ROUTLEDGE INTERNATIONAL HANDBOOKS

The Routledge International Handbook on Decolonizing Justice

Edited by Chris Cunneen, Antje Deckert, Amanda Porter, Juan Tauri and Robert Webb

The Routledge International Handbook on Decolonizing Justice

The Routledge International Handbook on Decolonizing Justice focuses on the growing worldwide movement aimed at decolonizing state policies and practices, and various disciplinary knowledges including criminology, social work and law. The collection of original chapters brings together cutting-edge, politically engaged work from a diverse group of writers who take as a starting point an analysis founded in a decolonizing, decolonial and/or Indigenous standpoint. Centering the perspectives of Black, First Nations and other racialized and minoritized peoples, the book makes an internationally significant contribution to the literature.

The chapters include analyses of specific decolonization policies and interventions instigated by communities to enhance jurisdictional self-determination; theoretical approaches to decolonization; the importance of research and research ethics as a key foundation of the decolonization process; crucial contemporary issues including deaths in custody, state crime, reparations, and transitional justice; and critical analysis of key institutions of control, including police, courts, corrections, child protection systems and other forms of carcerality.

The handbook is divided into five sections which reflect the breadth of the decolonizing literature:

- Why decolonization? From the personal to the global
- State terror and violence
- Abolishing the carceral
- Transforming and decolonizing justice
- Disrupting epistemic violence

This book offers a comprehensive and timely resource for activists, students, academics, and those with an interest in Indigenous studies, decolonial and post-colonial studies, criminal legal institutions and criminology. It provides critical commentary and analyses of the major issues for enhancing social justice internationally.

Chris Cunneen is Professor of Criminology at the Jumbunna Institute for Indigenous Education and Research at the University of Technology Sydney, Australia.

Antje Deckert is an Associate Professor in Criminology at Auckland University of Technology, New Zealand.

Amanda Porter is Senior Fellow at Melbourne Law School, University of Melbourne, Australia.

Juan Tauri is Adjunct Professor, Indigenous Studies, Macquarie University, Australia.

Robert Webb is Senior Lecturer in Criminology at the University of Auckland, New Zealand.

The Routledge International Handbook on Decolonizing Justice

Edited by Chris Cunneen, Antje Deckert, Amanda Porter, Juan Tauri and Robert Webb

Routledge
Taylor & Francis Group
LONDON AND NEW YORK

Designed cover image: © Getty Images / Abstract Aerial Art

First published 2023
by Routledge
4 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
605 Third Avenue, New York, NY 10158

Routledge is an imprint of the Taylor & Francis Group, an informa business

British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library

ISBN: 978-1-032-00977-3 (hbk)
ISBN: 978-1-032-00979-7 (pbk)
ISBN: 978-1-003-17661-9 (ebk)

DOI: 10.4324/9781003176619

Typeset in Bembo
by SPi Technologies India Pvt Ltd (Straive)

Contents

Illustrations

Figures

Tables

About the editors

Chris Cunneen is Professor of Criminology at the Jumbunna Institute for Indigenous Education and Research, the University of Technology Sydney. He is a white Australian who has worked with Aboriginal communities and their organizations since the 1980s. He has published widely on various aspects of the criminal legal system. In 2016 he published (with Tauri) *Indigenous Criminology* (Policy Press) and in 2019 (with Behrendt et al.) *Aboriginal and Torres Strait Islander Legal Relations* (OUP). His most recent book is *Defund the Police. An International Insurrection* (Bristol University Press). In 2022, he launched *Call It Out*, the first national online racism register for Indigenous people in Australia.

Antje Deckert (German, tauiwi) is an Associate Professor in Criminology at Auckland University of Technology in Aotearoa New Zealand. Collaborating with like-minded scholars across the globe, she seeks to push the edges of criminology from decolonizing to moving beyond it. She is co-editor-in-chief of *Decolonization of Criminology and Justice*; co-editor of *Neo-colonial injustice and the mass imprisonment of Indigenous women* (2020) and *The Palgrave Handbook of Australian and New Zealand criminology, crime and justice* (2017); serves on the Advisory Board of the Center for Theory of Change, New York City, and as a research adviser to the Grace Foundation in Auckland.

Amanda Porter (Brinja Yuin) is a Senior Fellow at Melbourne Law School. Her research examines processes of criminalization and racialization in policing, with a special interest in police powers and police accountability law. Amanda teaches legal research, criminal law, and criminology, and coordinates the Indigenous Legal Advocacy Clinic, an experiential learning subject in partnership with the Victorian Aboriginal Legal Service, Victorian Aboriginal Child Care Agency, and the *Yoo rrook* Justice Commission, among others.

Juan Tauri (Ngāti Porou) is an Adjunct Professor at Macquarie University. His research focuses on a critical analysis of settler-colonial state responses to the interrelated wicked (policy) problems of Indigenous overrepresentation in criminal justice processes, and Indigenous critique of, and resistance to, state-centred crime control policies and interventions. Juan is co-editor-in-chief of the academic journal *Decolonization of Criminology and Justice* and co-editor of *Indigenous Research Ethics* (2020) and *Neo-colonial injustice and the mass imprisonment of Indigenous women* (2020).

Robert Webb (Ngāpuhi, Ngāti Te Ata) is a Senior Lecturer in Criminology at the University of Auckland in Aotearoa New Zealand. His research and teaching interests include the critical analyses of criminal justice policies and how these impact Māori communities, youth justice and risk, Indigenous criminology, and Māori and organ donation. He is an Associate Editor of the journal *Decolonization of Criminology and Justice*.

Contributors

Alana Abramson is an expert on the traditional, unceded, and never surrendered traditional territory of the Secwepemc peoples. She has been involved in the field of restorative justice as a researcher, practitioner, and trainer since 1999 and is a faculty member in Criminology at Kwantlen Polytechnic University. Her research has examined the police, community, and serious crime in relation to restorative justice; Indigenous-led justice; and restorative justice in the post-secondary environment. She is a dedicated community volunteer for the Restorative Justice Association of British Columbia, the British Columbia Bereavement Society, and the Alternatives to Violence Project.

Biko Agozino, a Professor of Sociology, is ranked one of the world's top criminologists on academicinfluence.com. He is the (co-)author and (co-)editor of several books, including *Community policing in Nigeria* (2021); *Routledge handbook on Africana criminologies* (2020); *Critical, creative and centered scholar-activism* (2016); *Pan African issues in crime and justice* (2004); and *Black women and the criminal justice system* (1997). He is the director-producer of *Shouters and the Control Freak Empire*, winner of the Best International Short Documentary at the Columbia Gorge Film Festival in 2011 and was appointed Professor Extraordinarius 2021–2024 by the University of South Africa.

Ahmed Ajil holds a PhD in Criminology (University of Lausanne), an MLaw in Criminology and Security (University of Lausanne), a MA in Applied Security Strategy (University of Exeter, UK), and a BA in International Relations (University of Geneva). His research concerns migration and security, conflict and terrorism, state violence, decolonization, prisons, and policing. It has been published by the *British Journal of Criminology, European Journal of Criminology*, and *Déviance & Société*. Ahmed is also the author of the *Handbook on dynamic security in penal settings* (2021) and *Political mobilisation and violence in the Arab World* (2022).

Thalia Anthony belongs to a big Cypriot family and has two children. She is a radical activist, member of the Deadly Connections Advisory Board, Professor of Law at the University of Technology Sydney, and Research Fellow at Charles Darwin University. Her research addresses the carceral system's role in colonization. She conducts research with Aboriginal Legal Services, Queensland Community Justice Groups, Tangentyere Council and sista2sista. Thalia contributes

analysis of systemic racism for law reform commissions, coronial inquests, and United Nations committees. Thalia's first book was *Indigenous People, Crime and Punishment* (2013) and her forthcoming book is on colonial carceralism.

Muhammad Asadullah is an Assistant Professor at the University of Regina's Department of Justice Studies. Prior to joining UofR, he taught at Simon Fraser University, the University of the Fraser Valley, and Kwantlen Polytechnic University. He is the recipient of multiple awards and scholarships, including the Neekaneewak Indigenous Leadership Awards, Contemplative Social Justice Scholar Award, Liz Elliott Memorial Graduate Scholarship, President's PhD Scholarship, and Law Foundation Scholarship in Restorative Justice. Asadullah is deeply grateful to the Elders in Treaty-4 territory who guided him to walk on this land with humility and respect.

Cheryl Redhorse Bennett is a citizen of the Navajo Nation and also descends from the Comanche Nation. She has a PhD in American Indian Studies and is currently a law student at the University of Arizona. She is a former Assistant Professor at Montana State University and Arizona State University. Bennett's research focuses on violence against Indigenous peoples, racial violence, social justice, and violence against Native women and girls. Her book, *Our fight has just begun*: *A call to justice for hate crimes against Native Americans* (2022), analyzes hate crime and racism in the Southwestern US.

Cindy Blackstock is a member of the Gitxsan First Nation, the Executive Director of the First Nations Child and Family Caring Society of Canada, and a Professor at the School of Social Work at McGill University. Her work centres on culturally based equity for First Nations children and families.

Harry Blagg is a Professor of Criminology at the Faculty of Law at the University of Western Australia. He specializes in Indigenous people and criminal justice, youth justice, family violence, and diversionary strategies. He has over 20 years of experience conducting high-level research with Aboriginal people across Australia (including urban, rural, and remote locations) on justice-related issues. He co-convened the Indigenous Reference Group at UWA in 2018 and was the Research Director of the 2006 Western Australian Inquiry into Aboriginal Customary Laws. His books include *Crime, aboriginality and the decolonisation of justice* (2008) and, with Thalia Anthony, *Decolonising Criminology* (2019).

Ethan Blue, Senior Lecturer in History at the University of Western Australia, has published widely on the history of prisons and punishment in the US and Australia. He is the author of *The Deportation Express: A History of America through Forced Removal* (2021), *Doing Time in the Depression: Everyday Life in Texas and California Prisons* (2012), and the co-author of *Engineering and War: Militarism, Ethics, Institutions, Alternatives* (2013). Since 2010, he has served as an active member, board member, and researcher with the First Nations Deaths in Custody Watch Committee of Western Australia.

Florian Bobin is a Dakar-based researcher, author of a forthcoming biography of revolutionary philosopher Omar Blondin Diop and co-director of the documentary in the making *Contested Independence: Revolutionary Senegal*. His research focuses on liberation struggles and state violence in 1960s–1970s Senegal.

Mark Brown teaches in the School of Law at The University of Sheffield. He is also an Honorary Senior Fellow in the School of Social and Political Sciences at the University of Melbourne, Australia, and, during 2022–23, is a Leverhulme International Fellow based at Jigme Singye Wangchuck School of Law, Bhutan. His work spans topics in punishment and penal theory, criminal justice, and law, with a particular emphasis on historical and comparative studies. He is presently working on a study of alternatives to imprisonment drawing on Himalayan Buddhist histories and perspectives.

Vicki Chartrand is a mama and an Associate Professor in the Sociology Department at Bishop's University in Québec, the unceded territory of the Abenaki people. She is also an Adjunct Professor in the Criminology department at the University of Ottawa. Her general research includes penal and carceral politics, modern-day colonialism, grassroots justice, and collaborative methodologies. She has over 20 years of experience working in the non-profit, government, and voluntary sectors and collaborating with women and children, Indigenous communities, and people in prison.

Pablo Ciocchini is Honorary Research Fellow in Sociology, Social Policy and Criminology at the University of Liverpool and Research Fellow at the Institute of Legal Culture at the National University of La Plata, Argentina. His research adopts a neo-Gramscian approach to analyze the political role law and legal professionals play in societies of the Global South where state violence is rampant. His work has been published in international journals such as the *British Journal of Criminology, Critical Criminology*, the *International Journal of Law in Practice, Crime, Law and Social Change*, and the *Asian Journal of Social Sciences*, among others.

Wesley Crichlow is an African/Black Canadian critical race theorist, and intersectional decolonial queer scholar, whose work critically connects theories of enslavism, anti-Blackness, anti-Black racism, intersectionality, and decoloniality as the signature praxis and framing for his research, teaching, and service. His work aims to alleviate anti-Black racism, hetero-cis-normativity, transmisogyny, and structural and systemic inequalities.

Angela Y. Davis, through her activism and scholarship over many decades, has been deeply involved in movements for social justice around the world. Her work as an educator – both at the university level and in the larger public sphere – has always emphasized the importance of building communities of struggle for economic, racial, and gender justice. She is the author of eleven books, including *Abolition.Feminism.Now* (2022), co-authored with Gina Dent, Erica Meiners, and Beth Richie, and a new edition of her *Autobiography* (2022). Having helped to popularize the notion of a 'prison industrial complex', she now urges her audiences to think seriously about the future possibility of a world without carceral systems and to help forge a twenty-first-century abolitionist movement.

Antje Deckert is an Associate Professor in Criminology at Auckland University of Technology in Aotearoa New Zealand. Collaborating with like-minded scholars across the globe, she seeks to push the edges of criminology from decolonizing to moving beyond it. She is co-editor-in-chief of *Decolonization of Criminology and Justice*; co-editor of *Neo-colonial injustice and the mass imprisonment of Indigenous women* (2020) and *The Palgrave Handbook of Australian and New Zealand criminology, crime and justice* (2017); serves on the Advisory Board of the Center for Theory of Change, New York City, and as a research adviser to the Grace Foundation in Auckland.

Leanne Dowse is an Emeritus Professor in Disability Studies at the University of New South Wales in Sydney, Australia. Her research and publications centre on the application of critical models of inquiry to complexity in disability. Her work traverses intersectional scholarship in disability studies with a focus on gender, race, age, and complex social disadvantage and their relationships to violence, criminalization, and marginalization.

Jackie Dugard is a Senior Lecturer in Human Rights at the Institute for the Study of Human Rights at Columbia University. She is also a visiting professor at the University of the Witwatersrand's School of Law, an affiliate at the Center for Human Rights and Global Justice at New York University's Law School, and a global fellow at the Centre for Law & Social Transformation at Bergen University. She has published widely on access to justice and the role of courts in social change. She was co-founder and first director of the Socio-Economic Rights Institute of South Africa.

Rod Earle is a Senior Lecturer in Youth Justice at The Open University. Before becoming an academic, Rod worked for over a decade with young people in South London to help prevent them from being drawn into the criminal justice system. He has conducted research on youth justice, restorative justice, and men's imprisonment. Working with Coretta Phillips and Alpa Parmar, he has written about race, racism, and criminology. He is a founder member of British Convict Criminology, a loose group of academics who have served a prison sentence and now combine their experiential knowledge with critical criminological insights and doctoral training.

Maria Giannacopoulos is an Associate Professor of Criminology in the Faculty of Law and Justice at the University of New South Wales, Sydney. Born to post-war migrants from Greece and experiencing life on unceded Gadigal lands, she remains impacted by and driven to unravel the workings of white supremacy and Indigenous dispossession. She has degrees in law, literature, and a PhD in Cultural Studies. She works across the disciplines of law and criminology to reveal the complicity of Australian law with ongoing colonialism.

Grace Gordon is a Lecturer in the School of Social Sciences and Public Policy at Auckland University of Technology in Aotearoa New Zealand, specializing in criminology. Her areas of interest are incarceration, risk and safety, and alternatives to prisons. Grace's PhD research examined conceptualizations of risk and safety and how those conceptualizations contribute to a reliance on punitive responses to harm. As a prison abolitionist, non-Indigenous ally, and activist-scholar, Grace is committed to promoting decolonial and transformative change in our responses to harm.

David Rodriguez Goyes is a researcher at the University of Oslo. He holds a PhD in criminology from the same university. He has contributed extensively to the study of North–South global relations, environmental conflicts, and Indigenous issues. David is editor-in-chief of the *International Journal for Crime, Justice and Social Democracy* and a member of several editorial boards. He has a long publication record, with titles in English, Portuguese, and Spanish. His first sole-authored book, *Southern Green Criminology* (2019), was published by Emerald. He has also published numerous edited books, scientific journal special editions, academic articles, and book chapters.

Sue Green is a Galari, Wiradyuri (First Nations Australian) woman. She is a Professor of Indigenous Australian Studies and the Course Director of Wiradjuri Language, Culture and

Heritage at Charles Sturt University. Sue holds a Bachelor's degree in Social Work (Hons), PhD in Social Sciences, and a Graduate Certificate of Wiradjuri Language, Culture and Heritage. She is currently undertaking a Bachelor of Arts, Linguistics and she is the Aboriginal and Torres Strait Islander Director of the Australian Association of Social Work. Her research interests are decolonizing practices, Wiradjuri language, language reclamation, Indigenous nation rebuilding, Indigenous well-being and welfare, and Australian history.

Joe Greener is a Lecturer in Sociology, Social Policy, and Criminology at the University of Liverpool. His work centres on critical perspectives of state power and political economy. He has recently written a materialist critique of Southern criminology for the *British Journal of Criminology*. He has also published articles looking at regulatory failure in the care sector, the shifting policy context of stigma within mental health services, and the policing of migrant workers in Singapore.

Aya Gruber is a Professor at the University of Colorado Law School, where she teaches criminal law, criminal procedure, and critical theory. As a lifelong feminist, a former public defender, a professor of criminal law for eighteen years, and a survivor, she has personally and professionally grappled with the issue of feminism's influence on criminal law for decades. With her book, *The Feminist War on Crime*, Gruber seeks to engage the new generation of energized feminists who care deeply about women's equality and ending mass incarceration.

Michael A. Guerzoni is an Indigenous Fellow Academic Development in the School of Social Sciences at the University of Tasmania. He is a Palawa man, a descendant of the Trawlwoolway people of North Eastern Tasmania. He is a qualitative criminologist, whose research is focused on the safeguarding of children within religious institutions, and crime prevention. He is the author of *Child Protection in the Church: An Anglican Case Study* (2021).

Nancy A. Heitzeg is a Professor of Sociology and Critical Studies of Race and Ethnicity at St. Catherine University, St. Paul, Minnesota, US. Her work centres on race, class, gender, and social control with particular attention to the prison industrial complex. She is the author of *The school to prison pipeline: Education, discipline and racialized double-standards* (2016) and co-author of *Carceral con: The deceptive terrain of criminal justice reform* (2021).

Wendy Hermeston works as a Senior Research Fellow for the ALIVE National Centre for Mental Health Research Translation, at the University of Melbourne Department of General Practice, Melbourne Medical School. Wendy is a First Nations legal scholar of Wiraduri descent. Her lived experience of historical Aboriginal child welfare policies and extensive professional background in Stolen Generations-related and care and protection-related policy and practice informed her PhD study '*Safe, Protected … Connected*? *The Best Interests of Aboriginal Children and Permanency Planning in the NSW Care and Protection System*.' This research explored Aboriginal community members understandings of concepts central to decision making in the care jurisdiction, in particular the notions of the best interests of the child, permanency and attachment.

Zoë James is Professor of Criminology at the University of Plymouth, UK and co-director of the International Network for Hate Studies. Her key research interests lie in examining hate from a critical perspective with a particular focus on the criminalization of Gypsies, Travellers, and Roma. Zoë's research has explored how mobility, accommodation, policing, and planning

have affected the lived experience of Gypsies, Travellers, and Roma. Zoë has published and presented her work nationally and internationally, most recently authoring a monograph with the title *The harms of hate against Gypsies and Travellers: A critical hate studies perspective* (2020).

Debbie Kilroy is a settler on unceded lands. She was first imprisoned at age 14 and spent the subsequent 20 years moving in and out of women's and children's prisons in Australia. After her final release in 1992, she established Sisters Inside, which advocates for the human rights of women and girls affected by the criminal legal system. In 2007, Debbie was the first person in Australia with serious convictions to be admitted to practice law by the Supreme Court of Queensland. She is a qualified social worker, gestalt therapist, forensic mental health practitioner, CEO of Sisters Inside, and Principal of Kilroy & Callaghan Lawyers.

Jennifer King is Anishinaabe of mixed descent with family ties to the Wasauksing First Nation. She has a Master's degree in social work and has worked in areas of research, policy, and public engagement in support of Indigenous families for over 15 years.

Tamari Kitossa is a Professor of Sociology at Brock University in St. Catharines, Ontario, Canada. He is a generalist who explores the history of ideas in criminology, sociology, philosophy, and science for an overstanding of anti-Blackness, gender, race, social control, and war. His research and instructional interests include Blackness and anti-Blackness; Black masculinities; African Canadian leadership; anti-criminology and counter-colonial criminology; interracial unions; gender, sex and sexuality; race; the sociology of knowledge; and war and militarism.

Tabitha Lean is a Gunditjmara woman and a storyteller, poet, and freelance writer. She is also a lived-experience abolition activist having spent almost two years in prison, and two years on home detention in Adelaide, South Australia. Tabitha is committed to elevating the voices of those with lived prison experience to expose carceral state-sanctioned violence and to stop the brutalizing and killing of her own people at the colonial frontier, which is the criminal injustice system. She is a member of the recently formed National Network for Incarcerated and Formerly Incarcerated Women and Girls.

Terri Libesman is an Associate Professor in the Law Faculty at the University of Technology Sydney. Terri has researched and advocated for more than two decades with international, national, state, and local First Nations children's organizations. Her recent books include *Decolonising Indigenous child welfare: Comparative Perspectives* (2014) and *Aboriginal and Torres Strait Islander Peoples and the Law in Australia* with Professor Chris Cunneen, Professor Larissa Behrendt and Dr Nicole Watson (2019).

Claire Loughnan is a Lecturer in Criminology at the University of Melbourne. Claire researches the modes, practices, and effects of living and working in sites of confinement, and the carceral and colonial expansion accompanying border control practices. She has published in *Globalizations, UNSW Law Journal, Asia Pacific Journal of Migration* and *Law Text Culture*. She is research partner with the EU-funded CONREP project. Her first book on the institutional effects of immigration detention is under contract with Routledge (forthcoming 2023).

Elena Marchetti is a Professor at the Griffith Law School, Griffith University, Australia and Deputy Chair of the Queensland Sentencing Advisory Council. Elena has received two prestigious Australian Research Council Fellowships. The first, a five-year Australian Research

Fellowship, was awarded in 2009 to research the impact of using Indigenous sentencing courts for partner violence offending. The second, a four-year Future Fellowship, was awarded in 2015 to research different ways of evaluating Indigenous-focused criminal justice programmes so that the cultural ethos of such programmes is not lost when responding to key performance indicators set by funding bodies.

Brittany Mathews is Michif and a member of the Métis Nation of Alberta. Her family more recently comes from St. Paul, Alberta with kinship relations from St. Francois Xavier in Manitoba. Brittany has an Bachelor of Arts (Hons) in Indigenous Studies and a minor in Conflict Studies and Human Rights from the University of Ottawa.

Michaela M. McGuire (Jaad Gudgihljiwah) is a PhD student in the School of Criminology at Simon Fraser University. Her research interests include Haida justice; decolonization and resurgence; Haida identity and belonging; racism; self-determination and self-governance; Indigenous women and corrections; and qualitative, Indigenous, decolonial, and/or community-based research methods and pedagogy.

Tim McCreanor (Professor) is a Pākehā researcher at Te Rōpū Whāriki, with a long record of using qualitative research to address racism and other forms of injustice. His current focus is on decolonization in Aotearoa New Zealand with a particular focus on population health disparities, media representations, and sustainable transformation.

Angela Moewaka Barnes (Te Kapotai) is a researcher based at Te Rōpū Whāriki, Aotearoa. Her research is grounded in Māori paradigms, methods, and methodologies, including Kaupapa Māori as well as Indigenous approaches. Areas of interest include media, Māori identities, mātauranga Māori approaches to health and the natural environment, racism, and decolonization.

Florin Moisă is the Executive President of the Resource Center for Roma Communities Foundation in Cluj Napoca, Romania. His educational background includes a degree in Social Work (1995), an MBA (2006), and a PhD in Sociology (2012). He has over 25 years of professional and managerial experience. He teaches part time as an Associate Lecturer in the Social Work Department at Babeş-Bolyai University in Cluj Napoca, Romania. Since 2000, he has been involved in developing programmes that improve conditions for Roma. He has published several articles and coordinated several research reports related to Roma issues.

Keenan Mundine is the co-founder of and an Ambassador for Deadly Connections. He is a proud Biripi and Wakka Wakka man. After losing both parents at a young age, Keenan was placed in care and separated from his brothers. He was subsequently incarcerated in youth detention and adult prisons. Keenan has a passion for giving back to his community and working with people with similar experiences to his. His staunch advocacy for decarceration has led Keenan to address the United Nations Human Rights Council, present a TED Talk, and appear in international documentaries. Keenan received the 2018 Eddie Mabo Award for Social Justice.

Nyasha Mutongwizo is a PhD candidate in the School of Justice at the Queensland University of Technology (QUT), Australia. She has over a decade experience in conducting programmes aimed at youth wellbeing and empowerment in marginalised, low-resource communities in Africa. Her PhD explores youth engagement in political activity through non-traditional social movements in Zimbabwe.

Tariro Mutongwizo is an Adjunct Lecturer in the School of Justice at the Queensland University of Technology (QUT), Australia. Her research interests include multidisciplinary approaches to exploring the non-state governance of security, the governance of contested spaces and the security of vulnerable and marginalized groups.

Robyn Newitt is a Tharawal woman and has family connections to Yorta Yorta. Robyn is an activist and a Lecturer at Monash University in the Faculty of Medicine, Nursing and Health Sciences. Her field is in the space of the criminal justice system and Aboriginal rights to self-determination. Her research primarily focuses on colonization, human rights, social justice, systemic racism, prison abolition, defunding police, and improving outcomes for Aboriginal people in relation to the Australian legal system.

Nabil Ouassini is an Assistant Professor at Prairie View A & M University. He received his PhD in criminal justice from Indiana University at Bloomington in 2017. His research interests include comparative criminal justice/criminology, legitimation and legitimacy, and crime/criminal justice in the Arab world. Along with several book chapters, his most recent publications have appeared in the *Review of Black Political Economy*, the *British Journal of Criminology*, the *Journal of Asian and African Studies*, and the *Journal of Victimology and Victim Justice*.

Augustine SJ Park is an Associate Professor in Sociology at Carleton University in Ottawa, Canada. Her research interests include transitional justice, restorative and community-based justice, settler colonialism, and race/racism. Her recent publications address transitional justice in settler societies.

Coretta Phillips is a Professor of Criminology and Social Policy. Coretta's research interests lie in the field of race, ethnicity, crime, criminal justice, and social policy. Her most recent book, *The multicultural prison* (2012), won the Criminology Book Prize in 2013 and it was shortlisted for the BBC Radio 4 Thinking Allowed/British Sociological Association Award for Ethnography in 2014.

Scott Poynting is an Adjunct Professor at the School of Justice at Queensland University of Technology and an Adjunct Research Professor at the Centre for Islamic Studies and Civilisation, Charles Sturt University. His most recent book (jointly with Ulrike Vieten) is *The Normalisation of the Global Far Right – Pandemic Disruption?* (2022).

Emmy Rākete is a communist and prison abolitionist of the Ngāpuhi and Te Rarawa iwi. She is a community organizer with People Against Prisons Aotearoa, which she helped to found in 2015, and is currently its press spokesperson. Her research focuses on critical political economy and mass incarceration with the goal of informing and guiding class struggles.

Sherene H. Razack is a Distinguished Professor and the Penny Kanner Endowed Chair in Women's Studies in the Department of Gender Studies at the University of California in Los Angeles, US. Her research and teaching focus on racial violence. She is the founder of the virtual research and teaching network Racial Violence Hub (RVHub). Her book, *Dying from improvement: Inquests and inquiries into Indigenous deaths in custody (2015)*, explores state violence against Indigenous peoples.

Dylan Rodríguez was named to the inaugural class of Freedom Scholars in 2020 and recently served as President of the American Studies Association (2020–2021). He has been a Professor at the University of California, Riverside since 2001. He is the author of three books, of which the most recent bears the title *White reconstruction: Domestic warfare and the logic of racial genocide* (2021). He is also a co-editor of *Critical Ethnic Studies: A Reader* (2016).

Michael Roguski (Te Ātiawa and Tūwharetoa) is a criminologist in Aotearoa New Zealand. He is the director of Kaitiaki Research and Evaluation, and specializes in sensitive topic and social justice-related research. Much of this experience has focused on marginalized communities and sensitive topic evaluation and research. He is currently a committee member of the Family Violence Death Review Committee, Ngā Pou Arawhenua, Research and Ethics Approval Panel for the Royal Inquiry into Historical Abuse in State and Faith-based Institutions, and is a member of the Family Violence Clearing House Māori Advisory Group.

Iulius Rostas is Visiting Professor at the National School of Political Studies and Administration (Romania) and teaches courses on racism at the University of Stuttgart and Dortmund University of Applied Sciences. Between 2016 and 2019, he served as Chair of Romani Studies and Assistant Professor at Central European University. Dr Rostas is the editor of *Ten years after: A history of Roma school desegregation in central and eastern Europe* (2012) and his latest book *A task for Sisyphus: Why policies towards Roma in Europe are failing* was published by CEU Press in 2019.

Simone Rowe is a research associate and PhD candidate at the University of New South Wales in Sydney, Australia. Her research and publications include critical interdisciplinary analyses of disability and the criminal legal system; First Nations people and the criminal legal system; abolition; and decoloniality. Simone's doctoral research *Disability and the colonial carceral state* is an empirical and theoretical study about the experiences of criminalized people with cognitive disabilities.

Jonathan Rudin established the Aboriginal Legal Services (ALS) in 1990. He has been with ALS ever since and has made court appearances at all levels in Canada. In 1992, he helped establish the Community Council – the first urban Aboriginal justice programme in Canada, and, in 2001, the Gladue (Aboriginal Persons) Court in Toronto. His book *Indigenous people and the criminal justice system* won the Walter Owen Book Prize from the Canadian Foundation for Legal Research in 2019. Finally, he plays the mandolin and sings with Gordon's Acoustic Living Room, a group that plays in Toronto regularly and can also be found on YouTube.

Rishika Sahgal teaches human rights law at the University of Sheffield, UK. She has a DPhil in Law from the University of Oxford. She was a senior researcher at the Death Penalty Research Project, National Law University, Delhi (India), which documented the disproportionate burden of the death penalty in India on subaltern caste, class, and religious groups.

Viviane Saleh-Hanna is a Professor of Crime and Justice and Black Studies at the University of Massachusetts, Dartmouth. She is a member of Living Keemi Collective: a transnational Niremènxhmi [People of the Black Soil - pronounced NiRemenKeemi] collective founded by Pitṭrh (Piteeri) Michail in 2020, working with elder Ṫnhb Ognac (Ounas) Gerges (metremènxhmi Language Keeper) for language + cultural revival by north African descendants of historic Xhmi ('Ancient Egypt'). Saleh-Hanna's Indigenizing journey is informed through

teachings by Anishnaabe elder Banakonda Kennedy-Kish(Bell), Professor Kathy E. Absolon, and many more at the Center of Indigegogy at Wilfred Laurier University. She serves on the board of the *Journal of Prisoners on Prisons*, the *African Journal for Criminology and Justice Studies*, and *Decolonization of Criminology and Justice*. Her scholarship centers Black feminist hauntology, abolitionism, penal colonialism, wholistic justice, structurally abusive relationships, and freedom dreams inspired by Octavia E. Butler, Toni Morrison, and N.K. Jemisin.

Nompumelelo Seme is an advocate (barrister) at the Johannesburg bar. Between 2016 and 2021, she was a full-time lecturer at the University of the Witwatersrand's School of Law, where she taught Property Law and Customary Law. She has a special interest in land and property justice and has written on this topic. She is on the board of directors of the Centre for Applied Legal Studies and Section27, South African organisations that litigate and advocate for social change.

Carly Stanley is the CEO and co-founder of Deadly Connections. Carly is a proud Wiradjuri woman, born and raised on Gadigal land. In 2020, Carly was awarded a Churchill Fellowship and an AMP Tomorrow Maker award. Carly has both lived and professional experience in several community services areas but has spent over 20 years working across the government and non-government sectors supporting justice-involved people, families, and communities. In addition to Carly's professional expertise, she also holds a Master's of Criminology and has published chapters and articles in academic publications and on Indigenous platforms.

Adan Tatour is a human rights lawyer and activist. She previously worked at Adalah: The Legal Center for Arab Minority Rights in Israel and was part of the Lawyers for Defending the Uprising Detainees group which provided legal counsel to detainees in Haifa during the Unity Intifada.

Lana Tatour is an Assistant Professor in the School of Social Sciences at the University of New South Wales, Australia. She was the 2019/20 Ibrahim Abu-Lughod Postdoctoral Fellow at the Center for Palestine Studies at Columbia University. She is currently completing her monograph, provisionally titled *Ambivalent resistance: Palestinians in Israel and the liberal politics of settler colonialism and human rights*. Together with Ronit Lentin, she is also co-editing a book provisionally titled *Race and the question of Palestine*.

Juan Tauri (Ngāti Porou) is an Associate Professor at the University of Auckland. His research focuses on a critical analysis of settler-colonial state responses to the interrelated wicked (policy) problems of Indigenous overrepresentation in criminal justice processes, and Indigenous critique of, and resistance to, state-centred crime control policies and interventions. Juan is co-editor-in-chief of the academic journal *Decolonization of Criminology and Justice* and co-editor of *Indigenous Research Ethics* (2020) and *Neo-colonial injustice and the mass imprisonment of Indigenous women* (2020).

Valmaine Toki is of Ngatiwai and Ngāpuhi descent. She is a Professor in Law, Te Piringa, University of Waikato, Aotearoa, New Zealand. Her research and writing lie within the area of recognizing Indigenous rights. Professor Toki was the first Māori and New Zealander appointed to the UN Permanent Forum on Indigenous Issues. Her book *Indigenous Courts, self-determination and criminal justice* explores the nexus between Indigenous rights and criminal justice.

Waqas Tufail is a Senior Lecturer in Criminology at Leeds Beckett University, UK. His research interests primarily concern Islamophobia, the policing, racialization, and criminalization of marginalized and minority communities, and the lived experiences of Muslim minorities. Waqas is a board member of the International Sociological Association (ISA) Research Committee on Racism, Nationalism, Indigeneity and Ethnicity and is co-editor of *Media, Crime and Racism* (2018).

Pamela Ugwudike is Associate Professor of Criminology at the University of Southampton, UK, a Fellow of the Alan Turing Institute, and a co-editor-in-chief of *Criminology and Criminal Justice* Journal. She has led projects that have brought together expertise from criminology, computer science and mathematics to explore ethical and societal implications of artificial intelligence systems, with a focus on data-driven algorithms deployed by justice systems and social media platforms. She is currently leading a multidisciplinary research project on the motivations and risks of 'sharenting' on social media and how best to develop AI-driven remedial strategies (funded by the Economic and Social Research Council). Her most recent book (with Rosalind Edwards) is Governing Families: Problematising Technologies in Social Welfare and Criminal Justice.

Arvind Verma was a member of the Indian Police Service in the State of Bihar for many years, holding several senior positions. He earned his PhD in Criminology from Simon Fraser University in Canada, analyzing criminal justice data using a variety of mathematical techniques such as fuzzy logic, topology, and fractals. He served as managing editor for *Police Practice and Research: An International Journal* and was an adviser to the Bureau of Police Research and Development in India. His current research interests are in policing, criminal justice policy issues, Indian police, research methods, mathematical modelling, and agent-based simulation.

Maggie Walter is Palawa, descending from the Pairrebenne people of North Eastern Tasmania and a member of the Tasmanian Aboriginal Briggs family. She is a Distinguished Professor of Sociology at the University of Tasmania and teaches and publishes in the fields of race relations, inequality, and research methods and methodologies. Professor Walter is passionate about improving the position of Aboriginal people in Australian society and changing the dynamics around race relations. She is the editor and co-author of the bestselling *Social Research Methods* (2019) and co-author of *Indigenous Statistics: a quantitative methodology* (2013) and *Indigenous Data Sovereignty and Policy* (2021).

Robert Webb (Ngāpuhi, Ngāti Te Ata) is a Senior Lecturer in criminology at the University of Auckland in Aotearoa New Zealand. His research and teaching interests include the critical analyses of criminal justice policies and how these impact Māori communities, youth justice and risk, Indigenous criminology, and Māori and organ donation. He is an Associate Editor of the journal *Decolonization of Criminology and Justice*.

Leanne Weber is Professor of Criminology in the Canberra Law School at the University of Canberra and a Research Associate at the Centre for Criminology, Oxford University. She researches policing and border control using criminological and human rights frameworks. Her books include *Crime, justice and human rights* with Elaine Fishwick and Marinella Marmo (2014); *Policing non-citizens* (2013), *Stop and search: Police power in global context* with Ben Bowling (2013), and *Globalization and borders: Death at the global frontier* with Sharon Pickering (2011).

Andrew Woolford is a Professor of Sociology and Criminology at the University of Manitoba and former president of the International Association of Genocide Scholars. He is author of '*This Benevolent Experiment': Indigenous Boarding Schools, Genocide and Redress in the United States and Canada* (2015) and *Between Justice and Certainty: Treaty-Making in British Columbia* (2005), as well as co-author of *The Politics of Restorative Justice* (2019) and *Informal Reckonings: Conflict Resolution in Mediation, Restorative Justice, and Reparations* (2008). He is co-editor of *Canada and Colonial Genocide* (2017) and *Colonial Genocide in Indigenous North America* (2014).

Preface

This handbook focuses on the growing worldwide movement aimed at decolonizing state policies and practices and the discipline of criminology. The collection of original chapters brings together cutting-edge, politically engaged work from a diverse group of writers who take as a starting point an analysis founded in a decolonizing, decolonial and/or Indigenous standpoint. A basic criterion for inclusion in this handbook was that each chapter in some form addresses, is cognisant of, or is underpinned by one or more of these theoretical or political positions.

The book chapters offer critical commentary on momentous issues facing the decolonization of criminalization, carcerality, and criminology. These points of departure include analysis of specific decolonization policies and interventions instigated by communities to enhance jurisdictional self-determination and foster Indigenous sovereignty; theoretical approaches to decolonization; the importance of research and research ethics as a key foundation of the decolonization process; crucial contemporary issues including deaths in custody, state crime, reparations, and transitional justice; and the use of decolonizing, decolonial or Indigenous critical analysis of key institutions of social control, including police, courts, prisons, child protection systems and other forms of carcerality and state violence.

When we first drafted the outline for this edited volume, our discussions focused mostly on *who* we would like to write about *what*. We sought to cover a wide range of topics, while engaging perspectives from every continent and as many intersections as possible. We sketched rough section headings to which we made no commitment, trusting in the process: that the appropriate ones would organically emerge once all contributors had signed off their final manuscripts. As is the case with most edited collections, a good number of people we asked to contribute had to decline as they were already wedded to other projects, a few authors changed their topics after agreeing to contribute, and some had to discontinue their planned chapters for various reasons, which means that several of the topics and representations we had originally envisaged could not be covered in this volume after all. We also note some of the difficulties in relation to terminology. There is much debate on whether 'Black' and 'White' should be capitalized. We have left this to the decision of each author, rather than imposing our view. Similarly, the words 'decolonial' and 'decolonizing' are used variously by authors, sometimes interchangeably, sometimes with precision to represent different theoretical orientations. Again, we have not imposed an overarching definitional dogma on what is an evolving understanding of these terms.

After we had read, edited, and confirmed all chapters, we were confronted with one final question: How does one structure a handbook that is not only supposed to be a platform for authors to write *about* decolonization but a book that aspires to *be* decolonizing, *represent* decolonization, and, in doing so, *is* more than "just a metaphor" as Tuck and Yang (2012, p. 1) have urged us and whose call is echoed by so many of the contributors in this volume? Or as Debbie Kilroy, Tabitha Lean, and Angela Davis ask in their contribution to this volume: "What is the

use of talking about decolonial scholarship if we do not, in fact, employ, honour, and practice it?" So, how does one arrange chapters under subheadings in a meaningful way without caging or misrepresenting them? We did not take this task lightly. Our discussions were long and involved mind-thinking, gut-feeling, as well as heart-feeling-thinking. We can only hope that the outcome does justice to all contributors' hard work and intentions.

We thought the first section should elucidate *why* we saw a need for this book to be compiled in the first place, *why* decolonization of justice is necessary, and the range of locations in which it needs to occur. At the same time, we could not help but notice how deeply personal some authors' accounts were, while others focused their critical lens upon the global. To us, it demonstrated the complexity of the decolonizing project, requiring involvement at the individual, community, and global levels. Hence, we decided to name the first section *Why decolonization? From the personal to the global*. It starts with Viviane Saleh-Hanna's very personal account of the immortal connection between individual spirit and ancestral lands, which can be broken neither by colonialism nor by the passing of time. Eloquently and seemingly effortlessly, she links decolonization and healing to abolition – abolition of white supremacy and imperial institutions "that capture our bodies and take away our time and ability to be and feel alive". Following Viviane Saleh-Hanna, Michaela McGuire picks up the themes of white supremacy and justice to expose the "colonial smokescreens masked as policy and programming, resulting in the expansion of state control and the increased indigenization of justice policies and programming as stifling the potential for decolonial Nation-based solutions". From the broad theme of decolonizing justice, the section then moves on to cover a selection of macro-level areas of decolonization – the mass media, social work, and restorative justice – before zooming out to the global scale. Here, Pablo Ciocchini and Joe Greener "argue for a materialist understanding of neo-imperialism placing processes of wealth transference and extraction from Global South to North as central to the global system of inequality" and injustice, while Leanne Weber, Robyn Newitt and Claire Loughnan focus on colonial borders.

For some time, as we wrestled with the right wording for the heading of the second section, it bore the working title *I can't believe it's not policing*. While the deflective humour helped us to 'put a pin in it' and gave us time to think, it was, in hindsight, also a nod to the ongoing decolonization of our own minds. The words we use matter. That words matter is also illustrated in the first chapter of this section, written by Maria Giannacopoulos, who speaks to the "*violence* of the law" that is enabled through its "en*force*ability". As violence perpetrated by the state transpired from each chapter in this section, it was clear that the term *state violence* had to be part of the section heading. However, we felt this was not going far enough as the accounts of the experiences of state violence were too systematic, too methodical, and too lethal to not be understood as colonial-genocidal *terror*. Hence, we decided on the title *State terror and violence*. The section moves from the violence of the law to the criminalization and overpolicing of Romani people and other social groups whose legal construction and/or identity is based on their itinerant lifestyles. Here, again, the importance of terminology/words and thus language in both the process of colonization and decolonization becomes apparent as narrative categorizations are employed to determine *who* belongs and *who* does not. In the next chapter, Dylan Rodríguez also supports the importance of terminology in decolonization as he argues for the abandonment of the term 'police brutality' and the uptake of the term 'police terror' instead. The various shapes and forms in which this police terror occurs are outlined in the following chapters, which also capture a wide range of geographical locations. The second section ends with Chris Cunneen's contribution, in which he shows that the struggle against police violence has been foundational to the development of movements for racial justice and collective action predating the current calls to dismantle the police and end state terror and violence.

From the abolition of police, it logically followed that the third section would focus on *Abolishing the carceral*. That this topic is also a deeply personal one is demonstrated by Debbie Kilroy, Tabitha Lean, and Angela Davis in the first chapter of this section as they "employ the ancient art of storytelling drawn from struggles against racism, heteropatriarchy, and capitalism" to "steer, guide, and teach" us, asking us to find meaning as we "pause and reflect" on their stories of experiencing the violence of incarceration. Their chapter reminds us of a question asked by Stanley Cohen (2001): "What do we do with our knowledge about the suffering of others, and what does this knowledge do to us?" (p. x). Aya Gruber illustrates in the following chapter that to feminists of the carceral persuasion the knowledge of the suffering of others – in particular the suffering of Black and Indigenous others – does little to nothing to inform their analysis of crime control, evidenced by the fact that carceral feminists continue to participate in the "colonial prison project by sanitizing state violence as the protection of vulnerable women". The next two chapters, authored by Sherene Razack and Vicki Chartrand respectively, expound on the carceral violence committed by settler-colonial states against Indigenous people. Hereafter, Simone Rowe and Leanne Dowse discuss the intersections of indigeneity, race, and disability in the carceral context. In their chapter, they also elaborate on the harmful effects of the hyper-individualistic risk paradigm and demonstrate how "risk assessment tools preserve the colonial carceral impetus to confine the familiar targets of colonial oppression". How to move beyond the risk paradigm is then discussed by Grace Gordon and Robert Webb in the next chapter, followed by Nancy Heitzeg's chapter on the school-to-prison pipeline. This third section is book-ended by yet another highly personal account as Ethan Blue ponders his decades-long work with colonial carceral archives. Again, the importance of words – written, spoken, traced – becomes apparent as he conceives of the incarcerated other "about whom the records are written" as "imprisoned by the words" both beyond their time in prison and their lifetime.

Moving on from the specific context of the carceral, the fourth section looks more broadly at *Transforming and decolonizing justice*. It brings together chapters on decolonizing efforts within the immediate justice sector and at the community level. Topics include the decolonization of child welfare, family violence, and restorative justice, while covering a wide range of geographic locations from Turtle Island to South Africa, India, and Aotearoa New Zealand. Some chapters raise uncomfortable matters for the project of decolonization. For example, using India as the point of discussion, Mark Brown raises questions about how we understand the historical process of colonization and its implications for decolonization. Rishika Sahgal shows how the concept of decolonization can be appropriated by ultranationalists in India to fan communalism. This fourth section ends with two macro-level discussions – one about the link between environmental and criminal justice by David Rodríguez Goyes, followed by Andrew Woolford's analysis of the colonial roots of the concept of genocide.

The fifth and final section attends to the decolonization of academia and the discipline of criminology in particular. We gave it the title *Disrupting epistemic violence* because that is what all authors in the section aim to achieve with their writing. While this section was afforded more prominence in our original contents outline, we decided to move it to the end of the book, not because theory and academic research are of less importance but because they are and should be informed by and reflect on individual, community, and global experiences of de/colonization and in/justice. Topics covered in this section include both the decolonization and decolonial paradigm in criminology, Black criminology, and the decolonization of research methodologies, theory, and praxis. This section – and with it the edited volume – concludes with Rod Earle's chapter on *Tackling whiteness as a decolonizing task in contemporary criminology*. He argues "that

making whiteness better understood and more visible in criminology increases the prospects of decolonizing justice, confronting its racism, and promoting more egalitarian convivial futures".

Decolonization is a historical and contemporary set of political, economic, social, and cultural processes. We take the insight of abolitionists who acknowledge that change is not simply an act of pulling down but also simultaneously one of rebuilding. Colonial institutions including criminal legal systems have been built up over centuries. Decolonization by necessity will be both a generative and iterative process. While all of the chapters argue the need for decolonization, they do so from various perspectives in relation to both theory and praxis, reflecting the current vibrancy and diversity of writing and activism in the field.

Finally, we note that this book is the result of a joint project with equal contributions from all of us involved: the editors are listed in alphabetical order. We thank all the contributors and we sincerely hope they are as pleased with the outcome as we are. We were fortunate enough to receive funding from the University of Auckland to enable this book to be an open-access publication – which itself is a necessary step in the decolonization of knowledge. In reflecting on the audience for this book, we perhaps can do no better than paraphrase Mariame Kaba's response to Marc Lamont-Hill (2021) when she was asked the same question about her book *We do this till we free us*: we hope the book will find its audience and the audience will find the book useful.

Chris Cunneen, Antje Deckert, Amanda Porter, Juan Tauri, Robert Webb

References

Cohen, S. (2001). *States of denial: Knowing about atrocities and suffering*. Polity Press.

Lamont-Hill, M. (2021, March 15). *Coffee and books* [Podcast]. https://podcasts.apple.com/au/podcast/coffee-and-books/id1522592619?i=1000513043821

Acknowledgements

We acknowledge the funding from the University of Auckland to make this handbook open access.

Part I

Why decolonization?

From the personal to the global

1

Between the lines of land and time

Viviane Saleh-Hanna

Introduction: to my ancestors

> I am a Black feminist, the child of Coptic ancestors and Palestinian refugees.
> (Saleh-Hanna, 2016, p. 46)

Approaching three decades of anti-colonial and abolitionist organizing, scholarship, and teachings, I turn towards ⲛⲁⲛⲟⲩⲛⲓ ⲛ̀ⲣⲉⲙⲛ̀ⲭⲏⲙⲓ (my - Person of the Black Soil [Coptic - Egyptian] - roots), and my Palestinian roots to examine and disclose the unspoken loss and grief that embody this journey. The militarized terrors of colonialism and conquest harvest loss and anguish in so many ways, for so many people. Within my family, colonialism meant that my Ⲣⲉⲙⲛ̀ⲭⲏⲙⲓ father and matrilineal Palestinian grandparents became the first generation in their respective lineages to be buried outside their ancestral homelands. Consequently, my generation became the first born outside our lands of origin. We exist at the very early cusps of colonial displacement and land dispossession, grew up within families that experienced those ruptures first-hand, and now exist between the worlds they lost and the ones we are trying to create, so that we can go on living.

In this chapter, I break layers of silence surrounding the roots of my family's colonial trauma by reconsidering penal colonialism (2008) and Black Feminist Hauntology (2015) in relation to the lands that hold my ancestors and carry the histories and wisdoms of our ways. Anchored within an intentional commitment to write between the lines of land and time, I reflect on my scholarship in relation to my lived experiences and historic memories tangled within the viscous, knotted formations of colonization's enduring violence. As I share these personal dimensions and break silences surrounding anti-colonial moments of freedom, I map portions of our journey towards decolonizing justice. This is a journey that asks all who do this work to explore the lands of their ancestors, to break the silences we know need to be broken, and to contribute to next-world creations with intentional, anti-colonial, freedom-filled dreams come true.

DOI: 10.4324/9781003176619-2

We are the land: Ⲛⲓⲣⲉⲙⲛ̀ⲭⲏⲙⲓ (People of the Black Soil, pronounced NiRemenKeemi) and Palestinian

> I have come to believe over and over again that what is most important to me must be spoken, made verbal and shared, even at the risk of having it bruised or misunderstood.
>
> (Lorde, 1984, p. 40)

I sit down to write this chapter as the first anniversary of my father's passing into the spirit realm looms. His ancestry, the histories he passed on to his kin, his life lessons and struggles deeply shape who I am and what I create in the world. My matrilineal ancestry belongs to Palestine and holds the same significance. Yet, these are roots I seldom discuss or write about in public spaces. Don't get it twisted: I am open about my Ⲣⲉⲙⲛ̀ⲭⲏⲙⲓ (People of the Black Soil, pronounced RemenKeemi) and Palestinian roots, I am proud of my peoples, my ancestors, our history, our continued struggles against colonialism, and my heritage. I have just not been able to document, until now, how and why anti-colonialism resides at the core of my being, is the heart and soul of my relationships to and expectations of justice, necessitated my leap into abolitionist thought and activism so early in my life.

This is the first chapter I have dedicated fully to my roots. It has been a long time coming, as I have always known that the words needed to express these roots and family histories are bathed in colonial trauma, full of grief, and, at times, feel consumed by such immense loss. The actual loss of my father has become my catalyst for a broader, more visceral reflection of the many losses that began before his life was over; before his life began. As I process my grief and mourn his loss, I find myself more acutely aware of the fact that between the lines of everything I have ever written on colonialism, on justice, on abolition, on hauntology, reside the occupied lands and lost times of my ancestors. Throughout my scholarship, on every blank page between chapters, every blank line between paragraphs, and every single blank space between words, in each and every publication, I have always, privately, been able to read the pain and loss of north Africa's Land of the Black Soil - called ⲭⲏⲙⲓ (pronounced Keemi) by my ancestors for far longer than colonizers have taught us to call Her Egypt, and the obvious, on-going loss of Palestine. It is from between these lines of land and time that I felt compelled to write this chapter.

A long dirt road begins with the casual barrel of a gun

Seldom does the first line written become the actual first line printed in most publications. In the case of *Colonial Systems of Control: Criminal Justice in Nigeria* (2008), the first line I wrote remained unchanged throughout all the drafts of its making. "A long dirt road begins with the casual barrel of a gun, guarding a boundary, allowing selective access to outsiders and controlled exit to insiders." (2008, p. 1). The casual barrel of that gun is colonialism. It backs the criminal legal system, cannibalizing justice everywhere it goes. Colonialism's casual barrel of their gun enforces the borders of white, settler nation-states as they cut Indigenous nations and lands into obscure conquered formations all over the globe. It limits our beings into prototypes that must fit within the limiting and fetishized imaginations of white supremacist colonizers. Colonialism's militarized, imprisoning, dissecting, categories of allowable existence line the contours of western[1] thought and feed its vicious cycles of colonial world-making.

Within colonial systems of control, the guns pointed at our lands (enforcing borders) and our bodies (through war and criminal legal powers) appear 'casual'. This appearance is constructed through many mechanisms, not least of which are the many ways colonizing cultures minimize, gaslight, and deny our pain and loss. Fueling the militarized separations and ruptures

enforced by colonialism, the sterilizing language of colonizers transforms how we think about and articulate our struggles for freedom. For example, geography and demographics really mean the land and her people. In the arena of colonialism, our existence – both on and off captured homelands – haunts western geography and transforms conquered peoples and nations into 'demographics'. From the sterilized lens of these formations (re-forming land into geographics and re-framing people into demographics) the barrels of their guns are casually and falsely cast as an extension of our safety, as opposed to an extension of their vicious grasps on that which shall never truly belong to them.

Palestine: beloved lands between the river and the sea

> I was surprised at how much I thought about the loss of Palestine during my miscarriage. I was grieving a loss of a potential, a life I had never met or known, yet one that was mine, was within me, was a part of me. I have never been to occupied Palestine, and I found myself unexpectantly confronting the impact of that loss of family, land, and life during my miscarriage.
>
> (Saleh-Hanna, 2016, p. 51)

European colonialism resulted in my maternal grandparents becoming the first generation in their families to be buried outside their ancestral homeland. By this I mean, the vast majority of my maternal ancestors, as far back as time can measure, rest within the embrace of Palestine. In the aftermath of Europe's colonial catastrophe, my grandfather is buried in Egypt [XHMI] and his beloved wife, my grandmother, is buried in Canada. In one generation, my deeply rooted maternal lineage lost Palestine to armed white settlers backed by the strongest, wealthiest white nation-states in the world. As a result, our families, communities, and ways of life are scattered in ways that cannot be undone.

My mother was three years old when her parents fled in 1948. We grew up listening to my grandmother's retelling of those times. Early in the days of Palestine's most recent colonial occupation, European troops rounded up all the Palestinian men and boys who lived on her street in Jerusalem. They made them kneel on the sidewalk with their hands behind their heads all day. At sundown, they casually executed one or two or three of them before sending the rest home. The bodies of the murdered remained on the streets in front of their homes overnight. The next morning and night, the same thing happened until one by one, each family who could, left Palestine.

My mother's family lived in tents in the desert for three months waiting to see which surrounding nation-state would accept them. As far as I know, some of our relations went to Jordan, and some, along with my mother's family, to XHMI. There are also those who, against all odds and threats to their life, remain in Palestine. My mother's paternal and maternal lands are in Ramla and Yaffa, and the home my grandparents created for their new family is in Jerusalem – none of their homes and lands is located in the West Bank or Gaza. As a result of European colonialism, all of my maternal homelands, every inch of home and land, is fully occupied by the State of Israel. Once in a while, we get videos and photographs of our homes or shopfronts now occupied by white settlers. They may have changed the signs on our storefronts and moved into our homes as if they are their own, but they can never change the facts of Palestine: the facts of my ancestors and their times remain buried in the lands and woven into the very air those settlers breathe. On a visceral level, I have always understood that colonists impose, enforce, and murder because that which they claim is not true, and that which they occupy will

never fully belong to them. Palestine is not a question: we are a land outside of Europe with a religiously diverse people who are not European and have never been from Europe. The oral histories passed down to me by my grandmother taught me about the casual barrel of the gun I encountered at the entrance of all prisons, walls, and borders I have crossed. Colonial violence is epitomized and reproduced through the barrels of their guns: guarding, selecting, imprisoning, and expelling us casually and without an ounce of shame or second thought. For so many reasons, but particularly because of my family's colonial trauma, the work of Black feminists has always moved my spirit and spoken a language I needed to learn in order to survive and make sense of the world around me.

Penal colonialism and Black Feminist Hauntology: echoed formations in call and response

My scholarship on Black Feminist Hauntology is deeply influenced by Toni Morrison's *Beloved* (1987). In Morrison's re-written story of Margaret Garner, the central character Sethe processes and discusses the violations she faced during her life on a plantation and the brutal decisions she had to make to escape with her children. Sethe describes not 'memories' of those days, but instead the 'rememory' of those times. Morrison's reframing of memory as repetitive allows us to consider how the experiences of colonialism and enslavement do not only exist in the past, nor just within the memories of those who experienced these institutions first-hand. Instead, we are able to articulate how this violence embodies a vicious echo with impacts unleashed across occupied lands trapped within stolen time. When Toni Morrison renamed structural violence as 'rememory' she invoked a Black feminist call (in the name) and response (in the understanding) that echoes across colonialism's loss and despair – refusing to fall into the abyss – birthing next-world languages to describe the depths of colonialism's violence. Rememory disallows the barrel of their gun to continue to disguise itself as casual. The echoes we hear within Sethe's rememory are mirrored and intertwined throughout the institutionalized trajectories of white power:

> Colonialism was legalized by the same criminal system that legalized slavery […] neocolonialism was legislated through the same laws that legalized the economic exploitation of Africa […] criminal justice systems (in Nigeria and the world over) were born out of a system that legalized slavery and colonialism.
>
> *(Saleh-Hanna, 2008, p. 22)*

For these reasons, in *Black Feminist Hauntology: Rememory the ghosts of abolition?* (2015), I conclude that capitalism is haunted, not by communism as Derrida (1994) suggests, but by white supremacy. Further, white supremacy is not only inherently capitalist and classist, it is simultaneously and necessarily ableist, masculinist, and heterosexist. Racism, as a colonizing ideology, captures gender, sexuality, and our bodies as an extension of the lands they stole.

Wailing for Jerusalem

Both of my grandfathers were ancestors before my parents met, so I have only known them through stories we were told about their lives. Though it is not an actual first-hand memory, there is a particular story about my maternal grandfather that has always felt so clear in my mind's eye. During the escalating wars on Palestine in 1967, my Jido George sat on his balcony

at their apartment in Cairo listening to international news on the radio. When he learned that Jerusalem was under siege and about to fall into occupier hands, he began wailing "Jerusalem is lost!" over, and over, and over, between tears, as he repeatedly hit his hands upon his thighs, expressing unbearable, visceral anguish.

My grandmother cried both times she told me this story. She said his grief could be heard by everyone on the streets of Cairo that day, and both times I thought, his grief echoes right here in this living room in Canada all these years later. That is colonialism. That is injustice. It is not contained within the moment of loss or the original acts of violence alone: injustice is all of that violence plus the living grief and enduring losses that echo across land and time, continuing to violate long after those who incurred first contact with colonial violence have gone. Colonialism is bloody, vicious, haunting, loss after loss after loss. It is war and occupation inherited by colonizers as much as it is endured by those living as conquered peoples (Césaire, 1955). As all Indigenous nations, communities, and peoples who have been separated from the land and denied all that land holds for us know, colonialism is not theoretical nor historic, it is ongoing vicious occupation. Colonialism is synonymous with injustice – it is the rippling, repeating inception of unsurmountable grief for all that is stolen. The abolition of the criminal legal system is just the tip of the iceberg. Our journey for justice is much larger than the alternatives to policing and imprisonment we so desperately seek. The goal to decolonize and liberate justice from the clutches of colonial systems of control is only possible if we place it within larger, implicitly anti-colonial, overtly Indigenizing pathways to freedom.

ⲉⲣⲫⲉⲓ ⲛ̀Ⲕⲁⲣⲛⲁⲕ: passage into the lands and times of Ⲛⲓⲣⲉⲙⲛ̀ⲭⲏⲙⲓ ancestors

> Indigenous theory is earth based and derived from the teachings of the land, sun, water, sky and all of Creation. Its methodologies of practice integrate the natural teachers and elements of the earth. Indigenous wholistic theory is an ancestral concept to Indigenous people.
>
> (Absolon, 2010, p. 74)

The story I share in this section is the sort of lived experience we are trained and socialized to deny or keep silent as academics, or 'professionals' within colonized spaces. By sharing this experience, I am removing a barrier of silence that prevents us from discussing, exploring, acknowledging, and knowing justice through freedom-driven dimensions that exist beyond the measured and sterilized binaries of colonial systems of thought.

At the turn of the twenty-first century, I was living in Nigeria and working with imprisoned people across the west African coast. During those years, I travelled to ⲭⲏⲙⲓ to visit my paternal family and to spend time with my parents and sisters who travelled from Canada to meet me there. It was the first time my sisters and I were grown enough during a visit to ⲭⲏⲙⲓ to be able to make some demands: while we valued time with our family, we also wanted to see the ⲭⲏⲙⲓ that all these tourists get to see. A one-day trip to the Pyramids at Giza and an afternoon in Cairo's museum were not going to cut it this time. We wanted to see and experience more. Along with my sisters and my mother, we embarked upon a journey on the Nile that took us to as many temples and historic ⲣⲉⲙⲛ̀ⲭⲏⲙⲓ sites as we could visit.

Karnak is a colonial name - I do not yet know the name of this sacred place in ⲙⲉⲧⲣⲉⲙⲛ̀ⲭⲏⲙⲓ (language of the People of the Black Soil). I have no choice but to refer to this ⲉⲣⲫⲉⲓ (temple) as ⲉⲣⲫⲉⲓ ⲛ̀Ⲕⲁⲣⲛⲁⲕ (temple at Karnak) - for now. Until the day we went to ⲉⲣⲫⲉⲓ ⲛ̀Ⲕⲁⲣⲛⲁⲕ, I had worked with prisoners across Canada and west Africa for more than six years without

paying particular attention to the impact my body and spirit incurred through repeated and direct contact with prisons. I was not doing time, so I remained focused on the impact of imprisonment on those held captive within colonization's most vicious monster, without stopping to consider how my own repeated contact with prisons impacted me over the years of that intense work.

Long dirt roads hold the answers we seek

Walking across desert sands inside Karnak's walls, I felt an *immediate* and *absolutely* oppositional sensation to the experience of walking across yards behind prison walls. At Karnak, I looked down at my feet, on that land, and felt my whole being move in ways I had never moved before. I was flooded with a deep and unexpected sense of familiarity. I went through my wellness-in-the-desert checklist: I was not tired; I was hydrated; I had not yet been in the sun too long; I was neither feeling dizzy nor thirsty. And yet, I needed to find something to lean on because my body's overwhelming familiarity with a place I had never been to before was literally disorienting. I was consumed by a sensation that was simultaneously magnificent and terrifying. The closest concept I can grasp to put into words the experience I was having is déjà vu – but not in the same way we experience déjà vu as fleeting moments we bump into once in a while, but, as I wrote in my journal later that evening, it felt like déjà vu on steroids, in waves, moving me in and out of place and time. I felt my spirit awaken and begin to heal as the juxtaposition between imprisoning walls and the healing encirclements created within Karnak's walls grew louder and louder over the hours we were there. I felt a hyper-consciousness to the land as time came and went through my entire being at Karnack that day.

That was twenty years ago, and I have not experienced anything like it since – not in the other temples we visited that summer, and not anywhere else I have been on this blessed Earth. I have not had the chance to return to Karnack since, but, as you can imagine, I wonder if it would happen again. Sometimes my trained academic mind questions if it was real, but the rest of my being, particularly my spirit, knows it was. In ways I cannot describe fully through words, portions of my spirit awakened that day, like a workout that causes soreness in areas of your body you did not realize existed until they ached. The after-effects of that experience continue to resonate and echo through me today. It was an experience that shapes how I think about time, land, memory, and freedom.

In Kathy Absolon's *Kaandossiwin: How we come to know* (2011), I finally found the framework that best spoke to my experience at Karnack. Writing on 'memory' she states that "Indigenous scholars, through their search, reconnect to their ancestors, land, cultures, traditions, language, history, and knowledge. The search, in a sense, becomes a catalyst to remember who we are and what we know and to bringing those truths forward" (Absolon, 2011, p. 77). Reflecting on Karnack through the lens of Indigenous methodology, against the jarring backdrops of colonial prisons, I realize that in between the lines of all my scholarship and teachings on abolition, live not only grief and loss but beneath loss, perhaps alongside grief on some days, live the wisdoms and spirits of north African Egypt and west Asian Palestine.

The experiences I had at Karnack that day were *so* profound, they shaped 15 years of reading and reflecting on time, memory, and loss, eventually written into *Black Feminist Hauntology: Rememory the Ghosts of Abolition?* (2015). In its most visible form, Black Feminist Hauntology is a critique of Euro-centrism's vicious and misguiding suppositions on time and memory in relation to land and conquest, in relation to abolition and freedom struggles. Black Feminist Hauntology is also an interrogation of white supremacy's view of the past-present-future as mildly related entities, as opposed to the realities of their absolutely interlocking existence,

particularly as it is arrested within the colonializing, institutionalizing, inter-generational grasps white settlers have upon Indigenous lands and peoples. The brief moments of unchained freedom I experienced at Karnack, the small taste I received of what my lands hold and can teach, have allowed me to realize what it truly means to know that as long as they have our lands, they will continue to hold our futures hostage.

Coming up on 15 years since the publication of *Colonial Systems of Control*, when I revisit that first line, I intentionally teach myself to embrace the long dirt, to see its powers above and its beauty despite the barrel of colonialism's gun. At this stage in my journey towards justice, I am finally turning towards the land, the sky, air, water, creation, and the cosmos to learn about justice, to figure out how we can continue to expand our embrace of anti-colonialism as a wholistic philosophy and way of life.

The time is now

My spirit belongs to the lands where the majority of my ancestors were laid to rest. My ancestral lands of origin are mine, and they are significant – even if white power claims they are not. And by ancestral lands of origin, I am not speaking about the places our lineages are buried due to the last few hundred years of white power's forced migrations, kidnapped enslavements, and mass displacements. I mean back to the times before western Europe infected our Earth with white supremacy. Before European imperialism and colonialism extended their poisonous tentacles throughout the land. Before chattel slavery. Before white settler occupation and genocide. Before the rise of Europe's prison and the end of our justice, my grandmother was Palestinian, and my father was Ρεмὴхнмι.

Time and colonialism cannot change the facts of my lineage. Yet, the way we speak about time continues to be colonized and conquered. For example, at one time or another, most of us have said or been told that 'the more things change, the more they stay the same'. No. This is wrong. The possibilities of a new world are real. We cannot accept white power and its occupation of our lands. Expressions and sayings like this continue to naturalize white power within our expectations of the world. We must reject this defeatist thinking.

We have also been told that 'history repeats itself'. No. This too is wrong. Institutions are repetitive. By their very nature, institutions are meant to enforce, on massive scales, the power of their exploitative ways. What makes something an institution? It is the wide-reaching, repetitive act of militarized power that 'institutionalizes'. History does not repeat itself: institutions repeat themselves. We must do all that we can to break those repetitive cycles of abuse (Saleh-Hanna, 2017).

We are also often told that 'those who do not learn from history are doomed to repeat it'. No. Those whose wealth, capital, and cultural powers continue to be invested within white power are most doomed to support (including through efforts to reform) systems that maintain and extend historic acts of colonial war, land occupation, and resource (including human) exploitation. And while those of us who are wounded and tired within captured communities and extensions of the histories being referenced here may engage with the liberal reformist logics of this statement, we must at some point acknowledge the fact that oppression is not the result of 'ignorance'. Oppression is the result of structural violence. Racism is not rooted in 'ignorance'. Racism, and all the -isms it upholds and relies upon (sexism, heterosexism, ableism, genderism, ageism, capitalism), is rooted in hatred, greed, and vicious fear. Racism is institutionalized within systems of law, systems of wealth, and systems of education. Learning about history will not resolve racism and white supremacy, just as land acknowledgements do not free the land nor return it to the descendants who belong with it.

And finally, time does not heal all wounds. What happens with time, what we are able to abolish and remove *in* our time – within our lifetimes – will begin the healing we so desperately need. Freedom. Decolonization. Indigenization. Balance. Ma'at. That is where healing resides. In fact, in order for us to truly enter into an era of decolonization and justice, we must liberate time. We must end imprisonment and all institutions that capture our bodies and take away our time and ability to be and feel alive. Our time is now.

Note

1 I have been using small case for directions (north African, western Europe, etc) to deconstruct Eurocentrism in how we think about our place upon a round planet (what is up and what is down for example). For this reason, I'd like to keep this W in western in small case. An exception is where west is part of a name, e.g. West Bank

References

Absolon, K. (2010). Indigenous wholistic theory: A knowledge set for practice. *First Peoples Child and Family Review*, *5*(2), 74–87.

Absolon, K. (2011). *Kaandossiwin: How we come to know*. Fernwood Publishing.

Césaire, A. (1955). *Discourse on colonialism*. Monthly Review Press.

Derrida, J. (1994). *Specters of Marx*. Routledge.

Lorde, A. (1984). *Sister outsider: Essays and speeches*. Crossing Press.

Morrison, T. (1987). *Beloved*. Alfred A. Knopf.

Saleh-Hanna, V. (2008). *Colonial systems of control: Criminal justice in Nigeria*. University of Ottawa Press.

Saleh-Hanna, V. (2015). Black feminist hauntology: Rememory the ghosts of abolition? *Champ Pénal/ Penal Field, 13*. http://journals.openedition.org/champpenal/9168

Saleh-Hanna, V. (2016). An abolitionist mama speaks: On natural birthing and miscarriage. In J.C. Oparah, A. Bonaparte & S. Matthews (Eds), *Birthing justice – Saving our lives: Black women, pregnancy and childbirth* (pp. 46–54). Paradigm Publishers.

Saleh-Hanna, V. (2017). An abolitionist theory on crime: Ending the abusive relationship with Racist-Imperialist-Patriarchy [R.I.P.]. *The Contemporary Justice Review*, *20*(4), 419–441.

2

Exposing the complexities of the colonial project

Michaela M. McGuire

Colonialism and racism are embedded within law, policy, and societal institutions. The colonial justice project furthers the ongoing marginalization and confinement of Indigenous peoples and maintains racialized societal order. The settler-colonial goals of assimilation, elimination, and control are continued and legitimated through state-based criminal justice systems (Tauri, 2014). Razack (2015) argues that Indigenous bodies must be dehumanized and controlled, and thus, abuse or confinement is deemed necessary for societal functioning. Today, settler-colonial criminal justice systems serve as a modern mechanism of state control, violence, abuse, and oppression. Chartrand (2019) suggests that "Indigenous incarceration is not the result of a colonial past but rather part of the colonial process itself" (p. 69). The continuation of the colonial (justice) project is enabled through its shape-shifting nature.

Indigenous peoples in the settler-colonial jurisdictions of Canada, the US, Australia, and Aotearoa New Zealand have been subject to colonialism, genocide, racism, and the imposition of foreign systems of governance, law, and justice. Indigenous Nations, communities, and peoples differ vastly; however, the weaponization of colonialism and genocide occurs across all four jurisdictions. Manuel (2017) defines colonialism as displacement or dispossession, dependency, and oppression – this chapter begins by unravelling this definition to facilitate an understanding of the complexities of the colonial justice project. The embeddedness of state-sanctioned criminal justice systems with genocide, colonialism, oppression, marginalization, and racism are considered, to demonstrate the pervasive nature of these systemic injustices. The criminalization of the symptoms of systemic injustice – trauma, mental health issues, poverty, substance abuse, etc. – has contributed to the pervasive overrepresentation of Indigenous peoples within the criminal justice systems of the aforementioned settler-colonial jurisdictions. In this chapter, I offer a broad overview of the entwined issues of genocide, colonialism, structural racism, white supremacy, and the colonial (in)justice project in the settler-colonial jurisdictions of Canada, the US, Australia, and Aotearoa New Zealand.

Genocide and colonialism: displacement, dependency, and oppression

Genocide has been utilized to force assimilation, eradicate the *Indian problem* and *heathen* cultures, and control the unruly Indigenous other (Anthony, 2018; Jacobs, 2018; Monchalin, 2016;

DOI: 10.4324/9781003176619-3

Robinson & Paten, 2008; Shantz, 2010). Genocide in settler-colonial jurisdictions was often under the formal sanction of law and policy (Shantz, 2010; Starblanket, 2018). Wakeham (2021) uses the phrase "[the] slow violence of settler colonialism" to denote the process in which "genocidal processes" accumulate and compound existing harm (p. 15). These genocidal processes continue to be enacted within settler-colonial jurisdictions, often under the guise of state law, policy, structures, and institutions.

Before colonization, self-determined Nations existed with the full capacity of any functioning society and the ability to effectively respond to conflict and wrongdoing (Simpson, 2008). Domination, control, power, and the maintenance of racialized hierarchies were used to develop and sustain a settler-colonial relationship within the aforementioned countries. Indigenous peoples continue to be subject to colonial dispossession and processes that undermine Nationhood while upholding white supremacy and Indigenous oppression (Coulthard, 2014; Simpson, 2017). The maintenance of settler-colonial state jurisdiction and power – through dispossession – is thus dependent on the continual marginalization and erasure of Indigenous peoples.

Through colonial invasion, Indigenous Nations across settler-colonial jurisdictions were displaced from their territories – lands and waters – and this displacement was enforced through the dispossession of Nationhood, governance, laws, jurisdiction, and justice. Despite Indigenous peoples' vast differences, "there is one constant: the land was stolen from underneath us" (Manuel & Derrickson, 2015, p. 40). Dispossession and displacement were supported by paternalistic policies, promoting land acquisition, assimilation, and erasure. An impact of dispossession and displacement is dependency, as economies, sustenance, and ways of life are intertwined with the land and waters. Manuel (2017) argues that colonial dispossession and dependency have "devastated our social, political, economic, cultural and spiritual life" (p. 20). Dispossession and dependency were and are weaponized by colonial states to systematically control Indigenous peoples, communities, and Nations. Dependency on the state for social support maintains racialized hierarchies with Indigenous peoples at the lowest end of the social order.

Similarly, oppression operates and is sustained through imposed social, legal, justice, and governmental systems and interrelated policies, laws, and procedures. The imposition of western systems oppresses Nation-based systems and subjects varied Indigenous Nations to a foreign system of law, governance, and justice. These imposed foreign systems are utilized as a mechanism of marginalization to maintain the oppression of Indigenous Nations, peoples and communities while upholding state values. Systematic and targeted erasure, control, assimilation, and racism are key tools of settler-colonial states in assuming and maintaining power. The dispossession and displacement of Indigenous peoples from the land were what Simpson (2017) aptly calls "a perfect crime – a crime where the victims were unable to see or name the crime as a crime" (p. 15). Colonial genocidal processes became embedded into state formation, racism entrenched and normalized, and violence against Indigenous peoples was accepted as necessary to control the *Indigenous other*.

All possible colonial tactics were utilized to secure Indigenous land, bodies, self-determination, and Nationhood – and thus, to preserve the dominance of settler states. The construction and maintenance of racialized hierarchies sustain white supremacy – defined as "an overarching political, economic, and social system of domination" (Diangelo, 2018, p. 28). This embedded racialized hierarchy occurs alongside the metamorphosing settler colonialism, which unfolds through law, policy, and institutions while continuing to oppress and marginalize the Indigenous other.

Complicity of criminology with the colonial project

The discipline of criminology is embedded within colonialism and sustains oppression. Criminology – rooted within colonialism and imperialism – has reproduced and sustained a fixation with the relationship between race and crime (Agozino, 2003; Kitossa, 2012). This preoccupation results in the blaming of the symptoms of colonialism, genocide, and racism on Indigenous peoples, while state crimes (genocide, the stealing of Indigenous children, forced sterilization, medical experimentation, etc.) are left unaddressed. The inadequate blaming of the *Indigenous other* oversimplifies Indigenous peoples' involvement with imposed colonial justice systems (Cunneen & Tauri, 2017) and ignores the role of the state in contributing to this "colonial problem" (Monchalin, 2016, p. 145). The individualization of blame upholds the mythology of white supremacy and racism as it results in perpetuating the myth of Indigenous peoples as inherently criminal. Instead of being viewed as complex human beings subject to a variety of massive traumas, Indigenous peoples are infantilized and subject to oppressive colonial dominance. The construction of the Indigenous other results in an acceptance of Indigenous peoples as subjects in need of state intervention.

The imposition of western law and criminal justice systems ran roughshod over pre-existing Nation-based systems of responding to wrongdoing. These imposed systems are imbued with foreign laws, reinforcing colonial worldviews, and undermining those of Indigenous peoples. The use of western criminal law and justice further oppresses Indigenous peoples, systems, and knowledges while upholding western regimes (Cunneen, 2011; Martel, Brassard & Jaccoud, 2011). When we take a step back and consider the impacts of colonial invasion, genocide, and racism – the notion of who and what is criminal and who defines what is criminal warrant consideration. Definitions of law and crime are created and maintained by the colonial (invader) states – the same states responsible for violations of the human rights of first peoples. This hierarchy of power sustains inequality. Cunneen and Tauri (2017) argue that "colonialism can be considered criminogenic to the extent that it actively produces dispossession, marginalization and cultural dislocation" (p. 57). Thus, colonial states are responsible for the underlying trauma, harm, and resultant mental, physical and social health issues that are subsequently criminalized.

Neoliberalism, criminalization, and marginalization

The use of carceral spaces to civilize, assimilate, and regulate Indigenous peoples has required the formation of colonial policies and laws that permit the maintenance of shape-shifting colonialism. Strakosch (2015) suggests that there has been increased policy attention towards Indigenous peoples' "welfare dependency and community behaviour" (p. 1), representative of a convenient amnesia to the role of colonial states in facilitating the conditions of impoverishment. Further, transitions have occurred away from social support in favour of increasingly strict welfare policies and the individualization of responsibility. This individualization is a key component of neoliberalism – the ideological foundation upon which many settler-colonial states operate. The impact of neoliberalism on the rolling back of social supports, criminalization of poverty and poverty-related crimes, and the privatization of the prison system has contributed significantly to increased prison populations in the US (Wacquant, 2009). Under neoliberalism, the Indigenous other can be regulated – and the rise of neoliberalism within the settler-colonial states of the US, Canada, Australia, and Aotearoa New Zealand has "coincided with both a decline in the welfare state and a rise in the penal state" in each of these countries (Cunneen, 2015, p. 32).

Under neoliberalism, strategic policy direction and rhetoric are utilized to disassociate colonial states of responsibility. The use of rhetoric that problematizes and chastises Indigenous peoples themselves with little to no recognition of state responsibility is characteristic of neoliberalism, colonialism, and structural racism. Problematizing the 'Indigenous unruly other' for being a drain on the social welfare system while continuing to profit from stolen lands and waters is the general modus operandi of settler-state policy pertaining to Indigenous peoples. Thus, settler-colonial state policy holds Indigenous peoples accountable for their oppression, divesting the state of responsibility, and entrenching racism while allowing states to provide band-aid solutions. Simpson (2017) suggests that attacking and blaming Indigenous peoples only reinforces existing harms – ultimately leading "neoliberalism to benevolently provide just enough ill-conceived programming and 'funding' to keep us in a constant state of crises, which inevitably [is marketed] as our fault" (p. 42). This individualization of blame at the personal or group level is concomitant with increased criminalization, reinforcing a cycle of displacement, dispossession, dependency, and oppression.

Carceral spaces

Controlling Indigenous peoples has been a means through which settler-colonial states can operationalize their goals of assimilation and dehumanization. Displaced from their land, subject to oppression, racism, and marginalization, Indigenous peoples are subject to paternalistic policy and confinement to state institutions. This includes control over mobility through reserves and reservations; assimilation through the removal of children and indoctrination with western perspectives; identity control; and the imposition of and confinement within an imposed criminal justice system. The historical and continual use of carceral spaces to control Indigenous peoples has occurred across settler-colonial jurisdictions. Woolford and Gacek (2016) coined the term "genocidal carcerality to refer to spaces enlisted toward the elimination of a targeted group, either for purposes of exterminating or transforming that group so that it no longer persists" (p. 404). Such spaces include reserves or reservations; residential, day and industrial schools; removal of children and placement into foster care; early medical experimentation and institutionalization; and the continued removal of Indigenous peoples and placement into the criminal justice system. The historicization of colonial harm obfuscates the ongoing colonization that Indigenous peoples experience today (Chartrand, 2019).

The ongoing nature of colonialism is evidenced by the criminal justice system and its continued displacement, dispossession, and oppression of Indigenous peoples. The interconnection between settler colonialism and criminal justice has been evidenced (see, e.g., Chartrand, 2019; Nichols, 2017). This continuation of settler colonialism is confirmed by the fact that "incarceration facilitates dispossession" (Nichols, 2017, p. 61), "assimilation, and segregation" today (Chartrand, 2019, p. 69). The prison is the new iteration of colonialism – facilitating the removal, and attempted assimilation of Indigenous peoples. Indigenous overrepresentation is a result of systemic racism, discrimination, and colonialism. The racial biases that result in Indigenous overrepresentation are fuelled by ignorance and dehumanization – with Indigenous bodies deemed worthy of violence, control, and confinement (Cunneen, 2011; Razack, 2015). Abuse and incarceration of Indigenous persons within state institutions must be understood and contextualized as a part of a much broader system of colonial harm (Anthony, 2018; Razack, 2015). Settler-colonial violence – often weaponized through state justice – removes Indigenous persons from societal purview, thus allowing for the continued occupation of their lands with impunity. Indigenous Nationhood "calls into question […] settler colonialism" and thus, Indigenous peoples' self-determination must be regulated through any means necessary

(Simpson, 2017, p. 7). The settler-colonial system continually perpetuates itself through band-aid solutions maintaining dispossession.

These vicious cycles of control, confinement, and the problematization of Indigenous peoples themselves (excusing the role of settler states), or disregard for ongoing injustices are perpetuated with the formal sanction of law and policy (Anthony, 2020). The intersection of law and policy, coupled with dehumanization and othering, and the aforementioned social marginalization, results in Indigenous peoples being subject to ongoing institutionalization at disproportionate rates. Colonial embeddedness constitutes an ideological limitation in terms of the potential for policy change. The myth of colonial law and policy as a "neutral instrument" disregards its weaponization as a "coercive tool to disproportionately regulate Indigenous people" (Anthony, 2020, p. 40). Settler states operating under colonial ideology and policy have criminalized the symptoms of their own colonial formation.

Criminalization of the symptoms of systemic injustice

Indigenous peoples are not inherently criminal. The othering of Indigenous peoples is fuelled by the cumulative impacts of trauma, colonialism, and racism. The interconnectedness of trauma and poverty, mental health, substance abuse, and disparate social, economic, and health outcomes culminates in the further othering of Indigenous peoples. These intertwined issues illuminate the pervasiveness of displacement, dispossession, dependency, and oppression. However, the framing of these issues within the media and public policy tends to diffuse the role of the state in creating the social problems that it subsequently marginalizes and/or criminalizes. Compounding the impacts of colonialism and genocide, Indigenous peoples are continually subject to colonial control through both the child welfare and criminal justice systems.

Despite the incredible diversity amongst the Nations within what are now the settler-colonial states of Canada, the US, Aotearoa New Zealand, and Australia, shared experiences include trauma, displacement, dispossession, oppression, and marginalization, as well as over-representation in criminal justice systems (Cunneen & Tauri, 2017). The historic and ongoing traumas endured have had intergenerational impacts on the health and well-being of Indigenous peoples. The compounded and systemic nature of collective trauma results in the continued marginalization and othering of Indigenous peoples to the periphery of society. As Starblanket (2018) argues:

> the devastation and effects of racist colonial violence enacted upon our Nations continue to be reflected through the poverty, incarceration rates, suicides and addictions that we suffer from, among other devastations and the most important being our relationship to our lands and territories.
>
> *(p. 89)*

The impacts of displacement, dispossession, dependency, and oppression continue to reverberate through the lives of Indigenous peoples, affecting their mental health, often leading to, or perpetuating substance abuse issues, and resulting in lower socioeconomic status, amongst a multitude of other impacts.

Displacement and land theft by settler states were integral components of furthering colonial goals weaponized through impoverishment and forced dependency. Displacement from the land had significant cultural and economic impacts as varied Indigenous economies were and are interconnected to the land and waters. Dependency on the state for social support is a result of colonial oppression. Moreover, Indigenous peoples' poverty is "created and maintained

through processes of dispossession, and policies of disenfranchisement and social and economic exclusion" (Cunneen & Tauri, 2017, p. 5). Poverty impacting Indigenous peoples is not circumstantial, nor is it individual; it is a direct result of the colonial project and sustains racialized hierarchies. Indigenous peoples' experiences of poverty are imposed by and perpetuate the colonial project (Manuel, 2017). There are significant disparities in funding between Indigenous communities and non-Indigenous communities in Canada for essentials such as "water, housing, and education" (Monchalin, 2016, p. 75). Pasternak (2021) argues that maintaining colonialism requires "a political system that operates through domination and violence to maintain this theft…that which enriches the settler state necessarily impoverishes and criminalizes the colonized" (p. 5). Settler-colonial jurisdictions through displacement, dependency, and dispossession have significantly limited the economic opportunities of Indigenous peoples (Moore, 2016). Indigenous peoples' experiences of poverty are created and maintained by settler-colonial governments to uphold the racialized status quo while criminalizing and marginalizing 'the other'.

Governmental solutions to Indigenous peoples experiencing poverty often divest the state of responsibility for creating and maintaining the conditions that led to socio-economic disparities. In the Canadian context, Palmater (2017) contends that the Canadian state's programmes and policies "could be considered a modern-day elimination policy" (p. 76), given the disparate social and health outcomes impacting Indigenous people's life chances. The shifting nature of colonialism is evidenced by the covert use of policy, law, and criminalization to eliminate Indigenous peoples through death/suicide, illness, and institutionalization within child welfare systems, youth custody centres, or criminal justice systems. This distancing of the state reinforces racialized hierarchies of the Indigenous other who needs to be *saved* by the state. Further, solutions put forward by the state government never involve holding the state accountable for creating the conditions of poverty but instead "reinforce the structure of settler colonialism that set the terms for exploitation in the first place" (Simpson, 2017, p. 81). This subsequently entrenches societal perceptions of Indigenous peoples as the undeserving other. If we consider the demographics of Indigenous peoples alone, we see "a higher chance of having contact with the [criminal justice system]," which is demonstrative of the pervasive inequalities impacting Indigenous peoples in Canada (Monchalin, 2016, p. 171).

The tools of colonialism are weaponized by the state to maintain oppression. The foundations of our Nations, political systems, governance, and connection to the land are continually targeted (Simpson, 2017). To cope with the pain of trauma, racism, stigma, shame, and erasure, Indigenous peoples may "turn inward, amplifying and cycling messages of self-harm, drugs, alcohol abuse, or depression and anxiety; or we turn our shame towards aggression and violence," perpetuating oppression (Simpson, 2017, p. 188). Surviving through grief, trauma, racism, and continued losses while grappling with structural conditions such as inadequate housing, limited educational attainment, and poverty may lead to or exacerbate underlying mental health issues and result in self-medicating. Razack (2015) argues that the rhetoric or focus on "Indigenous dysfunction and ill health obscures how colonial power is imprinted on Indigenous bodies" (p. 201). The maintenance of racial hierarchies of worthiness upholds white supremacy and structural racism as it removes the possibility that institutions – such as education, social welfare, health care, police, and justice – have failed Indigenous peoples in favour of blaming Indigenous peoples themselves.

There is an interconnection between historical trauma and its intergenerational impacts, societal marginalization, and control through imposed state policy and incarceration. Law and policy are weaponized by colonial states to condone the confinement of Indigenous peoples. When state violence is lawful, mistreatment of Indigenous peoples is deemed necessary to societal

functioning. Strakosch (2015) outlines how Australia enacts policy on 'other' Indigenous peoples and subsequently blames them for their purported inability to succeed within the Nation-state. This distancing of the state from culpability is key to maintaining racialized hierarchies and subordinating the Indigenous other.

Abuse, torture, confinement, starvation, and removal of Indigenous children across settler-colonial jurisdictions have been under the formal sanction of law and policy. State-coordinated forcible child removal, sterilization, and confinement were and are utilized within "American, Canadian and Australian jurisdictions" to subjugate Indigenous peoples (Tauri, 2014, p. 22, see also Jacobs, 2018; Macdonald, 2015). Extreme abuse is often historicized to justify the ongoing occupation of Indigenous lands. However, abuse and racism against Indigenous peoples are ongoing – and representative of continued subordination. For example, Anthony (2018) outlines horrific abuse by guards against "Indigenous children in Northern Territory (NT) youth detention," including "guards bashing, gassing, restraining and hooding Indigenous children" (p. 251). However, solutions to addressing this abuse only reinforced state power through a royal commission that sought to improve existing state systems without "calling into question the role of the state in relation to Indigenous communities" nor addressing "the horrific over-representation of Indigenous children in detention" (Anthony, 2018, p. 252). Thus, the royal commission reinforced inequality by seeking to improve the imposed carceral regime and blaming "Indigenous communities" themselves, divesting the state of responsibility (Anthony, 2018, p. 271). Colonial processes are maintained through othering and state rhetoric that reinforces inequality and racism.

The colonial (justice) project entrenches colonialism – dispossession, dependency, and oppression – by removing Indigenous peoples from their territories and confining them to carceral spaces. The utilization of institutionalization has been a key tactic in settler-colonial jurisdictions. Removal of Indigenous children into youth custody and social welfare systems solidifies the continued assimilatory goals of the state. Further, the criminalization of addiction and poverty aggravates existing dependency and oppression. Colonialism is sustained through its ability to transform and infiltrate multiple sectors of life. The compounded symptoms of systemic injustice including trauma, mental ill-health, poverty, substance abuse, violence, etc., result in increased marginalization and resultant discrimination fuelled by law and policy.

Construction and management of risk

The assessment of risk is a pertinent example of the individualization of systemic and structural issues often rooted within settler-colonial state formation. Risk assessment is increasingly utilized in settler-colonial criminal justice systems to determine security classification. A complex analysis of the issues with risk assessment is beyond the scope of this chapter; however, I will briefly outline some key issues as risk assessment is entwined with criminalization, neoliberalism, colonialism, and net widening. Like neoliberalism, risk assessment individualizes responsibility onto Indigenous peoples for structural, systemic, and intergenerational traumas while disregarding the role of the state in creating the conditions that heighten risk. The construction of the Indigenous other as inherently dangerous or 'risky' for exhibiting symptoms of massive traumas inflicted by settler-colonial states ignores state culpability. Risk assessment practices differ between settler-colonial jurisdictions; however, generally, they problematize and pathologize the symptoms of trauma, colonialism, and racism – increasing the risk level of Indigenous incarcerated persons. The risk factors considered by varied risk assessment tools generally result in factors entwined with colonialism, genocide, and structural racism being considered in measuring risk levels.

Risk assessment has been criticized as over-classifying Indigenous incarcerated persons, and subsequently impacting not only their security classification but their access to programming, often resulting in a ripple effect (Leitch, 2018; Montford & Moore, 2018; Shepherd, 2018; OCI, 2018). For instance, poverty, low educational attainment, mental illness, prior abuse, and substance use issues may result in a higher risk assessment. A risk assessment tool utilized for youth in the US was found to be lacking "socioenvironmental context" and thus, potentially, over-classifying Indigenous youth (Shepherd & Willis-Esqueda, 2018, p. 619). Cunneen (2015) suggests that considering these factors in assessing risk for Indigenous peoples means that "indigeneity is actively defined and correlated with dysfunction" (p. 36), maintaining racialized hierarchies. As Shepherd (2018) outlines within an Australian context, "mis-classification of risk can result in the misallocation (or non-allocation) of relevant resources," culminating in increased or ongoing involvement with the justice system (p. 47). The marginalization and oppression of Indigenous peoples, which results in these symptoms, often deny that colonialism, genocide, and racism are present in their everyday lives.

This rhetoric of Indigenous deviance and risk goes beyond criminal justice, impacting other societal institutions. Indigenous peoples are a "highly controlled, surveilled, and criminalised group" and this societal positionality and confinement are justified based on the threat that indigeneity poses to settler-colonial states (Cunneen, 2015, p. 36). The use of rhetoric to construct narratives of deviance, otherhood, and risk culminates in the compounded oppression and marginalization of Indigenous peoples who are subject to paternalistic policies, laws, and state control. The conflation of risk factors and indigeneity may over-classify the security risk level of Indigenous persons, expanding criminalization and marginalization. Indigenous peoples in settler-colonial jurisdictions have been subject to atrocious, traumatizing, and abhorrent violence, abuse, and control.

Conclusion

Colonialism, genocide, and racism have run roughshod – ignoring the pre-existence of Indigenous peoples and subjecting them to atrocious traumatizing violence, abuse, and control. As a result of colonial displacement, dispossession, dependency and oppression, Indigenous peoples in the US, Canada, Australia, and Aotearoa New Zealand have been forced to grapple with systemic impoverishment, extreme mental health issues, ongoing harm legitimized by racism and colonialism – and the continuation of neoliberal policies that sustain inequality. Solutions put forward to manage the symptoms of social ills (with the abuser being the state) infantilize Indigenous peoples and reinforce colonial structures. Thus, white supremacy is sustained through the elimination of the other into societal margins, the tweaking of existing policies – with, generally, the least effort and money possible – and the erasure of Indigenous faces from white spaces through incarceration. This confinement and erasure allow for the continued occupation of Indigenous land.

The transformative nature of the colonial (justice) project has contributed to its longevity. The complex array of state-based social policies and laws offering surface-level solutions to appease colonized minds result in sustained inequality, marginalization, and criminalization.

Indigenous jurisdiction, rights, and self-determination are a threat to settler-colonial states – and thus, Indigenous peoples must be controlled by any means necessary. Indigenous peoples who continue to resist colonial shackles are forced into societal peripheries. Displacement and dispossession from the lands and waters have resulted in huge profits from industry on stolen lands – when Indigenous peoples protest this usurpation of rights they are touted as activists

or lawbreakers and criminalized accordingly. The criminalization of the symptoms of systemic oppression is constitutive of colonialism.

Indigenous lives are deemed expendable according to their construction as the less-than-human other. Consequently, when Indigenous peoples are subject to state injustice through disparate law, policy, and institutional impacts, settlers can easily disregard their suffering. The entwined relationship of policy and criminal justice results in the covert maintenance of colonial goals through social policy deemed to be for the betterment of Indigenous Nations, peoples, and communities. As Strakosch (2015) argues, "policy making is one among several strategies of colonisation" (p. 69). The oppressive, racist, genocidal, and disparate harm against Indigenous peoples by settler-colonial states has often been sanctioned by law and/or policy. The surreptitious maintenance of white supremacy, structural racism and colonialism depend upon the perpetuation of racialized hierarchies. As Simpson (2017) argues, the "social ills" impacting Indigenous communities "are a direct result of state violence in the form of settler colonialism that maintains and accelerates dispossession" (p. 227). The imposition of poverty, state criminal justice systems, foreign law, policy, governance, etc., perpetuates vicious colonial cycles that privilege settler states who continue benefitting from Indigenous oppression.

The colonial (justice) project is entwined with and sustained by policy, rhetoric, and imposed systems of law and governance. The infiltration of neoliberal policy has led to the rolling back of social services and increased criminalization of Indigenous peoples. The elimination of Indigenous peoples from societal purview is fuelled by societal marginalization and incarceration. Chartrand (2019) argues that "without changing the underlying colonial relationship, we not only ignore the ways that colonialism continues to exist today; we also continue to offer colonizing arrangements as part of the remedy" (p. 79). These remedies are evidenced by the malleability of colonialism. Indigenous peoples' oppression sustains colonialism – and thus, solutions advanced that alter the existing colonial (in)justice projects in Aotearoa New Zealand, Canada, the US, and Australia are often superficial, piecemeal approaches that appease and distract critics. Often, within the justice context, these piecemeal solutions include varied indigenization practices – which superficially involve 'Indigenous' practices and peoples in the development of either new or indigenized programming (Martel, Brassard & Jaccoud, 2011; Tauri, 2015); or accommodation which refers to the integration of often pan-indigenized programming into existing systems (McGuire & Palys, 2020). Programming offered tends to include simplistic versions of Indigenous practices that can be easily streamlined and integrated into justice programming. For example, the integration of restorative justice programming – deemed to have appropriated Indigenous justice practices – is marketed for broader consumption (Moyle & Tauri, 2016). This amalgamation of varied Nation-based justice approaches and responses to wrongdoing coupled with the infiltration of colonialism into policy results in the continued marginalization and othering of Indigenous justice-involved persons, limiting possibilities for Nation-based responses while reinforcing inequality.

It is time that we begin to unravel the shackles of settler colonialism and position ourselves once again as self-determined Nations. Settler colonialism necessitates Indigenous erasure and displacement or confinement (Wolfe, 2006), and resistance to settler colonialism requires resurgence, decolonization, and Nationhood. Solutions put forward are often surface level, attempting to fix, control, or heal social – or as Simpson (2017) calls them "political" (p. 227) – ills without holding settler-colonial states to account for their role in perpetuating dispossession. Manuel and Derrickson (2015) argue that Indigenous Nations need to stop negotiating with the settler state unless those negotiations involve the "dismantling of the colonial system" instead of opting for piecemeal solutions that only increase "debt and dependency" (p. 226). Simpson

(2008, 2017) calls for a radical resurgence, Nationhood revitalization, and reclamation that centres Nation-based knowledges, systems, and ways of life. It is within the power of first peoples to revitalize, reimagine, and engage in the decolonization process to wake up our own systems and ways of life from their colonial slumber.

References

Agozino, B. (2003). *Counter-colonial criminology a critique of imperialist reason*. Pluto Press.

Anthony, T. (2018). "They were treating me like a dog": The colonial continuum of state harms against Indigenous children in detention in the Northern Territory, Australia. *State Crime*, 7(2), 251–277.

Anthony, T. (2020). Settler colonial governmentality: The carceral webs woven by law and politics. In S. Maddison & S. Nakada (Eds.), *Questioning Indigenous-settler relations: Interdisciplinary perspectives* (pp. 33–53). Springer.

Chartrand, V. (2019). Unsettled times: Indigenous incarceration and the links between colonialism and the penitentiary in Canada. *Canadian Journal of Criminology and Criminal Justice*, *61*(3), 67–89.

Coulthard, G. (2014). *Red skin white masks: Rejecting the colonial politics of recognition*. University of Minnesota Press.

Cunneen, C. (2011). Indigeneity, sovereignty, and the law: Challenging the processes of criminalization. *South Atlantic Quarterly*, *110*(2), 309–327.

Cunneen, C. (2015). Surveillance, stigma, removal: Indigenous child welfare and juvenile justice in the age of neoliberalism. *Australian Indigenous Law Review*, *19*(1), 32–45.

Cunneen, C., & Tauri, J. (2017). *Indigenous criminology*. Policy Press.

DiAngelo, R. (2018). *White fragility: Why it's so hard for white people to talk about racism*. Beacon Press.

Jacobs, M.D. (2018). Seeing like a settler colonial state. *Modern American History*, *1*, 257–270.

Kitossa, T. (2012). Criminology and colonialism: Counter colonial criminology and the Canadian context. *The Journal of Pan African Studies*, *4*(10), 204–226.

Leitch, D. (2018). The constitutionality of classification: Indigenous overrepresentation and security policy in Canadian federal penitentiaries. *Dalhousie Law Journal*, *41*(2), 411–442.

Macdonald, D.B. (2015). Canada's history wars: Indigenous genocide and public memory in the United States, Australia and Canada. *Journal of Genocide Research*, *17*(4), 411–431.

Manuel, A. (2017). From dispossession to dependency. In P. McFarlane & N. Schabus (Eds.), *Whose land is it anyway: A manual for decolonization* (pp. 18–21). Federation of Post-Secondary Educators of BC.

Manuel, A., & Derrickson, R.M. (2015). *Unsettling Canada: A national wake-up call*. Between the Lines.

Martel, J., Brassard, R., & Jaccoud, M. (2011). When two worlds collide. *British Journal of Criminology*, *51*(2), 235–255.

McGuire, M., & Palys, T. (2020). Toward sovereign Indigenous justice: On removing the colonial straitjacket. *Decolonization of Criminology and Justice*, *2*(1), 59–82.

Monchalin, L. (2016). *The colonial problem: An Indigenous perspective on crime and injustice in Canada*. University of Toronto Press.

Montford, K., & Moore, D. (2018). The prison as reserve: Governmentality, phenomenology, and indigenizing the prison (studies). *New Criminal Law Review*, *21*(4), 640–663.

Moore, M. (2016). Justice and colonialism. *Philosophy Compass*, *11*(8), 447–461.

Moyle, P., & Tauri, J. (2016). Maori, family group conferencing and the mystifications of restorative justice. *Victims & Offenders*, *11*(1), 87–106.

Nichols, R. (2017). The colonialism of incarceration. In A. Swiffen & J. Nichols (Eds.), *Legal violence and the limits of the law, Volume 1* (pp. 49–67). Routledge.

Office of the Correctional Investigator. (2018). *Office of the Correctional Investigator annual report 2017–2018*. www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20172018-eng.aspx

Palmater, P. (2017). Decolonization is taking back our power. In P. McFarlane & N. Schabus (Eds.), *Whose land is it anyway? A manual for decolonization* (pp. 73–78). Federation of Post-Secondary Educators of BC.

Pasternak, S. (2021). *Cash back: A Yellowhead Institute red paper*. https://cashback.yellowheadinstitute.org/

Razack, S.H. (2015). *Dying from improvement: Inquests and inquiries into Indigenous deaths in custody*. University of Toronto Press.

Robinson, S., & Paten, J. (2008). The question of genocide and Indigenous child removal: The colonial Australian context. *Journal of Genocide Research*, *10*(4), 501–518.

Shantz, J. (2010). "The foundation of our community": Cultural restoration, reclaiming children and youth in an Indigenous community. *The Journal of Social Welfare & Family Law*, *32*(3), 229–236.
Shepherd, S. (2018). Violence risk assessment and Indigenous Australians: A primer. *Alternative Law Journal*, *43*(1), 45–47.
Shepherd, S., & Willis-Esqueda, C. (2018). Indigenous perspectives on violence risk assessment: A thematic analysis. *Punishment & Society*, *20*(5), 599–627.
Simpson, L.B. (2008). Oshkimaadiziig, the New People. In L. Simpson (Ed.), *Lighting the eighth fire: The liberation, resurgence and protection of Indigenous nations* (pp. 13–21). Arbeiter Ring Publishing.
Simpson, L.B. (2017). *As we have always done: Indigenous freedom through radical resistance*. University of Minnesota Press.
Starblanket, T. (2018). *Suffer the little children: Genocide, Indigenous nations and the Canadian state*. Clarity Press.
Strakosch, E. (2015). *Neoliberal Indigenous policy: Settler colonialism and the 'post-welfare' state*. Palgrave Macmillan.
Tauri, J. (2014). Criminal Justice as a colonial project in contemporary settler colonialism. *African Journal of Criminology and Justice Studies*, *8*(1), 20–37.
Tauri, J. (2015). "Beware justice advocates bearing gifts": A commentary on the glorification of family group conferencing. *New Zealand Sociology*, *30*(1), 183–190.
Wacquant, L. (2009). *Punishing the poor: The neoliberal government of social insecurity*. Duke University Press.
Wakeham, P. (2021). The slow violence of settler colonialism: Genocide, attrition, and the long emergency of invasion. *Journal of Genocide Research*, *24*(3), 337–356.
Wolfe, P. (2006). Settler colonialism and the elimination of the native. *Journal of Genocide Research*, *8*(4), 387–409.
Woolford, A., & Gacek, J. (2016). Genocidal carcerality and Indian residential schools in Canada. *Punishment and Society*, *18*(4), 400–419.

3

"Feeding people's beliefs"

Mass media representations of Māori and criminality

Angela Moewaka Barnes and Tim McCreanor

> […] in any contest between Māori and Pākehā over land, resources or cultural space, media coverage functions, unwittingly or otherwise, to maintain Pākehā dominance.
> (Walker, 1990, p. 45)

Ranginui Walker's apposite summary above points towards the impacts of a long trajectory in colonizing media coverage evident toward the end of the twentieth century, and the ideological role of mass media in creating and spreading racist discourse about Māori, the Indigenous people of Aotearoa New Zealand.

In this work, we think that the notion of media representations is a crucial one because of its implications for the stories we tell about ourselves and others and thereby its material consequences for power, equity, and social justice. The visionary Moana Jackson (1987) saw contemporary media representations as perpetuating:

> […] the progressive development of a negative self-image among many young Māori. The extension of this into wider social attitudes is obvious. The constant reiteration of negative images about one group in society helps create the misconceptions from which prejudice springs.
> *(pp. 16–17)*

In the context of the critique of the criminal justice system in Aotearoa, Antje Deckert (2020) amplifies these understandings:

> it cannot be underestimated how discriminatory portrayals of criminal actors may sway public consent for crime or penal policies that target specific social groups.
> (pp. 339–340)

In this chapter, we analyse items across a range of media, for example, print and television (news, reality, and drama) and topics such as cannabis law reform, COVID-19 lockdowns, and criminal justice. We include hitherto unpublished Māori and Pākehā audience data with

DOI: 10.4324/9781003176619-4

reference to recent publications on reactions to representations of Māori in locally produced television dramas and their effects. We have included our earlier and ongoing explorations of antecedents and historical exemplars of discursive representations of Māori in mass media, along with research literature and findings on news media linkages between Māori and crime. The analyses demonstrate that pervasive negative representations of Māori across a range of media genres and topics perpetuate and reinforce associations of Māori, particularly Māori men, with violence and criminality. Here, the perpetuation of negative stereotyping is a form of normalized racism (Elers & Elers, 2017, p. 48).

Regimes of representation (Bhabha, 1994; Hall, 2001) based on ethnicity and developed through the colonial state are of critical importance to the entrenchment of the existing criminal justice system. We believe that transforming the ways in which we talk, write, perform, and practice in this domain is a vital component of decolonizing hegemonic media narratives that have implications for social/criminal justice, social cohesion, and well-being. Transformation is grounded not only in the understanding that negative representations have the potential to harm but also in the understanding that positive representations have the potential to promote positive social norms and enhanced societal relationships.

Background

The following provides examples of the ubiquitous and damaging nature of mass media representations of Māori that began at first contact, accelerated with colonization in the 1800s and persists today. The colonizing project produced contradictory, binary representations of Māori including Māori as the 'noble savage' and uncivilized. In print, for example, John Ward's (1839) *Information relative to New Zealand: A colonist's handbook*, although referring to the 'noble savage,' contained some of the first codified representations of Māori as inherently lawless, immoral, and criminal.

In her study of racism against Māori among Pākehā in the nineteenth and twentieth centuries, Angela Ballara (1986) analyses many texts, images, and other sources. She notes that in the 1850s and 1860s when such discourses were not socially proscribed, the notion of Māori 'savagery' supported an entire structure of race relations that continues to thrive even in contemporary settings. Matthew Nickless (2017) traces the role of the Auckland press, in particular narrating its version of 'Māori violence' from the mid-1850s to 1890, finding that "Māori agency was repeatedly condemned by the press whenever it was seen to be in conflict with [settlers'] own goals" (p. 89). He found that the recurrent representations of Māori as inherently dangerous and criminally violent were continuously deployed to foment and perpetrate war, violence, and alienation of Māori land, the ultimate goal of the early colonial enterprise.

Decades earlier, Richard Thompson (1955) focused particularly on coverage in newspapers in 1950, again noting the general tenor of anti-Māori coverage and drawing attention to crime news. Thompson's studies, while not widely acknowledged, provided a foundation to which other researchers have contributed in more recent times (see, e.g., Abel, 1997; McGregor & Comrie, 2002; Spoonley & Hirsh, 1990). In turn, these works added depth, scope, and detail, covering periods prior to the Kupu Taea[1] studies from 2007 onwards which used a combination of quantitative and qualitative methods within a bicultural research team (Kupu Taea, 2008, 2014). Peer-reviewed outputs confirm, with strong empirical evidence, the enduring legacy of underrepresentation (less than 2 percent of news stories) and negativity inherent in mass media representations of Māori and Māori/Pākehā relations. Elsewhere, we have described these findings as "symbolic annihilation" (Nairn et al., 2012, p. 41) and relentless denigration of Māori in the news domain. For the purposes of this chapter, we note that criminality, violence, and

law-breaking, in general, are crucial and persistent themes (McCreanor et al., 2014; Moewaka Barnes et al., 2012).

We now turn to examine audience responses and recent television representations that present Māori negatively, for example, as violent, criminal, childlike, and irresponsible.

Television and Māori representations

A small body of research examines Māori representation on mass television including television news (Abel, 2008; Blythe, 1994; Glynn & Tyson, 2007; Gregory et al., 2011; Moewaka Barnes et al., 2012; Nairn et al., 2012; Pearson, 2013; Pihama, 1996; Yan et al., 2021). Findings are consistent with other mass media studies described above and include the persistence of racist stereotyping that presents Māori in negative terms, including Māori as criminal and violent.

Our earlier Kupu Taea audience research, which focused on mass media news, including television, found that non-Māori participants thought "mass media depictions of Māori were predominantly negative, with Māori routinely associated with social problems" (Gregory et al., 2011). Māori participants in the same study suggested that constructions of Māori as criminal and violent, as examples, contributed to divisions in the community. Society's negative assumptions and discourses about Māori were experienced in the form of undue surveillance and confrontations in public spaces such as schools (Moewaka Barnes et al., 2013).

Little research has been conducted on audience responses to local television dramas (De Bruin, 2011; Moran, 1996). A recent study by the first author, 'Affect and Identity in Contemporary Television Drama', aimed to understand how contemporary Aotearoa television dramas affect our lives, including identity, social cohesion, and cross-cultural relationships. Twenty-five focus groups were conducted with 107 individuals from Te Waipounamu and Te Ika a Māui (South and North Islands) mostly residing in Te Ika a Māui urban centres: Te Tai Tokerau/Northland, Tāmaki Makaurau/Auckland, Taranaki/New Plymouth, Te Whanganui a Tara/Wellington, and Ōtautahi/Christchurch in Te Waipounamu. Participants were predominantly Māori (49) and Pākehā/New Zealand European (50), with the remaining eight identifying as Samoan, Fijian, Filipino, Indian, or Pasifika.

Each focus group viewed a single episode from one of the four selected drama series: *Westside*, which follows a family and their friends who are involved in criminal activities; *Find Me a Māori Bride*, a mockumentary about two male cousins, grappling with their identity as Māori, who must find a Māori woman to marry in order to inherit the family farm; *The Brokenwood Mysteries*, a murder mystery set in a rural town in Aotearoa; and *Shortland Street*, a long-running soap opera centred on an Auckland medical clinic. The dramas were selected because they were among the few that provided a substantial storyline with at least one Māori character. This choice of dramas provided a diverse corpus of excerpts that allowed for a range of responses and analyses of broader themes across the focus groups.

After viewing an excerpt together, each group participated in a facilitated semi-structured discussion in which participants talked about their reactions to the drama, with encouragement to express and elaborate on any emotions or feelings they experienced while watching the excerpt. The purpose was to explore audience meaning-making and affect; the feelings, emotions and behaviours engendered as a result of viewing a local drama. The findings that emerged in response to negative dramatized representations of Māori, such as criminal, violent, aggressive or irresponsible, are organized into two broad themes, 'reinforcing negative stereotypes' and 'societal relations.' The main focus is on Māori responses but includes those of Pākehā ethnicity to surface similarities and differences.

Reinforcing negative stereotypes

Viewing troubling depictions on local television dramas prompted deeply felt responses from Māori participants. They frequently spoke of the negative and damaging ways Māori are represented; feelings of anger, shame, and exasperation were expressed (Moewaka Barnes & Moewaka Barnes, 2022). Māori participants recognized the cumulative and ongoing nature of representations of Māori, men in particular, as violent, aggressive, irresponsible, and criminal, via markers such as drug dealing and membership of gangs. There were noticeably fewer representations of Māori women, and the few that appeared were mostly peripheral characters. Although Māori participants were predominantly responding to male characters, all Māori were affected by racist stereotypes. This Māori participant responds to a Māori male character in *Shortland Street* who acts aggressively when confronted with his wife's manipulative behaviour:

> Yeah, every time they show a Māori it's aggression, violence, slamming doors […] All part of being colonized.

In this universal response ("every time"), representations of Māori in dramas were experienced and understood within wider discourses and constructions, as problematic products of a colonized society. Also implied here is a sense of culpable agency on the part of the colonizers and the distress the participant feels at this material and unfair outcome.

"The mark of the plural" (Memmi, 2000, p. 51) where any negative individual actions are routinely taken as representative of the perceived deviance of Māori, was remarked on, with particular emphasis on the notion that all Māori are inherently violent and criminal. This Māori participant's comment arose from watching an episode of *Shortland Street* where a Māori male character acts unlawfully:

> And to restrict someone, just because of their ethnicity or gender is pretty shitty as a human being. Just because you think that someone that is Māori will do one thing and then every other Māori will do it as well, it's just, it's just stupid.

Affective turns of anger and frustration ("shitty," "stupid") are expressed here with implied blame attached to those who engage in such racist moves. The cumulative and ongoing nature of negative constructions of Māori was discussed by both Māori and Pākehā participants who agreed that these types of representations would reinforce dominant racist and colonizing beliefs and discourse about Māori. The following quotes were in response to watching *Find Me a Māori Bride*, where two Māori male characters behave badly while grappling with their Māori identity. The final quote is taken from a discussion about representations of Māori more broadly, promoted by watching *The Brokenwood Mysteries*. In the episode, a Māori character – a murder suspect – is obstinate and aggressive when dealing with police.

> And I found myself wondering would the people I'm thinking about […] would they see them as stereotypes, or would they see them as affirmation of their opinion of Māori?
>
> [I] think there's quite a few people for whom that would be an affirmation.
>
> Yeah the stigmatic approach that many non-Māori have about us. You can just see them 'oh we'll watch this cos this is what real Māori look like'. It's like 'Once Were Warriors'.

> They would love it and they'd be sitting there saying to each other there, there, that's them, that's exactly what they're like […] it just reinforces it.

The Pākehā participants (first and second quotes above) agree that the depictions in the excerpt are highly likely to reinforce negative stereotypes. Interestingly, both employ a distancing effect by placing these affects with other Pākehā. The Māori participant (third quote) takes a similar approach, though from the standpoint of being a target of racism, referencing *Once Were Warriors* (1994), a film that was vigorously debated on the grounds that it reinforced negative stereotypes of Māori. Other Māori participants also drew on the film and other stereotypical cinematic representations. Acutely aware of the effects, they spoke of feeling judged as individuals, as whānau (wider family), and as Māori collectively, with implications for non-Māori and societal relations.

Societal relations

A Māori participant, who identified "layers of racism and stereotyping" in dramatic depictions, was concerned that these forms of representation were a "way of stirring up our society." This idea was not uncommon among Māori participants (Moewaka Barnes & Moewaka Barnes, 2022), and some Pākehā, who were concerned that the reinforcement of negative stereotypes in television dramas would affect day-to-day interactions between Māori and non-Māori. The following quotes from Pākehā participants are in response to the main Māori male characters in *Find Me a Māori Bride* and *Westside* who share attributes of behaving badly.

> I kind of worry about those sorts of presentations to the public. Cos I think it runs the risk of affirming peoples' stereotypes if they turn it on. And if they're watching it. I look at it and think what's that doing to help with Māori Pākehā relationships?

> That just like feeds into their real-life interactions with Māori people, 'oh this is what they're like, this is what I've seen on tv so must be true […] you've got a violent Māori who steals things'.

A Māori participant questioned whether dramatized depictions of Māori as violent and criminal were a form of 'profiling' (attributing characteristics and behaviours that signal offending), that resonates with the highly constructed reality of *Police Ten 7* (a local police ride-along television genre), discussed below. This quote is in response to a Māori male character in *Shortland Street* involved in criminal activities, including drug dealing.

> Yeah, it's the Māoris stuck in the same storyline! […] About the drugs and all that stealing […] it kind of takes me out of the storyline from what they're trying to do, the drama and all of that […]. Are they just, like, profiling it kind of thing, yeah.

Frustration emerges with profiling in dramas that stigmatizes and criminalizes Māori. Constructing Māori in this way reminded this participant of the racism that operates against him at both individual and systemic levels. A Māori participant discusses the television series, *Beyond the Darklands*, in which a Pākehā presenter investigates serious offenders and their backgrounds. She raises the lack of contextualizing offending within a colonizing society that ignores systemic issues within the police, justice system, and wider society. The following quote emerged from a discussion about societal racism after watching *Westside*.

> Nigel Latta is Pākehā right, and his whole worldview around mental health issues and the psychology of criminals is from a very white way of making sense of the world. There is no attempt at all in his shows to think about how those people experience the world as Māori and how that might actually impact […] it always has to do with Māori or their whanau or as opposed to other things that impact [such as] societal pressures, stereotypes, systemic police abuse and there's a whole lot of other things. And I am not saying that that relieves the criminal themselves of fault for their crimes but just in terms of looking at how that person came to being in the world in that form.

There was a general feeling amongst Māori participants that television pandered to a Pākehā audience by reproducing familiar constructions of Māori, for example, aggressive, criminal, and irresponsible (Moewaka Barnes & Moewaka Barnes, 2022). One Māori participant described it as "feeding people's beliefs." This quote is in response to the representation of Māori more generally after viewing *Westside*:

> so you either have to write to the stereotype so the Pākehās can relate or it seems too made up. So it's like not a win it's a lose/lose - can't get a win anywhere.

Here she reflects on the closed loop of the discursive power at work where if writers diverge from the hegemonic Pākehā understandings the narrative will seem unrealistic to the Pākehā audience. She clearly articulates her distress at the forced choice between stereotypes and invisibility.

The dramas discussed here contained reminders of colonization such as the struggles and injustices connected to identity and negative stereotyping. Māori participants were deeply affected and frequently spoke about feelings of distress, grief, anger, loss, and anxiety. Prior to even watching a drama, they anticipated the worst and feared the inevitable: damaging representations, including Māori as violent and criminal. Negative depictions resulted in feeling undervalued, unnecessary, or unuseful as individuals and as Māori collectively (Moewaka Barnes, 2021; Moewaka Barnes & Moewaka Barnes, 2022).

Police Ten 7

A study by Yan et al. (2021) of depictions of Māori and Pacific people in the Aotearoa reality television show *Police Ten* 7, showed clearly that such marginalized groups are overrepresented (69 percent of cases covered in the programme while making up less than 25 percent of the population). Meanwhile, those defending the series argued that the criminals "select themselves" as subjects for *Police Ten* 7; that is, that the programme merely but accurately depicts the criminal behaviour of such people (Woodham, 2021, n.p.). This discussion points to a breakdown of understanding between such interpretations and the analysis which concluded that the programme presents a highly constructed reality that emphasizes the violence of Māori and Pacific males. We argue that *Police Ten* 7 shares such constructions of reality with a range of local television dramas and certainly some of the impacts for audiences revealed by the first author's research. Its popularity could, in part, be due to the reproduction of familiar constructions of Māori that appeal to and appease a Pākehā audience (Moewaka Barnes & Moewaka Barnes, 2022). These forms of entrenched representations reinforce the notion of the criminal violent other that the law-abiding, deserving group must be protected from.

Overall, these data and analyses suggest that like news, reality television and many other mass communications genres, television drama have implications beyond providing entertainment.

Audience responses demonstrate how participants understood representations within broader societal contexts and thought about the relational and political meanings the drama evoked (Moewaka Barnes, 2021; Moewaka Barnes & Moewaka Barnes, 2022). Exposure to negative stereotyping in dramatic forms was seen by participants, particularly Māori, to have significant effects on behaviours and actions towards Māori in society generally.

Indigenous and Māori representations related to crime

Our review of mass media representations of Indigenous peoples, published between 2000 and 2015 (Nairn et al., 2017), carries a significant section focused on the theme of violence that is of relevance to our discussion of crime. Numerous papers note that characterizing Indigenes as violent is commonplace and that this construction is highly salient to the negative representation of such groups and their 'criminality' in particular. "Across the identified representations of indigenous peoples, familiar synonyms for violence: brutal, savage, rough, wild, berserk, out of control, and barbarous, are employed in constructing a predatory animality that is to be feared and mistrusted" (Nairn et al., 2017, p. 38).

These representations draw on tropes of irrationality, callousness, and intoxication, but also a notion that Indigenous men enjoy and seek violence, so that audience attention is directed toward endogenous rather than systemic causality, to rationalize individual-focused reactions. They align with perceived 'newsworthiness,' especially where they are able to be linked to the use of weapons that can be linked to personal safety or threats to the nation's integrity. Their escalation into labels including extremist, fanatic, and terrorist delegitimizes justifiable Indigenous actions and sanctions heavy-handed, repressive actions by the state as seen in the case of 'Operation 8'[2] raids on peaceable Tūhoe communities (Norris & Tauri, 2021) and the denigration of legitimate peaceful protests such as over the Foreshore and Seabed[3] alienation (Hodgetts et al., 2005) and Ihumātao[4] (Hancock, 2020).

However, specific research and theorizing in the space of coloniality and criminology has been advanced by Indigenous scholars, including Māori scholars, in the last decade or so to present a real and critical challenge to established theory, policy, and practice in this domain. Juan Tauri's (2014) structural analysis of this "management of dispossession" (p. 27) of Indigenous people, exposes it as intentional and culturally inscribed in multiple intermeshed, racialized, colonial projects (including both criminal justice ideologies and mass media representations), institutions (schools, police, social services), and practices (stop/search, child up-lift, surveillance).

Together, these colonial forces promulgate a discourse that constructs Māori criminality as an essential characteristic "so significant that New Zealand's crime problem would likely disappear" (Tauri, 2014, p. 24) if it could be eliminated. Given the complete unacceptability of such elimination strategies, they have been superseded by policies for "sequestering Indigenous peoples within state-controlled, closed institutions" (Tauri, 2014, pp. 24–25), the legitimacy of which require the maintenance of the dominant discourses of criminality particularly by colonial mass media.

McCreanor et al. (2014) present analyses of representations of Māori and crime from a large prospective, representative sample of radio and television news coverage gathered in 2007/2008. Coverage was divided into crimes by Māori (64 police notices and 17 court reports) and crimes against Māori (18), which retained the negative association between Māori and crime.

The police notices take an almost standard form in which, on scant evidence, often taken from victims or bystanders, police sources request information from the public. Here is a typical example: "Nelson police were yesterday hunting for a man after a vicious baseball bat attack on two teenagers in an inner-city park […]. The attacker, described as a Māori aged 25 to 35

[…]" (*The Press*, 1 February 2008, as cited in McCreanor et al., 2014). Obviously, such items promulgate associations between Māori and crime without recourse to judicial oversight or any significant examination of evidence. We note that, while this practice has decreased steadily over a decade or so to the point where it is now a rare occurrence, nuanced versions, for example, the use of Māori names, effectively replicate the Māori–crime link.

Other recent examples reflect changing societal practices (including in media) but chart ways in which media continue to act as a vector for racist views that link Māori and crime. Derek Cheng (2019) reports in the local *NZ Herald* on law changes that give police discretion not to charge for possession of drugs but offer therapeutic support as an alternative. However, monitoring of the outcomes shows that Māori still make up more than one-third of those charged. Challenged on this finding, the police claim that ethnicity is not a factor (Cheng, 2021), reinforcing media audiences' associations between Māori and criminal drug possession.

Similarly, politicians continue to spread highly partisan and racist views that turn on associations between Māori and crime. An online story on Māori iwi (tribe) road checkpoints designed to reduce the spread of COVID-19 in isolated communities during the 2021 pandemic lockdowns (Dexter, 2021) brought the following sophistry from ACT Party leader David Seymour: "People who block roads are thugs. If you listen carefully I haven't actually called iwi thugs, I've called people who block roads and threaten to disrupt other people's freedoms thugs, and that's what they are" (n.p.).

In a typical populist form, Seymour takes a 'commonsense' stance ("that's what they are") that – despite evidence showing their positive contribution (AUT News, 2021) – decontextualizes the actions of Māori attempting to protect their communities from infection, apparently justifying the chosen denigrating label. The patronizing "if you listen carefully" is deployed as a cover for the point that, despite his choice of words, many of his audience will make the association between checkpoints and iwi and, therefore, with his compendium of "thugs," "threaten," and "disrupt."

Craig Dempster and Adele Norris (2020) studied *New Zealand Herald* coverage of cannabis law reform before and after the 2020 referendum,[5] finding that 75 percent of articles made no mention of Māori; of those that did the focus was on the implications of legalization for Māori health. Only a very small number of items considered the very high levels of Māori support for legalization, a point which is attributed by Māori analysts to reflect the lived experience of the impacts of racialized policing of cannabis prohibition (Norris & Tauri, 2021). In turn, this underpins societal and media assumptions about Māori and crime (McCreanor et al., 2014) that support the status quo of racist reporting that criminalizes Māori behaviours around this issue, ignoring systemic issues.

Resistance to negative representations is frequently ignored or downplayed in media praxis, policy, and legislation. For example, a case taken to the Human Rights Tribunal argued a breach of section 61 of the Human Rights Act, contending that cartoons published in May 2013, in both the *Marlborough Express* and the Christchurch-based *The Press*, about the government's 'breakfast in schools' programme brought Māori and Pacific people into contempt. The cartoons depicted Māori and Pacific peoples as dishonest, greedy, and immoral. The Tribunal found Fairfax Media did not breach the Human Rights Act and, while it considered the cartoons insulting, they "fell well short of bringing Māori and Pacifika into contempt" (Human Rights Review Tribunal, 2017, p. 51). In their analysis of the two cartoons, authors Elers and Elers (2017) conclude that they perpetuate negative stereotyping of Māori, a form of normalized racism. They argue that findings from both the Human Rights Review Tribunal and the Race Relations Commissioner (who found the cartoons to be offensive but not racist), "merely serve to legitimate racist acts" (p. 48). These forms of depictions promote Māori as criminal in intent, suspect, and in need of surveillance.

Discussion

In this chapter, we have examined some historical examples of journalistic coverage of Māori and crime. These regimes of representation demonstrate the longevity and entrenchment of Pākehā discourses into the colonial culture of Aotearoa where Māori are the criminal violent Other. We have provided exemplars of the ways in which this cultural form, despite the ideologically mandated 'objectivity' of the fourth estate and the active social constructionism of those disciplines, continues within news-making and spills over into the artistic licence of entertainment genres and fictional forms in mutually self-reinforcing ways.

Our new empirical work with audience data points out the implications of diverse media formats in reproducing and maintaining racist, colonizing discourse and practice in contemporary society. We are clear that such dominant discourses impact Māori and Pākehā but in very different ways, including uncritical acceptance of stereotypes and norms by the latter. Māori, however, do not consider such representations as merely entertainment or neutral but understand and experience their power to cause harm and pain.

We agree with the observations in our introduction that discursive representations of Māori extend into "wider social attitudes" (Jackson, 1987, pp. 16–17) and practices that "may sway public consent for crime or penal policies" (Deckert, 2020, p. 339) that target Māori. We refer back to Elers and Elers' (2017) observation that the perpetuation of negative stereotyping of Māori is a form of normalized racism. The ubiquity of these racist conventional Pākehā discourses of Māori and crime/violence, support and entrench the racism of the colonial criminal justice system so clearly described in the critical works of Juan Tauri and other Māori and Indigenous criminal justice researchers. The commonplace presence of these patterns in diverse media forms both historical and contemporary, in fiction and non-fiction genres, speaks to their long-entrenched character. We conclude that the narratives that these discursive resources support are exclusively populist, 'commonsense' stories that are decontextualized, ahistorical, and bound up with maintaining colonial criminal justice forms.

Decolonizing discourses and discursive resources that maintain the hegemony of the standard story on Māori and crime results in mana-enhancing narratives; a commitment of many Māori working in the field. Transformation is grounded not only in the understanding that negative representations have the potential to harm, but also that positive representations have the potential to promote positive social norms, justice and enhanced societal relationships.

Acknowledgements

We would like to thank the research participants who gave generously of their time and thoughts. Partly supported by Marsden Fund Council from government funding, administered by the Royal Society of New Zealand (contract MAU 1307: Affect and Identity in Contemporary Television Drama).

Notes

1 Kupu Taea is a bicultural research team within the research centre Te Rōpū Whāriki. It engages in critical analyses of media coverage and representations of Māori and Māori/Pākehā relations.
2 Operation 8 was mounted under the provisions of the Terrorism Suppression Act 2002 on the unfounded basis that there were weapons and training camps underway in these communities.
3 The Foreshore and Seabed Act 2004 was introduced without consultation to vest all land and assets in these unceded territories in the New Zealand Government.

4 The resistance at Ihumātao near Auckland airport was to an international corporation building housing on illicitly confiscated Māori land.
5 The referendum on a proposal to create a legal, regulated market for cannabis in Aotearoa was rejected in favour of current prohibitionist policies.

References

Abel, S. (1997). *Shaping the news: Waitangi day on television*. Auckland University Press.

Abel, S. (2008). Tūhoe, terror and television. In D. Keenan (Ed.), *Terror in our midst?* (pp. 113–128). Huia Publishing.

AUT News. (2021, August 16). Research backs iwi checkpoints. https://news.aut.ac.nz/news/support-for-iwi-checkpoints

Ballara, A. (1986). *Proud to be white: A survey of racial prejudice in New Zealand*. Heinemann.

Bhabha, H. (1994). *The location of culture*. Routledge.

Blythe, M. (1994). *Naming the other; images of the Maori in New Zealand film and television*. The Scarecrow Press.

Cheng, D. (2019, May 2). Watershed bill described as drug decriminalisation – Despite govt claims to the contrary. https://www.nzherald.co.nz/nz/watershed-bill-described-as-drug-decriminalisation-despite-govt-claims-to-the-contrary/L755UYOY7MSZ4ZQROTCWA6ECD4/?c_id=1&objectid=12227001

Cheng, D. (2021, November 8). Drug prosecutions: Police say prior offending, not race, main factor in decision to charge. https://www.nzherald.co.nz/nz/politics/drug-prosecutions-police-say-prior-offending-not-race-main-factor-in-decision-to-charge/VA6YIT4EMPCB2JJILTJIWWDHUE/

De Bruin, J. (2011). Shortland street audiences and cultural citizenship. *Continuum: Journal of Media & Cultural Studies*, *25*, 85–97.

Deckert, A. (2020). Indigeneity matters: Portrayal of women offenders in New Zealand newspapers. *Crime, Media, Culture*, *16*(3), 337–357.

Dempster, C., & Norris, A.N. (2020). The 2020 cannabis referendum: Māori voter support, racialized policing, and the criminal justice system. *Decolonization of Criminology and Justice*, *4*(1), 57–80.

Dexter, G. (2021, December 7). Coronavirus: Northland's iwi-led checkpoints prompts racism row after David Seymour calls those manning borders 'thugs'. https://www.newshub.co.nz/home/politics/2021/12/coronavirus-northland-s-iwi-led-checkpoints-prompts-racism-row-after-david-seymour-calls-those-manning-borders-thugs.html

Elers, S., & Elers, P. (2017). Myth, Māori and two cartoons: A semiotic analysis. *Ethical Space: The International Journal of Communication Ethics*, *14*(2/3), 42–51.

Glynn, K., & Tyson, A. (2007). Indigeneity, media and cultural globalization: The case of mataku, or the Maori x-files. *International Journal of Cultural Studies*, *10*(2), 205–224.

Gregory, M., Borell, B., McCreanor, T., Moewaka Barnes, A., Nairn, R., Rankine, J., Abel, S., Taiapa, K., & Kaiwai, H. (2011). Reading news about Maori: Responses from non-Maori audiences. *AlterNative*, *7*(1), 51–64.

Hall, S. (2001). The spectacle of the other. In M. Wetherell, S. Taylor & S. Yates (Eds.), *Discourse theory and practice: A reader* (pp. 324–344). Sage Publications.

Hancock, F. (2020, January 22). Ihumātao: A Pākehā ally's perspective. https://www.auckland.ac.nz/en/news/2020/01/22/ihumatao-pakeha-ally-perspective.html

Hodgetts, D., Barnett, A., Duirs, A., Henry, J., & Shwanen, A. (2005). Maori media production, civic journalism and the foreshore and seabed controversy in Aotearoa. *Pacific Journalism Review*, *11*(2), 191–208.

Human Rights Review Tribunal. (2017). Wall v Fairfax New Zealand Ltd [2017] NZHRRT 17. https://www.justice.govt.nz/assets/Documents/Decisions/wall-v-fairfax-new-zealand-ltd-2017-nzhrrt-17.pdf

Jackson, M. (1987). Maori and the criminal justice system: A new perspective. *He Whaipaanga Hou*. https://www.ojp.gov/pdffiles1/Digitization/108675NCJRS.pdf

Kupu Taea. (2008). Media & Te Tiriti Waitangi 2007. https://trc.org.nz/sites/trc.org.nz/files/summary2007.2_1.pdf

Kupu Taea. (2014). Alternatives to anti-Māori themes in news media. https://trc.org.nz/alternatives-anti-m%C4%81ori-themes-news-media-0

McCreanor, T., Rankine, J., Moewaka Barnes, A., Borell, B., Nairn, R., & McManus, A.-L. (2014). The association of crime stories and Maori in Aotearoa New Zealand print media. *Sites: New Series*, *11*(1), 121–144.

McGregor, J., & Comrie, M. (2002). *What's news? Reclaiming journalism in New Zealand*. Dunmore Press.

Memmi, A. (2000). *Racism*. University of Minnesota Press.

Moewaka Barnes, A. (2021, December 10–11). *It's not just entertainment: Māori audiences respond to local television dramas* [Keynote address]. *Kōrerorero Aotearoa, NZ Discourse Conference 8*, Christchurch, New Zealand.

Moewaka Barnes, A., Borell, B., Taiapa, K., Rankine, J., Nairn, R., & McCreanor, T. (2012). Anti-Maori themes in New Zealand journalism: Toward alternative practice. *Pacific Journalism Review*, *18*(1), 195–216.

Moewaka Barnes, A., & Moewaka Barnes, H. (2022). Māori in unexpected places: Watching Māori on television. *Sites: A Journal of Social Anthropology and Cultural Studies*, *19*(1), 34–59.

Moewaka Barnes, A., Taiapa, K., Borell, B., & McCreanor, T. (2013). Maori experiences and responses to racism in New Zealand. *MAI Journal*, *2*(2), 63–77.

Moran, A. (1996). National broadcasting and cultural identity: New Zealand television and Shortland street. *Continuum: Journal of Media & Cultural Studies*, *10*(1), 168–186.

Nairn, R., McCreanor, T., & Moewaka Barnes, A. (2017). Mass media representations of indigenous people. https://static1.squarespace.com/static/59152c88b8a79bdb0e644f2a/t/5a29b303085229098078 32f1/1512682251416/Monograph+December+FINAL.pdf

Nairn, R., McCreanor, T., Moewaka Barnes, A., Borell, B., Rankine, J., & Gregory, A. (2012). "Maori news is bad news": That's certainly so on television. *MAI Journal*, *1*(1), 38–49.

Nickless, M. (2017). *Through the red lens: Pākeha perceptions of Māori as a violent race, 1857–1873* [Doctoral thesis]. University of Auckland.

Norris, A.N., & Tauri, J. (2021). Racialized surveillance in New Zealand: From the tūhoe raids to the extralegal photographing of indigenous youth. *Race and Justice, Online First*. https://doi.org/10.1177/21533687211063581

Pearson, S. (2013). Persistent primitivisms: Popular and academic discourses about Pacific and Māori cinema and television. *The Journal of the Polynesian Society*, *122*(1), 21–44.

Pihama, L. (1996, n.d.). *Re-presenting Maori: Broadcasting and knowledge selections* [Conference presentation]. *New Zealand Association for Research in Education Annual Conference*, Auckland.

Spoonley, P., & Hirsh, W. (1990). *Between the lines: Racism and the New Zealand media*. Heinemann Reed.

Tauri, J.M. (2014). Criminal justice as a colonial Project in settler-colonialism. *African Journal of Criminology and Justice Studies*, *8*(1), 20–37.

Thompson, R. (1955). Maori affairs and the New Zealand press. Part IV. *Journal of the Polynesian Society*, *64*, 22–34.

Walker, R. (1990). The role of the press in defining Pakeha perceptions of the Maori. In P. Spoonley & W. Hirsh (Eds.), *Between the lines: Racism and the New Zealand media* (pp. 37–46). Heinemann Reed.

Ward, J. (1839). *Information relative to New Zealand*. J.W. Parker.

Woodham, K. (2021, March 22). Former Ten 7 host Graham Bell says show reveals 'cold, hard uncomfortable truth'. *Newstalk ZB*. https://www.newstalkzb.co.nz/on-air/kerre-woodham-mornings/audio/graham-bell-former-police-ten-7-host-defends-show-amidst-racism-criticism/

Yan, R., Rapana, W., Waitoki, W., McCreanor, T., Barnes, A., Taumoepeau, M., & Scarf, D. (2021, September 26). Police Ten 7 feeds racial stereotypes of Māori and Pacific peoples in Aotearoa New Zealand. https://psyarxiv.com/b359u/

4

Girramaa marramarra waluwin

Decolonizing social work

Sue Green

This chapter examines the importance of decolonization for the practice of social work. In order for the social work profession to meet its core principles of social justice and human rights, it needs to work towards decolonization. Firstly, the profession of social work needs to decolonize its own values and practices and then work to decolonize the world we live in. In recent times, decolonization has replaced terms such as empowerment and self-determination and is at risk of becoming just another catchphrase unless there is a commitment to undertaking the necessary processes and actions of decolonizing. The issue to date is that there is a lack of understanding of both colonization as an ongoing process and societal structure and decolonization as active processes. This chapter will discuss how social work can become an agent of decolonization whilst decolonizing the profession itself.

As it is an important protocol for most First Nations peoples, and definitely for Wiradyuri people, I must introduce myself and position myself within what I am writing.

> Yuwindhu Dyudyan Garbargarbar, Galari Wiradyuri yinaa, Biira-gu-bu Yilaaydya-gu-bu Yuluwidya-gu-bu garingun, Bala-dhu ngama Yandru-gu-bu Danyal-gu-bu Yalidya-gu-bu. Bala-dhu gunhinarrum-bu badhiin-bu galingabangbur-guliyagu. Baladhu Girramaa Marramaldhaany. Ngadhu yalmambili Wiradyuri-dyi gari-dyi.
>
> My name is Susan Green, Galari (Lachlan river clan), Wiradyuri (nation) woman, granddaughter to Vera, Eliza, and Louisa and mother to Andrew, Daniel, and Alicia, and grandmother to their children. I am a social worker. I teach Wiradyuri truth.

In addition, I am also currently the elected Aboriginal and Torres Strait Islander Board Director on the Australian Association of Social Work as well as the Professor of Indigenous Australian Studies and Course Director of the Graduate Certificate Wiradjuri Language, Culture and Heritage at Charles Sturt University.

Throughout this chapter, I will use Wiradyuri language as a sovereign Galari Wiradyuri woman and as part of the process of decolonizing the societal structures in which I currently exist. The title of this paper starts in Wiradyuri language – Girramaa marramarra waluwin – which I am using for Decolonizing social work. However, as with many languages, there are frequently words that cannot be directly translated from one language into another. It is almost

DOI: 10.4324/9781003176619-5

impossible to do a literal translation from Wiradyuri into English and vice versa, so what we do is look at the concepts and translate them that way. Girramaa means to be elevated, lifted (Grant & Rudder, 2010, p. 376) and marramarra means to make, do, create (Grant & Rudder, 2010, p. 406). These two words are being combined to make the term social work, as social workers are people who, in accordance with their professional codes, should be working to change social structures to elevate the lives of individuals and groups. Waluwin means good, well, healthy, in order, right, tidy (Grant & Rudder, 2010, p. 458), which is being used to mean decolonization, because the process and outcome of decolonization should be that things are being put in order and being put right and the result should be good, well and healthy peoples, communities and environments. My language is important as it gives me my identity and defines who I am in relation to all else, whilst giving me my focus, which in turn determines my actions and forms the wayanha (transformation) of my actions (Grant & Rudder, 2014). That wayanha (transformation) is decolonization.

Within their Code of Ethics, the Australian Association of Social Work (AASW, 2020) sets out that the social work profession in Australia complies with the definition set by the International Federation of Social Workers and the International Association of Schools of Social Work:

> Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance wellbeing.
>
> *(p. 5)*

Note that burrowed within the list of theories that underpin social work is "indigenous knowledge" (AASW, 2020, p. 5), sandwiched between humanities and well-being. This is our first clue on how much the profession of social work globally needs to decolonize. To state Indigenous knowledge as singular and not plural indicates a fundamental misunderstanding and misconception of the term. Globally, there are many different First Nations peoples with different cultures which are based on their knowledge systems. Within Australia, there are hundreds of different First Nations, who each have their own languages and cultures and hence knowledge systems. In addition, no one culture or person has a singular knowledge – everyone has multiple knowledges; thus, it should be 'Indigenous knowledges'. Our second clue is the spelling of 'indigenous' in lowercase. You would not find any other name for a people or a nation starting without a capital letter. Whilst not capitalizing 'indigenous' or other words to describe First Nations peoples, such as 'aboriginal', might be grammatically correct within the English language; it also shows how entrenched colonialism is within our current societal structures. Ideologies and belief systems are played out in language, and language reinforces those ideologies (Wardhaugh & Fuller, 2015). Hence, not capitalizing 'indigenous' places First Nations people in a different or even an inferior position to other groups of people. This is how colonialism continues even within systems and groups that are trying to achieve social justice. It also highlights the difficulties in decolonizing because we are often unconscious of the ways in which colonialism has invaded every structure of our lives. Hence the first step of decolonization is to become aware of how colonialism is present in our everyday lives, thoughts, and actions, as individuals and as a society. This first step highlights the importance of 'knowing one's self' – or to put it in social work terminology – self-reflective practice.

In Wiradyuri, the word winhangadurinya means to meditate, know, reflect, and the word winhangadilinya means to know one's self (Grant & Rudder, 2010, p. 469). There are several words that start with 'winhanga', which are all linked. For example, winhanganha means to know, think, remember; winhangarra means to hear, think, listen; and winhangabilang means intelligent, clever (Grant & Rudder, 2010, p. 469). What this tells us is the importance of self-reflection, in that not only does it allow us to know ourselves, but that knowing ourselves is linked to intelligence and being clever. It also tells us what you must do to be self-reflective, and that we must think, hear, and listen, which also lets us think, know, and remember. A further word that links to this group of words is winhangagigilanha, meaning to care for each other (Grant & Rudder, 2010, p. 496). Thus, a consequence of self-reflection is that we become knowledgeable, that we know through remembering and that through that knowing, that knowledge, we end up caring for each other. The Wiradyuri cosmology informs that we can only be known through our relationships with others; that we are in relationships with all else and that those relationships have always existed whether we are conscious of them or not (Grant & Rudder, 2014, p. 5). Those relationships give us our identities and thus when we are self-reflecting, when we are beginning to know ourselves, we can only know and understand ourselves via those relationships. We do not exist as individuals but rather as a collective of beings who exist within relationships – whereas in Western cultures, it is the individual that is the core of being.

Colonialism is embedded in the ideology of individualism and individual rights (Flynn, 2005). Ife (2016) points out that human rights have become seen as belonging to individuals rather than being based on the relationships between individuals and groups. Furthermore, focusing upon and centring the individual within the framework of human rights diminishes the rights of the collective and ignores that individuals exist and are known within and by their relationships with others and all else. Grant and Rudder (2014) explain that "the identity of all things (and people) is defined by their relationships with/to all other 'identities' in the social, the spiritual and the physical environment" (p. 4). You cannot take an individual out of their relationships and anything that is done or given to an individual directly impacts others. Please note, when speaking about others, this is not restricted to just people but as Grant and Rudder (2014) explain above, it includes all else. The AASW (2020) states that social workers "operate at the interface between people and their social, cultural and physical environments" (p. 6). The focus is on 'people' (singular) and the interface between individuals and their environments. Furthermore, 'interface' implies a space where people and their environment interact, which also implies that they exist separately. However, for Wiraadyuri it is the collective – including the spiritual and the environment – that co-exists and cannot exist outside of their relationships (Grant & Rudder, 2014). It is more than just the existence of relationships but rather that everything is interrelated. Wongamar (2006), a Wiradyuri Elder and now Ancestor, illustrated this when providing instructions on how Wiradyuri should live: "Look after the lands and rivers and the lands and rivers will look after you." (p. 31). This statement points to the truth of the interconnected relationship between people and what is termed 'the physical or natural environment'. If the lands and the rivers are not looked after, if they are unhealthy, their ill health impacts directly upon human health. Humans are totally dependent upon the natural environment for every aspect of their being, including their well-being.

Social Work has increasingly developed an understanding of this, as demonstrated by the works of people such as Boetto (2017, 2019), Matthies et al. (2020), Rambaree et al. (2019), Bowles et al. (2018), Norton (2012), and Molyneux (2010). A few years ago, Bowles et al. (2018) pointed out that social workers are dealing with the impact of climate change within their practices and that the profession's response to climate change was starting to pick up.

However, they also found that there was still much work to be done and that there was a need for stronger leadership from the International Federation of Social Workers. Fast forward to 2022, and the urgency of dealing with climate change has never been so heightened. Hensel et al. (2022) argue that despite there being clear evidence that there is an urgent need to take action against climate change, there is not enough societal action. The IFSW (2022) highlights how the last five years have been the hottest on record and that this is a threat to humans and the planet. They also highlight the connection between the damage to the environment and the COVID-19 pandemic. Further to this, the IFSW (2022) acknowledges that "humans are part of the ecosystem, and that human and environmental well-being are interrelated". However, despite talking about the importance of partnerships, nowhere in the document and its call to action does it mention Indigenous peoples or knowledges. Given the IFSW's definition of social work included that it was underpinned by theories including Indigenous knowledges (see AASW, 2020), it should be expected that somewhere in the document, regarding the role of social workers in addressing climate change, Indigenous knowledges are both centred and play a pivotal role. Firstly, because worldwide, Indigenous peoples are disproportionately affected by climate change, and secondly because they have knowledges about the environment and have to adapt and cope with environmental changes (UNESCO, 2021).

The current climate change situation we find out ourselves in is because of colonization. Harvey (2021) argues that human societies have created the crisis of climate change and that this commenced within the period of industrialization and colonization. Nursey-Bray and Palmer (2017) found that Country and connecting to Country are essential to dealing with climate change. Highlighting that the solution to climate change must be within the processes of decolonization. In order to uphold the values and principles of social work as set out by the IFSW, social workers must – as a matter of urgency – actively address climate change within the global society. However, to do that they must connect with Indigenous peoples to learn how to connect with Country and about their own inter-relationship with Country. Green and Bennett (2018a) contend that colonization has shaped the relationship of people with the environment and that – in order to decolonize – that relationship needs to change. Country is more than just 'land' or a 'geographical location'. The Wiradyuri word for Country is Ngurambang (Grant & Rudder, 2010, p. 99). Ngu as a prefix (beginning of a word) indicates belonging (Grant & Rudder, 2010, p. 448), which demonstrates that one belongs to Country. When a word begins with Nguram it is about home, camp, country (Grant & Rudder, 2010, p. 451). Bang, as a suffix, is an intensifier (something is large or larger) (Grant & Rudder, 2010, p. 297). Thus, for Wiradyuri, Country is that large area, camp, home, where you belong. Country is home and you belong to Country. Your relationship with Country gives you not only your identity (as in the Western world where your national identity is the nation-state where you either were born or are a citizen or you live), but it also gives you focus, your worldview, and understanding of the world. For Wiradyuri, Country is the essence of who we are, how we understand the world, and how we act or should be acting. When we disconnect from Country and from understanding who we are and our place on Country and in the world, we start to think we are different to Country and do not have the respect we need and do not care for Country. The industrial revolution, capitalism, and colonialism have resulted in this disconnect from Country and the crisis of climate change that we are now experiencing.

To reconnect with Country, we have to consider what our actions are. To consider our actions, we must have an understanding of the Wiradyuri cosmology as it provides our worldview, to understand what we must do. The Wiradyuri cosmology can be explained as five areas that are not separate and cannot be separated. They are in no order and each is formed by the

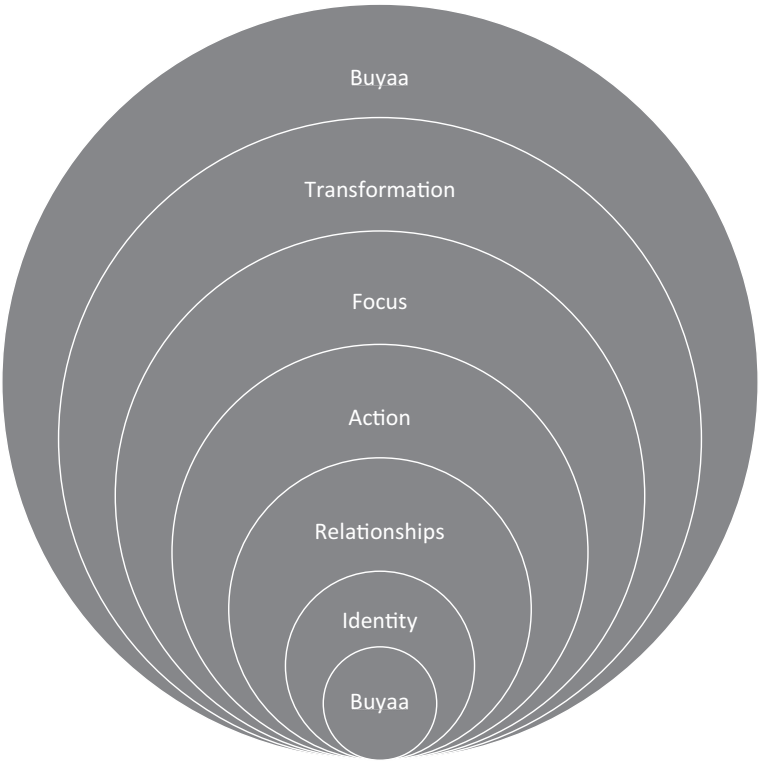

Figure 4.1 Wiradyuri cosmology.

others. Those five areas are identity, relationships, focus, actions, and transformation and have at their centre Buyaa (Figure 4.1).

Buyaa is another word that is not translatable into English. The easiest way to think of Buyaa is law or lore. However, neither of these English words accurately describes Buyaa. Buyaa is the centre of our being, the centre of our universe and the centre of all things Wiradyuri. Buyaa is also the outward covering, the protection of all things Wiradyuri. Bala is our identity; Bala or ba means to 'be' (Grant & Rudder, 2010, p. 293); when used as a prefix it can also mean 'am' (p. 64).

Our relationships are Yambuwan which means 'everything' (Grant & Rudder, 2010, p. 479) and words starting with 'yam' are connected with relationships. As well, we have relationships with Bangal, which, when used as a word stem, means place but it also means time (Grant & Rudder, 2010, p. 297). However, this type of time is related to place and is not measured in hours and minutes. Wiradyuri focus is based in Yindyamarra. Yindyamarra is a very important word and concept for Wiradyuri. The basic interpretation of Yindyamarra is respect, be gentle, polite, honour, do slowly (Grant & Rudder, 2010, p. 485). As with all Wiradyuri words they have a much deeper meaning than can be relayed in English translations. However, we can see some of the layers when we break down the word Yindyamarra. Yindyang means slowly (Grant & Rudder, 2010, p. 485) and marra, when used as a suffix, is an action that makes or causes something to happen (Grant & Rudder, 2010, p. 405). When putting the word Yindyamarra together the ng is dropped from Yindyang and marra is added. The word Yindyamarra provides

the definition of respect by clarifying *how* respect is shown, i.e., by going slowly and gently, and by clarifying that it is *an action* that either creates or causes something to happen. Yindyamarra is central to reconnecting to Country. We have to act slowly and gently, with the intention to have minimal impact on the environment.

Our focus should also include Walu-win, which means good, well, healthy, in order, right, tidy (Grant & Rudder, 2010, p. 458), and we must walumarra – protect, be guardians (Grant & Rudder, 2010, p. 458) of Country; marunbunmirra – love, to be kind (Grant & Rudder, 2010, p. 407); and garigarra – be true (Grant & Rudder, 2010, p. 366). In addition, two other important concepts that should inform our focus are Marrungbang – justice – and marrumbang – mercy (Grant & Rudder, 2010, p. 407). Basically, our duty is to be the guardian, to protect Country, and our focus should be grounded in respect, doing the right thing, love and kindness, truth, justice, and mercy.

This focus informs our actions. Our actions comprise Winhanganha (outlined earlier in this chapter); we need to think about our actions and what the consequences of our actions will be. Are our actions gentle, having as little impact as possible, and where we do impact, is it tidy, is it right? We also need to ensure that we Wirimbirra – take care of, preserve, keep (Grant & Rudder, 2010, p. 470) Country. As well we have to Dugunybirra – be generous, give always, give freely (Grant & Rudder, 2010, p. 333) and also be Dugumbirra – generous, not be greedy (Grant & Rudder, 2010, p. 332). Birra is a suffix that indicates that something is being made or caused to happen (Grant & Rudder, 2010, p. 308), which like Marra means that it is something that we have to actively cause to happen.

Demonstrating how each area of cosmology is not separate from the other areas – with transformation, the consequences of our focus and actions should result in Waluwin and Walumarra. As well, we should have ensured Bagaraybang – restored, comforted, healthy, comfortable (Grant & Rudder, 2010, p. 2928). Notice that Bagaraybang finishes with 'bang' which, as discussed earlier, is an intensifier meaning that you cannot have a little part that is healthy. To be healthy means that the whole must be healthy. So, things cannot be right until we have decolonized. We cannot address the issues that create illness, inequality, disadvantage, crisis or disaster until we address the structures that create these things. Where we currently are, climate change and pandemics are all a result of the way we have been living. We have been living in a manner that is not sustainable and certainly has not been Wirimbirra Ngurambang-gu – Caring for Country.

It is important to note that Country is not just about land, it includes all aspects of the environment, it includes sky, water, plants, and animals. It also includes people and all people. People are not separate from any other part of the environment. We exist within and are part of the environment and our being and actions impact the environment in the same way that any other part of the environment impacts all else in the environment. However, people have impacted the environment to an extent that no other part of the environment has. In addition, people as well as other areas of the environment are being impacted and peoples' lives and livelihoods are under threat. People have the responsibility to address what we have done, to correct, to put right the damage of our actions and to ensure it never happens again and we need to do this before it is too late.

Social workers as agents of social change and social justice have a responsibility to address not just the effects but also the causes of climate change. While we are not scientists, social workers should be lobbying, advocating and developing policies and programmes that address climate change and also the impacts on individuals, families, communities, and groups, particularly those who are most vulnerable and will disproportionally be impacted in these situations. Social workers have the responsibility to ensure that policies and resource distribution are not used to oppress and harm or are unfair and they must work in solidarity to ensure changes

that result in a responsible and inclusive society (IFSW, 2018). The issue of climate change has to have priority for social work practice to ensure that policies and resource distribution are fair and that those policies and practices do not continue to harm others and in particular the most vulnerable. Further, the AASW (2020) directs Australian social workers to "recognize the impact of the environment on the physical and mental health and wellbeing of people and its fundamental importance to the future of human society". There is a very clear directive about the responsibilities of social workers in working to address the issues of climate change both at the policy and government levels and with communities and peoples.

We cannot even start to think about how to address the issues of climate change and its impact on the well-being of people and Country without addressing what has brought us to this point. Climate change is a direct result of the exploitation of natural resources (Green, 2020). Colonization was and continues to be about the exploitation of resources and human labour. First Nations peoples have also had their land taken and were forced into labour, often for little to no wages. Colonization has sought to alienate people from the environment and First Nations peoples from their belonging to Country. Thus, we have to work to dismantle the structures of colonization that continue today. That means that we must actively decolonize our societies as this is the only way for social justice to be achieved.

To decolonize, we must address the actions of the past and also make invisible the structures and actions of the present that continue to perpetrate harm. We need to change our view of the environment and natural resources. We need to recognize the rights of Country and the right to justice (both social and criminal) for Country. Actions led by Indigenous peoples and communities in New Zealand (Aljazeera, 2017), Bangladesh (Westerman, 2019) and Canada (Kestler-D'Amours, 2021) applying for the 'personhood' of rivers or recognizing them as a 'legal person' should be replicated throughout the world and not just for waters. There is a growing conversation about how 'personhood' and legal rights of the environment can address the ongoing harm to the environment (Gordon, 2018; Mortiaux, 2021; Pain & Pepper, 2021; Reeves & Peters, 2021). For Wiradyuri people, the concept of the environment having personhood and rights is nothing new. The environment (Country) has always been recognized as Mother – the nourisher, the one who looks after you and provides life. As per the Wiradyuri cosmology, everything is in relationship with all else and thus all have rights. Buyaa provides Country (the environment) with those legal rights and recognition as being equal to people. Decolonization cannot occur without the recognition of the rights of the environment.

The social work profession and thus individual social workers must work together as a collective and alongside First Nations peoples and other allies to decolonize. However, it does mean that the profession must decolonize itself at the same time as it is seeking to decolonize society on a global level. To decolonize we must first acknowledge that the problems are created by colonization and its structures that continue to govern society and our lives. One of the things that colonization does is to ensure that it remains invisible and to refocus attention from itself onto those who are experiencing the greatest impact of colonization. People have become separate from the environment, thinking that they have the right to exploit it for their own benefit. At the same time, people and their labour have also become a commodity to be exploited. First Nations people have been denigrated for their continuing connection to Country and this has been used to justify their exploitation and also their disadvantaged positions within society. However, if all people and all of the environment are recognized as having personhood and legal rights then it would mean that anyone who does damage to either people or the environment would be legally held to account, which would address much of the ongoing damage that is occurring.

This can all appear to be quite overwhelming and too hard to even know where to start. Green and Bennett (2018) point out that whilst both the problem and solution are quite complex, it is also quite simple. They argue that the problem is that we keep focusing on those who are experiencing disadvantage as being the problem and seeing the solution as helping them to overcome their problems rather than focusing upon the structures that create the problem in the first place. Colonization and colonialism are the problem and decolonization is the process to solve the problem. Decolonization must become the focus, the primary objective of social work globally. Without decolonization, there is no chance of social justice being achieved, as it will also just become another metaphor in a box of metaphors of what we talk about being. Decolonization must inform our practices and our actions as social workers. As Tuck and Yang (2012) caution us: if we allow the word decolonization to become another metaphor that we pull out at convenient times, we will prevent any possibility of decolonization from becoming a reality. We can no longer afford to ignore the urgency of the problems facing us globally. Whilst it is hard to change from the lifestyles we are accustomed to, we cannot keep ignoring the price that is being paid for those lifestyles. Also, we can no longer ignore the disproportionate price that continues to be paid by the environment and by First Nations peoples, along with other disadvantaged and vulnerable populations. In addition, First Nations peoples hold the knowledges that are required to address the issues we now face, during this global crisis of climate change and pandemics.

Social Work has a responsibility to work in solidarity and to advocate for the rights of First Nations peoples and the environment. It is the right of First Nations peoples to be able to care for Wirimbirra Ngurambang-gu, to live and practice their duty to Country, and to acknowledge and live their relationship to Country. It is not enough nor any longer acceptable for social workers to 'help' First Nations people to live in a society that continues to destroy Country. It is also no longer acceptable to ignore or deny the rights of Country (of the environment). Country must be accepted as a living entity that determines not just the quality of our lives but also our very existence. We cannot become decolonized without Indigenous knowledges, First Nations peoples and most importantly without Country.

This means that as part of the process of decolonization, social work, globally, needs to revise its codes of ethics, standards and principles and redevelop them to include the centrality of Country to all things; education and training programmes need to be rewritten to ensure that all social workers graduate with an in-depth understanding of Indigenous knowledges and Country along with a commitment to fight for decolonization; and our current social workers must retrain to upskill them for the important work ahead. It is no longer enough to just throw around words such as social justice, empowerment, self-determination and decolonization without any understanding of what these concepts truly mean. However, it is not possible to begin the journey of decolonization without first making visible colonization – as both an action and a structure – and how it affects society and the lives of all.

We live in a time when the world is facing interrelated crises of climate change, and pandemics. All of these are direct consequences of human behaviour and the belief that it is the right of humans to exploit natural resources. People have disconnected from the environment and no longer recognize Country as an integral part of their identity nor that people are a part of the environment, just as much as animals, plants, air, water, and land. To address the issues of these crises and the crises themselves, we must decolonize. Social work, as a profession that is committed to social justice and human rights, has the mandate to advocate and work in solidarity with First Nations peoples to ensure that decolonization is achieved. An essential part of decolonizing is to recognize the rights of Country (the environment) and this requires the recognition of the legal rights and personhood of Country. However, to

do this, social work has to work to decolonize its own identity and practices and, at the same time, work to decolonize the world.

References

AASW. (2020). Australian Association of Social Workers Code of Ethics. https://www.aasw.asn.au/document/item/13400

Aljazeera. (2017, March 16). New Zealand river is the world's first 'legal person'. *Aljazeera*. https://www.aljazeera.com/news/2017/3/16/new-zealand-river-is-the-worlds-first-legal-person

Boetto, H. (2017). A transformative eco-social model: Challenging modernist assumptions in social work. *The British Journal of Social Work*, *47*(1), 48–67.

Boetto, H. (2019). Advancing transforming eco-social change: Shifting from a modernist to holistic foundations. *Australian Social Work*, *72*(2), 139–151.

Bowles, W., Boetto, H., Jones, P., & McKinnon, J. (2018). Is social work really greening? Exploring the place of sustainability and environment in social work codes of ethics. *International Social Work*, *61*(4), 503–517.

Flynn, D. (2005). What's wrong with rights? Rethinking human rights and responsibilities. *Australian Social Work*, *58*(3), 244–256.

Gordon, G.J. (2018). Environmental personhood. *Columbia Journal of Environmental Law*, *43*(1), 50–91.

Grant, S., & Rudder, J. (2010). *A new Wiradjuri dictionary*. Restoration House.

Grant, S., & Rudder, J. (2014). *A grammar of Wiradjuri language*. Restoration House.

Green, S. (2020). Colonisation, post-colonialism and decolonisation. In D. Hölscher, R. Hugman, & D. McAuliffe (Eds.), *Social work theory and ethics* (pp. 1–20). Springer.

Green, S., & Bennett, B. (2018a). Social work and Indigenous Australians: Ngurambang Yanhambulanha ('walking Country'). In M. Alston, S. McCurdy, & J. McKinnon (Eds.), *Social work, fields of practice* (pp. 52–66). Oxford University Press.

Green, S., & Bennett, S. (2018b). Wayanha: A decolonised social work. *Australian Social Work*, *71*(3), 261–264.

Green, S., Evans, D., & Harris, L. (2020). *Wiradyuriness. IKC301 Wiradjuri Language [Lecture]*. Charles Sturt University.

Harvey. M. (2021). *Climate emergency: How societies create the crisis*. Emerald.

Hensel, H., Bryan, J., McCarthy, C., McNeal, K.S., Norfles, N., Rath, K., & Rooney-Varga, J.N. (2022). Participatory approaches enhance a sense of urgency and collective efficacy about climate change: Qualitative evidence from the world climate simulation. *Journal of Geoscience Education*. https://doi.org/10.1080/10899995.2022.2066927

Ife, J. (2016). Human rights and social work: Beyond conservative law. *Journal of Human Rights and Social Work*, *1*, 3–8.

IFSW. (2018, July 2). Global social work statement of ethical principals. https://www.ifsw.org/global-social-work-statement-of-ethical-principles/

IFSW. (2022, May 24). The role of social workers in advancing a new eco-social world. https://www.ifsw.org/the-role-of-social-workers-in-advancing-a-new-eco-social-world/

Kestler-D'Amours, J. (2021, April 3). This river in Canada is now a 'legal person'. *Aljazeera*. https://www.aljazeera.com/news/2021/4/3/this-river-in-canada-now-legal-person

Matthies, A., Narhi, K., & Ward, D. (Eds.). (2020). *The eco-social approach in social work*. University of Jyväskylä.

Molyneux, R. (2010). The practical realities of ecosocial work: A review of literature. *Critical Social Work*, *11*(2), 61–69.

Mortiaux, R. (2021). Righting Aotearoa's coastal marine area: A case for legal personhood to enhance environmental protection. *Griffith Law Review*, *30*(3), 413–437.

Norton, C.L. (2012). Social work and the environment: An ecosocial approach. *International Journal of Social Welfare*, *21*(3), 299–308.

Nursey-Bray, M., & Palmer, R. (2017). Country, climate change adaption and colonisation: insights from an Indigenous adaptation planning process, Australia. *Heliyon 4*. https://en.unesco.org/links/climatechange

Pain, N., & Pepper, R. (2021). Can personhood protect the environment? Affording legal rights to nature. *Fordham Internationl Law Journal*, *45*, 315.

Rambaree, K., Powers, M.C.F., & Smith, R.J. (2019). Ecosocial work and social change in community practice. *Journal of Community Practice*, *27*(3–4), 205–212.
Reeves, J., & Peters, T.D. (2021). Responding to anthropocentrism with anthropocentrism: The biopolitics of environmental personhood. *Griffith Law Review*, *30*(3), 474–504.
Tuck, E., & Yang, K.W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education & Society*, *1*(1), 1–40.
UNESCO. (2021). Indigenous knowledge and climate change. https://en.unesco.org/links/climatechange
Wardhaugh, R., & Fuller, J.M. (2015). *An introduction to sociolinguistics* (7th ed.). Wiley Blackwell.
Westerman, A. (2019, August 3). Should rivers have same legal rights as humans? A growing number of voices say yes. *NPR*. https://www.npr.org/2019/08/03/740604142/should-rivers-have-same-legal-rights-as-humans-a-growing-number-of-voices-say-ye
Wongamar. (2006). How to live. Instructions given by an Elder. In S. Grant & J. Rudder (Eds.), *Learning Wiradjuri. Book 3* (p. 31). Restoration House.

5

The plastic shamans of restorative justice

Juan Tauri

In *Crime, aboriginality and the decolonisation of justice*, Harry Blagg (2008) contemplates whether it is possible for restorative justice (RJ) to empower Indigenous peoples and *decolonize* criminal justice. Blagg (2008) also ponders if the structures that sustain the RJ movement are "sufficiently *liminal* [emphasis added] to accommodate Aboriginal narratives" (p. 74). Blagg's ruminations are pertinent to the broad question considered here, namely: Why has RJ failed to support Indigenous peoples' struggle for self-determination and the decolonization of settler-colonial justice? To fully answer this question, we must address the conduct of some of the movement's practitioners towards Indigenous peoples to underline why RJ requires its own decolonization project.

Drawing on the work of Indigenous scholars such as Aldred (2000), Deloria (1998), and Arregi (2021) on the concept and practice of *plastic shamanism*, I argue that the appropriation of Indigenous culture and language by members of the RJ movement from the 1990s onwards is the criminal justice equivalent of the plastic shamans that permeate the New Age Spiritualist Movement in North America. Like those who fraudulently pose as Native American traditional healers, the plastic shamans of RJ have misappropriated and utilized Indigenous cultural artefacts for their own benefit, sometimes to the detriment of Indigenous peoples seeking self-determination (see Victor, 2007). Furthermore, by marketing their RJ wares as 'Indigenous-based' or 'Indigenous-inspired', the plastic shamans support efforts of settler-colonial states to manage and constrain Indigenous peoples' attempts to attain self-determination and decolonize settler-colonial crime control (Tauri, 2016).

This chapter builds on one of the earliest expositions of the decolonization of RJ – Chris Cunneen's (2002) *Restorative justice and the politics of decolonization*, in which he explores "the intersections between decolonization and restorative justice" and argues that a "major reason for considering this relationship is that restorative justice has drawn on and connected itself with justice processes among colonized peoples, particularly [I]ndigenous peoples in Australia, New Zealand, Canada and the United States" (p. 32). Discussing the term decolonization, Cunneen (2002) states:

> Decolonization refer[s] to the need to 'rethink' institutions outside of the context of colonization… This point has particular relevance to restorative justice given that, historically,

DOI: 10.4324/9781003176619-6

> the institutions of the criminal justice system have been so instrumental in the colonial project of delegitimizing the social institutions and political aspirations of colonized peoples.
>
> *(p. 35)*

Cunneen (2002) builds on earlier expositions on the gap between the RJ movement's emancipatory rhetoric that portrayed it as a potential ally, and whether it is a vehicle for the advancement of Indigenous self-determination (see Cunneen, 1998). Two decades after Cunneen (2002), little in RJ theorizing, policy, and practice suggests that his call for a "decolonization project" within the movement has occurred in any meaningful way (Tauri, 2018). From where we stand as Indigenous scholars and recipients of (largely) state-centred RJ policies and interventions, instead of 'decolonization' we have experienced what Tauri (2019) refers to as strategies of indigenization and co-option, whereby 'acceptable' components of Indigenous cultural beliefs and practices are retrofitted onto RJ policies and interventions. While this chapter supports Cunneen's 2002 call and Abramson and Asadullah's work in this book, which suggests what the decolonizing project might entail, I provide (further) evidence of the need for a meaningful decolonization of the RJ movement as it engages with Indigenous peoples, starting with the nefarious behaviours of some of its most ardent advocates.

Restorative justice and Indigenous peoples: a case study in plastic shamanism

> Are you angry about the recent cultural appropriation of Native American culture at Burning Man? Are you tired of seeing headdresses for sale at expensive boutiques? Or sick of hearing about schools for Shamans? Do you cringe when you see a Lynn Andrews book? If you do, you may also want to know about the recent co-option of the Ghost Dance.
>
> Christine Nobiss (2017, n.p.)

The late 1960s saw the rise, in the US, of what became known collectively as the New Age Spiritualist Movement (NASM) (Peters, 2022). This profitable enterprise began with several literary hoaxes by non-Indians such as Carlos Castañeda (1968) and Jay Marks (a.k.a. Jamake Highwater, 1981), along with Indigenous collaborators Alonzo Blacksmith, 'Chief Red Fox', and Hyemeyohsts Storm (Churchill, 2003). According to Churchill (2003), these 'spiritualists' published distorted commentaries on Indigenous spirituality and cultural practices to enhance the marketability of their products for the growing and increasingly globalized New Age spiritualism market. From the beginning, Indigenous and non-Indigenous scholars published critical analyses of the movement (see, e.g., Churchill, 1994; Deloria, 1998; Riley & Carpenter, 2015; Rose, 1992; Znamenski, 2007). A major concern of critics was the appropriative activities of NASM practitioners. Churchill (1994) contends that as a result of their deceptions, "the authors grew rich peddling their trash, while real Indians starved to death, out of the sight and mind of America" (n.p.).

For many Indigenous peoples, the appropriation of their cultural practices by the plastic shamans of the NASM was especially harmful given the long history of colonialism they had suffered. The extent of the impact of the shamans is eloquently captured by Janet McCloud (as cited in Churchill, 2003), an Elder of the Nisqually Nation, who wrote:

> First they came to take our land and water, then our fish and game. Then they wanted our mineral resources and, to get them, they tried to take our governments. Now they want

> our religions as well. All of a sudden, we have a lot of unscrupulous idiots running around saying they're medicine people. And they'll sell you a sweat lodge ceremony for 50 bucks. It's not only wrong, it's obscene […]. This is just another in a very long series of thefts from Indian people and, in some ways, this is the worst one yet.
>
> *(n.p.)*

The late Indigenous scholar Vine Deloria (as cited in Churchill, 2003) argued that the motivation behind the explosion of plastic shaman activity resulted from a confluence of factors, including the increasing individuation in Western societies and advances in technology, so that:

> White people in this country are so alienated from their own lives and so hungry for some sort of real life that they'll grasp at any straw to save themselves. But high-tech society has given them a taste for the 'quick fix.' They want their spirituality pre-packaged… to provide instant insight, the more sensational and preposterous the better. They'll pay big bucks to anybody dishonest enough to offer them spiritual salvation after reading the right book or sitting still for the right 15-minute session… this opens them up to every kind of mercenary hustler imaginable. It's all very pathetic, really.
>
> *(n.p.)*

According to Znamenski (2007), it is clear what was being appropriated by the plastic shamans:

> Many neo-shamanism practitioners rely on symbols and artefacts that are usually associated with North American Indians. Among the most popular are vision quests, eagle feathers, hawks, the four directions, the sacred circle, the sweat lodge, drums, dream catchers, and sacred pipes.
>
> *(p. 279)*

I contend that the appropriative conduct of NASM shamans is often visible in the conduct of RJ advocates and practitioners. The parallels are obvious: from the exaggerated 'histories' linking RJ to Indigenous cultural artefacts to the unabashed hucksterism of RJ entrepreneurs marketing their eroticized, indigenized wares on the globalized crime control market; all the while ignoring the critique Indigenous scholars and our non-Indigenous allies have published since the beginning of these thefts and malpractices (see Blagg, 2008; Cunneen, 2008; Tauri, 2018).

Understanding the motivations of RJ advocates for their plastic shamanism perhaps lies in what Schiff (2013) referred to as the "strange paradoxical position [of the RJ movement] of trying to breach the social order of governmental justice […] while also trying to simultaneously integrate within those same institutions" (p. 163; see also Pavlich, 2005). Attempts by RJ advocates to infiltrate state justice systems and obtain acceptance by and access to the policy sector have given rise to a peculiar response in many Western jurisdictions, whereby RJ has been accepted to one degree or another by both conservative and progressive policy workers and governments (Tauri, 2016). Schiff (2013) further argues that to move from the periphery to the centre of contemporary justice practice, RJ advocates and practitioners had to respond forcefully to perceptions that the movement was a threat to the status quo.

As a result, RJ advocates, practitioners, and entrepreneurs had to learn to 'speak the language of the policy sector', moulding their restorative rhetoric and practices into language and forms palatable to the structures (and restrictions) of neoliberal, Western crime control. In so doing, they subverted the communitarian ethos of restorative philosophy by reorienting their values, ethics, and practice to placate the neoliberal obsession with the deviant individual

(Acorn, 2004). For RJ approaches and practices to be provided legislative and financial support, they needed to demonstrate the viability of their approach to crime and, arguably more importantly, *what they could do to meet the crime control needs of the state* (Tauri, 2018). One successful strategy deployed to procure support was developing products suited to specific criminal justice markets. Enter the plastic shamans of RJ and their strategic consumption of Indigenous cultural artefacts; a handy side-hustle for marketing of RJ policies and programmes in settler-colonial jurisdictions dealing with the wicked policy problem of Indigenous people's 'overrepresentation' in the criminal justice system.

'Playing Indigenous': the plastic shamans of restorative justice

> One of the oldest and most pervasive forms of American cultural expression, one of the oldest forms of affinity with American culture at the national 'performance' I call 'playing Indian'.
>
> Rayna Green (1988, p. 1)

Elsewhere we have demonstrated the extent to which the RJ industry has long moved on from the emancipatory, transformative rhetoric (and goals) that characterized many of its foundational texts (Tauri, 2016, 2018). Instead, over the 30 years covering 1980 to 2010, RJ rapidly transitioned from an emancipatory project to a cog in the machinery of settler-colonial crime control (Tauri, 2018). Analysis of this transition, including the strategic *appropriation* of Indigenous life-worlds, demonstrates that the *institutionalization* and *bureaucratization* of RJ were based, in part, on exaggerated claims of their 'Indigenousness' and ability to 'solve' the Indigenous 'problem' (Moyle & Tauri, 2015).

Blagg (2008) argued that "Indigenous processes can be appropriated, denuded of context and employed to meet the interests of the status quo" (p. 79). The process of appropriation via the shamanistic activities of RJ practitioners benefits both the status quo of the settler-colonial state's hegemony over crime control and the RJ industry itself, enabling the latter to mould its products more tightly to the settler-colonial government's strategic aims. In the settler-colonial context, one of the most pressing policy issues is the Indigenous 'overrepresentation' in criminal justice institutions, a problem has that created openings in crime control for the type of plastic shamanism previously observed in NASM (Tauri, 2018).

According to Nobiss (2017), the growing popularity of native spirituality in the modern era is somewhat ironic, especially when:

> [t]here was a time when Euro-Americans held Native American religion in low regard, condemning it as evil and archaic… [Now], we see a very different sentiment as many Americans of the dominant, mainstream society admire and emulate Native religious traditions.
>
> *(n.p.)*

In 'Plastic shamans and astroturf sun dances', Lisa Aldred (2000) reveals how cultural co-option and the increasing commercialization of Native American spirituality marginalize and disembody Indigenous histories and contemporary Indigenous identities. She argues that "[a]lthough the New Age spiritualists identify themselves as counter-cultural, their uncritical ideas about commercialisation and marketing practices appear to have been shaped by the larger capitalist economy" (p. 346). Aldred (2000) comments that "[m]oreover, their imperialistically nostalgic fetishisation of Native American spirituality hinders any recognition of their own historical and

social complicity in the oppression of Indigenous peoples" (p. 346). In Aldred's schema, the cultural co-opters of the NASM are imperialist colonizers engaged in unabashedly distorting and compartmentalizing the Native American identity to construct opportunities to part others from their money. Nobiss (2017) extends this critique further:

> This co-option phenomenon is controversial because the non-Native practice and commercial consumption of Native American traditions is essentially an act of colonisation. Many Natives feel that the commercial appropriation of their traditions, customs, philosophies and worldviews is exploitative and a setback to the Native American identity struggle. While partaking in this co-option many non-Natives are not aware of or interested in this issue because there are often Natives or 'self-identified' Natives legitimising this trend.
>
> *(n.p.)*

Green (1988) describes the process of the typical plastic shaman:

> For, I would insist now, the living performance of 'playing Indian' by non-Indian peoples depends upon the physical and psychological removal, even the death, for real Indians. In that sense, the performance, purportedly often done out of a stated and implicit love for Indians, is really the obverse of another well-known cultural phenomenon, 'Indian hating', as most often expressed in another, deadly performance genre called 'genocide'.
>
> *(p. 30)*

Sadly, we can see many of the appropriative practices in the activities of some RJ advocates and practitioners who, whether knowingly or unknowingly involved in or supportive of indigenized programmes, are 'playing Indigenous' in much the same way as the plastic shamans of NASM are with their Europeanized sweat lodges and faux Sun Dance ceremonies. At times, the appropriation is so blatant that practitioners appear neither aware of the racism that underpins it nor the disempowerment resulting from it. For example, consider the following incident experienced by the author while presenting a paper on RJ and Indigenous Peoples at the European Criminology conference in Budapest in 2013.

During the question-and-answer part of the session, two members of the audience took exception to criticism made of RJ entrepreneurs using Indigenous artefacts to sell their products on the globalized crime control market (for further discussion of this issue, see Tauri, 2018), making the following comments:

> Who really owns culture; do you [Māori] have intellectual property rights over your culture?
>
> When I was in New Zealand, I found out that the word 'Māori', means 'other person', so, being an outsider I can call myself Māori, and therefore I can use Māori culture in my work.

The second comment is by far the more troubling: the RJ scholar who made this statement was purposely taking one translation of the term Māori, most likely from a Pākehā (European) translation from the mid-nineteenth century and used it to self-identify as Māori to justify cherry-picking whichever Māori cultural artefacts were convenient for advancing their work. This *shared identity* defence for appropriative behaviour is well known to Indigenous peoples everywhere who have experienced the behaviour of plastic shamans. For example,

Green (1988) highlights the practice, not so much of 'playing Indian', but 'becoming Indian' through self-identification of 'Indianness' often performed by NASM practitioners:

> Most notable among these has been the recently well-known and successful writer and critic, Jamake Highwater, who was recently revealed by an Indian newspaper to be of Armenian Jewish parentage. Specialising in costumed appearance in expensive 'Santa Fe Chic' clothes, he insists that he is Indian 'because I say I am'.
>
> *(p. 45)*

To understand the importance of the activities of the plastic shamans of the RJ movement, we turn to Blagg (2008) who argues that "[t]he Indigenous dimension provided a wholesome adornment to the nourishing imagery of restorative justice: redolent with images of peace pipes, desiderata, the creator spirit and mother earth" (p. 79) And, as I will demonstrate below, it was these adornments and the process of procurement of Indigenous desiderata by the plastic shamans of RJ that fuelled the globalization of RJ in the later part of the twentieth century and enabled the composition of the 'myth' that RJ would empower Indigenous peoples.

Mythmaking and plastic shamanism in contemporary restorative justice

> Begin, ephebe, by perceiving the idea of this invention, this invented world.
>
> Wallace Stevens (1990, p. 380)

Elsewhere I have argued that one of the key marketing strategies deployed by RJ advocates and practitioners in setter-colonial contexts has been the persistent, mythological (mis)representation that Eurocentric RJ interventions are founded on Indigenous cultural practices (Moyle & Tauri, 2015; Tauri, 2014). The argument that the marketing activities of RJ practitioners are supported by the construction and maintenance of myths has become a common theme in critical literature (e.g., Cavello, 1992; Taylor, 1990/91). Myth is often presented in the literature as a cultural construct that sustains the hegemony of the political and policy classes and the ideologically aligned and supportive justice movements, over the terrain of justice policy and 'valid knowledge'. Cavello (1992) argues that myth construction and maintenance both operate to "construct reality by organising experience and perception, and that law's reality appears to primarily express the perspective or mythology of a particular [hegemonic] social group" (p. iv).

Myth must, therefore, be analysed not for its intellectual content alone, but for its "functional, cultural, and pragmatic aspect" and for "the diffuse, complex ways in which it enters into life" (Cavello, 1992, p. 28). By explicating the RJ industry's ideological representation of key initiatives such as Family Group Conferencing (FGC) and Sentencing Circles (SC), I seek to demonstrate the extent to which myth is more than mere narrative. Rather, I argue that its importance is very much real and solid, demonstrated blatantly through the role myth plays in the construction and promotion of RJ products on the globalized crime control market by RJ advocates, policy entrepreneurs, and plastic shamans (see Tauri, 2018).

The mythological invention of the 'indigenousness' of RJ and its parallels to Indigenous modes has become a foundational trope within the historicization of the RJ movement (see Richards, 2007). As Sylvester (2003) writes, "restorative justice scholars, seeking to effect legal change, have increasingly sought to justify that change by expanding the sources of their legitimacy" (p. 495). Moreover, Sylvester (2003) identifies one of the principal aims of the mythologizing ethos of RJ, namely that "[i]n the battle over cognitive legitimacy, history is one more tool in the restorative justice arsenal" (p. 495). To this end, RJ is often portrayed by advocates

and historians as being consistent with Indigenous customs (Cary, 2000; Umbreit, 2001), as being based on or underpinned by Indigenous customs (LaPrairie, 1992; Leung, 1999), arising out of, being fed by, owing a debt to or being embedded in Indigenous traditions (Llewellyn & Howse, 1998; Zehr, 2002), and/or having been established by Indigenous communities (Leung, 1999). Sylvester (2003) contextualizes the invention of the supposed affinity between RJ and Indigenous justice when he writes that:

> Despite some apparent misrepresentations about the evidence they cite, the main thrust of their [RJ advocates] history appears to be interpretative. That is, they are seeking to take much of the history of criminal justice and recast it into a restorative mould. In so doing, they have narrowed their historical narratives to fit their particular political agenda - promoting restorative justice over current paradigms.
>
> *(p. 519)*

I contend that through analysis of the activities of RJ advocates and interventions like FGC, we can observe the practice and impact of the mythmaking and maintenance process. This is most evident in the impact that the plastic shamans, practitioners, and advocates have had on Indigenous peoples residing in settler-colonial contexts.

The mythologizing process is exemplified by a range of exaggerated or empirically weak claims by RJ advocates and entrepreneurs. For example, advocates of FGC claim that the construction of legislation that introduced FGC was influenced by Māori concerns for the prevalence of institutionally racist and culturally inappropriate practices within the New Zealand criminal justice system (Goodyer, 2003; Ministerial Advisory Committee, 1988). Some also contend that because FGC and Māori justice protocols share 'restorative components', FGC derives directly *from* Māori cultural practice and that its implementation reveals the justice system's ability to *culturally sensitize* itself and address the justice needs of Māori in meaningful ways (see, e.g., Becroft, 2017; Consedine, 1995; Henwood & Stratford, 2014; McElrea, 1994; Olsen et al., 1995; Shearer & Maxwell, 2012).

Over the past three decades, such claims have been consistently repeated in the global RJ literature (see, e.g., Griffiths & Bazemore, 1999; Marsh, 2019; Umbreit, 2001; Weitekamp, 1999; Zehr, 2002). These mythological claims continue to be made despite an expanding lexicon that exposes the lack of evidence supporting such claims (for a general overview see Cunneen, 2008; Tauri, 2016; Victor, 2007). For example, one of the most startling examples of the mythologizing process within RJ is the claim that it was designed, in part, to enable Māori families/communities to *manage the response to Māori youth offending* (see Maxwell & Morris, 1993; Serventy, 1996). In fact, the record shows there was little intent on the part of the architects of the intervention to empower Māori or any other 'community of concern' forced to engage with the process. For example, Doolan (2003), one of the chief architects of the legislation, stated that "those of us who were involved in the policy development process leading up to the new law had never heard of restorative justice" (p. 7). Doolan (2003) also writes that *the* primary goals of the forum were to hold youth offenders responsible for their offending behaviour and reduce referrals to the Youth Court and not – as is often claimed by RJ advocates such as McElrea (1994), and Maxwell and Morris (1993) – to provide Māori whānau (families) with a process through which they can "control responses to the offending of their youth" (p. 1).

The mythmaking of RJ elites is concerning because it has material consequences for Indigenous peoples. As Sylvester (2003) argues "mythmaking not only represents the presentation of a distorted past, but also the forensic use of fantastic narratives to influence current attitudes or choices" (p. 474). Evidence is mounting that the mythologizing activities of the

RJ elite have influenced current attitudes and (policy) choices, especially of the policies for dealing with Indigenous overrepresentation in criminal justice systems (see Moyle, 2013, 2014; Moyle & Tauri, 2015). In the following section, I demonstrate how the marketing activities of RJ advocates and plastic shamans have profoundly impacted Indigenous peoples in settler-colonial contexts.

The focus of the remainder of the paper is on demythologizing RJ, wherein I seek to unpick and expose the conceit that lies at the heart of the industry's response to Indigenous peoples. My critical analysis is guided by Blagg (2008) who demanded that "[a]ny examination of the links between restorative justice and Indigenous people needs to begin with a process of *demystification*" (p. 78), or in the case of this paper, the demythologizing of RJ representations of its relationship with Indigenous peoples and their life-worlds. The process necessitates an examination of the damage done to Indigenous peoples by the RJ industry.

Demythologizing restorative justice

There are several ways to critique the mythologizing activities of the RJ movement. I begin by focusing on the claims made that form the basis of the mythologizing project and specifically with the claim that RJ products like FGC represent the gold standard programmatic response to Indigenous agitation for a meaningful measure of jurisdictional autonomy (on this form of mythmaking see Tauri, 2016).

Recent empirical research undertaken by Indigenous scholars has contested the claims of the RJ industry as to the 'indigenousness' of forums like FGC and SCs, as well as the extent to which they meet Indigenous justice-related needs. In the New Zealand context, the work of Paora Moyle (2013, 2014) is instructive for demythologizing RJ and centring the Indigenous experience when analyzing Indigenous overrepresentation in criminal legal systems. In a two-part project undertaken by Moyle, Māori justice, childcare, child protection practitioners, youth, and whānau were asked about their experiences of FGC. Participants reported many instances when they were negatively impacted by an FGC process run by officials lacking the necessary cultural competence and empathy. This – along with what participants believed was the biased application of administrative processes and rules – created significant barriers for youth and whānau to achieve positive outcomes (see also Love, 2002).

A key experience reported by Moyle's (2013, 2014) participants was that mainstream non-Māori social workers (officials employed by state agencies) often lacked the skills required to engage with them in ways that showed a meaningful level of respect for Tikanga Māori (the values, ethics, and cultural practices that characterize Māoridom). For example, participant 19 in Moyle's research (an FGC participant; cited in Moyle & Tauri, 2015, p. 95) stated that:

> The family group conference is about as restorative as it is culturally sensitive […] in the same way Pakeha [European] social workers believe they are competent enough to work with our people […]. Pakeha think they're the natural ordinary community against which all other ethnicities are measured.

Several of the research participants spoke about what they considered inappropriate conduct and/or processes that Māori practitioners and whānau experience when participating in FGC. For them, these behaviours flow from the Eurocentric, monocultural foundations of both youth justice and statutory social work that dominate practice in New Zealand. A consequence of this situation is the adoption of a *one-size-fits-all worldview* and a standardized approach to engaging with what is a socio-culturally diverse clientele (Moyle, 2013).

While policy entrepreneurs and RJ advocates often present FGC as culturally appropriate and Māori inspired, most of Moyle's research participants' experiences align with the view of Māori commentators such as Love (2002) and Tauri (2018) that the process is an attempt by the state to *indigenize* child care and protection and youth justice through the *co-option* of Māori cultural practices. While it is possible to argue that members of the RJ industry have successfully indigenized the forum, the largely symbolic use of Māori culture has not translated into effective practice, with most participants in Moyle's (2013, 2014) research describing the process as *culturally inappropriate and disempowering*. The experience of these research participants aligns with the way that forum-related practice undermined and even *excluded* Māori cultural expertise.

Kletsan (2017) argues that RJ has become popular within Western criminal justice and the academy, in part, because it has been successfully (some might say aggressively) marketed as a "respectful and humane alternative to state sanctioned, retributive incarceration" (p. 1). Throughout this paper, I have argued that for Indigenous peoples residing in settler-colonial jurisdictions, the RJ movement has often fallen short of the promises made in its policy pronouncements and marketing material. Claims by RJ practitioners and entrepreneurs that their indigenized wares would deliver us a fairer justice system, reduce Indigenous 'engagement' with crime control agencies, and empower us to obtain meaningful measures of jurisdictional autonomy, is simply not reflected in the Indigenous experience of RJ (Tauri, 2018).

More than 20 years have passed since Gloria Lee (1997) predicted that the spread of the (supposedly Māori and restorative) FGC forum as *the* programmatic response to youth offending in Canada would have little impact on both Indigenous youth offending rates and Indigenous peoples' ability to attain jurisdictional autonomy (see also Monture-Angus, 1999). Lee's (1997) prediction has proved accurate, as the Indigenous peoples of Turtle Island continue to struggle to gain state support to implement their own responses to social harm (Hansen, 2010; Monchalin, 2016). The accuracy of Lee's prediction leads us to perhaps *the* central question about the power and authority that can be attributed to RJ forums, namely: What role does RJ play in today's criminal justice landscape? For reasons outlined throughout this chapter, the response by many Indigenous peoples is likely to be: *As a project that supports the settler-colonial state's continued subjugation of Indigenous peoples* (Tauri, 2018).

There is perhaps ground to hope that things might soon change, with prominent RJ advocates beginning to critically reflect on the limitations of RJ, and the movement's complicity in the marginalization of disenfranchised communities, such as Indigenous peoples. For example, Mara Schiff (2013) wrote:

> My experience at the [RJ] Symposium thus far had led me to ponder the possibility that the success of restorative justice in educational, juvenile or criminal justice institutional contexts may be intrinsically limited by the broader complex power structures within which such reform is situated.
>
> *(p. 153)*

Self-reflection is always a good thing, but the questions being contemplated are the wrong ones, or perhaps more accurately, the most convenient ones. The question should instead be: What part does RJ play in the replication of social division and social injustice? (Tauri, 2018). Relatedly, we might also ask: Why do settler-colonial governments favour appropriated justice processes and policies to deal with the wicked problem of Indigenous overrepresentation, over self-determination? One possible answer to these questions is that appropriated RJ policies and programmes enable state functionaries to develop politically expedient responses

to the counter-hegemonic insurgencies of Indigenous (and other disenfranchised) peoples. I contend that RJ, as exemplified in FGC-like, stated-dominated forums, provides *nourishment to the settler-colonial state* through its support for a *programme of recuperation* that nullifies Indigenous critique of the crime control edifice. The settler-colonial state's support for the uptake and extensive utilization of RJ-type forums, such as FGC and SCs, whilst ignoring Indigenous peoples' calls for fundamental changes to the criminal justice practice, reflects a recuperative strategy of deflection and dissimilation (Kurczynski, 2008) by those tasked with protecting the settler-colonial state's dominance in crime control (see Lee, 1997; Tauri, 2018; Victor, 2007).

The policy sector's adoption of RJ, especially as a response to Indigenous criminalization and imprisonment, was never designed to support Indigenous self-determination. Instead, the intent was to extend the provenance of state ownership over social conflict (*à la* Christie, 2000) to (re)empower the state, and to enable it to reoccupy the ideological high ground after two decades of Indigenous critique of settler-colonial governance. Arguably, the settler-colonial state *recovered* in part by purposely utilizing Indigenous cultural artefacts, in the hope that such a move would overcome the socio-cultural gap between the 'communitarian tendencies' of Indigenous justice, and the sophisticated rationality of the 'Western way' of justice.

Grassroots advocates of RJ in Indigenous communities tend to promote Indigenous autonomy in the sphere of criminal justice as part of a broader political strategy to counteract structural injustices, such as racist policing, bias in sentencing and overrepresentation in imprisonment (Frederiksen, 2010). Advocates for Indigenous justice often describe the process of empowerment as one in which the state slowly withdraws, leaving Indigenous communities to develop their own responses to social harm (Frederiksen, 2010; Victor, 2007). In comparison, justice reformers working within the formal justice system, and RJ advocates and entrepreneurs seeking legitimacy and income through government contracts, often ignore the racist, structural drivers of Indigenous overrepresentation. Instead, RJ is presented uncritically, as capable of overcoming 'cultural impediments' to effective service delivery (see Henwood & Stratford, 2014, McElrea, 1994).

However, for Indigenous peoples, the move to adopt restorative principles and practices in settler-colonial contexts often has a particular *cultural angle*: since Indigenous cultures tend to privilege a restorative approach to justice, or so the argument goes, decisions that enable restorative sentences and sentencing practices are more likely to be experienced as meaningful and will therefore be more effective for Indigenous offenders than ones that follow the conventional, punitive practices. However, a major weakness of this approach is that it frames the problem of Indigenous overrepresentation in terms of *efficiency* rather than *legitimacy* and *effectiveness*. The fact that Indigenous people come into contact more frequently with the criminal justice system and are imprisoned at a dramatically higher rate than other peoples residing in New Zealand, Canada, Australia and the Americas, is attributed to inadequate service delivery by a system that remains fundamentally just, efficient and fair (Frederiksen, 2010), as opposed to it being one of the principal colonial projects of the contemporary settler-colonial state (Proulx, 2002; Tauri, 2018; Woolford, 2013).

Restorative justice is arguably a powerful, social justice-focused approach to crime and victimization. However, we must challenge the claim that it presents a structural alternative to the state's carceral complex (Wood, 2015) or that its inclusion in the formal system is motivated by the settler-colonial state's desire to empower Indigenous peoples (Daly, 2002; Richards, 2007; Tauri, 2018). Not only is it "insufficient to meet the challenges of ever-encroaching state legality and mass incarceration" (Kletsan, 2017, p. 2), but as demonstrated here (and in Tauri, 2018), it has become one of the key state projects that work to nullify the counter-hegemonic politics of Indigenous peoples, or as Kletsan (2017) argues:

> As a structural alternative to the prison industrial complex, restorative justice is at best a way for the state to repackage its oppressive profiteering and sell it back as progress. Restorative justice is good and beautiful and human only so long as it is outside the power structure.
>
> *(p. 8)*

References

Acorn, A. (2004). *Compulsory compassion: A critique of restorative justice*. University of British Columbia Press.

Aldred, L. (2000). Plastic shamans and astroturf dances: New age commercialism and Native American spirituality. *American Indian Quarterly*, *24*(3), 329–352.

Arregi, J. (2021). Plastic shamans, intellectual colonialism and intellectual appropriation in new age movements. *The International Journal of Ecopsychology*, *2*(1), 1–14.

Becroft, A. (2017). *Family group conferences: Still New Zealand's gift to the world?* Children's Commissioner.

Blagg, H. (2008). *Crime, aboriginality and the decolonisation of justice*. Federation Press.

Cary, M. (2000). *Restorative justice – A new approach with historical roots: Corrections retrospective 1959–1999*. Department of Corrections.

Castañeda, C. (1968). *The teachings of Don Juan: A yaqui way of knowing*. University of California Press.

Cavello, L. (1992). *The mythologies of law: A postmodern assessment* [unpublished Master's thesis]. York University.

Christie, N. (2000). *Crime control as industry; Towards gulags western style* (3rd ed). Routledge.

Churchill, W. (1994). *Indians are us? Culture and genocide in Native North America*. Common Courage Press.

Churchill, W. (2003, May 7). Spiritual huckterism: The rise of the plastic medicine men. *Cultural Survival Magazine*. https://www.culturalsurvival.org/publications/cultural-survival-quarterly/spiritual-hucksterismthe-rise-plastic-medicine-men

Consedine, J. (1995). *Restorative justice: Healing the effects of crime*. Ploughshare Publishing.

Cunneen, C. (1998). Community conferencing and the fiction of Indigenous control. *Australian and New Zealand Journal of Criminology*, *30*, 292–311.

Cunneen, C. (2002). Restorative justice and the politics of decolonization. In E. Weitekamp & H. Kerner (Eds.), *Restorative justice. Theoretical foundations* (pp. 32–49). Willan Publishing.

Cunneen, C. (2008). Indigenous anger and the criminogenic effects of the criminal justice system. In A. Day, M. Nakata, & K. Howells (Eds.), *Anger and Indigenous men* (pp. 37–46). Federation Press.

Daly, K. (2002). Restorative justice: The real story. *Punishment and Society*, *4*(1), 55–79.

Deloria, P. (1998). *Playing Indian*. Yale University Press.

Doolan, M. (2003). Restorative practices and family empowerment: Both/and or either/or? *Family Rights Newsletter*. Family Rights Group.

Frederiksen, E. (2010, June 1–3). *Aboriginal peoples and restorative justice in Canada: Confronting the legacy of colonialism* [Paper presentation]. *Canadian Political Science Association Conference*, Montreal.

Goodyer, H. (2003). Rethinking justice in New Zealand: A critical assessment of restorative justice. *Canterbury Law Review*, *9*, 179–199.

Green, R. (1988). The tribe called wannabee: Playing Indian in America and Europe. *Folklore*, *99*(1), 30–55.

Griffiths, C., & Bazemore, G. (1999). Introduction to the special issue. *International Review of Victimology*, *6*(4), 261–263.

Hansen, J. (2010). *An exploration of Swampy Cree restorative justice* [unpublished PhD thesis]. University of Regina.

Henwood, C., & Stratford, S. (2014). *New Zealand's gift to the world: The youth justice family group conference*. Henwood Trust.

Highwater, J. (1981). *The primal mind: Vision and reality in Indian America*. Harper & Row.

Kletsan, P. (2017, May 9). Revolution and restorative justice: An anarchist perspective. *Abolition Journal*. https://abolitionjournal.org/revolution-restorative-justice-anarchist-perspective/

Kurczynski, K. (2008).Expression as Vandalism: Asger Jorn's 'Modifications'. *RES: Anthropology and Aesthetics* 53/54: 295–296.

LaPrairie, C. (1992). Aboriginal crime and justice: Explaining the present, exploring the future. *Canadian Journal of Criminology*, 34(3–4), 281–298.

Lee, G. (1997). The newest old gem: Family group conferencing. *Justice as Healing*, *2*(2), 1–3.

Leung, M. (1999). The origins of restorative justice. https://www.cfcj-fcjc.org/sites/default/files/docs/hosted/17445-restorative_justice.pdf

Llewellyn, J., & Howse, R. (1998). *Restorative justice: A conceptual framework*. Law Commission of Canada.

Love, C. (2002, June). *Māori perspectives on collaboration and colonisation in contemporary Aotearoa/New Zealand child and family welfare policies and practices* [Paper presentation]. *Policy and Partnerships Conference*. Wilfrid Laurier University.

Marsh, C. (2019). Honouring the global Indigenous roots of restorative justice: Potential restorative approaches for child welfare. https://cssp.org/2019/11/honoring-the-global-indigenous-roots-of-restorative-justice

Maxwell, G., & Morris, A. (1993). Family, victims and culture: Youth justice in New Zealand. https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/journals-and-magazines/social-policy-journal/spj01/spj1-policy-issues.doc

McElrea, F. (1994). Restorative justice – The New Zealand Youth Court: A model for development in other courts? *Journal of Judicial Administration*, *4*(1), 33–54.

Ministerial Advisory Committee. (1988). Puao-te-ata-tu (Daybreak): The report of the Ministerial Advisory Committee on a Māori perspective for the Department of Social Welfare. https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/archive/1988-puaoteatatu.pdf

Monchalin, L. (2016). *The colonial problem: An Indigenous perspective on crime and injustice in Canada*. University of Toronto Press.

Monture-Angus, P. (1999). *Journeying forward: Dreaming First Nations' independence*. Fernwood Publishing.

Moyle, P. (2013). *From family group conferencing to whānau ora: Māori social workers talk about their experiences* [unpublished Master's thesis]. Massey University.

Moyle, P. (2014). Māori social workers' experiences of care and protection: A selection of findings. *Te Komako, Social Work Review*, *26*(1), 55–64.

Moyle, P., & Tauri, J. (2015). Māori, family group conferencing and the mystifications of restorative justice. *Victims and Offenders, Special Issue: The Future of Restorative Justice*, *11*(1), 87–106.

Nobiss, C. (2017). *Cultural appropriation and plastic shamans [Blog post]*. https://seedingsovereignty.org/blog/2017/12/14/cultural-appropriation-and-plastic-shamans

Olsen, T., Maxwell, G., & Morris, A. (1995). Māori and youth justice in New Zealand. In K. Hazlehurst (Ed.), *Popular justice and community regeneration: Pathways to Indigenous reform* (pp. 45–66). Praeger.

Pavlich, G. (2005). *Governing paradoxes of restorative justice*. Glass House Publishing.

Peters, M. (2022). New age spiritualism, mysticism, and far-right conspiracy. *Educational Philosophy and Theory*. https://doi.org/10.1080/00131857.2022.2061948

Proulx, C. (2002). *Re-claiming justice and community: The community council project of Toronto* [unpublished PhD thesis]. McMaster University.

Richards, K. (2007). *'Rewriting history': Towards a genealogy of 'restorative justice'* [unpublished PhD thesis]. University of Western Sydney.

Riley, A., & Carpenter, K. (2015). Owning red: A theory of Indian (cultural) appropriation. *Texas Law Review*, *94*, 859–931.

Rose, W. (1992). The great pretenders: Further reflections on white shamanism. In M. Jaimes (Ed.), *The state of Native America: Genocide, colonisation and resistance* (pp. 403–421). South End.

Schiff, M. (2013). Institutionalising restorative justice: Paradoxes of power, restoration and rights. In T. Gavrielides & V. Artinopoulou (Eds.), *Reconstructing restorative justice philosophy* (pp. 153–178). Ashgate Publishing Company.

Serventy, N. (1996). *Between idea and reality: The development of conferencing in Australia* [unpublished MA thesis]. University of Technology Sydney.

Shearer, A., & Maxwell, G. (2012). Revolution, decline, and renewal: Restorative youth justice in New Zealand. In E. Zinsstag & I. Vanfraechem (Eds.), *Conferencing and restorative justice: International practices and perspectives* (pp. 101–116). Oxford University Press.

Stevens, W. (1990). *The collected poems of Wallace Stevens*. Vintage.

Sylvester, D. (2003). Myth in restorative justice history. *Utah Law Review*, *1*, 471–522.

Tauri, J. (2014). An Indigenous critical commentary on the globalisation of restorative justice. *British Journal of Community Justice*, *12*(2), 35–55.

Tauri, J. (2016). *The state, the academy and Indigenous justice: A counter-colonial critique* [unpublished PhD thesis]. University of Wollongong.

Tauri, J. (2018). Restorative justice as a colonial project in the disempowerment of Indigenous peoples. In T. Gavrielides (Ed.), *Routledge international handbook of restorative justice* (pp. 342–358). Routledge.

Tauri, J. (2019). Indigenous perspectives. In T. Bradley & R. Walters (Eds.), *Introduction to criminological thought* (3rd ed., pp. 183–204). Edify.

Taylor, R. (1990/91). Reclaiming our roots: Law and mythology. *Duquense Law Review*, *29*, 271–289.

Umbreit, M. (2001). *The handbook of victim offender mediation: An essential guide to practice and research*. Jossey-Bass Inc.

Victor, W. (2007). Indigenous justice: Clearing space and place for Indigenous epistemologies. https://fngovernance.org/wp-content/uploads/2020/09/wenona_victor.pdf

Weitekamp, E. (1999). The history of restorative justice. In G. Bazemore & L. Walgrave (Eds.), *Restorative juvenile justice: Repairing the harm of youth crime* (pp. 75–102). Criminal Justice Press.

Wood, W. (2015). Why restorative justice will not reduce incarceration. *The British Journal of Criminology*, *55*(5), 883–900.

Woolford, A. (2013). The next generation: Criminology, genocide studies and settler-colonialism. *Critica Penal y Poder*, *5*, 163–185.

Zehr, H. (2002). *The little book of restorative justice*. Good Books.

Znamenski, A. (2007). *The beauty of the primitive: Shamanism and the western imagination*. Oxford University Press.

6

Southern disorders

The criminogenesis of neo-imperialism

Pablo Ciocchini and Joe Greener

Contemporary social science is seeing a renewed interest in decolonization as an intellectual and theoretical project (Bhambra, 2021, 2022; Bhambra & Holmwood, 2021), and, within criminology, this has resulted in the development of 'Southern criminology' (Carrington et al. 2016, 2018, 2019). Southern criminology and postcolonial studies are both concerned with foregrounding the voices of peripheral actors and searching for novel epistemologies and approaches to crime control in the Global South. Southernizing foregrounds a critique of existing knowledge production as skewed toward metropolitan conceptions of modernity in the exclusion of peripheral actors' voices and epistemologies from mainstream thinking. Decolonization is then framed as a process of inclusion: including marginal voices, histories, theories, methodologies, ideas, and so forth.

However, while the recent renewed focus on decolonization is concerned with democratizing the social sciences, it arguably also seems somewhat reluctant to theorize the connection between imperialism and capitalism as an ongoing contemporary set of dynamics. Gurminder Bhambra (2022), for example, argues that a decolonial project for Europe necessitates recognition and reparation of the 'inheritance' of wealth derived from colonial legacies. There is no mention that Europe's wealth is an ongoing extraction of resources from the Global South. In another article, Bhambra (2021) draws attention to 'relations of extraction' and 'relations of redistribution' and notes the development of welfare states as dependent on colonialism, but again the overall presentation is that the advantages of the West are only historically derived.

In a previous journal article in the *British Journal of Criminology*, we suggested several weaknesses with the current overall status of the Southern criminology project (Ciocchini & Greener, 2021). Southern criminology has limited its political imagination by seeing decolonization as primarily an epistemological project. The almost singular attention to epistemology arguably ascribes much too great an importance to academia as a radical force, whilst also tending to reify Southern knowledge systems, actors and so on, as somehow innately transformative. We pointed out that people in the South are often divided, contradictory and even exploiting subjects, just as Northern actors can assume emancipatory and social justice-oriented positionalities. Scholarly work and even crime control institutions 'from the South' are often presented simplistically as having some extra-benevolent characteristics or purity due to their geographical origins. Our central criticism of Southern criminology is that the project

DOI: 10.4324/9781003176619-7

generally understates the importance of documenting and explicating neo-colonialism. When it does note the importance of the structures of imperialism they are often seen as legacies from the past, rather than ongoing brutalities. The project's central statements of intent (Carrington et al. 2016, 2018, 2019) do not highlight the system of global inequality as directly implicated in the production of violence, harm and criminality. Instead, an identitarian politics of diversity and inclusion is continually preferred over a concerted theorization of imperialism. Southern criminology aligns with weaknesses in postcolonial studies which, as Chibber (2013) has painstakingly set out, occlude analysis of contemporary capitalism.

Southern criminology in its most pervasive form fails to theorize the connection between capitalism and imperialism, thus arguably offers little serious criminological analysis of global inequality. Overplaying the radical potential of academia and locating decolonization in a simple project of inclusion makes decolonization seem immanent and possible within existing social arrangements and without serious economic implications for the developed world. This chapter contributes to theorizing decolonization by arguing for continued and renewed attention to the global fact of capital's expansion operating through a gross system of inequality.

This chapter reveals criminogenic tendencies central to the restructuring of Global South societies for extraction and exploitation. Once we recentre analysis around the global forces of geographical disparity and accumulation, structural explanations for the persistence of harm, crime, violence, and state repression in the periphery assume greater credibility. The next section highlights some of the major political and economic relations which make up the current system of global inequality. The subsequent section explores the 'productive' capacities of state-corporate power to create circuits of accumulation. We then examine the tendency to reactionary forms of state and everyday violence.

Theorizing the criminogenic tendencies of neo-colonial capitalism requires us to interrogate what could be constructed as the *ordering* and *disordering* potentialities of neo-colonialism. The powers of capitalist imperialism are *ordering* in the sense that states and corporations continually reinvent the global socio-legal infrastructures needed for accumulation. The appeal to order here is not intended to be necessarily positive, as will be elaborated later, but it captures the institutional capacities geared to creating specific accumulation strategies. However, the ordering of regions and nations within the world system is dialectically positioned to *disordering*, which is the constant emergence of socio-economic insecurity.

Mapping the contours of neo-colonialism for studying harm and violence in the Global South

To understand the relations of extraction that structure the current imperialist system, and, as we will argue, the ordering and disordering forces in the Global South, we turn to those accounts of imperialism which have put capitalism central. As Callinicos (2009) states, "modern imperialism is *capitalist* imperialism" (emphasis in original, p. 10). There is a co-determination of capital accumulation and the unequal world system as an integrated process. This chapter follows two primary claims at the core of most Marxist theories of imperialism. Firstly, the ebb and flow of imperialist ascendency and decline is an issue of class relations operating on both global and national planes. Globally, there is a complex process of competition and collaboration between different capitals. The dominant financial capitalist class interests find an expression in the extension of nationally rooted state capacity into other regions and territories, such as military action, foreign investment, trade agreements, the creation of tax havens, and security policies. The power of capital, however, depends partially on maintaining hegemonic support and legitimacy within its national spheres of influence. This is because the state machinery,

notably its military capabilities, is essential to advance and protect capital interests locally and overseas (Harvey, 2003). Historically, this produces uneven development as differing materializations of capital have the power to see their needs met, in the process making certain nations, regions, and classes subordinate to those interests. The second basic premise is that imperialism is structurally inevitable due to the crisis tendencies of capitalism. Capital constantly clashes with social and material barriers which interrupt its expansion, meaning that state and corporate activity aims at overcoming various stagnating hurdles, such as lack of access to cheap raw materials, limited labour and consumer markets, or problems with the increasing cost of wages or inputs. This encompasses the violent extension of capitalist social relations through the privatization of land and the forcible proletarianization of populations with alternative subsistence modes. Projections of imperialist power are geared toward opening new markets for the sale of commodities, new spaces for the extraction of raw materials, new populations who can be exploited, new consumer markets and new technologies that increase the speed of turnover of production and realization.

In exploring the specific forms of harm that emerge from corporate activity in the Global South, it is important to recognize the meso-institutional processes. French regulation school scholar Lipietz (1987) warns against the reification of totalizing conceptions of imperialism such as the New International Division of Labour or World Systems which he sees as failing to capture the dynamism of capitalism. For instance, Jessop (1990) argues that "accumulation strategies" (p. 155) are understood as socio-relational formations which unify value transformation within a circuit of capital (e.g., between labour, money, energy, and commodity). From this point of view, longer-lasting unequal global relations are continually remade through dynamic modes of accumulation with adjacent supporting political structural conditions, not static arrangements of dominator and oppressed states.

The argument here rests on conceptualizing the relational dimensions of violence and harm in impoverished regions of the world as connected to both the specific accumulation strategies which are geared toward wealth extraction but are firmly sitting within and reproducing the longer-term planetary organic structure of inequality between regions.

Our first theme connects harms to specific structures of corporate accumulation, which are created and sustained through domestic and transnational state power, but which can be thought of as imperialist due to their orientation toward offshoring value. Even within Marxist theories of imperialism, the category of the corporation as a distinct institutional actor tends to disappear in favour of interstate rivalry. Colonialist exploitation and extraction are deliberate state-corporate projects where wealth and resources are redistributed to 'core' corporations and their home societies. The exploitation occurring is not only of a class orientation but also of an 'extra' geo-racialized dynamic where economic flows err toward Northern elites and populations.

Samir Amin (2010) constructed a worldwide theory of value which develops the principles of Marx's value theory but reworks it by taking imperialist structures into account. For Amin, value is created according to a global logic which patterns unequal development. This inequality is not a failure of certain regions to "catch up" to wealthier nations or because they are somehow not integrated into the worldwide economy (Selwyn, 2014). Uneven development is a central process in the system for two primary reasons. Firstly, the system depends on differentially renumerated labouring classes whose conditions of subsistence are divergent. Although still subordinate to capital for wages, some classes, including proletarian classes in 'core' countries but also professional classes in the South, are relatively empowered as consumers. The value of labour power depends on historical and geographical differentiation. This basic fact has led Amin and others to argue for a condition of 'super-exploitation' – a third category of surplus value not specified by Marx (Higginbottom, 2014; Smith, 2016). For Smith, 'super-exploitation' or

'global labour arbitrage' is achieving gains in surplus value by driving down the value of labour power or searching for labour with higher rates of exploitation, rather than lengthening the working day (absolute surplus value) or technical reorganization of the labour process (relative surplus value). A further imperialist dimension of super-exploitation is that the value produced in Global South countries is appropriated not only by Western-based multinational corporations but also by Western states (Smith, 2016). Commodities from the South support higher-paid jobs in Western countries (through the retail industry, marketing, or design) and represent a source of tax revenue (sales tax, shop rent, or income tax of retail workers) that can be spent on healthcare, education, the military, and pensions. This arrangement re-orientates value toward the consumer end of supply chains, redistributing the largest proportion of profits to the dominant core corporations and societies (Smith, 2016). The differential price of labour power produces exceptional profits, allowing elites in wealthier countries to craft a stronger social basis for legitimacy in their societies through instigating consumerist lifestyles.

Smith's work on super-exploitation reveals the exceptional profitability and political uses of corporate strategies which take advantage of the uneven development of the planet. Our second analysis of violence in the periphery sees social conditions as connected to the broader production of poverty. Specific accumulation modalities are nestled within conditions created through policy making done by the matrix of global political institutions largely controlled by Northern societies such as the United States Agency for International Development (USAID), International Monetary Fund (IMF), World Bank and World Trade Organization (WTO). These hold the institutional capacity to shape favourable conditions for globalized financial capital, such as influencing and fashioning trade policies, security agendas, development strategies, dominant cultural signs and symbols, labour regimes, debt structuring or monetary policy in peripheral and Southern regions.

However, perhaps the single most important process held up by the institutions of contemporary financialized capital is the mass production of poverty and immiseration across entire swathes of the planet. Patnaik and Patnaik (2021) have persuasively argued that mass poverty in the Global South has been essential for the reproduction of global capitalism. They claim capitalism is systemically contingent on the appropriation of the surplus generated in the colonies. Poverty is neither the failure of development nor an unintended consequence of capitalism expansion, but instead, it is a mechanism to keep at bay the potential increase of supply price. According to them, this colonial dynamic of income deflation has continued in postcolonial times through the constantly forced migration of peasants to cities, enlarging the labour reserves, alongside the imposition of structural adjustments by international financial capital which ultimately result in severe budget cuts that dismantle the local state capacity to alleviate economic inequality.

Gramsci's thinking around hegemony has influenced many theorizations of political power and illegitimacy of institutions in Global South countries (Guha, 1997; Salem, 2020). Joseph's (2002) critical realist account of hegemony argues that many accounts of hegemony are overly agential, tending to foreground the capacity of certain dominant classes to assume political leadership through historical blocs. Joseph argues for a critical realist emphasis on agency as constrained by its structural conjunctures. The development of national and even global generalized hegemony, as well as less significant demands developed by coalitions of forces, unfold in relation to competing projects, resistance by other groups but also the suitability of aspiring groups' interests to reproduce and embed social and economic relations. A hegemonic project with limited potential to organize an economy providing basic subsistence for the masses will always be highly volatile. Whilst the concept of hegemony is usually employed to discuss the political superstructure seen to be somehow separate from but legitimating production, Joseph (2002)

suggests that, in truth, economic relations exist in a complex totality: economic dynamics do "not stand alone, but operate within a complex totality where they interact with social structures, political strategies, class struggles and other features of the social world" (p. 185).

We might, however, talk of specific accumulation strategies, which sit above generalized hegemonies but may also require elaboration and transformation of existing political conditions. In other words, realizing hegemony for imperialist value extraction may require coercive strategies such as the forcible eviction of certain groups from their land, the destruction of previous modes of subsistence, or the degradation of labour and environmental legal protections. Simultaneously, consent-based political activity is employed to achieve permission for accumulation such as the state re-regulating for certain protections, providing concessions for certain groups and disseminating new discursive ensembles such as those foregrounding the developmentalist or "sustainable" facets of production. We contend that the state-sanctioned violence and criminality pervading social life at certain geo-historical conjunctures in the Global South can be blamed on imperialist forces of wealth extraction and the maintenance of impoverishment.

Corporate accumulation and the productive capacities of violence in the Global South

In understanding the deterioration of social life in Southern contexts toward violence and barbarity, we first look at the way corporations, in coalition with states, craft specific accumulation strategies in the periphery. Whether a specific modality of corporate accumulation will take hold and stabilize is driven by several material and political factors. The possibility of a strategy taking root depends on the significant application of state power to ensure a conducive "balance of forces between the dominant and subordinate classes" (Jessop, 1990, p. 201). In any context, this involves consideration by relevant dominant groups of those who may be subsumed into the project and those who have an antagonistic positionality. State regulations – such as bodies monitoring corporations' activities or legal frameworks offering protections to the environment, consumers, or workers – are often geared toward managing potential dissent (Tombs & Whyte, 2010). However, this section argues that corporate accumulation strategies in the Global South *are seeking permission to exploit land and labour, but as a result craft particular strategies, often in coalition with local governmental agencies, that are highly contentious and often deeply unjust*. Embedding the social relations needed for imperialist forms of production often involves resorting to coercive, rather than consent-focused, legitimation strategies.

The difficulty and complexity of corporations' attempts to achieve legitimacy for neo-imperialist forms of extraction are theorized by Hannah Appel (2019) in her account of the domestic politics of oil production in Equatorial Guinea. She argues for a conception of neo-colonialist markets as "projects" (p. 25), which are 'made' by actors and institutions through deliberate toil. For her, capitalism is not a totalizing context: the regulatory frameworks, legitimating justificatory narratives, accompanying modalities of everyday life, contractual agreements, and state-supporting political arrangements are "entangled" (Appel, 2019, p. 25) with global inequity and racialized/gendered differentiation. In Equatorial Guinea, the capability of American companies to produce oil, whilst polluting the local environment and reproducing racialized poverty, rests on carefully crafted arrangements. These arrangements assert the foreign firms' (seemingly innate) legality and compliance with Equatorial Guinean political society, whilst also seeking to invent an inherent separate, 'off-shored' and enclaved status. Equatorial Guineans are unable to openly criticize the impacts of oil production for fear of violent retaliation from state agencies. American oil depends on this state violence to manage dissent for polluting the

environment and other unjust activities in the country, but, conversely, the industry seemingly appears to stand for progress and development. Appel's work emphasizes the complex different scales of infrastructural power which coalesce and intersect to create specific regimes for colonial extraction, even when support from local populations is weak. On the one hand, the oil companies operating in Equatorial Guinea harness universal discourses about development and the power of corporate capitalism to legitimize their activities, while long-term extreme social problems such as pollution and poverty are blamed on the "resource curse" idea. Open dissent is largely absent due to the ever-present fear of violent retribution by state agencies and the corporations consistently manufacture distance from responsibility for improving the lives of the Equatorial Guinean population.

A very similar set of strategies is also constructed around export-processing zones (EPZs), perhaps the quintessential form of industrialized neo-colonial corporate profiteering, where states and businesses construct spaces of exception for labour exploitation. Coming to prominence through the 1980s, EPZs came to epitomize exploitation in the contemporary globalized economy. In essence, EPZs are spatial fixes which intensively target regulative state capacities – usually located in Global South countries – to secure the conditions needed for competitive commodity production. The policy was widely endorsed by the World Bank, arguing that EPZs offer a springboard for development by stimulating employment for impoverished populations and the platform for entrepreneurial and technological innovation (Madani, 1998). They are better understood as bordering governance techniques fashioning exceptionality for the institutionalization of intensive labour exploitation. EPZs require a host of legal exceptionalities including the undermining of established national agreements on minimum wages, diminishing trade union rights within zones, and special visa systems for the employment of immigrants. When we examine the social conditions prevalent in EPZs across the planet, we see that illegality is bound up in their operation.

Hall et al. (2022) offer a detailed account and explanation of the harms and corruptions associated with special economic zones (SEZs), of which EPZs are one type. They point to a range of illicit and quasi-criminal activities in SEZs, including tax and trade tariff avoidance, trade in illicit goods (such as wildlife and counterfeit products), and crimes against workers. Creating sites for the intensification of production is also associated with severe environmental degradation, they argue, including intense localized pollution and the devastation of whole tracts of arable land. Casting an eye at the relations that form around EPZs in all corners of the globe, it becomes apparent that violence and harm are central components in sustaining capital's globalized low-cost labour regime.

Enforcing the deregulated control of labour, for instance, often depends on formal (e.g., state-led) or informal (e.g., gangsterist) mobilization of violence to prevent and quell worker uprisings. Research conducted in the Mae Sot region in Thailand reveals the widespread use of violence sustaining a system of intense exploitation of Myanmarese migrant workers (Arnold & Hewison, 2005; Arnold & Pickles, 2011). Whilst there is a formal work permit system allowing documented employment in the region, the majority remain undocumented. Whether documented or undocumented, a wide array of abuses against workers have been recorded, including the murder of trade union activists, sexual violence, unpaid wages, and unsanitary living conditions in dormitories. Ultimately, the Thai authorities accept that employers will fail to follow policies that dictate labour standards.

Examining the wider Mekong region, several reports have detailed the exploitative practices across all five countries in the region. Kusekabe and Melo (2019) offer a comprehensive analysis of jobs across EPZs for garment production in the region. Achieving profitability rests on a highly gendered system of low pay and poor working conditions. Many times, police or

military have been deployed to break up worker protests against labour conditions. Kuaycharoen et al. (2020) found that the development of EPZs across the region almost always rests on illegal land dispossession practices where authorities flout established rules governing consultation and compensation. In Bangladesh, the infamous location for the Rana Plaza disaster where 1,100 people were killed in a factory fire, there are ongoing clashes with police as workers fight for better wages.

Corporate accumulation in the Global South frequently searches for intensified permission to exploit labour and extract resources. As we noted in the last section, the Marxist tradition of thinking around imperialism conceptualizes the wealth that can be redistributed from the periphery to the core through corporate accumulation strategies in the South (Amin, 2010; Higginbottom, 2014; Smith, 2016). Importantly – what is not always captured by macro interpretations focusing on global inequality – specific circuits of value flow require institutionally created political regimes. Such systems often rest on the tolerance or deployment of violence. Also, because what is generally being crafted is a form of *de*-regulation – a strict limiting of tax commitments, constrained investment in a country's infrastructure, access to devalued labour and the ability to freely pollute the environment – economic legitimacy over business practices remains highly unstable. As a result, sustaining accumulation rests on excessive coercion (Arnold & Hewison, 2005; Arnold & Pickles, 2011) and the construction of political distance from the harms of accumulation strategies (Appel, 2019). In the case of EPZs, not only is violence frequently deployed to sustain low-cost labour regimes, but corporations construct supply chains reliant on spaces of exception that evade both more tangible commitments to development and the attribution of accountability. When corporations are acting in more developed regions, they may secure their reproduction through concessions to workers or consumers, but in the Global South they are less fettered in their commitment to ensuring support from local populations. What is also evident is that the predatory social relations involved in Global South production are frequently directed through state policies and legalities to achieve forms of accumulation. Corruption and violence are frequently *not* primarily products of underdevelopment or 'weak' state control but arise as part of manufacturing imperialist relations.

Social disorder, fractured hegemonies, and everyday violence and crime

The connections we have described between neo-colonial accumulation strategies, political arrangements heavily reliant on coercion, and social formations characterized by different forms of social violence are not exclusive to the sphere of production. This connection is not always apparent since the disorder that characterizes urban life in the Global South, such as in megapolises like Cairo or Manila, is not a direct result of the attempt to institutionalize circuits of wealth extraction. The economic inequality and social unrest that fed the disorder are better conceptualized as by-products of the income deflation measures imposed by the global economic system to ensure capitalist growth in 'core' economies (Patnaik & Patnaik, 2021). Monetary policies promoted by international financial institutions (IFIs), such as the IMF and the World Bank, are mainly responsible for ensuring income deflation. They specifically target the state's expenditure, demanding budget cuts that undermine attempts to establish social welfare systems (Sarkar, 1991). They result in the reproduction of mass modern poverty ubiquitous in the Global South (Patnaik & Patnaik, 2021). These austerity measures are usually accompanied by the privatization of public services, the deregulation of financial markets, the reduction of labour protections, and the removal of trade barriers. The factors coalesce in the dispossession of peasants and petty producers that become unable to compete with international capital (Kentikelenis et al., 2016). These measures have triggered colossal migrations from rural

areas and the closure of small and medium local businesses (Kotz, 2018). The living standard of these unemployed masses is further degraded by the state's incapacity – itself a consequence of budget restrictions – to provide the required infrastructure to accommodate them in the cities. The result is the expansion of slums and shanty towns in the bulging urban conurbations of the Global South (Davis, 2006). Simultaneously, the politics of privatization and promotion of foreign investment enable private developers to build gated condominiums and corporate and commercial enclaves (Shatkin, 2008). The consequence of these two trends, the proliferation of slums and enclaves, are cities, such as Manila, defined by extreme class segregation and an accompanying set of divisive social relations between rich and poor (Garrido, 2019).

The systematic immiseration not only produces inter-class tensions but also precludes governments' capacity to grant widespread concessions to working classes, a critical fundamental potentiality for building consent in any political project (Joseph, 2002). Rather, stability is secured by the deployment of coercive violence through unleashing police and military forces (Guha, 1997). However, the IMF structural reforms impose severe financial constraints that attempted to thwart the development of a disciplined police force. For example, since the end of the Nasser regime in 1970, Egypt has experienced a constant economic downfall and intensifying social unrest. This political and economic crisis has been exacerbated by its dependence on IMF loans and the conditionalities imposed by them (Salem, 2020). The political consequence was a weakening of the popular support that was compensated with the expansion of the capability of the Ministry of Interior, the government agency with responsibility for security and social order (Salem, 2020). But the need to expand its capabilities, especially by recruiting more personnel, clashes with the IMF's policies of public expenditure cuts (Rashed, 2016). The lack of available funding to pay police salaries produced inequality within the police force itself, with older officers properly trained and better paid while newer ones experience precarious working conditions. To complement meagre salaries, police resorted to illegal practices such as extortion and bribes targeting economically deprived communities. The impunity given to police officers reflects the reliance of the ruling class on coercion, which has allowed the emergence of a 'security state' (Salem, 2020).

A similar deployment of police brutality can be observed in the Philippines under the government of Rodrigo Duterte. Duterte mobilized public support with his 'war on drugs' campaign and his 'populist' tone (Curato, 2017). His emergence has been interpreted as a crisis of legitimacy of the political elite (Curato, 2016). Scholars have attributed the popular discontent which led to Duterte's rise to power to a combination of disillusion with a corrupt ruling elite, unappealing technocratic discourses, and the fear of crime amongst the upper and middle classes (Curato, 2017; Garrido, 2019; Lamchek, 2017). Explanations of the popularity of Duterte, even after the visibility of the bloody consequences of his campaign, have tended to emphasize a politics of fear (Curato, 2017) and the continuity between the 'war on drugs' and a long history of politically driven extrajudicial killings (Kreuzer, 2016). Nonetheless, because Duterte's regime's anti-narcotics measures effectively rationalized a wider attack on the poor, it represents a break from the persecution of political opponents present in previous eras.

The political emphasis on the interpretation of Duterte has been further fuelled by his unremarkable economic programme, so-called *dutertenomics*, which consists of liberal reforms in line with previous government agendas, such as his flagship Comprehensive Tax Reform Program, aimed at cutting income and corporate tax (Capuno, 2020). The key factor to understand the logic behind the deployment of police brutality by Duterte's administration is that many of the policies seek to establish a certain set of ideological truths in the context of emerging extreme class inequality despite decades of continuous macroeconomic growth (Kusaka, 2017). In this context, the 'war on drugs' became a set of political discourses and interventions that blame

poor drug users for generalized social and economic insecurity. Blaming the impoverished for the country's underdevelopment is a common trope of the dominant narrative that presents the most vulnerable sectors as lazy and parasitical on state resources. Morally charged politics have further contributed to the decline (or absence of) class-based politics in the country (Kusaka, 2017). Middle-income groups perceive the ongoing problems in Philippine society as arising from the 'undisciplined' underclass lacking the necessary qualities requisite for good citizenship. Furthermore, the narrative effectively mobilizes support against drug users even from the poorest sectors in society as the approval ratings for Duterte across all classes show (Lamchek, 2017). The outcome is that most Filipinos consider that poor drug users not only 'deserve' such violent repression but due to their apparently transgressive and disorderly behaviours also need to be neutralized for society to progress.

Neo-colonial arrangements ensure the reproduction of modern mass poverty in Global South societies. These politics of immiseration foster social conflicts which are exacerbated by the local state's limited capacity to intervene. Concurrently, budget restrictions preclude local ruling elites from granting concessions to alleviate social conflicts. In this context, local elites resort to coercive strategies to maintain political stability through the authoritarian neutralization of potential political challenges. The widespread deployment of police violence in Egypt and the Philippines illustrates this strategy. Police repression fulfils two functions: it terrorizes the sectors most severely impacted by income inequality and poverty, and at the same time fuels the dominant narrative that blames these sectors for the failure of development, shifting the attention away from international and local elites. Critically, the structuring of systems of inequality by IFIs through imposing debt and limiting developmentalist potentialities constrains the potential for alternative consent-orientated welfare hegemonic projects to emerge and find lasting traction. Elite hegemonic projects seek to stabilize around morally charged discursive constructions which blame poorer populations for ongoing social ills whilst also justifying punitive interventions in the shape of disciplinary policing. In this context, the boundaries between legality and illegality, originally set by the state law to legitimate its interventions, are an obstacle to governance based on coercion, so state agencies need to constantly cross them as observed in the two cases discussed.

Conclusion

This chapter has argued that harm, crime, violence, and state repression in societies of the Global South are intrinsically connected with the unequal structuring of the global economic order. Transgressing typical postcolonial (Bhambra, 2021, 2022; Bhambra & Holmwood, 2021) and Southern criminology perspectives (Carrington et al., 2016, 2018, 2019), the chapter has sought to place a material analysis of actually existing neo-colonial dynamics which structure the socio-relational conditions in the periphery. We highlighted the state violence and everyday predatory social relations that emerge through the imperial structuring of the world through two analyses.

Firstly, there are specific projections of state–corporate power geared to achieving social orders conducive to deregulated access to labour and the extraction of wealth and resources. This more deliberative process of *ordering* sees the deployment of violence and coercion to invent and sustain specific accumulation strategies, or in other words, unite coherent flows of value creation and redistribution (Jessop, 1990). Oil production in Equatorial Guinea (Appel, 2019) and the development of EPZs in Southeast Asia (Arnold & Pickles, 2011) both reveal that organized violence is imbricated in ensuring the necessary conditions for various modalities of 'super-exploitation' (Amin, 2010; Smith, 2016). In Equatorial Guinea, ensuring unhindered access to oil reserves in conditions which are highly favourable for American capital rests on

the continued support and funding of a brutal regime which violently quashes popular opposition to extractive practices (Appel, 2019). In the Mae Sot region of Thailand, both formal and informal forms of violence have been parts of the disciplinary apparatus ensuring compliance from migrant workers, working to prevent the potential for more far-reaching political change through organized labour activities (Arnold & Pickles, 2011). In Cambodia, state brutality has been systematically deployed against trade unions, maintaining cheap garment production geared toward Western markets. In all these cases we see that legitimacy over production practices meets organized resistance, and are not robust development strategies as they rest on sustaining exceptionality. Such accumulation strategies have an 'extra'-exploitative dimension because they are embedded in unequal geo-racialized structures of inequality (Smith, 2016).

Secondly, we argued that the continuous restructuring of the world system to service financialized capitalist interests by a range of actors including major political architects of globalization, such as the IMF, works to sustain impoverished conditions in the Global South. The reproduction of poverty in the South is a structural compulsion mitigating against crisis tendencies (Patnaik & Patnaik, 2021). Within this discussion, we argued that neo-imperialist currents create socio-economic insecurity, with Southern regions falling into *disorder*, leading to criminality and repressive state responses. The current immiseration of the South has resulted in highly indebted societies with minimal welfare spending and huge surplus urban populations, causing everyday life to become shrouded in predacious social relations. In Egypt, the IMF debt restructuring ended the developmentalist aspirations of Nasserism, intensified urban poverty and shifted the form and content of policing (Rashed, 2016). The police shifted from a relatively well resourced and professional force to a mass of lowly paid officers relying on corruption and extortion for subsistence. The failure of developmentalism in Egypt also heralded the widespread growth in criminal markets as state-supported industries and state employment fell away in favour of servicing IMF debt. In the Philippines, Duterte's war on narcotics, which is a symbolic project of denigration of the poor alongside widespread state-sanctioned violence against many sections of society, is a vehicle for legitimizing a political economy which largely failed to offer any hope of social mobility for large swathes of the population. Shifts in the Philippine economy have resulted in intensifying inequality, and the top-down denigration of the economically marginalized provides moral legitimation for these trends. In both cases – Egypt and the Philippines – we see not only the power of global financial institutions to enforce poverty in the South but the possibility of politics based on developmentalism becoming increasingly difficult. As Joseph (2002) argues, the potentiality for dominant classes to consolidate a project is conjunctural: the power to achieve stable hegemony rests on the existing social structures and material possibilities. The turn to a politics of blame and the extensive use of violence are products of the limited possibility of ensuring rule through consent.

References

Amin, S. (2010). *The law of worldwide value*. Monthly Review Press. (Original work published 1978)

Appel, H. (2019). *The licit life of capitalism: US oil in Equatorial Guinea*. Duke University Press.

Arnold, D., & Hewison, K. (2005). Exploitation in global supply chains: Burmese workers in Mae Sot. *Journal of Contemporary Asia*, *35*(3), 319–340.

Arnold, D., & Pickles, J. (2011). Global work, surplus labour, and the precarious economies of the border. *Antipode*, *43*(5), 1598–1624.

Bhambra, G., & Holmwood, J. (2021). *Colonialism and modern social theory*. Wiley.

Bhambra, G.K. (2021). Relations of extraction, relations of redistribution: Empire, nation, and the construction of the British welfare state. *British Journal of Sociology*, *73*, 4–15.

Bhambra, G.K. (2022). A decolonial project for Europe. *Journal of Common Market Studies*, *60*(2), 1–16.

Callinicos, A. (2009). *Imperialism and global political economy*. Polity Press.

Capuno, J. (2020). Dutertenomics: Populism, progress, and prospects. *Asian Economic Policy Review*, *15*, 262–279.
Carrington, K., Dixon, B., Fonseca, D., Rodríguez Goyes, D., Liu, J., & Zysman, D. (2019). Criminologies of the Global South: Critical reflections. *Critical Criminology*, *27*, 163–189.
Carrington, K., Hogg, R., Scott, J., & Sozzo, M. (Eds.). (2018). *The Palgrave handbook of criminology and the Global South*. Palgrave Macmillan.
Carrington, K., Hogg, R., & Sozzo, M. (2016). Southern criminology. *British Journal of Criminology*, *56*(1), 1–20.
Chibber, V. (2013). *Postcolonial theory and the specter of capital*. Verso.
Ciocchini, P., & Greener, J. (2021). Mapping the pains of neo-colonialism: A critical elaboration of Southern criminology. *British Journal of Criminology*, *61*(6), 1612–1629.
Curato, N. (2016). Flirting with authoritarian fantasies? Rodrigo Duterte and the new terms of Philippine populism. *Journal of Contemporary Asia*, *47*(1), 142–153.
Curato, N. (2017). Politics of anxiety, politics of hope: Penal populism and Duterte's rise to power. *Journal of Current Southeast Asian Affairs*, 35(3), 69–89.
Davis, M. (2006). *Planet of slums*. Verso.
Garrido, M. (2019). *The patchwork city: Class, space, and politics in metro Manila*. University of Chicago Press.
Guha, R. (1997). *Dominance without hegemony: History and power in colonial India*. Harvard University Press.
Hall, A., Antonopoulos, G.A., Atkinson, R., & Wyatt, T. (2022). Duty free: Turning the criminological spotlight on special economic zones. *British Journal of Criminology*, online first. https://doi.org/10.1093/bjc/azac010
Harvey, D. (2003). *The new imperialism*. Oxford.
Higginbottom, A. (2014). 'Imperialist rent' in practice and theory. *Globalizations*, *11*(1), 23–33.
Jessop, B. (1990). *State theory: Putting the capitalist state in its place*. Polity Press.
Joseph, J. (2002). *Hegemony: A realist analysis*. Routledge.
Kentikelenis, A.E., Stubbs, T.H., & King, L.P. (2016). IMF conditionality and development policy space, 1985–2014. *Review of International Political Economy*, *23*(4), 543–582.
Kotz, D.M. (2018). Neoliberalism, inequality, and capital accumulation. In D. Cahill, M. Cooper, M. Konings, & D. Primrose (Eds.), *The SAGE handbook of neoliberalism* (pp. 427–445). Sage.
Kreuzer, P. (2016). *"If they resist, kill them all": Police vigilantism in the Philippines*. https://www.hsfk.de/fileadmin/HSFK/hsfk_publikationen/prif142.pdf
Kuaycharoen, P., Longcharoen, L., Chotiwan, P., Sukin, K., & Lao Independent Researchers (2020). Special economic zones and land dispossession in the Mekong region. https://th.boell.org/sites/default/files/2021-05/SEZs%20%26%20Land%20Dispossession%20in%20the%20Mekong%20Region-Update.pdf
Kusaka, W. (2017). *Moral politics in the Philippines: Inequality, democracy and the urban poor*. National University of Singapore Press.
Kusekabe, K., & Melo, C. (2019). Jobs in SEZs: Migrant garment factory workers in the Mekong Region. https://mekongmigration.org/wp-content/uploads/2019/10/Jobs-in-SEZs-23-Sep-2019.pdf
Lamchek, J. (2017). A mandate for mass killings? Public support for Duterte's war on drugs. In N. Curato (Ed.), *A Duterte reader: Critical essays on Rodrigo Duterte's early presidency* (pp. 199–218). Ateneo de Manila University Press.
Lipietz, A. (1987). *Mirages and miracles: The crises of global Fordism*. Verso.
Madani, D. (1998). *A review of the role and impact of export processing zones*. World Bank.
Patnaik, U., & Patnaik, P. (2021). *Capital and imperialism*. Monthly Review Press.
Rashed, D. (2016). Violence from above, violence from below: The state and policing citizens in Mubarak's Egypt. In B. Koch (Ed.), *State terror, state violence* (pp. 93–114). Springer.
Salem, S. (2020). *Anticolonial afterlives in Egypt: The politics of hegemony*. Cambridge University Press.
Sarkar, P. (1991). IMF/World Bank stabilisation programmes: A critical assessment. *Economic and Political Weekly*, *26*(40), 2307–2310.
Selwyn, B. (2014). *The global development crisis*. Polity Press.
Shatkin, G. (2008). The city and the bottom line: Urban megaprojects and the privatization of planning in Southeast Asia. *Environment and Planning*, *40*, 383–401.
Smith, J. (2016). *Imperialism in the twenty-first century: Globalization, super-exploitation, and capitalism's final crisis*. Monthly Review Press.
Tombs, S., & Whyte, D. (2010). The state and corporate crime. In R. Coleman, J. Sim, S. Tombs, & D. Whyte (Eds.), *State, power, crime* (pp. 103–115). Sage.

7

Place, borders, and the decolonial

Leanne Weber, Robyn Newitt and Claire Loughnan

The violent imposition of colonial borders, accompanied by the subjugation and attempted erasure of the borders of First Nations Peoples, are core technologies of colonization. In this chapter, we critically examine these twin practices of colonial re-bordering and the attempted erasure of the borders of First Nations Peoples, using the example of the Australian settler-colonial state. We consider the potential for the decolonization of contemporary settler-state borders from both *within* and *without*, with decolonization understood to mean a practice that fundamentally alters the exercise of power beyond mere theorization. We are mindful that decolonization must avoid becoming a "buzzword" (Mbembe, 2016, p. 29) or a "metaphor" which can undermine its radical objectives concerning the "repatriation of Indigenous land and life" (Tuck & Yang, 2012, p. 21). In other words, the question of what decolonization might mean in relation to colonially imposed borders is a substantive and structural one.

Our discussion is informed by the diverse perspectives of one border criminologist whose work to date has been framed primarily in terms of globalization (Weber), another who has sought to centre decolonization in her research and writing (Loughnan), and a scholar with both lived experience as a colonized person and a professional interest in practices of (de)colonization (Newitt). In doing so, we acknowledge that the centring of First Nations[1] knowledges and resistance is critical (see, e.g., McKinnon, 2020; Moreton-Robinson, 2015; Watego, 2021). Such resistance to the settler border can be seen as an act of decolonization.

We set out our argument in three steps. We first examine the *making* of colonial borders, noting that efforts directed toward the *breaking* and *unmaking* of these borders through formal decolonization processes have merely transformed them into conduits for the expression of neo-colonial power. Decolonization can then be understood not as a single act which dismantles colonial structures, but as an ongoing process of challenging the power relations that colonial borders have imposed. We then consider how the hegemony of neo-colonial borders is contested *from the outside* through illegalized border crossings between the Global South and North,[2] using the specific example of refugees attempting to reach Australia by sea. Finally, we explore Indigenous Australian perspectives on the economic and cultural significance of Indigenous borders, arguing that the 'precolonization' of borders – through the assertion of their continued existence and meaning – challenges the hegemony of settler-colonial borders *from within*.

DOI: 10.4324/9781003176619-8

While referring initially to the global context, we are particularly concerned to anchor our analysis in a specific geo-political setting and place – in this case, the Australian settler-colonial state – since colonial borders are typically produced out of a specific conflict within and with a place and its peoples. This is significant given that *settler* colonialism was (and is) a "land-based project" (Evans, 2009, p. 6) with colonization unfolding in ways that varies across different sites (Balint et al., 2015). In the Australian setting, there has not yet been a treaty established between settlers and First Nations peoples, as we explain below. Although nation-state borders are "never purely local institutions" (Balibar, 2010, p. 316), their distinct features and how they function play out in particular ways that are, therefore, distinctly local and thus institute 'places' – and by implication also borders – that are both internal and external.

As a settler state, Australia is illustrative both of how the violence of the nation-state border is directed *outwards* as an expression of the prevailing neo-colonial world order, and *inwards* through the ongoing suppression of First Nations borders and sovereignty. As Tuck and Yang (2012) observe, "Settler colonialism operates through internal/external colonial modes simultaneously because there is no spatial separation between metropole and colony" (p. 5). By attending to the local manifestation of Australian borders, both external and internal, we are able to locate the common source of these ongoing bordering practices in Australia's colonial history and present.

Formal and informal decolonization: the making, breaking and unmaking of colonial borders

In contrast to the idea that borders are immutable and constant, the geo-political significance and very existence of particular borders have changed repeatedly alongside major historical upheavals (Weber & Bowling, 2008). Border controls at the perimeter of the nation-state appeared on the scene only once localized projects of nation-building were well advanced. Notably, the invention of the passport consolidated the territorial boundaries of the nation-state, enabling distinctions between citizen and 'alien' to be maintained in law (Mongia, 1999). As a political act, nation-state borders have thus always functioned as boundaries of differential inclusion *and* exclusion, often along racialized lines.

The locations and meaning of nation-state borders have not only been transformed through gradual historical change. Borders have also been subject to abrupt transformation through conquest, one form of which is the violent imposition of colonial rule. As nation-states emerged with clearly defined borders and centralized repositories of power, many engaged in expansionist projects that violently projected their sovereign power beyond their own borders. These ambitions were justified by the construction of European culture as civilized, and those colonized as barbaric, with Europe engaged in colonization as a civilizing mission (Anghie, 2005). Colonization required the erasure of existing borders and the imposition of new borders constructed for the benefit of colonial rulers. According to Schmitt (as cited in Mezzadra & Neilson, 2013), the "appropriation of space" (p. 4) through the imposition of colonial borders was integral both to capitalism – via the establishment of private property – and to colonial conquest, for which it performed a "world configuring function" (p. 4):

> The tracing of borders within modern Europe went hand in hand with political and legal arrangements that were designed to organise an **already global** space […] [and] provided a blueprint for the colonial partitioning of the world and the regulation of relations between Europe and its outsides.
>
> *(p. 4)*

The racialized boundary between "savages" and "civilized peoples" (Mbembe, 2019, p. 24) enabled sharply divergent political and legal arrangements to be established in Europe and its colonial 'outsides'. Colonially imposed borders subverted the 'normal' borders of law (Evans, 2009), through the way they were imposed and the spaces of unfettered power they created. So, according to Mbembe (2019), colonial conquest is a "borderless war, *outside of the law*" that endures long after the initial act of colonial occupation through a condition he describes as "endless war" (p. 26).

As well as reconfiguring the colonial borders of territory and law on a global scale, colonial rule also entailed the creation and manipulation of *internal* borders to facilitate control over subjugated populations, notably First Nations Peoples. Colonial governance thus effectively created "a new set of social and spatial relations on the ground" which involved, *inter alia*, "the production of boundaries and hierarchies, zones and enclaves; the subversion of existing property arrangements; the differential classification of people" (Mbembe, 2019, p. 79). The internal borders of colonial occupation might be drawn around the camp, mission, township, or homeland, effectively erasing pre-existing boundaries of self-governance.

Colonially imposed borders, institutions and legal systems did not necessarily vanish in the face of post-World War II decolonization. On the global stage, exploitative power relations established via colonial rule also continue to shape relations between nation-states within a *neo*-colonial world order that mobilizes racism to establish and maintain inequities (Ciocchini & Greener, 2021). Within this world order, the relatively porous borders of formerly colonized countries enable practices of capital extraction to continue, while former colonial powers and wealthy settler states selectively fortify their borders in ways that simultaneously deliver a supply of insecure, illegalized labour (Cheliotis, 2015). Mbembe (2019) dubs this effect "borderization" (p. 99), which is the "process by which world powers *permanently* [emphasis added] transform certain spaces into impassable places for certain classes of populations", noting that "the brutality of borders is now a fundamental given of our time" (p. 3).

Despite Mbembe's (2019) reference to permanence, globalization theorists often argue that national borders are being unsettled from both 'above' and 'below', producing a 'hollowing out' of the state. Hardt and Negri (2004) label this period of transition in which the nation-state is being undermined by massive structural change as the "interregnum" (p. 162); a period of destabilization that provides opportunities for other configurations of governance to emerge that will likely cut across existing borders. In fact, the present 'brutality of borders' can partially be understood as a defensive attempt to regain sovereign control in the face of global challenges to the state (Brown, 2010). This configures the contemporary borders of nation-states as "sites of struggle" around which "relations of domination, dispossession, and exploitation are being redefined" (Mezzadra & Neilson, 2013, p. 18).

The question from a counter-colonial perspective is whether these global and local upheavals can support processes of decolonization and how that might occur. Wonders and Jones (2021), for example, view mass border crossings from the Global South to countries of the Global North, not just as an issue of forced migration or a border control 'problem', but as a social movement with the potential to "wedge open cracks in the border regime" (p. 303) and delegitimize the authority of national borders at a multi-scalar level.

To address this question meaningfully and ethically requires us to be attentive to the geocultural politics of place. Not to do so would be, in a sense, to repeat the disregard of connections to territory and place and the claims to sovereignty that arise as a result, which have characterized colonization. As Ruth Wilson Gilmore (2017) observes in relation to abolition, "freedom is a place" (p. 238), and any attempt to work in a situated way requires attention to the relations between a land and its peoples. We, therefore, explore the question of the

decolonization of borders in the remainder of the chapter in more detail and from two different viewpoints, using the situated example of the Australian settler-colonial state.

Contesting colonial borders from the outside

As outlined above, colonial borders are structures deployed by colonizing states to enforce territorial control, generating constraints over (certain kinds of) migration. In response to growing levels of migration and numbers of displaced persons that 'threaten' these borders, governments in the Global North turn to punitive and sophisticated border controls, ranging from detention to surveillance, policing, and imprisonment (Aas & Bosworth, 2013). This enforcement of the *external* border has also led to thousands of deaths among those undertaking *illegalized* border crossings (Grewcock, 2012; Weber & Pickering, 2011). Paradoxically, such crossings are often made to escape violence produced by past and present colonial interventions. Refugees are thus produced as an effect of global systems and the *externalizing* border laws deployed against them. In Australia, these are often remarked upon as especially violent – and they are. However, Amangu Yamatji scholar Crystal McKinnon (2020) reminds us that:

> To see contemporary practices of incarceration and detention of asylum seekers as exceptional removes them from the historical and contemporary context of global systems of imperialism and racial capital, which have made people refugees and asylum seekers and forced people to flee their homes. It removes the local context and histories too, erasing the ongoing colonial violence against Indigenous people.
>
> *(p. 691)*

The violence at the colonial border thus replicates the "violence and horror of colonialism" and is *not* exceptional (McKinnon, 2020, p. 691). As a racialized structure, colonization informs laws directed both at those seeking refuge at/beyond the border and First Nations people within it (McKinnon, 2020). The task of 'decolonizing' the settler-colonial border, therefore, demands a recognition that to speak of colonial borders is already to speak of racialized violence, whether in the making of these borders or in the punitive response by states towards those attempting to cross settler-colonial borders without being 'granted' colonial authority to do so. For sovereign First Nations scholars these racialized dimensions are, of course, unsurprising (McKinnon, 2020; Moreton-Robinson, 2015; Watson, 2012; Whittaker & Watson, 2019). The white body functions here as the measure on which belonging is granted, or refused (Moreton-Robinson, 2015 p. 4). This "possessive logic of patriarchal white sovereignty" (Moreton-Robinson, 2015, p. 81) is amongst many techniques through which the settler state seeks to "constantly reinforce itself" (McKinnon, 2020, p. 697). In the Australian context, the harms of immigration detention and offshore processing also sit within a history of control, segregation, punishment, and exclusion within missions, reserves, quarantine stations, and prisons that are situated along a continuum of violence (McKinnon, 2020; Nethery, 2021; Perera & Pugliese, 2021).

It bears emphasis that the reinforcement and reproduction of settler-colonial control are also marked by the outwards expansion of the border, beyond the territorial borders of the settler-colonial state (Dastyari, Nethery & Hirsch, 2022; Giannacopoulos & Loughnan, 2020). This repeats a history of the partition and appropriation of island states in the Pacific for the purpose of imperial expansion, extending the carceral archipelago (Giannacopoulos & Loughnan, 2020; McKinnon, 2020, p. 694; Mountz, 2011). Described as the "externalization" of refugee protection (Dastyari, Nethery & Hirsch, 2022), it includes techniques through which states seek to dilute, deny or defer their Refugee Convention obligations, often by contracting these out

to other states (Frelick et al., 2016, p. 196; Loughnan, 2023, p.108). Offshore processing of refugee claims is one such technique, in which those who arrive without prior authorization – as granted by settler law – have been subjected to long-term, indefinite, and harmful detention in the neighbouring Pacific states of Nauru and Papua New Guinea (PNG).

Offshore processing detention sites are thus most likely to be "located in racialized and/or formerly colonized territories, and they continue practices of abuse and torture perpetrated there against colonized peoples" (Perera and Pugliese, 2021, p. 92). For Manusian scholar Michelle Nayahamui Rooney (2016), colonializing tropes persist in the representation of PNG communities in the externalizing laws and practices that support offshore processing by Australia on Manus Island:

> Vetted by the PNG government and supported and funded by the Australian government it has become difficult to disentangle indigenous actors from outside actors in the Manus Island 'hell-hole' trope. Australia's offshore detention centre on Manus Island succeeds precisely because Manus Island is represented as a 'hell-hole' and its people violent and unwelcoming.
>
> *(p. 1)*

Given ongoing settler-colonial harms – against those at, beyond, and within these settler borders – there has been long-standing advocacy against such harms, including within the Australian community broadly speaking. Commonly, such actions have articulated human rights claims to defend those detained and punished at the border (Briskman et al., 2008; Taylor, 2005). This has extended to citizen-based resistance and advocacy reflecting necessary institutional disruption by those with privilege and resources (Surma, 2018) including at a local level, through initiatives such as Welcoming Cities (Wonders & Jones, 2021) and Cities of Sanctuary.

There is a history of resistance by those subjected to settler-border harms through protest and legal action as well as creative interventions through art, music, and poetry. Such resistance has been individual *and* collective, spanning 20 years: escapes by detainees at several Australian immigration detention sites in 2002 and other protests at the gates of these sites reveal how those detained assert their agency despite attempts to oppress them (Grewcock, 2012). Similarly, in late 2017, hundreds of men protested their forced transfer from one detention site to another on Manus Island (Giannacopoulos & Loughnan, 2020). Such resistance contests the notion that those detained are simply "bare life" without choice, agency, and creativity (Fiske, 2016, p. 51). For Iranian scholar and poet Saba Vasefi, the voices of women and other gendered bodies in immigration detention, affirm their "survival and non-compliance" (Vasefi & Dehm, 2022, p. 532) despite the regime seeking to oppress them.

For former refugee and Kurdish scholar Behrouz Boochani (2018a), resistance also demands a new language to destabilize violent structures and processes. This extends, he claims, to the need to avoid journalistic language. For Boochani, such language "already is or becomes part of the system. Journalism relies on official language and often absorbs government propaganda" (Surma, 2018, p. 130). Instead, Boochani (2018a) calls for writing in a "different voice", often through poetry, as a genre that "could express the intensity and volume of the message" of resistance (p. 528).

Simultaneously, resistance extends beyond the discursive, to the corporeal, in which the bodies of those detained have become an instrument and site of protest. Former asylum seeker Farshid (as cited in Fiske, 2016) describes self-harm as an act of self-realization:

> People's situation in detention was that you were the lost person, the forgotten person, you don't exist […] you have no power over anything. So, self-harm in most cases wasn't a

> planned thing. It was in most cases out of frustration and it was good in a way that people feel they are real again, they exist, they have power over something – their body. So, blood always has a very powerful message and when people see they can get over their fear and do something […] they come back to that colour of existence […] I have power. I can do things. So I was calling that self-actualisation.
>
> *(p. 55)*

Acts of self-harm thus comprise an ethical call for recognition *and* a reflection of border violence back to the state that enforces it, when the only site of protest remaining is the body (Pugliese, 2004). At its most extreme this has included hunger strikes, suicide, and lip sewing. Through all of these actions, "detainees form part of and help construct the social audience" that challenges the colonial border and its accompanying violence (Grewcock, 2012, p. 64).

As part of this social audience, asylum seekers have acted in solidarity with First Nations peoples, who daily experience the racialized 'possessive logic' of the colonial border and its laws (Moreton-Robinson, 2015). Aboriginal Passport ceremonies – in which passports are granted to refugees by First Nations peoples – exemplify this solidarity, inverting the institutional practices of settler law by declaring that the settler state has no "jurisdiction or sovereignty over Aboriginal lands, and they cannot make decisions regarding who can and cannot enter" (McKinnon, 2020, p. 698; see also Pugliese, 2011, pp. 35–38). Such acts must be understood as provoking "a radical calling into question of the juridico-political concept of sovereignty that underpins the Australian nation state" (Pugliese, 2011, p. 36). This is a decolonial act insofar as it directly challenges claims to legal authority made by the settler state. In contrast, citizen-driven initiatives like Welcoming Cities and Cities of Sanctuary, while communicating a local message of welcome, do so from a position that has never been authorized, granted, and consented to by First Nations peoples in Australia: this welcome is one which settler-colonial communities do not have lawful authority to give (Pugliese, 2011).

In examining the 'breaking' of borders, we offer a situated analysis of colonial border practices, to generate insights into the actuality of settler-border violence. It is also clear that other border practices, notably of sovereign First Nations people, have been disrespected by settler states that seek to impose their own by partitioning the land of others without their consent (Simpson, 2014). The construction of the colonial border is crucial to the expansion and consolidation of the settler state, seeking to 'override' those of First Nations peoples that existed well before colonization (Perera & Pugliese, 2021). Such a consolidation is achieved through settler claims to lawful authority at the same time that First Nations are positioned as "people without law, as peoples who transgress borders, rather than refuse them *lawfully*" and as people without land (Simpson, 2014, p. 124). The demand that they either remain in place or only move with the granting of *permission* to move renders First Nations peoples 'aliens' in their own country (Simpson, 2014). As Moreton-Robinson (2015) observes, "[t]he legal regime of the nation-state places Indigenous people in a state of homelessness because our ontological relationship to the land, which is the way we hold title, is incommensurable with its own exclusive claims of sovereignty" (p. 16).

Can colonial borders be unmade? The view from a settler-colonial state

Indigenous sovereignty, which includes all First Nations communities throughout the continent now *termed* Australia, has been intentionally disavowed by colonial governments in their efforts to assert and maintain the legal fiction of *terra nullius*, which means land belonging to no one, to justify their invasion (Behrendt, 2002; Moreton-Robinson, 2015). The racist policies and

legislation with which colonial governments target Aboriginal and Torres Strait Islander people are best expressed by McKinnon (2020): "Australian colonists have implemented some of the most racist border policies in the world, and they are the architects of some of the most racist policies and practices to eliminate Indigenous people from their lands" (p. 691).

Professor Irene Watson (2012), a Tanganekald, Meintangk-Bunganditj scholar, points out that "the Australian state is unable to produce any evidence which would prove that Aboriginal peoples of Australia have expressly and of our own free will renounced our sovereignty" (p. 14). This is indicative of unlawful practices by the British colonial government in their false claims of sovereignty over land – when sovereignty was never ceded by Aboriginal and Torres Strait Islander people and their communities – the moment the first fleet arrived on the shores of Warrane, Gadigal Country, in 1788.

The Australian legal system is an import from Britain and has imposed borders and control that have impacted negatively on the First Nations people and their communities throughout Australia. For over 234 years, Aboriginal and Torres Strait Islander people have constantly and consistently fought for Indigenous rights, as well as rights to practice self-determination, however "the struggle for Indigenous rights and justice is tied to the establishment of the nation state and citizenship" (Moreton-Robinson, 2005, p. 63). Distinguished Professor Larissa Behrendt AO[3] (2013), a Eualeyai/Kamillaroi woman in law, presented aspects of the legal system, finding that "law finds innovative ways to balance competing interests in property" (p. 169), which results in deliberately denying Indigenous rights.

First Nations Peoples are uniquely diverse with strong connections in identity, spirituality, ongoing obligations to Country (either land, sea and/or inland waters), cultural and social traditions, laws, language, kinship systems, and distinct existing borders prior to colonization. For me as a Yorta Yorta woman and academic (Newitt), sharing Indigenous knowledge is a cultural right and obligation, which informs our connection to land, sea and/or inland waters and our relationship with other First Nations Peoples through our existing borders. The colonial exploitation of constructing British-imposed borders in the years that followed the Union Jack flag-raising land grab in 1788, resulted in relationship changes for Aboriginal and Torres Strait Islander peoples and their Country. British colonialism's continued obsession with power and control is a commodity used and maintained by administering violence and punitive measures on Indigenous peoples (Fredericks & Bradfield, 2021). As Wegman (2017) states, "The first land grants were given to former convicts as a way to control an unfenced prison colony" (n.p.). The violent process of apportioning stolen Aboriginal land by European settlers was based on a hierarchy, much like their social system, such that "land ownership in Australia has been intricately connected with role and status" (Wegman, 2017, n.p.). This reflected the colonially imposed power imbalance between the rich and the poor and the educated and uneducated. Loss of land was just the beginning for Aboriginal people, with loss of language, cultural disconnection, and loss of identities following due to the impact of colonization. Many battles were fought between Aboriginal people and European settlers during the eighteenth and nineteenth centuries, resulting in the Frontier Wars, and the massacring of Indigenous people by white settlers. Ryan's (2020) time-layered cultural map reveals the impact of the massacres that occurred from 1788 to 1930 across Australia and depicts how colonization spread quickly throughout the country.

In terms of borders, the colonizers in Australia dismissed the borders that existed for Aboriginal communities by building fences and other means to signify that the land was claimed to 'now belong' to the white settler. Surveyors gained permission to enter 'unknown' land, to draw maps that indicated the territories where there would be 'rich' soil for crops and agriculture, whether the land was flat or mountainous or whether it was cleared and ready for farming or needed clearing (Wegman, 2017). The surveyors dismissed the existence of the Aboriginal

communities' traditional borders and failed to include the location of these borders in their reports to the colonial government. The pre-colonial borders that had guided Aboriginal people and communities for over 65,000 years – before the commencement of ongoing colonization in 1788 – were completely removed and denied by the white settlers to build the colony 'Australia'. Although a national border was not officially recognized until the Federation of Australia in 1901, it is important to note that colonial borders were imposed well before 1901 (Einspruch & Einspruch, 2012).

Government control policies, such as the Aboriginal Protection Acts, enacted throughout the nineteenth and twentieth centuries, meant that all the activities and movements of Aboriginal and/or Torres Strait Islander people were regulated, controlled, and enforced by police and government officials. This included restriction of movement; people being forced onto reserves or missions; wage control and work 'agreements'; payment of wages in rations; forcible removal of Aboriginal children from family and community; and prohibited engagement in and practising of anything culturally related, including speaking one's language (Wickes, 2008). Behrendt (2002) states that "the concept of Indigenous 'sovereignty' referred to and flowed from a distinct history, a distinct culture, a distinct community, distinct identity" (p. 163). Some results of colonization are that the history, culture, community, and identity of First Nations peoples in Australia have been negatively impacted by the denial of the borders that existed before the European invasion. Maintaining borders maintains control and power. If the Australian government was to 'return' or 'decolonize' borders or indeed was to 'decolonize' any other white institution, it would mean telling the truth of Australia's history by acknowledging pre-colonial borders and admitting wrongdoings by the colonial government. Essentially, this would require undoing – or 'unmaking' – what colonization took and changed. For Australia, specifically the colonial government, it would require meaningful action to address how Aboriginal and/or Torres Strait Islander people have been and continue to be mistreated, such as ongoing racism and social inequality, and the gaps in health, education, and housing; to change the future so the past does not continue. To decolonize the borders throughout Australia would mean more than tearing down the colonial fencing lines – it would mean giving back stolen land that was never ceded and unravelling the legal structures that enabled dispossession.

The power imbalance that exists between Aboriginal self-determination and the Australian legal system is so great that to begin to decolonize borders in a contemporary context seems implausible. In Australia, there has never been a signed treaty between the colonizers and Aboriginal people (Langton, 2001). However, in Victoria, the government and Aboriginal communities began talks in relation to a treaty in March 2016.

Treaty negotiations must include redressing past wrongdoings, which would mean returning stolen land; however, Crown land sits across many Aboriginal communities' borders. Crown land is a colonial concept that dictates where colonial borders sit, without any recognition of pre-existing borders or that these borders might conceivably be returned. Prisons comprise another form of border control due to the restriction and control of people in prisons, a deliberate act of confinement used against First Nations Peoples and immigrants who refuse colonial borders. Authority over decisions as to who is to be imprisoned, the length of their sentence, and the security level of the prison in each case, rests with the Australian legal system, whose interests align with those of the colonial government (Kilroy, 2020). Aboriginal and/or Torres Strait Islander people are denied the authority to determine punishment outcomes for their own people. Therefore, the decolonization of prisons cannot occur while colonial governments hold all the power. Prisons and incarceration must be

dismantled to abolish the settler-colonial borders imposed by the nation-state and to enable First Nations' self-determination and sovereignty to be centred.

Conclusion: prospects for decolonizing and precolonizing colonial borders

Colonial borders are the site of harms both within and beyond the nation-state, harms that are experienced by those seeking to enter (refugees) or those within, whose own borders and communities have been disrespected (First Nations Peoples). We have argued that ongoing struggles against both the external and internal manifestations of the Australian state border have become sites of solidarity for both refugees and First Nations peoples, who often find themselves united in opposition to the oppression of the settler-colonial state (McKinnon, 2020). This is not to suggest that colonial power relations are experienced in the same way by the groups subjected to these borders, or that the project of decolonizing colonial borders is equivalent, or even comparable, in both cases. For example, it might be argued (Mayblin & Turner, 2020 as cited in Avgeri, 2022) that a 'no-borders' agenda – which is one way of opposing the neo-colonial power of contemporary state borders – is inconsistent with Indigenous decolonizing demands that rest on the recognition of prior sovereignty and assertion of precolonial borders.

Indeed, the task of imagining what decolonization might mean in relation to settler-colonial borders and other hegemonic borders that operate according to the logic of neo-colonialism is not straightforward. To move beyond metaphor, 'unmaking' these borders will require challenges to "the vested interest and often complex interrelations within industries engaged in incarceration, border militarization, government lobbying and law making" (Burridge, 2014, p. 465). Thinking outside the border often appears to be a radical act, since borders are inscribed by particular ways of thinking about the world. Decolonization, then, necessitates a reimagining not only of borders – since to focus on borders alone is insufficient – but of relations between people and place. Decolonizing borders could also be understood as a process of abolition that requires new imaginings and new relations *in place* (Simpson, 2014).

In attending to the Australian example, while placing it within the geo-political context of a neo-colonial world order, we urge an appreciation of the significance of local expressions of border control and for attentiveness to place in our research. This approach, we suggest, interrogates the dynamic between local and global which should be at the heart of analysis in an increasingly interconnected world while attempting to undo ways of thinking that tend to privilege the global, thereby erasing local – often Indigenous – knowledges. As Tuck and Yang (2012) advise: "Decolonization is not an 'and'. It is an elsewhere" (p. 36). Accordingly, they suggest we may not know what this "elsewhere" entails until we get there, but that we will move in the right direction if guided by Indigenous sovereignty and futurity.

Notes

1 We respect the diversity of opinion amongst Indigenous/Aboriginal/First Nations people in their naming preferences and use these terms interchangeably in this chapter. We also acknowledge the strong preference when referring to individuals to use names reflecting their specific cultural identity.
2 We use these generic terms in a non-geographic way to distinguish between the affluent countries of the Global North, to which all colonizing nations belong, and those historically exploited countries of the Global South. We acknowledge that these labels tend to erase inequalities experienced by different population groups *within* nation-states.
3 Officer of the Order – an honour that recognizes Australian citizens and other persons for outstanding achievement and service.

References

Aas, K., & Bosworth, M. (2013). *The borders of punishment: Migration, citizenship, and social exclusion*. Oxford University Press.

Anghie, A. (2005). *Imperialism, sovereignty and the making of international law*. Cambridge University Press.

Avgeri, D. (2022). Migration studies and colonialism. By Lucy Mayblin and Joe Turner [Book review]. *Journal of International Affairs*, *98*(2), 776–778.

Balibar, E. (2010). At the borders of citizenship: A democracy in translation? *European Journal of Social Theory*, *13*(3), 315–322.

Balint, J., Evans, J., McMillan, N., Nanni, G., & Reynolds-Diarra, M. (2015). The 'Minutes of Evidence' project: Creating collaborative fields of engagement with the past, present and future. In L. Boucher & L. Russell (Eds.), *Settler colonial governance in Victoria, 1851–1900* (pp. 203–224). ANU Press and Aboriginal History Inc.

Behrendt, L. (2002). Ensuring that sentencing 'alternatives' focus on Indigenous self-determination. In H. Strang & J. Braithwaite (Eds.), *Restorative justice and family violence* (pp. 178–190). Cambridge University Press.

Behrendt, L. (2013). Aboriginal sovereignty: A practical roadmap. In J. Evans, A. Genovese, A. Reilly, & P. Wolfe (Eds.), *Sovereignty: Frontiers of possibility* (pp. 163–177). University of Hawai'i Press.

Boochani, B. (2018a, February). Incarceration, autonomy and resistance on Manus Island. *Arena*. https://arena.org.au/incarceration-autonomy-and-resistance-on-manus-island-by-behrouz-boochani/

Boochani, B. (2018b). Response to Anne Surma. *Continuum*, *32*(4), 527–531.

Briskman, L., Latham, S., & Goddard, C. (2008). *Human rights overboard: Seeking asylum in Australia*. Scribe Publications.

Brown, W. (2010). *Walled states, waning sovereignty*. Zone Books.

Burridge, A. (2014). 'No borders' as a critical politics of mobility and migration. *ACME: An International Journal for Critical Geographies*, *13*(3), 463–470.

Cheliotis, L. (2015). The limits of inclusion: Globalization, neoliberal capitalism and state policies of border control. In L. Weber (Ed.), *Rethinking border control for a globalizing world: A preferred future* (pp. 32–43). Routledge.

Ciocchini, P., & Greener, J. (2021). Mapping the pains of neo-colonialism: A critical elaboration of Southern criminology. *British Journal of Criminology*, *61*, 1612–1629.

Dastyari, A. Nethery, A., & Hirsch, A. (2022). *Refugee externalisation policies: Responsibility, legitimacy and accountability*. Routledge.

Einspruch, A., & Einspruch, A. (2012). *New South Wales*. Pearson Australia.

Evans, J. (2009). Where lawlessness is law. *Australian Feminist Law Journal*, *30*, 3–22.

Fiske, L. (2016). *Human rights, refugee protest and immigration detention*. Palgrave McMillan.

Fredericks, B., & Bradfield, A. (2021). "Waiting with bated breath": Navigating the monstrous world of online racism. *M/C Journal*, *24*(5). https://doi.org/10.5204/mcj.2825

Frelick, B., Kyself, I., & Podkul, J. (2016). The impact of externalisation of migration controls on the rights of asylum seekers and other migrants. *Journal on Migration and Human Security*, *4*(4), 190–220.

Giannacopoulos, M., & Loughnan, C. (2020). "Closure" at Manus Island and carceral expansion in the open air prison. *Globalizations*, *17*(7), 1118–1135.

Gilmore, R.W. (2017). Abolition geography and the problem of innocence. In G.T. Johnson & A. Lubin (Eds.), *The futures of black radicalism* (pp. 225–248). Verso.

Grewcock, M. (2012). The great escape: Refugees, detention and resistance. In E. Stanley & J. McCulloch (Eds.), *State crime and resistance* (pp. 54–67). Routledge.

Hardt, M., & Negri, A. (2004). *Multitude: War and democracy in the age of empire*. Penguin.

Kilroy, D. (2020, July 13). Debbie Kilroy: Why abolish the prison system? *Green Left*. https://www.greenleft.org.au/content/debbie-kilroy-why-we-must-abolish-prison-system

Langton, M. (2001). Dominion and dishonour: A treaty between our nations? *Postcolonial Studies: Culture, Politics, Economy*, *4*(1), 13–26.

Loughnan, C. (2023). Active neglect and the externalisation of responsibility for refugee protection. In A. Dastyari, A. Nethery, & A. Hirsch (Eds.), *Refugee externalisation policies: Responsibility, legitimacy and accountability* (pp. 105–123). Routledge.

Mayblin, L., & Turner, J. (2020). *Migration studies and colonialism*. Polity Press.

Mbembe, A. (2019). *Necropolitics*. Durham University Press.

Mbembe, J.A. (2016). Decolonizing the university: New directions. *Arts and Humanities in Higher Education*, *15*(1), 29–45.

McKinnon, C. (2020). Enduring indigeneity and solidarity in response to Australia's carceral colonialism. *Biography*, *43*(4), 691–704.
Mezzadra, S., & Neilson, B. (2013). *Border as method, or the multiplication of labor*. Duke University Press.
Mongia, R. (1999). Race, nationality, mobility: A history of the passport. *Public Culture*, *11*(3), 527–556.
Moreton-Robinson, A. (2005). Patriarchal whiteness, self-determination and indigenous women: The invisibility of structural privilege and the visibility of oppression. In B. Hocking (Ed.), *Unfinished constitutional business* (pp. 61–73). Aboriginal Studies Press.
Moreton-Robinson, A. (2015). *The white possessive: Property, power, and indigenous sovereignty*. University of Minnesota Press.
Mountz, A. (2011). The enforcement archipelago: Detention, haunting and asylum on islands. *Political Geography*, *30*(3), 118–128.
Nethery, A. (2021). Incarceration, classification and control: Administrative detention in settler colonial Australia. *Political Geography*, *89*(4), 1–10.
Perera, S., & Pugliese, J. (2021). Geographies of violence: Island prisons, prison islands, black sites. *From the European South*, *9*, 85–97.
Pugliese, J. (2004). Subcutaneous law: Embodying the Migration Amendment Act 1992. *The Australian Feminist Law Journal*, *21*, 23–34.
Pugliese, J. (2011). The reckoning of possibles: Asylum seekers, justice and the indigenisation of the Levinasian third. *Australian Feminist Law Journal*, *34*(1), 23–42.
Rooney, M.N. (2016, November 21). *Imagining the other: Its contemporary significance [Blog post]*. https://devpolicy.org/imagining-contemporary-significance-20161121/
Ryan, L. (2020). Digital map of colonial frontier massacres in Australia 1788–1930. *Teaching History*, *54*(3), 13–20.
Simpson, A. (2014). *Mohawk interruptus: Political life across the borders of settler states*. Duke University Press.
Surma, A. (2018). In a different voice: "A letter from Manus Island" as poetic manifesto. *Continuum*, *32*(4), 518–526.
Taylor, S. (2005). The human rights implications of the psycho-social harm caused by Australia's temporary protection regime. *Australian Journal of Human Rights*, *11*(1), 233–261.
Tuck, E., & Yang, K.W. (2012). Decolonisation is not a metaphor. *Decolonization: Indigeneity, Education & Society*, *1*(1), 1–40.
Vasefi, S., & Dehm, S. (2022). Refugee women and the gendered violence of Australia's extraterritorial asylum regime on Nauru. *Refugee Survey Quarterly*, *41*(3), 529–558.
Watego, C. (2021). *Another day in the colony*. University of Queensland.
Watson, I. (2012). The future is our past: We once were sovereign and we still are. *Indigenous Law Bulletin*, *8*(3), 12–15.
Weber, L., & Bowling, B. (2008). Valiant beggars and global vagabonds: Select, eject, immobilise. *Theoretical Criminology*, *12*(3), 355–375.
Weber, L., & Pickering, S. (2011). *Globalization and borders: Death at the global frontier*. Palgrave MacMillan.
Wegman, I. (2017, September 12). Property ownership has been about status and wealth since our convict days. *ABC News*. https://www.abc.net.au/news/2017-09-12/property-has-been-about-status-and-weatlh-since-colonial-days/8892586
Whittaker, A., & Watson, N. (2019). Introduction: First Nations women; law, power, story. *Australian Feminist Law Journal*, *45*(2), 179–184.
Wickes, J. (2008). "Never really heard of it": The certificate of exemption and lost identity. *Indigenous Biography and Autobiography*, *17*, 73–91.
Wonders, N.A., & Jones, L.C. (2021). Challenging the borders of difference and inequality: Power in migration as a social movement for justice. In L. Weber & C. Tazreiter (Eds.), *Handbook of migration and global justice* (pp. 296–313). Elgar.

Part II
State terror and violence

8

Law's violence

The police killing of Kumanjayi Walker and the trial of Zachary Rolfe

Maria Giannacopoulos

To all racialized, but especially Indigenous peoples, the full force of an imposed law's violence is visible and palpable. This is evident from the ways that Indigenous peoples have led the way through activism and knowledge creation to expose the true workings of non-consensual white settler regimes to those in the population who can mindlessly live off the back of law's brutal and fatal force. Irene Watson, who belongs to the Tanganekald, Meintangk Boandik First Nations peoples of the Coorong and the southeast of South Australia, has long argued that "in the beginnings of Australia its foundation relied upon the power of force and so it does still" (Watson, 2007, p. 27). From here she asked, "how do we begin to engage with the continuity of an overpowering force?" (Watson, 2007, p. 27). Following Watson, what are the possibilities for engagement with the colonial state and the violent infrastructure that locks it in place? And how are these possibilities affected depending on who the 'we' undertaking the engagement is? To Watson's question, I add another posed by Jacques Derrida (1992):

> How are we to distinguish between the force of law of a legitimate power and the supposedly originary violence that must have established this authority and that could not itself have been authorized by any anterior legitimacy, so that, in this initial moment, it is neither legal or illegal…neither just nor unjust?
>
> *(p. 6)*

Following Derrida, Australian colonial law becomes visible as "originary violence", which triggers (or at least should) an interrogation of the very meaning of its *legality*. This is because "originary violence" was and remains "neither legal nor illegal". Both theorists point to the critical significance of foundation to a deep understanding of ongoing colonial power exercised through law and in doing this they pose a dual challenge. The methodological challenge of *how* engagement with an illegitimate legal regime should occur is inextricably bound up with the theoretical challenge of *how* we *think law*. In what follows, I draw on the still under-theorized *Nulyarimma* case.[1] Commencing in 1998, the case was an Aboriginal challenge to colonial law brought within the boundaries established by that same law, with applicants seeking recognition for the crime of genocide within Australian law. The refusal of the colonial court to allow such recognition is, I argue, what makes the case so significant. The challenge reveals the impasse

DOI: 10.4324/9781003176619-10

experienced by Aboriginal people when seeking decolonial justice through the channels of colonial law or, as Audre Lorde (1984) famously asserted, "the master's tools will never dismantle the master's house". The *Nulyarimma* challenge offers an activist grounding for a theoretical framework with which to read the acquittal of Zachary Rolfe. The case, through the words of Coe, provides an explanation for why the acquittal of a police officer for an Aboriginal death is the logical outcome of a legal system with an unlawful foundation that functions to secure dispossession in the present.

"No Guns-no guns in our own remote community. We don't want no guns. Enough is enough" ("Zachary Rolf", 2022). These are the words of Walpiri Elder Ned Jampijinpa Hargraves speaking after police officer Zachary Rolfe, who shot and killed Kumanjayi Walker in a remote Aboriginal community in the Northern Territory of Australia in 2019, was acquitted of murder. The Northern Territory, which falls under the control of the federal government, is in the central and central northern regions of Australia and a large proportion of its population is Aboriginal. Although Rolfe entered Walker's home, Yuendumu, Walker's country,[2] and fired more than one gunshot ending Walker's life, the Northern Territory Supreme Court would not equate this police killing with murder. Ned Jampijinpa Hargraves, in a statement issued after the colonial court's verdict, added

> We want a ceasefire. No more guns in our communities. It must never happen again. The police must put down their weapons. We have been saying this since the beginning. We cannot walk around in fear in our own homes.
>
> *(Solidarity, 2022)*

Although some scholars (including in this volume) make a distinction between historic and neo-colonization, this chapter argues that colonial laws founding 'Australia' have generated and maintain conditions for the continuity of colonial power. Hargraves likens the violence of colonial law to wartime requiring a ceasefire. Like others who have mourned and mourn the deaths of Aboriginal people at the hands of this law, Ned Jampijinpa Hargraves also carries the burden of revealing the full force of law's violence while most in the population remain unaware or at least immune from it. As I write, I am aware that the argument I am making will resonate differently with different audiences, depending on each reader's proximity to law's violence. Positionality in relation to law and state power can be a powerful contributor to understanding power relations or the thing that makes the brutality of those powers disappear.

"The legal system is a part of that genocide against our people"

In 1998, Isabel Coe along with her husband Billy Craigie, Wadjularbinna Nulyarimma, and Robbie Thorpe brought an action to the Supreme Court of the Australian Capital Territory to have the crime of genocide recognized in Australian law.[3] The applicants argued that John Howard (former Prime Minister of Australia), Timothy Fischer (former National Party leader), Brian Harradine (former independent Member in the Senate) and Pauline Hanson (former leader of the right-wing One Nation Party) had, by introducing into Parliament and securing the passing of the Native Title Amendment Bill, committed an act of genocide. The applicants asserted that the failure to enact legislation creating statutory offences of genocide, following the Convention on the Prevention and Punishment of the Crime of Genocide (1948), also constituted genocide. Justice Crispin, presiding over the case, found the contentions put by the applicants "obviously somewhat startling" as "it was not readily apparent how allegations relating to the formulation of government policy concerning land rights and the introduction of a

Bill to amend a Commonwealth statute could support charges of genocide". Justice Crispin's response demonstrates (among other things) that a colonial judge whose function is to maintain that law as 'authoritative' must structurally find the claim of colonial law's violence unintelligible. Crispin's unwillingness to read for the killing function of Australian law is bound up with the way this same law systematically denies Indigenous sovereignty (Moreton-Robinson, 2007). When Indigenous sovereignty "has been raised in courts and parliaments, legal and political decisions have in one way or another found in favor of the patriarchal white sovereignty of the nation state" (Moreton-Robinson, 2007, p. 4). Australian law produces colonial violence in each instance that it discriminates in favour of itself.

While the legal system refuses to acknowledge that Aboriginal sovereignty was never ceded (Treaty 88 Campaign, 1988) it has become commonplace in academic circles to make this acknowledgement (Watson, 2020). I suggest that for this to be ethically and logically consistent among knowledge producers, all colonial law stemming from an imposed and violent sovereignty must be seen as violence and must cease to be seen and treated as an authority with authority. While the tendency in academic work across disciplines is to critique specific instances of law's violence, especially within the criminal justice system, what is required is a connection of these specific instances of violence with the foundational role of law in the organization and maintenance of colonial power. The critique of law's violent foundation is essentially the first task for abolitionist work.

The *Nulyarimma* case continued in 1999 and through to 2000 when the applicants sought special leave to appeal in the High Court. So important is Coe's confrontation in and to the Court about its violence that I quote it at length here:

MS COE: Now, you know, it just seems that this is just another form of genocide that is happening right now against our people, and the legal system is a part of that genocide against our people. Now, if we cannot get any justice here, where do we go? We are desperate. Our people are dying everywhere. Just today there is a funeral. You know, we had to make a choice whether we come here or go to a funeral. Now, – there has been at least three this week.

KIRBY J: What is the substantive thing you want to say to the Court?

MS COE: Well we want to say that, you know, this war against our people has to end. It has been undeclared for 212 years.

KIRBY J: Well, this is a Court of law. We are obliged to conform to the law and there are some very complicated legal questions which are before the Court… Now is there anything else you want to say relevant to those issues? We cannot fix up every issue in the country. We can only deal with the matters that are before the Court.

MS COE: Well, I appreciate that but someone has to help us stop the genocide in this country against Aboriginal people. Now, if we cannot get justice here in the highest Court of this country, then I think that this Court is just a party to that genocide as well.

GUMMOW J: No, we will not hear that sort of thing.

(Nulyarimma, Transcript)

Coe identifies and exposes the Court's refusal to curb genocide as a form of genocide itself. She references the ongoing deaths in custody and the death and grief that Aboriginal communities deal with daily, less than a decade after the Royal Commission into Aboriginal Deaths in Custody handed down its 339 recommendations.[4] Justice Kirby, who is often celebrated as progressive in the Australian legal landscape, responds to Coe by asking what the *substantive* thing is that Coe wants to put to the Court. The word substantive has several meanings

including a specific (colonial) legal meaning. In general usage the word refers to something that has substance, is considerable, meaningful and of utmost importance. Kirby's posing of the question requires Coe to put her case even more bluntly. The ongoing and undeclared war against Aboriginal people must end, she asserts. Perhaps Kirby is seeking from Coe something that conforms to the stricter (colonial) legal usage where substantive law refers to law which governs the original rights and obligations of individuals. Substantive law might derive from common law, statutes, or a constitution (Legal Information Institute, 2022). But here is the first colonial impasse. All these typologies, distinctions about what can constitute law, are colonial creations. These categories are created *after* the foundationally violent moment of colonial law's imposition. Coe would never be able to deliver something *substantive* to satisfy Kirby's question, since the *nomopoly* creates the categories that it deems justiciable before the colonial court. Here the etymology of the term substantive can shed further light on the material violence animating colonial law. From Latin, it means to 'stand beneath'. The deaths and systematic killing of Indigenous peoples are precisely what underwrites and stands beneath the violent legal apparatus. As such, Coe's challenge works to reveal the false promise of 'access to justice'. Considered the all-important precursor to the rule of law, access to justice at a national level posits that all Australians "receive appropriate advice and assistance, no matter how they enter our justice system" (Attorney-General's Department, 2016). And according to international law, it is thought that without "access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable" (United Nations, 2022). Member states of the United Nations, of which Australia is one, are required to be "taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all" (United Nations, 2022). But the polemic between Coe and Kirby stands as a significant critique of 'access to justice' which itself can be seen to be a critique of law and its exclusivity. 'Access to justice' is an enduring legal fiction about the possibility of justice within a colonial infrastructure, even after the foundational legal fiction of *terra nullius* was ostensibly overturned in 1992 in the *Mabo (No.2)* decision. As the challenge of the *Nulyarimma* case revealed, even if access to a colonial justice system occurs, decolonial justice is not possible through this channel. Instead, the pseudo-neutral Australian legal framework generates deadly effects and closes off possibilities for Aboriginal justice.

Law and the undeclared war

In Ned Jampijinpa Hargraves' call for a ceasefire and a prohibition of guns in communities and Isabel Coe's demand that the undeclared war against her people ends, we *should* hear through their word choice, and not look away from the inextricable connection they are drawing between law and war. An undeclared war refers to a military-style conflict between two or more nations in the absence of a formal declaration of war. A ceasefire is both the opposite of open fire and an agreement to stop fighting in a war to advance discussions for peace. The challenge here is to understand the role that colonial law with its non-consensual foundations plays in the ongoing war of dispossession. This undeclared war generates violence and death through its overpowering force (Watson, 2007), and the colonial legal regime is both agent and neutralizer of this violence. This is because colonial law, that is, all Australian law, operates as a critical dispossessing machinery but does not always appear as such. Colonial law (at least by those who are not its direct targets) is more often blindly loved and followed because it is presumed to be above and outside of practices of colonialism rather than instrumental in its production. Patricia Hill Collins (2022) argues that force used against marginalized people, "constitutes an essential feature of domination […] yet violence also requires interpretive contexts whose purpose is to

solicit cooperation from elites and subordinated groups alike" (p. 27). Colonial law is one such interpretive context where violence is both produced and obfuscated. The inability or unwillingness to read colonial law as a vehicle for colonial violence but instead to love law for the neutrality and objectivity it claims to bring is what I have termed nomophilia (Giannacopoulos, 2011, 2020). Derived from the Greek *nomos*/law and *philia*/love, nomophilia is an unquestioned tendency to believe in the correctness of 'law'. When nomophilia underpins thinking about colonial law, it disallows its war and domination function to be fully visible, since the structural colonial dimensions of white law are covered over with legal fictions about law's objectivity and neutrality.

Patricia Hill Collins (2022) has argued that one of the major challenges of resisting violence is that its ubiquitousness does not allow it to be conceptualized as violence at all, asserting that "violence can be so routinized as to be invisible" (pp. 36–37). Aileen Moreton-Robinson (2004), a Goenpul woman of the Quandamooka people and Professor of Indigenous Research, has revealed how a logic of white possession is generated through discourse and the repetitive circulation of meanings that come to appear as common sense. A central repetition produced in all arms of the colonial law about itself is the idea that the imposed legal system has a legitimate basis for exercising its violent sovereignty and law over stolen Indigenous lands where sovereignty was never ceded. The logic of white possession is asserted at policing, legislative, judicial, and administrative levels. Each time any of these arms of the colonial infrastructure are at work, white possession and authority over stolen lands are quietly and repetitively reaffirmed. This is precisely why the conceptualization of all arms of colonial law *as* violence is so important. Failing to *see* and *think* of law as violence acts as a key barrier to challenging its violence. But this statement comes with a proviso. This is because "people who experience political domination" recognize and often try to resist the "organisations that organize and enforce institutionalized violence" (Hill Collins, 2022, p. 38). Although many activists and scholars in the US context – one that has many parallels with the Australian settler-colonial society – have pointed out that mass incarceration was a racialized practice when these practices took hold (see Alexander, 2012), many in less targeted white populations supported 'law and order' campaigns. They could not or would not see mass incarceration as an extension of racialized political domination (Hill Collins, 2022, p. 39). With mass incarceration as a racialized practice having a constitutional basis, nomophilia can stand as a barrier to seeing law's violence. When slavery and involuntary servitude were removed from the US legal code, the concession "except as punishment for crime whereof the party shall have been duly convicted" (Hill Collins, 2022, p. 38) generated the basis for the legal machineries of the police force, the judiciary, and the prison system to be available for use against targeted populations. In other words, the relicensing of the racialized regime of white supremacy has a basis in (colonial) law.

Nomopoly: when 'substantive' law is premised on substantive injustice

In the Australian settler-colonial context, where the Australian Constitution follows the originary violence that was "neither legal nor illegal" (Derrida, 1992, p. 6), and so has an illegitimate foundation (Watson, 2007), a monopoly of violence through law or a 'nomopoly' results. The nomopoly presents as a neutral framework without origin but is the vehicle through which the ongoing war of dispossession is licensed and legalized. Sara Ahmed's (2006) concept of non-performativity, the dynamic of *doing something* but not the thing named is central to illuminating the violence of colonial law. Colonial law announced in 1992 that it had overturned *terra nullius* but, in fact, it proceeded to do something other than what it named/said. It is still, to this day, continuing to impose a nomopoly: a monopoly over what can constitute law on

Indigenous lands. This nomopoly lacks consent at its foundation and as such has a killing function. When Indigenous law and sovereignty are foreclosed upon by the operations of colonial law, then this law is a law that kills. 'Nomopoly', etymologically from the Greek *nomos* meaning law and *poleis* meaning exclusive right to sell, is coined here to highlight the exclusive status that Australian/colonial law claims for itself upon Indigenous lands. A nomopoly denotes a monopoly of *nomos*/law. But in a colonial context, it has the added feature of structurally foreclosing the operations of the first laws of Aboriginal peoples by subjecting all to its rule. The nomopoly is as instrumental in the war of dispossession as it is in hiding this same violence. In the leading judgement of the 1992 *Mabo (No.2)* decision, Justice Brennan declared that:

> In discharging its duty to declare the common law of Australia, this Court is not free to adopt the rules that accord with contemporary notions of justice and human rights if their adoption would fracture the skeleton of principle which gives the body of our law its shape and internal consistency […]. Here rests the ultimate responsibility of declaring the law of the nation. Although this Court is free to depart from English precedent which was earlier followed as stating the common law of this country […] it cannot do so where the departure would fracture what I have called the skeleton of principle […]. The peace and order of Australian society is built on the legal system. It can be modified to bring it into conformity with contemporary notions of justice and human rights, but it cannot be destroyed.
>
> *(Mabo (No.2)*

Brennan's judgement reveals the workings of the colonial nomopoly. The law, he says, cannot depart from the law. The legal system that provides 'the law of the nation' is presented as detached from its colonial origin. But it was at the time of Federation that the Constitution was imposed upon Indigenous lands. Australia, as it is currently legally, politically, and economically constituted, came into being in 1901 following the passing of a British Act of Parliament, the Commonwealth of Australia Constitution Act 1900. This was/is "whiteman's law" to use the words of Senior Lawman Murray George, who said that "Aboriginal law must sit on top of whiteman's law, because our law is the law of the land" (Anderson, 2015). But Brennan's assertion is that 'peace and order' result from the imposed legal framework that attempts to usurp the operations of Aboriginal laws. Operating without reference to its colonial foundation, originary violence and its usurping function is Australian law as nomopoly.

Nomocide: the killing of Kumanjayi Walker and the acquittal of Zachary Rolfe

In the aftermath of the fatal police shooting of Walpiri man Kumanjayi Walker at Yuendumu, while in his home and on his country, law's violent impact over Aboriginal life once again came to the fore. In 2019, at the time of the police killing, I attended one of the many rallies organized around the country by Aboriginal communities and activists to mark yet another death in custody. As I approached the steps of the South Australian Parliament House on Kaurna Country in Adelaide, I could feel the grief and the intensity of the crowd that had gathered. Handprints of red paint, simulating blood, had been pressed against the smooth grey marble and granite of Parliament House. The bloody hands on the outside of the Parliament House were a visual articulation of the killings enabled, licensed, and covered up by the workings of that parliament, itself a product of the *nomopoly*. And as Isabel Coe had asserted two decades earlier from within the Supreme Court building, "it just seems that this is just another form of

genocide that is happening right now against our people, and the legal system is a part of that genocide against our people" (*Nulyarimma* Transcript para 439).

In early 2022, after a jury trial, a choice that is possible for the defence to make within the rules of the nomopoly, Constable Zachary Rolfe was acquitted by an all-white jury of all charges for the killing of Kumanjayi Walker (McGlade, 2022). This verdict could only have amplified the grief of Walker's family and communities as the impossibility for Aboriginal justice within the nomopoly was once again laid bare. All-important public debate was prohibited by a suppression order during the trial. I say all-important debate because the time of writing marks 31 years since the Royal Commission into Aboriginal Deaths in Custody handed down its 339 recommendations. Those recommendations continue to be systematically ignored by the colonial state. The deaths continue at an accelerated pace. There have been over 500 deaths in custody since the Royal Commission, which is equal to one every month (McGlade, 2022). Despite this background of deep violence against Aboriginal peoples at the hands of the so-called justice system, the trial functions to individualize justice and promote procedural protections, in this case for the police. Suppression orders prohibiting the publication of evidence or information can be made by judges where they deem that it is in the interests of justice to do so (Director of Public Prosecutions, 2013). Those thinking from within the rule book imposed by the nomopoly might argue that without the suppression order, the fairness of the trial would be compromised for the policeman charged. I am suggesting that in the interests of decolonial justice, we (knowledge producers and non-Indigenous populations) can no longer *think* and judge colonial law in accordance with its own system of logic, since that logic is one that exists to enable dispossession and colonial control. Colonial law, with its violent foundation and its implication in genocide, must be seen as instrumental in producing Aboriginal death. Colonial law must be seen as nomocidal.

Had the suppression order not been made, some information about Zachary Rolfe linking him to the historical role played by police in the violent dispossession of Aboriginal people from their lands could have surfaced. After the trial and Rolfe's acquittal, the suppression order was lifted, revealing his disdain for the communities he was policing and his understanding of his policing function. One text message authored by Rolfe revealed this:

> We have a small team in Alice, IRT (immediate response team). We're not full time, just get called up from GDs (general duties) for high-risk jobs, it's a sweet gig, just get to do cowboy stuff with no rules.
>
> *(Park & Butler, 2022)*

In another text message Rolfe wrote:

> Alice Spring sucks ha ha. The good thing is its like the Wild Wild West and fuck all the rules in the job really […] but it's a shit hole. Good to start here coz of the volume of work but will be good to leave.
>
> *(Park & Butler, 2022)*

In Rolfe's text, the accuracy of the claim that there is an undeclared war occurring through law and policing is borne out. Chris Cunneen's (2017) work has revealed the historical role played by police in colonizing Australia, showing that, unlike any other group, Indigenous peoples were subjected to military-style policing, akin to a state of war, by paramilitary policing units such as the Mounted Police and Native Police forces. Cunneen (2017) argues that this form of policing was integral to the expansion of the British jurisdiction in Australia, and it

was influenced in its intensity by the degree of Indigenous resistance to the colonial will. In Australia, Indigenous people, in their resistance, were not policed by consent – and if consent is the mechanism through which legitimacy for policing is gained, then it remains absent to the present day. Details of a paramilitary style of policing in the modern day were protected by a suppression order in the Rolfe trial. The historical context and origins of colonial policing which operated in tandem with colonial law's violent foundation were removed from view in favour of procedural rules that self-represent as fair and objective while obfuscating deeper violence.

At the time of Walker's death, the Yuendumu community and protestors nationwide were asserting culpability for murder and death that was bigger than the potential verdict of guilt or innocence for Zachary Rolfe. Calls were being made by protestors that drew a line of causation from the deaths perpetrated by the state and officers of the law to the critical absence of self-determination. At the rally on Kaurna land (Adelaide), I heard this: "We don't need this Government, we have been governing this place for millennia!" Another placard read: "Your laws are killing us". An Aboriginal elder at the rally in Adelaide called out to the police who were surrounding the protestors on the North Terrace: "This is a peaceful protest. Why do you bring your guns?" Within these cries for justice reverberates the call to abolish colonial law and all violence that it licenses and then attempts to cleanse. These are the calls to abolish the nomocidal regime, to abolish the law that kills.

Abolition of colonial law as the impossible

With Zachary Rolfe having been absolved of all culpability for the death of Kumanjayi Walker, the evidence on law's violent machinery continues to build. And, while the Yuendumu community is calling for an end to guns in their community, a national gun amnesty is occurring across Australia, "with holders told to surrender their illegal firearms or face the full force of the law" (Australian Associated Press, 2022). The authorities, i.e., the colonial state, are assuring citizens that if they surrender an illegal firearm they will not be penalized. To encourage people further, Crime Stoppers Australia chair, Vince Hughes, said people should consider how they would feel if they had information about an illegal gun that was then used to harm or kill someone. He continued, "Criminals often go to great lengths to obtain a firearm illegally and then conceal it from authorities, and it's unlikely they would go to that effort unless they are prepared to use it". This gun amnesty reveals the distinctions drawn by the colonial state to conceal its own violence and its power to kill. The legal/illegal firearm dichotomy also establishes the colonial state/criminal distinction. Although it is often cited in these debates that Australia has not had a mass shooting since the Port Arthur massacre in 1996, the deaths of Aboriginal people at the hands of police armed with guns are removed from view. The ability to hold and use firearms legally is generated by the rulebook of the colonial nomopoly. The fact that the police have the legal power to hold and use guns on Aboriginal lands reveals the definition of (colonial) law as the strongest form of violence (Derrida, 1992).

When it comes to Indigenous peoples, Australian law and policing do not deal with crises – they both produce and *are* the crisis. I am aware that peoples most targeted by law's violence will find this conclusion obvious and logical, while the ones who are invested in the logic of the nomopoly will find it extreme. In the latter group, there will be a tendency to hold onto comforting fictions that law is about peace and order and that policing is about public safety. The verdict in the case of Zachary Rolfe has failed to deliver justice to Aboriginal people and reveals, for all those willing to look, exactly what is at stake in continuing to turn to colonial law for resolutions to colonial violence. The challenge for all scholars, but especially

those producing knowledge in law and criminology, is clear. How will we move beyond our investments in colonial law frameworks and their self-justifying and responsibility-avoiding logics to face, understand, and work with the reality of the deathly impact of colonial law upon dispossessed people?

Isabel Coe's protest within the High Court in 1999 correctly anticipated the death and harm that would continue to transpire if law were to remain deaf to its own complicity in ways that prevent justice. If the High Court and other colonial legal apparatuses foreclose on Indigenous sovereignty even as they seem engaged in further fact-finding about escalating issues, then an implicit challenge exists. This is to see law for what it really is and does in a colonial context. A legal system that lacks consent at its foundation and is characterized, in the present day, by a refusal to examine and engage with its violent origin, while continuing to cause deaths of Indigenous peoples and country, is nomocidal. I argue, following Isabel Coe, that an unresponsive death-producing law is a part of the genocide experienced by Aboriginal people. I name this death by law 'nomocide', an arm of genocide that captures the unique functions performed by law in reproducing and repetitively maintaining colonial conditions in Australia. Recently I listened with great interest to the Annual John Barry Lecture given by Professor Chelsea Watego (2022), hosted by the Department of Criminology at the University of Melbourne. Professor Watego made a compelling case for the abolition of the discipline of criminology because it is so deeply linked to the colonising function of the state. Abolition is a project of love, Professor Watego argued; it is about rethinking and rebuilding, and is not simply destructive as nomophilic readings of it might suggest. But this got me thinking. If we can be convinced that criminology must be abolished, must we not also consider how to abolish the larger colonial infrastructure from which the criminal justice system and so criminology stem? Doing this might allow us to fully see and so address the deep sovereign debt owed to Aboriginal people and grasp why justice through colonial law will continue to be elusive. This would require a "critical love" (Giannacopoulos, 2020) to interrupt the killing function of a regime that says it is about peace and order.

Notes

1 For an extended analysis of this case see Giannacopoulos (2021).
2 Ambelin Kwaymullina (2005) explains that "For Aboriginal peoples, country is much more than a place. Rock, tree, river, hill, animal, human – all were formed of the same substance by the Ancestors who continue to live in land, water, sky. Country is filled with relations speaking language and following Law, no matter whether the shape of that relation is human, rock, crow, wattle. Country is loved, needed, and cared for, and country loves, needs, and cares for her peoples in turn. Country is family, culture, identity. Country is self."
3 In the matter of an application for a writ of mandamus directed to Phillip R Thompson Ex parte Wadjularbinna Nulyarimma, Isabel Coe, Billy Craigie, and Robbie Thorpe (Applicants), Tom Trevorrow, Irene Watson, Kevin Buzzacott and Michael J Anderson (Intervenors) [1998] ACTSC 136.
4 The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (1987-1991) was a Royal Commission appointed by the Australian government in October 1987 to study and report upon the underlying social, cultural and legal issues behind the deaths in custody of Aboriginal people and Torres Strait Islanders, in the light of the high level of such deaths. See Royal Commission into Aboriginal Deaths in Custody (1998).

References

Ahmed, S. (2006). The nonperformativity of antiracism. *Meridians: Feminism, Race, Transnationalism*, 7(1), 104–126.

Alexander, M. (2012). *The New Jim Crow: Mass incarceration in the age of colorblindness*. The New Press.

Anderson, M. (2015, October 15). Queen got no right here. This is our country under our Tjukurpa law… Murray George. *Sovereign Union – First Nations Asserting Sovereignty*. http://nationalunitygovernment.org/queen-got-no-right-here-our-country-under-our-tjukurpa-law-murray-george

Attorney-General's Department. (2016). Access to justice. https://www.ag.gov.au/legal-system/access-justice

Australian Associated Press. (2022, February 3). Hand it in: Gun amnesty targets 260,000 unregistered firearms across Australia. *The Guardian*. https://www.theguardian.com/australia-news/2022/feb/03/hand-it-in-gun-amnesty-targets-260000-unregistered-firearms-across-australia

Commonwealth Director of Public Prosecutions. (2013). Guidelines and directions. https://www.cdpp.gov.au/sites/default/files/CDPP-GDM-Suppression-Orders.pdf?acsf_files_redirect#:~:text=Suppression%20orders%20are%20orders%20made,Commonwealth%2C%20State%20or%20Territory%20legislation

Cunneen, C. (2017). Police violence: The case of Indigenous Australians. In P. Sturmey (Ed.), *The Wiley handbook on violence and aggression* (pp. 1591–1602). John Wiley and Sons.

Derrida, J. (1992). Force of law: The 'mystical foundation of authority'. In D. Cornell, M. Rosenfeld, & D.G. Carlson (Eds.), *Deconstruction and the possibility of justice* (pp. 4–67). Routledge.

Giannacopoulos, M. (2021). White law/black deaths: Nomocide and the foundational absence of consent in Australian Law. *The Australian Feminist Law Journal*, *46*(2), 249–263.

Giannacopoulos, M. (2020). Without love there can be law but not justice. *Globalizations*, *17*(7), 1085–1090.

Giannacopoulos, M. (2011). Nomophilia and bia: The love of law and the question of violence. *Borderlands*, *10*(1). https://go.gale.com/ps/i.do?id=GALE%7CA267422555&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=14470810&p=AONE&sw=w&userGroupName=anon%7E668ef4bc

Hill Collins, P. (2022). Violence and intersecting power relations. In S. Perera & J. Pugliese (Eds.), *Mapping deathscapes: Digital geographies of racial and border violence*. Routledge.

Kwaymullina, A. (2005). Seeing the light: Aboriginal law, learning and sustainable living in Country. *Indigenous Law Bulletin*, *6*(11). http://classic.austlii.edu.au/au/journals/IndigLawB/2005/27.html

Legal Information Institute. (2022). *Substantive law*. https://www.law.cornell.edu/wex/substantive_law

Lorde, A. (1984). *Sister outsider: Essays and speeches*. Crossing Press.

McGlade, H. (2022, March 15). All white juries are a symptom of structural racism. *NITV*. https://www.sbs.com.au/nitv/article/2022/03/14/opinion-all-white-juries-are-symptom-structural-racism

Moreton-Robinson, A. (2004). The possessive logic of patriarchal white sovereignty: The High Court and the Yorta Yorta decision. *Borderlands*, *3*(2), 1–9. https://eprints.qut.edu.au/7690/

Moreton-Robinson, A. (2007). Introduction. In A. Moreton-Robinson (Ed.), *Sovereign subjects: Indigenous sovereignty matters* (pp. 1–14). Routledge.

Nulyarimma & Ors v Thompson C18/1999 (2000). High Court of Australia. Transcript.

Park, M., & Butler, D. (2022, March 18). 'Cowboy stuff with no rules': Zachary Rolfe text messages to army friend revealed. *NITV*. https://www.sbs.com.au/nitv/article/cowboy-stuff-with-no-rules-zachary-rolfe-text-messages-to-army-friend-revealed/wixpuioj4

Royal Commission into Aboriginal Deaths in Custody. (1998). Royal commission into aboriginal deaths in custody. *Australasian Legal Information Institute*. https://www.indigenousjustice.gov.au/resources/royal-commission-into-aboriginal-deaths-in-custody/

Solidarity. (2022, March 11). Ned Hargraves: No more guns in our communities, it must never happen again. https://www.solidarity.net.au/highlights/ned-hargraves-no-more-guns-in-our-communities-it-must-never-happen-again/

Treaty 88 Campaign (1988). Aboriginal sovereignty – never ceded. *Australian Historical Studies*, *23*(91), 1–2. https://doi.org/10.1080/10314618808595786

United Nations. (2022). Access to justice. https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/

Watego, C. (2022). *Who are the real criminals? Making the case for abolishing criminology [Lecture]*. Youtube. https://www.youtube.com/watch?v=B6uwQylOyv4

Watson, I. (2007). Aboriginal sovereignties: Past, present and future (im)possibilities. In S. Perera (Ed.), *Our patch: Enacting Australian sovereignty post-2001* (pp. 23–43). Network Books.

Watson, J. (2020, March 18). How the acknowledgement of Country became a core custom-and why it matters. *ABC News*. https://www.abc.net.au/news/2020-03-18/history-indigenous-acknowledgment-of-country-national-custom/12029886

Rolfe, Zachary. (2022, March 11). Policeman acquitted of murdering Aboriginal teenager. *BBC News*. https://www.bbc.com/news/world-australia-60703420

9

The criminalization and racialization of Palestinian resistance to settler colonialism

Adan Tatour and Lana Tatour

'Dad, did you see the Shahid [martyr] Muhammad? Did you see how they shot him in his forehead? Did you see the red dot?' Referring to the 17-year-old martyr Muhammad Kiwan from Umm al-Fahm, who was shot dead by the police, this is the first thing that 13-year-old Muhammad Shadi Sa'adi told his father following his release from police detention yesterday.

Yesterday, I met this champion, Muhammad, when we arrived at the Hadera police station. When we got there, they took off our blindfolds. We had spent three hours in darkness. During that time, the police threatened to kill us, pointing a gun to our heads. While we were inside the car of the Mista'arevim [a notorious Israeli counter-terrorism unit whose members disguise themselves as Arabs], we had no idea where they were taking us. The first thing I saw when they took off the blindfold was the smile of Muhammad—seeing that smile allowed me to take a deep breath and smile back at him.

Make no mistake. Muhammad was not arrested by the police. He was kidnapped by the Mista'arevim after he had participated in Muhammad Kiwan's funeral. They got out of their vehicles, which were disguised as civilian cars, with their faces covered and attacked him on the street, kicking and punching him all over his body. They threatened him with their guns and took him to the car. From that moment, they covered his eyes and he couldn't see or know where they were taking him. I was kidnapped and beaten, too.

They hit him more in the car, forcing him to put his head between his legs, and threatened to put a bullet in his head if he dared to move or resist his kidnapping. At some point, we arrived at a police station. From what I could gather, it was the Umm al-Fahm station. Muhammad told them that he was minor, a child, and that he hadn't done anything. I tried to talk to him and reassure him, but with every attempt we were both beaten and threatened. Whenever Muhammad tried to explain that he was a minor, they would laugh at him and then beat him again. After a while, they tied his hands behind his back with plastic handcuffs, tightening them again and again. This hurts beyond imagination. They took the handcuffs off only after we had arrived at the Hadera police station, three hours later.

He was interrogated in the Hadera police station. He was prevented from seeing a lawyer or having his parents present, which is against the law, and the police

DOI: 10.4324/9781003176619-11

> interrogators tried to coerce him to confess. But Muhammad was strong and persistent in his refusal to do so. It is thanks to his strength that he was able to return to his parents, who were deeply concerned about and proud of their son.
>
> What Muhammad has gone through is a crime against any child and against any Palestinian. The acts of kidnapping and terrorizing speak to the oppressive racist institutions that our youth and young are facing.
>
> The Sumud of Muhammad and his resistance to this terror is one of many examples of a new generation that is challenging Israel. In their leadership and strength, they are writing a new chapter in our history.
>
> (Kayyal, 2021, n.p.)

The story of Muhammad Shadi Sa'adi, a 13-year-old boy arrested by Israeli forces during the Unity Intifada, was shared on social media by the Palestinian activist Ward Kayyal. Sa'adi and Kayyal were arrested in the Palestinian city of Umm al-Fahm after the funeral of 17-year-old Muhammad Kiwan, who was killed by Israeli police in the Unity Intifada (also known as the Unity Uprising or the May Uprising). In May 2021, protests against Israeli settler colonialism spread across historic Palestine – East Jerusalem, the West Bank, '48 Palestine (Israel), and the Gaza Strip – and the *shatat* (diaspora). The catalyst for the uprising was the expulsion of six Palestinian families from their homes in the Jerusalem neighbourhood of Sheikh Jarrah, Israel's brutal violence against Palestinians in the old city of Jerusalem, and Israel's repeated raids on Al-Aqsa Mosque and assault on worshippers during the holy month of Ramadan. What began as a series of protests evolved into a popular uprising uniting all Palestinians in the struggle for liberation.

Israel saw the Unity Intifada as a threat. Its colonization and domination of Palestinians rely on the fragmentation of the Palestinian people into separate groups and on a differentiated citizenship regime that distinguishes not only Jews from Palestinians but also Palestinians from each other. Israel has divided Palestinians into those who hold Israeli citizenship, East Jerusalemites with Israeli residence status, Palestinians under military occupation in the West Bank and under brutal siege in Gaza, and refugees. Viewing Palestinian unity as a danger to the state's ability to sustain its colonial project, Israel responded to the Unity Intifada with full force, suppressing protests with a massive offensive of police and military violence, as well as conducting a bombing campaign in Gaza that killed hundreds of Palestinians and obliterated entire families. Mass arrests of Palestinian protestors were among the main strategies that Israel used to suppress the uprising. Thousands were arrested and detained across historic Palestine.

Israel's criminalization of Palestinians and their resistance has a long history to it. Since its inception, Israel has been detaining and arresting Palestinians for their political activism and resistance. In fact, Israel's first act of criminalization was the creation of the legal category of 'infiltration' immediately after the establishment of the state in 1948, as part of its War on Return, that is, Israel's attempts to prevent Palestinian refugees from returning to their homeland and their lands, especially during the first decades of the Israeli state (Robinson, 2013, p. 74). The category of 'infiltration' aimed to criminalize Palestinian refugees who tried to return to their homes and villages as illegal infiltrators and aliens in their own homeland – and it still does (Korn, 2003; Rozin, 2016; Shalhoub-Kevorkian, 2015, 2016).

Rashid Khalidi reminds us that the settler state, including the Israeli state, is always also a carceral state:

> Fencing off lands to prevent access by their indigenous owners, or walling in, confining, and otherwise restricting the native people of the land to 'reservations' in order to allow the settler population freedom of movement and action, all the while imprisoning (or killing)

> those who actively contest the legitimacy of the colonial project, are typical characteristics of settler-colonial endeavors.
>
> *(Khalidi, 2014, p. 5)*

In the context of Palestine, he adds:

> Israel has taken the traditional approaches of isolation, containment, and control to new heights. It has done so by creating settlement blocs strategically sited to separate, isolate, and break down Palestinian population concentrations; a web of walls, fences, crossing-points, and checkpoints, as well as a segregated road network, and a highly sophisticated system for the regulation of Palestinian movement; and a vast prison structure overseen by an intrusive and omnipresent intelligence service and a tame and subservient military and civil legal apparatus. In short, this is a vast carceral edifice.
>
> *(Khalidi, 2014, p. 5)*

Carcerality in Palestine and of Palestinians, as scholars have argued, operates as a "settler-colonial technology of confinement, containment and terror" (Jadaliyya, 2022). Arrests, interrogations, detentions and incarceration are part and parcel of Palestinian life under the Israeli colonial regime. At any given moment, there are thousands of Palestinians in Israeli prisons and many more are routinely detained and interrogated. According to the Addameer Prisoner Support and Human Rights Association (2022), as of July 2022 there were 4,650 Palestinians in Israeli prisons. And, since 1967, between 800,000 and one million Palestinians have been arrested by Israel, representing between 40 and 50 percent of the male population in Palestine (Khalidi, 2014; Jadaliyya, 2022). The numbers are even larger if we take into consideration the period between 1948 and 1967, for which no statistics are available.

This chapter examines one aspect of carcerality: mass arrests. It focuses specifically on ''48 Palestinians' during the Unity Intifada in May 2021 and the use of mass arrests by Israel as a colonial technology to stifle Palestinian resistance and to criminalize and racialize Palestinians as lawbreakers, security threats, and criminals. For Israel, the participation of '48 Palestinians – who hold Israeli citizenship and comprise one-fifth of Israel's citizenry – in the uprising was especially concerning, given that it destabilizes what Israel considers its internal colonial frontiers. Israel watched with worry as protests swept towns and villages from the Naqab (Negev) in the south to the Jalil (Galilee) in the north. Israel responded by brutalizing and arresting activists and protestors. Between 9 May and 3 June 2021, 1,951 protestors, including many minors, were arrested in '48 Palestine'. The targeting of children and the young is not new and it is deliberately designed to inflict harm on Palestinian families and communities and to (unsuccessfully) undermine their commitment to resistance (Shalhoub-Kevorkian, 2019; Viterbo, 2021).

The levels of violence unleashed on '48 Palestinians during May 2021 were immense. Israeli security forces, along with Israeli settlers, worked in cahoots to beat, lynch, and terrorize Palestinians, attacking them in their towns and cities, on the streets, and in their homes. Armed Israeli settlers, protected by Israeli police, marched into Palestinian cities – especially Lydda, Jaffa, Acre and Haifa – looking for victims to lynch and cars, shops, and property to burn. Settlers attacked mosques and used lasers to mark Palestinian homes as targets for arson and attack, all while Israeli police fired rubber bullets, live ammunition, stun grenades, and tear gas on Palestinians (Who Profits, 2021). Muhammad Kiwan from Umm al-Fahm and Moussa Hassouna from Lydda were martyred: Kiwan was shot dead by Israeli police and Hassouna by settlers.

For Palestinians in these cities and across the country, the violence they experienced was a painful echo of the Nakba and a reminder that Palestinians are always a target for elimination and expulsion. Tamer Abu Kishek from Lydda, who went with others to protect the city's mosque, stated: "It looks like I won't be returning home today. Either I come back in a burial cloth or I don't know what my fate holds. This is their attempt to kick us out of Lydd, to implement another massacre" (+972 Magazine, 2022). Given that the police, along with the settlers, were the perpetrators, most Palestinians did not report the violence that they suffered as this would only subject them to further police brutality. Instead, they self-organized to protect their homes, families, communities, property, and holy sites. Israel, in response, indicted hundreds of young Palestinians with hate crimes and terrorist acts.

On the first anniversary of the uprising, the Office of the State Attorney (2022) released a report characterizing its work at that time – the prosecution of hundreds of Palestinians – as an "important national task" (p. 1). The report frames the events of May 2021 as coordinated attacks by Palestinians on Israeli security forces, Jews, and state property. While it mentions "attacks of Jews by Arabs and of Arabs by Jews", the report makes clear that "most of the [attacks] were carried out by Arab citizens against Jews and few were carried out by Jews against Arabs" (Office of the State Attorney, 2022, p. 1). This account plays into and reproduces racist, colonial, and orientalist depictions of Palestinians as barbaric, violent, and a danger to public safety and (Jewish) security. It is intended to justify the extensive criminalization of Palestinians and the disparity in the indictments between Palestinians and Jews, in terms of both numbers of indictments and the types of offences attributed to Palestinians compared to Israeli Jews. Of the 616 defendants charged, 545 were Palestinians and only 71 were Jewish Israelis (Office of the State Attorney, 2022). Many of the Palestinians faced charges of terrorism and hate/racist crimes, which warrant more severe punishment under Israeli law (Office of the State Attorney, 2022). The over-criminalization of Palestinians, especially for their activism, is not new. Between the years 2014 and 2021, 77 percent of all indictments for incitement to violence and racism were against Palestinians and all but two of the indictments resulted in a conviction, compared with two-thirds against Israeli Jews (Kashti & Mannit, 2022).

In this chapter, we chart how the Israeli justice system operates as part and parcel of the Israeli settler-colonial enterprise and its violence, as well as the legal narratives and means by which Palestinians are produced as criminals for resisting colonial domination and dispossession. The chapter proceeds in three parts. In the first part, we look at the use of mass arrests as a colonial tool to suppress Palestinian resistance and we detail the nature of arrests, police violence, and the violation of the basic rights of detainees during the uprising. The second part focuses on indictments of Palestinians and shows how the Office of the State Attorney mobilized racialized legal categories that enabled it to subject Palestinians to more severe punishment – allowing for the doubling of prison sentences – by classifying offences as racist or terrorist crimes, or both. The third part focuses on how Israeli discourse has tied the uprising to the rising crime rates in Palestinian society in recent years, thereby erasing the political and anticolonial nature of the protests. In this part, we identify a dual process that we frame as the securitization of crime (treating crime as a security issue) and the criminalization of resistance (treating political activism and mobilization as a criminal issue). The entwining of crime and resistance facilitates the labelling and treatment of Palestinian protestors as criminals.

Importantly, this chapter draws on the experience of co-author Adan Tatour, a human rights lawyer and activist, who – together with a group of Palestinian lawyers, all of whom are women – provided legal aid during the Unity Intifada in Haifa.

Mass arrests as a colonial tool

Protests by '48 Palestinians in solidarity with Sheikh Jarrah and against Israeli attacks on Al-Aqsa Mosque erupted on 9 May 2021 with demonstrations in Haifa and Nazareth. On the first evening, 16 protestors were arrested and assaulted in Haifa and 14 in Nazareth. In the following days, protests continued to spread, including in Shefa-Amr, Jaffa, Umm al-Fahm, Ein Mahil, Tamra, Baka al-Gharbiyye, Majd al-Krum, 'Arabe, Shaqib al-Salam, al-Be'ene, Zarazir, Lydd, Ramla, Kafr Kanna, Jaljulia, Kafr Manda, Jadeide al-Makr, and Kafr Qara (Bakri, 2021; Tatour, 2021). As resistance continued to grow, Israel ramped up mass arrests to suppress protests. On 10 May, the second day of protests, more than 100 were arrested, with the number increasing to 270 on 11 May (Israel Police, 2021a). Between 9 and 15 May, more than 900 arrests were recorded (Israel Police, 2021b), and, in total, Israel arrested 2,000 Palestinians with Israeli citizenship during the Unity Intifada (Breiner, 2021a).

Human rights lawyers, all of whom were volunteers, immediately began to mobilize, heading to police stations to determine how many protesters had been arrested, along with their names and medical conditions, and to provide legal counsel and advice to detainees. The number of detainees and the levels of violence they witnessed grew with each day. This led a group of Haifa-based lawyer-activists – all of whom are women – to publish two ad-hoc reports in Arabic and English during the uprising in order to draw attention to the violation of both detainees' basic rights and their lawyers' rights. The first report, *The Terror of Israel's Arrests*, was published on 15 May, just one week after the protests had begun. The report documented what lawyers witnessed in police stations and in the courts, as well as the use of mass arrests – which included the arbitrary detention of activists, protestors, bystanders, and people using their cameras to document police brutality – by Israel to "terrorize Palestinians and deter them from protesting and taking to the streets" (LDUD, 2021a, n.p.).

Detainees were subjected to excessive beatings by Israeli security forces. The resulting injuries were visible all over their bodies. Physical violence was a common practice and it was exercised during arrests, in crowded and stifling police vehicles as detainees were transported to police stations and detention centres, and in police stations and Shabak (the Israeli General Security Services) interrogation facilities. Detainees suffered:

> fractures in their feet, hands, back and neck, as well as injuries in their eyes, face, and head. Police continued to beat detainees with batons and rifle butts; they stepped on their heads and necks for minutes, and deliberately slammed their heads against the ground, walls, and cars.
>
> *(LDUD, 2021a, n.p.)*

On 9 May, for example, 40 percent of the detainees in Haifa had been beaten so badly that they required medical care (Mureih & Hasan, 2021). With each day, the level of police brutality continued to increase. The Palestinian human rights organization Adalah, the Legal Center for Arab Minority Rights in Israel, documented a designated 'torture room' in Nazareth police station, where protesters, minors, bystanders, and even attorneys were tortured. According to Adalah:

> [P]olice officers led the detainees to a room located on the left side of the entrance corridor to the station, forcing them to sit on the floor handcuffed, to lower their heads towards the floor, and began to beat them on all parts of their bodies, using kicks and clubs, slamming their heads against walls or doors, and more. Officers wounded the detainees, terrorized them, and whomever dared to lift his head upwards risked more beatings by officers. According to affidavits, the floor of the room was covered in blood from the beatings.
>
> *(Adalah, 2021a, n.p.)*

Detainees with serious head injuries and broken bones in Nazareth, Haifa, and elsewhere were denied medical care and access to lawyers. In many cases, the police conditioned the provision of first aid and medical care on the signing of a release with restrictive conditions and without legal counsel (Adalah, 2021a; LDUD, 2021a).

Detainees were also subjected to mental violence. Officers from Israel Police, the Shabak, and the Mista'arevim unit threatened detainees, often blindfolded, to kill, kidnap or make them disappear. They also applied emotional pressure on detainees and used their families as bargaining chips (Hamakor, 2021). In Haifa, for example, lawyers alerted the police that one detainee suffered from serious mental health issues. The police, in turn, used the information to intimidate and pressure the detainee during interrogations, leading to a severe anxiety attack that required them to be hospitalized (LDUD, 2021a).

Lawyers also reported incidents they had witnessed firsthand of police randomly accusing detainees of offences and planting evidence, such as stones, to incriminate them (Hamakor, 2021; LDUD, 2021a). Since arrests were carried out on such a large scale, police often did not remember why, how, when, or where they were made. Forced to file reports, they would arbitrarily attribute offences – such as assaulting police or throwing stones – to detainees.

The police violated the rights of detainees to legal counsel. They abused their power by obstructing the work of lawyers, refusing to provide them with or delaying access to detainees and preventing them from even entering police stations. Soheir Asaad, for example, one of the volunteer lawyers in Haifa, described how she and other lawyers waited for 14 hours to gain access to detainees:

> In Haifa there are 38 detainees as of last night and we are still waiting from 9pm to see most of them to give them legal advice. The police have been stalling us for hours and are preventing us from seeing detainees. Some of them are being interrogated without legal counsel, with minors being interrogated without parents present, and while injured and without medical care.
>
> *(Asaad, 2021)*

In Umm al-Fahm, lawyers reported, the police closed down the police station altogether and stopped answering the phones, refusing to let lawyers enter the station (LDUD, 2021a). In Nazareth and other locations, lawyers were themselves arrested. In cases where detainees were subjected to Shabak interrogations, they were denied access to legal counsel for days.

Arrests were clearly aimed at preventing Palestinians from protesting. The Office of the State Attorney issued instructions to "keep the largest number of detainees in cells", regardless of the evidence against them (LDUD, 2021b, n.p.). Protestors were to be kept in custody for participating in demonstrations, thus criminalizing them merely for protesting. The demonstrations were labelled 'violent riots.' In one of many cases, the Public Prosecution claimed:

> This morning we submitted to the District Court an appeal that we see as extremely important, given the events. The appeal was submitted following a decision of the Magistrate's Court to release to house arrest four detainees who participated in riots but were not observed throwing stones. In our appeal, we argued that the situation in the field is an important parameter that needs to be taken into account when evaluating the dangerousness of the defendants. In the current situation, anyone who participates in a violent riot—even if he is not actually observed throwing stones at police officers—demonstrates by his actions that he is dangerous.
>
> *(Office of the State Attorney, 2021a, n.p.)*

Minors also faced mass arrests, and one-third of the indictments were against minors (Office of the State Attorney, 2022). This led the group of activist-lawyers to publish a second updated report that was dedicated exclusively to violations of the rights of minors, documenting how Israeli police and prosecutors exploited the vulnerability of minors and prevented from having their lawyers and parents present during interrogations. The interrogations were conducted in Hebrew rather than Arabic – the children's native tongue – and in the middle of the night, with interrogators practising "deceptive methods against the children to extract confessions from them" and coercing them to sign documents in Hebrew (LDUD, 2021b, n.p.), in violation of both Israeli and international law. As it did with adult detainees, the Office of the State Attorney insisted that children be remanded in custody until the end of proceedings, which meant they could effectively spend months in prison. It appealed the decisions of the Magistrates' and District Courts to release children altogether or to release them to house arrest. Children and young people were subjected to severe beatings, threats, and intimidation and were denied medical care. In Lydd, for example, a 14-year-old boy who was shot in the leg by police was refused medical treatment. When local residents tried to drive him to the hospital in a private car (despite repeated pleas, an ambulance never arrived at the scene), they were stopped by the police. The wounded boy was instead taken by the police and beaten in the police car. Only hours later was he finally brought to the hospital (+972 Magazine, 2022).

Racializing Palestinian resistance as terrorism and hate/racist crimes

According to data from the Office of the State Attorney (2022), during the uprising, 397 indictments against 545 defendants, including minors, were filed against Palestinians in East Jerusalem and Israel (see also Breiner, 2021a). The indictments included serious offences such as malicious endangerment of people on a traffic route, assault of a police officer in the performance of their duty, assault of a police officer under aggravating circumstances, interference with a police officer in the performance of their duty, throwing stones, arson, misconduct in a public place, vandalism, incitement to violence, terrorism and racism, murder, and attempted murder (Office of the State Attorney, 2021b).

Israel classified many of these offences as racist crimes and/or terrorist acts. The attribution of racial, nationalist, or terroristic motivations created racialized legal categories that enabled prosecutors to subject Palestinians to aggravated punishment. In relation to offences that are classified as racist crimes, the Office of the State Attorney (2021c) stated that

> the legislature sees the severity of offences based on racist motivations or based on hatred and hostility to specific people and sets that the punishment for such offences will be double the punishment specified for the offence in law or 10 years, whichever is the lower.
>
> *(n.p.)*

Israel also applied the Anti-Terror (Counter-Terrorism) Law, which doubles the punishment for specific offences, to impose sentences of up to 25 years (Office of the State Attorney, 2022). In some cases, it alleged both racist intent and terrorism. Importantly, racial and terrorist motivations were applied to offences against not only people but also property. For example, five Palestinian Bedouin from the Naqab were charged with toppling 12 light poles. Israel used the definition of terror under the Anti-Terror (Counter-Terrorism) Law to classify this as a terrorist act based on "nationalist, religious and ideological motivation" (Ben Zikri, 2021, n.p.).

While, in theory, this policy applied to both Jewish and Palestinian defendants, in practice it targeted Palestinians. Accordingly, Palestinian defendants who were sentenced to less than

10 years in prison saw a doubling of their sentences (Bendal, 2022). In total, 37 percent of Palestinian defendants were charged with crimes classified as either racially motivated or terrorist acts, or both (Office of the State Attorney, 2022). Ninety-four defendants (90 percent of whom were Palestinians) were accused of terrorism, 95 defendants (87 percent of whom were Palestinians) were accused of both racist *and* terrorist crimes, and 50 defendants (70 percent of whom were Palestinians) were accused of crimes driven by racist motivations (Office of the State Attorney Report, 2022).

By framing Palestinian resistance as a racist and terrorist act, the Israeli legal system not only criminalized Palestinians for resisting settler colonialism, but it also worked to racialize them as unruly savages whose violence is senseless. Israel used criminalization to erase the political context of colonial domination, oppression, and dispossession that had prompted the widespread resistance in the first place.

The presumption of racist and terrorist motivations drew on the experience of the Jerusalem District Attorney's Office. Palestinians in historic Palestine are subjected to different legal regimes. Those in the West Bank and Gaza are tried in military courts, while '48 Palestinians who hold Israeli citizenship are formally subjected to the same legal system as all Israelis; although they experience it as a racialized system marked by over-criminalization and over-conviction. Palestinian Jerusalemites who hold Israeli residence status but not citizenship occupy a liminal space in the Israeli legal system. They are subjected to the same Israeli legal system that applies to all Israelis but are governed differently than '48 Palestinians or Palestinians in the West Bank and Gaza.

In Jerusalem, Israel has long classified offences as having been driven by racial and nationalist intent. During the Unity Intifada and afterwards, the Office of the State Attorney (2021d) imported the East Jerusalem model and applied it to '48 Palestinians who are Israeli citizens:

> The Jerusalem District Public Prosecution is unique because it specializes in offences that are nationalist crimes and it is thus at the forefront of such matters. Attorney Shoham [the head of the arrests department] explains how 'in light of the knowledge we accumulated in Jerusalem, it was decided that other Public Prosecution districts across the country will use our expertise, and a special forum of prosecutors from all around the country was established to share knowledge.
>
> *(n.p.)*

The securitization of crime and the criminalization of resistance

In recent years, '48 Palestinians have become increasingly concerned with issues of crime and personal and community safety in Palestinian society. In 2021, 112 Palestinians were killed in crime-related incidents. Since 2014, an average of 14,000 Palestinians have been injured each year and the numbers are on the rise (Baladna, 2022). The numbers are striking when compared to those of Jewish citizens and Palestinians in the West Bank and Gaza. Between 2017 and 2020, the number of '48 Palestinians injured or killed by live ammunition was 30 times the rate for Jewish Israelis (Baladna, 2022; Yachimovich-Cohen, 2021). And in comparison, the rate of killing in Palestinian society in the West Bank and Gaza is 0.5 cases to 100,000 residents, while among '48 Palestinians it is 7 cases to 100,000 residents (Baladna, 2022).

As a result, in January and February 2021, thousands of '48 Palestinians mobilized against rising violence, increased crime rates, and killings within Palestinian society in Israel. Weekly demonstrations were seen in numerous cities and towns including Umm al-Fahm, Tamra, Jaffa, Qalansawe, Basmet Tabo'n, Nazareth, Sakhnin, Kabul, Kafr Qara, Shefa-Amr, Jaljulia, Taybeh,

Haifa, Nahf, Baka al-Gharbiyye, al-Fridis, and Kafr Kanna. Palestinians protested the inaction of Israeli police, as well as police brutality and over-policing. Israel has not only turned a blind eye to rising crime in Palestinian society, but it has also facilitated it. A senior Israeli police official recently commented that "most of the criminals who lead serious crimes in the Arab sector are Shabak collaborators. In this situation, the hands of the police are tied because the collaborators enjoy impunity" (quoted in Nussbaum, 2021b, n.p.).

Israel used the rising crime rates in Palestinian society to frame the Unity Intifada as a criminal issue. As the May uprising subsided, the Shabak announced that, according to its estimation, 85 percent of protestors had criminal backgrounds (Mugrabi, 2021). From that point on, Israel would treat crime and Palestinian political mobilization as entwined problems. Crime became a security issue and a matter of national security, while political protest is treated as a criminal issue. A day after the Shabak's statement, Israel declared the launch of Operation Law and Order. Thousands of police officers and Israel Border Police (a unit that operates under the auspices of both the army and the police) stormed and raided '48-Palestinian cities, towns, and villages. The operation framed the uprising as both a criminal and security matter. In a span of two weeks, 531 Palestinians who had participated in the Unity Intifada were arrested and labelled as criminals (Breiner, 2021a). The protestors were now suspects in "nationalist crime, possession and arms dealing, arson, property crimes, affiliation with criminal organisations and economic offences, and driving offences" (Nussbaum, 2021a, n.p.; see also Israel Police, 2021c).

Class played a significant role in the criminalization of protestors. Israeli police and prosecutors targeted the most vulnerable members of Palestinian society – specifically, those from lower socio-economic background, including minors. Those protestors do not have the social and political capital that many activists hold, and they have only limited access to legal aid and assistance from human rights organizations. They could, therefore, be more easily labelled as criminals than middle- and upper-class activists, and, consequently, they paid a heavier price for their resistance.

Israeli officials continued to link crime and the Unity Intifada after Operation Law and Order. The State Comptroller announced an investigation into the failure of police to deal with a proliferation of arms among '48 Palestinians. He stated that "during the Guardian of the Walls Operation [the war on Gaza in May 2021], we witnessed difficult scenes of pogroms in mixed cities—in Lod, Yafo, Ramla, Akko, and others" (as quoted in Bendal, 2021, n.p.). A senior law enforcement official similarly declared that "we have to treat the crime problem as a security problem", while a senior police officer added that "it's clear that the weapons that organized crime rings maintain for criminal activity can also be used against the security forces or civilians during the next riots" (Breiner, 2021b, n.p.). Similarly, the Public Security Minister stated that the 'Arab riots' during the Guardian of the Walls Operation saw an "overlapping between crime families and nationalist incidents" (Breiner, 2021c, n.p.).

The securitization of crime and the criminalization of resistance has been further reinforced by the call from then the Israeli Prime Minister Naftali Bennett to integrate the Shabak – a security agency – in the crackdown on crime (Breiner, 2021b). This meant shifting the already racialized treatment of crime among '48 Palestinians from a civil issue within the mandate of the Israeli police into a security issue within the mandate of the general security services. The uprising thus provided Israel with the opportunity to entrench the role of the Shabak in governing '48 Palestinians. The human rights organization Adalah (2021b) has warned that integrating the Shabak, which operates in the shadows of Israeli law, creates "two systems of law" for Palestinians and Jewish citizens and that the work of the Shabak "is carried out in secrecy, without oversight or transparency", leading to "grave violations of basic human and civil rights" (n.p.).

Criminalizing resistance and securitizing crime draws on the colonial culturalization of political contestation, whereby the political struggle between colonizers and the colonized is framed as a clash between pre-modern and/or anti-modern cultures and the civilized modern settler state (Mamdani, 2004). The culturalization of political contention justifies the depiction of Palestinians as lawbreakers in need of control and taming. Within this discourse, political activism is portrayed as sourced in the pathological criminality of Palestinian society. Accordingly, '48 Palestinian mobilization during the Unity Intifada is not an expression of anti-colonial resistance but rather an illustration of criminality that intersects with (savage) Palestinian nationalism, and with Palestinian nationalism framed as anti-Jewish racism.

Conclusion

Israel's use of mass arrests as a colonial tool demonstrates the threat it sees in anti-colonial mobilization by Palestinians that transcends the geographical fragmentation of the Palestinian people, as with the Unity Intifada. The history of the Palestinian struggle against settler colonialism shows that every time Palestinians mobilize in unison, Israel attempts to reframe the protests in ways that reinforce the fragmentation of the Palestinian people. One such significant moment, Majd Kayyal argues, was the October 2000 uprising that launched the Second Intifada. Then, '48 Palestinians took to the streets, together with their brethren in the West Bank and Gaza, to resist Israeli settler colonialism and to defend Al-Aqsa Mosque. In the aftermath of the October 2000 uprising, Israel established a national inquiry known as the Orr Commission. The Commission, Kayyal (2020) suggests, was a colonial tool used to reframe the events in ways that re-centre the distinction between '48 Palestinians and Palestinians in the '67 occupied territories by determining that "the root cause of the uprising in '48 was 'discrimination'", not colonial domination (Kayyal, 2020, n.p.). The Commission urged the closing of the socio-economic gap between Israeli Jews and Palestinians.

The discourse that entwines the rise in crime in Palestinian society and the Unity Intifada serves a similar function. By framing Palestinian resistance as a criminal matter, Israel seeks to reinforce the division between '48 Palestinians and Palestinians in the West Bank, Gaza and the *Shatat* (diaspora) by erasing the anticolonial sensibilities and commitments that led '48 Palestinians to mobilize. By focusing on crime and by criminalizing resistance, Israel seeks to erase the radical stand that '48 Palestinians made during the Unity Intifada: the liberation of Palestine is their liberation.

References

+972 Magazine. (2022, May 22). *Testimonies from Jaffa/Lydda, May 2021* [Video]. https://www.972mag.com/film-palestinians-lydd-jaffa/

Adalah: The Legal Center for Arab Minority Rights in Israel. (2021a, June 7). What happened in the 'torture room' at Israel's police station in Nazareth. https://www.adalah.org/en/content/view/10351

Adalah: The Legal Center for Arab Minority Rights in Israel. (2021b, October 4). Israeli government's decision to involve the Shit Bet and army to fight crime in Arab society is racist and illegal. https://www.adalah.org/en/content/view/10429

Addameer: Prisoner Support and Human Rights Association. (2022, July 14). Statistics. https://www.addameer.org/statistics

Asaad, S. (2021, May 13). Facebook post. https://www.facebook.com/831688749/posts/10159422749983750/?d=n

Bakri, K. (2021, May 11). Mass arrests in Arab towns due to protests. https://bit.ly/3yQ3RXL

Baladna: The Association for Arab Youth. (2022). Violence and crime among the young in 48 Palestine. https://bit.ly/3Sh8Ur0

Ben Zikri, A. (2021, June 3). Five accused of toppling light polls due to nationalist motives during the "Guardian of the Walls" operation. *Haaretz*. https://www.haaretz.co.il/news/law/1.9872987

Bendal, N. (2021, May 31). The state comptroller: I will examine how law enforcement dealt with the riots in the mixed cities. *Haaretz*. https://www.haaretz.co.il/news/law/.premium-1.9860434

Bendal, N. (2022, February 23). A senior prosecutor: The rioters during the "Guardian of the Walls" became domestic enemies. *Haaretz*. https://www.haaretz.co.il/news/law/.premium-1.10628396

Breiner, J. (2021a, June 3). Israel police arrested over 2,000 people since Gaza Op – 91 percent of them Arab. *Haaretz*. https://www.haaretz.com/israel-news/2021-06-03/ty-article/.premium/israel-police-arrested-over-2-000-people-since-mixed-city-riots-91-percent-of-them-are-arab/0000017f-e815-d97e-a37f-ff754fa20000

Breiner, J. (2021b, August 23). Shin bet opposes Bennett's request for help in crackdown on Arab crime. *Haaretz*. https://www.haaretz.com/israel-news/.premium-shin-bet-opposes-bennett-s-request-for-help-in-crackdown-on-arab-crime-1.10141453

Breiner, J. (2021c, September 13). Israel police chiefs dubs May riots 'Intifida,' sparks uproar in Knesset. *Haaretz*. https://www.haaretz.com/israel-news/.premium-israel-police-chief-dubs-may-riots-intifada-sparks-uproar-in-knesset-1.10206232

Hamakor. (2021, November 10). *How could it be that two young men confessed for a lynch they never committed?* [Video]. *13 TV* (minute 12:08 to 18:51). https://13tv.co.il/item/news/hamakor/season-20/clips/a2sec-902636844/

Israel Police. (2021a, May 11). Police forces dispersed protests and arrested suspects across the country. https://www.gov.il/he/departments/news/police_riots_11052021

Israel Police. (2021b, May 12). *270 arrested for disrupting order and violent rioting*. https://www.gov.il/he/departments/news/police_12-5-21_arrests

Israel Police. (2021c, June 3). Operation "Law and Order": 2,142 Suspects were arrested and 970 weapons were seized. https://www.gov.il/he/departments/news/police_23-5-21_operation

Jadaliyya, Palestine Page Editors. (2022, March 24). Palestinian prisoner bundle: Editorial introduction. https://www.jadaliyya.com/Details/43983

Kashti, O., & Mannit, C. (2022, August 1). 77% of indictments charges in Israel filed against Arabs, study reveals. *Haaretz*. https://www.haaretz.com/israel-news/2022-08-01/ty-article/.premium/77-of-incitement-indictments-in-israel-filed-against-arabs-study-reveals/00000182-55c2-d9b3-a1a2-55db18ed0000

Kayyal, M. (2020, October 26). Israel's Orr Commission: A colonial tool to maintain Palestinian division. https://www.middleeasteye.net/big-story/israel-orr-commission-colonial-tool-maintain-palestinian-division

Kayyal. W. (2021, May 21). Facebook post. https://ar-ar.facebook.com/781724886/posts/pfbid02mzLVyw5FT7rwFGHJdEJfErWDP6LFavioLWPM6kGzw8pdjgNwf2HoKJSac54s1Lml/?d=n&mibextid=7ovdaX

Khalidi, R. (2014). Israel: A carceral state. *Journal of Palestine Studies*, *43*(4), 5–10.

Korn, A. (2003). From refugees to infiltrators: Constructing political crime in Israel in the 1950s. *International Journal of the Sociology of Law*, *31*, 1–22.

LDUD [Lawyers for Defending the Uprising Detainees]. (2021a, May 15). The terror of Israel's arrests. https://assafirarabi.com/en/37755/2021/05/16/the-terror-of-israels-arrests/

LDUD [Lawyers for Defending the Uprising Detainees]. (2021b, May 19). *An update on the arrests campaign until May 19, 2021* [Unpublished report].

Mamdani, M. (2004). *Good Muslim, bad Muslim: America, the Cold War, and the roots of terror*. Pantheon Books.

Mugrabi, A. (2021, May). The Shabak estimates: 85% of the Arab rioters have a criminal background. *13 TV*. https://13tv.co.il/item/news/politics/security/the-arab-protesters-1253893/

Mureih, E., & Hasan, Z. (2021, May 10). The release of the detainees in Haifa and the extension of arrests of the detainees in Nazareth. https://bit.ly/3TaJvAw

Nussbaum, M. (2021a, May 23). Operation "Law and Order": Thousands of police officers will be assigned to capture the rioters in mixed cities. *N 12*. https://www.mako.co.il/news-israel/2021_q2/Article-7b8f54088ca9971026.htm

Nussbaum, M. (2021b, June 30). The police: Most of the perpetrators of crime in Arab society are collaborators with the Shabak. *N 12*. https://www.mako.co.il/news-law/2021_q2/Article-921fce655fd5a71026.htm

Office of the State Attorney. (2021a, May 16). Facebook post. https://www.facebook.com/2834452325093 18/posts/914617662725402/?d=n

Office of the State Attorney. (2021b, May 14). Facebook post. https://www.facebook.com/283445232509318/posts/pfbid02ovQ23z4dnPv6itKXPEkMT86HcaqSt63KfyCX363j9aJMtQgfpUJiRS1N9qup6B4Fl/?d=n&mibextid=7ovdaX

Office of the State Attorney. (2021c, May 23). Facebook post. https://www.facebook.com/283445232509318/posts/pfbid0FYrkLwZQgsrnPFAZxjhjvMTA8x2huh4HNJqivopjXBANmZhvTE9sWoX2oZavcTBbl/?d=n&mibextid=7ovdaX

Office of the State Attorney. (2021d, June 28). Facebook post. https://www.facebook.com/283445232509318/photos/a.304232963763878/940826663437835/

Office of the State Attorney. (2022, May). Guardian of the Walls operation report. https://www.gov.il/BlobFolder/generalpage/adm-dep-stock/he/Gates_Keeper_Summary.pdf

Robinson, S. (2013). *Citizen strangers: Palestinians and the birth of Israel's liberal settler state*. Stanford University Press.

Rozin, O. (2016). Infiltration and the making of Israel's emotional regime in the state's early years. *Middle Eastern Studies*, *51*(3), 448–472.

Shalhoub-Kevorkian, N. (2015). Criminalizing pain and the political work of suffering: The case of Palestinian 'infiltrators'. *Borderlands*, *14*(1), 1–28.

Shalhoub-Kevorkian, N. (2016). Infiltrated intimacies: The case of Palestinian returnees. *Feminist Studies*, *42*(1), 166–193.

Shalhoub-Kevorkian, N. (2019). *Incarcerated childhood and the politics of unchilding*. Cambridge University Press.

Tatour, L. (2021). The "Unity Intifada" and '48 Palestinians: Between the liberal and the decolonial. *Journal of Palestine Studies*, *50*(4), 84–89.

Viterbo, H. (2021). *Problematizing law, rights, and childhood in Israel/Palestine*. Cambridge University Press.

Who Profits. (2021, December). Israeli repression of the Palestinian May uprising: Suppliers of crowd control weapons. https://whoprofits.org/wp-content/uploads/2022/01/Israeli-Repression-of-the-Palestinian-May-Uprising-Final.pdf

Yachimovich-Cohen, N. (2021, August 16). Weapons offences: Data and authorities response. *Knesset*. https://fs.knesset.gov.il/globaldocs/MMM/55c6612f-2c28-eb11-811a-00155d0af32a/2_55c6612f-2c28-eb11-811a-00155d0af32a_11_18130.pdf

10

Criminalizing Gypsies, Roma, and Travellers in the UK

Zoë James

This chapter explores the multiple and various ways in which anti-Gypsyism has functioned in the UK to marginalize and exclude Gypsy, Roma, and Traveller communities. The chapter will evidence how the criminal justice process has served as an apparatus to contain Gypsies, Roma, and Travellers and has prevented them from flourishing as individuals and communities. Having established who the Gypsies, Roma, and Travellers in the UK are, the chapter will set out how legislation and policy have, over time, been developed, designed, and delivered in ways that have negatively impacted their lived experience. In order to do this, it is necessary to consider a range of legal provisions and associated policies that relate to planning law and public order law, and, indeed, to identify the contradictory nature of the legislation in different areas. Gypsies, Roma, and Travellers have failed to fit colonial perceptions of what it is to be 'civilized' and, as such, their ways of life have effectively been criminalized by a state that has repeatedly failed to meet their needs, expectations, and rights. To appreciate how the state has failed, the chapter will examine the excessive imprisonment and over-policing of Gypsies, Roma, and Travellers. The chapter draws upon literature gathered from across the social sciences and knowledge attained from a breadth of empirical research completed over a long academic career of working with Gypsies, Roma, and Travellers. The theoretical underpinnings of the chapter are informed by critical approaches to criminology and criminal justice that acknowledge the impact of colonialism over time, which is ongoing and embedded in some attempts at decolonial thinking (Tauri, 2021). The author has no Gypsy, Roma, or Traveller heritage and does not speak for those communities. Rather, I hope that I am able to use my privilege to open doors for conversations, to prise open space for discussion in notoriously closed academic spaces, and support Gypsies, Roma, and Travellers to challenge the status quo.

Gypsies, Roma, and Travellers in the UK

Romantic notions of who is legitimate and who is not amongst Gypsy, Roma, and Traveller communities have abounded in public discussion and academic debate (Clark, 2006; James, 2020; Okely, 1983). This discourse has placed them in an "idealised historical past" (Taylor & Hinks, 2021, p. 630) and augmented negative perceptions of all Gypsies, Roma, and Travellers

DOI: 10.4324/9781003176619-12

by creating false ideas of the 'real Gypsy' as a darker-skinned person, living in a horse-drawn painted wagon, and dancing in vividly coloured clothes. Gypsies, Roma, and Travellers cannot possibly meet this imposed racialized representation of who they are. Indeed, the association of the romanticized version of identity with specifically being a Romany Gypsy has meant that a hierarchy of legitimacy has developed that has placed people of Romany Gypsy heritage perceptively above other groups of Gypsies, Roma, and Travellers as they more closely align to the stereotype. In real terms, the communities that make up the contemporary grouping of Gypsies, Roma, and Travellers in the UK are diverse and complex.

In mainland Europe, the moniker 'Roma' is used, as per agreement at the first World Romani Congress in 1971 (Council of Europe, 2011), to represent a diverse range of peoples whose commonality lies in their Indian origins although the origins of Roma are contested to some degree (Hancock, 2000; Matras, 2004; Okely, 1983). The identities of Roma in Europe include the Sinti, Kale, Manus, Kalderas, Lovari, and Romanichals, to whom Liegeois (1994) refers as "a rich mosaic of ethnic fragments" (p. 12, see also Kostadinova, 2011). There are approximately 10 to 12 million Roma people in Europe (Willers & Johnson, 2020). In the UK, there is a clear distinction made between Gypsies, Roma, and Travellers, and pride is associated with each of those titles. This differs significantly from the European mainland, where the use of the word 'Gypsy' is pejorative. 'Roma' in the UK has tended to refer to recent Roma migrants from mainland Europe during the latter part of the twentieth century and the early twenty-first century. Roma are a distinct ethnic group and therefore protected by equalities legislation in the UK.

Roma have a common heritage, but what mainly provided solidarity between essentially diverse communities across Europe over time were the shared experiences of exploitation, exclusion, slavery, and execution (Achim, 2004; Alliance Against Anti-Gypsyism, 2017; Bancroft, 2005). The subjugation of Roma has been sustained through processes that have criminalized, securitized, and minoritized them (Van Baar, 2011; Yildiz & De Genova, 2018). Approximately 200,000 migrant Roma live in the UK (Brown et al., 2013), though this is an estimate due to a lack of coherent source information. Brown et al. (2013) provide an outline of Roma migration from mainland Europe to the UK and the difficulties they have faced since being in the UK (see also Beluschi-Fabeni et al., 2019). Further, they note that as Roma migration to the UK has increased in the twenty-first century, their specific needs and concerns have been complex and rarely identified as bespoke compared to Gypsies and Travellers. The significant difference between Roma, and Gypsies and Travellers is where they would choose to live. Many Gypsies and Travellers in the UK prefer to live in temporary structures or mobile homes, and case law has acknowledged their cultural aversion to living in 'bricks-and-mortar' accommodation. Migrant Roma, on the other hand, choose to live in settled housing.

In the UK, it has been estimated that Gypsies and Travellers, not including Roma, constitute approximately 200,000 to 300,000 people (Brown et al., 2013), though some estimates are much higher, suggesting that Gypsies and Travellers make up 1–1½ percent of the population (James, 2019). The title 'Gypsy' refers to Romany Gypsies whose heritage, identified particularly through their language, is in common with Roma and of whom records note their arrival in the UK in the fifteenth century. Legal recognition of Romany Gypsies as an ethnic group occurred under the Equality Act 2010 in England and Wales, following case law in 1989 (Greenhall & Willers, 2020). Romany Gypsies are the largest group of Gypsy, Roma, and Travellers in the UK (Clark, 2006) and their identity is closely aligned with their culture: their ways of living and moral values. Romany Gypsies tend to be very family focused and they traditionally live according to relatively strict moral codes, including those concerning relations

between genders, family roles that tend to be gendered, and rules of cleanliness that require consideration of hygiene at all times. The rules of cleanliness are particularly important as they inform many Romany Gypsies' desire to not live in bricks-and-mortar accommodation whose internal plumbing is considered unclean (Foley, 2010).

Also of Romany heritage are the Welsh Kale, a very small group of people in North Wales whose origins are Romany. One argument suggests that the Kale represent the more ethnically distinct Romany Gypsy – Kale meaning black in the Romany language and representing the darkness of Welsh Kale skin. However, debate even ensues regarding whether the Kale exist at all (Clark, 2006). Scottish Travellers or Gypsies live throughout Scotland and are linked culturally to Romany Gypsies, particularly by their language, in parts of Scotland. There are records of Scottish Travellers in Scotland from the fifteenth century, similar to English Romanies. Scottish Travellers, again, follow similar cultural norms to other traditional Gypsies and Travellers and, likewise, they have been recognized as an ethnic group by the Scottish government via case law since 2008 (Greenhall & Willers, 2020).

The term 'Traveller' is broad and can refer to many communities. Most commonly, Traveller has referred to Irish, or Pavee, Travellers who have been mobile across the UK and Ireland for centuries but are most associated with a migration from Ireland in the nineteenth century. Irish Travellers gained legal recognition in England and Wales as an ethnic group in 2000 following case law and previously in Northern Ireland within the Race Relations (Northern Ireland) Act 1997 (Greenhall & Willers, 2020). The culture of Irish Travellers is born from their history in Ireland, which dates back to the fifth century and is similarly organized to Romany Gypsies' culture. Irish Travellers have strict moral codes, close family ties, and cleanliness rules. However, Romany Gypsies and Irish Travellers are distinct communities, have rarely mixed and show some antipathy towards each other (Clark, 2006). Other groups of Travellers in the UK are Showpeople and New Travellers, but neither of these groups has been recognized as having protected characteristics in equality law despite their cultures and lifestyles bearing significant similarities to Gypsies and Travellers, and, as will be discussed in due course, they are recognized *as* Gypsies and Travellers within other legislation. This means, however, that they are not protected against discrimination based on their Traveller identity.

Showpeople are commercial Travellers who move from town to town in the fair season between February and November (Clark, 2006). Showpeople have had an ancient charter to hold fairs since the twelfth century and in the summer there may be as many as 250 fairs in UK towns at any one time. The Showmen's Guild acts as representative of Showpeople in the UK and governs the large majority of fairs that run. Showpeople have similar cultures to Gypsies and Travellers, particularly concerning their familial bonds and cultural expectations. New Travellers, on the other hand, are some of the newest people to take up a travelling way of life in the UK. They came into being in the late 1970s and early 1980s and are commonly associated with music festival culture. However, research has shown that many New Travellers were pushed into travelling due to poverty or social exclusion (Martin, 2002). They responded to this exclusion by aspiring to traditional Gypsy and Traveller lifestyles and have now been nomadic for more than a generation (Clark, 1997).

Nowadays, the overarching grouping 'Gypsy, Roma, Traveller' – or the acronym GRT – tends to be used as an inclusive way of ensuring representation of all those people with similar heritage as outlined above. However, it has been argued elsewhere that this conflation of peoples' identities increases their exclusion as it fails to acknowledge their differences and strengths and serves to diminish them as racialized communities of difference (James, 2021).

Law and Policy – Categorizing and Containing Gypsies, Roma, and Travellers

The chapter has already briefly noted legal protections provided to some Gypsies, Roma, and Travellers in the UK within race relations legislation that acknowledges their various identities. They mean that some Gypsies, Roma, and Travellers can challenge racist discrimination against them within work and social life, as well as bias-motivated or 'hate' behaviours against them. While slow in being realized by only coming into being in the late twentieth century and early twenty-first century, this legislation has been important in ensuring many Gypsies, Roma, and Travellers can call upon these protections to challenge racism and prejudice. However, the discrimination and prejudice faced by Gypsies, Roma, and Travellers over time, and specifically from public agencies, has meant that they commonly lack the agency and confidence, as well as knowledge of legal processes and remedies, to call upon the law when they are treated badly. Indeed, the everyday nature of prejudice and systemic discrimination experienced by Gypsies, Roma, and Travellers has meant these communities often see such behaviours as incidents of everyday hate crimes, which they also regularly experience based on their identity (James, 2020).

Gypsies, Roma, and Travellers have historically been associated with nomadism and arguments persist regarding the legitimacy of this connection (van Baar, 2011). In wider Europe, the association of Roma with nomadism has been highly problematic as it has implied that Roma are a 'stateless' people. Governments, particularly those that have embraced right-wing ideologies, have used this approach to facilitate the exclusion and expulsion of Roma from states, despite EU acknowledgement of their citizenship and the EU Framework for Roma Inclusion, which formally placed expectations on EU states to recognize the rights of Roma (Kóczé & Rövid, 2012; Luggin, 2012). As noted by Howard and Vajda (2017), Roma – presented as a pan-European ethnic minority – can symbolize the need for European governance that simply serves to reinforce institutions and processes that perpetuate anti-Gypsyism and normalize attitudes that sustain anti-Gypsyism.

In the UK, the governance of Gypsies, Roma, and Travellers, which previously outlawed them as vagrants, thieves, and vagabonds (Taylor, 2014), has shifted in the contemporary era to protect them as vulnerable, marginalized denizens according to the European model (Equality and Human Rights Commission, 2016). The idea that Roma, Gypsies, and Travellers are vulnerable is highly problematic as it removes their capacity for agency and fails to recognize their successes, their apparent resilience and their resistance (Belton, 2013; Howard & Vajda, 2017). Thus, Gypsies, Roma, and Travellers have been subject to assimilationist mechanisms that have attempted to address what has been perceived as most problematic about their cultures: their apparent nomadism. In the UK, as previously stated, Roma do not tend to want to live according to any traditional nomadic norms. In other words, they are keen to settle in secure housing that has often eluded them in their previous home states due to prejudice and discrimination. However, Gypsies and Travellers in the UK have embraced their nomadic roots in three ways. First, they often choose to live in accommodation that is not bricks-and-mortar. Second, they often choose to be mobile. And third, they have embraced a culturally nomadic approach to life.

Van Baar (2011) has noted caution in romanticizing nomadism in direct opposition to sedentarism. In the UK, Gypsies and Travellers utilize their nomadism to traverse the virtual and physical boundaries between them and wider society that is hateful towards them. It is worth noting here that research has clearly shown that public perceptions of Gypsies, Roma, and Travellers in the UK are routinely negative and more so than towards any other minoritized communities (Abrams et al., 2018; Pew Research Center, 2014). A sedentarist binary approach

to nomadism within UK state systems has meant that Gypsies' and Travellers' nomadism is reduced simply to mobility. This fails to understand or appreciate the culturally nomadic nature of Gypsy and Traveller communities, that is, their predisposition to think and act in a boundless fashion, which includes a range of approaches to living that are connected to notions of freedom and autonomy (Acton, 2010; Halfacree, 1996; Levinson & Sparkes, 2004; Shubin, 2010). A sedentarist binary logic to Gypsy and Traveller cultures denotes that nomadic people are those who are constantly mobile without stopping, and non-nomadic people are those who stop and will never be mobile. Many Gypsies and Travellers in the UK are mobile and many are not, but state (and public) perceptions of them as constantly on the move have meant that they have been demonized in the public imagination as 'place invaders' who constitute a threat to the dominant sedentary way of living (Kabachnik, 2010).

The sedentarist binary logic of UK governments towards the nomadic lifestyles of Gypsies and Travellers in the UK has dictated policies and guidance on defining who constitutes a Gypsy or Traveller, as well as who can stop and stay in particular places. The two areas of legislation that have consistently served to problematize and ultimately criminalize Gypsies and Travellers are public order and planning law. Public order law defines what behaviours and actions disrupt the peaceful habit of life within public space while planning law determines how land is used, what areas of land are developed, and who can live where. Before the 1960s, in the UK, Gypsies and Travellers had utilized traditional stopping grounds to live on when mobile, and/or to settle on for periods of time or long term. Many of these places were on common land but the Caravan Sites and Control of Development Act 1960 closed the commons to Gypsies and Travellers. Further, other places to stop and stay likewise diminished in the post-war years as farm work, cropping, and other rural occupations were mechanized, meaning that much traditional work carried out by Gypsies and Travellers, which also provided accommodation space, disappeared (Clark, 2006).

In 1968, the Caravan Sites Act required local authorities to provide sites for Gypsies and Travellers to stop and stay in their areas. However, local authorities failed to fulfil the requirements under the legislation, because, similar to now, councillors were unwilling to support site provisions that would risk their likelihood of electoral success amidst popular prejudice against Gypsies and Travellers (Casciani, 2004). Gypsies and Travellers, therefore, increasingly resorted to stopping at places that local authorities did not formally recognize. Tensions between Gypsies and Travellers and the settled community consequently increased in the post-1968 period, as Gypsies and Travellers found themselves relying on places to stop and stay that encroached on settled communities' lifestyles (Murdoch & Johnson, 2004). So, for example, Gypsies and Travellers stopped and stayed in public spaces such as parks, community fields, and car parks, which caused disruption and confusion to the settled population. Settled communities felt subsequently unable to use those spaces due to the mess left behind because local authorities refused to provide services such as rubbish collection. The crisis of accommodation for Gypsies and Travellers has been exacerbated by extensive eviction actions taken by local authorities and police to move Gypsies and Travellers out of their geographical areas and beyond their responsibility (James, 2006, 2007; James & Richardson, 2006).

Government responses to community tensions between Gypsies and Travellers and settled people, and the crisis of accommodation faced by Gypsies and Travellers, led to attempts to assimilate those communities into settled housing. The colonial model of civilized living, as embedded in the post-war welfare system, was oriented around the provision of housing. Taylor (2014) has referred to the experience of housing for Gypsies and Travellers as 'house death'. For many Gypsies and Travellers housing was culturally anathema and so they stayed in their mobile accommodation or bought land to set up sites to live where they could. Those people who

did not have the means to buy land were reliant on local authority provision of places to stop and stay, but the short supply and lack of legitimacy for many communities, particularly Irish Travellers, meant that they increasingly moved into housing, despite the distress this caused. Even those people who could afford to buy land were stymied by the refusal of their planning applications for permission to live there (Ellis & McWhirter, 2008). Therefore, Gypsies and Travellers were placed in precarious positions wherein their ways of living were deemed illegitimate and their attempts to adapt put them in conflict with planning officers who prosecuted them for illegal development of land and police officers who moved them on from stopping at what police considered 'inappropriate' public places.

In the 1980s, public order law was utilized as a key tool to move Gypsies and Travellers on from land they had stopped and/or stayed on that was deemed inappropriate, despite them often having nowhere else to go. The Criminal Justice and Public Order Act 1994 introduced draconian measures that criminalized trespass and provided the police with extensive powers of eviction to move Gypsies and Travellers on from public and private spaces and to seize their homes if they refused to move (James, 2006). Meanwhile, local authorities did very little to accommodate Gypsies and Travellers, despite increasing research evidence that showed the health and welfare needs of Gypsies and Travellers required acute support as a direct outcome of their lack of secure accommodation (Cemlyn et al., 2009). Political rhetoric regarding Gypsies and Travellers in the 1980s and 1990s was highly negative, abusive and hateful, and malignant media augmented racist attitudes towards Gypsies and Travellers within society generally (James & Richardson, 2006). Increasingly 'joined-up' approaches between police and welfare services meant that what little trust and confidence Gypsies and Travellers had in those agencies was destroyed and remains so (James, 2020).

The resilience of Gypsies and Travellers is rarely discussed and can be deemed patronizing if taken out of context or used to ratify the responsibilization of minoritized people (Belton, 2013). However, the activism within Gypsy, Roma, and Traveller communities and their solidarity in the face of overwhelming social, political, and economic exclusion was vital in engendering some social change. In the early 2000s, Gypsies, Roma, and Travellers lobbied for legislative change and specifically for appropriate accommodation provisions for communities. The Housing Act 2004 subsequently required local authorities to measure explicitly the accommodation needs of Gypsies and Travellers within their planning processes, which led to the completion of a raft of such assessments across the UK. These assessments were often excellent and highlighted the breadth of poverty, exclusion, and discrimination Gypsies and Travellers had experienced as a consequence of racism, prejudice, and associated failures to accommodate them. Further, they often highlighted the severe impacts of aggressive policing tactics towards Gypsies and Travellers, as well as the wider hate harms they experienced in everyday life (James, 2020).

The moment of promise that the Housing Act 2004 had elicited was not met by provisions, however, and despite the initial accommodation needs assessments being comprehensive in their recommendations, local authorities failed to act. It is highly likely that the task they saw before them was too great, but moreover the ingrained racialized prejudice towards Gypsies, Roma and Travellers and the associated failure to respect their different cultures and ways of living meant that their needs were ignored and their demonization increased. Standing (2014) has referred to the places and spaces into which marginalized and minoritized people are pushed as the 'precariat'. The precarity of everyday life for Gypsies, Roma, and Travellers has not diminished. National planning policy in 2015 redefined who constituted a 'traveller' (sic) in relation to site provision. This returns us to the sedentarist binary logic within law and policy in this area. Planning law has consistently utilized a definition of Gypsy and

Traveller identity that uses economic mobility as the defining feature of those communities. Hence, mobility is the required characteristic that determines whether a person is a Gypsy or Traveller within planning law. This means that all those people who align with a mobile lifestyle, including Showpeople and New Travellers, are recognized as belonging to Gypsy and Traveller communities. However, a lack of mobility within this policy removes any rights to planning provisions in this area. Hence, a paradox occurs: those people who are recognized as ethnic minorities within equalities legislation (Romany Gypsies and Irish Travellers) but have settled on sites rather than in housing (perhaps due to having young children, due to infirmity or old age) are not considered 'travellers' and their homes are placed at risk (James & Southern, 2018).

Most recently, in the UK, the government passed the Police, Crime, Sentencing and Courts Act 2022, which augmented existing public order legislation and police powers to evict Gypsies and Travellers from land. Even the police nationally objected to this legislation on the basis that Gypsies and Travellers have nowhere to go (Dearden, 2021).

Policing and Punishment: Gypsies, Roma, and Travellers as Offenders

The problematization of Gypsies, Roma, and Travellers in the UK has occurred over centuries (Okely, 2014; Taylor, 2014) and has not abated in contemporary society, as detailed above, in relation to the development of legislation and policy intended to assimilate their communities or punish them for not living according to what are considered civilized modes of order. There are few studies of Gypsies', Roma and Travellers' experiences of criminal justice processes, which is highly problematic, particularly given that stereotypes have long been oriented around perceptions of Gypsies, Roma, and Travellers as offenders (Taylor, 2014). In 2014, Her Majesty's Inspectorate of Prisons identified very high proportions of "Gypsy, Romany and Traveller" people in prisons (HM Inspectorate of Prisons, 2014). Further, in his review of prisons in 2017, Lammy (2017) reported that the high proportion of Gypsies, Roma, and Travellers in prison was troubling and a failure of relevant and useful knowledge in this area required redress. Subsequently, research has identified high numbers of Irish Travellers in English prisons and the issues they have experienced there (Gavin, 2019), including harassment and bullying from both other prisoners and guards, reflecting the findings of the earlier HM Inspectorate of Prisons study. However, each account detailed here incorporates different groups of Gypsies, Roma, and Travellers, making true comparisons difficult (James, 2021).

Research on the policing of Gypsies and Travellers has likewise been limited. Some studies (James, 2006, 2007) with communities not living in bricks-and-mortar accommodation found that they were often subject to harsh public order policing measures to evict them. However, that research also found that the police had realized that proactive methods of containing these communities would potentially be more cost-effective and less troublesome for the police. Therefore, multiple policing mechanisms were used to manage Gypsies and Travellers and move them on. First, they were subjected to spatial exclusion, meaning that the police worked in partnership with public and private landowners to block Gypsies and Travellers from stopping on land using methods such as the 'bunding' of land, i.e., placing fixed barriers in places that meant they could not be accessed. Further, police escorted Gypsies and Travellers through geographical police or council areas – moving them into another area where alternate police forces and local authorities would have to deal with them. Little care was had for the welfare of the communities being moved on or for the authorities into whose area they were moved. Gypsies and Travellers move through spaces in a fluid manner, whereas sedentarists spatially striate their

environment physically, socially, and cognitively (Halfacree, 1996). Thus, the priority of the police and their partner agencies was to move Gypsies and Travellers out of their area.

The other approaches used by police to manage Gypsies and Travellers were disruption and destabilization tactics that interconnect and served to make life very difficult for Gypsies and Travellers. Examples of disruption included infiltration of communications between Gypsies and Travellers to block telephone calls, using stop and search powers each time individuals moved away from other members of the community or a site, and moving people on by very short distances (in one instance literally meters). Destabilizing measures included the regular use of 'raids' on Gypsy and Traveller sites for drugs or stolen goods, despite a lack of subsequent arrests or convictions. Indeed, the police variably enforce drug legislation in that they ignored drug use by some Travellers if they were willing to move on. Likewise, there was a lack of application of vehicle legislation if Gypsies and Travellers were prepared to move away from the area. In addition, Gypsies and Travellers noted police patrols during all times of day and night around and within their sites. In the 2000s, local authorities were required to assess the welfare needs of Gypsies and Travellers who came into their areas, but research has evidenced that these assessments were often done by agencies in partnership with police enforcement actions intended to move people on. Gypsies and Travellers would, therefore, move on prior to any potential eviction for fear of police aggression (James & Richardson, 2006).

Multi-agency or partnership working was a feature of policing in the 2000s that has persisted due to the apparent cost efficiencies it provides in late modernity wherein fiscal management determines public responsibilities (Reiner, 2010). Even those Gypsies and Travellers living on settled sites experienced securitization as management of the few publicly owned Gypsy and Traveller sites served to control who was living on site, visitors, and movement in and off the site. Common features of such sites were also closed-circuit television cameras as blatant surveillance of site activities, and police patrol and/or welfare visits carried out with personnel from multiple agencies (James & Richardson, 2006). However, despite the attention paid to Gypsies and Travellers, and increasingly Roma, by policing and welfare agencies in the post-war period, and specifically in the early 2000s, their victimization was ignored. Research has evidenced the high levels of hate crimes and incidents that Gypsies, Roma, and Travellers experience alongside their ill-treatment by police and public services (James, 2020).

Conclusion

This chapter has established who the Gypsies, Roma, and Travellers in the UK are, how legislation and policy have framed, determined, and perpetuated their marginalization, and how their subsequent securitization as a community of risk has meant that they have been over-policed as offenders and under-supported as victims. Contemporary discussions of how to challenge racism and how the structures of governance can shift or swell to accommodate the diverse needs of communities fail to acknowledge the enormous task before us. Racism and prejudice against Gypsies, Roma, and Travellers, i.e., anti-Gypsyism, has been embedded in the very development of contemporary society via colonial norms and expectations that are baked into our understanding of what it is to be civilized (Butler, 1990). Further, the neoliberal capitalist project (Harvey, 2005) has co-opted those norms and expectations in such a way that we do not even perceive its influence (Fisher, 2009). For Gypsies, Roma, and Travellers to flourish we need to deconstruct our perceptions of rights and responsibilities and rebuild social orders that are decolonial and liberatory.

References

Abrams, D., Swift, H., & Houston, D. (2018). Developing a national barometer of prejudice and discrimination in Britain. https://www.equalityhumanrights.com/sites/default/files/national-barometer-of-prejudice-and-discrimination-in-britain.pdf

Achim, V. (2004). *Roma in Romanian history*. Central European University Press.

Acton, T. (2010, January 14–15). *Theorising mobility: Migration, nomadism, and the social reconstruction of ethnicity* [Conference presentation]. *Romani mobilities in Europe: Multidisciplinary perspective conference*. Oxford, UK. https://www.rsc.ox.ac.uk/files/events/abstracts-romani-mobilities.pdf

Alliance Against AntiGypsyism. (2017). Anti-Gypsyism: A reference paper. http://antigypsyism.eu/wp-content/uploads/2022/01/Antigypsyism-reference-paper-PRINT-11.07.2017.pdf

Bancroft, A. (2005). *Roma and Gypsy-Travellers in Europe: Modernity, race, space and exclusion*. Ashgate.

Belton, B. (2013). "Weak power": Community and identity. *Ethnic and Racial Studies*, *36*(2), 282–297.

Beluschi-Fabeni, G., Leggio, D.V., & Matras, Y. (2019). A lost generation? Racialization and stalled social mobility in a group of Roma migrants in the UK. *Migration Studies*, 7(2), 180–200.

Brown, P., Scullion, L., & Martin, P. (2013). Migrant Roma in the United Kingdom: Population size and experiences of local authorities and partners. https://hub.salford.ac.uk/care-shusu/wp-content/uploads/sites/125/2020/06/Migrant_Roma_in_the_UK_final_report_October_2013.pdf

Butler, J. (1990). *Gender trouble: Feminism and the subversion of identity*. Routledge.

Casciani, D. (2004, April 20). The battle for Gypsy land. *BBC News*. http://news.bbc.co.uk/1/hi/uk/3639495.stm

Cemlyn, S., Greenfields, M., Burnett, S., Matthews, Z., & Whitwell, C. (2009). Inequalities experienced by Gypsy and Traveller communities: A review. https://www.equalityhumanrights.com/sites/default/files/research_report_12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf

Clark, C. (1997). "New age" travellers: Identity, sedentarism and social security. In T. Acton (Ed.), *Gypsy politics and Traveller identity* (pp. 125–142). University of Hertfordshire Press.

Clark, C. (2006). Who are the Gypsies and Travellers of Britain? In C. Clark & M. Greenfields, (Eds.), *Here to stay: The Gypsies and Travellers of Britain* (pp. 10–27). University of Hertfordshire Press.

Council of Europe. (2011). The Council of Europe: Protecting the rights of Roma. https://edoc.coe.int/en/roma-and-travellers/5976-pdf-the-council-of-europe-protecting-the-rights-of-roma-.html

Dearden, L. (2021, May 18). Police do not want 'discriminatory' new laws to criminalise Travellers, senior officer says. *The Independent*. https://www.independent.co.uk/news/uk/home-news/travellers-law-caravans-vehicles-discrimination-b1849603.html

Ellis, G., & McWhirter, C. (2008). Land-use and planning and Traveller-Gypsies: Towards non-prejudicial practice. *Planning, Practice and Research*, *23*(1), 77–79.

Equality and Human Rights Commission. (2016). England's most disadvantaged groups: Gypsies, Travellers and Roma. https://www.equalityhumanrights.com/sites/default/files/is-england-fairer-2016-most-disadvantaged-groups-gypsies-travellers-roma.pdf

Fisher, M. (2009). *Capitalist realism: Is there no alternative?* Zero Books.

Foley, A. (2010). *Trailers and tribulations: Crime, deviance and justice in Gypsy and Traveller communities* [PhD thesis]. Cardiff University.

Gavin, P. (2019). "Prison is the worst place a Traveller could be": The experiences of Irish Travellers in prison in England and Wales. *Irish Probation Journal*, *16*, 135–152.

Greenhall, O., & Willers, M. (2020). Using domestic legislation to tackle race discrimination. In M. Willers & C. Johnson (Eds.), *Gypsy and Traveller law* (3rd ed., pp. 499–568). Legal Action Group.

Halfacree, K. (1996). Out of place in the country: Travellers and the 'rural idyll'. *Antipode*, *28*(1), 42–72.

Hancock, I. (2000). The emergence of Romani as a Köiné outside of India. In T. Acton (Ed.), *Scholarship and the Gypsy struggle: Commitment in Romani studies* (pp. 1–13). University of Hertfordshire Press.

Harvey, D. (2005). *A brief history of neoliberalism*. Oxford University Press.

HM Inspectorate of Prisons. (2014). People in prison: Gypsies, Romany and Travellers. https://www.bl.uk/collection-items/people-in-prison-gypsies-romany-and-travellers

Howard, J., & Vajda, V. (2017). Navigating power and intersectionality to address inequality. https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/13431/Wp504_Online.pdf?sequence=1&isAllowed=y

James, Z. (2006). Policing space: Managing New Travellers in England. *British Journal of Criminology*, *46*(3), 470–485.

James, Z. (2007). Policing marginal spaces: Controlling Gypsies and Travellers. *Criminology and Criminal Justice*, 7(4), 367–389.
James, Z. (2019). Gypsies' and Travellers' lived experience of harm: A critical hate studies perspective. *Theoretical Criminology*, *24*(3), 502–520.
James, Z. (2020). *The harms of hate for Gypsies and Travellers: A critical hate studies perspective*. Palgrave Macmillan.
James, Z. (2021). Roma, Gypsies and Travellers as a community of difference: Challenging inclusivity as an anti-racist approach. *Critical Romani Studies*, *4*(2), 142–162. DOI: 10.29098/crs.v4i2.104.
James, Z., & Richardson, J. (2006). Controlling accommodation: Policing Gypsies and Travellers. In A. Dearling, T. Newburn, & P. Somerville (Eds.), *Supporting safer communities: Housing, crime and neighbourhoods* (pp. 141–154). Chartered Institute of Housing.
James, Z., & Southern, R. (2018). Accommodating nomadism and mobility: Challenging the application of a sedentarist binary approach to provision for Gypsies, Travellers and Roma. *International Journal of Sociology and Social Policy*, *39*(3/4), 324–336.
Kabachnik, P. (2010). Place invaders: Constructing the nomadic threat in England. *The Geographical Review*, *100*(1), 90–108.
Kóczé, A., & Rövid, M. (2012). Pro-Roma Global Civil Society: Acting for, with or instead of Roma? In M. Kaldor & H.L. Moore (Eds.), *Global Civil Society 2012: Ten years of critical reflection* (pp. 110–122). Palgrave Macmillan.
Kostadinova, G. (2011). Minority rights as a normative framework for addressing the situation of Roma in Europe. *Oxford Development Studies*, *39*(2), 163–183.
Lammy, D. (2017). The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice *System*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf
Levinson, M.P., & Sparkes, A.C. (2004). Gypsy identity and orientation to space. *Journal of Contemporary Ethnography*, *36*(6), 704–734.
Liegeois, J.-P. (1994). *Roma, Gypsies, Travellers*. Manhattan Publishing.
Luggin, B. (2012). EU anti-discrimination and social inclusion politics. In H. Kyuchokov (Ed.), *New faces of antigypsyism in modern Europe* (pp. 80–82). Decade Trust Fund.
Martin, G. (2002). New age travellers: Uproarious or uprooted? *Sociology*, *36*(3), 723–735.
Matras, Y. (2004). The role of language in mystifying and demystifying Gypsy identity. In N. Saul & S. Tebbutt (Eds.), *The role of the Romanies: Images and counter-images of Gypsies/Romanies in European cultures* (pp. 53–78). Liverpool University Press.
Murdoch, A., & Johnson, C. (2004). Introduction. In C. Johnson & M. Willers (Eds.), *Gypsy and Traveller law* (pp. 1–20). Legal Action Group.
Okely, J. (1983). *The Traveller-Gypsies*. Cambridge University Press.
Okely, J. (2014). Recycled (mis)representations: Gypsies, Travellers and Roma treated as objects, rarely subjects. *People, Place and Policy*, *8*(1), 65–85.
Pew Research Center (2014, May 12). A fragile rebound for EU image on eve of European Parliament elections.https://www.pewresearch.org/global/2014/05/12/a-fragile-rebound-for-eu-image-on-eve-of-european-parliament-elections/
Reiner, R. (2010). *The politics of the police*. Oxford University Press.
Shubin, S. (2010). "Where can a Gypsy stop?": Rethinking mobility in Scotland. *Antipode*, *43*(2), 494–524.
Standing, G. (2014). *A precariat charter: From denizens to citizens*. Bloomsbury Academic Press.
Tauri, J. (2021, October 27). *Criminal justice and indigeneity: perspectives from India, Australia and New Zealand* [Seminar presentation]. Cambridge.
Taylor, B. (2014). *Another darkness, another dawn: A history of Gypsies, Roma and Travellers*. Reaktion Books.
Taylor, B., & Hinks, J. (2021). What field? Where? Bringing Gypsy, Roma and Traveller history into view. *Cultural and Social History*, *18*(5), 629–650.
van Baar, H. (2011). Europe's Romaphobia: Problematization, securitization, nomadization. *Society and Space*, *29*, 203–212.
Willers, M., & Johnson, C. (Eds.). (2020). *Gypsy and Traveller law*. Legal Action Group.
Yildiz, C., & De Genova, N. (2018). Un/free mobility: Roma migrants in the European Union. *Social Identities*, *24*(4), 425–441.

11

Romani people, policing, and penality in Europe

Iulius Rostas and Florin Moisă

Roma in Europe are discriminated against in all fields of public life. This situation has been extensively documented and recognized by international organizations and human rights monitoring bodies, governments, and non-government organizations (NGOs). It has become customary to start a discourse on Roma with reference to the widespread discrimination they are subjected to. Of course, needless to say, Roma are discriminated against in education, housing, employment, access to health, and other public services. Nevertheless, few officials go beyond this cliché and talk about the discrimination Roma face within the justice system and by law enforcement agencies. This chapter goes against the aforementioned trend, focusing on the discrimination of Roma in the administration of justice rather than on the socio-economic discrimination faced by Roma in Europe.

On April 18, 2016, a 17-year-old Romani boy, Mitko Yonkov, from Ovchepoltsi village was brutally beaten by a 24-year-old Bulgarian man, Angel Kaleev. Mitko told his assailant that they were both equal, despite their different ethnicities. Kaleev filmed the attack himself and posted it on social media. The short video displays the kicks inflicted on the Romani boy by Kaleev, accompanied by a racist rant against Roma. According to the European Roma Rights Center (ERRC, 2016), Kaleev was arrested the next day, after hiding from the police.

On April 18, 2020, a video posted on a social network shows police officers and officers from special force units carrying rifles and wearing masks abusing verbally and physically several Roma men in the village of Bolintin Vale, 30 kilometres south of Bucharest. The Roma men are lying flat on the ground with the officers standing over them. At one moment, the video reveals two uniformed officers beating a man's legs while a third officer, in plain clothes, who later was identified as the local police chief, rests a shoe on the man's neck. Racial slurs, cursing with sexual expletives, and demolishing the house accompany the physical abuse. According to the reports filed with a court of law, one man was beaten with a metal rod on the soles of his feet – a torture technique used in authoritarian regimes. The police intervention was triggered by the fact that these eight Roma men gathered in a private courtyard, drinking and listening to music. Police accused them of breaking the curfew imposed by law during the COVID-19 pandemic. Following widespread media coverage, the head of the local police was suspended and appointed chief of the local police in a nearby village, but was reinstated to his position in Bolintin Vale two months later. A journalistic investigation one year after the incident revealed

DOI: 10.4324/9781003176619-13

that Giurgiu County Police changed the reason for police intervention from the initial check on compliance with lockdown measures to intervening in a fight that broke out in Bolintin Vale (Petre, 2021). While the abused Roma, with the support of non-governmental organizations, filed a complaint with a court of law, the case was stalled over efforts to identify the masked officers involved.

The two cases offer insight into the social and psychological mechanisms that might explain the discrimination of Roma within the administration of justice. In the first one, the claim for equality made by young Roma Mitko Yonkov is met with force and behaviour that dehumanizes Roma. How could a Roma youth dare to make such a claim when inequality seems to be understood by the perpetrator as God-given and enshrined into the social norms of everyday life? Opposing these norms and claiming equality and equal rights is not acceptable. Power relations are meant to maintain the status quo where Roma are seen as sub-human and whose subjugation is part of the everyday social norms and institutions.

In the second case, police officers could use any means, including torture, to discipline the Roma even when their behaviour did not pose a significant threat to the social order. Respect for the rule of law, the interdiction against meting out justice by yourself, the prohibition of applying penalties outside the law, and the ban on torture are not values, norms, and procedures that apply to police officers while interacting with Roma. Romani bodies can be disciplined in any way, as anti-gypsyism is "a sort of 'permanent state of exception' within the legacies of European coloniality/modernity" (Fejzula, 2019, p. 2112) with Roma being constructed as a constant threat to state and society. The fact that police filmed their operation and posted it on social media to send a message to others reveals that they were not even aware that what they were doing was wrong or illegal. Considering the reaction of their superiors within the police, the Ministry of the Interior, and the justice system, it was normal for the police officers not to fear any repercussions as their behaviour clearly expressed the power of the state to discipline Roma as a colonial subject.

Justice, Roma, and law enforcement

Racism is embedded in all the acts of violence committed by the European majority against the Roma minority over centuries. This history generates today's situation and leads to a simple conclusion: Roma deserve less than others.

The overrepresentation of Roma in prison systems across Europe is commonly recognized and proven through disaggregated statistical data made available by several countries, while the relationship with the police is also recognized as a difficult and sensitive subject. The situation became so severe that the European Commission against Racism and Intolerance (ECRI) adopted the General Policy Recommendation No. 13 on Combating Discrimination against Roma in 2011 (amended in 2020) (ECRI, 2020). It strengthens the earlier General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing adopted in 2007 (ECRI, 2007).

In terms of the collection of disaggregated data, the current legislation is not very permissive, due to personal data protection rules applicable in European Union member states. On the one hand, the collection of disaggregated ethnic data may support the identification of certain social, economic, cultural, and educational inequalities, and may be used to develop or adjust public policy. On the other hand, disaggregated ethnic data may be very sensitive due to confidentiality issues and possible misuse of data, and, in areas like police, criminal justice and prison, such disaggregated data may be considered harmful through its identification of ethnic groups like the Roma.

Recommendations 8 and 9 made by the ECRI in its General Policy Recommendation No. 13 speak specifically to combating racist violence and crimes against Roma, as well as combating the manifestations of anti-gypsyism and racism likely to come from the police. The recommendations also call for a comprehensive system to record acts of violence against Roma, support for Roma who have been mistreated by police, investigations into police misconduct, and the punishment of abusers. Also recommended are improved training of police and a campaign for recruiting Roma as police officers.

According to various reports, including those by the ERRC, there is a greater chance for Roma to be racially profiled, to be victims of physical abuse by police, and to be overrepresented in the prison population. This situation is a result of a complexity of interrelated and reciprocally reinforcing factors. A report issued by the ERRC (2021) clearly states that

> Roma are overrepresented in the criminal justice system for a combination of reasons which include persistent racial profiling and over-policing of Romani communities, social marginalization and higher rates of poverty, lack of eligibility for alternatives to sentencing, and a presumption of guilt rooted in wider racist narratives around so-called 'Gypsy crime'. *(p. 19)*

A series of reports by the criminal justice watchdog organization Fair Trials present solid evidence and arguments that, compared to other majority ethnic groups in European countries, Roma are more likely to be suspected of criminal behaviour, to be racially profiled by police, to receive harsher sentences when convicted, and to be poorly treated in the prison system (Fair Trials, 2016, 2021).

Fair Trials (2021) bluntly describe police practices as "discriminatory and abusive" (p. 6) and claim that the police "not only violate the rights and dignity of Roma, but they are also responsible for the disproportionate representation of Roma in the criminal justice system" (p. 6). They also state that "there is clear evidence of anti-gypsyism in the police" (p. 6). In their report, *Uncovering anti-Roma discrimination in criminal justice systems in Europe*, Fair Trials (2021) found that "discriminatory attitudes are undoubtedly present in the criminal justice system and they can, and often do, impact criminal justice outcomes for Roma and most probably for other racialized groups as well" (p. 41).

The significant findings from their interviews with police, prosecutors, judges, and lawyers present a rather dark conclusion: "the racist and discriminatory attitudes of police, prosecutors, judges, and even defense lawyers were, in many cases, entirely conscious, with researchers noting countless examples of open manifestations of racism and prejudice" (Fair Trials, 2021, p. 41). As a result, Roma are facing racism at all stages of the criminal justice system. "The police are taking excessive and violent action against Roma and judges and prosecutors presuming criminality and guilt, leading to harsher sentences and the increased use of pretrial detention" (Fair Trials, 2021, p. 41).

The European Union Agency for Fundamental Rights' (FRA, 2017) survey on minorities and discrimination found that 14 percent of respondents were stopped by police during the previous year. Of those, 40 percent believed that it was because of their immigrant or their ethnic origin, including Roma. The report found that "discriminatory police practices affect certain immigrant and ethnic minority groups more than others" (FRA, 2017, p. 18). Moreover, if we compare the data with an earlier survey, there is a significant increase in the proportion of respondents declaring that they were stopped and searched by the police because of their immigrant or ethnic origin – 26 percent in the earlier survey (FRA, 2010). As for Roma respondents, the data are similar: 42 percent of Roma believed that the police stops were due to their Roma

ethnicity and that "Roma women and men believe to the same extent that the most recent police stop they experienced was of discriminatory nature" (FRA, 2017, p. 68). The report also found a relatively even distribution for Roma across different age groups, with 24 percent of those aged 16–24, 22 percent of those aged 24–34, 21 percent of those aged 35–44, and 20 percent of those aged 45–54 considering that ethnicity played a significant role in police stop and searches. A disrespectful relationship with the police over stop-and-search events was also reported in the case of Roma, where around three-quarters of Roma respondents identified disrespectful police behaviour (FRA, 2017, pp. 68–75).

There is a clear lack of trust between Roma communities and the police, and this "distrust inevitably leads to the worsening of tensions between the community and the police, which further fuels prejudice" (Fair Trials, 2021, p. 23). Instead of support and fairness, members of the Roma community fear the police and avoid contact with them, with negative stereotypes not benefiting either party. It is relevant to mention an affirmative action measure for Roma candidates to the Police Academy in Romania, where during the last year around ten positions were made available for candidates of Roma ethnicity, a practice that is expected to continue over the coming years (see Partida Romilor, n.d.).

Once funnelled into the criminal justice system by the police, racial discrimination continues at the next stage – in the courtroom. No matter the level of education and specialized training, judges and prosecutors seem to be subject to stereotyping Roma and this is affecting their professional judgement. As Fair Trials (2021) conclude after analyzing judicial decisions and public statements, "some judges and prosecutors are openly, and consciously biased against Roma, and […] their prejudices have a direct impact on how they make their decisions" (p. 24).

The Fair Trials (2021) report presents several cases in Bulgaria, Hungary, and Romania where Roma communities and their members are associated with criminal behaviour based on their ethnicity. A significant finding is that the prosecutors and judges interviewed by Fair Trials tend to "dismiss the suggestion that there might be discriminatory attitudes amongst their peers and/or that societal biases against Roma had any impact on how they make their decisions" (p. 26).

In terms of the pre-trial situation, it seems that for Roma the principle of detention as a last resort is not applicable. Rather, for Roma pre-trial detention is the rule and not the exception as it is for the majority of people who might be suspected of an offence. In addition, Roma may be subject to extensions of pre-trial detention without having the authorities produce "fresh evidence or arguments to justify the extensions of [the] detention period" (Fair Trials, 2016, p. 31).

House arrest and electronic monitoring are only just emerging as detention measures in some European Union countries. They are primarily made available for prominent suspects such as politicians and business people while the vulnerable are denied access. For example, Romania adopted special legislation on the use of electronic monitoring only in 2021, with the law coming into force in March 2022, for judicial supervision/bail, house arrest, in the application of provisional protection orders and protection orders under the legislation for combating domestic violence, in the application of European protection orders, and in the case of criminal sentences not involving imprisonment (Law No. 146/2021). As another Fair Trials (2016) report recommends, it is important to reduce the excessive use of pre-trial detention as an essential element of good governance and to monitor and regularly report on its use.

The presence of Roma in the prison population is not well documented. Most European countries are reluctant to collect such sensitive data and, as a result, the data that does exist is rather old. For example, in the case of Romania, a study by Durnescu, Lazar & Shaw (2002) found that Roma comprised 17.2 percent of the prison population; in the case of juvenile

inmates, the proportion is even higher, where Roma children made up 39.5 percent of inmates. According to the *Census of Population and Households 2002* (535,140 self-declared Roma) (Institutul Național de Statistică, 2002), Roma comprise 2.46 percent of the overall Romanian population. However, estimations by the Council of Europe put the figure much higher at 1.5–1.8 million, i.e., approximately 8 to 9 percent of the population (Council of Europe, 2012).

In Bulgaria, a recent study found that 50.8 percent of newly imprisoned individuals in 2016–2017 self-identified as Roma (Angelova & Kukova, 2020, p. 33), while the official police statistics state that the share of minorities among the identified offenders was 18.4 percent in 2014, and 17.5 percent in 2015 (Bulgarian Ministry of Interior, 2015). In understanding these figures, it is necessary to acknowledge the use of excessive force by police in Roma communities (Angelova & Kukova, 2020, p. 33).

To sum up, the relationship between Roma and law enforcement agencies in Europe could be characterized as tense, with Roma often being abused by these agencies. Specifically, the most common problems that Roma encounter in their interaction with the justice system and law enforcement are racial profiling by police, including stop-and-frisk practices, which are disproportionately applied to Roma individuals; police raids in Roma communities as a form of collective punishment; police statistics and intelligence are used to target and harass Roma individuals and families and are often justified as a form of 'crime prevention'; disproportionate use of force and firearms against Roma individuals, including killings of Roma individuals; ill-treatment while in police custody, including torture and severe beatings that result in deaths of those arrested; and the impunity enjoyed by the perpetrators.

Racism and the construction of the 'Gypsy'

The root cause of the inequality between Roma and the rest of the society in the administration of justice is racism against Roma or what is called anti-gypsyism. Anti-gypsyism is a special form of racism directed against those stigmatized in the social imaginary as 'Gypsies', 'tsigane', 'țigan', 'Zigeuner', 'tatars', 'zingari' or other related terms, that has at its core the assumption that Roma are an inferior and deviant group, which justifies their control and oppression. Other key assumptions underlying anti-gypsyism are orientalism, nomadism, rootlessness, and backwardness (Rostas, 2019, pp. 12–20).

Roma inferiority is linked to them being perceived as less human and closer to the animal world. Since the earliest writings about Roma, frequent references to animality in descriptions of Roma can be identified (Eliav-Feldon, 2009; Kenrick, 2004). Inferiority is also connected with the believed inability of Roma to respect the minimal rules and values of the society in which they live, as Nazi and other racist scientists believed (Wetzell, 2000).[1] Deviance emphasizes the outsider status of Roma and is often equated with criminality and certain practices considered Roma specific, such as begging, palmistry, or prostitution. Criminality is often perceived by the majority population as a genetic characteristic of Roma or as part of their nature. Orientalism based on skin colour and other ethnic characteristics emphasizes the non-European roots of the Roma, paving the ground for their exclusion. Roma play the role of 'the other': they are the reference point that reaffirms the identity of the majority population (Said, 1979).

Nomadism, seen as a feature of the way of life of Roma, depicts Roma as unstable and untrustworthy people, wandering around of their free will and exploiting the marginal resources existing in local communities. Despite their visible poverty, Roma are seen as beneficiaries of limited resources available locally through stealing, cheating, and deception of the local population. Nomadism is presented as a choice made by Roma, as a strategy to avoid accountability to society, to avoid paying taxes and being held accountable for alleged crimes, or as a primitive

and anti-social way of life in stark contrast with the settled majority population. Rootlessness is closely linked with nomadism and underlines the lack of a sense of identity, depicting Roma as people incapable of having relations with the land, with no collective memory and sense of belonging. Backwardness consists of presenting Roma as uncivilized, uneducated, and having a very different and primitive way of life from that of the civilized European majority. Both popular culture and government policy aim to respond to this 'problem' through the modernization of Roma by way of their assimilation through adopting the norms and values of the majority population.

These assumptions about Roma provide insights into their racialization and the mechanisms through which anti-gypsyism is produced and operates. An analysis of the relationship between Roma and the criminal justice system and the inequality of the legal system outputs must include an analysis of the construction of Romani identity. Who were those seen by authorities as failing to respect the rules and social norms? How could they be identified and deterred from breaking social norms? What was considered at the time as acceptable behaviour? What was the relationship between Roma and the rest of the population with which they interacted? How were Roma interacting with the religious and secular authorities? These questions assist us in better understanding the root causes of the current injustices which Roma face.

Historically, Romani identity construction was the privilege of the educated non-Roma elite. It continues to be dominated to this day by non-Roma academics, research centres, universities, and state institutions. The information available about Roma since their arrival in Europe is from writings of non-Roma and there are no Roma sources providing an alternative perspective. As early as the fourteenth century, Roma were enslaved in the principalities of Walachia and Moldova, in what is now Romania (Petcut, 2016). The origins of Roma slavery remain unknown, as does the reason why they were so severely punished. There are four theories regarding the origin of Roma slavery, but they are not supported by clear evidence or archival documents: slavery as a result of the Tatar invasion; slavery as Byzantium/Ottoman domination; slavery as economic exploitation; and slavery as a result of the historical practice of taking prisoners of war (Petcut, 2016).

There were three categories of Roma slaves: those belonging to the state, those belonging to private landlords or boyars, and those belonging to the Orthodox Church and monasteries. The conditions of the slaves varied, but in general, those belonging to the state had more freedom to sell their goods. Unlike other forms of slavery that existed in the Middle Ages, Roma slavery was hereditary and lasted for approximately 500 years. Slaves could be sold, beaten and abused, and, for a long period, the owners had the right to decide over the life and death of their slaves. They could not testify before a court of law and they could be punished without a court decision. Even the Orthodox Church treated them as sub-human: they were objects with no soul and they had no right to attend religious services (Petcut, 2016).

In the 1422 *Chronicles of Bologna* (Eliav-Feldon, 2009, pp. 276–291) and the writings of Lionardo di Niccolo Frescobaldi and Arnold von Harff (Taylor, 2014, p. 26), Roma were already described as darker-skinned, ugly, sinful heathens. As shown by Donald Kenrick (2004), between 1400 and 1450, approximately 62 historical chronicles and town council records about Roma can be identified. These early writers, mostly notaries of the cities, used imitation and exaggeration to construct the negative image of 'Gypsies' that was transmitted further through visual arts, literary works, and folklore. By the end of the fifteenth century, Roma were framed as political subjects opposing the local rulers. In Spain and the Holy Roman Empire, Roma were declared political enemies as suspected spies for the Arabs and the Ottomans respectively. Following these accusations, they were banished from Spain and the Holy Roman Empire.

Another important source of the hatred against Roma, which led to their criminalization, was the declaration of Roma as Christian pilgrims at the time when they arrived in Western Europe (Fraser, 1995). Their declared Christianity was not trusted by the powerholders as some of their habits, especially palmistry and fortune-telling, were seen as contradicting Christian norms. Their letters of safe conduct from the Pope, kings, and local powerholders were increasingly regarded as fake. During the reform of charity by the Catholic Church and following the publication in 1526 of Juan de Vives' book, *De Subventione Pauperum Sive de Humanis Necessitatibus* (On Assistance to the Poor), pilgrims were excluded from those entitled to charity from the Church and local communities (Terpstra, 2013).

Perhaps the most important source of hatred against Roma arises from their perceived deviant lifestyle. Vagabondage, homelessness, and vagrancy were perceived by the majority population as characteristics of Roma. The visibility of Roma due to their different dress style, skin colour, and different cultural and social practices, strengthened their association with behaviour that was increasingly outlawed. The legislation against those perceived as 'Gypsies' was mostly directed at their itinerant way of life. Although in certain cases the authorities distinguished between those perceived as 'Gypsies' and those defined as vagrants and vagabonds, they were placed under the same legal regimes. Hence, the criminalization of the 'Gypsies' served two aims: controlling them and increasing the power of the emerging state over a specific territory through greater regulation and laws (Dragomir, 2019; van Baar, 2011).

The criminalization of 'Gypsies' due to their perceived nomadism further increased conceptually and within the social imaginary through the distinction between those perceived as such and the local populations. As Tumminelli (2016) puts it: "To declare oneself a Gypsy, therefore, signified a life that was vagabond and tendentially criminal. To have a fixed and permanent home, on the other hand, meant a life that was orderly, honest and, thus, Christian" (p. 19). The obsession with Roma nomadism continues to this day. As Dragomir (2019) argues, "(w)hile the seventeenth century was marked by the state's aim to control movement, in the eighteenth century the state changed its techniques to control and reform 'vagrants' under the guise of transforming them into productive citizens" (p. 68).

Klaus-Michael Bogdal (2012) – author of a highly acclaimed book on the construction of Romani identity in Western Europe – argues that through their categorization as vagabonds, thieves and beggars, Roma were denied the status of a people:

> The Roma could only be placed in the social structure of early modern societies on the basis of a premise that had far-reaching consequences: the denial of their status as a people, even a small one. If they were not a people, then they could be classified among the mass of 'vagabonds' that existed outside and beneath the social hierarchy and who attempted to survive through casual labour, begging and crime. Degraded to a band that merged with the army of the vagrant poor – the 'rogues' and 'vagabonds' described by contemporary sources – the Roma lost their special position as an ethnic group. Their lifestyle was now interpreted within the discourse of social deviance and criminality and thus in a different context to that of ethnic genealogy and typology.
>
> *(n.p.)*

Thus, the social deviance of Roma was constructed through the denial of their status as a people within the feudal social hierarchy.

The association of Roma with vagrants and vagabonds within the legislation of medieval and modern states is exacerbated by several non-Roma academics who still make the case that Roma do not exist as a distinct ethnic group but claim that they are historically a group of vagabonds

and vagrants who developed their own language to escape authorities. These 'theories' are popularized by the Dutch scholars Anne Cottaar, Leo Lucassen, and Wimm Willems (see Lucassen, Willems & Cottaar, 1998) and by some anthropologists – key among them are Marek Jakoubek (see Budilova & Jakoubek, 2009) in the Czech Republic and Christian Giordano (see Giordano & Boscoboinik, 2011) in Switzerland. A recently published book makes a similar claim already in its title: *The damned fraternitie: Constructing Gypsy identity in early modern England, 1500–1700* (Timbers, 2016).[2]

As ideas are not innocent and have consequences, even international organizations sometimes feel the need to mention nomadism as a characteristic of Roma, as did the Council of Europe and the European Commission (2011):

> The term 'Roma' is used—similarly to other political documents of the European Parliament and the European Council—as an umbrella which includes groups of people who have more or less similar cultural characteristics, such as Sinti, Travellers, Kalé, Gens du voyage, etc., whether sedentary or not; around 80% of Roma are estimated to be sedentary.
>
> *(n.p.)*

Modern states have continued the historical tradition of controlling 'the Gypsies', depicted as a social danger for society. The police may be the state institution that has historically contributed the most to the reproduction of the image of Roma as criminal. Medieval scholars have negatively depicted Roma. Sebastian Münster described Roma as "born into vagrancy, without a homeland, wandering from one country to another, living off goods stolen by their women, and living as dogs, not caring at all about religion" (Solms, 1998, n.p., translated from German). These types of descriptions and images have continually informed police practices, as Leo Lucassen (1997) has shown. Reports from the police reveal that Roma have been the target of police surveillance, arrests, and abuses for centuries. In 1905, Alfred Dillmann published the *Zigeuner Buch*, a manual for training police officers on how to deal with Roma. The book contained 3,350 names and 650 cases describing persons labelled as *Zigeuner*. Seven thousand copies of the book were printed and distributed. In Bavaria and Austria, it was still in use until the 1950s. The book defined 'the Gypsies' both as an ethnic group and as people with a disorganized way of life. In fact, as Lucassen (1997) noted, what was disturbing for the police was not criminality but Roma's "disorderly" (p. 41) way of life.

It is also important to note that in the post-World War II period in West Germany the so-called 'Gypsy' registration files created during the Nazi era were transferred to postwar successor agencies. The police's and other authorities' harassment of the Roma/Sinti population remained routine. In addition, anatomical, anthropometrical, and linguistic research data gathered by the Nazi regimes continued to be used in academic research and publications (Tebbutt, 1998, pp. 36–39). The German 1926 anti-vagrancy ordinance which enabled police to target Roma was only repealed in West Germany in 1970 under pressure from civic groups. Experts have expressed doubts that police changed their practices in dealing with Roma after that date (Lucassen, 1997).

What can be done about it?

The general tendency is to address the issues identified above by insisting on education as a universal solution. In general, when it comes to problems faced by Roma, education is seen as the solution for almost everything. The general perception is that the majority population has

to learn to become more tolerant and to learn something about Roma culture and traditions – a folkloristic approach – while Roma must learn how to behave, maintain hygiene and, at best, learn an occupation. We depart from this interpretation. While we value education as an important long-term component of the set of measures to combat anti-gypsyism, we cannot accept that ignorance and prejudice justify the violence against Roma systematically inflicted by state authorities for centuries. In fact, we question the very content of the education currently provided by European states.

Law enforcement officers, prosecutors, and judges are the by-products of the educational systems of their countries. The lack of any relevant information about Roma in the mainstream curricula, the lack of human rights and civic education, and the lack of anti-racism and anti-bias training for criminal justice professionals represent significant shortcomings of the justice system and society in general. These shortcomings should be fixed as a matter of urgency.

We believe that there is an urgent need to conduct an institutional and legal audit within law enforcement agencies and the justice system to identify what exactly facilitates the infliction of violence against Roma, what the mechanisms are that produce unequal outcomes for Roma and non-Roma when it comes to sentencing, and to provide a complex set of measures and policies to make sure that the justice system does not produce inequalities based on race or any other unjustifiable ground. However, this audit should be part of the larger initiative to renegotiate the social contract between the state and Roma, as it requires a reimagination of Roma as citizens endowed with rights and agency, and to establish institutions that defend these rights so Roma are able to fully exercise and enjoy them.

Notes

1 Wetzell (2000) analyses the contribution of Ritter and other scientists to framing Roma as "asocial primitives" and "hereditary criminals", proposing their preventive internment in working camps and sterilization as a genetic crime prevention measure (pp. 220–230).
2 The book description on the publishers' website is highly relevant: "the book argues that the construction of Gypsy identity was part of a wider discourse concerning the increasing vagabond population, and was further informed by the religious reformations and political insecurities of the time. The developing narrative of a fraternity of dangerous vagrants resulted in the Gypsy population being designated as a special category of rogues and vagabonds by both the state and popular culture."

References

Angelova, D., & Kukova, S. (2020). Guilty by default: Discrimination against Roma in the criminal justice system in Bulgaria. https://www.bghelsinki.org/en/reports/guilty-by-default-discrimination-against-roma-in-the-criminal-justice-system-in-bulgaria-en

Bogdal, K.M. (2012, February 24). Europe invents the Gypsies: The dark side of modernity. *Eurozine*. https://www.eurozine.com/europe-invents-the-gypsies/

Budilova, L., & Jakoubek, M. (2009). Anthropological fieldwork, site and Roma communities: Roma/Gypsies in the Czech and Slovak Republic. *Anthropological Notebooks*, *15*(2), 5–14.

Bulgarian Ministry of Interior. (2015). Annual police statistical bulletins for 2014 and for 2015. http://www.mvr.bg/Planirane_otchetnost/Policeiska_statistika/Police_statistika.htm

Council of Europe. (2012). Estimates on Roma population in European countries. https://www.coe.int/en/web/roma-and-travellers/publications

Dragomir, C.I. (2019). Nomads, "gypsies", and criminals in England and India from the seventeenth to the nineteenth century. *Critical Romani Studies*, *2*(1), 62–81.

Durnescu, I., Lazar, C., & Shaw, R. (2002). Incidence and characteristics of Roma men in Romanian prison. *The Howard Journal of Crime and Justice*, *41*(3), 237–244.

ECRI. (2007). General Policy Recommendation No. 11 on combating racism and racial discrimination in policing. https://rm.coe.int/ecri-general-policy-recommendation-no-11-on-combating-racism-and-racia/16808b5adf

ECRI. (2020). General Policy Recommendation No. 13 on combatting discrimination against Roma. https://rm.coe.int/ecri-general-policy-recommendation-no-13-on-combating-anti-gypsyism-an/16808b5aee

Eliav-Feldon, M. (2009). Vagrants or vermin? Attitudes towards Gypsies in early modern Europe. In M. Eliav-Feldon, B. Isaac, & J. Ziegler (Eds.), *The origins of racism in the West* (pp. 276–291). Cambridge University Press.

ERRC [European Roma Rights Centre]. (2016, April 19). Romani boy attacked in Bulgaria for declaring himself equal. http://www.errc.org/press-releases/romani-boy-attacked-in-bulgaria-for-declaring-himself-equal

ERRC [European Roma Rights Centre]. (2021). Justice denied: Roma in the criminal justice system. http://www.errc.org/reports--submissions/justice-denied-roma-in-the-criminal-justice-system

European Commission. (2011). An EU framework for national Roma integration strategies up to 2020. http://ec.europa.eu/justice/discrimination/roma/eu-framework/index_en.htm

Fair Trials. (2016). A measure of last resort? The practice of pre-trial detention decision making in the EU. https://www.fairtrials.org/app/uploads/2022/01/A-Measure-of-Last-Resort-Full-Version.pdf

Fair Trials. (2021). Uncovering anti-Roma discrimination in criminal justice system in Europe. https://policehumanrightsresources.org/uncovering-anti%E2%80%91roma-discrimination-in-criminal-justice-systems-in-europe

Fejzula, S. (2019). The anti-Roma Europe: Modern ways of disciplining the Roma body in urban spaces. *Revista Direito e Praxis*, *10*(3), 2097–2116.

FRA [European Union Agency for Fundamental Rights]. (2010). EU-MIDI, European Union Minorities and Discrimination Survey. https://op.europa.eu/en/publication-detail/-/publication/85da6cf8-8e76-4517-804e-5a684579f007

FRA [European Union Agency for Fundamental Rights]. (2017). EU-MIDIS II, Second European Union minorities and discrimination survey. https://fra.europa.eu/en/publication/2017/second-european-union-minorities-and-discrimination-survey-main-results

Fraser, A. (1995). *The gypsies*. Wiley-Blackwell.

Giordano, C., & Boscoboinik, A. (2011). The Roma "problem": Ethnicisation or social marginalisation? In G. Mirescu (Ed.), *Social inclusion and cultural identity of Roma communities in South-Eastern Europe* (pp. 11–18). Swiss Peace Institute.

Institutul Național de Statistică. (2002). Populatia dupa. https://insse.ro/cms/files/RPL2002INS/vol1/tabele/t40.pdf

Kenrick, D. (2004). The origins of anti-gypsyism: The outsiders' view of Romanies in Western Europe in the fifteenth century. In N. Saul & S. Tebbutt (Eds.), *The role of the Romanies: Images and counter-images of 'gypsies'/Romanies in European cultures* (pp. 79–84). Liverpool University Press.

Lucassen, L. (1997). "Harmful tramps": Police professionalization and gypsies in Germany, 1700–1945. *Crime, Histoire & Sociétés/Crime, History & Societies*, *1*(1), 29–50.

Lucassen, L., Willems, W., & Cottaar, A. (1998). *Gypsies and other itinerant groups: A socio-historical approach*. MacMillan.

Partida Romilor. (n.d.). Locuri pentru candidații romi la Academia de Poliție "Alexandru Ioan Cuza" București. https://partidaromilor.ro/locuri-pentru-candidatii-romi-la-academia-de-politie-alexandru-ioan-cuza-bucuresti/

Petcut, P. (2016). *Rromii. Sclavie si Libertate Constituirea și emanciparea unei noi categorii etnice și sociale la nord de Dunăre1370 – 1914*. Editura Centrului National de Cultura a Romilor.

Petre, A. (2021, March 31). Racism, police brutality and online hate: Why Romania's Roma are no nearer their Black Lives Matter moment. *Reporting Democracy*. https://balkaninsight.com/2021/03/31/racism-police-brutality-and-online-hate-why-romanias-roma-are-no-nearer-their-black-lives-matter-moment/

Rostas, I. (2019). *A task for Sisyphus: Why policies towards Roma in Europe are failing*. CEU Press.

Solms, W. (1998). Zigeunerbilder deutscher Dichter [German poets' images of Gypsy]. https://www.lpb-bw.de/publikationen/sinti/sinti10.htm

Taylor, B. (2014). *Another darkness, another dawn: A history of Gypsies, Roma and Travellers*. Reaction Books.

Tebbutt, S. (1998). *Sinti and Roma. Gypsies in German-speaking society and literature*. Berghahn Books.

Terpstra, N. (2013). *Cultures of charity: Women, politics, and the reform of poor relief in Renaissance Italy*. Harvard University Press.

Tumminelli, M.G. (2016). The anti-Gypsy legislation of the Duchy of Milan in the early modern age. In H. Kyuchukov, E. Marushiakova, & P. Vesselin (Eds.), *Roma: Past, present, future* (pp. 6–23). Lincom Academic Publishers.

Van Baar, H. (2011). *The European Roma: Minority representation, memory, and the limits of transnational governmentality*. Beheer.

Wetzell, F.R. (2000). *Inventing the criminal: A history of German criminology 1880–1945*. The University of North Carolina Press.

12

The obsolescence of 'police brutality'

Counterinsurgency in a moment of police reform

Dylan Rodríguez

'Police brutality' and the reformist fever dream

The recent age-defining global revolts against anti-Black police violence have almost nothing to do with 'police brutality'. Rather, an old-and-new poetics of rebellion – the kind that unapologetically urges burning the plantation, razing the settler presence, eradicating apartheid, and destroying colonizers, compradors, and slave masters if they refuse to evacuate – has enlivened a lexicon of abolitionist confrontation with state power. Before, during, and after the uprisings of 2020, the incisive, thoughtful, radical praxis of rebellion demystifies the fundamental *legitimacy* – not merely the brutality – of policing. The revolts were/are not against police brutality, in the narrow sense, but rather against the prestige, cultural sanctity, and state-valorized violence of the police as (at once) system/institution, uniformed soldier, occupying force, and modality of being that is anti-social, psychotic, supra-human, and selectively impervious to rule/restriction/law.

'Police brutality' thus remains a vastly overused and misused term. Police reform organizations, elected officials, academics, media pundits, celebrities, surviving loved ones, community leaders, and various influencers continue to use this phrase when describing and criticizing the physically vicious and often deadly actions of law enforcement.[1] To invoke police brutality is generally to suggest that such atrocious police behaviours are violations of criminal or civil rights law as well as transgressions against the protocols and policies governing police and sheriff's departments (e.g., Cherry, 2021; Copblock, n.d.).

Yet, it is almost always the case that the acts in question are formally or effectively sanctioned by both institutional policy and (criminal) law (Rodríguez, 2012). That is, the police behaviour under scrutiny is almost never illegal, or for that matter, altogether abnormal.

Brutality implies an exception to the rule, a corruption of state power that besmirches an otherwise sound (or at least salvageable) institution of social order. But what if such beliefs are misled or fraudulent because the police actions in question are actually state-sanctioned, within

DOI: 10.4324/9781003176619-14

policy, and thus 'legal'? Correia and Wall (2018) argue that the generalized juridical sanction of police violence:

> highlights the pitfalls of the term, since what commonly goes by police brutality works to demarcate between acceptable and unacceptable state violence, and therefore simultaneously works to legitimate all sorts of police violence that might not be deemed excessive or illegal.
>
> *(p. 217)*

Further, as a descriptive journalistic, legal, and activist lexicon, 'police brutality' appeals to a liberal fever dream of decisive *reformability*: the notion that adjustments to the policy, juridical, and cultural apparatus of policing can magically morph it into an equitable, democratic, and inclusive expression of state power.

This chapter concisely demystifies the limitations of the 'police brutality' concept by arguing for a rigorous embrace of alternative keywords for abolitionist and other forms of engaged, collective, scholarly activist praxis: *police terror*, *counterinsurgency*, and *reformism*, among others. These terms, when defined *and narrated* properly, help to demystify the empirical and theoretical problems with police brutality as a descriptive, analytical, legal, and reformist concept. Here, I am working from an understanding of contemporary US policing as a *narrative* regime that sustains asymmetrical domestic and hemispheric warfare, in significant part, through its capacity to (1) discipline political imagination and (2) effectively normalize reformist agendas and subjects as the critical deputies of police power in moments of radical crisis. A rigorous, radical analysis of policing as a (state) violence of narrativity, I contend, challenges the assumptions and ideological faith structures of liberal-to-progressive reformist frameworks that vest hope in the possibility that police power can be separated from its foundations in anti-Blackness as well as various forms of racial-colonial violence (including but not limited to conquest, occupation, and the undeclared war of settler societies).[2]

Official ignorance as police power

As of this writing (April 2022), according to the best available empirical evidence, on-duty police have consistently killed about 1,000 people annually in the United States since 2005 (Fatal Force, n.d.). Of these, a mere 121 instances resulted in the arrest of an officer for murder or manslaughter, of which 95 reached a juridical conclusion (negotiated pleas or completed trials). Only 44 resulted in a conviction, though such convictions were frequently for significantly reduced criminal charges (e.g., manslaughter rather than second-degree murder). Annual arrest rates for such deadly police acts hover between 1 and 2 percent.[3] The rate of fatal on-duty police activity has remained consistent through the first two decades of the twenty-first century, seemingly unaffected by increased media and investigative reporting, massive protest movements, ever-present cellphone cameras, multiform rebellions against police authority, showcase prosecutions of individual police officers, or implementation of localized police reform agendas (see Fatal Force, n.d.). It is especially noteworthy that – against what seemed to be a shared, if not prevalent, commonsense assumption by police reformists and various communities of activists and scholars that the surge of the global movement against police violence in 2020 would at least temporarily reduce the casualties of such state violence – the number of civilians killed by US police in 2021 was the highest in the 17-year history of the *Washington Post's* Fatal Force project, which culls available data from publicly available sources to assemble an empirical archive on police violence from 2005 to the present (Iati et al., 2022).

The flagship medical journal *The Lancet* frames fatal police violence in the US as a public health crisis, stating that,

> Current data on deaths from police violence are constrained by the limitations of government-run vital registration systems. Vital registration data are often considered high quality for cause of death estimation; however, vital registration systems can be biased. Considerable evidence in the USA suggests government vital registration data under-report police violence.
> *(Sharara & Wool, 2021, p. 1240)*

Placed in the broader context of contemporary state-proctored information technologies, the absence of accessible, transparent state-reported data on civilian fatalities at the hands of police suggests a comprehensive, systemic, active neglectfulness. While the modern information-gathering apparatus of the US constantly culls, refines, and periodically weaponizes the personal data of hundreds of millions of people in and beyond its national borders (see, e.g., Biddle, 2021), it has developed no protocols for collecting or coordinating rudimentary factual evidence of homicidal police actions.

Why are academic researchers, grassroots organizations, and investigative journalists the primary compilers of national data on the civilian casualties of police violence? Why do these independent research efforts consistently have to navigate the obfuscation, unresponsiveness, and apparent bureaucratic negligence and incompetence of state officials and police administrators?

Far from being a consequence of typical governmental dysfunction or a failure of will among state (police) administrators, elected officials, or data bureaucrats, the evacuation of accessible, coordinated data about the casualties of police violence composes an *infrastructure of official ignorance*. The state's persistent deprivation and dis-coordination of such 'official facts' is a primary technology of policing, especially as official ignorance plays a vital role in the state's navigation of the persistent, uneven crises of legitimation that shape the overlapping cultural, affective, and ideological apparatuses of police power (Hall et al., 1978). Put another way, the legitimation of police power relies on a broad institutionalization of plausible deniability. One concrete consequence of this infrastructure of official ignorance is the state's credible disavowal of any shared evidentiary premise for national and local debates over the reform, defunding, and/or abolition of police (Arango & Dewan, 2021; Jackman, 2021).

I am arguing that police power's (self-)legitimation does not merely justify, normalize and rationalize its gendered anti-Black and colonial violence: rather, the production of legitimacy is itself already a primary, metastasizing form of such violence (Rodríguez, 2012). Knowledge evacuation, factual non-accountability, and unarchiving are not failures of the state or police bureaucracy, they are infrastructures of police power that actively produce the epistemic and ideological contours of a political culture that thrives on disappearing, concealing, and obscuring the evidence of everyday police terror and its various forms of atrocity. Defining this capacious, cross-institutional, shared protocol of non-accounting as a vital component in a larger infrastructure of police terror further reveals the conceptual and explanatory limitations of police brutality.

The limits/obsolescence of 'police brutality'

The targeted casualties and asymmetrical suffering created by police violence are part of a historical totality of police terror, an archive of targeted atrocity that is inseparable from global and regional formations of racial capitalism (Schrader, 2019; Seigel, 2018; Robinson, 2020).

By way of example, the late nineteenth- and early twentieth-century transformation in US regimes of surveillance and bodily discipline exerted over Black people structured juridical and political-economic shifts that established the foundations for modern police power. The formal disestablishment of chattel racial slavery included cultural and systemic re-articulations of anti-Black plantation/chattel power through institutionalizations of 'emancipation' (Woods, 2017). Numerous slave plantations were repurposed as sites of carceral convict leasing and debt sharecropping, while the social-legal order of slavery transitioned into gendered apartheid after the Tilden-Hayes Compromise of 1876 re-empowered (and re-armed) the former Confederates and radically undermined (and dis-armed) the brief, surging renaissance of Black Reconstruction throughout the South (Du Bois, 1963; Haley, 2016). Concurrently, white male volunteer slave patrols morphed into apartheid white citizens' militias. At the dawn of the twentieth century, these militias evolved into what would become the foundations for modern police (Correia & Wall, 2018; Hadden, 2001).

Throughout the half century following the nominal abolition of plantation slavery, the logic of anti-Black state/social surveillance and militarized policing did not fundamentally recede – it expanded. The social and institutional practices through which this logic was exercised underwent multiple cultural shifts, experimental political and legal reforms, and logistical transformations. A vast archive of scholarship within and beyond African American, Africana, and Black Studies – from W.E.B. Du Bois and Ida B. Wells-Barnett onward – suggests that intense anti-Black state and state-condoned violence constituted the post-emancipation period of national reform and that logics of anti-Blackness at the turn of the twentieth century permeate cultural and institutional domains that define the emergence of modern police power (Du Bois, 1963; Wells-Barnett, 2014).

When examined in historical continuity with prior and co-existing forms of statecraft and (anti)social formation, contemporary regimes of policing, within and across their anti-Black, racial-colonial, queer and transphobic, ableist, misogynist global iterations, do not generally engage in 'police brutality'. Between border patrol agents on horseback terrorizing Haitians, the Los Angeles Police Department's weaponization of gang injunctions, and the Baltimore Police Department's abortive attempt to implement total aerial surveillance of city residents, and other recent-to-long historical examples, police power constantly blurs the limits of legitimacy, law, and standard operating procedure (see ACLU, 2021; Queally, 2020; Sullivan & Kanno-Youngs, 2021). The growing North American and global movement focused on Missing and Murdered Indigenous Women and Girls (MMIWG) identifies police *negligence* – an often under-discussed form of police violence – as a primary cause of ongoing gendered colonial atrocity. While some strains within the MMIWG movement continue to advocate for improved police responsiveness and investigation, many survivors and loved ones state definitively that "ultimately, Indigenous women do not matter to the police and are not worthy of the police's time and effort" (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019, p. 101).

Such state violence, even on the rare occasions when it is curbed by its own unconstitutionality and illegality, melts brutality into targeted, everyday normality for those targeted by the historical logics of anti-Black criminalization, apartheid (Jim Crow) segregation, and colonial/white supremacist property (see Haley, 2016; Skalicky & Davey, 2016; Yancy & Jones, 2013).

The common use of the phrase 'police brutality' reflects a contemporary cultural lexicon that tends to substitute catchphrases for substantive, sober analysis (Rodríguez, 2021b). While there are periodic exceptions to the generic, sloppy use of this concept in public discourses, it

is nonetheless possible to identify four of the intertwined assumptions that generally cohere the explanatory structure of police brutality as an everyday notion:

(1) That the violent behaviours identified as police brutality are, in fact, illegal acts and/or infringements of specific rules of conduct that can be resolved through reforms and innovations of jurisprudence and/or institutional policies (see, e.g., Harmon, 2008). Further, that police brutality does not encompass forms of violence, harm, and suffering created by police negligence.
(2) That police brutality is fundamentally a problem of misconduct and criminal behaviour by individual police officers or identifiable groups of officers; culpability is best addressed through individual criminal prosecutions (see the protocols for addressing law enforcement misconduct, particularly the section on investigations and prosecutions by the US Department of Justice, Civil Rights Division (n.d.)).
(3) That the violation, public betrayal, and harm created by police brutality can be grieved, redressed, and/or corrected in part (or at all) through existing judicial and institutional mechanisms such as citizens' complaints, coronial inquests, whistleblower grievances, internal investigations, in addition to criminal prosecutions of individual police officers (see, e.g., Merkl and Holder Jr, 2021).
(4) That it is possible to reduce or even eliminate police brutality through the implementation of reform measures that include bias and diversity training, changes in recruitment and hiring practices, increased use of body cameras, and revisions of use of force policies (e.g., eliminating specific chokeholds), among other institutional adjustments (Brenes, 2021; Rodríguez, 2019).

Contrary to these and other assumptions, many (if not most) of the acts described as police brutality are neither illegal nor altogether abnormal (see the National Institute of Justice, 2020) and especially so in relation to policed communities (for a critical overview of the normalization of police violence see Stinson, 2022). The conceptual integrity of the term further erodes when accounting for legal concepts like qualified immunity, which effectively grants police breathtaking entitlement to engage in various forms of torture, maiming, and deadly violence (Chung et al., 2020). Perhaps most importantly, police brutality fails to encompass the overwhelming historical totality of targeted casualties and lived atrocities induced by officers who act within the parameters of the law and institutional policy: enacting the historical mission of police power includes the reproduction of anti-Black chattel and apartheid sociality, domination of workers, punitive control of borders, and protection of private property, especially under terms of anti-Black corporate, white supremacist, and colonial ownership.[4]

Cedric Robinson (2020) offers a corrective to this malformed dependence on the concept of police brutality when he identifies 'police terror' as a symbiotic historical corollary of 'racialism' in his classic text *Black Marxism*. He conceptualizes police terror as a description of the foundational and historically persistent relations of warfare and violence enabling the rise of racial capitalism as a social, economic, and symbolic/cultural order. Robinson's (2020) historical analysis of the post-Civil War US includes a description of the ensemble of historical power within which policing plays a central role:

> **Complemented by the terror** [emphasis added] of state militias, company police, and security agents, the persistent threats of immigration controls, the swelling ranks of reserve labor, racialism was reattired so that it might once again take its place among the inventory of labor disciplines.
>
> *(pp. 188–189)*

For Robinson (2020), it is "terror" rather than brutality or even violence that indexes the emergent modernity of US policing as a regime of anti-Black chattel and carceral power. Beyond police brutality, there is a condition of targeted *terror* that defines the reign of modern US law enforcement in relation to segregated, displaced, and otherwise targeted populations: unhoused people, sex workers, undocumented border crossers, Indigenous land and water protectors, and of course Black people generally, as anti-Black policing consistently negates class privilege and persists among 'diverse' police forces.

Terror lingers, moves, leaks, and permeates. It invades, deforms, and damages physiology, genealogy, imagination, and access to futurity while undermining the collective capacity to manifest personhood and shared autonomy (peoplehood). A protracted conceptual, practical, poetic, and theoretical centring of police terror may help to constructively obsolete (or at least demystify) 'police brutality' as the primary organizing rhetoric and a keyword for collective mobilizations of critical, insurgent, and abolitionist responses to the asymmetrical domestic warfare waged by the modern US state.

Lessons from the *counterinsurgency* field manual

Dwelling in the long historical, real-time archive of police terror can induce a dynamic approach to studying and responding to the technologies, rhetorics, and institutional rituals of *counterinsurgency* that constantly attempt to (1) neutralize radical critiques of and movements against police terror, while simultaneously (2) empowering, fabricating, and/or materially endorsing ensembles of liberal reformism that reproduce the legitimacy of police power by compartmentalizing its terror as a fixable brutality.

Here, I am especially concerned with how various institutional responses to the global uprisings of 2020 openly expropriate the language, thought, and creativity of Black radical, abolitionist, revolutionary, and anti-colonial movements as part of an emergent cultural ensemble of counterinsurgency. The symbolic, aesthetic, pedagogical, and other cultural productions of counterinsurgency attempt to domesticate the lexicons of revolt in what can be understood as a strategic reformist conquest of ideas and imagination, knowledge and language, pedagogy and aesthetics.

Published in 2006, the US Army and Marine Corps *Counterinsurgency* field manual (also known as US Army Field Manual 3-24) frames a variety of strategies and methods for pacifying resistance to US militarism, invasion, settler-colonial occupation, and empire. While much of the text is concerned with developing boots-on-the-ground protocols for neutralizing insurgencies against US occupation and "integrating civilian and military activities" (US Army and Marine Corps, 2006, ch. 2), it also foregrounds "The Learning Imperative" as a primary technology of pacification. Field Manual 3-24 suggests that opening "channels of discussion and debate" between US military officers and occupied community members will:

> **encourage growth of a learning environment** [emphasis added] in which experience is rapidly shared and lessons adapted for new challenges. The speed with which leaders adapt the organization must outpace insurgents' efforts to identify and exploit weaknesses or develop countermeasures.
>
> *(US Army and Marine Corps, 2006, ch. 7, p. 9)*

Read within and against its own textual and strategic grain, *Counterinsurgency* seems to be as applicable to the political geographies of the United States as it is to any territories occupied or otherwise directly impacted by a US military presence. Stuart Schrader (2019) provides a

rigorous historical context for apprehending this strategic and tactical mobility, showing how an influential bloc of "security experts" worked from the 1950s through the 1970s to transform "the counterinsurgency program of police assistance to Third World countries, into a key instrument of domestic policy" (p. 8). The flow of counterinsurgency is dynamic, global and relentless – which is to say that its formation as a global modality of the US empire is as 'national' as it is transnational in its geographies of power/violence.

I read Field Manual 3-24 as a text that shapes the contours of counterinsurgent domestic warfare, in continuity with the long legacies of the FBI's Counterintelligence Program (COINTELPRO) among other containment, surveillance, and liquidation measures undertaken by the US state against Black liberation movements, the American Indian Movement, the Communist Party, Puerto Rican *Independentistas*, and various US-based revolutionaries (Churchill & Vander Wall, 1990). *Counterinsurgency* departs from COINTELPRO, however, by adopting an even more expansive approach to asymmetrical warfare and civilian pacification. While it retains the broad objective of slowing and neutralizing militant opposition to and revolt against US police/colonial power, the field manual foregrounds interdisciplinary methods of solicitation, selective empowerment, and reform, placing strategic emphasis on piecemeal changes to economic, governmental, and schooling infrastructures.

Counterinsurgent reformism, in this instance, is a composite within the aforementioned infrastructure of police legitimation: notably, Field Manual 3-24 openly affirms that "Legitimacy Is the Main Objective" (US Army and Marine Corps, 2006, ch. 1, p. 21). Counterinsurgency's civilian pacification mandate includes an aspirational perversion of Gramscian hegemony: "counterinsurgents achieve [pacification] by the balanced application of both military and nonmilitary means" (US Army and Marine Corps, 2006, ch. 1, p. 21). Accounting for the fact that hegemonic consent is not possible under conditions of conquest, occupation, incarceration, or displacement, the strategic goal of legitimacy – a term that must be distinguished from both *hegemony* and *consent* – relies on reformism as a technology of policing.

Field Manual 3-24 outlines a strategy of reformist triage that ostensibly addresses the material conditions underlying occupied/policed peoples' revolts:

> [K]illing insurgents – while necessary, especially with respect to extremists – by itself cannot defeat an insurgency. Gaining and retaining the initiative requires counterinsurgents to address the insurgency's causes through stability operations as well. This initially involves securing and controlling the local populace and providing for essential services. As security improves, military resources contribute to supporting government reforms and reconstruction projects.
>
> *(US Army and Marine Corps, 2006, ch. 1, p. 3)*

This passage extends a strategic narrative that draws lessons from the US state's protracted, multi-front response to Black radical, liberation, and revolutionary movements during the mid-to-late twentieth century.

Contemporaneous with this expansion of police power and infrastructure, a counterinsurgent nonprofit industrial complex was crystallizing through the shared, crisis-driven brainstorming of philanthropic foundation executives, liberal community leaders, police administrators, and elected officials across the United States (Gilmore, 2017; Rodríguez, 2017; Wolch, 1990). Robert Allen's durable 1969 study, *Black Awakening in Capitalist America*, shows how a coalescence of philanthropists, state officials, academics, community-based reformers, and other counterinsurgent actors played a central role in institutionalizing the suppression of domestic Black radicals and revolutionaries during the late 1960s and 1970s (Allen, 2017). In fact, Field

Manual 3-24 overtly endorses such an ensemble of pacification, stating that counterinsurgency must typically "adopt different approaches to address each element of the insurgency", including co-opting certain parts of occupied communities through "economic or political reforms", while accepting the fact that "fanatic combatants will most likely have to be killed or captured" (US Army and Marine Corps, 2006, ch. 1, p. 13).

The uneven success of recent grassroots efforts to defund and redistribute police budgets has been accompanied by a growth of community-centred debates about how to create real-time abolitionist infrastructures of community safety.[5]

A developing soft counterinsurgency has met these efforts with a proliferation of police reform agendas that attempt to recalibrate and restabilize the institutional legitimacy of policing in the United States – see, for example, the George Floyd Justice in Policing Act 2021, also McGreevy (2021) and Eder et al. (2021). Informed by the historical blurring of global war-making, domestic policing, and reformist reaction, the dynamic expansion of counterinsurgency as a technology of early twenty-first-century policing has increasingly deputized liberal-to-progressive activists, elected officials, academics, students, nonprofit community organizations, social and health care workers, and other non-police actors to reproduce and/or re-legitimate police power by naturalizing reformism as the horizon of political imagination as well as the paradigmatic focus of pragmatic "social justice" agendas – this reformist episteme forms the dynamic precondition for sustaining the historical regime of police terror.

Echoing Geo Maher's (2021) assertion that "police reform [has] been largely successful in its own task: to legitimize the police" (p. 73), Schrader (2019) considers how such reforms have historically "aimed to bolster the legitimacy of the institution and rehearse new modes of regulating and producing social order" (p. 35). A stream of counterinsurgency thus works through both 'reform' and 'reformism', terms that are often conflated but which require rigorous practical and conceptual differentiation.

It is useful to define 'reform' as a logic of institutional manoeuvring rather than a discrete agenda or desired institutional outcome. Reform is an approach to limited institutional change that concedes the existence of prevailing social, economic, political, and/or legal systems, including those organized through the power of anti-Black, racial-capitalist, colonial, apartheid, and other violently oppressive (anti-)social forms. Agitating for reform within such systems entails identification and adjustment of relatively isolated aspects of their operation, often for the announced purpose of increasing (perceptions of) access and equity in their administration and everyday functioning: for example, voting/civil rights, police training and hiring, and criminal justice policy (e.g., the emblematic Obama-era reform of sentencing guidelines for crack cocaine possession) are prototypical areas of emphasis for reform efforts (Gotsch, 2011). In many cases, the purpose of reform is in fact to protect political, economic, and cultural systems against collapse, whether threatened by internal contradiction and dysfunction or external forces of opposition.

'Reformism' on the other hand, is a *militant ideological and political commitment* that is often sanctioned by a combination of state power and the regimes that constitute gendered racial capitalism, including those encompassed in the formation of the nonprofit industrial complex that Allen (2017) so carefully chronicled. Reformism militantly stakes the claim that the cultural, economic, and political ensemble of an existing order *ought to be* protected, legitimated, and sustained rather than transformed, abolished, or creatively disrupted. As a defence of the existing material and epistemic order, the reformist position tends to passively and/or actively criminalize and endanger people, communities, and movements that seek fundamental – that is, radical, abolitionist, anti-colonialist, or revolutionary – change to an oppressive arrangement. As Erica Edwards (2012) has shown, certain reformist traditions pivot on gendered racial

performances of gendered (Black) respectability, inducing troubled convergences with cultural logics of commodification and racial fetish as well as entrepreneurial (neoliberal brand-building) opportunism. Finally, and perhaps most importantly, reformism attempts to delimit the imaginative horizon of political possibility to that which is seen as practical and achievable within the protocols and power relations of existing institutional forms.

Under the conditions of anti-Black policing and asymmetrical domestic war, 'reform' at best functions as a method of casualty management, while 'reformism' works as a primary pedagogical, political, and cultural form of counterinsurgency against those undertaking radical, abolitionist, revolutionary, and liberationist projects of community, collective power, and futurity.

From liberal carceral horizons to civilizational abolition

Reformist counterinsurgency cultivates liberal carceral horizons. By this, I mean aspirations of social change that already presume the institutional existence and necessity of police power (and its criminological, carceral complements: jails, prisons, and borders) as a foundation of sociality itself. Yet, horizons are a matter of interpretation and imagination; they are projected, narrated, and fantasized; horizons are political art, cultural praxis, and a collective abstraction of space that takes place within regimes of spatial endangerment. Hence, there is plenty of room to engage in meaningful and creative collective praxis that poses the notion of liberal carceral horizons as a problem of the first order, that is, as an insidious accomplice to police terror rather than aspirational liberation from it.

Perhaps a practical focus on the overlapping problems of police terror and reformist counterinsurgency can nourish a deeper understanding of the crisis in our midst. Confronting anti-Black, white supremacist, and colonial state violence means departing from conversations and debates about 'brutality' and developing creative, community-informed, abolitionist solutions to a long historical condition that is only sustainable through the constant creation of asymmetrical casualties, suffering, and mourning. Amika Tendaji, a co-founder of Ujimaa Medics in Chicago, speaks to the urgency of radically confronting this normalized condition when she asserts "my liberation is bound up with yours. Solidarity is necessary for us to move forward. For Black folks, help is not coming, and the closer you are to Black, the less help is going to come".[6]

Following Tendaji, I have argued that reformism is a primary, political and cultural vehicle of contemporary counterinsurgency against abolitionist, Black radical, anti-colonial/decolonizing, and other forms of collective movement and liberated life. Reformism takes shape through a flexible, changing ensemble of institutions, cultural forms, aesthetics, and political rituals that often steal the language, energy, and ideas of activists and community organizers to domesticate, commodify, and absorb them (and their communities) into processes that undermine the capacity to fundamentally change relations of domination and power. The narratives, propositions, seductions, and ongoing grift of liberalism and progressivism are the front lines of domestic counterinsurgency in the United States and elsewhere. Every single one of us who cares about liberation from civilizational warfare in all its forms must accept the responsibility of severing our attachments to this counterinsurgency.

Notes

1 By way of example, note the pervasiveness of 'police brutality' in the rhetoric, agendas and mission statements of organizations like Campaign Zero (https://campaignzero.org/) and October 22 Coalition to Stop Police Brutality, Repression and the Criminalization of a Generation (https://www.october22.org/) as well as the June 1, 2020 House of Representatives Resolution 988 (116th Congress) "Condemning all acts of police brutality, racial profiling, and the use of excessive and

militarized force throughout the country" (https://www.congress.gov/bill/116th-congress/house-resolution/988/text). Nonprofit and community organization leaders, media pundits, academics, celebrities and various social media influencers also commonly use the phrase across media platforms as a catch-all term; see "Van Jones On George Floyd, Police Brutality, & What Comes Next," Conan on TBS, June 1, 2020, accessed June 2020 at https://www.youtube.com/watch?v=62opaXeyWZY; Deon J. Hampton and Janelle Griffith, "Minneapolis activists, community leaders say Chauvin's conviction hasn't altered their missions," NBC News, April 21, 2021 accessed July 2020 at https://www.nbcnews.com/news/us-news/minneapolis-activists-community-leaders-say-chauvin-s-conviction-hasn-t-n1264865; Jessica Guynn, "BLM influencers: 10 Black Lives Matter activists on Facebook, Instagram, TikTok and Twitter you should follow," *USA Today*, February 2, 2021, accessed July 2021 at https://www.usatoday.com/in-depth/tech/2021/02/02/black-lives-matter-blm-facebook-instagram-tiktok-influencers-john-legend/4014707001/; Bryan Alexander, "Kanye, Banksy, Drake and more stars take action following George Floyd's death," *USA Today*, May 31, 2020, accessed June 2020 at https://www.usatoday.com/story/entertainment/celebrities/2020/05/31/george-floyd-celebrities-speak-out-chrissy-teigen-gives-bail-money/5301522002/; and Brian Resnick, "Police brutality is a public health crisis," *Vox*, June 1, 2020, accessed July 2020 at https://www.vox.com/science-and-health/2020/6/1/21276828/pandemic-protests-police-public-health-black-lives-matter.

2 For a useful definition of anti-Blackness see Jung and Costa Vargas (2021); on racial-colonial power, see Rodríguez (2021a) and Olutola (2020).

3 The work of criminologist (and former police officer) Philip M. Stinson (Bowling Green State University) is likely the most widely cited, comprehensive source of information regarding on-duty police killings and subsequent criminal prosecutions of police officers for murder or manslaughter. Stinson's Henry A. Wallace Police Crime Database compiles data on 13,214 criminal arrests of (non-federal) police officers between 2005–2016 (www.policecrime.bgsu.edu/). The Police Crime Database serves as a primary source for numerous investigative reports and academic research articles, including recent, widely read pieces such as Dewan (2020), Berman (2021) and Thomson-DeVeaux, Rakich, and Butchireddygari (2021).

4 While the vast and growing critical interdisciplinary and transdisciplinary scholarship on policing and police violence exceeds a simple citation, a few standout works are worth mentioning. These include Hadden (2001), Williams (2015), Correia & Wall (2018), Maher (2021), Schrader (2019), Seigel (2018), Neocleous (2021) and Vitale (2018).

5 On successful police defunding campaigns, see Levin (2021); on abolitionist forms of community safety, see Critical Resistance (2003) and the Website, Don't Call the Police: Community Based Alternatives to Police in Your City, Accessed January 2022 at https://dontcallthepolice.com/about/

6 See "Mutual Aid is a People's Movement," American Studies Association Freedom Course (roundtable), May 4, 2020 at www.youtube.com/watch?v=pZwz7IG_I9U; also see Ujimaa Medics website at www.umedics.org/.

References

ACLU (2021, June 24). Federal Appeals Court rules Baltimore Aerial Surveillance Program is unconstitutional. www.aclu.org/press-releases/federal-appeals-court-rules-baltimore-aerial-surveillance-program-unconstitutional

Allen, R.L. (2017). *Black awakening in capitalist America: An analytic history*. Africa World Press.

Arango, T., & Dewan, S. (2021, September 30). More than half of police killings are mislabeled, new study says. *The New York Times*. www.nytimes.com/2021/09/30/us/police-killings-undercounted-study.html

Berman, M. (2021, April 4). When police kill people, they are rarely prosecuted and hard to convict. *The Washington Post*. www.washingtonpost.com/nation/2021/04/04/when-police-kill-people-they-are-rarely-prosecuted-hard-convict/

Biddle, S. (2021, November 4). The U.S. Treasury is buying private app data to target and investigate people. *The Intercept*. www.theintercept.com/2021/11/04/treasury-surveillance-location-data-babel-street/

Brenes, M. (2021, April 26). Police reform doesn't work. *Boston Review*. www.bostonreview.net/articles/police-reform-doesnt-work/

Cherry, A. (2021, November 22). *Al Sharpton rallies for police reform in Dover [Video]* www.wdel.com/news/video-al-sharpton-rallies-for-police-reform-in-dover/article_b13d9f36-4bde-11ec-93e7-739865f493b2.html

Chung, A., Hurley, L., Botts, J., Januta, A., & Gomez, G. (2020, May 8). For cops who kill, special Supreme Court protection. *Reuters*. www.reuters.com/investigates/special-report/usa-police-immunity-scotus/

Churchill, W., & Vander Wall, J. (1990). *Agents of repression: the FBI's Secret Wars against the Black Panther Party and the American Indian Movement*. South End Press.

Copblock (n.d.). Know your rights. www.copblock.org/knowyourrights/

Correia, D., & Wall, T. (2018). *Police: A field guide*. Verso.

Critical Resistance (2003). What is abolition? www.criticalresistance.org/wp-content/uploads/2012/06/What-is-Abolition.pdf

Dewan, S. (2020, September 24). Few police officers who cause deaths are charged or convicted. *New York Times*. www.nytimes.com/2020/09/24/us/police-killings-prosecution-charges.html

Du Bois, W.E.B. (1963). *Black Reconstruction in America: An essay toward a history of the part which Black folk played in the attempt to reconstruct democracy in America, 1860–1880*. Russell & Russell.

Eder, S., Keller, M.H., & Migliozzi, B. (2021, October 10). As new police reform laws sweep across the US, some ask: are they enough? *Los Angeles Times*. www.nytimes.com/2021/04/18/us/police-reform-bills.html

Edwards, E.R. (2012). *Charisma and the fictions of Black leadership*. University of Minnesota Press.

Fatal Force (n.d.) Database. *The Washington Post*. www.washingtonpost.com/graphics/investigations/police-shootings-database/

Gilmore, R.W. (2017). In the shadow of the shadow state. In INCITE! Women of Color Against Violence (Eds.), *The revolution will not be funded: Beyond the non-profit industrial complex* (pp. 41–52). Duke University Press.

Gotsch, K. (2011). Breakthrough in US drug sentencing reform: The Fair Sentencing Act and the unfinished reform agenda. www.sentencingproject.org/wp-content/uploads/2016/01/WOLA-Breakthrough-in-US-Drug-Sentencing-Reform.pdf

Hadden, S.E. (2001). *Slave patrols: Law and violence in Virginia and the Carolinas*. Harvard University Press.

Haley, H. (2016). *No mercy here: Gender, punishment, and the making of Jim Crow modernity*. The University of North Carolina Press.

Hall, S., Critcher, C., Jefferson, T., Clarke, J., & Roberts, B. (1978). *Policing the crisis: Mugging, the state, and law and order*. Macmillan Publishers.

Harmon, R. (2008). When is police violence justified? *Northwestern University Law Review*, *102*(3), 1119–1187.

Iati, M., Rich, S., & Jenkins, J. (2022, February 9). Fatal police shootings in 2021 set record since *The Post* began tracking, despite public outcry. *The Washington Post*. www.washingtonpost.com/investigations/2022/02/09/fatal-police-shootings-record-2021/

Jackman, T. (2021, June 9). For a second year, most U.S. police departments decline to share information on their use of force. *The Washington Post*. www.washingtonpost.com/nation/2021/06/09/police-use-of-force-data/

Jung, M.K., & Costa Vargas, J.H. (2021). Introduction. In M.K. Jung & J.H. Costa Vargas (Eds.), *Antiblackness* (pp. 1–16). Duke University Press.

Levin, S. (2021, March 11). These US cities defunded police: 'We're transferring money to the community'. *The Guardian*. www.theguardian.com/us-news/2021/mar/07/us-cities-defund-police-transferring-money-community

Maher, G. (2021). *A world without police: How strong communities make cops obsolete*. Verso Books.

McGreevy, P. (2021, September 30). Governor Newsom approves sweeping reforms to law enforcement in California. *Los Angeles Times*. www.latimes.com/california/story/2021-09-30/newsom-approves-sweeping-changes-to-californias-criminal-justice-system

Merkl, T.A., & Holder, E.H. Jr. (2021). *Protecting against police brutality and official misconduct*. Brennan Center for Justice.

National Inquiry into Missing and Murdered Indigenous Women and Girls (2019). Reclaiming power and place: The final report of the national inquiry into missing and murdered indigenous women and girls, Volume 1a. https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf

National Institute of Justice (2020). Overview of police use of force. www.nij.ojp.gov/topics/articles/overview-police-use-force

Neocleous, M. (2021). *A critical theory of police power*. Verso Books.

Olutola, S. (2020, September 1). The history of racist colonial violence can help us understand police violence. *The Washington Post*. www.washingtonpost.com/outlook/2020/09/01/history-racist-colonial-violence-can-help-us-understand-police-violence/

Queally, J. (2020, December 26). Los Angeles must change use of gang injunctions under court settlement. *Los Angeles Times*. www.latimes.com/california/story/2020-12-26/los-angeles-gang-injunctions-must-change

Robinson, C.J. (2020). *Black Marxism:Tthe making of the Black radical tradition* (3rd ed.). The University of North Carolina Press.

Rodríguez, D. (2012). Beyond 'police brutality': Racist state violence and the University of California. *American Quarterly*, *64*(2), 301–313.

Rodríguez, D. (2017). The political logic of the non-profit industrial complex. In INCITE! Women of Color Against Violence (Eds.), *The revolution will not be funded: Beyond the non-profit industrial complex* (pp. 21–40). Duke University Press.

Rodríguez, D. (2019). Abolition as praxis of human being: A foreword. *Harvard Law Review*, *143*(6), 1575–1612.

Rodríguez, D. (2021a). *White reconstruction: Domestic warfare and the logics of genocide*. Fordham University Press.

Rodríguez, D. (2021b). Police reform as counterinsurgency. In C. Kaepernick (Ed.), *Abolition for the people: The movement for a future without policing and prisons* (pp. 154–161). Kaepernick Publishing.

Schrader, S. (2019). *Badges without borders: How global counterinsurgency transformed American policing*. University of California Press.

Seigel, M. (2018). *Violence work: State power and the limits of police*. Duke University Press.

Sharara, F., & Wool, E.E. (2021). Fatal police violence by race and state in the USA, 1980–2019: A network meta-regression. *The Lancet*, *398*, 1239–1255.

Skalicky, S., & Davey, M. (2016, October 28). Tension between police and Standing Rock protesters reaches boiling point. *The New York Times*. www.nytimes.com/2016/10/29/us/dakota-access-pipeline-protest.html

Stinson, P.M. (2022). *Henry A. Wallace police crime database*. https://policecrime.bgsu.edu/

Sullivan, E., & Kanno-Youngs, Z. (2021, September 21). Images of border patrol's treatment of Haitian migrants prompt outrage. *The New York Times*. www.nytimes.com/2021/09/21/us/politics/haitians-border-patrol-photos.html

Thomson-DeVeaux, A., Rakich, N., & Butchireddygari, L. (2021, June 4). Why it's so rare for police officers to face legal consequences. *FiveThirtyEight*. www.fivethirtyeight.com/features/why-its-still-so-rare-for-police-officers-to-face-legal-consequences-for-misconduct/

US Army and Marine Corps (2006). Counterinsurgency (Field Manual No. 3-24). *Department of the Army*. https://irp.fas.org/doddir/army/fm3-24.pdf

US Department of Justice, Civil Rights Division (n.d.). Law enforcement misconduct. www.justice.gov/crt/law-enforcement-misconduct

Vitale, A. (2018). *The end of policing*. Verso Books.

Wells-Barnett, I.B. (2014). *On lynchings*. Dover Publications.

Williams, K. (2015). *Our enemies in blue: Police and power in America*. AK Press.

Wolch, J.R. (1990). *The shadow state: Government and voluntary sector in transition*. Foundation Center.

Woods, C. (2017). *Development arrested: The blues and plantation power in the Mississippi Delta*. Verso.

Yancy, G., & Jones, J. (2013). *Pursuing Trayvon Martin: Historical contexts and contemporary manifestations of racial dynamics*. Lexington Books.

13
Army of the rich

Emmy Rākete

I saw a cop today, actually. A man in a uniform, standing around on a street corner in Central Auckland. He wasn't doing anything in particular that I could see. Maybe he was talking half-heartedly into a walkie-talkie or scrolling through some kind of notebook app on his phone. In this situation, the point of the cop's existence is not immediately clear. In others, such as during the 2018 community effort to shut down the New Zealand Defence Industry Weapons Expo, the purpose of the police starts to become more apparent. In defence of the arms dealers profiteering from imperialist wars, a squadron of police officers bounced my head off the pavement and threw me into the back of an overloaded paddy wagon. What was the relationship between these two moments – the bored uniformed figure standing around doing basically nothing, and the armed enforcers of a distant billionaire class? Which one is the 'real' cop?

The question of how to know what is real has always confronted philosophers. The Buddha, for instance, argued that all earthly phenomena are transitory and that the world is therefore a kind of illusion, Samsara, in which all beings are trapped until they attain enlightenment (Choong, 1999). Karl Marx (1990), a philosopher at least as significant as the Buddha, also contributed to the debate about our ability to perceive reality with his concept of commodity fetishism. In market relations, Marx (1990) says, we perceive a commodity being exchanged for a quantity of money equivalent to that commodity's price. What this perception *conceals* is that the price of the commodity is determined not by the hand of God but by the human labour that went into producing it (Marx, 1990). Market relations only appear to our senses as relations between lumps of cash and commodities. In reality, they are relations between human beings, between human beings who command and are commanded, who exploit and are exploited (Lenin, 1977). Marx's approach uses materialist analysis of the relations of production – the economic relations that define the conflict between the capitalist and working classes – to peel back the form of appearance and focus not on how something looks but on what something does. The only way to understand what we perceive is by analyzing it. Accepting the form of appearance of things means risking remaining trapped in the world of illusions.

When we look at the New Zealand Police, we see a lot of things. Like any act of perception, dozens of details skitter across the surface of our eyes. The police website lists the organization's so-called values – professionalism, respect, integrity, commitment to Māori and the Treaty,

DOI: 10.4324/9781003176619-15

empathy, valuing diversity (New Zealand Police, n.d.-a). The organization also reports that it is seven times more likely to use violence against Māori people (New Zealand Police, 2021b). The police were also found to be racially profiling and illegally photographing Māori children to build an intelligence database (Hurihanganui, 2021). The Police Commissioner spoke at a memorial for George Floyd, murdered in the United States of America by police (Coster, 2020). How do we make sense of these disparate facts? Just what are the cops, and what is their purpose? As with Marx's commodities, the form of appearance taken by the cops in upbeat press releases and sombre speeches will not be sufficient for us to understand the organization or its members. To know what the cops are, we must understand what they do and understand their role in the economic relations that have made up the history of colonization in Aotearoa.[1]

Relations of production

The point of Marxist analysis is that it lets us understand society as a machine for making the things that society needs. When Marx summarizes his theory of society, he argues that "[i]n the social production of their existence, men[2] inevitably enter into definite relations, which are independent of their will, namely relations of production appropriate to a given stage in the development of their forces of production" (Marx, 1977, p. 20). These relations of production are made up of the various roles which one can play in the process of making the things necessary for society to go on existing. Capitalist society has relations of production with which we are all by now very familiar – we sell our labour power to an employer and in return receive a wage; for their part, our employers extract surplus value from our labour and pocket it in the form of profits. The spark in Marxist analysis, the thing about Marxist analysis that keeps on exploding over and over and over again, is that these relations are not set in stone. The relations of production live in history just as we do. As societies change, as the forces of production develop, new relations of production can emerge (Marx, 1990).

From the point of view of production, the history of Aotearoa is a grand drama, a heartbreaking tragedy, and a cataclysmic horror. To explain the history of this place, we need to understand the relations of production that have existed here at various points in time. In the pre-colonial era, Māori society was organized in a communist manner. Historians and ethnographers have been loath to concede this point, their chief representative being the economic anthropologist Raymond Firth. Firth's *Primitive*[3] *Economics of the New Zealand Māori* (2012) is a foundational text in the study of Aotearoa's economic history, albeit a flawed one. Firth intends to describe how Māori people traditionally produced the things they needed, and to explain the relations of production in Māori society. His merely descriptive work is reliable and even valuable – Firth lived in a remote Māori community and accurately recorded how that community produced food, clothing, and shelter. It is his explanation of how these processes fit together that fails utterly, but even Firth's failure is informative.

Friedrich Engels (1902), writing about pre-colonial societies, describes them as communist for three reasons: because there is insufficient surplus production for a ruling class to expropriate, because the means of production are owned in common, and because goods are distributed and consumed based on need. Throughout his work, Firth repeatedly asserts that Māori society was essentially capitalist. However, in making this argument, Firth constantly demonstrates that Māori society fits Engels' definition of a pre-colonial communist society. For example, Firth (2012) observes the stockpiling of kūmara for the off-season and describes this as the creation and storage of surplus wealth. However, this kūmara was stored precisely because it *was not surplus*: this food was stored to be consumed because the pre-colonial process of production produced only enough to meet people's needs and little more. In another section, Firth (2012)

observes that family groups had their own plots of farming land to which they had usage rights, and concludes that Māori society recognized private property. What Firth does not elaborate upon is that *every family* had the right to farm on tribal lands, land itself being recognized as the collective property of the tribe to which all had a common right. Finally, on the topic of the distribution and consumption of goods, Firth is unable to even put forward an argument to counter Engels. Tongue-tied, Firth (2012) can only offer up the contradictory statement that "[i]t would be incorrect to picture the Maori distributive system as an idyllic kind of communism, but it is true that the manner of apportionment of goods […] bore direct relation to the needs of the people" (p. 280). It would be incorrect to call Māori society communist, he says, but it does look and work exactly like communism.

I have gone to such lengths to describe the relations of production of Māori society because they are fundamentally different to those of British society in the colonial era. Massive surplus production was visible in Britain, buoyed by the extractive industries the Empire had established throughout its colonies. The means of production were concentrated in the hands not only of the capitalist class, but specifically of the *British* capitalist class, cementing a racial *and* class hierarchy which concentrated wealth and power in the imperial core. Finally, the things people needed to survive were distributed not based on need, but in the form of commodities, which had to be purchased using wages earned by submission to exploitation in the labour process. These are not just different ways of organizing society, but mutually incompatible ways of organizing society.

Driven by a looming economic crisis and its large population of surplus labourers, the British capitalist class recognized the colonization of Aotearoa as a way of forestalling disaster. By exporting its surplus population to the colony, the British capitalist class could not only open up new lands for profitable production but also rid itself of its increasingly discontented and militant excess workers (Poata-Smith, 2001). The only barrier to this plan was the fact that this land was already inhabited, already integrated into the relations of production of Māori society. In Aotearoa, the earliest periods of contact between Māori and Pākehā[4] did not involve an immediate and revolutionary transformation in the mode of production. Māori continued to produce goods as they always had, with communal participation in the labour process and distribution of goods according to need. However, it rapidly became clear to Māori that the relatively advanced British technology presented an opportunity to those tribes which were able to acquire it. Of particular interest were metal tools, cloth, pigs and potatoes. By the time of Captain James Cook's second visit to Tōtaranui in 1773, Māori tribes in the area eagerly traded for British technology. By his third visit, Cook found that local tribes were travelling to the region for the opportunity to trade – and significantly, were specifically producing goods for the purpose of selling them (Walker, 2004). This dynamic was replicated across Aotearoa.

In his history of capitalism in Europe, Marx had already described such a moment of impact. Because capitalism had developed out of prior, non-capitalist modes of production, there has to have been a moment in which the common ownership of the means of production was turned into private ownership. This process, which Marx (1990) terms primitive accumulation, is "the historical process of divorcing the producer from the means of production. It appears as primitive because it forms the prehistoric stage of capital and of the mode of production corresponding with it" (p. 875). In English history, Marx (1990) argues, primitive accumulation was waged throughout the fifteenth and sixteenth centuries as the power of the feudal aristocracy was broken up and the free common lands enclosed and privatized. The early period of contact between Māori and Pākehā could not serve as a lasting model for economic relations because it required leaving the tribal communist mode of production intact. In Aotearoa, for capitalism

to live, Māori society had to die. Thus, primitive accumulation here took the form of colonization. We will now discuss this process and the role that the New Zealand Police play in it.

Colonialism

The practical question facing the capitalist class in Aotearoa was this: how do you create capitalism in a place which is currently communist? Marx notes with clear amusement the failure of a British colonist to successfully establish a commercial farm in Australia. This aspiring farm owner had conceived of capitalism as a matter of material, and so had dutifully shipped to the colony both seeds, his means of production, and workers, his source of labour power. However, upon arriving, the workers simply left to become independent subsistence farmers. The error in the colonist's reasoning, Marx argues, is that capitalism is not things. It is a social relationship, a relationship of domination between capitalists who have exclusive control of the means of production and workers who have no other options than to sell their labour power (Marx, 1990). Unless workers are dispossessed of the means of production, unless capitalists have exclusive control over those means, the capital relation does not exist. The establishment of the capital relation in Aotearoa progressed according to two stages. Marx (1990) describes these stages in his history of the relationship between capital and labour, terming them the formal and real subsumption of labour by capital.

Formal subsumption

The formal subsumption of labour by capital describes the process of contact between capitalist and pre-capitalist relations of production. It occurs throughout history, either when capitalist societies begin to subsume pre-capitalist societies or when capital independently emerges in pre-capitalist societies. In the process of formal subsumption, capital discovers a pre-existing labour process which operates according to its own relations of production. Capitalists can insert themselves into the pre-existing process of production, but, at this stage, lack the ability to reorganize production. Capital does not directly control the labour process but is able to exploit the production of commodities which occurs there, in the process growing in magnitude and increasing the power of the capitalist class. Thus, while the form of pre-capitalist production is preserved, the relations of production begin to transform as the capitalist class establishes itself as the ruling class (Marx, 1990).

We can clearly see this process playing out during the initial stages of colonization. The British capitalist class was acquiring goods produced by Māori according to the ordinary process of production of Māori society, and while this class did not have control over the relations of production, it had successfully inserted itself into them. Māori had not become a dispossessed proletariat, and the capitalist class did not possess exclusive ownership of the means of production, but Māori production was increasingly coming to be carried out for the benefit of British capitalists. As the settler population increased, particularly in population centres like Auckland, the colonial system relied on Māori agricultural production to survive (Mackintosh, 2021; Walker, 2004). The subsumption of labour by capital was, at this stage, only formal. Nonetheless, the subsumption had begun to occur.

Real subsumption

The real subsumption of labour by capital describes the transformation that occurs when the capitalist class becomes the dominant power, and capitalism the dominant mode of production.

At this point, the pre-capitalist process of production on which the formal subsumption was premised has been rendered obsolete. In its place, the capitalist class is able to reorganize the process of production according to its own interests, destroying the pre-existing relations of production. To achieve real subsumption, the capitalist class must secure its exclusive control over the means of production, requiring it to expropriate these means and convert them into its private property. Thus dispossessed, the newly created proletariat is obliged to sell its labour power to the capitalists to survive, submitting to exploitation in the labour process (Marx, 1990). The formal subsumption of labour by capital is only a prelude, a premonition of the horror yet to come. Because the real subsumption of labour by capital is premised on primitive accumulation, in Aotearoa it could only be carried out through the blood-drenched process of colonization.

In Aotearoa, the name given by history to this period is a matter of some debate. Names such as the Māori Wars, the Anglo-Māori Wars, the Land Wars, the New Zealand Wars, and others have been proposed. O'Malley (2019) proposes the New Zealand Wars as the most nuanced description of the half-century of bloodshed that would follow the signing of Te Tiriti o Waitangi in 1840. As a Marxist who understands control over land as the basis of class struggle, and as a Māori person who understands our relationship to the land as the primary spiritual orientation human beings have to our planet, I prefer to use the term 'Land Wars'.

The Land Wars

As the British 'settler' population of Aotearoa increased, it became clear to the colonial administration that greater land holdings would be required. Before 1840, land sales to Pākehā were essentially unregulated, with the legitimacy of many of these being extremely suspect. The 1840 Tiriti o Waitangi, which granted the Crown the exclusive right to purchase land, was nominally intended to resolve this problem by creating a monopsony – a market with only one buyer. As O'Malley (2019) notes, land acquisition continued virtually unabated in this period, with massive areas of land becoming the property of the Crown for negligible sums of money and goods. Further, the Māori-language document presented to Māori leaders for ratification promised that they would retain tino rangatiratanga, while the Crown would exercise only kāwanatanga. The former term means 'ultimate authority,' and the latter a 'delegated, lesser form of authority' (Mikaere, 2011, p. 256). It quickly became clear that the Crown instead intended to abide by the terms of an English-language document, the Treaty of Waitangi, which most Māori had not signed and which no Māori had ever debated or discussed. The Treaty of Waitangi, directly counter to Te Tiriti o Waitangi, asserted that Māori leaders unconditionally surrendered all decision-making power and submitted their people utterly to the sovereignty of the Crown (O'Malley, 2019). The stage was now set for devastating conflict for both the control of the land and the right to determine who would govern it.

The series of wars which were to follow, the battles and campaigns across the breadth of these islands, are not the primary subject of this text. I do not want to discuss in detail the military history of the Land Wars. It is sufficient for our purposes to accept O'Malley's account that there were nine major conflicts which made up the Land Wars (O'Malley, 2019). The only addition I wish to make is a discussion of the Crown's invasion of Parihaka, a conflict that took place from 1878–1881. To understand the police and their role in the colonization of Aotearoa, what is important is not the wars themselves but the Crown forces who were responsible for fighting them.

In the opening years of the colonization of Aotearoa, soldiers of the British Imperial Army and Navy were the primary military force responsible for occupying Aotearoa and securing British holdings. When the Land Wars began, British soldiers frequently fought alongside both

settler militias made up of volunteers and Māori who were pursuing their own tribal interests through the various conflicts. The Northern War, for example, saw Ngāpuhi troops led by Hone Heke and Te Ruki Kāwiti fighting against the British army and Ngāpuhi troops led by Tamati Wāka Nene, who hoped to maintain good trade relations with the British (O'Malley, 2019). As New Zealand grew more distant from the central British administration, becoming a self-governing colony in 1852, British military support for New Zealand's wars for control of Māori land grew less and less forthcoming. Between 1866 and 1870, British imperial troops were entirely withdrawn from the country. New Zealand's own military, the Colonial Defence Force, was founded in 1862, fighting in the Taranaki War, Waikato War, the War in Tauranga, the West Coast Campaigns, and the East Coast Wars. In 1867, the Colonial Defence Force was dissolved and the Armed Constabulary Force was founded, an organization combining both law enforcement and military responsibilities. It picked up where the Colonial Defence Force left off, continuing to repress Māori efforts to retain ownership of land or exercise political independence from the Crown, fighting in Titokowaru's War, Te Kooti's War, and the invasion of Parihaka (O'Malley, 2019).

It is in the invasion of Parihaka that we can see the historical role played by the Armed Constabulary Force the most clearly. Parihaka was a settlement founded by Te Whiti o Rongomai and Tohu Kākahi to protest the Crown's confiscation of land following the Taranaki War. By 1879 an influx of Māori refugees from throughout the country made Parihaka, built on confiscated land, one of the largest Māori communities. However, in that year government surveyors began to prepare the land for settlement. Citizens of Parihaka removed stone markers placed by surveyors, removed survey pegs, ploughed over settler farmland, built fences across roads and engaged in other forms of non-violent resistance (Riseborough, 2004). In response, the government sent Armed Constabulary Force troops to seize and arrest demonstrators from Parihaka. By 1880, over 600 protesters, making up the majority of the male population of Parihaka, had been arrested and sentenced to forced labour throughout the country. Once it was deemed unable to defend itself, the Armed Constabulary Force and settler volunteers descended on Parihaka, looted homes, raped women, and burned the settlement to the ground. The land confiscation went ahead, now with the addition of reserve land that had been set aside for Māori inhabitation (Waitangi Tribunal, 1996).

The army of the rich

In 1886, with organized Māori military resistance to colonization decisively crushed, the Armed Constabulary Force was itself reformed. The process of primitive accumulation that the Land Wars had secured brought about the complete annihilation of the Māori mode of production, privatizing commonly held land and ensuring that the capitalist class retained exclusive control over the means of production. The Armed Constabulary Force was divided into two bodies which persist to this day – the New Zealand Army, New Zealand's military organization, and the New Zealand Police, New Zealand's nominally civilian law enforcement (O'Malley, 2019). While the Armed Constabulary Force was an explicitly colonial military, its successor groups have avoided this perception. Despite decades of violent, racist discrimination against Māori, some still prefer to believe that the blood of the Land Wars vanished when the constables changed their uniforms. With the reorganization of the Armed Constabulary Force, it would be very easy to mistake a change in a thing's form of appearance for a change in the thing itself. The colonization of Aotearoa was, after all, carried out by a series of formally distinct institutions: the British Army, the Colonial Defence Force, the Armed Constabulary Force, the New Zealand Police, among many others.

Rather than being deceived by what appears to us as a series of ruptures in the development of unique and separate organizations, I instead want us to focus on the continuity of function that unifies all of them: colonial and racist violence. The military organizations responsible for carrying out the Land Wars may have been renamed, reorganized, or replaced, but these organizations were nonetheless all still responsible for carrying out the Land Wars. The formal designations of these organizations may have differed but beneath those designations is a single army of the rich, persistent across time, responsible for securing the capital relation. The form of appearance that this army takes necessarily differs in different contexts, but its purpose in the capitalist relations of production does not. Primitive accumulation can only be carried out by force, and so during the transition from the only formal to the real subsumption of labour by capital, the capitalist class requires an armed force to secure its exclusive ownership of the means of production. The name, uniform, structure, and composition of this army are merely surface features – it is its role in the relations of production that identifies it as the army of the rich. In Aotearoa, it was the British military that first served as the army of the rich. As the British capitalist class benefited less and less from the process of primitive accumulation, the New Zealand capitalist class replaced British soldiers with settlers in the Colonial Defence Force, then the Armed Constabulary Force. Despite the replacement of one organization by another, the purpose of these organizations remained the same: killing Māori people who resisted the expropriation of their lands and the suppression of their rangatiratanga (O'Malley, 2019).

Once the army of the rich had completed the process of primitive accumulation, it continued to secure the capitalist social order in its form – as the New Zealand Police. This has been, as Louis Althusser (2014) argues, through both direct repressive means and indirect ideological means. During moments of potential rupture such as the mass working-class militancy of the waterfront lockouts, the decolonial land reoccupation at Takaparawhā, or the vibrant anti-imperialist street battles of the Springbok tour, capitalist class power is materially threatened. There is the possibility, often faint, always present, that we might actually keep going and seize power as the proletariat. In these moments, the New Zealand Police regain their martial aspect and use direct, counterrevolutionary violence to put down threats to the bourgeoisie.

While these sporadic outbursts of quasi-military violence are the most dramatic manifestation of their role in the relations of production, the ideological role that the police serve as the army of the rich also cannot be neglected. The supremacy of the capitalist class is threatened not only when the working class and decolonial resistance threaten to tear it down, but also when the ideological justifications for its actions stop seeming convincing. Since the neoliberal economic reforms of the 1980s, the primary task of the New Zealand state has been to reduce spending in order to buoy the financial capitalist sector. These austerity policies have required, for example, the offshoring of production to the Global South, the elimination of New Zealand's guaranteed employment policy, the deregulation of the finance industry, and the dismantling of New Zealand's welfare state (Kelsey, 1997). Each of these measures contributed to a worsening of inequality, shifting the balance of national income away from working-class people and in favour of employers, property owners, and speculators (Conway et al., 2015). Kim Workman and Tracey McIntosh argue that the social conditions associated with poverty – the likelihood of victimization, precarious housing, and unstable employment – are also the social conditions associated with crime (Workman & McIntosh, 2013). Tax data released to Ti Lamusse by the Department of Corrections under the Official Information Act 1982 support this argument, showing that in the three months before their incarceration only 13% of the country's prisoners were employed in the formal economy (Department of Corrections, 2017). These structural problems have structural solutions – solutions that capitalism has shown itself incapable of implementing.

In capitalist societies, the army of the rich works to achieve a sort of misdirection. The ideological function of the police, in service of the capitalist order, is to make sure we look at and think about only individuals (Wacquant, 2009). When a crime occurs, the purpose of the police is to ensure we see nothing more than the individual in front of us: a violent, feral, dole-bludging criminal who smoked meth and never worked an honest day in their life. The social relationships that needed to exist in order for that crime to occur, the pre-colonial mode of production that had been destroyed, the psychological healthcare that was not provided, the childhood poverty that was not alleviated, the meaningful job that was not available, the secure housing that could not be afforded: the mode of production that causes all of these is never put on trial. The class that owns everything and still gluts itself on our blood is never put on trial. But the people whose dysfunctions and suffering and violence are caused by the capitalist mode of production are put on trial every day, are hunted in their communities and their homes by the cops. We set the cops on people so we don't have to help them. That's what the army of the rich is for.

Reform and decolonization

Racist discrimination against Māori has been a persistent feature of the settler criminal justice system. Moana Jackson's *He Whaipaanga Hou* (1988) is the earliest and most systematic description of this problem, identifying racist violence against Māori in every part of the system, including by police. In the 30 years since *He Whaipaanga Hou* was published, the fundamental problems still stand. The *Tactical Options Research* reports, data on their use of force gathered by the New Zealand Police themselves, have shown that police use violence against Māori at more than seven times the rate they use violence against Pākehā (New Zealand Police, 2021b). This massive disproportionality in how often police beat, taser, pepper spray, shoot, or set attack dogs on Māori people has been unchanged for the entire existence of the Tactical Options Research reporting framework (New Zealand Police, 2015). Yet, the New Zealand Police proudly proclaims that in a ten-year period, it increased its Māori staff by 31% (New Zealand Police, n.d.-b). To celebrate Te Wiki o te Reo Māori (Māori Language Week), the New Zealand Police announced the creation of a patrol car covered in koru decals with the Māori word for 'cop', pirihimana, emblazoned on the side (New Zealand Police, 2017). Despite these demonstrations of biculturalism, Guyon Espiner and Farah Hancock found that the New Zealand Police had killed 39 people since 1990, 13 of whom were Māori (who make up only around 17% of the total population), and that police shootings were growing more and more common over time (Espiner & Hancock, 2022). More Māori have been killed by police between 1990 and today than between 1916 – when records began – and 1990 (New Zealand Police, 2021a).[5] The cops have not killed so many Māori people since killing Māori people was literally their job during the Land Wars.

Why have 40 years of police reform in Aotearoa resulted in such miserable failure? We can explain the error at the heart of efforts to reform the police because we now know what it is that the police are. Reform efforts have been focused on things like trying to change the demographic of police personnel by recruiting more Māori people, or trying to change perceptions of the police with branding and advertising. These efforts at police reform are interventions in an illusion. The police are not how they appear, the police are what they do. Efforts to reform the police, to 'decolonize' them, will and *must* always fail because you cannot reform a thing away from its purpose. The police are the army of the rich and their role in the relations of production is to secure the capital relation, to secure the subjection of the working class to the capitalist class. If this is premised on primitive accumulation and colonialism, then the police

will secure primitive accumulation and colonialism. After these long decades of asking the police to reform themselves, it is time to recognize the futility of this project. The police cannot but be our enemies.

If reforming the police is absurd, the prospects for decolonizing the police are still open – but only if we understand what this term means. Vladimir Lenin argued that capitalist culture tries to assimilate the work of great revolutionaries, "to hallow their names to a certain extent for the 'consolation' of the oppressed classes and with the object of duping the latter, while at the same time robbing the revolutionary theory of its substance, blunting its revolutionary edge and vulgarizing it" (Lenin, 1975, p. 265). As Eve Tuck and K. Wayne Yang argue in "Decolonization is not a metaphor", the term decolonization is likewise used as a general stand-in for whatever progressive social project one might be talking about, at the expense of stripping the word of any actual content (Tuck & Yang, 2012). In Aotearoa, colonization meant that the army of the rich eliminated the Māori mode of production, severed the productive relationships that governed the life-making processes of Māori society, militarily conquered Aotearoa, massacred Māori people, raped Māori women, killed Māori children, incarcerated and enslaved Māori men, enclosed and stole Māori land so it could be converted into the private property of the parasitic capitalist class. If colonization is all of these things, what can decolonization be? Cops speaking our language? Māori motifs stuck to the sides of patrol cars? Decolonization is not a metaphor, but we should also remember that metaphors are not decolonization. Colonialism meant the violent creation of a capitalist mode of production and the state apparatuses necessary to support it. *De*colonization can only mean the destruction of the capitalist mode of production and the overthrow of those apparatuses. The rich have their army. Now we need ours.

Notes

1 I use the name Aotearoa to refer to the geographical territory, and the name New Zealand to refer to the political entity.
2 Marx was unfortunately prone to a problem suffered by many men of his era, and occasionally forgot that women exist.
3 Given Firth's difficulty in accurately explaining our economic system, I question his qualification to term it 'primitive'.
4 Person of European descent.
5 Record-keeping was poor during this period, but even assuming that every person killed by the police whose ethnicity was not recorded was Māori, there are still only a maximum of 11 police killings between 1916–1990 that could have been of Māori people.

References

Althusser, L. (2014). Ideology and ideological state apparatuses. In G.M. Goshgarian (Trans.), *On the reproduction of capitalism: Ideology and ideological state apparatuses* (pp. 232–272). Verso.

Choong, M.-K. (1999). *The notion of emptiness in early Buddhism*. Motilal Banarsidass Publications.

Conway, P., Meehan, L., & Parham, D. (2015). *Who benefits from productivity growth?—The labour income share in New Zealand*. Productivity Commission.

Coster, A. (2020, June 18). "We need to examine our attitudes": Andrew Coster on policing and racial justice. *The Spinoff*. https://thespinoff.co.nz/society/18-06-2020/police-commissioner-andrew-coster-we-must-make-sure-we-are-not-part-of-the-problem

Department of Corrections (2017, August 11). Official Information Act request response: Reducing reoffending through employment. https://fyi.org.nz/request/6290/response/21095/attach/html/9/Correspondence%20from%20Corrections%20C87697.pdf.html

Engels, F. (1902). *The origin of the family, private property and the state*. Charles H. Kerr Publishers.

Espiner, G., & Hancock, F. (2022, March 23). Licence to kill: The startling truth about New Zealand's fatal police shootings. *Radio New Zealand*. https://www.rnz.co.nz/programmes/in-depth-special-projects/story/2018834464/licence-to-kill-the-startling-truth-about-new-zealand-s-fatal-police-shootings

Firth, R. (2012). *Primitive economics of the New Zealand Maori*. Routledge.

Hurihanganui, T.A. (2021, March 25). Police using app to photograph innocent youth: "It's so wrong". *Radio New Zealand*. https://www.rnz.co.nz/news/in-depth/437944/police-using-app-to-photograph-innocent-youth-it-s-so-wrong

Kelsey, J. (1997). *The New Zealand experiment: A world model for structural adjustment?* Auckland University Press.

Lenin, V. (1975). The state and revolution. In *Lenin: Selected Works* (pp. 263–348). Progress Publishers.

Lenin, V. (1977). The three sources and three component parts of Marxism. In *Lenin's Collected Works, Volume 19* (G. Hannah, Trans.) (pp. 21–28). Progress Publishers.

Mackintosh, L. (2021). *Shifting grounds: Deep histories of Tamaki Makaurau Auckland*. Bridget Williams Books.

Marx, K. (1977). *A contribution to the critique of political economy*. Progress Publishers.

Marx, K. (1990). *Capital: Volume I.* (B. Fowkes, Trans., F. Engels, Ed.). Penguin Classics.

Mikaere, A. (2011). How will future generations judge us? Some thoughts on the relationship between Crown Law and Tikanga Māori. In A. Mikaere (Ed.), *Colonising myths, Māori realities: He rukuruku whakaaro* (pp. 251–281). Huia Publishers.

Moana, J. (1988). The Maori and the criminal justice system: A new perspective/He whaipaanga hou. https://www.ojp.gov/pdffiles1/Digitization/108675NCJRS.pdf

New Zealand Police (2015). *Annual tactical options research report 2014*. https://www.police.govt.nz/sites/default/files/publications/annual-tactical-options-research-report-3.pdf

New Zealand Police (2017, September 17). Kia ora Te Wiki o Te Reo Māori – Titiro ki tō mātou waka. https://www.police.govt.nz/news/release/kia-ora-te-wiki-o-te-reo-m%C4%81ori-%E2%80%93-titiro-ki-t%C5%8D-m%C4%81tou-waka?ref=/news&search=&cmin=2017-09-01&cmax=2017-10-01

New Zealand Police (2021a). *Annual tactical options research report 2020*. https://www.police.govt.nz/sites/default/files/publications/annual-tactical-options-research-report-9-webversion.pdf

New Zealand Police (2021b). *Tactical options supplement: Police shootings: 1916–2021*. https://www.police.govt.nz/sites/default/files/publications/tactical-options-supplement-shootings-by-police-august2021.pdf

New Zealand Police (n.d.-a). Our values. https://www.police.govt.nz/sites/default/files/publications/our-values.pdf

New Zealand Police (n.d.-b). Recruiting Māori into police. https://www.police.govt.nz/about-us/m%C4%81ori-and-police/recruiting-m%C4%81ori-police

O'Malley, V. (2019). *The New Zealand wars: Ngā Pakanga o Aotearoa*. Bridget Williams Books.

Poata-Smith, E.T.A. (2001). *The political economy of Māori protest politics 1968–1995: A Marxist analysis of the roots of Māori oppression and the politics of resistance* [Doctoral thesis]. University of Otago.

Riseborough, H. (2004). *Days of darkness: Taranaki, 1878–1884*. Penguin.

Tuck, E., & Yang, K.W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education & Society*, *1*(1), 1–40.

Wacquant, L. (2009). *Punishing the poor: The neoliberal government of social insecurity*. Duke University Press.

Waitangi Tribunal (1996). *The Taranaki report: Kaupapa tuatahi (Report No. Wai 143)*. https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68453721/Taranaki%201996.compressed.pdf

Walker, R. (2004). *Ka whawhai tonu matou: Struggle without end*. Penguin Books.

Workman, K., & McIntosh, T. (2013). Crime, imprisonment and poverty. In M. Rashbrooke (Ed.), *Inequality: A New Zealand crisis* (pp. 120–133). Bridget Williams Books.

14

Algorithms, policing, and race

Insights from decolonial and critical algorithm studies

Pamela Ugwudike

Data-driven predictive algorithms are increasingly informing decision-making across Western justice systems. The influence of the technologies spans the earliest stages of the criminal justice process, from the pre-trial and trial phase (during bail and sentencing decision-making) to the later stages when they influence decisions about the intensity of penal interventions. The algorithms are also used by police services to forecast locational crime risks and inform dispatch decisions (Richardson et al., 2019).

Together, the predictive technologies are part of the classificatory algorithms currently labelling individuals and communities as deserving or undeserving in various domains. Examples include social security services (Eubanks, 2018), the health sector (Price, 2019), employment practices (Ajunwa, 2021), and the insurance industry (Tanninen, 2020). The algorithms are, as such, central to the ongoing digital transformation of decision-making across key aspects of social life. Amongst the digital technologies currently proliferating within Western and non-Western jurisdictions are the previously mentioned predictive policing algorithms. They are deployed by some police services for proactive crime control via the identification and surveillance of crime-risk locations or individuals.

This chapter aims to analyze the racial dynamics of the technologies. To this end, it draws on decolonial logics and related perspectives from the multidisciplinary field of critical algorithm studies (CAS), which is part of the broader field of science and technology studies. Insights from both scholarships provide the rationale for the chapter. The insights suggest that, although the technologies reflect liberal race-neutral logics of objectivity and scientific neutrality, they can reproduce historical biases and entrench the 'digitised racialization of risk and crime' (Ugwudike, 2020). Specifically, the studies indicate that the exclusionary contexts of their design and their capacity to reproduce systemic biases can exacerbate harmful racial essentialism. Insights on these issues and possible remedies are required and are provided by this chapter.

Predictive policing algorithms and race neutrality

Predictive policing algorithms are data-driven technologies that observe and draw on patterns in data to forecast either individual risks of offending or locational crime risks. The algorithms form part of what I conceptualise as CrimTech which refers to technologies deployed by justice

DOI: 10.4324/9781003176619-16

systems for decision making. They rely on various data sources which may include 'big data' – such as linked biometric, health, demographic, geographical, and socioeconomic data – and administrative criminal justice data compiled by justice services (Hannah-Moffat, 2019).

Varieties of technologies exist including those that attempt to assess and predict individual risks of offending (Oswald et al., 2018) or those that are designed to forecast spatio-temporal crime risks (Richardson et al., 2019). Together predictive policing algorithms specifically, have been defined as "data-mining tools that [seek to] predict and pre-empt criminal activity" (Andrejevic, 2017, p. 879). Brayne (2017) notes in an analysis of such algorithms that developers[1] and procurers depict them as scientifically objective technologies that can expedite accurate decision-making which can, in turn, improve systemic efficiency and cost-effectiveness (see also Lavorgna & Ugwudike, 2021). This implies that they are race neutral (Ugwudike, 2020).

The myth of race neutrality

As I have argued elsewhere, underpinning the liberal race-neutral presumption which currently shrouds the design and deployment of predictive policing algorithms and similar technologies are two logics (Ugwudike, 2020). One is the bias elimination fallacy or the belief that excising race from the lexicon of predictive tools automatically eliminates racial bias, rendering them neutral. It is argued that this assumption overlooks the continuing impact of systemic racial bias and structural inequalities in several contemporary Western societies (see, e.g., Murakawa & Beckett, 2010). Studies suggest that, with predictive policing algorithms, for instance, conduits of systemic bias include the reliance on administrative datasets, including crime data that contain records of racially biased arrests that go on to trigger biased algorithmic predictions[2] – the perennial "garbage in, garbage out problem" (see Lum & Isaac, 2016, p. 19). Here, the fundamental source of bias is shielded by ostensibly race-neutral and scientific predictive analytics. Another race-neutral logic is the scientific neutrality fallacy which manifests itself in the view that the quantification of predictive analytics equates to irrefutable scientific objectivity which obviates racially biased decision-making (Ugwudike, 2020). Again, in this case, the presumption of race neutrality appears to be mythical. It merely obscures design processes such as the aforementioned reliance on flawed data that can foment biased predictions. This calls for critical analyses of race-neutral logics.

Decolonial perspectives in the field of technology design and development (Adams, 2021; Birhane, 2019; Couldry & Ulises, 2019; Mohammed et al., 2020) and insights from the CAS scholarship or the related field of critical data studies (Barocas & Selbst, 2016; Benjamin, 2019; Boyd & Crawford, 2012; Brayne, 2017; Kitchin & Lauriault, 2014) are particularly useful in this context. They suggest that the race neutrality frame obfuscates the ethical challenges posed by technologies such as predictive policing algorithms and could indeed reproduce and perpetuate historical biases. Race scholars similarly contend that, more broadly, the idealistic race neutrality logic reflects a decontextualized abstract liberalism that ignores the continuing reality of systemic bias in institutional contexts (e.g., Bonilla-Silva, 2015) including justice systems (Murakawa & Beckett, 2010).

Despite allusions to the neutrality and scientific objectivity of predictive policing algorithms, as we shall see later in the chapter, studies have revealed several ethical challenges associated with the algorithms, and racial bias has emerged as a key issue (Ensign et al., 2017; Lum & Isaac, 2016; Richardson et al., 2019). The liberal race-neutral frame ascribed to the technologies obscures this problem and other similar challenges. It presumes that systemic and structural biases have been eradicated with the supposed advent of a post-racial age.[3] From this perspective, digital technologies such as predictive policing algorithms are being designed and deployed

in criminal justice settings that are devoid of racial bias. Presumably, the technologies reflect the progressive ideals of a colour-blind, post-racial world. It is in this context that sections of CAS and decolonial perspectives become relevant given their focus on unravelling respectively, historical structures of racial inequality that permeate algorithm design and fuel racially biased predictions, and the enduring legacy of colonial logics that continue to foment systemic bias and broader structural disadvantage.

In the next section, the chapter provides an overview of decolonial logics in the fields of technology design and criminology. After this, the chapter discusses analogous perspectives from CAS and draws on both decolonial logics and CAS to analyze the exclusionary contexts of the bias associated with 'race-neutral' predictive policing algorithms, and how best to develop remedial strategies.

Decolonial logics and critical algorithm studies

A recurring theme traversing decolonial theory is the notion that constructed racial and other hierarchies evident in contemporary social, political, and economic structures, are themselves rooted in enduring legacies of colonialism, refuting claims about the emergence of a race-neutral and post-racial world. Decolonization is thus proposed and is defined by Mohammed et al. (2020) in their analysis of decolonial artificial intelligence (AI) systems as, "the intellectual, political, economic and societal work concerned with the restoration of land and life following the end of historical colonial period" (Mohammed et al., 2020, p. 663; see also Adams, 2021). In the context of technology design and deployment, decolonization challenges the dominance of colonial epistemology and aims to decentre Western influences whilst proposing the amplification of historically marginal, non-Eurocentric voices (e.g., Birhane, 2019).

Decolonial and decolonizing studies arguably have a longer history in criminological scholarship and they similarly advocate epistemological and paradigmatic shifts that can restore and reinstate localized modes of knowledge production (see, for example, Anthony & Sherwood, 2018; Blagg & Anthony, 2019). These should foreground the realities of historically marginalized populations in colonized Black African regions (Agozino, 2018, 2021) and Indigenous communities in "Anglo-settler colonial jurisdictions" from Australia and New Zealand to Canada and the United States (Cunneen & Tauri, 2017, p. 359). Ultimately, the decolonizing mission is to redress the long-standing racially discriminatory effects of colonial power and thought on contemporary knowledge production, social structures, and systems of governance in those locations. It is argued that criminology as a discipline should embrace this decolonizing agenda. Indeed, there have been calls to decolonize criminology via theories and methods that foreground the colonial roots of contemporary racial and other oppressions within and beyond justice systems. A primary contention here is that Western criminological thought continues to ignore or underplay the historical legacy of colonialism and its enduring influence on crime control practices and institutions as well as broader social structures which continue to disadvantage racialized people[4] (Cunneen & Tauri, 2017). This criticism has been extended to the field of Southern Criminology which seeks to amplify perspectives from the Global South.[5] As Agozino (2004) notes, "Criminology is a social science that served colonialism more directly than many other social sciences" (p. 343). From this perspective, the imperialistic, racially divisive logics and relations of colonialism continue to permeate current criminal justice practice, including applications of predictive policing software.

Insights from CAS reaffirm decolonial logics concerning the enduring emblems of coloniality and repudiate the race neutrality discourse. Scholars in this field contend that data-driven

predictive technologies, including predictive policing algorithms, can reproduce historical forms of structural disadvantage (e.g., Benjamin, 2019; Brayne, 2017; Richardson et al., 2019). In this respect, studies have found that where a predictive policing algorithm relies on crime data it can reproduce racial biases embedded in the data via the overprediction of crime risks associated with racialized people (Ensign et al., 2017; Lum & Isaac, 2016). The next sections explore the exclusionary contexts of this adverse outcome and the essentialism it can foment, with specific reference to both decolonial perspectives and CAS.

Exclusionary contexts of algorithmic bias

As I discussed in a previous analysis of digital predictive technologies in justice systems, the race-neutral frame ignores algorithmic biases that can arise from broader structural conditions of technology design (Ugwudike, 2020). A relevant example is unequal access to digital capital, which is a sociological concept that, broadly defined, refers to the resources required for accessing and/or designing and developing technologies (van Dijk, 2005). Insights from CAS and related fields suggest that unequal access to this form of capital in contemporary Western neoliberal societies signifies long-standing power asymmetries and marginalizations rooted in the racial, gender, and other constructed hierarchies. Benjamin (2019), for example, notes that the empowered group invariably comprises White males of relatively high socio-economic status, typically entrepreneurs, researchers, and others. Their digital capital empowers them to infuse their products with unregulated and unchallengeable values in the form of personal choices, ideologies, assumptions, theoretical preferences, and other subjectivities.

In tandem with these insights from CAS, decolonial logics from criminology (e.g., Agozino, 2021) similarly suggest that unequal access to digital and other forms of capital in contemporary times is a reflection of coloniality. The concept of coloniality refers to relics of colonialism or, as Mohammed et al. (2020) put it, "coloniality is what survives colonialism […] coloniality names the continuity of established patterns of power between coloniser and colonised—and the contemporary remnants of these relationships" (p. 663). From a criminological perspective, Dimou (2021) similarly defines coloniality as "long-standing patterns of power that emerged because of colonialism and that are still at play" (p. 431). Dismissing any notions of race neutrality, decolonial discourses in criminology draw attention to how unequal access to capital breeds power imbalance and reproduces adverse outcomes such as the disproportionate vulnerability of historically marginalized populations to higher rates of criminalization compared with other groups (Agozino, 2021).

In the same way, the CAS scholarship suggests that the concentration of digital capital specifically, within historically powerful groups, reproduces colonial power inequalities and has been linked to adverse outcomes for racialized people. As we shall see, studies have shown that the data choices of those equipped with digital capital can produce profound implications in the sense that they can trigger adverse outcomes such as racially biased overprediction (e.g., Lum & Isaac, 2016), despite the depiction of the tools as race neutral.

With their digital capital, the developers are also empowered to construct new forms of knowledge about risk and riskiness whilst racialized people typically lack similar levels of access to digital capital[6] and are, as such, often unable to fully participate in such knowledge production processes. Their lack of digital capital excludes them from design processes (Costanza-Chock, 2018) when potentially harmful choices that inform racially biased predictions and knowledge production about risk and riskiness can be pre-empted and avoided. Perhaps unsurprisingly and contrary to race neutrality logics, they invariably bear the ethical burden of both technology design and deployment (see Barabas, 2020; Taylor, 2017) or the 'ethical debt' (such as racially

biased overprediction) that accumulate as technologies are deployed over time (Petrozzino, 2021). Their exclusion is problematic, not least because justice systems are high-stakes domains where access to certain human rights and civil liberties can be withdrawn.

Adverse outcomes: the problem of essentialism

Perspectives from CAS further repudiate the race-neutral logics of bias elimination and scientific objectivity ascribed to predictive policing algorithms in additional ways. Echoing decolonial discourses, sections of CAS argue that the algorithms can reproduce and perpetuate historical forms of knowledge production which consistently label racialized people as intrinsically criminogenic. The roots of this form of essentialism can be traced to the tendency of the algorithms to over-predict or artificially inflate crime risks, as noted by several studies (see Ensign et al., 2017; Lum & Isaac, 2016). Decolonial logics suggest that such overprediction events are instances of coloniality in that they sustain or even worsen racial essentialism, which remains one of the hallmarks of constructed colonial racial hierarchies and knowledge systems.

The negative construction of Black and Indigenous populations as inherently deviant and a 'social problem' (Agozino, 2018) has long been described as a feature of coloniality which is embedded, not only in criminological thought but also more broadly in contemporary social structures and institutional practices. Overprediction of crime risks in cases involving racialized people can exacerbate such essentialism. It can normalize the demonization of racialized people whilst sustaining and validating racially inequitable policies and power structures entrenched in the legacy of colonialism.

Overprediction stems partly from the unrepresentative data on which the technologies rely for crime forecasts, data which, as already noted, can include administrative records of racially biased decision-making. Unfortunately, studies suggest that the algorithms cannot detect problems such as those that call for a nuanced analysis of crime data and other criminal justice datasets (see generally, Fair Trial and EDRi, 2022). Instead, the technologies interpret the data as race-neutral proxies for crime. In reality, however, well-documented discriminatory practices such as "over-searching" and "over-patrolling" (Vomfell & Stewart, 2021, p. 566; see also, Shiner et al., 2018) do find their way into such data and can partly explain the over-representation of racialized people in criminal justice statistics across justice systems where predictive technologies are deployed (Australian Bureau of Statistics, 2018; Bureau of Justice Statistics, 2018; Canadian Centre for Justice Statistics, 2019; Ministry of Justice, 2019). Their over-representation draws attention to the disadvantage racialized people experience in justice systems. It also contributes to algorithmic overprediction.

Criminologists have theorized the adverse experiences of racialized people in justice systems, invoking themes relevant to decolonial logics. Examples include the disempowering effects of coloniality and the associated colonial epistemologies that continue to foster the exercise of power, sovereignty, and control over racialized people in contemporary institutions and wider society (Dimou, 2021). Meanwhile, empirical research from the field of CAS continues to reveal how such overrepresentation foments the ethical problem of algorithmic overprediction of crime risks.

It is worth acknowledging that developer-led studies have alluded to the race neutrality and accuracy of predictive policing technologies (e.g., Brantingham et al., 2018; Mohler et al., 2015). Independent studies, on the other hand, suggest otherwise. Lum and Isaac's (2016) study, for example, investigated the effects of using a predictive policing algorithm that relies on crime data from a Police Department in the US for locational crime forecasts. They found that, because the crime data had been artificially inflated by excessive police presence in locations

heavily populated by Black people, it triggered an algorithmic self-reinforcing feedback loop whereby the algorithm repeatedly targeted those locations for high crime-risk predictions (overprediction), encouraging even more policing in those areas and heightening exposure to unwarranted criminalization (see also Browne, 2015).

Lum and Isaac (2016) concluded that "allowing a predictive policing algorithm to allocate police resources would result in the disproportionate policing of low-income communities and communities of colour" (p. 18). Ensign et al. (2017) arrived at similar conclusions. Their analysis of the same algorithm relied on police data from Lum and Isaac's (2016) study and uncovered similar algorithmic feedback loops (see also Chapman et al., 2022; Richardson et al., 2019). These studies and others from the field of CAS demonstrate the links between unrepresentative crime data and algorithmic risk inflation which disadvantages Black and Indigenous people and can reproduce and entrench notions of Black riskiness and criminality. As already noted, decolonial logics suggest that such contemporary instances of essentialism are emblems of coloniality.

CAS scholars similarly recognize the embeddedness of this essentialism in historical structures and oppressive racial, class, and gender relations. Benjamin (2019), for example, acknowledges that technologies such as predictive policing algorithms which rely on flawed "data that have been produced through histories of exclusion and discrimination" (p. 10) can reproduce long-standing racial ideologies. Of particular relevance here are deeply entrenched views and beliefs that essentialize racialized people as the immanently risky other. This form of essentialism poses profound implications. For instance, decolonial discourses suggest that colonial constructions of racial difference continue to fuel the criminalization of racialized people and their sustained overrepresentation in prisons across Western jurisdictions (Jackson, 1988; Tauri, 2016).

The CAS scholarship is similarly unravelling the historical roots of the ethical issues associated with algorithms deployed in justice systems (Benjamin, 2019) and other domains such as welfare allocation services (Eubanks, 2018), internet platforms (Noble, 2018), and other domains. In synergy with decolonial perspectives on the persistence of coloniality despite allusions to race neutrality, the scholarship is providing useful insights into how historical and long-standing inequalities along racial, gender, and socioeconomic lines are also being played out in these settings disadvantaging Black and Indigenous populations. It is thus not surprising that Couldry and Ulises (2019) point to a "decolonial turn" (p. 1) in critical studies of data and technology.

Mitigations and solutions rooted in a confluence of decolonial and critical algorithm studies logics

Mitigations and remedies have been proffered to address the biases and other ethical challenges associated with predictive policing algorithms and other data-driven predictive technologies applied in justice systems. Commonly cited mitigations include debiasing datasets (Johndrow & Lum, 2019), conducting internal and external audits (Brown et al., 2021; Jobin et al., 2019; Mittelstadt, 2019; Raji et al., 2020) and developing explainability and transparency techniques (Parent et al., 2020; Ugwudike, 2022; Zeng et al., 2015).

In this section, I demonstrate how synergies between decolonial and CAS logics can contribute to ongoing efforts to avoid or at least remediate ethical challenges by embedding decolonial thought in technology design. Invocations by criminological scholars and others to decolonize technology design are gathering momentum in light of emerging evidence of ethical issues.

Mohammed et al. (2020) argue that AI communities should consider integrating a decolonial approach into technical practice. This, in their view, is useful for understanding how best to

bring AI research and design in line with ethical ideals whilst foregrounding vulnerable groups typically affected by the effects of technological advances. Cave and Dihal (2020) contend that decolonizing AI should involve the dismantling of colonial power structures and the underpinning systems of oppression that continue to permeate technology design and outputs, entrenching injustices (see also Cave, 2020). Primarily, any emblems of coloniality embedded in design processes should be excised. Examples include data practices and any other design features that can reproduce and entrench historical racial, gender, and other biases, fuelling broader disparate impact and other ethical problems (Barocas & Selbst, 2016; Benjamin, 2019; Buolamwini & Gebru, 2018; Hagendorf, 2020).

Decolonization strategies should also involve efforts to uncover historically entrenched, systemic biases and foreground the typically marginalized voices of racialized and other disadvantaged communities. Below I outline several concepts emerging from the field of CAS which are useful for considering how to develop these decolonial ideals and design decolonized, ethical technologies.

Data justice: dismantling data colonialism

Data justice is a concept emerging from CAS scholarship (e.g., Dencik et al., 2016; Taylor, 2017) that can advance decolonial ideals. The concept has been framed in several ways by different disciplines. But fundamentally, it emphasizes the importance of ensuring that those who collect the digital data that are used for algorithm design should ensure that such data are collected and used fairly. This is particularly crucial as societies continue to advance towards datafication, which involves the transformation of key aspects of social life and human activity into data. In the design of predictive policing algorithms, for example, decolonial logics can remind developers that histories of discrimination mean that administrative data are likely to be far from race neutral.

Unlike dominant liberal frames which depict such data as objective crime records, decolonial logics suggest that they can be imbued with historical forms of racial bias and can, as such, potentially generate biased predictions, just as several studies have shown (Chapman et al., 2022; Ensign et al., 2017; Lum & Isaac, 2016). Therefore, care should be taken when selecting data for predictive algorithms. Data justice requires that the way the people are made visible and represented in the datasets used for predictive policing and other similar algorithms does not expose them to bias or any other harmful outcomes (Taylor, 2017).

Data justice can also help dismantle data colonialism (Couldry & Ulises, 2019; Ricaurte, 2019), which is a concept from the CAS scholarship that alerts us to the historical and enduring nature of personal data as a means of pervasive marginalization and exploitative capitalist extraction and accumulation. Theorizations of this problem feature in the decolonial literature (Mohammed et al., 2020). Data colonialism inspires epistemologies that can foment exclusion and the negation of other worlds and forms of *knowledge* (Ricaurte, 2019). Understanding data colonialism and how to reverse the problem is important in contemporary applications of data which reconstitute human experiences and attributes as data points and uncritically posit them as objective reflections of reality as well as useful *knowledge* production tools (Adams, 2021).

Developers equipped with digital capital in the form of financial and other resources such as digital skills and competencies currently dominate such applications of data. They design technologies that draw on the data they select to define risk classifications in justice systems. The classifications are then depicted by the developers as statistically backed, race-neutral 'truths' about crime risks. In the case of predictive policing algorithms, their outputs are fundamental to prevailing knowledge of crime patterns across geographical locations. The knowledge generated

from the technologies can determine levels of police dispatch and surveillance. But studies show that when they rely on potentially biased data, they can expose already overpoliced communities to disproportionately high levels of policing and risks of criminalization, reproducing historical biases and inequalities.

What this suggests is that in justice systems, it is important to recognize that the way communities are represented or made visible in data can influence the way they are treated. If, as decolonial logics suggest, racialized communities are more vulnerable to historical biases and discrimination, these can permeate criminal justice activity and records, and become amplified by predictive algorithms that rely on such records (Lum & Isaac, 2016), regardless of their facile race neutrality.

Design justice: amplifying marginal voices for broader representation

Design justice (Costanza-Chock, 2018) is another useful conceptual tool from CAS that implicitly reflects decolonial logics and is useful for considering how to mitigate the capacity of AI to reproduce historical biases and other ethical challenges. It refers to practical strategies for ensuring that disempowered communities that are typically most affected by algorithmic harms, such as the overprediction of risk, are empowered to participate in key design considerations.

The concept evokes themes associated with the broader notion of data sovereignty (Kukutai & Taylor, 2016; Walter & Suina, 2019). It explains how design processes that centre the methods and knowledge, and perceptions of users, including typically underrepresented groups, can help democratize technology design. This can achieve additional aims of public acceptability and trustworthiness which could be vital for the sustainability of new and emerging technologies. The concept of design justice focuses attention on tools and strategies for reversing historical power asymmetries associated with contemporary technology design and fuelled by uneven access to digital capital (see Van Dijk, 2005).

In sum, data justice and design justice are concepts that echo decolonial sentiments about the importance of foregrounding the voices and contributions of historically marginalized groups in an effort to dismantle entrenched structural dynamics that can permeate technology design and trigger discriminatory outcomes. By highlighting these issues, both concepts reflect decolonial logics and refocus our attention on the structural contexts in which technologies are designed, and on the importance of structural transformation.

Conclusions

Decolonial logics and the CAS scholarship inspire the critical analysis of technologies and their societal impact. Such analysis reveals links between the historical legacy of colonialism and the contemporary racialization of social problems, including crime. Predictive policing technologies may reflect liberalism's idealistic, race-neutral ideology. But decolonial logics and the CAS scholarship suggest that contemporary structural conditions displaying features of coloniality (Mohammed et al., 2020) continue to foment predictions that can reproduce racial ideologies and biases experienced by structurally disadvantaged communities, particularly Black and Indigenous people.

More specifically, studies have shown that such algorithms can reproduce the biased assumption that low-income locations heavily populated by racialized people are the areas most exposed to crime risk. Similar algorithmic assumptions linking race to crime and risk have been found to affect Indigenous First Nations people in Australia (Allan et al., 2019; Shepherd et al., 2014) and Canada (Cardoso, 2020), and can fuel discriminatory geographical profiling

and overpolicing. Decolonial and CAS perspectives suggest that developers should remain alert to these problems and the potential of long-held biases to permeate some of the tools they deploy during technology design. The tools include the datasets they select and their theoretical choices (Ugwudike, 2020).

Embedding insights from decolonial and CAS perspectives that highlight the capacity of historical biases to permeate technology design can reorient AI design decisions away from the narrow choices, assumptions, and ideologies of a few developers empowered by their access to digital capital. Further, concepts from CAS such as design justice and data justice, both of which reflect core decolonial aims of dismantling relics of coloniality, such as the enduring marginalization of historically disadvantaged groups (see, e.g., Mohammed et al., 2020), provide useful insights on how best to democratize technology design.

The concepts suggest that democratization should involve opening up design decisions and processes to a wider population, including historically marginalized populations who, as studies suggest, are most affected by the risks and harms of predictive technologies. This may require resource investment to redistribute digital capital and promote digital literacy. Such investment is required to expand the pool of individuals and communities able to participate in building representative and trustworthy technologies for the future.

Notes

1 In this chapter, the term 'developers' refers broadly to those who design and develop data-driven technologies.
2 Rovastos et al. (2020) define algorithmic bias as "the systematic, repeatable behaviour of an algorithm that leads to the unfair treatment of a certain group" (Rovastos et al., 2020, p. 69).
3 See, Goldberg (2015) and Vickerman (2013) for critical analyses of the post-racial discourse.
4 In this chapter, the terms 'racialized communities' or 'racialized minorities' refer to Black and Indigenous communities.
5 See Anthony et al. (2021) for a critique of Southern Criminology.
6 For a UK example showing racial differences in levels of access, see House of Commons Science and Technology Committee (2016).

References

Adams, R. (2021). Can artificial intelligence be decolonized? *Interdisciplinary Science Reviews*, *46*(1/2), 176–197.

Agozino, B. (2004). Imperialism, crime and criminology: Towards the decolonisation of criminology. *Crime, Law and Social Change*, *41*, 343–358.

Agozino, B. (2018). The withering away of the law: An Indigenous perspective on the decolonisation of the criminal justice system and criminology. *Journal of Global Indigeneity*, *3*(1), 1–22.

Agozino, B. (2021). Reparative justice: The final stage of decolonization. *Punishment & Society*, *23*(5), 613–630.

Ajunwa, A. (2021). An auditing imperative for automated hiring systems. *Harvard Journal of Law and Technology*, *34*(2), 1–77.

Allan, A., Parry, C.L., Ferrante, A., Gillies, C., Griffiths, C.S., Morgan, F., Spiranovic, C., Smallbone, S., Tubex, H., & Wong, S.C.P. (2019). Assessing the risk of Australian Indigenous sexual offenders reoffending: A review of the research literature and court decisions. *Psychiatry, Psychology and Law*, *26*(2), 274–294.

Andrejevic, M. (2017). To pre-empt a thief. *International Journal of Communication*, *11*, 879–896.

Anthony, T., & Sherwood, J. (2018). Post-disciplinary response to positivism's punitiveness. *Journal of Global Indigeneity*, *3*(1), 1–33.

Anthony, T., Webb, R., Sherwood, J., Blagg, H., & Deckert, A. (2021). *In defence of decolonisation: A response to Southern Criminology* [Blog post]. https://thebscblog.wordpress.com/2021/11/09/in-defence-of-decolonisation-a-response-to-southern-criminology/

Australian Bureau of Statistics (2018). *4512.0 – Corrective services, Australia, June quarter 2018*. https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4512.0Main+Features1June%20quarter%202018?OpenDocument

Barabas, C. (2020). Beyond bias: "Ethical AI" in criminal law. In M.D. Dubber, F. Pasquale, & S. Das (Eds.), *The Oxford handbook of ethics of AI*. Oxford University Press.

Barocas, S., & Selbst, A.D. (2016). Big data's disparate impact. *California Law Review*, *104*, 671–732.

Benjamin, R. (2019). *Race after technology: Abolitionist tools for the New Jim Code*. Polity Press.

Birhane, A. (2019, July 18). The algorithmic colonization of Africa. *Real Life*. https://reallifemag.com/the-algorithmic-colonization-of-africa/

Blagg, H., & Anthony, T. (2019). *Decolonising criminology*. Palgrave Macmillan.

Bonilla-Silva, E. (2015). The structure of racism in color-blind, "post-racial" America. *American Behavioural Scientist*, *11*, 1358–1376.

Boyd, D., & Crawford, K. (2012). Critical questions for big data: Provocations for a cultural, technological, and scholarly phenomenon. *Information, Communication and Society*, *15*(5), 662–679.

Brantingham, P.J., Valasik, M., & Mohler, G.O. (2018). Does predictive policing lead to biased arrests? Results from a randomized controlled trial. *Statistics and Public Policy*, *5*(1), 1–6.

Brayne, S. (2017). Big data surveillance: The case of policing. *American Sociological Review*, *82*(5), 977–1008.

Brown, S., Davidovic, J., & Hasan, A. (2021). The algorithm audit: Scoring the algorithms that score us. *Big Data & Society*, *8*(1), 1–8.

Browne, S. (2015). *Dark matters: On the surveillance of Blackness*. Duke University Press.

Buolamwini, J., & Gebru, T. (2018). Gender shades: Intersectional accuracy disparities in commercial gender classification. In A.F. Sorelle & C. Wilson (Eds.), *Proceedings of Machine Learning Research, 81*, 1–15. https://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf

Bureau of Justice Statistics (2018). Prisoners in 2016. www.bjs.gov/content/pub/pdf/p16_sum.pdf

Canadian Centre for Justice Statistics (2019). Adult and youth correctional statistics in Canada, 2017/2018. https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00010-eng.htm

Cardoso, T. (2020, October 24). Bias behind bars: A Globe investigation finds a prison system stacked against Black and Indigenous inmates. *The Globe and Mail*. https://www.theglobeandmail.com/canada/article-investigation-racial-bias-in-canadian-prison-risk-assessments/

Cave, S. (2020, February 7–8). *The problem with intelligence: Its value-laden history and the future of AI* [Conference paper]. Conference on AI, Ethics, and Society Proceedings. New York. https://doi.org/10.1145/3375627.3375813

Cave, S., & Dihal, K. (2020). The whiteness of AI. *Philosophy & Technology*, 33, 685–703.

Chapman, A., Grylls, P., Ugwudike, P., Gammack, D., & Ayling, J. (2022, June 21–24). *A data-driven analysis of the interplay between criminological theory and predictive policing algorithms* [Conference paper]. *Conference on Fairness, Accountability, and Transparency*. Seoul. https://doi.org/10.1145/3531146.3533071

Costanza-Chock, S. (2018, June 25–28). *Design justice: Towards an intersectional feminist framework for design theory and practice* [Conference paper]. *Meeting of the Design Research Society*. University of Limerick. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3189696

Couldry, N., & Ulises, A.M. (2019). Data colonialism: Rethinking big data's relation to the contemporary subject. *Television and New Media*, *20*(4), 336–349.

Cunneen, C., & Tauri, J. (2017). *Indigenous criminology*. Polity Press.

Dencik, L., Hintz, A., & Cable, J. (2016). Towards data justice? The ambiguity of anti-surveillance resistance in political activism. *Big Data & Society*, *3*(2), 1–12.

Dimou, E. (2021). Decolonizing southern criminology: What can the "decolonial option" tell us about challenging the modern/colonial foundations of criminology? *Critical Criminology*, *29*, 431–450.

Ensign, D., Friedler, S.A., Neville, S., Scheidegger, C., & Venkatasubramanian, S. (2017). Runaway feedback loops in predictive policing. Paper presented at the Machine Learning Research. In A.F. Sorelle & C. Wilson (Eds.), *Proceedings of Machine Learning Research*, *81*, 1–12. http://proceedings.mlr.press/v81/ensign18a/ensign18a.pdf

Eubanks, V. (2018). *Automating inequality: How high-tech tools profile, police, and punish the poor*. St Martins Press.

Fair Trial and EDRi. (2022). Civil society calls on the EU to prohibit predictive and profiling AI systems in law enforcement and criminal justice. https://edri.org/wp-content/uploads/2022/03/Prohibit-predictive-and-profiling-AI-systems-in-law-enforcement-and-criminal-justice.pdf

Goldberg, D. (2015). *Are we all post racial yet?* Polity Press.

Hagendorf, T. (2020). The ethics of AI ethics: An evaluation of guidelines. *Minds & Machines*, *30*, 99–120.

Hannah-Moffat, K. (2019). Algorithmic risk governance: Big data analytics, race and information activism in criminal justice debates. *Theoretical Criminology*, *23*(4), 453–470.

House of Commons Science and Technology Committee (2016). Digital skills crisis: second report of session 2016–17. HC270. https://publications.parliament.uk/pa/cm201617/cmselect/cmsctech/270/270.pdf

Jackson, M. (1988). The Māori and the criminal justice system: He Whaipaanga Hou: A new perspective. https://www.ojp.gov/pdffiles1/Digitization/108675NCJRS.pdf

Jobin, A., Ienca, M., & Vayena, E. (2019). Artificial intelligence: The global landscape of ethics guidelines. *Nature Machine Intelligence*, *1*, 389–399.

Johndrow, J.E., & Lum, K. (2019). An algorithm for removing sensitive information: application to race-independent recidivism prediction. *Annals of Applied Statistics*, *13*(1), 189–220.

Kitchin, R., & Lauriault, T. (2014). Towards critical data studies: Charting and unpacking data assemblages and their work. In J. Thatcher, J. Eckert, & A. Shears (Eds.), *Thinking big data in geography: New regimes, new research* (pp. 3–20). Nebraska Press.

Kukutai, T., & Taylor, J. (2016). *Indigenous data sovereignty: Toward an agenda*. ANU Press.

Lavorgna, A., & Ugwudike, P. (2021). The datafication revolution in criminal justice: An empirical exploration of frames portraying data-driven technologies for crime prevention and control. *Big Data and Society*, *8*(2), 1–15.

Lum, K., & Isaac, W. (2016). To predict and serve? *Significance*, *13*, 14–19.

Ministry of Justice (2019). Statistics on race and the criminal justice system 2018: A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/849200/statistics-on-race-and-the-cjs-2018.pdf

Mittelstadt, B. (2019). Principles alone cannot guarantee ethical AI. *Nature Machine Intelligence*, *1*, 501–507.

Mohammed, S., Png, M., & Isaac, W. (2020). Decolonial AI: Decolonial theory as sociotechnical foresight in artificial intelligence. *Philosophy and Technology*, *33*(4), 659–684.

Mohler, G., Short, M.B., Malinowski, S., Johnson, M., Tita, G.E., Bertozzi, A.L., & Brantingham, P.J. (2015). Randomized controlled field trials of predictive policing. *Journal of the American Statistical Association*, *110*, 1399–1411.

Murakawa, N., & Beckett, K. (2010). The penology of racial innocence: The erasure of racism in the study and practice of punishment. *Law and Society Review*, *44*(3/4), 695–730.

Noble, S.U. (2018). *Algorithms of oppression. How search engines reinforce racism*. New York University Press.

Oswald, M., Grace, J., Urwin, S., & Barnes, G.C. (2018). Algorithmic risk assessment policing models: Lessons from the Durham HART model and 'experimental proportionality'. *Information and Communications Technology Law*, *27*, 223–250.

Parent, M., Roy, A., Gagnon, C., Lemaire, N., Deslauriers-Varin, N., Falk, T.H., & Tremblay, S. (2020). Designing an explainable predictive policing model to forecast police workforce distribution in cities. *Canadian Journal of Criminology and Criminal Justice*, *62*(4), 52–76.

Petrozzino, C. (2021). Who pays for ethical debt in AI? *AI Ethics*, *1*, 205–208.

Price, M. (2019, October 24). Hospital 'risk scores' prioritize white patients. *Science*. https://www.sciencemag.org/news/2019/10/hospital-risk-scores-prioritize-white-patients

Raji, I.D., Smart, A., White, R.N., Mitchell, M., Gebru, T., Hutchinson, B., Smith-Loud, J., Theron, D., & Barnes, P. (2020, January 27–30). *Closing the AI accountability gap: Defining an end-to-end framework for internal algorithmic auditing* [Conference paper]. *Conference on Fairness, Accountability, and Transparency*. Barcelona, Spain. https://dl.acm.org/doi/pdf/10.1145/3351095.3372873

Ricaurte, P. (2019). Data epistemologies, the coloniality of power, and resistance. *Television and New Media*, *20*(4), 350–365.

Richardson, R, Schultz, J., & Crawford, K. (2019). Dirty data, bad predictions: How civil rights violations impact police data, predictive policing systems, and justice. *New York University Law Review*, *94*, 192–233.

Rovastos, M., Mittelstadt, B., & Koene, A. (2020). Landscape summary: Bias in algorithmic decision-making – What is bias in algorithmic decision-making, how can we identify it, and how can we mitigate it? https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819055/Landscape_Summary_-_Bias_in_Algorithmic_Decision-Making.pdf

Shepherd, S.M., Adams, Y., McEntyre, E., & Walker, R. (2014). Violence risk assessment in Australian Aboriginal offender populations: A review of the literature. *Psychology, Public Policy and Law*, *20*(3), 281–293.

Shiner, M., Carre, Z., Delsol, R., & Eastwood, N. (2018). The colour of injustice: 'Race', drugs and law enforcement in England and Wales. https://www.lse.ac.uk/united-states/Assets/Documents/The-Colour-of-Injustice.pdf

Tanninen, M. (2020). Contested technology: Social scientific perspectives of behaviour-based insurance. *Big Data & Society*, 7(2), 1–14.

Tauri, J.M. (2016). The state, the academy and Indigenous justice: A counter-colonial critique [PhD thesis]. University of Wollongong. https://ro.uow.edu.au/cgi/viewcontent.cgi?article=5702&context=theses

Taylor, B.J. (2017). *Decision making: Assessment and risk in social work* (3rd ed.). University of Ulster.

Ugwudike, P. (2020). Digital prediction technologies in the justice system: The implications of a 'race-neutral' agenda. *Theoretical Criminology*, *24*(3), 482–501.

Ugwudike, P. (2022). AI audits for assessing design logics and building ethical systems: The case of predictive policing algorithms. *AI and Ethics*, *2*, 199–208.

van Dijk, J. (2005). *The deepening divide: Inequality in the information society*. Sage.

Vickerman, M. (2013). *The problem of post-racialism*. Palgrave Macmillan.

Vomfell, L., & Stewart, N. (2021). Officer bias, over-patrolling and ethnic disparities in stop and search. *Nature Human Behaviour*, *5*, 566–575.

Walter, M., & Suina, M. (2019). Indigenous data, Indigenous methodologies and Indigenous data sovereignty. *International Journal of Social Research Methodology*, *22*(3), 233–243.

Zeng, J., Ustun, B., & Rudin, C. (2015). Interpretable classification models for recidivism prediction. *Royal Statistical Society*, *180*(3), 689–722.

15

Decolonizing Policing in the Gulf Cooperation Council

Nabil Ouassini and Arvind Verma

The academic study of criminal justice in the Arab world is still incipient with the recent advent of Southern Criminology (Carrington et al., 2016, 2019), decolonization (Blagg & Anthony, 2019), and Arab Criminologies (Ouassini & Ouassini, 2020; 2023) prompting needed attention to policing in the Arab nations of the Persian Gulf. Until the 2010s, available information on the rudimentary aspects of policing in the Gulf Cooperation Council (GCC) nations was scarce. Headquartered in Riyadh and established in 1981, the GCC is a regional organization consisting of every country in the Arabian Peninsula except for Yemen. The distinctions between the GCC members are exiguous as they share the same cultural, ethnic, linguistic, and religious traditions. Each of the six monarchies – Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE) – aims to strengthen political, economic, and security cooperation. Stability is of the utmost importance in these relations, and the region's policing institutions developed during the British colonial administration are at the core of this partnership.

In the GCC, one must consider the legacy of British colonialism to better understand policing today. Consistent with Orientalist depictions and stereotypes that justified colonialization, the British settlers treated the Arab tribes as violent, uncivilized, lawless, brigands, and pirates (Said, 1979). Naval power protected British interests and regulated the relations between the Empire and local sheikhs and rulers. By the twentieth century, the British colonial administration was propping up pro-Western monarchs to safeguard its interests, a system that continues today.

Decades have passed since the British were in physical occupation, with half of these nations (Bahrain, Qatar, UAE) only gaining their independence in the 1970s; yet the field of criminology has never addressed the underlying epistemologies that subjugated the region. Instead of the London elite, police forces now serve the state's interests and preserve the status quo through a highly centralized hierarchy under the direct authority of each sheikhdom. Despite the autocratic nature of each member state, policing in the GCC has recently been transformed due to neoliberal economic policies, rapid modernization, and the need to diversify the region's oil-dependent economies.

The GCC states have become one of the world's foremost centres for economic activity, tourism, and international events. The region's continued growth and popularity as a world destination entail reliable law enforcement agencies, but at a cost. Many non-governmental

DOI: 10.4324/9781003176619-17

organizations accuse these states of serious human rights violations (Polymenopoulou, 2020). This chapter examines policing in the GCC in light of the region's sectaries and foreign nationals and expounds on the necessity of decolonizing policing in the GCC. First, the chapter introduces the reader to policing in the GCC through the British colonial administration and the subsequent influences of neoliberalism and modernization on modern policing. The next section describes issues between indigenous sectaries, foreign nationals (high-skilled and sponsored contracted migrants), and the police. The chapter argues that the exported policies of policing from the West warrant decolonization and presents suggestions for alternatives in the Arab nations of the Gulf.

Policing in the Gulf Cooperation Council

There is limited academic and policy research on the policing of the Arabian Peninsula in the periods before European imperialism and invasion. During the Umayyad (661–750 CE) and Abbasid (750–1258 CE) periods, the *shurta* led by the *sahib al-shurta* were the police forces responsible for a range of enforcement duties (Rashid, 1983), along with the market police called the *muhtasib* (Crystal, 2001). Most tribes in the Peninsula were nomadic and maintained tribal and kinship networks for protecting themselves and their communities. When tribes could not resolve their conflicts, they would either consult third-party mediators or, as a last resort, request a *qadi* (Islamic judge) to settle disputes (Lienhardt, 2001). Others utilized *sulh* (settlement) and *musalaha* (reconciliation) as an Islamic approach to tribal conflict resolution, which are still practised and recognized in contemporary forms of restorative justice (Irani, 2016; Pely, 2016).

Europeans arrived in the Arabian Peninsula during the 'age of discovery' when the Portuguese ambitiously pursued gold, ivory, slaves, and spices while propagating Roman Catholicism. The Portuguese directly challenged the Safavid Empire's control of the Strait of Hormuz and stationed bases throughout the Persian Gulf to control trade. With the support of Shah Abbas I, the Dutch East Indies Company would conspire with the British East India Company in expelling the Portuguese. The British eventually became the dominant colonial power, with residencies on the Persian side and peace treaties with Arab tribal leaders on the other. The major issues the British faced were raids from Qawasim pirates. The British eventually defeated the pirates in Ras al Khaimah and signed a treaty in 1820 that effectually halted piracy, managed local rulers, and protected their interests in the Trucial States (the Arab tribal confederations in the Peninsula's southeast).

As the exclusive colonial power in the Gulf, European practices in governance, law, education, and economics replaced time-honoured customary and Islamic legal traditions. The British drew the current geographical boundaries and asserted dominance through political systems that transformed tribes into centralized colonial governments ruled by unelected royal families. The discovery of oil provided the Gulf with geo-strategic significance and re-aligned interests between Gulf leaders and the British. The monarchs assured oil concessions and the investment of surplus oil revenues in British companies in return for assistance, protection, defence, and their incorporation into the global economic order. The rise of Arab nationalism, the Arab League, and the Palestinian/Israeli conflict all emphasized decolonization and forcing the British out of the Arab world. When most Arab Gulf states declared their independence, the Gulf monarchies firmly secured their relationship with the British and the Americans.

During the nineteenth century, the British introduced the first modern institution of policing amongst the Arab Gulf states to cease conflicts between tribes, and target transgressions from brigands and pirates. Jeffries (1952) notes that the British "have taken many useful things with

them when they have gone out to colonise or administer other parts of the work […] they took nothing which was to have a more profound and lasting influence than their own particular conception of police" (p. 17). The police and military were effective enforcers of imperialism by preventing uprisings and preserving the colonial administration's ascendancy. The British modelled the police after the Royal Irish Constabulary in a highly centralized militaristic structure designed to effectively quell any form of civil unrest (Das & Verma, 1998). Through the recruitment of locals, the British would implement several flexible policing practices with the Camel Corps, desert patrols, and other mobile units (Nasasra, 2021). One strategy utilized by the colonial powers was to recruit ethnic groups to control others, typically when a minority/majority dynamic persisted in a colony. The British would label and justify the use of particular ethnicities for enforcing their will through so-called designations of castes and tribes as either loyal martial races (Thomas, 2012) or criminals for their tendencies towards colonial resistance (Yang, 1985). When compared to other colonies across the Arab world, the Arab Gulf states did not rebel against the European imperialists in the same magnitude.

The colonial administrative structures and bureaucracies were preserved in the formation of new states, with governments now focused on their convergence into the global capitalist economy. The policing systems maintained the status quo (Ouassini & Verma, 2012) while relying on various technical and administrative support forms, often from England and the United States. Each member of the GCC has its own centralized and coordinated police forces under its respective Ministry of the Interior. In 2014, the GCC announced a new regional initiative to establish GCCPOL – the Gulf Cooperation Council Police. The GCC's reputation as an economic hub and centre for multibillion-dollar corporations has made member states an appealing target for criminal activity, which requires coordination among GCC police forces. The goals of GCCPOL are for members to combat crime together and maintain the region's prosperity and stability through open communication and regular meetings.

Nevertheless, beyond a few declarations and exchange visits, GCCPOL has not reached its potential in law enforcement against myriad transnational criminal activities, despite being outfitted with the necessary resources, training, and equipment (Dempsey, 2019). These delays are partly due to the historical events of the Arab Spring failing to achieve the democratic aspirations of protestors in the region, and the police forces' continued acquiescence towards the regimes and their autocratic rule (Strobl, 2016). The GGCPOL, in particular, fragmented when Bahrain, Saudi Arabia, and the UAE expressed their political antagonism toward Qatar, severing diplomatic relations and imposing a blockade against the latter.

Racialized Minorities in the Gulf Cooperation Council

Located at the intersection of international commercial trade and cultural interactions connecting Africa, the Middle East, and Asia, the region represented by the GCC has always been one of the most diverse in the world. The following section will examine minorities in the GCC and start with sectaries in the GCC's Indigenous Arab and Islamic populations, discussing various Islamic groups like the Sunnis, Ibadis in Oman, and Shi'as. The subsequent section will then provide a detailed discussion of the *kafala* system and the foreign populations of the GCC with an examination of high-skilled workers and sponsored/contracted migrants.

The GCC's three main sectaries among its Indigenous citizens consist of the Sunnis, the Ibadis, and the Shi'a. The vast majority of the population in each state is Sunni, similar to the demography in the greater Muslim world. Ibadism is the leading sect in Oman and constitutes 45 percent of that nation's population. However, the largest Indigenous sect in the GCC is the Shi'a. Shi'as comprise more than 10 percent of the population in the region and are spread

around Bahrain (65 to 75 percent), Kuwait (20 to 25 percent), Qatar (10 percent), Saudi Arabia (10 to 15 percent), the UAE (10 percent) but only 5 to 10 percent in Oman (Pew Research Center, 2011). Bahrain, where the Sunni House of Khalifa rules over the majority Shi'a population, and Saudi Arabia's long discriminatory practices against the Shi'a majority in its Eastern Province have formulated explicit hostilities against the governments (Matthiesen, 2015). Many of these issues have spilt over during the anti-government protests of the Arab Spring. These tensions originate in the overthrow of the Iranian Shah and the establishment of Khomeini's *Velayat-e faqih*. The regimes of the GCC were always apprehensive of a revolutionary replay and labelled their Shi'a minorities as a subversive fifth column committed to the Iranian regime. The destruction of Saddam's Sunni-dominated regime, the Hezbollah conflict of 2006, the protests of the Arab Spring, followed by the Syrian Civil War, and the Yemen War between the Saudis and the Shi'a Houthis exacerbated these enmities.

The majority of minorities in the GCC are foreign nationals. In almost every country, foreigners comprise a significant portion of the population or the majority. According to the Central Intelligence Agency (2022), nearly 45 percent of the population in Bahrain, 70 percent in Kuwait, 46 percent in Oman, 88 percent in Qatar and the UAE, and about 38 percent in Saudi Arabia are foreign nationals. The majority of these foreign nationals arrived in the 1970s and 1980s from other Arab nations, recruited for various occupations generated by the oil economy. However, to preserve their national identities, Arab migrants were targeted for deportation, absorbed into professional positions, or replaced with Asian migrants, predominantly from the Indian subcontinent (Thiollet, 2019). In the 2000s, the GCC sought to pursue economic diversification and neoliberal policies that expanded the private sector by relying on foreign workers.

Consequently, the GCC became a prominent destination for transnational labour migration, especially from the Indian Ocean World (Gardner, 2018). Currently, foreign nationals constitute the majority of the workforce, with vast inequality gaps between citizens and non-citizens, especially migrants in unskilled positions. The exploitation of these populations remains a severe human rights issue as many face underpayment and nonpayment of promised salaries, substandard working conditions and uncompensated overtime, the confiscation of their passports to prevent them from fleeing, as well as summary deportation if migrants complain (Babar & Gardner, 2016). Naturalization is nearly impossible for most foreign nationals no matter how long they reside in the GCC, since *jus sanguinis* determines citizenship.

The *kafala* system provides GCC citizens and companies with a far-reaching network for controlling foreign workers. *Kafala* is a neoliberal approach to immigration where the government entrusts the regulation of migrants to private citizens and corporations. This system originated during British colonial rule in the Gulf, regulating and monitoring foreigners with the aid of their residents (AlShehabi, 2021). Governments recruit unskilled workers and experts from various disciplines in developing and diversifying the GCC's economies. Through this institutionalized sponsorship for residency and employment, the GCC can entirely regulate and terminate the permanent settlement or naturalization of migrants (Damir-Geilsdorf & Pelican, 2019). Ruhs (2013) explains the system as "an employer-led, large-scale guest worker program that is open to admitting migrant workers, but at the same time restrictive in terms of the rights granted to migrants after admission" (p. 98). *Kafala* is a multi-billion-dollar industry for Global Southern countries, supplying GCC employers with workers. These employers are then legally responsible for their employees with absolute control over their ability to change positions or travel in or out of the country (Lori, 2012).

Fernandez (2021) conceptualizes *kafala* as systematic and institutional humiliation. The *kafala* system reinforces clear hierarchical distinctions based on migrants' citizenship and occupations

in line with an ethnocracy. At the upper tiers, migrants from the Global North, often known as expatriates, gain employment in high-income tax-free occupations in global corporations or educational institutions. At the bottom, low-level migrant workers from the Global South compete for unskilled labour, face indifference towards their civil liberties, and experience abuse, discrimination, and exploitation from GCC citizens (Malaeb, 2015; Parreñas, 2021). This system functions agreeably for the GCC's autocratic political and neoliberal economic structure aligned with corporations of the Global North, namely in the sectors of energy, transportation, retail, logistics, healthcare, construction, real estate, and tourism.

Decolonizing Policing?

The call for the decolonization of criminology has multiple interpretations and applications. Decolonization is contextual and defined through diverging frameworks as a response to centuries of settler colonialism, racism, slavery, genocide, domination, and exploitation (Tuck & Yang, 2012). Scholars promote decolonization to challenge contemporary structures of institutionalized inequalities originating from colonialism (Agozino, 2019; Blagg & Anthony, 2019). Decolonization is a process and an aspiration toward reversing the harms caused by colonial ideologies (Monchalin, 2015; Tuck & Yang, 2012). The deeper intent of decolonization is to free minds from the colonial mentality – "a term which refers to the conscious and subconscious mimicry of behavioural and cultural standards established by European colonisers, European expatriates and other perceived agents of Euro-American modernity" (Ochonu, 2019, p. 11). This mentality has affected the countries within the GCC that fully embrace everything Western, including the normalized global privilege afforded to whiteness. *Kafala* and the variegated salaries based on an employee's nationality rather than the labour standard demonstrate the special privileges granted to 'expatriates' from the Global North while 'migrants' from the Global South linger at the bottom as the underclass.

The colonial administration fixated on the stability of the regimes and reinforcement of the *kafala* system is a regular feature in policing the region's sectaries and foreign nationals. In the case of sectaries, the strategy utilized in certain nations to protect Sunni hegemony against the Shi'a is a remnant of British colonial policies (Strobl, 2011). Though the police in the region are less violent than those in many other regions around the world, certain GCC states have no problem forcibly confronting the challenges and demonstrations presented by their sectaries. Bahrain and Saudi Arabia's crackdown on Shi'a activists during and after the Arab Spring were clear examples of their resoluteness. Likewise, the *kafala* system – developed from British colonialism (AlShehabi, 2021) – continues to uphold class inequality in the GCC under neoliberal economic policies. Sponsors have the authority to withhold payment, underpay, or overwork migrants; and an indirect stranglehold through the state to neglect migrant complaints and deport those that complain, replacing them with other (widely available) migrants willing to undertake the risks. These cycles of exploitation necessitate the collapse of the long-established colonial structures and racism within *kafala* through decolonization and state intervention. Decolonization will require policies curtailing the over-enforcement of colonially rooted laws and the implementation of policing approaches that protect these marginalized populations (Fernandez, 2021).

The sectaries and foreign nationals need to decolonize police practices. Both communities were victimized by "periodic displays of strength, showcase trials, and exemplary punishment of carefully selected and dramatized cases of transgression" (Parekh 2009, p. 33–34). The threat of arrest, lengthy sentences, and executions lurk for sectaries. Saudi Arabia staged mass executions of 47 men in 2016, 37 men in 2019, and 81 men in 2022, most belonging to the Shi'a

community, on charges of terrorism, espionage, and protest-related offences (Human Rights Watch, 2022). Meanwhile, migrants fear arrest, detention, and deportation by the authorities. Saudi Arabia, for example, targeted specific migrant communities with mass deportations. From late 2013 to 2014, the Saudi government deported around 163,000 Ethiopians, causing a humanitarian emergency in Ethiopia (Kuschminder et al., 2021). The interactions between law enforcement and marginalized communities demand a paradigm shift beyond increased budgets and cutting-edge technology towards options that consider "systemic institutional change of public services, from education to government" (Asadullah, 2021, p. 31). In contrast to social movements around the world, no one in the region has called for the defunding or divestment of police. Since the Arab Spring, the regimes have averted protests by providing incentives and political concessions, constraining dissidents, and through repressive tactics (Abouzzohour, 2021). Unfortunately, even in the aftermath of George Floyd's murder, the Gulf media downplayed the ensuing protests, framing the events as attempts by the Democrats to reseize power from former President Trump (Leber, 2020).

The process of decolonization in the GCC incorporates at least two of the following recommendations. The first is to bridge the gaps between sectaries, migrants, and police through community policing initiatives. Community policing is the systematic approach to policing that fosters a sense of community to improve the quality of life (Oliver, 1998). Generally, community policing has three components: community partnerships, organizational transformation, and problem-solving (Nalla & Newman, 2013, p. xxvii). This strategy provides law enforcement with options to recognize and commit to disparate communities. Community policing was long established in Bahrain, Oman, Qatar, and the UAE but needed to address these specific communities (Ardemagni, 2019; Strobl, 2011). Hegemonized groups perceive the police as advocates for the powerful and are fearful of complaining about their experiences with injustice or oppression. Decolonization through community policing enhances cultural understanding, increases awareness, and directly addresses community needs. Community policing will optimistically repair the persisting rifts and fractured trust amongst those who react unfavourably when the police are mentioned. More significant is a representation of these communities, an attempt to understand the culture and speak the languages of foreign migrants, and the solving of problems by communities in partnership with the police. Nevertheless, studies on community policing in the region are limited and future research should examine the counter-perspectives on these policies.

The second suggestion for decolonizing policing builds on Tyler's (1990) foundational work on the use of perceived procedural fairness in assessing encounters between citizens and police. Numerous studies substantiate the contention that procedural fairness leads to compliance and acceptance of decisions made by police and further generates legitimacy (Bolger & Walters, 2019; Reisig, Wolfe & Holtfreter, 2011; Sunshine & Tyler, 2003; Tyler & Fagan, 2008). Professional and proper behaviour, demeanour, tone, and other positive perceptions of procedural fairness when interacting with disenfranchised communities legitimize police forces and, therefore, increase citizens' consent, inclusion, cooperation, and collaboration (Bradford 2014; Hough, Jackson & Bradford, 2016). Decolonizing policing, in this case, requires law enforcement to be trained in treating members of these communities in a fair, unbiased, and neutral manner. Given legitimacy's dialogical nature (Bottoms & Tankebe, 2012), procedural fairness shapes the perceptions of the public and power holders. Procedural fairness would contribute significantly to the decolonization of policing in the GCC by fostering legitimacy, trust, and compliance despite past issues.

Community policing and legitimacy through procedural fairness are two suggested policies for decolonizing policing in the GCC. Porter (2016) explains that the decolonization of

policing "may be more an oxymoron than an ideal objective for future reform" (p. 561). To further the discussion, the radical geographer Ruth Wilson Gilmore conceptualizes the decolonization of police as a process that dismantles oppressive institutions and builds new life-affirming alternatives. While others, like the scholar-activist Angela Davis, strongly advocate for making the old exploitive foundations obsolete since previous attempts at reforms have failed these oppressed communities. The authority police hold in the GCC should be redirected into candid problem-solving by incorporating organic ideas, voices, and solutions from the sectary and foreign national communities. The strategy is beyond the traditional policing responsibilities but essential for reversing the accumulated distrust of police exacerbated by decades of personal and vicarious experiences of police mistreatment. Decolonizing policing, therefore, consists of people's empowerment, the addressing of each community's issues, higher living standards and conditions, social welfare, and opportunities for socio-economic advancement.

Conclusion

In the aftermath of global protests following George Floyd's death, police forces worldwide re-examined their community relations. The GCC's challenges with sectaries and migrants can apply the copious remedies utilized by countries facing comparable predicaments. Similar to Brogden and Shearing's (1993) analysis of policing for a post-apartheid South Africa, the decolonization of policing in the GCC does not necessarily lie in the reform or improvement of the criminal justice system but rather in the necessity for a paradigm shift that would empower sectaries and migrants through socio-economic opportunities, welfare, and self-determination.

The call for decolonizing policing is not a quest for pre-colonial solutions since "the authenticity of indigenous law and governance is not measured by how closely they mirror the perceived past, but by how consistent they are with the current ideas of their communities" (Borrows, 2005, p. 200). The GCC nations are not colonizing countries as the British did, yet member states are part of the current neocolonial policies dominated by multinational corporations that conform to international capitalist hegemony. Therefore, many policing ideas and practices from the colonial mentality preserve and perpetuate economic growth, success, and order. The inherited colonial policing strategies in the GCC conform to the state's objectives while foregoing the rights of the vulnerable and downtrodden populations within their states. In some countries, the Shi'a continue to experience harassment while foreign migrants suffer anti-integration policies and exclusion from many of their rights. Neoliberalism and modernization should not coincide with the succession of British colonial strategies like that of the *kafala* system. International human rights and the indigenous reverence towards generosity and preserving people's dignity no matter the sect, religion, or origins of the guest foreigners should be the standard for the region.

Future studies must examine perceptions from government representatives of the GCC and members of the communities either living or working in the region. Further research should consider each GCC member individually, since each country varies substantially based on its unique history, context, and population. Implementing the strategies and effectiveness of the initiatives suggested to address these issues warrants further documentation and review. The decolonization of policing is the approach suggested in this chapter to the issues facing indigenous sectaries and foreign nationals. The decolonization of policing should include policies of community policing and procedural fairness targeted at these specific communities to formulate and increase police legitimacy in each state. Such recommendations can include better communication and partnerships with the sectaries through dismantling the *kafala* system and replacing it with impartial and ethical immigration policies. Hopefully, with police decolonization, the

sectaries, foreigners, and locals will usher in further stability and continue its prosperity, retain its success, and be a model for the region.

While the focus of this paper has been on the reforms of police systems in Arab Gulf nations, it must be acknowledged that decolonizing, community-oriented policing, and procedural fairness practices cannot happen by themselves. Ultimately, these regions must adopt a more democratic form of government with greater devolution of political power. The far-sighted monarchs have brought rapid transformation and economic development to their societies. The citizens of these countries enjoy high standards of living and considerable welfare measures. However, the lack of political empowerment seriously affects the sectaries, migrants, and citizens. Wasteful expenditures, gender inequalities, and brutal action against political opponents are glaring examples of areas where more progress is needed. For these regions to become open societies accepting of diversity and plurality and an example to the rest of the world, glittering layout and infrastructure alone are insufficient. Amartya Sen (1999) argues that democracy provides intrinsic, instrumental, and constructive values. The counter-revolution against the values and ideals of the Arab Spring has exceedingly triumphed. Arab nation rulers must realize that greater democratic participation and attention to the rights of Indigenous sectaries and migrants provide the best path to long-term stability and prosperity.

References

Abouzzohour, Y. (2021). *Heavy lies the crown: The survival of Arab monarchies, 10 years after the Arab Spring [Blog post]*. https://www.brookings.edu/blog/order-from-chaos/2021/03/08/heavy-lies-the-crown-the-survival-of-arab-monarchies-10-years-after-the-arab-spring/

Agozino, B. (2019). Humanifesto of the decolonization of criminology and justice. *Decolonization of Criminology and Justice*, *1*(1), 5–28.

AlShehabi, O.H. (2021). Policing labour in empire: The modern origins of the Kafala sponsorship system in the Gulf Arab States. *British Journal of Middle Eastern Studies*, *48*(2), 291–310.

Ardemagni, E. (2019). The Abu Dhabi Policing Laboratory: Building security, forging community. https://www.mei.edu/publications/abu-dhabi-policing-laboratory-building-security-forging-community

Asadullah, M. (2021). Decolonization and restorative justice: A proposed theoretical framework. *Decolonization of Criminology and Justice*, *3*(1), 27–62.

Babar, Z., & Gardner, A. (2016). Circular migration and the Gulf States. In C. Solé, S. Parella, T. Martí, & S. Nita (Eds.), *Impact of circular migration on human, political and civil rights* (pp. 45–62). Springer.

Blagg, H., & Anthony, T. (2019). *Decolonising criminology: Imagining justice in a post-colonial world*. Springer.

Bolger, P.C., & Walters, G.D. (2019). The relationship between police procedural justice, police legitimacy, and people's willingness to cooperate with law enforcement: A meta-analysis. *Journal of Criminal Justice*, *60*, 93–99.

Borrows, J. (2005). Indigenous legal traditions in Canada. *Washington University Journal of Law & Policy*, *19*, 167–223.

Bottoms, A., & Tankebe, J. (2012). Beyond procedural justice: A dialogic approach to legitimacy in criminal justice. *Journal of Criminal Law & Criminology*, *102*, 119–170.

Bradford, B. (2014). Policing and social identity: Procedural justice, inclusion and cooperation between police and public. *Policing and Society*, *24*(1), 22–43.

Brogden, M., & Shearing, C. (1993). *Policing for a new South Africa*. Routledge.

Carrington, K., Hogg, R., Scott, J., Sozzo, M., & Walters, R. (2019). *Southern criminology*. Routledge.

Carrington, K., Sozzo, M., & Hogg, R. (2016). Southern criminology. *British Journal of Criminology*, *56*, 1–20.

Central Intelligence Agency. (2022). World Factbook – Middle East. https://www.cia.gov/the-world-factbook/middle-east/

Crystal, J. (2001). Criminal justice in the Middle East. *Journal of Criminal Justice*, *29*(6), 469–482.

Damir-Geilsdorf, S., & Pelican, M. (2019). Between regular and irregular employment: Subverting the kafala system in the GCC countries. *Migration and Development*, *8*(2), 155–175.

Das, D. K., & Verma, A. (1998). The armed police in the British colonial tradition: The Indian perspective. *Policing: An International Journal of Police Strategies & Management*, *21*(2), 354–367.

Dempsey, A. (2019, March 28). The Arabian Peninsula's missing police force. *Lobe Log*. https://lobelog.com/the-arabian-peninsulas-missing-police-force/?msclkid=8daf19d9b1a011ec9cd7f72aea7ee1b9

Fernandez, B. (2021). Racialised institutional humiliation through the Kafala. *Journal of Ethnic and Migration Studies*, *47*(19), 4344–4361.

Gardner, A. (2018). Reflections on the role of law in the Gulf migration system. *The Journal of Legal Studies*, *47*(1), 129–147.

Hough, M., Jackson, J., & Bradford, B. (2016). Policing, procedural justice and prevention. In A. Sidebottom & N. Tilley (Eds.), *Routledge handbook of crime prevention and community safety* (2nd ed.) (pp. 274–293). Routledge.

Human Rights Watch. (2022, March 15). Saudi Arabia: Mass execution of 81 men. https://www.hrw.org/news/2022/03/15/saudi-arabia-mass-execution-81-men?msclkid=9ed78dfbb9d711ecb7417a7ddbc4f677#

Irani, G.E. (2016). The best judgements: Rituals of settlement (Sulh) and reconciliation (Musalaha) in the Middle East. In H. Tuso & M. Flaherty (Eds.), *Creating the third force: Indigenous processes of peacemaking* (pp. 55–76). Lexington Books.

Jeffries, C.J. (1952). *The colonial police*. Max Parrish.

Kuschminder, K., Ogahara, Z., & Rajabzadeh, I. (2021). Evaluations of return within a mass deportation: Ethiopians' experiences of return after expulsion from Saudi Arabia. *International Migration*, *59*(2), 167–185.

Leber, A. (2020). Hidden hands or inspiring example? Gulf perspectives on the 'American Spring'. https://agsiw.org/hidden-hands-or-inspiring-example-gulf-perspectives-on-the-american-spring/

Lienhardt, P. (2001). *Shaikhdoms of Eastern Arabia*. Palgrave.

Lori, N. (2012). Temporary workers or permanent migrants? The kafala system and contestations over residency in the Arab Gulf States. https://www.ifri.org/en/publications/notes-de-lifri/temporary-workers-or-permanent-migrants-kafala-system-and-contestations

Malaeb, H.N. (2015). The "Kafala" system and human rights: Time for a decision. *Arab Law Quarterly*, *29*(4), 307–342.

Matthiesen, T. (2015). *The other Saudis: Shiism, dissent and sectarianism*. Cambridge University Press.

Monchalin, L. (2015). *The colonial problem: An Indigenous perspective on crime and injustice in Canada*. University of Toronto Press.

Nalla, M., & Newman, G.R. (2013). *Community policing in Indigenous communities*. CRC Press.

Nasasra, M. (2021). The frontiers of empire: Colonial policing in Southern Palestine, Sinai, Transjordan and Saudi Arabia. *The Journal of Imperial and Commonwealth History*, *49*(5), 899–939.

Ochonu, M. (2019). Looking for race: Pigmented pasts and colonial mentality in "non racial" Africa. In P. Essed, K. Farquharson, K. Pillay, & E.J. White (Eds.), *Relating worlds of racism: Dehumanisation, belonging, and the normativity of European whiteness* (pp. 3–38). Palgrave Macmillan.

Oliver, W. (1998). *Community-oriented policing: A systemic approach to policing*. Prentice-Hall.

Ouassini, N., & Ouassini, A. (2020). Criminology in the Arab world: Misconceptions, nuances and future prospects. *The British Journal of Criminology*, *60*(3), 519–536.

Ouassini, N., & Ouassini, A. (2023). *Arab criminology*. Taylor & Francis.

Ouassini, N., & Verma, A. (2012). Policing minorities in the Arab World. In F. Hakim, M.R. Haberfeld, & A. Verma (Eds.), *Policing Muslim communities: Comparative and international context* (pp. 97–116). Springer.

Parekh, B. (2009). Logic of humiliation. In G. Guru (Ed.), *Humiliation: Claims and contexts*, (pp. 23–40). Oxford University Press.

Parreñas, R.S. (2021). *Unfree: Migrant domestic work in Arab States*. Stanford University Press.

Pely, D. (2016). *Muslim/Arab mediation and conflict resolution: Understanding sulha*. Routledge.

Pew Research Center. (2011). Pew forum on religion & public life – Mapping the global Muslim population. https://www.pewresearch.org/wp-content/uploads/sites/7/2009/10/Shiarange.pdf

Polymenopoulou, E. (2020). Human rights in the six Arab states of the Gulf Cooperation Council (GCC): From vision to reality. *Cardozo Journal of International and Comparative Policy, Law and Ethics Review*, *3*(3), 929–983.

Porter, A. (2016). Decolonizing policing: Indigenous patrols, counter-policing and safety. *Theoretical Criminology*, *20*(4), 548–565.

Rashid, A.M. (1983). *The role of the 'Shurta' in Early Islam* [Doctoral Dissertation]. Edinburgh University.

Reisig, M.D., Wolfe, S., & Holtfreter, K. (2011). Legal cynicism, legitimacy, and criminal offending: The nonconfounding effect of low self-control. *Criminal Justice and Behavior*, *38*(12), 1265–1279.

Ruhs, M. (2013). *The price of rights: Regulating international labor migration*. Princeton University Press.

Said, E. (1979). *Orientalism*. Vintage Books.
Sen, A. (1999). Democracy as a social value. *Journal of Democracy*, *10*(3), 3–17.
Strobl, S. (2011). From colonial policing to community policing in Bahrain: The historical persistence of sectarianism. *International Journal of Comparative and Applied Criminal Justice*, *35*(1), 19–37.
Strobl, S. (2016). Policing in the Eastern Province of Saudi Arabia: Understanding the role of sectarian history and politics. *Policing and Society*, *26*(5), 544–562.
Sunshine, J., & Tyler, T.R. (2003). The role of procedural justice and legitimacy in shaping public support for policing. *Law & Society Review*, *37*(3), 513–548.
Thiollet, H. (2019). Immigrants, markets, brokers, and states: The politics of illiberal migration governance in the Arab Gulf. https://hal-sciencespo.archives-ouvertes.fr/hal-02362910v2/document?msclkid=1852ffa6b3d311ecb4afed310b2e6e60
Thomas, M. (2012). *Violence and colonial order: Police, workers and protest in the European colonial empires, 1918–1940*. Cambridge University Press.
Tuck, E., & Yang, K.W. (2012). Decolonization is not a metaphor. *Decolonisation, Indigeneity, Education and Society*, *1*(1), 1–40.
Tyler, T.R. (1990). *Why people obey the law*. Yale University Press.
Tyler, T.R., & Fagan, J. (2008). Legitimacy and cooperation: Why do people help the police fight crime in their communities? *Ohio State Journal of Criminal Law*, *6*(1), 231–275.
Yang, A. (1985). *Crime and criminality in British India*. University of Arizona Press.

16

Inherited structures and 'indigenized' policing in Africa

Insights from South Africa and Zimbabwe

Tariro Mutongwizo and Nyasha Mutongwizo

Non-state methods of governance in Africa did not only emerge from the failure of the state. Non-state mechanisms have a long history. Sekhonyane and Louw (2002) point out that African communities have long been known to develop their own systems, separate from state structures. The unresponsiveness and unavailability of policing services are extensive in Africa (Alao, 1999; Alger, 1998; Herbst, 1997; Menkhaus, 2006; Pelser, Louw, & Ntuli, 2000). Where state services are inadequate, Mhamba and Titus (2001) observe that individuals develop alternative initiatives to deal with service delivery inadequacies in their communities. These solutions may either be efforts to influence actors such as local government, non-governmental organizations, or policymakers to improve services (Lea & Stenson, 2007), or individuals may resort to their own devices, including violence, to access services (Myers, 2011). The community response to police brutality in Brits, in South Africa's Northwest Province, which resulted in two deaths from police shootings to quell the violence that erupted during the January 2014 water crisis protests, is an example of how individuals resort to strategies that may involve a variety of actions such as protests. Similarly, the 1998 Food Riots in Zimbabwe, which led to the deaths of eight individuals shot by the police, demonstrate extreme cases where violence is the result of protesting state-sanctioned actions (Berazneva & Lee, 2013; Chattopadhyay, 2000).

While these two examples shed light on these respective states' use of extreme force post-apartheid and post-independence, the chapter aims to interrogate how state policing falls short of providing security for citizens as it remains deeply rooted in colonial practices. This chapter will rely on two examples of the actions of the state police in contemporary South Africa and Zimbabwe that illustrate how colonial practices in policing have endured in the formally postcolonial states. Two further examples of bottom-up community initiatives for governing security in the two states will be discussed to demonstrate how effective and necessary alternatives to state policing remain in locations in postcolonial Africa.

Policing in postcolonial Africa

Criminologists and policing scholars have highlighted the diverse entities that engage in policing activities where community patrols (Baker, 2004b; Brogden & Shearing, 2005) are highly relied on in African communities. Singh (2016) observes that in most poor African townships,

DOI: 10.4324/9781003176619-18

community initiatives are the only option for residents to secure themselves in the absence of state or private security services. Accordingly, state and non-state governance institutions have long existed side by side and operated within each other's shadows (Baker, 2004a, 2009).

It is important to note that while non-state entities exist on a large scale, the theorization of non-state governance institutions lacks depth in specific African contexts. The scarcity of literature on criminal justice in Africa is, however, relative. For example, studies in West Africa found that criminal justice existed well before the advent of colonialism in the area (Chingozha & Mawere, 2015). Accordingly, it is important to develop and extend these analyses. Furthermore, the extent to which informal governance is shaped and influenced by states within different African contexts warrants documentation and analysis. As Agozino (2003) notes, it is necessary that emphasis be placed on understanding criminology in Africa with a specific focus on reparations for the crimes of the slave trade, the crimes of colonialism, the crimes of apartheid and of neo-colonialism, rather than being preoccupied with the crimes of the poor.

This chapter aims to unpack the legacy of colonialism and its impact on state and non-state policing structures. The specific 'postcolonial' period that we refer to in this chapter for South Africa and Zimbabwe is the period that marked the end of colonial rule and when majority rule was established at independence in 1994 and 1980 respectively. We begin by discussing the modern African state's challenges of service delivery and how non-state governance emerges and is shaped. The chapter is interested in uncovering the ways in which the state influences the development and sustainability of these non-state actors. We aim to illustrate how state policing has been encountered in African history, accessed, evaded, and negotiated within the urban poor's day-to-day security frameworks. The way in which the state is encountered and imagined by citizens depends on the nature of the state and helps in understanding the identities of each state (Cornwall, Robins, & Von Lieres, 2011) and, consequently, how these identities shape non-state security governance patterns. For our purposes, 'policing' denotes the maintenance of social order and the regulation of behaviour (Reiner, 2010) and encompasses much more than the activities of the state police (Jones & Newburn, 1998).

A history of police–citizen relationships in South Africa and Zimbabwe

To begin, we present a brief outline of the history of police and citizen relations in South Africa and Zimbabwe.

South Africa

Prior to settler arrival, Indigenous traditional authorities, such as chiefs and village headmen, were responsible for enforcing rules (Geschiere, 1993; Herbst, 2014). The colonial state co-opted traditional authorities to ensure hegemony and political, social, and cultural control (Singh, 2016). Following settler occupation, the South African Police (SAP) was formally established in 1913. Before this, policing was conducted by Boer commandos who relied on military tactics to protect white settlers from the Indigenous population and non-white migrant labourers (Brogden & Shearing, 2005). This discriminatory policing continued with apartheid policing through the South African Police Force (SAPF), which controlled all racialized peoples through the use of brutal force (Brewer et al., 2016; Brogden & Shearing, 2005). Singh (2016) observes how this type of collaboration was engineered by the apartheid state to control African townships by regulating activities that mobilized policing communities at the grassroots level, which usually took the form of 'street committees'.

In 1998, with the end of apartheid and the advent of democracy, there was a shift from the South African Police *Force* to the South African Police *Service* (SAPS) and the National Crime Prevention Strategy (NCPS). This brought with it more independence for community policing forums (CPFs), street committees, and neighbourhood watch platforms, as well as the Independent Police Investigative Directorate (IPID). However, some oppressive forms of policing still exist, as was witnessed in Marikana in 2012 (Dixon, 2015), which will be discussed later in this chapter. Such incidents bring into question the extent to which the SAPS has evolved from the SAPF and the levels of confidence that citizens have in the police.

The colonial legacy is imprinted on Africa in the manner that crime and criminals are perceived from a Western point of view (Agozino, 2003; Kalunta-Crumpton & Agozino, 2004). This perception is grossly disadvantageous to Africans. As such, some scholars have advocated for a postcolonial African criminology (see Agozino, 2003; Kalunta-Crumpton & Agozino, 2004). Post-democratic states like South Africa have been unable to eradicate the perceptions linked to its past identity of human rights abuses perpetrated during apartheid, particularly by the police, on the African population, and this reduces the confidence of people in the state (Marks, 1995; Marks & Goldsmith, 2006). However, despite the lack of confidence in the state, individuals still expect the state to fulfil its role of provider (Bénit-Gbaffou & Oldfield, 2011) and still largely look to the state police when security issues arise (Mutongwizo, 2018).

It is, however, inadequate to look only at colonial histories. The post-independence/democratic governments have also shaped how present-day African states function. Hyden (2012) points out that "in much of Africa, state stands for abuse of power and dashed hopes of development" (p.1). As such, some individuals resort to vigilantism and gangs as a form of policing. This was common post 1994 in South Africa, where groups like the People Against Gangsterism and Drugs and Mapogo a Mathamaga – both vigilante-type organizations, flourished and held more legitimacy than the state police in more disadvantaged areas where the state police's reach was not felt (Schärf & Nina, 2001). Furthermore, informal dispute resolution mechanisms within communities were also relied on as an alternative to the courts. These initiatives tended to be valued by community members since, in many cases, reparation and reconciliation between conflicting parties could be resolved without involving the police and placing further tensions on community relations (Froestad & Shearing, 2007).

Zimbabwe

There is limited information available on how locals policed themselves before the arrival of the first colonial police force in Zimbabwe. Little information exists on traditional chiefs and elders enforcing traditions, customs, and laws. With the arrival of the colonial settlers, chiefs and traditional leaders were nominated by colonial powers to enforce political, social, and cultural control (Geschiere, 1993; Herbst, 2014). The establishment of the Pioneer Column from Bechuanaland (present-day Botswana) to Salisbury (present-day Harare, Zimbabwe) in 1889 led to the force that guarded the column and which evolved into the first police force. Violence was used by the force to legitimize European rule (Summers, 1994). The British South African Police (BSAP) held control up until the 1960s when the rise of African nationalism in Rhodesia threatened the dominance of colonial forces. The BSAP was responsible for enforcing laws that suppressed the Black majority, laws that included the repressive land apportionment and pass laws, which specified areas in which Africans could live and restricted their movement into certain areas established for Europeans (Matunhu & Matunhu, 2021).

The BSAP was disbanded in August 1980 following the independence of Zimbabwe in April of the same year. The BSAP structure was commuted into the Zimbabwe Republic

Police (ZRP) with the integration of forces from the Zimbabwe People's Revolutionary Army and the Zimbabwe African National Liberation Army (Gibbs, Phillips, & Russell, 2000). For 23 years, until the introduction of the new Constitution, the ZRP operated under the 1980 Constitution. In 1986, the police embraced community policing as a philosophy and an organizational strategy that aims to promote partnerships between the people and the police (Chingozha & Mawere, 2015; Trojanowicz & Bucqueroux, 1998). This led to the involvement of the public in the fight against crime (Muzenda, 1999). According to the ZRP's Strategic Plan Vision 2020, initiatives brought on included: community relations officers; neighbourhood watch schemes; suggestion boxes and hotlines; business against crime initiatives; posts and reporting centres; and the police's participation in sporting activities with the community (Matunhu & Matunhu, 2021; Mutongwizo, 2018). The role of community relations liaison officers included carrying out educative crime awareness campaigns, training neighbourhood watch committee members, publicizing the use of hotlines and suggestion boxes, as well as providing counselling, and providing advice on matters of a domestic and social nature. In view of their functions, the community relation liaison officers were to be the bridge between the police and the community in the areas they served (Muzenda, 1999).

Throughout Zimbabwe's history (both colonial and postcolonial), despite these initial strides, the use of the police as a vehicle for repression intensified (Mutongwizo & Mutongwizo, 2022). Previously, the state had fashioned laws that gave immunity to state agents of violence. Among such laws are the Amnesty Ordinance 3 1979, the General Pardon Ordinance 12 1980, and the Clemency Order 2000 (Sachikonye, 2011). The police were – up until 2013 when the new constitution was introduced – under the power of the Presidency thereby enabling partisan practices in the interests of the ruling party to flourish. The most recent and prolific use of this state agency in the oppressive control of citizens is the infamous Operation Murambatsvina (Restore Order) of 2005.

Operation Murambatsvina can best be described as urban cleansing targeted at the poor, which from May 2005 and for several months thereafter razed informal sector activities (Coltart, 2008) mainly in opposition stronghold communities. Operation Murambatsvina is estimated by the United Nations to have directly affected at least 700,000 people who lost their homes or sources of livelihood. Additionally, close to 2.5 million people could have been affected indirectly by its widespread destructive effects (Tibaijuka, 2005). The police and the municipal authorities were instrumental in Operation Murambatsvina, expelling the now homeless people from the urban areas (Bourne, 2011). The continuation of the oppression of citizens from colonial to postcolonial Zimbabwe through violence meted out by the state apparatus points to the intersectionality of how Black Zimbabweans, particularly the poor or those who oppose the state, were and continue to be brutally policed by the colonial and postcolonial regimes (Mutongwizo, 2014).

The move from the BSAP in Rhodesia to the ZRP in 1980 and the South African Police *Force* to the South African Police *Service* post 1994 brought various perceptible shifts but some practices of the previous colonial regimes remained ingrained in the new police. This has intensified tensions between citizens and the police and has, unfortunately, resulted in the police receiving more backlash from society and a continuation of some of the brutality previously experienced by Africans in the colonial era. The way in which these new police forces are encountered by citizens – bearing in mind these police histories – is important to consider when assessing what modern police services look like in postcolonial Africa.

Next, a few examples of policing practices that have been experienced and initiated in modern-day South Africa and Zimbabwe and which have had an impact on our understanding of the current state of policing will be discussed briefly. These examples, while few, aim

to demonstrate how through these major occurrences, current police practices are ingrained in colonial practices and citizens have sought to devise their own, local policing initiatives that may in some instances be connected to the state police, and may be separate from the police in others.

Contemporary issues in African policing

The following section will discuss some prominent examples of policing events and initiatives that illustrate how the violence of colonial policing has endured in parts of Africa. In addition, we will endeavour to show some of the successes in largely alternative forms of policing that have led to various actors operating within state structures to provide security. To do so, we will discuss the street patrols and community police forums of South Africa; and community relations liaison officers in Zimbabwe. To interrogate the nature and the enduring challenges of policing structures in the modern-day states, we will focus on the Marikana Massacre that took place in 2012 in South Africa and the government-actioned Operation Murambatsvina (Restore Order) in Zimbabwe in 2005.

South Africa: street committees and community policing forums

Community policing is a joint effort by police and citizens coming together to set up crime prevention strategies that work (Marks, 1995). Some of the key objectives of the community police forums in South Africa are to promote partnerships between the community and the state police, support communication between the service and the community, and provide effective service delivery nationwide. Community police forums also aim to improve transparency in the service and accountability of the service to the community while promoting problem identification and problem-solving by the service and the community (Shaka, 2021). These initiatives have similar aims to community policing elsewhere around the globe.

On the other hand, street committees – although no longer in existence – were a subsidiary form of local government and run by Elders in communities while being connected to the formal governance structures (Burman & Schärf, 1990). These were useful for settling community matters without involving the repressive police and courts. Because of the power the street committees yielded, attempts were made by the state to co-opt them and the loss of their credibility led to various alternatives being developed, which included local youth developing their own informal initiatives and the rise of vigilantism (Burman & Schärf, 1990).

South Africa: the 2012 Marikana Massacre

What started as a strike for higher wages by platinum mine workers at Lonmin Mine in Marikana in the Northwest Province led to the deaths of 34 miners at the hands of the police on 16 August 2012. During the week that preceded the shootings, ten people were killed, including two private security guards and two police officers (Power & Gwanyanya, 2017). While the South African government denies that it was a massacre and rather refers to it as a tragedy (Alexander, 2013), it has been likened to the Sharpeville Massacre when the police fatally shot 69 anti-apartheid protestors in the township of Sharpeville on 21 March 1960 (Dixon, 2015). The striking miners had been sitting on and around the mountain when the police cordoned off the area with razor wire. The mine workers began to leave the area as they feared being penned in. Most of them walked in the direction of Nkaneng – a nearby informal settlement where many of them lived. Available video footage shows that, at this point, the workers were

not running or behaving in a threatening manner towards the police, but it was then that the police started shooting. Once the shooting started, the men began to run but not charging at the police. During this time, a middle-ranking officer told his officers to shoot if they felt threatened, which can be interpreted as permission to kill. Twenty people were shot dead by the task team within a few seconds (Alexander, 2013).

The police and police union argued that they acted in self-defence, while the bereaved families and workers argued that there was excessive use of force, especially considering that 14 of the 34 men were shot in the backs of their heads (Alexander, 2013). In this instance, the police acted in the interests of Lonmin – the mining company that the workers were striking against for higher wages. This support of Lonmin's interests at the expense of 34 lives has been referred to as "toxic collusion" which benefits a minority over the majority (Power & Gwanyanya, 2017, n.p.). Similarities can be seen in the outcomes of the 2012 Marikana Massacre and the 1960 Sharpeville Massacre, as both reflect the lack of meaningful reforms in police services from the colonial era up to present-day South Africa.

Zimbabwe: community relations liaison officers

With independence in 1980, the police aimed to achieve popular participation to educate the public about police functions and simultaneously understand the nature of public problems. The police were to participate in all mass activities, both at the grassroots and national levels. Six years later, Community Relations Liaison Officer (CRLO) posts were established in the Harare South District, mostly in the high-density, low-income suburbs of Mbare, Warren Park, and Marimba Park, where most domestic violence cases were recorded. Additionally, satellite tents were established for the public to have close access to the police in some areas. The police also introduced neighbourhood watch committees and began to network with other agencies for referral purposes, including government ministries (Muzenda, 1999). However, with time, these officers became inundated with requests for other support in addition to their specific roles within the police. As a result, the training of CRLOs and the running of the programme was outsourced to a non-governmental organization and, decades later, despite the programme being considered necessary, it is no longer in existence. The case of CRLOs is not unique as various initiatives aimed at improving policing and citizen–police relations have failed to thrive. However, local grassroots initiatives that aim to provide alternative security measures exist on an informal level and tend to be disconnected from the state police (Mutongwizo, 2018).

Zimbabwe: Operation Murambatsvina

The United Nations' final report (Tibaijuka, 2005) on the fact-finding mission into the effects of Operation Murambatsvina states that approximately 2.5 million individuals were affected either directly or indirectly. This is in sharp contrast to the Zimbabwe Republic Police estimating that 120,000 people were affected, which – although undoubtedly a severe underestimation of the reality – is in itself a large number considering that the total population of Zimbabwe was estimated at the time to be between 12 and 14 million (Bracking, 2005). The campaign was formally code-named Operation Restore Order or Operation Murambatsvina. The latter name joins the two Shona words *ramba* (refuse, reject, disown) and *tsvina* (dirt, filth, rubbish) to mean 's/he who despises filth' (Mbiba, 2017). The code name Murambatsvina (rejecting filth) supports the narrative of how present-day policing perpetuates colonial policing of public spaces – policing that problematizes the occupation of public spaces by undesirable, subaltern, and marginalized African groups. The presence and activities of informal traders and street vendors

have long been viewed as an urban nuisance (Mazhambe, 2017, p. 91). Street vending is closely connected with the availability of public urban space (pavements, roads, parks) (Bromley, 2000), and historically, colonial policing enforced the limited mobility and access to public spaces of the majority African population.

Colonial legislation established and maintained favourable conditions for formal businesses (mostly white), while subjecting small businesses (mostly owned by blacks) to harassment for failure to meet prescribed standards (Njaya, 2014). In present-day Zimbabwe, the outdated legislation and its enforcement by national and municipal police continue to criminalize the informal market. Before and beyond a discussion on decolonizing the police, a recalibration of policy and legislation to regulate informal activity and public spaces is required. While the ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF) government maintained that Operation Murambatsvina was an urban renewal campaign, there are several different arguments offered to explain why this happened at the time it did. Some scholars argue that Operation Murambatsvina was a politically motivated campaign to drive out large sections of the urban poor who posed a threat to the Mugabe administration because the majority of urban residents supported the main opposition party – the Movement for Democratic Change (MDC) (Human Rights Watch, 2005; Ncube, Bate, & Richard, 2005; Potts, 2006; Rupiya, 2005; Tibaijuka, 2005). Others assert that Murambatsvina aimed to chastise the urban poor for supporting the MDC and force the MDC into a situation where it would have to merge with the ruling party. The MDC supporters would be dispersed to remote rural locations, thereby making it easier for the ZANU-PF administration to control hostile civilians in case riots or mass action took place in the urban cities (Bratton & Masunungure, 2007).

Furthermore, it is argued that the aim of Operation Murambatsvina was to restore the control that the government had lost over foreign currency due to the extensive black-market activities at a time when Zimbabwe's economy was on its knees. The growth of the informal economy posed a threat to the state. The informal economy also endangered business with the Chinese who were invited by the state to invest in Zimbabwe (Hansen, 2011; Ncube et al., 2005; Sachikonye, 2008; Youde, 2007). Additionally, Bracking (2005) argues that Operation Murambatsvina was conducted because it was the state's desire for poverty to be out of sight. To uphold a modern, first-class city image, Bromley (2000) asserts that the City of Harare adopted interventions that impacted the livelihoods of informal traders negatively (regular police raids and evictions). The visibility of the second/black-market economy and an urban informal sector were an endless reminder of the decline of industry, unemployment, and the continued shrinking of the economy with the passing of sanctions from the West.

Evidently, the state's use of the police and army to demolish homes and businesses and to destroy livelihoods demonstrates that – similar to the colonial regime – violence has been relied on as a method of control (Mutongwizo & Mutongwizo, 2022; Sachikonye, 2011; Summers, 1994). Benyera and Nyere (2015) refer to a continuum of episodic state violence from colonial to present-day times, influencing how Zimbabwe is governed. The endurance of police force in interparty and intraparty violence; violence by state institutions in the independent state; ethnic violence unleashed by state security forces; election violence by the police; violence in the land reform process through forcible evictions; and the police force violence used in Operation Murambatsvina are all examples of this continuum of violence by the state in policing. Avoidable events like Operation Murambatsvina run counter to building citizen–police relations and undermine the progress made through initiatives such as police–citizen partnerships in the form of CRLOs. It can, therefore, be said that the CRLOs did not have a meaningful citizen engagement platform or mandate for negotiating and navigating the operationalization

of Operation Murambatsvina in the local communities. The outcome was that millions were negatively impacted, including community–police relations.

Conclusion

In conclusion, positive initiatives such as community policing forums in South Africa and community relation liaison officers in Zimbabwe have taken a back seat and were either co-opted by the state or could not continue to run because of resource shortages. Yet, the brutal colonial structures and systems endure in state structures. To echo Brogden and Shearing (2005), improving the justice system may require a radical change, including an improvement of socio-seconomic opportunities, social welfare, and community empowerment nurturing alternative forms of policing rather than simply improving the state police (Bayley & Shearing, 1996). One way to do this is to explore how the different policing actors interact with each other. In further decolonizing policing, it is necessary to not focus solely on the state police and pay more attention to local initiatives, even if they do not resemble Western ideals of policing (Porter, 2016).

In the two settings, relations of avoidance, collaboration, compliance, and conflict between and among policing actors are structured differently. This influences the way actors within multi-layered governance fields engage with each other – through relationships mediated either by negotiation, resistance, or submission. Additionally, to decolonize policing and eradicate some of the enduring colonial practices seen in these contemporary police services, it is important to think of new ways to nurture and work with local Indigenous governance initiatives in whatever form. Albeit challenging within existing state policing frameworks, identifying the various self-governance practices and giving voice to local perspectives of policing would be worthwhile for nurturing existing initiatives in postcolonial states such as those discussed. Future research into how these initiatives can be further developed and fostered in both urban and rural postcolonial settings would be worthwhile.

References

Agozino, B. (2003). *Counter-colonial criminology: A critique of imperialist reason*. Pluto Press.

Alao, C.A. (1999). The problem of the failed state. In M. Alagappa & T. Inoguchi (Eds.), *International security management and the United Nations*, (pp. 83–102). United Nations University Press.

Alexander, P. (2013). Marikana, turning point in South African history. *Review of African Political Economy*, *40*(138), 605–619.

Alger, C.F. (1998, February 25–27). *Failed states and the failure of states: self-determination, states, nations and global governance* [Paper presentation] Conference on Failed States and International Security. West Lafayette, Indiana.

Baker, B. (2004a). Multi-choice policing in Africa: Is the continent following the South African pattern? *Society in Transition*, *35*(2), 204–223.

Baker, B. (2004b). Protection from crime: What is on offer for Africans? *Journal of contemporary African studies*, *22*(2), 165–188.

Baker, B. (2009). *Security in post-conflict Africa: The role of nonstate policing*. CRC Press.

Bayley, D.H., & Shearing, C.D. (1996). The future of policing. *Law and Society Review 30*(3), 585–606.

Bénit-Gbaffou, C., & Oldfield, S. (2011). Accessing the state: Everyday practices and politics in cities of the South. *Journal of Asian and African Studies*, *46*(5), 445–452.

Benyera, E., & Nyere, C. (2015). An exploration of the impact of Zimbabwe's 2005 operation Murambatsvina on women and children. *Gender & Behaviour*, *13*(1), 6522–6534.

Berazneva, J., & Lee, D.R. (2013). Explaining the African food riots of 2007–2008: An empirical analysis. *Food Policy*, *39*, 28–39.

Bourne, R. (2011). *Catastrophe: What went wrong in Zimbabwe?* Bloomsbury Publishing.

Bracking, S. (2005). Development denied: Autocratic militarism in post-election Zimbabwe. *Review of African Political Economy*, *32*(104/105), 341–357.

Bratton, M., & Masunungure, E. (2007). Popular reactions to state repression: Operation Murambatsvina in Zimbabwe. *African Affairs*, *106*(422), 21–45.

Brewer, J.D., Wilford, R., Guelke, A., Hume, I., & Moxon-Browne, E. (2016). *The police, public order and the state: Policing in Great Britain, Northern Ireland, the Irish Republic, the USA, Israel, South Africa and China*. Springer.

Brogden, M., & Shearing, C.D. (2005). *Policing for a new South Africa*. Routledge.

Bromley, R. (2000). Street vending and public policy: A global review. *International Journal of Sociology and Social Policy*, *20*(1/2), 1–28.

Burman, S., & Schärf, W. (1990). Creating people's justice: Street committees and people's courts in a South African city. *Law & Society Review*, *24*(3), 693–744.

Chattopadhyay, R. (2000). Zimbabwe: Structural adjustment, destitution & food insecurity. *Review of African Political Economy*, *27*(84), 307–316.

Chingozha, M.P., & Mawere, M. (2015). *Negotiating law, policing and morality in Africa: A handbook for policing in Zimbabwe*. Langaa RPCIG.

Coltart, D. (2008). A decade of suffering in Zimbabwe: Economic collapse and political repression under Robert Mugabe. https://www.cato.org/sites/cato.org/files/pubs/pdf/dpa5.pdf

Cornwall, A., Robins, S., & Von Lieres, B. (2011). States of citizenship: Contexts and cultures of public engagement and citizen action. https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.2040-0209.2011.00363_2.x

Dixon, B. (2015). A violent legacy: Policing insurrection in South Africa from Sharpeville to Marikana. *British Journal of Criminology*, *55*(6), 1131–1148.

Froestad, J., & Shearing, C. (2007). Effecting security and deepening democracy through peacemaking and peacebuilding forums: A South African rural experiment. In R. Southhall (Ed.), *Conflict and governance in South Africa: Moving towards a more just and peaceful society* (pp. 312–333). The Conflict and Governance Facility.

Geschiere, P. (1993). Chiefs and colonial rule in Cameroon: Inventing chieftaincy, French and British style. *Africa*, *63*(2), 151–175.

Gibbs, P., Phillips, H., & Russell, N. (2000). *Blue and old gold: The history of the British South Africa police, 1889–1980*. 30° South Publishers.

Hansen, H.B. (2011). Donors and the crisis in Zimbabwe: Experiences and lessons learned. In H. Besada (Ed.), *Zimbabwe: Picking up the pieces* (pp. 247–268). Springer.

Herbst, J. (1997). Responding to state failure in Africa. *International Security*, *21*(3), 120–144.

Herbst, J. (2014). *States and power in Africa: Comparative lessons in authority and control*. Princeton University Press.

Human Rights Watch. (2005). Clear the filth: Mass evictions and demolitions in Zimbabwe. https://www.hrw.org/legacy/backgrounder/africa/zimbabwe0905/zimbabwe0905.pdf

Hyden, G. (2012). *African politics in comparative perspective*. Cambridge University Press.

Jones, T., & Newburn, T. (1998). *Private security and public policing*. Clarendon Press.

Kalunta-Crumpton, A., & Agozino, B. (2004). Introduction. In A. Kalunta-Crumpton & B. Agozino (Eds.), *Pan African issues in crime and justice* (pp.1–4). Routledge.

Lea, J., & Stenson, K. (2007). Security, sovereignty, and non-state governance "from below". *Canadian Journal of Law and Society/La Revue Canadienne Droit et Société*, *22*(2), 9–27.

Marks, M. (1995). *Community policing, human rights and the Truth and Reconciliation Commission*. Paper presented at *the National Secretariat of the South African Police Union*, Roodeplaat Training Centre.

Marks, M., & Goldsmith, A. (2006). The state, the people and democratic policing: The case of South Africa. In J. Wood & B. Dupont (Eds.), *Democracy, society and the governance of security* (pp. 139–164). Cambridge University Press.

Matunhu, J., & Matunhu, V. (2021). Policing and law enforcement in Zimbabwe. In J.M. Mbumba (Ed.), *Global perspectives in policing and law enforcement* (pp. 43–58). Lexington Books.

Mazhambe, A. (2017). Assessment of the contribution of street vending to the Zimbabwe economy: A case of street vendors in Harare CBD. *International Journal of Business and Management*, *19*, 91–100.

Mbiba, B. (2017). *On the periphery: Missing urbanisation in Zimbabwe*. Africa Research Institute.

Menkhaus, K. (2006). Governance without government in Somalia: Spoilers, state building, and the politics of coping. *International Security*, *31*(3), 74–106.

Mhamba, R.M., & Titus, C. (2001). Reactions to deteriorating provision of public services in Dar es Salaam. In A. Tostensen, I. Tvedten & M. Vaa (Eds.), *Associational life in African cities: Popular responses to the urban crisis* (pp. 218–231). Nordic Africa Institute.

Mutongwizo, T. (2014). Chipangano governance: Enablers and effects of violent extraction in Zimbabwe. *Africa Peace & Conflict Journal*, 7(1), 29–40.

Mutongwizo, T. (2018). Expectations and encounters: Comparing perceptions of police services among the underprivileged in South Africa and Zimbabwe. In K. Carrington, R. Hogg, J. Scott, & M. Sozzo (Eds.), *The Palgrave handbook of criminology and the Global South* (pp. 569–585). Springer.

Mutongwizo, T., & Mutongwizo, N. (2022). Proactive or predatory: Citizen perceptions of the Zimbabwe State Police. In D. Watson, S.N. Amin, W.C. Wallace, O.M. Akinlabi, & J.C. Ruiz-Vásquez (Eds.), *Policing the Global South* (pp. 180–193). Routledge.

Muzenda, E. (1999). Training police liaison officers in Zimbabwe. *Australian and New Zealand Journal of Family Therapy*, *20*(4), 216–219.

Myers, G.A. (2011). *African cities: Alternative visions of urban theory and practice*. Zed Books.

Ncube, P., Bate, R., & Richard, T. (2005). State in fear: Zimbabwe's tragedy is Africa's shame. https://reliefweb.int/attachments/bdf9b00a-bb17-3479-acb6-577492970fbe/22E93F4ABBAEFFE9C125703B002A87EC-afm-zwe-06jul.pdf

Njaya, T. (2014). Operations of street food vendors and their impact on sustainable urban life in high density suburbs of Harare, in Zimbabwe. *Asian Journal of Economic Modelling*, *2*(1), 18–31.

Pelser, E., Louw, A., & Ntuli, S. (2000). Poor Safety: Crime and policing in South Africa's rural areas. https://www.africaportal.org/documents/4854/Mono47Full.pdf

Porter, A. (2016). Decolonizing policing: Indigenous patrols, counter-policing and safety. *Theoretical Criminology*, *20*(4), 548–565.

Potts, D. (2006). 'Restoring order'? Operation Murambatsvina and the urban crisis in Zimbabwe. *Journal of Southern African Studies*, *32*(2), 273–291.

Power, M., & Gwanyanya, M. (2017). Massacre at Marikana. https://sur.conectas.org/wp-content/uploads/2017/06/sur-25-ingles-michael-power-manson-gwanyanya.pdf

Reiner, R. (2010). *The politics of the police*. Oxford University Press.

Rupiya, M. (2005). Zimbabwe: Governance through military operations. *African Security Studies*, *14*(3), 116–118.

Sachikonye, L.M. (2008). Crouching tiger, hidden agenda? Zimbabwe–China relations. In K. Ampiah & S. Naidu (Eds.), *Crouching tiger, hidden dragon?: Africa and China* (pp. 124–137). University of Kwazulu-Natal Press.

Sachikonye, L.M. (2011). *When a state turns on its citizens: 60 years of institutionalised violence in Zimbabwe*. African Books Collective.

Schärf, W., & Nina, D.(2001). Introduction: The other law? In W. Schärf & D. Nina (Eds.), *Non-state ordering in South Africa* (pp. 1–13). Juta.

Sekhonyane, M., & Louw, A. (2002). Violent justice vigilantism and the state's response. https://www.africaportal.org/documents/4311/Mono72Full.pdf

Shaka, Y. (2021). The stalemate of community policing in South Africa. *EUREKA: Social and Humanities*, *2*, 61–70.

Singh, A.-M. (2016). *Policing and crime control in post-apartheid South Africa*. Routledge.

Summers, C. (1994). *From civilization to segregation: Social ideals and social control in southern Rhodesia, 1890–1934*. Ohio University Press.

Tibaijuka, A.K. (2005). Report of the fact-finding mission to Zimbabwe to assess the scope and impact of Operation Murambatsvina. https://reliefweb.int/attachments/43072b5c-abf9-3f75-b925-8cf47af3a9b7/A3EAD4A3C643D7318525704600592184-habitat-zwe-18jul.pdf

Trojanowicz, R.C., & Bucqueroux, B. (1998). *Community policing: How to get started*. Routledge.

Youde, J. (2007). Why look East? Zimbabwean foreign policy and China. *Africa Today*, *53*(3), 3–19.

17

Policing and imperialism in France and the French Empire

Florian Bobin

> When I hear 'police violence', I choke.
>
> (Gérald Darmanin, French Interior Minister, July 2020)

How French policing is enmeshed in imperialism

In March 1667, King Louis XIV signed an edict to reform the police institution, which until then had been scattered (Jobard, 2015). "Policing", the decree reads, "consists in ensuring the safety of the public and of private individuals, purging the city from that which causes disorder, [and] providing abundance" (Denis, 2008, n.p.). In charge of securing lucrative businesses as well as quelling writings and behaviours deemed seditious, the newly appointed lieutenant of Paris, Gabriel Nicolas de la Reynie, had the authority to call for the army's support and approve imprisonment, exile, or internment without trial (see Swann, 2017). The man behind this 1667 edict was Jean-Baptiste Colbert, a staunch defender of mercantilism – a policy based on state-regulated trade and maximization of exports. As Louis XIV's minister of finance, trade, and industry, he oversaw the expansion of France's colonial empire in North America and the Caribbean, and founded, in 1664, the French East India Company. Colbert later drafted the first version of the *Code Noir* (Black Code) – a racist decree policing African enslaved captives, treated as chattels – officially enforced until 1848 (see Soll, 2009). Article 38 of the Black Code reads:

> The fugitive slave who has been on the run for one month from the day his master reported him to the police, shall have his ears cut off and shall be branded with a fleur de lys [symbol of French monarchy] on one shoulder. If he commits the same infraction for another month, again counting from the day he is reported, he shall have his hamstring cut and be branded with a fleur de lys on the other shoulder. The third time, he shall be put to death.
>
> *(Colbert, 1685, n.p.)*

The French monarchy, under King Louis XVI, expanded the police's powers in relation to African people. After the first two pieces of legislation were signed in 1716 and 1738, the minister of the Navy, Antoine de Sartine, a former lieutenant of Paris, established the *Police des*

DOI: 10.4324/9781003176619-19

Noirs (Police for Blacks) in 1777. Unlike the *Code Noir*, this 32-page edict prescribed actions not based on slave status but on skin colour alone. "Especially in the capital city", the declaration states, "[Blacks] cause the greatest disorders, and when they return to the colonies, they bring with them the spirit of independence, indocility, and become more harmful than useful". Article 3 declares: "[Blacks] who will have entered [France] will be […] arrested and escorted to the nearest port to be deported to the colonies" (Peabody, 1996, pp. 106–120).

In the early nineteenth century, French emperor Napoleon Bonaparte – who had re-established slavery after it had been abolished less than a decade earlier following the Haitian Revolution – further extended the policing of Black people in France. From 1807–1808, Napoleon mandated the Minister of Police, Joseph Fouché – the architect of modern French policing – to organize a nationwide census of "Blacks, mulattos and other people of colour" (Noël, 2016, n.p.). Using the same denomination as de Sartine had for the *Police des Noirs*, this classification drew direct inspiration from historian Moreau de Saint-Méry's racial theories, which positioned white colonialists as "the epidermis' aristocracy" (Gauthier, 2008, p. 1, translated from French). Openly pro-slavery, out of "taste for trade", Fouché effectively institutionalized intricate methods of espionage on "outside threats" (Zacharie, 2012, pp. 132–134). Such monitoring was particularly emphasized in cities such as Bordeaux, one of France's biggest slave-trading ports.

Following the invasion of Algiers in 1830 and the expansion of the French Empire in Africa after the 1884–1885 Berlin Conference, the *Code de l'Indigénat* (Native Code), a racially discriminatory set of laws creating an inferior legal status for colonial subjects, was thereafter applied to most Africans (Saada, 2011). Under this "legal monstrosity", implemented until the mid-1940s, colonial administrators regularly abused their powers, convicting Africans on arbitrary charges, such as "[disrespecting] the administration and its civil servants" or "[disseminating] alarming and false rumours" (Fabre, 2010, pp. 280–281). Such lawlessness was openly endorsed by members of parliament, such as Etienne Flandin, who asserted: "To [Africans], prison is not punishment but a reward, the supreme happiness to live in idleness" (Fabre, 2010, p. 287).

As French authorities tightened their rule of African colonies at the turn of the twentieth century, the military and the police were initially the same. However, as urban centres grew, so did movement of people and various forms of political mobilization (Brunet-La Ruche, 2012, p. 2). Structured police forces, based on those of the *métropole*, therefore appeared essential to safeguard the financial interests of colonialists (Tiquet, 2011, pp. 12–16). For the construction of the Congo-Océan Railway (1921–1934), armed forces captured countless young men, forcing them to work in deplorable conditions, including without protection. As a result, an estimated 15,000 to 30,000 perished (Autey-Roussel, 2017, n.p.). Drawing from the infamous *Police des Noirs*, the ministry of the colonies oversaw an independent secret service, the *Service de contrôle et d'assistance des indigènes* (Natives' Control and Assistance Service), which employed undercover agents to monitor the political activities of Africans in France (Keller, 2018, pp. 66–70).

Among the first to appear on surveillance records was Senegalese activist Lamine Senghor. In 1924, a few years after Senghor had started working in Paris as a postman, the *Service de contrôle et d'assistance des indigènes* started following him. For the next three years, police reports closely monitored him as both an "anticolonial agitator" and a "communist, antimilitarist activist". Senghor had indeed joined the French Communist Party, but quickly expressed frustration at the grouping's limited integration of Black activists, thereafter founding a separate organization championing African liberation (Murphy, 2013, pp. 166–170). Lamine Senghor represented the *Comité de Défence de la Race Nègre* (Defence Committee of the Negro Race) at the founding conference of the League Against Imperialism in Brussels in 1927, forcefully proclaiming:

> It is capitalism which breeds imperialism in the peoples of the leading countries. […] Fight with the same weapons and destroy the scourge of the earth, world imperialism! It must be destroyed and replaced by an alliance of the free peoples.
>
> *(Senghor & Murphy, 2012, p. 63)*

Senghor's speech, relayed in newspapers around the world, alerted French authorities, who quickly arrested him, as he returned to France, for "provocative statements toward a law enforcement authority" (Bat, 2015, n.p.). Until his death later that year, the Senegalese activist's wish was to return to his home country, but he strongly suspected police forces would arrest him upon his arrival (Senghor & Murphy, 2012, p. xxii).

The mid-1920s also saw the creation, by former colonial administrator André-Pierre Godin, of the Service d'Assistance aux Indigènes Nord-Africains (North African Natives' Assistance Service) composed of a police force known as the *Brigade Nord-Africaine* ('North African Brigade'). Carefully regulating Algerians' activities in France, this surveillance agency repeatedly threatened those known to frequent anti-colonial circles, coercing employers to terminate their contracts. Abolished after World War II, the unit came back to life in the mid-1950s as the *Brigade des Agressions et Violences* (Aggression and Violence Brigade) (see Blanchard, 2004).

An empire unwilling to die[1]

The end of the Second World War intensified anti-colonial and decolonial movements around the world. Within the French empire, those who dared imagine full equality between Europeans and Africans, or – worse – secession from the *métropole*, were met with great violence. The Thiaroye massacre (African soldiers enrolled in the French army, made prisoners of war by the Germans following France's surrender, were promised full compensation for service to the nation but in December 1944, were premeditatively murdered in their hundreds instead) was the first of many post-war counterinsurgency efforts orchestrated by France.[2] However, after a long eight-year war effort in Indochina, France's army lost to the Việt Minh at Điện Biên Phủ in 1954 and was forced to leave East Asia. That same year, while a growing number of colonies in Asia were asserting their sovereignty, the Algerian war for independence created a new battlefield.

Internal colonialism

As the war in Algeria intensified with the 1956–1957 Battle of Algiers, Charles de Gaulle, who had been head of the *Résistance* facing occupation by Nazi Germany (1940–1944), returned to power in 1958 – consecutive to a putsch led by supporters of 'French Algeria'. Newly appointed Paris police prefect Maurice Papon, who institutionalized torture and industrialized military warfare in Eastern Algeria from 1956 to 1958 (see Peyroulou, 2019), expanded the repressive apparatus against North African workers in France through the *Service de coordination des affaires algériennes*, reinforcing recognition operations, abusive arrests and night raids (Blanchard, 2006, pp. 62–65). On 17 October 1961, in reaction to a demonstration of Algerians protesting a racist curfew imposed only on them, Papon mobilized over 1,500 officers: raiding and interning 10,000 protesters, the police tortured and killed hundreds, throwing dozens of bodies into the river Seine (see Einaudi, 2011) (Figure 17.1).

As part of post-war reconstruction – the *Trente Glorieuses* (1945–1975) – the French state incentivized African workers to migrate to France and take on precarious jobs in industry, construction, and mining. Living mostly, as of the 1960s, in large low-income suburban housing

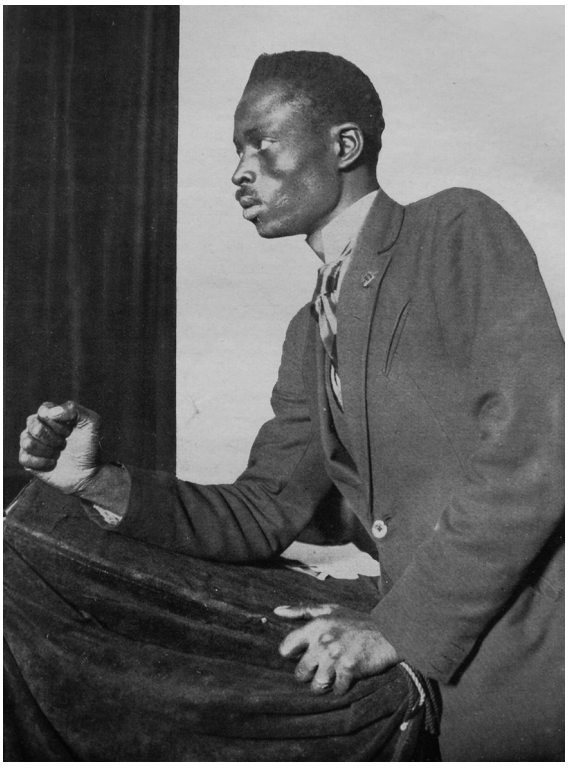

Figure 17.1 Lamine Senghor at the founding conference of the League Against Imperialism in Brussels, February 1927.

Source: Neuer Deutscher Verlag.

complexes, they were effectively marginalized from centres of power and wealth, cut off from running public services, and disproportionately controlled and harassed by the police. As hundreds of thousands of French soldiers returning from Algeria at the end of the war in 1962 integrated into the police force (Blanchard, 2008), these *cités* quickly became the authorities' new battlefield. Independent researcher Matthieu Rigouste (2021) explains:

> The **cité** commonly refers to socio-racial segregation in contemporary France, in the same way that the term **ghetto** refers to segregation in North American popular culture. […] They are the common expression of an internal coloniality which neoliberal and security capitalism are partly based on. They have become the privileged places of the surge and transformation of state violence within the imperial metropolises, at the foot of the great centres of capital accumulation.
>
> *(p. 49)*

Like Papon, commissioner François Le Mouel spent the first years of the French campaign in Algeria working at the judiciary police, before leading Parisian policemen in harassing North Africans back in France. A decade later, he elaborated the concept of 'anti-criminality', whereby fighting crime consists of 'penetrating the population' to capture the 'enemy within'. While throughout the first half of the twentieth century, the French state had justified the

policing of Africans as a means of "saving the empire from undisciplined native agitators", its rhetoric from the 1970s shifted to the imperious duty of "protecting the nation from dangerous criminal thugs", i.e., young, predominantly non-White, suburban, poor men (Rigouste, 2009, pp. 113–116). The *Brigade Anti-Criminalité* (BAC, Anti-Crime Brigade) was established in the Paris area in 1971 by Pierre Bolotte, a former colonial officer in Indochina and Algeria, who spearheaded the violent state response to the May 1967 workers' strike in Guadeloupe causing the deaths of dozens of demonstrators. Throughout the 1980s, the political discourse shaped the concept of 'rioting', disregarding any structural context, as indisputable proof of non-White suburban youth's bestiality, justifying the police's stronghold over *cités*; "police hunting reserves" managed as "endo-colonial enclaves"[3] (Rigouste, 2021, p. 74).

From the 1990s, the BAC grew beyond Paris into the rest of the country, while the government opted to upgrade the police's armament with the brand-new *Lanceur de balles de défense* (LBD, rubber ball grenade), presented as a preventive, less lethal weapon. In its everyday use, however, the LBD lacks precision and can cause serious injuries. Between 1999 and 2019, rubber ball grenades maimed over 70 people and killed at least one. In the aftermath of the Fall 2005 uprising, President Nicolas Sarkozy, Interior Minister during the riots, invested considerably into the new-generation LBD 40, a shoulder rifle, as opposed to the smaller handgun in use until then (Douillard-Lefèvre, 2021). The growth of rubber ball grenades – which have accustomed officers to pull the trigger more easily – is indicative of the French police's militarization over the past quarter-century, as evidenced by the high number of mutilated protesters during the 2018–2019 *gilets jaunes* (yellow vests) movement (see Rigouste, 2016, 2020).

Fifty years on, the police order carved out by colonial officers remains robust. The discourse on *cités* suburbs as 'outlaw areas' where Western civilization is ousted by 'foreign savagery' and 'Islamic expansionism' has gained considerable traction in France. In February 2022, the right-wing police union, *Alliance Police Nationale*, invited Eric Zemmour to their presidential campaign forum on matters related to security. Facing an enthralled audience, Zemmour, who had come to prominence as a columnist and television pundit pushing a radically conservative agenda built on sexism, racism, and Islamophobia, called upon the police to return to being "the hunters" and not "the game". Guided by the *Grand Remplacement* – a racist conspiracy theory claiming that the White, Christian population in Europe is being replaced and effectively colonized by an African, Muslim population – the polemist, who describes French colonialism as "a blessing", also urged the police to lead a colonial war on the descendants of those colonized by France: "You are at the forefront of a civilizational struggle", he hammered. "You are facing another civilisation which we cannot coexist peacefully with" (Pascariello & Ramdani, 2022, n.p.).

Neocolonialism in Africa

Upon Charles de Gaulle's arrival in office in 1958, France – already engaged in guerrilla fighting in Algeria and Cameroon – could not enter yet another large-scale conflict. With the wind of decolonization blowing across the empire, de Gaulle seized the opportunity to grant supervised independence to France's colonies in Africa, conditional on the simultaneous signing of 'cooperation agreements' in all key areas of state action (monetary, military, education, etc.), effectively grooming ally regimes. This pattern of persistent French neo-colonial interference in Africa would later be termed *Françafrique* (see Borrel et al., 2021).

Repressive policing culture persisted beyond the birth of nominally independent states in the 1960s, through 'assistance agreements' that guaranteed the continuity of French methods and structures. As historian Sidina Noël Mvou Kounta explains,

> By signing technical assistance agreements, the [French state] transferred to the newly independent states not only the personnel who had served in colonial institutions, but also the administrative apparatus, the equipment, as well as the regulations, the tradition and the military culture. These technical assistants would be responsible not only for setting up these new institutions, but also for supervision and training. […] Those made available to [African] governments were generally those who were there during the colonial rule: Frenchmen who stayed put.
>
> *(as cited in Nivelon, 2020, n.p.)*

In 1959, the *Service de Sécurité Extérieure de la Communauté* (French External Security Service) was set up to maintain strong ties between intelligence services in France and local police units in African colonies. Its founder, police official Pierre Lefuel, was the last director of national security in Upper-Volta (now Burkina Faso). In 1960, he founded the *Service de Coopération Technique Internationale de Police* (International Technical Police Cooperation Service), a unit mainly composed of former colonial officials mandated to train the new national police forces (Tiquet, 2013). In Cameroon, French authorities' merciless war against the anti-colonialist Union of the Peoples of Cameroon, simultaneously with its war in Algeria, deployed methods such as aerial bombardments, targeted assassinations, mass internment, and psychological warfare, which, for another decade following the country's formal independence in 1960, mutated into state policy under the pro-French regime of Ahmadou Ahidjo (see Deltombe, Domergue & Tatsitsa, 2016).

Although African politicians were now in command, coercive policing methods remained central to institutions supported by 'technical assistants' and former colonial officials. Well into the 1960s, sulphurous French commissioner André Castorel supervised endless torture sessions on opponents to Senegal's President Léopold Sédar Senghor, drawing from France's methods in Indochina and Algeria – waterboarding until temporary loss of breath; electrocuting the tongue, ears and genitals; forcibly inserting bottlenecks into the rectum often leading to anal fissure (Danfakha, 2012). Jean Collin, a French colonial administrator who obtained Senegalese citizenship around independence, became Interior Minister to President Senghor, his uncle-in-law, in the 1970s. The repression of opposition movements was the highlight of his time in office, as authorities proceeded to mass arrests and continued to torture oppositional voices, some of whom, like Omar Blondin Diop, died as a result (Bobin, 2020b, n.p.).

Today, the legacy of colonial policing can be seen in the ways African states react to dissent. From struggles for the betterment of working conditions and access to food and water, to mobilization for ending the rampant unemployment, rising inequality, political arbitrariness, and general corruption that is supported by neo-colonial arrangements, public demonstrations are usually met with tear gas and bullets. State responses to the COVID-19 pandemic have both amplified distrust toward the authorities and absolved abuses of power, as exemplified in March 2021 by Senegal's Five Days of Anger, the country's largest popular uprising in over a decade, met with great ferocity by police forces (Sylla, 2021, n.p.). On 3 March 2021, the arrest of opposition leader Ousmane Sonko – who was on his way to court to answer the investigating judge's summons on rape accusations – set the country ablaze amid unpopular pandemic-related restrictions, bleak economic prospects, and a gridlocked political system. The Dakar police prefect was caught on camera calling to charge "everyone", including the press. And while the authorities deployed the military in several regions of the country, numerous videos shared online show the presence of marauding militias harassing demonstrators, whom the Interior Minister labelled "terrorists" manipulated by "occult forces". In less than a week, nearly 600 civilians were injured and 14 more killed, like unarmed 32-year-old tailor Cheikh Wade whose assassination by the police in broad daylight was captured on camera (Amnesty International, 2022, n.p.). A closer

look at the repressive arsenal deployed by the Senegalese police and military, which is still regularly trained by French forces, exposes the mainly French manufacture of equipment ranging from grenade launchers, rubber bullets, and tear gas grenades to armoured vehicles (Reynié, 2021, n.p.). Despite the authorities' promises to bring those responsible for these deaths to justice, proceedings remain, over a year on, at a stalemate.

Pas de justice, pas de paix!: No justice, no peace

As talks between the Senegalese state, religious authorities, and civil society movements had put an end to the protests, ephemeral graffiti appeared on the walls of Dakar on 11 March 2021, before being quickly covered by thick black paint. The scene depicts President Macky Sall, draped in the French blue-white-red colours with blood dripping from his sleeves, as the leader of heavily armed forces that shoot and kill an anonymous protester, *doomu jambur* ('child of a free man', translated from Wolof[4]), who is armed only with a Senegalese flag. Elsewhere the mural reads: "You can't arrest an idea", "Power to the people", and "Free Senegal". "When we represent Macky Sall shooting a young person, we tell him that he holds primary responsibility for the police cowardly shooting unarmed demonstrators", explained one of the artists (Madzoo and Veneno, 2021, n.p.). A Black Panther Party representative in West Africa, Madzoo is a founding member of the pan-Africanist art collective Radikal Bomb Shot (RBS) (2020), which had already taken a stand following the murder of George Floyd in May 2020 by celebrating, through graffiti, figures of Black liberation from the African continent (e.g., Winnie Madikizela Mandela and Cheikh Anta Diop) as well as the diaspora (e.g., Malcolm X and Nina Simone) (Figure 17.2).

Figure 17.2 Graphic artwork referencing a graffiti drawn in March 2021 that depicts Senegal's President Macky Sall shooting an unarmed protester in Dakar, March 2023.

Source: Radikal Bomb Shot (Madzoo TRK).

Similarly, a group of four rappers (M.A.S.S, Rex-T, Gaston, and Baryo) seized this opportunity to shed light on police violence within the Senegalese context, through their single *Baadoola Lives Matter*[5]:

> Prohibited direction, Abdoulaye Timera overrun
> Police violence, prison: our new religion […]
> Under Macky's rule, we self-immolate
> Different day, less hope, same fate […]
> Power, the only victor
> Police order, our new terror
>
> *(M.A.S.S et al., 2020, n.p.)*

Drawing from the stories of victims, the song addresses the grievances of a youth fed up with being constantly at risk of dying at the hands of law enforcement, like young motorcyclist Abdoulaye Timera, who was fatally hit by a police car that drove the wrong way on a busy avenue in Dakar in April 2018. Between 2000 and 2021, excluding the 14 deaths in March 2021, an estimated 50 civilians lost their lives as a result of police violence,[6] having been shot at during a protest or having succumbed to beatings while incarcerated. In July 2018, at Thiaroye police station, Pape Sarr was covered in flammable liquid, electrocuted by officers, caught fire, and died shortly after his transfer to hospital. Other intimidation strategies consist of releasing activists from police detention in the middle of the night and dropping them in unknown remote locations, kilometres away from any city, with no money or cell phone (Sagna, 2022, n.p.). In solitary confinement – where inmates are subjected to even more adverse treatment by guards – prison director Khadidiatou Ndiouck Faye confessed that the rule there is 'suicide' (Bobin, 2021, n.p.). 'Suicide' is invoked whenever suspicion arises over the circumstances of a death in detention, as in 2017 with 42-year-old Elimane Touré. His passing inspired Rex-T and Gaston's (2017) *Police Faat Dou Moudjou Fenn* ("Police Everywhere, Justice Nowhere", translation from Wolof). Challenging the authorities' version of events, *Baadoola Lives Matter* imagines Touré telling his side of the story:

> 6 pm, police is killing us, abusing their power, creating such a fuss
> They said I killed myself
> That I tied a rope around my neck (RIP)
> Elimane Touré speaking, it is me
> On the station's floor my blood all spilled
> An autopsy full of lies they filled
> My children living now on a minefield
>
> *(Rex-T et al., 2017, n.p.)*

A recurring figure in both Radikal Bomb Shot's and M.A.S.S' art is activist Guy Marius Sagna, a founding member of the Front for an Anti-Imperialist Popular and Pan-African Revolution (FRAPP). Arrested dozens of times in recent years, Sagna (2021) views African police forces as "the heirs of colonial France" (Figure 17.3):

> In one of the central police station's cells, we are sometimes dumped there and, to urinate, we are forced to use the same water bottles we drink out from. But we understand that one of the functions of defence and security forces in a neo-colony like Senegal is frightening the population. And so, subjecting demonstrators and protesters to such treatment that they no longer feel like resisting; that they surrender, that they become afraid, that their parents and their families become terrified. You regularly hear that comrades are tortured.
>
> *(n.p.)*

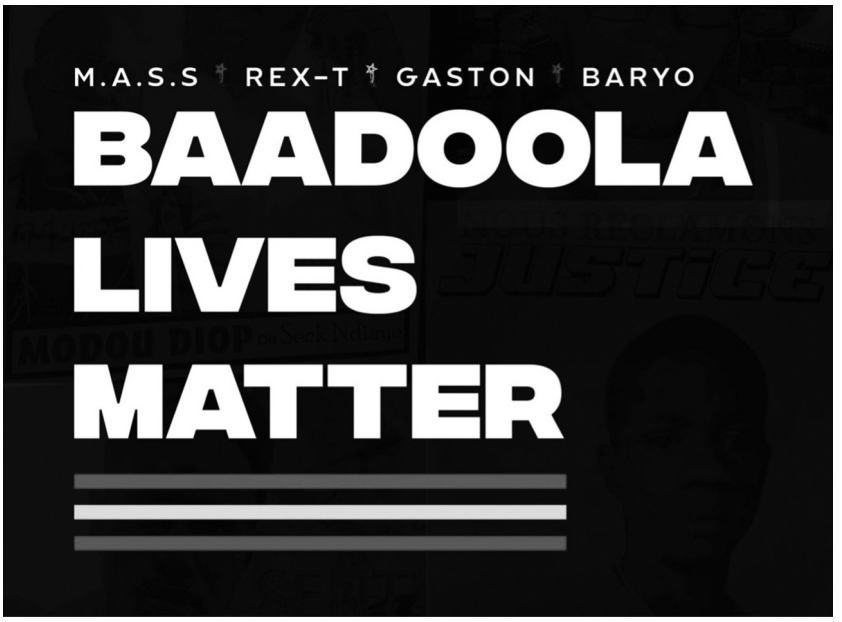

Figure 17.3 Cover art from M.A.S.S, Rex-T, Gaston and Baryo's single Baadoola Lives Matter, June 2020.

Source: Mass Seck.

In February 2018, FRAPP emerged from the Anti-EPA Anti-CFA Front determined to overturn African states' Economic Partnership Agreements as well as abolish the CFA franc – a colonial currency since 1945 that is still largely controlled by France and used by 12 former French colonies (Sylla & Pigeaud, 2021). Within a few months, the organization had made multiple calls to decolonize public spaces, embodied by colonial governor Louis Faidherbe's statue in the northern city of Saint-Louis (Ndiaye, Sylla & Bobin, 2020), and launched the Collective for Justice and Against Police Violence (CJCVP) in July 2018, subsequently organizing protests in the streets demanding justice for victims, checking in regularly with victims' families, setting up a phone number open to the public to gather calls on new cases of police violence (Koïta, 2022, personal communication). Through its intense lobbying, the Collective amplified the story of Oumar Watt, who, in September 2018, trying to break up a late-night fight outside a restaurant, was punched in the neck and knocked unconscious by a French soldier deployed in Senegal. The soldier then proceeded to kick him as Watt lay defenceless on the street (Ciss, 2018, n.p.). During Watt's nearly month-long coma, the CJCVP (2018) issued a statement entitled "Police kills the Senegalese and the French army send them into comas", calling for popular rallying behind efforts to bring to justice authors of violence:

> To citizens, victims of police violence and victims' families: the Collective tells them that they are not alone. […] To all citizens: we must all together impose the liberation of

> victims' voices; impose full disclosure on past, present and future cases of violence; and cut them back.
>
> *(n.p.)*

As a result of the media pressure, the French soldier was placed in pre-trial detention for seven months before receiving an additional 18-month conditional sentence and a minor monetary fine.

In France, Justice and Truth Committees have rallied considerable momentum, although impunity remains the rule. As in many countries around the world, police officers are protected by their superiors. Social scientist Pierre Douillard-Lefèvre (2021) details how exceptional it is for a criminal trial to be held. Rarely identified, agents are seldom convicted – an exception being the 2016 trial of BAC agents who maimed a young man, resulting in their sentencing. One emblematic judicial case is that of Adama Traoré, a 24-year-old Black man who, after a manhunt, died from asphyxiation at the hands of the police in 2016. In late May 2020, an official medical expert report presented Traoré's death as a result of cardiogenic oedema (a heart condition) rather than from a *plaquage ventral* (action of tackling someone and maintaining pressure on their stomach), which was the finding of an expert report requested by the civil parties (Di Giacomo, 2020, n.p.). On 2 June 2020, coinciding with global mobilization after George Floyd's murder, tens of thousands of demonstrators gathered in front of the Paris Judicial Court to demand justice, shouting: "Justice for Adama! No justice, no peace!". Despite intimidation by the police and far-right groups present in the assembly, tens of thousands of protesters (over a hundred thousand according to some estimates) rallied at Republic Square to maintain popular pressure on the authorities (Slaoui, 2020, n.p.).

Shortly after Adama Traoré's death, his sister Assa established the Justice and Truth for Adama Committee, which is the basis of all the public events in his memory. Through a strong presence on social media, sustained legal action, and visibility coming from a supporting cast of artists (e.g., Revue Ballas, 2018), intellectuals, and athletes, Assa Traoré has become the symbol of resistance to police violence in France. She also mobilizes her platform to shed light on the stories of less mediatized victims, like Lamine Dieng, who was killed by a *plaquage ventral* in a police car after he was arrested in June 2007. After 13 years of legal battle, his family, who had appealed to the European Court of Human Rights, obtained €145,000 from the French state in exchange for dropping the charges (AFP, 2020, n.p.). Among pending cases are those of Babacar Gueye, who was shot at five times by agents from the BAC as he was experiencing a manic episode in December 2015, and of Théodore Luhaka, who was sexually assaulted by seven policemen, including three from the BAC, in February 2017.

Conclusion

The reform of France's police in the seventeenth century met two key objectives: defending the interests of wealthy capitalists and ensuring impunity for pro-slavery colonialists. Over the following centuries, legislation and official bodies flourished that were designed to monitor and control colonial subjects within its empire. France's contemporary violent police methods towards non-White youth, particularly Africans, draw from this ongoing history. It is also at the core of African states' post-colonial relationship with dissent.

However, from slave uprisings to anti-colonial struggles, resistance has been a constant force in France's imperial history. Today, the fight for truth and justice for victims of police violence, both in France and former French colonies like Senegal, has opened nationwide

debates on the role of the police, its restructuring or dismantlement, and the lasting effects of racism and imperialism.

Acknowledgements

This chapter draws on materials from my article "Law and disorder" initially published on the website *Africa Is a Country* (Bobin 2020a). I would like to thank Gii Maryiis Saaña (Guy Marius Sagna) and Aliyu Seraar Koytaa (Aliou Gérard Koïta) for taking time to discuss resistance to police violence in Senegal today; Maryam Jóob (Mariam Diop) for her invaluable mastery of all things Wolof; and Njamba Koffi (John-Michael Koffi) and Tristan Bobin for their comments on an earlier version of this chapter.

Notes

1 See Borrel et al. (2021).
2 Based on his military experience in Algeria (1956–1958), French military officer David Galula extensively theorized counterinsurgency warfare, becoming an international reference in the field still taught in military academies to this day. As a researcher at Harvard in the 1960s, Galula befriended William Westmoreland and Henry Kissinger, two prominent figures in the United States' counterinsurgency war in Vietnam (see Douillard-Lefèvre, 2021, p. 35).
3 Endo-colonialism, also known as internal colonialism, refers to the forms of imperialist domination exerted by a state within its national borders through the development of "internal peripheries" (see Rigouste, 2021, pp. 35–76).
4 While French remains Senegal's official administrative language, Wolof is the most widely spoken language in the country.
5 *Baadoola* (Wolof) can be translated as pariah, underdog, or outcast.
6 I have come to this figure after a careful study of press articles detailing deaths related to police violence and of victim lists drafted by human rights organizations such as Amnesty International/Senegal, over the period 2000–2021. See, for example, Ngom (2015, n.p.).

References

AFP. (2020, June 15). Treize ans après la mort de Lamine Dieng, l'État français passe un accord à l'amiable avec sa famille. *Le Monde*. https://www.lemonde.fr/societe/article/2020/06/15/treize-ans-apres-la-mort-de-lamine-dieng-l-etat-francais-passe-un-accord-a-l-amiable-avec-sa-famille_6042955_3224.html

Amnesty International. (2022, March 3). Senegal: One year on from the deaths of 14 demonstrators, the families demand justice. *Amnesty International*. https://www.amnesty.org/en/latest/news/2022/03/senegal-one-year-after-march-2021-families-demand-justice/

Autey-Roussel, C. (2017, April 28). Le chemin de fer Congo-Océan, un massacre colonial français. *Entelekheia*. http://www.entelekheia.fr/2017/04/28/le-chemin-de-fer-congo-ocean-un-massacre-colonial-francais/

Bat, J.-P. (2015, September 6). "L'œil de Moscou"? Le dossier de surveillance de Lamine Senghor. *Libération*. https://www.liberation.fr/debats/2015/09/06/l-oeil-de-moscou-le-dossier-de-surveillance-de-lamine-senghor_1816991/

Blanchard, E. (2004). La dissolution des Brigades nord-africaines de la Préfecture de police: la fin d'une police d'exception pour les Algériens de Paris (1944–1958)? https://hal.archives-ouvertes.fr/hal-00745453/document

Blanchard, E. (2006). Police judiciaire et pratiques d'exception pendant la guerre d'Algérie. *Vingtième Siècle. Revue d'histoire*, *90*(2), 61–72.

Blanchard, E. (2008). Circulations coloniales. La place de l'Outre-mer dans la socialisation et les trajectoires professionnelles des policiers parisiens (1944–1962). In J.-M. Berlière (Ed.), *Les métiers de police: être policier en Europe, XVIIIe-XXe siècles* (pp. 201–213). Presses Universitaires de Rennes.

Bobin, F. (2020a, July 17). Law and disorder. *Africa Is a Country*. https://africasacountry.com/2020/07/law-and-disorder

Bobin, F. (2020b, March 18). Omar Blondin Diop: Seeking revolution in Senegal. *Roape*. https://roape.net/2020/03/18/omar-blondin-diop-seeking-revolution-in-senegal/

Bobin, F. (2021, March 8). Beware of martyrs. *Africa Is a Country*. https://africasacountry.com/2021/03/beware-of-martyrs

Borrel, T., Boukari-Yabara, A., Collombat, B., & Deltombe, T. (Eds.), (2021). L'empire qui ne veut pas mourir: Une histoire de la Françafrique. *Seuil*.

Brunet-La Ruche, B. (2012, January 13). "Discipliner les villes coloniales": La police et l'ordre urbain au Dahomey pendant l'entre-deux-guerres. *Criminocorpus*. http://journals.openedition.org/criminocorpus/1678

Ciss, M. (2018, Novembre 22). Le militaire français Mike Teiho face au juge du 2e cabinet vendredi. *Seneplus*. https://www.seneplus.com/societe/le-militaire-francais-mike-teiho-face-au-juge-du-2e-cabinet

CJCVP. (2018, September 28). La police tue les sénégalais et l'armée française les envoie au coma. *Seneplus*. https://www.seneplus.com/societe/la-police-tue-les-senegalais-et-larmee-francaise-les-envoie-au

Colbert, J.-B. (1685). Le Code noir. Recueil d'édits, déclarations et arrêts concernant les esclaves nègres de l'Amérique. https://www.axl.cefan.ulaval.ca/amsudant/guyanefr1685.htm

Danfakha, B. (2012). Le vécu de la torture subie par les militants PAI et d'autres sénégalais. In Comité National Préparatoire (CNP) pour la Commémoration du 50e Anniversaire du Parti Africain de l'Indépendance (Eds.), *Réalité du Manifeste du PAI au XXIe siècle* (pp. 187–193). Presses Universitaires de Dakar.

Deltombe, T., Domergue, M., & Tatsitsa, J. (2016). *La guerre du Cameroun. L'invention de la Françafrique*. La Découverte.

Denis, V. (2008). Édit de mars 1967 créant la charge de lieutenant de police de Paris. *Criminocorpus*. https://doi.org/10.4000/criminocorpus.80

Di Giacomo, D. (2020, June 2). Mort d'Adama Traoré: le plaquage ventral a causé le décès, selon une contre-expertise demandée par les parties civiles. *France Info*. https://www.francetvinfo.fr/faits-divers/adama-traore/mort-d-adama-traore-le-plaquage-ventral-a-cause-le-deces-selon-une-contre-expertise-demandee-par-les-parties-civiles_3992131.html

Douillard-Lefèvre, P. (2021). *Nous sommes en guerre: Terreur d'État et militarisation de la Police*. Grevis.

Einaudi, J.-L. (2011). *Octobre 1961: Un massacre à Paris*. Pluriel.

Fabre, M. (2010). L'indigénat: Des petites polices discriminatoires et dérogatoires. https://www.hegemone.fr/IMG/pdf/ArtT5MFabre.pdf

Gauthier, F. (2008). *L'aristocratie de l'epiderme: Le combat de la Société des Citoyens de Couleur (1789–1791)*. CNRS Editions.

Jobard, F. (2015). Police et jeunesse. *Idées Économiques et Sociales*, *181*(3), 40–47.

Keller, K. (2018). *Colonial suspects: Suspicion, imperial rule, and colonial society in interwar French West Africa*. University of Nebraska Press.

M.A.S.S, Rex-T, Gaston, & Baryo. (2020, June 5). *Baadoola lives matter [Video]*. YouTube. https://youtu.be/-FITlalonns

Madzoo & Veneno. (2021, April 12). Un graffiti qui dérange! *Hiya*. https://hiya.fr/2021/04/12/un-graffiti-qui-derange-interview-de-lartiste-dakarois-madzoo-par-veneno/

Murphy, D. (2013). Defending the 'Negro race': Lamine Senghor and black internationalism in interwar France. *French Cultural Studies*, *24*(2), 161–173.

Ndiaye, K., Sylla, S., & Bobin, F. (2020). In Senegal and France, Faidherbe must fall. *Roape*. https://roape.net/2020/07/07/in-senegal-and-france-faidherbe-must-fall/

Ngom, M.M. (2015, August 26) Des coupables en cavale. *Seneplus*. https://www.seneplus.com/article/des-coupables-en-cavale

Nivelon, V. (2020, May). La marche du monde: au nom du maintien de l'ordre [Radio]. *Radio France Internationale*. https://www.rfi.fr/fr/podcasts/20200517-france-maintien-ordre-police-histoire

Noël, E. (2016, May 17). Le renouvellement sémantique à travers la Police impériale. *Université des Antilles*. http://www.manioc.org/fichiers/V16103

Pascariello, P., & Ramdani, Y. (2022, February 2). Alliance met la droite et l'extrême droite au garde-à-vous. *Mediapart*. https://www.mediapart.fr/journal/france/020222/alliance-met-la-droite-et-l-extreme-droite-au-garde-vous

Peabody, S. (1996). *'There are no slaves in France': The political culture of race and slavery in the ancien régime*. Oxford University Press.

Peyroulou, J.-P. (2019). Maurice Papon, administrateur colonial (1945–1958). In S. El Mechat (Ed.), *Les administrations coloniales, XIXe–XXe siècles* (pp. 69–80). Presses universitaires de Rennes.

Radikal Bomb Shot. (2020, June 14). *The wall the ñuulest* [Photo]. Facebook. https://www.facebook.com/RadiklBombShot/posts/1583295678504477

Revue Ballas. (2018, June). *Rencontre Angela Davis et Assa Traoré* [Video]. YouTube. https://youtu.be/ATVKdI9p05A

Rex, T., & Gaston. (2017). *Police faat dou Moudjou Fenn* [Video]. YouTube. https://youtu.be/vn7DewfMw5k

Reynié, M. (2021, March 17). La France fournit au Sénégal les armes de la répression. *StreetPress*. https://www.streetpress.com/sujet/1615980861-france-fournit-senegal-armes-repression-maintien-ordre-grenades-lacrymos

Rigouste, M. (2009). *L'ennemi intérieur: La généalogie coloniale et militaire de l'ordre sécuritaire dans la France contemporaine*. La Découverte.

Rigouste, M. (2016). *État d'urgence et business de la sécurité*. Niet!éditions.

Rigouste, M. (2020, February 13). The violence of the French police is not new, but more people are seeing it now. *The Guardian*. https://www.theguardian.com/commentisfree/2020/feb/13/french-police-violence-gilets-jaunes-victims

Rigouste, M. (2021). *La Domination policière: Une violence industrielle* (2nd ed.). La Fabrique.

Saada, E. (2011). The Republic and the Indigènes. In E. Berenson, V. Duclert, & C. Prochasson (Eds.), *The French republic: History, values, debates* (pp. 223–231). Cornell University Press.

Sagna, G.M. (2022, March 24). *La police voyou, d'un Ministre de l'Intérieur voyou, d'un Président voyou [Social media post]*. Facebook. https://www.facebook.com/guymarius.sagna/posts/4940109532710264

Sagna, G.M., Bobin, F., & Sylla, M.M. (2021, May 13). Decolonising a neo-colony: An interview with Guy Marius Sagna. *Roape*. https://roape.net/2021/05/13/decolonising-a-neo-colony-an-interview-with-guy-marius-sagna/

Senghor, L., & Murphy, D. (2012). *La violation d'un pays: et autres écrits anticolonialistes*. L'Harmattan.

Slaoui, N. (2020, July 19). *A Beaumont, la « génération Adama » redonne une jeunesse à la lutte [Blog post]*. https://www.bondyblog.fr/societe/police-justice/a-beaumont-la-generation-adama-redonne-une-jeunesse-a-la-lutte/

Soll, J. (2009). *The information master: Jean-Baptiste Colbert's secret state intelligence system*. University of Michigan Press.

Swann, J. (2017). *Exile, imprisonment, or death: The politics of disgrace in Bourbon France, 1610–1789*. Oxford University Press.

Sylla, N.S. (2021, April). Senegal's five days of anger. *Le Monde Diplomatique*. https://mondediplo.com/2021/04/08senegal

Sylla, N.S., & Pigeaud, F. (2021). *Africa's last colonial currency: The CFA Franc story*. Pluto Press.

Tiquet, R. (2011, June). *"Mais que fait la police?": Étude de la transmission de l'institution policière en Haute-Volta 1949–1966*. https://www.academia.edu/2279878/_Mais_que_fait_la_police_%C3%A9tude_de_la_transmission_de_linstitution_polici%C3%A8re_en_Haute_Volta_1949_1966_M%C3%A9moire_de_Master_2_Paris_1_2011_

Tiquet, R. (2013). Un policier français dans l'Empire. Pierre Lefuel, dernier directeur de la Sûreté voltaïque (1959–1960) et pionnier du Service de coopération technique internationale de police (SCTIP). *Histoire Économie et Société*, *4*(32), 49–58.

Zacharie, C. (2012). Ordre public et affaires de famille: le rôle de la police du Consulat et de l'Empire. *Napoleonica. La Revue*, *14*(2), 127–138.

18

Policing Muslims

Counter-terrorism and Islamophobia in the UK and Australia

Waqas Tufail and Scott Poynting

What does the important work on decolonization have to say about the globalized racism that is Islamophobia? Much of the literature on decolonization rightly focuses on the originary and ongoing racism against Indigenous peoples, begun by European colonization at the beginnings of capitalism. Racisms are multifarious but there are some recurring patterns in the many sites of contemporary imperialism; these common patterns arise from shared underlying structures.

If you are having the life crushed out of you by forces of a constitutively racist state, then the various racisms are likely to be experienced similarly: 'I can't breathe!' has been painfully uttered on a deportation flight from the UK, in a prison in Australia, in a street in the US. We do not know how often. A few notorious instances have echoed around the world, showing the disproportionate and lethal state force used against those resisting colonialist racism, often young men, against overwhelming power. As well as these common patterns and experiences, we approach decolonization from a perspective of solidarity: past, present, and necessary for the future.

Here we deal with the need to decolonize justice in both the British metropolis and in the British Empire's former 'settler' colonies, in particular focusing on Australia. These present different conditions for decolonization, albeit with a shared history and global context. Our concern in this chapter is with the policing of Muslim communities in Britain and Australia. In both countries these are minority populations of mainly immigrant backgrounds, with many quite diverse and some distinctly shared experiences of colonialism, not least being the racialization of Islam. The elimination of colonialism is a project not yet greatly evident in its realization; its structures and processes are ongoing. We are committed to that elimination.

The editors have asked us to comment on our "standpoint and speaking position", to "address [our] perspective and how [we] come to be writing on this topic" (C. Cunneen, personal communication, 30 November 2021). Waqas is Muslim and a British Pakistani who has witnessed first-hand the state-led demonization of his community in the War on Terror. This – and the anger and frustration of living through the much less acknowledged racism and Islamophobia experienced by Britain's Asian and Muslim communities in the pre-9/11 era – are significant factors in how he came to be researching and writing on this topic. Scott is a whitefeller Australian living and working on unceded Gadigal land. He began collaborating with Waqas about 15 years ago, when we were both living and working in Greater Manchester,

DOI: 10.4324/9781003176619-20

researching and combatting Islamophobia. Together our stance is against imperialism and capitalism, the makings of racism.

Prevent and the 'ultimate folk devil'

For over two decades, Muslim minorities in the UK and Australia – as elsewhere – have been subjected to the sharp end of state counter-extremism strategies. The so-called War on Terror, led by the US and its allies, sparked not just military conflict overseas in countries such as Afghanistan and Iraq, but also drastic changes in domestic policies related to counter-terrorism, policing, and multiculturalism. The War on Terror thus had global and national-local dimensions. In this period, Muslim minorities, and especially young Muslim men, very quickly came to be regarded as the *ultimate* folk devil (Kapoor et al., 2013). The status of Muslim minorities as the 'enemy within' (Fekete, 2004) was cemented in 2003 when the Blair government introduced Prevent – the government's flagship and most familiar counter-terrorism strategy.

Prevent is one strand of the overarching counter-terrorism strategy known as CONTEST and rose to prominence following the London transport bombings of 2005. Prevent was instituted with a flawed understanding of how to prevent terrorism by relying on the dubious concept of 'radicalization' (Kundnani, 2012), used to justify state intervention against 'pre-crime' (McCulloch & Pickering, 2009). A government fixation began with 'preventing violent extremism' – this extended from the existing work of the security services identifying known individuals and attempting to disrupt suspected plots, to encompass a far wider focus that placed greater emphasis on police and community involvement at the local level. The underpinning logic appeared to be that the terrorists of tomorrow were hiding in plain sight within Britain's communities, and the political climate of the moment, heavy with bombastic, nationalist, pro-military fervour, served to provide legitimation for such a radical programme of state surveillance. The shift towards focusing on individuals who *may* pose a future violent extremist threat marked a radical departure in state counter-terrorism policy that was justified by largely relying on the widely critiqued 'radicalization' theory (Kundnani, 2012).

Though it has several variations, the simple premise of radicalization theory is that individuals may begin their 'pathway' to radicalization with a grievance. It is argued that this grievance, unless checked by way of an intervention, can ultimately escalate in severity where the individual becomes more 'radicalized' over time, culminating in an act of violent extremism. A key reason why 'radicalization' theory became quickly popular with law enforcement was its simplicity. To help illustrate the concept, the 'radicalization' process has often been described as a ladder or an escalator – highlighting its supposedly incremental nature. Chief among its many problems are the supposed 'indicators of radicalization' that law enforcement and other officials are encouraged to use to spot suspected extremists and terrorists. These are wide-ranging, not underpinned by empirical data and, as Sentas (2014) argues, effectively serve as a tool for racial profiling. This can primarily be seen in the overwhelming focus Prevent has had on Muslim individuals and communities (Qurashi, 2018). Some of the bizarre officially listed 'indicators' or 'signs' of radicalization include affiliating with a political cause or movement, a change in friendship networks, or protesting against government foreign policy (Sukarieh & Tannock, 2016). An especially problematic development related to Prevent is the Channel 'deradicalization' initiative. Individuals referred to Prevent, in many cases children, undergo assessment and intervention by multi-agency teams made up of police officers, social workers, psychologists, and other professionals. Though only a small percentage of individuals referred to Prevent are deemed to require a Channel intervention, the details of all referred individuals are stored for seven years. The Home Office describes Channel in Kafkaesque terms as "ideological mentoring" (Aked, 2020).

As with Prevent, there is no publicly available or transparent data that demonstrates whether Channel is effective and there are significant concerns that Channel interventions may lead to harm owing to their reliance on psychological techniques, such as cognitive behavioural therapies (Coppock & McGovern, 2014). Research has consistently highlighted that Muslims are significantly overrepresented in referrals to Prevent (and thus, Channel), relative to both school and college populations, and the general population (Thomas, 2020).

In 2011, Prevent was re-branded by the Conservative–Liberal Democrat coalition government to also focus on 'non-violent extremism' – this was seemingly an attempt to make the dragnet even wider and critics have highlighted the implications for freedom of speech and freedom of thought (O'Donnell, 2016). Prevent was placed on a statutory footing following the introduction of the Counter Terrorism and Security Act 2015. This placed a duty on public bodies and officials, including teachers, lecturers, doctors, and local authority officials, to actively report any concerns they had over extremism in their workplace. The impact of this is alarmingly repressive and many human rights groups and civil liberties groups have criticized this development for inappropriately placing policing and counter-terrorism work within the remit of educational and other public sector settings (Tufail, 2015).

Since its inception Prevent has frequently been subject to accusations of Islamophobia for focusing Britain's counter-extremism efforts almost exclusively on Muslim minority communities, for engaging in unwarranted community surveillance strategies and for curtailing civil liberties (Qurashi, 2018). This criticism has not only emanated from Britain's Muslim communities and civil society groups but from leading human rights organizations such as Liberty and Amnesty International, student and trade union bodies, and several Members of Parliament (MPs). In 2018, the UN Special Rapporteur for Human Rights said that Prevent was "inherently flawed", raised, "very serious human rights concerns" and found there was "no evidence Prevent actually prevents extremism" (MEND, 2018, n.p.). The latter point from this damning critique is perhaps the most significant aspect to highlight when appraising Prevent – despite the billions of pounds invested in it over nearly two decades, there is no tangible evidence that Prevent actually prevents extremism. Notwithstanding the occasionally issued government press releases often uncritically reported by much of the media, there is no publicly available information to assess the effectiveness of Prevent in reducing terrorism. Britain's counter-terrorism policies have been described as a "catastrophic failure", leading to the criminalization of minorities, assisting the promotion of Islamophobia, and eroding human rights (Blakeley et al., 2019).

The Trojan Horse scandal

The key development which led to this change in the law was the widely publicized Trojan Horse hoax – a fictitious plot by Muslim teachers to infiltrate schools in Birmingham to 'take them over' as part of an extremist agenda. This scandal, which erupted in 2013 following leaks to the British press, returned to the headlines in 2022 following the highly successful and widely publicized investigative podcast which serialized the events – a collaboration between *Serial* and the *New York Times* (Jackson, 2022).

In 2013, a letter was published in the British press purporting to be details of a 'plot' to 'take over' schools within the Birmingham city area in order to 'Islamize' them. The letter had no named author, and was incomplete and incoherent. Yet, this was enough for the then government to commission several official investigations and inquiries into the allegations. As detailed by Holmwood and O'Toole (2017), following years of inquiries and reports, and a consistent British media narrative that presented the case as an example of the nefarious activities of British Muslims, no tangible evidence of extremism or terrorism was ever uncovered. Nevertheless,

several Muslim teaching and governance staff lost their jobs, had their reputations destroyed, and in many cases are still seeking to clear their names. The *Serial* and *New York Times* podcast alleged, using new and convincing information, that the initial Trojan Horse letter may have been written and circulated maliciously as part of a local employment dispute within a Birmingham school. They asserted that key individuals within the leadership of Birmingham City Council were aware of this, yet – following pressure from both government ministers and the relentless media circus surrounding the story – decided to press ahead to treat the issue as a potential extremist or terrorist threat. The fallout of this scandal was predictable – it fed into extant Islamophobic stereotypes about Birmingham, one of Britain's most multicultural cities and home to many long-standing Muslim communities, being a supposed haven for extremists. Research has documented the harms the scandal has had on Birmingham's Muslim communities and, in particular, the negative effects on the remarkably high-performing schools that were subject to intense government and media scrutiny (Holmwood & O'Toole, 2017). Without evidence of extremism or terrorism, the narrative developed that students in the affected schools within Birmingham were being subject to undue influence from a supposed 'Islamist ethos'. This vague but racially loaded phrase was contradicted by the fact that the schools were acting entirely properly and in line with the law in having a religious ethos centred around Islam (Holmwood & O'Toole, 2017). A major consequence was a significant policy change that schools were now required to teach and promote 'British values'. In educational spaces, this has been fraught with confusion and has proved to be divisive, with clear implications for Muslim students in particular (Vincent & Hunter-Henin, 2018). Stated fundamental 'British values' are identified as "democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths", yet this broad interpretation in practice is exclusionary as it aligns with racially loaded notions of 'Britishness' (Poynting & Mason, 2008; Vincent & Hunter-Henin, 2018).

The harms of Prevent extend far beyond the quantifiable. Prevent has had a disturbing effect on the right to protest, has led to Muslim students self-censoring in classroom discussions, has encouraged surveillance, racial profiling and suspicion within educational settings and, most of all, it has harmed the Muslim individuals and families who have experienced significant damage by being unfairly or inappropriately targeted by counter-terrorism police (Holmwood & Aitlhadj, 2022). There are countless experiences described in the popular press detailing outrageous abuses – a four-year-old boy was referred to Prevent over a computer game; two brothers, aged five and seven, were referred by their school to police over fears of 'radicalization' when one mentioned a toy gun (Addley & Topping, 2017; Stein & Townsend, 2021). In the latter case, the local authority later admitted to having racially discriminated against the boys. Several widely reported cases have involved the targeting of young, politically active Muslims and in particular those campaigning for Palestinian rights. A 17-year-old Muslim youth was visited at home and intimidated by counter-terrorism police officers who had a file with his name in their possession. The reason was his campaigning work at college, which included wearing a badge supporting Palestine (Segalov et al., 2016). These and many other reported examples point to the systematic abuse of counter-terrorism powers to target young and in many cases vulnerable people, often with little to no justification. The state's targeting of support for the Palestinian anti-colonial struggle is especially telling.

Because of the clear and consistent focus of Prevent on Muslim communities, the strategy has faced frequent and persuasive claims of racism, racial profiling, and Islamophobia. What is less acknowledged are the particular tactics that counter-terrorism police have sought to use to attempt to win community consent from within Muslim communities. Often masquerading as 'community policing' and 'partnership working', such strategies seek to build alliances with

Muslim organizations, often with the lure of funding (Qurashi, 2018). Such strategies have been condemned, particularly when the funding on offer is seen within the context of government-implemented austerity, which led to huge cuts to public funding for the youth and charity sector (Blakeley et al., 2019). As Sabir (2017) cogently argues, the implementation of Prevent follows the counter-insurgency framework, a military doctrine developed by the British in its overseas colonies that sought to win the 'hearts and minds' of local populations through the twin strategies of surveillance and directed propaganda. Whilst Britain, in the colonial era, sought to use counter-insurgency to quell and suppress revolutionary anti-colonial uprisings, the tactics were then used in the form of Prevent as "a continuation of colonial warfare on the 'home front'" (Sabir, 2017, p. 205). It is therefore important to remember that the War on Terror has been a war *of* terror (Poynting & Whyte, 2012) – identifiable abroad through the use of military invasions and occupations, drone strikes, torture, and extraordinary rendition, and at home through the use of counter-extremism programmes seeking to use colonial-era strategies of surveillance, propaganda, and social control of Indigenous and racialized populations (Sabir, 2017).

Counter-terrorism and Muslims in Australia

At first sight, activists and academics seeking to decolonize knowledge on the policing of Muslims in Australia confront very different circumstances to those in the United Kingdom. In the UK, those targeted by Islamophobic othering are mostly immigrant former colonial subjects and their descendants. Sivanandan's (2008) apt dictum "We are here because you were there" (n.p.) thus applies to most British Muslims. The ongoing colonialism is as obvious when Boris Johnson ridicules women in niqab as looking like letterboxes as it is when he invokes egregious racist cliches about "piccaninnies" with "watermelon smiles". Yet, it goes beyond mere stupid prejudice: the colonizing state kills, terrorizes, and tortures (present tense) – in the metropolis as well as in the neocolonial periphery. The colonizing processes continue in both, just as globalization and imperialist wars continue: We are here because you *are* there – to update Sivanandan (2008). The theft of land, treasures, natural resources, and labour goes on: primitive accumulation is not a bygone early stage of capitalism; it continues as long as capitalism does. 'Post-colonialism' is a project, an aspiration, not an accurate descriptor of the present. The suppression of ('formerly') colonized peoples to sustain expropriation goes on, and we have been concerned, in this chapter, with how it goes on in the metropolitan state, particularly in the context of the global War on Terror.

In Australia, the majority of Muslims have immigrated from lands which were colonized, but not by Australia: some by Britain, some by France, and so on. The relationship between the Australian state and society and Australian Muslims is not the immediate and straightforward relationship of colonialism that is found in Britain. The principal form of colonialism in Australia is settler colonialism and it is Indigenous people who are subjected to it. This does not mean that Muslims in Australia are not subjected to ongoing colonialism; it is just not as direct and not as harsh as that experienced directly by Aboriginal and Torres Strait Islander peoples. Violence, dehumanization, Eurocentrism and indeed white supremacism are involved in both. As the slogan, soon a movement, Black Lives Matter (BLM) swiftly crossed the Atlantic and took hold in Britain, so it resounded in Australia for reasons immediately recognizable, despite differences in national histories of racism and colonialism. Muslim Australians had also been racialized and targeted by police and subjected to, at times lethal, state violence. Members of Muslim communities were, therefore, evident in their solidarity in BLM demonstrations in this country. Most were not 'Black' in the sense used in the United States or the different (more inclusive) sense historically used in Britain which incorporated Britons of (South) Asian

origin in solidarity against racism, but here, especially since 9/11, they knew that they were not 'white'.

The surveillance, targeting, and 'cracking down' suppression of Muslim communities in Australia, as in the US and the UK, began immediately after the US proclaimed the War on Terror following the airborne terrorist attacks on New York and Washington of 11 September 2001. Not coincidentally, the counter-terrorist legislative frameworks in all three nations, as well as the domestic security and policing tactics, bore a remarkable resemblance to each other. As we have mentioned above in discussing British counter-terrorism, the tenets and techniques of counter-terrorism arose in the process of maintaining colonial power. The surveillance, social control, and indeed state terrorism practised against suspect Muslim communities – as minorities in the metropole and as intractable neocolonial subjects in targeted Muslim majority countries – adopted colonialist methods from the outset. The UK had a head start: prior to 9/11 it already had a range of anti-terrorism laws in place because of political violence over Northern Ireland. Paddy Hillyard (1993) has analyzed the British state's creation of 'suspect communities' in relation to suppressing that anti-colonial struggle, and the striking parallels with the post-9/11 construction of British Muslim 'suspect communities' have been noted by many authors (e.g., Pantazis & Pemberton, 2009). These are not just parallels, but much the same processes, because the same dynamics of racist, imperialist, and colonialist violence are at issue.

The legislative mimicry truncating and suspending civil liberties for a supposed 'emergency'; the exchange of racializing ideology about deviant communities; the shared 'intelligence'; the joint labelling and banning of organizations and targeting of suspects; the 'ghost flight' renditions between partner nations; and the collaboration in torture and interrogation – the list goes on – are part of the contemporary arrangement of empire, the US-led "Empire of Capital" (Wood, 2003). Of course, it has inherited much of the ideology and adapted colonialist techniques of earlier (territory-occupying) empires: Orientalism (Said, 2003) has been much in evidence in the War on Terror and the Islamophobic versions from well before 2001 are brought out continually in waging that war, renovated for current service like new designs upon older weapons. Contemporary Islamophobia in the context of the War on Terror is marshalled (consciously and unconsciously) in the service of empire (Kumar, 2012; Kundnani, 2016). The counter-insurgency doctrines and techniques inherited from the colonial period and still viciously deployed against anti-colonial struggles after World War II – concentration camps, political detention, assassination, torture – have been continued and refined in the War on Terror. The regimes at Guantánamo Bay, Abu Ghraib, and various 'dark sites' as well as the global industry of 'extraordinary rendition', exemplify this. On the home front, the curtailment of civil liberties – surveillance of criminalized communities, detention of suspects without charge, prolonged detention without trial, interrogation in secret, secret trials or secrecy in trials, limiting of free expression, interference in religious observance, criminalization of dissent associated with 'political Islam' or anti-colonialist struggle (e.g., Palestine) – a whole gamut of policing and repression, ranges from suppression by harassment to the practical terrorizing of communities. Given the status of the British and Australian nation-states as constituent though minor participants in the US-led empire, we should not be surprised that the purportedly counter-terrorist laws and state practices in Australia closely follow those of the US and the UK.

By 11 September 2001, the UK already had in place the Terrorism Act 2000, intended to pull together and supersede a mish-mash of some three decades of temporary emergency laws passed by the British state in addressing the struggle over Northern Ireland. The colonialist intent was clear. The Act provided for detention without charge and the proscription of organizations. The main targets of this legislation and its successors over the subsequent two decades were to

be Muslims, just as Irish republicans had been hitherto. In December 2001, the Anti-Terrorism Crime and Security Act 2001 allowed the Home Secretary to order indefinite detention of foreign terrorism suspects who could not be deported. The Prevention of Terrorism Act 2005 introduced control orders for terrorism suspects – later copied in Australia. The Terrorism Act 2006 – following the July 2005 London transport bombings – extended the period of detention without charge and criminalized the glorification or encouragement of terrorism – provisions also taken up in Australia. Further counter-terrorism laws were passed in 2008, 2010 (seizures of financial assets of terrorism), and 2015 (against 'foreign terrorist fighters') with the latter two measures also finding Australian counterparts.

Australia's first tranche of post-9/11 counter-terrorism legislation was introduced under the Howard government in March 2002 and comprised seven substantial new legal provisions, notably the Security Legislation Amendment (Terrorism) Bill 2002 (No 2), which defined acts of terrorism, enumerated types of terrorist offence, and – as in the UK – provided for government proscription of organizations identified as 'terrorist' (Hocking as cited in Dagistanli & Poynting, 2017, p. 335). Virtually all were Muslim organizations. The ASIO Act 2003 provided for prolonged detention without charge, as it allowed the Australian Security Intelligence Organisation (ASIO) to detain, under warrant, for up to a week and question for up to 24 hours, individuals, including non-suspects, who may have information concerning terrorist offences; as Williams (2011) pointed out, these could include family members of a suspect, children aged between 16 and 18, journalists or even bystanders (see also Dagistanli & Poynting, 2017). Over the ten years between 2001 and 2011, some 54 pieces of anti-terrorism legislation were passed in Australia (Williams, 2011). Twenty years after 9/11, 92 such pieces of legislation had been enacted, with one repealed (Hardy, Ananian-Welsh & McGarrity, 2021).

Collectively, this counter-terrorism legislation is draconian in the breadth of its applicability, its lack of checks and balances, and its punitiveness. Its provisions are applied in discriminatory ways to target populations – Muslims identified as 'radical' or at risk of 'radicalization' – without transparency and often covered by secrecy and, therefore, little accountability in practice. Some notorious cases of injustice are outlined by Dagistanli and Poynting (2017), including the infamous Haneef case in 2007 of a wrongfully detained Indian Muslim resident doctor and the controversial case of Izhar Ul-Haque – a young Australian medical student unlawfully held and interrogated. Exemplifying globalized strategies of counter-terrorism, there was also an Australian echo of the Trojan Horse affair, in a media-driven moral panic about a Muslim principal in a western Sydney school and his resistance to a 'counter-terrorism' intervention (Poynting & Briskman, 2018).

Countering violent extremism in Australia

The preferred terminology used in Australia for Prevent-like 'prevention of violent extremism' strategies is 'countering violent extremism' (CVE), by now a multi-million-dollar industry of surveillance and propaganda, directed almost entirely at Muslims. Randa Abdel-Fattah (2019) finds the source of CVE doctrines in Australia, circa 2006, in the Howard Coalition government's weaponization of national 'values', reflecting the misconceived UK obsession with British identity and values following the 7/7 terrorist attacks in London, and the integration or otherwise of British Muslims (see also Kundnani, 2007). Abdel-Fattah (2019) rightly characterizes this project as assimilationist, as have Poynting and Mason (2008). As we have noted earlier in this chapter, this period coincided with the increased impact of Prevent in the UK, attendant on the shift from state concern with foreign-based to 'home-grown' extremism, with its dependence on the ideology of 'radicalization' (Abdel-Fattah, 2019).

The National Action Plan to Build on Social Cohesion, Harmony and Security was produced in 2006 by Australia's federal and state governments, explicitly in response to the 7/7 terrorist attacks in London and presented as "part of the Australian government's national strategic framework to address terrorism, developed since the events of 11 September 2001" (Ministerial Council on Immigration and Multicultural Affairs, 2006, p. 6). It claimed to build on the principles agreed to at the meeting between Prime Minister Howard and (selected) Muslim community leaders in the month after 7/7. Its stated purpose was "to reinforce social cohesion, harmony and support the national security imperative in Australia by addressing extremism, the promotion of violence and intolerance, in response to the increased threat of global religious and political terrorism" (Ministerial Council on Immigration and Multicultural Affairs, 2006, p. 6). It is obvious in its assumptions that Muslims are the root of global extremism, violence, and intolerance. Subsequent iterations of CVE strategy in Australia attempted to be less pointed in their rhetoric and to broaden the focus on extremism, but the targeting of Muslim communities remained paramount in practice.

The Labor Rudd-Gillard government's counter-terrorism White Paper, *Securing Australia, Protecting our Community*, turned to the rhetoric of resilience: "building a strong and resilient Australian community to resist the development of any form of violent extremism and terrorism on the home front" (Barker, 2015, p. 1). A CVE Unit was subsequently set up in the Attorney-General's Department, with a provision of AUD 9.7 million over four years in the 2010–11 federal budget for "targeted programs to reduce violent extremism in Australia"; the targeting was predictable, "developing mentoring programs for 'at risk' youth in partnership with relevant community groups", for example (Barker, 2015, p. 2). Fostering 'deradicalization', as well as 'resilience', were among the key aims, as was investigating online 'radicalization'. As Abdel-Fattah (2019) remarks, "surveillance imperative at the heart of the projects cannot be masked and is one of the reasons CVE grants schemes attract much controversy and angst in the Muslim community" (p. 382). Not only surveillance but what Abdel-Fattah (2019) calls "conducting the conduct of Muslims" (p. 381): asserting the distinctions between acceptable and unacceptable ways of being a Muslim, discouraging the former and encouraging the latter (with varying degrees of forcefulness and subtlety).

Funding for CVE increased under subsequent Abbott and Turnbull coalition governments: AUD 13.4 million over four years, as part of AUD 64 million of measures against violent extremism and radicalization (Barker, 2017), and continued under the Morrison coalition government, which in February 2022 announced a further AUD 61.7 million. The latest iteration of CVE includes an initiative and website called Living Safe Together (LST), which was announced in 2014 (Barker, 2017). Among other things, the LST website publishes a series of 'fact sheets' aimed at doctors, psychiatrists, psychologists, and social workers, informing these health and social work professionals of tell-tale signs of radicalization, how they can undergo CVE training to recognize them, and where they should report them – in the doctors' case, "balancing patient confidentiality against the need to disclose information to preserve the safety of the patient and others in the community" (Living Safe Together, n.d.). The first two of the three bullet-point signs of radicalization are "changing social relationships to align with a particular group (e.g. changing behaviour, appearance or relationships)" and "more extreme ideology (e.g. statements of moral superiority over, or hatred towards, other groups" (Living Safe Together, n.d.). Yassine and Briskman (2019) have critiqued the collaboration between the 'CVE industry' and the professional body of social workers in Australia. Reporting a patient or a client through the rather opaque reporting mechanisms could get them killed, in a context where suspect community members may be confronted by on-edge, armed police.

By 2014, Abdul Numan Haider, an 18-year-old Afghan-Australian from suburban Naarm/Melbourne, had been contacted by counter-terrorism police who wanted him to answer some questions related to their concerns about his behaviour. He had reportedly displayed a black-and-white Islamic flag and argued volubly in a shopping mall. He had ranted online against ASIO after they had his Australian passport cancelled on suspicion of supporting terrorism in Syria and the assumed possibility of travelling there. His family home had been raided by counter-terrorism police (occasioning no arrest) under these suspicions, and he had been traumatized by intensive security surveillance and police visits. His concerned family had encouraged him to see a counsellor about his agitated mental state, but this had not yet eventuated. On the evening of 23 September 2014, Haider met, as arranged, with two counter-terrorism officers who intended to 'warn' him about his behaviour. He attacked both officers with a small knife. One officer shot Haider dead. Victoria Police admitted that Haider was 'acting on his own'. No evidence of a terror plot was ever found: Islamic Council of Victoria secretary Ghaith Krayem aptly remarked that waving a flag and posting disparaging comments about Australian security agencies on social media "did not make a person a terrorist" (Poynting & Briskman, 2018, p. 141). It could be argued that the young man was 'radicalized' by counter-terrorism.

Conclusion

The horrific public lynching of George Floyd by US police officers in May 2020 drew anti-racist protests around the world, re-energizing the BLM movement with unprecedented global solidarity. Just six months before Floyd was murdered, an Indigenous (Warlpiri) man, Kumanjayi Walker, was shot dead by Northern Territory police during an arrest raid after his absconding on bail. The killing was reported internationally, and there were widespread protests for 'Justice for Walker' in 2019, including across Australian state capitals. After international outrage at the Floyd killing, Kumanjayi's case was highlighted by the BLM movement. Highly unusually, the police officer who shot Kumanjayi was charged with murder, though he was acquitted by a jury in March 2022. As we write (September 2022), a coroner's inquest into the fatal shooting has heard evidence of damningly 'racist' and 'disgusting' text messages between officers concerned, including the boast from the acquitted officer that he had a "licence to towel up the locals", whom he referred to as "neanderthals" and other racist epithets. The 'Justice for Walker' protests, therefore, seem set to continue, just as statues of slavers and their supporters will continue to be toppled from Charlottesville to Bristol.

As BLM organizers have highlighted, the movement goes beyond opposition to racist, violent policing, including support for the liberation of the Palestinian people, and also opposing Islamophobia identifiable in state-led counter-terrorism programmes. The BLM movement and the related anti-racist and abolitionist social movements it has sparked have strengthened decolonial struggles, through awareness and consciousness-raising, but especially through action in the form of protest, political organizing, and building networks of solidarity. Decolonization will only be reached through the power of collective efforts of movements working with communities at the grassroots. Criminology and academic disciplines that have long served colonialism and empire must join this project or be brushed aside.

References

Abdel-Fattah, R. (2019). Countering violent extremism, governmentality and Australian Muslim youth as "becoming terrorist". *Journal of Sociology*, 56(3), 372–387.

Addley, E., & Topping, A. (2017, January 27). Council admits racially discriminating against two boys over Prevent toy gun referral. *The Guardian*. https://www.theguardian.com/uk-news/2017/jan/27/bedfordshire-local-education-authority-admits-racial-discrimination-brothers-toy-gun-school-police

Aked, H. (2020). False positives: The prevent counter-extremism policy in healthcare. https://www.medact.org/wp-content/uploads/2020/07/MEDACT-False-Positives-WEB.pdf

Barker, C. (2015, February 10). Australian government measures to counter violent extremism: A quick guide. https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/3650900/upload_binary/3650900.pdf;fileType=application/pdf#search=%22library/prspub/3650900%22

Barker, C. (2017, August 18). Update on Australian Government measures to counter violent extremism: A quick guide. https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/5461291/upload_binary/5461291.pdf

Blakeley, R., Hayes, B., Kapoor, N., Kundnani, A., Massoumi, N., Miller, D., Mills, T., Sabir, R., Sian, K., & Tufail, W. (2019). Leaving the war on terror: A progressive alternative to counter-terrorism policy. https://www.tni.org/files/publication-downloads/leaving_the_war_on_terror_online.pdf

Coppock, V., & McGovern, M. (2014). 'Dangerous minds'? Deconstructing counter-terrorism discourse, radicalisation and the 'psychological vulnerability' of Muslim children and young people in Britain. *Children & Society*, *28*(3), 242–256.

Dagistanli, S., & Poynting, S. (2017). Terrorism and anti-terrorism laws in Australia. In A. Deckert & R. Sarre (Eds.), *The Palgrave handbook of Australian and New Zealand criminology, crime and justice* (pp. 331–345). Palgrave Macmillan.

Fekete, L. (2004). Anti-Muslim racism and the European security state. *Race & Class*, *46*(1), 3–29.

Hardy, K., Ananian-Welsh, R., & McGarrity, N. (2021). Democracy dossier: Secrecy and Power in Australia's National Security State. https://cdn.getup.org.au/2836-GetUp-Democracy-Dossier.pdf

Hillyard, P. (1993). *Suspect community: People's experiences of the Prevention of Terrorism Acts in Britain*. Pluto Press.

Holmwood, J., & Aitlhadj, L. (2022). The people's review of Prevent. https://www.preventwatch.org/wp-content/uploads/2022/03/Peoples-Review-of-Prevent.pdf

Holmwood, J., & O'Toole, T. (2017). *Countering extremism in British schools? The truth about the Birmingham Trojan horse affair*. Policy Press.

Jackson, L. (2022, March 11). The inside story of how a 'bogus' letter roiled Britain. *The New York Times*. https://www.nytimes.com/2022/03/11/podcasts/trojan-horse-podcast-takeaways.html

Kapoor, N., Kalra, V., & Rhodes, J. (2013). *The state of race*. Springer.

Kumar, D. (2012). *Islamophobia and the politics of empire*. Haymarket Books.

Kundnani. A. (2007). *The end of tolerance: Racism in 21st century Britain*. Pluto Press.

Kundnani, A. (2012). Radicalisation: The journey of a concept. *Race & Class*, *54*(2), 3–25.

Kundnani, A. (2016). Draft paper on Islamophobia as lay ideology of US-led empire. http://www.kundnani.org/draft-paper-on-islamophobia-as-lay-ideology-of-us-led-empire/

Living Safe Together. (n.d.). Doctors understanding radicalisation to violent extremism. https://www.livingsafetogether.gov.au/Documents/fact-sheet-doctor-understanding-radicalisation-extremism.pdf

McCulloch, J., & Pickering, S. (2009). Pre-crime and counter-terrorism: Imagining future crime in the 'war on terror'. *British Journal of Criminology*, *49*(5), 628–645.

MEND. (2018, May 25). "No evidence that PREVENT actually prevents terrorism" – UN Special Rapporteur slams UK's Counter-terrorism strategy. https://www.mend.org.uk/no-evidence-prevent-actually-prevents-terrorism-un-special-rapporteur-slams-uks-counter-terrorism-strategy/

Ministerial Council on Immigration and Multicultural Affairs. (2006). A national action plan to build on social cohesion, harmony and security. https://library.bsl.org.au/jspui/bitstream/1/1350/1/National-Action-Plan-2007.pdf

O'Donnell, A. (2016). Securitisation, counterterrorism and the silencing of dissent: The educational implications of Prevent. *British Journal of Educational Studies*, *64*(1), 53–76.

Pantazis, C., & Pemberton, S. (2009). From the 'old' to the 'new' suspect community: Examining the impacts of recent UK counter-terrorist legislation. *British Journal of Criminology*, *49*(5), 646–666.

Poynting, S., & Briskman, L. (2018). Islamophobia in Australia: From far-right deplorables to respectable liberals. *Social Sciences*, *7*(11), 1–17

Poynting, S., & Mason, V. (2008). The new integrationism, the state and islamophobia: Retreat from multiculturalism in Australia. *International Journal of Law, Crime and Justice*, 36, 230–246.

Poynting, S., & Whyte, D. (Eds.) (2012). *Counter-terrorism and state political violence: The 'war on terror' as terror*. Routledge.

Qurashi, F. (2018). The Prevent strategy and the UK 'war on terror': Embedding infrastructures of surveillance in Muslim communities. *Palgrave Communications*, *4*(1), 1–13.

Sabir, R. (2017). Blurred lines and false dichotomies: Integrating counterinsurgency into the UK's domestic 'war on terror'. *Critical Social Policy*, *37*(2), 202–224.

Said, E. (2003). *Orientalism*. Penguin Books.

Segalov, M., Pritchard, R., & Tait, M. (2016, August 26). The problem with Prevent: "I was investigated by the government's anti-radicalisation programme". *The Guardian*. https://www.theguardian.com/uk-news/video/2016/aug/26/prevent-anti-radicalisation-muslims-london-video

Sentas, V. (2014). *Traces of terror: Counter-terrorism law, policing, and race*. Oxford University Press.

Sivanandan, A. (2008, November 6). Catching history on the wing. https://irr.org.uk/article/catching-history-on-the-wing/

Stein, J., & Townsend, M. (2021, January 31). Muslim boy, 4, was referred to prevent over game of Fortnite. *The Guardian*. https://www.theguardian.com/uk-news/2021/jan/31/muslim-boy-4-was-referred-to-prevent-over-game-of-fortnite

Sukarieh, M., & Tannock, S. (2016). The deradicalisation of education: Terror, youth and the assault on learning. *Race & Class*, *57*(4), 22–38.

Thomas, P. (2020). Britain's Prevent strategy: Always changing, always the same? In J. Busher & L. Jerome (Eds.), *The Prevent duty in education* (pp. 11–31). Palgrave Macmillan.

Tufail, W. (2015). Policing Muslim communities in partnership: 'Integration', belonging and resistance. In N. El-Enany & E. Bruce-Jones (Eds.), *Justice, resistance and solidarity: Race and policing in England and Wales* (pp. 18–20). Runnymede Trust.

Vincent, C., & Hunter-Henin, M. (2018, February 6). The problem with teaching 'British values' in schools. *The Conversation*. https://theconversation.com/the-problem-with-teaching-british-values-in-school-83688

Williams, G. (2011). A decade of Australian anti-terror laws. *Melbourne University Law Review*, *35*, 1136–1176.

Wood, E.M. (2003). *Empire of capital*. Verso.

Yassine, L., & Briskman, L. (2019). Islamophobia and social work collusion. In D. Baines, B. Bennett, S. Goodwin, & M. Rawsthorne (Eds.), *Working across difference: Social work, social policy and social justice* (pp. 55–70). Red Globe Press.

19

Decolonizing terrorism

Racist pre-crime, cheap orientalism, and the Taqiya* trap

Ahmed Ajil

A decolonial lens

Decolonization must first and foremost be concerned with changing institutions and power structures in a way that serves the liberation and emancipation of the oppressed, lest decolonization becomes little more than a "metaphor" (Tuck & Yang, 2012, p. 1). Besides that, at an epistemic level, decolonization efforts must also confront the persistent colonialities in the production of knowledge. Firstly, in their own right, because of the resulting epistemic injustice and secondly, because they, in turn, influence how colonial power is deployed, preserved, and re-negotiated on the ground, with tangible repercussions for individuals and communities. This dual focus of decolonial scholarship – both on the production of knowledge and the social power structures – is particularly applicable to how the phenomenon called terrorism has been studied and dealt with. In terms of knowledge production, the field of terrorism studies has been criticized in many regards, especially concerning its problematization of Islam, Muslims, and assumed psychological-culturalist traits of individuals associated with this religion. Given the field's Western-centrism, the persistent focus on Islam and Muslimness as a central factor in terrorism research can be understood as a continuation of an orientalist tradition of thought (Said, 1978) and adoption of the collective imaginary of the 'Arab villain' which has served to legitimize the colonization of Arab-Muslim peoples (Salaita, 2006; Shaheen, 2003). In practical terms, the impacts of counterterrorism policies and practices have been borne disproportionately by Black and Brown Others, especially those associated with the imaginary of the Arab-Muslim figure.

This chapter adopts a specifically decolonial reading of terrorism research and practice, by narrowing in on the logics, narratives, mechanisms, and dynamics that, so my argument, are vestiges and vectors of colonialist logic that serve to oppress, marginalize, and disenfranchise the Arab-Muslim Other. These colonialities maintain the image of a dangerous and lunatic Arab-Muslim Other and downplay the role of colonial violence in the past and present. I argue

* As will be explained below, the term *taqiya* refers to the dissimulation of one's true religion or beliefs in order to escape harm.

DOI: 10.4324/9781003176619-21

that these characteristics are inscribed in the coloniality of power (Quijano, 2000) establishing systems of knowledge and hierarchy that disfavour the Arab-Muslim Other. The term colonialities in this context refers to narratives, ideologies, and patterns of thought that posit the Arab-Muslim Other as intellectually inferior, culturally retrograde, and a threat to the security and safety of the white body.

To do so, I draw on my experiences as a scholar and practitioner in this field over the past decade. I have been studying the trajectories and stories of those called terrorists and listened to the views of practitioners who engage with them, whether in the realm of politics, policymaking, prosecution, criminal defence, prison, probation, or reintegration. My research is primarily qualitative, including hundreds of hours of interviews and ethnographic observation in Europe, North America, and the Arab World as well as analyses of social media (Ajil, 2022b). In Switzerland, where I am based, my fieldwork has included observations of terrorism trials and participation in about 20 conferences on counterterrorism. In my function as a scientific collaborator at a think tank on prison and probation, I have been part of the development of policies and practices relating to terrorism and radicalization prevention in Switzerland. I have also been increasingly involved in legal cases (criminal law, administrative law, asylum law) concerning individuals accused of or tried for terrorism-related offences to support lawyers and provide expertise. Through this work and direct contact with defendants and convicts, I have been able to access confidential documents and analyze the discourse and praxis of the War on Terror. Since 2017, I have documented, using reflective writing and autoethnography, my various experiences in the field and inside the workings of the counterterrorism *dispositifs* (Foucault, 1980).

As an Arab-Muslim scholar of political violence, I am both the subject and object of my research. Through my navigation of the realms of terrorism research and counterterrorism praxis, I have – intellectually – experienced the weight of colonial power, especially because my scholarship tends to be critical. I highlight state violence and analyze terrorism as a product of it. I denounce state practices in the fight against terror. I do not shy away from pointing out violations of the fundamental rights of those accused of being or convicted as terrorists. This stance collides with the hegemonic discourse on terrorism. Therefore, my opinions, positions, and scholarship often provoke strong reactions and even censorship, which create brief moments during which the veil of colonial power is lifted. For instance, when opinion pieces are refused by major newspapers because my argument "neglects the simple statistical reality that the overwhelming number of terror attacks are committed by Muslims" (A. Ajil, personal communication, 26 February 2020, translated from German) or "because it only shows the perspective of the convicted terrorist" (A. Ajil, personal communication, 15 April 2021, translated from French), or when scientific articles are refused because "it seems like the author is justifying terrorism" (A. Ajil, personal communication, 2 March 2021), or through reactions in conferences and workshops. I have made a constant effort to document and analyze these moments in as much detail as possible.

After presenting my reflections on the entanglement of state-centrism and orientalism in knowledge production on terrorism, I elaborate on how colonialities, which serve to marginalize and alienate the Arab-Muslim Other, have been able to reach further into the ordinary lives of innocent citizens due to a racially charged ideology of preventionism. I argue that underlying the identified colonialities is the notion of *Taqiya*, which has institutionally legitimized mistrust against the Arab-Muslim Other in all spheres of society's engagement with the terrorist phenomenon. It serves, however, specifically to ensure that the Other remains stuck in the figure of the terrorist.

The Muslims are coming!: Defending the state against the Other

The pursuit of 'security' in the post-9/11 era has meant insecurity for many peoples, predominantly from the Global South but also those associated with it in the Global North, through imperial violence in the form of neo-colonial military interventions and occupations, extrajudicial kidnappings and killings, torture, indefinite detention without trial, and deportation of suspects to states where they face torture. In the domestic sphere, the dominant security paradigm facilitated "the rise of the preventive state" (Zedner & Ashworth, 2019, p. 429) with expansionist surveillance practices and pre-crime policing.

These practices have led to the stigmatization and marginalization of those associated with terrorist danger, miscarriages of justice, and disproportionate restrictions on the rights of suspects. The right to a fair trial is circumvented through the use of administrative rather than criminal law, civic space is shrunk, and the rule of law is weakened (Abbas, 2019; Amarasingam, 2021; Crawford & Hutchinson, 2016; Zedner & Ashworth, 2019). A United Nations (2020) report highlights that counterterrorism is informed by overly simplistic generalizations and stereotypes and lacks a "robust scientific basis" (p. 1) and "human-rights-based monitoring and evaluation" (p. 6).

The counterterrorism *dispositifs* around the world – *dispositif* in the Foucauldian (Foucault, 1980) sense, which includes the practices, laws, documents, discourses, and narratives that underlie and perpetuate a particular power balance and hegemonic frame of reference – have evolved in symbiosis with the realm of research. The past 20 years have seen the development of a strand of scholarship somewhat in isolation, dismissing the knowledge that had been produced before, leading to its subjugation as largely "unknown" knowledge (Jackson, 2012).

This field is characterized by a particularly high level of promiscuity that involves the realm of policymaking. Terrorism scholars' research priorities and findings tend to mirror the terrorism-related concerns of states and legitimize their counterterrorism efforts (Jackson, 2012; Schmid, 2013; Silva, 2018). Some observe that "the state has been not just the primary sponsor of knowledge-production, but also the primary consumer of research" (Stampnitzky, 2011, p. 7) with respect to terrorism, while others have qualified radicalization research as a form of "embedded expertise" (Mills, Massoumi & Miller, 2020, p. 9). Criminology's increased engagement with terrorism has done little to change this, given that it is mainly the positivist and state-centrist mainstream of the discipline that has engaged with this object of research (Ahmad & Monaghan, 2019).

It is hardly surprising, then, that terrorism research examining the role of institutional actors, policies, and state violence remains marginal (Duclos, 2020; Qureshi, 2020). Structural, sociopolitical, geopolitical, and historical factors are sidelined in the analysis (Ajil, 2022a; Geisser, Marongiu-Perria & Smaïl, 2017; Githens-Mazer & Lambert, 2010; Jackson, 2012; Kublitz, 2021; Lafaye & Rapin, 2017). State terrorism also remains underexplored, being mentioned in 2.1 percent of articles published between 2007 and 2016 (see Schuurman, 2019). Meanwhile,

> [G]overnments ignore research critical of status-quo surveillance, intelligence and policing strategies in favour of questionable 'indicator' and 'evidence-based' studies attempting to identify the cultural, theological, psychological or even social characteristics of those in the so-called radicalisation process.
>
> *(Silva, 2018, p. 45)*

The field's state-centrism is accompanied by an orientalist outlook: Besides the research-policy promiscuity, almost all terrorism research considered relevant is produced in European and North American universities (Campana & Lapointe, 2012; Mohammed, 2021), and focuses

on phenomena and movements that are predominantly located in the Middle East and North Africa (Schuurman, 2019), hence reproducing a traditionally colonialist relationship between the metropolis and the periphery (Mohamedou, 2018). In concrete terms, this has paved the way for orientalism's renewed entering into force through increased emphasis on the figure of the Arab-Muslim Other and the problematization of Islam:

> The understanding of that violence of the savage has become boxed into a discussion on terrorism that strips it of its political nature and moves to discuss anthropologically the Muslim, Arab, Brown, Black, or Southern perpetrator and the scriptures of their nominal religion.
>
> *(Mohamedou, 2018, p. 20)*

Cheap orientalism

While orientalism, as described by Edward Said (1978), was complicit in justifying colonial projects and dehumanizing the colonized, it arguably also required a certain level of sophistication and a broader understanding of the Arab-Muslim world. With the rise and spread of terrorism studies and pseudo-expertise in media, journalism and among different professions involved in countering the terrorist threat, I have observed what I consider *cheap orientalism*: By perpetuating racist stereotypes and problematic assumptions about terrorism, it has similar effects but requires much less sophistication. It suffices to throw around a few Arabic terms or Islamic concepts such as *Jihad, Shari'a, Taqiya* or *Hijra* to convey the impression of being a terrorism expert. I realized this when reading through a report produced by a prison guard who had spent time in a French prison with 'radicalized' prisoners. It was obvious that the individual had no deeper understanding of the terms and concepts used. Someone without a prior understanding of these concepts may, however, be easily fooled into perceiving this person as a jihadism expert. *Cheap orientalism* is particularly worrisome because the focus on jihadist violence is often the only reason why such practitioners or researchers become interested in the Arab-Muslim world. Thereby, their engagement with the cultures and religions associated with it is based on an exclusively securitizing and criminalizing lens. The 'knowledge' they produce and disseminate will then further corroborate the association between Islam and terrorism.

In practice, this translates as an abuse of terms and concepts associated with Islam in the context of working with individuals who have been accused or convicted of terrorism-related offences. Practitioners, such as police officers, prison guards or psychologists, use such *ad-hoc* acquired pseudo-knowledge to confront individuals of concern, enthusiastic about the prospects of 'understanding how these people think' and knowing how to deal with them, yet completely oblivious to the grossly dehumanizing nature of their statements. One police officer I interviewed mentioned that he had "learned so much about Islam" and was able to confront accused individuals with his acquired knowledge, which as he admitted was often counterproductive. During my research with terrorism convicts, I was often told that such pseudo-theological confrontations performed by non-Muslim laymen are extremely offensive and tend to further alienate the accused and convicted.

Violent Muslims

Terrorism research and counterterrorism practice are riddled with theses that – explicitly or implicitly – link Islam to violence. They rest on predominantly speculative and far-fetched assumptions or selective extracts from Islamic scriptures and are inscribed in a larger discourse

of clashing civilizations and Islam's supposed incompatibility with democratic values. They draw on the works of authors and activists who suggest that the Judeo-Christian civilization is being invaded by groups with an Islamist agenda (Carr, 2006; Kundnani, 2014). They include so-called *comprador intellectuals* – referring to native intellectuals that serve the interest of the oppressor (Andrade, 2020; Dabashi, 2011) – with an Islamic background or name who contribute to associations of Islam with violence, misogyny, and oppression. These ex-Muslims often benefit from the fact that the Islamic identity has become a precious political currency that helps amplify their voice and visibility.

The fear of 'Islamization' is pervasive in Europe and Northern America. While the fear itself is at least partly based on orientalist associations of the Arab-Muslim figure with dangerousness, it is in the reactions against this perceived invasion that we can track down colonial vestiges more fruitfully. More generally, they appear as a vehement rejection of multiculturalism, diversity, and political correctness. In relation to terrorism, they manifest in calls to fight back more decidedly against what is seen as Islamist terrorism, "not on our knees, but standing upright, eye to eye, using our police. The same police that you dislike" (Addor, 2020, translated from French), as a Swiss parliamentarian said during debates on increasing anti-terror measures. Behind such statements often lurks the white supremacist fantasy of a strong white Europe (Kundnani, 2014).

The reactions also appear as celebrations, in the public sphere, of harsh sentences for terrorism-related offences, regardless of the actual acts committed. Admittedly, those who demand no mercy for terrorist offenders tend to have in mind the perpetrators of attacks in Paris, Brussels or Berlin. The reality is, however, that most terrorist offenders have committed not a single act of violence, but engaged in acts considered as propaganda, typically via social media (Ajil & Lubishtani, 2021). Such nuances are dismissed in favour of a monolithic 'they are all the same' mentality. This dehumanization would not be possible were the archetypical terrorist in the collective imaginary not one with Arab-Muslim traits. The toughness of the stance is in this respect differential.

The fact that engagement in jihadist terrorism is explained by mainstream terrorism scholarship as mainly religiously motivated is itself a manifestation of coloniality. It posits a sort of continuum between religiosity and violence: The more religious, the logic goes, the more likely the individual is to adopt a sectarian ideology that promotes violence in the name of Islam. This assumption leads to the securitization of aspects of life that are *a priori* unrelated to security matters and ultimately the extension of biopolitical control over Muslim bodies.

In a nationally funded study on extremism among youth, a group of predominantly white male researchers set up a questionnaire to determine extremist attitudes. The questions, posed only to interviewees who identified as Muslim, asked about their perception of the importance of religion (the higher the importance, the more extremist the attitude) and their observation of Islamic principles (the more observant, the more hostile towards non-traditional Muslims). On the other hand, believing that the conflicts in Islamic countries have to do with the interventions of Western powers was qualified as hatred of the West. During a conference where these results were presented, a group of German researchers described how they entered into conversations with supposed Salafists on Facebook, by creating fake profiles that used Islamic names and a Koran as a profile picture. It is particularly worrisome that such researchers are visibly oblivious to the fundamentally racist nature of their instruments.

Criminalizing anti-colonial critique

A compounding effect of the field's state-centrism and orientalism manifests itself in the downplaying of the role of the colonial past and neo-colonial enterprises. As I have pointed out

elsewhere (Ajil, 2022a), grievances in relation to colonial suffering are sidelined as foci of analysis (see also Agozino, 2003; Githens-Mazer & Lambert, 2010; Mohamedou, 2018). Prominent radicalization scholars consider colonization to be a "thing of the past" (Roy, 2015) and ridicule its pertinence for contemporary forms of terrorism. This also has to do with the post-ideological and anti-racialist[1] self-understandings of Western academia. Insisting on the link between colonial violence and terrorism – which Mohamedou (2018) calls "colonialism boomerang" (p. 166) – is often seen as excusing terrorism. Anti-colonial activist groups are accused of nurturing extremism and allowing "grievances […] to be extrapolated in a radicalisation process" (Porter, 2015).

In terms of criminalization, this means that political engagement marries poorly with religious convictions. It becomes a zero-sum game between radicality and religiosity. The crackdown on Islamism and political Islam in various contexts has produced a chilling effect among Muslim activists. They are often aware that apolitical religiousness is unproblematic in the eyes of the state, and a certain level of secular activism as well. When political activism takes place in a religious lexicon and out of religious convictions, the association with extremism and terrorism is quickly established. As Kundnani (2014) wrote, in the post-9/11 era, the most disconcerting is

> Western Muslims who identify with the victims of Western state violence in other parts of the world. To be classed as moderate, Muslims must forget what they know about Palestine, Iraq, and Afghanistan and instead align themselves with the fantasies of the war on terror; they are expected to constrain their religion to the private sphere.
>
> *(p. 110)*

Counterterrorism operates on the idea that "believing Muslims are oppressed is a sign of extremism" (El-Bar, 2020). In very tangible terms, this has led to the criminalization, under terrorism legislation, of Facebook posts where ordinary individuals vent their indignation about the victims of the Syrian civil war (Ajil & Lubishtani, 2021).

The racist pre-crime

The fight against terrorism has generated a significant shift into the pre-crime sphere. This has meant that activities are now being prosecuted that were previously considered to be legal. They include posting images or videos on social media, communicating with certain individuals and groups, playing politico-religious chants, etc. With the pre-crime shift, the criminal justice apparatus reaches ever further into a presumably preventive sphere, where activities are increasingly detached from the actual act of violence. This intensified reach is characterized by both more criminalization, and more preventive intervention before a criminal offence is committed. The underlying ideology of *preventionism*, i.e., the belief that security threats should be averted as soon as possible, is a racially charged one. Since it is impossible to monitor the entire population and identify 'potential terrorists', the preventive lens must necessarily discriminate between risky and non-risky identities, places, and attitudes. In the absence of concrete acts of violence in the pre-crime sphere, criminal justice practitioners, prosecutors, and judges must resort to assessments of the individual's beliefs, attitudes, intentions, and purported dangerousness. This is precisely where the theories and assumptions, collective imaginaries and racist stereotypes come in: They serve to establish a hierarchy of risky activities and attitudes and fill the gaps left by the inherent lack of information that characterizes the pre-crime sphere. This is exacerbated by the lack of literacy and competency of the predominantly white, male, non-Muslim-dominated criminal justice apparatus in the Western context.

In practice, preventionism translates as a securitizing focus on religious practices and the wearing of religiously loaded symbols (e.g., headscarf). In a recently distributed pamphlet called "Recognising religious radicalisation" (A. Ajil, confidential documents, translated from German and French) by the Swiss intelligence service, wearing a long beard or a headscarf is associated with Salafism which in turn is explicitly associated with terrorism. In 2015, a police corps in Switzerland sent out a letter to schools and youth organizations to "recognize jihad sympathizers", which said that "sudden change of appearance (e.g., beard)", "sudden interest in Islam or IS" or "quitting a job" (Kantonspolizei, 2015, translated from German) should be reported to the police. During police investigations or in court, this association between Islam and terrorism police is blatantly construed when authorities ask defendants if they identify as practising Muslims or how they interpret certain parts of the Koran. In his expertise on an individual convicted of terrorism-related offences, a psychiatrist responded to the items of a risk assessment instrument with sweeping generalizations such as "based on his religion, he must believe that he holds the only truth" (a major risk factor according to the instrument) or "A feeling of collective victimhood is a given among Sunni Muslims today" (A. Ajil, confidential documents, translated from German) (a risk factor as well). This persistent focus on religion when questions should revolve around an individual's interest or engagement in violent ideologies or groups makes it hard to challenge the argument that individuals are on trial *for being Muslim*.

It further appears that, where information is fragmentary, state power tends to operate according to a logic of *in dubio contra reum*, which means, when in doubt, to assume terrorist links or intentions. At the macro level, this can be found in the collective imagination that intuitively associates Islam with terrorism. While the collective imaginary is elusive and hard to study, it manifests itself in the tacit or explicit assumptions regarding the Arab-Muslim figure. For example, when it comes to media portrayals of the Islamic State group, news of beheadings, rape, enslavement and massacres are commonplace. It is often readily accepted that the group represents, if not all Islam, then a problematic strand of it. While these crimes are indeed committed by this criminal organization, it is the lack of questioning of the link between Islam and violence that reveals stereotypical thought patterns. A report that a Christian or secular militia was committing such crimes would likely provoke a question or two regarding the veracity of the report or incite demands to look further to understand why. There would likely be reservations as to the direct association between Christianity and violence. That a group called Islamic State commits these crimes is more readily accepted.

Within the criminal justice system, the logic of *in dubio contra reum* manifests itself at all stages. It is at play when in situations of stress, those associated with the Arab-Muslim figure are more readily qualified as suspects, for example, when an Algerian-French man chasing the perpetrator of a terrorist attack is arrested by police and described as a potential accomplice by the media (Werly, 2020). It shows when prosecutors and judges decide to define a person as supporting a terrorist group despite extremely thin evidence; it leads journalists to judge defendants not by their acts, but by their attitude and behaviour in court; and it leads people not to question when an Arab-Muslim is qualified as a terrorist. There is, hence, a *selective mental effort* when it comes to the Arab-Muslim figure, and it is in the non-questioning and the taking-for-granted that colonialities surface. This also means that the burden of proof is shifted from the state to the accused individual: They must prove that they are *not* a terrorist sympathizer or *not* dangerous, which is a virtually impossible task.

Finally, racist pre-crime preventionism is characterized by a *high tolerance of false positives* (i.e., wrongful accusation, detention, or conviction of terrorist offences) when the target group is associated with the Arab-Muslim figure. When government representatives, journalists, or researchers argue that some judicial errors can be tolerated for the sake of the greater good

(i.e., a hypothetical sense of safety for the dominant group), this attitude is a racially charged one, because it is the Arab-Muslim body that must endure these false positives. False positives would not be tolerable if they affected members of the dominant group.

Institutionalized mistrust: the Taqiya trap

My final argument is that state power's engagement with the Arab-Muslim Other is encapsulated in the notion of *Taqiya*. Briefly put, *Taqiya* ascribes some legitimacy to lying about one's faith to escape harm and death. The concept has been heavily debated and lacks a consensual definition in Islamic jurisprudence (Suleiman & Khan, 2017). Historically, it is reported to have mostly been used by Shia Muslims to escape death throughout centuries of persecution during the domination of the caliphates. It has also been used against Shia Muslims to declare them liars and infidels. Some argue that the accusation of *Taqiya* is now being used in Europe against all people of the Islamic faith, to delegitimize them and discredit any efforts at integration (Skovgaard-Petersen, n.d.). Parallels can be drawn with anti-Judaism. Unsurprisingly, the idea has been zealously pushed by groups with agendas hostile to immigration and Islam (Daro, 2018).

On the one hand, *Taqiya* serves to institutionalize mistrust (see Stephen & Squires, 2004) against the Arab-Muslim figure and the Islamic religion and culture. This mistrust can be read as a particularly well camouflaged form of racism within criminal justice, which is essentially founded on scepticism: Averting threats to society and national security requires a permanent scrutinizing focus on risky groups. Mistrust is a valued attribute of crime work because it stands in opposition to the naivety of those who are fooled by criminals and terrorists. It is associated with competency. Yet, behind this veil of seemingly professional and necessary mistrust, racist tropes and colonialist ideologies operate unheeded. Through the securitization of previously non-security-related spheres of society and the pervasive fear of terrorism, the institutionalized mistrust was able to spread widely and inform society's general engagement with the Arab-Muslim Other.

On the other hand, it acts as a trap for those members of the Othered body who are associated with the terrorist phenomenon. Once an association is established – facilitated through the collective imaginary and *in dubio contra reum* logics – it is extremely hard for suspects or convicts to rid themselves of it. The idea of *Taqiya* serves to maintain a veil of suspicion and to block any acknowledgement of progress on the part of the accused. Any statement made by the accused or any positive behaviour (in prison, for example) is considered part of a general deception strategy believed to be strategically adopted by terrorists (Hussein, 2015). *Taqiya* is consistently brought up by practitioners and researchers to point out that 'the terrorists' cannot be trusted. Since it is not yet as widespread a concept as *Jihad* or *Shari'a*, it also seems to be a convenient token to show off some ostensive expertise on the topic (cheap orientalism). During my research and practical engagement, I have found various instances where *Taqiya* is used to silence, delegitimize, exclude, marginalize, oppress, and mistreat the Arab-Muslim Other.

Sometimes, *Taqiya* is also mobilized against practitioners and researchers. A German social worker recalled being excluded from the most sensitive discussions and even facing interrogation-like encounters with security agents who were openly sceptical of her trustworthiness as a Muslim woman. Once, she was directly accused of *Taqiya*. On another occasion, a prosecutor declared that "a Salafist has never betrayed a brother" (A. Ajil, personal communication, 2 March 2017, translated from German), indicating sweeping mistrust of anyone accused (by the prosecutor herself) of terrorism-related offences. In court, I have witnessed multiple situations firsthand, where the prosecutor or the judge declared the defendant's statements as

untrustworthy and used the concept of *Taqiya* to corroborate their position. De Koning (2020) encountered this use of *Taqiya* in Dutch courts as well.

Finally, those labelled as terrorists are faced with constant *pressure to repent*. Judges and authorities often point out the lack of repentance among terrorist suspects or convicts, sometimes to justify harsher sanctions. To those individuals, it is often not clear what they should repent of: In the pre-crime sphere, they have usually not committed any physical acts of violence. They often feel like they expressed their sympathies for a terrorist group, but mainly out of indignation about the lack of defence for suffering civilians. Understandably, they often refuse to show repentance for that inherently political engagement, but the pressure to repent does not differentiate in that respect. Not to speak of cases of miscarriage of justice, where convicts maintain their innocence – in such cases, the epistemic violence of being pressured to show repentance is colossal (Ajil & Jendly, 2020). The pressure to repent is again a racially charged one: It focuses on the Otherness of the labelled terrorist because, beyond the criminal offence committed, the individual is seen to have broken the tacit pact that allowed them to enter or remain in the country on the condition that they must never err. They are accused of "nastily abusing the granted hospitality" (Swiss Federal Criminal Court 2016, translated from German). This logic is at the core of the degrading practice of citizenship stripping, which is the ultimate proof of the Other's conditionality of existence within the dominant white body.

Concluding remarks: decolonizing terrorism

The argument laid out here is that knowledge production on terrorism is state-centrist and orientalist: It serves to unleash state power against the Arab-Muslim Other under the banner of fighting terrorism. The worlds of research and policymaking are closely entangled, both structurally and epistemically. The focus on the Arab-Muslim Other has led to a problematization of anything associated with Islam. Grievances about the colonial past and present are dismissed and the phenomenon is depoliticized. Knowledge production benefits from the workings of *comprador intellectuals* and *cheap orientalism*. Given the intertwining of research and praxis, colonialities travel easily between all segments of society and especially within the criminal justice system.

I argue that these characteristics of the field are particularly worrisome because the pre-crime shift has created a larger state-sanctioned space for these colonialities to operate. The focus on Islam makes it hard to deny that individuals are on trial for being Muslim. The logics of *in dubio contra reum* and a selective mental effort divert the burden of proof from the state to the individual and increase the tolerance of false positives. On the other end, once individuals are labelled as terrorists, the concept of *Taqiya* makes it impossible for them to rid themselves of the label. More generally, I propose that *Taqiya* translates as a general and institutionally sanctioned mistrust of the Arab-Muslim Other.

So, where do we go from here? Identifying and naming the colonialities at play in societies' engagement with the Arab-Muslim Other is a necessary step. To decolonize terrorism research and practice, however, these colonialities must be actively confronted. This requires a joint engagement of scholars, activists, lawyers, and grassroots organizations, especially representatives of the Arab-Muslim body, to highlight and denounce the workings of colonial power behind the veil of the fight against terror. The task is a daunting and tedious one. May the light be with us.

Note

1 Anti-racialism is a form of racial denial, "characterised by historical amnesia, through which the histories of colonialism and slavery are not deemed important for the way race operates in contemporary Europe" (Boulila, 2019, p. 1408).

References

Abbas, M.S. (2019). Producing 'internal suspect bodies': Divisive effects of UK counter-terrorism measures on Muslim communities in Leeds and Bradford. *The British Journal of Sociology*, *70*(1), 261–282.

Addor, J.-L. (2020, June 18). Nationalrat Sommersession 2020. Sechzehnte Sitzung. https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=49426

Agozino, B. (2003). *Counter-colonial criminology: A critique of imperialist reason*. Pluto Press.

Ahmad, F., & Monaghan, J. (2019). Mapping criminological engagements within radicalization studies. *The British Journal of Criminology*, *59*(6), 1288–1308.

Ajil, A. (2022a). Politico-ideological violence: Zooming in on grievances. *European Journal of Criminology*, *19*(2), 304–321.

Ajil, A. (2022b). *Politico-ideological mobilisation and violence in the Arab World: All in*. Routledge.

Ajil, A., & Jendly, M. (2020). La fabrication d'un dangereux ennemi terroriste: Une étude de cas suisse. *Déviance & Société*, *44*(4), 635–665.

Ajil, A. & Lubishtani, K. (2021, May 31). Terrorisme djihadiste devant le Tribunal Pénal Fédéral. *Jusletter*. https://jusletter.weblaw.ch/fr/juslissues/2021/1068/le-terrorisme-djihad_4e711fa864.html__ONCE&login=false

Amarasingam, A. (2021). Human rights abuses and the war on terror in South Asia. https://thesoufancenter.org/intelbrief-2021-august-13

Andrade, G. (2020). Dinesh D'Souza as a comprador intellectual: Punditry, media and neocolonialism. *Socialism and Democracy*, *34*(2/3), 61–83.

Boulila, S.C. (2019). Race and racial denial in Switzerland. *Ethnic and Racial Studies*, *42*(9), 1401–1418.

Bundesstrafgericht. (2016). *Geschäftsnummer: SK.2015.45. Urteil vom 18. März 2016*. https://entscheide.weblaw.ch/cache.php?link=18.03.2016_sk.2015.45&sel_lang=en

Campana, A., & Lapointe, L. (2012). The structural "root" causes of non-suicide terrorism: A systematic scoping review. *Terrorism and Political Violence*, *24*(1), 79–104.

Carr, M. (2006). You are now entering Eurabia. *Race & Class*, *48*(1), 1–22.

Crawford, A., & Hutchinson, S. (2016). Mapping the contours of 'everyday security': Time, space and emotion. *British Journal of Criminology*, *56*(6), 1184–1202.

Dabashi, H. (2011). *Brown skin, white masks*. Pluto Press.

Daro, I.N. (2018, April 12). "Taqiyya": How an obscure Islamic concept became an obsession of anti-Muslim activists. *BuzzFeed*. https://www.buzzfeednews.com/article/ishmaeldaro/taqiyya-explained

Duclos, N. (2020). Joining the Kosovo Liberation Army: A continuist, process-based analysis. *Violence: An International Journal*, *1*(1), 21–39.

El-Bar, K. (2020, January 19). UK police pull 'outrageous' pamphlet on Islamic extremism. *Anadolu Agency*. https://www.aa.com.tr/en/europe/uk-police-pulloutrageous-pamphlet-on-islamic-extremism/1707261

Foucault, M. (1980). *Power/knowledge: Selected interviews and other writings 1972–1977*. Pantheon.

Geisser, V., Marongiu-Perria, O., & Smaïl, K. (2017). *Musulmans de France, la grande épreuve: Face au terrorisme*. Les Éditions de l'Atelier-Les éditions Ouvrières.

Githens-Mazer, J., & Lambert, R. (2010). Why conventional wisdom on radicalization fails: The persistence of a failed discourse. *International Affairs*, *86*(4), 889–901.

Hussein, S. (2015, May 28). The myth of the lying Muslim: 'Taqiyya' and the racialization of Muslim identity. *ABC*. https://www.abc.net.au/religion/the-myth-of-the-lying-muslim-taqiyya-and-the-racialization-of-mu/10098252

Jackson, R. (2012). Unknown knowns: The subjugated knowledge of terrorism studies. *Critical Studies on Terrorism*, *5*(1), 11–29.

Kantonspolizei. (2015, September). Früherkennung von Dschihad-Sympathisanten. https://www.humanrights.ch/cms/upload/pdf/151104_Aufruf_Kantonspolizei_TG.pdf

Koning, M.D. (2020). "For them it is just a story, for me it is my life." Ethnography and the security gaze: Academic research with "Salafi" Muslims in the Netherlands. *Journal of Muslims in Europe*, *9*(2), 220–239.

Kublitz, A. (2021). Omar is dead: Aphasia and the escalating anti-radicalization business. *History and Anthropology*, *32*(1), 64–77.

Kundnani, A. (2014). *The Muslims are coming! Islamophobia, extremism, and the domestic war on terror*. Verso Books.

Lafaye, C.G., & Rapin, A. (2017). La 'radicalisation': Individualization et dépolitisation d'une notion. *Politiques de communication, Presses universitaires de Grenoble*, *8*(2), 1–17.

Mills, T., Massoumi, N., & Miller, D. (2020). The ethics of researching 'terrorism' and political violence: A sociological approach. *Contemporary Social Science*, *15*(2), 119–133.
Mohamedou, M.-M.O. (2018). *A theory of ISIS: Political violence and the transformation of the global order*. Pluto Press.
Mohammed, I. (2021). Decolonising Terrorism Journals. *Societies*, *11*(1), 1–18.
Porter, T. (2015, February 27). What is Cage? Jihadi John confidant that describes executioner Mohammed Emwazi as 'beautiful'. *International Business Times*. https://www.ibtimes.co.uk/what-cage-jihadi-john-confidants-that-describesexecutioner-mohammed-emwazi-beautiful-1489672
Quijano, A. (2000). Coloniality of power, eurocentrism, and Latin America. *Nepantla: Views from the South*, *1*(3), 533–580.
Qureshi, A. (2020). Experiencing the war 'of' terror: A call to the critical terrorism studies community. *Critical Studies on Terrorism*, *13*(3), 1–15.
Roy, O. (2015, November 23). Le djihadisme est une révolte générationnelle et nihiliste. *Le Monde*. https://www.lemonde.fr/idees/article/2015/11/24/le-djihadisme-une-revolte-generationnelle-et-nihiliste_4815992_3232.html
Said, E. (1978). *Orientalism*. Random House.
Salaita, S. (2006). *Arab American literary fictions, cultures, and politics*. Springer.
Schmid, A.P. (2013). Radicalisation, de-radicalisation, counter-radicalisation: A conceptual discussion and literature review. http://www.icct.nl/app/uploads/download/file/ICCT-Schmid-Radicalisation-De-Radicalisation-Counter-Radicalisation-March-2013.pdf
Schuurman, B. (2019). Topics in terrorism research: reviewing trends and gaps, 2007–2016. *Critical Studies on Terrorism*, *12*(3), 463–480.
Shaheen, J.G. (2003). Reel bad Arabs: How Hollywood vilifies a people. *The ANNALS of the American Academy of Political and Social science*, *588*(1), 171–193.
Silva, D.M. (2018). 'Radicalisation: the journey of a concept', revisited. *Race & Class*, *59*(4), 34–53.
Skovgaard-Petersen, J. (n.d.). *On Taqiyya and democracy*. https://www.academia.edu/34856255/On_Taqiyya_and_Democracy
Stampnitzky, L. (2011). Disciplining an unruly field: Terrorism experts and theories of scientific/intellectual production. *Qualitative Sociology*, *34*(1), 1–19.
Stephen, D.E., & Squires, P. (2004). 'They're still children and entitled to be children': Problematising the institutionalised mistrust of marginalised youth in Britain. *Journal of youth studies*, 7(3), 351–369.
Suleiman, O., & Khan, N. (2017, April 28). Playing the Taqiyya card: Evading intelligent debate by calling all Muslims liars. https://yaqeeninstitute.org/read/paper/playing-the-taqiyya-card-evading-intelligent-debate-by-calling-all-muslims-liars
Tuck, E., & Yang, K.W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education & Society*, *1*(1), 1–40.
United Nations General Assembly, Human Rights Council, A/HRC/43/46. (2020, February 21). https://digitallibrary.un.org/record/3872336?ln=en
Werly, R. (2020, September 27). A nouveau attaquée, la France bute toujours sur la complexité du terrorisme islamiste. *Le Temps*. https://www.letemps.ch/monde/nouveau-attaquee-france-bute-toujours-complexite-terrorisme-islamiste
Zedner, L., & Ashworth, A. (2019). The rise and restraint of the preventive state. *Annual Review of Criminology*, *2*(1), 429–450.

20

State Terror, Resistance, and Community Solidarity

Dismantling the Police

Chris Cunneen

Introduction[1]

This chapter considers some of the antecedents to the current demands to dismantle/defund the police, specifically in the US, Britain, and Australia. I do this for several reasons. Perhaps the most obvious is the ubiquity of targeted policing against Black and Indigenous people and people of colour. More important, however, for contemporary political strategies is the focus, in earlier movements, on solidarity-making in the community and the connections made with an abolitionist vision for the future. From the late 1960s, the activist movements against police violence linked their work against police terror with organizing and providing services for local communities. Many had an outward vision that was focused on oppression more generally and was internationalist in outlook. I write this from the perspective of someone who is neither Black nor Indigenous, who grew up in an Australian working-class environment where police and prison were ubiquitous, who worked in community organizations during the 1980s and who has been active in various campaigns around police violence, prison, and deaths in custody in both First Nations and working-class communities.

The Black Lives Matter (BLM) movement today draws on earlier campaigns in recognizing the importance of replacing police with:

> community-based services that meet basic needs and advance safety without using methods of policing, surveillance, punishment, and coercion. It is also about investing in cultural life, arts, recreation, and the things that make and strengthen community and our dreams for our future.
>
> *(Movement for Black Lives [M4BL], n.d.)*

The call to 'defund the police' advocates to both *divest* from police and *invest* in "jobs, education, housing, health care — all the elements that are required for a productive and violence-free life", according to US abolitionist Ruth Wilson Gilmore (as cited in Kushner, 2019, n.p.). Thus, the movement is "about presence, not absence" in the words of many abolitionists like Ruth Gilmore, Mariame Kaba (2021) and others. It is about building life-affirming institutions and creating a society that does not need to rely on force, violence, and mass incarceration.

DOI: 10.4324/9781003176619-22

The protest movements against police and security forces have been linked in many countries to broader abolitionist and decarceral strategies. As the M4BL succinctly states:

> And while #DefundPolice focuses on law enforcement agencies, we are also calling for defunding of jails, prisons, detention centers, immigration enforcement, sites of involuntary commitment and incarceration of disabled people. We are also calling for defunding the military-industrial complex.
>
> *(M4BL, n.d.)*

It is a challenge to the carceral and colonial society which embeds a logic of state violence, repression, and forced confinement as necessary, morally justified, and of benefit for the protection of citizens. Patrisse Cullors, a co-founder of the US BLM movement, recognizes that "we live in a police state, in which the police have become judge, jury and executioner. They've become the social worker […] the mental health clinician […] they've become anything and everything that has to do with everyday life" (as cited in Heatherton, 2016, p. 36). The targets of all this punitiveness remain depressingly familiar: the poor; the marginalized; racial, ethnic, and religious minorities; Indigenous peoples; refugees; immigrants; and people with disabilities who fill the police lock-ups, courtrooms, prisons, and other carceral sites in countries around the world.

The abolitionist project confronts the violence and oppression that are at the heart of how police, prison, and other carceral institutions operate, in both the wealthy, liberal democracies of the North and the countries of the Global South. Indeed, profound class, gender, racial, dis/ableist, and other social divisions and inequalities replicate the targets of police and carceral institutions internationally with repressive and coercive state institutions enforcing these relational divisions and spaces of oppression. The political strategies that directly challenge police and security forces are often local and place based, with campaigns, for example, against individual state murders; however, they necessarily confront the global intersections of state repression and maintain an internationalist vision that recognizes the multidirectional flows of techniques of state domination. Witness, for example, the repressive police strategies practised by the Israeli state against Palestinians, which are then exported as training to US cities (Schrader, 2019, p. 18).

The international uprisings against state violence in 2020 had roots in the longer anti-colonial struggles to dismantle the institutionalized frameworks of control – these roots were common across the Global North and South. Contemporary police and security forces had their origins as tools of colonial repression for poor, marginalized, racialized, and oppressed peoples globally. There is an international dimension to the opposition to the police, which links to the longer histories of imperialism, colonization, slavery, and settler colonialism – from the development of the police as a colonial force for pacification in the early nineteenth century to the contemporary role of policing in wielding the direct violence of the colonial state, whether as, for example, the Israeli state against Palestinians, Latin-American states against Indigenous peoples, or African states using colonial-style police forces for ruthless internal suppression.

Underpinning these contemporary demands is the long history of policing as the violent arm of colonialism and imperialism in its various forms. However, there is also the more recent history of the struggle against police violence which arises in the revolutionary movements of the 1960s and 1970s. In the Global North, the anti-imperialist struggles against the American war in Vietnam and opposition to its interventions and support for dictatorships in Latin America and elsewhere, the anti-apartheid movement, the civil rights movements, the rise of workers' and students' militancy, and the women's and gay rights movements brought a generation of

people into direct contact with the ferocity of state violence. Many of the popular movements were not simply oppositional – they were concerned with responding to the needs of communities in accessing healthcare, education, housing, and safety, and they were concerned with building community solidarity. The historical fragments I provide below reflect some pieces of this much larger mosaic of struggle. I draw on them to consider wider reflections of what might be learnt from these experiences.

Intersecting Stories of Activism

Confronting state violence was central to the radical politics of the Black Panther and First Nations liberation movements in the US and Australia from the late 1960s. The formation of the American Indian Movement (AIM) in Minneapolis, the Black Power movement in Australia, and the Black Panther Party for Self-Defense in the US reflect the struggle for autonomy, self-defence, and self-determination which emerged alongside protecting local communities from police terror. In short, the struggle against police violence and racism was one of the defining features of modern First Nations and Black radical political movements in both Australia and the US and began in both countries at similar moments.

The movements understood that colonialism was a core structure that underpinned police violence. The Black Panther Party was formed in 1966 and initially involved direct resistance to policing. Activists like Stokely Carmichael and Bobby Seale linked the contemporary position of Black people in the US with the history of domestic colonialism and the US imperialist war in Vietnam. The work of Frantz Fanon was used as a point of analysis in the Panthers' writings, and police violence and killings were constant themes. According to Seale (1967), "the racist military police force occupies our community just like the foreign American troops in Vietnam" (p. 7). The Black Panthers' Ten Point Program (1972) was inclusive. It called for an end to "police brutality and murder of Black people, other people of color, and all oppressed people inside the United States" (p. 2). It was internationalist and called for an "end to all wars of aggression" by the US. The Ten Point Program addressed education, housing, employment, and health care. The Black Panthers (1972) were abolitionists.

> We want freedom for all Black and oppressed people now held in U.S. federal, state, county, city and military prisons and jails […]. We believe that the many Black and poor oppressed people […] have not received fair and impartial trials under a racist and fascist judicial system and should be free from incarceration. We believe in the ultimate elimination of all wretched, inhuman penal institutions, because the masses of men and women imprisoned […] are the victims of oppressive conditions which are the real cause of their imprisonment.
>
> *(p. 1)*

In the late 1960s and early 1970s, First Nations political activists in Australia understood that the contemporary position of Aboriginal people was created by colonial oppression. They had connections with Māori activists in Aotearoa New Zealand, the Polynesian Panthers in the Pacific, both the American Indian Movement and the Black Panthers in the US, First Nations people in Canada, and the Caribbean Black Power movement. They were also involved in the opposition to apartheid in South Africa and Australia's involvement in the American war in Vietnam. The more radical activists were influenced by a range of international writers from Frantz Fanon and Sartre to Stokely Carmichael, Malcolm X, and James Baldwin. They saw their position within the context of colonialism and imperialism and as part of the international Black Power

movement (Foley, 2001; see also Attwood, 2003, pp. 318–349). A leading activist at the time, Denis Walker, stated "when I say I'm first black and then Aboriginal […] I see behind it the link that can go on with black people to the north of us, black people in Africa, black people in India" (as cited in Foley, Schaap & Howell, 2014, p. 131).

In late 1971, Black Power activists established the Black Panther Party of Australia. Key members included Denis Walker, Sam Watson, Gary Foley, Paul Coe, Gary Williams, and Billie Craigie. Their platform had some similarities to the US Party, except that it contained some important and specifically Indigenous provisions for land rights, restitution, and a United Nations supervised plebiscite for Aboriginal people to determine "the will of black people as to their national identity" (as cited in Attwood & Markus, 1999, pp. 252–254). Concerning the police and prisons, their platform demanded "freedom for all black men held in prisons and jails" and "an immediate end to police brutality, murder and rape of black people". This could be achieved by giving "communities control of the police" (as cited in Attwood & Markus, 1999, p. 253). Other Aboriginal activists, such as Bruce McGuinness, saw the establishment of the Black Panther Party in Australia not as a copy of the US but as part of an international movement and an international philosophy – it was akin to what Fanon had advocated for – a Third World movement (see Foley, Schapp & Howell, 2014, p. 136).

The First Nations and Black movements were never merely negative protests. Like the BLM movement and calls to defund the police today, they were quintessentially focused on positive interventions for community protection, advocacy, and the building of community-led initiatives to support Black, Indigenous, and oppressed peoples. In the US Black Panthers, Huey Newton recognized the necessity to connect with communities and their needs. Thus began the provision of the Panthers' many survival programmes, including free breakfasts for children, food packages, schooling, legal and social security advice, free ambulances, free clothing, free bus transport for prison visits, housing, and medical treatment (Newton, 1973; PBS, 2002). So, while the Black Panther Party set out to protect the community from police violence, they also provided community services and support that otherwise could not be accessed. They developed a wide-ranging commitment to addressing social needs. As Mary Bassett (2019) writes, "the Black Panther Party evolved from an organization focused on armed self-defense against police brutality to one that framed police violence as part of broader social violence" (p. 352). The provision of community-based health care is an example. Utilizing the assistance of health activists, the Panthers set up free community-based medical clinics beginning in Chicago in 1969. In the early 1970s, there were free health clinics established by the Panthers in 13 American cities and a national sickle cell screening programme (Bassett, 2019). By 1972, the Ten Point Program of the Black Panthers (1972) called for "completely free health care for all Black and oppressed people" (p. 2). The Panthers pursued a community healthcare model: they linked ill health with poverty and racism and had a holistic approach to healthcare – health and social justice were intertwined. A similar model was developed by AIM in the US and Black Power activists in Australia. It has had a lasting impact on the provision of community health care to poor and oppressed people ever since.

The American Indian Movement began in Minneapolis in the summer of 1968. A group of Native American activists led by George Mitchell, Dennis Banks, and Clyde Bellecourt called a community meeting to address the issue of extensive police violence, brutality, and racism experienced by First Nations people in the city – as a result, AIM was formed. It was "born out of the dark violence of police brutality and the voiceless despair of Indian people" (Ikche, 1993, n.p.). It established the Minneapolis AIM Patrol to actively monitor police violence and brutality against First Nations people, particularly around public housing projects. Growing from the initial patrol, a national network of AIM patrols was established in 16 cities and

communities facing similar problems across the country. The following year, AIM established the Indian Health Board of Minneapolis, which was the first Native American urban-based health care provider in the US. In 1970, the Legal Rights Center opened in Minneapolis with the support of AIM, Black and other activists who were committed to addressing the criminalization of First Nations and Black people, and people of colour in the criminal legal system (see LRC, 2022). The Legal Rights Centre still operates in Minneapolis today and continues its fight against police violence and racial and culturally based oppression. AIM continued with its activism, advocacy, and demands for self-determination, participating in the 19-month occupation of Alcatraz Island, the establishment of Indian Survival Schools to provide culturally based education for First Nations children and the Trail of Broken Treaties march on Washington DC in 1972, which resulted in the occupation of the Federal Bureau of Indian Affairs. It engaged in a range of other community-based and national initiatives from local food and employment programmes to national strategies for fighting racism in sports and the media. The AIM was instrumental in establishing the International Indian Treaty Council (IITC) in 1974, which still operates today with a membership of Indigenous peoples from the Americas, the Caribbean, and the Pacific. It continues to support Indigenous anti-colonial struggles for Indigenous rights and environmental justice.

In Sydney, Australia, concern over deaths in police custody and constant police violence, brutality, harassment, and racially discriminatory arrests of Aboriginal people led to the establishment of the first Aboriginal Legal Service (ALS). During the 1960s, the Aboriginal-Australian Fellowship and the NSW Council for Civil Liberties were involved in several important legal cases over police killings, assaults, and the abuse of police powers. However, a group of young Black activists took more direct action. In 1969, Gary Foley, Paul Coe, Gary Williams, Billie and Lyn Craigie, and others decided to establish a patrol to observe and collect information on police violence and harassment in the Redfern area. The group was aware of the Black Panthers' establishment of the 'pig patrol' in Oakland, California to counteract police violence and intimidation, and similar patrols were also established in Brisbane by Aboriginal activists including Denis Walker (Foley, 2001). Developing from the pig patrol and with support from volunteer lawyers, in early 1970 the ALS opened its doors as the first free shopfront legal assistance service in Australia. It still operates today.

The Black Power movement in Australia was politically committed to the process of empowering community action. As Black activist Roberta Sykes stated, "concerted effort on behalf of the entire community, and with the assistance of the entire community, creates a force and a power in itself […] which will propel the people towards a better way of life" (as cited in Howell, 2014, p. 72). Gary Foley (2001) observed that "the establishment of the Redfern Aboriginal Legal Service was to create a resurgence of pan-Aboriginal nationalism" (p. 3). In July 1971, the Redfern Aboriginal Medical Service was established based on the same model of community control as the ALS. Similarly, the Aboriginal Housing Company was established as a community housing provider in Redfern. A breakfast programme was established for local Aboriginal children in Redfern in 1972 that later became a community-run childcare centre named Murawina (meaning Black woman). The National Black Theatre was also established. Over subsequent years, Aboriginal-controlled legal, medical, housing, and childcare services were to spread throughout Australia. The model of community-run legal and medical services was to influence the establishment of similar service delivery initiatives in broader society. Today, the peak bodies for First Nations legal and medical services – the National Aboriginal and Torres Strait Islander Legal Service Secretariat and the National Aboriginal Community Controlled Health Organization – are two of the most influential bodies representing the interests of First Nations peoples in Australia.

In Minneapolis, Redfern, and Oakland, First Nations and Black organizations, born from the struggle against police violence, were fundamentally concerned with fighting for sovereignty, self-determination, and community control. In 1972, both the AIM's march on Washington DC and the establishment of the Aboriginal Tent Embassy in Canberra were powerful anti-colonial symbols of unrelinquished Indigenous sovereignty and nationhood. The struggle against police brutality and the use of the prison system against Black, Indigenous, and other oppressed peoples were important; however, they were always part of the development of broader strategic political platforms, including sovereignty, self-determination, restitution/reparations, and land rights. Furthermore, while organizing and fighting against police violence was an immediate response to the need for survival, First Nations and Black organizations pushed those demands further through the provision of focused projects in areas of health, education, housing, legal assistance, community safety, and other forms of support. These initiatives were part of the broader process of building community solidarity and deepening the political understanding of the causes of racism, poverty and oppression.

The Black Power movement in Australia and the Black Panther Party and AIM in the US were subject to covert surveillance, active intervention and violence by law enforcement and security agencies. The FBI's Counter-Intelligence Program (COINTELPRO) targeted the Panthers and AIM as well as other groups and aimed to "expose, disrupt, misdirect, discredit or otherwise neutralize" their activities (Harcourt, 2018, pp. 136–138). It led to the killing of the chairman of the Chicago chapter of the Black Panthers, Fred Hampton (Harcourt, 2018). In Australia, the federal Australian Security Intelligence Organisation (ASIO) and state police Special Branch operatives had been monitoring Aboriginal activists since the early 1950s. In the following decades, they targeted the rise of the Black Power movement using surveillance, phone taps, and informants; some activists were listed as threats to national security (Foley, 2011). Fifty years later, in 2017, the FBI developed the term "Black Identity Extremism" to describe the BLM movement and Black activism. It was grouped with White Supremacy Extremism as posing an equivalent threat of racially motivated violent extremism. According to Kimberlé Crenshaw (2020), "these allegedly equivalent tendencies were treated as a threat on par with ISIS, justifying a major program of surveillance, investigation, and infiltration" (p. 15).

Policing Britain's Internal Colonies

One of the most important commentaries on policing, race, and the politics of law and order in the Global North was *Policing the Crisis*. Stuart Hall et al. (1978) showed how racism, authoritarianism, and state violence were enabled through the figures of dangerous young Black men and the crime of 'mugging'. The 'problem' of Black and Asian immigration was defined through Black youth and crime while policing and the maintenance of law and order became attached to an appeal to the 'British Nation'. The policing of Britain's internal colonies – to use Hall's term – increasingly involved arbitrariness, violence, and strident levels of racism. Racist violence and Black and Asian resistance to police harassment and abuse were evident throughout the 1970s in places like Notting Hill, Stockwell, Southall, and Brixton in London, and elsewhere in England including in Manchester and Birmingham (Gilroy, 1987). As Sivanandan (1990), another key Left intellectual who was the Director of the Institute of Race Relations and the founding editor of the journal *Race and Class*, recognized, "the story of black struggles in the 1970s has almost always been the story of confrontations with the police" (p. 135).

During the 1970s, paramilitary police units began to play a more repressive role, including the Special Patrol Groups (SPGs) and the Police Support Units (PSUs). These units actively policed/harassed Black communities and were used to intimidate and disrupt anti-racist and

anti-fascist demonstrations such as Rock Against Racism and Anti-Nazi League protests during the 1970s. Several anti-racist demonstrators were killed in London in SPG baton charges, including Kevin Gately in 1974 and Blair Peach in 1979 (Gordon, 1985). In the case of Peach, it took 31 years to release an internal police report which found that Peach was "almost certainly" killed by an SPG officer (Chaudhary, 2019, n.p.). Forty years after his death, in 2019, there were renewed calls for a public investigation into his killing and why it had been covered up for so long (Chaudhary, 2019).

The Black British academic and activist Paul Gilroy (1987) articulated, in the early 1980s, an important insight for abolitionists and those calling for dismantling the police today: it is "fruitless to search for programmatic solutions to 'discriminatory police behaviour' in amendments to [police] training" (p. 109). For Gilroy, the problem was seeing racism as a product of individual bias, rather than a structural condition of oppression in which policing played a strategic role. Gilroy (1987) argued further that the war in Northern Ireland had affected policing in the rest of the UK through the adaptation of operational techniques and methods of surveillance. Foreshadowing current arguments (see Harcourt, 2018; Rodriguez, this volume; Schrader, 2019), he observed that domestic policing was changing through the influence of counter-insurgency planning and growing militarization. Likewise, 'community policing' was never more than a complementary strategy to militaristic police interventions (Gilroy, 1987).

In 1980, Stuart Hall (1980) followed up the themes of *Policing the Crisis* in *Drifting into a Law and Order Society*. He wrote: "We are now in the middle of a deep and decisive movement towards a more disciplinary, authoritarian kind of society […]. This drift into a 'Law and Order' society is no temporary affair" (pp. 257–258). The authoritarian state was aimed at controlling those who were seen as ungovernable: the 'scroungers', the 'enemy within' – to use then Prime Minister Margaret Thatcher's popularized phrases. It was the corollary to the recalibrated capitalist free market and the retraction of the welfare state that was inevitably and simultaneously driving social conflict and class polarization. For Hall (1980), the police had become "the disciplinary arm, the shock troops of the Law and Order society" (p. 265). He noted the highly visible and aggressive role of policing in industrial disputes and in the policing of Black communities, which he referred to as the "war of attrition" between the police and Black people (Hall, 1980, p. 266). Hall (1980) also identified the militarization of the police, which was particularly evident in the saturation policing of Black areas and the use of discriminatory stops and searches. His analysis was prescient to the urban uprisings of 1981 and 1985 and the policing of the British miners' strike in 1984.

The summer of 1981 saw anti-police riots across many English cities involving mostly but not exclusively Black youth, sparked by aggressive policing, discriminatory stop and searches, and saturation policing. The most intense clashes were in parts of London, Liverpool, Birmingham, Manchester, and Leeds (Cowell, Jones & Young, 1982). As a result of the conflict, police received more riot training and equipment, including CS gas and plastic bullets. Meanwhile, the public face of policing continued with a community policing profile – multiagency initiatives, racial awareness training, neighbourhood watch, and so on (Sim, Scraton & Gordon, 1987). The urban uprisings were closely followed by overt class warfare. The British miners' strike began in March 1984 after the Thatcher government closed collieries they regarded as uneconomical. The ensuing strike was reportedly the longest in British history. It was met by a massive and violent police response. Arthur Scargill (1986), the president of the National Union of Mineworkers, described the outcome of the policing of the miners' strike:

> We had 11,000 people arrested during the course of the dispute, including myself. We had 7,000 people injured, many of them hospitalised… We also had in the region of 200 jailed.

> We also had, tragically, eleven people killed during the miner's strike… The police also did something that was more blatant than we'd ever seen before. They fabricated evidence, they deliberately lied in the witness boxes, they forged documents.
>
> *(p. 16)*

The violence of the police coalesced with broader government support for more aggressive policing. Comparing the experience of the miners with unrestrained state terror to that of racialized policing, Arthur Scargill commented, "police tactics in this dispute have revealed clearly to us what black and Asian communities throughout Britain mean by 'police harassment'" (as cited in Gordon, 1985, p. 161). In September and October 1985, there were further violent confrontations between young people and police in Brixton and Tottenham (London) and Handsworth (Birmingham). All of these were sparked by police violence and brutality: the police beating of a Black woman in Handsworth, the police shooting of a Black woman in her home in Brixton, and the death of a Black woman in her home in Tottenham after a police raid. Sivanandan (1990) noted at the time that this was life in Britain's Gulags.

The confrontations with police through the 1970s and 1980s gave rise to new forms of community-based organizations and resistance. Some of these interventions used the legal system to advance political struggle through, for example, using criminal trials as a political platform, while, at the same time, mobilizing community support and protest outside the legal system. As Paul Gilroy (1987) explained, "this combination of tactics and the synchronization of protest inside and outside the law provided a model which was to become central to the political repertoire of black activism up and down this country" (pp. 125–126). The campaigns and struggles included self-defence groups against racist violence, defence and support groups for particular people victimized by police and the justice system, and local groups established to monitor police (Sim, Scraton & Gordon, 1987). There was also the use of independent, community-driven inquiries after serious confrontations and killings by police. This was a direct response to the limitations of official inquiries or the refusal by the state to hold any inquiry. After the SPG killing of Blair Peach, the National Council for Civil Liberties established its own inquiry into his death and the policing of Southall during the anti-fascist demonstration of April 1979. Sim, Scraton and Gordon (1987) noted: "the Inquiry documented a chilling picture of uncontrolled state violence towards legitimate demonstrators whose primary motivation was to protect their community from a racist presence on their streets" (p. 32). During the 1980s, local councils also established independent inquiries into policing, for example, in London and Birmingham. These inquiries documented people's experiences with the police. In Tottenham, witness after witness spoke, "of the indignities which they suffered at the hands of the police officers for no other reason that they were Black. The bitterness of their experience was shared by old and young, men and women, professional people and unemployed" (as cited in Sim, Scraton & Gordon, 1987, p. 34).

A key moment, in the 1990s, was the racist murder of Black teenager Stephen Lawrence in London in 1993. He was killed by a white racist gang known for other attacks in the area. The events following Stephen's murder included the establishment of the Stephen Lawrence Campaign and the subsequent Macpherson Inquiry, which reported in 1999 (see Elliot-Cooper, 2021), concluding that there were fundamental police errors in the murder investigation, which was "marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers" (Macpherson, 1999, para 46.1). The effects of police corruption, incompetence, and racism in responding to the racist killing of Stephen Lawrence were to reverberate for decades. In 2012, two of the five perpetrators were convicted of murder. The legacy of Stephen Lawrence's death lived on in other ways. In 2013, Peter Francis, a

former police officer with the Special Demonstration Squad, revealed that, while working undercover in an anti-racist campaign group, his superiors constantly pressured him to find 'dirt' and 'disinformation' that could be used to smear the reputations of the Lawrence family and supporters and to undermine their campaign. Senior officers also withheld information from the Macpherson Inquiry about his undercover role (see Evans & Lewis, 2013). In the longer term, the importance of the Stephen Lawrence Campaign was critical. Adam Elliot-Cooper (2021) acknowledges that the campaign was both a search for justice by the family, and "also a movement of resistance which took on the most powerful state institutions, forcing London's Metropolitan Police to concede publicly their own institutional racism in the face of irrefutable evidence" (p. 57). The campaign resulted in a range of community outcomes, including the Stephen Lawrence Centre in South London and the Stephen Lawrence Trust focused on education.

There are two final points in this discussion on the recent history of policing in Britain. One is the debate, which emerged in the 1980s among the Left, on questions of reformism and abolitionism which, while bound by their historical milieu, is still relevant today in the discussions of defunding/dismantling the police. Those who adopted a liberal, reformist position on policing emphasized that crime was a problem for working-class and Black communities which needed to be addressed, and that reform of the police and criminal justice system was capable of achieving that outcome. Those on the Left who understood the limitations of reform were disparagingly described as abolitionists and "idealists" (Sim, Scraton & Gordon, 1987, pp. 39–59). Yet, the reformist position failed to address the profound impact of institutional racism and the intersections of class and race. Despite the weight of historical evidence, the extreme state violence evident in Britain during the 1980s, and the social and political authoritarianism of the Thatcher Conservative government, reformists argued that the police could be made accountable to the community, that increasing militarization could be stopped and public confidence restored. History was not kind: New Labour came to power in 1997 with a further strengthening of the carceral agenda through its 'Tough on Crime, Tough on the Causes of Crime' programme.

The second point concerns community activism. I have drawn from the analysis of the Stephen Lawrence Campaign by Elliot-Cooper (2021) and his observation that "almost every campaign calling for justice following a Black death at the hands of the police is led by a woman" (p. 57), a mother, a partner, a sister. He makes the point that Doreen Lawrence and her campaign for justice for her son was to influence how subsequent campaigns approached grassroots community building, protest, the court system, and the mainstream media. Elliot-Cooper (2021) acknowledges the role of Black feminism in seeing the family as a potential source of strength, as a space or site of resistance against racism rather than primarily as a site of oppression. We see something akin to this in the role First Nations women and families (including, e.g., Helen Corbett, Rose Stack, and Alice Dixon) played in the public campaigns over police killings in Australia from the 1980s onwards and the more recent role of Black and First Nations women in the BLM movement in the US (including, e.g., Patrisse Cullors and Alicia Garza). It is also a demonstration of the strength of Black and Indigenous people and people of colour and working-class familial relations that runs counter to the dominant racialized (media, academic, and political) discourses of dysfunction, violence, and criminality.

Conclusion

The idea of drawing lessons from the past is always problematic, if for no other reason than the changing political, social, economic, and historical contexts. Having said that, we can at least

identify some considerations that are relevant today. The struggle against state repression highlights what we need to do to build solidarity within the community and across communities of difference. So much of the lasting work of the movements in the late 1960s and 1970s has been in the role of community-based organizing to meet basic needs: medical, housing, legal, and so on. In other words, it has been about *presence* in the community.

The building of solidarity across groups has also been fundamental, if not always easy. Thirty years ago, Angela Davis and Elizabeth Martinez (1994) warned that building alliances needed to avoid what they referred to as the "oppression Olympics" (n.p.). Building coalitions for challenging state power requires a focus on the common interests and connections that exist, rather than emphasizing hierarchies of oppression. Today, Dean Spade (2020), for example, speaks of the need to develop "a multi-issue and solidarity-based approach because […] lives are cross-cut by many different experiences of vulnerability" (p. 15). The recent history also shows the importance of multifaceted political strategies, from strategic use of the legal system to public protest; it has also involved the use of international forums from UN committees and complaints mechanisms to international human rights organizations.

Finally, the history of the struggle against state violence and terror has highlighted many of the current debates between abolitionism and reformism. The limitations of police reform through community relations and training were articulated 40 or more years ago. Yet, we still see the same solutions presented. With the hindsight of decades of so-called police reforms, we are in a better position to understand the limitations of these approaches, and perhaps articulate more clearly the difference between those reforms which simply work to strengthen police and carceral systems and those which diminish police power. This is perhaps the most important task. As Ruth Gilmore and others argue, abolitionism is a long-term goal *and* a practical policy programme that requires investment in social goods that enable a productive life: "It's obvious that the system won't disappear overnight […] no abolitionist thinks that will be the case" (Gilmore as cited in Kushner, 2019, n.p.). Reforms are needed but they need to be reforms that actually change the order of things.

Note

1 With authorization from the publisher (Bristol University Press), this chapter draws from an earlier work by Cunneen (2023).

References

Attwood, B. (2003). *Rights for Aborigines*. Allen & Unwin.

Attwood, B., & Markus, A. (1999). *The struggle for Aboriginal rights*. Allen & Unwin.

Black Panthers (1972). Ten point program. https://www.collectiveliberation.org/wp-content/uploads/2015/01/BPP_Ten_Point_Program.pdf

Chaudhary, V. (2019, April 21). Forty years on, Southall demands justice for killing of Blair Peach. *The Guardian*. https://www.theguardian.com/uk-news/2019/apr/21/southall-demands-justice-killing-of-blair-peach-1979

Cowell, D., Jones, T., & Young, J. (Eds.) (1982). *Policing the riots*. Junction Books.

Crenshaw, K. (2020, August 13). Fear of a Black uprising. Confronting the white pathologies that shape racist policing. *The New Republic*. https://newrepublic.com/article/158725/fear-black-uprising-confronting-racist-policing

Cunneen, C. (2023). *Defund the police: An international insurrection*. Policy Press.

Davis, A. Y., & Martinez, E. (1994). Coalition building among people of color. *Inscriptions*, 7, Center for Cultural Studies, University of California.

Elliot-Cooper, A. (2021). *Black resistance to British policing*. Manchester University Press.

Evans, R., & Lewis, P. (2013, June 24). Police 'smear' campaign targeted Stephen Lawrence's friends and family. *The Guardian*. https://www.theguardian.com/uk/2013/jun/23/stephen-lawrence-undercover-police-smears

Foley, G. (2001). *Black Power in Redfern 1968-1972*. http://gooriweb.org/history/233.pdf

Foley, G. (2011, April 7). Of spooks and imaginary plots: ASIO and the 1970s Black Power movement. *Tracker Magazine*. http://www.gooriweb.org/essays/tracker/tracker1.html

Foley, G., Schaap, A., & Howell, E. (Eds.) (2014). *The Aboriginal tent embassy: Sovereignty, Black Power, land rights and the state*. Routledge.

Gilroy, P. (1987). The myth of Black criminality. In P. Scraton (Ed.), *Law, order and the authoritarian state* (pp. 107–120). Open University Press.

Gordon, P. (1985). "If they come in the morning…": The police, the miners and Black people. In B. Fine & R. Millar (Eds.), *Policing the miners' strike* (pp. 107–120). Lawrence & Wisehart.

Hall, S. (1980). Drifting into a law and order society. In J. Muncie, E. McLaughlin & M. Langan (Eds.), *Criminological perspectives: A reader* (pp. 257–270). Sage.

Hall, S., Critcher, C., Jefferson, T., Clarke, J., & Roberts, B. (1978). *Policing the crisis*. Macmillan Publishers.

Harcourt, B. (2018). *The counterrevolution: How our government went to war against its own citizens*. Basic Books.

Heatherton, C. (2016). #BlackLivesMatter and global visions of abolition: An interview with Patrisse Cullors. In J.T. Camp & C. Heatherton (Eds.), *Policing the planet* (pp. 35–40). Verso.

Howell, E. (2014). Black Power – By any means possible. In G. Foley, A. Schapp, & E. Howell (Eds.), *The Aboriginal tent embassy: Sovereignty, Black Power, land rights and the state* (pp. 67–83). Routledge.

Ikche, W. (1993). What is the American Indian Movement? *Document from AIM 25th Anniversary Conference/ International Peoples Summit* September 1–6, 1993. https://archive.org/stream/wotanging_ikche_1993/wotanging_ikche_1993_djvu.txt

Kaba, M. (2021). *We do this till we free us*. Haymarket Books.

Kushner, R. (2019, April 17). Is prison necessary? Ruth Wilson Gilmore might change your mind. *New York Times Magazine*. www.nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html

LRC. (2022). Our history. https://www.legalrightscenter.org/our-history.html

Macpherson, W. (1999). The Stephen Lawrence inquiry. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf

Movement for Black Lives [M4BL]. (n.d.). #DEFUNDPOLICE, #FUNDTHEPEOPLE, #DEFENDBLACKLIVES, Concrete steps toward divestment from policing and investment in community Safety. www.drive.google.com/drive/folders/1gZz_k20UY0JQADf2UKblS5ivMqo-53Rx

Newton, H.P. (1973). *Revolutionary suicide*. Penguin.

PBS. (2002). A Huey P. Newton story: Community survival programs. www.pbs.org/hueypnewton/actions/actions_survival.html

Scargill, A. (1986, February 26). Interview with Arthur Scargill – "You fight for your class". *Tribune*. p. 16.

Schrader, S. (2019). *Badges without borders: How global counterinsurgency transformed American policing*. University of California Press.

Seale, B. (1967, June 20). The coming long hot summer. *The Black Panther*. https://www.marxists.org/history/usa/pubs/black-panther/01n03-Jun%2020%201967.pdf

Sim, J., Scraton, P., & Gordon, P. (1987). Introduction: Crime, the state and critical analysis. In P. Scraton (Ed.), *Law, order and the authoritarian state* (pp. 1–70). Open University Press.

Sivanandan, A. (1990). *Communities of resistance. Writings on Black struggles for socialism*. Verso.

Spade, D. (2020). *Mutual aid: Building solidarity during this crisis and the next*. Verso Books.

Part III

Abolishing the carceral

21

Abolition as a decolonial project

Debbie Kilroy, Tabitha Lean and Angela Y. Davis

As we put pen to paper to write these words, our fingers linger heavily on the keyboard. Our eyes are misty and our shoulders heavy, and we ask that you forgive us for the overwhelming emotions that may cloud our thoughts in this introduction. But we cannot put this matter aside. To look away is a privilege not afforded to all of us, and certainly a privilege we refuse to exploit. As we write this chapter, the verdict in the Rolfe murder trial is being handed down. National Indigenous Television (NITV – the 'Australian'[1] national Aboriginal broadcasting network) has broken the news that Northern Territory policeman Zachary Rolfe has been found not guilty of the murder of Warlpiri teenager Kumanjayi Walker in Yuendumu in November 2019. Constable Rolfe was also found not guilty of the alternative charges of manslaughter and engaging in a violent act causing death. This outcome is unfathomable to us. And as we write this, we hear barely a whisper, let alone a roar from the colony, at this gross injustice.

Another Black man – a teenager – has been killed by police with impunity.

Another Aboriginal life snuffed out by those charged with upholding the law. Those charged with the 'highest honour' of maintaining good order and protection of property. Those who wear badges and guns and tell us they are here to keep us safe – just not all of us, right?

Certainly not Kumanjayi who was fatally shot three times by this police officer – two of those shots fired into his restrained body, in his home, on his ancestral lands, the night before he was scheduled to surrender himself to law enforcement in Yuendumu.

Despite there being more than 500 Aboriginal deaths in carceral custody since the Royal Commission into Aboriginal Deaths in Custody in 1991, Rolfe was the first police officer in the Northern Territory to be charged with murder. The Aboriginal community could be forgiven for hoping that justice could have prevailed, but the non-Aboriginal[2] jury was unable to find the constable culpable. It was not just whiteness, however (though certainly a big factor), but also a question of legal privilege. Rolfe's legal team consisted of the very best Queen's Counsels and barristers the police union could buy. The legal team argued that the 12 previous complaints, including five from the North Australian Aboriginal Justice Agency (NAAJA), were 'tendency' evidence, and therefore the jury was not able to hear this evidence. The colonial and arcane criminal procedural law worked in Rolfe's favour, to quite literally plead legal 'privilege'. Aboriginal people are grieving. Warlpiri families and the Yuendumu community are devastated. While Constable Rolfe welcomed the verdict, Yuendumu families wept. The Justice for Walker

DOI: 10.4324/9781003176619-24

Facebook page posted: "We had a trial. Just not a fair one. Heartbroken." The colony might call this justice, but we call this murder, and as Dr Watego says, "fuck hope" (Watego, 2021).

This was not how we intended to start this chapter, but perhaps it is fitting. Perhaps it is fitting to start with grief. Perhaps it is appropriate, right, and proper because it is 2022, more than 200 years since this colony was created. A time when more police officers have been promoted than found culpable in relation to an Aboriginal death in custody. It is fitting because this colony, indeed this country, is a site of mourning.

This chapter will not take the usual form. This is both an act of sovereignty and an act of resistance. This is decolonization. What is the use of talking about decolonial scholarship if we do not, in fact, employ, honour, and practice it? As criminalized women, whose stories have been largely erased from the lexicons of knowledge, we assert the right to centre our knowledges and stories as expertise. By centring our lived prison experience, we challenge the hegemony that academia continues to hold over 'legitimate' knowledge about criminality and those who 'offend' and counter the incessant reproduction of racialized dynamics and white knowledges favoured and valorized by universities. We seek to disrupt these canons. In doing this, we also resist the epistemic violence projected onto criminalized bodies. In order to achieve this, the world must think differently about what people can teach us about state violence by changing the way we see knowledge being produced and reproduced, and by whom.

For this chapter, we employ the ancient art of storytelling drawn from struggles against racism, heteropatriarchy, and capitalism, and bring these stories and experiences into the dominant discourse. Brayboy (2005) explains that "stories are our theories […] and are, therefore, real and legitimate sources of data and ways of being" (pp. 426, 430). Wilson (2008) states that storytelling in research enables the Indigenous researcher to build a relationship with the reader. Tafoya (1995) explains, "stories go in circles. They don't go in straight lines […] [p]art of finding is getting lost, and when you are lost you start to open up and listen" (pp. 11–12). Our stories will orient you; they will steer, guide, and teach you. Stories are medicine and they have the capacity to heal us. Our stories are not linear, they will not direct, rather they will guide. They are method and meaning, not instruction. Therefore, the stories we gift you may not appear immediately relevant; however, you will find meaning if you are able to pause and reflect.

As Indigenous people are fond of doing, let us travel backwards to understand the present. As respected Māori First Nations scholar Linda Tuhiwai Smith (1999) states, "history is important for understanding the present, and reclaiming that history is a critical and essential aspect of decolonization" (p. 31).

So, let us start at the beginning.

Tabitha's story

I remember tripping over as I was pushed into the metal prison van. I had on these gold and black slip-on shoes I had ordered online. They were one size too big for me, and as they were ballet flats, they kept catching on the back of my pants' hem. I dressed nicely for court that day. I was carrying quite a bit of weight at that time. The anti-depressants I was on had ballooned my weight out and I worried the judge would think I was slovenly. So, I dressed in clothes that I thought would slim out my large frame, when really nothing was going to make an ounce of difference in the courtroom that day.

As I stumbled into the back of the transport van, my toe hit metal and my forehead grazed the top of the door. I thought I would be staring into a large open space, but the seat was right there in front of me. I manoeuvred my hefty body around and sat on the cold metal seat and the officer slammed the door closed on me. I mean literally – he slammed it on me. The metal

door touched my nose. I was basically sitting in a metal coffin. There was no room to move, let alone exhale and expand my lungs. If my hands were not cuffed, my arms could not have even stretched to full length in front of me. This was like being buried alive, one of my recurring childhood night terrors. I started to panic. The darkness folded into me and not even the stars that I started to see in my eyes brought any relief from the blackness that enveloped me. I was going to prison.

I thought it would rain the day they took me away from my family. But the sun was shining. I saw my last glimpse of sunshine as I clumsily stumbled from my metal coffin into the prison gates, with a guard under each of my arms pushing me along my way. I sat in the concrete cell and wept. I know they were ugly tears because there was nothing dignified about where I was or what was to come. An officer came over to the small holding cell and dramatically looked me up and down: she was sizing me up for a uniform. No one spoke to me. I was being given the silent treatment. After what felt like 700 lifetimes, the heaviest of jangling keychains approached the cell, and stepped inside. Now, this cell was smaller than a broom closet, I could smell the onion on his breath, he was standing that close to me. He bellowed, "Ms Lean, you are here for breach of bail." I stammered, "Ah no, I'm not on bail." "What the fuck did you say? Did you just speak to me, bitch?", he bellowed back. "I … ahhh … I just said I am not on breach of bail, I was sentenced…" "You better learn your place, bitch, you're here for what I say you're here for." I closed my eyes and swallowed and told myself to shut up. My mind just kept repeating over and over again, "they're going to kill you Tabs, you're going to die in this hell with fluoro lighting."

The next thing I knew I was being stripped. I stood barefooted on the hard concrete floor completely naked with two officers standing before me. I was very aware of everything and nothing around me. One officer told me to spread my legs, squat, and cough. I looked at them, unsure of what they were asking. They repeated the instruction as if I was deaf. Their partner eyed my body up and down. I felt so exposed. I became super conscious of every bump and line and bulge on my frame. I willed my body to fold into itself as if I had some forcefield inside of me that could be engaged to protect me from their leers – but I was not a superhero. As I shuffled my feet to shoulder width apart, one of the officers narrowed their eyes because they had spied something. It was the tampon string hanging between my legs. "Remove that," they said gesturing to my crotch. "What?" I whispered. "Take the fucking tampon out." A small cry escaped my lips. I felt humiliated. I reached down and yanked the bloody tampon out of my vagina. I could not lift my eyes from the ground. The tampon dangled from my fingers like a dead mouse hanging from a cat's mouth. I did not know what to do with it and this amused the officer, who started to laugh. Their laughter was contagious, and it set the other officer into a state of mirth. I just stood there pathetically trembling; naked, legs apart, with a used tampon hanging from my bloodied fingertips while they laughed at me. The sequence of events that followed haunts me in the midnight hours. From being forced to shower in front of two strangers who stood with their arms crossed over their chest and their eyes firmly planted on my chest, to having my hair ploughed through and inspected for lice, to being warned gruffly not to "fuck anyone" inside, to being called a liar at every turn, I honestly believed I was going to be killed in those first 12 hours. Not killed by other prisoners, but by the people in uniforms. The officers.

Debbie's story

It was 1975, the first time I went to prison. I was just a child, and I was in my school uniform the day they took me away. All I had in my possession that day was two clothes pegs. I remember that clearly because as I emptied my pockets on admission and turned them out, all that I had on me was two little plastic pegs. I was stripped and showered with an antiseptic as if they

had to wash the filth off me. I was given prison-issued clothes, grey shorts and a t-shirt – the colour of them matching the institutional bleakness that surrounded me. The humiliation ratcheted up when they placed a nit cap on my head to treat me for head lice I did not even have. You had to wear that for three whole days. None of this had anything to do with infection control or germ prevention but everything to do with shaming and control.

On admission, every girl had to have a gynaecological exam. They said it was so we could swim in the swimming pool. I was stripped and dressed in a white medical gown, then placed on an exam bed, where they inserted the cold, hard speculum. I was a virgin, like almost every single girl in that place. This was their policy of so-called care. This was state-sanctioned sexual assault, and I was just 14 years old.

It would be during my next incarceration four months later that the course of my life would be altered. My father died. He died while I was inside, and he died suddenly and unexpectedly. Now getting news of a family death when you are locked up is hard at any time but hearing that your parent has died when you are a kid is emotionally crippling. I received the news of my father's death from the prison psychiatrist with a nurse by my side. When I lashed out as my grief overwhelmed me and I physically hurled my body across at them, I was restrained and placed in a padded cell. I was exiled from human care and comfort. I was placed in a cage and left to flail about with only my grief and tears to keep me company.

Hours passed and I spent every one of them throwing my body against the wall, thrashing my arms and legs about the room. After some time, the matron appeared. Over and over again she told me I had killed my father: "It's your fault Deborah. Now, will you behave?" The grief and pain were inexplicable. I had killed my father. I believed what they said, and I hated them. I hated every fucking dog in that place.

Angela's story

I was underground and staying in an apartment outside Miami when I learned that the FBI had added me to their Ten Most Wanted Fugitives List. Serendipitously, on a Sunday night in September 1970, I was mindlessly watching a television drama entitled *FBI*, which closed each episode with a 'most wanted' series with information about and photographs of a real-life person wanted by the FBI. Having been out of touch with virtually everyone I knew since I had gone underground, I had no real source of information about ongoing developments in my case. While I obviously knew that I was being sought by the police, and probably the FBI, I had absolutely no idea that I had been declared one of their ten most wanted criminals. My heart dropped when my image flashed on the TV screen and the star of the fictional show began to talk about me as if I were the most dangerous person in the world.

Not long after this mediated encounter with the FBI – and despite my best efforts and those of the friend who was accompanying me – I was captured by FBI agents in a New York City hotel, triumphantly displayed to an enormous contingent of journalists, and then transferred to the Women's House of Detention. The House of D – as the people inside liked to call it – was already familiar to me because I knew that Elizabeth Gurley Flynn (Chairperson of the Communist Party in the early 1960s) had spent time there, as had members of the Black Panther Party, Afeni Shakur and Joan Bird. What I did not know was that I would soon become one of the many women forced to undergo what amounts to sexual assault by the jail authorities – or what Debbie Kilroy and others at Sisters Inside have called sexual assault by the state. A routine feature of the intake process was the strip search, shower, and internal search during which a male doctor jammed his fingers into the women's vaginas and rectums. This happened not only on intake but, as I later learned, every time an incarcerated person left the

House of D and every time they returned. The doctor was creepy – and women in the jail told me later that this was his only duty. Like them, I found the experience to be quite weird and deeply disturbing, but it was not until many years later that I began to understand it as normalized and routinized gender violence.

At the conclusion of what seemed like an interminable intake process, I was directed to a special section of the jail. I later learned that it was the section reserved for women who were deemed psychologically unstable and who were forced to take such psychotropic drugs as Clorazine. Because the jail authorities had decided to house me in this section, I was also subjected to drug-taking routines. (When I was eventually moved to the main population, I learned that the distribution of psychotropic drugs was quite widespread, not so much because the women incarcerated suffered psychological problems, but because behind walls, drugs were viewed as an effective, gendered method of control.) Refusing to submit to their drug routine was one of my few successful acts of resistance while inside.

How our experiences bring us to abolitionism

We are criminalized women. Three disposable humans who have seen the grotesque bowels of the cages used to exile and punish. The state has cast us as criminals and misfits. This is, in part, how we have come to abolition, and how our criminalized bodies have come to be abolitionists.

The stories we have presented are our gift to you. Stories, though, are part gift and part medicine. The sharing of stories renders the teller vulnerable, but also emboldened – they have the capacity to heal. It is in this plurality that we find strength and weakness – it is in this space that magic can be made. We have gifted you a part of us. A part of us that no one else sees or feels. It is up to you what you make of that gift. The stories are interwoven with both the personal and the political. They have sought to disrupt the hegemonic notion that criminalized bodies are inherently deviant and our stories intend to carve out a space of possibility, or as Salazer (2020) calls it, creating a moment which is a portal.

Now the portal is open. This is a time of infinite possibility. You would not think so when you look around and see the emboldening of conservatism and racism across the world, impending war, famine, fire, flood, and pandemic. But this is a critical juncture. A crucible moment. A time to make emergent another way of being. We three are seeing a powerful condemnation of racism and carceral violence across the world – the call to build a world in which the Prison Industrial Complex is obsolete has never been louder. We have a chance right now to challenge the ubiquitous belief that there are 'throw-away' people. This is our chance to abolish systems and professions that are anti-black and pro-colonial. Abolition, by nature of being a radical decolonial perspective, has contributed new concepts and theories for understanding the multiplicity of oppressions and for developing new strategies for liberation. Abolitionism is at its core and in its practice a decolonial, anti-racist, anti-patriarchal, and anti-ableist project. Abolition theory is environmental, international, intersectional, and pro-cooperation.

In this country they call Australia, we are seeing a gradual and hesitant emergence of abolition in public discourse. However, the reality is that the carceral state is relatively young in its formation in this country, given the colony itself is only 233 years old.

Tabitha: what does abolition mean to you as a First Nations woman?

Safety – individual or community safety – cannot come without freedom and justice because who we are and what we are comes from the alchemy of our struggles. If we dismantle systems that cage and punish, we can explicitly fight genocide and dispossession and create a world

focused on radical reciprocity and accountability. Abolition, therefore, is a necessary element of the decolonial struggle. As a theory and a practice, abolition allows us to dislodge the logic of imprisonment, and while it is concerned with overturning and disestablishing, it is also a building project, a reconstructive process, an invitation to think about how we want to be in a relationship with each other, with property, and with institutions. It is a recalibration. So, if you are banging on about decolonization in your workplaces, pedagogies, classrooms, policies, organizations, and articles and you are not an abolitionist then you are *not* decolonizing. If you are judging people and exiling people and punishing people, then you *are* an agent of the carceral state. Because abolition absolutely requires us to all disentangle ourselves from the pull to vengeance, the pull to retribution and revenge, the pull to punishment, the pull to surveillance, the pull to act like a cop – and yes, that even means the little cop in your head.

And for me, abolition is not just about getting rid of cages, it is about actually undoing the parts of society that continue to feed on and maintain the oppression of masses of people, mainly my people, through punishment, violence, and control. Because the Prison Industrial Complex is not an isolated system, abolition must be a broad strategy. And so, I am interested in building models today that develop and represent how we want to live in the future. It is because of that, that I see abolition as both a practical organizing tool and a long-term goal. The day I walked out of those prison gates, I turned to look back at the barbed wire and said "I will be back", not as their captor, but to tear down those walls and free my people, and I will not rest until we have broken the bars, torn down the walls, smashed the chains, and abolished the system that sucks the life out of our communities.

Angela: can prisons be abolished before addressing the social problems that lead to the mass incarceration of marginalized communities?

The long history of resistance to imprisonment reveals that critics, reformers, and other advocates of civil and human rights tend to focus myopically on the institution of the prison. Rather than asking questions about the necessity of the institution itself, they have repeatedly attempted to improve the way it performs its putative job of rehabilitation in the name of justice. Unfortunately, activists who have linked the radical transformation of socio-economic conditions more broadly to strategies of producing more just modes of addressing the reasons why people go to prison, have been in the minority. Thus, the institution of the prison has survived over the last centuries precisely because it has managed to ideologically dominate the entire field of justice. The same observation holds true with respect to policing. Reformers have always attempted to call for better and more effective police practices, rather than asking whether safety and security might be better guaranteed through other institutions. I make this point because if we are not careful, even as we insist on abolitionist strategies, we can myopically focus on prison and police issues to the exclusion of larger determining social and economic questions and actually end up unwittingly replicating the logic of reform.

Prison abolition can be misleading because, while we begin with questions regarding the way the prison reflects and enacts projects that are class-biased, racist, and heteropatriarchal, we cannot simply look at institutions of incarceration and the issues they raise. The same is true of police abolition: we cannot focus so exclusively on challenging the racist and repressive practices of the police that we forget about larger questions of structural racism, capitalist exploitation, gender and sexual repression. We have to examine the afterlives of colonialism, slavery, and institutions that are products of and help to reproduce racial capitalism and heteropatriarchy, not only as they are expressed in the structures of imprisonment and policing, but also in healthcare, housing, education, political representation, etc. We are not simply interested in dismantling

prisons, but we want to radically reorganize our societies so that they no longer rely on the existence of such institutions of racism, repression, and violence. Thus feminism and feminist strategies of always attending to connections, linkages, and intersections are crucial when it comes to successful abolitionist approaches. We have learned a great deal from the ways in which abolitionist work in Australia conducted by Sisters Inside and other organizations always centres the struggles of Aboriginal and Torres Strait Islander peoples and polities.

As Gina Dent, Erica Meiners, Beth Richie, and I have argued in *Abolition. Feminism. Now.*, abolition is most compelling when it acknowledges and incorporates feminist imperatives to make connections and embrace contradictions, just as feminism is most efficacious when it repudiates carceral approaches and welcomes the anti-racism and anti-capitalism that ultimately defines abolitionist theories and practices. "[A]bolition is unthinkable without feminism and our feminism (is) unimaginable without abolition" (Davis et al., 2022, p. 168). This interrelationality of abolition and feminism helps us to understand why gender violence, not only in carceral institutions but within intimate relationships as well, is an abolitionist issue, and why the unmitigated racist incarceration, surveillance and policing of Black and Aboriginal people – men as well as women, trans and nonbinary people – is a central feminist concern.

Debbie: in conclusion, how can white settlers contribute to decolonization?

I live and work on the unceded land of the Turrbal and Jagera nations. Every day, I benefit directly and indirectly from being a white settler. This is as much a result of what I do not have to deal with (compared with my Aboriginal friends and family) as the moment-to-moment benefits I am conscious of. Too often, I take my white privilege for granted and fail to value my relative ability to engage with life more easily and safely than my friends of colour.

Having said that, I share the experience of living under constant surveillance by the colonial state by virtue of intersecting oppressive realities – my criminalization, my working-class background, my close personal association with First Nations people and people of colour, and my public success and profile.

As white settlers, we can only begin to become more meaningful allies in the fight against colonized justice when we treat all the multiple and interdependent systems of capitalism, racism, patriarchy, and ableism as integral to the ongoing colonial project. We must recognize our profound privilege, and deal with our own discomfort, guilt, complicity, and fears for the future: decolonization SHOULD be "unsettling" (Tuck & Yang, 2012, p. 1), to say the least, for those of us who have 'settled'. We should never again assume our right to feel settled on stolen Indigenous land and in a system which favours us over our friends and family who are Aboriginal, Torres Strait Islander, other survivors of oppression and slavery, and/or other people of colour. We must recognize that decolonization requires the repatriation of First Nations' land, law, and social power. This is not an exercise of progressive reform of existing colonial structures – 'moving deck chairs on the Titanic'. We must collaborate with those who contribute toward fundamentally changing the nature of those systems, and the power balance between First Nations peoples, people of colour with lived current and historic experiences of slavery, those who benefit from colonialism, and settlers.

Reforming a broken system has never worked. We must think outside and beyond the prison bars at all levels. After decades of reform, the colony has only strengthened and become more arrogant in its surveillance and control of anyone who functions outside settler norms. In support of First Nations associates, we should "demand a ceasefire" (Institute for Collaborative Race Relations & Sisters Inside, 2022, n.p.) to allow the space to address the structural racism

and normalized violence at the heart of both our legal system and the other institutions which are complicit in furthering the colony, particularly the child protection, health, and education systems (Kilroy, Lean & Quixley, forthcoming).

Abolition is not merely about the removal of carceral institutions: abolition is positive and active. It is about what replaces police and prisons – a whole new approach to the rights of every human being in terms of health, shelter, identity, membership in a cultural group, safety, autonomy, and learning.

Notes

1 'Australia' is used throughout this chapter for the sake of expediency. The authors neither accept the hostile and violent takeover of this country, nor recognize 'Australia' as a legitimate nation state.
2 There were no Yapa (Warlpiri people) on the jury; instead there were only Kardiya (non-Warlpiri, or non-Aboriginal).

References

Brayboy, B.M.J. (2005). Toward a tribal critical race theory in education. *The Urban Review 37*(5), 425–446.
Davis, A., Meiners, E., Ritchie, B., & Dent, G. (2022). *Abolition. Feminism. Now*. Penguin.
Institute for Collaborative Race Relations and Sisters Inside. (2022). *We demand a ceasefire: Responding to Australia's 'anti-racism' framework*. https://www.sistersinside.com.au/3168-2/
Kilroy, D., Lean, T., & Quixley, S. (forthcoming). Neither seen nor heard: State-sanctioned violence against women prisoners in 'Australia'. In H. Bows & B. Fileborn (Eds.), *Geographies of gender-based violence: A multi-disciplinary perspective*. Bristol University Press.
Salazer, S. (2020, June 3). Repurposing our pedagogies: Abolitionist teaching in a global pandemic. [Webinar], https://www.facebook.com/edliberation/videos/260890484987341/
Smith, L.T. (1999). *Decolonizing methodologies: Research and Indigenous peoples*. Zed Books.
Tafoya, T. (1995). Finding harmony: Balancing traditional values with Western science in therapy. *Canadian Journal of Native Education 21*, 7–27.
Tuck, E., & Yang, K.W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education & Society. 1*(1), 1–40.
Watego, C. (2021). *Another day in the colony*. University of Queensland Press.
Wilson, S. (2008). *Research is ceremony: Indigenous research methods*. Fernwood Publishing.

22

Colonial carceral feminism

Aya Gruber

Decolonizing criminal 'justice', from the perspective of this US criminal law theorist, appears no less than an impossibility. A decolonized American penal system is an oxymoron; it is a logical contradiction. The American carceral state is a colonial institution at its core, and it serves to maintain colonial domination. It cannot be decolonized – only dismantled.

Yet, for certain feminists and progressives, there is this persistent notion that the US penal system, with all its faults and insidious institutional design, is one into which progressives may make occasional insurgencies to procure justice by punishing the 'right' criminals (rapists, bigots, rich people). The stubbornly persistent but historically unsupported presumption is that the American criminal legal system originated to address criminal wrongdoing (private and public harms), and that its problems, though great, are discrete and remedial. This leads people – including progressives – to believe that the system can achieve justice by inflicting pain on their preferred wrong-doers. The idea that the prison industrial complex (Davis, 2003) – a vast interlocking surveillance and punishment system fueled by an entrenched bureaucracy and for-profit entities – is about fighting crime, rather than disciplining outgroups and preserving hierarchy, is a formidable colonial myth.

"Carceral feminism" (Bernstein, 2007) also cannot be decolonized. When feminists engage in criminalization projects, espouse punitive logics, and publicize individualized, classed, and raced accounts of wrongdoing, they become part of the colonial carceral apparatus. In this essay, I provide a sketch of carceral feminism's role in the colonial project of US mass incarceration. I begin by discussing carceral feminism, which does not denote a discrete group of feminists but the fact that criminalization is a stubbornly persistent feature of feminist agendas. Second, I turn to the penal system as a colonial institution born of Indigenous displacement, Black enslavement, and capitalist exploitation. Third, I examine how powerful feminists have historically participated in the American colonial prison project by sanitizing state violence as the protection of vulnerable women and silencing anti-carceral, Black, Indigenous, and socialist feminist and other contradictory voices. I conclude by suggesting how feminists can purge carceral programmes, practices, and logics from their gender-justice-seeking agendas.

DOI: 10.4324/9781003176619-25

Carceral feminism

In the 2010s, critical scholars increasingly used the term 'carceral feminism' to describe certain feminists' entanglement with, support of, and cooptation by criminal legal apparatuses and actors. Most analysts describe carceral feminism as a phenomenon of the late twentieth century, when feminist concerns over sexual and domestic violence met with a political and race-reactionary frenzy over street crime (Bernstein, 2007; Bevacqua, 2000; Gruber, 2020). Indeed, by the millennium, mainstream feminism had become so tightly intertwined with the tough-on-crime agenda that criminalization projects were consistently at the fore of the mainstream feminist agenda (Gottschalk, 2006; Kim, 2020). Yet, the feminist–criminal system alliance is as old as US feminism itself, as is the intra-feminist critique of carceral feminism.

Today, people associate modern feminism with its criminal law 'victories' like mandatory arrest for domestic violence, prosecutorial 'no-drop' policies in domestic violence cases, broad criminalization of sexual misconduct, unique conviction-favouring rules in gender-crime cases, and the stringent anti-trafficking agenda (Goodmark, 2018; Halley et al., 2006). The carceral face of feminism is hypervisible. However, feminists have also long fought *against* the carceral state, from Ida B. Wells' critique of lynching in the name of white womanhood (Carby, 1985) to mid-century socialist feminists' condemnation of anti-labour policing and modern feminists' efforts to decriminalize cohabitation, contraception, and abortion (Gruber, 2020). Black feminists were always sceptical of the idea that the penal state could be recruited to the ends of justice. In 1977, the Combahee River Collective, a group of Black feminists who publicized the interlocking racial, sexual, economic, and social oppressions faced by Black and other third-world women, released a statement on the principles of Black feminism. It challenged mainstream feminists' commitment to 'separatism' from men – a commitment that significantly underwrote feminists' comfort with invoking a violent, racist, sexist, and hierarchical penal system to discipline individual men. "[W]e feel solidarity with progressive Black men and do not advocate the fractionalization that white women who are separatists demand," the statement read, "We struggle together with Black men against racism, while we also struggle with Black men about sexism" (Combahee River Collective, 1977). In the 1990s, as the feminist criminalization agenda turned into law, groups like INCITE! (2022) articulated an alternative vision of preventing and remedying gender-based violence that avoided amplifying the violence of the carceral state.

Throughout the history of American feminism, diverse groups vied for the narrative framing of violence against women: whether it was an individual criminal act or a product of structural inequality; whether patriarchy or white supremacy was the main culprit; whether law generally or criminal law particularly had the capacity to address the problem. Time and again, feminists with criminalization agendas won out. They defined the nature of the problem, received financial and state support, and achieved legal reform. Thus, despite the decades of contestation within the feminist crucible, a simple message emerged by the late twentieth century: The American penal system is a friend to feminism. So strong was this message that for most feminists, criminalization was an end in itself (Gruber, 2020; Halley, 2004). Every new criminal law and policy further criminalizing gendered crime was a triumph of justice, regardless of whether it portended to increase violence against women or worsen the plight of marginalized women (and even *after* it did those things). Criminalization was the default – the only 'meaningful' feminist response. Thus, criminal law came to colonize the feminist imagination.

Accordingly, carceral feminism is not a 'wave' or school of feminism. And while it is popular to attribute various criminalization programmes to 'carceral feminists', there is, in fact, no such discrete group. Instead, carceral feminism describes pro-criminalization and other pro-law

enforcement actions and frames adopted by diverse feminists, including feminists with anti-carceral pre-commitments. To be sure, there is a deeply ingrained punitive impulse in the collective American consciousness that is triggered when people see the actions and actors they regard as the worst of the worst (Gruber, 2015; Levine, 2021). The term carceral feminism is similar to governance feminism. Governance feminism explores the implications of feminists and feminist ideas, once cast to the policy periphery where leftist ideas generally reside, coming to *govern* law and policy (Halley et al., 2006). Similarly, the carceral feminism critique explores the phenomenon of feminism and feminist ideas, which one might initially connect with the anti-carceral periphery, coming to govern within the US penal apparatus (Dorries & Harjo, 2020). Consequently, decolonizing justice is not a matter of rejecting the carceral wave of feminism or banishing a unified group of carceral feminists to the movement's margins. It instead involves feminist groups jettisoning carceral ideas and programmes and resisting the urge to see criminal law as feminism's friend.

Colonial carceralism

Colonialism is notoriously polysemic. In its most general sense, colonialism refers to the legacies – institutional, structural, socio-legal, economic, discursive, methodological, and cultural – of Western imperialist domination of non-Western lands and people (Thomas, 1994). In the US context, the colonial fountainhead was the genocide and forced displacement of Indigenous peoples, but there were other state-forming colonial processes. Most notably, scholars have analyzed the colonial nature of the importation of and labour extraction from enslaved Black African people. As Arvin, Tuck, and Morrill (2013) explain,

> In order for settlers to usurp the land and extract its value, Indigenous peoples must be destroyed, removed, and made into ghosts. Extracting value from the land also often requires systems of slavery and other forms of labor exploitation […]. Profit is obtained by making property out of the land, as well as out of the body of the slave.
>
> *(p.12)*

Relevant to this discussion of carceral feminism is an institutional and methodological legacy of American racism and settler colonialism. The institutional legacy is the penal state and its auxiliaries. The methodological legacy is the repression of decolonizing ideas and those who espouse them, which occurs even within progressive movements like feminism. Both are discussed in the next two sections.

The American carceral state is an archetypal colonial institution. "The system as it evolved has everything to do with confinement of Native people" (Ross, 2016, p.1). American penal law enabled the colonization, subjugation, and slaughter of Native peoples. In the nineteenth century, for example, there was a "shift from mission and Spanish control of Native peoples [in California] to one of conquest by law and criminalization" (Teran, 2016, p. 19). Narratives of Native criminality and violence were crucial parts of the potent colonial mythology of the noble white settler. Moreover, the colonizers forced tribal communities to abandon communal problem-solving methodologies in favour of the Western common-law legal model of punitive and adversarial criminal process (DeLoria & Lytle, 1983). Ultimately, the US government stripped tribes of jurisdiction over major crimes altogether (see *Ex Parte Crow Dog. (1883). 109 U.S. 556, 571.*).

Indeed, that Western punitive system has and continues to disproportionately incarcerate sovereign First Nation peoples. The disparity statistics are astounding. In 2018, according to

data from the Department of Corrections, Indigenous Hawaiians comprised 23 percent of Hawaii's population and 47 percent of the people incarcerated under its jurisdiction – a figure, experts say, that significantly undercounts the proportion of imprisoned people who were Native Hawaiian (ACLU, 2022a; Prison Policy Initiative, 2022). Native Americans comprised 7 percent of South Dakota's 2017 population and 31 percent of the people imprisoned. Native Americans were seven times more likely to be imprisoned than white people. What's more, while 23 percent of men in prison were Native men, Native women made up 48 percent of the female prison population (ACLU, 2022b). A 2012 report found that of all racial and ethnic groups, Native American girls were in custody outside the home at the highest rate and five times the rate of non-Hispanic white girls, with 179 of every 100,000 Native girls imprisoned (Saar et al., 2020).

One particularly striking example of the convergence of carceral feminism and the federal penal system's centuries-long repression of First Nation peoples involves sex offences. In the 1980s and 1990s, the US was in the throes of a 'sex panic' over child predators. Relentless news coverage of rare but horrific kidnappings and killings of young children, some by known sex offenders, created a sense of public insecurity and even terror. Federal legislators capitalized on this fear and scored political points by passing a raft of symbolic anti-sex offender laws that raised the already high sex-offence sentences into the stratosphere and created a draconian and ineffective registration and notification system that kept convicted people in a revolving door of incarceration, poverty, and despair (Logan, 2011; Simon, 2002). Feminist activists today distance themselves from those laws, but the influence of feminism on the child-predator panic is not easily dismissed.

In the 1970s, it was feminists, not conservatives, who spotlighted child sexual abuse and lobbied for legislative change. Rebranding incest as 'father rape', feminists strategically publicized men's – even family members' – predatory nature and inherent danger to children. For feminists, "recharacterizing sex offenses involving children became a […] political argument for redefining all sex offenses and for changing the criminal justice system's response to sex crimes generally" (Bienen, 1998, pp. 1563–1564). In addition, "feminist scholars found that these claims about predatory male sexuality resonated well with conservative child welfare authorities who assumed that mothers should play the primary caretaking role" (Rich, 2013, p. 658). To be sure, early feminist take-back-the-night rhetoric is virtually indistinguishable from conservative anti-predator histrionics. "Outside are the predators who will crawl in the windows, climb down drainpipes, pick the locks, descend from skylights, to bring the night with them," Andrea Dworkin (1988) proclaimed in 1979. "They bring with them sex and death" (p. 13–14).

But symbolic federal tough-on-predator legislation does not stay symbolic. Because of the limited jurisdiction of the federal government, most sexual assault cases proceed in state systems and are unaffected by harsh federal laws. However, until recent years, federal law exclusively governed sex crimes on reservations. In 2006, George W. Bush signed the latest of several federal anti-predator bills, the Adam Walsh Child Protection Act, which increased already exorbitant penalties and broadened the registration, notification, and civil commitment regime. Bush remarked, "We're sending a clear message across the country: those who prey on our children will be caught, prosecuted, and punished to the fullest extent of the law" (The White House, 2006). But it was not the worst-of-the-worst child predators who endured most of the federal government's sex-predator politics. Before the bill's passage, the federal public defender had warned Congress that Native American defendants would disproportionately suffer from the punitive symbolism and tribes would shoulder the massive bureaucratic burden (Sands, 2006). By 2006, 75 percent of federal sex abuse defendants were American Indian or Alaska Native.

These suspects "tended to be younger […] and less educated" than other alleged offenders (Motivans & Kyckelhahn, 2007).

Still, people widely accept the benevolent-settler myth that the carceral state originated to and does fight savage criminals and protects the public (Vitale, 2018). This myth has granted the police and prosecutors a perpetual license to fail up. Today, people also widely recognize the harms of racist policing and mass incarceration, but they view them as failures that can be remedied through siphoning more resources to a necessary and noble system. History demonstrates that racialized imprisonment is not a failure of a benevolent crime-fighting system, it *is* the system (Butler, 2016). Police forces did not originate to fight ordinary crime; they did not expand in response to crime spikes; and it remains contested whether they, in fact, fight crime (Bayley, 1994). But the criminal system has long succeeded in managing the marginalized to serve the interests of the powerful.

Police forces emerged in the early nineteenth century and became the norm during the Progressive Era. The development of these police forces is not a unified story but hundreds of local stories. Nevertheless, there is a striking consistency: the stories have little to do with everyday crime interdiction. In the reconstruction-era South, organized policing emerged as part of the effort to maintain post-war white social and economic supremacy. Black Codes, with their broad definitions of vagrancy, rendered freed people perpetually subject to state detention and forced labour (Hadden, 2001; Stewart, 1998). A column in the 1865 *Lynchburg Virginian* (Spruill, 2016) explained that these "stringent police regulations" (p. 42) were "necessary to keep [formerly enslaved people] from overburdening the towns and depleting the agricultural regions of labor" (p. 59). The police forces created to enforce them included former slave catchers and patrollers who "kept blacks off city streets, just as patrollers had done in the colonial and antebellum eras", as noted by historian Sally Hadden (2001, p. 219).

Policing and imprisonment expanded steadily throughout the twentieth century, and the 1980s ushered in an era of precipitous government investment in and expansion of law enforcement, always under the banner of responding to 'crime waves'. The reality is that expansions in policing responded to changing social dynamics like socialist agitation, integration, and demographic shifts and the political ramifications thereof (Gottschalk, 2006; Wacquant, 2009). Yet, today, even liberals believe that the precipitous carceral expansion of that era was in response to spiking crime rates. A 1993 study put real numbers to the "widely held belief that the level of serious criminal activity increased during the 1980s, particularly among the urban underclass"[1] (Boggess & Bound, 1993, p. 725). Examining crime data from 1979 to 1992, it concluded that "statistics do not support the notion that there [was] any overall rise in the level of criminal activity". Instead, "there was a large increase in the incarceration rate, primarily attributable to an increased probability of incarceration [and] a sizable increase in the number of arrests and incarcerations for drug law violations" (Boggess & Bound, 1993, p. 726).

Also contradicting copaganda mythology, most experts opine that the era's massive expansion of penal management had little to do with the 'great crime decline' from the 1990s to the 2010s. Analyzing data from 1991 to 2000, McCarty and colleagues (2009) found that "increases in police strength during the 1990s [had] little to do with changes in all measures of the crime rate". A comprehensive 2014 study found that police workforce levels did not affect deterrence (Kleck & Barnes, 2010). That policing and prison expansion did little to reduce crime should not be surprising. Flush with funds and officers, police departments used their bounty in the traditional manner: to exercise strict and total control over Black neighbourhoods, a process I call "bluelining" (Gruber, 2021). McCarty and colleagues (2009) also revealed that every 1 percent increase in the Black population in a neighbourhood correlated with an increase of 5.54 police officers per 100,000 residents.

In sum, "[c]arceral practices must be understood as constitutive of the settler-colonial state and its ideological, material, and institutional mooring in racial whiteness as the locus of settler power and sovereignty", as Jessica Evans (2021, p. 517) opines. She adds, "[t]o this end, it is not enough to reform specific penal practices, while leaving intact the legitimacy of the criminal justice system in general" (Evans, 2021, p. 517). Ordinary crime fighting has little if any relationship to the American penal system, whose purpose is maintaining the economic maldistribution, land theft, racial and ethnic subordination, and white-European supremacy forged in the fires of colonial violence and decimation.

Colonial carceral feminism

Carceral feminism is colonial because of its relationship to the quintessential colonial institution of the American penal state. From the very inception of organized white feminism in the nineteenth century, concerns over gender crime were front and centre on the agenda. Over the years, various feminist organizations made tough choices about how to address state and private violence against women. On the varied feminist agendas were pro-criminalization programmes, anti-criminalization programmes, non-legal programmes, and legal but non-criminal programmes. Yet, powerful feminist groups repeatedly embraced criminalization. Some did so for strategic reasons, while others fully embraced the retributive and deterrent logics that drive criminalization policies. Feminists' use of criminal law expanded over the years and proliferated in the latter twentieth century, just as the American penal system was rapidly morphing into a shameful system that landed the country with the inglorious title of the most punitive nation on earth.

Carceral feminism is also colonial because feminist groups supporting criminalization adopted colonial methodologies. Scholars of decolonization note that even progressive groups that challenge larger subordinating racial, economic, and gendered legal and social arrangements adopt discourses, practices, and internal hierarchies that mirror those of colonizers and maintain the distributional consequences of settler colonialism. Indigenous writers have observed that Native women reject the term feminism and association with the feminist movement because of the history of white feminists' support of colonial racial subordination and modern-day feminists' frequent engagement in colonial discourses and practices (Arvin, Tuck & Morrill, 2013).

Contemporary feminist groups – especially feminist legal theorists steeped in American legalism – have frequently ignored or silenced Indigenous, Black, and racialized peoples with alternative views about the law, wrongdoing, and remedy. Sandy Grande (2003) argues that these methods are so ubiquitous within feminism that mainstream feminism should be called "whitestream feminism": "a feminist discourse that is not only dominated by white women but also principally structured on the basis of white, middle-class experience; a discourse that serves their ethno-political interests and capital investments" (p. 330).[2] To be sure, one need not engage in deep sleuthing to uncover white-streaming in popular feminism. The 'women's movement' recalls two watershed moments: turn-of-the-century suffrage and late-twentieth-century 'women's liberation'. In both, feminist leaders subordinated subaltern voices and interests. Historians have recounted the participation of white suffragists' alliances with white supremacists and support of Black voter suppression to secure white women's suffrage (Kraditor, 1965; Tyrrell, 2014).

Women's liberation is the subject of frequent critique because of its essentialist notion of 'the woman's experience' that discounts racialized and non-binary perspectives. During the 1970s, feminist anti-poverty activists, including women of colour, argued that welfare rights were a far more pressing issue of gender justice than fighting for the chance to participate in the neoliberal

masculinist employment market. Johnnie Tillmon (1972), a Black feminist and the first president of the National Welfare Rights Organization, observed that women's liberation is "a matter of concern" (p. 1) for middle-class women, whereas welfare is "a matter of survival" (p. 1) for poor women. Tillmon (1972) hoped to reach out to the mainstream women's movement by analogizing the welfare system to a controlling husband:

> The truth is that welfare is like a super-sexist marriage. You trade in a man for the man. But you can't divorce him if he treats you bad. He can divorce you, of course, cut you off anytime he wants. The man runs everything. In ordinary marriage, sex is supposed to be for your husband. On [welfare assistance] you're not supposed to have any sex at all. You give up control of your own body […] The man, the welfare system, controls your money. *(p. 1)*

For a time, national women's organizations incorporated anti-poverty sentiments into their agenda, although the National Organization of Women's (NOW) support was always a bit tepid – the 1970 national conference organizers 'forgot' to schedule the poverty workshop (Davis, 1996). But as early as 1971, NOW's anti-poverty position became an equality-of-poverty position: NOW sued the government to ensure the new work-for-welfare requirements applied equally to men and women (Chappell, 2002). NOW's leadership was "fixed on formal, legal equality for those already in the workplace as the proper instrument for addressing women's poverty" (Davis, 1996, p. 157). These anti-domesticity sentiments never resonated with Black women, many of whom were already employed, but in low-paid domestic jobs that conferred no social status or political power. These women wanted to spend more time in *their* homes mothering *their* children. As Toni Morrison (1971) remarked,

> It is a source of amusement even now to Black women to listen to feminists talk of liberation while somebody's nice black grandmother shoulders the daily responsibility of child rearing and floor mopping and the liberated one comes home to examine the housekeeping, correct it, and be entertained by the children. If Women's Lib needs those grandmothers to thrive, it has a serious flaw.

In their pursuit of pro-criminalization laws and policies, powerful white feminists frequently silenced alternative viewpoints articulated by feminists of colour. Consider, for example, the battered women's movement of the 1970s to 1990s. Originally, battered women's advocates were deeply anti-authoritarian. Organizers of battered women's shelters were reluctant to cooperate with state bureaucrats whom they saw as "embodiments of the top-down hierarchical, imperialistic, war-mongering society" (Vaughan, 2009, p. 2). The criminal system was even worse: an institution of "domination based on race, class, and sex", as one activist wrote (Schechter, 1982, p. 177). Yet, by the mid-1980s, feminists had embraced the "law enforcement model" approach to domestic violence (Lerman, 1984, p. 70). In the late 1970s, powerful feminist lawyers, authors, and advocates, in their zeal to use the high-profile battering issue to upend sex stereotyping and gender roles, suppressed and silenced Indigenous, Black, and feminists of colour who argued that economic insecurity and racial inequality underlay violence. Then, having established sexist men and not larger social structures as *the* cause of abuse, feminists aggressively pursued criminalization policies like mandatory arrest and no-drop prosecution (Goodmark, 2018; Gruber, 2020).

Black feminists had always been wary of the separation and arrest model, and not just because of a well-founded scepticism of policing. They knew that separation would not work for women

in economic precarity who did not possess the resources to leave. Moreover, Black women valued what little privacy they had and were not so sanguine about opening their home's doors to perpetual government oversight. Feminists of colour recognized that "the black body is culturally, socially, and legally hyper-surveyed" and thus "the black female subject has never been granted the same kind of privacy as the white female, the privacy that some feminists have argued needs to be 'exploded'", as Jennifer Nash (2005, p. 319) observed. But the larger battered women's movement was not listening. From the time feminists "began to develop domestic violence programs, concerns of Black women were virtually ignored" (Hampton et al., 2008, p. 332).

During the watershed 1978 Commission on Civil Rights hearings on 'wife abuse', women of colour activists and white feminist lawyers articulated diametrically opposing viewpoints (United States Commission on Civil Rights, 1978). Latina shelter operator Marta Segovia-Ashley's remarks, for example, attributed domestic violence to "the racism of the Great White Society" (United States Commission on Civil Rights, 1978, p. 99). Segovia-Ashley described how at age 16, she suffered the horror of domestic violence when her stepfather brutally murdered her beloved mother, Seferina. But her assessment of the murderer's character is surprising: "He was very kind and gentle. He promised my mother the world, and in his heart he really meant it" (p. 100). Segovia-Ashley saw the root of his violence as "[t]he white world [that] slowly and insidiously defeated my stepfather. Racism and despair affected him so deeply that within two years a man who had enjoyed a glass of wine with dinner was a full-blown alcoholic" (p. 100). She described her mother's murder as "the final act of a racist society which propelled two people to annihilate each other" (p. 101). Her remarks ended with a plea:

> We need money for the day-to-day operation of shelters, ongoing rent, food, furniture, clothing, remodeling, upkeep, and paid staff […]. When the hell are you going to do something about it? Or are you going to wait until we, like Seferina, are dead?
>
> *(p. 107)*

Lisa Richette, a prominent judge, feminist pioneer, and fixture in Philadelphia high society, spoke in opposition. "I disagree completely […] that this is a problem of white society," she said. "It is a problem of human society" (United States Commission on Civil Rights, 1978, p. 128). To the extent that "black and Chicano women" disproportionately suffered, Richette counselled them to resist the sexism "inherent in [their] culture" (p. 130). Richette rejected shelter funding as a mere "conscience balm to a society which tolerates the oppression of women" (p. 128). Her remarks also ended with a plea: for an "equalitarian society in which sex stereotyping is condemned as surely as racism is condemned today" (p. 133). She received a standing ovation.

Bok Lim Kim, an advocate for Asian-American women who spoke after Richette, began with, "Well, that certainly is a very hard act to follow, especially for a person for whom English is a second language" (United States Commission on Civil Rights, 1978, p. 133). Still, she urged the audience to pay attention to the "institutionalized bias based on race, language, culture and/or ethnic origin [that contributes] to the additional oppression and exclusion of minority women and to the conditions of poverty from which they disproportionately suffer" (p. 134). Kim said she hoped to

> raise the consciousness of the majority women so that the concerns of minority women also become their concerns. Otherwise, this commendable activity may become another case of special group advocacy which, in its insensitivity and nonresponsiveness to minority women, simply serves to perpetuate racism.
>
> *(p. 136)*

Yet, white feminists kept singing the tune that there is 'no difference' between Black and white, rich and poor when it comes to domestic violence, drowning out the appeals of women of colour to focus on battering's structural antecedents. This 'everywoman' narrative, as Beth Richie (2012) termed it, defined any woman's experience of abuse as every woman's experience, and the everywoman was of course "a white, middle-class woman" (p. 92).

One expert at the hearings testified frankly that welfare reform would not help affluent victims because of their "reluctance to reduce their or their children's standard of living" and the "welfare stigma" that "prevented [them] from considering AFDC payments", leaving arrest as the most promising avenue (United States Commission on Civil Rights, 1978, p. 172). Indeed, studies soon demonstrated that arrest had some effect in decreasing violence among employed white men, but it clearly aggravated violence among economically marginalized Black men. Studying domestic violence in Milwaukee, researchers estimated that "an across-the-board policy of mandatory arrests prevents 2,504 acts of violence against primarily white women at the price of 5,409 acts of violence against primarily black women" (Sherman et al., 1992, p. 160).

By the early 1990s, the proven escalatory effects of tough-on-domestic-violence programmes – effects that disproportionately burdened women of colour – led researchers to declare that "mandatory arrest may make as much sense as fighting fire with gasoline" (Sherman, Schmidt & Rogan, 1992, p. 210). But the pleas of anti-carceral feminists had not been a reason for mainstream feminist circumspection, and neither were the studies proving those pleas right. Pro-arrest reform had been one of the signature achievements of second-wave feminism, and proponents were reluctant to give it up. One prominent activist argued that the Milwaukee study simply proved that police needed to be tougher on Black men (Zorza, 1992, p. 66). To deter "society's failures", as she called the men, the "stakes may need to be higher, not lower or nonexistent" because "in some subcultures of ghettoized people, where imprisonment is all too common, a few hours in jail may be seen as only minor irritation, or even a right [sic] of passage" (Zorza, 1992, p. 66).

Conclusion

Criminalization and colonialism have been persistent features of US feminist agendas. However, it does not have to be that way. In contemporary times, the #MeToo movement's calls to treat sexual misconduct 'seriously' (i.e., criminal penalties and fearmongering over crime rates) have put enormous pressure on feminists to support more criminal prohibitions and even higher sentences for sex crimes. It is imperative that feminists resist the urge to keep ratcheting up policing, prosecution, and imprisonment based on inchoate notions of the right level of reporting to police or the just number of gender-crime convictions. Here are some thoughts on how feminists can do that.

Start by listening. Feminist groups with the leverage to affect policy should listen to diverse voices, and not only diverse theoretical voices. They should listen to people who have first-hand experience with violence and the carceral state: the women most vulnerable to state and private violence; victims who are not so sanguine about incarceration; individuals who participate in underground commercial sex markets; community activists; incarcerated people, and others with life experience. Listening does not mean that all feminists will agree on everything. Nor will it be the case that all those with first-hand experience are invariably anti-carceral. To be sure, many victims, even those who have experienced incarceration, demand the harshest punishment for individuals who have harmed them. Nevertheless, listening portends to soften mainstream feminism's tendency toward punitivism, given that such has largely been based on a closed conversation within the "whitestream". Non-poor, white women have had an

outsized presence in feminism, and they often relied on their subjective experiences to theorize gender-based violence. Indeed, the mantra was that their 'personal is the political'. It is striking the extent to which these personal, often unconsciously incorporated, understandings reflect police's, prosecutors', politicians', and even corporations' constructions of harm, crime, punishment, justice, and remedy.

In *The feminist war on crime: The unexpected role of women's liberation in mass incarceration*, I sketch out a three-step path that can help feminists resist the punitive impulse to broaden the penal state. The first step is to adopt a "neofeminist" approach that breaks from the orthodox thinking that entangled feminism with mass incarceration (Gruber, 2020, p. 192). This approach continues to prioritize countering gender violence but rejects feminism's victimization narrative, reliance on criminal authority, and prioritization of (white) women's interests over larger social equality. The second step is to withdraw support for existing and future carceral programmes erected in the name of gender justice that produce neither gender equality nor justice. The third step is to redistribute feminist financial, academic, and political capital toward programmes that address gender violence *and* counter mass incarceration. By breaking from its carceral past and entrenched hierarchical methodologies, feminism can begin the long and painful, but crucial, project of decolonizing itself.

Notes

1 'Urban underclass' was the tough-on-crime contingent's more politic way of saying 'the Blacks'.
2 I do not share Grande's view that postmodern theory, in contrast to pragmatic rights-agitating praxis, is inherently colonizing. One could make the case that critical theories, including critical race theory and decolonial theory, borrow heavily from Foucauldian insights about tracing the dynamics of power.

References

ACLU. (2022a). *Blueprint for smart justice: Hawaii*. https://50statebluepprint.aclu.org/states/hawaii
ACLU. (2022b). *Blueprint for smart justice: South Dakota*. https://50statebluepprint.aclu.org/assets/reports/SJ-Blueprint-SD.pdf
Arvin, M., Tuck, E., & Morrill, A. (2013). Decolonizing feminism: Challenging connections between settler colonialism and heteropatriarchy. *Feminist Formations*, *25*(1), 8–34.
Bayley, D. (1994). *Police for the future*. Oxford University Press.
Bernstein, E. (2007). The sexual politics of the "New Abolitionism". *Differences: A Journal of Feminist Cultural Studies*, *18*(3), 128–151.
Bevacqua, M. (2000). *Rape on the public agenda: Feminism and the politics of sexual assault*. Northeastern University Press.
Bienen, L. (1998). Defining incest. *Northwestern University Law Review*, *92*(4), 1501–1578.
Boggess, S., & Bound, J. (1993). *Did criminal activity increase during the 1980s? Comparisons across data sources*. https://www.nber.org/papers/w4431
Butler, P. (2016). The system is working the way it is supposed to: The limits of criminal justice reform. *Georgetown Law Journal*, *104*(1), 1419–1478.
Carby, H.V. (1985). "On the threshold of woman's era": Lynching, empire, and sexuality in Black feminist theory. *Critical Inquiry*, *12*(1), 262–277.
Chappell, M. (2002). Rethinking women's politics in the 1970s: The League of Women Voters and the National Organization for Women confront poverty. *Journal of Women's History*, *13*(4), 155–179.
Davis, A.Y. (2003). *Are prisons obsolete?* Seven Stories Press.
Davis, M.F. (1996). Welfare rights and women's rights in the 1960s. *Journal of Policy History*, *8*(1), 144–165.
Deloria, V., & Lytle, C.M. (1983). *American Indians, American justice*. University of Texas Press.
Dorries, H., & Harjo, L. (2020). Beyond safety: refusing colonial violence through Indigenous feminist planning. *Journal of Planning Education and Research*, *40*(2), 210–219.
Dworkin, A. (1988). *Letters from a war zone*. Secker & Warburg Press.

Evans, J. (2021). Penal nationalism in the settler colony: On the construction and maintenance of 'National Whiteness' in settler Canada. *Punishment and Society*, *23*(4), 515–535.
Goodmark, L. (2018). *A troubled marriage*. UC Press.
Gottschalk, M. (2006). *The prisons and the gallows: The politics of mass incarceration in America*. Cambridge University Press.
Grande, S. (2003). Whitestream feminism and the colonialist project: A review of contemporary feminist pedagogy and praxis. *Educational Theory*, *53*(3), 329–346.
Gruber, A. (2015). When theory met practice: Distributional analysis in critical criminal law theorizing. *Fordham Law Review*, *83*(6), 3211–3239.
Gruber, A. (2020). *The feminist war on crime*. UC Press.
Gruber, A. (2021). Policing and "bluelining". *Houston Law Review*, *58*(4), 867–936.
Hadden, S.E. (2001). *Slave patrols: Law and violence in Virginia and the Carolinas*. Harvard University Press.
Halley, I. (2004). Queer theory by men. *Duke Journal of Gender Law & Policy*, *11*, 7–54.
Halley, J., Kotiswaran, P., Shamir, H., & Thomas, C. (2006). From the international to the local in feminist legal responses to rape, prostitution/sex work, and sex trafficking: Four studies in contemporary governance feminism. *Harvard Journal of Law and Gender*, *29*(2), 335–423.
Hampton, R., LaTaillade, J.J., Dacey, A., & Marghiet, J.R. (2008). Evaluating domestic violence interventions for Black women. *Journal of Aggression, Maltreatment & Trauma*, *16*(3), 330–353.
INCITE! (2022). *INCITE!* https://incite-national.org
Kim, M.E. (2020). The carceral creep: Gender-based violence, race, and the expansion of the punitive state, 1973–1983. *Social Problems*, *67*(2), 251–269.
Kleck, G., & Barnes, J.C. (2010). Do more police lead to more crime deterrence? *Crime & Delinquency*, *60*(5), 716–738.
Kraditor, A.S. (1965). *The ideas of the woman suffrage movement*. W.W. Norton.
Lerman, L.G. (1984). Mediation of wife abuse cases: The adverse impact of informal dispute resolution on women. *Harvard Women's Law Journal*, 7, 57–113.
Levine, K. (2021). Police prosecutions and punitive instincts, *Washington University Law Review*, *98*(4), 997–1057.
Logan, W. (2011). Megan's laws as a case study in political stasis. *Syracuse Law Review*, *61*(3), 378–379.
McCarty, W.P., Ren, L., & Zhao, J. (2009). Determinants of police strength in large U.S. Cities during the 1990s: A fixed-effects panel analysis. *Crime & Delinquency*, *58*(3), 397–424.
Morrison, T. (1971, August 22). What the Black woman thinks about women's lib. *The New York Times*. https://www.nytimes.com/1971/08/22/archives/what-the-black-woman-thinks-about-womens-lib-the-black-woman-and.html
Motivans, M., & Kyckelhahn, T. (2007). *Federal prosecution of child sex exploitation offenders*. https://bjs.ojp.gov/library/publications/federal-prosecution-child-sex-exploitation-offenders-2006
Nash, J.C. (2005). From lavender to purple: Privacy, Black women, and feminist legal theory. *Cardozo Women's Law Journal*, *11*, 303–330.
Prison Policy Initiative. (2022). *Hawaii Profile*. https://www.prisonpolicy.org/profiles/HI.html
Rich, C.G. (2013). Innocence interrupted: Reconstructing fatherhood in the shadow of child molestation law. *California Law Review*, *101*(3), 609–698.
Richie, B.E. (2012). *Arrested justice: Black women, violence, and America's prison nation*. New York University Press.
Ross, L. (2016). Settler colonialism and the legislating of criminality. *American Indian Culture and Research Journal*, *40*(1), 1–18.
Saar, M.S., Epstein, R., Rosenthal, L., & Vafa, Y. (2020). *The sexual abuse to prison pipeline: The girls' story*. https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2019/02/The-Sexual-Abuse-To-Prison-Pipeline-The-Girls%E2%80%99-Story.pdf
Sands, J.M. (2006). *Letter re comments on Adam Walsh Child Protection and Safety Act of 2006, Pub. L.* 109–248. https://bit.ly/3e7h8E4
Schechter, S. (1982). *Women and male violence: The visions and struggles of the battered women's movement*. South End Press.
Sherman, L.W., Schmidt, J.D., & Rogan, D.P. (1992). *Policing domestic violence: Experiments and dilemmas*. Free Press.
Sherman, L.W., Schmidt, J.D., Rogan, D.P., Smith, D.A., Gartin, P.R., Cohn, E.G., Collins, D.J., & Bacich, A.R. (1992). The variable effects of arrest on criminal careers: The Milwaukee domestic violence experiment. *Journal of Criminal Law and Criminology 83*(1), 137–169.

Simon, J. (2002). Introduction: crime, community, and criminal justice. *California Law Review*, *90*(5), 1415–1422.
Spruill, L.H. (2016). Slave patrols, "packs of Negro dogs" and policing Black communities. *Phylon*, *53*(1), 42–66.
Stewart, G. (1998). Black codes and broken windows: The legacy of racial hegemony in anti-gang civil injunctions. *Yale Law Journal*, *107*(7), 2249–2279.
Teran, J. (2016). The violent legacies of the California missions: Mapping the origins of Native women's mass incarceration. *American Indian Culture and Research Journal 40*(1), 19–32.
The Combahee River Collective. (1977). *Combahee River Collective statement*. https://www.blackpast.org/african-american-history/combahee-river-collective-statement-1977/
The White House. (2006, July 27). *President signs H.R. 4472, the Adam Walsh Child Protection and Safety Act of 2006*. https://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060727-6.html
Thomas, N. (1994). *Colonialism's culture: Anthropology, travel and government*. Melbourne University Press.
Tillmon, J. (1972). *Welfare is a women's issue*. https://bit.ly/3fNhGzx
Tyrrell, I. (2014). *Woman's world/woman's empire: The woman's Christian Temperance Union in international perspective, 1880–1930*. University of North Carolina Press.
United States Commission on Civil Rights (1978). *Battered women: Issues of public policy*. https://www.ojp.gov/ncjrs/virtual-library/abstracts/battered-women-issues-public-policy
Vaughan, S.R. (2009). The story of shelter, "women's advocates". In E. Stark & E.S. Buzawa (Eds.), *Violence against women in families and relationships* (pp. 1–14). ABC Clio.
Vitale, A.S. (2018). *The end of policing*. Verso.
Wacquant, L. (2009). *Punishing the poor*. Duke University. Press.
Zorza, J. (1992). Criminal law of misdemeanor domestic violence, 1970–1990. *Journal of Criminal Law and Criminology*, *83*(1), 46–72.

23

Both sorry and happy

Inquests into Indigenous deaths in custody

Sherene H. Razack

> Native American ghosts haunt American literature because the American nation is compelled to return again and again to an encounter that makes it both sorry and happy, a defiled grave upon which it must continually rebuild the American subject.
> (Bergland, 2000, p. 22)

> **DEFILE: verb (used with object)**, de·filed, de·fil·ing.
> to make foul, dirty, or unclean; pollute; taint; debase.
> to violate the chastity of.
> to make impure for ceremonial use; desecrate.
> to sully, as a person's reputation
> (Dictionary, n.d.)

In her study of Indian ghosts in American literature, Renee Bergland (2000) argues that the spectralization of Indians, i.e., their representation as ghosts in the canon of American literature, allows Americans to imagine themselves as settlers in a triumphalist narrative of a superior race whose superiority is confirmed in an encounter with dead Indians. American literature is populated with Indian ghosts, providing opportunities for the nation to relive its triumph and put to rest its fears. Ghosts haunt, however, and fears are not easily put to rest. As many observe, ghosts are the return of the repressed (Blanco & Peeren, 2013; Gordon, 2008). In the white-settler imagination, dead Indians recall national pride and national guilt. For these reasons, settlers cannot let the Indigenous dead rest undisturbed. To repeat the story of triumph in the wake of anxiety that will not go away, settlers are compelled to return again and again to the defiled grave, responding to Indigenous death with a mixture of sorrow and triumph. To show that the settler must engage in a regular process of desecration if that subject is to know themselves as triumphant and legitimate, Bergland (2000) turns to representations – metaphorical graves and ghosts that endlessly constitute the American subject in literature as moral and legitimate.

Settler societies such as the United States, Canada, Australia, New Zealand, and Israel are European societies that are founded on the dispossession of Indigenous populations. As in the canons of literature, so too, in law, white-settler societies seek to preserve legitimacy through

DOI: 10.4324/9781003176619-26

establishing themselves as entitled to the land not by dint of having conquered Indigenous peoples but instead by possessing a natural, God-given entitlement to it. Casting Europeans as a modern, superior people in contrast to the Indigenous peoples who have been dispossessed, settler societies such as the United States are, among other things, "reliant on the ever-expanding dispossession and disavowal of Indigenous peoples" and on "economies of racialization" (Goldstein, 2014, p. 1). In this chapter, I consider one space in Canadian common law, the inquest, where one sees up close one of the ways in which the white-settler state pursues its legitimacy in law through a simultaneous commitment to reform and disavowal of the impact of colonization on Indigenous populations. The inquest, I argue, should be understood as a site of desecration, a place for the ritual that constitutes white settlers and the settler state as legitimate. It is useful to remember, as the dictionary outlines, that a defiled grave is one that is desecrated, made impure for ceremonial use, and violated. To defile is also to sully someone's reputation, as inquests both in settler societies and in the United Kingdom are known to do by speaking ill of the dead and blaming the dead for their own fate (Scraton & Chadwick, 1986).

Desecration

White-settler states regularly indulge in practices of desecration, from keeping Indigenous bones in museums (see, e.g., Cantwell, 2006) to heaping indignities on bodies and graves (see, e.g., Kevorkian, 2017), practices that fulfil the psychic need that Bergland (2000) identifies where the settler is constituted anew through feeling both sorry and happy. In law, graves are desecrated when Indigenous bodies are examined with a forensic intensity that is often excessive and in aid of declaring that the Indigenous body is one which no one can harm or kill because it is always already a damaged body on the brink of death. To take one stark example of a material and not simply metaphorical desecration, in the Canadian criminal trial of Bradley Barton, a white man who was accused of murdering Indigenous woman Cindy Gladue through the application of too much force during an episode of paid sex, a piece of the victim's vagina was brought into the courtroom and viewed behind a screen. Indigenous and other observers pointed out that the presence of a body part in the courtroom was itself desecration and they reminded us that the body parts of the enslaved and colonized have often been displayed for purposes of reducing a human being to a thing (Razack, 2016). Upon appeal and amidst a national outcry, the second trial dispensed with the display of the body part. The appeal court declared itself a progressive one that did not violate the dignity of Indigenous women as the lower court did by bringing the dead woman's tissue into the courtroom. Nonetheless, engaging in its own desecration through spectacle, the court devoted several days to a discussion of the physical qualities of the dead woman's vagina, exploring at length its elasticity and capacity to rupture and leaving in the wake of this scientific performance the same reduction of Cindy Gladue to a body part as had happened during the first trial (Razack, 2021). Intent on exploring the complicity of the dead woman in her own death, the court devoted little or no time to the accused white man's body and what it meant that he sought out an Indigenous woman for what was euphemistically labelled 'rough sex'.

The Indigenous body that contains the seeds of its own demise is a recurring redemptive narrative, and perhaps nowhere more so than in inquests (and inquiries) into the deaths of Indigenous and racialized peoples in legal fora dedicated to the improvement of a population deemed to be insufficiently modern. As a legal process that is typically conducted by a coroner, an inquest has an investigative rather than an adversarial function and its purpose is to determine the cause of death and to prevent the deaths of others. Coroners frequently remind the public that the inquest does not determine innocence or guilt. Inquiries share the same function but

review deaths of broader public concern. In structure and form the inquest is a site where the state performs its legitimacy and assumes its role as sovereign and patriarch, dedicated not to punishment but improvement. The liberal logic of the inquest – a logic that is about a pledge to do better – legitimizes the settler state as caring rather than punitive. If the Indian is always on the brink of extinction, death is only the end point of a natural process. It is never untimely, as when a person has been murdered and thus no one can be called to account. Through the inquest, both settler state and settlers have an opportunity to return to the grave and to leave both sorry that a life has been lost and happy that they have worked hard to prevent similar deaths in the future and assisted, to the extent that is possible, a dying race. In these triumphal arrangements, the state's responsibility for Indigenous death recedes from view as Indigenous pathologies take centre stage.

In this chapter, I review a death in custody that I first discussed in *Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody* to reiterate the following: Law, at the site of inquests and inquiries into Indigenous deaths in custody, stages a peculiar colonial encounter with the Indigenous dead and in much the same way that Bergland (2000) describes that encounter in the canon of American literature (Razack, 2015). That is, the encounter is staged as a scene of spectacle where non-Indigenous national subjects are horrified by damaged bodies and, simultaneously, persuaded that settlers have had nothing to do with the violence that is written on the body. Law invites settlers to return to the defiled grave and to gain from the ritual a sense of settler superiority even as the violence that is written on the Indigenous body troubles and prompts settlers to perform themselves as good people who are determined to make things better. Legal scenes entail processes of consumption where it is horror itself that we must consume if settlers are to install themselves as innocent national subjects. If horror as an affective state seldom leads to responsibility, it is an indulgence that inquests and inquiries cannot do without. Narratives that leave us feeling innocent and horrified are necessary to the constitution of the settler state and settlers. Settlers, it must be remembered, endure only to the extent that they can continue to dispossess and banish the Indigenous ghosts in their heads through a triumphal display of virtue. As a settler scholar I may well participate in the game of colonial improvement, offering my own display of virtue in the form of critique. These are the treacherous waters that legal practitioners and scholars alike navigate.

Defiled graves in the courtroom

In *Dying from Improvement*, I wrote about inquests and inquiries into the deaths of Indigenous people in state custody and summarized what was happening in these legal fora as follows: Through forensic analyses of bodies, coronial inquests and inquiries consistently produce the story of the Indian on the brink of death, repeating the narrative of the vanishing Indian that has been dear to white-settler societies from the time of their inception. Inundating us with details of fatty livers, mental illness, alcoholic belligerence, and a mysterious incapacity to cope with modern life, legal records tell the story of a pre-modern people encountering, and losing out to a more advanced and superior race (Razack, 2015, p. 4). The details of deaths, which are framed as timely rather than untimely, range from the cinematic, for example, a man portrayed as someone who could only crawl (Razack, 2015, pp. 29–56), to the mundane – bodies that simply give out. Take, for example, A., an Indigenous woman who died in a detention unit after police officers noticed two intoxicated women walking in a ditch on a dry reserve and detained them both (Razack, 2015, pp. 122–124).[1] At 5 a.m., A. wanted to talk to someone and called for the guard, J., a woman whom she knew. A. wanted to talk about the apprehension of her 9-year-old son by child protection authorities. They spoke for 20 minutes and J. said she

would come back later if A. wanted to talk some more. At 6 a.m., J. checked on A. and found her breathing but not waking up. By 7.30 a.m., J. told one of the police officers that she was worried about A. Together they checked on A. and found that her breathing was laboured and heavy. They called for an ambulance from the police cells, only 100 feet away. About 15 minutes later, when the ambulance arrived, A. was dead. The arresting officer told the coroner he was shocked by the death since it had been such a routine arrest. It was "simply [an] intoxicated person" (Razack, 2015, p. 59). The Corporal clarified that the arrest was so routine that he took very limited notes and did not notice any signs of A. being ill.

During the inquest, we come to know A. only through the questions that are asked of witnesses, questions posed by the coroner's counsel as he set out to establish the circumstances of A.'s death. These questions highlight A.'s own role in her demise. We learn that A. had been drinking for several days and that she most often drank hairspray. The nursing coordinator at the reserve noted that she had never seen A. sober and commented that A. had poor health generally, with high cholesterol and out-of-control diabetes which she poorly managed. If A. had taken better care of herself, the nurse opined, she might have survived her medical emergency. A.'s 17-year old daughter confirmed her mother's ill-health and her drinking "with lots of people". When asked about it repeatedly, A.'s daughter also confirmed that her mother did not always take her medications. We even learned about the kind of food A. was eating and the kind of food available in her home. Counsel put on record that A.'s household ate Kraft dinner macaroni, and chicken noodles, all nutrition-poor and extremely cheap foods.

The coroner concluded that A.'s death was due to the "long term consumption of alcohol" (Razack, 2015, p. 112). As he summarized for the jury, A. was a diabetic who was not compliant in taking her medication. Reading aloud the pathologist's one-sentence summary of the autopsy, "Severe fatty degeneration of the liver and the presence of hardly any normal liver cells on microscopic examination and diffuse strong positive fat could cause her death any time" (Razack, 2015, p. 109), the coroner laid out the basis for his own conclusion: Death comes suddenly to people like A; it is no one's fault. The inquest was able to wrap up in two days. The jury recommended that guards check on prisoners every five to ten minutes, and that police check with prisoners if they have specific medical needs or medications before they are taken to the cells. The inquest into A.'s death intentionally paints a picture for us of the inevitable death in custody of an alcoholic, severely diabetic, poor Indigenous woman.

It is hard to find anything in this story but confirmation that Aboriginal bodies and minds simply give out, and that detention in a prison is a place where this is likely to happen. Not even kind guards such as J. can stop the process. In inquests, Aboriginal deaths in custody are always regarded as timely deaths. The cells are spaces of death where people die; it is simply the last stop on a road littered with failing bodies, a road that begins on the reserve. Through their emphasis on failing bodies, inquests confirm that there is no calling anyone to account for their failure to care in such spaces. A.'s body gives up its secrets in law and narrates a scandal of alcohol abuse, diabetes, and poor nutrition, all attributed to A.'s own failure to care for herself. The guard's failure to check on her progress often, or to get an ambulance quickly when it became apparent that she was ill, all remain tangential. Indeed, the colonial context that potentially sheds light on A.'s poverty, alcoholism, and ill-health as well as inadequate policing and carceral practices, are not key concerns for the inquest. In their place, we have fatty livers and the details of a household where children must rely on Kraft dinner as the adults around them drink to abandon. Perhaps few would equate these details to horror but I want to consider the visual regime of the scene in the courtroom and imagine the ripples of disgust and sorrow that travel as the inquest takes us to the defiled grave, a moment where we can imagine the emaciated diseased body of an alcoholic Indigenous woman drinking hairspray and find in the image confirmation of our

own superiority. We might say this: If emaciated, alcoholic Indigenous women did not exist, the settler state would have to invent them. How else would we know that it is no one's fault that Indigenous people so often die in custody?

My use of the term horror is an intentional turn toward the affective and the visual regime of legal narratives (and indeed in scholarly narratives such as this one). We must *feel* our superiority through the images painted for us in the narrative. As was the case when Cindy Gladue's vagina was introduced in the trial of the white man accused of murdering her by inserting a knife and/or his fists brutally in her vagina, we can think of little else but those fists and the knife. In the same way, the details of all-night drinking binges and the sordidness of life on the reserve stay with us. The feeling that is generated by details about fatty livers and Kraft macaroni dinners travels swiftly along legal rails; it becomes an affect, a solid structure of feeling, on which settlers can rely to take them to the final destination: their own legitimacy and capacity for modern life and Indigenous incapacity for it.

Affect theorists of whiteness remind us that when emotions become collectively owned, as they do when they circulate in a legal environment, a structure is consolidated that sustains white supremacy and entitlement to the land (Hunter, 2015, p. 19; see also Ahmed, 2004). Recognizing the affective underpinnings of settler colonialism as intrinsically racial – the legal narrative must make white settlers feel good about whiteness – it comes as no surprise that the legal mechanism of the inquest traffics in horror that circulates the destroyed Indigenous body. Legal processes ensure that it is the dead Indigenous body rather than the settler's living one that remains at the centre of the inquiry. Despite its formal function, the inquest does not pause too long to consider the practices of state actors – how, for example, sick Indigenous prisoners or poor alcoholic Indigenous women are policed and incarcerated. It is the destroyed Indigenous body that must remain in the spotlight and the details about fatty livers do the trick. As I have asked elsewhere, how does one dissect indifference? How might settler indifference penetrate our senses as vividly as Indigenous pathologies do? (Razack, 2015, p. 135). If inquests could say less about Kraft dinner and fatty livers and more about why policing and prisons are the state's answer to poverty and systemic ill-health, would this so derail the game of improvement that we would no longer need this legal avenue for settler legitimacy? The main point I wish to make about inquests into deaths like A.'s is that the inquest is held together by a white-settler, race-making dynamic in which the thrust of improvement – assisting a primitive population into modern life – is the means through which the settler is established as both modern and legitimate. The inquest's perennial preoccupation with fatty livers is its affective base. How to shift such an important affective site of white race-making?

The trouble with improvement

In its dedication to improvement, the inquest and the inquiry appear to be the reparative heart of settler colonial law. They are sites where the state's caring and benevolence are demonstrated. I am not the first scholar to worry about the reparative heart of settler colonialism. Carmela Murdocca (2014) shows, for instance, that historical redress in the form of a directive to judges to take 'historical injustice' into account during sentencing mimics the very gesture so central to inquests and inquiries by focusing on the damage settler colonialism did to Indigenous lives (it's always a question of the past and not the present) and failing to locate the source of the damage in settler colonialism itself. A kind of settler colonialism without colonizers emerges that casts Indigenous people as mysteriously unable to cope with the demands of modern life, damaged people we must help but whom we find hard to help. Apologies, inquiries, commemorations, and truth commissions are also powered by a similar dynamic, rehearsing Bergland's 'sorry but

happy' routine to a fault. The return to the defiled grave, however, is a fraught process even when collective suffering is acknowledged. As Leslie Thielen-Wilson (2018) shows, reconciliation narratives that centre the collective trauma of a colonized people tamper with what Bergland (2000) identifies as the happy part of the story. Settlers may become too unsettled by the thought that settler colonialism inflicts suffering (Thielen-Wilson, 2018, p. 519). There is a fine line between feeling sorry and feeling bad. To acknowledge colonial violence may well be the straw that breaks the camel's back: the dissolution of the resolve to improve. We may just have to let them die. As one guard suggested to a coroner investigating the death of an Indigenous prisoner, "people die" (Razack, 2015, p. 131). We try, but there is little that can be done about it.

Recent scholarship on the reparative turn to apologies – a turn that I maintain is less a turn than an enduring feature of settler colonialism – suggests that repair is too often a ruse that works to conceal the violence of the state. As Patricia Stuelke (2021) argues, its outcome is that

> racial capitalism, settler colonialism, and empire often emerge as structures only in need of repair and remediation, rather than as ever-shifting violent structures whose nuances must be perpetually, collectively apprehended if they are ever to be destroyed.
>
> *(p. 17)*

It is the very demonstration of transparency and virtue – the willingness to fix injustice – that installs the racial capitalist state as only in need of minor adjustments. Transparency and virtue, as I suggested above, are important pursuits of the settler state and if repair seems like the *mode du jour*, it is important to remember that it is a critical way in which the settler state pursues its legitimacy in law. Repenting and correcting course are things that *must* happen alongside continuing dispossession. Indigenous people can be offered cultural rights and recognition at the very moment that the state directs genocidal force against Indigenous communities, the move Elizabeth Povinelli (2002), writing in the Australian context, named the cunning of recognition. American scholar Dylan Rodríguez (2021) reminds us that white reconstruction, the regenerative capacity that is built into white supremacy,

> references a historically persistent, continuous, and periodically acute logic of reform, rearticulation, adaptation, and revitalization that shapes white social and ontological self-and-world-making within the aspirational, present-tense and violently future-oriented humanist projects of Civilization/Manifest destiny/Progress, and so on.
>
> *(p. 3)*

Those who take what they believe is a reparative or reformist turn often do so in the interests of carving out a temporary respite from the violence. I would not doubt that legal actors and scholars know well the perils of a reparative approach but embrace it nonetheless hoping that even the smallest of changes (maybe the guards could be made to better monitor prisoners, for example) could save lives. It is hard to give up trying when so many deaths occur often under the same circumstances. Inquests have reminded guards to check on prisoners more regularly for more than a hundred years. Many researchers would agree with Stuelke (2021) that doing nothing is not the preferable route. Exploring how repair came to be embraced by so many on the left, Stuelke (2021) suggests that it is the good feeling that comes with repair that draws us in. We must, therefore, interrupt the imperial circuits of feeling that we know to be powering the reparative track. But what if feeling good is the whole point of repair, and repair is not a new turn but an enduring colonial

mode? It is this built-in feature of the justice system that abolitionist scholars and activists recognize when they call for defunding the police and other strategies for change.

The dilemma, whether new or old, is a classic one: reforming a system delays its abolition. Black abolitionist scholars and activists have much to teach us about navigating these waters. As they have pointed out, in the wake of an unrelenting anti-blackness and unending police brutality and killings, the objective cannot be to get the police to do their job better. The objective is to get rid of the job altogether, a job that is centrally about containing Black, Indigenous, and other racialized bodies. It is to ask what else we might be doing instead (see Davis, 2003; Wilson, 2007). Along the same lines, the job of endlessly policing A. and locking her up is not an environment where concern for A. can flourish. A. didn't need police and prison. She needed medical help, food, the conditions for economic survival, and a community that has a chance of flourishing. These are things that form the very essence of what it means to decolonize.

While it is hard to imagine how a decolonial and an abolitionist route can be pursued in the context of the inquest or inquiry, mechanisms expressly designed to sustain the settler state in its current form through a reformist gesture, we can gather a few possibilities from inquests and inquiries into Indigenous deaths themselves. First, although the rules of the game often eliminate Indigenous voices, Indigenous peoples have found ways to speak their truth, insisting, for example, that dispossession lies at the heart of the problem and causes death. Chief Nancy Sandy wryly suggested at the inquest into the death of Paul Alphonse, an Indigenous man, that it would solve everything if the inquest could simply give back the land (Razack, 2015, p. 82). It is of course difficult to call the state to account but there is something to be said for preempting the reparative gesture by stating outright that settler colonialism is ongoing and violent and that it has a material base. 'Give us back our land' at least serves as a notice that we know what kind of game is being played in inquests. Making the connection to land would begin to educate us all on what dispossession looks like on the ground. Chief Sandy's comment interrupts the fundamental race-making game of improvement and zeros in on the anxieties that prompt a return to the defiled grave in the first place. Both openly racist and liberal legal environments present challenges for abolitionists. The former simply denies the colonial narrative altogether (there has been no colonization); the latter turns the story of colonization into one about sick Natives with fatty livers. Each sustains white supremacy and white property interests but the liberal gesture is arguably harder to dislodge. Given the liberal dynamic in play at inquests and inquiries, narratives of good settlers who will save the day through improvement, we ought to pay special attention to the array of liberal gestures that characterize these legal fora. Such gestures include, for instance, the ever-popular cultural sensitivity training for state actors who must deal with Indigenous people. Training of any kind is likely to do more harm than good if it is not informed by a comprehensive acknowledgement of colonial violence and its structural and historical features.

It may seem daunting to think of strategies to avoid the reparative trap and reroute affect towards the settler's body rather than the Indigenous one. The first move we can make is to acknowledge that white race-making takes place in the law through the categories of the modern and pre-modern, categories that are structurally and affectively embedded in law. The task of the inquest or inquiry is colonial improvement and the script is one about fatty livers and the modern professionals who understand its effects on a dying population. As we seek to interrupt these imperial circuits, it is important to keep in mind that the settler's dearest fantasy is legitimacy. Inquests and inquiries are hospitable sites for race-making, designed as they are as stages for the state's legitimacy and goodness, places where the settler seeks to feel both sorry and happy.

I have argued that inquests are modes of colonial improvement. They are rituals intended to frame the settler and the settler state as having won out over a dying race that has not been able to survive modern life. The ritual of improvement built into settler law sheds light on apologies. Writing on apologies as "abortive rituals" because "their conditions of emergence deny the possibilities for transformation" (p. 176), Michel-Rolph Trouillot (2000) suggests that apologies express the repentance of a speaking subject who pronounces the wrong done as in the past and who expresses a culturally specific remorse. The ritual is liberal to the core, dehistoricized and concerned with the feelings and emotions of the subject who is making the apology. In this regard, apologies share with colonial improvement a denial of ongoing violence and a concern not with responsibility but with the settler's good feeling. By way of contrast, it is useful to keep in mind David Scott's (2018) reflections on reparatory politics:

> Reparatory politics, rather, is a **demand** for neither equality nor fairness. It is a demand **now** for what is **owed** for what was taken, morally and materially, symbolically and spiritually, a demand that includes the recognition that the **unforgivable** wrong of generations of enslavement has given rise to a permanent racial debt that, while it can **never** be finally discharged, has necessarily to be honored **before** any common future of freedom can begin.
>
> *(p. x)*

Focusing on what is owed automatically interrupts the game of improvement. 'Give us back our land' and 'stop killing us' are demands that will deny good feelings. Can an inquest or inquiry be a site for reparations? Can we ever hope to infuse the proceedings with a sense of what was taken and continues to be taken? Put another way, can justice begin from the premise that an unforgivable wrong has occurred and a permanent debt incurred? Anything less is about being sorry and happy.

The settler state persistently imagines itself as innocent and as a protector of Indigenous peoples – a calling it pursues in law. Indigenous deaths in custody are framed as outlier events, something to be fixed in an otherwise just society. The legal landscape is littered with decisions that declare that the settler state and Indigenous peoples are in a fiduciary relationship, 'historic bargains' imagined as establishing a regime for managing the sharing of land.[2] As Audra Simpson (2018) writes, a "repaired past, reparations, justice, reconciliation, is impossible in a place that has not untethered itself from its initial imperative: to take land and live atop it as if it is fair" (line 1965). In that regard, Chief Nancy Sandy's call to the coroner to "give us back our land" is the appropriate demand at an inquest into an Indigenous death in custody. 'Give us back our land' inaugurates abolition. Indigenous leaders issued an analogous call for the disbandment of the police in Thunder Bay, Ontario, Canada after a report prepared for the province's attorney general revealed that 14 deaths of Indigenous people were improperly investigated (Turner, 2022). Deputy Grand Chief, Anna Betty Achneepineskum (as cited in Turner, 2022), stated the obvious:

> In the last five years, when the reports came out, there was enough evidence and documentation that change needs to happen and we keep getting these statements that deny, that minimize and possibly justify what has taken place. That's not enough.

If we are ever tempted to view such calls for abolition as impractical or to consider the problem of the Thunder Bay police as exceptional rather than systemic, we should keep in mind those places in settler law dedicated to denying, minimizing and justifying what has taken place.

Notes

1 Names are redacted in an effort to minimize the invasion of privacy and the circulation of painful accounts.
2 For a review of the relationship between the Crown and Aboriginal peoples as a fiduciary one in Canada, see Luk (2013).

References

Ahmed, S. (2004). *The cultural politics of emotions*. Routledge.

Bergland, R.L. (2000). *The national uncanny: Indian ghosts and American subjects*. University Press of New England.

Blanco, M.D.P., & Peeren, E. (2013). *The spectralities reader. Ghosts and haunting in contemporary cultural theory*. Bloomsbury Academic Press.

Cantwell, A.M. (2006). "Who knows the power of his bones": Reburial Redux. *Annals of The New York Academy of Sciences*, *925*(1), 79–119.

Davis, A.Y. (2003). *Are prisons obsolete?* Seven Stories Press.

Dictionary (n.d.). Defile. https://www.dictionary.com/browse/defile?s=t

Gilmore, R.W. (2007). *Golden gulag: Prisons, surplus, crisis and opposition in globalizing California*. University of California Press.

Goldstein, A. (2014). Toward a genealogy of the U.S. colonial present. In A. Goldstein (Ed.), *Formations of United States colonialism* (pp. 1–30). Duke University Press.

Gordon, A. (2008). *Ghostly matters: Haunting and the sociological imagination*. University of Minnesota Press.

Hunter, S. (2015). *Power, politics and the emotions: Impossible governance*. Routledge.

Kevorkian, N.S. (2017). The occupation of the senses: The prosthetic and aesthetic of state terror. *The British Journal of Criminology*, *57*(6), 1279–1300.

Luk, S. (2013). No so many hats: The Crown's fiduciary obligations to Aboriginal communities since Guerin. *Saskatchewan Law Review*, *76*, 1–48.

Murdocca, C. (2014). *To right historical wrongs: Race, gender, and sentencing in Canada*. University of British Columbia Press.

Povinelli, E.A. (2002). *The cunning of recognition: Indigenous alterities and the making of Australian multiculturalism*. Duke University Press.

Razack, S.H. (2015). *Dying from improvement: Inquests and inquiries into Indigenous deaths in custody*. University of Toronto Press.

Razack, S.H. (2016). Gendering disposability. *Canadian Journal of Women and the Law*, *28*(2), 285–307.

Razack, S.H. (2021). *Gray zones in law: Sexual terror, genocide and the erotic schemes of settler colonialism*. Unpublished manuscript.

Rodríguez, D. (2021). *White reconstruction. Domestic warfare and the logics of genocide* Fordham University Press.

Scott, D. (2018). Preface: Evil beyond repair. *Small Axe*, *22*(1), vii–x.

Scraton, P., & Chadwick, K. (1986). Speaking ill of the dead: Institutional responses to deaths in custody. *Journal of Law and Society*, *13*(1), 93–115.

Simpson, A. (2018). Sovereignty, sympathy, and Indigeneity. In C. McGranahan & J.F. Collins (Eds.), *Ethnographies of U.S. empire* (pp. 72–90). Duke University Press.

Stuelke, P. (2021). *The ruse of repair: US neoliberal empire and the turn from critique*. Duke University Press.

Thielen-Wilson, L. (2018). Feeling property in the time of reconciliation. *Canadian Journal of Women and the Law*, *30*(3), 494–521.

Trouillot, M.R. (2000). Abortive rituals: Historical apologies in the global era. *Interventions*, *2*(2), 171–186.

Turner, L. (2022, March 10). First Nations leaders say they've lost faith in Thunder Bay police, call for disbandment and OPP oversight. *CBC News*. https://www.cbc.ca/news/canada/thunder-bay/thunder-bay-police-calls-to-disband-1.6380408?cmp=rss

24

The quotidian violence of incarcerating Indigenous people in the Canadian state

Why reform is not an option for decolonization

Vicki Chartrand

Scholarly and public discussions of the high rates of incarcerating Indigenous people in Canadian prisons are becoming a common narrative. The growing rates have been well documented over the years through commissions of inquiry, parliamentary studies and hearings, correctional watchdog investigations, multiple government reports, and even media accounts. This racialized penal trajectory is similarly well documented across other settler countries like Australia, New Zealand, and the United States (Axster et al., 2021). Given these consistent spatial and temporal trends of what is considered 'modern' justice, it is impossible not to locate the practice of incarcerating Indigenous people in Canada or elsewhere without interfacing with its colonial context.

As the founder and director of the Centre for Justice Exchange (Justice Exchange),[1] a collective of academics, students, and volunteers who seek to create more collaborative and community approaches to justice, We correspond and collaborate daily with people in prison, receiving hundreds of letters and phone calls every year. In these correspondences, we document how justice is repeatedly absent, inaccessible, invasive, and even violent for people in and out of prison and how this is particularly acute for Indigenous and other racialized people. Our findings at the Centre are also in line with many studies, reports, and commissions that have documented the invasive character of the penal system in the lives of Indigenous people over the years (e.g., Aboriginal Justice Inquiry of Manitoba, 1991; Canadian Corrections Association, 1967; Commission on Systemic Racism in the Ontario Criminal Justice System, 1995; Office of the Correctional Investigator, 2012; Royal Commission on Aboriginal Peoples, 1996; Saskatchewan Metis Justice Review Committee, 1992; Task Force on Federally Sentenced Women, 1990; Task Force on the Criminal Justice System and its Impact on the Indian and Métis People of Alberta, 1991). Despite the long string and series of reports, recommendations, and reforms to address the problem, the rates of incarcerating Indigenous people have only increased every year since 1960 (Chartrand, 2019).

DOI: 10.4324/9781003176619-27

Where the "past harms" of colonization are more commonly acknowledged and documented within the Canadian state (CBC Newsworld, 2008), the current colonial relationship and structural and systemic manner by which Indigenous people continue to be colonized are categorically ignored. This ongoing colonial violence within the Canadian state is reflected in wide-scale boil-water advisories across reserves (Arsenault et al., 2018), thousands of unmarked graves of Indigenous children forced into residential schools (McKenzie, 2021), exponentially high rates of Indigenous children in child welfare and foster care systems (Blackstock, 2019), the thousands of missing and murdered Indigenous women, girls and Two-Spirit+ people (NIMMIWG, 2019), economically starved communities (Leonard, et al., 2020), forced migrations to cities (Lampron & Chartrand, 2020), coercive and forced sterilization (Stote, 2012), and negligent or lack of available healthcare (Denny, 2020) – all in addition to the high rates of imprisonment.

The ongoing trajectory of forced interventions and abandonments in the lives of Indigenous and other colonized people in the Canadian state shows a colonial relationship predicated on violence, erasure, and death (see also Blagg & Anthony, 2019; Chartrand & Rougier, 2021; Cunneen & Tauri, 2016; Ross, 2016; Rodríguez, 2006; Saleh-Hanna, 2015). The intensifying practice of incarcerating Indigenous people is not outside, but a part, of this violent colonial relationship that is pervasively found throughout the land.

Despite the many studies and reforms that have been introduced to address rates of Indigenous incarceration, in this chapter, I show that not only have the rates increased, but Indigenous people are also subject to the most punitive and restrictive aspects of the system. Drawing on prison studies and our work at Justice Exchange, I show how penal reforms are a part of an ongoing colonial practice that gives the appearance of 'progress' while erasing and routinizing carceral violence. Exposing these ongoing and increasing carceral trends within the prison makes visible the ongoing, repetitive, and quotidian violence of colonialism today. Given that carceral interventions in the lives of Indigenous people have grown unabated in federal Canadian penitentiaries, I argue that that the persistence of such ongoing carceral interventions is not the result of failed or unrealized penal reforms but is rooted in the very logics and practices of the colonial relationship itself. Given that reform measures only serve to further entrench the prison in the lives of Indigenous people, I conclude that decarceration is the only option.

Carceral violence and ongoing penal reforms

It has become commonplace in the field of justice to find references to the 'over-representation' of Indigenous people in federal Canadian prisons. Notwithstanding the critique of framing the incarceration of Indigenous people as a problem of proportionality (see Nichols, 2014), the most recent studies show that Indigenous people comprise 30 percent of the federal prison population, with Indigenous women comprising 48 percent, while Indigenous people comprise only 5 percent of the general Canadian population (Department of Justice, 2020; OCI, 2021). In addition to these statistics, it is also documented that this is a growing trajectory. From 2009 to 2020, the federally incarcerated population of non-Indigenous people declined by 10 percent (from 79 to 69 percent) while the Indigenous incarceration rate went from 20 to 30 percent (OCI, 2020). In ten years, between March 2005 and March 2015, the Indigenous federal prison population increased by more than 50 percent compared to only a 10 percent overall prison population growth during the same period (Department of Justice, 2020). For women, the federal prison population grew by 30 percent between 2006 and 2016, and the Indigenous women prison population increased by 60 percent (Standing Committee on the Status of Women, 2018).

As I discuss below, these trends have persisted throughout years of penal research and reforms specific to incarcerating Indigenous people.

Since the 1960s, when the rates of Indigenous incarceration began to increase (see Chartrand 2019), ongoing reform measures have been introduced throughout all levels of the criminal justice system. The more well-known and cited sentencing reform is the introduction of section 718.2(e) in 1996 to the Criminal Code 1985 which directs sentencing judges to consider all "reasonable" alternative sanctions to imprisonment, particularly for Indigenous people. Further to this amendment, the landmark Supreme Court case *R. v. Gladue* (1999) reinforces section 718.2 (e) in that it must be applied to all Indigenous persons, whether living on reserve or not, and that judges must additionally consider a) the unique systemic or background factors which may have played a part in bringing the Indigenous person before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances because of their Indigenous heritage. This Supreme Court case ruling has further led to the application of Gladue principles throughout all levels of the criminal justice system and beyond (Laskin, 2021). Court cases such as *R. v. Ipeelee*, 2012 and *Twins v. Canada (Attorney General)*, 2016, for example, have further extended Gladue principles across the criminal justice system to include bail, dangerous offender hearings, incarceration, and parole.

In addition to wide-scale sentencing reforms, several legislative, regulatory, and policy reforms that outline specific matters relevant to incarcerating Indigenous people were introduced. Some of these many reforms include the introduction of Sections 79 to 84 in the Correctional Conditional Release Act, 1992 (CCRA), which outlines specific criteria in the CSC's "care and custody" of Indigenous people. This includes Sections 81 and 84 which offer provisions for transfer agreements with Indigenous governing bodies and organizations for the respective provision of correctional and parole services to Indigenous people in the community.[2] Commissioner's Directive 702, entitled "Indigenous Offenders" and Commissioner's Directive 702-1 entitled "Establishment and Operation of Pathways Initiatives" outline standards, protocols, and programs in the governance and treatment of Indigenous people in federal corrections. This includes the use of Indigenous Social History factors (CSC, 2013) to apply to case plans, risk assessment, and classification of incarcerated Indigenous people, including Indigenous programming and the designation of Indigenous-specific prison units. More generally, the overall correctional strategy to address the trends of Indigenous incarceration has been to Indigenize prisons (Jackson, 1989). This practice includes cultural training for staff, offering Indigenous programming, hiring Indigenous staff, advisors, and Elders, and ostensibly carrying out community consultations. Despite the many ongoing reforms to reverse the rates at which Canada incarcerates Indigenous people, the growth trajectory of incarceration in the lives of Indigenous people has not abated but, as I outline below, only intensified.

Compounding colonial violence in federal corrections

Just as, or even more, problematic than the growing trends of incarcerating Indigenous people, and despite all the penal reforms noted above, Indigenous people also experience the most punitive and repressive aspects of the prison system. These punitive interventions are reflected at almost every level from security classifications and risk assessments, to the types of carceral placements and designations received, to release options and returns to prison, all escalating into longer and more restrictive terms of incarceration. Drawing on recent varying reports and studies and reports documented by Justice Exchange, I highlight this compounding carceral violence for Indigenous people in federal Canadian prisons to make more visible the ongoing colonial relationship that continues to exist for Indigenous people within Canadian corrections today.

Security classifications and risk assessments

In addition to higher rates of incarceration, Indigenous people tend to serve longer periods of their sentence in prison. These longer prison stays are, in part, the result of consistently higher ratings on classification scales and subsequent incarceration at higher-security institutions. In 2020, only 16 percent of Indigenous people were classified as minimum security (vs. 22.5 percent non-Indigenous), 66.9 percent were classified as medium security (vs. 64.3 percent non-Indigenous) and 17.1 percent as maximum security (vs. 13.2 percent non-Indigenous) (Public Safety Canada, 2022). Indigenous women represented nearly twice the proportion of non-Indigenous women in maximum security and also consistently receive higher risk and needs ratings (OCI, 2021). Higher-security classifications have the consequence of longer periods of incarceration, as conditional release mostly occurs once someone is classified as minimum security. In our documentation at Justice Exchange, we have also noted that once classified at maximum security, there is very little programming offered and conditional release is much less of a concern for the institution. Without programming, it is even more challenging to demonstrate the institutional 'motivation' that would reclassify a prisoner as lower security.

Along with higher-security classifications, Indigenous people in prison are also more commonly assessed as presenting a higher risk for recidivism. Risk factors for determining one's institutional stay and programming are based on criminal history, pro-criminal attitudes, pro-criminal associates, antisocial personality patterns, employment/education, family/marital relations, substance abuse, and leisure/recreation. Studies show that Indigenous people are more likely to score higher on most of these factors, particularly given the ongoing experiences of colonization, as noted in the introduction (see also Martel, Brassard & Jacoud, 2011). Indigenous men, for example, are approximately 30 percent more likely than white men to rate poorly on reintegration potential (Cardoso, 2020). Similar to higher classifications, risk assessments limit positive assessments by the Parole Board of Canada for possibilities of conditional release and that also results in longer stays of incarceration.

Designations and placements

In addition to being classified at higher security levels and projected as higher risks, Indigenous people also tend to be given the most restrictive placements. On a visit by Justice Exchange members on 1–2 September 2022 to the Special Handing Unit (SHU) – a prison equivalent to the Super Maximum prisons found in the United States – 23 of the 47 people incarcerated at the SHU were Indigenous, making up 48% of the SHU population. Indigenous people are also more often isolated in solitary confinement, accounting for approximately 31 percent of solitary confinement cases, and spend 16 percent more time in isolation once confined to a segregation unit (Standing Senate Committee on Human Rights, 2021). Between April 1 and November 30, 2019, Indigenous people in prison accounted for 39.5 percent of the admissions to administrative segregation – the separation of a prisoner from the general population, other than pursuant to a disciplinary decision (Public Safety Canada, 2022). Since the introduction of Structured Intervention Units (SIU) – in lieu of administrative or disciplinary segregation – as a result of the Superior Court ruling the practice as cruel and unusual (November 2019), 80 percent of all SIU placements in women's federal prisons were Indigenous (Standing Senate Committee on Human Rights, 2021).[3] While more likely to be segregated, Indigenous people are also more likely to be given 'dangerous offender' designations, accounting for 36.3 percent of all dangerous offender designations ascribed by the courts (Public Safety Canada, 2022), and which impose indeterminate, and potentially life, prison sentences. In our anecdotal documentation

with Justice Exchange, many of these designations are received as a result of institutional charges received after the initial sentence, which makes the prison an environment for which indeterminate sentences are likely to be received.

Conditions of confinement

Where Indigenous people are subject to more restrictive placements, designations, and classifications, they are also more likely to experience punitive interventions while in prison. Between 2015 and 2020, 39 percent of all recorded use-of-force incidents by guards involved Indigenous people, while Indigenous women accounted for 60 percent of all women subject to the use of force. These use-of-force incidents were also irrespective of the designated security or risk level (OCI, 2021), meaning force was just as likely to occur with someone perceived as less of a 'security threat' to the prison population or public. Indigenous people also account for 52 percent of self-harm injuries and 39 percent of all attempted suicides in the last 10 years (OCI, 2019). From 2009 to 2016, Indigenous people also accounted for 27 percent of the 67 deaths by suicide within federal prisons (CSC, 2019a). Many of these self-harm incidents and deaths are the result of the punitive and restrictive conditions experienced by Indigenous people while in prison. Edward Snowshoe, a Gwich'in man from the Northwest Territories, for example, died by suicide in 2010 after spending 162 days in segregation in federal prison. Overall, Indigenous people are more likely to be restrained in prison, be involved in use-of-force incidents, receive institutional charges, and die in prison (Standing Senate Committee on Human Rights, 2019). Not only are rates of incarceration higher and the length of incarceration longer, but so is the violent intensity of the punishment.

Prison release and returns

In terms of release from prison, Indigenous people were less likely to be paroled, also contributing to longer periods of incarceration. Between the years 2015–2016, 69 percent of Indigenous people were released at their statutory release date, as opposed to receiving early-day or full parole. Of these statutory releases, 14 percent were released directly from maximum security, 65 percent from medium security, and only 13 percent were released from lower security (Office of the Auditor General of Canada, 2016). In the same year, 83 percent of the Indigenous prison population waived their parole, some for a lack of program non-completion or availability. Justice Exchange has further documented that Indigenous people are often discouraged from applying for parole to avoid 'wasting' the Parole Board's time. For a one-year snapshot in 2019–2020, studies showed that 68.6 percent of Indigenous people were held in custody with 31.4 percent supervised in the community, compared to 56.1 percent of non-Indigenous people held in custody and 43.9 percent supervised in the community (Public Safety Canada, 2022). Once released from prison Indigenous people are more likely than others to be returned to prison. A study from 2008–2012 showed that 38 percent of Indigenous men and 11 percent of Indigenous women were returned to prison compared to 21 percent and 9 percent respectively of non-Indigenous people (CSC, 2019b). Given the above trends for incarcerated Indigenous people, it is clear that release from prison has failed to be a correctional priority.

Carceral continuum

Indigenous people in prison experience a host of carceral repression, with incarceration being only a part of that colonial trajectory. Self-reports from 316 men enrolled in Indigenous

prison programming revealed that half of them had been in the care of the child welfare system, 71 percent spent time in foster care, 39 percent in a group home, and 61 percent had family members who had spent time in prison (OCI, 2021). Furthermore, 73 percent reported a family history of involvement with the residential school system and 18 percent said they were residential school survivors (OCI, 2021). This only reflects a snapshot of the series of violent carceral trajectories in the lives of Indigenous people (see NIMMIWG, 2019; TRC, 2015).

From higher classifications and designations to spending longer periods in the most restrictive environments of the prison, to experiencing the harshest conditions of confinement, Indigenous people are more commonly subject to the deepest and most punitive aspects of the prison. The regularity of such ongoing carceral and punitive interventions suggests that the ongoing confinement and segregation of Indigenous people has been entrenched and normalized now through the prison system. While the above rates and figures only capture a modicum of penal trends[4] it nonetheless exposes the violence of a system that cannot be set apart from the colonizing technologies and logics that have historically served to dispossess Indigenous and other colonized people from life-sustaining supports and relations.

The quotidian violence of colonialism

The colonial violence of incarcerating Indigenous people reflects what Katherine McKittrick (2011) refers to as an enforced placelessness, a dislocation of people that facilitates colonial interventions, racialized dispossession, and exploitation of land. The colonial history of racialized dispossession for Indigenous people and others in the Canadian state is well captured by the Aboriginal Justice Inquiry of Manitoba (1991) which reminds us how

> Racist government policies authorized slavery in Canada until 1834; created segregated schools for blacks and Indians; prohibited Chinese persons from certain kinds of jobs or activities; expropriated property and confined Japanese-Canadians to internment camps during World War II; permitted the expulsion of Black Acadians from the Maritimes; virtually prohibited the entry of Jewish refugees into Canada during the Holocaust; discriminated against Indians, Chinese, Japanese, East Indians and others with regards to voting rights; and established racist immigration classifications and quotas.
>
> *(Chapter 4)*

As shown above, the prison is very much a part of an enforced placelessness of dislocation and forced segregation. The same logics and ethos that naturalized the Indian agent and the attending violence are part of the same episteme that naturalizes the prison, and all other punitive interventions, that continue to dislocate and disappear Indigenous people today. Through a trajectory of reserves, child and social welfare, foster care and adoptions, detentions, youth centres, and prisons, carceral violence has been reasoned and built into the very momentum, symbolism, and vernacular of colonial relations, including criminal justice apparatuses.

This trajectory reflects the "quotidian violence" of colonialism that normalizes the day-to-day indignities, punishments, and brutalities of colonization (Hartman, 1997; see also Arbel, 2019; Rodríguez, 2021). If the violence of the system can be ignored, this is because it is a part of a familiar custodial sphere to which Indigenous people are constructed to belong (Million, 2008), where unremarkable and yet unimaginable violence occurs.

Within the Canadian state, the violence of a colonial episteme is grounded in the paradoxical logic of benevolence (see also Bird, 2021; Marques & Monchalin, 2020). This paradoxical

violence is again reflected in the following quote from the Aboriginal Justice Inquiry of Manitoba (1991) which highlights how violence is used to ostensibly create 'civil' nations.

> When one considers the floggings, jailings, hangings, torture and burnings inflicted by European states for the multitude of crimes that did not even exist in Indian society, one becomes painfully aware that an incalculably great proportion of European violence against persons was inflicted by the very agencies whose ostensible function was to reduce violence. *(Chapter 2)*

Today, colonial 'benevolence' has shifted to the prison and to deep punishments that aim to rehabilitate. The prison emerges as yet another carceral sphere to which Indigenous people naturally belong and for whom it must be saved by criminal justice administrators (formerly Indian agents) (see Saleh-Hanna, 2015). Through the prison, the violent colonial dispossession and removal of Indigenous people from their lands and all other life-sustaining relations remain intact and reasoned as a necessity.

Disappearing colonial violence through penal reforms

What is equally unsettling about naturalizing Indigenous dislocation to carceral spheres is how colonial violence is disappeared through the perennial nature of penal reforms. Since its inception in 1835, the Canadian penitentiary has been modernized and reasoned through a mass of reforms offered by all kinds of bodies of critique (see Walby & Piché, 2011). In their effects, penal reforms give the prison its ongoing modernizing force with an appearance of 'improvement'.

In a move to Indigenize the prison system through programmes, training, and hiring of Indigenous workers, among others, penal reforms naturalize the prison as an Indigenous space; a punitive space where Indigenous people are sent to receive their culture (Martel, Brassard & Jacoud, 2011). It is a 'handing back' to Indigenous people a coopted culture, rife with colonial tropes of healing, treatment, rehabilitation, and good citizenship (Chartrand & Rougier, 2019). Cultural assimilation within the prison further naturalizes the deep containment of Indigenous people within a colonial relationship predicated on dispossession, erasure, and violence. Where any kind of investment in Indigenous communities is transitory, limited, or poor by design (Brittain & Blackstock, 2015), the prison is repeatedly reformed and deployed in the lives of Indigenous people, now as a culturally adaptive space.

When such recurrent reforms fail to address the growing rates and punitive trajectory in the lives of Indigenous people, they are treated in their singularity as either ineffective, ill-conceived, or poorly implemented, among other reasonings. Collectively – in their function and form – reforms continue to animate Indigeneity into the tombs of carceral penality (see Foucault, 1977). The issue then is not whether reforms have failed, but that critique itself has failed to scrutinize how such a carceral exercise is contingent upon the reforms that are ushered in each year.

Reforms fail to problematize the violent, and yet normalized, practice of incarceration that assumes a place in the lives of Indigenous people in seemingly legitimate ways. This is what Art Solomon (1994) describes as the "abomination" of the prison that does not "heal our social ills" but continues to "disrupt the naturalness of who we are" (p. 81). Prison reforms, such as Indigenizing the prison, are rooted in a long history of colonial domination over Indigenous life worlds, language, and symbolism, and of shaping and building an imaginary of Indigenous people and where they belong.

A rethinking or interrogation of colonial relationships and the links between carceral systems must be a central framework in decolonizing approaches to criminal justice. Prisons must be understood as a source of violence, dispossession, and colonial discipline. As a normalized aspect of the prison system, penal reforms do not address the conditions that facilitate or heighten a context of violence but contribute to its necessity and legitimize what is inherent to its character (Chartrand, 2015). In painting this picture of the compounding and yet unremarkable violence of the carceral, I highlight from this stark landscape the necessity to abolish carceral and related reforms as a solution to a colonized people.

Conclusion: decarceration as a decolonization strategy

Understanding how the structures and logics of colonialism persist today is essential to any discussion of addressing the colonial relationship and state's so-called 'past harms'. The logics of colonial control pervasively exist throughout the myriad of institutions, practices, and narratives that keep Indigenous people under the boot-heel of the state. A past that is separated from the present and that exonerates our systems from accountability, is not a path to decolonization. Linking Indigenous incarceration trends to the colonial context occurring across the Canadian state not only provides a more nuanced understanding of the persistence of incarcerating Indigenous people but also offers a framework for creating better solutions.

The Truth and Reconciliation Commission of Canada (2015) in its Calls to Action has explicitly made the elimination of the high rates of Indigenous imprisonment (Call to Action #30) and the implementation of Indigenous justice systems (Call to Action #42) a priority for the Canadian state. Achieving these ends means that all initiatives and actions must incorporate an understanding of how colonialism interweaves into the policies, practices, and decision-making processes at every level of the criminal justice system, including the prison.

To address any rates or trends of incarcerating Indigenous people, given that incarceration is a form of colonial violence, any remedy requires a move away from prison. Currently, even when a colonial context is considered, such as with Gladue principles or restorative justice practices, such approaches often only consider the historical context of the individual, while the institution itself is rarely, if ever, given any scrutiny. As Saleh-Hanna (2015) argues, "crimes of enslavement within plantations, chain gangs, reservations and penitentiaries are shielded from moral interrogation while processes of confinement (whom, how and for how long) conveniently take precedence" (para. 9). There are multiple existing decarceration strategies and community options available to prison authorities. For example, as noted, Sections 81 and 84 of the Corrections and Conditional Release Act (1992) stipulate that Indigenous people in prison can serve their sentence and parole in a supported way in the community through Indigenous governing bodies and organizations. These practices are currently under-utilized (OCI, 2012; Standing Senate Committee on Human Rights, 2021) and also under-resourced.

Equally important in reducing the practice of incarcerating Indigenous people is addressing the conditions that foster and heighten ongoing colonial relationships. This would include investing in community self-determination, honouring land and treaty agreements (Yellowhead Institute, 2021), investing in community-based and led initiatives (Milward, 2012; Centre for Justice Exchange, 2020), providing a basic livable income (Gazan, 2020), and investing in care, wellness, and healing (Choosing Real Safety, n.d.). In other words, we need to divest from punitive responses to a colonial problem and invest in those areas of life that support and build people and communities.

While I have problematized the field for normalizing and naturalizing the carceral for Indigenous people, much important work and research have also challenged the Canadian

colonial episteme over the years (e.g., Jackson, 1989; Monture-Angus, 1999; Rudin, 2008; Solomon, 1994). This work has laid important foundations for setting an anti-colonial framework against the trends, rates, and violence of incarceration. Building on this work, I contribute to these insights by collating the research in federal corrections to broadly conceive the many levels at which Indigenous people are subject to the deepest, most violent, and most punitive aspects of the system. I profile this work against the ongoing backdrop of innumerable reforms to address the problematic context of prisons, punishment, and justice for Indigenous people. Finally, I offer some solutions beyond current reforms that will cultivate people and not prisons.

Notes

1 https://justiceexchange.ca/
2 Section 81 of the CCRA was modified by Bill-C83, 2019, which changed the language whereby the agreements were no longer between the CSC and "Aboriginal community" (i.e. any community, group, etc. with predominantly Aboriginal leadership) to an "Indigenous governing body or any Indigenous organization" which limited exchange agreements to a government-identified Indigenous group, community, or people or an Indigenous-based organization (see Murdocca, 2020, p. 40).
3 Administrative and disciplinary segregation has been renamed by CSC as Structured Intervention Units (SIU).
4 See Chartrand and Savarese (In Press) and Anthony, Chartrand & McIntosh (2022) for Indigenous voices on incarceration.

References

Aboriginal Justice Inquiry of Manitoba. (1991). *Report of the Aboriginal justice inquiry of Manitoba*. http://www.ajic.mb.ca/volume.html

Anthony, T., Chartrand, V., & McIntosh, T. (Eds.) (2022). Special issue: Anti-colonial abolitionism. *Journal of Prisoners on Prison*, 30(2). https://doi.org/10.18192/jpp.v30i2

Arbel, E. (2019). Rethinking the "crisis" of Indigenous mass imprisonment. *Canadian Journal of Law and Society/La Revue Canadienne Droit et Société*, *34*(3), 437–456.

Arsenault, R., Diver, S., McGregor, D., Witham, A., & Bourassa, C. (2018). Shifting the framework of Canadian water governance through Indigenous research methods: Acknowledging the past with an eye on the future. *Water*, *10*(1), 49.

Axster, S., Danewid, I., Goldstein, A., Mahmoudi, M., Burak Tansel, C., & Wilcox, L. (2021). Colonial lives of the carceral archipelago: Rethinking the neoliberal security state, *International Political Sociology*, *15*(3), 415–439.

Bird, D. (2021). Settler colonialism, anti-colonial theory, and "indigenized" prisons for Indigenous women. In K. Struthers Montford & C. Taylor (Eds.), *Building abolition: Decarceration and social justice*, (pp. 110–121). Routledge.

Blackstock, C. (2019). Indigenous child welfare legislation: A historical change or another paper tiger? *First Peoples Child & Family Review*, *14*(1), 5–8.

Blagg, H., & Anthony, T. (2019). *Decolonising criminology: Imagining justice in a postcolonial world*. Springer Nature.

Brittain, M., & Blackstock, C. (2015). *First Nations child poverty*. First Nations Child and Family Caring Society of Canada. https://fncaringsociety.com/sites/default/files/First%20Nations%20Child%20Poverty%20-%20A%20Literature%20Review%20and%20Analysis%202015-3.pdf

Canadian Corrections Association. (1967). *Indians and the law*. Canadian Welfare Council, Ottawa. https://muse.jhu.edu/article/676220/pdf

Cardoso, T. (2020, October 24). "Bias behind bars: A Globe investigation finds a prison system stacked against Black and Indigenous inmates." *The Globe & Mail*. https://www.theglobeandmail.com/canada/article-investigation-racial-bias-in-canadian-prison-risk-assessments/

CBC Newsworld. (2008, June 25). Government apologizes for residential schools. *Canadian Broadcast Company*. https://www.cbc.ca/archives/government-apologizes-for-residential-schools-in-2008-1.4666041

Centre for Justice Exchange. (2020). *Unearthing justices resource collection*. https://justiceexchange.ca/projects/unearthing-justices-2/

Chartrand, V. (2015). Landscapes of violence: Women and Canadian prisons. *Champ pénal/Penal field*, VII. https://doi.org/10.4000/champpenal.9158

Chartrand, V. (2019). Unsettled times: Indigenous incarceration and the links between colonialism and the penitentiary in Canada. *Canadian Journal of Criminology and Criminal Justice*, *61*(3), 67–89.

Chartrand, V., & Rougier, N. (2021). Carceral other and severing of people, place and land: Redefining the politics of abolition through an anti-colonial framework. In M.J. Coyle & M. Nagel (Eds.), *Contesting carceral logic* (pp. 22–35). Routledge.

Chartrand, V., & Savarese, J. (Eds.) (In Press). *Unsettling colonialism in the Canadian criminal justice system*. Athabasca University Press.

Choosing Real Safety. (n.d.). *A historic declaration to divest from policing and prisons and build safer communities for all*. https://www.choosingrealsafety.com/

Commission on Systemic Racism in the Ontario Criminal Justice System Ontario. (1995). *Report of the Commission on systemic racism in the Ontario criminal justice system*. Queens Printer for Ontario.

Community Justice Exchange. (2020). *About us*. https://www.communityjusticeexchange.org/en/about-us

CSC. (2013). *Commissioner's directives: Aboriginal offenders, Number 702*. https://www.csc-scc.gc.ca/lois-et-reglements/702-cd-eng.shtml#D_Aboriginal_social_history

CSC. (2019a). *Annual report on deaths in custody 2016–2017*. https://www.csc-scc.gc.ca/005/008/005008-3013-en.shtml

CSC. (2019b). *A comprehensive study of recidivism rates among Canadian federal offenders*. https://www.csc-scc.gc.ca/005/008/092/005008-r426-en.pdf

Cunneen, C., & Tauri, J. (2016). *Indigenous criminology*. Policy Press.

Denny, E. (2020). *The fatality of bias: The legacy of colonialism on Indigenous women and the Canadian health-care system*. https://static1.squarespace.com/static/552fe729e4b0c33e91169c8e/t/5fde65f85809ae3434fa8124/1608410664583/Global-Policy-Review--New-Developments--The_Fatality_of_Bias

Department of Justice Canada. (2018). Trends in adult federal custody populations. *Research and Statistics Division*. https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2018/docs/march01.pdf

Department of Justice Canada. (2020). *Overrepresentation of Indigenous people in the Canadian criminal justice system: Causes and responses*. https://www.justice.gc.ca/eng/rp-pr/jr/oip-cjs/e.html

Foucault, M. (1977). *Discipline and punish: The birth of the prison*. Penguin Books.

Gazan, L. (2020). *National framework for a guaranteed livable basic income*. MP, Winnipeg Centre. https://www.leahgazan.ca/basicincome

Hartman, S.V. (1997). *Scenes of Subjection: Terror, Slavery, and Self-making in Nineteenth Century America*. Oxford University Press.

Jackson, M. (1989). Locking up natives in Canada. *University of British Columbia Law Review*, *23*(2), 215–300.

Lampron, E., & Chartrand, V. (2020). Fallen feathers: Tracing the Canadian government's responsibility in the unnatural deaths of seven Indigenous youth in Thunder Bay. *Canadian Journal of Law and Justice*, *2*(1), 227–255.

Laskin, R. (2021). Expanding the reach of Gladue: Exploring the use of Gladue reports in child protection. *Appeal: Review of Current Law & Law Reform*, *26*, 25–50.

Leonard, B., Parker, D.P., & Anderson, T.L. (2020). Land quality, land rights, and Indigenous poverty. *Journal of Development Economics*, *143*, 1–24.

Marques, O., & Monchalin, L. (2020). The mass incarceration of indigenous women in Canada: A colonial tactic of control and assimilation. In L. George, A.N. Norris, A. Deckert & J. Tauri (Eds.), *Neo-colonial injustice and the mass imprisonment of indigenous women* (pp. 79–102). Palgrave Macmillan.

Martel, J., Brassard, R., & Jacoud, M. (2011). When two worlds collide: Aboriginal risk management in Canadian corrections. *The British Journal of Criminology*, *51*(2), 235–255.

McKenzie, S.M. (2021). Acknowledging Canada's genocide. *Postcolonial Text*, *16*(3), 1–6.

McKittrick, K. (2011). On plantations, prisons, and a black sense of place. *Social & Cultural Geography*, *12*(8), 947–963.

Million, D. (2008). Felt theory. *American Quarterly*, *60*(2), 267–272.

Milward, D. (2012) *Aboriginal justice and the charter: Realizing a culturally sensitive interpretation of legal rights*. UBC Press.

Monture-Angus, P. (1999). Considering colonialism and oppression: Aboriginal women, justice and the "theory" of decolonization. *Native Studies Review*, *12*(1), 63–94.

Murdocca, C. (2020). Re-imagining "serving time" in Indigenous communities. *Canadian Journal of Women and the Law*, *32*(1), 31–60.

Nichols, R. (2014). The colonialism of incarceration. *Radical Philosophy Review*, *17*(2), 435–445.

NIMMIWG. (2019). *Reclaiming power and place: The final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*. Government of Canada. https://www.mmiwg-ffada.ca/final-report/

OCI [Office of the Correctional Investigator]. (2012). *Spirit matters: Aboriginal people and the Corrections and Conditional Release Act*. Government of Canada. https://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022-eng.aspx

OCI [Office of the Correctional Investigator]. (2019). *Annual report 2018–2019*. Her Majesty the Queen in Right of Canada. https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20202021-eng.pdf

OCI [Office of the Correctional Investigator]. (2021). *Annual Report 2020–2021*. Her Majesty the Queen in Right of Canada. https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20202021-eng.pdf

Office of the Auditor General of Canada. (2016). *Report 3: Preparing Indigenous offenders for release – Correctional Service Canada*. https://www.oag-bvg.gc.ca/internet/english/parl_oag_201611_03_e_41832.html

Public Safety Canada. (2022). *2020 Annual report: Corrections and conditional release statistical overview*. https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ccrso-2020/ccrso-2020-en.pdf

Rodríguez, D. (2006). *Forced passages: Imprisoned radical intellectuals and the US prison regime*. University of Minnesota Press.

Rodríguez, D. (2021). "Mass incarceration" as misnomer: Chattel/domestic war and the problem of narrativity. In M.K. Jung & J.H.C. Vargas (Eds.), *Antiblackness* (pp. 176–214). Duke University Press.

Ross, L. (Ed.). (2016). *Settler colonialism and the legislating of criminality*. American Indian Studies Center, University of California.

Royal Commission on Aboriginal Peoples. (1996). *Bridging the cultural divide: A report on Aboriginal people and criminal justice in Canada*. https://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1991-1-41-8-eng.pdf

Rudin, J. (2008). Aboriginal over-representation and R. v. Gladue: Where we were, where we are and where we might be going. *Osgoode's Annual Constitutional Cases Conference*, *40*(1), 22–40.

Saleh-Hanna, V. (2015). Black feminist hauntology. Rememory the ghosts of abolition? *Champ pénal/Penal field*, *12*. https://doi.org/10.4000/champpenal.9168

Saskatchewan Metis Justice Review Committee. (1992*). Report of the Saskatchewan Metis justice review committee*. https://publications.saskatchewan.ca/api/v1/products/33132/formats/40051/download

Solomon, A. (1994) *Eating bitterness: A vision beyond the prison walls*. NC Press.

Standing Committee on the Status of Women. (2018). *A call to action: Reconciliation with Indigenous women in the federal justice and correctional systems*. https://www.ourcommons.ca/Content/Committee/421/FEWO/Reports/RP9991306/feworp13/feworp13-e.pdf

Standing Senate Committee on Human Rights. (2019). *Interim report – Study on the human rights of federally sentenced persons: The most basic human right is to be treated as a human being*. https://sencanada.ca/content/sen/committee/421/RIDR/reports/RIDR_Report_Prisioners_e.pdf

Standing Senate Committee on Human Rights. (2021). *Human Rights of Federally Sentenced Persons*. https://sencanada.ca/en/info-page/parl-43-2/ridr-federally-sentenced-persons/

Stote, K. (2012). The coercive sterilization of Aboriginal women in Canada. *American Indian Culture and Research Journal*, *36*(3), 117–150.

Task Force on Federally Sentenced Women. (1990). *Creating choices: The report of the task force on federally sentenced women*. https://www.csc-scc.gc.ca/women/092/002002-0001-en.pdf

Task Force on the Criminal Justice System and its Impact on the Indian and Métis People of Alberta. (1991). *Justice on trial: Report of the task force on the criminal justice system and its impact on the Indian and Métis people of Alberta*. https://open.alberta.ca/publications/1369434

Truth and Reconciliation Commission of Canada. (2015). *Truth and Reconciliation Commission of Canada: Calls to action*. http://caid.ca/TRCFinCal2015.pdf

Tuck, E., & Yang, K.W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education & Society*, *1*(1), 1–40.

Walby, K., & Piché, J. (2011). The polysemy of punishment memorialization: Dark tourism and Ontario's penal history museums. *Punishment & Society*, *13*(4), 451–472.

Yellowhead Institute. (2021). *Yellowhead briefs: Treaties, Rights and Titles*. https://yellowheadinstitute.org/yellowhead-briefs/treaties-rights-title/

Cases cited

Derrick Campeau v. Attorney General of Canada, Originating Application for a Class Action, 500-06-000917-183, Application Granted.
R. v. Gladue, 1999 1 SCC 688 Canada.
R. v. Ipeelee, 2012 SCC 13, 1 S.C.R. 433 Canada.
Twins v. Canada (Attorney General), 2016 FC 537 1 FCR 79 Canada.

Legislation cited

Corrections and Conditional Release Act, 1992, S.C. c. 20 Canada.
Criminal Code, 1985, R.S.C., c. C-46 Canada.

25

Disability, race, and the carceral state

Toward an inclusive decolonial abolition

Simone Rowe and Leanne Dowse

The material and epistemic violence of the colonial encounter is starkly evident in the high rates of people with disability who are criminalized or imprisoned in carceral institutions across the globe – the vast majority of whom are Black, Indigenous and people of colour (Ben-Moshe, 2020; Human Rights Watch, 2009, 2020). The distinctive political, material and epistemic circumstances driving the growth in criminalization and incarceration for this group expose the shortcomings of a universalist understanding of justice. This chapter focuses on the epistemic and political foundations needed to reimagine justice for criminalized or incarcerated people with disability in settler-colonial contexts, many of whom are Black, Indigenous and people of colour. By foregrounding the primacy of coloniality in the creation and maintenance of the carceral state, we contend that justice for criminalized or incarcerated people with disability in settler-colonial contexts is contingent upon the progression of an inclusive decolonial abolition.

Following disability justice activists and movements, we use 'disability' as an umbrella term for the experience of people who have a range of physical, cognitive, and psychological impairments. While acknowledging the specificity of the struggles for justice of Indigenous people and people of colour, where appropriate, we use the terms 'race' and 'racialized peoples' to include Black, Indigenous and people of colour. We further acknowledge the particularities of Black, Indigenous, peoples of colour, and disabled peoples' respective struggles for liberation and self-determination. Our analysis fundamentally aligns with the call by Chickasaw Nation anti-colonial scholar Jodi Byrd (2019) to think through the multiple possibilities of solidarity and resistance between members of these various and overlapping groups in a manner that foregrounds the realities that Indigenous peoples' lands "became the grounds for others' oppressions" (p. 213).

Despite its pervasiveness in settler-colonial carceral regimes, sustained discussions of the nexus between race and disability continue to be largely missing from the decolonial and abolitionist scholarship. One consequence of this absence is that the potential implications of such inquiry for progressing the liberatory aspirations of decolonization and abolition as mutually constitutive projects remain underdeveloped. In pursuing the development of intellectual and praxis interventions that seek to dismantle and transform colonial carceral regimes, abolitionist scholars and activists urge us to think through the *interconnections* between all forms of domination and oppression (Davis et al., 2022; Matsuda, 1999). Indigenous and decolonial scholars

DOI: 10.4324/9781003176619-28

have compellingly demonstrated the colonial roots of carceral regimes (Chartrand & Rougier, 2021; Cunneen, 2021; Ross, 1998) and recognized the concomitant epistemic violence (Spivak, 1998) arising from the imposition of Western colonizing paradigms and processes and the continuing subjugation of Indigenous knowledges and culture (Smith, 2014). These analyses make evident the necessity to progress anti-colonial or decolonial abolitionism that counters entrenched beliefs in the superiority of Western paradigms and the reproduction of colonizing discourses. This brings focus to the transformative role that Indigenous knowledge and ways of being might play in the construction of alternatives to the colonial project (Coulthard, 2014).

Centring the experiences of racialized and non-racialized people with disability who are criminalized in settler-colonial contexts gives rise to multiple related lines of inquiry: What understandings about the continuity and reproduction of coloniality (as relations of power) and the carceral (as techniques and logics of punitiveness in and beyond the penal realm) emerge in the interconnections between the genealogies of race and disability in settler-colonial contexts? What can we learn from Indigenous knowledges and cultural practices that "instinctively swim against the colonising currents" (Chartrand & Rougier, 2021, p. 30) of white supremacy, colonial normativity, and carcerality? How might these insights be mobilized to reimagine justice for racialized and non-racialized people with disability who are also carceral subjects via bridging decolonial, Indigenous and abolitionist struggles against the colonial carceral state?

In this chapter, we draw on the work of Indigenous, decolonial and abolitionist scholars and activists who emphasize various aspects of the nexus between the colonial project and constructions of race, disability and the carceral. In so doing we argue for a (re)conceptualization of the pivotal roles of Indigenous, decolonial, and abolitionist perspectives in generating theoretical and practical insights about the reproduction of and resistance to colonizing paradigms, institutions, norms, and practices in relation to criminalized or incarcerated racialized and non-racialized people with disability. First, we think through the significance of the historical continuity of colonial regimes to categorize, confine, and eliminate biological and embodied differences in the form of race and disability and examine the interconnections between them. Second, we explore key insights from Indigenous, decolonial, and abolitionist scholars and activists that challenge colonial logic via the (re)valorization of Indigenous knowledge and ways of being. Finally, we consider how such insights can be applied to the reimagining of justice in the form of an inclusive decolonial abolition.

Disabling coloniality: interconnecting race and disability

Historicizing disability under the colonial project reveals three closely related insights. Creating a 'history of the present' firstly renders visible the interconnections between the continuity and reproduction of colonial constructions of race and disability. Secondly, it reveals the centrality of the continual confinement of people with disability in the creation of the carceral state. Thirdly, it exposes how the "relational life affirming power" (Dudgeon, 2021, p. 110) of Indigenous knowledge systems and worldviews were subjugated and discredited via claims of the superiority of Western positivist paradigms and their associated "death making institutions" (Kaba as quoted in Taylor, 2021, n.d.). Together these insights point to the key epistemic and material forces that have given rise to one of the fastest-growing groups in settler-colonial penal regimes: racialized and non-racialized people with disability.

Two conceptual ideas about coloniality shape our arguments. Firstly, following Mignolo and Walsh (2018) we see coloniality as constitutive of modernity: "modernity/coloniality are intimately, intricately, explicitly, and complicitly entwined", such that there is "no modernity without coloniality" (p. 4). Relatedly, we take up Santos' call to foreground the continuity

of colonial relations in analyses of capitalism: "the modern world system is not just capitalist; it is also colonialist in nature" (as cited in Dalea & Robertson 2004, p. 159). We thus follow Yellowknives Dene scholar Glen Coulthard's argument (2014) to contextually shift our investigations from "an emphasis on the capital relation to the colonial relation" (p. 13). Incorporating disability and its connections to race into an analysis of the colonial matrix of power necessarily recognizes how both colonialism (as a series of historical events) and coloniality (as relations of power) have informed the modern Western and capitalist epistemic orderings, logics, and practices used to legitimize and justify the categorization, subordination, confinement, and elimination of *both* racialized and non-racialized people with disability.

Much has been written about the colonial construction of race and gender, however, disability and its connections to race in the context of colonialism have been comparatively underexplored. Similarly, the nexus between race and disability in relation to the creation of the carceral state is rarely examined. Whereas the mass production of impairment created through the physical violence of the colonial encounter, slave labour, and colonial corporeal punishments is increasingly acknowledged, there remains a tendency to overshadow the ways in which colonization was not only about the creation of racial hierarchies based on the assumed superiority of white bodies/minds, but also about ableist hierarchies based on the assumed superiority of able bodies/minds (Cleall, 2015). As Soldatic (2015) argues, a primary means of maintaining colonial legitimacy and control was the simultaneous employment of both scientific racism and scientific ableism. Put differently, disability under the colonial project came to be construed as "a socially dehumanising construct *in tandem* [emphasis added] with theories of racial degeneracy" (Mitchell & Snyder, 2003, p. 851).

Indeed, scientific racism and scientific ableism fundamentally changed the ways in which the *embodied* knowledges of Indigenous peoples about difference, impairment, and ability were socially constructed (Connell, 2011). Here, what Sean Grech (2015) refers to as "colonial normativity" (p. 10) usefully captures how colonialism reframed and repositioned both disability and race as conditions "replete with signifiers and messages around notions of ideal colonised bodies" (p. 10). Eugenic genocidal practices – premised on theories of perceived biologically based insufficiencies that aimed to erase the presence of both racialized people and people labelled 'disabled' – coincided with techniques of medicalization, pathologization, control, and segregation (Soldatic, 2020). The appeal of eugenics centred primarily on its power to objectify, classify, and categorize difference (e.g., race and disability) as a sanctified form of scientific disqualification and to attribute the power to enact this disqualification to a plethora of professions (including medicine, psychology, psychiatry, and social work) and associated carceral institutions (Mitchell & Snyder, 2003, p. 852). As a key locus of oppression, the reproduction of the colonial fixation on categorization and disqualification is seen in the present day in what disability justice activist and theorist Mia Mingus (2015) describes as the Medical Industrial Complex (MIC):

> The Medical Industrial Complex is an enormous system with tentacles that reach beyond simply doctors, nurses, clinics and hospitals. It is not just a major piece of the history of ableism, but all systems of oppression […]. From the forced medicalisation used in prisons today to the ways 'criminal' and 'mentally disabled' are still used interchangeably. From the lack of culturally competent services, to the demonisation and erasing of Indigenous healing and practices.
>
> *(n.p.)*

The reproduction of the colonial logics of scientific racism and scientific ableism – or what Angela Ritchie (2017) refers to as "racialized ableism" (p. 91) – is also seen in the

contemporary policing and criminalization of racialized and non-racialized people with disability (Rowe et al., 2021). As Liat Ben-Moshe (2020) argues, racialized ableism necessitates the acknowledgement of deep interconnections between criminalization and pathologization as core forms of oppression and core features of state violence and carceral logics. As we have demonstrated elsewhere, the default police response to racialized and non-racialized people with disability is the enactment of both racism and ableism in their most naked and carceral forms – both race and disability are all too frequently constructed by police as *dangerous* (Rowe et al., 2021). The consequences for members of these groups are often dire. Evidence from the US, for example, reveals that people with disability comprise a staggering one-third to one-half of all individuals killed by police, the vast majority of whom are racialized people (Kim et al., 2021). Since its earliest origins in settler-colonial contexts, policing has been pivotal in colonial expansion, maintaining slavery, and the exploitation and control of First Nations people (Cunneen, 2023). The historical continuity of racialized ableism (in concert with heterosexism and classism) is thus not a by-product of policing, but central to its function; a point that reinforces the urgent need to decolonize policing (Porter, 2016) for *all* marginalized and oppressed groups (Rowe et al., 2021).

Alongside the propensity to underplay the interconnections between the colonial construction of race and disability is the tendency to disregard the pivotal role that the history of the institutionalization of people labelled disabled – motivated by a continuing application of eugenics and classism – played in the creation of the carceral state (Appleman, 2018; Ben-Moshe, 2020). The modern Western carceral state developed in the context of colonialism – what Cunneen et al. (2013) refer to as the penal/colonial complex. People with disability are intricately enmeshed in this complex, just as carcerality is deeply enmeshed in the disability experience (Steele, 2017). As Angela Davis (2014) observes, "carceral practices are so deeply embedded in the history of disability that it is effectively impossible to understand incarceration [and criminalization] without attending to the confinement of disabled people" (p. viii). The colonial carceral impetus to control, segregate, and incarcerate people with physical, cognitive, and psychological impairments has indeed been a constant since the colonial encounter (Appleman, 2018). For people with disability, subordination and repression in institutional life – whether in the early poorhouses, asylums, hospitals, institutions, or later in prisons – has been the forced reality, not the exception (Russell & Stewart, 2001).

People with disability have always been primary among the intended targets of the colonial carceral machine. Thus, the mass, long-term institutionalization of people with disability is deeply entwined with the development of the penal system and both are central in the creation of the carceral state. In the first decades of colonization in settler-colonial contexts, the almshouse or poorhouse was introduced to contain and control those who were labelled feeble-minded, women and children who were deemed to be in 'moral danger', widowed, orphaned, and sick people – all in a relatively undifferentiated manner (Appleman, 2018; Chapman et al., 2014). Here, poverty was the only common theme (Chapman et al., 2014) – one that has remained a constant throughout the history of the carceral state. During this period, the lives of racialized people "were viewed as even more disposable" (Schenwar & Law, 2020, p. 70): racialized people were subjected to normalized and unrestrained torture and violence (Chapman et al., 2014). Soon after the introduction of poorhouses, asylums were introduced to contain and control primarily people with disability – a form of institutional confinement that would last between 70 and 150 years, depending on the settler-colonial context and the advent of deinstitutionalization in each context.

Asylums effectively grew up alongside prisons (Schenwar & Law, 2020) and the criminal legal system, which, alongside forced labour and slavery, were core to the establishment of

colonial authority, and specifically for Indigenous people, the enactment and legitimization of the theft of Indigenous land and genocide (Cunneen, 2021). It is important to emphasize here that disability is already overdetermined by race, or by poverty or both. We know, for example, that disability is disproportionately manifest in poor and racialized communities where exposure to the material conditions of contemporary forms of colonization such as poverty, structural racism, lack of access to medical care, affordable healthy food, and so on creates the conditions for disability (Erevelles, 2014). The disproportionate number of racialized people with disability is thus intrinsically tied to structural racism and its multiple manifestations in poverty and inequality. The inherently disabling (Russell & Stewart, 2001) nature of the penal and criminal legal systems (including policing) also fundamentally contributes to the disturbing overrepresentation of racialized people with disability in prisons today.

Meanwhile, deinstitutionalization has done little to curb the funnelling of people with disability into prisons. Rather, in settler-colonial contexts, the devolution of the social safety net, cuts to public services, erosion in living wages, and policies that make affordable and accessible housing out of reach have directly contributed to the continuing failures of deinstitutionalization for successive generations of people with disability (Ben-Moshe, 2020). Settler-colonial states have moreover "abandoned their social contract with deinstitutionalized people" (Russell & Stewart, 2001, p. 69) via the chronic long-term under-resourcing of community care. Deinstitutionalization then has led directly or indirectly to the imprisonment of an even greater number of people with disability (Appleman, 2018), often as a result of minor infractions such as sleeping in a public place, stealing food, breaches of violence protection/intervention orders and other court orders, and possession of illicit substances (Rowe et al., 2022).

The reproduction of colonial carceral logic is also starkly evident in the contemporary fixation on risk-based paradigms proliferating in the criminal legal sphere. As a form of evidence-based oppression (Goddard & Myers, 2017), risk assessment technologies in criminal legal contexts effectively act as scientific justification – operating under the pretence of scientific objectivity and neutrality – to ignore the historical and contemporary impact of colonization (Cunneen et al., 2013). More specifically in relation to racialized and non-racialized people with disability, the risk paradigm ignores the impact of racialized ableism discussed above. By way of their fixation on narrowly defined hyper-individualistic interventions that blame the individual for their 'failings', risk assessment tools preserve the colonial carceral impetus to confine the familiar targets of colonial oppression. They do so, for example, by laundering the lived experience of marginalized groups such as racialized and non-racialized people with disability into an elevated risk score (Goddard & Myers, 2017) and by constructing aspects of impairment (e.g., impulsiveness, poor problem-solving abilities) as simply another category of risk – while disavowing the intersections between the raced, classed, gendered and ableist oppressions that create the definitions and causes of 'crime' (Cunneen et al., 2013). There is, indeed, "a very thin line" between the racist and ableist eugenic tools of the colonizer and the late twentieth-century tools of the risk paradigm (Appleman, 2018, p. 462).

The seeds of our modern hyperincarceration (Cunneen et al., 2013) – the targeting of racialized groups, people with disability and other poor and marginalized groups – are thus to be found in the early colonizers' carceral impulse to categorize, control, and incarcerate people with disability (Appleman, 2018). Abolitionist scholar-activists Schenwar and Law (2020) explain the continuity, reproduction, and normalization of the colonial carceral impulse thus: "The real problem is that certain ways of experiencing the world are seen as categorical

threats – to normativity, to capitalism, to hierarchy, to the system itself. And our society's answer to a perceived threat is, of course, confinement" (p. 84). Indeed, the epistemic and material violence of colonialism is not the effect of a colonial past, but rather, it is a central logic of the modern Western carceral state (Chartrand & Rougier, 2021). Simple distinctions between the material and the epistemic – that is, the multiple forms of social-structural injustice and the knowledge practices underpinning those forms of injustice – thus do not hold; rather, they are deeply entwined (Cunneen, 2023).

Contesting coloniality: learning from Indigenous traditions

One key consequence of accepting that the oppression experienced by criminalized or incarcerated racialized and non-racialized people with disability is rooted in the colonial project is the pressing need to decentre and disrupt the paradigmatic underpinnings of the "prison of coloniality" (Quijano, 2007, p. 178) in which we are *all* captured. Indeed, there is "no global social justice without global cognitive justice" (Santos et al., 2008, p. xx). Rather, the realization of cognitive justice is contingent upon the recognition of a plurality of knowledges – that is, justice which encompasses the recognition of the great epistemological diversity of the world, including the intersectional "fugitive/maroon abolitionist knowledges" that originate from those who are most affected by state violence (Ben-Moshe, 2020). Indeed, the valorization of a multiplicity of knowledges is pivotal to facilitating both the "radical democratisation and the decolonisation of knowledge and power" (Santos et al., 2008, p. xiix). The operationalization of the dual goal of democratizing and decolonizing knowledge and power is particularly enabled in two closely related projects: the re-inscription of Indigenous knowledge systems and worldviews, and the critical revival of Indigenous cultural practices as a way to begin to untangle the "interrelated structural and psycho-affective dimensions of colonial power" (Coulthard, 2014, p. 26).

Thus far we have presented evidence to highlight the largely suppressed history of disability oppression in the colonial context along with its interconnections with racial oppression and their continuity in the present day. We have also demonstrated the ways these are central to carceral projects. Coloniality has relied on two interconnected forms of scientific oppression – scientific racism and scientific ableism – to categorize, control, and eliminate non-white and non-normative bodies/minds. The reproduction of the colonial logics of scientific racism and scientific ableism is acutely manifest in the modern Medical Industrial Complex (MIC) (Mingus, 2015). The violent imposition of colonial power relied on the confinement and elimination of people with disability and racialized people in the creation of the carceral state. The reproduction of the logics of colonial carcerality is starkly evident, *inter alia*, in the policing of people with disability and contemporary risk-based paradigms.

Positivist, racist and ableist tools of oppression that target criminalized or incarcerated racialized and non-racialized people with disability also necessitate the acknowledgement of deep interconnections between processes of criminalization and pathologization. Criminalization and pathologization are both core forms of oppression and core features of state violence and carceral logics (Ben-Moshe, 2020). For criminalized or incarcerated racialized and non-racialized people with disability, the MIC (as a core means of pathologization) and the carceral state (as a core means of criminalization and carcerality) must be understood as interconnected. As Mari Matsuda (1999) argues, the deep interconnections between all forms of domination and oppression demand that the dismantling of one form of oppression is impossible without the dismantling of every other. Accordingly, the colonizing positivist paradigmatic foundations of

the MIC and the carceral apparatus itself must be simultaneously challenged. There is an urgent and indispensable need for the decolonization of the epistemic foundations of these regimes of knowledge and power. As we have demonstrated, this project of decolonization is as essential to achieving justice for racialized people in the carceral state as it is for criminalized people with disability.

Perhaps one of the most radically understated proposals for unsettling the underpinnings of colonizing paradigms lies in Indigenous people's understanding of the life-affirming power of the closely connected notions of relationality and interconnectedness. Indeed, Indigenous understandings of relationality and interconnectedness profoundly disrupt and challenge a core claim of Western positivist regimes of knowledge and power: the unquestioned acceptance of claims to *disconnectedness* – not only via the mind/body split but also via claims of our disconnection from the living earth; a claim that, in turn, denies the s*ocial embodiment* (Connell, 2011) of knowledge, specifically via the unquestioned acceptance of objectivity and rationality (Moreton-Robinson, 2017).

In her insightful critique of Western research methodologies, Goenpul scholar Aileen Moreton-Robinson (2017) explains how the hegemony of Western science disavowed the embodiment of knowledge by failing to address the metaphysical origins of its claims to disconnectedness, particularly a disconnectedness to the natural world. Yet, Indigenous, feminist, abolitionist, and (some) disability theorizing demonstrates that "we are, as embodied beings […] profoundly involved in a larger whole" (Connell, 2011, p. 1360). At the very least, there is a need to accept that it is as valid to approach the world with a metaphysical argument that one is connected to one's body, mind, and the natural world as it is to make a metaphysical argument that one is disconnected from the body, mind, and the natural world (Moreton-Robinson, 2017). Drawing attention to the central role of relationality in the literature on Indigenous research methodologies produced in Canada, the United States, Hawaii, Australia, and New Zealand, Moreton-Robinson (2017) explains Indigenous understandings of relationality and interconnectedness:

> Relationality is grounded in a holistic conception of the inter-connectedness and inter-substantiation between and among all living things and the earth […]. [Relationality] shapes ways of knowing, being and doing; to be connected is to know, and knowing is embodied in and connected to country.
>
> *(pp. 71–72)*

As Coulthard (2014) shows, the critical revival of such core tenants of Indigenous knowledge systems and cultural practices is fundamental to Indigenous anti-colonialism, and in turn to the rupturing of the exploitative and oppressive processes and practices of colonizing paradigms:

> Indigenous anticolonialism […] is best understood as a struggle primarily inspired by and oriented around **the question of land** – a struggle not **for** land in the material sense, but also deeply **informed** by what the land **as a system of reciprocal relations and obligations** can teach us about living our lives in relation to one another and the natural world in nondominating and nonexploitative terms.
>
> *(p. 13, emphasis in the original)*

This place-based foundation of Indigenous decolonial thought constitutes what Coulthard (2014) terms "grounded normativity" (p. 13). "Grounded normativity teaches us how to live our lives in relation to other people and nonhuman life forms in a profoundly nonauthoritarian,

nondominating and nonexploitative manner" (Coulthard & Simpson, 2016, p. 254). In her discussion of the transformative pedagogical dimensions of Indigenous people's profound understandings of interdependence, Mississauga Nishnaabeg scholar Leanne Betasamosake Simpson (2014) explains how the embodied and contextualized nature of grounded normativity renders "an implicate order that does not discriminate by gender, by age, by ability, or any of those things"; but rather, meaning and knowledge is derived "through a compassionate web of interdependent relationships that are different and valuable because of that difference" (pp. 11–12).

The radical and transformative potential of the critical revival of Indigenous understandings of interdependence is recognized in many of the most important social/abolitionist movements of our time, including Black Lives Matter, Critical Resistance, and the Disability Justice movement. For example, Sins Invalid (2019) – a group of disabled activists including queer people and people of colour who founded the Disability Justice movement in the US – have embedded interdependence as one of the movement's ten core principles:

> Before the massive colonial project of Western European expansion, we understood the nature of interdependence within our communities. We see the liberation of all living systems and the land as integral to the liberation of our own communities, as we all share one planet. We work to meet each other's needs as we build toward liberation, without always reaching for state solutions which inevitably extend state control further into our lives.
>
> *(p. 25)*

The articulation of interdependence for the Disability Justice movement is a political practice centred in difference that simultaneously opposes processes of normalization and the myriad forms of state-sanctioned carcerality and violence (Sins Invalid, 2019). In its praxis, Disability Justice is radically inclusive. Disability Justice disrupts the core of colonizing paradigms by challenging what is considered 'normal', not wanting to simply join the ranks of the colonizers, but instead seeking to dismantle the ranks and the systems that maintain them (Mingus, 2010). By centring the commonalities of intersectionally targeted groups, a form of radical interrelatedness grounded in Indigenous understandings is critically revived.

Inextricably connected to the recognition of our interdependence in building 'intersectional resistance' in movements such as Disability Justice, is the insistence by abolitionists and transformative justice organizers on centring the concept of relationality (Davis et al., 2022). As Mariame Kaba (2020) puts it, "if we can't get along with each other […] then what the hell are we doing? Everything that is worthwhile is done with other people […]. [W]hen we are in relationship with each other, we influence each other" (pp. 175–179). As Kaba implies, there is a dialectical dimension to relationality in abolitionist organizing (Davis et al., 2022). Dialectical relationality at the movement-building level is a powerful vehicle for moving beyond the "myth of independence" (Mingus, 2010, n.p.), for grappling with difference, uncovering commonalities, and forging authentic alliances. Indeed, the critical revival of Indigenous understandings of interdependence and relationality in key social/abolitionist movements of our time attests to the life-affirming power of Indigenous knowledge systems to resist, dismantle and transform the death-making institutions and paradigms upon which the colonial carceral state is founded.

Conclusion: toward an inclusive decolonial abolition

Narrating a history of the present interconnected forms of oppression targeting criminalized or incarcerated racialized and non-racialized people with disability in settler-colonial contexts elucidates how liberation for members of these groups is contingent on both the abolition of

networked institutions of oppression such as the MIC and the penal-colonial complex and the decolonization of oppressive colonial paradigms, relations, and processes. In this chapter, we have suggested some key conceptual, transformative and organizing tools that can be applied to the reimagining of justice to progress an inclusive decolonial abolition. Firstly, and perhaps most importantly, we point to the pivotal need to acknowledge the intersectionality of struggles for liberation and self-determination between criminalized or incarcerated racialized and non-racialized people with disability. We have highlighted the multiple possibilities of solidarity and resistance that emerge when social movements, activists, and scholars reject single-axis understandings of subordination, but rather, explicitly employ intersectional analysis as a key tool to forge solidarities. Secondly, we argue the critical need to simultaneously centre understandings of the continuity of coloniality and to acknowledge the role that critically revived Indigenous knowledges and cultural practices can play in the construction of alternatives to the oppressive social relations and paradigms upon which the colonial project is founded. As Coulthard and Simpson (2016) powerfully remind us,

> When we disappear Indigenous presence from our intellectual endeavours, and our movement building, and our scholarship, we not only align ourselves with the wrong side of history, we necessarily negate any form of solidarity and become actors in the maintenance of settler-colonialism.
>
> *(p. 255)*

The deepening of dialogues between decolonial and abolitionist movements toward comprehensive political unity – an abolition that is decolonial and a decolonial that is abolitionist – will amount to a radically inclusive opportunity to co-create a just and liberated world for all. We propose that crucial to achieving this aim is the reframing of justice and liberation as relational and interdependent. When we simultaneously 'learn to learn' from those who experience intersectional oppression and, at the same time, 'learn to unlearn' the epistemic foundations of the prison of coloniality, the revalorization of Indigenous understandings of relationality and interdependence becomes central.

By centring an understanding that Indigenous peoples' lands "became the grounds for others' oppressions" (Byrd, 2019, p. 213), while simultaneously attending to the life-affirming subjugated knowledges of Indigenous peoples, we can begin to see how our current oppressive arrangements for criminalized or incarcerated racialized and non-racialized people with disability are historically contingent and can, therefore, be transformed (Davis et al., 2022). At the same time, such an analysis uncovers multiple possibilities for building solidarity and resistance between diverse groups, as is starkly evident in intersectional movements such as Disability Justice. A deeper acknowledgement of our interdependence – our profound involvement in a larger whole – and the fundamental need for relationality – as that which unites us and is more important than our differences – are critical tools for building solidarity in the present moment. In this way, the progression of decolonial abolition demands acknowledgement that, "no person is free until the last and the least of us is free" (Matsuda, 1999, p. 1189).

References

Appleman, L.I. (2018). Deviancy, dependency, and disability: The forgotten history of eugenics and mass incarceration. *Duke Law Journal*, *68*(3), 417–478.

Ben-Moshe, L. (2020). *Decarcerating disability: Deinstitutionalization and prison abolition*. University of Minnesota Press.

Byrd, J.A. (2019). Weather with you: Settler colonialism, antiblackness, and the grounded relationalities of resistance. *Critical Ethnic Studies*, *5*(1), 207–214.

Chapman, C. (2014). Five centuries' material reforms and ethical reformulations. In L. Ben-Moshe, C. Chapman & A.C. Carey (Eds.), *Disability incarcerated: Imprisonment and disability in the United States and Canada* (99. 25–44). Palgrave Macmillan.

Chapman, C., Carey, A.C., & Ben-Moshe, L. (2014). Reconsidering confinement: Interlocking locations and logics of incarceration. In L. Ben-Moshe, C. Chapman & A.C. Carey (Eds.), *Disability incarcerated: Imprisonment and disability in the United States and Canada* (pp. 3–24). Palgrave Macmillan.

Chartrand, V., & Rougier, N. (2021). Carceral other and severing of people, place and land. In M.J. Coyle & M. Nagel (Eds.), *Contesting carceral logic: Towards abolitionist futures* (pp. 22–35). Routledge.

Cleall, E. (2015). Orientalising deafness: race and disability in imperial Britain. *Social Identities*, *21*(1), 22–36.

Connell, R. (2011). Southern bodies and disability: Re-thinking concepts, *Third World Quarterly*, *32*(8), 1369–1381.

Coulthard, G.S. (2014). *Red skin white masks: Rejecting the colonial politics of recognition*. University of Minneapolis Press.

Coulthard, G.S., & Simpson, L.B. (2016). Grounded normativity/ Place-based solidarity. *American Quarterly*, *68*(2), 249–255.

Cunneen, C. (2021). A disbelief in colonial penality: Settler colonialism and abolitionism. In M.J. Coyle & D. Scott (Eds.), *The Routledge handbook of penal abolition* (pp. 269–279). Routledge.

Cunneen, C. (2023). *Defund the police: Possibilities for police divestment and abolition*. Policy Press.

Cunneen, C., Baldry, E., Brown, D., Brown, M., Schwartz, M., & Steele, A. (2013). *Penal culture and hyperincarceration: The revival of the prison*. Ashgate.

Dalea, R., & Robertson, S. (2004). Interview with Boaventura de Sousa Santos. *Globalisation, Societies and Education*, *2*(2), 147–160.

Davis, A.Y. (2014). Foreword. In L. Ben-Moshe, C. Chapman & A.C. Cary (Eds.), *Disability incarcerated: Imprisonment and disability in the United States and Canada* (pp. vii–viii). Palgrave Macmillan.

Davis, A.Y., Dent, G., Meiners, E.R., & Richie, B.E. (2022). *Abolition. Feminism. Now*. Haymarket Books.

Dudgeon, P. (2021). Decolonising psychology: Self-determination and social and emotional well-being. In B. Hokowhitu, A. Moreton-Robinson, L. Tuhiwai-Smith, C. Anderson & S. Larkin (Eds.), *Routledge Handbook of Critical Indigenous Studies* (pp. 100–113). Taylor & Francis.

Erevelles, N. (2014). 'Crippin' Jim Crow: Disability, dis-location, and the school-to-prison pipeline. In L. Ben-Moshe, C. Chapman & A.C. Cary (Eds.), *Disability incarcerated: Imprisonment and disability in the United States and Canada* (pp. 81–99). Palgrave Macmillan.

Goddard, T., & Myers, R.R. (2017). Against evidence-based oppression: Marginalised youth and the politics of risk-based assessment and intervention. *Theoretical Criminology*, *21*(2), 151–167.

Grech, S. (2015). Decolonising Eurocentric disability studies: Why colonialism matters in the disability and global South debate. *Social Identities*, *21*(1), 6–21.

Human Rights Watch. (2009). *One billion forgotten: Protecting the human rights of persons with disabilities*. https://www.hrw.org/sites/default/files/related_material/2014%20disabilities_program_low.pdf

Human Rights Watch. (2020). *Living in chains: Shackling of people with psychosocial disabilities worldwide*. https://www.hrw.org/sites/default/files/media_2020/10/global_shackling1020_web_1.pdf

Sins Invalid. (2019). *Skin, tooth, and bone. The basis of our movement is our people: A disability justice primer* (2nd ed.). Sins Invalid.

Kaba, M. (2021). *We do this 'til we free us: Abolitionist organising and transforming justice*. Haymarket Books.

Kim, M.E., Chung, M., Hassan, S., & Ritchis, A.J. (2021). *Defund the police – Invest in community care: A guide to non-police mental health crisis response*. https://www.interruptingcriminalization.com/non-police-crisis-response-guide

Matsuda, M.J. (1999). Beside my sister, facing the enemy: Legal theory out of coalition. *Stanford Law Review*, *43*, 1183–1192.

Mignolo, W.D., & Walsh, C.E. (2018). *On decoloniality: Concepts, analytics, praxis*. Duke University Press.

Mingus, M. (2010, February 12). *Changing the framework: Disability justice. How our communities can move beyond access to wholeness [Blog post]*. https://leavingevidence.wordpress.com/2011/02/12/changing-the-framework-disability-justice/

Mingus, M. (2015, February 6). *Medical industrial complex visual [Blog post]*. https://leavingevidence.wordpress.com/2015/02/06/medical-industrial-complex-visual/

Mitchell, D., & Snyder, S. (2003). The eugenic Atlantic: race, disability and the making of an international eugenic science, 1800–1945. *Disability & Society*, *18*(7), 843–864.

Moreton-Robinson, A. (2017). Relationality: A key presupposition of an Indigenous social research paradigm. In C. Anderson & J.M. O'Brien (Eds.), *Sources and methods in Indigenous Studies* (pp. 69–77). Taylor & Francis.

Porter, A. (2016). Decolonising policing: Indigenous patrols, counter-policing and safety. *Theoretical Criminology*, *20*(4), 548–565.

Quijuno, A. (2007). Coloniality and modernity/rationality. *Cultural Studies*, *21*(2/3), 168–178.

Ritchie, A.J. (2017) *Invisible no more: Police violence against Black women and women of colour*. Beacon Press.

Ross, L. (1998). *Inventing the savage: The social construction of Native American Criminality*. University of Texas Press.

Rowe, S., Dowse, L., Baker, M., & Baldry, E. (2022). Policing disability: Alliance building, police divestment and community investment. *Current Issues in Criminal Justice*, *34*(2), 171–187.

Russell, M., & Stewart, J. (2001). Disablement, prison, and historical segregation. *Monthly Review*, *53*(3), 61–75.

Santos, B.d.S., Nunes, J.A., & Meneses, M.P. (2008). Introduction: Opening up the canon of knowledge and recognition of difference. In B.d.S. Santos (Ed.), *Another knowledge is possible: Beyond Northern epistemologies* (pp. xx–xvix). Verso.

Schenwar, M., & Law, V. (2020). *Prison by any other name: The harmful consequences of popular reforms*. The New York Press.

Simpson, L.B. (2014). Land as pedagogy: Nishnaabeg intelligence and rebellious transformation. *Decolonisation: Indigeneity, Education & Society*, *3*(3), 1–25.

Smith, L.T. (2014). *Decolonising methodologies: Research and Indigenous peoples* (2nd ed.). Zed Books.

Soldatic, K. (2015). Postcolonial reproductions: Disability, indigeneity and the formation of the white masculine settler state of Australia. *Social Identities*, *21*(1), 53–68.

Spivak, G.C. (1998). Can the subaltern speak? In C. Nelson & L. Grossberg (Eds.), *Marxism and the interpretation of culture* (pp. 271–316). Macmillan.

Steele, L. (2017). Disabling forensic mental health detention: The carcerality of the disabled body. *Punishment & Society*, *19*(3), 327–347.

Taylor, K. (2021, May 7). The emerging movement for police and prison abolition. *The New Yorker*. https://www.newyorker.com/news/our-columnists/the-emerging-movement-for-police-and-prison-abolition

26

'Risk' and the challenges in moving beyond marginalizing frameworks

Grace Gordon and Robert Webb

This chapter examines the development and application of risk approaches over the last three decades in various criminal justice jurisdictions. It draws attention to how the deployment of risk-based responses and interventions has particular consequences for the development of crime control policies aimed at Indigenous peoples and ethnic minority populations. Critical research has identified systemic racism and disproportionate levels of criminal justice interventions in Indigenous communities in settler states as a product of colonialism and systemic discrimination (Anthony, 2013; Cunneen & Tauri, 2016; Jackson, 1988). Yet, in examining the development of crime control policies in recent decades, it is possible to observe the ways some state criminal justice agencies have favoured explanations that emphasize individualistic causes and factors. Illustrative examples from the US, the UK, Australia, and Aotearoa New Zealand (NZ) are presented, highlighting the differing conceptions of risk factors and criminogenic needs and associated assessment tools that emerge in criminal justice and correctional practices that impact Indigenous and minority communities. These risk frameworks ignore the wider social and structural inequalities that exist in society and thus their impact on criminalization and victimization.

This exploration and discussion of risk in state policies and its disproportionate impact on minority and Indigenous populations draws upon a critical criminology lens (Cunneen & Tauri, 2016) to discuss the growth of administrative practices that rationalize and maintain punitive crime control policies in the international context. There is also a history of colonial and neo-colonial state policies that negatively impact Indigenous peoples globally, which necessitates a critical understanding of state social control practices.

The first section examines the theoretical basis of risk and the growing developments of risk-based approaches internationally in criminal justice settings. The second section outlines various issues with reliance on risk and algorithms in determining future actions and we argue that the deployment of state and agency policies and practices has particular consequences for Indigenous communities and young people, racialized ethnic minorities, and marginalized youth. Thirdly, we examine how within the discursive risk formulation of groups that are viewed to be vulnerable to harm, members of these groups are also potentially considered a future risk to others in society, and how this justifies intervention by the

DOI: 10.4324/9781003176619-29

state welfare and criminal justice apparatus. Lastly, we propose that the decolonization of risk requires challenging and rethinking the ongoing harm that risk policies and practices cause to Indigenous and racialized minority populations.

Theorizing risk

Risk discourses have continued to expand and feature in many areas of social life globally. Regarding the justice system, risk is commonly associated with the predictability of future events (most notably, recidivism), but can also be used to label people based on their perceived dangerousness and riskiness. Additionally, risk can be framed as a mode of governance, demonstrating the way risk is managed, controlled, or governed by states or individuals (Werth, 2019). Risk will be discussed through these three frameworks throughout this chapter.

Risk logics have become increasingly pervasive and demonstrate the expansion of our consciousness of risk (Pratt & Anderson, 2020). The prioritization of risk within the justice system can be demonstrated through the movement in the last three decades toward what has been characterized as the 'new penology' by Feeley and Simon (1992). This involves managing prison populations under a 'culture of control' (Garland, 2001), alongside the development of correctional assessments which Carlen (2008) describes as "risk-crazed governance" (p. 1). Through this period, alongside the presumption in rehabilitation that 'nothing works', the justice system adapted its rehabilitative and welfarist approach. Instead, the focus was on efficiency and effectiveness in addressing crime and protecting the community (O'Malley, 2010; Phoenix, 2009). New forms of managerialism in crime control responses were introduced across many countries such as the UK, the US, Australia, and NZ to manage and control risk.

Rising concern about risk has encouraged multiple strategies for addressing the 'problem'. Clear and Cadora (2001) identified risk reduction, risk management, and risk control as commonly utilized strategies. Risk reduction prioritizes intervention programmes that seek to rehabilitate risky people. Risk management utilizes managerial techniques, with a focus on people categorized as high risk. Lastly, risk control relies on exerting control over people through punitive approaches. Within this approach, the "primary intent is thus containment, not change" (Clear & Cadora, 2001, p. 59). In a society that is fixated on risk aversion, risk reduction and risk management may not provide certainty in terms of eliminating risk. Therefore, risk control is favoured, due to its ability to give higher assurance that risk will be contained.

Pat O'Malley (2008) argues that the emergence of risk paradigms coincided with the rise in neoliberal politics. Neoliberal assumptions are reinforced through the prioritization of self-management of risk (Carlen, 2012; Kendall, 2013). Risk management approaches such as "responsibilisation" (Gray, 2005, p. 938) and the "individualization of risk" (Furlong & Cartmel, 2007, p. 6) function to make people responsible for managing their own risk levels (Gray, 2005). These approaches intend to be empowering and encourage people to have agency through their self-management of risk. As Anthony (2013) notes, "[t]his presumes that offenders exercise freedom and choice in committing offences. In the instance of Indigenous offenders, the state and judiciary not only regard offenders as disavowing their responsibility, but also impute irresponsibility to the Indigenous community" (p. 74). Critics argue that individual responsibility for risk management ignores broader structural issues that trap people in positions of social and economic disadvantage (Furlong & Cartmel, 2007; Gray, 2009). This inevitably restricts a person's ability to negotiate and manage the risk. Individual-level interventions are prioritized, which limits the potential for structural change, and thus as Gray (2009) notes it reinforces social marginalization:

> When transformation becomes synonymous with individual empowerment or responsibilization without simultaneous attempts to remove structural barriers, it acts as a strategy of social discipline and regulation which simply reinforces and deepens social inequality and injustice.
>
> *(pp. 452–453)*

Two simultaneous processes of responsibilization and de-responsibilization occur. While individuals are increasingly held responsible for self-managing their risk, the actors within the justice system experience 'de-responsibilization' (Hannah-Moffat, 2016). Policymakers, police, judges, lawyers, correctional officers, and parole board members can influence the experiences of those who go through the justice system. This can be through risk-based decisions to divert someone from the justice system, the length of time someone may spend in prison, and whether someone is released from prison. Through the de-responsibilization process, they evade the responsibility for the consequences of their decision-making (Hannah-Moffat, 2016).

Algorithmic-based risk assessments were introduced to supposedly assist in standardization and transparency of decision-making around risk (Eckhouse et al., 2019). Since their introduction, risk assessment tools have become preferable and now "dominate correctional management and programming" (Hannah-Moffat, 2015, p. 113). The popularity of these tools informs Starr's (2015) claim that the justice system is in a "risk assessment era" (p. 205). Within risk assessment tools, 'risk factors' are used to categorize people into a *risk pool* (O'Malley, 2010) within which a combination of unchangeable, static factors (e.g., criminal history) and adaptable, dynamic factors (e.g., lack of prosocial leisure activities) are used to categorize people (Miller et al., 2022). While certain countries may differ in what risk factors are utilized to determine risk levels, the central eight risk factors are often core features. They involve the following: (1) criminal history; (2) pro-criminal attitudes; (3) pro-criminal peers; (4) anti-social personality pattern (i.e., impulsive, aggressive); (5) family/marital (i.e., level of conflict and supervision); (6) school/work (i.e., quality of relationships, performance); (7) substance abuse; and (8) leisure/recreation (i.e., prosocial activities) (Heffernan et al., 2019).

However, as Ugwudike (2022) observes, the deployment of predictive algorithmic risk assessments relying on criminal history such as arrest data may not be neutral and can integrate data from the over-policing of ethnic minorities. The racially biased outcomes and decision-making in policing and other justice practices may be present in what is considered criminal history, thus distorting and integrating this bias into the risk assessment of racialized minorities (Ugwudike, 2022, p. 87). Concerningly, risk assessment tools are often developed with no input from the populations they are deployed against and may be opaque in both their development and use. Ugwudike (2022) notes that power and control in the development process can be viewed as 'digital capital', which is "a key structural conduit of bias: the uneven distribution of digital resources with which predictive algorithms are created. Such inequality excludes affected populations from creational processes, conferring on others the power to inject their choices and preferences into algorithm design" (p. 88).

Risk and marginalization: reinforcing the 'risky subject'

Scholars globally have recognized how 'objective' risk factors disproportionately attribute the social conditions of marginalized communities to greater levels of risk (Cunneen, 2020; Harcourt, 2015; Werth, 2019). Risk-based models tend to focus on "individualised psychosocial factors which can produce an isolated view of a young person and ignore the wider historical, cultural and social structural context of their development" (Johns et al., 2017, p. 5).

For example, substance abuse, having a parent in prison, and lack of stable housing are "treated as discrete 'facts' devoid of historical and social context", and are then identified as risk factors (Cunneen, 2020, p. 528). These risk factors are commonly experienced by ethnic minorities and Indigenous populations due to long-standing consequences of oppression, marginalization, and colonization (Webb, 2018). In the American context, Goddard and Myers (2017) argue that risk assessments "*transform life experiences* rooted in race and class inequalities into individual attributes that elevate a youth's total risk score" (p. 155).

Despite their proposed objectivity, there are concerns about the potential for bias to be embedded within them (Werth, 2019). Risk assessment tools seek to predict future behaviour, and thus function as a "mirror of the past" (Mayson, 2019, p. 2282). While a range of factors is used in risk assessment tools, a lot of weight is given to criminal history as a determinant for future offending. Extensive scholarship has debated how criminal history as a risk factor may operate in a way that disproportionately affects ethnic minorities and Indigenous populations (Cunneen, 2020; Goddard & Myers, 2017; Harcourt, 2015; Miller et al., 2022; Tonry, 2019). The criminalization process of racialized minorities leads to higher levels of engagement in the justice system. Therefore, segments of society that are subjected to heavy policing and more severe punishment are inclined to have an elevated risk score. This, in turn, justifies and legitimizes police presence in and high incarceration rates of those communities (Goddard & Myers, 2017). Cunneen (2020) argues that risk assessment "both *masks* race in its practices and *marks* race in its outcomes" (p. 522). Through the guise of objectivity, these "technologies of racial governance" appear to be race neutral, but in reality, they "operate silently in producing highly racialized outcomes including state surveillance, supervision and incarceration" (Cunneen, 2020, p. 528).

Risk assessment tools create a cycle of repeating previous statistical and data patterns to determine future events (O'Malley, 2015). Criminal history, therefore, does not operate as an objective risk factor and instead is the product of subjective decisions made by actors in the justice system (Goddard & Myers, 2017). This enables criminal history to function as a "proxy for class and race" (Werth, 2019, p. 9). Mayson (2019) argues that it is not necessarily the risk-based tools that are problematic, however; it is the process of using past behaviour from an unequal and socially stratified setting, to predict future action:

> [T]he source of racial inequality in risk assessment lies neither in the input data, nor in a particular algorithm, nor in algorithmic methodology per se. The deep problem is the nature of prediction itself. All prediction looks to the past to make guesses about future events. In a racially stratified world, any method of prediction will project the inequalities of the past into the future.
>
> *(p. 2218)*

Criticisms of using static factors to determine riskiness have led to the privileging of dynamic risk factors (alternatively known as criminogenic needs). The introduction of the risk-need-responsivity (RNR) intervention across several jurisdictions since the late 1990s demonstrates a commitment to risk-based intervention. In addressing dynamic risk factors, the intention is that this will reduce a person's likelihood of reoffending (Hannah-Moffat, 2016). However, dynamic factors have become increasingly criticized for their universal approach to criminogenic needs, lacking consideration of the specific needs of certain segments of society (Hannah-Moffat, 2015, 2016). Criticism of the RNR intervention suggests that the criminogenic needs identified may differ from self-defined or socio-cultural needs (Maurutto & Hannah-Moffat, 2007). Criminogenic needs are often viewed through a deficit lens and are

identified as needing to be addressed to reduce the likelihood of recidivism. However, a fixation on reducing recidivism can result in other needs – such as "individual well-being, a sense of hope or purpose, developing human capital, or reconnecting with family and friends" – being ignored or sidelined (Werth, 2019, p. 9). Approaches to determining risk that rely heavily on the identification of static and dynamic risk factors continue the criminalization and marginalization of ethnic minorities and Indigenous peoples (Anthony, 2013). Cardoso (2020), for example, reviewed risk assessments for Indigenous and Black inmates in Canadian federal prisons, noted that they were biased and found that Indigenous and Black inmates were more likely than other inmates to receive the worst risk scores in assessments, which affected access to rehabilitation programmes and reduced the likelihood of gaining parole.

In the interests of risk aversion, the identification of 'risky subjects' is prioritized over upholding human rights. Decisions on risk have a large impact on the experience that a person has with/within the justice system. Whether they are diverted from the justice system, the level of supervision that is required, or their access to programmes or treatment are all decisions impacted by the risk pool a person is categorized into (Campbell et al., 2018). Risk management and control paradigms are "strategies of inclusion and exclusion" (Hudson, 2003, p. 76), in which people who are labelled as dangerous or risky are deprived of their humanity:

> [People] are deprived of their rational humanity and become determined creatures of statistical risk-assessment systems; instead of being flesh and blood, inconsistent, unpredictable humans acting out of their own interests and desires, free to change their perceptions of these and their moral cognitive sets at any time in the present and future, they become the predictable embodiment of databases, for whom the behavioural uncertainty of actual choices in actual situations is replaced by the statistical certainties of factorial calculations.

Risk-based governance has informed a shift towards increased risk prediction, categorization, and control (O'Malley, 2004a). Individualized responses and treatments have gone by the wayside, in the interest of identifying and controlling "risky subjects" (O'Malley, 2004b, p. 334). Young people – particularly those on social, cultural, and economic margins – are frequently perceived as dangerous or risky (Hudson, 2003). Risk management technologies in the justice system privilege group classification, rather than personalized support and treatment (Werth, 2019). This process can be identified as dehumanizing, as individual identity is stripped away for the sake of group classification (Dagan & Dancig-Rosenberg, 2020; O'Malley, 2008).

Incorporating "colonization-specific" factors (i.e., social conditions that have been produced through coloniality) into risk assessment tools, enforces individuals to be held responsible for the ongoing consequences of colonization (Lockwood et al., 2018, p. 1701). As Cunneen (2011) notes:

> Within the risk paradigm, any rights of Indigenous peoples (such as self-determination or self-government) are seen as secondary to the membership of a risk-defined group. In other words the group's primary definition is centered on the risk characteristics they are said to possess, and risk is measured through factors such as the incidence of child abuse, domestic homicide, drug and alcohol problems, school absenteeism, juvenile offenses, and so on.
>
> *(p. 319)*

Colonialism for Indigenous peoples in white settler colonies has resulted in a disproportionate level of state interventions and control of communities, and for Indigenous peoples, there is the

risk of institutional harms, institutionalized racism, and ongoing systemic violence. The application of the risk framework to other policies and sociological phenomena, such as Indigenous child removals in the child protection rubric, mental health responses, surveillance in education, control of alcohol, and management of Indigenous organizations, reveals that it is a framework that is not peculiar to just the criminal justice system (Blagg, 2008). Keddell (2022), for example, discusses the child protection system in NZ and argues that the concept of risk is weighted toward identifying factors that arise from structural inequalities, which are a product of colonization for Indigenous people. This risk concept combines with a history of ongoing disproportionate control and institutional bias – with state agencies more likely to intervene in the lives of Māori people. Keddell (2022) argues, "[b]oth risk and bias, as sources of disparities, can be related to patterns of racism, colonization, and class inequity through history, rooted in both cultural and economic imperialism" (p. 4).

Thalia Anthony (2013) has examined the Australian settler state's characterization of risk and argues that it is used to demarcate the Indigenous population as the 'other' requiring state intervention and control under the auspices of supervision and treatment. Anthony (2013) notes that the language of 'risk' may be new when referring to punishment, but for Indigenous peoples, it is a continuance of a history of control since colonization in ongoing neocolonial state policies. Cunneen (2020) also observes that many Aboriginal and Torres Strait Island communities collectively experience socio-economic deprivation and that this economic marginalization may produce more punitive and intrusive interventions due to risk thinking. He notes that "[r]isk thinking reinforces structures of cultural, social and economic exclusion, either explicitly solidifying race as a predictor of criminality or more generally through assessment processes which reinforce deficit discourses surrounding the intersection between race and social and economic marginalization" (Cunneen, 2020, p. 531).

Youth, vulnerability, and risk

Central to the notion of deficit is also the idea of vulnerable populations. Individuals and groups identified as vulnerable are viewed as needing support and protection, which in some instances can promote greater governmental intervention and state control. Within this framing, vulnerability as an identity becomes infused with notions of risk. Furedi (2008) describes how the concept of risk is used to portray the existence of vulnerability in groups, in a way that also subjectively defines them as powerless:

> To be at risk assigns to the person a passive and dependent role. To be at risk is no longer about what you do – it is about who you are. It is an acknowledgement of powerlessness – at least in relation to that risk. Increasingly, someone defined as being at risk is seen to exist in a permanent condition of vulnerability.
>
> *(p. 656)*

Stanley and Monod de Froideville (2020) observe that the meaning of vulnerability can change over time and is an elastic term that can be deployed according to shifting political demands. Under neoliberalism, they argue, discourses of vulnerability merge with understandings of risk and danger, whereby young people identified as vulnerable are simultaneously viewed as being 'at risk' of harm or 'as a risk' to others (Stanley & Monod de Froideville, 2020). Young people who have experienced trauma, abuse, or economic hardship in their upbringing are "no longer 'innocent' children, but unpredictable and potentially dangerous 'others'" (Stanley & Monod de Froideville, 2020, p. 528). This has particular consequences for Indigenous people and the

ongoing experiences of overt colonial state control. Stanley and Monod de Froideville (2020) note that ongoing state interventions in Indigenous communities and lives rely on notions of vulnerability and risk. These interventions are discursively portrayed by the state as being undertaken for the benign ends of 'well-being' or the 'best interest' of the community, regardless of the actual community concerns over state actions.

In NZ, the government agency responsible for the well-being of children, Oranga Tamariki (Ministry for Children), has been heavily criticized for removing 'vulnerable' children from their whānau under the guise of care and protection. As Stanley's (2016) interrogation of abuse in state care demonstrates, successive governments have removed Māori children from their homes and placed them in state 'care' where a considerable amount of abuse and harm occurred. Māori rangatahi who were once deemed vulnerable often become identified as "deficit-laden risks to be managed, policed and incarcerated" (Stanley & Monod de Froideville, 2020, p. 542). Any behaviour perceived as anti-social in the community by the state can be categorized as a risk that forms part of a youth's history.

The subjective allocation of risk categories can also be revealed in the example of biased policing practices and the extension of surveillance over populations deemed to be at future risk of offending. In late 2020 and early 2021, concerns were made public that the NZ Police were deliberately stopping innocent Māori youth and children on the street to photograph and record personal details to add to a police intelligence database (Hurihanganui, 2021; Hurihanganui & Cardwell, 2020). In the Wairarapa region, in which this illegal practice was first reported by the media, NZ Police had to acknowledge that they had acted inappropriately by photographing children who were not under arrest and who had not been stopped in relation to any criminal activity. The practice had occurred without the children being informed of their legal rights and in the absence of parental knowledge or consent. A national investigation into this practice by the Office of the Privacy Commissioner (OPC) and the Independent Police Conduct Authority (IPCA) (2022) produced findings that were highly critical of policing behaviour and noted that it breached children's rights. The report identified that this practice was widespread and that rangatahi Māori (young people) made up more than 50 percent of the youth stopped and photographed. Therefore, the police practice has received criticism for the ongoing racial profiling and criminalization of the minority Indigenous population, by reinforcing stereotypes about who is deemed as being risky and thereby amplifying negative relationships between Māori and the NZ Police (Norris & Tauri, 2021).

Parallels can be drawn with the deployment of risk tools to youth populations, which highlight the consequences of such an approach. In the US, African-American youth are disproportionately policed, prosecuted, and imprisoned (Goddard & Myers, 2017). Selman, Myers, and Goddard (2019) argue that the collateral consequences of the growth of carceral punishments in the US are the extensions of shadow carceral innovations and crime control into communities, whereby the assessment of 'risk' or 'dangerousness' is applied to manage and control minority young people in community settings such as school. Once young people come to the attention of the criminal justice system, they are subjected to risk tools that produce disproportionate outcomes.

Cunneen (2020) has drawn comparisons between risk assessment tools in Australia and the UK to highlight disproportionate outcomes for Black, ethnic minority, and Indigenous young people. Risk assessment tools such as ASSET (England and Wales) and the YLSI-CMI (Australia) rely on measuring negative individual behaviour and attributes to determine levels of risk for young people. The reductionist approach to risk has been criticized for oversimplifying complex social conditions into quantifiable risk factors (Case & Haines, 2015). A study of Youth Offending Teams (YOT) workers' experiences of ASSET found the risk-based tool to be "an unhelpful and at times problematic tool in assessing young people" (Phoenix, 2009,

p. 120).[1] For young people, risk-based models are often reductionist in that they are problem orientated, and deficit focused (Johns et al., 2017).

While the explicit mention of race or ethnicity may be removed within many of these assessments, it functions in a less overt way which continues the perpetuation of racial discrimination within the justice system (Cunneen, 2020). The markers of risk (e.g., unemployment, parental incarceration), which a person has limited control over are used to criminalize and justify further contact with authorities and the criminal justice system. Social conditions as a result of systemic discrimination and the ongoing legacy of colonization are removed from their historical context for the sake of risk categorization (Cunneen, 2020).

Decolonizing risk

Alongside the growth and development of risk tools in criminal justice settings, it must be recognized that they have the potential to reinscribe and intensify the marginalized position that certain segments of society already face (Werth, 2019). It requires the consideration of the historical and social structures that are embedded in settler states and challenging the social structures of racism and colonialism that continue to inform crime control responses. As Cunneen (2011) notes, there is a need to challenge the orthodoxy of mainstream criminal justice interventions that continue to perpetuate marginalization.

In decolonizing risk, the broader social history and context need to be considered before making judgements on risk levels. In doing so, this will ensure that 'risk factors' are reconsidered in light of the colonial history that forced people into a marginalized and oppressed social condition. Cunneen and Rowe (2015) demonstrate how Eurocentric victimization frameworks are limited due to their lack of consideration of the ongoing impacts of colonization. We argue that their suggestions for decolonizing victimization frameworks can be applied to decolonizing risk paradigms:

> [T]here is a need for a much deeper understanding of Indigenous ontologies and the way in which the 'self' is understood in connectivity to the social, physical and spiritual world. The centrality of interrelationality to Indigenous worldviews means that the understandings of particular situations and contexts, and the decisions which people make, are formed from within a worldview that is in strong contrast to colonising assumptions regarding individual decision making based on autonomous self-interest.
>
> *(Cunneen & Rowe, 2015, p. 27)*

It is important to recognize the power dynamics in the deployment of policies in settler societies and the ways different states generate data and information on groups in society. As Cunneen (2011) argues, "the rise of risk paradigms, 'governing' through crime, both domestically and internationally, and the focus on statistical populations rather than people who are the bearers of rights are all working against the development of Indigenous approaches to criminal justice" (p. 319). Maggie Walter (2016) argues that the state control and deployment of data on Indigenous populations, should be understood and contextualized in the wider legacy of colonial control:

> In First World colonised nations such as Australia, Aotearoa New Zealand, Canada and the United States, the question is not just 'are these numbers real', but also 'how are these numbers deployed and whom do they serve'. The reality query is not the numbers themselves but of what they purport to portray.
>
> *(p. 79)*

This is also shaped by a colonial state legacy of viewing minority communities through a 'deficit' lens. Harris (2008) argues that this type of thinking, which has its roots in colonialism, continues to problematize and attribute the social problems arising from histories of marginalization and social exclusion to supposed 'deficits' in those groups that are marginalized. Indigenous data sovereignty over the official information and statistics used by government institutions should be prioritized to prevent the ongoing state policies of social exclusion (Walter, 2016).

There also needs to be a transformation of the wider societal structures that embed risk and carceral logics. Speaking to these societal transformations required for an abolitionist future, Lamusse and McIntosh (2021) observe that we need a new set of "societal structures which create the conditions that allow freedom from poverty, freedom from inequality, freedom from racism and practices of discrimination and marginalization, and free from harm" (p. 289). Similarly, we also argue that decolonizing risk requires a critique of the ways various jurisdictions have deployed these tools that further embed colonial logics of control into criminal justice policies and practices. Thus, while contemporary risk tools fixate on risk at the individual level, it is imperative that the focus remains on unveiling the risks that institutions pose. A proposed alternative to contemporary risk-based models – one that operates in tandem with decolonizing oppressive structures – is the concept of 'humanizing risk' (Gordon & Webb, 2022). Through this approach, human relationships and rights are brought to the forefront, which enables those that go through the justice system to be seen as people, rather than as risks to be managed. Understanding the interplay between risk assessment techniques and the disproportionate outcomes within the justice system is essential. For Indigenous peoples and racialized minorities globally, oppressive institutions and the risk tools themselves pose the greatest risk.

Note

1 In NZ, similar concerns have been raised about the Youth Offending Risk Screening Tool (YORST) that has been deployed by NZ Police since 2007. The NZ Law Foundation raised concerns that although the tool does not record ethnicity, several of the factors used are proxies for it (Gavaghan et al., 2019).

References

Anthony, T. (2013). *Indigenous people, crime and punishment*. Taylor & Francis.

Blagg, H. (2008). *Crime, aboriginality and the decolonisation of justice*. Federation Press.

Campbell, C., Papp, J., Barnes, A., Onifade, E., & Anderson, V. (2018). Risk assessment and juvenile justice: An interaction between risk, race, and gender. *Criminology & Public Policy*, *17*(3), 525–545.

Cardoso, T. (2020). *Bias behind bars: A Globe investigation finds a prison system stacked against Black and Indigenous inmates*. https://www.theglobeandmail.com/canada/article-investigation-racial-bias-in-canadian-prison-risk-assessments/

Cardwell, H. (2020, December 3). Children's Commissioner probing how widespread police photographing incidents are. *Radio New Zealand*. https://www.rnz.co.nz/news/national/433443/children-s-commissioner-probing-how-widespread-police-photographing-incidents-are

Carlen, P. (2008). Imaginary penalities and risk-crazed governance. In P. Carlen (Ed.), *Imaginary penalities* (pp. 1–25). Willian Publishing.

Carlen, P. (2012). Against rehabilitation; for reparative justice. In K. Carrington, M. Ball, E. O'Brien & J. Tauri (Eds.), *Crime, justice and social democracy: International perspectives* (pp. 89–104). Palgrave.

Case, S., & Haines, K. (2015). Risk management and early intervention: A critical analysis. In B. Goldson & J. Muncie (Eds.), *Youth crime and justice* (pp. 100–119). Sage.

Clear, T., & Cadora, E. (2001). Risk and community practice. In K. Stenson & R.R. Sullivan (Eds.), *Crime, risk and justice: The politics of crime control in liberal democracies* (pp. 51–67). Willan.

Cunneen, C. (2011). Indigeneity, sovereignty, and the law: Challenging the processes of criminalization. *South Atlantic Quarterly*, *110*(2), 309–327.

Cunneen, C. (2020). Youth justice and racialization: Comparative reflections. *Theoretical Criminology*, *24*(3), 521–539.

Cunneen, C., & Rowe, S. (2015). Decolonising Indigenous victimisation. In D. Wilson & S. Ross (Eds.), *Crime, victims and policy: International contexts, local experiences* (pp. 10–32). Palgrave Macmillan.

Cunneen, C., & Tauri, J. (2016). *Indigenous criminology*. Policy Press.

Dagan, N., & Dancig-Rosenberg, H. (2020). Character retribution as a brake on risk-driven criminal justice. In J. Pratt & J. Anderson (Eds.), *Criminal justice, risk and the revolt against uncertainty* (pp. 69–89). Palgrave Macmillan.

Eckhouse, L., Lum, K., Conti-Cook, C., & Ciccolini, J. (2019). Layers of bias: A unified approach for understanding problems with risk assessment. *Criminal Justice and Behavior*, *46*(2), 185–209.

Feeley, M., & Simon, J. (1992). The new penology: Notes on the emerging strategy of corrections and its implications. *Criminology*, *30*(4), 449–474.

Furedi, F. (2008). Fear and security: A vulnerability-led policy response. *Social Policy & Administration*, *42*, 645–661.

Furlong, A., & Cartmel, F. (2007). *Young people and social change: New perspectives*. Open University Press.

Garland, D. (2001). *The culture of control: Crime and social order in contemporary society*. Oxford University Press.

Gavaghan, C., Knott, A., Maclaurin, J., Zerilli, J., & Liddicoat, J. (2019). *Government use of artificial intelligence in New Zealand*. The New Zealand Law Foundation.

Goddard, T., & Myers, R.R. (2017). Against evidence-based oppression: Marginalized youth and the politics of risk-based assessment and intervention. *Theoretical Criminology*, *21*(2), 151–167.

Gordon, G., & Webb, R. (2022). Reframing risk in Aotearoa New Zealand: A humanising approach. *New Sociological Perspectives*, *2*(1), 20–36.

Gray, P. (2005). The politics of risk and young offenders' experiences of social exclusion and restorative justice. *British Journal of Criminology*, *45*(6), 938–957.

Gray, P. (2009). The political economy of risk and the new governance of youth crime. *Punishment & Society*, *11*(4), 443–458.

Hannah-Moffat, K. (2015). Needle in a haystack: Logical parameters of treatment based on actuarial risk–needs assessments. *Criminology & Public Policy*, *14*(1), 113–120.

Hannah-Moffat, K. (2016). A conceptual kaleidoscope: Contemplating 'dynamic structural risk' and an uncoupling of risk from need. *Psychology, Crime & Law*, *22*(1/2), 33–46.

Harcourt, B.E. (2015). Risk as a proxy for race: The dangers of risk assessment. *Federal Sentencing Reporter*, *27*(4), 237–243.

Harris, F. (2008). Critical engagement with the deficit construction of Māori children as learners in the education system. *Critical Literacy: Theories and Practices*, *2*(1), 43–59.

Heffernan, R., Wegerhoff, D., & Ward, T. (2019). Dynamic risk factors: Conceptualization, measurement, and evidence. *Aggression and Violent Behavior*, *48*, 6–16.

Hudson, B. (2003). *Justice in the risk society*. Sage.

Hurihanganui, T.A. (2021, March 26). Police using app to photograph innocent youth: "It's so wrong". *Radio New Zealand*. https://www.rnz.co.nz/news/in-depth/437944/police-using-app-to-photograph-innocent-youth-it-s-so-wrong

Hurihanganui, T.A., & Cardwell, H. (2020, January 26). Questions raised after police officers stop youths to take their photos. *Radio New Zealand*. https://www.rnz.co.nz/news/national/460279/police-internal-review-on-photographing-youth-given-to-independent-watchdogs

Jackson, M. (1988). *The Māori and the criminal justice system: He Whaipaanga Hou: A new perspective*. https://www.ojp.gov/pdffiles1/Digitization/108675NCJRS.pdf

Johns, D.F., Williams, K., & Haines, K. (2017). Ecological youth justice: Understanding the social ecology of young people's prolific offending. *Youth justice*, *17*(1), 3–21.

Keddell, E. (2022). Mechanisms of inequity: The impact of instrumental biases in the child protection system. *Societies*, *12*(3), 1–19.

Kendall, K. (2013). Time to think again about cognitive behavioural programmes. In P. Carlen (Ed.), *Women and punishment* (pp. 182–198). Routledge.

Lamusse, T., & McIntosh, T. (2021). Prison abolitionism: Philosophies, politics, and practices. In E. Stanley, T. Bradley, & S. Monod de Froideville (Eds.), *The Aotearoa handbook of criminology* (pp. 289–302). Auckland University Press.

Lockwood, I., Peterson-Badali, M., & Schmidt, F. (2018). The relationship between risk, criminogenic need, and recidivism for Indigenous justice-involved youth. *Criminal Justice and Behavior*, *45*(11), 1688–1708.

Maurutto, P., & Hannah-Moffat, K. (2007). Understanding risk in the context of the Youth Criminal Justice Act. *Canadian Journal of Criminology and Criminal Justice*, *49*(4), 465–491.

Mayson, S.G. (2019). Bias in, bias out. *Yale Law Journal*, *128(*8), 2218–2301.

Miller, W.T., Campbell, C.A., Papp, J., & Ruhland, E. (2022). The contribution of static and dynamic factors to recidivism prediction for Black and White youth offenders. *International Journal of Offender Therapy and Comparative Criminology*, *66*(16), 1779–1795.

Norris, A.N., & Tauri, J. (2021). Racialized surveillance in New Zealand: From the Tūhoe raids to the extralegal photographing of Indigenous youth. *Race and Justice*, Online First. https://doi.org/10.1177/21533687211063581

O'Malley, P. (2004a). The governing of risk. In A. Sarat (Ed.), *The Blackwell companion to law and society* (pp. 292–308). Blackwell Publishing.

O'Malley, P. (2004b). The uncertain promise of risk. *Australian and New Zealand Journal of Criminology*, *37(3)*, 323–343.

O'Malley, P. (2008). Risk and governmentality. In J.O. Zinn (Ed.), *Social theories of risk and uncertainty: An introduction* (pp. 52–75). Blackwell Publishing.

O'Malley, P. (2010). *Crime and risk*. Sage.

O'Malley, P. (2015). Uncertainty makes us free: Insurance and liberal rationality. In L. Samimian-Darash & P. Rabinow (Eds.), *Modes of uncertainty: Anthropological cases* (pp. 13–28). University of Chicago Press.

Office of the Privacy Commissioner and Independent Police Conduct Authority. (2022). *Joint inquiry into police conduct when photographing members of the public.* https://www.privacy.org.nz/assets/New-order/Resources-/Publications/Commissioner-inquiries/8-SEPTEMBER-2022-IPCA-AND-OPC-Joint-Inquiry-into-Police-photographing-of-members-of-the-public.pdf

Phoenix, J. (2009). Beyond risk assessment: The return of repressive welfarism? In M. Barry & F. McNeill (Eds.), *Youth offending and youth justice* (pp. 113–153). Jessica Kingsley Publishers.

Pratt, J., & Anderson, J. (2020). Introduction. In J. Pratt & J. Anderson (Eds.), *Criminal justice, risk and the revolt against uncertainty* (pp. 1–13). Palgrave Macmillan.

Selman, K.J., Myers, R., & Goddard, T. (2019). Young people, shadow carceral innovations, and the reproduction of inequality. *Critical Criminology*, *27*(4), 527–542.

Shepherd, S.M., & Anthony, T. (2018). Popping the cultural bubble of violence risk assessment tools. *The Journal of Forensic Psychiatry & Psychology*, *29*(2), 211–220.

Stanley, E. (2016). *The road to hell: State violence against children in postwar New Zealand*. Auckland University Press.

Stanley, E., & Monod de Froideville, S. (2020). From vulnerability to risk: Consolidating state interventions towards Māori children and young people in New Zealand. *Critical Social Policy*, *40*(4), 526–545.

Starr, S. (2015). The risk assessment era: An overdue debate. *Federal Sentencing Reporter*, *27*(4), 225–227.

Tonry, M. (2019). Predictions of dangerousness in sentencing: Déjà vu all over again. *Crime and Justice*, *48*, 439–482.

Ugwudike, P. (2022). Predictive algorithms in justice systems and the limits of tech-reformism. *International Journal for Crime, Justice and Social Democracy*, *11*(1), 85–99.

Walter, M. (2016). Data politics and Indigenous representation in Australian statistics. In T. Kukutai & J. Taylor (Eds.), *Indigenous data sovereignty: Toward an agenda* (pp. 79–98). ANU Press.

Webb, R. (2018). Rethinking the utility of the risk factors and criminogenic needs approaches in Aotearoa New Zealand. *Journal for Global Indigeneity*, *3*(1), 1–21.

Werth, R. (2019). Risk and punishment: The recent history and uncertain future of actuarial, algorithmic, and "evidence-based" penal techniques. *Sociology Compass*, *13*(2), 1–19.

27

The school-to-prison pipeline

Nancy A. Heitzeg

School-to-prison pipeline defined

For nearly three decades, scholars, educators, and activists in the United States have decried the emergence of a school-to-prison pipeline. The school-to-prison pipeline is most immediately a consequence of the criminalization of school discipline via zero-tolerance policies. It is further characterized by schools that rely on suspensions, expulsions, and arrests for minor infractions, and schools that have police and/or security officers (School Resource Officers or SROs) present for enforcement. The school-to-prison pipeline funnels students out of educational institutions and, indirectly and directly, towards legal encounters with police and the juvenile justice system (Fuentes, 2013; Heitzeg, 2016). This push towards prison and jail may be indirect; students who are suspended and/or expelled are less likely to return to school, are sent to underresourced alternative schools, and are, in effect, 'pushed out' of the educational system. Increasingly, the school-to-prison pipeline operates in a more direct fashion, as misconduct is criminalized and as a growing police presence in the schools allows for direct arrests and ticketing, often for minor misconduct that once would have been handled by teachers and school administrators (Advancement Project, 2011).

While these policies were promoted by the perceived need to increase safety and security, zero-tolerance policies and police in schools have instead increased the risks of criminalization for segments of the student body, most dramatically for students of colour. This pattern of 'push-out' has become so pronounced that scholars, child advocates, and community activists now refer to it as the school-to-prison pipeline, the schoolhouse-to-jailhouse track, or – as younger and younger students are targeted – the cradle-to-prison track (Advancement Project, 2004; Children's Defense Fund, 2007; NAACP, 2005). More recently, the parallels between education and incarceration have been referred to as the school-to-prison nexus. Rather than seeing the school as a location which steers certain students towards incarceration, this framing acknowledges the myriad practices that schools and prisons have in common and the confluence of structural forces that shape criminalization.

DOI: 10.4324/9781003176619-30

The context of criminalized education

The school-to-prison pipeline emerges as both metaphor and reality in the late twentieth-century US climate of hyperincarceration and punitive criminal justice policy, an era of neoliberalism and austerity. Neoliberalism demands the shifting of public resources to private corporate interests and institutions of military and carceral control, and in the context of US racial capitalism, it is communities of colour who most directly feel the impacts of both organized abandonment and extreme carceral control (Gilmore, 2007; Whitlock & Heitzeg, 2021). The marked reduction of social welfare spending in favour of an ever-expanding carceral state is at the centre of both declining investment in public education and the rise of the school as a site for additional policing and punishment (Gilmore, 2007; Wacquant, 2010).

The United States has the highest incarceration rate in the world with more than 2.3 million people in prisons and jails. Another 4.7 million are under correctional supervision in the community, while an estimated 77 million carry the stigma of a criminal record. Policing and punishment of this scale – a tenfold increase since 1970 – consumes tremendous resources, and annually more than USD 182 billion is spent on this vast system of carceral control (Sawyer & Wagner, 2021; Whitlock & Heitzeg, 2021). This correctional apparatus is both costly and lucrative. Correctional control is funded by public revenue. As correctional expenditures rise, funding for social programmes falls, and the corrections system is seen as the one-stop solution for social problems related to unemployment, lack of educational opportunities, physical and mental health care, housing, and poverty (Davis, 2003; Wacquant, 2010).

But beyond the costs, there is revenue to be generated for local, state, and federal governments, and profit to be made for the private sector. The overlapping neoliberal interests of government and industry in the arena of policing and punishment have come to be known as the prison industrial complex. According to scholar and activist Angela Davis (2003), the prison industrial complex is a contemporary variation on the legacy of US settler colonialism and chattel slavery. It includes racialized criminalization, captivity, control of land and labour, and profiteering related to all of it. The system feeds off multiple marginalized populations whose statuses are shaped not only by racial and class hierarchies, but also by such factors as place, gender, sexuality, ability, and age. The system also requires an endless supply of bodies, and the school-to-prison pipeline represents a key feeder into this web of carceral control.

One correlate of carceral expansion has been the further decimation of public education. Free and compulsory public education in the United States has always been a fraught project. The promise of education as a liberatory provider of enlightenment and economic opportunity has always been undercut by its role in assimilation, colonization, social control, and replication of the structural inequality of the status quo. Certainly, education as a constrainer rather than a liberator has provided the paradigm for public education with regard to race and ethnicity. The very foundation of universal public education in the United States is entangled with a desire to 'Americanize' children of immigrants, and from the outset, educational settings have been marked by segregation in terms of both race and class. This racial segregation has been both *de jure* and *de facto*, and the quality of education has been tied to the wealth of neighbourhoods via a funding scheme linked to local property tax bases. Federal and state funding can close this gap but has long been abandoned along with the promise of racial desegregation outlined nearly 60 years ago in *Brown v the Board of Education* (Orfield & Frankenberg, 2014).

The current situation is now one of double segregation by both race and class, as school reflects the residential segregation that persists in the United States. Students of colour, particularly African Americans and Latinx, are overwhelmingly isolated in high-poverty, underresourced

schools. The results have consistently been lower rates of graduation, literacy, and college attendance. These challenges to equity in education are exacerbated by the persistence of a Euro-centric curriculum delivered by a teaching force that is 85 percent white, and complicated further by the emphasis on high-stakes standardized testing in the early twenty-first century (Giroux, 2013). Schools that are already struggling with limited resources and large class sizes now find their funding tied to 'success' on test scores, adding to the pressure to push out students who fall academically behind, and research indicates that disciplinary policies are often used to do so.

The school-to-prison pipeline is made possible by this larger socio-political climate: double segregation of both neighbourhoods and schools, dwindling resources and high-stakes testing, and extensive industrialized profit-driven systems of social control. This landscape shapes the contours of the school-to-prison pipeline and calls it into being, but the immediate push of youth towards prison is made possible by the proliferation of zero-tolerance policies and police in schools.

Zero tolerance and police in schools

Criminal justice policies, exemplified by the 'war on drugs', took a turn towards zero tolerance in the 1980s, favouring mandatory minimum sentences and policing practices that targeted low-level offences. By the early 1990s, these policies were mirrored in an increasingly punitive and legalistic juvenile justice system, driven by media-driven moral panics over gangs, and an alleged emerging generation of so-called superpredators, both with heavily racialized implications. These policies very quickly became similarly entrenched in the schools (Heitzeg, 2016).

Zero-tolerance policies were implemented in schools following the federal passage of The Gun-Free Schools Act of 1994 (GFSA). The GFSA mandates that all schools receiving federal funding must 1) have policies to expel for one year any student who brings a firearm to school, and 2) report that student to local law enforcement. Subsequent amendments to the GFSA and changes in many state laws and local school district regulations soon broadened the zero-tolerance policy to include other weapons, alcohol/drugs, threatening behaviour, fighting on school premises, and increasingly minor misconduct such as tardiness, defiance, and disorderly conduct (Heitzeg, 2016). While non-weapons infractions may result in a suspension of less than one year, enforcement of zero tolerance is nonetheless disruptive to the student educational experience and highly reliant on the discretion of teachers and other school officials. And, as the name implies, zero tolerance means that a predefined mandatory consequence is applied to a violation of school rules without regard to the seriousness of the behaviour, mitigating circumstances, or the situational context (Fuentes, 2013).

Although districts vary widely, most do not distinguish between serious and minor misconduct and, as a result, increasing numbers of children are labelled, suspended or expelled for what was once considered to be misbehaviour that could easily be handled within the schools. Ironically, national data reveal that, despite the initial emphasis on guns and other weapons, only 5 percent of serious disciplinary actions nationally in recent years involve possession of a weapon. In contrast, the vast majority of suspensions and expulsions are for minor infractions; insubordination accounts for 43 percent of expulsions and out-of-school suspensions lasting a week or longer (US Department of Education Office of Civil Rights, 2018).

Zero-tolerance policies are additionally associated with an increased police presence at school, metal detectors, security cameras, locker and person searches, use of so-called less-than-lethal weapons such as tasers and chemical sprays, and an overall environment of correctional control. The expanded role of law enforcement in schools was also furthered by federal policies

including The Safe Schools Act of 1994, and a 1999 Department of Justice COPS in Schools grant programme that dramatically increased the use of police (sometimes referred to as Security Resource Officers or SROs). Currently, more than half of all public schools have assigned police officers (Justice Policy Institute, 2011; Sheasley, 2021). There are limited data collected on the wide variation across states and districts in SRO training, the use of force expectations, or attention to the legal rights of students. Although enhanced security measures were largely promoted as a remedy to the school shootings in predominately white suburban schools, they have been most readily adopted and enforced in urban schools, where nearly 70 percent report a police presence (Nolan, 2011).

Police in schools easily translates into more arrests, and these arrests are usually not for serious criminal violations. A police presence significantly increases both arrests as well as the criminalization of minor misconduct; one three-year study of numerous schools in the same district, for example, found that the schools with police had nearly five times the number of arrests for disorderly conduct as schools without a police presence (Na & Gottfredson, 2011). Each year, hundreds of thousands are ticketed and/or arrested at school for minor infractions, and this is at a time when juvenile justice is increasingly punitive and legalistic. Research indicates that as many as two-thirds may be for 'offences' such as talking back to teachers, truancy or disorderly conduct (Justice Policy Institute, 2011). Police in schools dramatically increase the risk of criminalization and create a direct flow from school to criminal legal systems (Eckholm, 2013).

There is little evidence that zero-tolerance policies and police in schools have made schools safer. However, a large body of research documents the enhanced risks posed to segments of the student body by excluding them from education. Approximately 3 million students are suspended annually, another 100,000 expelled, and an additional nearly 300,000 are referred to law enforcement or arrested at school. The vast majority of these incidents are for relatively minor disciplinary infractions such as tardiness, defiance, insubordination, and disorderly conduct (US Department of Education Office for Civil Rights, 2018). Suspension, expulsion, and arrest at school all increase the likelihood that students will fall behind scholastically, drop out, and / or experience additional encounters with juvenile justice (Bacher-Hicks, Billings & Deming, 2021). This risk is not equally borne.

Class, race, gender, and ability: disproportionality in school discipline and arrests

The school-to-prison pipeline flows most heavily from underresourced schools that are doubly segregated by race and class, and under escalating pressure due to educational policy reliant on high-stakes testing (Advancement Project, 2011; Heitzeg, 2016). Students tracked towards this pipeline represent the very marginalized communities who are heavily overrepresented in the prison industrial complex. Class, race, gender, and ability are all highly correlated with exclusionary school discipline, and increasingly so at the intersections of these statuses.

Class matters, as a climate of surveillance and carceral control is pervasive in schools whose neighbourhoods and students face economic challenges. A security presence in affluent, majority-white schools is directed outwards, that is towards protecting students from outside threats. In stark contrast, students in poorly resourced schools are perceived *as the threat itself* and subject to a surveillance apparatus that parallels the prison (Fuentes, 2013; Nolan, 2011). Those targeted are disproportionately students of colour, especially Black students of all genders, Latinx and Indigenous youth, LGBTQ+ students, and students with disabilities, raising additional questions about the role of bias among educators, and the school-to-prison pipeline as a civil rights issue (Losen & Gillespie, 2012).

One of the consistent features of the school-to-prison pipeline is the overrepresentation of students of colour, particularly Black students. This is true at all levels from pre-school to grade 12 and the racial gap persists across class and gender lines (US Government Accountability Office, 2018). More than 20 years of data reveal a consistent pattern of Black students being overrepresented in all aspects of school discipline – suspension, expulsion, restraint, seclusion, and arrest (Heitzeg, 2016). Indeed, this disparate racial impact was the very impetus for initial scholarly attention to the policies and practices that shape the school-to-prison pipeline (Skiba & Peterson, 1999).

The most recent US Department of Education Civil Rights (2018) data collection, for example, shows that Black students are 3.5 times more likely to be suspended, expelled, or arrested at school than their white peers. Black students represented 15.5 percent of all public-school students, but accounted for 39 percent of in-school suspensions, 28 percent of expulsions, and 31 percent of school arrests. Indigenous students are also overrepresented in all discipline and arrest data, especially in districts where they represent a higher percentage of students than the national average. Undocumented Latinx and Asian American and Pacific Islander students are increasingly at risk for the so-called school-to-deportation pipeline. This phenomenon is linked to crimmigration, that is, the increased link between the US Immigration and Customs Enforcement (ICE) agency and the criminal legal system. Entry into this system is often triggered by false claims of gang affiliation (Dillard, 2018; Magsaysay, 2021).

Exclusionary school discipline is heavily gendered with two of every three suspensions, expulsions or arrests involving boys. Nonetheless, disproportionate discipline affected both Black boys and Black girls – the only racial group for which both sexes were disproportionately disciplined (Morris, 2017; US Government Accountability Office, 2018). While less researched, the suspension, expulsion and arrest rates for Black girls are also stunningly high, and often surpass the rates for their male peers in other racial groups. The high rates of harsh discipline for Black males are largely understood via the extensive literature on criminalizing stereotypes of Black masculinity and racial threat. The situation with Black girls, however, may best be analyzed in light of white middle-class notions of femininity and the extent to which Black girls are seen to be in defiance of these norms (Goff & Jackson, 2014; Morris, 2017). Failure to comply with expected gender norms is a factor in the disproportionate discipline of LGBTQ+ students as well. Emergent research indicates that LGBTQ+ students are three times more likely to be suspended and expelled than their straight peers, and often for minor infractions such as dress code violations, including restrictions on hair styles (Mitchum & Moodie-Mills, 2014).

Students with disabilities also experience disparate levels of all disciplinary actions; this is particularly the case for Black boys with disability labels, who are the group most likely to appear in all statistics (US Department of Education Office for Civil Rights, 2018; US Government Accountability Office, 2018). Disability in an educational context is often a psychiatric label – one derived from various diagnostic categories in the Diagnostic and Statistical Manual of Mental Disorder (DSM-V-TR) – that carries a stigma as well as a lowered expectation for academic success (American Psychiatric Association, 2021). Black youth, especially males, are additionally at risk due to their overrepresentation in special education programmes for disabilities. They are nearly twice as likely as any other group to receive services under the Individuals with Disabilities Education Act (IDEA) (Ramey, 2020). While medical labels such as Attention Deficit Hyperactivity Disorder (ADHD) can mitigate criminalization for middle-class white boys, the harsher labels given to Black youth magnify their chances of suspension, expulsion, and arrest. Black youth of all genders are often mislabeled as intellectually disabled; they are nearly three times more likely to receive special education services

under IDEA for mental retardation, and more than two times more likely to receive services for emotional disturbance than same-age students of all other racial/ethnic groups combined (Ramey, 2015, 2020).

Research demonstrates that these persistent disparities are not the result of any differences in behaviour, but may rather be the result of bias on the part of teachers and other school officials (Goff & Jackson, 2014). As noted earlier, 85 percent of the nation's teaching ranks are filled by whites, mostly women, and implicit biases with attendant stereotyping can shape labelling decisions (Heitzeg, 2016). This is supported by recent research that suggests creative play is viewed negatively when exhibited by Black children and that young white females, in particular, view Black male children as young as ten as criminals rather than innocent children (Goff & Jackson, 2014). In fact, the highest rates of racially disproportionate discipline are found in states that have low minority populations, indicating that boys of colour are potentially threatening to white teachers, even in small numbers.

These grim statistics reveal that the school-to-prison pipeline is not intended for everyone, nor is suspension, expulsion, and arrest at school the result of any actual differentials in rule-breaking behaviour. Rather, the school-to-prison pipeline is designed and implemented to capture those students whose race, class, gender, and ability statuses have already marginalized them, and to then marginalize them further by marking them for prison.

Remedies and policy debates

Various initiatives have emerged in federal, state, and local school districts to address this pipeline and the policies that most immediately create it, especially zero tolerance and police in schools. Recently, for the first time in 20 years, the federal government is rethinking both messaging and policy around school discipline and challenging the efficacy of the current situation of mass suspension, expulsion, and arrest at school.

In December 2012, the first-ever Congressional hearings on the school-to-prison pipeline were held by the Senate Judiciary Committee's subcommittee on constitutional, civil, and human rights. The hearing featured expert testimony and statements from hundreds of organizations and youth advocates, that detailed both the scope of the problem and solutions, including calls for decreased funding incentives for police; increased funding for counselling, support staff and educational resources; mandatory nationwide data collection on suspension, expulsion, and arrests at school; and support for evidence-based solutions to end the persistent racial disparities that shape the contours of the pipeline (Advancement Project, 2012).

In addition, there are calls for an overhaul of The Gun-Free Schools Act 1994, The Safe Schools Act 1994, and a 1998 amendment to the Omnibus Crime Control and Safe Streets Act 1968. To date, there has been no federal legislative action on any recommendation that flowed from the hearing, raising questions about the willingness of legislators to commit to taking the political risks required to undo the policies that so easily emerged from an era of 'law and order'.

Nationally, the most meaningful action against the school-to-prison pipeline has come from federal litigation, school climate data collections, and strong policy shifts away from zero tolerance. The US Department of Education and the Civil Rights Division of the US Department of Justice have committed to addressing disparities in school suspensions and expulsions as a civil rights matter. In 2011, the launch of the Supportive School Discipline Initiative (SSDI) was announced; this collaborative project between the Departments of Justice and Education is committed to supporting good discipline practices to foster safe and productive learning environments in all classrooms (Losen & Gillespie, 2012). One of the first major joint efforts involved filing a suit against the State of Mississippi for operating a heavily racialized school-to-prison

pipeline in Meridian (Mock, 2013). Since then, Federal agency actions towards dismantling the pipeline have expanded.

In January 2014, the Department of Education and the Department of Justice issued new guidelines on School Climate and Discipline that, for the first time in 20 years, advocated a move away from zero-tolerance policies and mandated suspension/expulsion as a last resort. This announcement was coupled with the creation of a Civil Rights Data Collection (CRDC) that provides national data on both discipline and opportunity gaps in education (US Department of Education, 2014). Regular data snapshots from the CDRC serve as guidance for school districts on their disciplinary trends and as a platform for federal civil rights action in the case of persistent race, gender, and ability gaps in exclusionary discipline practices.

Despite this progress, the heads of the Department of Education and the Department of Justice – as is the case with all federal agencies – are political appointees whose policies reflect those of the current executive branch. These policies, unlike legislation, may easily be undone under a new administration. This was exactly the case as the Trump administration abandoned all Department of Education civil rights directives in 2017. Even as the Biden administration considers reinstating these guidelines, in lieu of accompanying federal legislation, it is always possible that any movement away from zero tolerance may be short-lived (Camera, 2021; Heitzeg, 2016).

State and school district action has been similarly sporadic and subject to political currents. Data collection and assessment across states and districts is spotty; moratoriums on suspension often are limited to elementary and middle-school students only; alternatives to zero tolerance may not be fully funded, while federal monies continue to pour in for SROs (Heitzeg, 2016). Some jurisdictions have sought alternatives to zero tolerance with an emphasis on positive behavioural supports, restorative justice practices, and additional teacher training to address implicit bias (Heitzeg, 2016; US Department of Education, 2014). Restorative and transformative justice practices seek conflict resolution through peace-making circles, critical curricula that address historical trauma and current inequality, and often larger action plans designed to transform both individual actions and the larger systems which oppress (Hereth et al., 2012; Nakagawa, 2003). These approaches have been adopted by school districts in Oakland, Chicago, Philadelphia, Portland, Denver, and state-wide in Colorado. and have shown success in reducing suspensions, expulsions, and arrests while reducing racial gaps in disciplinary outcomes (Davis, 2014).

The issue of police in the schools has been more difficult to address, despite recent guidance on SRO training. Following the murder of George Floyd in 2020, several districts including Minneapolis, Portland, Oregon, and Denver cut SRO contracts with city police departments. In many cases, SROs are replaced with either private security or community safety specialists (Kiererleder, 2020; Sheasley, 2021). Beyond this, there is little political will to remove police from schools. There is always pressure to increase rather than curtail the numbers of SROs, especially in light of persistent clamouring for safety (Dignity in Schools Campaign, 2018). Nonetheless, addressing the issue of police in schools is crucial to interrupt the school-to-prison pipeline. Recent data from the US Department of Education Office of Civil rights indicate that even when there is a shift from reliance on zero tolerance and a corresponding reduction of suspensions/expulsions, student removal rates remain high as arrests increase (US Department of Education Office for Civil Rights, 2021).

The limits of reform

The school-to-prison pipeline has finally been recognized as a civil rights issue. Students of colour, the poor, LGBTQ, and students with disabilities – and especially those at the

intersections of these statuses – are being denied the right to an education via differential labelling, suspension, expulsion, and arrest at school. In addition to the denial of education, they are being denied the right to a childhood and a meaningful adulthood too, as minor youthful misbehaviour is criminalized and their futures are now entangled with a pervasive and punitive legal system.

More than 20 years since the pipeline emerged, it remains – despite various federal, state, and local efforts to curtail the effects of the immediate contributors, i.e., zero-tolerance policy and a police presence in schools. The school-to-prison pipeline flows most heavily from schools that are underresourced and doubly segregated by race and class, and it targets youth of colour, especially Black youth of all genders, wherever it operates. It is a racialized and classed phenomenon – a product of neoliberal divestment from social goods and heavy investment in carceral responses to all social problems.

It is difficult to imagine that the school-to-prison pipeline can be ended without comprehensive, nationally mandated, and nationally funded initiatives that address the larger plight of public education. As Giroux (2015) observes:

> Schools are not prisons, teachers are not a security detail and students are not criminals. Schools should model the United States' investment in children and to do so they need to view young people as a resource rather than as a threat. If public schools are going to improve they have to be appropriately funded. That means, raising corporate taxes, cutting the defense budget, and allocating funds that contribute to the public good. It also means closing down and defunding those financial and military institutions that produce misery and destroy human lives, especially the lives of children…Schools are a public good and should be defined as such. How the United States invests in schools will shape an entire generation of young people. The lesson these youth should not be learning is that they can't be trusted and should be treated as criminals. That view of schooling is one we associate with totalitarian states, not with a genuine democratic *society*.
>
> *(n.p.)*

Scholars, educators, and activists alike remain concerned that the school-to-prison pipeline is an intractable problem that cannot be solved by educational policy alone, but only with deeper attention to larger societal challenges of a carceral climate buttressed by persistent inequality (Heitzeg, 2016; Vaught, 2017). The school-to-prison pipeline is a feeder for the prison industrial complex and any efforts to disrupt it must consider this. The pipeline is the product of our reliance on racialized mass incarceration, now the centrepiece of our political economy, where disposable labour in a late-capitalist service-sector economy is criminalized and caged in order to create jobs and profit opportunities for others. Educational institutions serve to track select students along career pathways, and for children of colour in poor urban schools that pathway is prison. They are prepared for this future by penal atmospheres, replete with a police presence and punitive disciplinary policies. They are prepared for this future because the prison industrial complex will always demand more bodies, and piecemeal reforms will not refuse this gaping need (Heitzeg, 2016; Hereth et al., 2012).

Dismantling the school-to-prison pipeline requires us attending to both the school and the prison and necessitates a rethinking of the punishing state and privatizing ethos that has permeated all aspects of public life. It requires a shift towards reinvestment in institutions that serve – rather than deplete – the public good. It requires an interrogation of the carceral state in all of its manifestations, including – perhaps especially – the school-to-prison pipeline. Ending the school-to-prison pipeline requires us to meet this challenge: "The most difficult and urgent

challenge of today is that of creatively exploring new terrains of justice, where the prison no longer serves as our major anchor" (Davis, 2003, p.10).

References

Advancement Project. (2004). *Education on lockdown: The school to jailhouse track*. https://www.ojp.gov/ncjrs/virtual-library/abstracts/education-lockdown-schoolhouse-jailhouse-track

Advancement Project. (2011). *Federal policy, ESEA reauthorization, and the school-to-prison pipeline*. https://www.fairtest.org/sites/default/files/Federal_Policy,_ESEA_Reauthorization,_and_the_School-to-Prison_Pipeline_-_03_09_11.pdf

Advancement Project. (2012, December 12) *Testimony of Judith A. Browne Dianis Co-Director, Advancement Project Hearing on Ending the School-to-Prison Pipeline Before the Subcommittee on the Constitution, Civil Rights, and Human Rights, Senate Committee on the Judiciary*. https://www.judiciary.senate.gov/download/testimony-of-judith-browne-dianis-pdf

American Psychiatric Association. (2021). *Diagnostic and statistical manual of mental disorder* (5th ed.). American Psychiatric Association.

Bacher-Hicks, A., Billings, S., & Deming, D. (2021). Proving the school-to-prison pipeline. *Education Next*, *21*(4), 52–57.

Camera, L. (2021, July 17). Study confirms school-to-prison pipeline *US News*. https://www.usnews.com/news/education-news/articles/2021-07-27/study-confirms-school-to-prison-pipeline

Children's Defense Fund. (2007). *America's cradle to prison pipeline*. https://www.childrensdefense.org/wp-content/uploads/2018/08/cradle-prison-pipeline-report-2007-full-lowres.pdf

Davis, A. (2003). *Are prisons obsolete?* Seven Stories Press.

Davis, F. (2014, February 19). Discipline with dignity: Oakland classrooms try healing instead of punishment. *Yes Magazine*. http://www.yesmagazine.org/issues/education-uprising/where-dignity-is-part-of-the-school-day

Dignity in Schools Campaign. (2018). *Model policies to fight criminalization*. https://dignityinschools.org/resources/model-policies-to-fight-criminalization/

Dillard, C. (2018). The school-to-deportation pipeline. *Learning for Justice*, *60*. https://www.learningforjustice.org/magazine/fall-2018/the-school-to-deportation-pipeline

Eckholm, E. (2013, April 12). With police in schools, more children in court. *New York Times*. https://www.nytimes.com/2013/04/12/education/with-police-in-schools-more-children-in-court.html

Fuentes, A. (2013). *Lockdown high: When the schoolhouse becomes a jailhouse*. Verso.

Gilmore, R.W. (2007). *Golden gulag: Prisons, surplus, crisis, and opposition in globalizing California*. University of California Press.

Giroux, H.A. (2013). *America's education deficit and the war on youth*. Monthly Review Press.

Giroux, H.A. (2015, August 6). Schools as punishing factories: Handcuffing education. *Truthout*. https://truthout.org/articles/schools-as-punishing-factories-the-handcuffing-of-public-education/

Goff, P.A., & Jackson, M.C. (2014). The essence of innocence: Consequences of dehumanizing Black children. *Journal of Personality and Social Psychology*, *106*(4), 526–545.

Heitzeg, N.A. (2016). *The school-to-prison pipeline: Education, discipline, and racialized double standards*. Praeger.

Hereth, J., Kaba, M., Meiners, E.R., & Wallace, L. (2012). Restorative justice is not enough: School-based interventions in the carceral state. In S. Bahena, N. Cooc, R. Currie-Rubin, P. Kuttner & M. Ng (Eds.), *Disrupting the school-to-prison pipeline* (pp. 237–255). Harvard Education Press.

Justice Policy Institute. (2011). *Education under arrest: The case against police in schools*. https://justicepolicy.org/research/education-under-arrest-the-case-against-police-in-schools/

Kiererleder, M. (2020, April 6). Here are the people Minneapolis schools hired to replace campus police after George Floyd's death — and why some are raising new red flags. *The 74*. https://www.the74million.org/article/here-are-the-people-minneapolis-schools-hired-to-replace-campus-police-after-george-floyds-death-and-why-some-are-raising-new-red-flags/

Losen, D.J., & Gillespie, J. (2012). *Opportunities suspended: The disparate impact of disciplinary exclusion from school*. The Center for Civil Rights Remedies at the Civil Rights Project.

Magsaysay, R. (2021). Asian Americans and Pacific Islanders and the prison industrial complex, *Michigan Journal of Race and Law*, *26*(2), 443–519.

Mitchum, P., & Moodie-Mills, A.C. (2014). *Beyond bullying: How hostile school climate perpetuates bullying for LGBT students*. https://www.americanprogress.org/article/beyond-bullying/

Mock, B. (2013, May 31). Good news in Mississippi: School to prison pipeline closes. *Colorlines*. http://www.colorlines.com/articles/good-news-mississippi-school-prison-pipeline-closes

Morris, M.W. (2017). *Push-out: The criminalization of Black girls at school*. The New Press.

Na, C., & Gottfredson, D.C. (2011). Police officers in schools: Effects on school crime and the processing of offending behaviors. *Justice Quarterly*, *30*, 619–650.

NAACP. (2005). Interrupting the school to prison pipe-line. https://www.naacpldf.org/wp-content/uploads/Dismantling_the_School_to_Prison_Pipeline__Criminal-Justice__.pdf

Nakagawa, S. (2003). *Restorative and transformative justice: A comparison*. http://www.safetyandjustice.org/node/173

Nolan, K. (2011). *Police in the hallways: Discipline in an urban high school*. University of Minnesota Press.

Orfield, G., & Frankenberg, E. (with Ee, J. & Kuscera, J.). (2014). *Brown at 60: Great progress, a long retreat and an uncertain future*. The Civil Rights Project.

Ramey, D.M. (2015). The social structure of criminalized and medicalized school discipline. *Sociology of Education*, *88*(3), 181–201.

Ramey, D. M. (2020). Punitive versus medicalized responses to childhood behavior problems and high school graduation, *Sociological Perspectives*, *63*(6), 201–227.

Sawyer, W., & Wagner, P. (2021). *Mass incarceration: The whole pie*. https://www.prisonpolicy.org/reports/pie2021.html

Sheasley, C. (2021, April 20). In a roiled Minneapolis, schools are testing a new model for public safety. *Christian Science Monitor*. https://www.csmonitor.com/USA/Education/2021/0420/In-a-roiled-Minneapolis-schools-are-testing-new-model-for-safety

Skiba, R.J., & Peterson, R. (1999). The dark side of zero tolerance: Can punishment lead to safe schools. *Phi Delta Kappan*, *80*(5), 372–382.

US Department of Education. (2014). *Guiding principles for improving school climate and discipline*. https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf

US Department of Education Office for Civil Rights. (2018*). Civil rights data collection: Data snapshot (school discipline)*. US Department of Education Office for Civil Rights.

US Department of Education Office of Civil Rights. (2021). *An overview of exclusionary discipline practices in public schools for the 2017-18 school year*. https://www2.ed.gov/about/offices/list/ocr/docs/crdc-exclusionary-school-discipline.pdf

US Government Accountability Office. (2018). K-12 education: Discipline disparities for Black students, boys, and students with disabilities. https://www.gao.gov/products/gao-18-258

Vaught, S.E. (2017). *Compulsory: Education and the dispossession of youth in a prison school*. University of Minnesota Press.

Wacquant, L. (2010). Class, race & hyperincarceration in revanchist America. *Daedalus*, *139*(3), 74–90.

Whitlock, K., & Heitzeg, N.A. (2021). *Carceral con: The deceptive terrain of criminal justice reform*. University of California Press.

28

Seeking justice in (and beyond) colonial carceral archives

Ethan Blue

This chapter is a personal, situated reflection on the threshold between *anticolonial* and *decolonial* engagement with carceral archives. My use of the *anticolonial* refers to structures and practices that are antagonistic but recognizable to colonial state epistemologies. By the *decolonial*, I mean largely but not solely Indigenous methods – both traditional as well as emergent – that are unbounded by the precepts, epistemologies, and ontologies of the settler state. I argue that engagement with carceral/colonial archives is a multidirectional, hybridizing process rooted in colonial domination and the creation of state knowledges and bureaucracies. I follow the lead of critical scholars/activists/poets exploring the potential to repurpose, subvert, and transform archival collections, and discuss the archives created by the First Nations Deaths in Custody Watch Committee of Western Australia, a group I have worked with for more than a decade. The Committee's practices occupy a space between the *anticolonial* and the *decolonial*, and these tensions are reflected in how the Committee's inheritors might engage with their records in future struggles.

Many years ago, when I was just beginning to study the history of American mass incarceration, a state archivist showed me the binders of finding aids and told me about the archives' holdings.[1] As an aside, she explained that she had been tasked with visiting the state prison to evaluate a set of institutional records which were now available to join the other boxes of prison records, along with the files of governors' correspondence and speeches, the records from the bureaus of housing and waterworks and roads and other state offices. She was to identify which of the prison's many files would go into the state archives, and which would not. It was a heavy responsibility, which she undertook with professionalism and in good faith towards the preservation of historical materials for future examination. The archivist made the long drive to the prison, met with guards and managers and clerks, identified records that should be kept and those that would be destroyed. When she later returned to collect the boxes, the records she flagged for safekeeping were gone. The guards' explanation: a bunch of chairs. Chairs are useful, and guards needed to put them somewhere. They saw a room full of old papers in old boxes; presumably files on people who were not locked up anymore. Old records are less useful than chairs. And so, the story goes, into the garbage they went.

I cannot help but suspect that guards threw out the records to destroy historical evidence of brutality and neglect. It's not unheard of. The Los Angeles Police Department (in)famously

DOI: 10.4324/9781003176619-31

destroyed all but four boxes of its historical records after Edward J. Escobar's critical history of the LAPD was published (Escobar, 1999; Hernández, 2017). But it's just as easy to believe that guards had little sense of the value of historical documents. Incompetence and malice are equally compelling explanations. But those records – and whatever partial, positioned remnants of the past they bore – are forever gone. The traces of the people, first locked behind prison walls, then boxed away in records, were disappeared, again.

Not long after, I returned to California, continuing my research. The bulk of the California prison records was at the State Archives and Library in Sacramento. But there was a minor collection at a public library in the Marin County Civic Center, in the county where I grew up. As a boy, I passed by the Civic Center each day on my way to school. More exciting visits to the Civic Center grounds came with the annual Fourth of July fireworks. The first time I ever went inside the low, sweeping building was when my brother and I met with a court-appointed psychologist to determine the custody arrangements that would follow our parents' divorce. The psychologist was a one-off event, but I went to school every day. From certain parts of my school, you could see San Quentin State Penitentiary, California's oldest, storied, menacing, and notoriously overcrowded prison. Years later, when I studied the history of San Quentin, the carceral state, and the protests against it, I learned that the Civic Center was also the place where, on 7 August 1970, Jonathan Jackson, the seventeen-year-old Black radical and brother of Black Panther intellectual George Jackson, tried to spark a revolution by arming prisoners and kidnapping a judge and district attorney. Jackson and his partners brought their hostages from the courthouse into a van to escape. They didn't get far. Nearly everyone in the van was killed in the subsequent shootout (Berger, 2014; Popp, 1970).[2] A year later, George Jackson was gunned down at Soledad Prison. On the other side of the country, in New York, prisoners at the Attica Correctional Facility drew on George and Jonathan Jackson's revolutionary praxis and rebelled in the name of prisoners' rights and justice. Twenty-nine prisoners and ten of their hostages were killed when guards stormed the facility. The records of the Attica rebellion, and its suppression, have had a fraught and shrouded history (Thompson, 2016).

None of this was on my mind when I entered the Marin County Library and requested to see the papers of Dr Leo Stanley, San Quentin's chief physician from 1913 to 1951. I was interested in understanding how this man's documents might give insight into the historical conditions of life and death and dying, experienced by people caged in California.

Historical archives, housed in government buildings in major cities, were constructed to bolster modern states by providing storehouses for their records. For some decades now, critics have understood that archives are thick with colonial, capitalist, patriarchal, cis-gendered, white supremacist powers. Archival collections are never innocent repositories of an uncontested past: many people make specific decisions, determining the members of which institutions deserve to have records stored in acid-free file folders, arranged in a certain taxonomic order and grouping, so that future generations may lavish their attention over them (Derrida & Prenowitz, 1995).

Documents in state archives provide researchers with words and images from the past and communicate representations from that time to this. Scholars have spilt much ink on the craft and philosophy of history, but historians traditionally look to the writing on the page to interpret a document's possible meanings. Those meanings are rarely self-evident and unfold in multiple directions based on the scholars' perspectives and the questions they ask. Historians debate how records in archives do (or do not) transmit knowledge, the degrees of clarity or obfuscation they allow, whether those records and their stories should be untainted by scholarly interpretation (as per certain kinds of positivism), or if those stories and records are the product of the imagination of contemporary scholars who project their ideas on an unknowable past (Carr, 1964; Elton, 1967; Jenkins, 1995).

Conceptual debates notwithstanding, state agents produce documents to help administer their institutions and maintain control of their subjects. But once on paper, those intents can be subverted. South Asian historian Ranajit Guha (1988) identified a method of critically interpreting British colonial documents, writings he called the "prose of counterinsurgency" (p. 45). While colonial historians might read the documents of a colonial bureaucracy with fidelity to the writers' intent, an anticolonial scholar can read those same documents against the grain, finding evidence of the insurgencies, consciousnesses, and protests against colonial rule (Guha, 1988). It is in this tradition, largely popularized by British labour historian E.P. Thompson (1966) and sometimes known as 'history from below', that I was trained.

Leo Stanley saw himself as a progressive and heroic physician, as well as a researcher. His records ostensibly focused on medical care rather than carceral control, but Stanley conducted many horrific experiments on prisoners (Blue, 2009). In the library, I requested an item with the cryptic title Photo Album #17. The librarian was a bit flustered; I soon saw why. It was a scrapbook of Stanley's medical photos. There were few captions and little explanation other than a felt-tip written note in the elderly Stanley's shaky hand: "These are some pictures taken at San Quentin in the early days 1913–1920. Many defects were corrected. Our aim was to turn a man out of prison in better condition than he was on entrance" (Stanley, Album 17, Marin County Free Library, np.).

I've struggled to describe the scrapbook in the years since, but the best I can do is that it is a record of what Stanley considered his medical "achievements", a menagerie of medical curiosities, as well as a form of medical, coercive, carceral pornography. His photo album profoundly illustrated Frankfurt School theorist Walter Benjamin's (1969) insight into state archives:

> For without exception the cultural treasures [the historian] surveys have an origin which he [sic] cannot contemplate without horror […]. There is no document of civilization which is not at the same time a document of barbarism. And just as such a document is not free of barbarism, barbarism taints also the manner in which it was transmitted from one owner to another.
>
> *(p. 256)*

Stanley's medico-carceral project was aligned with but distinct from lynch mobs in the US South; but both Stanley and the mobs saw themselves maintaining a racially–gendered social order (Blue, 2013). Stanley's photos are awful, but few documents in American history are more horrific, more brutally barbaric, than the photographs that white mobs took of the African Americans (and others) they tortured and murdered on accusations that they had broken the law. White mobs took those photographs to circulate the violence beyond the people witnessing in the crowd. And yet Black insurgents in the US civil rights movement repurposed those images to indict the mobs, giving evidence of white America's barbarism (Apel, 2005).

As a white man, raised on Coast Miwok land in California and now living on unceded Wahdjuk Noongar country in Western Australia, Leo Stanley's colonial legacy is also my own. To confront the history of Stanley's barbarism-in-the-name-of-civilization is, I think, a step toward restitution, a meagre process of reawakening what I imagine as a fuller being-in-the-world, recognizing my structural position as a settler-invader twice over. Addressing that legacy takes a small step away from the radical alienations of colonial modernity.

In the Halluci Nation's 2016 song "ALie Nation" – whose title conjures concepts of alienation, dishonesty, and the settler-invader nation's ontologies – the First Nations poet-activist John Trudell explained that "all the things of the earth and in the sky" are sacred and interconnected. Yet, the colonizers, citizens of ALie Nation, fail to understand these relationships and exploit

all things of the earth. They are endangered by their own creation, he charges, exploiting "even themselves, mining their spirits into souls, sold, until nothing is sacred" (Halluci Nation, 2016). Some 50 years earlier, the Martinican intellectual and anticolonial activist Aimé Césaire (1972) argued that even the agents of colonialism are injured by colonization, which "works to *decivilize* the colonizer, to *brutalize* him [sic] in the true sense of the word, to degrade him" (p. 13).

Colonial violence against the colonized is worse. There is no equivalence in experience between the person under the lash and the one holding the whip. But to take part in systemic hierarchies, to be a *beneficiary* of those systems without contesting them, is to succumb to their profound alienations: violence of another sort. Césaire (1972) continues "It is not the head of a civilization that begins to rot first. It is the heart" (p. 28). Since coming to live in Australia and through my involvement in the First Nations Deaths in Custody Watch Committee, I've come to feel this *heart* more fully. For settlers, like myself, to fail to challenge colonialism, either in anti- or de-colonial forms, is to risk the most important parts of their being, or as I have come to understand it, their heart.

Years later, I published an essay on Stanley's photo album and my first book, on the cultures of punishment at San Quentin and elsewhere (Blue, 2012, 2013). By then, I had moved to Boorloo/Perth, where I was hired to teach US history at the University of Western Australia. I had also begun volunteering with the First Nations Deaths in Custody Watch Committee.

Reading archival material: toward the decolonial and archival poetics

There are diverse ways of engaging with the past. European-derived historical methods via archival work and presentation in written narrative differ in important ways from oral traditions of passing on knowledge and wisdom, which evade capture by the written word. Tanana Athabascan scholar Dian Million (2009) has identified the difference in knowledge systems between *history*, as a contained, archive-based discipline, and what she calls *felt theory*, in which lore and stories are felt through bodies and memories, and via particularly embodied standpoints, which offer alternative narratives to a historical record (see also Morton-Robinson, 2014).

Engaging with archival materials can also work through frequencies which exceed received historical methods. Writing as a settler/invader, and trained as a historian, no less, my beliefs on archival engagements may sound odd. Historians typically interpret words written on the archives' paper. But it is not a one-way relationship. I am convinced that just as much, we enter into dialogic relations between the past and the present. Historians bring their ideas into that relationship but never emerge unchanged. At the very least, a student open to the past will learn to ask new questions from the words they read and ideas they learn and will see the world's possibilities in unexpected ways.

The possibilities are greater still. The pages – material objects of wood pulp and rag – are impregnated with ink through which the author aimed to convey meanings, yes, but they are also laden with their authors' breath and dust and skin. To this end, the pages present the reader with a porous, haunted, and – one hopes – respectful, interface between bodies across time. In some way, the people who wrote on the paper and who were written about on the paper persist within it. The government men behind the typewriters – or more likely, the women who typed their words – have their voices and ideas recorded. Others – the ones about whom the records are written – can be seen as more imprisoned by the words. Wiradjuri poet and scholar Jeanine Leane (2018) identifies archival boxes as cardboard coffins, entombing the people who are written about within them. But her poems, and the work of others to be discussed shortly, also show how *storying*, as a loving and thoughtful process of restoring relationships, can aid archival subjects to exceed and fly free – or partially free – from those bounds.

But first, if we understand the archival documents as not just conveyances of (unclear) information, but also as portals creating relationships across time and space, how might we engage with the paper of the archives, as well as the words and meanings they convey? What if, like Leane (2018), we were to look for the *other side* of the archive's paper, for the emotions, to hear the sounds (p. xi)? Or, further still, if we were to look within the paper itself?

I do not know where the particular papers were made that are kept in the Australian archives I have visited, but the history of Australian paper industries suggests that many were made from trees and discarded rags (Donath, 1957), and therefore from the earth; but also from the sweat of the people who worked at paper mills, from a whole ecology of soil and worms, birds, fungi, insects, bacteria, rivers, people, stories, and songs. Those trees were felled, pulped, matted; their fibres tangled and pressed into sheets. When this process is applied to trees and plant fibres, we call it paper. When the same process is applied to animal furs, we call it *felt*. Can the depths and tangles of this paper, can the country from which it is made – and to which it will someday return – also be *felt*, in a sense inspired by (but not the same as) Dian Million's critical work, by students of the past who visit the archives? Can we reimagine forests rising into the air and plunging into the soil from the tangle of cellulose fibers? Learn from First Nations scholars' methods for listening, looking, sharing, relationships with each other, with the more-than-human-world, and with the past? (Karuka, 2019, p. 20).

My thoughts on the tangled, unravelling and interconnected materiality of archival paper are driven by my situated understanding of being in emplaced, embodied relationship with the more-than-human world. The connections are deeper and denser still in other scholar/activists' projects, and particularly in the Indigenous and Indigenous women-led projects that accord with what Natalie Harkin (2019a, 2019b, 2019c), the Narungga poet/scholar, has identified as *Archival poetics*. Harkin, like Noongar and Yawuru poet/scholar Elfie Shiosaki (2021), sifts through colonial archives to uncover the ties of kin and love that persist within – but more pointedly surge beyond – carceral archives. These modes of work accord with what Anishinabe poet and literary theorist Gerald Vizenor (1999) has called survivance, "an active sense of presence, the continuance of native stories", stories that are "renunciations of dominance, tragedy, and victimry" (p. vii). They might be understood as decolonial projects, refusing the epistemological violence of state knowledge and claiming/re-claiming non-state priorities.

In *Archival poetics*, Harkin (2019b) writes of the prospect of freeing her kin from the colonial-carceral records. The project is *not* history as commonly understood: "not evoking history as linear/passed/past" (p. 31). Instead, "This is a search for missing narratives […] a perpetual motion of search" for people looking back from the gaps in the colonial archives. She identifies the work as "an active reckoning toward something else restorative, transformed, honouring and just" (Harkin, 2019b, p. 5). Harkin (2019a) leads us through the embodied practice of archival research – processes of recognition and loss – which causes visceral reactions: "throat tight/ catch my breath sharp/ hold it" (p. 16). She does not stop there. Harkin hears and sees family in the records of state institutionalization and alienation and meditates on ancestors' handwriting. Via the document, her hands reach across time and space to those of a young girl, "and I imagined our fingertips touching". Through her works and storying, Harkin recuperates relationships. Ancestors and kin are returned to sociality, restoring, in part, relationships that the state had sundered through the theft of children (Harkin, 2020, p. 155). Harkin (2019b) urges archival work to bear witness to colonial violence and as an act of mourning. Her *Archival poetics manifesto* is worth quoting at length:

> honour what you conjure and recognise this as everyone's story: surveillance file-notes / letters/ correspondence files/ inspector reports/ genealogies and photos/ data-card-artefacts-specimens-remains. Soak up the blood. Don't let the weight of it kill you.

> Find new ways to negotiate loss imbued with affective-aesthetic concerns for justice. It will come to you in uncanny moments and unanticipated memory where blood memory, haunting, and the potency of place will collide. Expose state violence. Make visible the humanity of those trapped and lost, now complicit in their vision of refusal to be silent/ silenced you will recognise them as your own. Seek company of others who refuse to accept a culture of amnesia, who refuse once again to be left out of history. This is active reckoning through recognition/ transformation/ action; a rememory collision; a fight-flight-guide response; and embodied literary intervention to the ongoing project of colonialism […].Get to work. Repatriate love. Write decolonial poetry. Forever mourn and weave your way out.
>
> *(p. 34)*

Elfie Shiosaki's *Homecoming* is a similarly profound meditation on her ancestors' struggles for justice as documented in the state archive. Like Harkin, she reinvigorates past struggles through embodied archival connection. Much as Harkin reaches through the page to touch her ancestors' hands, Shiosaki literally traces and thus re-writes her ancestors' angry, measured, righteous handwritten protests to A.O. Neville – the West Australian "Chief Protector of Aborigines" and agent behind child-stealing – for the return of children who had been taken. Shiosaki's words reinscribe, re-embody, and renew struggles of love, dignity, family, and refusal to submit to the colonial carceral state. The words are urgently political but transcend the state's spatio-temporal and epistemological realms.

The First Nations Deaths in Custody Watch Committee archives

Sometime in late 2009 or early 2010, I started going to meetings of the Deaths in Custody Watch Committee. The committee was in the midst of a campaign for justice for Mr Ward, the deeply respected Ngaanyatjarra Elder who died in the back of an overheated prison van in 2008 in an act of state (and private contractor) barbarism. The struggle I joined was one manifestation of unceasing survivance. Settler invasion may be a structure rather than an event, but forms of opposition are an equally permanent, if shifting, struggle (Wolfe, 2006; Svirsky, 2017). I have been walking together with my friends in the Watch Committee ever since – as a member, board member, campaign committee member, and senior researcher. My understanding of the Watch Committee is based on that experience, as well as my conversations with longtime members, and from my reading of its records as a researcher, which began in consultation with – and at the behest of – the Committee. My understanding, of course, is partial and positioned, rather than total.[3]

The Watch Committee grew from interwoven Aboriginal Rights, trade unionist, and religiously inspired human rights movements, interlaced with late twentieth-century global civil rights and anti-apartheid efforts. The Committee is itself an open, living, breathing thing, with temporal rhythms of growth, delay, change, and renewal. It is driven by a broad, insurgent, liberatory sense of justice that hovers between anticolonial and decolonial desires; a justice that comes from its diverse members' different experiences working together to contest a racist, exploitative, sexist system, and which calls for a better world.

The Watch Committee is a *third-space* Aboriginal and non-Aboriginal organization which embraces hybrid worldviews, talents, and strategies. As Pat Dudgeon (Bardi) and John Fielder theorize (2006, cited in Wright et al., 2015),

> The third space represents a radically hybrid space—unstable, changing, tenuous, neither here nor there. The third space is not just something in-between two distinct cultures:

> […] there is no pure, homogeneous cultural space—even within an ostensibly unitary and coherent culture. Communication always takes place (or, more precisely, makes space) in-between.
>
> *(p. 31)*

The Committee's practices have occupied this third space and more, in that it has also moved into the interstitial space (Blagg, 2016) between the *anticolonial* – by which I mean adopting structures and forms that are antagonistic but recognizable to colonial state epistemologies, and the *decolonial* – by which I mean largely Indigenous forms, both traditional and emergent, that are unbounded by the precepts, epistemologies, and ontologies of the settler state.

The history of the Watch Committee deserves more space than is available here. Nevertheless, the West Australian branch of the Committee formed in 1993 following the investigation of the Royal Commission into Aboriginal Deaths in Custody. Advocates realized that the Royal Commission provided few mechanisms for overseeing the implementation of its 339 recommendations and proposed to form a committee of First Nations peoples and non-Aboriginal allies to do so. Federal funding enabled the committee to take institutional form, and in so doing, channelled pre-existing struggles into this organizational mode, which affected collective dispositions to engage in specific ways. Staff undertook substantive anticolonial work challenging Australia's carceral state. With the development of those organizational forms and bureaucratic structures, it conducted prison visits, met with incarcerated people and their families, and developed funding, accounting, and reporting procedures.

When the federal government under John Howard (1996–2007) cut the Committee's funding in 2005, it became an all-volunteer organization. Without funding, there was no money to rent an office; without an office, there was nowhere to keep the records. As the story was related to me, for a while the Committee's records were kept at the church to which one member belonged. One cold night, a First Nations family who had been sleeping rough found refuge in the church. Looking for something to feed the small fire that kept them warm, someone opened a box to burn the papers inside it but saw a family member's name. They read further and saw that these papers held important stories and must not be burned, not even to stay warm on a cold night.

The church eventually grew tired of storing the boxes. A long-time committee member with a semi-covered garage volunteered to take them. And that is where they sat, through Perth's sweltering heat and biting cold, beating sun and the soaking rain that blows sideways.

In 2011, as I grew more involved with the Committee, I asked about the records that the Committee had generated, imagining the flyers, notices, posters, and speeches. I knew little at that time of the Committee's longer history, or the extent of its files. The Committee's leadership discussed how to safeguard the records. We agreed that they are an invaluable resource documenting the Committee's struggle and are of deep historical importance. They are also thick with trauma, detailing very personal, very brutal stories of police and prison violence against Aboriginal people.

The Committee reached out to the State Library of Western Australia, making the case that the state, with its many resources, was obligated to care for these records. It worked. By late 2014, the Library and the Committee were signing documents and agreements, shuttling the boxes from the garage to the Library, where they now sit.[4] I am unsure how close or far the Committee's records are from the boxes and records of the explicitly colonial archive – the records of police patrols in the Kimberley (Owen, 2016), the diaries of pastoralists and squatters, the reports that A.O. Neville wrote, or the letters that Noongar women wrote to Neville, demonstrating their love, and petitioning for the return of their children.

Futuring the Watch Committee archives

At the time, Watch Committee members envisioned that we might develop a policy offering guidance to the librarians on how to allow access to sensitive documents. We intended to contact the senior family members of people described in the records as part of that process. We articulated three goals in doing so. First, we would inform family members about these records and share them if they wanted them. Second, based on those families' desires, we would develop specific access policies. Third, we would do practical work of political organization, building and mobilizing communities and community capacity toward just futures.

What might decolonizing justice mean, in archival research? I've been thinking through the ways that colonial/carceral records can be turned against the state. Drawing on state-authored archives is necessary because those records speak the language of the state itself. When one addresses state agents, wherever they stand on the spectrum of settler states – from social-democratic to fascist–it helps to demonstrate mastery of those tools. History is a discipline that speaks in a register that can be argued in the public sphere and accepted by the state. It is not innocent; its epistemologies are steeped in colonial domination. But it is a tool at the disposal of those seeking justice in many forms (Chakrabarty, 1997).

Another element of decolonizing justice through archives may come from the example of anti-colonial/decolonial organizations and the records they produce. The First Nations Death in Custody Watch Committee's bureaucratic infrastructures generated records that document past strengths and ongoing struggles, offering lessons about its methods, efforts, successes, false starts, and mistakes to be drawn upon by future activists. Its more sensitive records can be returned to family members, rewoven to mourn towards healing, and support through trauma. We can marvel at the breadth and scale of forms of resistance to state domination, and make room for struggles whose traces remain in the memories, bodies, and stories of participants. As future scholars and activists interested in decolonizing justice look to the records, or as they make their own, they (we) will do well to heed Harkin's (2019b) archival-poetic call: *Get to work. Repatriate love* (p. 34).

No conclusion

Decolonizing the criminological and historical archives of justice might, then, be understood as a process, not the end. The revolutionary Black lesbian and feminist poet Audre Lorde (1984) once said "the master's tools will never dismantle the master's house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change" (p. 112). There is little question that archive-based history, for much of the past, was among the master's tools. But in insurgent hands, historical research – the bread-and-butter epistemology of modern state forms of self-knowledge – might be understood as an effort to *temporarily* beat the master at his own game. Even if this is a temporary measure, it seems worthwhile. Survival and survivance mean many things, not least stealing small opportunities when they flash, and fighting on whatever new terrain tomorrow may hold. It might only be temporary; there are no guarantees that it – or anything – will last (Bey, 2020).

And in writing from Whajuk Noongar country, those of us settler/invaders who study history, and who draw on the paper records of the state (and other sources), would do well to recall that these knowledge systems have barely existed for the blink of an eye. Aboriginal peoples have lived in what is now called Western Australia for (at least) 50,000 years. It is entirely likely that Noongar knowledges will persist anew long after the buildings we call archives, with their dreams of monumental permanence, have returned to the ground and

sea from which they were built. The white pages in even the most hermetically sealed, climate-controlled archive, will age, crumble, and someday return to the earth.

Notes

1 'Finding aids' are the binders (or now, the electronic equivalents) that describe the organizational logic of archival collections. For example, a particular governor's archives may be organized by speeches, meeting minutes, correspondence, and so forth, typically broken down chronologically (or by other criteria) into boxes, and with each box internally organized by specific folders. Finding aids allow archivists and researchers to identify areas and periods of particular interest, and help researchers identify where precisely they found the documents they refer to, enabling other researchers to also interpret those documents. On a more practical level, finding aids help archivists find specific materials within labyrinthine storage spaces.

2 While reading a *San Francisco Chronicle* article from 1970 about the Civic Center rebellion in preparation for this chapter, my eye was caught by an article entitled "Aussie Police Halt Protest" at the bottom of the newspaper page. Activists in Perth had chained themselves to the National Service Registration office, protesting the war in Vietnam. Stories about Western Australia, much less stories about radical protests, *do not* abound in US newspapers. To find a coincident connection between these Californian and West Australian anticolonial/decolonial movements – despite their differences – was, as Natalie Harkin might put it, "an uncanny moment of unanticipated memory, where blood memory, haunting, and the potency of place will collide" (2019b, p. 34).

3 I acknowledge power differences and dynamics within hybrid and solidaristic organizations. I also believe that everyone (despite different subject positions) is diminished (though differently) by the global systems of gendered racial capitalism. Recognizing differences while sharing solidaristic struggles is what I take the metaphors of *accompaniment* (Tang, 2015; Tomlinson & Lipsitz, 2013), and *walking together*, to mean. For those of us in positions of structural power, sometimes making space for others is the best form of accompaniment. I am grateful for the insight and wisdom that FNDICWC members continue to share. I also acknowledge the support of a 2019 Battye Fellowship from the WA State Library, which, in part, allowed time for this research.

4 I confess to fears that this was a mistake. A strong case can be made that the settler state has no right to hold these documents. Our sense was that this was a necessary compromise in the complex praxis of anticolonialism and decolonization: appropriating the resources of the state in the interests of preserving these records; setting one branch of the settler state (the library and the archives) against another (the police and the prisons).

References

Apel, D. (2005). Torture culture: Lynching photographs and the images of Abu Ghraib. *Art Journal*, *64*(2), 88–100.

Benjamin, W. (1969). *Illuminations: Essays and reflections*. Schocken.

Berger, D. (2014). *Captive nation: Black prison organizing in the civil rights era*. University of North Carolina Press.

Bey, M. (2020). *Anarcho-Blackness: Notes toward a Black anarchism*. AK Press.

Blagg, H. (2016). *Crime, aboriginality and the decolonization of justice*. Federation Press.

Blue, E. (2009). The strange career of Leo Stanley: Remaking manhood and medicine at San Quentin State Penitentiary, 1913–1951. *Pacific Historical Review*, *78*(2), 210–241.

Blue, E. (2012). *Doing time in the depression: Everyday life in Texas and California prisons*. New York University Press.

Blue, E. (2013). Abject correction and penal medical photography in the early twentieth century. In D.E. McDowell, C. Harold & J. Battle (Eds.), *The punitive turn: New approaches to race and incarceration* (pp. 108–130). University of Virginia Press.

Blue, E. (2016). Seeing Ms Dhu: Inquest, conquest, and (in)visibility in black women's deaths in custody. *Settler Colonial Studies*, 7(3), 299–320.

Carr, E.H. (1964). *What is history?* Penguin Books.

Césaire, A. (1972). *Discourse on colonialism*. Monthly Review Press.

Chakrabarty, D. (1997). The time of history and the times of the gods. In L. Lowe & D. Lloyd (Eds.), *The politics of culture in the shadow of capital* (pp. 35–60). Duke University Press.
Derrida, J., & Prenowitz, E. (1995). Archive fever: A Freudian impression. *Diacritics 25*(2), 9–63.
Donath, E.J. (1957). The Australian paper industry – past, present, and future, *Australian Quarterly*, *29*(3), 61–68.
Dudgeon, P., & Fielder, J. (2006). Third spaces within tertiary places: Indigenous Australian Studies. *Journal of Community & Applied Social Psychology 16*, 396–409.
Elton, G. (1967). *The practice of history*. Fontana Books.
Escobar, E.J. (1999). *Race, police, and the making of a political identity: Mexican Americans and the Los Angeles Police Department, 1900–1945*. University of California Press.
Guha, R. (1988). The prose of counterinsurgency. In R. Guha & G. C. Spivak (Eds.), *Selected subaltern studies* (pp. 45–88). Oxford University Press.
Haley, S. (2016). *No mercy here: Gender, punishment, and the making of Jim Crow modernity*. University of North Carolina Press.
Halluci Nation (2016). 'ALie Nation.' *We are the Halluci Nation [CD]*. Radicalized Records. Available at https://www.youtube.com/watch?v=WhlKs_3Srj0
Harkin, N. (2019a). *Archival poetics* (Vol I). Vagabond Press.
Harkin, N. (2019b). *Archival poetics* (Vol II). Vagabond Press.
Harkin, N. (2019c). *Archival poetics* (Vol III). Vagabond Press.
Harkin, N. (2020). Weaving the colonial archive: A basket to lighten the load, *Journal of Australian Studies*, *44*(2), 154–166.
Hernández, K.L. (2017). *City of inmates: Conquest, rebellion, and the rise of human caging in Los Angeles, 1771–1965*. University of North Carolina Press.
Jenkins, K. (1995). *On 'What is history?': From Carr and Elton to Rorty and White*. Routledge.
Karuka, M. (2019). *Empire's tracks: Indigenous nations, Chinese workers, and the transcontinental railroad*. University of California Press.
Leane, J. (2018). *Walk back over*. Cordite.
Lorde, A. (1984). *Sister outsider: Essays and speeches*. Crossing Press.
Million, D. (2009). Felt theory: An Indigenous feminist approach to affect and history. *Wicazo Sa Review 24*(2), 53–76.
Morton-Robinson, A. (2014). Towards an Australian Indigenous women's standpoint theory. *Australian Feminist Studies*, *28*(78), 331–347.
Papadopoulos, D., Stephenson, N., & Tsianos, V. (2008). *Escape routes: Control and subversion in the twenty-first century*. Pluto Press.
Popp, R. (1970, August 8). Judge and cons slain – Photo story of a battle: Kidnap and escape try drama. *SFGate*. https://www.sfgate.com/news/slideshow/1970-Marin-County-courthouse-shooting-144014.php
Shiosaki, E. (2021). *Homecoming*. Magabala Books.
Svirsky, M. (2017). Resistance is a structure not an event. *Settler Colonial Studies*, 7(1), 19–39.
Tang, E. (2015). *Unsettled: Cambodian refugees in the New York City hyperghetto*. Temple University Press.
Thompson, E.P. (1966). *The making of the English working class*. Vintage.
Thompson, H.A. (2016). *Blood in the water: The Attica prison uprising of 1971 and its legacy*. Pantheon.
Tomlinson, B., & Lipsitz, G. (2013). American studies as accompaniment, *American Quarterly*, *65*(1), 1–30.
Vizenor, G. (1999). *Manifest manners: Narratives on postindian survivance*. University of Nebraska Press.
Wolfe, P. (2006). Settler colonialism and the elimination of the Native. *Journal of Genocide Research*, *8*(4), 387–409.
Wright, M., O'Connell, M., Jones, T., Walley, R., & Roarty, L. (2015). *Looking forward: Aboriginal mental health project, final report*. Telethon Kids Institute.

Part IV

Transforming and decolonizing justice

29

Decolonizing First Peoples child welfare

Cindy Blackstock, Terri Libesman, Jennifer King, Brittany Mathews and Wendy Hermeston

Children are the perpetuity of all cultures and communities. Hence the forced removal of First Peoples' children systematically carried out as part of the colonial project has been profoundly damaging. Violence and resistance have characterized colonial relations from the point of colonization and continue as we pen this chapter (Dunstan et al., 2019; Libesman et al., 2022; Royal Commission on Aboriginal Peoples, 1996).

While many directly discriminatory child protection laws have been repealed, a continuity in colonial values and practices continues. This is starkly expressed in the gross over-representation of First Peoples' children in child protection systems and the underfunding of First Peoples' early intervention and support services (*First Nations Child and Family Caring Society et al v. Attorney General of Canada, CHRT 16. T1340/7008*; SNAICC, 2021). Western child protection systems continue to be experienced as controlling and oppressive, yet the rhetoric of child protection departments and their policy and reform agendas are portrayed as benevolent, inclusive, and even supporting self-determination.

In this chapter, we bring to light the duplicity of colonial governments' claims to support human rights and equality of First Peoples children in Canada and Australia, while not only perpetuating but defending inequality. In Canada, we focus on resistance to inequitable funding for First Nations children's services, litigated through a human rights claim. In Australia, we examine law reform that fast-tracks permanent removals akin to adoption, while failing to adequately fund First Peoples-designed and delivered children's services.

First Peoples families in contact with child protection systems usually experience immense social and economic stressors which are a product of generations of dispossession, discrimination, and colonial trauma, leading to issues such as overcrowding and housing insecurity, domestic and family violence, addiction and mental health concerns, and, subsequently, child protection interventions. These underlying issues, together with systemic failings in child protection services, and other discriminations, need to be addressed. Effective child protection responses must address children's well-being in the context of the individual, family, and community, rather than placing responsibility and blame on parents for systemic racism and intergenerational inequalities resulting from colonialism. While programmes which provide intensive support to parents and families may assist some, they do not address the structural

DOI: 10.4324/9781003176619-33

factors which drive over-representation. Further, for services to be effective they need to be designed and controlled by First Peoples.

The grief and loss of each child removed has created a ripple effect of personal and national intergenerational loss (Menzies & Grace, 2020; Turnbull-Roberts et al., 2022). First Peoples mothers, fathers, grandparents, and extended family and community members have resisted and mourned the loss of multiple generations of children. This chapter recounts some of the ways First Peoples in Canada and Australia have confronted violence and inequality in child protection and continue to advocate to decolonize child protection laws, policies, funding and services.

Stolen generations reparations and repetition in Australia

Members of the Stolen Generations placed their faith in the courts for vindication and redress when the Australian government chose not to implement recommendations from *Bringing Them Home* – the report produced by the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (hereafter referred to as the 'National Inquiry') with respect to reparations for forced and unjustified removal of First Peoples children (National Inquiry, 1997). However, successive courts failed to provide justice for the members of the Stolen Generations, with technical and narrow decisions widely critiqued for their complicity in inflicting further harms and for the lost opportunity to provide a jurisprudence of regret (Genovese, 2011; Gray, 2021; Luker, 2005). Ngarrindjeri man, Bruce Trevorrow, brought forward the first successful case for compensation in South Australia (see *South Australia v Lampard-Trevorrow (2010) 106 SASR 331)*.

The pain caused to Bruce Trevorrow by his illegal removal from his family as a thirteen-month-old baby in 1958 was compounded by the South Australian Government vigorously contesting his damages claim in 2010. Bruce's parents took him to a hospital on Christmas Day 1957 with acute gastroenteritis. From here, despite no evidence of neglect or abuse, he was removed and subsequently adopted by a non-Aboriginal family, who responded to a newspaper advertisement offering Aboriginal children for adoption (Burnside, 2019). When Bruce's parents Thora and Joseph inquired about him, authorities first lied to them and then made veiled threats to remove their other children (Burnside, 2019).

While Bruce Trevorrow's litigation succeeded, Julian Burnside, council for Mr Trevorrow, observed that "the Government of South Australia contested every point in the case. Nothing was too small to pass unchallenged" (Burnside, 2019; para 11). Despite state, federal, and church apologies to members of the Stolen Generations, the imprints of colonial values remain deeply embedded within governments' responses to contemporary and prior Stolen Generations. *Bringing Them Home* contained recommendations with respect to an apology, compensation for past harms, and reforms to child protection laws and practices. It recommended "a complete overhaul" of child protection laws, with reforms founded in principles of self-determination, to avoid the repetition of cycles of harm (see recommendations 42–52, National Inquiry, 1997). Successive Australian governments in the three decades since *Bringing Them Home* have perpetuated harms to First Peoples families by failing to make adequate reparations for past harms or to implement the necessary child welfare law and funding reforms to prevent repetition. This is despite subsequent research and inquiries identifying self-determination and adequate funding as necessary for more just and effective child protection services to First Peoples (Secretariat of National Aboriginal and Islander Child Care – National Voice for our Children (SNAICC), 2021). First Peoples children in Australia were ten times more likely to be in out-of-home care than non-Indigenous children in 2021 (SNAICC, 2021).

First Peoples resistance

First Peoples have persistently and in many ways resisted the removal of children from families and communities. These have included hiding children from welfare officers; writing letters to authorities; protesting; practising culture; through creative channels including song, poetry, film, and art; through the advocacy of local, national, and international First Peoples' children's organizations in UN international human rights arenas; litigating in courts; creating educational resources; and speaking truth to power in public inquiries and forums. Moreover, First Peoples organizations have assumed aspects of child protection responsibilities while continuing to challenge economic and political inequalities within established processes and institutions.

In Australia, the Secretariat of National Aboriginal and Islander Child Care – National Voice for our Children (SNAICC), from its formation in the 1970s, has led calls for recognition of past harms, reparations, and self-determination in contemporary child protection with a focus on children being looked after safely in culture and community. The language, concepts, and institutions of international human rights and global solidarity have been and remain a feature of Australian First Peoples activism. First Peoples children's organizations have advocated for the transfer of child protection to First Peoples as recommended in *Bringing Them Home* (see recommendations 42–52, National Inquiry, 1997). However, claims of self-determination have been distorted by colonial governments. This distortion, since the 1990s, has been in tandem with the shift towards privatizing and outsourcing child welfare responsibilities to non-government organizations.

Contemporary Australian child protection

Unjust laws and pervasive racism persist across the spectrum of Australian child protection measures, from notification to placement in out-of-home care or restoration, at both individual casework and structural levels. Racism has been found to be evident with respect to early surveillance and notifications, how risk is framed, in casework, and in the lack of appropriate support or funding for culturally suitable early intervention and intervention-related services such as drug and alcohol, mental health, housing, and domestic or family violence support (Davis, 2019; SNAICC, 2021). Legal advice is limited and provided to parents and families too late during the 'establishment phase' – when child protection departments have accumulated reports and evidence about a parent for the purposes of bringing the matter to court. This usually results in parents conceding removal and making a case for restoration. Further, decision-making processes in children's courts focus on deficits and usually leave out First Peoples' organizations and extended families from participation (Libesman et al., 2022).

Each stage in the child protection process embeds structural injustice and reinforces racist inequalities. Recent changes to laws within Australia are provided as an example of the incongruity between colonial governments' claims to address inequalities in child protection systems, including the over-representation of First Peoples' children in child protection systems, while simultaneously deepening colonial structures which cause harm.

Recent legislative reforms to Australian state and territory child protection legislation, implemented under the banner of 'permanency', set short time frames (usually two years) for the permanent legal restoration or placement of children in out-of-home care. The legislative changes triangulate with colonial funding and practice imperatives by, for example, limiting out-of-home care funding to accord with legal time frames. 'Permanency' reforms have a disproportionately adverse impact on First Peoples children, jeopardizing opportunities for achieving safe and suitable placements within children's extended First Peoples family networks

(SNAICC, 2016). The limited time frames often preclude parents from addressing the issues necessary for the restoration of their children. This is compounded by long waiting lists for services and limited culturally appropriate services available to First Peoples families, particularly in regional and remote communities. 'Permanent' out-of-home placements are defined in terms of legal permanency, rather than in terms of the relational and cultural notions of permanency demonstrated to be of more relevance to First Peoples families (Hermeston, 2022).

Further, permanency-related reforms such as those in New South Wales have removed oversight of and support for many children in out-of-home care placements. This takes place by placing children on adoption-like guardianship orders with the transfer of parental responsibility to the carer until the child is 18 (see section 79A(2) of the Children and Young Persons Care and Protection Act NSW (1998)). The removal of departmental supervision and support for the placement arguably creates additional risks with respect to abuse in care. Some children are left for long periods in unsuitable accommodation such as motels. Others are placed with non-Aboriginal families, with connection to community and culture left to the discretion of the carer. Despite legislative recognition of elements of the Aboriginal and Torres Strait Islander Child Placement Principle in all Australian jurisdictions, only 42.5 percent of First Peoples children in Australia were placed with First Nations carers (SNAICC, 2021). Further, the placement principle, as articulated by SNAICC, is more extensive than an order for placing children in out-of-home care, which is at the most severe end of child protection intervention. SNAICC defines the Aboriginal and Torres Strait Islander Child Placement Principle as having five elements, each of which is consistent with principles of self-determination: prevention, connection, partnership, participation, and placement (SNAICC, 2018).

Permanency reforms are embedded within and reinforce child protection systems which focus on individual parental responsibility despite underlying issues, including poverty, inadequate housing and homelessness, domestic and family violence, drug and alcohol addiction, and psychosocial or mental health concerns, requiring systemic investment and reforms (Dunstan et al., 2019). Individualization of responsibility for structural and colonially founded problems is reinforced through the privatization of responsibilities for children in need via the devolution of child welfare responsibility to non-government out-of-home care organizations, and to individual families through 'permanent' care orders (Libesman, 2016). This privatization is conflated with and presented by governments as self-determination. While responsibility for the case management of some First Nations children in out-of-home care has transferred to First Nations children's organizations, services are regulated and funded within colonial bounds rather than enabling self-determination.

As the numbers of Australian First Peoples children in out-of-home care have grown, more First Peoples community-controlled children's services and peak bodies have emerged across state and territory jurisdictions. Many of these services challenge the corporatization of care, given their focus on ensuring children are looked after safely within their own First Peoples extended family, kin, and community networks. However, they are constrained by the control exerted through contracts, legislation, and policy that are framed around limiting cost and controlling which support services can be purchased, how limited funds can be spent, and whether (and with whom) children will be placed in out-of-home care, restored to parents, or permanently removed. Controls include, for example, purchasing international programmes which are untested in First Peoples families and communities such as the Multisystemic Therapy for Child Abuse and Neglect, and Functional Family Therapy Child Welfare, which originated in the US. These US early intervention, prevention, and restoration programmes were foisted on the New South Wales care sector without regard for the local context and in particular, for First Peoples needs (Audit Office of New South Wales, 2020).

Opportunities for local, community-developed solutions have been limited. First Peoples organizations have had to find ways to work around inadequate funding and restrictive contract arrangements to ensure the relevance and cultural integrity of their services. Further, the New South Wales government's commitment to transfer all First Peoples children in out-of-home care from either the department or a non-Indigenous non-government organization to First Peoples organizations seems to have stalled. Although this transfer offers some scope to provide more culturally appropriate services, these are opportunities that paper over rather than transform colonial child protection systems. While various child protection departments acknowledge that First Peoples organizations are best placed to look after their children – as the Canadian experience demonstrates – equality of funding together with First Peoples laws and values are necessary to give meaning to governments' 'nice words'.

Canada's old mindset and the pattern of colonial duplicity

In 2021, the discovery of unmarked graves at residential schools[1] across Canada highlighted the duplicity of a colonial government that apologizes for wrongdoing while actively perpetuating and vigorously defending discrimination against today's First Nations children. Newspaper headlines about the unmarked graves and government apologies sat contrary to reports of Canada's latest efforts to overturn legal orders by the Canadian Human Rights Tribunal (Tribunal) in the decade-long case to end government discrimination against First Nations children and redress the harms. Some say Canada has *failed* First Nations children. The authors argue that Canada *chose* to harm First Nations children. With regard to both the residential school system and the Tribunal case, the government knew they were harming and discriminating against First Nations children and ignored remedies to fix it, using propaganda to divert public attention from government wrongdoing.

This chapter demonstrates that Canada's treatment of First Nations children is one of wilful discrimination and inequity, characterized by a pattern of ignoring the evidence, *choosing* not to act on solutions, and using good words to deflect accountability. Canada chooses to privilege the best interests of a colonial government over the well-being of First Nations children even when these choices are known to cause harm. This pattern is part of what the Tribunal has called Canada's "old mindset" – ways of thinking and doing with respect to First Nations children that are known to be discriminatory (*First Nations Child and Family Caring Society et al v. Attorney General of Canada*, *CHRT 16. T1340/7008*; see also Caring Society, 2021; Mathews et al., 2022). Drawing on examples of government decisions about First Nations children as recent as 2021, we demonstrate the workings of Canada's old mindset, arguing that pathways forward must focus on interrogating mindsets and engaging the public to hold Canada accountable.

Canada's relationship with First Nations, and First Nations children in particular, is one of wilful inequity. In 1867, the Confederation established a division of powers between the federal and provincial governments. The federal government (Canada) is responsible for funding public services for First Nations on reserve and in the Yukon Territory,[2] whilst the provinces fund them for everyone else. The result is an apartheid public service regime in which First Nations children and families get less than all other people in Canada for essentials like clean water, education, health care, and child welfare, due to federal underfunding (Auditor General of Canada, 2008; Caldwell, 1967; House of Commons, 2009; Loxley et al., 2005; McDonald & Ladd, 2000; Royal Commission on Aboriginal Peoples, 1996; Sims, 1967). Canada has knowingly perpetuated this inequity while being indifferent to the harms foisted on First Nations children for well over 100 years. In 1907, Canada's own Chief Medical Inspector for the Department of Interior and Indian Department, Dr Peter Henderson Bryce, found that chronic underfunding

and disregard for basic standards of health and hygiene in residential schools contributed to a staggering child death rate of 50 percent of students over three years, primarily to tuberculosis (Bryce, 1907).

It would be wrong to suggest that 'people back then did not know any better' or that the choice not to act was simply a regrettable consequence of the times. Bryce's findings were national news in 1907, prompting human rights lawyer Samuel Hume Blake to publicly wonder if Canada's conduct towards the children amounted to manslaughter (Milloy, 2017). Canada's response to Dr Bryce's report was to do nothing other than to retaliate against the doctor for blowing the whistle, forcing him out of public service, while children continued to die needlessly. In 1920, Canada made attendance at residential schools mandatory for all First Nations children aged seven to 15, using its 'civilizing mission' to legitimize the horrific and preventable death rates in residential schools which exceeded those of Canadian soldiers in World War II (Milloy, 2017; Schwartz, 2015; Truth and Reconciliation Commission of Canada, 2015).

One hundred years after Canada ghosted Dr Bryce's report, a beautiful boy from Norway House Cree Nation named Jordan River Anderson passed away in a Winnipeg hospital in 2005, never having spent a day in a family home. Jordan was born with complex medical needs and spent the first years of his life in a hospital. When Jordan was two years old, doctors said he could move to a nearby home with medical support in place. Sadly, Jordan never left the hospital. The provincial and federal governments spent the next two years arguing over which level of government was responsible for Jordan's in-home care – care that would have been provided as a matter of course if Jordan was not First Nations.

In 2007, as a result of advocacy by Jordan's family, First Nations leaders, and public awareness, Canada's House of Commons passed a motion to establish Jordan's Principle, a child-first principle to ensure that what happened to Jordan would never happen to any other First Nations child (House of Commons, 2007). The motion passed unanimously, although Ernest Anderson, Jordan's father, remained cautious about the government's commitment, telling Canada, "Don't let the good being done in my son's name today just be a moral victory" (Soloducha, 2017). Unfortunately, Mr Anderson's words proved apt. Also in 2007, the First Nations Child & Family Caring Society (Caring Society) and the Assembly of First Nations[3] filed a human rights complaint alleging racial discrimination by Canada in its failure to meet the needs of First Nations children and improper funding of First Nations child welfare.

Like the deaths of children in residential schools, federal underfunding of First Nations child welfare and related harms were well known by Canada (Auditor General of Canada, 2008; House of Commons, 2009; Loxley et al., 2005; McDonald & Ladd, 2000; Royal Commission on Aboriginal Peoples, 1996). Indeed, Canada's legal strategy in response to the complaint was not to deny the discrimination. Rather, Canada attempted to have the case dismissed based on procedural mechanisms and technical jurisdictional arguments (Blackstock, 2016). By the time final arguments were heard in 2014, the federal government had "made eight unsuccessful attempts to get the case dismissed on technical grounds and breached the law on three occasions" (Blackstock, 2016, p. 285).

In 2016, a landmark ruling from the Tribunal substantiated the complaint and ordered Canada to immediately cease its discriminatory practices, reform the First Nations child welfare programme, and fully implement Jordan's Principle (*First Nations Child and Family Caring Society et al v. Attorney General of Canada*, *CHRT 16. T1340/7008*). A press release by Canada at the time made no mention of the government's repeated attempts to have the case dismissed – prolonging proceedings for nine years – or the impact of those years spent waiting on the life of a child. Instead, Canada "welcomed the decision", saying "we can and must do better" (Indigenous and Northern Affairs Canada, 2016). These good words by Canada proved little more than

government propaganda. As of 2022, the Tribunal has issued more than 20 non-compliance and procedural orders compelling Canada to act to end the discrimination. These additional orders, coupled with concerted public attention and outcry following the discovery of the unmarked graves at residential schools across the country, led to a commitment by Canada in 2021 of CAD 40 billion to compensate the victims of its discrimination and reform child welfare, and over 1.89 million products and services for First Nations children through Jordan's Principle as of July 2022 (Indigenous Services Canada, 2022a, 2022b). While these improvements are to be celebrated, the authors are keenly aware that these gains are not the result of Canada's benevolence but of continued legal oversight by the Tribunal and public demands for action.

First Nations resistance and challenging Canada's duplicity

Canada's colonial duplicity is apparent in the arguments it recycles at the Tribunal. Canada's 'old mindset' is systemic and places the lives and well-being of children at risk (Mathews et al., 2022). Characteristics of the 'old mindset' include inequitable resources in the face of demonstrated need, the government choosing not to 'do better' when it knows better, deferring decision-making to a later, often unknown date, and replicating harmful policies and practices under a different name.

A recent example of the 'old mindset' at work – as it applies to First Nations child welfare – is Canada's refusal to fund prevention services at actual cost for Innu families[4] in the province of Newfoundland and Labrador. The importance of child welfare prevention services for First Nations families was at the centre of the complaint filed by the Caring Society and the Assembly of First Nations at the Tribunal. The Tribunal found that improper funding for prevention incentivized the removal of children into alternative care and ruled this to be discriminatory (*First Nations Child and Family Caring Society et al v. Attorney General of Canada, CHRT 2. T1340/7008*). Despite clear orders by the Tribunal to reform First Nations child welfare funding to prioritize prevention, Canada refused to fully fund the Innu to deliver such services until 2021, ignoring clear evidence of need and again relying on technical jurisdictional arguments to justify its position. Ultimately, a legal order by the Tribunal was needed to compel the government to act in the best interest of Innu children.

Innu leader Germaine Benuen describes the colonization of the Innu as "recent and brutal", resulting in deep social challenges for the Innu (Benuen, 2020, para. 15). By 2020, the Innu Nation estimated a tenth of their child and youth population to be in provincial child welfare care (Benuen, 2020, para. 15) and leaders reported an increased risk of suicide by youth as a consequence of involvement with the provincial system (Barker, 2018; Gillis, 2020; Sheshatshiu, 2019). Following the Tribunal's decision in 2016, the Innu were informed that they would start receiving a specified and set amount of prevention funding, as determined by Canada. In 2018, the Tribunal found such arbitrary caps to be inequitable and issued a non-compliance order compelling Canada to fund First Nations agencies for the actual costs of delivering prevention services, based on the needs of children (*First Nations Child and Family Caring Society et al v. Attorney General of Canada*, *CHRT 4, T1340/7008*). The Innu applied for this funding and were denied. Canada maintained that to be eligible, agencies must provide protection as well as prevention services.[5] Responsibility for child protection has never been an immediate or short-term intention of the Innu, but rather part of future work associated with plans to develop their own Innu child welfare laws. The Innu explained to Canada that assuming responsibility for protection was, in fact, contrary to the best interests of children as they first needed time to build capacity (Benuen, 2020, para. 64). Canada was unmoved by the argument of best interests. Further, Canada said the organization

designated by the Innu Nation to deliver prevention services was ineligible because it was not a First Nations child welfare agency as defined by the federal government.

Canada's intransigence left the Innu no option but to take legal action. In 2021, the Tribunal issued an order finding communities not served by First Nations child welfare agencies to be within the scope of the Tribunal case (*First Nations Child and Family Caring Society et al v. Attorney General of Canada, CHRT 12, T1340/7008*). Under the weight of a legal order, the impossible became possible. Funding for the Innu to deliver prevention services at actual costs was provided. Unfortunately, the situation of the Innu is only one example of how Canada's old mindset persists (see Mathews et al., 2022). Changing this mindset – both structurally and at the level of individual decision-makers – through public awareness and pressure must be at the fore of pathways of resistance.

Pathways forward

Reports, negotiations, agreements, inquiries, and photo-ops – these are some of the go-to advocacy strategies used by First Nations to address ongoing injustices by Canada. The problem is that they all assume, to a certain degree, that Canada will choose to 'do better' and act on the solutions when presented with evidence of harms. Canada's conduct suggests otherwise. Detractors may argue that change takes time and that First Nations, Métis, and Inuit need to remain patient. The 'progress takes time' argument is untenable for at least two reasons. Like the position taken by Canada at the Tribunal, this argument privileges the interests of government over the interest of children, in that the harms inflicted on First Nations children are considered secondary to inconveniencing the bureaucratic machine. Second, the idea that those who perpetrated the harm have the right to set the pace for change is the epitome of systemic discrimination (Blackstock, 2020). Indeed, setting the pace of change is a strategy of colonial control (Gambill, 1958) that uses good words to eclipse inaction, allowing Canada to recycle old justifications while carrying on in the fundamentally same manner. Pathways toward equity and justice require that all people in Canada do the hard work of interrogating mindsets and that the public hold the government accountable for meaningful change.

Conclusion

Simultaneous and contradictory colonial government commitments to recognizing principles of participation and self-determination in child protection co-exist with exercises of domination, control, and denial of responsibility. These are seen in Bruce Trevorrow's experiences, in the Caring Society's litigation, and in contemporary Australian child protection reforms which appropriate the language of sharing child protection responsibilities, but then enact 'reforms' that perpetuate laws and practices that result in increased rates of child removal. The ways in which colonial child protection systems have evolved, whilst resisting transformative change, reflect the depth and reach of colonial values.

At the heart of ongoing deep-seated failures to overhaul colonial child protection systems are two critical factors. The first is a powerful undergird of *terra nullius*, that is, denial of First Peoples laws, customs, and capacity for decision-making. 'Allowing' community-controlled organizations to provide services on colonial terms, or within the colonial enclosure, is fundamentally different to recognizing First Peoples' right to self-determination and inherent jurisdiction over child protection laws, practice, and adjudication. Decolonizing child protection

requires the colonial state to equitably fund those critical factors driving the over-representation in child protection systems. These drivers are founded on colonial violence and include poverty, poor housing, and the impacts of intergenerational trauma.

First Peoples' self-determination in child protection also requires investment in and sufficient resourcing for the kind of early intervention and supports that enrich the lives of babies, children, and young people within extended family and community groups. First Peoples have been creative, adapting resistance to the shifting forms of colonial power. However, deep-set colonial values and inequities have and continue to impede the translation of law and policy and the implementation of principles of self-determination into practice. Addressing multi-generational harms requires reparations, including First Peoples' self-determination in child protection – with adequate funding – that builds on community and parents' resources and capacity to raise children in physically and spiritually healthy communities that experience equity and safety.

Notes

1 For more than 150 years, First Nations, Métis and Inuit children were removed from their families and communities and placed in residential schools with the explicit intent to separate children from their families, cultures and languages. The residential schools were church-run and funded by the federal government with the last school closing in 1996. The Truth and Reconciliation Commission found that the residential school system amounted to cultural genocide.
2 Reserves are designated parcels of land where First Nations were forced by Canada to settle as part of the colonial project. The Yukon is the only province or territory in Canada without reserves.
3 The Assembly of First Nations is a national advocacy organization representing First Nation citizens in Canada.
4 The Labrador Innu are the only First Nations people in Labrador.
5 Prevention services are services for families involved with the child protection system, or at risk of involvement which aim to reduce the level of protective intervention. Protection services are those related to taking a child into alternative care.

References

Audit Office of New South Wales. (2020). *Their futures matter*. https://www.audit.nsw.gov.au/our-work/reports/their-futures-matter

Auditor General of Canada. (2008). *Report of the Auditor General of Canada to the House of Commons*. https://www.oag-bvg.gc.ca/internet/docs/aud_ch_oag_200805_00_e.pdf

Barker, J. (2018, November 7). 'You have got to talk about it': Sheshatshiu Innu First Nation chief opens up about suicide. *CBC News*. https://www.cbc.ca/news/canada/newfoundland-labrador/chief-hart-family-sheshatshiu-suicide-1.4894185

Benuen, G. (2020, October 30). Affidavit submitted by Innu Nation in support of the motion filed by the Caring Society on August 7, 2020. *First Nations Child and Family Caring Society et al v. Attorney General of Canada*. T1340/7008.

Blackstock, C. (2016). The complainant: The Canadian human rights case on First Nations child welfare. *McGill Law Journal*, *62*(2), 285–328.

Blackstock, C. (2020). *#Fairness4Everyone: Twitter learning series [presentation]*. https://fncaringsociety.com/sites/default/files/fairness4everyone_learning_series.pptx_.pdf

Bryce, P.H. (1907). *Report on the Indian schools of Manitoba and the North West Territories*. Government Printing Bureau.

Burnside, J. (2019). *The Stolen Generations*. https://www.julianburnside.com.au/the-stolen-generations/

Caldwell, G. (1967). *Indian Residential Schools: A research study of the child care programs of nine residential schools in Saskatchewan*. Department of Indian Affairs and Northern Development, Canada.

Caring Society [First Nations Child & Family Caring Society]. (2021). *Canadian Human Rights Tribunal: The "old mindset" that led to discrimination [Information sheet]*. https://fncaringsociety.com/sites/default/files/old_mindset_information_sheet_feb_2021.pdf

Davis, M. (2019). *Family is Culture review report: Independent review of Aboriginal children and young people in out-of-home care in New South Wales*. https://www.familyisculture.nsw.gov.au/media/independent-review-OOHC

Dunstan, L., Hewitt, B., & Nakata, S. (2019). Indigenous family life in Australia: A history of difference and deficit. *Australian Journal of Social Issues*, *55*(3), 323–338.

Gambill, G. (1958). *On the art of stealing human rights [Conference presentation]*. https://indigenous-russia.com/wp-content/uploads/2021/12/art_of_human_rights_stealing_1958_08.pdf

Genovese, A. (2011). Metaphor of redemption, myths of state. *Griffith Law Review*, *20*(1), 67–90.

Gillis, H. (2020, October 14). An Innu teen died in care. Now a fired social worker is speaking out. *CBC News*. https://www.cbc.ca/news/canada/newfoundland-labrador/social-worker-labrador-child-protection-system-1.5752279

Gray, P. (2021). First Nations reimagining of child welfare key to addressing ongoing disparities. *Australian Bar Review*, *50*(3), 466–475.

Hermeston, W. (2022). *Safe, protected… connected? The best interests of Aboriginal children and permanency planning in the NSW care and protection system* [PhD thesis, University of Technology, Sydney].

House of Commons (2007, December 12). *39th Parliament, 2nd session, Private Member's Business M-296*. https://www.ourcommons.ca/DocumentViewer/en/39-2/house/sitting-36/journals

House of Commons. (2009). *40th Parliament, 2nd Session, Report of the Standing Committee of Public Accounts*. https://www.ourcommons.ca/Content/Committee/402/PACP/Reports/RP3731041/402_PACP_Rpt07/402_PACP_Rpt07-e.pdf

Indigenous and Northern Affairs Canada. (2016). *Statement on the Canadian Human Rights Tribunal decision on First Nations Child and Family Services*. https://www.canada.ca/en/indigenous-northern-affairs/news/2016/01/statement-on-the-canadian-human-rights-tribunal-decision-on-first-nations-child-and-family-services.html

Indigenous Services Canada. (2022a). *Agreements-in-Principle reached on compensation and long-term reform of First Nations child and family services and Jordan's Principle*. https://www.canada.ca/en/indigenous-services-canada/news/2022/01/agreements-in-principle-reached-on-compensation-and-long-term-reform-of-first-nations-child-and-family-services-and-jordans-principle.html

Indigenous Services Canada. (2022b). *Helping First Nations kids*. https://www.sac-isc.gc.ca/eng/1568396042341/1568396159824

Libesman, T. (2016). Indigenous child welfare post Bringing them Home: From aspirations for self-determination to neo-liberal assimilation [UTS: Law Research Paper No. 2016/6]. *Australian Indigenous Law Review, Special Issue on Indigenous Child Welfare*, *19*(1), 46–61.

Libesman, T., Hermeston, W., & Aboriginal Legal Service NSW/ACT. (2022). *Aboriginal participation in child protection decision making*. University of Technology, Sydney & Aboriginal Legal Services NSW/ACT.

Loxley, J., DeRiviere, L., Prakash, T., Blackstock, C., Wien, F., & Thomas Prokop, S. (2005). *Wen:de: The journey continues*. https://fncaringsociety.com/sites/default/files/WendeJourneyContinues_0.pdf

Luker, T. (2005). Intention and iterability in Cubillo v Commonwealth. *Journal of Australian Studies*, *28*(84), 35–41.

Mathews, B., King, J., & Blackstock, C. (2022). Canada's "old mindset" and the struggle to fully honour Jordan's Principle. In J. Albert, D. Badry, D. Fuchs, P. Choate, M. Bennett, & H. Montgomery (Eds.), *Walking together: The future of Indigenous child welfare on the prairies* (pp. 3—24). University of Regina Press.

McDonald, R.-A. J., & Ladd, P. (2000). *First Nations child & family services joint national policy review*. https://fncaringsociety.com/sites/default/files/first_nations_child_and_family_services_joint_national_policy_review_2000.pdf

Menzies, K., & Grace, R. (2020). The efficacy of a child protection training program on the historical welfare context and Aboriginal trauma. *Australian Social Work*, *75*(1), 62–75.

Milloy, J. (2017). *A national crime: The Canadian government and the residential school system*. University of Manitoba Press.

National Inquiry [National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families]. (1997). *National Inquiry into the separation of Aboriginal Torres Strait Islander children from their families*. https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

Royal Commission on Aboriginal Peoples. (1996). *Report of the Royal Commission on Aboriginal Peoples*. Minister of Supply and Services Canada.

Schwartz, D. (2015, June 2). Truth and Reconciliation Commission: By the numbers. *CBC News*. https://www.cbc.ca/news/indigenous/truth-and-reconciliation-commission-by-the-numbers-1.3096185

Sheshatshiu Innu First Nation in N.L. declares suicide crisis. (2019, October 30). *CBC News*. https://www.cbc.ca/news/canada/newfoundland-labrador/sheshatshiu-suicide-crisis-1.5340247

Sims, A. (1967). *The education of Indians in Ontario: A report to the provincial committee on aims and objectives of education in the schools of Ontario*. North Gower.

SNAICC [Secretariat of National Aboriginal and Islander Child Care - National Voice for our Children. (2021). *The Family Matters report 2021: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia*. https://www.familymatters.org.au/the-family-matters-report-2021/

SNAICC [Secretariat of National Aboriginal and Islander Child Care - National Voice for our Children]. (2018). *The Aboriginal and Torres Strait Islander child placement principle: A guide to support implementation*. https://www.snaicc.org.au/wp-content/uploads/2019/06/928_SNAICC-ATSICPP-resource-June2019.pdf

SNAICC [Secretariat of National Aboriginal and Islander Child Care]. (2016). *Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care. SNAICC policy position statement*. http://www.snaicc.org.au/achieving-stability-aboriginal-torres-strait-islander-children-home-care-snaicc-policy-position-statement-july-2016/

Soloducha, A. (2017, December 12). Indigenous family receives wheelchair accessible house after chief applies for access to Jordan's Principle. *CBC News*. https://www.cbc.ca/news/canada/saskatchewan/jordan-principle-first-nations-canada-progress-1.4445179

Transition Program Office. (2013). *Out-of-home care transition implementation framework stage 2, 2013-2014: Meeting the needs of children and young people in out-of-home care*. https://www.facs.nsw.gov.au/__data/assets/pdf_file/0014/320081/tpo_oohc_framework_stage2.pdf

Truth and Reconciliation Commission of Canada. (2015). *Canada's residential schools: The history, part 1: Origins to 1939*. McGill-Queen's University Press.

Turnbull-Roberts, V., Salter, M., & Newton, B.J. (2022). Trauma then and now: Implications of adoption reform for First Nations children. *Child & Family Social Work*, *27*(2), 163–172.

30

Anti-violence efforts and Native American communities

Cheryl Redhorse Bennett

I began my career as a Native American hate crimes scholar after growing up in a reservation border town adjacent to the Navajo Nation in the United States. I am Diné, a citizen of the Navajo Nation and I also descend from the Comanche Nation (Numuunuu). As a teenager, I learned about hate crimes committed against Navajos and Native Americans and, in particular, I learned about horrific incidents in the Navajo border town of Farmington, New Mexico. In May of 1974, three white teens brutally murdered and tortured three Navajo men in separate incidents. These crimes were part of a nefarious tradition in reservation border towns in the southwestern United States and were known colloquially as 'Indian rolling'. During this period, most incidents of Indian rolling can be described as physical assaults with the intent to rob intoxicated Native Americans in border towns like Farmington. The three white male perpetrators were sentenced to a juvenile facility and the Navajo and Native community felt that they did not get justice; that the murderers got away with their crimes (Bennett, 2022). This incident, among many others, deepened my commitment to bringing attention to and analyzing hate crimes within a decolonizing framework.

There are few Native and Indigenous scholars who study racial violence, even though Native Americans experience hate crimes at alarming rates. Throughout my research, I have found that many hate crimes committed against Native Americans occur in reservation border towns, which are settler communities located adjacent to Native American reservations. These types of towns are rampant with racism, racial violence, and hate crimes committed against Native Americans in the United States. Border towns profit off stolen land and cultural commodification while enacting physical and social harm against the original inhabitants of the town (Bennett, 2018).

I discuss border town hate crimes and the violence of policing at length in my book *Our fight has just begun*: *Hate crimes and justice in Native America* (Bennett, 2022). I also interrogate violence against Native women in earlier work (Bennett, 2018). Within my research, it is apparent that anti-violence strategies are developed by Native communities when the settler justice system fails. In most examples that I have analyzed within this chapter, anti-violence strategies become necessary and even urgent because Native communities are ignored, marginalized, and in danger.

DOI: 10.4324/9781003176619-34

As a former professor I taught about crime and violence in Native American communities, and though the subject matter is difficult it is important to teach these topics. In particular, when I taught about violence towards Native peoples, I always discussed the Indigenous community response to this violence and anti-violence strategies that Indigenous communities have created, usually because within white settler systems they are denied justice, protection, and accountability. In many cases, communities have to determine their own strategies for anti-violence and advocate for justice. This is the important part of the work as a Native American hate crime scholar and scholar of crime: to determine strategies for anti-violence and interventions in order to protect our communities. In my opinion, this approach is essential to any discussion about violence against Native people.

What can be done? How do we limit violence? How can we protect our communities for a better future? In this chapter, I examine racial injustice against Native Americans in the United States and analyze the responses to racial violence, police violence, and violence against Native women that Native communities have created. In all situations, communities have noted the lack of justice and the lack of response from settler systems and institutions. Native communities have sought anti-violence remedies where white settler 'justice' failed.

Hate crimes against Native Americans

Hate crimes against Native Americans have their roots in colonization. The racist ideology that ignited hate crimes against Native Americans began with Native American genocide (Bennett, 2022). This anti-Indian ideology has justified colonization, genocide, and theft of land (Cook-Lynn, 2001). Indian hating is the root cause of racial violence against Native Americans. Indian hating is the vilification of Native peoples in the United States used to justify racist policies, genocide, theft of land, and current-day hate crimes. There are few scholars who focus on hate crimes against Native Americans and hate crime data is sparse in regard to the prevalence of hate crimes against Native Americans.

In 2019, hate crimes increased in the United States. The political climate and racist rhetoric are cited as igniting hate and bias incidents. Advocates against racial violence theorize that hate crimes are a result of increasing racist rhetoric. Hate crimes against Native Americans and other marginalized groups have increased since 2016 (Southern Poverty Law Center, 2018). However, hate crime reporting is undercounted. Data collection is inconsistent and problematic (Bennett, 2022). There are no accurate data regarding the rates at which Native Americans experience hate crimes and bias incidents.

Definitions of hate crimes include both legal and sociological. In the United States, hate crimes have been occurring for hundreds of years but it was not until the 1980s that the term became popularized. The sociological definition I draw on was developed by hate crime scholar Barbara Perry (2008), who articulates hate crimes as a mechanism to keep the colonized under control. Additionally, hate crimes send a message to the targeted group and do not solely impact an individual victim. Maintaining boundaries is another part of hate crimes against Native Americans for breaching a social or physical boundary (Bennett, 2022; Perry, 2008).

In the United States, all states have hate crime laws except for Wyoming, Arkansas, and South Carolina. President Barack Obama passed the Matthew Shepherd and James Byrd, Jr., Hate Crimes Prevention Act of 2009, which extended legislation for hate crimes over gender violence. The passage of this federal law was monumental because federal jurisdiction can extend when or if a state will not include hate crime charges. Federal hate crimes law comes into play in the absence of state law or in lieu of state law.

Only recently, the COVID-19 Hate Crimes Act was passed in response to the increasing amount of racial violence towards Asian Americans and Pacific Islanders during the COVID-19 pandemic. Korean American women were targeted and shot in Atlanta in May of 2021, and this tragedy was among many instances of racially motivated violence that had been festering since 2020. The COVID-19 Hate Crimes Act was passed at the urging of a team of researchers and advocates, and the data behind the passing of this legislation was collected by the organization Stop Asian Hate. In March of 2022, lawmakers passed the Emmett Till Antilynching Act, which finally classified lynching as a hate crime with a punishment of up to 30 years' imprisonment. This law was years in the making, even though such legislation had been urgently needed for hundreds of years.

Community action against hate crimes

In direct response to the 1974 racially motivated murders in Farmington, New Mexico, Native American activists organized five consecutive anti-violence marches in downtown Farmington. This corresponded with a boycott of Farmington businesses (Redhouse, 2014). At the urging and insistence of Navajo and Native American community members, the United States Commission on Civil Rights investigated the racism and discrimination in Farmington (United States Commission on Civil Rights, 1975). The Native American demonstrations and organizing directly prompted the US Commission on Civil Rights investigation. Most likely, without urging and without the attention that the anti-violence marches drew, the United States Commission on Civil Rights would not have investigated Farmington. The investigation culminated in a report, *The Farmington Report: A Conflict of Cultures*, which listed a series of recommendations for the city of Farmington to improve race relations.

The United States Commission on Civil Rights returned to Farmington for a follow-up investigation in 2005. They noted the marked "improvement" in race relations in Farmington but failed to discuss any instances of racial violence after 1974. In the years following the murders of three Navajo men in 1974, hate crimes continued unabated in Farmington and surrounding Navajo reservation border towns. The Navajo Nation's leaders and the Navajo community realized they needed their own anti-violence initiative as a sovereign nation in order to protect Navajo citizens.

Navajo Nation Human Rights Commission

The first human rights commission by a Native Nation in the United States was created in 2006. The Navajo Nation Human Rights Commission (NNHRC) was formed in direct response to the police killing of a Navajo man in a Walmart parking lot in Farmington. Around the same time, a brutal hate crime was committed against Navajo man William Blackie. William Blackie asked two white males for a ride home in Farmington. The two white males beat him and left him for dead in the wilderness. Fortunately, he had a cell phone with him and was able to call for help. The assault was considered a hate crime (Buchanan, 2006).

The creation of the NNHRC was spearheaded by Navajo activist turned political leader Duane Chilli Yazzie and tasked with investigating race relations in reservation border towns. Diné were frustrated by years of racist and colonial violence that they had experienced in reservation border towns, and family members of victims of violence urged Yazzie and other Navajo leaders to create a Commission that could advocate for victims. Yazzie was also instrumental in activism in 1974 when three white teens murdered three Navajo men. Yazzie was part of a group of Navajo activists who formed the Coalition for Navajo Liberation (CNL). The CNL

organized a series of peaceful marches and a boycott of Farmington, New Mexico in the summer of 1974. Family members of the victims knew his history of fighting for justice and mediating racial tension throughout his political career. Yazzie was instrumental in advocating for a Navajo Nation Human Rights Commission (Bennett, 2022).

As a relatively new organization, it has yet to be determined what impact the NNHRC is having on race relations in reservation border towns. In 2007, the NNHRC held a series of public hearings asking for testimony from Navajo Nation citizens regarding race relations in reservation border towns. The testimony was compiled into a report that relayed the experiences of Navajo citizens regarding discrimination and mistreatment in border towns (NNHRC, 2007). The NNHRC also advocated for memoranda of understanding with reservation border towns that were intended to acknowledge the white settler history of border towns and solidify the intent to mend relationships between border towns and the Navajo Nation and its citizens. In recent years, the NNHRC has been criticized by Navajo Nation tribal council members. The criticisms accused the NNHRC of not having enough of a positive influence on race relations in reservation border towns. Tribal council members did not see the impact the NNHRC had on improving these relationships. The limitations of the NNHRC include that the NNHRC is a Navajo Nation governmental entity, and within that limitation relies on the funding and political authority of the Navajo Nation. For instance, the director of the NNHRC is under the Navajo Nation council. Commissioners serve to give guidance to the NNHRC and are appointed for two-year terms. Often, the appointments of the Commissioners are politicized, and those chosen by the Navajo Nation tribal council are not necessarily the most qualified individuals with knowledge of race relations (Bennett, 2022).

Currently, the NNHRC is the only available outlet for Navajo citizens to lodge complaints against racism and discrimination. In 2010, the NNHRC was able to advocate for a victim of a horrible hate crime. Young Navajo man Vincent Kee was kidnapped at a McDonald's in Farmington, New Mexico. He was branded with swastikas, and swastikas were shaved into his head. The NNHRC supported Kee when his perpetrators were arrested and tried for the crime. One of the perpetrators, who was a white supremacist, was convicted of a hate crime. The NNHRC is one of the few anti-violence organizations supporting Navajo citizens. Unlike other marginalized groups, Native Americans do not have groups, such as the Southern Poverty Law Center (SPLC) and the Anti-Defamation League, that monitor and advocate against hate crimes and racial violence. The SPLC has also documented hate crimes against Native Americans, but there is a need for a watchdog group that focuses solely on violence against Native Americans and Indigenous peoples in the United States.

Police violence against Native Americans

In the United States, there has been little recent advocacy against police violence against Native and Indigenous peoples. In 2015, Native Americans were the most at risk of police violence (Woodard, 2016). Native Americans are more likely to be killed by police than any other race or ethnic group. The numbers consider the small population size of Native Americans compared to the rates of police violence. Yet, many instances of police killings go unnoticed by the mainstream (Woodard, 2016). Policing is state-sponsored violence committed against Native Americans and has been used as a tactic to curb anti-violence social movements.

In 2016, in Standing Rock, South Dakota, water protectors faced insurmountable police brutality during the NoDapl movement against the Dakota Access Pipeline. Water protectors were beaten by police, arrested and put in dog cages, tear-gassed, and shot with rubber bullets. Police, during one intense confrontation on Blackwater Bridge, also used militarized weapons.

Water protectors were assaulted with water hoses, percussion grenades, and rubber bullets. Much of this violence was captured by social media and independent journalists. In other instances, private security, hired by the Dakota Access Pipeline, used attack dogs to violently attack and intimidate water protectors (Loor, 2020). Despite media coverage and social media documentation of these police attacks, the settler court ruled that the violence was justified.

Community response against police brutality

In the 1960s, the American Indian Movement organized, in part because of police brutality against Native Americans in Minneapolis, Minnesota (Deloria, 1969). Their organizing and demonstrating brought awareness to the issue at the time. In recent years, Lakota Peoples Law Project (2015) has also advocated against police brutality in Rapid City, South Dakota and published a report called *Native Lives Matter* to address the state violence of police shootings and brutality in Rapid City, South Dakota. The anti-violence initiatives that address police killings and brutality have yet to catch on as a movement in the way Black Lives Matter has in recent years. Researchers point to the smaller population size of Native Americans, while non-profits have pointed to the lack of visibility in general in the United States. Frustratingly, as demonstrated with other anti-violence initiatives, communities are left with the burden of creating their own solutions to state-sanctioned violence and social harm.

Increasingly, anti-violence response in Native American communities is now provided by mutual aid organizations that offer services to Native peoples. Mutual aid is an organizational theory where communities are responsible for caring for one another, in a solidarity-based initiative (Benally, 2021). Mutual aid initiatives have grown during the pandemic, particularly in Native American communities and on reservations. COVID-19 relief efforts proliferated where tribal governments and federal and state governments failed. Relief efforts included grocery delivery, personal protective equipment delivery, and hot meal delivery (Indigenous Mutual Aid, 2022).

Native American organizations refer to the unhoused population of Native people as *unsheltered relatives* or *unhoused relatives* (Taala Hooghan, 2022). Unsheltered relatives are most at risk for violent forms of hate crime and racial violence in reservation border towns (Bennett, 2022). Mutual aid organizations provide valuable services and support to these relatives. In particular, Taala Hooghan in Flagstaff, Arizona has provided food, shelter, and aid to unsheltered relatives. These types of services are what Plested, Edwards, and Jumper-Thurman (2006) have referred to as harm reduction. These Indigenous non-governmental organizations themselves cannot fix the root cause, which is systemic racism, but they can alleviate and reduce violence by providing much-needed support for these relatives. Though the Southern Poverty Law Center has included Native populations in a few of their reports, they have not included them in any litigation, leaving Native Nations and peoples to fight these issues themselves.

Violence against Native women

In recent years, in the United States, the issue of violence against Native women has drawn much attention nationally in the news media. In particular, the issue of Missing Murdered Indigenous Women and Girls (MMIWG) has entered the mainstream. In Canada, the MMIWG movement started in the 1990s in response to the large number of missing and murdered Native women. Much later, the movement expanded into the United States. This issue has been described as an epidemic (Deer, 2015).

In the United States, there has been a flurry of media coverage surrounding MMIWG. Major news outlets have all covered the issue to some extent with special news programmes and documentaries. This issue is not new, however, and advocates and scholars of violence against Native women have described its origins as rooted in colonization (Deer, 2015). In many respects, there has been an epidemic of violence against Native women for 400 years. However, only relatively recently has it been brought to national attention.

Advocates and scholars point to a number of factors in relation to the epidemic of violence against Native women. Studies have shown that the perpetrators of violence against Native women are often white males (Amnesty International, 2007). However, these studies are not conclusive, and, in fact, most of the literature does not discuss how much of the violence occurs off reservations. This is where urban Native initiatives become important because if most violence occurs off-reservation, families of victims are left with little support besides urban organizations and settler police departments and justice systems (Urban Indian Health Institute, 2018).

Community response

Once again, in the absence of protections for Native women, it has been left up to grassroots organizations and non-profit groups to advocate for and search for missing women. Non-profit organizations are leading anti-violence efforts. Particularly in regard to violence against Native American women and the recent activism MMIWG. Advocacy had been instrumental in raising awareness of the issue of violence against Native women.

In Canada, sovereign Indigenous First Nations organized searches for missing female relatives. During the 1970s, and to the present day, many First Nations women disappeared along a desolate stretch of highway known as the 'highway of tears'. Some women were victims of homicide, and many have never been recovered. Often, the Royal Canadian Mounted Police victim-blamed missing women. They accused the missing women of leading 'risky' lifestyles or running away (McDiarmid, 2019). Families of the missing women were left with little choice but to organize their own searches and awareness marches. Families of the missing also point to the disparity in policing responses when Native women go missing versus when a white woman goes missing. Families of missing women and girls are left to push for justice (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019).

Years after many women went missing and community calls for justice, the Canadian government investigated the highway of tears missing cases and offered a list of recommendations after a symposium. The Canadian government also created a National Inquiry into MMIWG. The final report acknowledges that the families of victims were not silent on this issue, but "it took this long for Canada to listen" (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019, p. 49). The report discusses the violence against First Nations women in Canada as genocide and discusses the systematic racism that puts First Nations women at risk of violence. It concludes with a series of recommendations regarding what the government should do in response to the violence against First Nations women.

Many non-profit organizations have organized around the issue of missing Native women and girls. They have stepped in to offer data collection and research because there is no effort in the United States to collect this information at the federal level. Reports from the Urban Indian Health Institute (2018) and the Amnesty International (2007) report, *Maze of Injustice*, were the result of grassroots efforts to generate accurate data regarding the issue of MMIWG and violence against Native women (Urban Indian Health Institute, 2018). There is a desperate need for more research on this issue and more accurate data.

Legal remedies

In the United States, violence against Native women advocates and law experts often point to the jurisdictional maze of federal Indian law as a factor in the epidemic of violence against Native women. Because of the Supreme Court case *Oliphant v. Suquamish Indian Tribe (1978)*, Native Americans do not have criminal jurisdiction over non-Native Americans on reservations. As a result of this case and numerous others, justice on Native American reservations is elusive. In fact, perpetrators of violence who are non-Native American have admitted to seeking out victims on reservation because of the jurisdictional loophole (Amnesty International, 2007).

The Violence Against Women Act (VAWA), which was reauthorized in 2013, included provisions extending jurisdiction over settler Americans. This was limited jurisdiction in that it could potentially extend jurisdiction over settlers in certain instances of domestic violence. This was important in order to address an urgent situation where non-Indians could not be prosecuted for domestic violence on reservations. This issue was met with controversy, particularly amongst Republicans. During the Senate debates, conservative lawmakers argued that settler Americans would not receive a fair trial if they were tried in First Nation courts. Native American advocates from across the United States rallied to urge lawmakers to pass VAWA with the tribal jurisdictional provisions. The provisions remained and VAWA was again reauthorized in 2021. Currently, several Native Nations have adopted VAWA into their tribal codes and have successfully prosecuted settlers in their tribal courts.

In some cases, advocates and Native Nations have sought additional legislation to pursue anti-violence. In August of 2017, a young Native American woman, Savanna Grey Wind, was kidnapped while eight months pregnant. Two white perpetrators brutally assaulted her in Bismark, North Dakota and she died from her injuries. In North Dakota, after this heinous crime, state lawmakers urged Congress to pass Savanna's Act, which would "review, revise, and develop law enforcement and justice protocols to address missing or murdered Native Americans" (Congressional Research Service, 2020, n.p.). Similarly, in 2019, 11-year-old Ashlynne Mike was kidnapped on the Navajo Nation. At the time, there was no AMBER Alert on the Navajo Nation. Tribal police and volunteers searched for Ashlynne Mike but heartbreakingly did not discover her remains until the following day. Mike's parents were instrumental in advocating for a national Act that would extend the AMBER Alert to Indian country. In 2018, the Ashlynne Mike AMBER Alert in Indian Country Act was passed. It allows for tribes to access state AMBER alert plans.

On the Navajo Nation, the Missing and Murdered Diné Relatives was created to search for missing relatives, and compile a list of those relatives that remain missing. Organizations such as these have provided direct services to relatives of victims, searched for missing persons and advocated for justice for victims. In many instances, tribal and non-profit organizations have led the anti-violence efforts on reservations and in urban areas. These organizations have often formed because they do not get the services or support from settler systems, and families do not receive the same support that whites receive. Often, missing Native persons are not taken seriously by authorities. Police reports are not filed, police do not adequately investigate, and there is little to no search or investigations into a missing Indigenous person (Bennett, 2022; McDiarmid, 2019).

In particular, the strategies that the Navajo Missing Murdered Diné Relative initiative formed provide support for families in order to locate their missing relatives. However, unlike other advocacy groups, the Navajo Missing Murdered Diné Relatives initiative does not solely focus on women and girls. In their data collection, the organization found that Navajo men are

also missing at alarming rates. In some cases, there may be more Navajo men reported missing (Federal Bureau of Investigation, 2022).

Conclusion

In this chapter, I have surveyed a range of Native American anti-violence initiatives. Native American nations and peoples are instrumental in advocating for justice within federal Indian policy, community action, and decolonized research. In all instances, I observed that it is urgent for communities to enact a multifaceted approach to anti-violence specifically in the United States. In the United States, the complex maze of federal Indian law inhibits justice on reservations so any potential solutions to curb violence must include legal remedies. Legislation can potentially help reduce legal loopholes in prosecuting settler Americans on Native Nations.

Additionally, the focus should not be solely on on-reservation violence but on off-reservation violence as well. (Urban Indian Health Institute, 2018). There is a significant population that resides off reservation and in urban areas. Native Americans experience violence at disproportionate rates, so any remedies must include off-reservation communities.

Native Nations have gained strides in exerting sovereignty, yet they need to do much more in protecting their citizens. While tribal entities such as the Navajo Nation Human Rights Commission have had some measured success in anti-violence initiatives, many of the anti-violence initiatives within Native Nations are relatively new. It remains to be seen how such initiatives will curb violence against Native Americans. Much hope is also within non-profits and grassroots efforts to curb violence. The MMIWG crisis has drawn a multifaceted response from communities and continues to grow. Reviewing the initiatives created by Native communities has shown that decolonizing and indigenizing anti-violence initiatives is our best hope.

References

Amnesty International. (2007). *Maze of injustice. The failure to protect Indigenous women from sexual violence in the USA*. https://www.amnesty.org/en/documents/amr51/035/2007/en/

Benally, K. (2021, August 2). *Anarchist profiles - Klee Benally on Indigenous Mutual Aid*. https://www.anarchistagency.com/commentary/anarchist-profiles-klee-benally-on-indigenous-mutual-aid/

Bennett, C.R. (2018). Another type of hate crime: Violence against American Indian women in reservation border towns. In M.O. Nielsen & K. Jarratt-Snider (Eds.), *Crime and social justice in Indian Country* (pp. 21–38). University of Arizona Press.

Bennett, C.R. (2022). *Our fight has just begun: Hate crimes and justice in Native America*. University of Arizona Press.

Buchanan, S. (2006). *Indian Blood. Intelligence Report*. Southern Poverty Law Center.

Congressional Research Service. (2020). Summary: S.227 — 116th Congress (2019–2020). https://www.congress.gov/bill/116th-congress/senate-bill/227

Cook-Lynn, E. (2001). *Anti-Indianism in modern America: A voice from Tatekeya's Earth*. University of Illinois Press.

Deer, S. (2015). *The beginning and end of rape*. University of Minnesota Press.

Deloria, V. (1969). *Custer died for your sins: An Indian manifesto*. Macmillan.

Federal Bureau of Investigation. (2022, October 11). *FBI provides statistics in latest list of Native Americans verified as missing throughout New Mexico and the Navajo Nation*. http://www.fbi.gov/mmip

Indigenous Mutual Aid. (2022). *About*. https://www.indigenousmutualaid.org/about/

Lakota Peoples Law Project. (2015). *Native lives matter*. https://s3.us-west-2.amazonaws.com/romeroac-stage/uploads/Native-Lives-Matter-PDF.pdf

Loor, K.J.P. (2020). Tear gas + water hoses + dispersal orders: The fourth amendment endorses brutality in protest policing. *Boston University Law Review*, *100*(3), 817–848.

McDiarmid, J. (2019). *Highway of tears: A true story of racism, indifference, and the pursuit of justice for Indigenous women and girls*. Atria Books.

National Inquiry into Missing and Murdered Indigenous Women and Girls. (2019). *Reclaiming power and place. The final report of the national inquiry into missing and murdered Indigenous women and girls*. https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf

Navajo Nation Human Rights Commission. (2007). *Assessing race relations in reservation border towns*. https://nnhrc.navajo-nsn.gov/docs/NewsRptResolution/071810%20Assessing%20Race%20Relations%20Between%20Navajos%20and%20Non-Navajos.pdf

Perry, B. (2008). *Silent victims: Hate crimes against Native Americans*. University of Arizona Press.

Plested, B., Edwards, R., & Jumper-Thurman, P. (2006). *Community readiness: A handbook for successful change*. Tri-Ethnic Center for Prevention Research.

Redhouse, J. (2014). *Getting it out of my system [Unpublished memoir]*.

Southern Poverty Law Center. (2018, March 1). *Rise in hate violence tied to 2016 Presidential Election*. https://www.splcenter.org/hatewatch/2018/03/01/report-rise-hate-violence-tied-2016-presidential-election

Taala Hooghan. (2022). *Support unsheltered relatives*. http://www.taalahooghan.org/support-unsheltered-relatives/

United States Commission on Civil Rights: New Mexico Advisory Committee. (1975). *The Farmington report: A conflict of cultures: A report of the New Mexico Advisory Committee to the United States Commission on Civil Rights*. United States Commission on Civil Rights.

Urban Indian Health Institute. (2018). *Missing and murdered Indigenous women and girls*. https://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf

Woodard, S. (2016, October 16). The police killings no one is talking about. *In These Times*. https://inthesetimes.com/features/native_american_police_killings_native_lives_matter.html

31

Decolonizing family violence in Aotearoa New Zealand

Michael Roguski

Family violence is an endemic social and health-related concern in Aotearoa New Zealand (hereafter Aotearoa), incurring immense health, social, personal, and economic costs to immediate victims, children, whānau (extended family), families, communities, and society.[1] In 2016 alone, New Zealand Police investigated 118,910 incidences of family violence in a country with a population of approximately five million people (Family Violence Clearing House, 2017). The 2019 New Zealand Family Violence Survey noted that 30.9 percent of women reported lifetime intimate partner physical or sexual violence closely followed by 29.9 percent of men. Further, lifetime prevalence rates for two or more acts of intimate partner physical or sexual violence were 33.0 percent for women, and 19.3 percent for men (Fanslow et al., 2022). Data from national crime victimization surveys highlight that an estimated 74% of interpersonal violence offences are not reported to the New Zealand Police (Ministry of Justice, 2022).

Despite significant under-reporting, family violence has continued to increase (Family Violence Clearinghouse, 2017). Within this context, there has been a growing appreciation of the need to better understand, critically evaluate, and better respond to family violence. Globally, the imposition of dominant Western family violence theoretical frameworks on Indigenous communities have consistently been identified as problematic (Chartrand & McKay, 2006; Cooper & Wharewera-Mika, 2011; Cripps, 2011; Te Puni Kōkiri, 2010; Wilson et al., 2019). Māori scholars have critiqued the imposition of these dominant frameworks and concur that Western analytical models and intervention approaches have been largely ineffective for Māori (Kruger et al., 2004; Robertson, 1999).

The most prevailing theoretical family violence frameworks have arisen from feminist socio-political movements (Ali & Naylor, 2013) and the predominance of feminist family violence frameworks has been critiqued as imposing dominant Anglo-American epistemologies, reflective of specific cultural, socio-political, economic, individualized, and gendered perspectives (Cooper, 2012; Kruger et al., 2004). Salient, within the context of Aotearoa, are concerns that such culturally derived frameworks stress individualism and express specific Eurocentric understandings of gender, gender roles, relationships, and well-being that differ considerably from the centrality of collective identities shared by Māori and Pacific peoples (Cooper, 2012; Kruger et al., 2004; Rankine et al., 2017; Rua, 2015).

DOI: 10.4324/9781003176619-35

A second critique has focused on criminal justice responses to family violence as opposed to a wider public health response (Family Violence Death Review Committee, 2022; Roguski & Edge, 2021). Criminal justice responses have been criticized for privileging crisis interventionist responses over primary prevention considerations, which are more likely to achieve a significant reduction in family violence (Hassall & Fanslow, 2006). Furthermore, such criminal justice orientations are denoted by an individualized focus (Ali & Naylor, 2013; Armenti & Babcock, 2016; Taumaunu, 2020) that has questionable effectiveness beyond crisis intervention, effectively pathologizes perpetrators as criminals, and is unlikely to support the restoration of well-being or balance within relationships and within whānau (Kruger et al., 2004).[2] In addition, the entrenchment of criminal justice orientations has resulted in stigmatizing self-directed help-seeking, effectively creating a barrier to accessing early intervention support in Aotearoa (Roguski & Gregory, 2014) and acting counter to the cultural importance of accountability within whānau, hapū, and tribal structures (Balzer et al., 1997; Kruger et al., 2004).

It is noteworthy, however, that the above critiques generally reflect a singular focus that fails to position family violence responsiveness within a socio-political context. The need for a socio-political critique of State[3] responsiveness to family violence is evidenced by three key strategic documents, each of which acknowledges inefficiencies within extant family violence responsiveness. First, the Productivity Commission's[4] 2015 inquiry into the effectiveness of social services in Aotearoa identified significant inadequacies within social service provision. These inadequacies were often aggravated by competitive funding models with stringent eligibility criteria: a focus on crisis intervention rather than prevention and a lack of holistic service provision. Within a context of centralized decision-making, the New Zealand Productivity Commission (2015) recommended increased use of devolution[5] of the social services system, defining devolution as "[t]he transfer of substantial decision-making power and responsibility to autonomous or semi-autonomous organisations with separate governance" (p. xii). Concerning Māori, the New Zealand Productivity Commission (2015) recommended:

> Creating opportunities for Māori groups to exercise mana whakahaere [power to manage, governance, authority] in delivering social services has the potential to both improve outcomes and lead to more effective exercise of rangatiratanga [self-determination]. More devolution of commissioning decisions to Māori would help create such opportunities".
>
> *(p. 335)*

A second recommendation stated,

> In making decisions about whether and how to devolve the commissioning and delivery of social services for Māori, government should be open to opportunities for Māori to exercise mana whakahaere. This should be based on the Treaty of Waitangi principles of partnership, and active protection of Māori interests and of rangatiratanga.
>
> *(p. 335)*

The next significant document is the Auditor-General's release of the outcome of an audit of the government's Joint Venture for Family Violence and Sexual Violence – a cross-agency[6] collaboration making agency chief executives collectively responsible for improving how government agencies work together to reduce family and sexual violence. A primary criticism arising from the audit was how the agencies work with Māori, citing a lack of clarity surrounding what partnership means and how partnership works in practice (Office of the Auditor-General, June 2021). This is a significant finding as partnership remains unrealized

despite the New Zealand government, in 2017, agreeing to recommendations arising out of the Productivity Commission Inquiry (Government of New Zealand, 2017).

In December 2021, the New Zealand government launched a national sexual and family violence elimination strategy called Te Aorerekura (Joint Venture, 2021). This third document includes 40 actions that reinforce a "whole of government response" (Joint Venture, 2021, p. 2) and to varying degrees, references collaborative community relationships, inclusive of Māori. What is evident, however, is that the Strategy privileges the authority and pre-eminence of government 'leading' responses to family and sexual violence. Such pre-eminence is evidenced by government agencies being held responsible for the various actions, coupled with a smattering of paternalistic references to devolution of decision-making and funding to local communities. In this sense, devolution is reflective of an authoritative relationship whereby the status quo of State control is maintained. For example, the Joint Venture (2021) states that:

> [A high-trust, collaborative and respectful relationship] requires government to devolve **some** [emphasis added] decisions and funding to communities while retaining clear responsibility for improving what government is accountable for delivering.
>
> *(p. 17)*

That the Strategy reflects a continued colonial legacy is further evidenced by the national implementation of Te Tokotoru, an ecological model of prevention and well-being that the Strategy has adopted as a means of enhancing interagency primary prevention collaboration (Hagen et al., 2021). The unilateral adoption of Te Tokotoru risks negating existing Iwi and hapū-defined systems of healing (matauranga Māori). There is equal concern that actions surrounding the strengthening of wāhine Māori (Māori women) leadership and succession planning effectively place the onus on cultural leadership and development at the hands of the State. Similarly, the development of a State-defined workforce capability framework risks minimizing skills, knowledge, and experience of Māori who fall outside of State-defined approval criteria. Overall, however, while the strategy makes considerable reference to partnering with communities and Māori, such partnership is reflective of a parallel hegemonic discourse whereby the State is consistently placed in a pre-eminent position of authority.

It is noteworthy that the imposition of State-perpetuated structures requires communities, including Māori, to respond to family violence in a prescribed, State-endorsed, manner, reinforced by government funding arrangements, eligibility criteria, and regular audits. Such colonial mechanisms are counter to te ao Māori (Māori epistemologies) that exist within hapū (subtribes) and Iwi (tribal) structures and are in direct opposition to Te Tiriti o Waitangi (The Treaty of Waitangi), an international treaty signed with the British Crown in 1840 that guaranteed Iwi tino rangatiratanga[7] (sovereignty) whereby Iwi were guaranteed the unqualified exercise of their chieftainship over their lands, villages, and all their property and treasures.

Within this context, this chapter seeks to provide an Indigenous-sociopolitical analysis of family violence responsiveness. I draw on three case studies of community-based specialist kaupapa Māori (for Māori, by Māori) organizations to understand how their journey and adherence to te ao Māori (Māori epistemologies), beliefs and practices can underscore the eradication of family violence. It is argued that the predominance of State-led responses to family violence is erroneous and is a mechanism of sustained colonization. Within this framework, the State has positioned itself as an agent of control and it is this positioning that drives a host of inefficiencies, which effectively maintain the status quo.

Such critique is especially prudent in light of the impact of the nation's colonial history, which has resulted in an overrepresentation of Māori in relation to reported family violence

(see, e.g., Family Violence Death Review Committee, 2022) and excessive incarceration of Māori, with Māori representing approximately 49 percent of the sentenced and 54.2 percent of the remand prison population (Department of Corrections, 2022). Moreover, such critique is urgently required given the State's assumption that it is best positioned to respond to family violence. This chapter actively rejects this assumption, as there is considerable evidence that family-related abuse was absent from pre-colonial Aotearoa (Salmond, 2017), that family violence and abuse is, in general, an artefact of colonization (Family Violence Death Review Committee, 2020), and that State actions often mimic the behaviour of offenders (Family Violence Death Review Committee, 2022).

Methods

The study employed a qualitative holistic multiple case-study design as described by Yin (2003) and informed by an Indigenous Māori-centred methodology. The case studies focus on three kaupapa Māori organizations that are widely acknowledged as exemplars of holistic, whānau-focused service provision, and that have had considerable success responding to, and preventing, family violence in their respective communities.

The use of a holistic multiple case-study design provides an opportunity to place the perspectives and experiences of three organizations as central to the research and to explore the various perspectives within each organization, in accordance with specific cultural understandings, namely te ao Māori.

Each of the three participating organizations is based in the North Island of Aotearoa. Tū Tama Wahine o Taranaki Incorporated (Tū Tama Wahine) is a kaupapa Māori organization based in the city of New Plymouth, in the Taranaki region. It has approximately 30 staff, 26 of whom are Māori or Pasifika. Rather than defining itself as a service provider, Tū Tama Wahine stresses that it is a kaupapa Māori common good organization. Tūhoe Hauora is a kaupapa Māori health provider based in the town of Tāneatua, approximately 30 kilometres from the city of Whakatane in the Bay of Plenty region. The organization comprises 42 staff, all of whom are Māori and 95 percent whakapapa (identify/trace genealogically) to Ngāi Tūhoe. Finally, Manaaki Tairāwhiti, an Iwi-led initiative based in the Gisborne area, comprises government and community organizations collaborating to devolve the commissioning of social services to the community.

Fifteen people from the three organizations participated in a series of in-depth interviews. Three case studies were developed from the interviews and participants were provided with drafts and were invited to amend or extend where necessary, either through verbal or written feedback. Approved case studies form the basis of this chapter's findings.

Findings

Case study participants shared journeys of first engaging in, and then entrenching, te ao Māori responses to the eradication of family violence. Aspects of these journeys have been grouped thematically in terms of resistance against State control, kaupapa Māori responsiveness, tino rangatiratanga, holistic whānau responses, and prevention and early intervention.

Resistance against State control

Participants described that, from the mid-1980s, State institutional racism supported the widespread adherence to agency and service responses, and staff having to operate within Eurocentric

models of prevention and intervention. These State models were devoid of a whānau-centric focus and failed to acknowledge the importance and right of Māori to work within their own cultural understandings. As described by a participant from Tū Tama Wahine, the areas of health, education and justice were, and continue to be, perceived as "not only compartmentalizing of whānau but also compartmentalizing of the individual themselves within whānau". Participants further described the government as entrenching individuals and their whānau within government agencies, either through entry into the criminal justice system or through State interference through such agencies as Oranga Tamariki.[8] These responses have had deleterious effects on whānau, capturing whānau (families) in cycles of negative labelling and dependence on State intervention (e.g., Royal Commission Inquiry into Abuse in Care, 2020).

Within this context, each organization described a journey of having acknowledged that government dictates and associated programmatic requirements were ineffective in responding to family violence and have intentionally developed approaches that are in direct opposition to such dictates.

Beginning in the late 1980s, Tū Tama Wahine arose from the acknowledgement of high rates of family violence amongst Māori whānau in their region and a recognition of significant service gaps that resulted in a failure to address the violence and its antecedents. In addition, it developed in opposition to Western conceptualizations of offending and victimology and actively opposed structural factors contributing to colonization, oppression, injustice, racism, and the many acts of violence of the colonial State upon Indigenous peoples. Within this context, the causes of family violence are acknowledged as historical, intergenerational, and multi-causational.

Tū Tama Wahine stressed that demarcations such as 'service provision' reflect transactional and client-restricted encounters, a type of interaction that reduces the ability of staff to adequately respond to whānau and can result in whānau relying on an organization rather than engaging in a process of whānau development. Within this context, Tū Tama Wahine developed a holistic service delivery strategy centred around whānau development. The strategy comprises ten streams, some of which focus directly on whānau development, such as family violence, social work, parenting support services, tamariki (children) and rangatahi (young people), korero awhi (counselling and advocacy), and whānau ora services. The remaining streams are embedded within an Indigenous community development framework and include community development, tikanga and cultural advice, housing, and research.

Tūhoe Hauora was established in 1991 in opposition to the continued negative portrayal of Māori in an array of government agency-related statistics and that entry into many of these government agencies had a negative impact on the individual and whānau. In this sense, Tūhoe Hauora realized that alternative ways of responding to family violence were needed and developed a therapeutic model underpinned by mana motuhake – the self-determination of Iwi, hapū, and whānau.

Beginning in 2016, Manaaki Tairāwhiti, led by the chairperson of each of the two local Iwi and comprising local members of 11 national government agencies, identified a need to address social-sector inefficiencies and gaps in service provision arising from government issue-specific initiatives. Such inefficiencies had resulted in siloed service provision and a focus on crisis intervention rather than prevention. These inefficiencies contributed to a variety of intergenerational issues, and a high proportion of families in Tairāwhiti were reported to be "living in crisis and passing that crisis on to their tamariki [children] and mokopuna [grandchildren]." Rather than a therapeutic model, Manaaki Tairawhiti sought to dismantle State structures that have acted as a barrier to responding to and reducing family violence. Within this context, Manaaki Tairawhiti identified the need to devolve social-sector commissioning to the community and

ensure that social-sector policy and service provision are interconnected. The emphasis on local decision-making is contrary to predominant, and conventional, issue-specific contracting and service delivery frameworks (New Zealand Productivity Commission, 2015).

Such local agency collaboration has been enabled by a government mandate for Tairawhiti to explore novel approaches to addressing whānau needs. The mandate was given in 2016 after Manaaki Tairawhiti was recognized as a place-based initiative, a central government response to the growing body of evidence that collective approaches are required to address the needs of the nation's most at-risk children and families. Being recognized as a place-based initiative was especially enabling because the initiative focused on bringing together local decision-makers and practitioners from social agencies, Iwi, and NGOs to walk alongside whānau to identify presenting issues and test innovative approaches within the community. As such, the mandate has enabled collaboration and collective action across government agencies.

Importantly, each organization exercised tino rangatiratanga in not only rejecting State dictates but by developing their own responses to the various presenting issues. Further, in accordance with the independent authority of each Iwi, tino rangatiratanga is reflected in the right of each Iwi to develop responses based on their own matauranga-a-Iwi (tribal knowledge).[9] Within this context, participants commonly referenced a reclamation of the rights of Iwi, and Māori in general.

Kaupapa Māori responsiveness

Participants commonly referenced aspects of cultural reclamation in their descriptions of how their organizations responded to whānau needs. Of significance, cultural reclamation occurred while simultaneously rejecting conventional Eurocentric constructions, such as Eurocentric intervention and feminist models of victim–perpetrator conceptualizations, both of which were viewed as reinforcing a criminal justice and individualized response (see Roguski & Edge, 2021). Rather, each organization stressed the importance of tino rangatiratanga, holistic whānau responses, prevention and early intervention, and Indigenous community development as central to their whānau responsiveness.

> Our approach was around working with whānau, which included the men, they are part of the whakapapa [genealogy] and we can't leave them at the door. I had fundamental difference around what tauiwi organisations perceived feminism to be, what I perceive feminism to be, and what it means about empowering families.
>
> *(Tū Tama Wahine participant)*

Tino rangatiratanga

Across the organizations, tino rangatiratanga and mana motuhake were described as foundational to whānau empowerment and whānau being positioned to make their own informed decisions, a commitment that is in contrast with whānau experiences of being disempowered by government agencies (see Roguski, 2020 for a description of supported whānau decision-making).

In addition, the organizations exercised tino rangatiratanga through a variety of strategies, reflective of Indigenous community development. For example, contrary to predominant issue-specific contracting and service delivery frameworks, Maanaki Tairawhiti identified the need to devolve social-sector commissioning to the community and ensure that social-sector policy and service provision are interconnected. Devolution was founded on a principle of tino rangatiratanga that has been operationalized through two inextricably linked strategic intents.

First, appropriate community-based derived support – framed around whānau empowerment and decision-making – will lead to transformational change and, ultimately, tino rangatiratanga of whānau. Next, of equal significance, whānau tino rangatiratanga is contingent upon the tino rangatiratanga of Tairawhiti. The emphasis on tino rangatiratanga of the Tairawhiti area counters conventional central government policy and programme delivery that has been developed outside of the area and imposed without consultation, and often, contrary to community-identified needs. Rather, tino rangatiratanga of the Tairawhiti area acknowledges that local leaders and stakeholders are best positioned to identify and develop their own unique solutions.

From its inception, Tū Tama Wahine acknowledged that the needs of Māori in the Taranaki region need to be addressed through whānau development while simultaneously engaging the wider community in a process of change. In this sense, Tū Tama Wahine adopted a dual focus on service delivery and community participation. Tino rangatiratanga is exercised through Indigenous community development whereby communities respond to their own needs. Such acknowledgement is a shift from a reliance on agency and service provider intervention. An example of such a shift is the organization's recent release of its violence prevention strategy, He Pūnaha Hohou Rongo, which centres on a regional commitment across hapū and Iwi to work together to address family violence.

> They've [communities] got to be there at some point. The community, all our communities. Saying, we've got this, we know, we understand this, we have to do something about it. That's where we want to get with our communities.
>
> *(Tū Tama Wahine participant)*

Tūhoe Hauora stressed the importance of being actively embedded within its community. In this sense, community embeddedness acknowledges the intersection of staff and community and serves as a mechanism of continued support of whānau within a community setting. Importantly, continued exposure to staff, when staff are regarded as respected community members, removes barriers associated with support engagement. Such commitment was contrasted against conventional approaches that commonly adhered to strict levels of professional distance between communities and practitioners.

> One of the things about community, that I'm hugely passionate about, is you make an extra effort in this work if you live in that community because you want that to be the best community. So, you're going to get into the very best that you can to embrace your community and give them every opportunity for our kids to actually thrive.
>
> *(Tūhoe Hauora participant)*

Notably, government strategies, such as Te Aorerekura, negate such Iwi and area-specific strategies and privilege the voice of government over that of hapū and Iwi. While Te Aorerekura makes some provision for place-based initiatives, there is no provision for devolution of decision-making to organizations or regions. In this sense, operations are impacted by central government dictates and there is little room for regions to make locally defined amendments.

Holistic whānau responses

Each of the organizations adopts a whānau-centric focus to address the needs of an individual while simultaneously addressing the needs of the whānau. Holistic whānau responses are reflected in each organization rejecting conventional issue-based service responses (e.g., such

as discrete service provision surrounding alcohol and other drug use) in favour of a whānau development, recognizing that whānau is the key social structure within Māori society. In this sense, whānau are viewed and responded to in their entirety; and the health and well-being of the individual are inextricably linked to the health and well-being of the whānau unit. A commitment to addressing the needs of the whole whānau, rather than the 'identified patient' stands in stark contrast to common conventional individualized service delivery.

> The conventional therapeutic approach is simply a referral from a government agency. "Can you do alcohol and drug counselling with this person?" That's it. And we say, "Kāo [no], not only are we going to work with the individual, but we're going to work with their family because we will affect no change whatsoever if we're just working with the individual".
>
> *(Tūhoe Hauora participant)*

Notably, the organizations reject simplistic and discrete compartmentalizations, such as family violence, and instead focus on whānau hauora (family health). Manaaki Tairawhiti, for example, actively rejected conventional targeted service provisions, such as family violence or addiction counselling. Such compartmentalizations have severely limited the ability of whānau to access support, as predetermined eligibility criteria have often acted to exclude individuals and whānau failing to meet levels of need required for intervention. Such a shift in focus represents an acknowledgement of the deleterious impacts of transactional service models in favour of transformative, and holistically framed, support interactions that privilege whānau problem-solving and positive change.

> We don't believe in the targeting approach. We think that the current system is so targeted that "there is this support" for specific problems deemed to be serious enough that the government wants to pay someone to do something about it. But that is not usually at the prevention end of the continuum. It is usually once the horse has bolted that it's an identified problem that someone tries to address. We want to test doing the opposite of that. We want to provide help with whatever problem whānau ask for help with.
>
> *(Manaaki Tairawhiti participant)*

Prevention and early intervention

A central focus on whānau development has resulted in an emphasis on prevention and early intervention. Early engagement with children and whānau has become increasingly important from a prevention viewpoint; whereby one Manaaki Tairawhiti participant stated: "a referral to the organisation essentially indicates missed opportunities before the escalation of presenting issues".

Prevention and early intervention are regarded as essential, as the health and well-being of whānau can only be achieved by preventing them from entering 'the system' and thereby preventing cycles of reliance, disempowerment, and negative labelling. Arising from this commitment to prevention, each organization engages whānau at the earliest opportunity to ensure that presenting issues do not escalate to the point of agency involvement.

> Our prevention interpretation is based on intervention opportunities to work with a whānau pre-agency involvement or stopping them from going to any government department for any reason.
>
> *(Tūhoe Hauora participant)*

> Our research in relation to child rearing and resiliency really led us to an avenue where we decided we're getting to whānau too late, and actually, the place where we needed to be was in schools. And so we started doing things like our social workers in schools, children's programmes or our attendance service.
>
> *(Tū Tama Wahine participant)*

Challenges

Both social service organizations, Tū Tama Wahine and Tūhoe Hauora, described their ability to fully realize tino rangatiratanga as compromised by a reliance on government contracts and associated funding requirements.

> You know, we can't actually put our hand on our heart and say, we practise mana motuhake wholeheartedly because we're funded by government, so it takes away mana motuhake straight away because we're bound by contracts and outputs.
>
> *(Tūhoe Hauora participant)*

Inflexibility and dictates of government contracts preclude the organizations from being able to respond to whānau need in ways that the organizations view as more pertinent. Such arrangements restrict the allocation of staff to roles, which may be incongruent with whānau and community needs. In this regard, both organizations asserted that devolved funding arrangements would enable the organization to respond to whānau need appropriately.

> We should be able to get bulk funding and be empowered to make our own decisions about where the need is because needs change.
>
> *(Tūhoe Hauora participant)*

Manaaki Tairawhiti identified the inability to direct change within member agencies as a significant challenge. Specifically, agency leaders have been prevented from consistently engaging in system improvement methodology because they were required to implement national policies and operational changes. Next, a lack of staff with a dedicated system improvement mandate has prevented the full realization of a system improvement focus. Finally, COVID-19 has had a significant impact. The need to implement new COVID-19 national policies has required unprecedented levels of resources which have prevented staff from addressing changes at a local level.

> We can gather the whānau voice, aggregate the information and point to where people frequently have trouble getting help. But we can't compel the agencies to change the system, or release staff to work on the problem.
>
> *(Manaaki Tairawhiti participant)*

> We are trying to work on things in our community but there are things that come in over the top. So, the agencies get pulled back into business as usual. This means the application of the system improvement methodology may not be consistently applied.
>
> *(Manaaki Tairawhiti participant)*

Participants suggested that these challenges could be circumnavigated if there was a cross-agency agreement to ringfence Tairawhaiti as a geographical area to test innovative practice.

> The best-case scenario would be for Tairawhiti to be ringfenced so that participating local agencies could have the freedom to look at things that are not working well in their system, and test making changes. By ringfencing us you remove the pressures from central government, like knee jerk reactions, that can impact on frontline staff.
>
> *(Manaaki Tairawhiti participant)*

Discussion and conclusion

The launch of Te Aorerekura was greeted with considerable fanfare, signalling what the State described as a holistic and community-embedded response to family violence. However, the Strategy represents only a guise of holistic and community embeddedness and, therefore, furthers the continued imposition of State control and enforcement structures at the expense of Indigenous responsiveness and rangatiratanga.

Given the deleterious impact of colonialism in Aotearoa (see, e.g., Moewaka Barnes & McCreanor, 2019) and the fact that family violence developed as a consequence of colonization, it is paradoxical for the State to assume that it is best positioned to address family violence. Hence, State-driven non-Indigenous responses to family violence need to be treated with caution.

A Te Tiriti o Waitangi-informed response to family violence negates the State's continued positioning as the paramount authority instead of a partnership between Iwi and Crown, the acknowledgement of tino rangatiratanga, te ao Māori, and the independent authority of Iwi and hapū, inclusive of their own matauranga-a-Iwi. Threaded throughout these pillars of Indigenous partnership is the need for the State to surrender its reliance on Western conceptualizations, such as compartmentalized understandings of family violence, and be willing to accept the efficacy of Indigenous responses that address the collective needs of the whānau, the intergenerational impact of colonization, and the importance of cultural reclamation and early intervention and support.

Significantly, the three case studies highlight that kaupapa Māori organizations have the skill and knowledge to address presenting issues and there is ample evidence to support that these Māori-led responses have been highly successful. Notably, however, these successes have occurred because of each organization's determination and despite the State's efforts to control family violence responses.

The greatest challenge faced by the three organizations is a lack of trust from the State.

The two social service organizations, Tū Tama Wahine and Tūhoe Social Services, have funding arrangements that are tied to specific State requirements. These organizations described the need for the State to trust them to work with whānau and respond to whānau-identified needs. In this vein, trust means that the State ceases to impose paradigms, such as Te Tokotoru, eligibility criteria, and client encounter numbers, and allows the organizations to function within their own systems of healing. Rather than service provision-related barriers, the greatest challenge faced by Manaaki Tairawhiti, in comparison, is the State's lack of trust to enable the place-based initiative to function innovatively and outside of policy and operational dictates that reinforce individualized crisis responses that exist within a siloed structure.

Given the 2015 findings of the Productivity Commission, such a lack of trust is incomprehensible and is reflective of successive governments' entrenched racism (Mutu, 2019). The State has failed to demonstrate a willingness to explore and take action on what devolution

might mean, and how Iwi, hapū and kaupapa Māori organizations might partner with the State. As evidenced by Te Aorerekura, the State has adopted the guise of a partnership while effectively asserting control.

The experiences of the three participating organizations highlight the urgent need for the State to first acknowledge that its continued control of family violence responsiveness is negatively impacting Māori in response to whānau. Second, there is a need for the State to engage in conversations with hapū, Iwi, and kaupapa Māori providers about what devolution means and how, in accordance with Te Tiriti o Waitangi, Māori might be able to partner with the State in such a way that Māori exercise tino rangatiratanga, inclusive of matauranga-a-Iwi.

If the State continues to privilege its position as an agent of control, State strategies, such as Te Aorerekura, will continue to ignore partnership and instead cast the State as paternalistic. In addition, the status quo, fraught with a myriad of inefficiencies will continue and the support needed – as defined by whānau – will fail to be provided. Moreover, our growing incidence rates of family violence will not be adequately addressed. The State's control, paternalism, and inaction are evidence that the State engages in sustained colonization and marginalization of Māori.

Notes

1 In 2015, it was estimated that the Government spent more than $1.4 billion annually addressing the consequences of family violence (Office of the Auditor-General, 2021).
2 Feminist theoretical orientations have shaped the most prevalent intervention responses to family violence. The most notable are based on the Domestic Abuse Intervention Project (DAIP), also known as the Duluth Model (Ali & Naylor, 2013; Armenti & Babcock, 2016) and have been particularly influential in the development of responses to family violence in Aotearoa New Zealand (Crichton-Hill, 2001; Rankine et al., 2017; Robertson, 1999; Slabber, 2012). The model rests on an analysis of violence as founded in the gendered imbalance of power and control, enacted towards women by men (Kruger et al., 2004), and seeks a reduction of violence through a criminal justice response with punitive consequences incurred for individual perpetrators and through the provision of desistance education programmes for perpetrators (Pence, 1983).
3 The author chooses to capitalize State throughout the chapter to emphasize the encapsulated power.
4 The Productivity Commission is an independent Crown entity tasked with undertaking in-depth inquiries on Government-selected topics. The Commission's 2015 inquiry into the effectiveness of social services in Aotearoa was initiated because a raft of inefficiencies associated with the way government agencies commission and purchase social services; the result of which is a social service system that has been precluded from responding holistically to presenting needs and a focus on crisis interventions to the detriment of prevention and early intervention. The Commission is bound and guided by the New Zealand Productivity Commission Act 2010.
5 The Commission defined devolution as "The transfer of substantial decision-making power and responsibility to autonomous or semi-autonomous organisations with separate governance" (Productivity Commission, 2015, p. xii).
6 Comprising Accident Compensation Corporation, the Department of Corrections, the Ministry of Education, the Ministry of Health, the Ministry of Justice, the Ministry of Social Development, the New Zealand Police, Oranga Tamariki, Te Puni Kōkiri, and the Department of the Prime Minister and Cabinet.
7 Tino rangatiratanga and mana motuhake refer to the sovereignty of Iwi Māori. Of note, Iwi differ according to which term is used. For example, Ngāi Tūhoe tend to refer to mana motuhake.
8 Oranga Tamariki is also known as the Ministry of Children and is the State childcare and protection agency.
9 Mātauranga ā-iwi, tribal knowledge, operates within tribal context – "it is premised on the tribal knowledge forms that are unique to the differing tribal identities" (Doherty, 2012, p. 33).

References

Ali, P.A., & Naylor, P.B. (2013). Intimate partner violence: A narrative review of the feminist, social and ecological explanations for its causation. *Aggression and Violent Behavior*, *18*, 611–619.

Armenti, N.A., & Babcock, J.C. (2016). Conjoint treatment for intimate partner violence: A systematic review and implications. *Couple and Family Psychology: Research and Practice*, *5*, 109–123.

Balzer, R., Haimona, D., Henare, M., & Matchitt, V. (1997). *Māori family violence in Aotearoa*. Te Puni Kōkiri. Wellington, New Zealand.

Chartrand, L., & McKay, C. (2006). *A review of research on criminal victimisation and first nations, Metis and Inuit Peoples 1990 to 2001*. https://www.justice.gc.ca/eng/rp-pr/aj-ja/rr06_vic1/rr06_vic1.pdf

Cooper, E. (2012). *Mokopuna rising: Intervention in whānau violence*. [PhD thesis, University of Auckland] https://researchspace.auckland.ac.nz/handle/2292/19218

Cooper, E., & Wharewera-Mika, J. (2011). Healing: Towards an understanding of Māori child maltreatment. *Journal of Māori and Social Issues*, *1*, 283–301.

Crichton-Hill, Y. (2001). Challenging ethnocentric explanations of domestic violence: Let us decide, then value our decisions - a Samoan response. *Trauma, Violence & Abuse*, *2*, 203–214.

Cripps, K. (2011). Indigenous family violence: From emergency measures to committed long term action. *Australian Indigenous Law Review*, *11*(2), 7–18.

Department of Corrections. (2022). *Inmate ethnicity by institution*. https://www.corrections.govt.nz/resources/statistics/corrections-volumes-report/past-census-of-prison-inmates-and-home-detainees/census-of-prison-inmates-and-home-detainees-2003/2-inmate-numbers-by-institution/2.4-inmate-ethnicity-by-institution

Doherty, W. (2012). Ranga framework – He raranga kaupapa. In T. Black, D. Bean, W. Collings & W. Nuku (Eds.), *Conversations on Mātauranga Māori* (pp. 15–36). New Zealand Qualifications Authority.

Family Violence Clearing House. (2017). *Data summaries 2017: Snapshot June 2017*. https://nzfvc.org.nz/sites/nzfvc.org.nz/files/Data-summaries-snapshot-2017.pdf

Family Violence Death Review Committee. (2020). *Sixth report. Te pūrongo tuaono: Men who use violence. Ngā tāne ka whakamahi i te whakarekereke*. https://www.hqsc.govt.nz/assets/Our-work/Mortality-review-committee/FVDRC/Publications-resources/FVDRC6thReport_FINAL.pdf

Family Violence Death Review Committee. (2022). *Seventh report. A duty to care. Me manaaki te tangata*. https://www.hqsc.govt.nz/assets/Our-work/Mortality-review-committee/FVDRC/Publications-resources/Seventh-report-transcripts/FVDRC-seventh-report-web.pdf

Fanslow, J.L., Malihi, Z., Hashemi, L., Gulliver, P., & McIntosh, T. (2022). Prevalence of interpersonal violence against women and men in New Zealand: Results of a cross-sectional study. *Australian and New Zealand Journal of Public Health*, *46*, 117–126.

Government of New Zealand. (2017). *Government response to the Productivity Commission report on more effective social services*. https://www.productivity.govt.nz/assets/Documents/9c5ad80787/Government-responses-to-recommendations-v2.pdf

Hagen, P., Tangaere, A., Beaton, S., Hadrup, A., Taniwha-Paoo, R., & Te Whiu, D. (2021). *Designing for equity and intergenerational wellbeing: Te Tokotoru*. https://static1.squarespace.com/static/5f1e3bad68df2a40e2e0baaa/t/619d6ee9ce2a4c268892b683/1637707507280/TeTokotoru_Oct_InnovationBrief_2021.pdf

Hassall, I., & Fanslow, J. (2006). Family violence in New Zealand: We can do better. *The New Zealand Medical Journal*, *119*, 1–4.

Joint Venture. (2021). *Te Aorerekura: National strategy to eliminate family violence and sexual violence*. https://violencefree.govt.nz/national-strategy/#moemoea

Kruger, T., Pitman, M., Grennell, D., McDonald, T., Mariu, D., Pomare, A., Mita, T., Maihi, M., & Lawson, K.T.A. (2004). *Transforming whānau violence: A conceptual framework. An updated version of the report from the former Second Māori Taskforce on Whānau Violence*. https://nzfvc.org.nz/sites/default/files/transforming_whanau_violence.pdf

Ministry of Justice. (2022). *New Zealand crime and victims survey. Results drawn from cycle 4 (2020/21) of the New Zealand Crime and Victims Survey*. https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-Cycle-4-Core-Report-Section-7-Reporting-to-the-Police-fin.pdf

Moewaka Barnes, H., & McCreanor, T. (2019). Colonisation, hauora and whenua in Aotearoa, *Journal of the Royal Society of New Zealand*, *49*, 19–33.

Mutu, M. (2019). "To honour the treaty, we must first settle colonisation" (Moana Jackson 2015): The long road from colonial devastation to balance, peace and harmony. *Journal of the Royal Society of New Zealand*, *49*(1), 4–18.

New Zealand Productivity Commission. (2015). *More effective social services*. http://www.productivity.govt.nz/sites/default/files/social-services-final-report-main.pdf

Office of the Auditor-General. (2021). *Working in new ways to address family violence and sexual violence*. https://oag.parliament.nz/2021/joint-venture/docs/joint-venture.pdf

Pence, E. (1983). The Duluth domestic abuse intervention project. *Hamline Law Review*, *6*, 247–275.

Rankine, J., Percival, T., Finau, E., Hope, L.T., Kingi, P., Peteru, M.C., Powell, E., Robati-Mani, R., & Selu, E. (2017). Pacific peoples, violence, and the power and control wheel. *Journal of Interpersonal Violence*, *32*(18), 2777–2803.

Robertson, N. (1999). Stopping violence programmes: Enhancing the safety of battered women. *New Zealand Journal of Psychology*, *28*(2), 68–78.

Roguski, M. (2020). The reclamation of whānau decision-making in the context of child welfare. A case study of Iwi-led family group conferences. *International Journal of Critical Indigenous Studies*, *13*(2), 86–100.

Roguski, M., & Edge, K. (2021). Thinking differently about family violence: Shifting from a criminal justice response to a recovery orientation. *Journal of Community & Applied Social Psychology*, *31*, 341–353.

Roguski, M., & Gregory, N. (2014). *Former family violence perpetrators' narratives of change*. Kaitiaki Research and Evaluation.

Royal Commission Inquiry into Abuse in Care. (2020). *Tāwharautia: Pūrongo o te Wā. Volume II*. https://www.abuseincare.org.nz/assets/Uploads/Abuse-in-Care-Volume-Two.pdf

Rua, M. (2015). *Māori men's positive and interconnected sense of self, being and place* [Unpublished doctoral thesis]. The University of Waikato.

Salmond, A. (2017). *Tears of Rangi: Experiments across worlds*. Auckland University Press.

Slabber, M. (2012). *Community-based domestic violence interventions*. https://www.corrections.govt.nz/__data/assets/pdf_file/0011/10721/COR_Community_Based_Domestic_Violence_Interventions_WEB_2.pdf

Taumaunu, H. (2020, November 11). *Calls for transformative change and the District Court response* [Norris Ward McKinnon annual lecture]. https://www.districtcourts.govt.nz/assets/Uploads/Publications/2020/Norris-Ward-McKinnon-Annual-Lecture-2020-Mai-te-Po-ki-te-Ao-Marama.pdf

Te Puni Kōkiri. (2010). *Arotake tukino whānau: Literature review on family violence*. https://www.tpk.govt.nz/documents/download/262/tpk-family-violence-literature-review.pdf

Wilson, D., Mikahere-Hall, A., Sherwood, J., Cootes, K., & Jackson, D. (2019). *E tū wāhine, e tū whānau: Wāhine Māori keeping safe in unsafe relationships*. https://niphmhr.aut.ac.nz/__data/assets/pdf_file/0011/330302/REPORT_E-Tu-Wahine,-E-Tu-Whanau-Wahine-Maori-keeping-safe-in-unsafe-relationships.pdf

Yin, R. (2003). *Case study research design and methods, Vol. 5* (3rd ed). Sage.

32

Access to justice in South Africa

Not yet Uhuru but not quite Sisulu: an examination of the decolonizing journey from colonial-apartheid rule

Jackie Dugard and Nompumelelo Seme

Introduction[1]

On 7 January 2022, African National Congress (ANC) stalwart and Minister for Tourism, Lindiwe Sisulu, penned an opinion piece in which, after lamenting South Africa's persisting poverty and inequality, she criticized black South African politicians for being "black assets for colonised capital" and black South African judges for being "mentally colonised Africans, who have settled with the worldview and mindset of those who have been dispossessed by their ancestors" (Sisulu, 2022). As a serving minister from the increasingly embattled and factionalized ANC, Minister Sisulu's rebuke was almost certainly aimed at politicking for the Radical Economic Transformation (RET) wing of the party ahead of the ANC's elective congress in December 2022. Nonetheless, her comments about the continuation in the 'new' South Africa of racialized socio-economic injustice deserve nuanced reflection. Indeed, almost 30 years after the formal end of apartheid and against the backdrop of the remarkable transformation of legal and judicial frameworks during the transition it is timely to critically assess the gains and failures of the post-1994 record using a decoloniality prism.

To do so, this chapter examines the post-apartheid access to justice record, focusing both on direct access – because it is the arena in which Constitutional Court (CC) judges have the most direct power to advance access to justice – and customary law because it impacts the majority of African South Africans and has critical implications for the most marginalized South Africans, i.e., African rural women. Our analysis is inspired by Nelson Maldonado-Torres's (2006) description of decoloniality as "the dismantling of relations of power and conceptions of knowledge that foment the reproduction of racial, gender and geo-political hierarchies that come into being or found new and more powerful forms of expression in the modern/colonial world" (p. 117).

Regarding author positionality, Jackie is white and grew up as a privileged beneficiary of the apartheid system, but in a human rights-oriented family. Jackie's father, John Dugard, authored the seminal critique of the apartheid legal order, *Human Rights and the South African Legal Order*, which he wrote in the "interests of a better society" (Dugard, 1978, p. xvi). Nompumelelo is black and grew up as a disadvantaged South African, within a renowned political family.

DOI: 10.4324/9781003176619-36

Nompumelelo's great-grandfather, Pixley ka Isaka Seme, is a founder of the African National Congress (ANC) and its President from 1930 to 1936 (preceded and succeeded by Jackie's partner's great-uncle, Zacharias Richard Mahabane). He is famous for his inspiring decolonial speech at Columbia University in 1906, in which he asserted his African origins with pride against the backdrop of colonization, stating: "I have chosen to speak to you on this occasion upon 'The Regeneration of Africa' – I am an African, and I set my pride in my race over against a hostile public opinion" (Seme, 1906, p. 1).

Having both grown up under apartheid, we write this chapter to celebrate that we now live in a profoundly better society but one that still has far to go on its decolonial journey, and is certainly 'not yet Uhuru' (not yet liberation) (Odinga Odinga, 1968). The chapter first outlines the apartheid (in)access to justice legacy against which momentous constitutional changes occurred between 1992 and 1996, culminating in the Constitution of the Republic of South Africa, 1996 (hereafter referred to as the Constitution). It then examines the post-apartheid access to justice records concerning direct access to the CC and customary law.

The colonial-apartheid (in)access-to-justice legacy

Colonial apartheid,[2] which persisted from 1948 to 1994, was an overarching system of white supremacist, political, economic, and socio-legal ordering that concretized inclusion and privilege for whites and exclusion and disadvantage for blacks. Political power was exercised by the white minority in its own interests and buttressed by a legal order of parliamentary sovereignty in which parliament had almost limitless powers of legal promulgation and the courts had very limited authority to question the validity of acts of parliament (Dugard, 1978, p. 6). On the political front, blacks were not able to vote and authoritarian security legislation – including the Internal Security Act 1950 (and 1982), Suppression of Communism Act 1950, Riotous Assemblies Act 1956, Unlawful Organizations Act 1960, Sabotage Act 1962 and Terrorism Act 1967 – outlawed black and left-wing political organizations and authorized the banning and brutalization of dissent, detention without trial, inhumane imprisonment, and the death penalty.

There was also a raft of racialized exclusionary laws including the Population Registration Act 1950, which required all South Africans to be classified and registered according to assigned racial groupings in a hierarchy with whites at the top and Africans at the bottom; and the Group Areas Act 1950, which established the legal basis for urban residential segregation. The basis for rural segregation and exclusion of the African population from the majority of South Africa's landmass had been laid under British colonial rule through the Natives Land Act 1913 and the Native Trust and Land Act 1936, which facilitated the mass dispossession of land and forced removal of Africans to inferior land in a system of 'Bantustans' or 'Homelands' for each African language group.

Within the Bantustan system, the African majority population was not only relegated to the overcrowded rural periphery but African customary law was subjected to a 'repugnancy clause', meaning that customary rules and practices were of less value and accepted as law only when not offensive to colonial-apartheid values and norms (Dlamini, 1991). Related to this was a gradual erasure of pre-colonial African notions of justice as a fluid and flexible system – 'living customary law' – grounded in the interests of the community (over the individual) and orientated towards reconciliation and restorative justice (Delius, 2008; Rautenbach, 2015).

At the same time, the practice of customary law was twisted to serve colonial-apartheid interests through establishing an indirect system of administration and control for the Bantustan Homelands in which compliant (male) traditional leaders were appointed as overseers of grand

apartheid, and critical traditional leaders were disposed of (Delius, 2008). Propped up by the apartheid regime, traditional leaders acquired immense power over their communities, and in most instances ultimately became dictators over and oppressors of their own communities (Mnwana, 2014). Alongside wide-ranging authority over land under their jurisdiction, they also presided over traditional courts, which evolved into an increasingly elite and patriarchal system. Representing the patriarchal values of the pre-colonial society bolstered by the institutional patriarchal structure of colonial apartheid, traditional courts functioned to place poor rural women on the margins of society (Claassens, 2005). Regarding post-colonial influences, Mahmood Mamdani (1996) has highlighted how South African customary law was profoundly swayed by the Roman-Dutch common law principle of the *paterfamilias* (father of the family) which mediated access to justice for women through males because women were in the same position as infants, lacking *locus standi*. The ascendancy of such thinking resulted in the formal exclusion of women from traditional courts and justice, perpetuating their marginalization from socio-economic life. Thus, by the 1990s, customary law had been stripped of much of its pre-colonial logic and had come to reflect an intensely exclusionary and patriarchal expression of hierarchical power and (in)justice.

Tritely, in apartheid's exclusionary legal order there was very little access to justice (or justice) for the black majority. Although there were some brave judges, the majority of judges were "as 'establishment-minded' as the executive" and, even when the law and the facts pointed to questioning the legislation or government action, they adopted an interpretation that facilitated the executive's task rather than defending "the liberty of the subject and upholding the Rule of Law" (Dugard, 1978, p. 280, citing International Commission of Jurists, 1968, p. iv).

Against this wicked legal legacy, the negotiated settlement and constitutional drafting process, which was pursued in the early 1990s and resulted in the formal transition from apartheid in 1994, replaced supremacist parliamentary sovereignty with democratic, inclusive constitutionalism. Concretized in the 'final' Constitution of 1996, a new legal order was established based on human rights and judicial review of all exercises of power. As set out in the preamble, one of the fundamental purposes of the Constitution was to "lay the foundations for a democratic and open society, in which government is based on the will of the people and every citizen is equally protected by the law". The first founding provision – contained in section 1(a) – is that South Africa is one democratic state founded on the values of "human dignity, the achievement of equality and the advancement of human rights and freedoms".

If colonial apartheid was characterized by both authoritarianism and exclusion, it is hard to argue that South Africa's constitutional revolution did not remove the authoritarian legacy, at least formally. Yet, as alluded to by Minister Sisulu, profound socio-economic injustice persists, with South Africa being the most unequal country on earth (Stoddard, 2022). In trying to understand this tragic paradox 25 years after the adoption of the 1996 Constitution, it is opportune to critically assess the extent to which South Africa has moved away from its colonial-apartheid past and realized its constitutional mandates. In what follows, we undertake this appraisal focusing on two pertinent terrains of access to justice – first, direct access to the CC and, second, customary law – analyzing the extent to which these contexts of law and practice have been decolonized in the sense of becoming inclusive arenas of transformative praxis.

Access to justice in the democratic era: direct access to the Constitutional Court

Access to justice, from the legal perspective, encompasses a range of factors including the prices charged by the legal profession, the availability of legal aid, and the rules of standing.

To advance access to justice, one of the Constitution's transformative features is the right to equality before the law and the right "to equal protection and benefit of the law" (section 9(1) of the Constitution). Moreover, section 34 of the Constitution guarantees everyone's right to have relevant legal disputes resolved through a fair public hearing. On access to the courts, there are generous rules of standing that allow individuals or groups to litigate not only in their own interest but also in the public interest.

These are important changes in the legal framework governing access to courts and they have certainly advanced access to justice. However, although there is a right to legal representation at state expense in criminal cases in which the accused person risks a prison sentence (section 35 of the Constitution), there is no comprehensive legal aid for non-criminal cases (Dugard, 2013) and the cost of private lawyers is much too expensive for poor South Africans (Klaaren, 2019). There are also insufficient free legal services to cover all the potentially meritorious and transformative cases that could, and arguably should, "be brought in order to give effect to legal and social change in South Africa" (Dugard, 2015, p. 113). Consequently, there remains a large void of unaffordable civil matters revolving around key issues for transformation, including those relating to gender, property, and socio-economic rights.

It is in this context of the (unquantified) unmet demand for adjudication – especially over transformative issues by poor people who otherwise might not be able to access the courts – that the question of the degree of access to the Constitutional Court is so relevant. Indeed, in light of the historical travesty of 'in-access' to justice, it follows that it should be a fundamental preoccupation of the post-apartheid judiciary to secure access to justice, especially for poor litigants. Yet, as an institution, "the judiciary has done little to address the problem of the unrepresented poor from a systemic perspective" (Dugard, 2008, p. 217). It is unfair to place the full burden of blame for this on the judiciary. However, there is at least one cogent way for the judiciary to have meaningfully advanced access to justice for the poor – by using the direct-access mechanism "to allow constitutional matters to be brought directly to it by poor people who have been unable to secure legal representation" (Dugard, 2008, p. 232).

Recognizing that one of the ways to rectify colonial apartheid's in-access-to-justice legacy was to widen access, the Constitution provides for direct access to the court when it is in the interests of justice. Thus, section 167(6)(a) of the 1996 Constitution (as well as its predecessor, see section 100(2) of the Interim Constitution of 1993) provides that rules of the CC should make provision for direct access when it is "in the interests of justice" to do so. The CC has enacted rules to give effect to this provision. The first rule, Rule 17(1) (which applied from 1995 to 2003), prescribed the granting of direct access in "exceptional circumstances only". These restrictive terms for the application of direct access were relaxed when the current set of rules was enacted in 2003. Rule 18, which replaced Rule 17(1), brought the CC Rules in line with section 167(6)(a) of the 1996 Constitution, which contemplates direct access broadly when "it is in the interests of justice".

In the seven years between the coming into force of the 1996 Constitution and the adoption of the new rules in 2003, it was never clarified whether – under the old rules of the 1996 Constitution – there were any circumstances beyond those contemplated by Rule 17 that would justify granting direct access under section 167(6) of the Constitution "in the interests of justice". Thus, instead of taking its cue from the broadening of terms implied by the wording of section 167(6), it appears that the CC's formative years were heavily influenced by the restrictive wording of Rule 17 rather than the inclusive ideal expressed in section 167(6) of the Constitution.

So, notwithstanding the encouraging start of its first ever written judgement – *S v Zuma* (1995 (2) SA 642 (CC)), in which the CC granted direct access to rectify a "serious prejudice

to the general administration of justice" arising from an apartheid-order reverse onus criminal law provision relating to confessions – the CC's subsequent jurisprudence on direct access (especially until 2013) has not been as receptive. Indeed, until recently, most of the energy on the issue of direct access appears to have been focused on developing (and then maintaining) a set of four broad principles that have had the effect of limiting direct-access applications, thereby undermining the access-to-justice premise. The four main principles the CC has developed to regulate direct-access applications are: exceptional circumstances; undesirability to sit as a court of first and last instance, especially where there are disputes of fact; urgency/desirability of an immediate decision; and reasonable prospects of success based on the substantive merits of the case. Between 1995 and 2013, these principles have been used by the CC – often in combination – to refuse the majority of direct-access applications.

There is no space here to engage in a case-by-case examination of the CC's restrictive direct-access practice (see Dugard, 2015 for a comprehensive analysis). However, it is relevant, from a decoloniality critique perspective, to highlight the overarching contours of the direct-access record. First, between 1995 and 2013, the CC granted direct access in only 18 instances.[3] When compared with the highest courts elsewhere in the world that allow direct access (e.g., the Indian Supreme Court and the Constitutional Courts of Costa Rica and Colombia), having only 18 direct-access cases over 19 years constitutes an extremely low number. Read with the exclusionary reasoning used to deny direct-access applications, this low number suggests a court that is reticent to advance direct access. Second, 11 of the 18 applications tagged as successful direct-access applications are not authentic direct-access cases. In these 11 cases, the issues had been previously aired in a lower court or had been combined with an application that falls within the CC's exclusive jurisdiction (Dugard, 2015, p. 128). Third, of the seven authentic direct-access cases, all but two relate to classic civil and political rights rather than socio-economic rights (Dugard, 2015, p. 128). Fourth, almost all the cases revolve around maintaining political coherence rather than delivering socio-economic justice (Dugard, 2015, pp. 128–129). And finally, it is striking that very few – with the most likely exception being *Gundwana v Steko Development CC* (2011 (3) SA 608 (CC)) – are cases of a poor person who otherwise would risk not having their matter taken up by the courts.

Preliminary research undertaken for this chapter to update the inquiry,[4] focusing on the five years between 2017 and 2021, indicates that the CC's exclusionary direct-access practice has persisted, albeit with a few notable changes, including that the CC no longer seems to provide written judgements for the direct-access applications it rejects. This suggests, in defiance of decolonial logic, that the CC is comfortable with the restrictive and exclusionary approach to direct access that was consolidated in the first 20 years.

Access to justice in the democratic era: customary law

Today, about 32.6 percent of the 22 million South African population live in rural areas (World Bank, 2022). The vast majority of rural South Africans practice customary law and have their disputes adjudicated by traditional courts. However, the system of customary law and justice practised today is vastly different to that experienced in pre-colonial times, such that what remains as customary law mostly reflects the power dynamics of colonial apartheid, rather than any intrinsic customary law values (Dlamini, 1992; Mamdani, 1996).

Mainstream academic debates before the adoption of the Constitution centred on the compatibility of customary law with the values and rights embodied in the Bill of Rights, in particular the right to gender equality and the position of women as second-class citizens under customary law (Albertyn, 2009; Kaganas & Murray, 1994). However, Thandabantu

Nhlapho (1994) and Charles Dlamini (1991) have questioned the framing of the debate by Cathi Albertyn and others as a clash between the universally accepted right to gender equality and the rights of women under customary law. Nhlapho (1994) and Dlamini (1991) argue that most, if not all, systems of law are institutionally patriarchal and that customary law, as part of the common law, is no different. The Constitution, according to Dlamini (1991), should not become a substitute for the repugnancy clause that operated under colonial apartheid. Yet, the dilemma with customary law is that no sooner was customary law and the right to culture recognized and protected under the Constitution (by section 30 on language and culture and section 31 on cultural, religious and linguistic communities) than it was rejected as conflicting with this very source of its recognition and protection (Holomisa, 2011).

Paradoxically, notwithstanding any aim to move away from the supremacist past, there has been little attempt by the post-apartheid government to decolonize customary law by restoring communal sovereignty over governance and justice or to feminize its institutions. On the contrary, in what many consider an abdication of its constitutional obligations, the post-1994 state has consolidated rather than denuded the power of traditional authorities who, now more than ever, owe their official legitimacy and recognition to the state (Claassens & Ngubane, 2008; Mnisi-Weeks, 2011). This has occurred through the delegation in the post-apartheid era of extensive powers to chiefs to allocate and administer communal land; issue confirmation of proof of residence; make laws; preside over disputes; and provide judgement and sentences in terms of the Black Administration Act 1927 (Mnisi-Weeks, 2011). Thus, in contrast to the notions of justice under lived customary law and the constitutionally entrenched doctrine of the separation of powers, today's traditional leaders are law-makers, prosecutors, adjudicators, and administrators of traditional communities (Rautenbach, 2015).

The unchecked power of traditional leaders has placed traditional leaders outside both the norms of community control inherent in pre-colonial customary law and the democratic protections under the post-apartheid Constitution. It has also impacted the institutions over which they preside – including traditional courts (Mnwana, 2014) – thereby affecting access to justice for rural communities. By coercing rural communities into having their disputes resolved by traditional courts purely based on their geographic location rather than choice and by not allowing them to opt out of the traditional court system, the state has further undermined traditional justice (Pikoli, 2021). The implication is that, for 32.6 percent of the South African population, the full right of access to justice remains elusive. Moreover, traditional courts manifestly exclude and marginalize poor rural women. Rural women rarely form the membership of the adjudicating forum, they are not legally represented, nor can they represent others (Claassens & Ngubane, 2008; Mogale, 2021; Mnisi-Weeks, 2011).

The erosion of customary law and justice has been exacerbated over the past decade by South Africa's prevailing macro-politics. As the urban support base of the ruling ANC has dwindled (in line with other post-colonial African countries such as Zimbabwe), the ANC has actively supported official customary law stances and the power of traditional leadership at the expense of rural women and vulnerable rural citizens in exchange for traditional authorities garnering support for the ruling party during elections. Under this alliance, the ANC has supported the Congress of South African Traditional Leadership's (CONTRALESA) push for the Traditional Courts Bill – a bill widely criticized for its exclusion of women as well as its top-down approach to the resolution of disputes in which traditional leaders are singularly afforded extensive authority contrary to the participatory, restorative, and inclusive nature of justice under living customary law (Claassens, 2019; Mnisi-Weeks, 2011; Skosana, 2019). A key feature of the Traditional Courts Bill is the exclusion of the right to opt out of the traditional court system. A choice to opt out would permit rural communities to decide whether they

want to subject themselves to the relevant traditional court (Mogale, 2021; Pikoli, 2021). This is critical to avoid the common abuse of power by traditional leaders to punish residents who have fallen out of favour or are critical of them (Ubink & Mnisi-Weeks, 2015). Traditional leaders have viewed calls for an opt-out clause as an attempt at undermining traditional values and customs. In this battle for the soul of customary law, rural women have borne the brunt of the tension between the Bill of Rights and misguided decolonial approaches to customary law. Consequently, feminists and activists from rural areas have been consistent in their rejection of the exclusionary versions of the Traditional Courts Bill that have been tabled to date.

The failure to grant rural communities the right to opt out is unconstitutional because it violates the rights of access to courts and legal representation. Its effect is that rural communities are excluded from the rights available to the rest of the citizens in urban areas, thereby replicating colonial apartheid's logic, in which customary law communities persist as subjects rather than citizens (Mamdani, 1996). Whereas under colonial apartheid all black people were excluded from the mainstream legal system (and its socio-economic and political benefits), in the post-apartheid reality, urban black people are formally included in the legal system but rural black people – and particularly rural black women – remain trapped under non-democratic rule.

In their call for an opt-out clause for the Traditional Courts Bill, rural women's movements have advocated for a single system of law and challenged traditional leaders to prove themselves worthy of being the adjudicating fora of choice for rural communities through merit rather than coercion. They have also mobilized for a Traditional Courts Bill that democratizes and feminizes traditional councils and courts by enabling the election of representatives by the community instead of the appointment by chiefs or kings or the state, and by introducing a quota for the number of women representatives to these structures (Claassens & Ngubane, 2008; Mogale, 2021). Such calls have emphasized the urgent need for traditional courts that are grounded in the values of living customary law, which would advance access to justice devoid of excessive legal costs and delays, as well as the challenges of language and cultural context inherent in state courts (Mnisi-Weeks, 2011). Yet, the post-apartheid state has colluded with traditional leaders to resist these calls (Claassens, 2019; Skosana, 2019). Thus, although the various iterations of the Traditional Courts Bill have been repeatedly rejected by both rural communities and the majority of the representatives in the National Council of Provinces, the bill has continually resurfaced, packaged in a different form and still geared toward entrenching the powers of traditional leaders (Mogale, 2021; Pikoli 2021). Arguably, the ANC's persistent support of this bill places it on the same footing as the apartheid state in relation to propagating an elite and exclusionary model of traditional leaders and courts and customary law more generally (Skosana, 2019).

Despite the gloomy reality of undemocratic custodianship and colonial continuity of customary law in the post-apartheid era, there is much to celebrate in terms of the significant resistance by affected communities to their continued exclusion from South Africa's project of democratization. In the case of *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* 2010 (6) SA 214 (CC), rural communities supported by non-governmental organizations were able to successfully challenge the Communal Land Rights Act 2004, which would have further diluted their land rights in favour of traditional authorities. Similarly, by winning the case of *Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others* 2016 (5) SA 635 (CC), rural communities prevented an amendment to the Restitution of Land Rights Act 1994 that would have opened the way for traditional authorities to lodge preferential land claims to the detriment of the communities. And in 2020, the case of *Council for the Advancement of the South African Constitution and Others v Ingonyama Trust and Others* 2022 (1) SA 251 (KZP) won a significant victory over the Ingonyama Trust (a trust established in 1994 to administer communal land in the Kwazulu-Natal province),

which had unlawfully been charging rural communities under its jurisdiction rental since 2007 (Cousins, 2021). Relying on constitutional protections, rural communities have also won significant victories to secure their customary land rights against traditional leaders colluding with the state to grant mineral rights to mining companies (Dugard, 2021).

The above legal activism has sought, broadly, to protect customary communities from further erosion of their rights. In terms of activism to challenge rural women's marginalization and exclusion from customary law spaces, feminists have formed grassroots rural women's movements that have used the formal courts to vindicate and entrench the constitutional rights to gender equality. The Constitutional Court decisions in *Bhe v Magistrate, Khayelitsha Shibi v Sithole South African Human Rights Commission v President of the Republic of South Africa* 2005 1 SA 580 CC (which successfully challenged the practice of primogeniture inheritance); *Shilubana and Others v Nwamita Shilubana* 2007 (9) BCLR 919 (CC) (which established that women could succeed to traditional leadership positions) and *Gumede (born Shange) v The President of the Republic of South Africa and Others* 2009 (3) BCLR 243 (CC) (which afforded greater protection to women in customary marriages) are evidence of attempts to vindicate women's right to equality against the entrenched patriarchy of the colonial, apartheid, and current form of customary law.

In such cases, the Constitution has been used by the applicants and their supporting organizations as a tool to decolonize and deconstruct customary law and advance access to justice within the traditional court system. One of the main supporting organizations, the Rural Women's Movement (RWM) (a non-governmental organization focused on addressing the challenges faced by rural women) has consistently articulated that it is not against tradition and traditional leaders, but that it opposes the misuse of tradition as a smokescreen to perpetuate patriarchal, oppressive, and discriminatory practices under official customary laws that are not informed by the values of living customary law (Claassens & Ngubane, 2008). The RWM has used South Africa's constitutional apparatus to challenge customary legislation such as the Traditional Courts Bill, the Communal Land Rights Act, and the discriminatory practices of the Ingonyama Trust, thereby resisting the oppression of rural women under South Africa's democratic government. The RWM and rural women more generally have emphasized that in any decolonial reinvigoration of living customary law, women must be placed at the centre of dispute resolution institutions and practices (Claassens & Mnisi-Weeks, 2009). Before she passed away in December 2020, the founder of the RWM, Mama Sizani Ngubane, highlighted – in multiple conversations with Nompumelelo Seme – that in the course of her struggle for rural women she drew constant strength from the Constitution's promise of equality, while being ever mindful of the law's limitations.

Conclusion

By outlining the colonial-apartheid legacy and the post-apartheid journey, this chapter has sought to examine the extent to which South Africa has decolonized access to justice. There have unquestionably been momentous positive changes to the law and legal systems affecting access to justice, especially those that apply in urban areas. But, as we have shown, there is significant residue from colonial apartheid's exclusionary logic in both the direct access and customary law arenas, thereby – to a certain extent – justifying the underlying premise of Minister Sisulu's strident critique.

Regarding direct access, the Constitutional Court's conservative record on granting direct access, and particularly the low number of instances where the court has used the direct-access mechanism to grant access to a poor person struggling to access justice, raises questions related

to the transformative/decolonial potential of the court's approach. Certainly, direct access on its own is unlikely to resolve the issue of access to justice in South Africa. However, it remains the mechanism to advance access over which the judges have the most direct power, particularly for socio-economically disadvantaged applicants. In other parts of the world, allowing greater direct access to the highest court has been an effective mechanism for advancing access to the courts generally by poor people, allowing their voices to be heard and to act as "alarm bells", alerting the public to "rights violations and other constitutional breaches" (Fowkes, 2011, p. 444). Yet, in South Africa, this has not been the case.

Unquestionably, the Constitution and rules of the court provide a conducive framework for Constitutional Court judges to proactively select, and possibly even seek out, deserving direct-access cases. That they have not done this indicates a cautious court that has attempted to limit direct access in the interests of maintaining a cohesive legal and judicial system, that is, a court that prioritizes continuity over transformation. In the short term, this exacerbates a reality in which – outside criminal cases in which there is legal representation at state expense – the court's roll is dominated by cases brought by empowered groups with the funds to litigate through the various required stages to reach the Constitutional Court. In the longer term, if poor people are unable to secure direct access to the Constitutional Court and this is their only chance to access justice, their confidence in using law as a means to resolve conflicts is likely to be weakened, undermining the popularity of the judiciary and the Constitution, and possibly increasing the use of extra-legal means of dispute resolution. Moreover, no matter how pro-poor a judge may be, if she only hears cases from advantaged groups, she is likely to lose touch with the plight of less advantaged litigants. This chapter is, therefore, a call for more attention to be paid to the direct-access mechanism as a means to advance access to justice and decolonize legal practice.

Regarding customary law, the picture is on the one hand extremely depressing in its reflection of the continuation of colonial apartheid through the patriarchal and exclusionary collusion between traditional authorities and the ruling political party. Undoubtedly, the resistance of traditional leaders and the state to genuinely decolonial change is a fundamental obstacle to the potential of traditional courts and customary law as the vehicle for greater access to justice in South Africa (Mogale, 2021; Pikoli, 2021). However, at the same time, the picture is rendered hopeful through the activism of rural communities and feminist organizations such as the RWM. Rooted in constitutional rights and inclusivity, this activism has been profoundly decolonial as it has sought to vindicate the rights of rural communities and women so that when rural people appear before the traditional courts, the dictum of emancipatory jurisprudence is echoed in the chambers of traditional courts held under the gum trees and the blue African skies of rural villages to the ears of patriarchal trappings and distorted decolonial views of customary law.

Notes

1 With authorization from the publisher (Taylor & Francis), this chapter draws from an earlier work by Jackie Dugard (Dugard 2015).

2 While apartheid can be viewed as a form of colonialism in its focus on domination and extraction, it had specific characteristics not necessarily shared with other colonial contexts. The form of domination was specifically authoritarian and neo-fascist (linked to the project of Afrikaner nationalism) and, at its heart, was an explicit programme of racial segregation (exclusion). Thus, as a sub-species of settler colonialism, apartheid is sometimes referred to as colonialism of a special type. In this chapter, we refer to colonial apartheid to reflect the ongoing practice of white supremacy exercised under British colonialism and Afrikaner apartheid.

3 This figure is based on the extensive research and analysis undertaken for Dugard (2015).
4 This snapshot research was undertaken by legal researcher, Nicola Soekoe, at the end of 2021.

References

Albertyn, C. (2009). The stubborn persistence of patriarchy? Gender equality and cultural diversity in South Africa. *Constitutional Court Review*, *IX*, 165–208.

Claassens, A. (2005). Women, customary law and discrimination: The impact of the Communal Land Rights Act. *Acta Juridica*, *1*, 42–81.

Claassens, A. (2019). Mining magnates and traditional leaders: The role of law in elevating elite interests and deepening exclusion. In M. Buthelezi & D. Skosana (Eds.), *Traditional leaders in democracy: Resources, respect and resistance 2002–2018*. (pp. 75–128). Mapungubwe Institute.

Claassens, A., & Mnisi-Weeks, S. (2009). Rural women redefining land rights in the context of living customary law. *South African Journal on Human Rights*, *25*(1), 491–516.

Claassens, A., & Ngubane, S. (2008). Women, land and power: The impact of the Communal Land Rights Act. In A. Claassens & B. Cousins (Eds.), *Land, power and custom: Controversies generated by South Africa's Communal Land Rights Act* (pp. 154–183). Ohio University Press.

Cousins, B. (2021, June 23). What landmark Kwazulu-Natal court ruling means for land reform in South Africa. *The Conversation*. https://theconversation.com/what-landmark-kwazulu-natal-court-ruling-means-for-land-reform-in-south-africa-162969

Delius, P. (2008). Contested terrain land rights and chiefly power in historical perspective. In A. Claassens & B. Cousins (Eds.), *Land, power and custom: Controversies generated by South Africa's Communal Land Rights Act*. (pp. 211–237). Ohio University Press.

Dlamini, C.R.M. (1991). The role of customary law in meeting social needs. *Acta Juridica*, *7*, 1–85.

Dlamini, C.R.M. (1992). Towards a new legal order for a new South Africa. *Legal Studies Forum*, *16*, 131–144.

Dugard, C.J.R. (1978). *Human rights and the South African legal order*. Princeton University Press.

Dugard, J. (2008). Courts and the poor in South Africa: A critique of systemic judicial failures to advance transformative justice. *South African Journal on Human Rights*, *24*(2), 214–238.

Dugard, J. (2013). Courts and structural poverty in South Africa: To what extent has the constitutional court expanded access and remedies to the poor? In D. Bonilla (Ed.), *Constitutionalism in the Global South* (pp. 293–328). Cambridge University Press.

Dugard, J. (2015). Closing the doors of justice: An examination of the Constitutional Court's approach to access to justice. 1995–2013. *South African Journal on Human Rights*, *31*(1), 112–135.

Dugard, J. (2021). Evaluating transformative constitutionalism in South Africa: A view from the mineral rights adjudication looking glass. *Nordic Journal of Human Rights*, *39*(3), 373–390.

Fowkes, J. (2011). How to open the doors of the court – Lessons on access to justice from Indian PIL. *South African Journal on Human Rights*, *27*(3), 434–465.

Holomisa, P. (2011). Balancing law and tradition: The TCB and its relation to African systems justice administration. *South African Crime Quarterly*, *35*, 17–25.

Kaganas, F., & Murray, C. (1994). The contest between culture and gender equality under South Africa's Interim Constitution. *Journal of Law and Society*, *21*, 409–433.

Klaaren, J. (2019). What does justice cost in South Africa? A research method towards affordable legal services. *South African Journal on Human Rights*, *35*(3), 274–287.

Maldonado-Torres, N. (2006). Césaire's gift and the decolonial turn. *Radical Philosophy Review*, *9*(2), 111–138.

Mamdani, M. (1996). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton University Press.

Mnisi-Weeks, S. (2011). Beyond the Traditional Courts Bill: Regulating customary courts in line with living customary law and the constitution. *South African Crime Quarterly*, *35*, 31–40.

Mnwana, S. (2014). Chiefs justice? Mining, accountability and the law in the Bakgatla-ba-Kgafela Traditional Authority Area. *South African Crime Quarterly*, *49*, 22–29.

Mogale, C. (2021, February 16). Traditional Courts Bill: Rural women's access to justice is betrayed again. *Daily Maverick*. https://www.dailymaverick.co.za/article/2021-02-16-traditional-ycourts-bill-rural-womens-access-to-justice-is-betrayed-again/

Nhlapho, T. (1994). Indigenous law and gender in South Africa: Taking human rights and cultural diversity seriously. *Third World Legal Studies*, *13*, 49–71.

Odinga Odinga, J. (1968). *Not yet Uhuru*. Heinemann.
Pikoli, Z. (2021, March 26). Justice department insists on 'unconstitutional' Traditional Courts Bill. *Daily Maverick*. https://www.dailymaverick.co.za/article/2021-03-26-justice-department-insists-on-unconstitutional-traditional-courts-bill/
Rautenbach, C. (2015). Legal reform of traditional courts in South Africa: Exploring the links between Ubuntu, restorative justice and therapeutic jurisprudence. *Journal of International and Comparative Law*, *2*(2), 275–304.
Seme, P. (1906). The regeneration of Africa. https://www.sahistory.org.za/sites/default/files/regeneration_of_africa_by_Pixley_Seme.pdf
Sisulu, L. (2022, January 7). Lindiwe Sisulu: Hi Mzansi, have we seen justice? *IOL*. https://www.iol.co.za/dailynews/opinion/lindiwe-sisulu-hi-mzansi-have-we-seen-justice-d9b151e5-e5db-4293-aa21-dcccd52a36d3
Skosana, D. (2019). Traditional leadership and the African National Congress in South Africa: Reflections on a symbiotic relationship. In M. Buthelezi & D. Skosana, D. (Eds.), *Traditional leaders in democracy: Resources, respect and resistance*. (pp. 50–74) Mapungubwe Institute.
Stoddard, E. (2022, March 13). South Africa the world's most unequal country – World Bank Report. *Daily Maverick*. https://www.dailymaverick.co.za/article/2022-03-13-south-africa-the-worlds-most-unequal-country-world-bank-report/
Ubink, J., & Mnisi-Weeks, S. (2015). Courting custom: Regulating customary dispute settlement in rural South Africa and Malawi. *Law & Society Review*, *50*(4), 825–858.
World Bank (2022). Rural population (% of total population) - South Africa. https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=ZA

33

Indigenous sentencing courts and Gladue reports

Elena Marchetti, Valmaine Toki and Jonathan Rudin

Colonization forced Indigenous peoples of Australia, New Zealand, and Canada into a foreign system of justice. Despite the signing of treaties in two of those countries (New Zealand and Canada), recognition of traditional laws and customs was all but erased with the arrival of the colonizers. Assimilating the original inhabitants of the land into the social and legal systems of the newly formed colonies entailed a civilizing process to transform "native savages" into conforming Christians (Cunneen, 2011, p. 163) and "define the Indigenous people out of existence" (Davies, 2002, p. 274). Indigenous peoples were not only massacred as colonizers seized lands for resettlement and cultivation, but those who remained were unable to practice their customs, speak their language, or live on their traditional lands. For various reasons, which are inextricably linked to the devastating impact of colonization, Indigenous peoples of all three countries are today excessively arrested, convicted, and imprisoned.

Each country has its own system of calculating population and prison rates, which can make comparisons difficult. Nevertheless, reporting the imprisonment rates of each country does provide some basis for highlighting the extent of the disproportionality. In Australia, despite Australian Bureau of Statistics (2016) data indicating that Australia's First Nations people comprise only 3.3 percent of the total Australian population, on 30 June 2020, First Nations Australians accounted for 29 percent of all prisoners (Australian Bureau of Statistics, 2020). New Zealand's Māori population is the largest First Nations population of the three countries, comprising 17.1 percent of the total population (Statistics New Zealand, 2021). On 31 December 2021, 53.2 percent of the adult prison population in New Zealand was Māori (Department of Corrections, 2021). Canada reports similar statistics with the 2016 Census stating that "Aboriginal adults accounted for […] 4.1% of the Canadian adult population" but made up 28 percent of admissions to provincial/territorial corrections and 27 percent of federal correctional services (Statistics Canada, 2018). For the past two decades, governments of all three countries have been attempting to rectify this complex and enduring problem with the inclusion of Indigenous community members in the sentencing process or taking Indigeneity into account when sentencing. These are small changes that have been incorporated into the sentencing processes in the three jurisdictions and are the focus of this chapter.

We begin this chapter by describing these changes in sentencing practices in Australia, New Zealand, and Canada. In Australia, the focus is on what we refer to as First Nations sentencing

DOI: 10.4324/9781003176619-37

courts, or courts in which Aboriginal and Torres Strait Islander Elders or community representatives have been included in the sentencing hearing. In New Zealand, court-based initiatives mainly exist at a youth court level, although recent developments have emerged whereby Māori cultural practices are included for cases involving adult Māori pre- and post-sentencing (Matariki Court) and when convening an Alcohol and Other Drug Treatment Court. In Canada, the discussion centres around the application of the Supreme Court of Canada's 1999 decision in *R v Gladue* (1999 CanLII 679) which clarified the status of s. 718.2(e) of the Criminal Code, RSC 1985, c C-46 (Criminal Code), and the introduction of Indigenous sentencing courts whereby Indigenous community members participate in the sentencing process.

The extent to which these processes and practices are viewed as decolonial 'hybrid' legal processes is also explored in the discussion that follows. Our reference to decolonial hybrid legal processes refers to court processes that attempt to create cultural hybridity that is more meaningful for people appearing in court and which moves away from the excluding, unfriendly and alienating practices of a mainstream court process. To this extent, it is assumed that perceptions of procedural justice will be improved when compared with perceptions of mainstream court processes and that, as a result, the legitimacy of the court and sentence outcome will be more favourable for the Indigenous person. The chapter concludes by comparing the initiatives in the three jurisdictions, reflecting on the extent to which they decolonize hegemonic sentencing processes.

First Nations courts in Australia

First Nations sentencing courts have been in operation in Australia since 1999, the first having been established by a magistrate in South Australia who sought to improve court communication and understanding and trust in the criminal justice system for First Nations people (Daly & Marchetti, 2012). The focus of the courts is on making the sentencing process more culturally appropriate and sensitive by including Elders and community representatives in the discussion that takes place during the sentencing hearing. There is much variation in the ways the courts operate, both within and amongst jurisdictions; however, in all courts, the person appearing before the court must either have been found guilty or have pleaded guilty to the offence and have committed an offence within the jurisdiction of that court, i.e., in terms of the seriousness of the offence and location of the commission of the crime. The judicial officer presiding over the courts retains the power to sentence in all jurisdictions. This, of course, means that the process does not provide Aboriginal and Torres Strait Islander people with a forum in which to practice self-determination, but it has been noted that it also means that Elders or community representatives are protected from being blamed for whatever sentence is imposed (Harris, 2004). Legislative support for including submissions or information about an individual's relationship to their Aboriginal or Torres Strait Islander community and considerations of culture exists in five jurisdictions (Queensland, South Australia, Victoria, Northern Territory, and the Australian Capital Territory), with Victoria being the only jurisdiction that specifically formalizes the establishment of their First Nations Court (Koori Court) in legislation (see *Magistrates Court Act 1989* (Vic), s4D).

Since the mid-2010s, several evaluations and impact studies have been conducted on the effect these courts are having on various outcomes such as recidivism, penalties imposed and strengthening informal social controls within Aboriginal and Torres Strait Islander communities by reconnecting defendants to their community and improving respect for Elders (Cultural & Indigenous Research Centre Australia, 2008; Fitzgerald, 2008; Morgan & Louis, 2010). Many of the studies have used quantitative data on reoffending and, until recently, found

little or no impact on recidivism as a result of the introduction of such courts. A Bureau of Crime Statistics and Research evaluation of the New South Wales Circle Sentencing Courts, however, found that Aboriginal and Torres Strait Islander people who had been sentenced in a Circle Sentencing Court were 51.7 percent less likely to be incarcerated and that those who had gone through the circle sentencing process and had not been incarcerated were 3.9 percentage points less likely to reoffend (meaning a 9.6 percent decrease in reoffending rates) within 12 months when compared with First Nations peoples who had been through the mainstream court (Yeong & Moore, 2020).

Magistrates and lawyers involved with the First Nations sentencing courts have seen what these courts can do and despite cutbacks in government funding in some jurisdictions, have continued their commitment to and support of such processes to safeguard the continuance of the courts. First Nations sentencing courts have also garnered the support of many Aboriginal and Torres Strait Islander people who have had some involvement with their operation either as Elders, community representatives, people being sentenced, or victims of crime. They see the courts as empowering Aboriginal and Torres Strait Islander people and communities by giving them a voice and showing some respect for culture (Cultural & Indigenous Research Centre Australia, 2013; Marchetti, 2014, 2015; Morgan & Louis, 2010).

Despite the support, critics have questioned whether the court processes, which embody Anglo-centric norms and values and exist in a postcolonial environment, can ever truly be culturally appropriate, relevant, and sensitive. The answer to this may depend on how well such a process can 'decolonize' and thereby transform the historically negative race relations that still exist between law enforcers and First Nations communities (Rose, 1996). Without acknowledging the continued existence of the dominant colonial enterprise, changes to laws and legal practices will do nothing more than create a legal discourse that converses with itself to explain and manage the needs and wants of the colonized 'other' (Roy, 2008). For example, as Davis notes, despite the High Court's recognition of native title in *Mabo v Queensland [No 2]* (1992) 175 CLR 1 (Mabo v Queensland), "it did not 'recognize' Indigenous law, beyond the recognition that it exists. It merely construct[ed] a new fiction – 'native title' – within the framework of Western law" (Davies, 2002, p. 275). In this sense, postcolonialism in law and legal practice exists as primarily privileging the colonial Euro-centric legal system.

Adapting a sentencing process so that it becomes more culturally appropriate and sensitive involves more than a rudimentary change in processes and procedures; it requires changes in postcolonial power dynamics that might exist between First Nations and non-First Nations actors. Several past evaluations have found that First Nations sentencing courts promote shared justice, reconciliation, and empowerment for Aboriginal and Torres Strait Islander communities. For example, the involvement of the broader Aboriginal and Torres Strait Islander community in the sentencing process has been identified as promoting a sense of pride amongst First Nations participants and a sense of ownership in the criminal justice process, with community participation being identified as critical in bridging the gap between First Nations communities and 'white law' (Parker & Pathé, 2006; Potas et al., 2003). It is claimed that Circle Courts, in particular, have strengthened individual and community empowerment and have been effective in reducing barriers between courts and Aboriginal and Torres Strait Islander communities (Potas et al., 2003). The Cultural and Indigenous Research Centre (2008) found in its evaluation that the Circle Courts encouraged a "two-way education" (p. 40) process between court workers and communities that promoted cross-cultural understanding and learning. It could be argued, therefore, that First Nations sentencing courts provide an opportunity for legal hybridity whereby the hegemonic system can be redefined and reinvented to accommodate Aboriginal and Torres Strait Islander knowledges and values.

Having said that, the roles of magistrates, judges (in jurisdictions where First Nations sentencing courts operate in the higher courts) and prosecutors play an integral part in ensuring that First Nations sentencing courts can transform the sentencing process into a culturally hybrid one. As mentioned, the sentence is handed down by the judicial officer, but this does not preclude Elders or community representatives from having input into the framing of the sentence. Ultimately, the extent to which Elders and community representatives can assert their cultural authority largely depends on how the judicial officer chooses to run the court. Bennett (2016), a South Australian magistrate, notes in his book on First Nations sentencing courts that "the magistrate who does least will often do best […] allowing others to give their views" (p. 48). There has been little analysis of how different judicial or prosecutorial styles affect the operation of an Indigenous sentencing court process. The only evaluation that dedicated a separate section to court personnel, including magistrates, was the 2006 Koori Court evaluation completed by Harris (2006), who notes that "[t]here is widespread recognition within the legal community and the Koori community […] that the choice of an appropriate Magistrate to sit upon the Koori Court can be crucial to its success" (p. 34). When discussing the meaning of 'success', Harris (2006) points to both criminal justice and community building aims, with community building including increased "Indigenous community ownership of the administration of law" (p. 82). Recognizing and exploring the role judicial officers and prosecutors play in achieving a decolonial hybrid sentencing process is important and requires further research.

Tikanga Māori courts

Māori, Indigenous peoples of Aotearoa New Zealand, are not immune to the adverse effects that colonization has imposed. The existing colonial criminal justice system, by its very nature, does not embrace tikanga nor a Māori worldview and consequently cannot resolve issues centred on or originating from this different worldview. Mainstream court processes are expensive and time-consuming and, as Māori feature predominantly in the poverty indicators, access to the court system is beyond reach for many. Mainstream courts can be confusing, frustrating, and demeaning to Māori litigants as they offer an environment that many Māori consider alien. The adversarial style of the mainstream courts is inconsistent with tikanga Māori practices such as kanohi ki te kanohi (engaging face to face), korerotia (talking things out), whiriwhiri-a-ropu (group discussion), whaikorero (formal speech making), and whakatatū (agreement).

Seeking a new approach to youth offending rates, the initiative of a Youth Court (Rangatahi Court) held on a marae (traditional meeting house), was championed by the now Chief District Court Judge Heemi Taumaunu in 2008. The main objective of a Rangatahi Court is for the youth to take responsibility and to reconnect with their whānau and identity within a cultural setting in a step to reduce recidivism rates. The Court represents a hybrid between legislative directions and customary practices. Section 4 (4) of the District Courts Act 1947 permits the sitting of the Youth Court within a marae with the same powers and responsibilities as a mainstream Youth Court. Once the youth has completed their Family Group Conference (FGC) Plan the youth is discharged or, if not, a more formal order is meted out (Taumaunu, 2014). Within the marae setting, tikanga Māori (customary practices) are observed and te reo Māori (Māori language) is spoken. Although the youth may have never spoken te reo they are expected to recite their pepeha (way of introducing oneself by telling a story of the places and people one is connected to) and a mihi (formal greeting). There is an emphasis on knowing "who you are, and, where you are from" which "draws on traditional Māori beliefs based on whakapapa (genealogy) and whakawhanaungatanga (making connections and relationships)", resulting in an "intense personal journey of discovery" (Taumaunu, 2014).

In 2012, an evaluation by the Ministry of Justice (2012) reviewed five of the (then) ten Rangatahi Courts. Although no long-term statistical data was available to indicate the success of these courts, the evaluation made observations of good practice and found that rangatahi have experienced many positive early outcomes, both expected and unexpected (Taumaunu, 2014). This included a level of comfort for rangatahi indicated by the high attendance level (seldom seen in the youth courts) and a court process they perceive to be legitimate.

The ability of Rangatahi Courts to position the process within a marae is an innovative example of a colonized system's willingness to embrace a tikanga Māori process. The marae is the embodiment of a world in balance and depicts tupuna (ancestors) within this environment. The inclusion of te reo and kaumātua (elders) contributes to the tikanga process. The immersion of the youth within this process provides an opportunity for the youth to take responsibility and reconnect with their identity – all important aspects that are not provided for in the general court jurisdiction. Taking responsibility and understanding 'where they are from' are powerful underliers to deter any reoffending, both benefits of this process. The ability of the court to accept non-Māori into the process demonstrates a willingness to the mainstream legal system that tikanga Māori can operate within the wider criminal justice system. For the judges of Rangatahi Courts, it is second nature to weave tikanga into the process. This ability also contributes to not only normalizing tikanga but also assists to ameliorate the perceived incompatibility of tikanga and the mainstream courts. The solution to achieving parity and well-being lies in the right of self-determination or tino rangatiratanga. Rather than rely on the colonial imposed criminal justice system and the punitive punishment regime, Rangatahi Courts represent a manifestation of a form of tino rangatiratanga.

However, Rangatahi Courts still fall within the existing criminal justice system and respective legislation. In addition, the marae is perceived as the last bastion of tino rangatiratanga and inviting a colonial process with a judge that may or may not whakapapa (relate) to the youth is seen as a slight on the mana of the youth's iwi (tribe). Arguably, the Rangatahi court process seeks to address this with kaumatua (elders) from the marae to sit alongside the judge. Notwithstanding these critiques, the halo effect of Rangatahi Courts has provided support for a wider application of tikanga Māori within the wider justice system with the introduction of Te Ao Marama courts by Chief Judge Heemi Taumaunu, the same insightful and innovative judge who piloted Rangatahi Courts. Although in its early stages, Judge Taumaunu (2020) has noted that "Te Ao Marama will incorporate best practices developed in the District Court's solution focused specialist courts into its mainstream criminal jurisdiction" (p. 1) and further that

> this is to realize the shared vision for the court by improving access to justice as well as enhancing procedural and substantive fairness, for all people who are affected by the business of the court, including defendants, victims, witnesses, whānau and parties to proceedings.
>
> *(p. 1)*

This broad and innovative approach to criminal justice has the ability to not only normalize tikanga Māori through incorporating best practices from specialized courts that are underpinned by therapeutic jurisprudence and subsequently, implicitly importing tikanga Māori into the mainstream criminal jurisdiction, but to also achieve access to justice through improving procedural and substantive fairness. Having said all that, a review of Te Ao Marama is keenly awaited.

Gladue reports and other initiatives

Sentencing initiatives specifically focusing on Indigenous people began in Canada in 1992. Broadly speaking, there are four distinct initiatives that have interacted with each other over time: 1) sentencing circles, 2) Criminal Code amendments, 3) Supreme Court of Canada decisions and community initiatives arising from those decisions, and 4) Indigenous-specific courts. Before detailing these initiatives, it is important to understand the Canadian constitutional framework. In Canada, criminal law is a federal responsibility. The Criminal Code applies across the country and decisions of the Supreme Court on criminal law are binding on all lower courts. On the other hand, the administration of justice is a provincial or territorial matter. This means the way most courts are organized as well as the provision of reports to these courts is up to the province or territory.

Section 35(2) of the Constitution Act 1982 recognizes "the aboriginal [sic] peoples of Canada" as "Indian, Inuit and Metis". The term Aboriginal has largely been replaced by Indigenous but it still captures the three distinct groups. There is no space in this chapter to outline the differences between the groups and so for our purposes, Indigenous will be used to be as inclusive as possible.

Sentencing circles arose initially in the Yukon, a territory in the northwest of Canada. The first circles were held in more remote Indigenous communities where the court was not a constant presence. In these circles, the judge would gather with the person being sentenced, their support persons, the Crown prosecutor, the police, and members of the community to try and develop solutions that did not inevitably see the individual leave the community to serve a prison sentence. Following the widely read decision in *R v Moses* (1992 CanLII 12804), sentencing circles were used fairly extensively in Western Canada.

The first wave of sentencing circles petered out in 2009. The reason for the decline in their use was three-fold. First, the circles took a lot of time. For courts, which were pressed for time as most courts are, it was not practical to spend half a day or a day to arrive at a sentence that could be arrived at through other means in half an hour or an hour. Second, these circles absorbed a large number of unpaid community resources. While the judge, defence counsel, Crown prosecutor, and police were all paid for their time, many of the Indigenous people in the circle were acting as volunteers. Third, the circles faced criticism for not always being sensitive to the needs of victims of domestic violence or sexual assault.

In 1996, after a long period of debate and discussion, the Parliament enacted significant amendments to the Criminal Code. Among the amendments was s. 718.2(e) which, for the first time, specifically directed judges to consider a person's Indigenous heritage. The section, which has been amended on several occasions, currently states:

> A court that imposes a sentence shall also take into consideration the following principles: […] all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

The significance of s.718.2(e) only became clear when the Canadian Supreme Court interpreted the section in *R v Gladue* in 1999. That ground-breaking decision decried the over-representation of Indigenous people in the criminal justice system. The Court noted the causes of over-representation included not just the impacts of colonialism, but also the direct and systemic discrimination that Indigenous people face every day in the operations of the criminal

justice system. The Court said that judges needed information about the personal and systemic factors that led to the person's involvement in the justice system. Judges also needed information on sentencing options. What was not clear was where that information would come from.

In 2001, Aboriginal Legal Services, an Indigenous organization in Ontario, developed Gladue reports. These reports provide the court with the necessary information about the Indigenous person before the court. The reports tell the story of the person's life and that of their family. The reports also address systemic factors such as the imposition of residential schools, the forced relocation of Indigenous communities, addictions, inter-generational trauma, and many other factors. They also talk about the individual's strengths and gifts as well as their challenges. Finally, the reports also outline sentencing options.

Gladue reports differ significantly from pre-sentence reports (PSRs). PSRs are provided for in the Criminal Code and are the responsibility of the provincial or territorial government to prepare. PSRs are risk-based documents that assess the person's suitability for community programming based largely on actuarial tools. On the other hand, Gladue reports explain risk in the context of the circumstances of the Indigenous person being sentenced and avoid the trap of relying on the impacts of colonialism to further justify the incarceration of Indigenous people (Hannah-Moffatt & Maurutto, 2010). Currently, Gladue reports are generally available in six provinces and one territory and largely unavailable in four provinces and two territories.

Aboriginal Legal Services developed Gladue reports specifically to support the first Indigenous-specific court in Canada at the Old City Hall courthouse in downtown Toronto. This court was a judge-led imitative that started in the fall of 2021. Many other Indigenous courts have since been developed across the country, usually as a result of consultations between the judiciary and Indigenous communities and organizations. Many Indigenous-specific courts rely on Elders or Indigenous knowledge helpers to assist in their activities. Those activities may well include a sentencing circle. Unlike the first wave of sentencing circles, these tend to be smaller and do not try to engage the whole community. While these circles take more time than routine sentencing in a regular court, they can often be completed in one or two hours or half a day.

Given the reality of the mass incarceration of Indigenous people, it is fair to question whether the initiatives described here have had any impact at all. Gladue reports are not available across the country and Indigenous courts are the exception, not the rule. Also, amendments over the years to the Criminal Code, which added many mandatory minimum sentences and restrictions on access to community sentences, have restricted the ability of judges to follow the Supreme Court's direction in *Gladue*. While the present federal government has repeatedly promised to repeal many of these amendments, progress on that front has been very slow. Indigenous people are still being sentenced to a term of imprisonment after receiving a Gladue report and/or before an Indigenous-specific court. On the ground, these initiatives make a real difference in people's lives; however, the problem is that they do not cover enough ground.

As worthy as these initiatives are, and as necessary as it is that they are more broadly adopted throughout the criminal justice system, on the face of it, none of them decolonizes justice processes. Judges working in a colonial justice system are still solely responsible for imposing sentences on Indigenous people. While their decisions will be better informed through information gained by way of Gladue reports and input from Indigenous-specific courts, the locus of power has not shifted from the bench. Decolonization is a process, however. Giving room, indeed prominence, to the voices of Indigenous Elders, knowledge helpers, and Gladue report writers is a recognition that they are an essential part of the justice system (Hannah-Moffatt and Maurutto, 2016). Over 25 years ago, in their report on criminal justice, the Royal Commission

on Aboriginal Peoples (1996) noted that the creation of distinct Indigenous justice systems will take place on two tracks – inside and outside the current system. These two tracks are not completely distinct and separate but rather complement each other; insights gained in one will inform developments in the other.

Comparing the three decolonial hybrid models

What becomes clear in considering the initiatives introduced in each of the jurisdictions is that Indigenous epistemology, ontology, and axiology remain at the margins of sentencing hearings and self-determination is absent. Despite considered and well-meaning efforts, sentencing decisions and court processes have not fully embraced a decolonial model. All the initiatives sit within the mainstream criminal justice system and rely on legislative or common law principles as justification for their existence. As a result, Indigenous community input remains peripheral to the power of the sentencing judge and the authority of the court, and "the dominant non-Indigenous justice system remains in a position of centrality […] [closing] off the possibility that different treatment, or indeed a different Indigenous system, is what is required" (Cunneen & Tauri, 2016, p. 112).

The initiatives seem to exist in a hybrid or 'third space' where "translation and negotiations define cultures rather than the exclusive expressions of the colonised or coloniser" (Blagg & Anthony, 2019, p. 245). We argue that, in this way, there is an attempt to decolonize sentence hearings by empowering Indigenous players and facilitating community healing. As Blagg and Anthony (2019) note, when "inter-cultural practices operate to further Indigenous objectives, they challenge the whiteness of legal traditions, discourses and processes and provide alternatives to the criminal justice apparatus of the Global North: police, prisons, corrections and Deluth-like diversions" (p. 246). It can be argued that Indigenous sentencing courts and culturally informed pre-sentence reports are initiatives that simply "constitute Indigenous buy-in to the colonizer's criminal justice system" and "buttress" the system rather than challenging it (Blagg & Anthony, 2019, p. 263; see also Cunneen & Tauri, 2016). The model that is 'most hybrid' appears to be the Tikanga Māori courts, mainly because they not only allow community members to have input or participate in the sentencing process, but they also embrace features of a Māori worldview, including observing customary practices and speaking the Māori language. The initiatives in Australia and Canada do not go this far, although they are transforming power dynamics in the courtroom and imbuing the sentencing hearing with a greater level of cultural and community knowledge.

Having said that, we believe these hybrid sentencing practices offer important advancements for accommodating Indigenous knowledges and perspectives and for making it more likely that Indigenous people appearing before the courts have a greater degree of respect and sense of procedural justice than if they had appeared before a mainstream court. In this way, they are contributing to the decolonial project, but we concede that more can and should be done to shift the colonial authority structures and gaze.

References

Australian Bureau of Statistics. (2016). *Estimates of Aboriginal and Torres Strait Islander Australians, June 2016*. https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/latest-release#data-download

Australian Bureau of Statistics. (2020). *Prisoners in Australia, 2020*. https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2019~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20prisoner%20characteristics%20~13

Bennett, P. (2016). *Specialist courts for sentencing Aboriginal offenders: Aboriginal courts in Australia*. The Federation Press.

Blagg, H., & Anthony, T. (2019). *Decolonising criminology: Imagining justice in a postcolonial world*. Palgrave Macmillan.

Cultural and Indigenous Research Centre Australia. (2008). *NSW Attorney General's Department evaluation of Circle Sentencing program: Report*. https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/evaluationofcirclesentencing-report-c5df9cd3f29cc7fcd709205b9ab27727.pdf

Cultural and Indigenous Research Centre Australia. (2013). *Evaluation of Indigenous justice programs - project A: Aboriginal and Torres Strait Islander sentencing courts and conferences, final report*. https://www.circaresearch.com.au/wp-content/uploads/CIRCA-Project-A-Final-report.pdf

Cunneen, C. (2011). State crime, the colonial question and Indigenous Peoples. In R. Haveman & A. Smeulers (Eds.), *Supranational criminology: Towards a criminology of international crimes* (pp. 159–180). Intersentia Press.

Cunneen, C., & Tauri, J. (2016). *Indigenous criminology*. Policy Press.

Daly, K., & Marchetti, E. (2012). Innovative justice processes: Restorative justice, Indigenous justice and therapeutic jurisprudence. In M. Marmo, W. De Lint, & D. Palmer (Eds.), *Crime and justice: A guide to criminology* (pp. 455–481). Lawbook Co.

Davies, M. (2002). *Asking the law question* (2nd ed.). Lawbook Co.

Department of Corrections. (2021). *Prison facts and statistics – December 2021*. https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics/prison_stats_december_2021

Fitzgerald, J. (2008). Does circle sentencing reduce Aboriginal offending? *Crime and Justice Bulletin*, *115*, 1–12.

Hannah-Moffatt, K., & Maurutto, P. (2010). Re-contextualizing pre-sentence reports: Risk and race. *Punishment & Society*, *12*(3), 262–286.

Hannah-Moffatt, K., & Maurutto, P. (2016). Aboriginal knowledges in specialized courts: emerging practice in Gladue Courts. *Canadian Journal of Law and Society/La Revue Canadienne Droit et Société*, *31*(3), 451–471.

Harris, M. (2004). From Australian courts to Aboriginal courts in Australia - Bridging the gap? *Current Issues in Criminal Justice*, *16*(1), 26–41.

Harris, M. (2006). *"A sentencing conversation": Evaluation of the Koori Courts Pilot Program October 2002-October 2004*. Department of Justice, Victoria.

Marchetti, E. (2014). Delivering justice in Indigenous sentencing courts: What this means for judicial officers, Elders, community representatives, and Indigenous court workers. *Law & Policy*, *36*(4), 341–369.

Marchetti, E. (2015). An Australian Indigenous-focused justice response to intimate partner violence: Offenders' perceptions of the sentencing process. *British Journal of Criminology*, *55*(1), 86–106.

Ministry of Justice. (2012). *Evaluation of the early outcomes of Ngā Kooti Rangatahi*. https://www.justice.govt.nz/assets/Documents/Publications/Evaluation-of-Nga-Kooti-Rangatahi-FINAL-report-17-December-1.pdf

Morgan, A., & Louis, E. (2010). *Evaluation of the Queensland Murri Court: Final report*. https://www.aic.gov.au/sites/default/files/2021-02/tbp039.pdf

Parker, N., & Pathé, M. (2006). *Report on the review of the Murri Court*. https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/murricourtreport-44432e36a4d12c2881aff068e6ac729f.pdf

Potas, I., Smart, J., Brignell, G., Thomas, B., & Lawrie, R. (2003). *Circle sentencing in New South Wales: A review and evaluation*. https://www.judcom.nsw.gov.au/wp-content/uploads/2016/07/research-monograph-22.pdf

Rose, D.B. (1996). Land rights and deep colonising: the erasure of women. *Aboriginal Law Bulletin*, *3*(85), 6–13.

Roy, A. (2008). Postcolonial theory and law: A critical introduction. *Adelaide Law Review*, *29*, 315–357.

Royal Commission on Aboriginal Peoples. (1996). *Bridging the cultural divide: A report on Aboriginal people and criminal justice in Canada*. https://publications.gc.ca/collections/collection_2016/bcp-pco/Z1-1991-1-41-8-eng.pdf

Statistics Canada. (2018). *Adult and youth correctional statistics in Canada, 2016/2017*. https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54972-eng.htm

Statistics New Zealand. (2021). *Māori population estimates: At 30 June 2021*. https://www.stats.govt.nz/information-releases/maori-population-estimates-at-30-june-2021

Taumaunu, H. (2014). Rangatahi courts of Aotearoa New Zealand: An update. *Māori Law Review*. https://maorilawreview.co.nz/2014/11/rangatahi-courts-of-aotearoa-new-zealand-an-update/

Taumaunu, H. (2020). *Transformative Te Ao Mārama model announced for District Court*. https://www.districtcourts.govt.nz/assets/Uploads/Publications/2020/11.11.2020_Transformative-Te-Ao-Marama-model-announced-for-District-Court.pdf

Yeong, S., & Moore, E. (2020). Circle sentencing, incarceration and recidivism. *NSW Bureau of Crime Statistics and Research Crime and Justice Bulletin*, *226*, 1–22.

34

Decolonizing restorative justice

Alana Abramson and Muhammad Asadullah

> Everything about Indigenous research tells us we have to locate ourselves in our research. First, we write our own stories and share our position in the world before we write about the world. This is a big task because first we have to come to terms with who we are and how we come to do the work we do.
>
> (Linklater, 2014, 11)

Positionality is the notion that personal values, views, and location in time and space influence how one understands the world (Sánchez, 2010). Gender, race, class, sexual orientation, education, and experience influence how one thinks about things at any given moment. Both positionality and privilege, which according to Memmi (1965) is at the heart of colonial relationships, are essential to consider when writing about decolonization and restorative justice (RJ). We, as authors and researchers, actively consider how our positionality and privilege impact our understanding of our work. Here we attempt to both locate ourselves and articulate where we are in our process of decolonizing ourselves.

Alana Abramson

My paternal grandfather and both paternal grandparents immigrated from Europe following Jewish persecution and war, respectively. My paternal Cree/Métis grandmother was born on Treaty 1 land, the traditional territory of the Anishinaabeg, Cree, Oji-Cree, Dakota, and Dene peoples, and the homeland of the Métis Nation (St. Bonifice, Manitoba, Canada). For most of my life, I have lived on the unceded, stolen traditional territory of the Semiahmoo First Nation, Katzie, and Kwantlen First Nation (colonially known as Surrey, British Columbia, Canada). Raised in a stable home, I benefit directly from the unearned privileges of being a white-presenting, middle-class, cisgender, able-bodied, educated person. However, experiences of violent victimization and conflict with the law as a teen inspired a keen passion for transformative justice. I have been mentored and inspired by both Indigenous and non-Indigenous scholars and practitioners in the field of RJ and they have instilled in me the importance of working to decolonize myself and the field.

DOI: 10.4324/9781003176619-38

Muhammad Asadullah

I was born in and spent my formative years in my ancestral land Bangladesh. All of my great-grandparents and grandparents were born and buried in Bangladesh. My worldviews on justice and RJ have been shaped by my mother, Dr Howard Zehr, Dr Brenda Morrison, and my undergraduate students. I consider myself a co-learner with my students. Since 2015, I have regularly taught Introduction to Restorative Justice courses. Teaching this introductory undergraduate course has been a healing journey. My fieldwork in Bangladesh on RJ played a catalytic role in terms of my journey to the field of decolonization. In 2019, I formally incorporated decolonizing RJ into the syllabus. My faith and spiritual tradition, and my Bengali heritage have also impacted my worldview on the idea of justice. Recently, the work of twelfth-century scholar Abu Hamid Al-Ghazali and contemporary scholars Dr Fania Davis and John Borrows have influenced my worldviews.

The impact of restorative justice and Indigenous peoples

Critiques raised by Indigenous and non-Indigenous scholars and communities about RJ are not new and underscore the importance of a decolonizing approach. According to Tauri (2018), the first published critiques informed by Indigenous perspectives began appearing in the mid-1990s: by Blagg (1997), Cunneen (1997), Lee (1997), and Tauri (1998) himself. McGuire (2022) notes that Friedland (2014), Palys and McGuire (2020), and Tauri (2016) discuss the ways that RJ approaches "often co-opt various pan-indigenized aspects of indigeneity" (p. 34).

The problems associated with RJ in relation to Indigenous peoples arguably stem from the central phenomenon of colonial powers culturally appropriating Indigenous ways of knowing and being. While the stated intentions of government and community RJ initiatives may have been to benefit Indigenous peoples, the negative consequences must be assessed against any real or promised benefits. In this chapter, we discuss six ways RJ has and continues to harm Indigenous peoples.

Cognitive injustice

The majority of RJ practices are rooted in Eurocentric worldviews and have been detrimental to the development of ideas and knowledge from non-Eurocentric worldviews (Blagg, 2017). Boaventura de Sousa Santos (2016) refers to Eurocentric knowledge domination as "cognitive injustice" (p. 142). According to Blagg and Anthony (2019), there is "nothing radical or progressive" (p. 140) in the definitions, philosophies, and paradigms of RJ. Additionally, this approach of Eurocentric knowledge hegemony reinforces the "origin myths" that RJ emerges from Indigenous traditions (Tauri, 2014, p. 40). Debates around the "Māoriness" of Family Group Conferencing in New Zealand (Tauri, 2016, p. 54) and the 'Indigenousness' of Sentencing Circle in Canada have become moot points. Cunneen (2002) explicitly expressed his scepticism about sentencing circles in Canada and states,

> While there is no doubt that the circle sentencing process has enabled greater participation of indigenous Canadians in the formal sentencing processes of the criminal justice system, there is doubt about the extent to which it represents a shift in power relations. Judges are still exercising a judicial function and have an obligation to impose a 'fit and proper' sentence within the sentencing guidelines of the Canadian Criminal Code.
>
> *(p. 45)*

The conflation of Indigenous justice and restorative justice

Another harmful impact of Eurocentric knowledge domination of RJ is that people confuse the concepts of Indigenous justice (IJ) and RJ. There are many reasons why the two terms have been used interchangeably. Abramson et al. (2021) found that many Indigenous and non-Indigenous justice workers felt IJ and RJ are "pretty much the same". However, as Chartrand and Horn (2016, 14) note, the relationship between RJ and Indigenous legal traditions is complex and nuanced and while there is a need to discuss and understand each as independent from the other, the truth is that these justice systems blend into each other.

Restorative justice as cultural appropriation

Diangelo (2020) notes that "cultural appropriation in today's modern and globalized world is always tricky […]. Advancements in travel, technology and widespread use of the internet means we are more culturally connected […] than we have ever been before" (p. 114). Further, Diangelo (2020) states there is tremendous variability within cultural groups with respect to what counts as cultural appropriation of another's cultural objects, motifs, symbols, rituals, artefacts, and other elements.

However, when one culture continues to benefit from historical acts of colonization, land theft, mass kidnapping and enslavement, attempted genocide, forced assimilation, segregation, legalized racial discrimination, and the reinforcement of negative racist stereotypes, adopting or exploiting elements from the nondominant culture is considered an act of cultural appropriation (Diangelo, 2020). What makes cultural appropriation harmful is not the intent to learn from non-dominant cultures but the power imbalance from which this practice is derived and the benefit that the dominant culture gains from the appropriation. While not everything called RJ was the direct result of cultural appropriation, there are examples from many countries that must give all who advocate for RJ reason to pause. Dashman et al. (2021) note that

> RJ is based on indigenous [sic] practice and philosophy. Anytime we as white practitioners fail to acknowledge the roots of this knowledge, we are engaging in cultural appropriation and in doing so, replicating the same power dynamics and oppression that has shaped the criminal justice system and broader society.
>
> *(p. 23)*

While some initiatives under the banner of RJ have been developed in partnership with Indigenous peoples, non-Indigenous peoples have benefited disproportionately from what Tauri (2018) calls the "RJ industry", i.e., non-Indigenous players have created for-profit businesses that claim to provide more "culturally responsive" approaches to justice. The erroneous reference to RJ as an IJ approach has become normalized in the field. Mainstream rhetoric maintains that RJ has been gifted by, borrowed from, or inspired by Indigenous peoples while the stalwart counter-narrative that certain aspects of Indigenous ways of knowing have been stolen, colonized, co-opted, and sold back to Indigenous people has been largely ignored. Meanwhile, the number of Indigenous people in prison continues to rise in countries like Canada and New Zealand that claim to embrace RJ. Littlewolf, Armster, and Paras (2020) frame the current state of RJ as colonial and not truly honouring Aboriginal/Indigenous roots as it remains situated in a Western white-supremacist, cisgender, male-dominated system.

The muddy waters between IJ and RJ have led to the unhelpful and inaccurate conflation of the terms. While there are similarities between some Indigenous customary laws and RJ,

it is inappropriate to use these terms interchangeably. Chartrand and Horn (2016) have noted that "there are important features that make Indigenous legal traditions quite different from RJ processes, including how Indigenous legal traditions often use proactive/preventative strategies mediated through kinship networks" (p. 3). The term IJ itself is problematic, given the lack of distinction between the many thousands of nations with unique languages, cultures, and histories. There is evidence of pan-Indigenous approaches in the justice system which can be found alongside the development of RJ in Canada. Starting in the 1980s, the Canadian government introduced so-called 'accommodation strategies' which attempted to integrate certain Indigenous traditions and processes into the existing legal system (Palys & McGuire, 2020). The incorporation of sweat lodges, smudge ceremonies, and Indigenous Elders within prisons, and the creation of Indigenous courts and halfway houses were intended to be more culturally responsive to Indigenous peoples (Milward, 2015). However, the adoption of some nations' traditions over others and tokenistic integration of cultural aspects into a system that was created by and for non-Indigenous peoples has resulted in distraction from fundamental issues of colonization.

Palys and McGuire (2020) contend that RJ exemplifies the appropriation and pan-indigenization of Indigenous cultures as it is represented by the amalgamation of 'traditions', such as circles and overall focus on 'holistic' understandings of the world. Vielle (2012) notes that, "[t]he strength of Indigenous community-based mechanisms of justice cannot easily be reproduced in societies where individuality and autonomy are celebrated" (p. 186), and that equating "RJ with Indigenous approaches to law and justice is harmful and dangerous for it risks rendering the scholarship homogenizing and universalizing RJ, to the detriment of local preferences and practices" (p. 174).

Tuck and Yang (2012) describe internal colonization as the use of interpersonal and structural control mechanisms to serve the dominant structure. Given that RJ espouses the importance of giving conflict back to those most affected (Christie, 1977), empowering those directly impacted by harm (van Wormer, 2004), and transforming people and structures (Van Ness & Strong, 2010), it can easily be marketed to Indigenous communities as a way to reclaim responsibility for justice in pursuit of the broader goal of self-determination. For example, Tauri (2016) notes that Māori people are given little choice but to accept this culturally appropriated gift and are tricked into thinking they are reclaiming their ways when the government remains in control. While there are cases of Indigenous and non-Indigenous RJ advocates engaging in what Tuck and Yang (2012) call the "hard, unsettling work of decolonization" (p. 5), for the most part, the wave of RJ continues to swell at the expense of Indigenous peoples.

By non-Indigenous acts of tokenizing some pieces of Indigenous culture and integrating them into existing colonial structures, settler countries are well on their way to what Diangelo (2020) would describe as "an erasure of the nondominant culture's origin story of the practice, while the dominant culture is able to profit – whether financially or socially – by the act of appropriation" (p. 118). In addition to this erasure and unequal benefits, there is evidence of harm to Indigenous individuals who participate in RJ processes and impediments to the pursuit of self-determination.

Restorative justice as an extension of the current justice system

RJ approaches are often described as attempts to "reinstate old ways of addressing current problems" (Linklater, 2014, p. 99) or reclaim Indigenous practices that can better address harm compared to the colonial legal system. However, Indigenous-led empirical research reveals the disempowering and harmful impact RJ practices have had on many Indigenous individuals

and communities. The phrase "good intentions are not enough" rings true when examining research by Moyle and Tauri (2016), which demonstrated that Māori participants of Family Group Conferencing (FGC) processes reported a lack of cultural responsivity and capability, particularly on the part of non-Māori professionals.

Similarly, Vielle (2012) noted that FGC appears to effectively encourage young people to take responsibility for their actions by diverting them from the traditional court system in New Zealand, they are far less successful in following up and facilitating the rehabilitation of young persons involved. Vielle's findings also suggest that many of the problems of the legal system are replicated through RJ processes, such as lack of attention to victim and community needs and voices, lack of flexibility, and over-reliance on government actors.

Moyle (2013) found that Indigenous participants do not necessarily experience RJ as culturally responsive. The "one world view, one size fits all" approach to engaging with what is a socio-culturally diverse clientele and the lack of skill and knowledge of non-Indigenous practitioners meant that the experience of Indigenous participants was largely negative (Moyle, 2013). This comes as no surprise, given the drive for efficiency and the lack of meaningful consultation with Māori. Shah and Stauffer (2021) note that

> there is a tendency in the western mindset to learn a practice or skill and then assert that it is **the way** or model. This replicates the colonial mindset and erases the many traditions and nuances of different indigenous circle traditions.
>
> *(p. xxiv)*

Concerns about RJ practices causing harm to Indigenous people – despite promises to do better than contemporary legal systems – can also be found in research related to female victims of family and sexualized violence. McGillivray and Comaskey (1999) found that Indigenous women in Canada continued to support the punishment and imprisonment of men based on the assumption that "jail is a guarantee of some period of immediate safety" (p. 21). While retributive approaches do little to reassure women of their safety, without attending to the social inequality that functions as a pre-condition of gendered violence, RJ cannot offer much more.

Balfour (2008) argues that Canadian sentencing reforms that include restorative principles, which aim to address the hyper-incarceration of Indigenous peoples, have worsened rather than slowed the rates of victimization and incarceration for Indigenous women. She notes that, although hundreds of RJ initiatives operate in Canada, they mainly focus on diverting first-time youthful offenders rather than more pressing matters of violence. These processes are closely linked to the colonial system where judges have the final say. As noted by Thomas, formerly of the United Native Nations, RJ in Canada is a, "mutilated version of First Nations diversity, 'beads and feathers' culture" where homogenized models of 'traditional justice' may be imposed upon Indigenous communities by white judges and lawyers (BC Association of Specialized Victim Assistance and Counselling Programs, 2002).

Restorative justice did not halt the mass incarceration of Indigenous peoples

Proponents of RJ often claim these approaches will reduce the number of Indigenous people involved in the criminal legal system. In Canada, the Gladue principles emerged from a 1996 Supreme Court decision whereby judges were instructed to consider the unique systemic or background factors which may have played a part in bringing a First Nations or Indigenous person in contact with the law. In sentencing, judges must also seriously consider alternatives to incarceration in favour of culturally appropriate restorative and

traditional IJ processes. The Gladue principles are meant to be both preventative and remedial in addressing the over-criminalization of Indigenous people. Despite the Court's decision in *R.v.Gladue* and its subsequent call to action in *R.v.Ipeelee* in 2012, the Gladue principles are perceived by Indigenous offenders to be ineffective and inconsistently applied (Iacobucci, 2013; Pfefferle, 2008; Roach, 2009).

With regard to reducing the incarceration rates of Indigenous people, there is no evidence to suggest RJ decreases prison populations for anyone (Wood, 2015). In Canada, MacIntosh and Angrove (2012) found that non-Indigenous offenders have benefited more from the 1996 sentencing reforms than Indigenous offenders, and hyper-incarceration has worsened since *R.v.Gladue* (p. 33). While the growth of RJ programmes in Canada partially explains the decrease in youth on probation and in prison (Department of Justice, 2016), the number of Indigenous youth in custody continues to grow (Malakieh, 2019). In fact, despite RJ and IJ programmes being available since the early 1990s, the justice system continues, at every stage, to worsen the crisis for both Indigenous adults and youth as victims and accused/offenders (Malakieh, 2019).

Obstructions to Indigenous self-determination

While the impact of RJ has been detrimental to many Indigenous individuals, the rise of Western conceptions of RJ has negatively impacted the difficult journey towards Indigenous self-determination. Tauri (2018) is clear that RJ has served as a contemporary colonial project that has

> thus far failed deliver on the promises it has made to deliver more culturally appropriate justice practice, and a measure of jurisdictional empowerment that allows Indigenous peoples a greater role in dealing with the offending and victimization of our own.
>
> *(p. 352)*

Evidence of attempts to assimilate select pan-Indigenous practices into legal systems in Canada and other settler nations since the 1980s takes the form of attempts to hire more Indigenous law enforcement officers, the creation of "Indigenous courts" and implementing "circle sentencing" and bringing Elders and "teachings" into carceral spaces (Milward, 2015). These ornaments hang off the colonial system and are boasted about by governments as culturally responsive means to address the over-criminalization of Indigenous people. However, these initiatives have done nothing to shift the balance of power from the colonial state to the Indigenous communities from which these practices were "borrowed".

Littlewolf (2022) said, "RJ is a life way for Indigenous people" and the "colonization of RJ has meant to take the spirit out of it" and make it inaccessible to Indigenous people. As the field has become increasingly professionalized, Indigenous people can be overlooked amongst the growing hierarchy that favours degrees or certificates in (so-called) RJ. Anderson (2020) notes that describing RJ as an alternative justice approach is problematic as "in reality [RJ] is a way of being and a way that communities once operated, therefore, viewing RJ as an alternative makes it easy to co-opt its processes and, in essence, water them down" (p. 144).

State actors still function as gatekeepers deciding which cases are "appropriate" for IJ initiatives. Policies and funding limit the impact IJ programmes can have and their work is further complicated by artificial timelines that impose how long they are "allowed" to work on a case (Abramson et al., 2021). Evaluations of performance are still conducted through a Western lens that focuses on recidivism as a sign of a successful justice programme. Reductionist and over-simplified ways of assessing the impact of Indigenous justice initiatives affect funding all while

these operations attempt to engage in justice work within communities where people lack clean water, secure housing, and experience the intergenerational traumatic impacts of colonization. This exemplifies what Manuel (2018) has noted about the state-designed system of Indigenous self-government in which "we administer our own poverty" while being fooled into thinking we have control (p. 21). Governments pat themselves on the back for Indigenous justice initiatives while refusing to discuss true self-determination, nation to nation.

These six issues related to RJ and Indigenous people highlight the need for a decolonizing framework and the importance of learning from wise practices as outlined below.

Decolonization

Discussions of decolonization require naming a basic and essential fact: colonialism is not a 'thing of the past', it is not one event or one oppressive system (Monchalin, 2016). Colonialism is ongoing (Coulthard, 2014) and woven into the very fabric and machinery of colonial countries' institutions, systems, laws, and policies. Globally, decolonization is conceptualized differently, and there is no catch-all definition – nor should there be. Colonialism exists differently throughout the world and decolonization must be informed by local contexts. Just as colonialism exists in micro, meso, and macro forms, definitions of decolonization encapsulate micro-level and macro-level action (Asadullah, 2021). According to McGuire (2022), "[d]ecolonization requires a thorough understanding of the pervasiveness of colonialism, racism, and oppression while also ensuring a critical eye on colonial rhetoric and politics" (p. 51). Decolonization discourse exists in several settings – policing, court, mental health and RJ (Asadullah, 2022). Some scholars describe decolonization on a micro level, as work that can be done within oneself, which differs depending on who you are. Regan (2010) describes decolonization as "unsettling the settler within" and offers detailed methods of unsettling, which include "living in truth" (p. 218), as well as naming and dismantling colonial mentalities, harms, systems, and 'solutions' historically and today. Monture-Angus (1999) conceptualizes decolonization as "a state of being free from responding to colonial forces" (p. 73). McGuire (2020) articulates decolonization as: "Gam yen asing k'aa.ngasgiidaay han hll guudang Gas ga" which translates as "*I will never again feel that I am less than*" (p. 18).

On the meso and macro level, scholars assert that decolonization requires first recognizing the fact that all land in what is called Canada is Indigenous land (Coulthard, 2017). Moving from recognition, decolonization involves the transfer of power and decision-making from settler-colonial governments to Indigenous Nations/peoples (McFarlane & Schabus, 2017). As noted by Coulthard (2017), colonialism centres on the violent disruption in relationships between land and Indigenous peoples. For some, decolonization requires handing land back to Indigenous Nations (Tuck & Yang, 2012; Valandra & Hokila, 2019). The centrality of land, power, wealth, and control is a reason why decolonization is deemed to "never take place unnoticed" (Fanon, 1963, p. 36). Decolonial action in Canada is not new as, throughout history, Indigenous peoples resisted and rejected colonialism in many different ways (Steinman, 2016). Coulthard (2014) explains "Indigenous resurgence is at its core a prefigurative politics – the methods of decolonization prefigures its aims" (p. 159). For Haida scholar McGuire (2020), the assertion of the inherent right to Indigenous justice, albeit within the confines of a colonial institution, is itself a decolonial act (p. 18).

In considering a framework for decolonizing RJ, it is important to note that simply acknowledging colonial harms and violence will not necessarily lead to decolonial work (Coulthard, 2014; McGuire, 2022; Tuck & Yang, 2012). Action must be taken on the micro, meso, and macro levels to address the harm related to historical and contemporary RJ initiatives.

Victor (2007) argues that, if RJ fails to engage in decolonization processes, it will be "nothing more than colonial justice wearing a different colored hat making use of different enforcers" (p. 16).

Decolonization and restorative justice

Whether RJ can be decolonized is debated. Blagg (2019) argues that RJ "may not survive a decolonising turn because, despite claims to the contrary, it is a modernist, Euro-north American concept concerned with reforming what remains an essentially Western paradigm of justice" (p. 133). Valandra and Hoksila (2019) challenge those in the field of RJ to begin with the following decentering question: "Other than adopting Circles or paying token homage to Indigenous peoples' influence on RJ, what is RJ doing to undo The First Harm [structural marginalization and settler colonialism] perpetuated against Indigenous people?" (p. 328). Further, "Why is [RJ] silent with respect to settler colonialisms' harms against Indigenous Peoples?" (Valandra & Hoksila, 2019, p. 336).

We, the authors, believe that a decolonizing approach to RJ is feasible if we take these critiques and questions seriously. A decolonizing approach to RJ would acknowledge the devastating impact of colonization including the dominance of Eurocentric worldviews. A decolonizing approach would also recognize that many government-led RJ interventions have contributed more harm to Indigenous peoples in New Zealand, Canada, and Australia.

A proposed framework for decolonizing restorative justice

Along with the do-no-harm principle, Asadullah (2021) offers a framework for decolonization (Figure 34.1) with four key components: 1) roots, 2) trunk, 3) branches, and 4) fruit.

The roots convey the trauma-informed and anti-oppressive foundation of this framework. Key tasks for root development are active listening and consultation. The trunk embodies local knowledge and leadership; relationship building is the key task of this phase. Branches represent culturally and socially relevant justice practices across similar settings. The key task in this phase is learning from community praxis across somewhat familiar cultural and social settings. In practical terms, a shift from terms like IJ to Indigenous-led justice can prevent conflation with RJ and the tendency towards pan-Indigenization. The 'fruit' in this framework are the by-products, whereas the adoption of a trauma-informed approach and anti-oppressive framework that involves the leadership of local Indigenous peoples coupled with lessons from the wise practices across somewhat similar cultural and spiritual settings would result in socially, culturally, and spiritually conducive RJ practices.

Some wise practices

The concept of wise practices over best or promising practices captures Callio's (2021) suggestion that "wise practices do not aspire to be universal, but instead are idiosyncratic, contextual, textured, and not standardized" (p. 29). In response to the growing call by academics and practitioners for more decolonized RJ practices, there has been a renewed interest in justice traditions that uphold Indigenous traditions and local knowledge and practices. Two such wise practices are discussed below.

Salish practices in Bangladesh

Salish – a Bengali word commonly translated as mediation – is a community-based conflict resolution practice in Bangladesh. Even though traditional salish has been distorted due

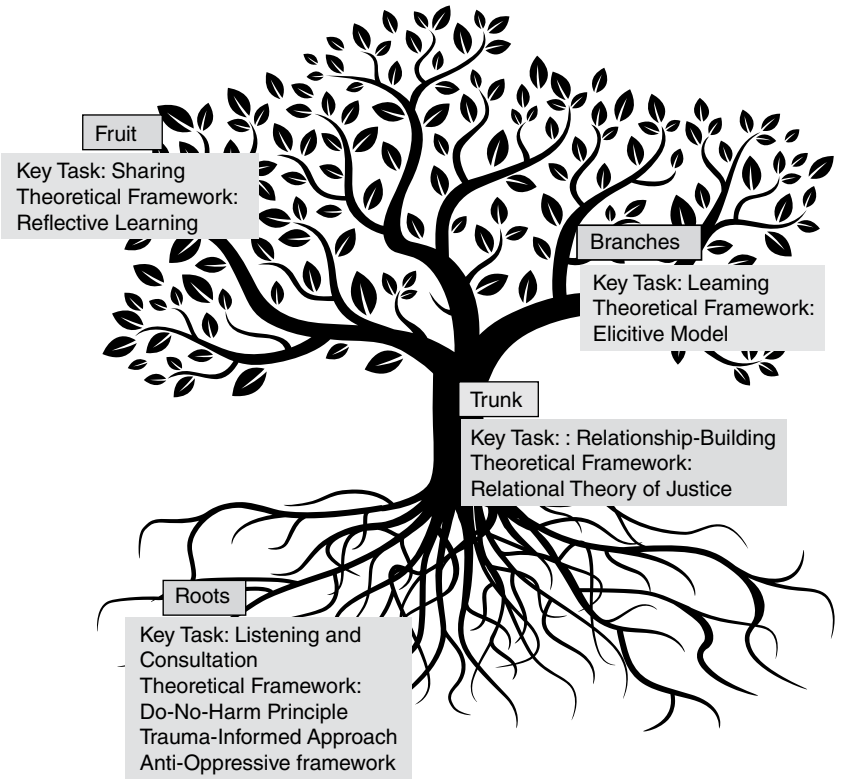

Figure 34.1 Decolonizing tree framework. (Asadullah, 2021, p. 19)

to colonization and the abuse of power by local leaders, NGO-led salish is still functional (Golub, 2003). Asadullah and Morrison (2021) explore the historical development of salish in Bangladesh, and the roles played by civil society organizations and international non-governmental organizations in its revival in recent years. Salish is, for instance, a community-owned mediation mechanism that has been in practice for a long time. The mediator, known as the salishkar, might not have prior legal experience; they, however, yield considerable social or religious authority. In practice, victims bring their grievances to the attention of the mediator who then contacts the offender three times. This stage is followed by the collection of information by the mediator listening to the parties involved. Finally, the mediator offers several solutions with the desire that the resolution ought to be acceptable to both parties. In Bangladesh, salish may perform the dual responsibility of mediation or arbitration, depending on the circumstances (Asadullah & Morrison, 2021). Notwithstanding the culturally grounded history of salish, it has been impacted by urbanization and misuse of power by undemocratic and religious leadership (Ahmed, 2013). Along with locally rooted NGO-led salish practices, there are IJ practices in the Chittagong Hill Tracts region of Bangladesh (Asadullah, 2013; Roy, 2005).

The authors consider both NGO-led salish and IJ practices in the Chittagong Hill Tracts in Bangladesh as wise practices because of their historical, cultural and spiritual roots with the local people in Bangladesh.

Pakhtoon Jirga in Pakistan

Jirga is another form of conflict resolution practised among the Pakhtoon tribes along the Afghanistan and Pakistan borders (Yousaf & Poncian, 2018). Yousufzai and Gohar (2005) offer some insights into the long tradition of jirga that serves the purpose of strategic communication channels as a mediation process. This communication may not always lead to an agreement over the issues of contention; it nonetheless provides a platform for peaceful discussion. It is composed of Spingiris (Elders) who act as mediators. One of the essential prerequisites of jirga is the conformity of the parties to the code of Pakhtoon life. Geographical proximity plays a crucial role in deciding how the jirga will address the issue because it acknowledges different practices within the community. Depending on the situation, jirga will first be convened among the Elders of different parties who decide what course of action to take. What makes jirga distinct, in addition to its local ownership, is transparency, the confidence of the community, unanimity, freedom of speech, accountability process, and finally the message of peace (Yousufzai & Gohar, 2005). The authors consider Pakhtoon jirga a wise practice because of its rootedness with Indigenous peoples in the Khyber Pakhtunkhwa area of Pakistan. Pakhtoon jirga is also socially, culturally and spiritually grounded in Pakistan.

Conclusion

Discussions and debates around decolonized approaches are instrumental to the future of RJ. Since the 1970s, Western expressions of RJ have, with over 100 countries partaking, become a global phenomenon (Asadullah & Morrison, 2022). RJ advocates, academics, and practitioners need to be aware of the impact of the Eurocentric paradigm of RJ on Indigenous peoples around the world. They also need to understand the consequences of the co-option of RJ by government and justice stakeholders. Scholarly work and innovative practices from the Global South need to be at the forefront. It is imperative for RJ advocates to understand that Indigenous-led justice has its own ethos and distinctiveness. Any attempt to conflate it with RJ would contribute more harm. We believe that the adoption of a trauma-informed approach and anti-oppressive framework that involves the leadership of local Indigenous peoples coupled with lessons from wise practices across somewhat similar cultural and spiritual settings would result in socially, culturally, and spiritually conducive and decolonized RJ practices.

References

Abramson, A., Asadullah, M., Pastran, X., Fulks, J., & Baumgartner, M. (2021). *Exploring Indigenous-led justice and restorative justice in British Columbia and Saskatchewan: A comparative action research project*. Ministry of Justice, the Government of British Columbia.

Ahmed, F.E. (2013). The compassionate courtroom: Feminist governance, discourse, and Islam in a Bangladeshi "Shalish". *Feminist Formations*, *25*(1), 157–183.

Anderson, D. (2020). Co-opting restorative justice in higher education. In Valandra, E. & W. Hoksila (Eds.), *Colorizing restorative justice: Voicing our realities* (pp. 143–159). Living Justice Press.

Asadullah, M. (2013). Indigenous-led justice system in the Chittagong Hill Tracts: An exploratory listening project in Bangladesh. *Alaska Journal of Dispute Resolution*, *1*, 87–100.

Asadullah, M. (2021). Decolonization and restorative justice: A proposed theoretical framework. *Decolonization of Criminology and Justice*, *3*(1), 27–62.

Asadullah, M. (Ed.) (2022). *Decolonization and justice: An introductory overview*. Open Book Press.

Asadullah, M., & Morrison, B. (2021). Exploring the growth and development of restorative justice in Bangladesh. *The International Journal of Restorative Justice*, *4*(2), 253–282.

Balfour, G. (2008). Falling between the cracks of retributive and restorative justice: The victimization and punishment of Aboriginal women. *Feminist Criminology*, *3*(2), 101–120.

BC Association of Specialized Victim Assistance and Counselling Programs. (2002). *Restorative justice, domestic violence and sexual assault in Canada: A summary of critical perspectives from British Columbia*. Ending Violence BC.

Blagg, H. (1997). A just measure of shame? Aboriginal youth and conferencing in Australia. *British Journal of Criminology*, *37*(4), 481–501.

Blagg, H. (2017). Doing restorative justice 'otherwise': Decolonising practices in the global south. In I. Aertsen & B. Pali (Eds.), *Critical restorative justice* (pp. 61–78). Hart Publishing.

Blagg, H., & Anthony, T. (2019). *Decolonising criminology: Imagining justice in a postcolonial world*. Palgrave Macmillan.

Callio, B. (2021). A wise practices approach to Indigenous law, governance, and leadership: Resistance against the imposition of law. In R. Hamilton, J. Borrows, B. Maniprize, R. Beaton & J. Nichols (Eds.), *Wise practices: exploring Indigenous economic justice and self-determination* (pp. 19–43). University of Toronto Press.

Chartrand, L., & Horn, K. (2016). *A report on the relationship between restorative justice and Indigenous legal traditions in Canada*. Department of Justice Canada.

Christie, N. (1977). Conflicts as property. *British Journal of Criminology*, *17*(1), 1–11.

Coker, D. (1999). Enhancing autonomy for battered women: lessons from Navajo peacemaking. *UCLA Law Review*, *47*(1), 1–112.

Coulthard, G.S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. University of Minnesota Press.

Cunneen, C. (1997). Community conferencing and the fiction of indigenous control. *Australian and New Zealand Journal of Criminology*, *30*(3), 292–311.

Cunneen, C. (2002). Restorative justice and the politics of decolonization. In E.G.M. Weitekamp & H.-J. Kerner (Eds.), *Restorative justice: Theoretical foundations* (pp. 32–49). Willan.

Dashman, M., Culberg, K., Dean, D., Lemler, A., Luinamsky, M., & Shackfood-Bradley, J. (2021). Bringing a racial justice consciousness to the restorative justice movement: A call to white practitioners. In T. Lewis & C. Stauffer (Eds.), *Listening to the movement: Essays on new growth and new challenges in restorative justice* (pp. 21–35). Cascade Books.

Department of Justice. (2016). *Youth criminal justice in Canada: A compendium of statistics*. https://publications.gc.ca/collections/collection_2018/jus/J4-58-2016-eng.pdf

Diangelo, R. (2020). *Me and white supremacy: Combat racism, change the world, and become a good ancestor*. Sourcebooks.

Fanon, F. (1963). *The wretched of the earth*. Grove Press.

Friedland, H. (2014). *IBA accessing justice and reconciliation*. https://dspace.library.uvic.ca/bitstream/handle/1828/12636/Friedland_Hadley_ILRU_2014.pdf?sequence=1&isAllowed=y

Golub, S. (2003). *Non-state justice systems in Bangladesh and the Philippines*. http://gsdrc.org/docs/open/ds34.pdf

Iacobucci, F. (2013). *First Nations representation on Ontario juries*. https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/iacobucci/First_Nations_Representation_Ontario_Juries.html

Lee, G. (1997). The newest old gem: Family group conferencing, *Justice as Healing*, *2*(2), 1–3.

Linklater, R. (2014). *Decolonizing trauma work: Indigenous stories & strategies*. Fernwood.

Littlewolf, E. (2022, February 22). *Decolonizing restorative justice: Repairing the first and second harm*. Panelist. [Online Presentation]. https://www.nyscasa.org/event/decolonizing-restorative-justice-repairing-the-first-and-second-harms/

Littlewolf, W., Armster, M. P., & Paras, C. (2020). Burn the bridge. In E. Valandra & W. Hoksila (Eds.), *Colorizing restorative justice: Voicing our realities* (pp. 87–100). Living Justice Press.

MacIntosh, C., & Angrove, G. (2012). Developments in Aboriginal law: The 2011-2012 term – charter rights, constitutional rights, taxation and sentencing. *The Supreme Court Law Review*, *59*(2), 1–50.

Malakieh, J. (2019). *Adult correctional statistics in Canada, 2017/2018*. https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016-eng.htm

Manuel, A. (2018). From dispossession to dependency. In P. McFarlane & N. Schabus (Eds.), *Whose land is it anyway? A manual for decolonization* (pp. 18–21). Federation of Post Secondary Educators of British Columbia.

McFarlane, P., & Schabus, N. (Eds.) (2017). *Whose land is it anyway?*. Federation of Post-Secondary Educators of British Columbia.

McGillivray, A., & Comaskey, B. (1999). *Black eyes all of the time: Intimate violence, Aboriginal women, and the justice system*. University of Toronto Press.

McGuire, M. (2019). Visions of a Haida justice system. *International Journal of Critical Indigenous Studies*, *12*(2), 18–33.
McGuire, M. (2020). *XaaydaGa Tll Yahda TllGuhlGa: Decolonizing Justice: The formation of a Haida justice system* [MA Thesis, Simon Fraser University]. https://theses.lib.sfu.ca/file/thesis/5881
McGuire, M. (2022). Reflections on decolonization and XaaydaGa Tll Yahda TllGuhlGa: A Haida justice system. *Decolonization of Criminology and Justice*, *4*(1), 31–56.
Memmi, A. (1965). *The colonizer and the colonized*. Beacon Press.
Milward, D. (2015). Sweating it out: Facilitating corrections and parole in Canada through Aboriginal spiritual healing, *Windsor Yearbook of Access to Justice*, *29*, 27–54.
Monchalin, L. (2016). *The colonial problem: An Indigenous perspective on crime and injustice in Canada*. University of Toronto Press.
Monture-Angus, P. (1999). Women and risk: Aboriginal women, colonialism, and correctional practice. *Canadian Woman Studies*, *19*(1/2), 24–29.
Moore, S.A. (2018). Radical listening: Transdisciplinarity, restorative justice and change. *World Futures*, *74*(7/8), 471–489.
Moyle, P. (2013). *From family group conferencing to whānau ora: Māori social workers talk about their experiences* [Master's thesis, Massey University]. https://mro.massey.ac.nz/bitstream/handle/10179/4731/02_whole.pdf?sequence=1&isAllowed=y
Moyle, P., & Tauri, J.M. (2016). Māori, family group conferencing and the mystifications of restorative justice. *Victims & Offenders*, *11*(1), 87–106.
Palys, T., & McGuire, M. (2020). Toward sovereign indigenous justice: On removing the colonial straight-jacket. *Decolonization of Criminology and Justice*, *2*(1), 59–82.
Pfefferle, B. (2008). Gladue sentencing: Uneasy answers to the hard problem of Aboriginal over-incarceration. *Manitoba Law Journal*, *32*, 113–143.
Porter, L. (2006). Planning in (post) colonial settings: Challenges for theory and practice. *Planning Theory & Practice*, *7*(4), 383–396.
Regan, P. (2010). *Unsettling the settler within: Indian Residential Schools, truth telling, and reconciliation in Canada*. UBC Press.
Roach, K. (2009). One step forward, two steps back: Gladue at ten and in the courts of appeal. *Criminal Law Quarterly*, *54*, 470–505.
Roy, R.D. (2005). *Traditional customary laws and Indigenous peoples in Asia*. https://www.refworld.org/pdfid/469cbfb70.pdf
Sánchez, L. (2010). Positionality. In B. Warf (Ed.), *Encyclopedia of geography* (pp. 2258–2258). Sage.
Santos, B.S. (2016). *Epistemologies of the South: Justice against epistemicide*. Routledge.
Shah, S., & Stauffer, C. (2021). Restorative justice: Taking the pulse of a movement. In T. Lewis & C. Stauffer (Eds.), *Listening to the movement: Essays on new growth and new challenges in restorative justice* (pp. xv–xxxii). Cascade Books.
Steinman, E.W. (2016). Decolonization not inclusion: Indigenous resistance to American settler colonialism. *Sociology of Race and Ethnicity*, *2*(2), 219–236.
Strang, H., & Sherman, L. (2015). The morality of evidence: The second annual lecture for restorative justice. *Restorative Justice: An International Journal*, *3*(1), 6–27.
Tauri, J. M. (2018). Restorative justice as a colonial project in the disempowerment of Indigenous peoples. In T. Gavrielides (Ed.), *Routledge International Handbook of Restorative Justice* (pp. 342–358). Routledge.
Tauri, J. (2016). Indigenous peoples and the globalization of restorative justice. *Social Justice*, *43*(3), 46–67.
Tauri, J. (2014). An Indigenous commentary on the globalisation of restorative justice. *British Journal of Community Justice*, *12*(2), 35–55.
Tauri, J. (1998). Family group conferencing: A case study of the indigenisation of New Zealand's justice system. *Current Issues in Criminal Justice*, *10*(2), 168–182.
Tuck, E., & Yang, K.W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education & Society*, *1*(1), 1–40.
Ucker, E. (2020). We're just doing our jobs: A provocation for restorative justice professionals. In T. Lewis & C. Stauffer (Eds.), *Listening to the movement: Essays on new growth and new challenges in restorative justice* (pp. xxxiii–xxxv). Cascade Books.
Valandra, E., & Hokila, W. (2019). Undoing the first harm: Settlers in restorative justice. In E. Valandra & W. Hoksila (Eds.), *Colorizing restorative justice: Voicing our realities* (pp. 325–370). Living Justice Press.

Van Ness, D., & Strong, H. (2010). *Restoring justice: An introduction to RJ* (4th ed.). Matthew Bender & Company.
van Wormer, K. (2004). Restorative justice: A model for personal and societal empowerment. *Journal of Religion & Spirituality in Social Work*, *23*(4), 103–120.
Victor, W. (2007). *Indigenous justice: Clearing space and place for Indigenous epistemologies*. http://fngovernance.org/ncfng_research/wenona_victor.pdf
Vielle, S. (2012). Frenemies: Restorative justice and customary mechanisms of justice. *Contemporary Justice Review*, *16*(2), 174–192.
Wood, W. (2015). Why restorative justice will not reduce incarceration. *British Journal of Criminology*, *55*, 883–900.
Yousaf, F., & Poncian, J. (2018). Detriments of colonialism on Indigenous conflict resolution: An analysis of Pakistan and Tanzania. *Contemporary Justice Review*, *21*(4), 455–473.
Yousufzai, H.M., & Gohar, A. (2005). *Towards understanding Pukhtoon Jirga*. Just Peace International.

35

Colonialism and penality

Mark Brown

This chapter focuses on the relationship between colonialism, penality, and the present. Criminology, it might reasonably be said, has a colonialism problem. Both colonialism and its contemporary legacies are almost invisible within the field generally, and certainly within penology more specifically. Thus, for example, in the 1000-plus-page *Oxford Handbook of Criminology* (Liebling, Maruna, and McAra, 2017), colonialism is not indexed at all, neither is imperialism, and the term 'global south' appears only a handful of times. Contemporary understandings and theories of the penal field are instead almost wholly focused on domestic spaces in North America, Great Britain, and a handful of Scandinavian, European-continental, and Antipodean countries, a situation that is only slowly changing (e.g., Aliverti et al., 2021; Blagg & Anthony, 2019; Black et al., 2021; Braatz, Bruce-Lockhart, and Hynd, 2022; Cunneen, 2021). Yet, if efforts to decolonize justice and penality are to amount to anything, we must begin with a much clearer understanding of the thing we oppose. I suggest here that not only is many criminologists' understanding of actually existing colonialism often quite poor – amounting to little more than a roughly sketched imagination of what it must have been like – but their equation of colonialism with simple repression is fundamentally flawed and undermines efforts to decolonize if indeed such a thing is even possible.

Drawing on the history of colonialism in India, Britain's largest and most important colony and an area that is, today, home to about one-quarter of the world's population, I aim in this chapter not only to redress the invisibility of colonialism within penal theory but also to offer a far more historically nuanced account of how colonial penality worked than is typically found in studies attending only to its repressive valence. I aim, therefore, to advance a new approach and I will do so here via two main arguments. First, with respect to colonial penality, I argue that to see in colonial penal power only repression is to take an impoverished and ultimately self-defeating view of how colonialism worked and why its forms and legacies remain so difficult to escape today. Recalling Michel Foucault's (1977) argument in *Discipline and* punish, I want to emphasize instead the importance of looking at what made colonial penal power productive: what allowed it to work for so long, to remain so dynamic that across hemispheres, centuries, and peoples it not only survived but expanded its reach.

Nothing in this denies penality's repressive face, and indeed repressive penal power in India will be discussed in the first section of the chapter. But in India, penal power also produced.

DOI: 10.4324/9781003176619-39

It produced, for example, specific discursive spaces of legality within which all sorts of problems of counter-conduct and different ways of being human were framed; it produced grids of control across social spaces that included the institutions of formal police and prisons but that were by no means limited to them, and it produced modes of plural and often tolerant legal arrangements and penal governance that knitted foreign and indigenous norms to create flexible new forms. The enduring, residual power of colonial penalities today thus arises not because colonial penal power was a big stick or a heavy hammer, though it was often both of those. The omnipresence and difficulty of escaping colonial penal power today are explained by the difficulty of escaping, of getting outside, the modalities of its productive renewal established in colonial locations but which are now a universal inheritance. And here is the crux of my wider argument and a bridge to its second leg: to focus only on a negation – on a need to decolonize – to get over or get rid of this negativity that is colonialism, rather than understand what made it productive, is to foreclose a great many more options than it opens. My second argument, then, is in some ways a corollary of the first. It is that to focus simply on decolonizing is to remain trapped within negativity, focused on a real or imagined colonialism in a debate whose terms and parameters were long ago set by the architects of European imperial expansion. Further, and as will be illustrated at length throughout this chapter, the productive side of colonial penal power was so expansive, so tolerating of difference, so accommodating and flexible that almost any contemporary decolonizing strategy will be found to have some kind of history in the colonial penal armature, somewhere. I conclude, therefore, that we should concentrate less on decolonizing – which will always be a regressive, backwards-looking exercise – and more on the creation of hybrid futures that look to assemble productive penal forms, regardless of the lineage of those elements that constitute them.

The remainder of the chapter will proceed in three stages. Section one will address the question: what is colonial penality? Too often, colonialism is spoken of in the abstract, as a universal. Of course, it was nothing of the sort. This first section notes some important characteristics of the phenomenon of colonialism that must be recognized if we are to analyze it as an existing phenomenon rather than just an imaginary. The section then narrows to look at the specific – yet undoubtedly important – case of British colonialism on the Indian subcontinent, a form of power which did much to influence colonial thought and forms around the world. Indeed, as the eminent historian of colonial governance, Thomas Metcalf (2007), observed:

> India [was] not just one among many British colonies, or a 'periphery' of the capitalist system, or a land of 'subalterns' struggling to be free. It [was] in addition a nodal point from which peoples, ideas, goods, and institutions — everything that enables an empire to exist — radiated outward.
>
> *(p. 1)*

The Indian Penal Code 1860 is one example among many of this influence and importance. It was widely adopted across the empire: in Zanzibar in 1867, in the Straits Settlements in 1870 (alongside the Indian Code of Criminal Procedure 1861), in Burma in 1886 (as too were both the Indian Code of Criminal Procedure 1861 and Indian Evidence Act 1872), in the Malay states progressively between 1893 and 1898, and across the entire East African Protectorate, alongside more than 20 other Indian Acts, in 1897. In the latter, the Indian model of articulating formal with indigenous customary law was also adopted (see Tupper, 1907). At the same time, this first section of the chapter also addresses some of the more obvious repressive characteristics of British colonialism in India, thus recognizing the data upon which repressive accounts are generally built. Section two then turns to identify three far less known but strongly

productive features of British colonial penality on the subcontinent, each of which has come down to us today as an enduring legacy of that place and time. Woven through these accounts will be a discussion of the difficulties these productive features pose in both principle and practice to the task of decolonizing penality. Finally, I make some concluding remarks, raising questions about the apparent impasse produced by colonial penality's productive character and the challenge of getting outside this global system of power.

Colonialism, penality, and colonial penal power

The terms colony, colonialism, empire, colonial empire, and imperialism have been used without much precision or distinction in the now vast literature on these topics (e.g., Cooper & Stoler, 1997). While colonialism itself is so varied in its forms as to largely escape encapsulation, most understandings at least recognize an elementary distinction between colonies of occupation and those of resource extraction. Kumar (2021) suggests that colonialism might best be understood as a particular manifestation "of an imperial drive" (p. 304) that became visible from about the seventeenth century onward. "Some take the form", he suggests:

> [of] plantations of large numbers of settlers [e.g., Australia, Canada, New Zealand]. But others might involve a relatively small group of metropolitan people ruling over diverse groups, and yet living in ways that are clearly distinguishable from those of the metropolitan society.
>
> *(p. 303)*

It should be clear, therefore, that one cannot speak of colonialism in the general – that decolonizing must mean different and perhaps quite specifically different things in different places, for there is no single colonialism from which to decolonize. But at the same time, this is not to say there was no convergence toward a certain colonial model or approach, such as British colonialism, nor that colonial projects in different places did not deal with a common problem: they did, and it was the problem of difference.

Colonial penal power on the Indian subcontinent: A repressive regime?

It is quite possible to tell the story of colonial penal power on the subcontinent as a tale of repression (see Elkins, 2022). At the broadest level, the original violence of colonial conquest was continually buttressed by a variety of forms of what might be termed secondary violence underpinned either by the law itself or by its biased application. Kolsky (2010), for example, has exposed the terror of non-official Europeans' white violence upon 'natives' that, against all principles, became a central feature of British rule. "Despite a rhetorical stance of legal equality", she observes, "Britons accused of assaulting and murdering Indians […] [received] little or no punishment" (Kolsky, 2010, p. 230).

And while British offenders managed to evade punishment or experienced only light penalties, Indians themselves were subjected to a range of frequently barbarous inflictions upon their bodily integrity. These included so-called godna tattoos, practised in the Bengal and Madras presidencies. In Bengal, for example, Anderson (2004) describes the Presidency's 1797 godna regulation as directing all "life prisoners have their name, crime, date of sentence and the division of the court by which convicted tattooed on the forehead" (p. 18). Flogging was also widely practised and moved in and out of popularity. In the 1830s, the practice was discontinued, but, after the 1857 uprising against British authority, it reappeared. It was made available as

a punishment for less serious offences, such as theft, in addition to crimes of greater gravity, and juveniles could be whipped as well as adults (Brown, 2014). Punishments were often devised to produce forms of defilement that would be felt particularly acutely by Indian subjects. The practice of transportation over the seas was for a very long time preferred and justified on the assumption that it produced, in the caste Hindu, a particular type of horror. And during the campaign against rebels in the uprising of 1857–58 much use was made of the punishment of strapping men across the mouths of cannons and blowing them apart. Indeed, as Heath (2021) illustrates, the torture of Indian bodies, often by other Indians in lowly ranks of the colonial police, was so widespread as to be recognizable as a distinct strategy of rule (see also McQuade, 2021).

On the basis of such evidence, equating colonialism with repression appears self-evidently correct and reinforces the moral claim that colonialism was and is an unalloyed bad thing. However, I suggest that to see in colonial penality only exclusion, only repression and pain, is to lose sight of what made colonial penalities and the legal frameworks, of which they were a part, work, what made them effective, and why they were so often, as the evidence equally illustrates, preferred over indigenous alternatives. It also blinds us to the reasons why these legalities and penalities remain with us today as robust, powerful and difficult-to-shake legacies.

Colonial penal power as productive discourse and practice

To understand colonial penalities we must disrupt the silos of contemporary criminology that divide off law, policing, courts, et cetera and view colonial governance and colonial power as it was. Configurations of colonial power were materially different to the structures within which an administrative discipline of criminology was born in metropolitan societies, particularly so as they concern the state itself. As Benton (2001) observes:

> Colonial states did not in an important sense exist as states in the early centuries of colonialism. They did not claim or produce a monopoly on legal authority or on the assignment of political and legal identity.
>
> *(p. 259)*

Colonial penalities were inseparable from colonial legalities, which themselves were connected with sovereignties, polities, customs, hierarchy, differences, and more. Colonial penalities encompassed not only what the nascent state claimed for itself – specifically, the definition, adjudication, and punishment of certain crimes – but also what it left alone, what it tolerated to leave to other sovereigns and their attendant communities, rules, and penal norms. Stark divisions we draw today, such as between civil and criminal law, matter much less for grasping arrangements of colonial power, which, at the same time, divides over cleavages often unfamiliar to us, such as notions of public versus private/personal domains and the crimes that lay within each. Further, common targets of decolonizing initiatives today, such as the prison and carceral controls, were never central to colonial penality in India precisely because of the way British authority recognized and responded to differences. As Arnold (1994) observes, this involved differences "not just of caste and religion, but also of climate, health, funding and agency" (p. 162) that worked as a restraint upon British "exercise of [their] own alien authority in the pursuit of a wider and more accommodating 'economy of power'" (p. 163). In understanding what made colonial penal power productive, therefore, we may profit from considering three of its defining features: it was progressive in its response to difference, in the sense of being tolerant; it was inclusive, in the sense of being accommodative; and it was flexible, in the sense of bending principle to meet the demands faced in the many and varied contexts wherein it was exercised.

Progressive: tolerating difference

While difference is a well-trodden theme in anti-colonial and revisionist critiques of colonial rule in India (Chatterjee, 1993; Metcalf, 2007; compare Kolsky, 2005), far less has been noticed of its positive valence. Indeed, it was precisely the recognition that securing justice for a governed people would necessitate some level of recognition of their difference *as a people* that established toleration as a core feature of colonial power. What might be termed a maximalist position can be found in, for example, the views of the Governor General of India, Warren Hastings. Writing ahead of the publication of Halhed's (1776) *A compilation of Gentoo laws, or ordinations of the Pundits*, Hastings spoke of the need to recognize "the rights of a great nation in the most essential point of civil liberty, the preservation of its own laws" (reprinted in Gleig, 1841, p. 399). The reason for doing so, Hastings wrote, was that "to rule this people with ease and moderation according to their own ideas, manners and prejudices" (p. 404) would ultimately advance Britain's interests.

Over the next century, attitudes undoubtedly changed and the importance of interventionist colonial legislation increased. The point here, however, is not to judge what we see as good or bad, to posit what ulterior motives might be found in Britain's interests, or to observe, correctly, that Hastings' views were those of an early colonial era. It is rather to recognize the important role of toleration, from the very beginning, in colonial formations of power in India. These should be understood for one equally important reason. It is that so many calls to *de*colonize justice begin with claims to replace or to leaven state sovereignty and formal statutory forms of law and punishment with arrangements presented as aspects of culture, custom, jurisdiction, and forum appropriate to a group defined by its difference (e.g., Indigenous or First Peoples). Yet, the toleration of such alternative sovereign domains and their different practices, the rearrangement of legal and penal spaces to accommodate them, and the flexing of rule of law principles to bring custom and culture within an overall system coherence is *quintessentially colonial*. If decolonization is really to mean something, it must do more than recruit one of the oldest and most trusted colonial strategies: recognizing and providing space for difference.

The presence of such strategies was not only a feature of colonial rule on the Indian subcontinent. In colonial Africa, Ibhawoh (2013) observes how British colonial authority recognized that "local African customs" were "indispensable to achieving justice" (p. 179) for Africans. In Africa, as in India, this was achieved through the wide jurisdiction afforded to customary law, adjudication, and punishment (and in India, to Hindu and Muslim personal laws also), and through the insertion into the ordinary machinery of state law certain roles to give space to difference. The Indian Evidence Act 1872, for example, provided for 'native assessors' who would assist the court in making sense of the local conditions and cultural codes within which the parties (in a civil case) or the defendant (in criminal trials) lived their lives. The assessor's views were "substantially on the same footing as the opinion evidence of expert witnesses" (*King Emperor v. Tirumal Reddi* [1901] ILR 24 Mad 523, §.15). The practice was imported wholesale to Africa, where, Ibhawoh (2013) writes, it was "construed as a 'safeguard to natives' accused of crimes and as a guarantee to them that their customs and traditions are not being misunderstood or misapplied by an 'alien court'" (p. 184). The alternative, it was felt, was to run the risk of "miscarriage[s] of justice in African societies" (p. 184). Thus, when Harry Blagg and Thalia Anthony (2019), in their book *Decolonising Justice*, point toward "Indigenous innovations" such as a new role for Indigenous laws and for "court innovations" such as "Indigenous courts and Indigenous narrative reports for sentencing" (p. 19) as banner decolonial strategies, the historian of colonialism is left to wonder whether such thinking is not but further evidence of the productivity of colonial power and the difficulty of escaping its tendency to reproduce

itself in different times and places as progressive innovation (see Marchetti, Toki & Rudin, this volume). Part of that sense of progressive innovation lies, in this case, in the fact that Indigenous sovereignty was denied in Australian settler-colonial settings at the same moment it was being recognized and accommodated within the armoury of colonial penal power in India. This raises the question of whether deploying well-worn colonial penal strategies into new places can ever be decolonizing or whether that appellation here signifies a misrecognition: the master's tools always remain such, despite appearing novel or progressive in an unfamiliar context.

Inclusive: accommodating penal pluralism

Legal pluralism and its corollary, penal pluralism, were important features of British rule in India. They were, in a very real sense, part of what made colonial power effective, efficient, and productive: what made it work. To adopt Foucault's analytic terminology, British acceptance that multiple sovereignties and thus multiple, often layered, legal orders – customary, religious, formal – and their equally variegated spaces of jurisdiction, could all be accommodated under the wide umbrella of British paramountcy created the conditions of possibility for a model of rule that would endure over hundreds of years. What it also did was make colonial power expansive. Further still, by dint of its capacity to accommodate difference and so to encompass endless variety, it also made colonial power difficult to escape.

There are many examples of how this was so in British India and the literature on legal pluralism is especially wide and deep. One example of British allowance of plural jurisdiction, legal domain, forms of self-policing, adjudication, and parallel penal spheres is the institution of the panchayat. The term panchayat translates roughly as the council of five. Panchayats were understood as a pre-colonial feature of local governance, representing a community at the level of either the village or a caste group. Understanding the role of panchayats in the networks of colonial power is important to discussions about decolonizing justice today, for it illustrates the roots of many putatively decolonizing arrangements not only in the deep history of pre-colonial societies but also in the armoury of colonial penal power itself. Two brief examples of panchayat justice will illustrate the way British colonial rule variously enfolded, allowed or negotiated with these tribunals, their spheres of sovereign authority, their legal orders, and their powers to judge and punish.

First, panchayat justice was left alone by British authorities to regulate social norms and punish transgressions that lay within what were commonly divided-off personal and religious domains of 'native' society. In a famous essay titled "Chandra's death", Ranajit Guha (1987) intricately reconstructs the subaltern worlds of Indian villagers, in this case, the Bagdi community who "belonged to that nether end of the colonial society where extreme poverty and abject pollution converged to make them amongst the lowest in class and caste" (p. 142). While the death of Chandra – the result of a botched attempt at medicinal abortion following an illicit sexual union – had attracted the notice of colonial authority (a case registered, depositions taken and so on), beyond that, the love affair had implications for what Guha terms "the government of sexuality […] [which] lay within the jurisdiction of *samaj* (a term in which the institutional aspects of society and their moral and political attributes are happily collapsed)" (p. 149). In this matter, the panchayat held jurisdiction and it was to the question of punishment it would address itself. The most serious of these punishments – jatmara, meaning destruction of caste – would lead to an outcasting that placed an individual or family group beyond the social pale. Avoidance of such a catastrophe meant that in most cases transgressions were not prosecuted – in the British fashion – but the offence was instead declared by a connected party and a ritualized punishment – byabostha – pre-emptively sought. This party could either be the

offender or, in Chandra's case, her family since her offence against rules of custom and shastra engaged the honour not just of her alone but all her relatives together. In this way, village and caste panchayats played an important role in the lives of Indians, functioning deep in the strata of their society, regulating social norms the colonial state either feared to tread upon or regarded as unnecessary to meddle with.

Other kinds of panchayats could be accommodated differently, as intermediaries. A second example concerns the crime of cattle theft and the institution of the cattle theft panchayat. In Punjab, as elsewhere across India, cattle constituted an important store of wealth and their value was recognized as a form of moveable property. This led to offences against cattle being addressed primarily within the frame of colonial property law. Of course, the law of property, and in particular notions of individual property rights and the individual as a rights-bearing legal subject have long been recognized as one of the great axes upon which the British sought to reorganize Indian society. Yet, while a cattle beast might well have an individual owner, the lands it grazed upon were often village commons. In Punjab, cattle theft was thus understood as an offence not only against the individual but so too against the village community – a foundational unit of 'native' self-governance. As Gilmartin (2003) observes, "the theft of cattle from common lands was read not simply as an attack on individual property, but also as a challenge to the collective proprietary rights of the village" (p. 55). In such circumstances, cattle theft panchayats – informally assembled councils of affected or influential men – would be drawn upon to negotiate and broker deals for the return of cattle from thieves or their receivers. On the one hand, this system of parallel justice was frowned upon by police, magistrates, and other functionaries of the colonial state, not least for its lack of punitive force. In the end, however, the two came to coexist partly by dint of a demarcation of jurisdiction that reflected Indians' emerging visions of the colonial state as an entity that not only taxed but also conferred entitlements. Where animals were stolen from barns or enclosures – domains understood to fall within the jurisdiction of the state and its protection of individual subjects and their property – police would quickly be notified. The existence of cattle panchayats thus marked out the presence of a different and quite separate 'native' domain wherein norms, proprietary rights, and customary modes of resolution would be left to prevail.

Flexible: balancing universalism and particularity

The extensive leaving-alone that characterized colonial governance and that allowed multiple and often layered spaces of 'native' jurisdiction presented a key challenge to British thinking about justice. How, as a supposedly paramount authority, might it at once leave alone while also regulating enough to ensure that decisions and punishments did not cross certain bright lines of principle related to justice, liberty, individual rights, and so on? The solution was captured in the phrase 'justice, equity and good conscience'. Its origins in India date to the administration of Bombay Island in the 1660s, but its attractions, at that time, lay in its more distant origins in Roman and Canon law. Officers of the East India Company, which leased the island from the British Crown, sought a form of legal arrangement that could be applied to nationals of diverse sorts in the island entrepôt: local Hindus, Muslims, and Parsis, as well as merchants of various countries who traded and interacted with Indians and British alike. Natural justice, equity and conscience were viewed as universal standards by which people of all kinds governed themselves and as such a system of Roman civil law – something sufficiently flexible to encompass all conduct, which was then regulated by these standards – was deemed suitable to the needs of the island.

Derrett (1963) illustrates the nature of the problem and the manner of its resolution with an example of 'natives' accused of offences against commercial goods in the port; behaviours that in England would constitute crimes and be punishable by law:

> but there was no pretence that English statute law applied to Hindus and Muslims domiciled on Bombay Island, for that had never been applied to them. However it was an offence at natural law, and perhaps […] at divine law; and therefore the natives were as amenable to it as their colleagues under Portuguese rule were amenable to the natural law in the matter of certain offences over which the Portuguese courts claimed exclusive jurisdiction.
>
> *(p. 130)*

From these origins, justice, equity, and good conscience moved first to Madras in 1687 and then to Calcutta in 1781. In this first era, it provided a mechanism for importing norms or rules where, in the instant case, statute, custom, or religious personal laws (principally Hindu or Muslim) were all silent. As Indians gravitated increasingly to British courts during the long nineteenth century to resolve all manner of disputes and seek punishment or damages from offending parties, this ancient formulation provided a means of bridging areas of uncertainty, controlling judicial arbitrariness and tying processes of justice to what were imagined to be universal norms applicable to Britons and Indians alike.

Yet, this was not the only way in which the formulation was applied, for as the nineteenth century wore on it was increasingly interpreted as creating a repugnancy test; something akin to what today we might imagine as a human rights standard. Thus, for example, under s.5 of the Punjab Laws Act 1872, for a wide array of civil matters as well as issues of "religious usage or institution" the Act directed that "the rule of decision shall be: (a) any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience". Practices repugnant to natural justice, equity or good conscience would have been found in a wide variety of customary practices such as, for example, the betrothal of girl-children (later dealt with legislatively through the Age of Consent Act 1891 and the Child Marriage Restraint Act 1929).

The work done by justice, equity, and good conscience as a repugnancy test, however, was not to provide a means for British courts that struck down practices as repugnant to modify or modernize those 'native' customs. These remained strictly an area of purely Indian jurisdiction. Indeed, this demarcation between formal and customary domains was something repeatedly emphasized by courts both in India and in Africa, to where the formulation was extended and where it remains law in many places today (Akamba & Tufuor, 2011; Caplan, 1964; compare Moore, 1992). Much like the work done by human rights norms today as they intersect with customary or alternative justice systems, the test was instead intended to create a kind of coherence between indigenous sovereign domains and their norms, rules, and penalties, and the realm of formal colonial law.

Conclusion

This chapter has turned a critical eye to colonial penalities in British India. Reading the archive against the grain of contemporary thought that presents colonial power as but pure repression, it has instead sought to understand why colonial power and its legal and penal forms have proven so durable and so difficult to escape. The story told in this chapter is one seldom heard. But I hope it may also go some way toward explaining why so many so-called decolonizing initiatives appear remarkably like standard colonial forms of justice, law, and penality. In the course

of this exercise, I have also attempted to follow a maxim Foucault (2007) gave while describing liberal governmentality. "What is involved", he proposed, "is precisely not taking either the point of view of what is prevented or the point of view of what is obligatory, but standing back sufficiently so that one can grasp the point at which things are taking place, whether or not they are desirable" (Foucault 2007, p. 46). Thus, none of what has been described in this chapter passes judgement on whether these features of colonial power in India were good or bad. The point has instead been to understand how it all worked and what made it workable for so long.

What this exercise has revealed is a wide array of connected legal and penal forms that tolerated, accommodated, and flexed in the face of Indian difference. These included the acceptance of indigenous sovereign spaces and associated legal jurisdictions and systems of norms, indigenous institutions and practices for judging and punishing, as well as recognizing important intracommunal hierarchies, the special demands of religion, and so on. It is these sorts of features, I have argued, that rendered colonial penal power both productive and durable. When considering the striking resemblance between these colonial forms and many supposedly *de*colonizing justice initiatives, two questions appear. First, what is the target of such reformism? Is it a whole system of thought? Is it only certain repressive practices deemed colonial or seen as colonial legacies? Or is it perhaps the apparatus of the modern nation-state? The latter is particularly pertinent, for as Gayatri Spivak (2021) has observed, in places like India, "[p]ostcoloniality celebrates a national liberation based on an orientalist nationalism" (p. 27). Recent work in postcolonial India on problems as diverse as the penalization of nomadic communities (Brown et al., 2021), the postcolonial state's erasures of Indigenous title (Kapila, 2022) and the exclusion of victimized communities from 'decolonizing' penal reform initiatives (see Sahgal, this volume) all contain elements of repression. Yet, is that which represses in modern India only the legacies of colonial power? Or do we partly conflate nation-states – whether in Africa, Oceania, South Asia or elsewhere – with their genealogical forebears in the colonial state? In other words, has the great centralization of powers of legal jurisdiction and powers to punish that we find in contemporary nation-states – something most colonial states would never have desired nor even thought appropriate (Benton, 2001; Burbank & Cooper, 2013) – been the driver that allows older colonial approaches to appear so novel today that they may be imagined as decolonizing in character? Is the target, therefore, what we might term the colonial-contemporary, or is the target the centralizing, homogenizing, institutionally focused modern nation-state? Untangling the colonial from the national may offer a useful perspective on the problems we face in the penal domain as elsewhere across the justice space.

Secondly, what does the similarity so many decolonizing initiatives have with standard colonial forms and practices reveal about our ability to think beyond, or get outside, colonial penal power? For as much as colonial power was exercised in different ways in different places, overall it addressed itself to one common problem: that of recognizing and ruling in the face of difference. Ibhawoh (2013) has succinctly observed that "[t]o endure through its expansionist encounters, British imperialism had to be responsively accommodating" (p. 180). It is this huge flexibility to incorporate and accommodate, and from there to manage disparate peoples, lifeways, laws, norms, jurisdictions, and powers to judge and to punish, that marked the productiveness of colonial power. Thus, colonial penality was more than just a bundle of repressions. Indeed, these might better be thought of as the striking and immediately visible top of a colonial iceberg, the remainder of which was submerged at various depths into Indian society. In the face of this larger, albeit less visible, legal and penal formation, it is difficult to imagine what decolonization should entail if it is not to entail any of these deeper arrangements that provided space for different communities to rule themselves, at least at some level. If all of this is to be encompassed within an overarching societal order, which today we often frame within

a language of human rights that itself has deep roots in colonial thought and practice, then the colonial and decolonial seem to increasingly blur.

This returns us to the larger and perennial problem of whether it is possible for a movement constituted in a negation – such as anti-colonialism or decolonization – to offer an alternative that is not ultimately parasitic upon that which it seeks to destroy. G.L. Lumen used the term "parasitic" (p. 32) in his translator's introduction to Carl Schmitt's (2006) *The Nomos of the Earth*. In *Nomos* and other writing, Schmitt's diagnosis of colonialism is remarkably aligned with that of decolonizers today, despite them probably being quite uncomfortable bedfellows. He diagnosed the issue at hand as the problem of land appropriation, but he was pessimistic about anti-colonialists' capacity to offer a genuine alternative. Partha Chatterjee (1986) similarly observed of anti-colonial, nationalist thought in India that it was ultimately a "derivative discourse", unable to escape "the very structure of power [its] thought seeks to repudiate" (p. 38). The critiques of Schmitt and Chatterjee go to the heart of questions about decolonizing justice, for they contrast ultimately derivative rearrangements with the monumental task of imagining true alternatives. Schmitt (2006) argued that anti-colonialism, limited in vision by its focus on negation – negation, that is, of a European spatial order established since the Age of Discovery – "does not have the capacity to forge the beginning of a new spatial order" by which our whole planet will be organized (p. 31). Instead, he suggests, anti-colonialism simply contests the dispensation arrived at under the "three great processes" that have made the modern world: "[land] appropriation, distribution, and production" (Schmitt, 2006, p. 327). For as long as decolonization retains its negating prefix *de-* it too leaves itself entrapped within a backwards-looking debate whose terms were long ago marked out in the spatial order created by European imperialism. I am inclined instead to look forward, to look ahead. To seek in penal spaces not pathways of return but the possibilities of hybrid futures whether or not contemporary 'innovations' have long histories of their own in colonial settings. Approaching such hybridity from a slightly different direction, Cunneen (2021) nevertheless, I think, recognizes the inevitability of something similar when he speaks of "outcomes [that] may be indicative of new hybrid justice spaces that are neither completely decolonised nor completely colonial, but rather reflective of a point in time, incomplete in themselves in [an] essentially enduring political and historic conflict" (p. 42).

References

Akamba, J., & Tufuor, I. (2011). The future of customary law in Ghana. In J. Fenrich, P. Galizzi & T. Higgins (Eds.), *The future of African customary law* (pp. 202–225). Cambridge University Press.

Aliverti, A., Carvalho, H., Chamberlen, A., & Sozzo, M. (2021). Decolonizing the criminal question. *Punishment and Society*, *23*, 297–316.

Anderson, C. (2004). *Legible bodies: Race, criminality and colonialism in South Asia*. Berg.

Arnold, D. (1994). The colonial prison: Power, knowledge and penology in nineteenth-century colonial India. In D. Arnold & D. Hardiman (Eds.), *Subaltern studies VIII: Essays in Honour of Ranajit Guha* (pp. 148–187). Oxford University Press.

Benton, L. (2001). *Law and colonial cultures: Legal regimes in world history, 1400-1900*. Cambridge University Press.

Black, L., Seal, L., Seemungal, F., Malkani, B., & Ball, R. (Eds.). (2021). Legacies of empire [Special issue]. *Punishment and Society*, *23*(5).

Blagg, H., & Anthony, T. (2019). *Decolonising criminology: Imagining justice in a postcolonial world*. Palgrave Macmillan.

Braatz, E., Bruce-Lockhart, K., & Hynd, S. (Eds.). (2022). African penal histories in global perspective [Special issue]. *Punishment and Society*, *24*(5).

Brown, M. (2014). Penal Power and Colonal Rule. London: Routledge.

Brown, M., Jadhav, V., Raghavan, V., & Sinha, M. (2021). Southern penal spaces: A study of hunting nomads in postcolonial India. *Punishment and Society*, *23*, 675–696.
Burbank, J., & Cooper, F. (2013). Rules of law, politics of empire. In L. Benton & R. Ross (Eds.), *Legal pluralism and empires, 1500-1850* (pp. 279–293). New York University Press.
Caplan, G. (1964). The making of 'natural justice' in British Africa: An exercise in comparative law. *Journal of Public Law*, *13*, 120–134.
Chatterjee, P. (1986). *Nationalist thought and the colonial world: A derivative discourse*. Zed Books.
Chatterjee, P. (1993). *The nation and its fragments: Colonial and postcolonial histories*. Princeton University Press.
Cooper, F., & Stoler, L.A. (Eds.) (1997). *Tensions of empire: Colonial cultures in a bourgeois world*. University of California Press.
Cunneen, C. (2021). Cartographies of place: Being, country and Indigenous justice. In A. Harkness & R. White (Eds.), *Crossroads of rural crime: Representations and realities of transgression in the Australian countryside* (pp. 31–44). Emerald Publishing.
Derrett, D. (1963). Justice, equity and good conscience. In J.N.D. Anderson (Ed.), *Changing Law in Developing Countries* (pp. 114–153). Routledge.
Elkins, C. (2022). *Legacy of violence: A history of the British empire*. The Bodley Head.
Foucault, M. (1977). *Discipline and punish: The birth of the prison*. Allen Lane.
Foucault, M. (2007). *Security, territory, population: Lectures at the college de France 1977-1978*. Palgrave Macmillan.
Gleig, Rev. G.R. (1841). *Memoirs of the life of the of the Right Hon Warren Hastings, First Governor-General of Bengal* (Vol. 1). Richard Bentley.
Guha, R. (1987). Chandra's death. In R. Guha (Ed.), *Subaltern studies V: Writings on South Asian history and society* (pp. 135–165). Oxford University Press.
Halhed, N.B. (1776). *A code of Gentoo laws, or ordinations of the pundits*. Reprinted 2013. Cambridge University Press.
Heath, D. (2021). *Colonial terror: Torture and state violence in colonial India*. Oxford University Press.
Ibhawoh, B. (2013). *Imperial justice: Africans in empire's court*. Oxford University Press.
Kapila, K. (2022). *Nullius: The anthropology of ownership, sovereignty, and the law in India*. Hau Books.
Kolsky, E. (2005). Codification and the rule of colonial difference: Criminal procedure in British India. *Law and History Review*, *23*, 631–683.
Kolsky, E. (2010). *Colonial justice and British India: White violence and the rule of law*. Cambridge University Press.
Kumar, K. (2021). Colony and empire, colonialism and imperialism: A meaningful distinction? *Comparative Studies in Society and History*, *63*, 280–309.
Liebling, A., Maruna, S., & McAra, L. (2017). *The Oxford handbook of criminology* (6th ed.). Oxford University Press.
McQuade, J. (2021). *A genealogy of terrorism: Colonial law and the origins of an idea*. Cambridge University Press.
Metcalf, T. (2007). *Imperial connections: India in the Indian Ocean arena, 1860-1920*. University of California Press.
Moore, S.F. (1992). Treating law as knowledge: Telling colonial officers what to say to Africans about running 'their own' Native Courts. *Law & Society Review*, *26*, 11–46.
Spivak, G. (2021). How the heritage of postcolonial studies thinks colonialism today. *Janus Unbound: Journal of Critical Studies*, *1*, 19–29.
Tupper, L. (1907). Customary and other law in the East Africa Protectorate. *Journal of the Society of Comparative Legislation, New Series*, *8*, 172–184.

36

Decolonizing criminal law in India

Rishika Sahgal

India was colonized by the British Empire, first indirectly and then directly, from the mid-eighteenth century to the mid-twentieth century. During that time, the foundation of Indian criminal law as it largely continues today was laid down (Asha, 2018; Hussain, 2003, p. 149; Singha, 1998) – the Indian Penal Code 1860 (IPC) contained the bulk of substantive criminal law, while the Code of Criminal Procedure 1898 and Indian Evidence Act 1872 contained the procedural and evidentiary rules applicable in criminal cases. The Code of Criminal Procedure was overhauled in 1973 and the other two statutes remain in force, albeit with many amendments. Institutions to enforce criminal law were also created during that time, including the police and prisons (Anderson, 2000, 2012; Heath, 2021; Kumar, 2018; Sen, 2000; Yang, 1987). The British used criminal law and penal institutions in India as a tool to subdue and manage subjugated populations and territories (Black et al., 2021; Chandavarkar, 1998; Heath, 2021; Hussain, 2003; Sundar & Sundar, 2014) as part of imperial "coercive networks" of institutions and practices (Sherman, 2009, p. 659).

India gained independence from British rule 75 years ago, on 15 August 1947, after a protracted freedom struggle. Thereafter, the British 'went back' to the metropole and Indians began to govern themselves. With this, India was decolonized, as per the *Oxford English Dictionary* (2022) definition of decolonization: "[t]he action or process of a state withdrawing from a former colony, leaving it independent" (n.p.; see also Kennedy, 2016). Today India continues to be plagued by intersecting systems of oppression on grounds of caste, indigeneity, gender, poverty, religion, and political dissent. Academics and activists argue that criminal law and institutions are used to uphold these systems of domination and oppression. Given this context, what does decolonization mean for India today, particularly in the context of criminal law? This is the overarching question I explore in this chapter.

The starting point of my enquiry into these issues occurred in July 2020 when the Ministry of Home Affairs of the Government of India constituted a Committee for Reforms in Criminal Law. The Committee did not release its precise mandate in the public domain but stated that its aim was to undo the colonial foundations of our criminal law. The current status and work of the Committee are shrouded in mystery, but from the information available on its website, it is apparent that the Committee aimed to recommend an overhaul of the Indian criminal justice system. Its functioning has been deeply criticized (Garg et al., 2020;

DOI: 10.4324/9781003176619-40

Surendranath & Pathak, 2020). The last time the government embarked on a similar criminal reform endeavour "to bring [criminal laws] in tune with the demand of the times and in harmony with the aspirations of the people of India" (Malimath, 2003, p. 3), it was met with similar criticism (see Amnesty International, 2003). Given the purported aims of these criminal law reform exercises, what does it mean to decolonize criminal law in India? This chapter explores what decolonization of criminal law ought to mean in India so that it is not just a metaphor (Tuck & Yang, 2012).

The second part of this chapter raises the concern that 'decolonization' has sometimes been used as a means to further Hindutva or Hindu nationalism in India, to make arguments to revert to a mythical Hindu past. The use of the language of decolonization masks a Hindu nationalist goal in seemingly progressive language. Such weaponization of the language of decolonization is dangerous. It should make us pause to consider whether we should continue to use the language of decolonization in the Indian context, including in the context of Indian criminal law.

Part three of this chapter engages with academic and activist work on decolonization in the criminal justice context, wherein it is understood that there are "considerable continuities in the oppressive character of rule over the colonial/postcolonial divide" (Brown, 2017, p. 189). The section engages with one prominent example of how Adivasis (Indigenous peoples) continue to be subjugated through the definition of criminal wrongs and the criminal process, particularly through habitual offender and other criminal provisions.

Part four of this chapter proposes an understanding of decolonization for the criminal law context in India. It proposes that decolonization ought to be understood in terms of non-domination (Young, 2011) – as the dismantling of systems of domination and oppression that existed in the past and continue in the present, even when Indians now govern themselves, based on a similar logic that operated during colonial rule (Baxi, 2005, 2007; Brown, 2017). It must involve dismantling the use of criminal law to subdue and manage subjugated populations (Black et al., 2021), such as Adivasis, Dalits (subaltern caste communities oppressed under the caste system of graded inequality endemic to the Indian subcontinent) (Ambedkar, 1935) as well as gendered and religious subalterns and political dissenters.

Finally, Part five of this chapter focuses on the process of decolonization. It argues that decolonization ought to take place through the participation of subaltern castes, genders, and religious and Indigenous peoples, taking their epistemic contributions seriously. Through this process, current laws and institutions may be entirely abolished or radically re-imagined.

Decolonization and Hindutva

In the criminal law context, the Indian government has prefaced several reform proposals as exercises in 'decolonizing' criminal law (Committee for Reforms in Criminal Law, 2020; Malimath, 2003). It is important to interrogate such calls. At best, the government's use of the language of decolonization is simply empty and rhetorical, signifying nothing. The Malimath Committee's report neither explains how it proposes to decolonize criminal law nor do its substantive recommendations challenge the use of criminal law to uphold structures of oppression and domination (Amnesty International, 2003). Similarly, the Committee for Reforms in Criminal Law 2020 has not indicated how it proposes to decolonize criminal law. [while we await its conclusions], its method has been criticized, inter alia, for failing to ensure the participation of subalterns in the reform exercise (Garg & Sahgal, 2020).

Worse still, the deployment of the language of decolonization may be a means to consolidate Hindutva or Hindu nationalism (Jaffrelot, 2009). The terminology of decolonization is

sometimes adopted in opposition to the West and in favour of 'Indian culture and tradition', involving an essentialization of Indian culture. It does not interrogate whether things ascribed to the 'West', such as subaltern sexuality, are equally native to India (Nandy, 1988) or whether there really is a stark division between the 'West' and 'Indian culture'. After the colonial encounter and in the interconnected world in which we live today, the search for a 'pure' or 'authentic' Indian culture may be futile (Prakash, 1990). Nor does it ask whether aspects of Indian culture and tradition involve the oppression and domination of people on grounds of gender, caste, indigeneity, and religion (Agnes, 2001; Ambedkar, 1935). Moreover, essentialist views of culture are often exclusively in Hindu terms, emphasizing a Hindu past in a subcontinent that has been multireligious, multilingual and multicultural for centuries; and where 'Hinduism' is seen in totalitarian terms, glossing over the many different and often conflicting beliefs and practices within the wide ocean that is 'Hinduism' (Nandy, 1998; Prakash, 1990). Kapur (1999) writes:

> In India, the reactionary potential of substantive or real cultural essentialism can be found in the Hindu Right's efforts to construct a history of Indian culture based on the idea of one god, Ram, one temple, in Ayodhya, and one people, the Hindus.
>
> *(p. 358)*

In this context, the terminology of decolonization has been weaponized to achieve this vision of the Hindu Right – that of a 'Hindu' India, which is seen as having been colonized by Muslim rulers and the British and which must now be 'decolonized' to revert to a mythical, essentialized 'Hindu' past.

These tensions are highlighted by the culture wars unleashed on the queer movement in India, and more narrowly, its fight against criminality under the IPC. The policing of subaltern sexuality through criminal law in India began during British colonial rule, through section 377 of the IPC (Human Rights Watch, 2008; Kannabiran, 2008; Narrain & Bhan, 2005). What had earlier been regulated by social norms was policed by the state through the threat of criminal sanctions (Kannabiran, 2008). Section 377 of the IPC proscribed "unnatural" sex or "carnal intercourse against the order of nature". The very wording of the provision stigmatized sexual subalterns and upheld hetero-patriarchal notions of 'natural' sex (Menon, 2005). The colonial experiment by the British Empire in India in policing people and their sexuality was exported both to other colonies (Rao, 2020) and back to the metropole so that subaltern sexuality was also criminalized in the British metropole (Bubb, 2009). The judicial interpretation of section 377 in cases coming before the courts in colonial times reinforced the subjugation of sexual subalterns, and this continued in independent India, so that "[f]or over 148 years, the judiciary has consistently used terms ranging from 'despicable', 'abhorred' to 'mental aberration' to describe the homosexual" (Narrain, 2008, p. 73).

When a movement began to create space for subaltern desires in contemporary India, including through the decriminalization of subaltern sexuality, it was met with the ire of the Hindu Right. They claimed that homosexuality was a Western import and therefore against 'Indian culture and tradition' (Bacchetta, 1999; Kapur, 1999, 2018; Rao, 2020). This was a re-reading of history and essentializing of culture (Bubb, 2009; Human Rights Watch, 2008). The same culture wars continued in the courtrooms. In 2009, the Delhi High Court held that the criminalization of consensual same-sex relations through section 377 of the IPC was unconstitutional (*Naz Foundation v Government of NCT of Delhi 2009 SCC Online Del 1762*). The comments of retired judge Verma (2009) on the decision epitomize the

essentializing of Indian/Hindu culture and the characterization of subaltern sexuality as an import from the West. He said:

> A reference to depiction of homosexuality or unnatural sex exhibited at Khajuraho etc. is to be seen as a record of such an aberration prevalent even in those times, and not as an accepted part of our ancient culture. What is accepted now in the West is not to be incorporated automatically in our culture and ethos. Let us not ape the west in everything! *(n.p.)*

The Delhi High Court's decision was appealed before the Supreme Court by religious groups who also argued that subaltern sexuality was a Western import (Kapur, 2013). The Supreme Court upheld the appeal, re-criminalizing subaltern sexuality through section 377 of the IPC (*Suresh Kumar Koushal v Naz Foundation (2014) 1 SCC 1*) until the provision was finally read down in 2018 by a five-judge bench of the Supreme Court (*Navtej Singh Johar v Union of India (2018) 10 SCC 1*).

Through this example, we can see that decolonization carries with it the danger that it will be deployed by the Hindu Right to pursue Hindu nationalist goals while couching them in seemingly progressive language. At the same time, decolonization also carries the danger of painting the past as a time of liberation for the queer community and others when this may not have been the case. The language of decolonization may be deployed to extinguish the possibility that "non-normative desire might have been stigmatized in the precolonial past, even if in ways that were distinct and less institutionalized than those introduced by colonial modernity" (Rao, 2020, p. 19). This should make us pause to consider whether we should continue to use the language of decolonization in the Indian context, including in the context of Indian criminal law. We may want to consider using alternate vocabularies to undo the continuing legacy of colonization in our criminal laws and elsewhere, and its interaction with other systems of oppression and domination.

Whether we continue to use the term decolonization or its alternatives, we need to be clear about what this means in the Indian context. The next two parts of this chapter propose an understanding of decolonization in the criminal law context in India.

The oppression of subalterns through criminal law

This part takes seriously the call that the colonial experience and its ongoing effects are critical to an understanding of how criminal justice systems interact with subalterns today (Cunneen & Tauri, 2016). In India, calls for decolonizing criminal law are not new. There is a vibrant activist and academic tradition of questioning the colonial foundations of Indian criminal law. Here, I engage with the literature on criminal law directed against Adivasi communities. Given the focus on Indigenous groups within decolonization literature, it is important to engage with the use of criminal law to subjugate Indigenous groups in India and what decolonization ought to mean in this context. At the same time, in the context of India, other structures of oppression and domination, not limited to the Adivasis, have been upheld through the use of criminal law and penal institutions. Continuing in the same vein as under the British Empire, this involves the oppression and domination of subaltern groups through the force of criminal law, processes, and penal institutions. Sedition provisions (section 124A of the IPC) are a prominent example, adopted by the British Empire to curb political criticism and the burgeoning independence struggle against its rule and now used by successive national and state governments in India to curb dissent (Bhatia, 2016; Kannabiran, 2004, p. 19; Rangarajan, 2022; The Wire, 2021).

Hence, the decolonization of criminal law in India requires us to pay attention to the use of criminal law to uphold systems of oppression and domination of Adivasis as well as others, such as those on grounds of caste, gender, sexuality, religion, and political opinion. It also requires us to pay attention to systems of oppression and domination not limited to colonization and to pay attention to how multiple systems of power are sustained in post-colonial India.

Criminalization of Adivasis

Adivasi translates into English as 'the original inhabitants'. The political term was coined by Adivasi activists to bring together different Indigenous 'tribes' in India in a collective struggle (Bijoy et al., 2010). Article 342 of the Indian Constitution recognizes various Indigenous 'tribes' as Scheduled Tribes, notified as such by the government of India. The government contests the use of the term 'Indigenous' for the Scheduled Tribes, claiming that all people are equally Indigenous in India (Sundar, 2011).

Many Adivasi communities in India were criminalized through the Criminal Tribes Act 1924 and its predecessor statutes enacted by the colonial British administration. Under these statutes, entire tribes were notified as criminal if they were considered to be "addicted to the systematic commission of non-bailable offences" (section 2 of the Criminal Tribes Act 1871) and were forced to live in settlements and subjected to a system of surveillance and control (Brown, 2001; Radhakrishna, 2001; Singh, 2010). Their cultural practices and physical attributes, when viewed through the lens of a colonial and casteist episteme, were seen as evidence of their criminality (Bhukya, 2010; Radhakrishna, 2001). This was connected with the criminalization of the British and Irish poor, migrant, and nomadic communities (Radhakrishna, 2008). Criminal law was used to oppress poor and migrant communities both in the colony and in the metropole (Banerjee, 2009). In fact, poor and itinerant peoples were compared with each other, and considered as 'primitive' and 'savage', in both the colony and the metropole (Brown, 2001). For example, it was explicitly recommended that the London poor ought to be governed as if they were a colony and not part of the same population as the upper class in London (Philip, 2002; Radhakrishna, 2008).

The criminalization of Adivasi communities has continued in independent India (Brown, 2017). Although the Criminal Tribes Act 1871 was repealed in 1952, and Adivasi communities have been officially 'de-notified' from their previous declaration as inherently criminal (Abraham, 1999; D'Souza, 1999), they continue to be treated as criminals (Brown et al., 2021) both by society and under the law. Arrests without warrants, long periods of detention, recording of photographs and fingerprints for surveillance, and custodial torture of members of de-notified tribes continue to be the norm (Vishwanathan, 2002). Other criminal provisions are used to continue the oppression of Adivasi communities through the force of criminal sanctions, including 'habitual offender' provisions (Satish, 2011) and seemingly neutral legislation that criminalizes Adivasi sources of livelihood and cultural practices, such as the criminalization of beggary that sanctions an itinerant way of life (Ramanathan, 2008) and prohibition of the production of 'country liquor' by Adivasi and low-caste communities (Gajbhiye, 2021; Pradhan et al., 2021).

Criminal provisions and processes, including sedition and terrorism offences, have been used to harass and persecute both Adivasi activists, who are striving to retain access to forests and land, and the upper-caste lawyers, journalists, and activists who lend them professional and political support (Choudhury, 2018). Adivasi activism often conflicts with the interests of mining and other industrial corporations supported by the state to promote development defined on their terms (Sundar, 2007; Sundar & Sundar, 2014). For example, Adivasi activist Soni Sori

was charged with sedition in 2011. She was taken into custody where she faced sexual violence and other forms of torture (Arya, 2016) and was eventually acquitted by the trial court, but after an 11-year ordeal (The Wire, 2022). This, again, is a continuity from colonial times, when Adivasi resistance and rebellion against the British administration and especially the recasting of patterns of ownership and rights in common resources hitherto accessible to the Adivasis was controlled through a range of different means, including through the violence of the police and the use of criminal laws (Sundar, 2007).

The decolonization of criminal law, then, remains incomplete. Although India no longer remains a British colony and although many of the specific British statutes used to control Adivasi communities during British colonial rule have been repealed, criminal law continues to be used to oppress and dominate Adivasi communities.

Colonization, in this context, can be understood to be about the social, economic, and political repression of Adivasis and other poor and itinerant communities through criminal law. Entire tribes were stigmatized as inherently and hereditarily criminal; deprived of their itinerant way of life, sources of livelihood, and access to resources used in common; and were subjected to criminal sanctions and penal control (Brown, 2015; Radhakrishna, 2001). Decolonization, then, ought to be about highlighting and dismantling the intersecting systems that lay beneath such prejudicial attitudes and penal practices, including capitalism, ethnic discrimination against itinerant communities in the British metropole and Ireland, and caste discrimination against the Adivasis in India. Decolonization of criminal law must mean the dismantling of criminal laws and penal institutions so that these do not uphold the oppression and domination of Adivasi communities. In Part five, I will argue that the process of decolonization must take place through the participation of Adivasis and other groups oppressed by criminal law and institutions so that they decide the details of what decolonization will look like (Asadullah, 2021).

The meaning of decolonization

This chapter engages with the "particularities" of colonization (Tuck & Yang, 2012) and its relation with criminal law in India. The chapter tries to think through those particularities to conceptualize the decolonization of criminal law in and for India. Criminal law was, under the British colonial endeavour, used to control, oppress, and subjugate the bodies and collective movements of people in India (Chandavarkar, 1998; Kannabiran, 2004). Similarly today, criminal law, processes, and penal institutions in independent India continue to subjugate the bodies and collective movements of caste, Indigenous, gender, religious, sexual and political subalterns in India. Decolonization of criminal law in India must involve the dismantling of criminal law so that it is no longer used as a tool to repress subalterns, including the Adivasi, and also Dalits, women, Muslims, queer and transgender people, and political dissenters, among others (Baxi, 2005; Kannabiran, 2008).

Such an understanding of decolonization does not reduce it to a metaphor for all social justice causes. It recognizes how the British colonial enterprise in India used criminal law and tries to strike at that use of criminal law. Criminal law was used to subjugate the Adivasi and also other peoples to enable and ease colonial rule. In today's India, criminal law continues to be used against the Adivasi and other subalterns, including Muslims and political dissenters who challenge the intersecting interests of capital and Hindutva. Decolonization, in this context, requires the dismantling of criminal law for such ends. This may mean the abolition of criminal law as we know it or its radical reimagining.

The process of decolonization

This part focuses on the process of decolonization. The focus on process, rather than constructing the ends of decolonization, is based on the insight that decolonization is an action – a verb and not an end-state. It is an undoing, a dismantling, a critical praxis of demolishing the structures of domination and oppression upheld through criminal laws, processes, and penal institutions. The colonized must have the right to perform this action so that they are the decolonizers (Etherington, 2016; Fanon, 2004). Decolonization cannot take place without the participation of those who face the brunt of colonization. In India, those oppressed and dominated by systems upheld by criminal law, including caste, capitalism, hetero-patriarchy, and Hindutva, must be able to participate in the process of decolonization.

In the previous part, I argued that decolonization must involve the dismantling of the use of criminal laws to uphold systems of oppression and domination. Oppression and domination have material/economic and social/status dimensions, alongside the denial of political participation (Fredman, 2016; Young, 2011). It includes the deprivation of subalterns from economic means and upholds economic systems of domination and economic power relations that have systematically impoverished subalterns (Young, 2011). It also causes misrecognition harms, including stigmatizing subalterns and subjugating them to prejudice, disdain, and even violence (Fraser & Honneth, 2003; Fredman, 2016). These material/economic, status/recognition, and participation harms are structural (Fredman, 2016) – based on structures of oppression and domination such as patriarchy, the caste system, capitalism, and of course, colonialism. In the context of the Adivasis, their access to land, forests, and resources was recast, or rather expropriated, through colonial law (Sundar, 2007); they were viewed as 'primitive', 'savage' (Sundar, 2007), and hereditarily criminal (Brown, 2001; Radhakrishna, 2001) and were subject to colonial governance and control, including penal control.

Through the participation of subalterns in deciding what we are to do with criminal law – whether we abolish it or radically reimagine it – and to re-think what we understand as criminal wrongs and the means we use to deal with criminal wrongs (perhaps not through penal institutions such as the police and prisons), subalterns begin to undo their oppression and domination through that very process of participation. This also strikes at the misrecognition harms wrought against subalterns when they are viewed in stereotypical terms as incapable of deciding such questions. The participation of subalterns in the process of decolonization takes their epistemic contributions seriously (Asadullah, 2021; Monchalin, 2016). This process of decolonization of criminal laws, processes, and institutions may well lead to the abolition of criminal law as we know it, offering an "alternative vision of responding to social harm to that of Western epistemologies and theories of punishment" (Cunneen & Tauri, 2016, p. 132).

Criminal law reform exercises in India that purport to undo the colonial foundations of Indian criminal laws have been designed to exclude the participation of subalterns (Garg et al., 2020; Garg & Sahgal, 2020). The 2020 reform exercise took place in the middle of the pandemic, with consultations taking place online at a time when only 40 percent of the Indian population actively used the internet (Mishra & Chanchani, 2020), and they took place in English when only 10 percent of India spoke English (Rukmini, 2019). The Committee lacked representation of subaltern castes, classes, genders, and religions (Garg et al., 2020). Such a process of 'reform' cannot be termed decolonial. It does not challenge the systems of oppression and domination upheld by criminal laws that subjugate Adivasis, Dalits, Muslims, gender subalterns, and political dissenters in India. An exercise in decolonizing criminal law in India cannot take place without the participation of subalterns who continue to bear the brunt of criminal law, processes, and penal institutions.

Conclusion

This chapter highlights some key concerns that we must think through when engaging with the issue of decolonization of criminal law in India. It is imagined as an invitation to a conversation, the beginning of a shared enquiry. First, it emphasizes that in the Indian context, the language of decolonization has been weaponized to uphold the structure of oppression and domination that is Hindutva or Hindu nationalism. It has been deployed by Hindutva forces to make arguments to revert to a mythical past that imagines India as a 'Hindu' country, to the exclusion of religious minorities and especially Muslims. It has been used to uphold the caste system and hetero-patriarchy and to impose a homogeneous order on a people that is multilingual, multicultural, and multireligious. Given this context, we must seriously consider whether we want to retain the language of decolonization in the Indian context. Second, the chapter looks at the particularities of colonization in India and its connection with criminal law. It draws on the relevant literature to conclude that criminal law, processes, and penal institutions were used by the British Empire to oppress and dominate people in India and maintain British political and economic interests. After 1947, when India ceased to be a British colony, criminal law, processes, and penal institutions continue to be used to oppress and dominate subalterns. This is highlighted through the case of the Adivasis and it is emphasized that this is also true in the case of other subalterns. In Rao's (2020) words:

> If postcolonial critique is to continue to remain meaningful in the contemporary world, it must do more than simply remind us of the enduring legacies of colonialism. It cannot avoid wading into the messy critical task of determining how responsibility for ongoing oppressions must be apportioned between colonial and postcolonial regimes. It must be attentive to shifts in power, including those that enable formerly colonised states to become colonial in their own right.
>
> *(p. 9)*

This chapter emphasizes that in formerly colonized, post-independence India, criminal law is often used not entirely differently from how it was used when India was a British colony – to curb political dissent and to oppress and dominate subalterns. Third, given these particularities, the chapter proposes that we conceptualize decolonization as an undoing or dismantling of the use of criminal laws, processes, and institutions to uphold intersecting systems of oppression and domination in India, including the caste system, capitalism, hetero-patriarchy and Hindutva. Fourth, we must understand decolonization as an action or process, and emphasize the participation of subalterns who face the brunt of criminal laws, processes, and penal institutions as the decolonizers. Through this process of decolonization led by subalterns, we may radically reimagine or abolish criminal law as we know it in India.

References

Abraham, S. (1999). Steal or I'll call you a thief: 'Criminal' tribes of India. *Economic and Political Weekly*, *34*(27), 1751–1753.

Agnes, F. (2001). *Law and gender inequality: The politics of women's rights in India*. Oxford University Press.

Ambedkar, B. (1935). *Annihilation of caste* [Speech]. https://ccnmtl.columbia.edu/projects/mmt/ambedkar/web/readings/aoc_print_2004.pdf

Amnesty International. (2003). The (Malimath) Committee on Reforms of Criminal Justice System: Premises, politics and implications for human rights. https://www.legal-tools.org/doc/70d1c6/pdf/

Anderson, C. (2000). *Convicts in the Indian Ocean: Transportation from South Asia to Mauritius, 1815–53*. Macmillan.

Anderson, C. (2012). *The Indian uprising of 1857–8: Prisons, prisoners and rebellion*. Anthem Press.
Arya, D. (2016, March 22). Soni Sori: India's fearless tribal activist. *BBC News*. https://www.bbc.co.uk/news/world-asia-india-35811608
Asadullah, M. (2021). Decolonization and restorative justice: A proposed theoretical framework. *Decolonization of Criminology and Justice*, *3*(1), 27–62.
Asha, S.A. (2018). Decolonizing criminal law: A critical appraisal. *Commonwealth Law Bulletin*, *44*(4), 652–667.
Bacchetta, P. (1999). When the (Hindu) nation exiles its queers. *Social Text*, *61*, 141–166.
Banerjee, S. (2009). *The wicked city: Crime and punishment in colonial Calcutta*. Orient Blackswan.
Baxi, U. (2005). Postcolonial legality. In H. Schwarz & S. Ray (Eds.), *A companion to postcolonial studies* (pp. 540–555). Blackwell Publishing.
Baxi, U. (2007). Failed decolonisation and the future of social rights: Some preliminary reflections. In D. Barak-Erez & A.M. Gross (Eds.), *Exploring social rights: Between theory and practice* (pp. 41–56). Hart Publishing.
Bhatia, G. (2016). *Offend, shock or disturb: Free speech under the Indian constitution*. Oxford University Press.
Bhukya, B. (2010). *Subjugated nomads: The Lambadas under the rule of the Nizams*. Orient BlackSwan.
Bijoy, C., Shankar, G., & Khanna, S. (2010). India and the Rights of Indigenous Peoples. https://aippnet.org/wp-content/uploads/2021/06/India-rights-indigenous-peoples-AIPP2010.pdf
Black, L., Seal, L., Seemungal, F., Malkani, B., & Ball, R. (2021). Introduction: Legacies of empire. *Punishment & Society*, *23*(5), 609–612.
Brown, M. (2001). Race, Science and the Construction of Native Criminality in Colonial India. *Theoretical Criminology*, *5*(3), 345–368.
Brown, M. (2015). *Penal power and colonial rule*. Routledge.
Brown, M. (2017). Postcolonial penality: Liberty and repression in the shadow of independence, India c.1947. *Theoretical Criminology*, *21*(2), 186–208.
Brown, M., Jadhav, V.K., Raghavan, V., & Sinha, M. (2021). Imperial legacies and southern penal spaces: A study of hunting nomads in postcolonial India. *Punishment & Society*, *23*(5), 675–696.
Bubb, A. (2009). Blustering Sahibs and section 377. *Economic and Political Weekly*, *44*(35), 25–28.
Chandavarkar, R. (1998). *Imperial power and popular politics: Class, resistance and the state in India, c. 1850–1950*. CUP.
Choudhury, C. (2018, September 3). If you raise questions, you are anti-government, anti-national: Adivasi-rights activist Stan Swamy on the Bhima-Koregaon crackdown. *The Caravan*. https://caravanmagazine.in/government-policy/interview-adivasi-rights-activist-stan-swamy-bhima-koregaon-crackdown
Committee for Reforms in Criminal Law. (2020). Home. https://criminallawreforms.in/
Cunneen, C., & Tauri, J. (2016). *Indigenous criminology*. Policy Press.
D'Souza, D. (1999). De-notified tribes: Still 'criminal'? *Economic and Political Weekly*, *34*(51), 3576–3578.
Etherington, B. (2016). An answer to the question: What is decolonization? Frantz Fanon's The Wretched of the Earth and Jean-Paul Sartre's critique of the dialectic of reason. *Modern Intellectual History*, *13*(1), 151–178.
Fanon, F. (2004). *The wretched of the earth* (R. Philcox, Trans.). Grove Press.
Fraser, N., & Honneth, A. (2003). *Redistribution or recognition? A political-philosophical exchange*. Verso.
Fredman, S. (2016). Substantive equality revisited. *ICON*, *14*(3), 712–738.
Gajbhiye, S. (2021, November 12). The colonial and casteist undertones of policing in Madhya Pradesh, India. [Blog post]. https://ohrh.law.ox.ac.uk/the-colonial-and-casteist-undertones-of-policing-in-madhya-pradesh-india/
Garg, A., Percival, R., Sahgal, R., Sonavane, N., & Bhatia, U. (2020). Law reform and deliberative democracy: Lessons for the Committee for Reforms in Criminal Laws (India). https://drive.google.com/file/d/1bhhY-o2qxGnU1v61V7m6AUqCHqOC3cLB/view
Garg, A., & Sahgal, R. (2020, August 19). Colonial processes, decolonial aims: On Committee for Reforms in Criminal Law. *The Hindu*. https://www.thehindu.com/opinion/op-ed/colonial-processes-decolonial-aims/article32388008.ece
Heath, D. (2021). *Colonial terror: Torture and state violence in colonial India*. Oxford University Press.
Human Rights Watch. (2008). This alien legacy: The origins of 'sodomy' laws in British colonialism. https://www.hrw.org/sites/default/files/reports/lgbt1208_webwcover.pdf
Hussain, N. (2003). *The jurisprudence of emergency: Colonialism and the rule of law*. University of Michigan Press.
Jaffrelot, C. (Ed.). (2009). *Hindu nationalism: A reader*. Princeton University Press.

Kannabiran, K. (2004). *The wages of impunity: Power, justice and human rights*. Orient Longman.
Kannabiran, K. (2008). The contexts of criminology: A brief restatement. In K. Kannabiran & R. Singh (Eds.), *Challenging the rule(s) of law: Colonialism, criminology and human rights in India* (pp. 451–476). Sage.
Kapur, R. (1999). 'A love song to our mongrel selves': Hybridity, sexuality and the law. *Social & Legal Studies*, *8*(3), 353–368.
Kapur, R. (2013). Multitasking queer: Reflections on the possibilities of homosexual dissidence in law. *Jindal Global Law Review*, *4*(1), 36–59.
Kapur, R. (2018). *Gender, alterity and human rights: Freedom in a fishbowl*. Edward Elgar Publishing.
Kennedy, D. (2016). *Decolonization: A very short introduction*. Oxford University Press.
Kumar, R. (2018). Seeing like a policeman: Everyday violence in British India, c. 1900–1950. In P. Dwyer & A. Nettelbeck (Eds.), *Violence, colonialism and empire in the modern world* (pp. 131–149). Palgrave Macmillan.
Malimath, J.V. (2003). Report of the Committee on Reforms of Criminal Justice System. https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf
Menon, N. (2005). How natural is normal? Feminism and compulsory heterosexuality. In A. Narrain & G. Bhan (Eds.), *Because I have a voice: Queer politics in India* (pp. 37–44). Yoda Press.
Mishra, D., & Chanchani, M. (2020, May 6). For the first time, India has more rural net users than urban'. *The Times of India*. https://timesofindia.indiatimes.com/business/india-business/for-the-first-time-india-has-more-ruralnet-users-thanurban/articleshow/75566025.cms
Monchalin, L. (2016). *The colonial problem: An Indigenous perspective on crime and injustice in Canada*. University of Toronto Press.
Nandy, A. (1988). *The intimate enemy: Loss and recovery of self under colonialism*. Oxford University Press.
Nandy, A. (1998). The politics of secularism and the recovery of religious tolerance. In R. Bhargava (Ed.), *Secularism and its critics* (pp. 321–344). Oxford University Press.
Narrain, A. (2008). 'That despicable specimen of humanity': Policing of homosexuality in India. In K. Kannabiran & R. Singh (Eds.), *Challenging the rule(s) of law: Colonialism, criminology and human rights in India* (pp. 49–77). Sage.
Narrain, A., & Bhan, G. (2005). Introduction. In A. Narrain & G. Bhan (Eds.), *Because I have a voice: Queer politics in India* (pp. 1–36). Yoda Press.
Oxford English Dictionary. (2022). Decolonization. https://www.oed.com/
Philip, K. (2002). Race, class and the imperial politics of ethnography in India, Ireland and London, 1850–1910. *Irish Studies Review*, *10*(3), 289–302.
Pradhan, A., Bokil, A., Bej, S., Gajbhiye, S., & Sonavane, N. (2021). Drunk on power: A study of excise policing in Madhya Pradesh. https://cpaproject.in/wp-content/uploads/2021/08/Drunk-on-Power-A-study-of-Excise-Policing-in-Madhya-Pradesh-CPA-Project-14-Aug-2021-1.pdf
Prakash, G. (1990). Writing post-orientalist histories of the Third World: Perspectives from Indian historiography. *Comparative Studies in Society and History*, *32*(2), 383–408.
Radhakrishna, M. (2001). *Dishonoured by history: 'Criminal tribes' and British colonial policy*. Orient Longman.
Radhakrishna, M. (2008). Laws of metamorphosis: From nomad to offender. In K. Kannabiran & R. Singh (Eds.), *Challenging the rule(s) of law: Colonialism, criminology and human rights in India* (pp. 3–27). Sage.
Ramanathan, U. (2008). Ostensible poverty, beggary and the law. *Economic and Political Weekly*, *43*(44), 33–44.
Rangarajan, L. (2022, February 4). a decade of darkness: Our new database reveals how a law discarded by most democracies is misused in India. *Article 14 – Justice, Constitution, Democracy*. https://article-14.com/post/a-decade-of-darkness-our-new-database-reveals-how-a-law-discarded-by-most-democracies-is-misused-in-india-61fcb8768d15c
Rao, R. (2020). Introduction: The queer politics of postcoloniality. In R. Rao (Ed.), *Out of time: The queer politics of postcoloniality* (Online ed.). Oxford University Press. https://doi.org/10.1093/oso/9780190865511.003.0001
Rukmini, S. (2019, May 14). In India, who speaks in English, and where? *Livemint*. https://www.livemint.com/news/india/in-india-who-speaks-in-english-and-where-1557814101428.html
Satish, M. (2011). 'Bad characters, history sheeters, budding goondas and rowdies': Police surveillance files and intelligence databases in India. *National Law School of India Review*, *23*(1), 133–160.
Sen, S. (2000). *Disciplining punishment: Colonialism and convict society in the Andaman Islands*. Oxford University Press.

Sherman, T.C. (2009). Tensions of colonial punishment: Perspectives on recent developments in the study of coercive networks in Asia, Africa and the Caribbean. *History Compass*, 7(3), 659–677.
Singh, B.P. (2010). *'Criminal' tribes of Punjab: A social-anthropological inquiry*. Routledge.
Singha, R. (1998). *A despotism of law: Crime and justice in early colonial India*. Oxford University Press.
Sundar, A., & Sundar, N. (2014). Introduction: Sovereignty, development and civil war. In A. Sundar & N. Sundar (Eds.), *Civil wars in South Asia: State, sovereignty, development* (chapter 1) (online ed.). Sage. https://dx.doi.org/10.4135/9789351508052
Sundar, N. (2007). *Subalterns and sovereigns: An anthropological history of Bastar, 1854–1996* (2nd ed.). Oxford University Press.
Sundar, N. (2011). The rule of law and citizenship in central India: Post-colonial dilemmas. *Citizenship Studies*, *15*(3/4), 419–432.
Surendranath, A., & Pathak, M. (2020, September 25). Dangerous haste to reform criminal law. *Frontline*. https://frontline.thehindu.com/cover-story/dangerous-haste/article32532770.ece
The Wire. (2021, July 15). SC asks centre why 'colonial era' sedition law is needed 75 years after independence. *The Wire*. https://thewire.in/law/supreme-court-sedition-colonial-era-independence-section-124a
The Wire. (2022, March 16). Chhattisgarh: Rights activist Soni Sori acquitted in 2011 sedition case. *The Wire*. https://thewire.in/rights/chhattisgarh-rights-activist-soni-sori-acquitted-in-2011-sedition-case
Tuck, E., & Yang, K.W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education & Society*, *1*(1), 1–40.
Verma, J.S. (2009, July 24). Justice JS Verma comments on the Naz Foundation Judgment. *Law and Other Things*. https://lawandotherthings.com/2009/07/justice-jsvermas-comment-on-naz/
Vishwanathan, S. (2002, June 8). Suspects forever. *Frontline*. http://www.frontline.in/static/html/fl1912/19120450.htm
Yang, A.A. (1987). Disciplining 'natives': Prisons and prisoners in early nineteenth century India. *South Asia: Journal of South Asian Studies*, *10*(2), 29–45.
Young, I.M. (2011). *Justice and the politics of difference*. Princeton University Press.

37

Transitional justice and decolonization

Augustine SJ Park

This chapter explores paradigmatic transitional justice (TJ) in the context of settler colonies that are also established liberal democracies ('settler democracies'). Settler colonialism refers to "the specific formation of colonialism in which the colonizer comes to stay, making himself the sovereign, and the arbiter of citizenship, civility, and knowing" (Tuck & Gaztambide-Fernandez, 2013, p. 73). Transitional justice refers to a constellation of responses to past mass political violence, including criminal trials, truth commissions, official apologies, and reparations. In paradigmatic TJ, these mechanisms have been employed to achieve liberalization, specifically transitions from illiberal regimes to liberal democracies. In recent decades, settler democracies, especially Australia and Canada, have mobilized mechanisms associated with paradigmatic TJ to address historical wrongdoing against Indigenous peoples. This chapter explores the limitations of paradigmatic TJ in addressing settler colonialism and offers preliminary proposals to 'radicalize' TJ to contribute to decolonization (Park, 2020). Further, I consider how existing alternative conceptions of TJ enrich our thinking in relation to decolonizing TJ.

As Goenpul scholar Aileen Moreton-Robinson (2015) explains, non-white settlers' "right to belong is sanctioned by the law that enabled dispossession" (p. 6). As a racialized settler in Canada, I understand myself to be a beneficiary of settler colonialism. Yet, I write on decolonizing TJ following Jodi Byrd's (2011) (Chickasaw) insight that settlers must "acknowledge their position within empire and […] to make visible what colonialism hides" (p. xxx). Moreover, since settlers are "the source of the problem, it behoves us to be part of the solution" (Bell et al., 2021, p. 4). However, I centre Indigenous theorists of decolonization in my discussion as I strive to follow "Indigenous leadership in critiques of colonialism which they have been offering from lived experience and analysis for centuries" (Davis et al., 2017, p. 396).

A brief overview of transitional justice in settler democracies

The two most fulsome examples of TJ in settler democracies are the mechanisms to address assimilationist and abusive systems to remove Indigenous children from their families and communities in Canada and Australia, both of which have been condemned as genocidal (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, 1997; Truth and Reconciliation Commission of Canada, 2015a).

DOI: 10.4324/9781003176619-41

In both countries, these policies of child removal were part of a larger colonial system and have produced intergenerational impacts.

Canada has made comprehensive use of TJ mechanisms to address the Indian Residential Schools system. Operating between the mid-1800s and late 1990s, Indian Residential Schools were boarding schools funded by the federal government and run by churches with the goal of assimilating Indigenous children. Indian Residential Schools were characterized by dislocation from family and community, poor education, forced labour, malnutrition, preventable disease, as well as widespread psychological, physical, and sexual abuse. In 2006, the Canadian government announced the Indian Residential Schools Settlement Agreement, which comprised individual reparations schemes, collective reparations in the form of funds for healing and commemoration projects, and the establishment of the Truth and Reconciliation Commission. An official apology in Canada's Parliament came after the Indian Residential Schools Settlement Agreement, which followed previous apologies by both government and church figures. Settlements have subsequently been reached with survivors of Indian Residential Schools in the Province of Newfoundland and Labrador and day scholars (Bartlett, 2017; Lilley, 2022).

In Australia, there has been a patchwork of justice measures that have unfolded over almost two decades in response to the Stolen Generations. The term Stolen Generations refers to approximately 100,000 Indigenous children who were forcibly removed from their families and placed with white families or in various institutions from the late 1800s to 1970s. The experience of the Stolen Generations was marked by dislocation from family, efforts at assimilation, racial discrimination, and various forms of abuse (Colsell & Simic, 2021; Henry, 2015). Established in 1995, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (1997) functioned much like a truth commission and resulted in the *Bringing Them Home* report. There have been some symbolic forms of reparations, such as the establishment of National Sorry Day in 1998. However, it was not until 2008 that the Australian Prime Minister delivered an official apology. In August 2021, the Australian government announced an agreement to pay AUD 280 million in reparations to survivors of the Stolen Generations within territories that were under its direct administration (i.e., the Northern Territory, the Australian Capital Territory, and a small area within the state of New South Wales which contained a federal military base and Aboriginal community), amounting to AUD 75,000 per eligible survivor. This follows reparation measures implemented by the individual states of New South Wales, South Australia, and Victoria (Pannett, 2021). In the State of Victoria, the Yoo-rrook Justice Commission (n.d.) was established with the powers of a Royal Commission in May 2021 as "the first formal truth-telling process into historical and ongoing injustices experienced by first peoples in Victoria".

I turn my attention now to the limitations of paradigmatic TJ in addressing settler colonialism. However, the goal of this chapter is not to dismiss TJ which has been implemented in settler democracies. In Australia and Canada, Indigenous peoples have fought for TJ mechanisms. Following Mississauga Nishnaabeg thinker Leanne Betasamosake Simpson (2017), criticisms of TJ institutions:

> are not meant to diminish the anguish of survivors or their families nor the sacrifice, commitment, and struggle of the families and community organizations that have acted out of love to try to bring justice and healing to their own lives and to our communities.
>
> *(p. 238)*

Transitional justice in settler democracies is marked by ambivalence. In Australia, for example, the Stolen Generations inquiry and eventual apology have been praised for drawing attention

to harms perpetrated by the state but criticized for historicizing injustice – relieving settler guilt while positioning Indigenous peoples as perpetual victims (Henry, 2015). Reparation measures in Australia are necessary to address material needs, acknowledge wrongdoing, and give meaning to an otherwise empty apology, but reparations delivered so far by states have been patchy and lacked uniformity (Colsell & Simic, 2021). In Canada, the Truth and Reconciliation Commission has been simultaneously framed as a source of accountability and as means to deny the larger colonial project, force closure on survivors, and redeem Canada's identity as a benevolent peacemaker (Park, 2020). Reparations in Canada have been a site of meaning creation for survivors to "harness and transform the reparative power of their compensation payments" (Petoukhov, 2017, p. 260), but they have also been criticized as (re)traumatizing, insufficient, and bureaucratically problematic. Recognizing the ambivalence of TJ in settler democracies, the goal of this chapter is not to discredit specific TJ mechanisms or peoples' varied experiences of them, but to problematize the relationship of paradigmatic TJ to settler colonialism and to inquire into the possibility of decolonizing TJ.

Settler colonialism

While its central objective is the land, settler colonialism operates through a "logic of elimination" that "destroys to replace" (Wolfe, 2006, p. 388). As Bonita Lawrence (Mi'kmaw) and Ena Dua (2005) explain, elimination takes wide-ranging forms from assimilation to extermination. These varied policies share the common goal of making "Indigenous peoples ultimately disappear as peoples so that settler nations can seamlessly take their place" (p. 123). Settler colonialism, however, not only eliminates to replace Indigenous peoples but also strives to eliminate and replace itself (Park, 2020, p. 5). Veracini (2011) writes that settler colonialism "justifies its operation on the basis of the expectation of its future demise" (p. 3). It

> is characterised by a persistent drive to ultimately supersede the conditions of its operation. The successful settler colonies 'tame' a variety of wildernesses, end up establishing independent nations, effectively repress, co-opt, and extinguish indigenous alterities, and productively manage ethnic diversity. By the end of this trajectory, **they claim to be no longer settler colonial (they are putatively 'settled' and 'postcolonial' […]). Settler colonialism thus covers its tracks and operates towards its self-supersession** [emphasis added].
>
> *(Veracini, 2011, p. 3)*

Self-supersession is the completion or perfection of the settler project. It is an imagined post-colonial future in which the colonizer becomes 'indigenous' to the expropriated land, and the colonized cease to be colonized and are reduced to minorities. In this imagined future, the colonial relation is extinguished and the "Indian problem" has been solved.

Paradigmatic transitional justice

While there is extensive scholarly debate on the meaning, means, and goals of TJ (see, e.g., Arthur, 2009), a paradigmatic concept of TJ remains dominant. Indeed, it is often against paradigmatic TJ that alternative conceptualizations of TJ are defined. Paradigmatic TJ is essentially liberal. As a field, TJ emerged in relation to the waves of liberalization sweeping across the globe in the late twentieth century (Teitel, 2000), especially the Latin American experience of

transition to democracy (Arthur, 2009). The specific "conceptual contents" of TJ are a product of the "dominant normative lens" that illiberal states would transition to liberal democracy (Arthur, 2009, p. 325). This liberalization orthodoxy established the contours of TJ. On the one hand, the liberalization orthodoxy defined the mechanisms that would be deemed legitimate forms of justice, namely "prosecutions, truth-telling, restitution, and reform of abusive state institutions" (Arthur, 2009, p. 326). At the same time, other forms of justice, such as distributive justice, were not included within the contours of the emerging field. On the other hand, the liberalization orthodoxy defined the end goal of TJ as the establishment of the liberal polity (Teitel, 2000), while foreclosing other possible futures.

Paradigmatic transitional justice and settler democracies

Despite the ascendance of mechanisms associated with TJ in settler democracies, paradigmatic TJ is not equipped to address settler colonialism for several reasons (for an elaboration of this argument see Park, 2020). Settler colonialism, as an oppressive political form that has recently become the target for transitional measures, cannot be separated from the state and the society that it structures. In this respect, settler colonies are fundamentally unlike other transitional contexts. However imperfectly, war can be followed by peace and authoritarianism can be followed by liberal democratic rule. Settler colonialism, in contrast, is "impervious to regime change" (Wolfe, 2006, p. 402). South Africa presents an especially good illustration of this point as a state that transitioned from apartheid to democracy while leaving settler colonialism firmly in place. Transitional justice in South Africa may have contributed to democratization but did nothing to advance decolonization (Park, 2021).

Bringing my discussions of settler colonialism and paradigmatic TJ into dialogue, I argue that paradigmatic TJ cannot address settler colonialism because they are both premised on liberal teleology comprised of 'linear progressivism' and the end goal of liberalism. Linear progressivism combines a linear concept of time and the principle of 'progress' over time (McKay, 2016). As explained above, through self-supersession, settler colonialism strives to replace its colonial past to achieve an imagined post-colonial future – a fantasy in which settlers become indigenous to the land. Paradigmatic TJ operates by an analogous logic of replacement that puts the past behind us. Yellowknives Dene scholar Glen Coulthard (2014) explains that the settler state manufactures "transition" by relegating settler colonialism to "the dustbins of history" (p. 108). This shared linear progressivism risks making TJ mechanisms instruments of settler colonial self-supersession. Settler colonialism and paradigmatic TJ share the same end goal, i.e., the establishment of the liberal polity. Not all settler colonies are liberal democracies; nonetheless, liberalism is fundamental to the settler colonial project. John Locke's liberal philosophy provided the central rationalization for the European expropriation of Indigenous lands. Locke regarded Indigenous peoples as in a state of nature, lacking a political society. Moreton-Robinson (2015) explains that the racial contract of liberalism determines who is fully human and enabled Indigenous peoples to be understood as subhuman by the (white, male) "universal liberal individual" (p. 139). Ownership of land was assumed to be created through exploiting and enclosing land, negating Indigenous conceptions and relationships to land and justifying dispossession (Murray, 2022). The liberal end goal of paradigmatic TJ "presents the obvious problem of reaffirming the very ideology that originally justified European colonization of Indigenous lands" (Park, 2020, p. 10).

Moreover, the contemporary liberal state serves the mission of settler colonial self-supersession. In the face of demands for sovereignty and decolonization, the settler state offers citizenship and equality. Historically, for example, Indigenous peoples in Canada had to give up 'Indian' status

and its attendant entitlements to enjoy the right to vote. Liberal equality, thus, was premised on renouncing Indigenous identity and claims. For Vine Deloria Jr (1969) (Standing Rock Sioux) and Harold Cardinal (1999) (Cree), liberal civic inclusion is a form of getting rid of Indigenous people. More recently, Indigenous scholars, such as Glen Coulthard (2014) and Audra Simpson (2014) (Mohawk) have problematized liberal recognition as a form of governing and managing Indigenous peoples. Liberal recognition reduces Indigenous peoples to minorities, which "erases Indigenous peoples' original claim to the land and the originary violence that created and sustains the settler polity" (Park, 2020, p. 11). Liberal recognition finds its analogue in TJ in the politics of trauma and reconciliation, which some Indigenous scholars argue pacify and depoliticize Indigenous justice claims and thus sustain settler colonial relations (Coulthard, 2014; Simpson, 2017).

What is decolonization?

Puawai Cairns (2020) (Ngāti Pūkenga, Ngāti Ranginui, Ngāi Te Rangi) has problematized decolonization as a concept that keeps settlers at the centre and thus re-peripheralizes Indigenous peoples. Eve Tuck (Unangax) and K. Wayne Yang (2012) argue that decolonization is often reduced to a metaphor to improve colonial conditions while sustaining the colonial relation; real decolonization requires the repatriation of land and meaningful "change in the order of the world" (p. 31). To think through decolonization, I explore the interconnection of refusal, resurgence, and prefiguration in the work of Indigenous thinkers in different contexts. While not suggesting uniformity in their thought, I look to commonalities in themes that reverberate through diverse writings.

In various forms, Indigenous scholars have advanced a politics of refusal. In the face of settler colonialism, Indigenous nations refuse elimination. Kēhaulani Kauanui (2021) (Kanaka Maoli) theorizes "enduring Indigeneity" to capture the idea that "indigeneity itself is enduring; the operative logic of settler colonialism may be to 'eliminate the native,' but Indigenous peoples exist, resist, and persist" (p. 16). Writing of the Kahnawak'kehro:non, Audra Simpson (2014) states "they are not done; they are not gone. They have not let go of themselves or their traditions, they subvert this requirement at every turn" (p. 33). This tenacity echoes the survivance theorized by Gerald Vizenor (1998) (Chippewa): Survivance is "more than survival, more than endurance or mere response" but "an active repudiation of dominance, tragedy, and victimization" (p. 15). Similarly, Leanne Simpson (2017) explains that the Nishnaabeg "refuse and reject dispossession" (p. 10). As explored above, various Indigenous scholars refuse liberal civic inclusion and recognition.

Resurgence is bound together with refusal. In Leanne Simpson's (2017) "radical resurgence project", refusal is paired with the generation of Indigenous nationhood. For Coulthard (2014), refusal underpins resurgence as Indigenous peoples must "turn away" from settler society and the settler state in order to develop their own "decolonial praxis" (p. 48). Similarly, for Kauanui (2021) resurgence involves "turning away from the state in ways that are generative" (p. 29). Going "beyond denouncing colonial modes of governance and authority", Kauanui (2021) urges "decolonial ways of 'reimagining and generating new worlds'" (p. 33). Vine Deloria Jr (1969) argued for the revitalization of Indigenous culture, customs, and social, legal, and political orders. Moana Jackson (Ngāti Porou, Ngāti Kahungunu, Rongomaiwāhine) has called for an "ethic of restoration" and "re-Māorification" that centres Indigenous peoples and their self-determinative independence (as cited in Bell et al., 2021, p. 4). Finally, "Indigenous resurgence", according to Coulthard (2014), "is at its core a prefigurative politics" (p. 159), where prefiguration refers to enacting, in the present, the desired future. Kauanui's (2021) "Indigenous

revitalization" (p. 29) exemplifies prefigurative politics. For Simpson (2017), prefiguration is present in embodied, place-based, everyday practices.

Can transitional justice be decolonized?

Despite the limitations of paradigmatic TJ to address settler colonialism, transitional justice is a contested concept. Its boundaries, applications, contexts, mechanisms, values, and goals are debated. Learning from Indigenous theorization of refusal, resurgence, and prefiguration, I argue for a radicalization of TJ that would fundamentally challenge paradigmatic TJ and potentially contribute to decolonization. I propose the following principles (for further elaboration see Park, 2020):

(1) *Decentring the settler state* would refuse the settler state's definition of the problem and its solution, while also advancing resurgence and prefigurative justice organizing by people and communities. As Kauanui (2021) explains, resurgence requires "de-centering the state" (p. 31).
(2) *Inter-nationalizing the justice relationship* would refuse the politics of liberal recognition that reduces Indigenous peoples to a minority receiving redress from the state and prefigures Indigenous sovereignties.
(3) *Delegitimizing the settler state* would subvert one of the goals of paradigmatic TJ to legitimize successor regimes by distancing them from the wrongdoing of oppressive predecessors. Radicalized TJ would force "the settler state and settler society to confront the fact of ongoing colonialism and raise existential questions of what to do about it" (Park, 2020, p. 18).
(4) *Abandoning liberal teleology and embracing indeterminacy* would refuse linear progressivism and the end goal of liberalism, thus opening other, yet unknown futures.

Alternative approaches to transitional justice and decolonization

As a settler, who is thinking through Indigenous theorizations, I have offered principles that radicalize TJ to contribute to decolonization. Now, I turn to alternative conceptualizations in the existing TJ literature to explore how they may enrich our thinking on decolonizing TJ. I turn my attention to a small selection of interconnected concepts: (1) local TJ, (2) victim-/survivor-centric TJ, and (3) transformative justice. There are expansive bodies of literature dedicated to each of these alternative concepts, so my brief discussion will be necessarily selective.

There has been a marked shift towards 'the local' in transitional justice (Shaw & Waldorf, 2010). The shift to the local has included the adaptation of paradigmatic mechanisms to local contexts as well as the mobilization of local practices (customs, traditions), institutions, and legal orders (such as customary law). However, the relatively novel emphasis on the local has not been uncomplicated. For example, the local may be subsumed under the paradigmatic expectations of TJ. External TJ actors may recognize only certain actors to speak for the local while marginalizing the majority of people and/or those less powerful. Local methods of justice are subordinated to liberal norms and international (liberal) legal orders. At the same time, local TJ operates within existing relations of power and is shaped by political agendas within the nation-state (Shaw & Waldorf, 2010). Nonetheless, the local is a useful concept for thinking about decolonizing TJ. While paradigmatic TJ tends to "exclude local communities" (Lundy & McGovern, 2008, p. 266), the "reality with which we have to begin – and without

which transitional justice cannot be legitimate or effective – is that of a nuanced understanding of what justice, redress, and social reconstruction look like from *place-based standpoints*" [emphasis added] (Shaw & Waldorf, 2010, p. 6).

There are many different meanings associated with local TJ (Brehm & Golden, 2017); however, I touch briefly on two conceptualizations of the local that I find very useful. First, community-based TJ "refers to practices that are not associated with the state, that take place in the community, that involve the participation of the community as a whole, and which, at least in part, emerge endogenously within a community" (Park, 2010, p. 95). While community-based practices have also attracted criticism, Clark (2012) argues, "community-based approaches to transitional justice are crucial for reflecting the agency of community-level actors" (p. 56). Clark's (2012) research on Rwanda and Uganda shows that community-based approaches were not limited to accountability for specific crimes but recognized "[d]iffuse forms of violence [that] affect societies in economic, relational, and psychosocial terms at national, provincial, communal, and individual levels" (p. 57).

Another conceptualization of local TJ is the bottom-up approach, which emphasizes the grassroots in contrast to the one-size-fits-all, top-down approach associated with paradigmatic TJ. Bottom-up TJ is premised on participation. As Lundy and McGovern (2008) explain, a "bottom-up, participatory approach puts communities and those on the frontline and receiving end of violent conflict at the very centre of transitional justice" (p. 291). Participation cannot be limited to the implementation phase (such as having survivors speak at truth commissions) or merely to advising or consultation (Selim, 2017). Rather, "a fully participatory process" should involve local peoples at every stage: "conception, design, decision making, and management" (Lundy & McGovern, 2008, p. 266). The principle of participation shows the intersection between concepts of local TJ and victim-/survivor-centric TJ. Local TJ approaches "place particular emphasis on survivors' priorities" (Shaw & Waldorf, 2010, p. 7). Indeed, for Brehm and Golden (2017), the local is defined by survivor agency and the prioritization of survivor experiences and desired outcomes.

Victim-/survivor-centred TJ refers to TJ processes that "place the victim at their centre" (Robins, 2011, p. 77). For Robins (2011), victim-centred mechanisms arise "as a response to the explicit needs of the victims, as defined by the victims themselves" (p. 77). Victim-/survivor-centred approaches often emphasize victim access to TJ processes, the protection of victims during their participation in TJ (such as during criminal trials), and understanding how victims experience TJ. However, many scholars urge a more profoundly participatory approach to victim-/survivor-centrism, which is associated with many important benefits, including countering elite control of TJ processes and better meeting victims' needs (Robins, 2011).

Finally, I touch briefly on the concept of transformative justice, which is intertwined with local and victim-/survivor-centric TJ. Transformative justice has been proposed as an alternative conceptualization of justice given the limitations of transitional justice. Gready and Robins (2014) define transformative justice as "transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level" (p. 340).

Transformative justice does not replace transitional justice but does "radically reform its politics, locus and priorities" (Gready & Robins, 2014, p. 340), including a shift from legal to social and political questions, from state-centrism to communities, and from the top-down to the bottom-up. Transformative justice, moreover, entails a range of different tools. Rather than being limited by paradigmatic mechanisms, transformative justice holistically extends to economic, political, and social policy to address structural issues. Indeed, a central criticism of

paradigmatic TJ is the inability to address structural inequalities or systemic violence and to achieve distributive forms of justice. For Gready and Robins (2014), transformative justice is "a new goal for transitional justice practice" (p. 360). TJ mechanisms can be repositioned as beginnings and opportunities for initiating wider-ranging transformative justice.

How can local TJ, victim-/survivor-centrism and transformative justice as alternative concepts of TJ enrich our thinking about decolonizing TJ? First, these alternative conceptualizations offer insights into the principle of decentring the settler state. Local TJ is place-based justice, which dovetails with resurgence as place-based. Moreover, as Clark's (2012) study of Rwanda and Uganda shows, community-based justice resists the state's definition of harm as justiciable offences, hence recognizing wrongdoing and its effects more comprehensively and holistically. Criticisms of paradigmatic TJ in settler democracies have similarly emphasized that the settler state's narrow definition of wrongdoing fails to locate wrongdoing in the broader facts of ongoing colonialism and the holistic effects of harm, such as intergenerational impacts. Local TJ shifts the locus from the state to the grassroots. We have already seen examples of grassroots, community-based TJ practices in response to settler colonialism. In Canada, the Remembering the Children Society – a collective composed of First Nations, Metis and settler members – strives to commemorate children who died at the Red Deer Industrial School (Park, 2016). In Australia, the return of art created by children of the Stolen Generations in the 1940s, storytelling, and an exhibition of this art has brought together Indigenous and settler communities (Forrest & Johnston, 2017). These examples illustrate practices that decentred the state and that were driven by and for communities.

Decentring the settler state is enhanced by victim-/survivor-centrism and meaningful participation rooted in both refusal and resurgence. Participation cannot be merely window-dressing (Selim, 2017) but requires involvement at all stages starting from the conception of TJ mechanisms. In the context of radicalizing TJ for decolonization, victim-/survivor 'participation' cannot simply be involvement in settler-state mechanisms but must be deeply survivor-centric. Survivor-centrism means refusing settler-state control over TJ, centring the needs of survivors, and ensuring that any mechanisms arise as a response to survivor needs. Centring Indigenous peoples in TJ in settler democracies entails decentring the settler state and resurgently centring Indigenous epistemologies or ways of knowing as the basis for TJ.

Local TJ and transformative justice help us to think about other principles of decolonizing TJ. The "paradigm of transitional justice […] is increasingly destabilized by its local applications" (Shaw & Waldorf, 2010, p. 4). It "is exposed, challenged, disassembled, and reconfigured precisely in its local engagements" (Shaw & Waldorf, 2010, p. 4). This insight helps us think about the ways in which paradigmatic TJ mechanisms – such as truth commissions – in settler democracies can, in practice, diverge from and resist paradigmatic TJ. I draw on examples from the Calls to Action that arose from the Canadian Truth and Reconciliation Commission to think about the ways in which TJ can be remade through the local and can be made to strive towards transformative justice.

Decolonizing TJ requires internationalizing the justice relationship to prefigure acknowledgement of Indigenous sovereignties; while there have been no instances thus far of TJ in settler democracies that enact nation-to-nation relations, the Calls to Action that arose from the Canadian Truth and Reconciliation Commission shining a light on this path. For example, *Call to Action 45* calls for the development of a Royal Proclamation of Reconciliation with Indigenous peoples that reaffirms the "nation-to-nation relationship between Aboriginal peoples and the Crown" (Truth and Reconciliation Commission, 2015b). While paradigmatic TJ works to legitimize the new regime by distancing it from the violent predecessor regime, radicalized TJ requires delegitimizing the settler state and settler society and implicating the

settler state and society in the ongoing reality of colonialism. *Call to Action 45* challenges the settler state's very premise by calling for the repudiation of "concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and *terra nullius*" (Truth and Reconciliation Commission, 2015b). Moreover, other Calls can be read together as a form of delegitimizing the settler state by highlighting the radical inequalities and injustice wrought by colonialism including inequalities and injustices related to child welfare, education, health, language, culture, and the justice system (Truth and Reconciliation Commission, 2015b). Highlighting the injustice, suffering, and inequity produced by settler colonialism, these Calls undermine settler democratic claims to being a just and equal society and reflect the exclusions inherent to liberalism. The Calls, moreover, emphasize the United Nations Declaration of the Rights of Indigenous Peoples, the implementation of which may be an instrument of transformative justice. It remains to be seen to what extent these Calls will be implemented. However, they highlight the potential for TJ to be reconfigured to demand and initiate transformative justice by outlining the transformation of relations between Indigenous peoples and the settler state and society, and by laying out how to address structural inequalities and systemic violence.

In Australia, there are signs of potentially decolonizing TJ. The Yoo-rrook Justice Commission, taking place in Victoria, presents the possibility of advancing transformation. The Commission, in sharp contrast to other TJ mechanisms in settler democracies, has taken on an expansive mandate to examine "Systemic Injustice since the start of Colonisation" (Yoo-rrook Justice Commission, 2021, p. 2a). Moreover, the Uluru Statement from the Heart (2017), which was forged by First Nations across Australia, exemplifies transformative justice. The statement calls for "voice" through a constitutionally enshrined First Nations Voice to Parliament to ensure lasting "empowerment in decision making and control over their own affairs" (The Uluru Statement from the Heart, n.d.) and calls for a Makarrata Commission that deals with "truth" and "treaty". In relation to this chapter, the proposed Makarrata Commission is especially innovative in pairing truth-telling – a practice often associated with TJ – with material transformation in the form of agreement-making. Should it be realized, the vision of the Makarrata Commission, combined with the Voice to Parliament, may represent a form of TJ that could contribute to decolonization.

Conclusion

This chapter has examined the limits of paradigmatic TJ to address settler colonialism. Rooted in the work of Indigenous thinkers' concepts of refusal, resurgence, and prefiguration, I have proposed principles for radicalizing TJ to contribute to decolonization: decentring the settler state, inter-nationalizing the justice relationship, delegitimizing the settler state, and abandoning liberal teleology including linear progressivism and the end goal of liberalism, in favour of embracing indeterminacy about what the decolonized future may look like. As outlined in this chapter, local (place-based), victim-/survivor-centric, and transformative justice enrich our thinking about these principles. However, abandoning linear progressivism and embracing indeterminacy are the hardest principles to confront for settler colonialism. There are, so far, no instances of these principles being mobilized in TJ in settler democracies. However, the realities of settler colonial violence belie linear progress. For example, a half dozen years after the end of the Truth and Reconciliation Commission in Canada, news stories about unmarked graves of children at residential schools have underscored that the past is not the past. In fact, the fourth volume of the Truth and Reconciliation Commission's final report focused on missing children and unmarked graves. Despite this important work, renewed

attention to the catastrophe of children's deaths at residential schools has highlighted the need to stop using the framework of linear progressivism and to displace the end goal of yet more liberalism, which ultimately perpetuates settler colonialism. Indeterminacy poses a distinct challenge to the settler state and settler society. If not a liberal future, then what will TJ strive to create? As Te Kawehau Hoskins (2017) (Ngāpuhi) writes, settlers need to "embrace discomfort and uncertainty in the face of the extraordinary comfort that power allows" (p. 144). Radicalized TJ that contributes to decolonization requires settlers to accept not knowing what the future holds.

References

Arthur, P. (2009). How transitions reshaped human rights: Conceptual history of transitional justice. *Human Rights Quarterly*, *31*(2), 321–367.

Bartlett, G. (2017, November 24). Tearful Justin Trudeau apologizes to N.L. residential school survivors. *CBC*. https://www.cbc.ca/news/canada/newfoundland-labrador/justin-trudeau-labrador-residential-schools-apology-1.4417443

Bell, A., Yukich, R., & Lythberg, B. (2021). Enacting settler responsibilities towards decolonisation. *Ethnicities*, 22(5), 605–618.

Brehm, H.N., & Golden, S. (2017). Centering survivors in local transitional justice. *Annual Review of Law and Social Science*, *13*(1), 101–121.

Byrd, J.A. (2011). *The transit of empire: Indigenous critiques of colonialism*. University of Minnesota Press.

Cairns, P. (2020, February 10). *Decolonise or indigenise: Moving towards sovereign spaces and the Maorification of New Zealand museology* [Blog]. https://blog.tepapa.govt.nz/2020/02/10/decolonise-or-indigenise-moving-towards-sovereign-spaces-and-the-maorification-of-new-zealand-museology/

Cardinal, H. (1999). *The unjust society*. Douglas and McIntyre.

Clark, P. (2012). Addressing atrocity at the local level: Community-based approaches to transitional justice in central Africa. In L. May & A. Forcehimes (Eds.), *Morality, jus post bellum, and international law* (pp. 49–77). Cambridge University Press.

Colsell, K., & Simic, O. (2021). 'It's not about the money—stop the trauma': Victims' responses to reparations in Argentina and Australia. *Human Rights Review*, *23*, 163–181.

Coulthard, G.S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. University of Minnesota Press.

Davis, L., Denis, J., & Sinclair, R. (2017). Pathways of settler decolonization. *Settler Colonial Studies*, 7(4), 393–397.

Deloria Jr., V. (1969). *Custer died for your sins: An Indian manifesto*. Collier-Macmillan.

Forrest, S., & Johnston, M. (2017). Koolark Koort Koorliny: Reconciliation, art and storytelling in an Australian Aboriginal community. *Australian Aboriginal Studies*, *1*, 14–27.

Gready, P., & Robins, S. (2014). From transitional to transformative justice: A new agenda for practice. *The International Journal of Transitional Justice*, *8*(3), 339–361.

Henry, N. (2015). From reconciliation to transitional justice: The contours of redress politics in established democracies. *International Journal of Transitional Justice*, *9*(2), 199–218.

Hoskins, T.K. (2017). Te ara whanaunga: Relations on the ground at Waitangi tribunal hearings. In R. Bell, M. Kawharu, K. Taylor, M. Belgrave & P. Meihana (Eds.), *The treaty on the ground: Where we are headed and why it matters* (pp. 133–148). Massey University Press.

Kauanui, J.K. (2021). The politics of indigeneity, anarchist praxis, and decolonization. *Anarchist Developments in Cultural Studies*, *2021*(1), 9–42.

Lawrence, B., & Dua, E. (2005). Decolonizing antiracism. *Social Justice*, *32*(4), 120–143.

Lilley, R. (2022, January 5). Residential school day scholars can now apply for compensation under settlement. *CBC*. https://www.cbc.ca/news/indigenous/day-scholars-residential-schools-settlement-1.6305459

Lundy, P., & McGovern, M. (2008). Whose justice? Rethinking transitional justice from the bottom up. *Journal of Law and Society*, *35*(2), 265–292.

McKay, A. (2016, July 13). An introduction to time, temporality and global politics. https://www.e-ir.info/2016/07/13/an-introduction-to-time-temporality-and-global-politics/

Moreton-Robinson, A. (2015). *The white possessive: Property, power and indigenous sovereignty*. University of Minnesota Press.

Murray, C. (2022). John Locke's theory of property, and the dispossession of Indigenous peoples in the settler-colony. *American Indian Law Journal Home*, *10*(1), 1–12.
National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (1997). *Bringing them home*. https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf
Pannett, R. (2021, August 5). Australia to pay hundreds of millions in reparations to Indigenous 'stolen generations'. *Washington Post*. https://www.washingtonpost.com/world/2021/08/05/australia-indigenous-school-reparation/
Park, A.S.J. (2010). Community-based restorative transitional justice in Sierra Leone. *Contemporary Justice Review*, *13*(1), 95–119.
Park, A.S.J. (2016). Remembering the children: Decolonizing community-based restorative justice for Indian Residential Schools. *Contemporary Justice Review*, *19*(4), 424–444.
Park, A.S.J. (2020). Settler colonialism, decolonization and radicalizing transitional justice. *International Journal of Transitional Justice*, *14*(2), 260–279.
Park, A.S.J. (2021). Settler colonialism and the South Africa TRC: Ambivalent denial and democratisation without decolonisation. *Social & Legal Studies*, *31*(2), 216–237.
Petoukhov, K. (2017). Theorising victimisation through the individual and collective reparations programs for Indian Residential School abuse. In S. Walklate (Ed.), *Handbook of victims and victimology* (2nd ed.) (pp. 247–267). Routledge.
Robins, S. (2011). Towards victim-centred transitional justice: Understanding the needs of families of the disappeared in postconflict Nepal. *The International Journal of Transitional Justice*, *5*(1), 75–98.
Selim, Y. (2017). The opportunities and challenges of participation in transitional justice: Examples from Nepal. *Journal of International Development*, *29*(8), 1123–1148.
Shaw, R., & Waldorf, L. (2010). Introduction: Localizing Transitional Justice. In R. Shaw, L. Waldorf, & P. Hazan (Eds.), *Localizing transitional justice: Interventions and priorities after mass violence* (pp. 3–26). Stanford University Press.
Simpson, A. (2014). *Mohawk interruptus: Political life across the borders of settler states*. Duke University Press.
Simpson, L.B. (2017). *As we have always done: Indigenous freedom through radical resistance*. University of Minnesota Press.
Teitel, R.G. (2000). *Transitional justice*. Oxford University Press.
The Uluru statement from the heart. (n.d.). https://ulurustatement.org/the-statement/view-the-statement/
Truth and Reconciliation Commission of Canada. (2015a). Honouring the truth, reconciling for the future: Summary of the final report of the Truth and Reconciliation Commission of Canada. https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive_Summary_English_Web.pdf
Truth and Reconciliation Commission of Canada. (2015b). Truth and Reconciliation Commission of Canada: Calls to Action. https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf
Tuck, E., & Gaztambide-Fernandez, R. (2013). Curriculum, replacement, and settler futurity. *Journal of Curriculum Theorizing*, *29*(1), 72–89.
Tuck, E., & Yang, K.W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education & Society*, *1*(1), 1–40.
Veracini, L. (2011). Introducing: Settler colonial studies. *Settler Colonial Studies*, *1*(1), 1–12.
Vizenor, G. (1998). *Fugitive poses: Native American Indian scenes of absence and presence*. University of Nebraska Press.
Wolfe, P. (2006). Settler colonialism and the elimination of the native. *Journal of Genocide Research*, *8*(4), 387–409.
Yoo-rrook Justice Commission. (2021). Letters patent. https://yoorrookjusticecommission.org.au/wp-content/uploads/2021/09/Letters-Patent-Yoo-rrook-Justice-Commission-signed-10-1.pdf
Yoo-rrook Justice Commission. (n.d.). https://yoorrookjusticecommission.org.au/

38

First, they took the land

Decolonizing nature to decolonize society

David Rodríguez Goyes

The white privilege of ignoring nature

Julio César Arana, the owner of the Peruvian rubber factory Casa Arana, punished his Indigenous workers with mutilation if they were first-time offenders; recidivists were burnt and raped. His sanction for career criminals was death. The crime committed by the thousands of Indigenous workers who died by Julio César's hand and whose dead bodies were piled up in front of Casa Arana was failing to extract the amount of rubber from the Amazon forest stipulated by the company (Ramírez Mejía et al., 2012). Casa Arana, a legitimate business between 1885 and 1932, was built by Julio César Arana deep in the Amazon rainforest and took advantage of the Northern demand for rubber (Santamaría, 2017). Arana was not driven by his hatred for Indigenous people, but neither did he care for their well-being. What mattered was profiting from the extraction of natural resources, and to this end, Arana established a *legal* system of social control, at a tremendous human cost, that ensured his profits (Goyes et al., 2021b).

Early colonizers were mesmerized by their first sight of rubber: "These balls jump much more than our hollow balls—by far—because even if they are only let slip from the hand to the ground, they rise much further than they started", Gonzalo Fernández de Oviedo y Valdés chronicled of his first encounter with a rubber ball in 1535 (as cited in Mann, 2011, p. 326). Colonial entrepreneurs experimented with ways to commodify rubber, and, in 1844, Charles Goodyear patented rubber vulcanization, and the ensuing Northern demand for rubber gave rise to a boom that decimated Latin American and Asian forests (Mann, 2011).

The genocidal practice of Casa Arana is only one example of a system of social control established by colonizers solely to take over Indigenous lands and plunder natural resources. The case of Casa Arana illustrates the connections between the exploitation of nature by colonizers, former and current, the creation of social systems to legitimize such plundering, and the extensive harms inflicted on Indigenous inhabitants, their land, and their ecosystems. Casa Arana also illustrates the criminological relevance of studying human interactions with nature.

DOI: 10.4324/9781003176619-42

Yet, criminologists who write from a position of privilege (middle-class, white, Northern males) deny the relevance of nature for criminology. Norwegian criminologist Johansen (2021) recently wrote:

> [Green criminologists] have taken a space where they can themselves define what criminality is, and they use that definition as a banner for the protection of the environment and of animals. While the concept of criminality organizes criminology, even though it causes tears and teeth squeaks, here [in green criminology] one has liberated oneself and taken the role of defining what counts as criminality. […] Green criminologists exploit the scientific weight of the discipline and make holes in the core of it.
>
> *(p. 187)*

Johansen (2021) further accuses green criminologists of "losing interest for the process of knowledge and the nuances in diverse sub-topics. Theory is used to legitimize a political plan. According to Johansen's line of reasoning, a criminologist working at the time of Casa Arana would have neglected the ongoing genocide because it was legal. The case of Casa Arana exemplifies the absurdity of ignoring what is "lawful but awful" (Passas, 2005, p. 771) because the foundational dogma of criminology – a colonially incepted discipline (Agozino, 2003, 2004; Morrison, 2006) – dictates it.

In contrast, green criminology's greatest strength is its capacity to critique the order – former and current – that colonizers impose on society, particularly regarding human interaction with nature. While those supporting the status quo are threatened by green criminology's critique, the subversion of colonial ways of thinking is necessary for anti-colonial practice. My main goal in this chapter is to demonstrate the value of green criminology for the decolonization of society and its systems of social control. In the first section, 'Ecological and social colonialism through the centuries', I demonstrate that colonization was built on gaining control of nature (through war and aggression) and that retaining control over human relations with nature allows neo-colonizers to retain their power over colonized regions. In 'What green criminology is about', I introduce the reader to the tenets of green criminology and explain how they advance the decolonizing agenda. I conclude the chapter with a call to expand the reach of *Southern green criminology* – a project explicitly intended to challenge colonial logic in society.

Ecological and social colonialism through the centuries

In the wake of Columbus's arrival in the Americas in 1492, colonizers displayed their "lust for gold, lust for silver" (Galeano, 1971/1997, p. 11). Whether it was Columbus's military campaign to decimate the Indigenous in Haiti, Cortés's strategies of slaughter and domination of the Aztec empire of México, or Francisco Pizarro's assassinations of Inca leaders in Peru, colonial empires undertook a massive "usurpation and plunder of native wealth" (Galeano, 1971/1997, p. 14). In other words, the domination of Indigenous people was propelled by a desire to take over Indigenous lands, exploit natural richness, and use Indigenous peoples as free labour (Goyes, 2021).

Crosby (2004) indicates that "the success of European ecological imperialism in the Americas was so great that Europeans began to take for granted that similar triumphs would follow wherever the climate and disease environment were not outright hostile" (p. 297). Western European conquerors, after having "opened new whole regions for immigrant settlement and exploitation", transformed those open spaces into "an enormous and varied adjunct to European

societies and economies" by the imposition of "crops and livestock pre-adapted to American environments" (Crosby, 2004, pp. xviii–xix).

The transformation of the Latin American environmental landscape was so extensive that it began serving as the main supply for other imperial forces, which "drew much and then more and more of its wood and food and almost all of its cotton for inexpensive clothing from the New World" (Crosby, 2004, pp. xviii–xix). The transformation was sustained by the introduction of new animal and plant species, the unintended introduction of external diseases, and the eradication of native species through their commercialization and the clearing of land for agricultural purposes.

The invaders not only colonized nature but imposed settler-colonial legal and political systems. The conquerors deployed a system of social control that combined powerful mechanisms and violence: armed force, the might of Catholicism, and non-capitalist tributary systems, which included comunas, encomiendas and resguardos, all of which were forms of colonial reservations used to dominate Indigenous populations and exploit Latin American natural resources. Also, to justify their plunder of the riches of the American continents and the exploitation of the Indigenous peoples and African slaves, the invaders passed legislation that ranked human 'races' from superior to inferior, a strategy that enabled the colonizers to 'legitimately' abuse non-Europeans. The hierarchy of humans encompassed their biological features and their cognitive capacities, privileging Western European anatomies and ways of learning.

Quijano (2000, 2007) explains that the colonial classification of humans survived the independence of the Latin American colonies in the nineteenth century and still lives in what he calls *coloniality*, a logic that considers valid only what follows the modern European ways of knowledge creation. Coloniality is the global dominance of a Western, modern way of being, knowing, and organizing the world.

Colonizing states and empires were located in the Global North while most colonies were in the Global South. Therefore, in this chapter, I refer to colonial powers as Northern and colonized locations as Southern, even though I am aware of the current geographical inconsistencies of these designations and the shifts in geo-political powers (Escobar, 2006). Under that nomenclature, Northern powers have been economically enriched by their environmental plundering of the South. And *coloniality* has shielded the colonizing structure of the North-South divide for five centuries and today sustains an unequal distribution of power between the North and the South politically, economically, and epistemologically (Franko & Goyes, 2019).

Even today, Northern countries impose international legal instruments that regulate human interaction with nature – both in terms of physical resources and immaterial property rights (Goyes, 2017; Goyes & South, 2016), extract and dispose of environmental products from Southern countries at the cost of environmental destruction and conflict (Franko & Goyes, 2019), and force environmental practices on the South to the detriment of local practices (Goyes, 2018, 2019, 2020). Because green criminologists have researched the interplay between environmental behaviour and harms, they will inevitably uncover the colonial social systems regarding nature, which were established to sustain colonial power and enable the exploitation of the colonized. In other words, green criminology is a useful tool for decolonizing society.

The decolonial power of green criminology

The Latin American decolonial project has as a goal "to liberate the production of knowledge, reflection, and communication from the pitfalls of European rationality/modernity" (Quijano, 2007, p. 177). Decolonizing society means freeing knowledge production and the ensuing practices by giving back epistemological force to the sources that have been made

subaltern (Santos, 2014). This involves "tak[ing] seriously the epistemic force of local histories and […] think[ing] theory through from the political praxis of subaltern groups" (Escobar, 2003, p. 61). To decolonize then is to undo the actions and effects of colonialism, not only by opposing colonial logic but by going beyond them (Escobar, 2003). Instrumentally, this can be done by centring and amplifying the experiences and knowledges of those made subalterns and by showing how their worldviews and knowledges are valid alternatives to a colonized way of being (Santos, 2009, 2014). Taking seriously the force of the epistemologies of the South does not mean rejecting the tools originating in the Western tradition. Just the opposite. There is a need for opening up to receive a multiplicity of knowledges.

Green criminology possesses the tools to challenge the supremacy of Western/Northern rationality and amplify the knowledge of the subaltern – partly by disassembling the colonizers' monopoly to define *crime* and criminology. Green criminology is not a theory or a unified school of thought built on univocal premises. Rather, as Brisman and South (2013) suggest, green criminology is an umbrella term. Using this logic, I understand green criminology to be a conceptual framework based on criminological knowledge that is used in studying transgressions against ecosystems, humans, and non-humans produced by the interactions between humans and their natural surroundings (Goyes, 2018).

While the term 'green criminology' was first used in 1990, when Lynch (1990) published his article 'The greening of criminology: A perspective for the 1990s', antecedents of green criminology can be found in non-English scholarship at least since the 1970s (Goyes & South, 2017) and even those scholars who wrote about green crime and harm in the 1970s drew inspiration from Indigenous cosmologies and ways of being (Goyes, 2022). For instance, in 1971 Manuel Quintín Lame, Indigenous leader of the Nasa People, published a book in which he denounced the social and environmental harms produced by settler-colonialism under the banner of *development*. Regardless of where and when green criminology was incepted, it combines environmentalism, radicalism, and humanism. This mixture means widening the criminological spectrum of interest beyond what is officially defined as a crime to include an array of sources of injustice and harm that preserve and reinforce inequitable distributions of power and means of subsistence.

Drawing on the critical tradition of the criminological discipline, green criminology intends to challenge racist, classist, sexist, and speciesist elements of science and society (Beirne & South, 2007). Marxist ideas have inspired several green criminologists to draw attention to the crimes of the powerful and the need to address settler-colonial, racial, and class bias in law (del Olmo, 1987, 1998; Stretesky et al., 2014). Feminist criminologists have impacted green criminology by pointing out the role of men and andro-centric cultures in the abuse of women and the environment (Sollund, 2012). Peacemaking criminologists inspire green criminology to call for a philosophy that emphasizes the power of and need for respect to mediate and reconcile the planet and its inhabitants (McClanahan & Brisman, 2015). Liberation criminologists highlight the role of imperial powers in the destruction of colonized locations and inhabitants (Aniyar de Castro, 1987; del Olmo, 1981). In the combination of these trajectories, green criminology emphasizes the need for sensitivity to the situation of the powerless and marginalized.

The few generalizable traits of green criminology further demonstrate its distance from colonialist logics. First, green criminology no longer depends on legal definitions of crime to outline its research interests, but instead embraces a harm perspective, as discussed above. This was inspired by a critical tradition that moved from individualizing and restrictively enumerating social problems to following the example of peace research perspectives (Galtung, 1971),

criticizing systemic and structural social arrangements as the main drivers of life-impairing events. Within criminology, the harm perspective exposes the low representativeness of what is legally defined as a crime in everyday life, in contrast to the production of harm derived from legal sources (Canning & Tombs, 2021; Hillyard et al., 2004; Tombs & Hillyard, 2004). Important works in the development of a harm perspective are those of Schwendinger and Schwendinger (1970), Davies et al. (1999, 2014), Beirne and South (2007), South (2008), White (2013), and Mol (2017).

As many of the most environmentally harmful human acts are legally approved and even advanced by law (as the genocide at Casa Arana was in its time), green criminology has developed hand in hand with harm perspectives. A harm perspective indicates that more adequate, effective, comprehensive, and practical responses to the sources of injustice can be derived from studying both harms and crimes instead of dealing exclusively with the latter. A harm perspective allows the power of those who define what is understood as criminal to be challenged. A harm perspective incorporates a wider spectrum of voices to participate in the definition of crime. Such expansion of the voices heard when identifying harms separates green criminology from colonial logics and attunes it to a decolonial project by giving back epistemological force to oppressed and colonized people.

Second, most research projects conducted within green criminology extend beyond political, economic, and geographical borders without ignoring them (White, 2012). Green criminology is interested in the complex networks which perpetuate environmental harms, which is coherent with the acknowledgement that the world has entered a 'risk-society' era, in which the possibility of distancing oneself from hazards has decreased and risks are globally shared regardless of national borders, albeit in an inequitable manner (Beck, 2006). Consequently, green criminology combines macro-structural with micro-sociological studies, taking into consideration the local, national, regional, global, and transnational scales of analysis (White, 2012). This modus operandi entails erasing the abysses between communities as well as acknowledging the interconnection and interdependence of all beings on earth. Such diminution of social distance helps to prevent both: othering (Sollund, 2017) and establishing barriers to multiple forms of knowledge production.

Finally, an interest in emotions and the adoption of care ethics (Sollund, 2012) that follow examples in philosophy (Kemmerer & Adams, 2011) are found in green criminology. This connects green criminology with one of the environmental rationales of Indigenous communities in colonial locations, referred to as "thinking-feeling with the earth" (Escobar, 2016, p. 11; see also Fals Borda, 1984) or as Indigenous environmental ontologies (Goyes et al., 2021a). This link is a pre-existing bridge between green criminology and Indigenous forms of relating to the environment that is not founded on purely instrumental reasoning. This bridge, combined with a sensitivity to the marginalized, an interest in the biases affecting social life, and the recognition of the interconnection of all beings on earth, are all characteristics that distance green criminology from colonial logics.

Nonetheless, criminology is still criminology, a discipline developed and entrenched in the North Atlantic academy, which disciplines the South to implement Northern theoretical constructions like green criminology, rather than developing Indigenous Southern theories and Southern disciplines. Criminology has generally neglected Indigenous peoples as creators of knowledge (Deckert, 2014, 2016; Goyes & South, 2021). The same is true for green criminology: in its anglophone version, Northern authors write *about* Indigenous peoples (e.g., Lynch & Stretesky, 2012; Lynch, Stretesky & Long, 2018). Therefore, the application of green criminology in other locations must be carefully examined. Yet, in the past decade, the

appearance of Southern green criminology has intended to correct the Northern-centrism of green criminology. Southern green criminology has challenged the discipline from the inside, informing it with a script from the South. Indigenous voices, mainly from Latin America, have enriched and corrected green criminology's intellectual production (e.g., Apaza Huanca, 2019; Goyes et al., 2021a, 2021b; Hernández Suárez, 2017). I detail the project below.

A Southern green criminology

Southern green criminology is not a new phenomenon but a reactivation of a longstanding epistemological tradition existent in Latin America and other locations of the Global South concerned with the sociological study of environmental crime (e.g., Arreaza de Márquez & Burgos Finol, 1981; Goyes, 2022), which draws on Indigenous knowledge, cosmologies, and ways of living. Southern green criminology draws on the rich tradition of thinkers – whether they self-identify as scholars or not – from the South who have analyzed the environmental conflicts brought about by colonial and neo-colonial practices. Many of those intellectuals are Indigenous. Current Southern green criminology gains additional inspiration from postcolonialism and decoloniality (Escobar, 1995, 2005, 2006, 2007, 2011, 2016).

Southern green criminology is based on the acknowledgement that the uneven distribution of political, economic, and epistemological power between the colonizers (the North) and the colonized (the South) expands considerably the possibility of abusive and destructive practices via nature. For instance, the political North-South divide gives Northern countries, mainly the United States and the European Union, the power to frame the international legal instruments globally regulating human interaction with nature. As Northern countries are mainly preoccupied with furthering their economic interests and those of the corporations they host, they overlook the deleterious global environmental consequences of their legal frameworks. Illustratively, the international intellectual property laws based on US and European models oblige Southern countries to drastically decrease the variety of seeds used in cropping, counteracting biological diversity (Shiva, 1997). Even when Southern countries refuse to accept the imposition of these legal frameworks, the superior political and economic power of Northern countries renders resistance meaningless (Goyes, 2017; Walters, 2011).

The uneven wealth distribution between the North and the South also allows Northern countries to fulfil their desire for environmental products at the cost of creating environmental destruction in Southern countries. For instance, most ivory, bird, and reptile collectors are located in the Global North but their 'collectables' are individuals of endangered Southern species (Sollund et al., 2019; Sollund & Runhovde, 2020). The economic power of the North also enables Northern investors to capitalize on stolen Indigenous land in the South (Goyes & South, 2016). Northern countries also use their economic power to transfer harm to the South. For instance, non-recyclable electronic appliance parts constitute an environmental hazard and are regularly offloaded on the Global South for processing (Ruggiero & South, 2010).

The uneven capital distribution between the North and the South is not only political and economic but also epistemological (i.e., coloniality). The Global North is credited with producing most of what is socially qualified as scientific knowledge, despite containing only 15 percent of the world's population (Carrington et al., 2016, 2019a, 2019b). This confidence in the North's capability to produce knowledge has prompted the imposition of scientific ways of relating to nature to the detriment of local methods (Goyes, 2020).

Three epistemological insights are evident in this theorization. First, the daily dynamics of Northern and Southern countries are inseparably linked (Lessenich, 2019). Second, the

implementation of global policies developed by Northern countries threatens the fulfilment of basic collective needs in Southern countries (Böhm, 2018; Goyes & South, 2016). Third, because of the above, the North-South divide is a key driver of environmental conflict and crime (Escobar, 1995; Franko & Goyes, 2019; Goyes, 2019, 2021). As such, Southern green criminology is the socio-criminological study of the social dynamics around environmental harms and conflicts and is attentive to the legacies of colonization, the North-South and core-periphery divide, the epistemological contributions of the marginalized, impoverished and oppressed, and the particularities of the contexts of the Global South (Goyes, 2019).

Therefore, Southern green criminology is a reaction to the harms derived from a colonial world order and uses the North-South division as a central analytical category (Goyes, 2019). This division is invaluable in the study of 'the historical impact of colonial and imperial practices' in instances of conflict and violence (Aas, 2013; Agozino, 2003, 2004; Carrington et al., 2016, 2019a, 2019b). Additionally, Southern green criminology grows out of the epistemological knowledge of those considered *knowledge-less*, that is, people most adversely affected by environmental crime such as Afro-descendants, Indigenous peoples, and *campesinos* (farmers). As such, it is inspired by decolonial work that has as its goal to liberate the production of knowledge, reflection, and communication from European rationality/modernity. Southern green criminology, like green criminology, frees itself from the colonial imposition of topics to research as determined by the criminal justice system and identifies what harms the lives of the colonized.

Decolonizing society and nature: the way forward

Imperial powers have not only plundered natural resources from their colonies, but they also established a system of social control that secured them economic, political, and epistemological supremacy. Southern green criminology works to decolonize society by mapping and exposing the impact that the North-South division has on human interactions with nature. Challenging *coloniality*, which presents Northern knowledge as superior, Southern green criminology draws on the epistemological insights of the colonized. Southern green criminology identifies the actors, dynamics, and logics of colonially driven environmental destruction. Defenders of the current world order in which the North imposes what to think about, how to think, and how to behave take issue with green criminology (e.g., Johansen, 2021). Yet, decolonizing criminology means liberating its contents from the shackles of Northern thinking, i.e., from the belief that only colonizers can produce knowledge, to unmask the logics and systems that allow the exploitation of the South by neo-colonizers.

The genocide at Casa Arana happened because a) the North needed rubber to produce commodities, b) colonizers imposed a worldview in which Indigenous peoples were inferior, and c) a legal system of social control was in place to discipline the colonized. At the time I write this chapter, all three elements are present throughout the world (Goyes et al., 2021a, 2021b; Goyes & South, 2021): the North's thirst for natural resources keeps generating the destruction of the South, non-Whites keep being seen as inferior, and global social systems keep legitimizing the exploitation of the many by the few. Decolonizing our interactions with nature is key to decolonizing society, as I have demonstrated in this chapter.

References

Aas, K.F. (2013). *Globalization and crime* (2nd ed.). Sage Publications.

Agozino, B. (2003). *Counter-colonial criminology: A critique of imperialist reason*. Pluto Press.

Agozino, B. (2004). Imperialism, crime and criminology: Towards the decolonisation of criminology. *Crime, Law & Social Change*, *41*, 343–358.

Aniyar de Castro, L. (1987). *Criminología de la liberación* [Liberation criminology]. Editorial de la Universidad de Zulia.

Apaza Huanca, Y.K. (2019). Non-western epistemology and the meaning of the Pachamama (environment) within the world(s) of the Aymara identity. *International Journal for Crime, Justice and Social Democracy*, *8*(3), 6–22.

Arreaza de Márquez, E., & Burgos Finol, F. (1981). Delito ecológico como delito de Cuello Blanco. *Revista Capítulo Criminológico*, *7/8*, 35–115.

Beck, U. (2006). *La sociedad del riesgo, hacia una nueva modernidad* [Risk society: Towards a new modernity] (J. Navarro, D. Jiménez, & R. Borrás, Trans.). Paidós.

Beirne, P., & South, N. (Eds.). (2007). *Issues in green criminology: Confronting harms against environments, humanity and other animals*. Willan.

Böhm, M.L. (2018). *The crime of maldevelopment: Economic deregulation and violence in the Global South*. Routledge.

Brisman, A., & South, N. (2013). Introduction: Horizons, issues and relationships in green criminology. In N. South & A. Brisman (Eds.), *Routledge international handbook of green criminology* (pp. 1–24). Routledge.

Canning, V., & Tombs, S. (2021). *From social harm to zemiology: A critical introduction*. Routledge.

Carrington, K., Dixon, B., Fonseca, D., Goyes, D. R., Liu, J., & Zysman, D. (2019a). Criminologies of the Global South: Critical reflections. *Critical Criminology*, *27*(1), 163–189.

Carrington, K., Hogg, R., Scott, J., Sozzo, M., & Walters, R. (2019b). *Southern criminology*. Routledge.

Carrington, K., Hogg, R., & Sozzo, M. (2016). Southern criminology. *British Journal of Criminology*, *56*(1), 1–20.

Crosby, A.W. (2004). *Ecological imperialism: The biological expansion of Europe, 900–1900*. Cambridge University Press.

Davies, P., Francies, P., & Jupp, V. (Eds.). (1999). *Invisible crimes: Their victims and their regulation*. St. Martin's Press.

Davies, P., Francies, P., & Wyatt, T. (Eds.). (2014). *Invisible crimes and social harms*. Palgrave Macmillan.

Deckert, A. (2014). Neo-colonial criminology: Quantifying silence. *African Journal of Criminology and Justice Studies*, *8*, 39–63.

Deckert, A. (2016). Criminologists, duct tape, and Indigenous peoples: Quantifying the use of silencing research methods. *International Journal of Comparative and Applied Criminal Justice*, *40*(1), 43–62.

del Olmo, R. (1981). *America Latina y su criminología* [Latin America and its criminology]. Siglo veintiuno editores.

del Olmo, R. (1987). Aerobiology and the war on drugs: A transnational crime. *Crime and Social Justice*, *30*, 28–44.

del Olmo, R. (1998). The ecological impact of illicit drug cultivation and crop eradication programs in Latin America. *Theoretical Criminology*, *2*(2), 269–278.

Escobar, A. (1995). *Encountering development: The making and unmaking of the Third World*. Princeton University Press.

Escobar, A. (2003). Mundos y conocimientos de otro modo: El programa de investigación de modernidad/colonialidad latinoamericano [Worlds and knowledge in another way: The Latin American program of research on modernity/coloniality]. *Tabula Rasa*, *1*, 51–86.

Escobar, A. (2005). *Más allá del Tercer Mundo: Globalización y diferencia* [Beyond the Third World: Globalization and difference] Instituto Colombiano de Antropología e Historia.

Escobar, A. (2006). Political ecology of globality and difference. *Gestión y Ambiente*, *9*(3), 29–44.

Escobar, A. (2007). Worlds and knowledges otherwise. *Cultural Studies*, *21*(2/3), 179–210.

Escobar, A. (2011). Más allá del desarrollo: Postdesarrollo y transiciones hacia el pluriverso [Beyond development: Postdevelopment and transitions towards pluriverse]. *Revista de Antropología Social*, *21*, 23–62.

Escobar, A. (2016). Thinking-feeling with the earth: Territorial struggles and the ontological dimension of the epistemologies of the South. *Revista de Antropología Iberoamericana*, *11*(1), 11–32.

Fals Borda, O. (1984). *Resistencia en el San Jorge* [Resistance in San Jorge]. Carlos Valencia Editores.

Franko, K., & Goyes, D.R. (2019). Global ecological destruction. In K. Franko (Ed.), *Globalization and crime* (pp. 193–212). Sage.

Galeano, E. (1997). *Open veins of Latin America*. Monthly Review Press.

Galtung, J. (1971). A structural theory of imperialism. *Journal of Peace Research*, *8*(2), 81–117.

Goyes, D.R. (2017). Corporate lobbying and criminalization. *Crime, Law & Social Change*, *69*, 401–419.

Goyes, D.R. (2018). *Biopiracy from a green criminological perspective* [Unpublished doctoral disseration]. The University of Oslo.
Goyes, D.R. (2019). *Southern green criminology: A science to end ecological discrimination*. Emerald.
Goyes, D.R. (2020). Little development, few economic opportunities and many difficulties: Climate change from a local perspective. *International Journal for Crime, Justice and Social Democracy*, *9*(2), 170–182.
Goyes, D.R. (2021). *Environmental crime in Latin America and Southern green criminology*. Oxford University Press.
Goyes, D.R. (2022). Latin American Green Criminology. *Justice, Power and Resistance*, *5*(3/4). https://doi.org/10.1332/CDQK2391
Goyes, D.R., Abaibira, M.A., Baicué, P., Cuchimba, A., Ñeñetofe, D.T.R., Sollund, R., South, N., & Wyatt, T. (2021a). Southern green cultural criminology and environmental crime prevention: Representations of nature within four Colombian Indigenous communities. *Critical Criminology*, *29*(1), 469–485.
Goyes, D.R., & South, N. (2016). Land-grabs, bio-piracy and the inversion of justice in Colombia. *British Journal of Criminology*, *56*(3), 558–577.
Goyes, D.R., & South, N. (2017). Green criminology before green criminology: Amnesia and absences. *Critical Criminology*, *25*(2), 165–181.
Goyes, D.R., & South, N. (2021). Indigenous worlds and criminological exclusion: A call to reorientate the criminological compass. *International Journal for Crime, Justice and Social Democracy*, *10*(3), 115–128.
Goyes, D.R., South, N., Abaibira, M.A., Baicué, P., Cuchimba, A., & Ñeñetofe, D.T.R. (2021b). Genocide and ecocide in four Colombian Indigenous communities: The erosion of a way of life and memory. *British Journal of Criminology*, *61*(4), 965–984.
Hernández Suárez, C. (2017). The environmental damages and liabilities of collective suicide. In D.R. Goyes, H. Mol, A. Brisman, & N. South (Eds.), *Environmental crime in Latin America: The theft of nature and the poisoning of the land* (pp. 13–30). Palgrave Macmillan.
Hillyard, P., Pantazis, C., Thombs, S., & Gordon, D. (Eds.). (2004). *Beyond criminology: Taking harm seriously*. Pluto Press.
Johansen, N. (2021). Bruddet med samfunnsskontrakten: Om forskjellen mellom gullalderen og den kritiske tradisjonen innenfor kriminologi og rettsosiologi [The breach of the social contract: The difference between the golden age and the critical tradition in criminology and sociology of law]. *Tidsskrift for samfunnsforskning* [Journal of Social Research], *62*(2), 176–191.
Kemmerer, L.A., & Adams, C.J. (2011). *Sister species: Women, animals and social justice*. University of Illinois Press.
Lessenich, S. (2019). *Living well at others' expense. The hidden costs of Western prosperity*. Polity.
Lynch, M. (1990). The greening of criminology: A perspective on the 1990s. *Critical Criminologist*, *2*(3), 3–12.
Lynch, M.J., & Stretesky, P.B. (2012). Native Americans and social and environmental justice: implications for criminology. *Social Justice*, *38*(3), 104–124.
Lynch, M.J., Stretesky, P.B., & Long, M.A. (2018). Green criminology and Native peoples: The treadmill of production and the killing of indigenous environmental activists. *Theoretical Criminology*, *22*(3), 318–341.
Mann, C. (2011). *1493: Uncovering the new world Columbus created*. Alfred Knopf.
McClanahan, B., & Brisman, A. (2015). Climate change and peacemaking criminology: Ecophilosophy, peace and security in the 'war on climate change'. *Critical Criminology*, *23*(4), 417–431.
Mol, H. (2017). *The politics of palm oil harm: A green criminological perspective*. Palgrave Macmillan.
Morrison, W. (2006). *Criminology, civilisation and the new world order*. Routledge.
Passas, N. (2005). Lawful but awful: Legal corporate crimes. *Journal of Socio-Economics*, *34*, 771–786.
Quijano, A. (2000). Coloniality of power, Eurocentrism, and Latin America. *Nepantla: Views from the South*, *1*(3), 533–580.
Quijano, A. (2007). Coloniality and modernity/rationality. *Cultural Studies*, *21*(2/3), 168–178.
Quintín Lame, M. (1971). *En defensa de mi raza* [In defence of my race]. Publicaciones de la Rosca.
Ramírez Mejía, S., Correa Aranzazu, A., Ramírez Mejía, E., & Hernández Baena, D. (2012). Aplicación de teorías de internacionalización a 'La Casa Arana' [Applying internationalisation theories to 'Arana House']. *Revista de Negocios Internacionales*, *5*(1), 44–54.
Ruggiero, V., & South, N. (2010). Green criminology and dirty collar crime. *Critical Criminology*, *18*(4), 251–262.
Santamaría, A. (2017). Memory and resilience among Uitoto women: Closed baskets and gentle words to invoke the pain of the Colombian Amazon. *Latin American and Caribbean Ethnic Studies*, *12*(3), 315–330.

Santos, B.d.S. (2009). Introduçao [Introduction]. In B.d.S. Santos & M.P. Meneses (Eds.), *Epistemologias do Sul* [Epistemologies of the South] (pp. 9–19). Almedina.

Santos, B.d.S. (2014). *Epistemologies of the South: Justice against epistemicide*. Paradigm Publishers.

Schwendinger, H., & Schwendinger, J. (1970). Defenders of order or guardians of human rights? *Issues in Criminology*, *5*(2), 123–157.

Shiva, V. (1997). *Biopiracy: The plunder of nature and knowledge*. South End Press.

Sollund, R. (2012). Victimisation of women, children and non-human species through trafficking and trade: Crimes understood under an ecofeminist perspective. In N. South & A. Brisman (Eds.), *Routledge international handbook of green criminology* (pp. 317–330). Routledge.

Sollund, R. (2017). The animal other: Legal and illegal theriocide. In M. Hall, J. Maher, & A. Nurse (Eds.), *Greening criminology in the 21st century: Contemporary debates and future directions in the study of environmental harm* (pp. 79–100). Routledge.

Sollund, R., Maldonado, A.M., & Brieva Rico, C. (2019). The Norway-Colombia agreement to protect rainforest and reduce global warming: Success or failure? *International Journal for Crime, Justice and Social Democracy*, *8*(3), 56–73.

Sollund, R., & Runhovde, S.R. (2020). Responses to wildlife crime in post-colonial times. Who fares best? *British Journal of Criminology*, *60*(4), 1014–1033.

South, N. (2008). Nature, difference and the rejection of harm: Expanding the agenda for green criminology. In R. Sollund (Ed.), *Global harms: Ecological crime and speciesism* (pp. 187–200). Nova.

Stretesky, P.B., Long, M.A., & Lynch, M.J. (2014). *The treadmill of crime: Political economy and green criminology*. Routledge.

Tombs, S., & Hillyard, P. (2004). Towards a political economy of harm: States, corporations and the production of inequality. In P. Hillyard, C. Pantazis, S. Tombs, & D. Gordon (Eds.), *Beyond criminology: Taking harm seriously* (pp. 30–54). Pluto Press.

Walters, R. (2011). *Eco crime and genetically modified food*. Routledge.

White, R. (2012). The foundations of eco-global criminology. In R. Ellefsen, R. Sollund, & G. Larsen (Eds.), *Eco-global crimes: Contemporary problems and future challenges* (pp. 15–31). Ashgate Publishing Limited.

White, R. (2013). *Environmental harm: An eco-justice perspective*. Policy Press.

39

Decolonizing genocide

Andrew Woolford

"First I must tell you about the genocide…"

I have worked in the area of genocide studies for over 20 years. The "problems of genocide" (Moses, 2021, p. 1) were made apparent to me early on. In 1999, I was conducting interviews for my PhD dissertation on the topic of modern-day treaty-making in my home province of British Columbia. I was particularly interested in treaty-making as a form of historical repair, but before Coast Salish Elders and leaders would speak to me about the treaty process, they first wanted me to understand the truth of their history. More than once, an Elder prefaced their remarks with a variation of the phrase, "First I must tell you about the genocide." At the same time, I was a teaching assistant for a class on the criminology of genocide. Key texts in the field said nothing of genocide in Canada and very little about colonial genocides in general. Moreover, those scholars who had shown leadership in articulating genocidal relations in Canada (Adams, 1975; Cardinal, 1969; Churchill, 1997; Crisjohn et al., 1997; Paul, 1993) were seldom given any regard in genocide studies. The juxtaposition of these two experiences influenced me to not only bring Canada further into the genocide studies conversation but also to open up the genocide concept to better address the unique characteristics of colonial destruction (Woolford, 2009).

The origins of the genocide concept

On the surface, the law of genocide appears to promise a tool in the struggle against colonial domination. What could be more fundamental to strategies of anti-colonization than legal protection for the physical, biological, and cultural continuity of a group? Yet, the genocide concept emerges from a colonial milieu and too often has served to prop up rather than limit the powers of colonizing forces.

To assess the anti-colonial potential of the genocide concept, scholars often turn to the life and thought of Raphael Lemkin, the Polish-Jewish jurist credited with coining the term. In some retellings, the young Lemkin is portrayed as being shocked by the injustice of group destruction that he read about in historical novels like Henryk Sienkiewicz's *Quo Vadis*, which details the slaughter of Christians after the burning of Nero's Rome in 64 CE, as well as in

DOI: 10.4324/9781003176619-43

reports on the Armenian genocide and pogroms against Jewish people in Europe. Lemkin writes in his autobiography, which mixes personal history with efforts to promote his genocide concept, "I became so fascinated with this story that I looked up all the similar instances in history, like the destruction of Carthage, of the Huguenots, of the Catholics in Japan, of so many Europeans by Genghis Khan" (Lemkin, 2013, p. 1). In 1933, he addressed such injustices through his draft of the twin crimes of barbarism and vandalism, drawing on these Eurocentric terms so often used to criminalize the outsider: "The first consisted of destroying a national or religious collectivity; the second consisted of destroying works of culture, which represented the specific genius of these national and religious groups" (Lemkin, 2013, p. 22). Lemkin's proposal was presented on his behalf at an international conference in Barcelona, since, at the time, he was deputy prosecutor at the District Court of Warsaw, and he was not permitted to attend this conference because the Polish Minister of Justice worried that Lemkin was motivated solely to represent Jewish interests and that this would reflect poorly on the Polish government (Irvin-Erickson, 2017; Lemkin, 2013).

Lemkin had to flee genocide in 1939 when the German invasion of Poland placed him in danger. Indeed, he lost most of his family to the Holocaust. After a long journey that eventually brought him to the east coast of the United States, Lemkin dedicated himself to codifying a law to prevent the destruction of groups. In 1943, Lemkin (1944) coined the term 'genocide' to describe this crime, defining it in his 1944 book, *Axis Rule in Occupied Europe*:

> Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.
>
> *(p. 79)*

On the same page, Lemkin connects genocide to colonialism. His analysis of Nazi occupation captures how the Nazi regime sought to overtake and occupy new territories, transforming them into German colonies – a notion picked up by later genocide scholars focusing on case studies in Australia, North and South America, and Africa (e.g., Kakel, 2011; Moses, 2008; Zimmerer, 2008). Lemkin (1944) writes:

> Genocide has two phases: one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain or upon the territory alone, after removal of the population and the colonization by the oppressor's own nationals.
>
> *(p. 79)*

Before we celebrate Lemkin as an anti-colonial innovator, we must grapple with the complexity of his biography. We often acknowledge Lemkin for his tireless efforts in the aftermath of the Holocaust to ensure the creation of the United Nations Convention on the Prevention

and Punishment of the Crime of Genocide in 1948 (hereafter UNGC). And we applaud how Lemkin staunchly defended the inclusion of cultural genocide as a distinct modality of group destruction, doing so against opposition from settler-colonial nations and others. For this reason, his legacy is often counterposed against those who limit genocide to its physical and biological forms. However, he also appears to have shifted his concept toward an emphasis on physical annihilation as time went on (Moses, 2021). Lemkin's commitment to legal codification was so great that he saw the need for compromises with powerful nations that were reluctant to embrace limitations on their powers (Weiss-Wendt, 2017). For this reason, he accepted the exclusion of political groups from the list of potential targets of genocide. Likewise, he sought to appease the United States by opposing the use of his term in the 1951 petition *We Charge Genocide*, which was prepared by William Patterson and the Civil Rights Congress. The petition argued that the United States' treatment of African Americans met the criteria of the Genocide Convention. Lemkin dismissed their arguments because he did not want them to distract the US from ratifying the Genocide Convention (Irvin-Erickson, 2017; Moses, 2021).

Other scholars have pointed to Lemkin's involvement in the Zionist movement as contradicting his commitment to the anti-colonial struggle (Loeffler, 2017; Moses, 2021). Though Lemkin's planned comparative study of world genocides included many cases from the colonial world (see McDonnell & Moses, 2005), these scholars suggest that Lemkin was most influenced by concerns about how anti-Semitism would always leave Jewish people at risk of destruction. Therefore, he sought to universalize a de-politicized notion of genocide that over-specified that destruction must be driven by hate, ignoring other forms of violent assault on groups, such as mass bombings of civilian populations, making it more difficult to apply genocide to greed- and expansion-driven colonial powers (Moses, 2021).

The debate about Lemkin's motivation continues. His complexity is a reminder not to seek pure foundations for the genocide concept, as well as not to assume that genocide is necessarily or solely a law to protect the weak. Decolonizing genocide requires we engage in *critical* genocide studies.

Critical genocide studies were developed to help scholars break free from many of the tiresome habits of the field, such as incessant debates about the uniqueness or comparability of the Holocaust (e.g., Katz, 1981). First, this approach pushes us away from prototype-based definitions of genocide that measure all genocides against the Holocaust. Second, critical genocide studies disrupt hierarchies of genocide, whereby there is what Alexander Hinton (2012) describes as an established core of acceptable cases (e.g., the Holocaust, Armenia, Rwanda), secondary cases that are sometimes questioned (e.g., East Pakistan, settler genocides), and then a group of peripheral or hidden cases (e.g., Burundi, Indonesia). It asks why some cases are more likely to come to the fore than others, as well as why some definitions of genocide take precedence. Third, critical genocide studies avoid overly broad comparative work that tends to examine cases largely at the national level. In contrast, fine-grained analysis of local, regional, and global conditions of genocide are preferred, with attention given to the micro-, meso-, and macro-processes of genocidal violence, as well as efforts to regulate, prevent, and ameliorate it (Verdeja, 2012; Woolford, 2015). Fourth, critical genocide scholars have questioned the genocide concept in several ways. Some, like historian Dirk Moses (2021), look at how genocide law has extended rather than limited sovereign power. He argues that it allows nations to define what counts as transgression and thereby use such laws to accuse enemies of committing transgressions while ignoring their own. In so doing, powerful nations pursue a "permanent security" (Moses, 2021, p. 1) whereby externalized threats are the primary targets for international law. Other critical genocide scholars examine how the genocide keyword has been defined in a manner that privileges

the lives of certain types of groups over others, and how this is often done with a European bias (Woolford, 2009). The next section follows this latter approach, focusing on the colonial origins of genocide law.

Colonizing genocide

To illustrate how colonial discourses influenced the formation of genocide law, it is useful to focus on the UN General Assembly debates on cultural genocide in the lead-up to the finalization of the UNGC, since they reveal how settler-colonial nations felt exposed for their historical and contemporary practices of Indigenous erasure and dispossession.

After the International Military Tribunal, where Lemkin's concept was not among the charges, Lemkin used his political contacts to convince nations such as Panama, Cuba, and India to sponsor a resolution on genocide to go before the General Assembly. He contributed to early drafts that included details of physical, biological, and cultural techniques of destruction. Sociologist Damien Short (2010) suggests that for Lemkin these three categories were not separate types of genocide; instead, they were interconnected techniques of group destruction. Following Lemkin's lead, the Secretariat Draft Convention for the Prevention and Punishment of Genocide of 6 June 1947 recognized physical, biological, and cultural destruction by identifying the following acts of genocide: "Causing the death of members of a group or injuring their health or physical integrity"; "Restricting births"; and "Destroying the characteristics of the group" (Abtahi & Webb, 2008, p. 116).

Cultural genocide had a prominent place within early drafts. As late as the Ad Hoc Committee on Genocide's 1948 draft, cultural genocide existed as a separate article. In this version, Article III read:

> In this Convention genocide also means any deliberate act committed with the intent to destroy the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious belief such as: 1. Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group; 2. Destroying, or preventing the use of, libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of groups.
>
> *(quoted in Morsink, 1999, p. 1023)*

Many parties involved in the creation of the UNGC, however, objected to the inclusion of cultural genocide. Lemkin countered their concerns, arguing that "a racial, national, or religious group cannot continue to exist unless it preserves its spirit and moral unity […]. If the diversity of cultures were destroyed, it would be as disastrous for civilization as the physical destruction of nations" (quoted in Abtahi & Webb, 2008, pp. 234–235). Lemkin assured delegates to the General Assembly that they would not be accused of genocide for their efforts to integrate minorities into their nations, noting the assimilation of minorities was acceptable when conducted through "relatively moderate methods" (quoted in Abtahi & Webb, 2008, p. 23).

These arguments failed to appease his opponents. For some delegates, it was absurd to suggest genocide could occur through efforts to assimilate and erase what they perceived to be backward cultures. Evolutionary standards for assessing the value of groups and belief in the civilizational project were still very much in vogue. For example, the delegate from Sweden, Mr Petran, stated:

> The acts which, according to article III, would constitute cultural genocide might be far less serious than those specified in article II; for instance, in the case of measures of educational policy, it might be difficult to estimate their scope in relation to the cultural position of a minority. The question could arise whether, for example, the fact that Sweden had converted the Lapps to Christianity might not lay her open to the accusation that she had committed an act of cultural genocide.
>
> *(quoted in Abtahi & Webb, 2008, p. 1506)*

Mr Goytisolo from South Africa scoffed that the law would allow for the "protection of such customs as cannibalism" (quoted in Abtahi & Webb, 2008, p. 1513).

Other delegates argued that physical and cultural genocide were too different to combine under the same law, that cultural genocide was or should be covered by other legal protections, and that the article on cultural genocide was too vague to be justiciable. Mr Federspiel from Denmark raised two of these objections in his remarks, expressing his astonishment "that the Ad Hoc Committee should have submitted so vague a text". He continued, "it would show a lack of logic and of a sense of proportion to include in the same convention both mass murders in gas chambers and the closing of libraries" (quoted in Abtahi & Webb, 2008, p. 1508).

In the end, 26 nations voted in favour of excluding cultural genocide from UNGC versus 16 against and four abstentions (Abtahi & Webb, 2008). In the final draft, genocide was defined in Article II of the UNGC:

> In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:
>
> a *Killing members of the group*;
> b *Causing serious bodily or mental harm to members of the group*;
> c *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part*;
> d *Imposing measures intended to prevent births within the group*;
> e *Forcibly transferring children of the group to another group*.[1]

A few immediate points are worth making about this article. The groups protected under it are limited to national, ethnic, racial, and religious groups – terms that do not capture the holistic complexity of many Indigenous societies. Destruction is also imagined in a manner that poorly reflects how Indigenous groups are entangled with their land and language. Moreover, the notion of intent offered is so narrow, referring only to specific intent designed to eliminate a group for who they are, or "as such", thus providing nations with a defence when their group-destructive actions can be presented as primarily driven by economic or expansionary desires (Woolford, 2009).

Contrast the conceptualization of group destruction presented here to the words used by Residential School survivor Theodore Fontaine (2014) to describe his experiences:

> [T]he consequences experienced by Indian Residential School Survivors and their children, and by successive generations of children, are a testament to the complex tangle of political, social, cultural, economic, mental, physical, emotional and spiritual harms that barrage the lives of those we call survivors and their descendants. The compounding burdens take an ever-increasing toll on the health, well-being and very survival of Indigenous people.
>
> *(p. vii)*

Group destruction, as lived by Survivors like Fontaine, is better captured by Lemkin's initial, more encompassing definition of genocide.

Lemkin (2013) felt Article II(e) on the transfer of children from one group to another preserved a form of cultural genocide in the UNGC. Some scholars agree and apply it to phenomena such as assimilative schooling (Grant, 1996); however, others argue that II(e) only reflects physical or biological genocide. That is, to qualify as genocide, children have to be removed from their homes in a manner that is permanent, thereby jeopardizing the group's biological and physical existence (Akhavan, 2016).

Settler-colonial nations played a key role in restricting the definition of genocide. Canada was, from the beginning, involved, and was consistent in its view that the United Nations should prepare "a more limited definition of genocide" than that found in the Secretariat Draft (quoted in Abtahi & Webb, 2008, p. 624). In his autobiography, Lemkin nonetheless represents the Canadian delegation as allies, though this may have been a strategic representation, hoping to preserve Canada's support for the UNGC. During the July 1948 discussions in Geneva, on a late-night stroll, Lemkin recalls coming across Canadian ambassador Dana Wilgress. Lemkin (2013) writes of their meeting:

> When I accompanied him back to his hotel, he told me it would be very good for us, and I distinctly heard the saving phrase 'for us,' to win the support of the future president of the Assembly in Paris. He was Wilgress's personal friend…
>
> *(p. 142)*

Around the same time, the Secretary of State for external affairs in Ottawa sent a 27 July 1948 telegram to the Canadian delegation in Geneva. It instructed:

> You should support or initiate any move for the deletion of Article III on 'Cultural' Genocide. If this move is not successful, you should vote against Article III and if necessary, against the Convention. The Convention as a whole less Article III, is acceptable, although legislation will naturally be required to implement the Convention.
>
> *(as quoted in Brean, 2015, n.p.)*

This telegram also notes that the UNGC will require domestic implementation. In implementing the UNGC in the Canadian Criminal Code, Canada recognized only Articles II(a) and II(c), further protecting itself from claims of cultural genocide.

During the October 1948 discussions on the UNGC, a Canadian delegate contended that cultural genocide represented a "dilution of the purpose of the Convention" (quoted in Abtahi & Webb, 2008, p. 1246). At the 83rd meeting, Mr Lapointe from Canada added that no revision of the article on cultural genocide would satisfy Canada – it simply had to be removed.

> Yet it was true to say that the Government and people of Canada were horrified at the idea of cultural genocide and hoped that effective action would be taken to suppress it. The people of [Canada] were deeply attached to their cultural heritage, which was made up mainly of a combination of Anglo-Saxon and French elements, and they would strongly oppose any attempt to undermine the influence of those two cultures in Canada.
>
> *(quoted in Abtahi & Webb, 2008, pp. 1509–1510)*

The delegate simultaneously rejects Article III and erases the cultural heritage of Indigenous peoples – all while claiming Canada's adherence to the protection of culture.

Focusing on the issue of cultural genocide and its elimination from the Genocide Convention, one can see how colonial logics seeped into the drafting of genocide law. Not only were civilizational discourses present in the rationale for removing Article III but settler-colonial nations, which had a vested interest in preventing scrutiny of their treatment of Indigenous peoples, were able to impose their will on its ultimate content.

Criminology colonizes genocide

Immediately before, during, and after World War II, criminological thought was enlisted both in the perpetration (Rafter, 2008; Wetzell, 2000) and adjudication (Hagan & Greer, 2002) of genocide. But it was not until the end of the twentieth century that there appeared any sustained discussion of the *crime* of group destruction. For example, several criminologists engaged with the Goldhagen–Browning debate that took place over the motivations of Police Battalion 101, a group of irregular German recruits that played an important role in Jewish massacres and removals from the Polish countryside (see Brannigan, 1998; Day & Vandiver, 2000; Friedrichs, 2000; Morrison, 2006). Prior to the onset of their atrocities, members of the battalion were invited by their commanding officer to step aside if they were uncomfortable with their orders. Few accepted. Instead, they participated in the murder of Jewish peasants, often at close quarters and in a gruesome fashion. Although some were initially repulsed by the killings, they gradually became inured to death and suffering. Daniel Goldhagen (1997) argues that these men were driven by an eliminationist anti-Semitism that was pervasive in Germany at the time and made all Germans "willing executioners" (p. 1). In contrast, Christopher Browning (1998) offers a multi-causal and social-psychological explanation that draws on factors such as peer pressure, authority, and ambition to make sense of the battalion members' actions. In this debate, criminologists found an opportunity to demonstrate how criminological concepts might help one arrive at conclusions similar to those of either Goldhagen or Browning.

Most of the early criminological work on genocide focused on canonical case studies (e.g., the Holocaust, Rwanda, and Bosnia), as well as on familiar themes of genocide perpetration and prevention. These themes were often re-clothed in criminological theory with the overarching aim of demonstrating the applicability and flexibility of criminology beyond its use to explain street crime.

Critical criminologists engaging in the study of genocide have also often focused on core cases such as the Holocaust, sometimes referred to as "the crime of the century" (Friedrichs, 2000), illustrating how mass murder as an act of state crime had failed to register in the world of mainstream criminology. In rightfully criticizing the narrow focus of mainstream criminology, the discourse of 'the crime of the century' threatened to inadvertently contribute to hierarchical thinking about genocide, suggesting the Holocaust as the prototype for criminological engagement with the phenomenon.

For the most part, criminological interventions in the study of genocide have the following characteristics: 1) the UNGC and other elements of genocide law are applied uncritically; 2) research is conducted at a distance from the communities and cultures in which genocide is perpetrated and experienced; 3) criminological concepts often drawn from the world of street crime are exported to genocidal contexts and standard criminological questions that support the expansion of state power are asked (e.g., "Why did the perpetrators participate in genocide?" "How should we intervene?" and "How might justice be achieved in the aftermath of genocide?"); and 4) Genocide is treated as an event with identifiable and consistent traits rather than as a process that ebbs and flows across time and space (Woolford, 2006, 2015).

Moreover, genocide is too often treated in this literature as something that happens elsewhere, displacing ongoing acts of settler violence (see Veracini, 2010) and purifying the complicity of colonial powers in genocide. Indeed, too many criminological treatments have ignored cases of colonial genocide (exceptions include Hoffman 2009; Morrison 2006). Why is this so? Is criminology an inherently colonial project, an "imperial science for the control of others" (Agozino, 2004, p. 343)? Or – as is often the case in emerging areas of study – are criminologists simply grasping at the lowest-hanging fruit – those cases from the core of genocide studies for which the most secondary information exists? Whatever the case, one can note that criminology is prone to begin its investigations from epistemological perspectives that automatically exclude certain cases. This tendency is even more evident in instances that involve what is often referred to as cultural genocide, which, as shown in the previous section, was excised from genocide law primarily for political reasons. Criminologists authorize this exclusion by restricting their focus only to instances of physical genocide.

It is also worthy of note that contemporary academic markets encourage a colonial or extractive mentality among scholars. In our world where citation counts are increasingly becoming part of professorial performance evaluation, and where graduate students are under intense pressure to make an original contribution to a cluttered field, there is an interest in planting one's flag and 'discovering' new areas for criminological exploration, which can result in extractive research that mines the suffering of others. To break out of this cycle, it is necessary for criminologists to reflexively engage in unsettling or decolonizing their practice.

Decolonizing genocide

As a settler scholar who accepts the Fanonian proposition that the colonized are the ones who must lead in decolonization (Coulthard, 2014; Fanon, 1963), my preference is to speak of *unsettling* genocide studies (Regan, 2010). The role of the settler scholar in this process is to unsettle their research, interrogating the assumptions and habits of Western scholarship, particularly those that obstruct Indigenous ways of knowing and being from receiving serious attention in criminology and genocide studies. Such work acts to open space for Indigenous scholars to enter and transform colonized fields, asserting a place for Indigenous perspectives and legal traditions. This cannot be an exploitative project that appropriates Indigenous knowledges for self-benefit, allowing the settler scholar to assume the position of the privileged knower, which in extreme cases produces so-called pretendians and wannabes, who perform Indigenous identities to gain access to the few inducements available to Indigenous scholars. Instead, the settler scholar is always implicated in a system of Indigenous dispossession, and unsettling is an act of scratching at the walls from the inside, hoping to weaken the barriers to the decolonization and transformation of not only how we think but also how we practice criminology.

With respect to thinking about genocide differently, the fate of Article III on cultural genocide and its omission from the UNGC exemplifies how the political construction of genocide law worked to the advantage of settler-colonial nations. More importantly, prevalent assumptions about 'the primitive' meant that Indigenous legal systems and Indigenous knowledges were given no consideration in the creation of genocide law (National Inquiry into Missing and Murdered Women and Girls, 2019). Indigenous input is evident in more recent UN pronouncements, like the United Nations Declaration of the Rights of Indigenous Peoples, but still, powerful nations are able to shape what is considered practical or achievable through the

declaration, meaning, in the end, a mentioning of cultural genocide in UNDRIP was lost among the statements affirming Indigenous cultural rights (Benvenuto, 2018).

The conceptual blockages (Moses, 2002) to full consideration of Indigenous perspectives on genocide and its prevention relate to the need for shifting the practice of criminological work on genocide. An unsettled genocide scholarship takes place in partnership with Indigenous peoples, providing not only scholarly benefits but also benefits to Indigenous communities (Kovach, 2021; Smith, 1999). Certainly, the practice of criminologists sitting back and reading human rights reports, all while ignoring genocide in their own backyard, needs to be addressed.[2] And deeper engagement with the backyard offers the promise of personal and scholarly growth for the criminologist. In my work on assimilative schooling for Indigenous children in North America, my education was greatly enhanced when I stepped out of the archive and began work with a group of Survivors from the Assiniboia Residential School in Winnipeg, Manitoba. Respecting their expertise, ownership of their knowledge and stories, and insight into the needs of their community, led the project in directions I otherwise never would have anticipated. The first goal they sought to achieve was a reunion for the former Assiniboia students who were still alive. To accomplish this, I became an event co-planner, admittedly wondering at times what any of this had to do with my skill set. But the event proved how misguided my doubts were. The reunion became what we came to call a 'knowledge gathering' rather than research, producing an incredible sharing of stories, pictures, and the material history of the school, which all featured in a book we published under the name of the Survivors, rather than my authorship. The book, *Did you see us? Reunion, remembrance, and reclamation at an urban Indian Residential School* (Survivors of the Assiniboia Indian Residential School, 2021), is not likely to be widely cited in either criminology or genocide studies, but it is receiving widespread use within high schools and universities, providing students with access to the unfiltered perspectives of Survivors on their experience of genocide in Canada.

The criminology of genocide risks becoming a "garrulous discourse" (Foucault, 1980, 47) in service to the replication of dominant, legalistic understandings of genocide when it fails to critically interrogate settler-colonial processes of destruction, as well as its own practices of colonization and extraction. Genocide law is far too dependent on Eurocentric understandings of what it means to be a group, what it means to destroy a group, and what it means to intentionally destroy a group (Woolford, 2009). It is also the product of self-serving negotiations through which settler-colonial nations such as Canada and the US sought to see all reference to cultural genocide removed from the UNGC (Churchill, 2004; MacDonald & Hudson, 2012). Without critical evaluation of genocide law and genocide studies and without critical attention to settler-colonial violence and its underlying logic of elimination (Wolfe, 2006), criminology risks remaining an imperialistic enterprise, conquering the new territory of genocide research, while preserving settler-colonial laws and settler-colonial nations, keeping them safe from genocide accusation, yet also empowered to accuse less powerful others of this transgression. Under such an approach, genocide is reduced to an act committed by others, out there, in the disordered zones of the Global South, and not an act of originary violence that made settler societies possible.

Notes

1 United Nations Convention on the Prevention and Punishment of Genocide. Adopted by Resolution 260 (III) A of the UN General Assembly on 9 December 1948. Entry into force: 12 January 1951.

2 For an example of on-site criminological work in Rwanda that remains conscious of North American genocide, see Nyseth Brehm, 2017.

References

Abtahi, H., & Webb, P. (2008). *The genocide convention: The travaux preparatoires*. Brill Academic Publishing.

Adams, H. (1975). *Prisons of grass: Canada from a native point of view*. Fifth House.

Agozino, B. (2004). Imperialism, crime and criminology: Towards the decolonization of criminology. *Crime, Law & Social Change*, *41*, 343–358.

Akhavan, P. (2016). Cultural genocide: Legal label or mourning metaphor? *McGill Law Journal*, *62*(1), 243–270.

Benvenuto, J. (2018). *From cultural genocide to cultural integrity: Indigenous rights and the co-optation of international norms* [Unpublished Dissertation]. Rutgers University.

Brannigan, A. (1998). Criminology and the Holocaust: Xenophobia, evolution, and genocide. *Crime & Delinquency*, *44*(2), 257–276.

Brean, J. (2015, June 18) Canada opposed concept of "cultural genocide" in 1948 Accord. *The Star Phoenix*.

Browning, C. (1998). *Ordinary men: Reserve police battalion 101 and the Final Solution in Poland*. Harper Perennial.

Cardinal, H. (1969). *The unjust society*. Douglas & McIntyre.

Churchill, W. (1997). *A little matter of genocide: Holocaust and denial in the Americas, 1492 to the present*. City Lights Books.

Churchill, W. (2004). *Kill the Indian, save the man*. City Lights Books.

Coulthard, G. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. University of Minnesota Press.

Crisjohn, R.D., Young, S.L., & Maraun, M. (1997). *The circle game: Shadows and substance in the Indian residential school experience in Canada*. Theytus Books.

Day, L.E., & Vandiver, M. (2000). Criminology and genocide studies: Notes on what might have been and what still could be. *Crime, Law & Social Change*, *34*, 43–59.

Fanon, F. (1963). *The wretched of the earth*. Grove.

Fontaine, T. (2014). Foreword. In A. Woolford, J. Benvenuto & A.L. Hinton (Eds.), *Colonial genocide in Indigenous North America* (pp. vii–x). Duke.

Foucault, M. (1980). *Power/knowledge: Selected interviews and other writings 1972–1977*. Pantheon.

Friedrichs, D.O. (2000). The crime of the century? The case for the Holocaust. *Crime, Law & Social Change*, *34*, 21–41.

Goldhagen, D.J. (1997). *Hitler's willing executioners: Ordinary Germans and the Holocaust*. Vintage Books.

Grant, A. (1996). *No end of grief: Residential schools in Canada*. Pemmican Publications.

Hagan, J.L., & Greer, S. (2002). Making war criminal. *Criminology*, *40*(2), 231–264.

Hinton, A.L. (2012). Critical genocide studies. *Genocide Studies and Prevention*, *7*(1), 4–15.

Hoffman, B. (2009). Conquest traditions, conflict transformation, and the cultural boundaries of criminology: Rigoberta Menchú and criminological science. *Contemporary Justice Review*, *12*(2), 171–189.

Irvin-Erickson, D. (2017). *Raphaël Lemkin and the concept of genocide*. University of Pennsylvania Press.

Kakel, C.P. III., (2011). *The American West and the Nazi East: A comparative and interpretive perspective*. Palgrave Macmillan.

Katz, S.T. (1981). The "unique" intentionality of the Holocaust. *Modern Judaism*, *1*(2), 161–183.

Kovach, M. (2021). *Indigenous methodologies: Characteristics, conversations, and contexts*. University of Toronto Press.

Lemkin, R. (1944). *Axis rule in occupied Europe: Laws of occupation, analysis of government, proposals for redress*. Carnegie Endowment for International Peace.

Lemkin, R. (2013). *Totally unofficial: The autobiography of Raphael Lemkin* (D.-L. Frieze, Ed.). Yale University Press.

Loeffler, J. (2017). Becoming Cleopatra: The forgotten Zionism of Raphael Lemkin. *Journal of Genocide Research*, *19*(3), 340–360.

MacDonald, D.B., & Hudson, G. (2012). The genocide question and Indian residential schools in Canada. *Canadian Journal of Political Science*, *45*(2), 427–449.

McDonnell, M.A., & Moses, A.D. (2005). Raphael Lemkin as historian of genocide in the Americas. *Journal of Genocide Research*, *7*(4), 501–529.

Morrison, W. (2006). *Criminology, civilization and the new world order*. Routledge.

Morsink, J. (1999). Cultural genocide, the universal declaration, and minority rights. *Human Rights Quarterly*, *21*(4), 1009–1060.

Moses, A.D. (2002). Conceptual blockages and definitional dilemmas in the "racial century": Genocides of Indigenous peoples and the Holocaust. *Patterns of Prejudice*, *36*(4), 7–36.

Moses, A.D. (2008). Empire, colony, genocide: Keywords and the philosophy of history. In A.D. Moses (Ed.), *Empire, colony, and genocide: Conquest, occupation and subaltern resistance in world history* (pp. 3–54). Berghahn Books.

Moses, A.D. (2021). *The problems of genocide: Permanent security and the language of transgression*. Cambridge University Press.

National Inquiry into Missing and Murdered Women and Girls. (2019). A legal analysis of genocide: Supplementary report of the National Inquiry into Missing and Murdered Women and Girls. https://publications.gc.ca/collections/collection_2019/bcp-pco/CP32-163-3-2019-eng.pdf

Nyseth Brehm, H. (2017). Subnational determinants of killing in Rwanda. *Criminology*, *55*, 5–31.

Paul, D. (1993). *We were not the savages: Collision between European and Native American civilizations*. Fernwood.

Rafter, N. (2008). Criminology's darkest hour: Biocriminology in Nazi Germany. *The Australian and New Zealand Journal of Criminology*, *41*(2), 287–306.

Regan, P. (2010). *Unsettling the settler within: Indian residential schools, truth-telling, and reconciliation in Canada*. University of British Columbia Press.

Short, D. (2010). Cultural genocide and Indigenous peoples: A sociological approach. *The International Journal of Human Rights*, *14*(6), 833–848.

Smith, L. (1999). *Decolonizing methodologies: Research and Indigenous peoples*. Zed Books.

Survivors of the Assiniboia Indian Residential School. (2021). *Did you see us? Reunion, remembrance, and reclamation at an urban Indian residential school*. University of Manitoba Press.

Veracini, L. (2010). *Settler colonialism: A theoretical overview*. Palgrave MacMillan.

Verdeja, E. (2012). On situating the study of genocide within political violence. *Genocide Studies and Prevention*, 7(1), 81–88.

Weiss-Wendt, A. (2017). *The Soviet Union and the gutting of the genocide convention*. University of Wisconsin Press.

Wetzell, R.F. (2000). *Inventing the criminal: A history of German criminology, 1880–1945*. The University of North Carolina Press.

Wolfe, P. (2006). Settler colonialism and the elimination of the Native. *Journal of Genocide Research*, *8*(4), 387–409.

Woolford, A. (2006). Making genocide unthinkable: Three guidelines for a critical criminology of genocide. *Critical Criminology*, *14*, 87–106.

Woolford, A. (2009). Ontological destruction: Genocide and Aboriginal peoples in Canada. *Genocide Studies and Prevention*, *4*(1), 81–97.

Woolford, A. (2015). *This benevolent experiment: Indigenous boarding schools, genocide and redress in North America*. University of Nebraska Press and the University of Manitoba Press.

Zimmerer, J. (2008). Colonial genocide: The Herero and Nama war in German South West Africa and its significance. In D. Stone (Ed.), *The historiography of genocide* (pp. 323–343). Palgrave MacMillan.

Part V

Disrupting epistemic violence

40

The decolonization paradigm in criminology

Biko Agozino

Decolonization has been incorrectly defined as the transfer of power by colonizers to the colonized (Young, 1965). Decolonization is the continuing struggle to restore independence under conditions dominated by racist-imperialist-sexist world systems of power. Empires rise and empires fall regularly in history because imperialism, the highest stage of capitalism, is unsustainable, according to Lenin (2017). This theory of imperialism as the highest stage of capitalism led Nkrumah (1965) to define neocolonialism as the last stage of imperialism, given the inevitability of resistance against colonization, sooner or later, by the colonized and their allies. The colonizers fought tooth and nail to retain their empire or to expand imperialism, but in ancient African classics, there is ample documentation of the nonviolent adherence to Ma'at, requiring fairness and justice in interpersonal and international affairs (Asante, 2011; Kamara, 1995). Being conquerors, colonizers cooked up academic theories to suggest that Indigenous peoples had 'warrior genes' or criminal genes that made them over-represented in the criminal justice system and had nothing to do with the racism-sexism-imperialism at work against people who were once poets, gardeners, and lovers (Jackson, 2016).

Today, almost every discipline and topic has reference to decolonization, and criminology is not an exception. When Agozino (1997), in the subtitle of his book, made the call "Towards the decolonisation of victimisation", the decolonization malaria had not yet infected criminology. The book was hailed by Onwudiwe (2000) as founding the decolonization paradigm in criminology. I am grateful to my colleagues, including students, who have supported my modest contributions. The original idea was a three-pronged approach: 1) the decolonization of victimization from the expanding empire of punishment that colonizes social processes, such as victimization, and represents them as part of the natural properties of punishment; 2) the conceptual decolonization of victimization as mere punishment from the concept of the punishment of offenders; 3) the withering away of law as part of the remedies for the victimized peoples through penal abolitionism or the *Abolition Democracy* of Angela Davis (1981, 2003, 2005).

Decolonizing criminology and justice

I was privileged to have been invited to New Zealand in 2018 and again in 2019, first to present an inaugural lecture for the journal, *Decolonising Criminology and Justice*, an open-access journal

DOI: 10.4324/9781003176619-45

hosted by Auckland University of Technology in the settler colony of Aotearoa New Zealand. That inaugural lecture was later published in the first issue of the journal. That was a significant affirmation of my contributions to the decolonization paradigm by my international colleagues. I remain grateful to those colleagues and I hope that their own contributions will be equally affirmed. You can't keep a good paradigm down!

What does decolonization look like?

A colleague at a European university hosted me by Zoom in 2021 for her criminology class and the students asked me several questions. My provisional answers follow below highlighting seven themes related to the key question of how an alien could identify decolonization reliably and whether the indicators are valid:

Theme 1: *Decolonization perspectives in the Routledge Handbook on Africana Criminologies (Agozino, et al., 2020)*

It was an invited editorial from Routledge editors who perceived a lacuna in the existing literature that excludes, marginalizes and colonizes Indigenous knowledge. Deliberately organized as a contribution to critical criminology in contrast to past texts on 'African Criminology'. We also included chapters from the African diaspora (Brazil, Caribbean, US), on slavery, hip hop, the death penalty, and the thoughts of Nelson Mandela and W.E.B. Du Bois for a Liberation Criminology (Agozino et al., 2020).

Theme 2: *Decolonization and a 'decolonized' criminology*

Perhaps decolonized is too final and complete to be imaginable in the struggles that say *a luta continua*. According to Edward Said (1978), decolonization is not an event that happened in the past, it is an ongoing struggle epistemically and practically, to deepen the democratization of all aspects of life, including law and culture, in universities and disciplines, in the face of attempts to reimpose slavery and colonization. Injustice anywhere is a threat to justice everywhere, according to King (1968). Tutu and Tutu (2014) theorized it as Ubuntu. Achebe (2012) used the symbol of Mbari to recommend tolerance as an Indigenous African value. Derrida (2001) theorized that the forgiveness of the unforgivable is found among people of African descent while the religions of the book insist that the unforgivable cannot be forgiven but Tutu and Tutu insist that under Ubuntu, nothing is unforgivable. Saleh-Hanna (2015) insists that the category of crime itself needs to be abolished to end the hauntology of racist-imperialist-patriarchal punitive criminal justice.

Theme 3: *How a decolonized criminology is represented within mainstream criminology*

There is confusion in criminology about what is decolonization. Some call it 'decolonial', following Mignolo (2011) who seeks epistemologies 'of' (not from) the South in line with de Sousa Santos (2014). Carrington (2021), in a BJC blog, critiqued what she called the "simplistic decolonial criminology" with a rebuttal blog by Indigenous criminologists and allies who reject the idea of the South as a "metaphor" (Anthony et al., 2021). The decolonization paradigm recognizes that imperialist reason is not simply epistemic but also practical in near and far places, requiring criminologists to aim for liberation against racism-sexism-imperialism, the way that Marx, Du Bois, CLR James, Nkrumah, Fanon, Cabral, and Hall did; and Davis, Gilmore, Opara, Agozino, Kitossa, and Chigwada continue to do. There is room for more decolonization of the empire of law and criminology. The critique of the decolonization paradigm is indicative that it has come of age and more critique is expected when it cannot be ignored anymore.

Theme 4: *The value of undertaking comparative criminology across Global North and South contexts*

The comparative method is suspect when men and women were compared because men were likely to be used as the norm, according to Cain (2010) and Smart (1989). Yet, the feminist standpoint allows the comparison of bourgeois female professors and poor women, though there is nothing like a global sisterhood. The solution is not to abandon comparisons but to ensure that the North does not remain the undisputed norm or index against which the inadequacies of the South will be measured in Weberian modernization theories critiqued by Dibua (2012). The North is capable of learning from the South, not only epistemic piracy, arrogance, exclusion, prejudice, or ridicule. Decolonization requires alliances and coalitions in articulation. There are definitely comparable facts about the colonizer and the colonized society when it comes to the police, courts, and prisons, war, capitalism, racism, sexism, and struggles against the ills of society that make up the culture of resistance.

Theme 5: *Research for, and not just on, the Global South*

Wolpe (1972) studied capitalism and low wages in South Africa under apartheid and concluded that the capitalist mode of production was articulated with the pre-capitalist mode of production and that the low wages of the workers were shared with families and communities back in the 'homelands'. Stuart Hall (1980, 2016) abstracted this articulation model from Wolpe (1972), who got it from Marx, and applied it to race-class-gender relations in societies structured in dominance. Agozino (1997) applied this articulation model to the analysis of Black women and the criminal justice system with emphasis on Committed Objectivity (we can be both objective and committed, Agozino, 1999). Our methods are more like methods of data reception rather than data collection. There are methodological issues in feminist research based on the standpoint ground that experience is the best teacher and so men could not study and learn from the experiences of women adequately (Agozino, 1995, 1999). The Africana paradigm of centred-critical-intellectual activism is the preferred methodology for the decolonization struggles in research, theory, and policy.

Theme 6: *The complicity of criminology in imperialism and calls for its abolition*

Stan Cohen (1988) wrote *Against Criminology* to warn against made-for-export criminology based on theories and policies that failed at home in Europe and North America. What needs abolitionism is the punitive obsession in modern society that Garland (1990) has theorized. Penal Abolitionism allows criminology to serve peacemaking, according to Pepinksey and Quinney (1991) who attributed it to East Asian philosophies, while Elechi (2020) indicated that nonviolent dispute resolution is rooted in Indigenous African jurisprudence of Ubuntu and Mbari. Liberation Criminology will learn from the ideas of freedom fighters and the resisting masses' paths to more humane societies without prisons, war, imperialism, sexism, and racism. Joe Feagin and colleagues (2015) theorized Liberation Sociology as being part of the struggle for social justice beyond what is known as public sociology, asserting that right-wing scholars can also be public intellectuals for the right but not liberation intellectuals for the masses.

Theme 7: *How to decolonize the curriculum of criminology*

It is good to hear universities call for decolonized curricula. Let them hire more scholars from the South to design and teach in collaboration with decolonization allies in the North; articulation theory emerged from the South and so more theories and practices are still emerging and are being stolen from there without full acknowledgement. The universities and white students who support decolonization in Europe and North America should not feel that they were doing a favour to the colonized. When a university refuses to hire and tenure leading intellectuals simply because of prejudice and institutionalized

marginalization, such discrimination also hurts white students and the universities that could have benefitted from the expertise of the excluded groups. On the other hand, if the universities and nation states that benefitted from hundreds of years of invasion, enslavement, and colonization that imperilled the survivors still being excluded, exploited, and even killed in large numbers today, they would be more supportive of the call for reparative justice for the survivors who would use any resources made available to make more valuable contributions to society and not just for themselves (Agozino, 2021).

Decolonization and the decolonial

The call for decolonization echoes across disciplines with fresh insights from different backgrounds. One such contribution comes from the work of Walter Mignolo (2011) and others who theorize the 'decolonial' in the humanities as a contribution to the call for epistemologies of the South in resistance against intellectual imperialism and epistemicide (de Sousa Santos, 2014). The decolonial has become a widely adopted catch-all term for all discourse related to the colonial. This may have meaning in the South American origin of decolonial, in societies supposedly decolonized but still living under colonial conditions with reference to Indigenous peoples and descendants of enslaved Africans, and also true of Africans at home – 'no chains around my feet but I'm not free', chanted Marley. However, a call for theories from the South should listen to scholars from the South to understand why decolonization, not the decolonial, is the preferred term. A collection of unpublished essays by Walter Rodney (2022) with the title *Decolonial Marxism* makes clear that Rodney never used 'decolonial' as an adjective while talking about decolonization, as an intellectual activist engaged in real struggles and not just spouting the adjectival jargon, 'decolonial'. The Foreword by Ngugi did not mention decolonial either but focused on decolonization, just like the final chapter of the book by Rodney.

If you delete the 'colo' in decolonial, you get denial. What is the African decolonial project that Falola (2022) claimed to address as part of the decolonization of Africana knowledge? Is it the struggle for decolonization that continues to be the African preferred way of theorizing the struggle, or is it an adjectival way of avoiding the charge that some writers use decolonization as a metaphor by adopting a jargon that people of European descent coined, apparently as a contribution to epistemologies from the South but mainly with a focus on such questions as whether the native can think as well as the "superiorist settler" intellectual (Tuck & Yang, 2012)?

It is possible to read a whole paper on the decolonial assertion of the need for epistemic justice, an important quest, but without a single word about decolonization which goes beyond epistemic struggles (Mignolo, 2011). The search for epistemic justice is important but we must remain watchful for those who want to tell us where the head is aching and insist that we are not thinking correctly when we call it a headache, but should call it 'headecolonial', which may mean something in Latin but defies translation into English or African languages. Epistemic justice demands that if we say that we are struggling for decolonization, you should respect this and avoid trying to make it look as if you are thinking better than us by calling it something that does not encourage us in the struggle against the war on drugs, against capital punishment, against colonial boundaries, against imperialism, against prisons, etc. (Agozino, 2010, 2020). Those who call for epistemologies from the South make a good point against epistemicide by Eurocentrism, but in relying on texts like *The Theft of History* by Jack Goody (2012), who carefully avoided mentioning *Stolen Legacy* by G.G.M James (2009), decolonial thinkers make it seem as if all the knowledge systems of Indigenous peoples were killed off, exterminated, wiped out, and the theft of knowledge took place in the past. But our peoples are not expected to believe that; we still create new knowledge and it

is still being stolen through epistemic piracy and we still resist ongoing genocide, not simply epistemicide, as documented by Achebe (2012) and Ekwe-Ekwe (2019).

The decolonial turn has entered criminology mainly from those advocating the Southernizing of the discipline. Carrington et al. (2019) used this term repeatedly with the emphasis that there is no freedom without epistemic freedom. However, there is no support in their text, either for the abolition of prisons or for an end to the war on drugs, nor for reparative justice to be offered to Indigenous peoples, the colonized, and the descendants of the enslaved, who come across in their book as being more prone to crime. For some reason, Carrington later disowned the term decolonial, preferring her term, Southern Criminology, citing my work and others as decolonial criminologists. However, the critique of racism-sexism-imperialism in criminology does not suggest that "all criminologists are racist", as alleged by Carrington (2021) in her British Society of Criminology blog post in opposition to the decolonization paradigm, prompting a robust rebuttal by Anthony et al. (2021). No one ever said that all criminologists are racist, but it is surprising that anyone would attack the decolonization perspective for being critical of racism-imperialism-sexism in criminology and criminal justice. There is institutionalized racism-sexism-imperialism in almost every field and even anti-racist critical criminologists cannot always avoid the power reflexivity inherent in the discipline, but we are required to bring critical thinking to the discipline because critical thinking is required in all disciplines – it is not optional.

A group of scholars blogged a rejoinder to Carrington's blog to critique her for calling the South a metaphorical space when it is indeed the home of Indigenous peoples (Anthony et al., 2021). They debunked the 'reviewer number two' type objection by Carrington who alleged that decolonization adherents still cite European authors and not enough Indigenous authors. We actually cite more Indigenous authors than the critics can claim; if more Indigenous authors had not been silenced or their thoughts stolen, we could have had more such sources to cite and we look forward to citing more as we learn about them. We do cite Europeans without apologies, especially if they are allies in the struggle. Anthony and colleagues (2021), however, defended the decolonial approach, though they had not used the term in their own work frequently before. Carrington may have intended her critique for her earlier co-authors who still used the term decolonial when talking about the penal turn without acknowledging that Indigenous peoples do not always couple deviance with punishment. The decolonization paradigm goes beyond the epistemic justice cause of decolonial studies to contribute to abolitionist struggles still ongoing.

Decolonization is an ongoing struggle

The struggle for decolonization continues around the world in opposition to imperialism manifested as neocolonialism in intellectual, political, economic and social aspects of life. Political scientists used to think of decolonization as the transfer of power by colonizers to Indigenous rulers, an event that took place in the past to bring us to a postcolonial era with the need for a postcolonial criminology. My contribution to the debate is the counter-colonial paradigm (Agozino, 2003), which Kitossa (2012) has applied to Canada to show that imperialism is a threat to all, even to those in the settler-colonial locations, and not only to those who are located in the previously colonized territories. For similar reasons, Deckert (2014) identified neocolonialism, a term coined by Kwame Nkrumah (1965), as a more accurate description of the current conjuncture in society.

The struggle against colonization remains strong around the world and is waged in disciplines like criminology because imperialist reason remains hegemonic in the existing praxis, begging to be contradicted by the antithesis of decolonization. The American Declaration of

Independence and the revolutionary war were not the be-all and end-all of the American quest for happiness as a right. The struggle continued with the demand for slavery abolition and the consequent civil war at the cost of some 700,000 lives to teach lessons on the fact that social equality is for the good of all. The women's rights movement emerged as part of the abolitionist movement, given that both women and the enslaved were presumed to be special categories of people who were owned and denied the right to vote, especially if they were African American women. Women still struggle to decolonize the control over their own bodies and to be paid as much as anyone else who does a similar job. The struggle continues for people who use drugs that are safer than some legal drugs but who are criminalized in opposition to the 'abolition democracy' of Angela Davis (1981, 2003, 2005). The struggle for decolonization is not an essentialist one based on race-class-gender articulation, for many are principled in opposition to racism-sexism-imperialism while some are opportunistic in choosing to side with oppressive systems of power for short-term gains. In the long run, when the rain falls, it will not fall on one man's housetop, Bob Marley reminded us. Studying zemiology, or social harm, is to the benefit of all (Canning & Tombs, 2021).

When rich women and men, white or Black, join the struggle against racism-sexism-imperialism, they are not doing charitable work for those who are targeted. We should not clap for them because the liberation of the oppressed is a precondition of the success of the revolution to make life more worth living for all, said Thomas Sankara and Samora Machel. That was why Martin Luther King Jr. talked about the World House left to us by our ancestors and we can choose to live in a beloved community or fight and burn it down. Sometimes, it is better to burn the mother faker down and rebuild from scratch, as Fanon (1963) did when he quit his impossible job as a colonial psychiatrist treating the victims of torture and treating the crazy torturers who went home to torture their families too. He quit and joined the nationalist warriors, just as he had volunteered to fight to free France from the Nazi occupation. Fanon demanded reparative justice for the colonized and the enslaved. Criminologists should support this demand (Cunneen & Tauri, 2016; Blagg & Anthony, 2019).

While young Portuguese army officers slaughtered Africans, Amilcar Cabral (2016) resisted with the weapon of theory to indirectly remind his brothers-in-law that their own motherland was underdeveloped in terms of the level of advancement of the productive forces: enough to allow military dictatorship rather than deepening democracy for all, including the colonized. Cabral used the term "class suicide" to describe petty bourgeois people like himself who sacrificed their privileges to lead the national liberation struggle and, in many cases, paid the ultimate price for freedom. The term class suicide sounds inappropriate because white people who support racial justice have never committed racial suicide, and men who support women's rights as human rights have not committed gender suicide. Therefore, middle-class or rich people who support the struggles of the poor cannot be said to have committed class suicide. They remain thoroughly what they are even while opposing injustice. It is in the interest of all to support decolonization!

The struggles against systems of colonization are understood by the colonized and their allies as a criminological project against crimes against humanity, but without emphasis on what Garland and Young (1983) called the power to punish and the power to forgive. The defence of the motherland, fatherland, or the people is the primary concern, not the obsession with the punitive turn in criminology. Rather, it is the colonizers who always presume that they are on a punitive expedition against a people whom they mythologize as having warrior genes or crime genes to justify the genocidal policies towards them. Cunneen and Tauri (2016) contributed to the decolonization of the white supremacist discipline of criminology by highlighting the neglected oppressive and unethical impacts on Indigenous peoples, but without calling for punishment for the oppressors. Blagg and Anthony (2019) contribute a similar text specifically

on efforts to decolonize criminology and criminal justice with an emphasis on the plight of Indigenous peoples.

The decolonization approach guided the contributions to the *Routledge Handbook on Africana Criminologies* (Agozino et al., 2020). The editors deliberately invited critical perspectives covering enslavement, colonization, apartheid, and internal colonialism or systems of criminalization and resistance that criminologists tend to ignore despite their relevance. The praxis of liberation fighters was analyzed in different chapters, and lessons from the African philosophy Ubuntu were contrasted with philosophies of retribution and utilitarianism.

The puzzle of neocolonialism

There is a puzzle whereby imperialism is entrenched despite symbolic victories in the decolonization struggles. It is puzzling that African countries retain colonial laws long after many of the colonizers had abolished similar laws in their metropolitan countries. Settler-colonial locations have no intention of ending colonialism, making Deckert (2014) conclude that the term postcolonial is not appropriate compared to neocolonial, as a description of both policies in the criminal justice system and systems of exclusion from the discipline of criminology. The existence of neocolonialism necessitates the continuation of the struggles for liberation not only at the epistemic level but also at the practical level for social justice. Kitossa (2012) argues that the neocolonial model applies also to Canada, where he found that the critique of imperialist reason by counter-colonial criminology will help to address the oppressive rule of white supremacist-sexist imperialism from the perspective of Indigenous peoples and people of African descent who happen to be at the receiving end of colonialist criminal justice while being marginalized in criminological professions.

One good response to the discontents of decolonization in criminology is to assume that they are sincere, in the way Martin Luther King Jr. assumed that the clergy were sincere who advised him to wait for God's time to be the best as the good Reverend Minister he was. Martin said that they were being sincere in their belief but they were mistaken because the civil rights movement was not against individuals or seeking to humiliate white men but to win their friendship. Of course, we do not need to be friends with Nazis but they must recognize the equal rights of all. Brother Martin wrote in the 'Letter from Birmingham City Jail' that the people had waited long enough for the system to change but it would not change without a nonviolent struggle. Power never concedes something valuable without a struggle, said Frederick Douglass (Blackpast, 2007).

The decolonization perspective is supported by people from different social backgrounds. Let those opposed to the struggle for decolonization bring their arguments and debate the claims of the decolonization paradigm without distortions and evasions. But it is not just academic debates that matter. Those who prefer neocolonial or counter-colonial to postcolonial, decolonization to the decolonial, also engage in decolonization struggles in opposition to past, present, and future injustices. Those who support racism-imperialism-sexism are the ones who should say why they support evil policies, those who support the struggle for decolonization do not have any case to answer. History absolves the colonized of shame and blame, and supports decolonization. Not all white men support colonization: ask enslavers who led the revolutionary war for independence in the US. Also, not all Black men support the struggle for decolonization; some of them, when they find themselves in power, tend to seek to replace the exploiters rather than end exploitation. The gusto with which Africans descended on fellow Africans in the neocolonial era of genocidal violence and the collusion of intellectuals with genocidists remains to be explained by criminologists (Agozino, 2022).

Examples of decolonization in criminology

The launch of a journal, *Decolonization of Criminology and Justice*, at Auckland University of Technology in 2018 marked the beginning of the institutionalization of the decolonization paradigm. I was honoured to have been invited to present the inaugural lecture to launch the journal and it was published as a video and also as a text in the first issue of the journal. I called my lecture the 'Humanifesto of the Decolonization Paradigm in Criminology'. By that, I suggested that decolonization is not a struggle left only to the colonized, it is a struggle open to contributions from all angles. Albert Memmi (2014) made this point clear in *Decolonization and the Decolonized* – people from all sorts of backgrounds support decolonization as being for the benefit of all. In his earlier work, *The Colonizer and the Colonized*, Memmi demonstrated that colonization also hurt the colonizer.

Successes of abolitionism lending support to the decolonization paradigm abound. The formal abolition of slavery came as a result of the brave struggles by the enslaved and their allies as Du Bois (1935), James (1938), Williams (1944), and Rodney (1972) established. The struggle for the enfranchisement of women may have looked impossible at first. Colonialism also believed that the sun would never set on the empire – but the sun always sets. Apartheid seemed invincible until Cuba intervened at huge cost to support the decolonization struggles in Africa.

When I was writing my doctoral research on Black women and the criminal justice system at Edinburgh University, some of my friends were afraid that I was going to fail because of my recommendation to abolish the criminalization of the drugs that result in the overrepresentation of Black women in the system (Agozino, 1997). I was surprised that the people of New Zealand had voted by a slight majority to keep the colonial laws criminalizing marijuana. On the other hand, it was not surprising, given that the people of Puerto Rico voted by a wide margin to remain the colony of the US rather than for independence. If the death penalty is put to the referendum, authoritarian populism would probably support its retention or restoration. Scotland voted twice to reject independence from the UK but the demand for a new referendum gained support after Brexit, given that Scotland voted to remain in Europe. As African students in Scotland, we used to joke that if they had appointed us as consultants, we would have advised them to declare their independence and defend it instead of begging for a 'wee referendum' now and then. The struggle continues.

The struggle for Black Lives Matter and End SARS, similar to movements around the world for social justice, indicates that criminologists who ignore decolonization are missing out on the study of power dynamics at all levels. Supporters of social justice call for the defunding of police to spare more resources for community nonviolent conflict resolution. Both the *Abolition Democracy* of Angela Davis (2005) and the denunciation of the *Golden Gulag* by Gilmore (2007) deserve support from all criminologists in recognition of the fact that democracy is in the interest of all. The prison industrial complex and police brutality do not only affect people of African descent. Many poor whites also suffer what has been theorized as 'deathscapes' under settler colonialism (Perera & Pugliese, 2022). In the US today, the vast majority of those killed by the police are white and in Australia, around 70% of the prisoners are poor whites.

Conclusion

The decolonization perspective expects to be attacked, ridiculed, and misrepresented by those who are afraid that changes in the *status quo* would result in the loss of unjust power. The criticism is welcome but the strategies of exclusion and marginalization of the colonized and Indigenous voices will no longer work in a world clamouring for decolonization in every field.

The decolonization paradigm is part of the solution in the interest of all because the existing imperialist reason in criminology threatens the interest of all to different degrees. If criminology journals had retraction policies, the work of intellectuals dedicated to the defence of imperialism would have been removed for ethical reasons if for nothing else, ethics being in the interest of all.

But beyond the unethical nature of imperialism, there are good lessons that criminologists could learn from the work of Indigenous intellectuals and their allies. Discrimination against the decolonization perspectives would also hurt the interests of students from privileged backgrounds who would otherwise benefit from the work of the excluded. Sometimes, for example, Western scholars admit that there is a lot to learn from Africa. Yet, the organization they set up as the African Studies Association has remained – for more than 100 years – without ever appointing a person of African descent as the editor of their official journal, the *African Studies Review* (Lawrence, 2020). Journals in Europe and settler-colonial locations are now beginning to include Africans and formerly colonized people on their editorial boards – but without seeking to publish more work that is critical of Eurocentrism.

The decolonization perspective has historical validity as an ongoing concern beyond the narrow confines of criminology. The struggle for decolonization will enrich criminological theory and policy in radical ways that would benefit everyone. For instance, the struggle for the legalization of marijuana and the abolition of prisons would benefit society in many ways.

Critical thinking is indeed a painful process for those in privileged positions, according to bell hooks (1994), but we must be open to the possibility that even the most ardent opponents of decolonization could be educated to come around to supporting liberation as being in the interest of all (Agozino & Ducey, 2020; Dastile & Agozino, 2019; Dastile & Ndlovu-Gathseni, 2020; Mandela, 1994). The task of decolonization in criminology is not to humiliate any individuals by opposing harm and pushing for the beloved community in the interest of all. Similarly, reparative justice will benefit all, especially in higher education and in criminology, when diversity, equity, and inclusive excellence produce better results for the entire society. Those who oppose decolonization are entitled to their opinions but the facts are in favour of decolonization in all aspects of life. Those of us who have contributed to the development of the decolonization perspective in criminology are pleased to see more interest in the approach from colleagues around the world. Let the discontents of decolonization marshal their reasons and let us have a debate when possible, but, for us, decolonization is not an academic debate, it is a practical struggle to deepen democracy in the interest of all.

To students who are afraid to adopt the decolonization perspective out of fear that they may be discriminated against in the academic job market, we offer the comfort of the knowledge that most critical criminologists are gainfully employed, while some right-wing criminologists also experience precariousness in the job market precisely because the majority of criminologists are conservative, making the decolonization paradigm increasingly popular to help fill the huge lacuna in existing knowledge.

References

Achebe, C. (2012). *There was a country: A personal history of Biafra*. Penguin.

Agozino, B. (1995). Methodological issues in feminist research. *Quantity & Quality: International Journal of Methodology*, *29*(3), 287–298.

Agozino, B. (1997). *Black women and the criminal justice system: Towards the decolonisation of victimisation*. Routledge.

Agozino, B. (1999). Committed objectivity in race-class-gender research. *Quantity and Quality: International Journal of Methodology*, *33*, 395–410.

Agozino, B. (2003). *Counter colonial criminology: A critique of imperialist reason*. Pluto.
Agozino, B. (2010). What is criminology? A control-freak discipline! Editorial. *African Journal of Criminology and Justice Studies*, *4*, i–xx.
Agozino, B. (2020). Africana liberation criminology. In B. Agozino, V. Saleh-Hanna, E.C. Onyeozili & N.P. Dastile (Eds.), *Routledge handbook on Africana criminologies* (pp. 18–31). Routledge.
Agozino, B. (2021). Reparative justice: The final stage of decolonization. *Punishment & Society*, *23*, 613–630.
Agozino, B. (2022). Genocidist discourse and intellectuals in Africa. *Journal of Central and Eastern European African Studies*, *2*(1). https://jceeas.bdi.uni-obuda.hu/index.php/jceeas/article/view/86
Agozino, B., & Ducey, K. (2020). Articulation of liberation criminologies and public criminologies: Advancing a countersystem approach and decolonization paradigm. In K. Henne, & R. Shah (Eds.), *Routledge handbook of public criminologies* (pp. 59–72). Routledge.
Agozino, B., Saleh-Hanna, V., Onyeozili, E.C., & Dastile, N.P. (Eds.) (2020). *Routledge handbook on Africana criminologies*. Routledge.
Agozino, B. B. Agozino, V. Saleh-Hanna, (2020) E.C. Onyeozili & N.P. Dastile (Eds.), *Routledge handbook on Africana criminologies*. Routledge.
Anthony, T., Webb, R., Sherwood, J., Blagg, H., & Deckert, A. (2021, November 9). In defence of decolonisation: A response to Southern Criminology. *The BSC Blog*. https://thebscblog.wordpress.com/2021/11/09/in-defence-of-decolonisation-a-response-to-southern-criminology/
Asante, M.K. (2011). Ma'at and human communication: Supporting identity, culture, and history without global domination. *International Communication Studies*, *XX*, 49–56.
Blackpast (2007), January 25. (1857) Frederick Douglass, "If there is no struggle, there is no progress". *Blackpast*. https://www.blackpast.org/african-american-history/1857-frederick-douglass-if-there-no-struggle-there-no-progress/
Blagg, H., & Anthony, T. (2019). *Decolonising criminology: Imagining justice in a postcolonial world*. Palgrave Macmillan.
Cabral, A. (2016). *Resistance and decolonization* (D. Wood, Trans.). Rowman & Littlefield.
Cain, M. (2010). *Globality, crime and criminology*. Sage.
Carrington, K. (2021, August 11). Decolonizing criminology through the inclusion of epistemologies from the south. *The BSC Blog*. https://thebscblog.wordpress.com/2021/08/11/decolonizing-criminology-through-the-inclusion-of-epistemologies-of-the-south/
Carrington, K., Hogg, R., Scott, J., Sozzo, M., & Walters, R. (2019). *Southern criminology*. Routledge.
Cohen, S. (1988). *Against criminology*. Transaction Books.
Cunneen, C., & Tauri, J. (2016). *Indigenous criminology*. Policy Press.
Dastile, N.P., & Agozino, B. (2019). Decolonizing incarcerated women's identities through the lens of prison abolitionism. *South African Crime Quarterly*, *68*, 21–32.
Dastile, N.P., & Ndlovu-Gathseni, S.J. (2020). Mandela's criminology: A decolonial intervention. In B. Agozino, V. Saleh-Hanna, E.C. Onyeozili & N.P. Dastile (Eds.), *Routledge handbook on Africana criminologies* (pp. 7–17). Routledge.
Davis, A.Y. (1981). *Women, race and class*. The Women's Press.
Davis, A.Y. (2003). *Are prisons obsolete?* Seven Stories Press.
Davis, A.Y. (2005). *Abolition democracy: Beyond empire, prisons and torture*. Seven Stories Press.
de Sousa Santos, B. (2014). *Epistemologies of the South: Justice against epistemicide*. Routledge.
Deckert, A. (2014). Neo-colonial criminology: Quantifying silence. *African Journal of Criminology and Justice Studies*, 8(1), 39–60.
Derrida, J. (2001). *On cosmopolitanism and forgiveness*. Routledge.
Dibua, J. (2012). Africanists, neo-Weberism and the pervasive Eurocentrism in the analysis of African development trajectory. In L.E. Otoide (Ed.), *History unlimited: Essays in honour of Professor Abednego Ekoko* (pp. 305–324). Mindex Publishing.
Du Bois, W.E.B. (1935). *Black reconstruction in America: 1860–1880*. Harcourt Bruce.
Ekwe-Ekwe, H. (2019). *The longest genocide from 1966*. African Renaissance Press.
Elechi, O.O. (2020). Mbari and Ubuntu in Indigenous Africana criminologies. In B. Agozino, V. Saleh-Hanna, E.C. Onyeozili, & N.P. Dastile (Eds.), *Routledge handbook on Africana criminologies*. (pp. 32–40). Routledge.
Falola, T. (2022). *Decolonising African studies: Knowledge production, agency and voice*. Boydell & Brewer.
Fanon, F. (1963). *The wretched of the earth*. Grove Press.
Feagin, J., Vera, H., & Ducey, K. (2015). *Liberation sociology* (3rd ed.). Paradigm Books.

Garland, D. (1990). *Punishment and modern society*. Clarendon.
Garland, D., & Young, P. (Eds.) (1983). *The power to punish: Penality and social analysis*. Heinemann Educational.
Gilmore, R.W. (2007). *Golden gulag: Prisons, surplus, crisis and opposition in a globalizing California*. University of California Press.
Goody, J. (2012). *The theft of history*. Cambridge University Press.
Hall, S. (1980). Race, articulation and societies structured in dominance. In UNESCO (Ed.), *Sociological theories: Race and colonialism* (pp. 305–344). UNESCO.
Hall, S. (2016). *Cultural studies 1983*. Duke University Press.
hooks, b. (1994). *Teaching to transgress*. Routledge.
Jackson, M. (2016). *The abolition of prisons and Indigenous self-determination. Keynote address at the Forum for Indigenous Research Excellence*, University of New South Wales. Available at https://www.youtube.com/watch?v=mPnf0cbFIuo
James, C.L.R. (1938). *The Black Jacobins: Toussaint Louverture and the San Domingo revolution*. The Dial Press.
James, G.G.M. (2009). *Stolen legacy: Greek philosophy is stolen Egyptian philosophy*. General Press.
Kamara, K. (1995). *A tribute to African civilization*. Sere Press.
King, M.L. (1968). *Where do we go from here: Chaos or community?* Beacon Press.
Kitossa, T. (2012). Criminology and colonialism: The Canadian context. *The Journal of Pan African Studies*, *4*(10), 204–226.
Lawrence, B.N. (2020). How African is the 'African Studies Review'? *Africa is a Country* https://africasacountry.com/2020/02/how-african-is-the-african-studies-review
Lenin, V.I. (2017). *Imperialism, the highest stage of capitalism*. Progress.
Mandela, N. (1994). *Long walk to freedom*. Basic Books.
Memmi, A. (2014). *Decolonization and the decolonized*. Minnesota University Press.
Mignolo, W. (2011). *The darker side of modernity: Global futures, decolonial options*. Duke University Press.
Nkrumah, K. (1965). *Neo-colonialism: The last stage of imperialism*. Thomas Nelson & Sons.
Onwudiwe, I.D. (2000). *Black women and the criminal justice system*. Ashgate.
Pepinksey, H.E., & Quinney, R. (1991). *Criminology as peacemaking*. Sage.
Perera, S., & Pugliese, J. (Eds.) (2022). *Mapping deathscapes: Digital geographies of racial and border violence*. Routledge.
Rodney, W. (1972). *How Europe underdeveloped Africa*. Bogle L'Ouverture.
Rodney, W. (2022). *Decolonial Marxism*. Verso.
Said, E. (1978). *Orientalism*. Penguin.
Saleh-Hanna, V. (2015). Black feminist hauntology: Rememory the ghosts of abolition? *Penal Field/Champ Penal*, *12*. https://doi.org/10.4000/champpenal.9168
Smart, C. (1989). *Feminism and the power of law*. Routledge.
Tuck, E., & Yang, K.W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education, & Society*, *1*(1), 1–40.
Tutu, D., & Tutu, M. (2014). *The book of forgiving*. HarperCollins.
Williams, E. (1944). *Capitalism & slavery*. University of North Carolina Press.
Wolpe, H. (1972). Capitalism and cheap labour power in South Africa: From segregation to Apartheid. *Economy and Society*, *1*(4), 425–456.
Young, C. (1965). *Politics in the Congo: Decolonization and independence*. Princeton University Press.

41
Black criminology

Coretta Phillips

Twenty, thirty white boys outside a youth club [doing] smack [heroin] – they was doing, they was doing some stuff, like. And it was, there was, **they was just being white lads, they were just being young lads. Black people cannot do that**.

(Jack, black British Jamaican)

[when I was a small child] one time my Dad got arrested. Erm, they put him in a police car, and I was like, "Oh, can I go with him?" You know, with the lights on, and speeding, and stuff like that, you know. They turned round to me, and said, "**Oh, you will one day** […] that was something that stuck with me […] my Dad had to bite his lip.

(Tyrone, Black British Jamaican)

So, I'll be dressed nice, in a suit […] I'll be on the train, for example, like on a really busy train with people going to work […]. You'll see some white people just holding their bags to themselves. Sometimes it's strong, sometimes it's weak, **but I can still feel it. There's always that sense of fear** […].

(James, White French and Black Congolese and Gabonian)

What does that bring to your mind when you look at that image?

(Coretta)

(The image shows a young black man who is being arrested during the London riots in 2011. He is standing upright with his hands behind his body, surrounded by seven white police officers. One officer has his hand on top of his head, another one is touching his neck with both hands, another is photographing him, and the remaining four hold him on his shoulders and arms from the sides and behind. The arrestee is holding up his head and smiles.

(see San Francisco Bay View, 2011)

They're scared of him.

(H., Black British Gambian and Sierra Leonian, Muslim)

DOI: 10.4324/9781003176619-46

> I kind of see a **sense of humiliation** with this man. Obviously, I don't know what he's done, he could have done something really bad, er, but, erm, yeah, I mean, I just kind of feel, it's not necessary to have that many people on one man, and handling him this way.
>
> (Ashad, Pakistani British, Muslim)

These quotes from interviews with five young minority ethnic Londoners in 2017[1] encapsulate the value of Black Criminology (Russell, 1992). Jack provides insight into the profound ways in which black lives are curtailed, constrained, and conflicted. The simplicity of his statement of what young white and black men can do in twenty-first century London is both familiar and yet still shocking. Engaging in illegal, recreational drug use en masse in a public space is a feature of youthful behaviour that can be done with ease – but only if you are white. Tyrone learned police expectations of him and witnessed the racialized humiliation of his father. James' brownness does not protect him from the fear of the Other as he feels the stereotype of the young black man who can be nothing other than criminal, no matter how well-dressed. The reaction to his presence is conditioned by historical representations that limit his capacity to live freely – to inhabit public space without creating anxiety among majority ethnic white people. Like me at his age, our brownness can only be seen in a binary of non-whiteness. H.'s reflection on being shown the image of a black man being arrested and photographed during the London riots of 2011 is also revealing. Despite the man being surrounded by seven police officers, including one with a riot shield, H. interprets this as the terror white police officers feel in their contact with young black men. Viewing the same image, Ashad pointedly sees a brutal display of power, perceiving the interaction as one of shaming and exerting control. In different ways, these quotes all convey what is captured in an equally simple statement by Cameroonian philosopher, Achille Mbembe: "[t]he Black Man is also the name of a wound" (Mbembe, 2017, p. 18). This chapter underlines the contribution that Black Criminology can make in light of such experiences. It begins by examining the originating call for Black Criminology in the US. It then turns to consider the implications of Black Criminology for theoretical understanding and the conduct of empirical research. The chapter then reflects briefly on Black Criminological representation in the academy.

Russell's clarion call (1992)

In her seminal paper, written 30 years ago, Russell (1992) called out criminology's whiteness – the whiteness of its theories and the whiteness of its scholars. Russell took to task mainstream criminology for documenting the 'fact' of elevated rates of offending among African Americans but not comprehensively examining *why* these longstanding patterns existed. In staking the claim for (US) Black Criminology, she asserted the importance of incorporating the voices of black people into criminological research, to fully document variation in experiences of crime and justice. Russell envisaged refining existing theoretical ideas to the whole realm of black lives, whilst also opening up new ways of thinking. In the beginning, she saw this subfield being the preserve of black criminologists only, drawing on their holistic understandings of black lives, free from unfounded myths and errors.

Similar ideas have been expressed in postcolonial and settler-colonial contexts. In the UK, Phillips and Bowling (2003) sought to promote minority perspectives that could reconcile the lived experiences and subjectivities of minority ethnic groups with the criminological data which consistently purports an unbiased overrepresentation of who gets stopped and searched by the police, arrested, convicted, incarcerated, and against whom force is disproportionately

exercised. In Canada, Kitossa's (2012) work emphasized the role of colonialism in decimating First Nation, Metis, and Inuit communities. Indigenous scholars' critique of Australasian criminology has exposed the complicity of positivist criminology which avoids engaging with "messy structural determinants such as racist policing, racist court processes, racist Government policy and legislation" (Tauri, 2012, p. 3). In all such variations of Black Criminology, there is an acknowledgement that such efforts risk reifying the fusing of pathological blackness with criminality and therefore require maximum care and sensitivity.

At the heart of conceptions of Black Criminology in Russell's (1992) paper is the call to operationalize racism (about which, more later), but also to pay due attention to racial inequalities in education, housing, and employment. These are, of course, domains that we recognize can heighten the risks of offending (and victimization). There must be explicit recognition, then, that lower levels of educational attainment can result from access to poorly performing schools in the neoliberal education market, negative teacher perceptions of possible learning outcomes, and institutional racism in curriculum design, teacher assessments, and disciplinary procedures (Gillborn, 2008; Strand, 2021). Furthermore, audit and correspondence studies that send in a job or rental application, matched on all relevant criteria except the racialized names of the applicant, consistently demonstrate a bias against black and other minority ethnic applicants. Being called Anthony Olukayode/Mariam Namagembe (traditional Black African names) or Latoya Williams/Erroll Griffiths (traditional Black Caribbean names), for example, required the sending in of between one-third and one-half more job applications than was the case for white applicants to generate a positive response from UK employers (Wood et al., 2009). Such perceptions of discrimination are are vividly captured here by H. and Tyrone – two of the minority ethnic Londoners whose voices were included at the start of the chapter:

> So as a black boy, like, growing up, growing up in this country and things are tight for you like that, you can't get a job […]. People are giving you stereotypes because of the way you look or because of your hair or the way you dress or the way you talk. It's like you can't be normal with normal people because they don't see you as normal.
>
> (H., Black British Gambian and Sierra Leonian, Muslim)

> I was the only black guy in the area [working for a lift maintenance company]. Erm, a new guy came, don't know if it's because he was white, but he got promoted before me […]. He can't fix a lift. He can't get no one out […]. They made me get people, you know, that was trapped in the lift on my own […].
>
> (Tyrone, Black British Dominican and Jamaican)

Similarly, in one further example of such approaches, Fang et al. (2019) found applying for rented housing in New York City was less likely to lead to a positive outcome if you were named Nevin Stovall/Myles Celestine (traditional African American names). Thus, racial inequalities in education, employment, and housing are not solely the result of lower socio-economic status; racism plays a part in black lives long before encounters with the criminal justice system.

Thirty years on

The recent volume *Building a Black Criminology: Race theory and crime*, edited by Unnever et al. (2019), tackles multiple dimensions of criminological study to set out what a Black Criminology has to offer. Chapters cover omissions in existing criminological theories (White Criminology)

and gaps in the empirical study of race and crime, particularly in assessing experiences of policing, courts, probation, and prisons. Included too is the work of Unnever and Gabbidon (2011) on African American offending. Its starting point is that general theories of crime have limited utility for understanding black offending because they insufficiently engage with historical and contemporary racism. According to Unnever and Gabbidon (2011), African Americans (and other minorities) experience their present in light of their past with collective memories of derogatory stereotyping and unfair and inhumane treatment. This produces a unique worldview and negative emotions and results in weak bonds to educational and workplace institutions, which increases the likelihood of offending. Contact with the criminal justice system and subsequent disenfranchisement then amplifies this spiral.

Despite this refreshing intellectual intervention and other advances, for Russell-Brown (2019), Black Criminology has still not penetrated the centre of the discipline of criminology. Likewise, Phillips et al.'s (2020) examination of British criminology finds the same lacuna. The loud silence of the exclusion of Black (and minority ethnic) experiences can be seen in the historical trajectory of theoretical developments. With few exceptions, the case can certainly be made for Marxist, radical, and control theories, and to a degree labelling perspectives, the new penology, and even critical criminology with its preference to privilege social class and economic inequality in understandings of offending. In part, Phillips et al. (2020) argue, this is because there has been a tendency to accept the "illusion that the conjunction of racism and criminal justice is a singularly US construct" and that this "all too often provides other states with an alibi for neglecting their own racial differentials and accounting for their own specific racial histories" (p. 435).

It is also true that there have been other relevant advances such as the emergence of Critical Race Criminology, which rejects criminological notions of race as a singular, measurable status variable, without socio-political contextualization, and with a colourblind framing. Instead, Critical Race Criminology holds onto the idea that racism exists in multiple domains in society (Glover, 2019). Critical Whiteness Studies are still in their infancy in criminology but they also centre white privilege in the social construction of law and its enforcement in reproducing racial inequalities and racist harms (Earle, this volume; León, 2021; Smith, 2014). Developing the importance of intersectional criminology, Potter (2015) has also advocated for the unpacking of multiple identities (such as class, gender, and sexualities) and their braiding (interweaving) in criminological research, and, in particular, in how power dynamics mediate racialized experiences (see also Parmar, 2017).

Theorizing the history of the present

A particular strength of Russell-Brown's (2019) work, building on her earlier piece, has been recognizing the central significance of a historical framework for understanding the race–crime link. Along with Phillips and Bowling (2003), there has been a call for socio-political histories to inform the study of race and crime in recognition of the formation and institutionalization of racial hierarchies that place white people at the pinnacle, and typically, black people at the bottom, categorized as inferior in terms of civilization, intellect, and morality (Eze 1997). Together, such perspectives do not countenance the myopic view that the past is of limited relevance to understanding patterns of race, racism, crime, and criminality now, and, in so doing, they refute claims that these are best explained by individual proclivities (Glover, 2019; Tauri, 2012). Racism is simply a given. As Mbembe (2017) puts it, "we cannot act as if slavery and colonisation never took place or as if we are completely rid of the legacies of such an unhappy period" (p. 177).

The absence of engagement with colonialization in 'bourgeois' criminology has long been highlighted by Agozino (2003) but has only recently been responded to. The (now popular) decolonizing agenda has come to contend with how legal codes and treaties provided the official mechanism for European territorial expansion that legitimized violent dispossession and subjugation of black and brown people (Agozino, 2003). This sets out how race was constitutively constructed through processes of policing, punishment, and border control in postcolonial and settler-colonial states (Cunneen, 2011; Gilroy, 1982; Tauri, 2014). Elliott-Cooper's (2021) work also shows how the traditions of anti-colonial resistance in the Caribbean have informed activism against racist policing in Britain (see also Lawrence, 1982; Nijjar, 2015).

The absence of race in mainstream scholarship, documented by Russell-Brown (1992, 2019) and others, is perhaps surprising, given that questions of race and crime seemingly have popular resonance. In the US, the publishing phenomenon of Michelle Alexander's (2010) crossover book, *The New Jim Crow*, likens the racist socio-legal regime of the pre-civil rights period to mass incarceration in the present. Likewise, here are selected lyrics from the song 'Black', eloquently performed by Dave (2020), a Black British Nigerian rap artist, at the 2020 Brit Awards[2] ceremony. This captures the specific historical and contemporary contours of British blackness and representations of race and crime:

> Black is pain, black is joy, black is evident
> Workin' twice as hard as the people you know you're better than
> 'Cause you need to do double what they do so you can level them
> Black is so much deeper than just African American
>
> Kid dies, the blacker the killer, the sweeter the news
> And if he's white, you give him a chance, he's ill and confused
> If he's black he's probably armed, you see him and shoot, look
>
> Black is people namin' your countries on what they trade most
> Coast of Ivory, Gold Coast, and the Grain Coast
> But most importantly to show how deep all this pain goes
> West Africa, Benin, they called it slave coast
>
> Poverty made me a beast, I battled the law in the streets
> We all struggled, but your struggle ain't a struggle like me
>
> The truth is our Prime Minister is a real racist
> They say, "You should be grateful we're the least racist"
> *I say the least racist is still racist*
> Equality is a right, it doesn't deserve credit
> *Giving tougher sentences, it's just papering cracks* (n.p.)

Dave picks up multiple threads – racist media coverage, police violence, racialized poverty, political complicity in ongoing state discrimination – but also the uniqueness of the Black British historical perspective, in light of Britain's direct involvement in, and wealth accumulation from, the transatlantic slave trade.

Empirical research

We now turn to the value of Black Criminology to empirical research.

Epistemology and methodology

Turning now to the value of a Black Criminology to empirical research. This can bring to the fore claims of bias (Russell-Brown, 2019), but these are so easily refuted: white criminologists study white offenders, victims, witnesses, police officers, sentencers, prison officers, and fellow criminologists without facing accusations of partiality. Yet, as Tauri (2012) has repeatedly made clear, such equivalence is rarely extended to minority ethnic and Indigenous scholars. More common is the negation of the quality of such research, which is regarded as overly subjective. Legitimate knowledge within Anglo Criminology, according to Cunneen and Tauri (2017, 2019), is positioned as superior, particularly when it adheres to positivist principles. But we should be reminded that these positivist traditions go back to the foundational thinkers in the discipline that started with Lombroso's racist phrenology. And, as scholars such as Agozino (2003) have long argued, biological and cultural theories of race and crime facilitated systemic state violence and subjugation by European nations through the disciplining of (former colonial) subjects using agents of the criminal justice, immigration, and military systems (see also Tauri, 2012). And, as already noted, the assumption that race can be neatly contained as a status or demographic variable is mistaken.

These epistemological and methodological concerns have been repeatedly rehearsed in Merton's (1972) classic paper on *Insiders and outsiders: A chapter in the sociology of knowledge*. The insider perspective assumes that black scholars have monopolistic and privileged access to empathic knowledge about the socially shared realities of black lives because of their continued (segregated) socialization. Indeed, as Jhappan (1996) convincingly argues, "our material situations, life opportunities, social positionality, and dominant discourses do profoundly mould our experiences and understanding of the world and our places in it" (p. 30). This offers a measure of authenticity to minority ethnic scholars' articulation of fellow minority experiences. One increasingly common way to do this is through autoethnography. Gunter's (2008, 2017) and Reid's (2022) work, for example, illustrate some of the tensions and ethical dilemmas that arise when researchers' lives become enmeshed with real lives, researching people you have grown up with. Such work can also throw up a kind of occupational trauma. As Russell-Brown (2021) recently noted, in reflecting on images of police brutality, "[t]here is psychological trauma associated with seeing images of people and in particular people who look like you being tortured in public by agents of the state" (pp. 328–329).

In contrast, Merton's (1972) outsider position argues that knowledge is most accessible to non-members of minority groups. These are perceived as being untainted by prejudice and therefore more objective, while also being able to ask questions about behaviour that an 'ethnically matched' researcher may take for granted and then not interpret as important to the study (Young Jr, 2004). Distance may be trumped by familiarity if it exposes researchers to participants' social worlds and stimulates meaningful communication. And we must also accept that there are multiple selves in the foreground and background of any given research interaction – most obviously but not only in relation to social class and gender. Thus, all researchers must be willing to self-critically examine any biases which can influence interpretations of the lived experience of those whose lives may or may not bear any relation to their own. Such a reflexive stance is, as Parmar et al. (2022) note, "an uneasy compromise position between Insider and Outsider discourses" (p. 4), not least because reflexivity is challenging to accomplish and can risk its own forms of exploitation if engaged in superficially through "reflexivity-by-rote" (Alexander, 2004, p. 138).

Operationalizing racisms

For Russell (1992), it is key in Black Criminology to conceptualize racism as reality and racism as perception and to consider how this impacts patterns of offending. Relatedly, Phillips

and Bowling (2003) – making efforts to incorporate minority perspectives into criminology – argued for a means by which to reconcile the criminological data on criminal justice over-representation with the lived experiences of minority ethnic groups, whose emphasis often lies with concerns about police racism, but also discriminatory actions by the courts, probation, and prisons. Data on perceptions of experienced discrimination are, therefore, invaluable. Threats to and assaults on a person's racial, ethnic, or cultural integrity can produce psychological symptoms of depression, anxiety, distress, and even trauma, as well as having a detrimental effect on physical health (Paradies et al., 2015), but they are also essential for understanding causal pathways into offending. Typical measures that use standardized scales, such as the Everyday Discrimination Scale, may not always be sensitive enough to record the multitude of subjective reactions to racial microaggressions, violent racism, and everything in between.

Qualitative research can offer a means to powerfully describe the essence of subjective experiences and their meaning. Returning to two of the young black Londoners cited at the start of this chapter, Jack and H., their talk illuminates the brutal essence of being positioned as inherently criminal. Jack remembered observing police officers on the other side of the road to him while he waited for a bus, knowing they would cross over and stop and search him:

> [Police officers said] "We think that you're going to rob this big white van opp- opposite you" in the middle of Mc like, at, right next to McDonald's […]. You're standing, you're being suspicious." […]. [To which Jack replies] "Hurry up and search me so I can get on my bus". Like, literally I was like, "Hurry up and search me because you can blatantly see that, like, I'm not dressed to steal".
>
> *(Jack, Black British Jamaican, Christian)*

H. recalls an incident where his sister sent him to the local shops to buy a paintbrush:

> I go to the shop and this one said they don't have it, so I jumped back on the bike, go to another one. So, er, just, like, let's say for, like, 10 minutes I was just going in and out of shops on the same road. Before I get to the end of the road just the undercovers [police] just stopped me, like, searched me, put their hands in my trousers […]. They was, like, I look like I'm selling drugs […] they asked me, "Whose bike is it?".
>
> *(H., Black British Gambian and Sierra Leonian, Muslim)*

For H., these kinds of incidents can lead to a fatalistic acceptance of the certainty of inferiorization. H. goes on to reflect how such regular infringements can lead black boys to 'lose hope' and to feel edged into criminal offending because they will always be stereotyped as criminals regardless of their actual behaviour (Phillips, 2020). H. suggests they may be provoked into drug dealing as they reflect that "I might as well be like that if I'm gonna – they're gonna stop me every day, search me, ask me about things that I didn't do". Guilt is judged *a priori*, attached to any black body, denying dignity and self-worth and projecting immorality and criminality. It is this toxic omnipresence which creates an ongoing stressor for minorities – what Russell (1998) calls the myth of *criminalblackman*. As black philosopher George Yancy (2017) observes, "White people stereotype us; they ontologically truncate and police us; and, they do violence to our sense of integrity" (p. 592). Similarly, for Jack, there were clear instances when his blackness so clearly connoted 'violent criminal' to police officers that he was certain about his under-protection and overpolicing. In the interview he described being

racially abused and then physically assaulted by a white man but seeing the outcome of the altercation as a foregone conclusion:

> Yeah, I know. It's a white man and a black guy […]. Even though he admitted to calling me a n***** and he admitted to putting his hands on me first I was still arrested [and he was not].
>
> *(Jack, black British Jamaican)*

Culturally intelligent methodologies

In addition to storytelling through qualitative research, various cultural forms speak to lived experiences of racism and discrimination and complement the data we collect through traditional means. Glynn's (2019) work calls for 're-storying the past' using the techniques of rhyming 'data verbalization' in spoken word, theatre performances, podcasts, and screenplays, to disseminate qualitative research findings.

Describing the value of Afrobeats (Nigeria), reggae (Jamaica), and hip hop (US) for analyses of historical-contemporary connected state violence, for example, Saleh-Hanna (2010) maintains music lyrics provide the creative expression of political resistance to racism and the articulation of black liberation and self-determination (see also Elliott-Cooper, 2021). "Empowered manifestations of blackness in musicianship symbolize survival and dignity despite immense attempts at annihilation" is how Saleh-Hanna puts it (2010, p. 149), and the Dave (2020) performance noted above exemplifies this. Not dissimilarly, Phillips et al. (2020) referenced, across the authors' generations, Linton Kwesi Johnson's (1979) 'Sonny's Lettah', Macka B's (1984) 'We've had enough', and P Money's (2016) 'Stereotype' as vivid orations of the violence of police power, capturing the essence of how policing can be felt, endured, and defied. Perhaps then it is no surprise that the policing of black music forms – hip hop, grime, and drill – is part of the panoply of devices that the state uses to surveil and criminalize black men (Fatsis, 2019a, 2019b; Owusu-Bempah, 2022).

According to Russell-Brown (2018), visual arts can help us tell stories of how race drives individual and structural decisions in the criminal justice system, but perhaps even more importantly it can serve to humanize black lives through the senses. Images of lynching victims can penetrate in a way that 'mind-numbing statistics' of racial disparity cannot, Russell-Brown (2018) suggests. Glynn's (2021) recent book, *Reimagining black art and criminology: A new criminological imagination*, looks to novels, letters, film, theatre, and music to infuse disciplinary understanding through counternarratives not confined by the academic conventions of peer-reviewed journals and conferences. Implicit in these forms is the accurate historicizing of the present through black performance that presents blackness as dynamic and multidimensional, and not only as inferior representations without humanity. What inspires all these culturally intelligent methodologies is the rejection of positivist chauvinism that assumes meaningful understanding can only come from hard scientific approaches that isolate race as a one-dimensional, decontextualized variable.

Practising criminology

In Russell-Brown's (1992) earlier piece, the call for Black Criminology assumed that – at least at first – it would be the preserve of African-American criminologists. Thirty years on, underrepresentation in the discipline seems somewhat less of an issue than it was then. However, Russell-Brown (2018) cites the work of Chesney-Lind and Chagnon (2016) that still finds some

underrepresentation and that this is most marked in the more prestigious and senior positions within the academy. They find higher rankings among more positivist journals, which, given earlier discussion, immediately positions minority ethnic scholars at risk of their work not being published in top-tier US journals such as *Criminology*. Representation of 'non-white' authors was higher in the journal *Theoretical Criminology* which, at the time of writing, *would* be considered a Q1 journal. However, it is unclear how many of the non-white authors were of African American/black heritage. Within the officer ranks of the American Society of Criminology, black criminologists have rarely been seen and neither have they proportionately won research awards. For Chesney-Lind and Chagnon (2016), "people of color are almost a nonpresence in criminology", noting that "it would be intellectually dishonest to overlook how limited the presence of non-White criminologists remains" (p. 327). Taylor Greene et al. (2018) similarly find that African Americans made up 5 percent of faculty in the top five criminology doctoral programmes in the US, which is below their representation in both the US population as a whole and the faculty population (see also Kitossa, 2012). As a small gesture, this paper lists minority ethnic scholars first in the list of references to signify the value of our contributions to the field.

In their piece on minority perspectives, Phillips and Bowling (2003) argued that representation is not the only issue. There must also be a public duty for criminologists whose work is informed by a minority perspective to be vigilant in critically assessing and monitoring policy developments that might have a specific detrimental effect on minorities, either as victims, offenders, or practitioners. This responsibility, they maintained, should also extend to being responsible for research claims put into the public domain and to rebutting inaccurate or false representations (see also Russell, 1992). Taken further – and more broadly pitched as anti-racist scholar-activism rather than the actions of public intellectuals – there are some pointers from Joseph-Salisbury and Connelly's (2021) manifesto that urges researching, teaching, and organizing around analyses of racism operating at structural, institutional, and micro levels, being in the mix of communities of resistance, and being reflexive about our roles within the neoliberal university. Black Criminology must surely adhere to these principles too.

Conclusion

The notion of Black Criminology, first advocated in 1992, has yet to secure a place in mainstream academic criminology. It promises a scholarly intervention that is sensitive to the historical forms of white state violence that continue to pattern black and minority ethnic experiences of crime and justice. It urges theoretical developments that do not individualize the experiences of young minority ethnic Londoners like Jack, Tyrone, James, H., and others, holding them to account for individual failings. Black Criminology centres structural dimensions of racialized inequality and it also interrogates the multiple layers of racism that exist in contemporary postcolonial and settler-colonial societies. Black Criminology cannot endorse an epistemological approach which assumes race can be reduced to a mono-dimensional status, devoid of what African American philosopher George Yancy (2017) calls the "many daily manifestations of black racialized trauma" (p. 587). Instead, it supports the more politically meaningful means of generating understanding that comes from the spoken word, music, and the visual arts. And the 'wound' (Mbembe, 2017) – referred to at the start of this chapter – supports Black Criminology, which exposes systematic stigmatization that is painfully felt, analyzes the continuities of European (white) imperialism, and interrogates the new technologies through which black populations are managed and controlled using algorithms, artificial intelligence, and genomic techniques.

Notes

1 From a purposive sample of 20 young, minority ethnic Londoners drawn from community, religious and sports organizations, in research examining the mobilization of racial orders in everyday life (Phillips, 2020).
2 The prestigious British Phonographic Industry's annual popular music awards.

References

Minority ethnic and Indigenous scholars

Agozino, B. (2003). *Counter colonial criminology: A critique of imperialist reason*. Pluto Press.

Alexander, C. (2004). Writing race: Ethnography and the imagination of The Asian Gang. In M. Bulmer & J. Solomos (Eds.), *Researching race and racism* (pp. 134–149). Palgrave.

Alexander, M. (2010). *The new Jim Crow: Mass incarceration in the age of colorblindness*. The New Press.

Cunneen, C., & Tauri, J. (2017). *Indigenous criminology*. Policy Press.

Cunneen, C., & Tauri, J.M. (2019). Indigenous peoples, criminology, and criminal justice. *Annual Review of Criminology*, *2*(1), 359–381.

Dave (2020). *Black (Live at The BRITs 2020)* [YouTube Video]. https://www.youtube.com/watch?v=mXLS2IzZSdg

Elliott-Cooper, A. (2021). *Black resistance to British policing*. Manchester University Press.

Eze, E. (1997). *Race and the enlightenment: A reader*. Blackwell.

Fang, A.H., Guess, A.M., & Humphreys, M. (2019). Can the government deter discrimination? Evidence from a randomized intervention in New York City. *The Journal of Politics*, *81*(1), 127–141.

Gilroy, P. (1982). Police and thieves. In Centre for Contemporary Cultural Studies (Ed.), *The empire strikes back; race and racism in 70s Britain* (pp. 143–182). Routledge.

Glynn, M. (2019). *Speaking data and telling stories: Data verbalization for researchers*. Routledge.

Glynn, M. (2021). *Reimagining Black art and criminology: A new criminological imagination*. University of Bristol Press.

Greene, H.T., Gabbidon, S.L., & Wilson, S.K. (2018). Included? The status of African American scholars in the discipline of criminology and criminal justice since 2004. *Journal of Criminal Justice Education*, *29*(1), 96–115.

Gunter, A. (2008). Growing up bad: Black youth, `road' culture and badness in an East London neighbourhood. *Crime, Media, Culture*, *4*(3), 349–366.

Gunter, A. (2017). *Race, gangs and youth violence: Policy, prevention and policing*. Policy Press.

Jhappan, R. (1996). Post-modern race and gender essentialism or a post-mortem of scholarship. *Studies in Political Economy*, *51*, 15–63.

Joseph-Salisbury, R., & Connelly, L. (2021). *Anti-racist scholar-activism*. Manchester University Press.

Kitossa, T. (2012). Criminology and colonialism: counter colonial criminology and the Canadian context. *The Journal of Pan African Studies*, *4*(10), 204–226.

Lawrence, E. (1982). In the abundance of water the fool is thirsty: Sociology and Black 'pathology'. In Centre for Contemporary Cultural studies (Ed.), *The empire strikes back: Race and racism in 70s Britain* (pp. 93–130). Routledge.

León, K.S. (2021). Critical criminology and race: Re-examining the whiteness of US criminological thought. *The Howard Journal of Crime and Justice*, *60*(3), 388–408.

Mbembe, A. (2017). *Critique of Black reason*. Duke University Press.

Owusu-Bempah, A. (2022), The Irrelevance of Rap, *Criminal Law Review*, *2*: 130–151.

Paradies, Y., Ben, J., Denson, N., Elias, A., Priest, N., Pieterse, A., Gupta, A., Kelaher, M., & Gee, G. (2015). Racism as a determinant of health: A systematic review and meta-analysis. *PLoS One*, *10*(9), 1–48.

Parmar, A. (2017). Intersectionality, British criminology and race: are we there yet? *Theoretical Criminology*, *21*(1), 35–45.

Parmar, A., Earle, R., & Phillips, C. (2022). Seeing is believing: how the layering of race is obscured by "white epistemologies" in the criminal justice field. *Journal of Criminal Justice Education*, *33*(2), 289–306.

Phillips, C. (2020). The pains of racism and economic adversity in young Londoners' lives: Sketching the contours. *Journal of Ethnic and Migration Studies, 49*(3), 734–751

Phillips, C., & Bowling, B. (2003). Racisim, race and ethnicity: developing minority perspectives in criminology. *British Journal of Criminology*, *43*(2), 269–290.

Phillips, C., Earle, R., Parmar, A., & Smith, D. (2020). Dear British criminology: Where has all the race and racism gone? *Theoretical Criminology*, *24*(3), 427–446.

Potter, H. (2015). *Intersectionality and criminology: Disrupting and revolutionizing studies of crime*. Routledge.
Reid, E. (2022). 'Trap life': The psychosocial underpinnings of street crime in inner-city London. *The British Journal of Criminology*. https://doi.org/10.1093/bjc/azac004
Russell-Brown, K. (2021). Black lives matter in criminology? Let's prove it *Race and Justice*, *11*(3), 328–337.
Russell-Brown, K. (2019). Black criminology in the 21st Century. In J.D. Unnever, S.L. Gabbidon & C. Chouhy (Eds.), *Building a Black criminology: Race, theory, and crime* (pp. 101–123). Routledge.
Russell-Brown, K. (2018 September 6–7) *The art of Black criminology [Symposium paper]. A new dialogue between Criminology and Sociology*. London, UK.
Russell, K.K. (1998). *The colour of crime: Racial hoaxes, white fear, black protectionism, police harassment, and other macroaggressions*. New York University Press.
Russell, K.K. (1992). Development of a Black criminology and the role of the Black criminologist. *Justice Quarterly*, *9*(4), 667–683.
Saleh-Hanna, V. (2010). Crime, resistance and song: black musicianship's black criminology. *Popular Culture, Crime and Social Control*, *14*, 145–171.
Smith, J.M. (2014). Interrogating Whiteness within criminology. *Sociology Compass*, *8*(2), 107–118.
Tauri, J. (2012). Indigenous critique of authoritarian criminology. In K. Carrington, M. Ball, E. O'Brien & J. Tauri (Eds.), *Crime, justice and social democracy: International perspectives* (pp. 217–233). Springer.
Tauri, J.M. (2014). Criminal justice as a colonial project in settler-colonialism. *African Journal of Criminology and Justice Studies*, *8*(1), 20–37.
Unnever, J.D., & Gabbidon, S.L. (2011). *A theory of African American offending: Race, racism, and crime*. Routledge.
Unnever, J.D., Gabbidon, S.L., & Chouhy, C. (Eds.). (2019). *Building a Black criminology: Race, theory and crime*. Routledge.
Yancy, G. (2017). The violent weight of whiteness: The existential and psychic price paid by black male bodies. In N. Zack (Ed.), *The Oxford handbook of philosophy and race* (pp. 587–597). Oxford University Press.
Young, A.A. Jr. (2004). Experience in ethnographic interviewing about race: the inside and outside of it. In M. Bulmer & J. Solomos (Eds.), *Researching race and racism* (pp. 187–202). Routledge.

Majority white scholars

Chesney-Lind, M., & Chagnon, N. (2016). Criminology, gender, and race: a case study of privilege in the academy. *Feminist Criminology*, *11*(4), 311–333.
Cunneen, C. (2011). Postcolonial perspectives for criminology. In M. Bosworth & C. Hoyle (Eds.), *What is criminology?* (pp. 249–266). Oxford University Press.
Fatsis, L. (2019a). Grime: Criminal subculture or public counterculture? A critical investigation into the criminalization of Black musical subcultures in the UK. *Crime, Media, Culture*, *15*(3), 447–461.
Fatsis, L. (2019b). Policing the beats: The criminalisation of UK drill and grime music by the London Metropolitan Police. *The Sociological Review*, *67*(6), 1300–1316.
Gillborn, D. (2008). *Racism and education: Coincidence or conspiracy*. Routledge.
Glover, K.S. (2019). Identifying racialized knowledge through critical race studies lens: theory and principles for the criminology textbook realm. *Contemporary Justice Review*, *22*(4), 371–388.
Merton, R.K. (1972). Insiders and outsiders: a chapter in the sociology of knowledge. *American Journal of Sociology*, *78*(1), 9–47.
San Francisco Bay View (2011 August 11). London police target Black men: You say riots! We say insurrection! *San Francisco Bay View*. https://sfbayview.com/2011/08/london-police-target-black-men-you-say-riots-we-say-insurrection/
Strand, S. (2021). *Ethnic, socio-economic and sex inequalities in educational achievement at age 16: An analysis of the Second Longitudinal Study of Young People in England (LSYPE2)*. https://www.education.ox.ac.uk/wp-content/uploads/2021/05/Strand_2021_Report-to-CRED.pdf
Wood, M., Hales, J., Purdon, S., Sejersen, T., & Hayllar, O. (2009). *A test for racial discrimination in recruitment practice in British cities*. https://www.bollettinoadapt.it/old/files/document/3626ATESTFORRACIALDI.pdf

42

Decolonial criminology

Oxymoron for necrocapitalism, racial capitalism, and the westernization of the professoriate

Wesley Crichlow

> For the master's tools will never dismantle the master's house. They may allow us to temporarily beat him at his own game, but they will never enable us to bring about genuine change…I urge each one of us here to reach down into that deep place of knowledge inside herself and touch that terror and loathing of any difference that lives here. See whose face it wears. Then the personal as the political can begin to illuminate all our choices.
>
> (Lorde, 1984, p. 110)

As Fanon (1967) puts it, "the tool [shall] never possess the man" (p. 231). I'm writing this piece as a letter with several questions about 'decolonial criminology'. First let me say, I strongly believe that universities are intellectually responsible for the reproduction and maintenance of state-ordained violence, white supremacy, colonization, and anti-Black/African racism and domination in society. Universities are called upon to legitimize the world of research, science, and the production of knowledge. With this context in mind, I ask the following questions: What is decolonization? From what and for whom is criminology to be decolonized? What is decolonial criminology? What have been the linkages between queer theory, queer criminology and marginalized groups' attempts to decolonize criminal justice and criminology? How many necrocapitalist, university-market-driven fields or cannons of criminology already exist? And what will make decolonial criminology different from bell hooks' (2000) formulation of "white supremacist, capitalist cisheteronormative, transphobic patriarchy" (p. 118) or the combination of colonialism, white supremacy, racial capitalism, transphobia, anti-Black racism, and anti-Indigenous racism in criminology?

Our neoliberal universities are great at repackaging colonial anti-Black projects as decolonial in the university business and governance framework, in departments, and within disciplines. Most recent was universities' worldwide anxiety-driven, flaccid solidary statements in response to the extra-judicial public lynching of George Floyd by US police, Black History Month celebrations – or as I prefer to coin it 'Negro Rental Month', Indigenous Heritage Month, Asian Heritage Month, anti-racism policies, racial injustice projects, and Black studies minors/majors et cetera. Fanon (2001) identified compartmentalization as a mechanism of colonization and

DOI: 10.4324/9781003176619-47

psychological and material apartheid, stating that "[t]he first thing which the colonized native learns is to stay in their place, and not to go beyond certain limits" (p. 40). The many classical and non-classical branches of criminology can best be summed up as profit-driven university-criminology-industrial complex recolonization or colonizing decolonization. In this context, I am weary of decolonial criminology as detached from the people who it claims it wants to liberate. Here, I see decolonial criminology as a form of what Cheryl Harris (1993) describes as the subordination of Blacks as the objects of property through slavery and the dispossession of Indigenous people of their land, in which race as identity was transformed into race as property through the legal action of giving "whiteness actual legal status", thereby "moving whiteness from privileged identity to a vested interest" (p. 1725). The rights to craft and instantiate meaning, to accrue benefit, and to expect exclusivity and legal protection continue to be cornerstones of university decolonial disciplines, departments, and studies in the contemporary exercise of "Whiteness as property" (Harris, 1993, p. 1707).

Decolonial criminology as property is complex but explains the ever-expanding university-criminology-industrial complex that makes money off the misery and racist criminalizing profiling of Black bodies in the structures and mechanisms that characterize white supremacist institutions, including universities, universities tourism, and prisons. Overcoming the deeply embedded plantation politics and anti-Black racism in academia is an ongoing project. Decolonial criminology within university criminology programmes is an example of how universities have yet to explicate fully the ways that enslavism, anti-Black racism, and colonialism are foundational to the construction of universities and the parallels between slave plantations and contemporary criminal injustice systems and universities. Institutional logics of colonialism and imperialism, which were essential to the establishment of Turtle Island and all other colonized nations, are reflected in the embracing of decolonial criminology as a field of study in universities. We need to think more critically about abolition and alternatives to decolonial criminology as a discipline, which is punitive, anti-Black, dehumanizing, pathologizing, disarticulating of humanity, and socially controlling of Black bodies. Care for social issues should not lose sight of the humanity and dignity of Black people, which raises another question: Is decolonial criminology symbolic violence?

Decolonial criminology as symbolic violence

> [D]ecolonization is always a violent event.
>
> (Fanon, 2001, p. 1)

The mind, metaphorically, has to be a lethal weapon in the narrative of colonial violence. French sociologist Pierre Bourdieu is widely known for popularizing the concept of symbolic violence. For Bourdieu, symbolic violence is subtle and sinister violence exerted imperceptibly, breeding misrecognition in its hapless victims and serving "to impose meanings and impose them as legitimate by concealing the power relations which are at the basis of its force" (Bourdieu & Passeron, 1990, p. 4). The colonial subject is often without a say in the construction of decolonial criminology. As Fanon (2001) reminds us,

> If the building of a bridge does not enrich the awareness of those who work on it, then that bridge ought not to be built and the citizens can go on swimming across the river or going by boat. The bridge should not be 'parachuted down' from above; it should not be imposed by a deus ex machina upon the social scene; on the contrary it should come from the muscles and the brains of [Black and racialized people].
>
> *(p. 162)*

The imposition of meaning, a form of symbolic violence, is met with a violent response of the kind described by Fanon (1963):

> for the colonized people this violence, because it constitutes their only work, invests their characters with positive and creative qualities. The practice of violence binds them together as a whole, since each individual forms a violent link in the great chain, a part of the great organism of violence which has surged upward in reaction to the settler's violence in the beginning. The groups recognize each other, and the future nation is already indivisible. The armed struggle mobilizes the people, that is to say, it throws them in one way and in one direction.
>
> *(p. 93)*

Are we imposing decolonial criminology on powerless African/Black peoples' bodies, onto the powerless subject, the prisoner or imprisoned, the subject of racist profiling, hyperincarceration (Wacquant, 2001, 2002, 2008), or prisonization (Crichlow, 2014)?

I am interested in how or whether so-called 'decolonial criminology' meaningfully engages the African/Black people subjected to colonization so that they have access to abolitionist decolonial criminological tools and analysis for liberation undoing colonial forms of knowledge production. This is critical given the push for decolonial ecological frameworks in university funding, research applications, curriculum delivery, and thesis supervision in the neoliberal power hierarchy that is still predominantly white, hetero-cis-gendered/hetero-cis-normative, heterosexual, male, and European/American. Yet, the seeking of agency by the colonized or oppressed group can be seen as a violent act by the colonizer or oppressor. Lewis Gordon (2007) argues:

> the blackened lives the disaster of appearance where there is no room to appear non-violently. Acceptable being is nonexistence, nonappearance, or submergence.[…] To change things is to appear, but to appear is to be violent since that group's appearance is illegitimate. Violence, in this sense, need not be a physical imposition. It need not be a consequence of guns and other weapons of destruction. It needs simply be appearance.
>
> *(p. 12)*

Are universities up to naming the empire as violent?

Universities not ready for decolonization

> Emancipate yourselves from mental slavery. None but ourselves can free our minds.
>
> (Bob Marley & The Wailers, 1980)

Is it possible to free ourselves from mental slavery while working in the necrocapitalist university? More importantly, there is a glaring absence of a commitment to racial justice and engagement with community-led abolition, and liberation movements. As Adele Blackett (2022) explains, drawing on historian Robin Kelley, universities do not seem to be up to the task: "Kelley questions the wisdom of 'acknowledging the university's magisterium in all things academic' while 'granting the university […] [considerable] authority'" (p. 405). The following positionality might shock more. Harney and Moten (2013), in their work on the *Undercommons*, suggest that the only possible relationship to the university is a criminal one,

which applies by extension to decolonial criminology and every other school of thought in criminology:

> To enter this space is to inhabit the ruptural and enraptured disclosure of the commons that fugitive enlightenment enacts, the criminal, matricidal, queer, in the cistern, on the stroll of the stolen life, the life stolen by enlightenment and stolen back, where the commons give refuge, where the refuge gives commons.
>
> *(p. 26)*

Instead, they advocate for the community and intellectual activists – as Blackett (2022) puts it:

> they centre alternative images – the maroon, the fugitive, those who refuse to allow themselves to be encircled by the narrow universe of a neoliberal academy, claiming instead the spaces 'in the hold' that remain constantly in motion, places that refuse to be settled, places that retain possibility.
>
> *(p. 405)*

I am also very concerned with decolonial thinking being attached to criminology, which is a very punitive, debilitating, and dehumanizing field, especially towards African/Black and Indigenous people locally and globally. It is from criminology that we have misrepresentative terms such as mass incarceration, the school-to-prison pipeline, racial profiling, and at-risk youth, all of which overlook the historicity and connections to colonialism, enslavism, and the afterlife of these evil forces (Broeck, 2020). Criminologists have white-washed, dehistorized, and simplified these white supremacist terms as perception based rather than systemically, structurally, and institutionally embedded in every aspect of life as a by-product of racial capitalism. These criminological terms conceal as much as they reveal, suggesting that all groups of people share these experiences while victim-blaming groups that wish to address the structural and systemic problems of racist criminal justice practices and policies that directly affect them. The challenge facing those who would pursue decolonial criminology is reflected in the works of Ruth Wilson Gilmore (2007), Angela Davis (2004), and, more recently, in Harney and Moten's (2013) work, *The undercommons: Fugitive planning and the Black body*, which cites Wilson on the twin pillars of racism and colonialism calling for abolition:

> "Ruth Wilson Gilmore: Racism is the state-sanctioned and/or extralegal production and exploitation of group differentiated vulnerabilities to premature (social, civil and/or corporeal) death." What is the difference between this and slavery? What is, so to speak, the object of abolition? Not so much the abolition of prisons but the abolition of a society that could have prisons, that could have slavery, that could have the wage, and therefore not abolition as the elimination of anything but abolition as the founding of a new society. The object of abolition then would have a resemblance to communism that would be, to return to Spivak, uncanny. The uncanny that disturbs the critical going on above it, the professional going on without it, the uncanny that one can sense in prophecy, the strangely known moment, the gathering content, of a cadence, and the uncanny that one can sense in cooperation, the secret once called solidarity.
>
> *(p. 42)*

Abolitionist reparative activism has to be a central component in our decolonial criminological resistance. Kelley (2018) worries that the classroom can never be a community and Harney

and Moten (2013) remind us we are often *in* the university, but not *of* the university (p. 173). The message here for us as decolonial scholars-cum-activists is that we cannot call the university our home, it was never meant for us to thrive in, antithetical to questions of reparations, abolition, decolonization, and racial justice camouflaging domination, and exploitation. Scholar-activism is an ethical, moral, radically fun-loving form of practice shaped by respect, action, reflection, and doing. To mobilize decolonial criminology in our own multiple, intersecting images, to cultivate social-justice scholar-activism and radical love, as Stevie Wonder (1976) puts it, "say you're in it but not of it", we are cautioned to be mindful of their roles, and reminded by Fox and colleagues (2009) that "academia's heart […] is intellectual, not activist" (p. 15). We must foster community-based, meaningful partnerships, given academia's inability to bring about alternative forms of justice. Educational theorist Darren Webb (2018) reminds us that educational institutions are imperial in nature:

> A site for trailing new forms of oppression and exploitation, an institution intimately involved in the reproduction of inequities […] its corrupt and criminal institution complicit in patriarchal, colonial, and racist systems and processes; a criminal institution comparable to the police as the racialized, gendered and class-based force of authority, surveillance enforcement and enactments of everyday patterns of structural violence.
>
> *(p. 97)*

Joy James (2019) is then correct in saying that the academy is not a site for nor has any revolutionary desire. Decolonial criminologists must redirect academy resources into the community for it to be liberatory.

Decolonial criminology as disease

> When the missionaries arrived, the Africans had the land, and the missionaries had the bible. They taught us how to pray with our eyes closed. When we opened our eyes after praying, they had the land, and we had the bible.
>
> (Jomo Kenyatta, as cited in Walker, 2004, p. 144)

The modern decolonial criminal industrial complex emerged as a critique of white supremacist colonial criminal justice projects of enslavement and dehumanization (Wynter, 2003). A central feature of coloniality is how it has defined 'civilized' humans as white people in juxtaposition to uncivilized non-human African/Black peoples. Similarly, decolonial and all strands of the supposedly critical criminology schools of thought define the Black body as cisheteronormative, disregarding the performative fluidity, fragmented formations, and nomenclature of African/Black sexualities. The current Western colonial university is a continued disease for the colonized. *Dorland's Illustrated Medical Dictionary* (2012) defines a disease as

> any deviation from or interruption of the 'normal' structure or function of any part, organ, or system (or combination thereof) of the body that is manifested by a characteristic set of symptoms and signs; the etiology, pathology and prognosis may be known or unknown.
>
> *(p. 527)*

The deviation is Western colonization, caused by the vector of French, English, and Portuguese colonizers. The interruption is the illegal entry, unwanted input, and exploitation by the usurpers. The normal is any free society before abnormal Western colonization disease (Crichlow, 2003). The colonizers imposed their patriarchal values on the structure – the

Indigenous people, their psyche, and the population. The body, of course, is the country. The manifestation of a set of symptoms and signs is the chronic subconscious belief of Indigenous inferiority to whites. This inferiority is both nourished and maintained through a daily indoctrination of self-hate, low self-esteem, and a denial of their contributions to civilization, society, history, and the country. Fanon's work instructs us to consider the dialectics of violence: education as violent and violence as educative. Césaire (2000) notes

> that no one colonizes innocently, that no one colonizes with impunity either; that a nation which colonizes, that a civilization which justifies colonization—and therefore force—is already a sick civilization, a civilization which is morally diseased, that irresistibly progress[es] from one consequence to another, one denial to another, […] call[ing] for […] its punishment.
>
> *(p. 39)*

This is a deplorable dehumanizing aspect of colonization and by extension colonial punitive pathologizing criminology. The guiding theme of the COVID-19 pandemic, antidemocracy, colonialism, racism, decolonial criminology, and disease is the symptomatic rendering of oppressed people and citizens as invisible, which brings me back to my earlier lists of questions.

Crime pays: the crime-industry complex

Crime is an industry; the crime-industry complex pays, and this necrocapitalist profit-driven industry has to be a central concern for decolonial criminology. The reality is that it is a multi-billion-dollar industry that relies on the stock market, private corporations, as well as massive state bureaucracies; where abject poverty, decrepit housing, decrepit schools, and classrooms exist, and where everyday racist profiling and overpolicing are the order of the day. It is a way to explore colonization, settler-colonialism, racial capitalism (particularly as it grew out of, in full racializing force, the enslavement of Black/Africans), modernity, and, most recently, neoliberalism and necrocapitalism (Wang, 2018) along with the ways in which they have displaced an array of modes of living, thinking, and being in our natural world. Mbembé (2003) describes how

> [It is] the notion of necropolitics and necropower to account for the various ways in which, in our contemporary world, weapons are deployed in the interest of the maximum destruction of persons and the creation of death-worlds, new and unique forms of social existence in which vast populations are subjected to conditions of life conferring upon them the status of living dead.
>
> *(p. 40)*

Decolonial criminology is driven by university market capitalism among academics in attempts to critique how capitalism is racialized and how it is specifically about structuring white universities' economic control. Racism, as Gordon (2003) points out, requires the rejection of another human being's humanity. Gordon (2003) clarifies why race emerges in the context of self/other relations between whites and Blacks:

> race has emerged, throughout its history, as the question fundamentally of the blacks' as it has for no other group. It is not that other groups have not been 'racialized.' It is that their racialization […] has been conditioned in terms of a chain of being from the European human beings to the subhuman on a symbolic scale from light to dark.
>
> *(p. 37)*

Necrocapitalism and decoloniality reveal 'the stark, gloomy weary side of modernity' and how it is built 'on the backs' of 'others', others that modernity racializes, erases, and/or objectifies. The combined ways in which criminalization of Black bodies, racism, patriarchy, and racial capitalism differentially impact Black communities have to be of concern for decolonial criminologists. Robinson (1983) explains that racial capitalism is the idea that racialized exploitation and capital accumulation are mutually constitutive. Racial capitalism created the modern world system, through slavery, colonialism, and genocide because "the development, organization, and expansion of capitalist society pursued essentially racial directions, so too did social ideology" (Robinson, 1983, p. 2). An intersectional analysis of racial capitalism and necrocapitalism should also force decolonial criminologists to ask how decolonial criminology is connected to every epoch of criminal justice administration and its connecting institutions, whether university/college, government or private spheres. If the object of decolonial criminology is to critique colonial criminal justice and legal apparatuses, how is it integrated into the following areas, and what are the opportunities for abolishing these racist institutions built on the twin pillars of racial capitalism and necrocapitalism?

When decolonial criminologists ask what decolonization is and what we are decolonizing from, they may be able to understand how racial capitalism and necrocapitalism are embedded in the history of the enslavement of every colony it has destroyed, from Africa to the diaspora. How can decolonial criminologists attempt to return social and racial justice projects to a pre-colonial world when addressing harms to others? W.E.B. Du Bois (1933), for example, wrote in *Black Reconstruction* of the global "color caste founded and retained by capitalism" (p. 30). Here, we see the significance of bell hooks (2000) describing the combined ways that racism, patriarchy, and capitalism differentially impact nonwhite and white people.

Decolonial criminology oxymoron

Perhaps the worst thing about the colonial system was the contradiction which arose and had to arise in Europe with regard to the whole situation. Extreme poverty in colonies was the main cause of wealth and luxury in Europe. The results of this poverty were disease, ignorance, and crime. Yet, these had to be represented as natural characteristics of backward peoples. Education for colonial people must inevitably mean unrest and revolt; education, therefore, had to be limited and used to inculcate obedience and servility lest the whole colonial system be overthrown (Du Bois, 1965).

Social theorists such as Wynter (2003), Hartman (2007), Césaire (2000), and Fanon (1967) all advocate that decolonization starts with oneself, which is a long and hard process. Césaire (2000) reminds us that

> the so-called European civilization—'Western' civilization—as it has been shaped by two centuries of bourgeois rule, is incapable of solving the two major problems to which its existence has given rise: the problem of the proletariat and the colonial problem; that Europe is unable to justify itself.
>
> *(pp. 29–31)*

Colonialism has left an indelible mark on the legitimacy of academic and intellectual knowledge coming from Indigenous peoples' subjugation to colonization, in all European, African, Western, and non-Western universities. Decolonizing criminology is a recolonizing that imposes a Westernized concept of homogenization and assumes that there is an emancipatory or liberatory decolonial criminology approach. It is often heteronormative – where Blackness

overdetermines heterosexuality and whites overdetermine queerness – and it is a concept of erasure, as there is no singular Indigenous or decolonial identity. Defining the paradox and clarifying the scope of the approach while also acknowledging its complexity and heterogeneity through decolonial intersectionality is warranted to avoid the danger of a single decolonial story or methodology. An intersectional and reflexive engagement with global and local colonial realities must highlight both the benefits and shortcomings of decolonial criminological theories in order to avoid romanticizing and fetishizing decolonial work.

Decolonial criminology is an oxymoron for white supremacist dehumanizing surveillance and policing of Black bodies that cannot offer liberation within the current corporate, white supremacist, neoliberal consumer university. We should not abandon decolonial abolitionist criminology, rather it has to be worked out in a new different sphere, in a different place not the university, in meaningful partnerships in combination with communities outside of academia. New modes of rhetorical inquiry invested in the decolonial perspective are proposed by Wanzer-Serrano (2012) to "better address epistemic coloniality (not merely colonialism as an economic-political system) to (1) deal more productively with situated public discourses as they circulate in the world and (2) enact more robustly its antisystemic functions/aims" (p. 648). Academics alone cannot set the tone and framework for decolonization without the histories of decolonial abolitionist community activists. Scholar activist must work in consultation with active participants in the movement for decolonization, so I am very much against the idea of the colonizing/decolonial academic vanguard intellectual. I do not believe we look to intellectuals to tell us what to do, what is wrong with us, or how to feel politically. I think very often intellectuals, those in the ivory tower, are disengaged from the experiences of the broader community and engaged in extractive university research in the quest for their tenure, promotion, grants, and publications. We run the risk of treating decolonial criminology, as it is currently deployed, as an object of study rather than an avenue for reparations, racial and social change. We have to start asking and thinking of new modes and forms of transformative justice aimed at addressing systemic and structural problems in promoting safety and security, recognizing how the state promotes violence, especially towards the colonized and marginalized. Abolitionist advocacy and activism for structural change must make structural racism, gender violence, class bias, homophobia, and transphobia visible. Too many oppressive institutions are tied to institutions such as prisons, police, child welfare, and child protection, as all are systemically fully dependent on each other, such that it is impossible to extract them from each other except through abolition.

Onward, forward, and lifting with purpose

I know we are all slaves to the rhythm and chained to the golden handcuff and we will always be implicated in the university as a site of colonization and stable reproduction of state violence that exists today. The world is legitimized and reified through the university keeping some of our rebellious will sedated. Social-justice research and decolonization projects are unavoidably tied to investments in fossil fuel, multinational arms, policing major degrees, military college training, security guard certificates, et cetera. Further, many universities are beneficiaries of and contributed to transatlantic trafficking enslavement and colonization of Indigenous peoples globally. The university then, as one of many sites, one can argue, for reparative must be a site for decolonial struggles and pedagogical praxis to disrupt and amplify historically marginalized voices, to push back and collaboratively engage with communities impacted and not do it for them. As Cornel West (2014) reminds us, the "vocation of the intellectual is to let suffering speak, let victims be visible, and let social misery be put on the agenda of those in power"

(p. 64). Our scholar praxis activism should be to avoid the white supremacist saviour "good intention" we see what happed with trans Atlantic enslavement and colonization as good intentions. Decolonial academics and other racial, gender, and LGBTQ justice activists need a different suite of narrative tools to move away from the necrocapitalist academy-industrial complex into decolonizing caring in the afterlife of slavery (Hartman, 2007) and decolonial caring community research. Decolonial criminology is educational necrocapitalism, tied to university-market-driven capital, extensive public and private corporations and network business for trade, hence a commodity tied to graduate degrees and the professionalization of the criminal justice industrial complex. It is impossible to have decolonial caring within Western subjectivities, where we are Westernized, shackled, colonially wounded, and mentally chained to Western 'colonization as disease' (Crichlow, 2003). To that end, I am encouraged by Fanon (2001) who said we are nothing on earth if we are not in the first place the slaves of a cause, the cause of the people, the cause of liberty and justice (p. 1).

References

Blackett, A. (2022). Vocation of the Black scholar in the neoliberal academy: A love story. In A. Ibrahim, T. Kitossa, M. Smith, & H. Wright (Eds.), *Nuances of Blackness in the Canadian academy: Teaching, learning, and researching while Black* (pp. 401–416). University of Toronto Press.

Bob Marley and the Wailers. (1980). Redemption song. On *Uprising*. Tuff Gong Recording Studios.

Bourdieu, P., & Passeron, J. (1990). *Reproduction in education, society, and culture* (R. Nice, Trans.). Sage.

Césaire, A. (2000). *Discourse on colonialism* (J. Pinkham, Trans). *NYU Press*.

Crichlow, W. (2014). Weaponization and prisonization of Toronto's male black youth. *International Journal for Crime, Justice and Social Democracy*, *3*(3), 113–131.

Crichlow, Wesley. (2003). Western colonization as disease: Native adoption & cultural genocide. *Critical Social Work*, *3*(1).

Dorland, W.A.N. (2012). Disease. In *Dorland's illustrated medical dictionary* (32nd ed.). W.B. Saunders.

Du Bois, W.E.B. (1933). *Black reconstruction*. Harcourt, Brace and Company.

Du Bois, W.E.B. (1965). *The world and Africa*. International Books.

Fanon, F. (1963). *The wretched of the earth* (C. Farrington, Trans.). Grove Press.

Fanon, F. (1967). *Black skin white masks* (C.L. Markmann, Trans.). Grove Press.

Fanon, F. (2001). *The wretched of the earth* (C. Farrington, Trans.). Penguin Books.

Fox, D., Prilleltensky, I., & Austin, S. (Eds.). (2009). *Critical psychology: An introduction*. Sage.

Gordon, L. (2003). African American existential philosophy. In T. Lott & J. Pittman (Eds.), *A companion to African American philosophy* (pp. 33–47). Blackwell Publishing.

Gordon, L. (2007). Through the hellish zone of nonbeing: Thinking through Fanon, disaster, and the damned of the earth. *Human Architecture: Journal of the Sociology of Self-Knowledge*, Summer Issue, 5–12.

Harney, S., & Moten, F. (2013). *The undercommons: Fugitive planning & Black study*. Minor Compositions.

Harris, C. (1993). Whiteness as property. *Harvard Law Review*, *106*(8), 1707–1791.

Hartman, S.V. (2007). *Lose your mother: A journey along the Atlantic slave route*.

hooks, b. (2000). *Feminist theory: From margin to center*. (2nd ed.). Pluto Press.

James, J. (2019). *The architects of abolitionism*. [Lecture Series]. The Center for the Study of Slavery and Justice Carceral State Reading Group. Brown University.

Kelley, R.D. (2018). Black study, Black struggle. *Ufahamu*, *40*(2), 153–168.

Lorde, A. (1984). The master's tools will never dismantle the master's house. In A. Lorde (Ed.), *Sister outsider* (pp. 110–113). Sister Visions Press.

Mbembé, A. (2003). Necropolitics. *Public Culture*, *15*(1), 11–40.

Robinson, C. (1983). *Black Marxism: The making of the black radical tradition*. University of North Carolina Press.

Wacquant, L. (2001). Deadly symbiosis: When ghetto and prison life meet and mesh. In D. Garland (Ed.), *Mass imprisonment* (pp. 82–120). Sage.

Wacquant, L. (2002). The curious eclipse of prison ethnography in the age of mass incarceration. *Ethnography 3*(4), 371–397.

Wacquant, L. (2008). *Urban outcasts: A comparative sociology of advanced marginality*. Polity Press.

Walker, J.F. (2004). *A certain curve of horn: The hundred-year quest for the giant sable antelope of Angola*. Grove Press.

Wang, J. (2018). *Carceral capitalism*. Massachusetts Institute of Technology Press.

Wanzer-Serrano, D. (2012). Delinking rhetoric, or revisiting McGee's fragmentation thesis through decoloniality. *Rhetoric & Public Affairs*, *15*(4), 647–657.

Webb, D. (2018). Bolt-holes and breathing spaces in the system: On forms of academic resistance (or can the university be a site of utopian possibility?). *The Review of Education/Pedagogy/Cultural Studies*, *40*(2), 96–118.

West, C. (2014). *Black prophetic fire*. Beacon Press.

Wonder, S. (1976). As [Song]. On *Songs in the key of life*. Musixmatch. https://www.musixmatch.com/

Wynter, S. (2003). Unsettling the coloniality of being/power/truth/freedom: Towards the human, after man, its overrepresentation – An argument. *CR: The New Centennial Review*, *3*(3), 257–337.

43

Mis-education of the critical criminologist

Theory, meta-curriculum of onto-epistemology, and the myth of decolonization

Tamari Kitossa

> Having masked one's own values in a set of assumptions about the way the social world *is*, a theorist may then proceed without having to specify what his (sic) values are or even having to admit that they exist.
>
> (Gouldner, 1974, p. 417)

> […] the essential reflexivity of sociological and social theory is based on the fact that its first task, prerequisite to all else, is to establish […] the human and social conditions for the control and exposure of 'false consciousness', for the control of the irrational and ideological components of discourse.
>
> (Gouldner, 1975, p. 96)

Introduction

In the contemporary parlance of the idea of 'decolonization', overworked to the point where its content is diffuse and nebulous, a foundational aspect of Critical Criminology is epistemic decolonization of the Criminology curriculum. I am sympathetic to this endeavour. Within the context of formal schooling, curriculum is the *praxis* of delivering content and the theory of its means and ends. There are thus three senses to curriculum: 1) manifest (inculcation at the surface level consisting of data and information), 2) latent (implicit or propagandistic inculcation generated by the form of the manifest curriculum in which 'the medium is the message'), and, 3) onto-epistemically, liberatory/self-mastery (knowledge, generated by theoretical rigour and robust empirical 'testing', as a consequence of awareness of *becoming* and ongoing development of critical consciousness in relation to the self and the world as a convergence of past, present, and future) (see Freire, 1973; Gramsci, 1991).

If the chapters in *The Oxford Handbook of Criminology* are an indication, Orthodox Criminology has not shown much inclination to think through curriculum at any level of abstraction or practice (see Maguire et al., 2007). Indeed, since they take for granted the security

DOI: 10.4324/9781003176619-48

of their operation as servants of power in a *quid pro quo* relationship with the state, they offer a variety of deterministic theories whose taken-for-granted assumption is that order maintenance and pain delivery are absolute and necessary conditions for social existence (Christie, 1981; Lynch, 2000). What the quality of life under such a dictatorship may be, is a wholly different matter, though not irrelevant to my concern here. The SARS COV-2/Great Reset full-throttle press – manifested as an interpenetrating network of the technocratic corporate-state, financialized national and global economies, transnational public/private 'partnerships', and capitalist-biomedical-military-oligarchic surveillance (Kennedy, 2021) – exceeds the conceptual and theoretical grasp of Critical and Orthodox Criminology. The principal reason for this is that, as noted by Bauman's (2020) assessment of "liquid modernity", the state is fast shedding the nation in place of fascist regimes of brute force and a never-before-seen campaign of global mass indoctrination. What future lies ahead for Critical Criminologists – the apparent heretics of the Criminological technocratic empire – is an onto-epistemic question of grave ethical and moral concern. By contrast, any question as to the future of administrative and managerial Criminology is a moot point.

For the totalitarian "clerisy of power" (Nisbet, 1975), whose *modus vivendi* is to epistemologically legitimate the *status quo*, it is no consideration that the *status quo* may constitute organized disorder. What is elided is that conflict, crises, and omnicide are *produced*, regulated and managed by the Leviathan state on behalf of dominant economic, intellectual and political interests. To be clear, the biases of the state toward maintaining itself and the power of other predatory constituents are facts that tip to neither extreme of 'vulgar' Marxism nor pluralism, but exist in a dynamic ecology of the *mean* which reifies absolutist authority against the democratizing tendency of the masses to be free of such inegalitarian constraints. The result is a complex administrative modality constitutive of four 'institutionalized' networks of interpenetrating power: economic, ideological, military and political (Mann, 1992). The aim of this configuration of power concentration necessary for technocratic management of the social 'order' launched by 'civilization' and tethered it to the state. It set in motion a historical social process to guarantee a predatory social stratum the means to produce citizen pacification by way of domestic low-intensity warfare, which Mann (1992) calls the "cage of authoritative power" (p. 100). The problem of citizen recalcitrance against the process of 'caging' was not only 'resolved' by death-making and force, but as a complement the state waged ideological war through legalized morality to propagate the myth that 'civilized' life cannot be lived otherwise without centralized political authority. Here we have Gramsci's (1991) dictum of hegemony: the persuasion of force and the force of persuasion.

Inaugurated by a predatory class that by force of arms leveraged provisitional authority 'loaned' from the local authority of families and communities, in a feedback loop, the state emerged as a "gigantic protection racket" (Mann, 1992, p. 100; see also Neocleous, 2010; Nisbet, 1975; Tilly, 1985) to make war and was in turn made by war. While, including the technical intelligentsia, much attention has focused on the role of the cultural intelligentsia in the external dimensions of war-making (Kuklick, 2006; Nisbet, 1975), there is comparatively little acknowledgement of the analogous role of Criminologists as members of the technocratic clerisy of power in the state's war against its caged population. Profiting from their dependency on the state, while asserting their claim of moral authority, Criminologists (Orthodox and Critical) are disincentivized from reflecting on the onto-epistemic dimensions of the deep 'structure' of curriculum that might, embarrassingly, expose their role in low-intensity domestic warfare – be it the extant status quo or some yet realized crime-free utopia.

Contrary to Orthodox Criminology's neglect of curriculum, Radical Criminology from its inception in the late 1960s and early 1970s saw Critical Criminologists show sustained but

episodic attention to matters of curriculum (Hinch, 1989; Krisberg et al., 1974; Pfohl, 1980; Reiman & Leighton, 2017). This attention centres on the manifest curriculum in terms of the ethical and normative contentions of Critical Criminology's orienting question – *Cui Bono*? In practice, the question articulates itself through dynamic instructional modalities that emphasize *how*, empirically and theoretically, the Church of Criminology's *modus vivendi* – the problems of law-making, law-breaking, and social reaction to deviance – are comparatively taken up by various schools of thought. In other words, to their credit and in contrast to the Orthodoxy, the manifest curriculum of Critical Criminologists is pluralistic; this is but one marker of their credibility as *Protestants* distinguishing them, but only so far, from the Orthodoxy (and 'Left realism'). In addition to their open-ended instructional methodology, Critical Criminologists engage in the latent reflexive exercise of specifying the normative basis for their proclivities. As a result, students are left with no doubt as to the distinctions *within* and among the sects of the Church of Criminology.

In one of Critical Criminology's earliest reflections on curriculum, Krisberg et al. (1974) put the matter sharply in their account of the dynamic and tumultuous days before the Berkeley School of Criminology were shuttered by the Board of Regents under pressure from Governor Ronald Reagan. Education, Krisberg et al. (1974) wrote,

> is essentially political and all courses are biased. We were more open and candid about our value positions than is typical in most university courses. It is time that our liberal and conservative counterparts are forced to make explicit their ideological positions. To paraphrase C. Wright Mills: we made our biases open so that others could discover their own.
>
> *(p. 65)*

Krisberg et al. (1974) recognize that because knowledge aims to intervene in the world, knowledge is unambiguously political. There may be objectivity in the recognition of natural and social facts, but there cannot be value-neutrality toward either – for, as noted by Searle (1995), values are a matter of judgement, be it of individuals or groups. Gouldner (1968) goes a step further. He argues that the task of the theorist is not to take sides but to intervene in the world guided by the principle of ethical and moral responsibility, and to bear witness to human suffering. In any case, for Critical Criminologists protesting the Orthodoxy, the question was and remains still: how to expose students to alternative and oppositional views so they may figure out for themselves their ethical and moral responsibilities – and to do so mindful of the problem of indoctrination. As a practice, what must be made clear to students is that to believe something, anything, is what it means to be human, but of equal importance is to be explicitly aware and responsible for what one believes and how one comes to believe it in a *Gesellschaft* political formation (Gouldner, 1974). Resistance to the unreflected positionality of the *status quo*, as much as working out in detail the theoretical stance of Critical Criminology, and the contradictions and paradoxes of the Orthodoxy it lays bare, informs an explicit theory of curriculum that is against the grain. Or so it is assumed.

The argument I make in this chapter is that Critical Criminology has not extended its reach to match its claim to be 'reflexive' and, therefore, to 'decolonize' Criminology and Critical Criminologists themselves. I suggest that while Critical Criminologists deploy the Socratic approach to good effect in the manifest curriculum, they have failed to transcend the determinism that is at the heart of Critical Criminology's dilemma: is it or is it not of the Orthodoxy? Determinism is fine for the Orthodoxy, but it is noxious to heretics who formulate their heresy in the language of the downpressor (Kitossa, 2020b). I suggest that Critical Criminologists seem unaware of the contradictions implicit in their claims about: a) the 'causes' and ontology

of crime and how to deter, cure, reduce and prevent it, b) how to rehabilitate 'criminals' and c) how to 'decolonize' Criminology. Hence, their insistence on exposing the contradictions and paradoxes of the Orthodoxy not only rings hollow but also amounts to deceptions of self and students alike (assuming students are *tabula rasa*). I ask whether Critical Criminologists can any longer propagate their own mis-education and that of students by treating reflexivity toward the curriculum as a coded, moralizing, superficial, and rhetorical exercise. Can they continue to leave their implicit commitment to the Orthodoxy's determinism, hence technocratic commitment to coercion, intact?

Terms of engagement: latent, manifest and meta-curriculum

As I imagine it, curriculum articulates at three interrelated levels of abstraction – and each corresponds in some way to the phenomenology of knowing: embodied, ontologically and relationally – which is to say "I think, therefore we are" and "I am because we are" and, therefore, in Rasta philosophy, there is only "I and I". To this end, any form of thinking is a dialectic of *being* with others and corresponds with the three levels of knowing/meaning-making: a) I do not know, b) I do not know that I do not know, and c) I do not know that I do not know that I do not know. These levels of knowing (the world through the self), virtually always mediated, merely state that the more one knows, humility demands recognition that one does not know much at all, but that one is fairly certain of some things – and that the I, both singular and plural, is relationally and ethically responsible (see Freire, 1973).

To this end, Critical Criminology is explicit about the first two interrelated dimensions of the curriculum-as-knowing: the latent and the manifest. We have the good fortune of having the latent curriculum simplified and made explicit by the degree level expectations (DLEs) found at most universities. In its fetishistic approach to knowledge, the DLE serves as a metric for students to judge the outcome of learning. At the deeper 'structure' of practice, the DLE is a political tool for state managers to 'licence' university programmes, whatever else pedagogical aficionados may think. The DLE also facilitates the superintendence of universities in the production of citizens and workers by empowering administrators to discipline the disciplines to ensure the aims of the state are met. Particularly as it concerns the coercive state apparatus, it is noteworthy that as a consequence of massive state funding, Criminology and Criminal Justice programmes have since the early 1970s continued to metastasize while other academic units wither or are eliminated (Kitossa & Tanyildiz, 2022).

As argued by Shapin and Schaffer (1985), "the problem of generating and protecting knowledge is a problem in politics, and conversely, […] the problem of political order always involves solutions to the problem of knowledge" (p. 21). In the contest over knowledge and order, then, it is an unavoidable fact there is considerable effort to legitimate ways of knowing that secure the status quo. The struggle for critical scholars is to wrest intellectual liberation from the smothering blanket of utilitarianism. This possibility exists within the DLE's specification of the deeper values of the ancient and humanistic philosophy that call for self-examination. These include:

> (1) Problem solving; (2) Literacy skills; (3) Communication; (4) Critical thinking; (5) Citizenship/community/social values; (6) Life-long learning and (7) Appreciation of ambiguity and limits of knowledge.
>
> *(Grose, 2011)*

The manifest curriculum channels the latent curriculum through the specified expertise and knowledge claims of specific areas of study. As a product of politics, the content of study, given

the enclosure of academic freedom within the confines of disciplinary specialization, expresses the conflicts, contradictions, debates, and development of disciplines and universities, as well as competing humanistic visions for both. However compelling might be the delusion of the idealized vision of the university as a bastion for free expression, rational inquiry and humane research, the contrary is manifest by its dominant reality as an extension of the warfare state – domestic and external. Indeed, as argued by Gouldner (1974), Durkheim's success in establishing sociology in the university rested on the implicit guarantee that sociology shall in no way counter utilitarianism and the warfare state. Thus, the professoriate who sought power within the ideological orbit allowed them, and – as compromising intellectual clerics – they also generated cultural and political-economic products that ideologically imposed the mechanistic-utilitarian worldview of the bourgeois state (Abraham & van Schendel, 2005; Gouldner, 1974; Wallerstein, 1991).

Were this all to curriculum, there would not be an issue. Otherwise, we would be talking about indoctrination rather than education; though sometimes it is hard to distinguish between the two given the totalitarian nature of mandatory schooling, the deeper iatrogenic imperative of subverting intellectual autonomy, and, generally, the problem of getting citizen-subjects to conform (Ellul, 1973; Illich, 2002a, 2002b). The reality, however, is that many students intuitively resist the bovine imperative of public schooling: 'dropping out', 'causing trouble', regarding their teachers as the ideological enemies they are, and expressing a lack of interest in a lengthy period of indoctrination and enforced non-competition with their parents' generation. Pulling back, nevertheless, from what is the meta-curriculum, or ontology-as-text, there are differences of belief, opinion, and claims for judging the (socially constructed) evidence that is the special object of each discipline – each of which contends to capture a) the attention of the totalitarian state and b) 'market' share within the academy. Within each discipline there are different and often antagonistic traditions and theories which amount to differing worldviews, but only so far. Concerning 'facts', the manifest curriculum makes the choice of theory explicit to account for the explanatory strengths and limitations of each theory (Mills, 2000). It is here, however, where discussion of curriculum generally stops, leaving students impoverished and nonplussed about how their professors themselves arrive at their awareness of choice of theory and how they manage contradictions and ethical and moral complexity.

I want to suggest that theory, not least as it relates to curriculum, is not *only* a rational account of 'facts'; for in reality 'facts' are themselves socially constituted by the historic conditions and social relations that produce them. As evidence, Morris (1976) reminds us that theory of the "the dignity of Man (sic) [which] can be traced back to [the 'secular'] philosophy of the eighteenth-century Enlightenment […] had […] more success in civilizing society's actual treatment of its deviants as any which derive from the practice of nominal Christians" (p. 17). And consequently, "belief in the essential dignity of Man is as much an act of faith as belief in the existence of God; neither is a proposition which may be put to test by any means of a controlled experiment" (Morris, 1976, p. 17). It is debatable whether the present vicious scientific mangling of minds and sensual deprivations of the present regime of punishment in the West (Lehtinen, 1979) is a whit more 'civilized' than the vicious mangling of bodies imposed by the Church and monarchs up until the dominance of the bourgeois state (see Kitossa, 2020a). Troubling though it may be – and related to the moral choice of theory as the deeper context of curriculum – Morris leaves aside that eighteenth-century Enlightenment philosophes expressly argued for colonialism, genocide, and slavery, none of which contradicted their belief in equality (see Agozino, 2003). So, how did eighteenth-century philosophes come to exclude their own ethical malfeasance by advocating for and profiting from colonization, slavery, and genocide at the same time they pontificated about the rights of man? There is no mystery to

the philosophes' moral choice of theory (i.e., social contract): they were self-interested materialists who were investors in and architects of colonialism and transatlantic slavery. If this is too harsh a judgement, then at least it should be accepted that so-called Enlightenment theorists, no less than any theorist today, have their theorizing determined by biases/prejudices, dreams, and emotional and cognitive conditioning arising from past and ongoing social experience (Gouldner, 1974; Nisbet, 1975).

The problem for us, nevertheless, remains. Since *all* social theory is personal, how, meta-theoretically, does one explain *which* theory is decided upon by Critical Criminologists? Is it evidence? This cannot be so, since social 'facts' are themselves the product of theory in action and must, secondarily, be given meaning (Searle, 1995). In other words, the power of some social constituencies to mobilize specified conceptions of social order as universal, and to coercively organize the whole social order toward materialism and the deformation of ethics, morality, and spirituality, serves interested parties who have expropriated state power at the expense of others (Kitossa, 2021). Thus, the objective social fact of 'crime' is really about how predatory ruling groups articulate definitions of harm while exonerating their own 'criminality' at scale, constituting what Agozino (2003) calls "executive lawlessness" and Giannacopoulos (2020) identifies as "nomocide".

To then withhold from legitimation opposing theories that demystify the taken-for-granted racketeering of the dominant order, requires an intimate awareness of one's relationship to hegemony (the persuasion of force and the force of persuasion), which is to say *praxis*. In a circadian sense, the explicit recognition and critical interrogation of theory – how it comes to be, where it comes from, and how it comes to *feel* right – is overwhelmed by a focus on the manifest curriculum. Illich (2002a) argues that this sort of overwhelm, calculated to produce intellectual dependency and paralysis, is the intent of schooling. It is therefore assumed wrongly, Gouldner (1974) avers, that a personal theory of events/evidence/facts "is governed by the deliberate inspection and rational appraisal of […] [a] theory's logic and supporting evidence" (p. 30). Gouldner demonstrates that there is no inherent and internal 'structure' to a theory that accounts for why anyone chooses one social theory over another as the most cogent and potent explanation of 'facts'. We are not, after all, dealing with establishing the principles that govern the natural world, though, after Heisenberg, it is not disputed that the act of observation must itself be counted as relevant to the 'fact' that is being observed (Searle, 1995; Wallerstein, 1991). By this reasoning, the myth of value-neutrality, which abstracts the observer from that which is observed, is monumental self-serving mystification.

We may think here of Thomas Hobbes making a contractarian case for the Leviathan state on grounds that life would otherwise be nasty, brutish and short. But, was it not Plato, Aristotle, the English Civil War and a few dubious (i.e., racist) travelogues that shaped his ideas about humankind in the "state of nature" being at perpetual war? Hobbes's claim of a "war of all against all" turns on a Platonic wish for a totalitarian order where the myth of consent is implied by the coercion that produces its own illusion: no one has to think, not even the rulers – it is simply the order of things that some command and others obey (Popper, 1963). Nisbet (1975) informs us that Rousseau, a devotee of Plato, established his totalitarian theory of equality based on his experience of occasional poverty and his enmity and jealousy toward the entitled Parisian salon set. We may also think here of Cesare Beccaria, an Italian nobleman, who himself knew nothing of the gradations of pain he would subject others to, making a case for fines and swift punishment. What prior 'value-neutral' inquiry that did not already assume a predetermined outcome – which is that 'pain reforms' – did he conduct to arrive at his conclusion? Both Hobbes' and Beccaria's foregone conclusions shaped 250 years of public policy and social and psychological 'research'.

Of relevance to the deeper 'structure' of the Critical Criminology curriculum is the question: what in the subjectivity of Beccaria led him to assume that pain deters and 'reforms'? Was

it because he, at some point, was subject to pain and it deterred and reformed him? If this were so, the experience of pain remains subjective and may as well enrage or promote refractory behaviour, not to mention that it is actively pursued as a transcendent modality by religious devotees, ascetics, and masochists. Therefore, does the belief in pain as a means of deterrence and reformation not say more about the sadistic subjectivity of the theorist, and their epistemic baggage, than it does about the objective reality of pain as a modality conducive to behaviour modification? Rousseau, at least, had the integrity to be honest. In *Emile*, he argued unambiguously and without subterfuge for the totalitarian value of force, calling it the "discipline of natural consequences".

The choice of theory, therefore, hinges on *sentiment* and the ends/interests of the theorist since *sentiment* is itself an end. In other words, we live to *feel*, not feel to live: the former is the human state, and the latter is instinct. It is, therefore, the *feel* of a theory that is consonant with the theorist's subjectivity, beliefs, social experience and interests, be it implicit or explicit, that gives the theory its resonance. At an intuitive level, the theory *feels* right for those who hold it. "Sentiments", Gouldner (1974) avers, "entail a hormone-eliciting, muscle-tensing, tissue-embedded, fight-or-flight disposition of the total organism" (p. 37). He points out that sociologists are likely to baulk at this claim since they presume themselves committed to the 'scientific method', which is effectively a way of concealing their self-interest and to abdicate their ethical and moral responsibility to do no harm.

The *affective* imperative of any given theory cannot be denied, since epistemology is every bit as sensual an experience as *religious* exaltation. And, as McLaughlin (2021) reminds us in his biography of Erich Fromm, every critical theorist not only comes to consciousness of themselves as facilitators of marginal perspectives, but the fact of marginality is an opportunity to account for and to justify the choice of theory.

What bearing might this have on the deeper 'structure' of the curriculum? As noted by Mills (2000):

> The art of teaching is in considerable part the art of thinking out loud but intelligibly. In a book the writer is often trying to persuade others of the result of his (sic) thinking; in a classroom the teacher ought to be trying to show others how one man (sic) thinks—and at the same time reveal what a fine feeling he *(sic)* gets when he *(sic)* does it well [emphasis added].
>
> *(p. 79)*

What is revealed is *feeling*, but behind the immediate *feeling* that the theory 'fits' are what Gouldner (1974) calls "background assumptions" (p. 29). The products of a lengthy period of general socialization and specialized enculturation into enterprises of expertise are hegemonic linguistic codes and frames of reference that direct individuals into acceptable and culturally approved sentiment. Very often, though, facts contradict stated values: this is where and when conditioned *sentiment* holds ground or gives way to alternative ways of thinking. Hard work, for example, is valued as the basis for merit but is contradicted by bailouts, massive intergenerational wealth transfers, monopoly, oligarchy, and plutocracy which concentrate wealth. It is this sort of cognitive dissonance that is at the root of critical theory, and it is a personal matter:

> Theory-making, then, is often an effort to cope with threat; it is an effort to cope with a threat to something in which the theorist himself is deeply and personally implicated and which he (sic) holds dear.
>
> *(Gouldner 1974, p. 484)*

As I reflect on Krishnamurti's (1995) insights on fear, Gouldner's point, I think, is that while all animals with limbic systems *experience* fright, only humans *know* fear, not only cognitively, psychologically and psychosomatically, but also politically through manipulation, moral panics, and scapegoating to achieve social control. But more than this: Krishnamurti (1995) points out that fear is a preoccupation with past traumas held onto in the present, and also an infantile preoccupation with control. We know, technocratically speaking, already from Plato's, Hobbes's, Rousseau's, and Beccaria's nightmarish visions of total control the ominous results; but what threat and trauma could possibly induce such fear in social theoreticians that they would want to unleash the tyranny of total conformity onto the world? Drawing on Gouldner and Krishnamurti, I suggest that without *authentic* reflection, Critical Criminologists will persist with their hidden investment in totalitarianism and never attain the 'decolonization' to which they aspire unless they free themselves from fear and the imperative to control the demons they project onto the world.

What bearing this has for Critical Criminology, in particular, is a salient one. All critical sociological theory, including Marxism, has a quality of religious Protestantism. This religious ideal is built into the DNA of sociology from its Comtean inception: Comte, after all, conceived of sociology as a religion (Gouldner, 1974). It should not be surprising, then, that when, in 1964, Gouldner (1974) polled the 6,762 members of the American Sociology Association (3,441 responded), they found that 27.6% of respondents had at one point or another contemplated becoming members of the clergy! To this end, it is not for nothing there is the suspicion that the differently articulated rhetoric of Critical Criminologists and Orthodox Criminologists disguises their commonality as human beings and professionals invested in totalitarian conceptions of state-imposed order and the management of its detritus.

Of whatever stripe, Criminologists betray themselves as servants of power. But it is not a one-way street, for it is through complicity they meet their *affective* needs. Some play the moral role of epistemic police officers who are the guardians of order, divining theories of crime causation and prevention. There is the pseudo-social worker who is 'helping' the down-and-out and 'social junk' to have a voice in the public domain. Some are compassionate "zoo-keepers of a deviant menagerie" (Gouldner, 1973, p. xiv). Others are the anthropological protector of 'their' tribe of miscreants. Some, being the eyes of a scandalized public, are pedestrian voyeurs of 'wildlife', 'bad boys', and the like. Being more refined, others are urbane 'appreciators' of deviants. Giving vent to the emotions of a vengeful public and justifying data to an all-too-eager political class, some are (vicarious) victims exacting punitive vengeance on perpetrators. Some are partisan champions of the 'underdog' surviving the best they can. Some are wannabe 'gangsters' who can move seamlessly among the seedy. Some are confessors to the wretched of the earth but fail to keep their secrets. Some are toadies who relish their proximity to coercive power; others are guardians of public conscience while others are yet toothless scourges of the moralizing middle class and 'top dogs' (see Cohen, 2007; Gouldner, 1968, 1974). All, however, with their eyes cast on the 'underdog', engage in what Nicolaus (1969) calls "social espionage".

The foregoing list is not endless, but it can go on. To be clear, as with the proverbial road to hell, good intentions are not in question here – incidentally, some good may come of it all – but rather Criminologists' *authenticity*. Whether they are bought by or prostitute themselves to the state, whether they are in it for reputation, pecuniary gain, or to righteously expose state mendacity, the dilemma of *authenticity* is haunted by the obfuscated background assumptions of Critical Criminologists. Again, none of this means that Criminologists and other social 'scientists' are not sincere in their regard toward human suffering and wish to improve the human condition. It is, rather, that as "professional ideologues of social pathology" (Mills, 1943) there is 'bad faith' toward knowing and experiencing *authenticity*: first, as Platonic advocates of bovine

humanitarianism; and second, a denial of their social location as a self-aggrandizing clerisy both dependent on the state and whose cognates staff the state and the corporation.

Gouldner (1974), neither the first nor the only one to observe this contradiction, puts the bind of the sociologist/Criminologist in their relationship to the state this way:

> [Dependency] as market researcher for the state […] limits the sociologist to the reformist solutions of the Welfare State; but on the other, it exposes him (sic) to the failures of this state and of the society with whose problems it seeks to cope. Such Academic Sociologists have a vested interest in the very failures of this society – in a real sense their careers depend on it; but at the same time their very work makes them intimately familiar with the human suffering engendered by these failures. Even if it is the special business of such sociologists to help clean up the vomit of modern society, they are also sometimes revolted by what they see.
>
> *(p. 439)*

A genuine encounter with this contradiction requires serious self-interrogation; an onto-epistemic encounter that Gouldner (1974) calls "authenticity" (p. 423–425). This is a search for the authentic self that centres on knowing one's self, knowing how that self came to be constituted, and *how* to judge and discern the ethical relationship between means and ends. "Authenticity", Gouldner (1974) asserts, "implies that some kinds of conformity are self-deceiving, self-destructive, and life-wasting" (p. 424). Here again, we come to curriculum, not simply as a modality for instructing others, but more importantly as a philosophy and onto-epistemic project for liberation as a process of *becoming* and *meaning-making*. In effect, Critical Criminologists are complicit with the totalitarian imperatives of centralized authority to suppress human creativity, liberty, happiness, and freedom. They assist in reducing the distance between people and centralized authority, evident in efforts to abolish or suppress sites of authority that predate the state – such as family, community, neighbourhood, and socio-cultural associations – because they might compete with and intercede on behalf of the individual against centralized power (Nisbet, 1975). That complicity with the state makes *all* Criminologists, as Christie (2004) avers, *potentially* dangerous people.

Conclusion

I have suggested in this chapter that because it is a Protestant reaction to orthodox Criminology, Critical Criminology needs to explicitly locate the inner dimensions of a theory that would go beyond the latent and manifest curriculum. More than Orthodox Criminology, Critical Criminology has had to be intentional about curriculum. I have suggested, however, that there is a possibility for a deeper quality of self-awareness open to Critical Criminologists – one that would go beyond the rhetoric of 'decolonizing' Criminology. But this possibility is evaded, or more appropriately repressed, by the presumption that rhetorical criticism of the Orthodoxy enabled by 'conflict' theory exposes the 'value-neutrality' of the Orthodoxy. What is avoided is the *affective* appeal of a theory that rationalizes its determinism – and worse, conceals it.

What I have called the meta-curriculum, which is the onto-epistemic reality of the theorist that implicates *affect*, background (and domain) assumptions, may well encourage Critical Criminologists to live openly with the cognitive dissonance of determinism *or* abandon their pretension of heresy. The manifest curriculum of Critical Criminology, therefore, ends up being rich with engaging strategies that ostensibly help students to appreciate their own bias, but the Critical Criminologist, at the deeper level of the curriculum, is not forthcoming. To be sure,

Critical Criminologists have paid more attention to curriculum than other branches of the Church of the 'science' of morality. Whether Critical Criminologists can go beyond the myth of 'decolonizing' their curriculum and liberate themselves, will require honesty about their unwillingness to expose what their preoccupation with the manifest curriculum hides.

If what I have argued in this chapter seems esoteric and divorced from reality, I suggest the need for onto-epistemic authenticity is more urgent now than ever before. Do Critical Criminologists any longer have a choice when, around the world, states, 'think tanks', unelected transnational 'institutions' (e.g., the World Economic Forum, WHO, UN) philanthro-socio-pathic capitalists (e.g., the Gates Foundation and the Wellcome Trust), and militaries contend and collude to abrogate the very possibility of democracy and freedom? In the wake of a confected 'pandemic', a bio-weaponized SARS CoV-2, and a coerced bioweapon COVID-19 gene therapeutic (Fleming, 2021; Kennedy, 2021), can Critical Criminologists bring to bear foundational conceptual tools such as 'folk devils', 'moral panics', 'neutralization', 'moral entrepreneurs', 'scapegoats' and 'laws empire' etc., to make sense of the in-progress world-shattering omnicide and mass wealth expropriation? Are they prepared for a crime-free, social-credit, neo-feudal world in which, by 2030, 99 percent of the population "will own nothing, have no privacy and life has never been better" (Auken, 2016)? Will they continue to be pain-delivering technocrats of absolutist state authority? Do Critical Criminologists want to be among the well-fed slaves who are starved or mentally mutilated when they do not comply? The choice for Critical Criminologists, in my view, is not between civilization or barbarism – it never was – but between collective and self-emancipation, or the mental and physical cage of slavery.

Acknowledgements

I am indebted to Christopher J. Williams, Rob Webb, and, especially Antje Deckert, for their engagement and insightful commentary. I have neither competing interests nor received funding for this work. All errors are mine.

References

Abraham, I., & van Schendel, W. (2005). Introduction. In W. van Schendel & I. Abraham (Eds.) *Illicit flows and criminal things: States, borders, and the other side of globalization* (pp. 1–37). Indiana University Press.

Agozino, B. (2003). *Counter-colonial criminology: A critique of imperialist reason*. Pluto Press.

Auken, I. (2016, November 16). Welcome to 2030: I will own nothing, have no privacy and life has never been better. *Forbes*. https://www.forbes.com/sites/worldeconomicforum/2016/11/10/shopping-i-cant-really-remember-what-that-is-or-how-differently-well-live-in-2030/?sh=2bebe2f31735

Bauman, Z. (2020). *Liquid modernity*. Polity Press.

Christie, N. (2004). *A suitable amount of crime*. Routledge.

Christie, N. (1981). *Limits to pain: The role of punishment in penal policy*. Wipf and Stock.

Cohen, S. (2007). *Against criminology*. Transaction Publishers.

Ellul, J. (1973). *Propaganda: The formation of men's attitudes*. Vintage Books.

Fleming, R. (2021). *Is COVID-19 a bioweapon? A scientific and forensic investigation*. Skyhorse Publishing.

Freire, P. (1973). *Pedagogy of the oppressed*. The Seabury Press.

Giannacopoulos, M. (2020). White law/black deaths: Nomocide and the foundational absence of consent in Australian law. *Australian Feminist Law Journal*, *46*(2), 249–263.

Gouldner, A.W. (1975). *For sociology: Renewal and critique in sociology today*. Penguin Books.

Gouldner, A.W. (1974). *The coming crisis of Western sociology*. Basic Books.

Gouldner, A.W. (1973). Foreword. In I. Taylor, P. Walton & J. Young (Eds.), *The new criminology: For a social theory of deviance* (pp. xv–xvi). Routledge & Kegan Paul.

Gouldner, A.W. (1968). The sociologist as partisan: Sociology and the welfare state. *The American Sociologist*, *3*(2), 103–116.

Gramsci, A. (1991). *Selections from the prison notebooks of Antonio Gramsci* (Q. Hoare & G.N. Smith, Eds., Trans.). International Publishers.
Grose, J. (2011). DLES & learning outcomes. http://www.brocku.ca/webfm_send/13687
Hinch, H. (1989). Teaching critical criminology and critical justice studies in Canada. *The Journal of Human Justice*, *1*(1), 63–75.
Illich, I. (2002a). *Deschooling society*. Marion Boyars.
Illich, I. (2002b). *Limits to medicine: Medical nemesis: The expropriation of health*. Marion Boyars.
Kennedy, R.F. (2021). *The real Anthony Fauci: Bill Gates, Big Pharma, and the global war on democracy and public health*. Skyhorse Publishing.
Kitossa, T. (2021, September 21). Canada's COVID coup. The Professor's Corner. https://tkitossa.ca/2021/09/13/canadas-covid-coup/
Kitossa, T. (2020a). Criminology as epistemic necropolitics. *Social Transformations: Journal of the Global South*, *8*(2), 89–123.
Kitossa, T. (2020b). Authoritarian criminology and racist statecraft: Rationalizations for racial profiling, carding and legibilizing the herd. *Decolonization of Criminology and Justice*, *2*(1), 5–36.
Kitossa, T., & Tanyildiz, G.S. (2022). Anti-Blackness, criminology and the university as violence work: Diversity as ritual and the professionalization of repression in Canada. In D.M.D. Silva & M. Deflem (Eds.), *Diversity in criminology and criminal justice studies* (pp. 39–61). Emerald Publishing.
Krisberg, B., Platt, T., & Takagi, P. (1974). Teaching radical criminology. *Social Justice*, *1*, 64–66.
Krishnamurti, J. (1995). *On fear*. HarperSanFrancisco.
Kuklick, B. (2006). *Blind oracles: Intellectuals and war from Kennan to Kissinger*. Princeton University Press.
Lehtinen, M.W. (1979). Controlling the minds and bodies of prisoners - without prisons. *Barrister*, *6*(4), 11–55.
Lynch, M.J. (2000). The power of oppression: Understanding criminology as a science of oppression. *Critical Criminology*, *9*(1/2), 144–153.
Maguire, M., Morgan, R., & Reiner, R. (2007). *The Oxford handbook of criminology*, (4th ed.) Oxford University Press.
Mann, M. (1992). *The sources of social power. Vol. I. A history of power from the beginning to A.D. 1760*. Cambridge University Press.
McLaughlin, N. (2021). *Erich Fromm and global public sociology*. Bristol University Press.
Mills, C.W. (2000). *The sociological imagination*. Oxford University Press.
Mills, C.W. (1943). The professional ideology of social pathologists. *American Journal of Sociology*, *49*(2), 165–180.
Morris, T. (1976). *Deviance and control: The secular heresy*. Hutchinson.
Neocleous, M. (2010). War as peace, peace as pacification. *Radical Philosophy*, *159*, 8–17.
Nicolaus, M. (1969). The professional organization of sociology: A view from below. *The Antioch Review*, *29*(3), 375–387.
Nisbet, R. (1975). *Twilight of authority*. Oxford University Press.
Pfohl, S.J. (1980). Teaching critical criminology: The ethical issues. In J.A. Inciardi (Ed.), *Radical criminology: The coming crisis* (pp. 245–256). Sage.
Popper, K. (1963). *The open society and its enemies: The spell of Plato*. Princeton University Press.
Reiman, J., & Leighton, P. (2017). *The rich get richer and the poor get prison: Ideology, class, and criminal justice* (11th ed.). Allyn and Bacon.
Searle, J.R. (1995). *The construction of social reality*. The Free Press.
Shapin, S., & Schaffer, S. (1985). *Leviathan and the air-pump: Hobbes, Boyle, and the experimental life*. Princeton University Press.
Tilly, C. (1985). State making and war making as organized crime. In B. Evans, D. Rueschemeyer, & T. Skocpol (Eds.), *Bringing the state back in* (pp. 169–191). Cambridge University Press.
Wallerstein, I. (1991). *Unthinking social science: The limits of nineteenth-century paradigms*. Polity Press.

44

Neo-colonial practices and narratives in criminological research

Antje Deckert

Researcher positionality and introduction

In 2006, I took a one-year sabbatical from both my job as a lawyer and my PhD candidature in Germany to complete a Master of Laws (LLM) in Aotearoa New Zealand (hereafter Aotearoa). At that time, my knowledge about the country was limited to what I could glean from travel guidebooks. The first LLM course taught me about the European invasion of Aotearoa and the injustices Māori peoples had experienced and continue to face. I remember fiercely debating the Foreshore and Seabed Act 2004 in the classroom because its blatant anti-Māori racism and violation of basic legal principles flabbergasted me.[1] Having been raised in communist East Germany, it had been drilled into me that antisemitism and other forms of racial discrimination must be confronted and actively resisted. My home country had outlawed racism and celebrated activists like Angela Davis and Nelson Mandela (Goethe Institute, 2022). Yet, I had to frequently observe my black-haired, olive-skinned father being poorly treated by both state authorities and fellow citizens. These experiences heightened my sense of (in)justice, hypocrisy, and tokenism.

In 2007, I made Aotearoa my home and, in 2009, I completed my legal doctorate in Germany via long-distance study. The ink on my PhD had barely dried when I started my academic career in early 2011. As I was still publishing off the back of my PhD dissertation, in which I had examined the misuse of diplomatic passports, I had not developed a firm sense of my future research direction. Hence, I sought inspiration by reading ferociously and attending as many local conferences as possible.

At one of these conferences, a session with the title 'Indigenous offending' caught my attention. Being a non-native English speaker, I wondered (tongue firmly in cheek) whether criminalized behaviours existed that could only be committed by Indigenous people or whether the title was meant to refer to criminalized behaviours committed by Indigenous people. Thus armed with a healthy amount of scepticism, I sat down and listened to four presenters. All were academics of European descent. None had talked to a single Indigenous person during the research process. None had Indigenous co-researchers or partner organizations. Two of the presenters had used official statistics, one had analyzed coroner reports, and one had employed an observational protocol that entailed watching how Aboriginal people moved around in a courthouse. I was stunned. How did these scholars convince themselves (and others) that their

DOI: 10.4324/9781003176619-49

interpretation of the data was meaningful – in the sense of producing truthful knowledge about Indigenous communities – as their understanding was inevitably limited through the sole use of Western ways of doing and thinking (i.e., methods)? That is not to say that Western methods are necessarily exclusionary. The slogan 'nothing about us without us' originated in Europe, after all, as the rallying cry of political movements in sixteenth-century Poland (Davies, 1984). I recall wondering whether the conference presenters and their audience would have accepted it if male scholars interpreted data collected on women without asking for female perspectives.

At dinner with a group of conference attendees, I shared my disbelief with Māori criminologist Juan Tauri who happened to sit across the table. He laughed and said: "That doesn't surprise me at all. They are too scared to talk to us Brown folks. We've been critiquing this kind of 'research' [air quotes hand gesture] for decades." "But how bad is it?", I asked. "How much of the research that gets published ignores Indigenous voices – I mean statistically speaking?" To which Juan replied, "I have no idea. You go and find out!" (personal communication, 28 September 2011). I simply nodded as I was determined to do exactly that. Little did I know that the decision I made that evening would shape my academic journey in fundamental ways and that Juan and I would start co-editing the journal *Decolonization of Criminology and Justice* only six years later.

This chapter is based on a decade of research into neo-colonial scholarly practices and academic narratives about Indigenous peoples that emerge from elite criminology journals. After briefly outlining the theoretical premises and design of my research, I will discuss three of these neo-colonial practices and narratives that continue to undermine decolonization efforts in criminology: the relative silence on the mass incarceration of Indigenous peoples; the overuse of silencing research methods; and the use of assimilation narratives. In doing so, I demonstrate three key features of what I call neo-colonial criminology. Firstly, over the last 20 years, elite mainstream criminology journals have remained relatively silent about the mass incarceration of Indigenous people. Secondly, the use of silencing research methods when studying Indigenous populations and the criminal legal system has decreased over the last 20 years but is still much higher compared to their general use by criminologists and also when compared to their use with other hyperincarcerated populations, i.e., African and Hispanic Americans. Thirdly, US-based studies that include Indigenous peoples in their data collection often use assimilation narratives that disappear Indigenous peoples into categories such as 'non-White' or 'other'.

Based on my findings, I argue that the dearth of mainstream criminological narratives on the mass incarceration of Indigenous people contributes to and reflects the inadequate public attention paid to this social issue, perpetuates colourblind narratives of criminal justice, and undermines decolonization efforts in criminology. The dearth of research is exacerbated by the fact that silencing research methods continue to dominate criminological studies on (not with) Indigenous people published in elite mainstream criminology journals. I argue that one of the overarching narratives that thus emerges from these academic journals is the claim that truthful knowledge about Indigenous people in the context of the criminal legal system can be obtained without involving Indigenous voices. Lastly, I argue that the narrative disappearing of Indigenous people into non-Indigenous categories constitutes a marginalizing micro-aggression and contributes to undermining Indigenous peoples' "legal and political uniqueness […] [and] relationship to the land" (Stevenson, 1998, p. 40).

Criminology and imperialism, past and present

My research is based on the premise that criminology is inextricably linked to imperialism and that research that fails to recognize colonization as an explanatory factor for contemporary

realities in criminal legal systems is bound to be flawed and incomplete (Cunneen & Tauri, 2016). While Ross (1998) demonstrates how European invaders constructed the Indigenous 'other' as inherently deviant and criminal, Agozino (2003) explains that criminology was solely created to serve imperialist expansion. He argues that criminologists provided colonizers with the 'scientific' narrative that justified the control and punishment of the Indigenous 'other'. Criminalizing numerous aspects of Indigenous culture was a key strategy to enforce colonial-genocidal and assimilation policies (Cunneen & Tauri, 2016). Following its effective use in the colonies, the same narrative was employed to institutionalize the so-called *Minderwertige* (biologically inferior people) in Europe – Jewish people, Roma, Sinti, sexual deviants, and people with mental or physical disabilities (Wetzell, 2000).

Critical race and critical Indigenous theorists have long sought to illuminate the mechanisms of academic imperialism and have highlighted the urgent need to decolonize the academy (e.g., Bourdieu et al., 1994; Briggs & Sharp, 2006; Brown, 1995; Cochran et al. 2008; Delgado, 1984, 1992; Lynch, 1999; Menzies, 2001; Raju, 2011; Rakowski, 1993; Smith, 1999; Stevenson, 1998; Van Dijk, 1993, 2008). This broader discussion was accompanied by a wide range of discipline-specific critiques (see, e.g., Erskine, 1998; Harrison, 1997).

The concept of neo-colonialism, coined by Kwame Nkrumah (1965), has been applied to the academic context to expose scholars from former colonial powers who extract data in former colonies but analyze the data without involving local researchers and publish findings without acknowledging local data collectors (Nagtegaal & De Bruin, 1994). Some use the term neo-colonialism also to describe Western scholars' domination of knowledge production and dissemination, which serves to marginalize theories and methods developed in former colonies (see, e.g., Murphy & Zhu, 2012) – an idea that has also been conceptualized as the coloniality of knowledge.

The theory of the coloniality of knowledge asserts that the knowledge hierarchy privileges Western knowledge over other knowledges. Individual positions in this knowledge hierarchy are said to correlate with positions in a power hierarchy that was created by the coloniality of power. The theory of the coloniality of power explains that, with colonial expansion, a power hierarchy was created through "the codification of the differences between conquerors and conquered in the idea of 'race', a supposedly different biological structure that placed some in a natural situation of inferiority" (Quijano, 2000, p. 533) and the global division of labour along those imagined racial lines (Quijano, 2000). This global division of labour is also said to affect academic labour. Both the theory of the coloniality of knowledge and its companion, decoloniality theory, are based on the premise that universal truths do not exist, but rather that several (more localized) truths or knowledges co-exist (Ndlovu-Gatsheni, 2013; see also Nakata, 2007; McKenna, Moodie & Onesta, 2021). Theories based on this premise have been criticized because of their inherent epistemic relativism, which has been said to undermine decolonial aspirations (Chambers, 2020). On the other hand, Hull (2021) points out that the internal logic of both theories – i.e., regarding all knowledges as equal – necessitates that neither neo-colonialism (referring to non-physical, often indirect forms of oppression or exploitation), decolonization (undoing colonialism), nor Western theories can "be dismissed for being false or evidentially unjustified" (p. 72). Hence, decolonization and decoloniality theory are not at odds but share important characteristics. They both recognize that the production of knowledge is influenced by social, economic, political, and cultural factors and both advocate for the uncovering and critiquing of knowledge claims that are affected by hegemonic biases (Chambers, 2020). With their goal to disrupt (neo-)colonial narratives and practices, both are fundamentally political in nature. Following these pioneering efforts of the 1990s and 2000s, the (de)coloniality movement gained significant momentum in the 2010s. Since then, research

publications in this area have accelerated at such a rate that Moosavi (2019) speaks of a 'decolonial bandwagon', warning about the inherent danger that "some manifestations of intellectual decolonisation may […] reinscribe coloniality" (p. 332).

Next to (de)coloniality theory, post-colonialism, anti-colonialism, counter-colonialism, neo-colonialism, and decolonization remain concepts that are used in criminological debates. Regardless of their differences, which I have debated elsewhere (Deckert, 2015), criminological scholars who employ these concepts are united in their critique of oppressive and exploitative scholarly traditions in former colonies and occupied lands (see, e.g., Agozino, 2019; Blagg & Anthony, 2019; Cunneen & Tauri, 2016; Porter, 2016). On the one hand, criminology has been criticized for *actively* engaging in neo-colonial narratives and practices such as using othering discourse (Agozino, 2003, 2004, 2010; Kitossa, 2012; Phillips & Bowling, 2003; Tauri, 2012a, 2012b; Young, 2011) and opposing the development of Indigenous criminologies (Agozino, 2003; Clifford, 1984; Tauri, 2012a, 2012b). On the other hand, criminology has been criticized for neo-colonial acts of *omission*, i.e., its lack of participatory research methods in the race–crime debate (Agozino, 2004, 2010; Deckert, 2015; Phillips & Bowling, 2003; Tauri, 2012a, 2012b; Young, 2011) and its failure to cite and engage with Indigenous scholarship (Cohen, 1988; Deckert, 2014; Goyes & South, 2021; Phillips & Bowling, 2003; Tauri, 2012a, 2012b). Some may argue that, like in criminal law, 'acts of omission' can only be committed if a duty of care obliges a party to act in a certain way. A duty of care is generally established through an existing relationship between two parties. I argue that academic criminologists' duty (of care) to involve Indigenous and minority voices in their research stems from the fact that their careers are largely built on the backs of Indigenous and minority communities. When criminologists in Aotearoa, Turtle Island, and the occupied countries known as Australia write about people who are policed, arrested, convicted, imprisoned, or victimized, they inevitably write, by and large, about Indigenous, Black and minoritized populations. Many orthodox criminologists like to obfuscate this fact though by couching their research findings in colourblind terms such as overrepresentation, educational underachievement, negative life experiences, socio-economic status, and rates of mental illness and drug addiction (see Norris, 2017).

Finally, my research is based on the premise that neo-colonial narratives and practices that emerge from high-ranking criminology journals exert discursive power because the high status of these journals is associated with high-quality research (Northcott & Linacre, 2010). Therefore, research published in these journals is a prime source for politicians and journalists who, in turn, shape the public discourse (Usdansky, 2008). Moreover, I argue that, regardless of the respective discipline, studies published in elite mainstream academic journals exemplify how to conduct research and narrate research findings. They thus set an example for other scholars who seek to advance their careers by getting published in high-ranked journals that promise a higher-than-average citation count.

Research design

To ascertain whether a specific discourse requires decolonization, we must first verify that (neo-)colonial narratives exist and prevail in this discourse. Identifying *prevalent* discursive patterns requires both empirical inquiry and a significant sample size. Hence, my research involved three main steps. First, I identified elite mainstream criminology journals. From the array of citation-based academic journal rankings, I opted for the report by Australian criminologists Brown and Daly (2008) to mitigate Northern hemisphere domination in the publishing market. They list a total of 152 criminology journals using the quality category labels A+, A, B, and C. Quality descriptions are, however, only provided for the first three categories (Brown & Daly, 2008).[2]

To represent 'the elite', I only included A+, A, and B-ranked journals that published research between 2001 and 2010 in my original data collection (Deckert, 2014, 2015). A subsequent data collection covered the period between 2011 and 2020 (Deckert, forthcoming). The second step in the research process consisted of counting the number of research articles, i.e., articles that convey original research findings, excluding all other publication types such as editorials, commentaries, and book reviews. I found a total of 8,887 research articles published in the first decade (2001–2010) and 11,583 in the following decade (2011–2020). Finally, I determined how many of these research articles focused on Indigenous peoples or African Americans or Hispanic Americans and were based in Aotearoa or the countries known as Australia, Canada, and the US. This resulted in a subset of research articles, which I coded for employed research methods and descriptive categories (names) used for Indigenous peoples.

Silence

For the purpose of this research, silence is understood as both the absolute absence of narrative and the relative absence of narrative. How much or how often an issue is talked about exerts discursive power because only when the extent of a debate reaches critical mass is the issue recognized as a social problem (Usdansky, 2008). "Shifts in consensus on social problems among scholars have been linked to parallel shifts within journalism and public opinion" (Usdansky, 2008, p. 76), which means that scholarly discourse is, if not impactful, at least insightful in the recognition of social problems.

In both the original and second data sets, I found articles that solely focus on Indigenous peoples. In the period 2001 to 2010, I found a total of 105 such articles and 151 in the following decade (2011–2020). Goyes and South (2021), who recently conducted a similar study but with fewer search terms, a different journal selection process and over a longer period, also found a dearth of research on Indigenous people in elite criminology journals (N = 155). Nevertheless, it can be said, that, over the last 20 years, the overall number of research articles that acknowledge the mass incarceration of Indigenous peoples has significantly increased. Albeit a handful of journals published the bulk of these articles (Deckert, 2015), elite mainstream criminology journals cannot be said to be *absolutely* silent about Indigenous peoples.

To determine whether a *relative* silence exists, I calculated the proportion of Indigenous incarceration rate to article rate in all four countries and compared them with the same proportion calculated for mass-incarcerated African and Hispanic Americans. Incarceration and article rate are compared because the former illustrates the scale of the real-life issue (mass incarceration), and the latter represents the level of attention that this issue receives in high-ranked criminology journals. Drawing on Usdansky (2008), the assumption behind this comparison is: the higher the article rate compared to the incarceration rate, the more this social issue is publicly recognized.

As Table 44.1 shows, in comparison to the incarceration rates, the article rate for Indigenous people in the countries known as Australia, Canada, and the US has shrunk in the period 2011–2020 when measured against the previous decade. Even though a greater number of articles on Indigenous people was published between 2011 and 2020, no improvement in the proportion between article and incarceration rates can be noted because incarceration rates of Indigenous people have further increased compared to the previous decade. In other words, although the number of publications has increased, this increase pales in comparison to the growth in incarceration. Only the proportion between article and incarceration rate for Māori in Aotearoa has slightly improved from one decade to the next, yet it remains the lowest proportion compared to the proportion for other Indigenous peoples included in this study. In comparison, for African

Table 44.1 Proportion of article and incarceration rates in elite mainstream criminology journals over two decades for mass-incarcerated populations

	2001–2010	*2011–2020*
Australia, Indigenous	1: 2.2	1: 3.4
Canada, Indigenous	1: 2.3	1: 3.3
Aotearoa, Indigenous	1: 14.1	1: 11.4
US, Indigenous	1: 2.4	1: 10.7
US, African American	1: 0.6	1: 0.7
US, Hispanic American	1: 0.4	1: 0.5

or Hispanic Americans the proportion of article and incarceration rates demonstrates an inverse relationship. That means, this social problem – the mass incarceration of African and Hispanic Americans – is well covered in elite mainstream criminological discourse, while the mass incarceration of Indigenous peoples receives inadequate attention. In line with Usdanky (2008), this relative silence suggests that the mass incarceration of Indigenous peoples is not recognized as a social problem in public opinion. This lack of recognition is, in turn, reflected in ever-growing incarceration rates. Thus, I argue that elite mainstream criminological discourse continues to contribute to the reproduction of social inequality through its relative silence on a key social issue (Deckert, forthcoming).

Silencing research methods

I coined the term silencing research methods (Deckert, 2015) to refer to data collection tools that entirely omit the voices of the researched populations. Silencing research methods are marked by a lack of direct engagement between researcher and researched and prevent the researched from articulating their lived experience and expertise. Examples include the use of personal health records, crime statistics, and observational protocols. However, this is not to say that silencing research methods are innately 'bad' research tools. For example, in their book, Walter and Anderson (2013) demonstrate the value of *Indigenous Statistics*. However, because findings gleaned from silencing research methods constitute researchers' exclusive interpretation of research subjects'[3] lived experiences, the overuse of such methods constitutes an act of suppression, if not oppression, thus emphasizing how the choices we make in social sciences research are profoundly political.

Overall, criminologists' primary choice trends toward non-silencing research methods, which allow participants to share their knowledge or views, be it in interviews, focus groups, experiments, or surveys (Deckert, 2015). Like the current study, Kleck, Tark and Bellows (2006) analyzed research articles published in elite mainstream academic journals. When categorizing surveys, experiments, and interviews as non-silencing research methods, their findings mean that less than half of the studies (43.7%) used silencing research methods (Deckert, 2015). From a similar, more recent study (Woodward et al., 2016) it can be gathered that, overall, only 28.8% of contemporary criminological research published in elite mainstream journals use silencing research methods (Deckert, forthcoming). In short, between 28.8 and 43.7% (average 36%) of criminological studies published in elite mainstream journals use silencing research methods.

I sought to find out how this overall trend compares to the use of silencing research methods with Indigenous peoples, African Americans, and Hispanic Americans. I analyzed all research articles contained in the two data sets (2001–2010 and 2011–2020) that focused on Indigenous peoples as well as research articles that focused on either African or Hispanic Americans to

Table 44.2 Percentage of studies published in elite mainstream criminology journals over two decades that use silencing research methods by mass-incarcerated population

	2001–2010 (%)	*2011–2020 (%)*
Australia, Indigenous	79.2	62.8
Canada, Indigenous	80.0	63.4
New Zealand, Indigenous	100.0	66.7
US incl. Hawaii, Indigenous	63.3	57.1
US, African American	57.4	37.5
US, Hispanic American	30.0	28.6

determine which type of data collection tools criminological researchers used for their projects. If mixed methods were used and one of the methods was non-silencing, the study was counted as using a non-silencing research approach.

As Table 44.2 illustrates, studies that focused on either African or Hispanic Americans fall within the normal range of criminologists' use of silencing research (28.8 to 43.7%). While the use of silencing research methods has decreased for all Indigenous peoples included in this study from one decade to the next – thus following an overall trend that seems to occur in elite mainstream criminology journals – the use of non-silencing research methods when studying Indigenous communities is not yet on par compared with their use in criminological research in general.

Studies about Indigenous peoples in elite orthodox criminology journals are twice as likely to be based on silencing research methods compared to studies that focus on African or Hispanic Americans and compared to the overall use of silencing research methods in these journals. So, while there is an overall downward trend in the use of silencing research methods, neo-colonial practices still dominate within the pages of these criminology journals. I argue that this practice is example-setting because the overarching narrative that emerges from these elite journals is that truth claims about Indigenous communities in the context of the criminal legal system can be made without involving Indigenous voices. In light of a contemporary push towards decolonization in criminology (Moosavi, 2019), it remains to be seen whether the downward trend in the use of silencing research methods continues.

A dearth of Indigenous citations and authorship in elite mainstream criminology journals may help explain the disproportionate use of silencing research methods when researching Indigenous peoples in the criminal legal system. As Goyes and South (2021) contend, most criminological research about Indigenous people is written by non-Indigenous authors and this is problematic. Indeed, it reveals distinct power dynamics when the authors who dominate a particular discourse are identified (Delgado, 1984, 1992). Who speaks or more precisely "who has the power to define the problem in a particular way, [and] who is silenced by a particular presentation" (Cunneen, 2006, p. 329) affects how a particular discourse is narrated and framed. Cognisant of this aspect of discursive power, several studies have identified the most cited scholars in criminology textbooks and journals (see, e.g., Cohn & Farrington, 2008; Cohn, Farrington & Iratzoqui, 2017; Roche et al., 2018; Wright, 1995). None of these studies lists an Indigenous scholar among the most cited; and very few are women. Paralleling what Delgado (1984) observed in the civil rights literature, criminology is also dominated by "an inner circle of about a dozen white, male writers who comment on, take polite issue with, extol, criticize, and expand on each other's ideas" (p. 563). That means that the overall narrative on Indigenous people in the criminal legal system that emerges from elite mainstream criminology journals is currently neither defined nor framed by Indigenous scholars.

Although the number of Indigenous academics remains small compared to both the number of issues affecting Indigenous peoples and the number of Indigenous peoples in the general population (Asmar et al., 2009; McAllister et al., 2019; Smith, 1999), academics, journal editors and reviewers all have the power to contribute to increasing the publication and citation of Indigenous scholarship (Carr et al., 2021).

Assimilation narratives

Criminological studies that solely focus on Indigenous people are bound to acknowledge Indigenous peoples as such. Assimilation narratives are more likely to occur in comparative research. The US incarceration rate for Indigenous peoples is four times that of European Americans, 1.5 times that of Hispanic Americans, and only outranked by the incarceration rate of African Americans (Deckert, 2014). Hence, any comparison that includes African and/or Hispanic and/or European Americans, should reasonably also include Indigenous people. Therefore, I generated, from the two data sets (2001–2010 and 2011–2020), a subset of US-based comparative articles and examined them (a) for their inclusion of Indigenous people and (b) for the social categories they assigned Indigenous people to.

Although the construction of social categories has been criticized for being 'groupist' and reinforcing othering (Brubaker, 2003), most Indigenous scholars consider indigeneity an important category because of its material and symbolic implications. The category of "indigeneity has great potential to at least partially rectify some of the past and present injustices committed" by the colonizer (Baird, 2016, p. 522). Therefore, a distinction between ethnic groups and Indigenous peoples becomes important in the pursuit of decolonization. Indigenous peoples are not ethnic minorities. Describing Indigenous peoples as 'ethnic' is considered a neo-colonial practice because it "undermines the legitimate claims of Indigenous peoples to local autonomy" (Bodley, 1990, p. 58)[4] and "undermines our legal and political uniqueness, our histories, our relationship to the land, and our goals" (Stevenson, 1998, p. 40).

In the first data set (2001–2010), I found 227 comparative studies. Of these, 99 compared African and European Americans; 99 compared African, European and Hispanic Americans; 15 compared African and Hispanic Americans; and the remaining 14 included an array of comparative groups. Of these 227 studies, 45 included Indigenous people in their data collection. However, 16 of these 45 explicitly excluded the collected data from their analysis, most giving insufficient data quantity as a reason. In the second data set (2011–2020), I found 281 comparative studies. Of these, 164 compared African, European and Hispanic Americans; 106 compared African and European Americans; 10 studies included an array of comparative groups, and one study compared African and Hispanic Americans. Of these 281 studies, 56 included Indigenous people in their data collection. However, 21 of these 56 explicitly excluded the gathered data from their analysis, most giving insufficient data quantity as a reason. Table 44.3, which includes

Table 44.3 Percentage of assimilation narratives in comparative US-based studies published in elite mainstream criminology journals over two decades

Indigenous people categorized as	*2001–2010 (%)*	*2011–2020 (%)*
Indigenous	57.8	44.6
Ethnic minority	15.6	3.6
White	22.2	3.6
Other	4.4	35.7
Non-White	—	12.5

both studies that explicitly excluded and those that included Indigenous people in their data analysis, illustrates how pervasive the use of assimilation narratives is in these studies.

Studies that ignore Indigenous people in a comparison of African and/or Hispanic and/or European Americans miss a key variable in a row of social groups that are unequally affected by the criminal legal system. Scholars who exclude Indigenous populations from their dataset authorize silence about the processes of colonization that have immiserated Indigenous peoples through forcibly imposed and maintained structural conditions of poverty and violence (see, e.g., Bear, 2016; Cunneen & Tauri, 2016; Deloria, 2004; Harjo, 2019; Moreton-Robinson, 2005), and "American Indian scholars are typically not rewarded for exposing America's mistreatment toward American Indians" (Bennett, 2022, p. 4). Being silent about Indigenous people permits scholars to "exclude colonialism as an explanatory factor [and] […] effectively removes the possibility of understanding the contemporary position of Indigenous peoples" (Cunneen & Tauri, 2016, p. 11).

While indigeneity is a category that is generally acknowledged when researchers solely focus on Indigenous peoples, the mass incarceration of African and Hispanic Americans seems to have created a visible Black and Hispanic 'other' (in opposition to a 'white self') but has rendered the Indigenous 'other' comparably invisible in elite mainstream criminology journals. This is reflective of the overall invisibility of Indigenous peoples (Norris, 2017; Robertson, 2015), although Indigenous peoples are among the most incarcerated people in the world.

Within academic discourses, expressions of marginalization have grown more complex over time because they "occur in situations where tolerance of diversity is a socially recognised norm" (Riggins, 1997, p. 7). However, assimilation discourses constitute racialized micro-aggressions that enhance pre-existing social marginalization (Matias, 2013). Although Indigenous identity constitutes an inviolable part of self-determination (Matias, 2013; Smith, 1999; UN Declaration on the Rights of Indigenous Peoples), elite mainstream criminology journals continue to normalize assimilation narratives that alienate Indigenous people and discourage Indigenous scholars and research participants from contributing to mainstream criminology (Carr et al., 2021; Tauri, 2017). Hence, assimilation narratives not only fail to acknowledge Indigenous rights to self-determination, but they also contribute to the active erasure and silencing of Indigenous voices in criminology journals.

Conclusion

The findings from two decades of research suggest that, in the discourse of elite mainstream criminology journals, (a) there persists a relative silence on the mass incarceration of Indigenous peoples, (b) silencing research methods continue to prevail when studying Indigenous people in the criminal legal context, and (c) assimilation discourses continue to be normalized. Cumulatively, these neo-colonial scholarly practices and narratives contribute to the marginalization of Indigenous peoples and thus reproduce social inequalities.

It is the sum of individual scholarly narratives that generates 'academic discourse'. Once particular discursive patterns are identified, scholars are empowered to assess how their work may contribute to these patterns. My research seeks to contribute to the decolonization of academia by way of encouraging scholars to undertake more criminological research *with* Indigenous communities and to be mindful of scholarly practices and narratives that may undermine Indigenous self-determination.

Notes

1 For a brief history of the Foreshore and Seabed Act 2004 and the related controversy, please see https://teara.govt.nz/en/law-of-the-foreshore-and-seabed.
2 Brown and Daly (2008) describe the quality categories as follows:

> A+ (top 5%): Contains the highest quality papers from the world's leading researchers; the editorial board is also composed of world leaders; rejection rates are normally very high; very robust peer review process (double blind?); junior academics would shout a round of drinks the first time they got a paper accepted in one of these journals.
>
> A (next 15%): Also publishes very high-quality papers with a significant proportion coming from the world's leading researchers; could be the leading journal in a sub-discipline; the editorial board contains many leading researchers; senior academics would routinely publish in these journals, and junior academics would strive to get their best work accepted here; normally high rejection rate.
>
> B (next 25%): Most articles are methodologically sound, and there is a robust peer review process; PhD students would usually aim for these journals and PostDocs would expect to publish in them; solid editorial board with perhaps a modest representation of top researchers.
>
> *(p. 3)*

3 In addressing these methods, it is correct to speak of research subjects because these research tools actively deny researched community members participant status.
4 The right to self-determination as protected by Article 3 and 4 of the UN Declaration on the Rights of Indigenous Peoples.

References

Agozino, B. (2003). *Counter-colonial criminology: A critique of imperialist reason*. Pluto Press.

Agozino, B. (2004). Imperialism, crime and criminology: Towards the decolonisation of criminology. *Crime, Law and Social Change*, 41, 343–358.

Agozino, B. (2010). Editorial: What is criminology? A control-freak discipline! *African Journal of Criminology and Justice Studies*, *4*, i–xx.

Agozino, B. (2019). Humanifesto of the decolonization of criminology and justice. *Decolonization of Criminology and Justice*, *1*(1), 5–28.

Asmar, C., Mercier, O., & Page, S. (2009). "You do it from your core": Priorities, perceptions and practices of research among Indigenous academics. In A. Brew (Ed.), *Australian and New Zealand universities: Academic research and researchers* (pp. 146–160). Open University Press.

Baird, I. (2016). Should ethnic Lao people be considered indigenous to Cambodia? Ethnicity, classification and the politics of indigeneity. *Asian Ethnicity*, *17*(4), 506–526.

Bear, T.L. (2016). *Power in my blood: Corporeal sovereignty through the praxis of an Indigenous eroticanalysis*. [PhD Dissertation, University of Alberta]. https://era.library.ualberta.ca/items/e55094bd-9308-4b61-85b6-6f49c990203d

Bennett, C.R. (2022). *Our fight has just begun: Hate crimes and justice in Native America*. University of Arizona Press.

Blagg, H., & Anthony, T. (2019). *Decolonising criminology: Imagining justice in a postcolonial world*. Milton Keynes.

Bodley, J. (1990). *Victims of progress*. Mayfield.

Bourdieu, P., Passeron, J., & de Saint Martin, M. (1994). *Academic discourse: Linguistic misunderstanding and professorial power*. Polity Press.

Briggs, J., & Sharp, J. (2006). Indigenous knowledges and development: A postcolonial caution. *Third World Quarterly*, 25, 661–676.

Brown. (1995). The reproduction of othering. *Feminism and Psychology*, *5*, 535–538.

Brown, M., and Daly, K. (2008). Australian and New Zealand Society of criminology report on criminology bibliometrics development. http://www.anzsoc.org/publications/bibliometrics_report:pdf

Brubaker, R. (2003). Neither individualism nor 'groupism': A reply to Craig Calhoun. *Ethnicities*, *3*(4), 553–557.

Carr, A., Movono, A., Hughes, E., Hapeta, J.W., Scheyvens, R., & Stewart-Withers, R. (2021). Indigenous scholars struggle to be heard in the mainstream. Here's how journal editors and reviewers can help. *The Conversation*, 21 April.

Chambers, P. (2020). Epistemology and domination: problems with the coloniality of knowledge thesis in Latin American decolonial theory. *DADOS*, *63*(4), e20190147. https://doi.org/10.1590/dados.2020.63.4.221

Clifford, W. (1984). An approach to Aboriginal criminology. *Anglo-American Law Review*, *13*, 33–51.

Cochran, P., Marshall, C., Garcia-Downing, C., Kendall, E., Cook, D., McCubbin, L., & Gover, R. (2008). Indigenous ways of knowing: Implications for participatory research and community. *American Journal of Public Health*, *98*, 22–27.

Cohen, S. (1988). *Against criminology*. Broadway Play Publishing.

Cohn, E., & Farrington, D. (2008). Scholarly influence in criminology and criminal justice journals in 1990–2000. *Journal of Criminal Justice*, *36*, 11–21.

Cohn, E., Farrington, D., & Iratzoqui, A. (2017). Changes in the most-cited scholars and works over 25 years: The evolution of the field of criminology and criminal justice. *Journal of Criminal Justice Education*, *28*(1), 25–51.

Cunneen, C. (2006). Racism, discrimination and the over-representation of Indigenous people in the criminal justice system: Some conceptual and explanatory issues. *Current Issues in Criminal Justice*, *17*, 329–346.

Cunneen, C., & Tauri, J. (2016). *Indigenous criminology*. Policy Press.

Davies, N. (1984). *Heart of Europe: The past in Poland's present*. Oxford University Press.

Deckert, A. (2014). Neo-colonial criminology: Quantifying silence. *The African Journal of Criminology and Criminal Justice*, *8*(1), 39–60.

Deckert, A. (2015). Criminologists, duct tape and Indigenous peoples: Quantifying the use of silencing research methods. *International Journal of Comparative & Applied Criminal Justice*, *40*(1), 43–62.

Deckert, A. (forthcoming-a). Better, but not there yet: Silencing research tools and Indigenous peoples in contemporary criminology.

Deckert, A. (forthcoming-b). Neo-colonial criminology 10 years on: The silence continues.

Delgado, R. (1992). the imperial scholar revisited: How to marginalize outsider writing, ten years later. *University of Pennsylvania Law Review*, *140*(4), 1349–1372.

Delgado, R. (1984). The imperial scholar: Reflections on a review of civil rights literature. *University of Pennsylvania Law Review*, *132*(3), 561–578.

Deloria, V. (2004). Marginal and submarginal. In D.A. Mihesuah & A.C. Wilson (Eds.), *Indigenizing the academy: Transforming scholarship and empowering communities* (pp. 17–99). University of Nebraska Press.

Erskine, N.L. (1998). *Decolonizing theology: A Caribbean perspective*. Africa World Press.

Goethe Institute. (2022). Race and racism. https://www.goethe.de/ins/us/en/spr/unt/cam/dfj/uni/rac.html

Goyes, D.R., & South, N. (2021). Indigenous worlds and criminological exclusion: A call to reorientate the criminological compass. *International Journal for Crime, Justice and Social Democracy*, *10*(3), 115–128.

Harjo, L. (2019). *Spiral to the stars: Mvskoke tools of futurity*. University of Arizona Press.

Harrison, F.V. (1997). *Decolonizing anthropology: Moving further toward an anthropology of liberation*. Association of Black Anthropologists.

Hull, G. (2021). Some pitfalls of decoloniality theory. *The Thinker*, *89*, 63–74.

Kitossa, T. (2012). Criminology and colonialism: Counter colonial criminology and the Canadian context. *The Journal of Pan African Studies*, *4*(10), 204–226.

Kleck, G., Tark, J., & Bellows, J. J. (2006). What methods are most frequently used in research in criminology and criminal justice? *Journal of Criminal Justice*, *34*, 147–152.

Lynch, K. (1999). Equality studies, the academy and the role of research in emancipatory social change. *The Economic and Social Review*, *30*, 41–69.

Matias, C. (2013). Who you callin' white?! A critical counter-story on colouring white identity. *Race Ethnicity and Education*, *16*(3), 291–315.

McAllister, T.G., Kidman, J., Rowley, O., & Theodore, R.F. (2019). Why isn't my professor Māori? A snapshot of the academic workforce in New Zealand universities. *MAI Journal*, *8*(2), 235–249.

McKenna, T., Moodie, D., & Onesta, P. (2021). *Indigenous knowledges: Privileging our voices*. Brill.

Menzies, C. (2001). Reflections on research with, for and among Indigenous peoples. *Canadian Journal of Native Education*, *25*, 19–36.

Moosavi, L. (2019). The decolonial bandwagon and the dangers of intellectual decolonisation. *International Review of Sociology*, *30*(2), 332–354.

Moreton-Robinson, A. (2005). Patriarchal whiteness, self-determination and indigenous women: The invisibility of structural privilege and the visibility of oppression. In B.A. Hocking (Ed.), *Unfinished constitutional business? Rethinking Indigenous self-determination* (pp. 61–73) Aboriginal Studies Press.

Murphy, J., & Zhu, J. (2012). Neo-colonialism in the academy? Anglo-American domination in management journals. *Organization*, *19*(6), 915–927.
Nagtegaal, L.W., & De Bruin, R.E. (1994). The French connection and other neo-colonial patterns in the global network of science. *Research Evaluation*, *4*(2), 119–127.
Nakata, M.N. (2007). *Disciplining the savages, savaging the disciplines*. Aboriginal Studies Press.
Ndlovu-Gatsheni, S. (2013). *Coloniality of Power in Postcolonial Africa: Myths of Decolonization*. Council for the Development of Social Science Research in Africa.
Nkrumah, K. (1965). *Neo-colonialism: The last stage of imperialism*. Nelson & Sons.
Norris, A. (2017). Are we really colour-blind? The normalisation of mass female incarceration. *Race and Justice*, *9*(4), 454–478.
Northcott, D., & Linacre, S. (2010). Producing spaces for academic discourse: The impact of research assessment exercises and journal quality rankings. *Australian Accounting Review*, *20*, 38–54.
Phillips, C., & Bowling, B. (2003). Racism, ethnicity and criminology: Developing minority perspectives. *British Journal of Criminology*, *43*, 269–290.
Porter, A. (2016). Decolonizing policing: Indigenous patrols, counter-policing and safety. *Theoretical Criminology*, *20*(4), 548–565.
Quijano, A. (2000). Coloniality of power and eurocentrism in Latin America. *International Sociology*, *15*(2), 215–232.
Raju, C. (2011). Ending academic imperialism: A beginning. http://ckraju.net/papers/Ending-academic-imperialism-front-back-matter.pdf
Rakowski, C. (1993). The ugly scholar: Neocolonialism and ethical issues in international research. *The American Sociologist*, *24*, 69–86.
Riggins, S. (1997). *The language and politics of exclusion: Others in discourse*. Sage.
Robertson, D.L. (2015). Invisibility in the color-blind era: Examining legitimized racism against Indigenous peoples. *American Indian Quarterly*, *39*(2), 113–153.
Roche, S., Fenimore, D., & Jennings, W. (2018). Trends in top journals in criminology and criminal justice. *Journal of Criminal Justice Education*, *30*(4), 551–566.
Ross, L. (1998). *Inventing the savage: The social construction of Native American criminality*. University of Texas Press.
Smith, L. (1999). *Decolonising research methodologies*. University of Otago Press.
Stevenson, W. (1998). 'Ethnic' assimilates 'Indigenous': A study in intellectual neocolonialism. *Wicazo Sa Review*, *13*, 33–51.
Tauri, J. (2017). Imagining an Indigenous criminological future. In A. Deckert & R. Sarre (Eds.), *The Palgrave handbook of Australian and New Zealand criminology, crime and justice* (pp. 769–783). Palgrave Macmillan.
Tauri, J. (2012a). Control freaks and criminologists. http://juantauri.blogspot.co.nz/2012/03/control-freaks-and-criminologists.html
Tauri, J. (2012b). Indigenous critique of authoritarian criminology. In K. Carrington, M. Ball, E. O'Brien, & J. Tauri (Eds.), *Crime, justice and social democracy: International perspectives* (pp. 217–233). Palgrave Macmillan.
Usdansky, M. (2008). The Emergence of a Social Problem: Single-Parent Families in U.S. Popular Magazines and Social Science Journals, 1900-1998. *Sociological Inquiry*, *78*, 74–96.
Van Dijk, T. (1993). *Elite discourse and racism*. Sage.
Van Dijk, T. (2008). *Discourse and power*. Palgrave Macmillan.
Walter, M., & Anderson, C. (2013). *Indigenous Statistics: A Quantitative Research Methodology*. Routledge.
Wetzell, R.F. (2000). *Inventing the criminal: A history of German criminology 1880–1945*. University of North Carolina Press.
Woodward, V. Webb, M., Griffin III, O., & Copes, H. (2016). The current state of criminological research in the United States: An examination of research methodologies in criminology and criminal justice journals. *Journal of Criminal Justice Education*, *27*(3), 340–361.
Wright, R. (1995). The most-cited scholars in criminology: A comparison of textbooks and journals. *Journal of Criminal Justice*, *23*, 303–311.
Young, J. (2011). *The Criminological Imagination*. Polity Press.

45

Decolonizing criminological research methodologies

Cognition, commitment, and conduct

Michael A. Guerzoni and Maggie Walter

Decolonizing is a concept increasingly spoken of across academic disciplines in Western societies and former colonies in the context of curricula (Begum & Saini, 2019), research (Connell, 2014), and universities (Bhambra et al., 2018). For criminology, there is the recognition that it has been shaped and influenced by the European context whence it emerged, and from its subsequent development within North America (Agozino, 2003). Consequently, criminology's ontological, epistemological, and methodological features retain a number of colonial characteristics; characteristics which manifest in researcher practice and publications (Cunneen et al., 2017). Indeed, the northern-centredness and colonial character of criminology have each become key discussion points within the discipline, with scholarly publications being dedicated to these subjects in recent years (e.g., Deckert, 2014; Dimou, 2021).

In this chapter, we comment on the decolonizing of criminological research methods and methodologies, and what is required for researchers to make their research more ethical.[1] We draw from scholarship, our own experience as Palawa[2] academics, and the formal advice we have given our colleagues when asked about decolonization. Since whole books have been written on decolonizing research methodologies in general, and in alignment with the editorial intent of this book, our chapter is written to be both practical and applicable to the context of the criminal legal system. What follows is introductory, rather than definitive. We open with a definition of decolonization and research methodologies to frame our chapter, giving an overview of the limited scholarship on decolonizing criminological research. This is followed by what research decolonization is not, drawing attention to how academic culture can appropriate and undermine such efforts in research. Then, drawing on Indigenous Data Sovereignty principles, we unpack a set of values that need to be transparent within any valid attempts to decolonize criminological research.

Criminology, decolonization, methods, and methodologies

The colonial nature of criminology is understandable and perhaps unavoidable. The discipline emerged from, and arguably remains centred in, Europe and North America. It is this Northern-centric positioning which gives criminology its tendency to undervalue or dismiss knowledge from other systems, such as that from the Global South and the knowledge of

DOI: 10.4324/9781003176619-50

Indigenous Peoples (Dimou, 2021). Similar to efforts in sociology (Connell, 2014) and social work (Baltra-Ulloa et al., 2019), there have been efforts to correct this bias, pioneered by those within the fields of Southern Criminology (Carrington et al., 2018; Warren & Ryan, 2022) and Indigenous Criminology (Cunneen et al., 2017). Each of these perspectives centres on moving ideological underpinnings away from the normative North to include perspectives from the Global South, place-based research, a greater plurality in journals and publishers, and the input from a diversity of scholars in disciplinary discussions/debates. Movements such as these highlight the breadth and depth of action and advocacy required of any disciplinary decolonization efforts.

As with many concepts in the social sciences, *de-colonization* does not possess an agreed universal definition. This lack of precision is both problematic and necessary. Definitions tend to vary regionally in accordance with the socio-historical and socio-cultural contexts. For instance, while countries within the African sub-continent and Australia have both experienced Anglo-colonization and its ongoing manifestations (Le Grange, 2018), the impact of that colonization and its contemporary realities vary significantly (even within Africa itself). Decolonization appropriate for a country such as South Africa is, therefore, not translatable or transportable to Australian research practice.

In defining key concepts, we must be careful to delineate methods from methodology. Methods are the tools used to conduct research such as surveying, in-depth interviewing, or content analysis (Walter, 2019). Methods should not be, but frequently are, especially by non-Indigenous researchers, confused with *methodology*. Methodology describes the overarching conceptual framework of research, how the research is perceived, conceptualized, and undertaken, encompassing our understandings of reality (ontology), knowledge (epistemology), and values (axiology); all shaped by the socio-cultural contexts of the researcher (Walter, 2019). Thus, methodology refers to our overall approach to research and it is very much linked to the values, societal positioning, and worldview of the researcher, not the mechanism for gathering and analyzing data (the method).

The concept of decolonization is also readily conflated (mistakenly) with other concepts, such as that of Indigenization – our preferred concept in the context of revising university curricula (see Mihesuah & Wilson, 2004; Walter & Guerzoni, 2020). Nevertheless, in the context of scholarly disciplines (as opposed to institutions), decolonization may be said to be a two-part phenomenon (Harvey & Russell-Mundine, 2019; Kuokkanen, 2007; Walters et al., 2009):

- **The recognition** of the colonial nature of a discipline, and how it is its default tendency for its knowledge, methodologies, and methods to prioritize Western perspectives, practices, people, and power over Indigenous people, knowledge, culture, and practice.
- **The revision and reconfiguration** of disciplinary knowledge, methodology, methods, and research practice for the betterment of Indigenous people. This often includes the removal of overt discriminatory practice and prejudicial ideologies and beliefs (viz. Indigenous inferiority), and the consideration and involvement of Indigenous knowledge, practice, and people.

Decolonization should not be dismissed as an academic fad or political correctness 'muscling its way' into universities (though some have expressed this to our faces!). As Smith (2012) explains in her seminal book, *Decolonizing Methodologies*, attention to decolonization is imperative because underlying researcher ideologies influence research, which in turn shapes government policy, institutional procedures, and university curricula; each affecting knowledge, laws, predispositions, and practice. Decolonization is worthy, therefore, of consideration in

criminological research because of the discipline's ability, as shown throughout this book, to influence the structures and operations of the criminal justice system. Criminology is not an inconsequential armchair science. To illustrate, here are two examples of why decolonizing is important for Indigenous research:

- **The Framing of Indigenous Criminality**: It is not uncommon for offending by Indigenous individuals and their subsequent incarceration to be framed as an Indigenous issue, as opposed to a more complicated phenomenon embedded within the ongoing consequences and operations of settler colonialism within the nation-state (Walter, 2016). Australian criminology has seen this issue explored within the so-called 'Cunneen/Weatherburn debates', centring on disagreement as to the use of quantitative methodologies to support assertions that there must be greater degrees of criminality amongst Indigenous people, without due consideration given to how such patterns reflect entrenched racially and colonially determined systemic factors (Porter, 2019; Walter, 2016). Additionally, the framing of offending and incarceration as an Indigenous problem allows settler descendants – the beneficiaries of colonization – to avoid any sense of complicity.
- **Justice Policy**: It is not uncommon for cost-effectiveness or cost-efficiency evaluative paradigms to be applied to criminal justice initiatives for Indigenous people, for instance, to circle sentencing courts (Barnes et al., 2019; Marchetti & Bargallie, 2017). Whilst understandable from a budgetary perspective, such an emphasis overshadows the voices of Indigenous stakeholders who are engaged with (or otherwise affected by) such courts and fails to recognize their lived experiences and accounts of programme efficacy and benefits not reflected in the preferred short-sighted mathematical recidivism formula (Barnes et al., 2019; Marchetti & Bargallie, 2017). Such financial evaluations can readily be skewed to the 'it didn't work' position and be used to justify cutting programmes, thereby maintaining the status quo responses to Indigenous Australians within criminal justice (Marchetti & Bargallie, 2017). The settler majority remains in control of not only defining the problem but also determining the 'solutions'.

Decolonizing criminological methodologies: context and concerns

Existing decolonizing scholarship tends to draw attention to the need for Indigenous epistemes and voice within research methodologies (Bargellie et al., 2020; Blagg & Anthony, 2019; Marchetti & Bargallie, 2017; Smith, 2012; Walter & Andersen, 2013). These writings are similar in structure and scope, canvassing research's colonial character, defining decolonization, expounding ethical guidelines, providing examples of how criminological research satisfies these, and offering recommendations. The need for practical writings is emphasized and attention is directed toward demonstrating what decolonizing and ethical principles look like in practice. For instance, the self-determination of Indigenous people, honouring our right of consent, the question of project benefit for Indigenous people, and collaborative endeavours are frequently stated. This emphasis on practice rightly seeks to remedy discussions remaining limited to definitions and paradigms (Bargellie et al., 2020). Indeed, conceptual fixation is not uncommon in scholarship pertaining to Indigenous matters, also seen, for instance, within scholarship on the Indigenization of curricula and cultural competency. Many seminars and publications have discussed their importance, though have failed to show how it can be operationalized.

However, practical guides are unhelpful without addressing the standpoint of the researcher in discussions of decolonizing research. This is because, as with the Indigenization of curricula, the decolonizing of criminological research methodologies is susceptible to being institutionally

portrayed, and subsequently adopted by academic staff, as solely involving changes in *practice* rather than accompanying changes in *predispositions*. Research principles (viz. co-designing with Indigenous people), ethics guidelines (e.g., risk assessments, true consent), and suggested best practice (e.g., sharing of research data), whilst all being important components of decolonization, can each be utilized out of *compliance* rather than from a change in *thinking*. In other words, decolonization can be rendered a task to be 'ticked off'. Such 'ticking off' on Indigenous prerequisites, despite the often heartfelt words of the researchers involved, is itself an example of the colonized and colonizing aspect of much criminological research in action. Words are spoken, practice is tweaked, but the balance of power from the non-Indigenous to the Indigene never shifts, creating yet another colonially infused oppression.

How do we move past symbolism and tokenistic change? Researchers have been trained in disciplines that are colonial in nature, and operate within institutions which are inherently colonial in structure, culture, and operation (Mihesuah & Wilson, 2004). Universities and academic culture are further subject to a neoliberal logic which perpetuates pragmatism, competitiveness, and pressures for the securement of publications and grants; each hindering decolonization (Moosavi, 2020). This is not an environment nourishing decolonization, for several reasons. Firstly, it is an endeavour requiring time-consuming reflexivity and re-training. Even where decolonizing is encouraged in university discourse, staff are seldom apportioned time in their workloads, or avoid apportioning time in their schedule, for decolonizing. Secondly, there is little reward for decolonizing, for the key performance indicators for academics, which typically involve a certain number of outputs (preferably in high-ranked journals), typically do not recognize decolonial outputs (e.g., providing material in accessible language and practical formats to researched communities). Thirdly, as mentioned above, universities remain colonial entities which are largely opposed to decolonizing; even where this is not explicitly observable in its artefacts or expressed values and norms, it can be seen in its organizational culture and within the heartfelt assumptions of its employees (see Mihesuah & Wilson, 2004; Schein, 2010).

We argue that for criminological research methodologies to be truly decolonized, there must be a genuine change in researchers' beliefs *and* behaviours. To differentiate, we provide some common ways in which colonial techniques are ignorantly misconstrued or wilfully misrepresented as decolonization:

- **Ask the Aborigine**: Rather than learning about ethical requirements in Aboriginal and Torres Strait Islander research, many non-Indigenous researchers expect an Indigenous academic to teach them. This knowledge is then often integrated into the ethics proposal with little to no acknowledgement of their assistance. Similarly, as Aboriginal academics, we are frequently asked to be 'interviewed' for a non-Indigenous scholar's Indigenous-framed research; our knowledge is then included as their 'findings'.
- **Baseless Benefit**: Ethical codes stipulate that research should provide tangible benefits to those who are the subject of that research. Regardless, it is common practice in many of the research projects that we have assessed to state that the project will be for the benefit of Indigenous people without specifying a tangible benefit, or sometimes stating that non-Indigenous knowledge about this Aboriginal 'problem' is automatically beneficial.
- **Cop-out Consultation**: A particular variation of the 'ask the Aborigine' practice. Rather than consulting with local Indigenous leaders about the scope and substance of the project, easily accessible, and often far more junior, Indigenous staff members on campus are asked about what 'the community' would think. The researchers then state in their ethics and grant applications that they had undertaken consultation with Indigenous community members or advisers.

- **Decolonization Delegation**: With many non-Indigenous researchers personally unfamiliar with Indigenous First Peoples in the region of their determined research, rather than taking the time to learn and form relationships, they hire Indigenous research assistants (casual, low pay, no authority to make decisions, often no co-authorship or acknowledgement in publications) to complete the 'Indigenous stuff'.
- **Tokenistic Decolonization**: Another common practice is to invite an Aboriginal academic onto the research team to give the project the appearance of being Indigenous led, though, in reality, they are completing only a small component, or one bolted on, to help sell the project. For example, one of the authors once asked a non-Indigenous project leader investigating Indigenous housing whether there was a place for them on their large (16 researchers) team. The author was told that it was a pity their interest was not known earlier because it was too late for their inclusion (they already had one Aboriginal researcher).

Where to start?

We now turn to provide practical guidance towards decolonization, over three stages: cognition, commitment, and conduct.

Cognition

Decolonization of research methodologies must commence with a stock-take of our thinking – a critical self-reflection known within the social sciences as 'reflexivity' or reflexive practice (Walter, 2019). This self-analysis involves the cataloguing of one's values, predispositions, attitudes, motives, and existing practice, an exploration of why they are part of the researcher, and how these shape one's research. This is because the social sciences have long recognized the researcher's standpoint in shaping how one conceptualizes, understands, and approaches social phenomena and research (Walter, 2019). Historically discouraged within criminology, contemporary academics are receptive to the process (Jewkes, 2012).

For instance, this could involve an assessment of our worldview, what has informed how we understand reality (ontology), knowledge and truth (epistemology), humans and human nature (anthropology), and our values (axiology). It could also involve assessing our norms and values pertaining to research in theory and practice (methodology). Questions include "why do I think this?", "in what way does this manifest?", and "what are the consequences?". For example, reflection could include considering how our education shaped our attitudes towards knowledge, how our class and gender shape our values, and how our racial and cultural identity has influenced how we think on matters of race (Walter, 2019). Indigenous scholars have recommended the use of similar questions (Lambert, 2014; Smith, 2000):

- **Why am I undertaking Indigenous research?** Is it because it is intellectually stimulating, because there is a tangible need for research, or is it linked to funding opportunities?
- **How do I view Indigenous people generally and with respect to my research topic?** Deviant and disadvantaged or respectful and resilient? (Note: Both of these answers are wrong thinking).
- **Who benefits from this proposed research?** Is the research driven by an identifiable, Indigenous-nominated benefit?
- **How do I view the involvement of Indigenous people in my research?** Is it solely as research participants or as leaders and partners?

- **How do I view the research data and research outputs?** Are these 'mine' or the property of and for Indigenous participants, or the First Nations communities from which they are drawn?

Critical self-reflection aids in uncovering what informs our thinking and where our loyalties lie, aiding in aligning to decolonial principles. At the end of this self-reflection, are you the right person to be undertaking this research? Sometimes you are not.

Commitment

Ethical Indigenous research is research that is ethical from an Indigenous perspective. Since its release in 2020, the primary set of Australian principles in relation to research with Indigenous Peoples is the Code of Ethics for Aboriginal and Torres Strait Islander Research (hereinafter 'the Code') (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2020). This Code has superseded the earlier Ethical Conduct in Research with Aboriginal and Torres Strait Islander Peoples and Communities: Guidelines for Researchers and Stakeholders, produced by the National Health and Medical Research Council (2018). The Code provides the framework for undertaking research in a way that prioritizes, promotes, and protects Indigenous people; your research will not receive ethical clearance without adherence to the Code (Table 45.1).

The Code demonstrates the commitments necessary for those undertaking research with Indigenous people, which, if incorporated into research, can contribute to decolonization. Collectively, the involvement of Indigenous Peoples in decision-making throughout the entirety of the research process, from conceptualization to conclusion, is critical. This essentially involves

Table 45.1 Explanations and examples of the AIATSIS code pertaining to Indigenous research

	Definition	*Example*
Indigenous self-determination	Indigenous people possessing mastery over their own lives as free agents, recognizing and respecting their legal, political and social liberties and rights.	Sincere engagement and collaboration throughout the research process, underpinned by respect.
Indigenous Leadership	Indigenous involvement in the research's formation and undertaking, underpinned by Indigenous epistemes and guided by their leadership.	Co-designed research, Indigenous methodologies, authorship in publications.
Impact and Value	Research should be beneficial for and valuable to Indigenous people, rather than solely what scholars or governmental personnel perceive as required or useful.	Indigenous interpretations of benefit used to guide the research, with a focus on tangible outcomes (e.g., resources, usable knowledge).
Sustainability and Accountability	That research pertaining to Indigenous people is within structures of accountability and run in a sustainable manner (in the domains of culture, economics, environment, and social).	Care of country that is used or studied, preservation of data, governance by Indigenous people, subjection to ethics boards requirements.

Indigenous Peoples moving from being primarily participants to becoming stakeholders, analysts, writers, and owners of that research. The above principles and guidelines could be consolidated as the following commitments (see Bargellie et al., 2020; Lambert, 2014):

- **Indigenous Leadership**: Indigenous people have decision-making rights in the conceptualization and conduct of the research project.
- **Indigenous Informed**: The visible inclusion of Indigenous perspectives, priorities, and knowledges.
- **Indigenous Centred**: The articulated benefits of the project as they are defined and understood by the Indigenous participants of the research.

Subscription to, and the integration of these commitments into one's research will carry over into decolonization in practice. A commitment to Indigenous-centred research will ensure that the project comprises not solely deficit-based foci and the customary data-extraction approach. Instead, it will entail coming alongside Indigenous Peoples to ask what they need; undertaking research built on relationship and service. An Indigenous-informed project will broaden epistemological considerations to not (by default) disregard Indigenous knowledge and perspectives. It will also ensure that research findings are funnelled back into communities in usable forms (not tomes, nor condescendingly light documents). A commitment to Indigenous leadership will shape the research and aid in the adherence to the aforementioned principles.

Conduct

Decolonization is not solely a matter of intellectual acquiescence; it necessitates changes in practice, changes that can be costly. Following reflexive practice, a resolution to a set of Indigenous-based commitments or principles, our practice must then begin to change. Here are some practical examples of how you can start decolonizing your work:

- Address any identified colonial biases you hold (e.g., that only Northern Criminology is worth reading and citing).
- Read literature in your field by Indigenous academics, learn from them, and cite them in your work alongside the other 'key scholars'.
- Undertake reading on decolonization with respect to your field or area and the aforementioned ethics guidelines from AITSIS.
- Visit a local Indigenous community organization and/or locate elders and knowledge holders. Form relationships and ask what research they require.
- Adopt a strengths-based approach in your research.
- Collaborate with an Indigenous academic in your work in a genuine partnership. If you do not know one, perhaps consider training and mentoring an Indigenous Master/PhD student (we attest to the value of this).

Indigenous data and Indigenous Data Sovereignty as part of the decolonial project

Data, how they are collected, from and by whom, for what purpose, and to whose benefit are central to Indigenous criminological research and Indigenous criminological methodology. These data issues, wrapped within an overarching assertion of the rights of Indigenous Peoples

to own and control data about them, are the centre of the advocacy and scholarship of the Indigenous Data Sovereignty. Underpinned by the Declaration on the Rights of Indigenous Peoples from the United Nations (UNDRIP), Indigenous Data Sovereignty is an Indigenous-led international movement, with strong representation within Australia via the Maiam nayri Wingara Indigenous Data Sovereignty Collective (see Maiam nayri Wingara, 2022; Walter & Carroll, 2020).

Indigenous Data Sovereignty centres on Indigenous collective rights to data about our peoples, territories, lifeways, and natural resources. The concept is formally defined as the right of Indigenous peoples to determine the means of collection, access, analysis, interpretation, management, dissemination, and reuse of data pertaining to the Indigenous peoples from whom it has been derived, or to whom it relates. (Kukutai & Taylor, 2016; Snipp, 2016). Whilst much of the Indigenous Data Sovereignty movement's activism has been on official statistics Indigenous data, the term refers to information or knowledge in any format that is about Indigenous people and that impacts Indigenous lives at the collective or individual level (Walter & Suina, 2019). Indigenous Data Sovereignty is practised through Indigenous data governance which asserts Indigenous interests in relation to data by informing when, how, and why our data are gathered, analyzed, accessed and used; and ensuring Indigenous data reflect our priorities, culture, lifeworlds, and diversity (Walter & Carroll, 2020).

The impetus for Indigenous Data Sovereignty stems, in part, from the central methodological fact that data are not 'neutral entities'. Rather, like methodological approaches, their form, function, conceptualization, and operationalization are shaped by those who commission them – researchers and policymakers (Walter & Carroll, 2020). For Indigenous people, data that is gathered about them are typically characterized by the following features that Walter (2016) calls the '5D data': Deprivation, Difference, Disadvantage, Disparity, and Dysfunction (Walter 2016). Such foci perpetuate a discourse of Indigenous people being a 'troublesome' population (Walter, 2016), redirecting attention away from the ongoing structural consequences of colonization. Furthermore, existing data are rarely disaggregated to the level that is required to meet Indigenous peoples' needs, priorities, or world views, nor do they contribute to Indigenous-framed solutions (see Walter et al., 2021).

Data are cultural, strategic, and economic assets for Indigenous peoples. The prerequisite for Indigenous leadership and data ownership has only intensified in the era of open data and big data. In 2018, responding to the traditional omission of Indigenous Peoples from these data-critical spaces, the Maiam nayri Wingara Indigenous Data Sovereignty Collective and the Australian Indigenous Governance Institute convened the National Indigenous Data Sovereignty Summit. Over 40 Indigenous delegates attended, including representatives from peak bodies, the public service, and academia, as well as community leaders, and they were joined by four representatives of Te Mana Raraunga Māori Data Sovereignty Network and the Data Iwi (Tribal) Leaders Group. The Summit progressed Indigenous Data Sovereignty and Data Governance through developing shared understandings and initiating an Australian set of Indigenous data governance protocols. The Summit delegates asserted that in Australia, Indigenous peoples have the right to:

- Exercise control of the data ecosystem including creation, development, stewardship, analysis, dissemination, and infrastructure.
- Data that are contextual and disaggregated (available at the individual, community, and First Nations levels).
- Data that are relevant and empower sustainable self-determination and effective self-governance.

- Data structures that are accountable to Indigenous peoples and First Nations.
- Data that are protective and respect our individual and collective interests.

Exercising Indigenous data governance, the Summit further asserted, enables Indigenous peoples, our representative and governing bodies, to accurately reflect our stories. Effective Indigenous data governance requires the collaboration of Indigenous leaders, practitioners, and community members. Indigenous communities retain the right to decide which sets of data require active governance and maintain the right to not participate in data processes inconsistent with the Indigenous Data Sovereignty protocols (Indigenous Data Sovereignty Communique, 2018).

These Indigenous Data Sovereignty protocols are reinforced by the CARE Principles of Indigenous Data Sovereignty developed by the Global Indigenous Data Alliance. The CARE principles are particularly concerned with the potential for further harming Indigenous Peoples through the open sharing of data and big-data processes. The emphasis on greater data sharing creates tension for Indigenous Peoples in our assertion of greater control over the application and use of Indigenous data and Indigenous knowledge. The CARE Principles for Indigenous Data Governance, therefore, are people and purpose oriented, reflecting the crucial role of data in advancing Indigenous innovation and self-determination) (Carroll et al., 2020). The following CARE principles have been adapted from GIDA (2019):

The CARE principles

Collective Benefit: Data ecosystems shall be designed and function in ways that enable Indigenous Peoples to derive benefit from the data.

C1. *For inclusive development and innovation*: Governments and institutions must actively support the use and reuse of data by Indigenous nations and communities by facilitating the establishment of the foundations for Indigenous innovation, value generation, and the promotion of local self-determined development processes.
C2. *For improved governance and citizen engagement*: Data enrich the planning, implementation, and evaluation processes that support the service and policy needs of Indigenous communities. Data also enable better engagement between citizens, institutions, and governments to improve decision-making. Ethically, open data has the capacity to improve transparency and decision-making by providing Indigenous nations and communities with a better understanding of their peoples, territories, and resources. It similarly can provide greater insight into third-party policies and programmes affecting Indigenous Peoples.
C3. *For equitable outcomes*: Indigenous data are grounded in community values, which extend to society at large. Any value created from Indigenous data should benefit Indigenous communities in an equitable manner and contribute to Indigenous aspirations for well-being.

Authority to Control: Indigenous Peoples' rights and interests in Indigenous data must be recognized and their authority to control such data be respected.

A1. *Recognizing rights and interests*: Indigenous Peoples have rights and interests in both Indigenous knowledge and Indigenous data. Indigenous Peoples have collective and individual rights to free, prior, and informed consent in the collection and use of such data, including the development of data policies and protocols for collection.

A2. *Data for governance*: Indigenous Peoples have the right to data that are relevant to their world views and empower self-determination and effective self-governance. Indigenous data must be made available and accessible to Indigenous nations and communities in order to support Indigenous governance.
A3. *Governance of data*: Indigenous Peoples have the right to develop cultural governance protocols for Indigenous data and be active leaders in the stewardship of and access to Indigenous data, especially in the context of Indigenous knowledge.

Responsibility: Those working with Indigenous data have a responsibility to share how those data are used to support Indigenous Peoples' self-determination and collective benefit.

R1. *For positive relationships*: Indigenous data use is unviable unless linked to relationships built on respect, reciprocity, trust, and mutual understanding, as defined by the Indigenous peoples to whom those data relate. Those working with Indigenous data are responsible for ensuring that the creation, interpretation, and use of those data uphold or are respectful of the dignity of Indigenous nations and communities.
R2. *For expanding capability and capacity*: Use of Indigenous data invokes a reciprocal responsibility to enhance data literacy within Indigenous communities and to support the development of an Indigenous data workforce and digital infrastructure to enable the creation, collection, management, security, governance, and application of data.
R3. *For Indigenous languages and worldviews*: Resources must be provided to generate data grounded in the languages, worldviews, and lived experiences, including values and principles, of Indigenous Peoples.

Ethics: Indigenous Peoples' rights and well-being should be the primary concern at all stages of the data life cycle and data ecosystem.

E1. *For minimizing harm/maximizing benefit*: Ethical data are data that do not stigmatize or portray Indigenous Peoples, cultures or knowledges in terms of deficit and that are collected, managed and used in ways that align with Indigenous ethical frameworks and with rights affirmed in the UNDRIP. Assessing ethical benefits and harms should be done from the perspective of the Indigenous Peoples, nations or communities to whom the data relate.
E2. *For justice*: Ethical processes address imbalances in power and resources and how these affect the expression of Indigenous rights and human rights. Ethical processes must include representation from relevant Indigenous communities.
E3. *For future use*: Data governance should take into account the potential future use and future harm based on ethical frameworks grounded in the values and principles of the relevant Indigenous community. Metadata should acknowledge the provenance and purpose and any limitations or obligations in secondary use inclusive of issues of consent.

Conclusion

The decolonization of criminological research methodologies is conceptually straightforward but complicated in practice, involving an active re-evaluation and re-learning of how research is understood and undertaken. We have presented a case for why the focus on this ought not to be directed solely towards the accumulation of new practices (though these are important), but primarily necessitates a shift in the axiological, ontological, and epistemological dimensions of

the researcher. This shift in one's identity and purpose, guided by reflexivity and decolonizing principles, will ensure that the change is genuine rather than a surface-level profession.

Importantly, this change process necessitates the decolonizing or Indigenizing of universities and their curricula as well in order to instil this awareness and framework in undergraduate and research candidates across their degrees. Mindfulness of this fact draws attention to the reality that whilst professional development is vital and welcomed for decolonizing criminological research methodologies, the training of new and emerging academics in perceiving this as normative is necessary. Having decolonizing mindsets and frameworks as core knowledge, rather than a footnote, is integral to this process. Criminology, as a discipline, needs to move on from decolonial conversations and conferences to integration into pedagogy and practice. We hope that this chapter will help you to do this.

Notes

1 Herein we use 'Indigenous' to refer to First Nations people from around the world, recognizing the contested use of the term. We recognize First Nations people hail from a myriad of nations, each unique in their history, culture, country, language and identity.
2 Palawa are Tasmanian Aboriginal people.

References

Agozino, B. (2003). *Counter-colonial criminology: A critique of imperialist reason*. Pluto Press.

Australian Institute of Aboriginal and Torres Strait Islander Studies. (2020). *AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research*. https://aiatsis.gov.au/sites/default/files/2020-10/aiatsis-code-ethics.pdf

Baltra-Ulloa, A.J., Vincent, K., & Holla, C. (2019). A relational pedagogy: A young MILE in our decolonising social work practice journey. In S. Nipperess & C. Williams (Eds.), *Critical multicultural practice in social work: New perspectives and practices* (pp. 163–176). Allen & Unwin.

Bargellie, D., Cunneen, C., Marchetti, E., Tauri, J., & Williams, M. (2020). Developing ethical standards in criminology and criminal justice research: A focus on Indigenous Australian peoples. In L. George, J. Tauri, & L. MacDonald (Eds.), *Claiming research sovereignty beyond deficit and the colonial legacy* (pp. 41–52). Emerald Publishing.

Barnes, B., Barnes, M., Brosnan, K., Guerzoni, M.A., Martin, K., Nona, Z., & Toonen, J. (2019). *Evaluation of Murri Court: Prepared for the Queensland Department of Justice and Attorney-General*. IPSOS Aboriginal and Torres Strait Islander Research Unit. https://www.courts.qld.gov.au/__data/assets/pdf_file/0009/674685/Murri-court-evaluation-report.pdf

Begum, N., & Saini, R. (2019). Decolonising the curriculum. *Political Studies Review*, *17*(2), 196–201.

Bhambra, G., Gebrial, D., & Nişancıoğlu, K. (2018). *Decolonising the university*. Pluto Press.

Blagg, H., & Anthony, T. (2019). *Decolonising criminology: Imagining justice in a postcolonial world*. Palgrave Macmillan.

Carrington, K., Hogg, R., Scott, J., Sozzo, M., & Walters, R. (2018). *Southern criminology*. Routledge.

Carroll, S.R., Garba, I., Figueroa-Rodríguez, O.L., Holbrook, J., Lovett, R., Materechera, S., Parons, M., Raseroka, K., Rodriguez-Lonebear, D., Rowe, R., Sara, R., Walker, J.D., Anderson, J., & Hudson, M. (2020). The CARE Principles for Indigenous data governance. *Data Science Journal*, *19*(43), 1–12.

Connell, R. (2014). Using Southern theory: Decolonizing social thought in theory, research and application. *Planning Theory*, *13*(2), 210–223.

Cunneen, C., Rowe, S., & Tauri, J. (2017). Fracturing the colonial paradigm: Indigenous epistemologies and methodologies. *Méthod(e)s: African Review of Social Sciences Methodology*, *2*(1/2), 62–78.

Deckert, A. (2014). Neo-colonial criminology: Quantifying silence. *African Journal of Criminology & Justice Studies*, *8*(1), 39–63.

Dimou, E. (2021). Decolonizing Southern criminology: What can the "decolonial option" tell us about challenging the modern/colonial foundations of criminology? *Critical Criminology*, *29*(3), 431–450.

GIDA. (2019). *s*. https://www.gida-global.org/care

Harvey, A., & Russell-Mundine, G. (2019). Decolonising the curriculum: Using graduate qualities to embed Indigenous knowledges at the academic cultural interface. *Teaching in Higher Education*, *24*(6), 789–808.

Jewkes, Y. (2012). Autoethnography and emotion as intellectual resources: Doing prison research differently. *Qualitative Inquiry*, *18*(1), 63–75.

Kukutai, T., & Taylor, J. (2016). *Indigenous data sovereignty: Towards an agenda*. ANU Press.

Kuokkanen, R. (2007). *Reshaping the university: Responsibility, Indigenous epistemes, and the logic of the gift*. UBC Press.

Lambert, L. (2014). *Research for Indigenous survival: Indigenous research methodologies in behavioral sciences*. Salish Kootenai College Press.

Le Grange, L. (2018). Decolonising, Africanising, indigenising, and internationalising curriculum studies: Opportunities to (re) imagine the field. *Journal of Education*, *74*, 4–18.

Maiam nayri Wingara (2022). *About us*. https://www.maiamnayriwingara.org/about-us

Marchetti, E., & Bargallie, D. (2017). Evaluating Indigenous-focused criminal court processes: Why using Indigenous-centric methodologies is important for the attainment of access to justice. *Yearbook of New Zealand Jurisprudence*, *15*, 1–25.

Mihesuah, D., & Wilson, A. (2004). *Indigenizing the academy: Transforming scholarship and empowering communities*. University of Nebraska Press.

Moosavi, L. (2020). The decolonial bandwagon and the dangers of intellectual decolonisation. *International Review of Sociology*, *30*(2), 332–354.

National Health and Medical Research Council. (2018). Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders. https://www.nhmrc.gov.au/about-us/resources/ethical-conduct-research-aboriginal-and-torres-strait-islander-peoples-and-communities

Porter, A. (2019). Aboriginal sovereignty, 'crime' and criminology. *Current Issues in Criminal Justice*, *31*(1), 122–142.

Schein, E. (2010). *Organizational culture and leadership*. Jossey-Bass.

Smith, L. (2000). Kaupapa Māori research. In M. Battiste (Ed.), *Reclaiming Indigenous voice and vision* (pp. 225–247). University of British Columbia Press.

Smith, L. (2012). *Decolonizing methodologies: Research and Indigenous peoples*. Bloomsbury Publishing.

Snipp, M. (2016). What does data sovereignty imply: What does it look like? In T. Kukutai & J. Taylor (Eds.), *Indigenous data sovereignty: Towards an agenda* (pp. 39–56). ANU Press.

Walter, M. (2016). Indigenous peoples, research and ethics. In M. Adorjan & R. Ricciardelli (Eds.), *Engaging with ethics in international criminological research* (pp. 87–105). Routledge.

Walter, M. (2019). The nature of social science research. In M. Walter (Ed.), *Social research methods* (pp. 3–28). Oxford University Press.

Walter, M., & Carroll, S.R. (2020). Indigenous Data Sovereignty, governance and the link to Indigenous policy. In M. Walter, T. Kukutai, S. Carroll, & D. Rodriguez-Lonebear (Eds.), *Indigenous data sovereignty and policy* (pp. 1–20). Routledge.

Walter, M., & Guerzoni, M.A. (2020). *How a university can embed Indigenous knowledge into the curriculum and why it matters*. https://theconversation.com/how-a-university-can-embed-indigenous-knowledge-into-the-curriculum-and-why-it-matters-147456

Walter, M., Lovett, R., Maher, B., Williamson, B., Prehn, J., Bodkin-Andrews, G., & Lee, V. (2021). Indigenous data sovereignty in the era of big data and open data. *Australian Journal of Social Issues*, *56*(2), 143–156.

Walter, M., & Suina, M. (2019). Indigenous data, Indigenous methodologies and Indigenous data sovereignty. *International Journal of Social Research Methodology*, *22*(3), 233–243.

Walters, K.L., Stately, A., Evans-Campbell, T., Simoni, J.M., Duran, B., Schultz, K., & Guerrero, D. (2009). Indigenist collaborative research efforts in Native American communities. In A.R. Stiffman (Ed.), *The field research survival guide*, (pp. 146–173). Oxford University Press.

Warren, I., & Ryan, E. (2022). Southern criminologies, Indigenous stories and qualitative research. *Journal of Criminal Justice Education*, *33*(2), 230–246.

46

Decolonizing criminology theories by centring First Nations praxis and knowledges

Thalia Anthony, Harry Blagg, Carly Stanley and Keenan Mundine

> We challenge the dominance, values and methods of imposed colonial systems, practices and beliefs. We also embrace self-determination. Aboriginal people, families and communities are experts of their own lives. We have solutions to challenges that we face and are our own agents for change.
>
> (Mundine, 2022, p. 27)

Introduction

Decolonizing criminological theories is more than changing ideas. It necessitates decolonial praxis where theory and practice speak to one another on a path to transformative change. Grounded in the day-to-day knowledges and expertise of First Nations peoples and collectives, decolonial praxis unravels the disciplinary theory that is produced in the ivory tower. These *post-disciplinary* epistemologies and praxis, built from generations of storytelling and activism, disrupt criminological orthodoxy. As Keenan Mundine (2022, p. 27) states, decolonizing theory requires recognition that First Nations people are experts and change agents. Decolonizing theory has a dual task: first, honouring the sovereign knowledges and actions of First Nations peoples in nurturing current and future generations; and second, exposing criminology for its complicity in the colonial project.

This chapter explores how Deadly Connections Justice and Community Services (hereafter referred to as Deadly Connections) enacts the decolonization of criminology by unsettling the positivist assumptions of criminological theory and its failure to account for the colonial logics across carceral institutions and practices. Deadly Connections is an Aboriginal community justice organization in New South Wales (NSW) that has offices and healing places on the land of the Wangal and Bidgegal people of Eora Nation (Inner-West/Canterbury, Sydney, Australia). It is run and operated by First Nations people with lived experience of prison, forcible child removals by the state, and colonial trauma. It relies on self-determination and cultural connections to promote healing, safety, and well-being for *mob*.[1] Unlike criminology, which looks at institutional reforms or 'soft' disciplines – such as health (e.g., Gisev et al., 2015) and psychology (e.g., Day, 2003) – for 'solutions', Deadly Connections reveals the power of post-disciplinary knowledges produced by First Nations collectives.

DOI: 10.4324/9781003176619-51

A decolonial theory asks different questions and builds different practices. It replaces criminological questions of "What causes Indigenous peoples' offending?" with "Why do state harms against First Nations people evade criminalization?", and "How can justice-involved Indigenous people be fixed?" with "How can First Nations peoples heal from the harms caused by colonial and carceral systems?" Decolonial approaches consciously work within and alongside First Nations movements to imagine a society without police and carceral institutions of control, where First Nations ways of being, doing, and knowing are respected. First Nations scholars remind us that First Nations people, specifically Māori people, as Moana Jackson (2017) attests, have no concept of prisons but have laws for regulating relations and wrongs. While the criminological discipline generates knowledge on crime and prisons, post-disciplinary concerns are directed to First Nations well-being, self-determination, and sovereignty (Anthony & Sherwood, 2016).

Through the prism of Deadly Connections, we turn criminology on its head – revealing that healing, well-being, safety, and justice for *mob* depend on self-empowerment, cultural pride, and community and family relationships. Building on the contributions of generations before us, Deadly Connections works as a change maker – advocating, protesting, supporting, organizing, educating, and making the change that is sought by community. We call for new ways to do research to decolonize criminological theories, which include:

1 Post-disciplinarity: Embedding First Nations practices, lived experiences, and epistemologies into theory to empower First Nations communities and, in turn, decentre Western knowledges and institutions. Their self-determined, place-based solutions decentre positivist, universal claims of criminological models and denaturalize carceral systems and notions of deviance.
2 Trans-disciplinarity: Identifying colonial-carceral logics as broader than the penal system (with which criminology is preoccupied) and as implicated in other Western disciplines (e.g., forensics, health, and psychology). In its contemporary manifestation, other carceral institutions include child residential and psychiatric facilities, and historically stem from missions, lock hospitals,[2] and children's homes. These form part of a colonial-carceral archipelago, where First Nations people experience racialized harms beyond the prison.
3 Anti-disciplinarity: Speaking truth to power through fearless criticism of the carceral-colonial system to abolish institutions and systems that continue to inflict violence, trauma, and harm on *mob* and, consequently, expose criminology's naturalization of the penal system.

We come to this chapter from diverse standpoints. Carly, a Wiradjuri woman, and Keenan, a Biripi and Wakka Wakka man, are frontline change makers, working to support First Nations children, adults, and families in the Sydney area, and advocate, research, and educate in relation to the harms of the carceral and child 'protection' systems and the strengths of First Nations-led and First Nations-designed initiatives to decolonize these systems. Keenan's and Carly's pride in community, family, and culture informs their work to strengthen *mob* and support well-being, healing, and connections to Country. They established Deadly Connections to expand their contribution. Carly notes that

> Our combined professional and lived experiences told us there were no services that could support us in the way that we needed, that understood our cultural values and needs […]. I'm connected to the community, I'm connected to the issues, I know what needs to happen to help our mob.
>
> *(Deadly Connections, 2020a, p. 8)*

Thalia, who is of Cypriot heritage, and Harry who is a migrant from the UK, are academics and activists who provide solidarity and support to First Nations organizations and individuals in and outside of prisons. Thalia comes from long matrilineal (Costa) and patrilineal (Hatziantonis) lines of fighters for Cypriot self-determination – from previous British rule and current Turkish military occupation – and she brings up her children to honour this fight and act in solidarity with local First Nations anti-colonial struggles. In the UK, Harry witnessed how colonization created a blueprint for white supremacy and continued to buttress British privilege – of which he has been an outspoken critic. Harry and Thalia contribute to grassroots resistance movements in the colonized land known as Australia. They work with First Nations organizations such as Deadly Connections, Aboriginal Legal Services, Grandmothers Against Removals and Fighting in Solidarity Towards Treaty (FISTT), Tangentyere Council and the Kimberley Aboriginal Law and Culture Centre to support their activism and research that identifies colonial harms in the carceral and child 'protection' systems. Thalia is on the board of Deadly Connections and seven years ago Carly approached her about supervising her PhD. In the years since, Thalia has had the privilege of learning from Carly and Keenan beyond what the PhD experience can offer.

Some of us have lived experience in the penal system (Keenan and Thalia) and one of us has endured prolonged periods of incarceration (Keenan). We all, in varying capacities, teach in universities and publish research in relation to the carceral system. The four of us come together with a sense of shared commitment to transformative change and outrage against colonial institutions and ideologies. Together, we seek decolonization through strengthening First Nations societies and dismantling colonial-carceral structures and knowledges, including those embedded in criminology theory.

Criminology's theoretical prisons

Before discussing the decolonizing of criminological theory, we will set out the tenets of what we call colonial criminology – because of its adherence to colonizing epistemologies and practices. Colonial criminology is rooted in Western positivism, which validates the role of the carceral system in settler colonies while disregarding the sovereignty of First Nations laws. It treats First Nation law and justice processes as pre-modern and belonging to the realm of anthropology (e.g., Bhambra, 2007) rather than relevant to the contemporary regulation of First Nations societies, for which First Nations people attest (e.g. Gaykamangu, 2012; McGuire & Palys, 2020). Colonial criminology spawned from forensics, phrenology (later, neurology), and psychology to naturalize ideas of 'the criminal'. The originator of modern criminology, Cesare Lombroso (1911), developed the idea of the 'born criminal' based on studies of the physical features of people in prison. From his study of their brains and appearance, he found that people in prison were more likely to have "small skulls" (p. 11), "darker" (p. 15) features and "Darwin's tubercle on the ear [monkey-like ear]" (p. 18). This research is replete with racialized logics that continue to taint penal institutions and agents.

Today, colonial criminology continues to slice and dice the characteristics of prison populations, including by age, gender, Aboriginality, citizenship, education, relationship status, and drug history (Fitzgerald et al., 2016). Studies about First Nations people in custody correlate child neglect, education, unemployment, and alcohol and other drug abuse with incarceration (e.g., Snowball & Weatherburn, 2006; Weatherburn et al., 2008). Criminologists' fascination with the deficiency of people – especially First Nations people – in carceral systems feeds the system of risk management through prolonged imprisonment and control.

While positivists problematize supposed differences between people in custody, they validate state penal interventions as neutral, fair, and acting in good faith. While interventions may need

a bit of tinkering at the margins (which is good for the business of criminology), the role of police, courts, prisons, and parole is even-handed. For instance, the Bureau of Crime Statistics and Research NSW (BOCSAR) attributes the hyperimprisonment of First Nations people to their circumstances rather than to racist institutions. They attempt to prove this by showing that the courts objectively account for criminal history and the seriousness of offences in prison sentences (e.g., Bagaric, 2016; Weatherburn, 2014). Yet, these factors are constructs that bear the hallmarks of racialization. They are operationalized to legitimate First Nation peoples' 'risk', as determined through risk assessment tools, in sentencing assessment reports (Anthony et al., 2017).

Implied by positivist criminology's theorization of hyperincarceration is that First Nations people are bad or broken and their behaviours are worse than non-First Nations people. When positivists recognize colonial circumstances, it is only in terms of distal background factors of individuals rather than foregrounded in the carceral system. Weatherburn (2020) states, "getting rid of racist policing would do little to reduce the number of Aboriginal Australians in prison custody" (p. 23). Palawa woman, Professor Maggie Walter (2016) criticizes Weatherburn for failing to understand that First Nations' hyperincarceration is part of the "same landscape of inequality" (p. 103) that denies First Nations people access to other human rights. While criminologists rely on statistics and survey data (e.g., Weatherburn, 2014) to create a "veil of scientism" (Tauri, 2013, p. 220), they are adhering to a positivist theory that maintains structural relations. They dismiss First Nations people's lived experiences of systemic racism in the criminal justice system by claiming there is "little evidence" for its existence (Weatherbum et al., 2003, p. 67) and, in doing so, normalize hyperincarceration because, apparently, there is evidence for its legitimate use.

In the 1970s, a coterie of sociologists instigated a critical turn in criminology. They posited the theory that penal institutions and notions of deviance served to maintain social control and institutional power. Unlike other sociologists, such as Durkheim in the late nineteenth century, who regarded crime as having a positive effect on social cohesion, critical criminologists highlighted the negative effect of criminalization on social relations, especially for racial minorities and working-class people (e.g., Cohen, 1972; Hall et al., 1978). They analyzed the creation of crime waves through cultural production – especially mainstream media. Stuart Hall (2006), in turn, promoted Black artists to challenge racist stereotypes and engage them in widespread cultural production.

In the main, however, critical theories of penal institutions have objectified rather than decentred their role in society. There has been a strong focus on the prison in social death (Goffman, 1963; Price, 2015). Foucault (1995) wrote extensively on the archaeology of the prison and its Benthamite Panopticon architecture that enabled the internalization of surveillance. Theories on "the pains of confinement" (Crewe, 2011, p. 510) set up a binary between coercive prisons and the 'liberal' society, ignoring the continuities of colonial oppression between prisons *and* institutional racism in the community. This dichotomy neglects the broader colonial relations impinging on First Nations' lives outside the prison; the elimination agenda of the colonial-carceral project looms large in the experiences of First Nations people.

Criminology's attempt to fix the system

In response to increasing harms against incarcerated people, criminologists and think tanks have sought to reform carceral settings to make them more humane and even therapeutic. The idea that "jailing is failing" (Justice Reform Initiative, 2022), opens conversations on how jailing might succeed in promoting rehabilitation, health justice, and human dignity. This has created

a branch of criminology dedicated to creating culturally safe and healing prisons (Grant, 2016; Hyatt, 2013).

Proud Yuin woman, abolition activist, and incarceration survivor Vickie Roach (2022) reminds us that prisons are designed to segregate, control, and oppress First Nations peoples. Carceral institutions are built on the colonists' agenda to dispossess, segregate, and brutalize First Nations people and extend the mission to separate families. Bidjara man, activist, and incarceration survivor Ken Canning (2022) – also known as Burraga Gutya – states that "colonialists globally have used incarceration as a powerful weapon" (p. 50), including to take the lives of Aboriginal people through "brutality behind bars" (p. 51).

These sophisticated analyses of the penal system as a colonial machine (Fong, 2022), by people with lived experience of prison and activists on the ground demonstrates how criminology overlooks the role of prisons in structural oppression. It also fetishizes the role of prisons in the lives of First Nations people, failing to conceive how prisons interact with other carceral institutions, including police, parole, and child welfare agencies, in the colonizing project (see Canning, 2022).

Decolonizing criminological theory involves denaturalizing the carceral system. It exposes this system as a construct of colonial capitalism. As Canning (2022) informs us, First Nations people did not have prisons before colonization: "Our systems of punishment did not include locking men and women up in tombs of decay" (p. 51). Jackson (2017) discusses how Māori laws had mechanisms for repairing wrongs without requiring a carceral system. Colonizers imposed prisons and occupied vast lands as a penal colony, such as the land known as the Australian federal state of New South Wales. However, colonial carceralism was characterized not just by prisons but also by other segregation sites such as Christian missions, government reserves, and lock hospitals. These places facilitated the forcible dispossession of First Nation peoples from their homelands and expedited their deaths.

In addition, decolonizing criminological theory problematizes notions of crime and the criminal. It identifies such labels as a product of the colonial will to control First Nations people and actions, including their resistance to colonial violence (Clayton-Dixon, 2020). Equally, these notions exclude acts of state crime such as First Nations people's deaths at the hands of the police (see Day, 2020). The discretionary catalogue of crimes and their enforcement vindicated colonizers' punishment of First Nations people and obfuscated colonial harms. This renders legal the settlers' occupation of First Nations lands while criminalizing First Nations peoples' 'trespass' on land claimed by settlers.

Decolonizing criminological theory through decolonial praxis

A decolonizing approach to criminological theory accepts that academic disciplines do not garner the solutions for a decolonial and just society, but rather this is actualized through post-disciplinary knowledges of First Nations people through ways of being and doing. As Tuck and Yang (2012, p. 36) state, decolonization is not an "and", it is an "elsewhere" that is incommensurable with settler perspectives. Despite attempts by criminologists to decolonize theory through building academic hubs (Carrington, 2021), it is the work of First Nations leadership on the ground that realizes the decolonization of theory. In their critical contribution, Tuck and Yang (2012) state that "decolonization is not a metaphor" (p. 3) for an improved settler society. Instead, decolonization enlivens First Nations' sovereignty, and intellectual and activist contributions, and centres the "context of settler colonialism" (Tuck & Yang, 2012, p. 3). Non-First Nations academics' and activists' solidarity work involves standing up to oppressive power relations in colonized societies and honouring First Nations sovereignty.

Decolonizing criminological theory also must be pursued as an act of First Nations self-determination and resistance to colonialism. The work of Deadly Connections illustrates a reality outside of colonial criminology – the role of First Nations collectives in providing safety, healing, and well-being for their communities despite, and in spite of, carceral interventions. Theory must be attuned to this work on the ground if it is to account for the lived reality of the penal system and to imagine a society beyond it.

Decentring criminological knowledges and institutions: post-disciplinary approaches

The crucial role that First Nations community and culture bring to the well-being, healing, and safety of First Nations peoples and societies is highlighted in the values and knowledges of Deadly Connections. Its work decentres the role of colonial-carceral institutions in our/their lives; the mindset of criminological theory. To use the concept of Edward Said (1993), the work of Deadly Connections creates a "contrapuntal" narrative (p. 66) to account for both colonialism and sites of resistance and First Nations sovereignty and thereby reveals what was once forcibly excluded" (p. 67). We refer to this as post-disciplinary knowledge that is grounded in community and serves to decolonize academic disciplinary theory. Such theory inscribes institutions as the exclusive determinant of social dynamics and change, whereas post-disciplinary approaches, examined through the lens of Deadly Connections, privilege First Nations ways of doing, knowing, and being.

The emphasis of Deadly Connections is on the social, cultural, and emotional well-being and strengths of the First Nations *mob* – a departure from criminology's concern with risk, crime prevention, and criminogenic needs of First Nations people. Deadly Connections fosters the self-determination of First Nations individuals by creating healing spaces, supporting justice-involved and child-protection-impacted individuals and families, and organizing cultural and social activities for First Nation *jarjums* (children) and young people, including on-Country camps. The holistic and wrap-around approach of Deadly Connections builds on the lived experiences and the knowledges of community and operates within cultural frameworks. Our mission is articulated in terms of embedding "holistic, community-based, decolonizing approaches to connecting First Nations people to their cultural, inner and community strength" (Deadly Connections, 2022b).

The five elements of the Deadly Connections (2022a) model are: holistic, lived experience, self-determination, life course, and healing-centred engagement. Board member, Wiradjuri woman, activist, and scholar Lynda-June Coe explains that "culture and community [are] at the core of who [we] are and what [we] do" (Deadly Connections, 2020a, p. 6). Keenan Mundine (2022) recently wrote that our work is decolonizing in our challenge to dominant principles and practices by centring First Nations methods. A key example of this methodology is the establishment of Girra Girra Place in 2022 to provide culturally safe and supportive accommodation outside of the institutional 'diversionary' options. Girra Girra, which has separate men's and women's places, was developed by and for First Nations people to strengthen residents on their healing journey (Deadly Connections, 2020a, p. 18). It has a minimum six-month stay and is semi-independent living based on relationships and empowerment between staff who also have lived experience of institutionalization and residents. Girra Girra defies the straitjacket requirements of other diversionary programmes and criminological models that presuppose the solutions for First Nations lives.

Through its work with community, Deadly Connections is acting in its own power to assert First Nations' collective self-determination. Their work animates Mohawk woman and scholar

Audra Simpson's (2014) concept of Indigenous refusal – refusing to acquiesce, assimilate, be appropriated on colonial terms and simply be ourselves. In contrast to family violence, policing models, and restorative justice practices that are imported from North America and valorized in criminology, the Deadly Connections model is place based. Whether it works with *mob* in urban Sydney or regional central-west New South Wales, it is sensitive to local community and the need to connect kids and families to Country. Decolonial approaches "sit in place" to strengthen First Nations identity and knowledges, whereas colonial criminology seeks erasure of place through its universalizing tendencies (Escobar, 2001, p. 140). Kamillaroi woman, novelist, filmmaker, broadcaster, and Distinguished Professor Larissa Behrendt (2019) notes that "asserting our place in the natural world and in our kinship network […] is an assertion of sovereignty" (p. 176). A decolonial approach in Australia recognizes the power of First Nations people on place, including the significance of connection to Country for social, emotional and cultural well-being and the enactment of law and jurisdiction (Langton, 2020).

Resisting colonial-carceral institutions beyond the prison: trans-disciplinary

Unlike colonial criminologists, Deadly Connections recognizes the breadth, diversity, and harms of the colonial-carceral archipelago – which includes the carceralism of welfare interventions, diversionary avenues, welfare interventions, and psychiatric treatments. The colonial-carceral archipelago is akin to a camp in Agamben's (1998) sense that it excludes First Nations people from the right to life and legal protections, creating states of exception where the normal rules do not apply. Aboriginal communities are often violated in this way. For example, the police officer who shot and killed Kumanjayi Walker in the Warlpiri town of Yuendumu, expressed that it was like the Wild West, with "f *** all rules" (Park & Butler, 2022). Cameroon-born scholar Achile Mbembe (2003) explains how colonial power enables necropower – the power of death – by exercising "power outside the law" (p. 23) in relation to First Nations people. There are no legal protections, because contrary to the belief of criminologists, the colonial settler law is intent on eliminating First Nations societies. The colonial camp is geared towards structured dispossession, with the goal of "colonial state-formation, settlement, and capitalist development" (Coulthard, 2014, p. 7).

Deadly Connections in its frontline work, programmes, advocacy, and activism responds to the "colonial matrix of power" (Mignolo, 2011, pp. 8/9; Quijano, 2007, p. 168) beyond the prison. Whether inside or outside prisons, colonial oppression is a heavy weight on First Nations people's lives and capacity to exercise self-determination. Racism affects child welfare, education, health care, experiences of rehabilitation, diversion, and policing. Settler colonialism requires "particularized modes of control – prisons, ghettos, minoritizing, schooling, policing – to ensure the ascendancy of a nation and its white elite" (Tuck & Yang, 2012, p. 5). Darumbal/South Sea Islander journalist, scholar, and activist Amy McQuire (2016) observes that "even if you aren't confined by physical walls, sometimes the reality of being Aboriginal in this country can feel like a prison in itself". Decolonizing criminological theory implores an engagement with colonial logics across various carceral settings.

Speaking truth to power through writing the narrative: anti-disciplinary approaches

As fearless change makers, Deadly Connections leadership and staff confront colonial-carceral institutions without compromise. In their advocacy for *mob*, they expose harms inflicted by child protection authorities, community corrections, prisons and youth detention centres.

This is done through direct action (e.g., speaking at Black Lives Matter rallies and organizing campaigns for people in prison during the pandemic) and through rewriting narratives about experiences of criminalization. Unlike criminologists whose partnerships with penal institutions make them beholden to such institutions, Deadly Connections is only accountable to *mob*. Its success is measured by the strength of community and individuals who engage with its programmes and activities. Following on from the documentaries *Incarceration Nation* (2021) and *Unheard* (2021) on penal racism in Australia, in which we (Keenan Mundine and Carly Stanley) retold our stories, Carly Stanley (2021) wrote for *Indigenous X*:

> From the time the first fleet arrived, our mob has been controlled under the guise of protection. […]. While the historical era of "protection" has dissipated, such controls have manifested in new forms through our legal systems. The racially driven and carceral nature of missions and reserves was gradually superseded by the institutional growth of the child protection, youth and adult "injustice" systems. Systems that continue to disproportionately inflict violence, disruption and devastation for First Nations people, families and communities.

Throughout the pandemic, Deadly Connections has been tenacious in its criticism of inhumane conditions in prisons. It slammed the protracted lockdowns; the suspension of programmes, in-person visits, and employment; and the inadequate healthcare, especially for *mob*, and advocated for the release of people in prison. It did so by sharing the stories of people inside in mainstream, First Nations, and social media; at parliamentary inquiries; and in open letters. It did this alongside its tireless work of providing care for people during community lockdowns. To extend its advocacy and elevate the lived experiences of people in prison, Deadly Connections produced a survey of Aboriginal people in prison and their families, which found that 98 percent of people inside experienced detrimental effects to their mental health and well-being during the pandemic (Deadly Connections, 2020a). It proved to be a powerful counternarrative and context to the Corrective Services New South Wales' own, and much narrower, survey that found 80 percent of people inside were happy with the rollout of family video visits during the pandemic (Community and Justice NSW Government, 2020).

In other advocacy work, Deadly Connections has made submissions and appeared in parliamentary inquiries on New South Wales deaths in custody, impacts on children of parental incarceration, and judicial impartiality. Its evidence highlights the systemic perpetuation of carceralism in the lives of First Nations people:

> the state's law enforcement model has continually subjugated, segregated and harmed First Nations people since the early period of colonisation. Collectively, these experiences and state interventions have meant that First Nations peoples have principally been dominated by, and had decisions made for them by non-Aboriginal decision-makers and society.
>
> *(Deadly Connections, 2020b, p. 10/11)*

By rewriting narratives, Deadly Connections is exposing the partiality of positivist approaches to criminology and its complicity in the colonization of First Nations people. It provides a counterpoint to the stereotypes in criminology about justice-involved First Nations people and identifies the harms of institutionalization. It challenges the dominant narratives and provides narratives by First Nations people. This is a feature of its Bugmy Justice Report project. These reports for criminal sentencing change the criminological imagination from criminogenic risks and needs to the humanity and dignity of the person and centring the person's own words. This project involves yarning with the First Nations person over several sessions and speaking

to family and community supports to tell the person's life story on their terms and highlight their strengths, and connections with family, culture, and community. Reports place the person within histories of colonization and systemic racism and emphasize the person's strengths and sacrifices in the face of oppression. Additionally, reports outline cultural supports, healing, and well-being strategies for the person in community, including with the ongoing involvement of Deadly Connections on their journey, which may include, for instance, placement at Girra Girra.

Through First Nations storytelling and advocacy, Deadly Connections is disrupting the "control-freak discipline" of Criminology that authorizes only a narrow set of methods and ideas, as Biko Agozino (2003) argues. Deadly Connections' narratives offset deficit depictions of First Nations people as offenders or passive victims and portray them in terms of their humanity, cultural connections, and resilience. Ojibwe woman Dr Heidi Kiiwetinepinesiik Stark (2016) asserts that settler colonies cast "Indigenous men and women as savage peoples in need of civilization and constructing Indigenous lands as lawless spaces absent legal order" (p. 1) to justify colonial law. Deadly Connections tells another story – a story of strengths – demonstrating that First Nations power resists injustice and builds community. Deadly Connections' experience reveals how self-determination is a means for decolonization and a pathway out of carceral thinking and doing.

Conclusion

Through building community and pushing back on carceral institutions, Deadly Connections enacts decolonization. It refuses to conform to criminological tropes of First Nations people as statistics, offenders, and passive victims or to accept that carceral institutions serve First Nations people. The everyday practice of Deadly Connections furthers claims to sovereignty and disrupts the colonial criminological narrative that is bent on the control and confinement of First Nations people and the non-recognition of First Nations laws and justice processes. Where criminology contributes to colonial logics of dispossession, Deadly Connections rises up in collective action to empower First Nations people. Its work to heal, strengthen, and create self-determination for individuals and families lays the foundation for First Nations justice-making. The poetry of Jason Tighe Fong (2022), Kamilaroi man, incarceration survivor, and co-founder of Beyond the Bars Art, reflects on how justice is conceived through struggle and transforming the justice system:

> We conceive justice
> where there's more positive support networks
> for any country brother in the city
> thinkin they alone, no self-worth
> the same for city brothers on country earth
> yes, we will conceive justice
> and will keep seeking justice
> till that brighter day
> when finally, maybe just finally
> justice can and will conceive us (p. 7)

This chapter has advanced that decolonizing criminological theory must be constituted and informed by ongoing activism. Frantz Fanon (1991) emphasized that struggles on the ground give meaning to decolonization, rather than formal acts of state. As some of us have articulated

elsewhere, decolonization is a "verb rather than a noun" (Blagg & Anthony, 2019, p. 325) that requires continual refusal and resistance to the colonial system, including its disciplinary weapon of criminology. A three-pronged response to criminology is an enduring challenge: engaging First Nations epistemologies of law and justice and lived experience of carceral institutions (*post-disciplinary* approaches); a broad elucidation of colonial-carceral logics across various sites of confinement and oppression (*trans-disciplinary* approaches); and resistance to positivist criminology methods and institutions (*anti-disciplinary* approaches). As we have shown through centring the contributions of Deadly Connections, decolonial theory honours the lived struggles of First Nations people and the frontline work of organizations. Decolonizing criminology theories is, therefore, not simply about new theories but about engaging a decolonial praxis that translates ideas from and into practice.

Notes

1 The term refers to Nations people associated with a particular place or country. It can represent a family group, clan group or wider community group.
2 Lock hospitals were used to quarantine First Nations people in the first half of the twentieth century. Police would force First Nations people into these hospitals, which were purportedly for people with disease. However, it was common for First Nations people without disease to be forced into these hospitals to hasten their deaths. See Munro (2014, 48).

References

Agamben, G. (1998). *Homo sacer: Sovereign power and bare life* (D. Heller-Roazen, Trans.). Stanford University Press.

Agozino, B. (2003). *Counter-colonial criminology: A critique of imperialist reason*. Sterling.

Anthony, T., Marchetti, E., Behrendt, L., & Longman, C. (2017). Individualised justice through Indigenous community reports in sentencing. *Journal of Judicial Administration*, *26*(3), 121–140.

Anthony, T., & Sherwood, J. (2016, December 10). *A decolonising critique of the disciplining and disciplinary inwardness of criminology* [Video]. Youtube. https://www.youtube.com/watch?v=2PamZ9CzZwo

Bagaric, M. (2016). Three things that a baseline study shows don't cause Indigenous over-imprisonment; three things that might but shouldn't; and three reforms that will reduce Indigenous over-imprisonment. *Harvard Journal on Racial & Ethnic Justice*, *32*, 103–151.

Behrendt, L. (2019). Stories and words, advocacy and social justice: Finding voice for Aboriginal women in Australia. *Australian Feminist Law Journal*, *45*(2), 191–205.

Bhambra, G.K. (2007). Sociology and postcolonialism: Another 'missing' revolution? *Sociology 41*(5), 871–884.

Blagg, H., & Anthony, T. (2019). *Decolonising criminology: Imagining justice in a postcolonial world*. Palgrave Macmillan.

Canning, K. (2022). A cacophony of mayhem: Colonialist prisons. *Journal of Prisoners on Prisons*, *30*, 46–47.

Carrington, K. (2021). *Decolonizing criminology through the inclusion of epistemologies of the South*. BSC Blog. https://thebscblog.wordpress.com/2021/08/11/decolonizing-criminology-through-the-inclusion-of-epistemologies-of-the-south/

Clayton-Dixon, C. (2020). *Surviving New England – A history of Aboriginal resistance and resilience through the first forty years of the colonial apocalypse*. Newara Aboriginal Corporation.

Cohen, S. (1972). *Folk devils and moral panics: The creation of mods and rockers*. MacGibbon and Kee.

Community and Justice NSW Government. (2020, September 10). *CSNSW officers enable 100,000 family video visits for inmates*. https://www.dcj.nsw.gov.au/news-and-media/media-releases/csnsw-officers-enable-100,000-family-video-visits-for-inmates.html

Coulthard, G. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. University of Minnesota Press.

Crewe, B. (2011). Depth, weight, tightness: Revisiting the pains of imprisonment. *Punishment & Society*, *13*(5), 509–529.

Day, A. (2003). Reducing the risk of re-offending in Australian Indigenous offenders: What works for whom? *Journal of Offender Rehabilitation*, *37*(2), 1–15.

Day, A. (2020, September 3). *Without accountability there is no justice for my mother's death in Australian police custody*. The Guardian. https://www.theguardian.com/commentisfree/2020/sep/03/without-accountability-there-is-no-justice-for-my-mothers-death-in-australian-police-custody

Deadly Connections. (2020a, June 9). *Inside out Aboriginal justice consultancy*. https://www.findglocal.com/AU/Sydney/1262633800453740/Inside-Out-Aboriginal-Justice-Consultancy

Deadly Connections. (2020b, September 30). *Inquiry into high level of First Nations people in custody and oversight and review of deaths in custody. Submission No 126*. https://www.parliament.nsw.gov.au/lcdocs/submissions/69204/0126%20Deadly%20Connections%20Community%20and%20Justice%20Services%20Limited.pdf

Deadly Connections. (2022a). *Impact Report 2018–2021: Transforming justice. Transforming lives. Transforming communities*. https://deadlyconnections.org.au/wp-content/uploads/2022/08/Deadly-Connections-Impact-Report-2019-2021.pdf

Deadly Connections. (2022b). Homepage. https://deadlyconnections.org.au/

Escobar, A. (2001). Culture sits in places: Reflections on globalism and subaltern strategies of localization. *Political Geography*, *20*(2), 139–174.

Fanon, F. (1991). *The wretched of the earth*. Grove Weidenfeld.

Fitzgerald, R., Cherney, A., & Heybroek, L. (2016). Recidivism among prisoners: Who comes back? *Trends & Issues in Crime and Criminal Justice*. No. 530. Australian Institute of Criminology. https://www.aic.gov.au/sites/default/files/2020-05/tandi530.pdf

Fong, J. (2022). We conceive justice. *Journal of Prisoners on Prisons*, *30*, 71–72.

Foucault, M. (1995). *Discipline and punish: The birth of the prison* (A.M. Sheridan, Trans.). Vintage Books.

Gaykamangu, J.G. (2012). Ngarra law: Aboriginal customary law from Arnhem land. *Northern Territory Law Journal*, *2*, 236–248.

Gisev, N., Larney, S., Kimber, J., Burns, L., Weatherburn, D., Gibson, A., Dobbins, T., Mattick, R., Butler, T., & Degenhardt, L. (2015). Determining the impact of opioid substitution therapy upon mortality and recidivism among prisoners: A 22-year data linkage study. *Trends & Issues in Crime and Criminal Justice*. No. 498. Australian Institute of Criminology. https://www.aic.gov.au/sites/default/files/2020-05/20-1011-FinalReport.pdf

Goffman, I. (1963). *Stigma: Notes on the management of spoiled identity*. Englewood Cliffs.

Grant, E. (2016). Designing carceral environments for Indigenous prisoners: A comparison of approaches in Australia, Canada, Aotearoa New Zealand, the US and Greenland (Kalaallit Nunaat). *Advancing Corrections Journal*, *1*, 26–47.

Hall, S. (2006). Black diaspora artists in Britain: Three "moments" in post-war history. *History Workshop Journal*, *61*(1), 1–24.

Hall, S., Critcher, C., Jefferson, T., Clarke, J., & Roberts, B. (1978). *Policing the crisis: Mugging, the state and law and order*. Macmillan.

Hyatt, A. (2013). Healing through culture for incarcerated Aboriginal people. *First Peoples Child & Family Review*, *8*(2), 40–53.

Jackson, M. (2017, October 14). Prison should never be the only answer. *E-Tangata*. https://e-tangata.co.nz/comment-and-analysis/moana-jackson-prison-should-never-be-the-only-answer/

Justice Reform Initiative. (2022). *Jailing is failing Aboriginal and Torres Strait Islander people*. https://www.justicereforminitiative.org.au/aboriginal_and_torres_strait_islander_people

Langton, M. (2020). Sovereignty: 65,000 years of ancestral links to land. https://www.atns.net.au/understanding-sovereignty

Lombroso, C. (1911). *The criminal man*. The Knickerbocker Press.

Mbembe, A. (2003). Necropolitics. *Public Culture*, *15*(1), 11–40.

McGuire, M.M., & Palys, T. (2020). Toward sovereign Indigenous justice: On removing the colonial straightjacket. *Decolonization of Criminology and Justice*, *2*(1), 59–82.

McQuire, A. (2016, September 28). The indignities that killed Ms Dhu, are the same indignities hurting her family. *Medium*. https://medium.com/@amymcquire/the-indignities-that-killed-ms-dhu-are-the-same-indignities-hurting-her-family-5320278fd433

Mignolo, W. (2011). *The darker side of Western modernity: Global futures, decolonial options*. Duke University Press.

Mundine, K. (2022). Anti-carceral and anti-colonial work on the ground. *Journal of Prisoners on Prisons*, *30*, 26–27.

Munro, C. (2014). Queensland's fantome history. *The Tracker*, *4*(30), 48–49.
Park, M., & Butler, D. (2022, March 18). 'Cowboy stuff with no rules': Zachary Rolfe text messages to army friend revealed. *NITV*. https://www.sbs.com.au/nitv/article/2022/03/18/cowboy-stuff-no-rules-zachary-rolfe-text-messages-army-friend-revealed1
Price, J. (2015). *Prison and social death*. Rutgers University Press.
Quijano, A. (2007). Coloniality and modernity/rationality. *Cultural Studies*, *21*(2/3), 168–178.
Roach, V. (2022). The system is not failing, it is working to harm First Nations people. *Journal of Prisoners on Prisons*, *30*, 54–56.
Said, E. (1993). *Culture and imperialism*. Vintage.
Simpson, A. (2014). *Mohawk interruptus: Political life across the borders of settler states*. Duke University Press.
Snowball, L., & Weatherburn, D. (2006). Indigenous over-representation in prison: The role of offender characteristics. *Crime and Justice Bulletin*, No. 99. https://www.bocsar.nsw.gov.au/Publications/CJB/cjb99.pdf
Stanley, C. (2021, November 4). Indigenous incarceration: An extension of the protection era. *IndigenousX*. https://indigenousx.com.au/indigenous-incarceration-an-extension-of-the-protection-era/
Stark, H.K. (2016). Criminal empire: The making of the savage in a lawless land. *Theory and Event*, *19*(4), 1–18.
Tauri, J. (2013). Indigenous critique of authoritarian criminology. In K. Carrington, M. Ball, E. O'Brien, & J. Tauri (Eds.), *Crime, justice and social democracy: International perspectives* (pp. 217–233). Palgrave Macmillan.
Tuck, E., & Yang, K.W. (2012). Decolonization is not a metaphor. *Indigeneity, Education & Society*, *1*(1), 1–40.
Walter, M. (2016). Indigenous peoples, research and ethics. In M. Adorjan & R. Ricciardelli (Eds.), *Engaging with ethics in international criminological research* (pp. 87–105). Routledge.
Weatherbum, D., Fitzgerald, J., & Hua, J. (2003). Reducing Aboriginal over-representation in prison. *Australian Journal of Public Administration*, *62*(3), 65–73.
Weatherburn, D. (2014). *Arresting incarceration: Pathways out of Indigenous imprisonment*. Aboriginal Studies Press.
Weatherburn, D. (2020, June 15). Violence and death at end of a long chain. *The Sydney Morning Herald*, p. 23.
Weatherburn, D., Snowball, L., & Hunter, B. (2008). Predictors of Indigenous arrest: An exploratory study. *Australian & New Zealand Journal of Criminology*, *41*(2), 307–322.

47

Tackling whiteness as a decolonizing task in contemporary criminology

Rod Earle

> White people have not always been 'white', nor will they always be 'white'. It is a political alliance. Things will change.
>
> Amoja Three Rivers (Epigraph in Roediger, 1997)

Contexts and introduction: an English tableau from the 2020s

In June 2020, a large metal statue of the slave trader Edward Colston was pulled off its plinth in the city of Bristol and dumped by an angry crowd into the river that runs through the town and out to sea. I want to gather thoughts and ideas around that incident to frame my analysis of how a better understanding of whiteness might help the decolonizing task facing criminology and criminologists. In part, this is an act of tribute, a salute to the courage in the crowd that facilitated this action, but by describing this and another incident routed through Britain's criminal justice system I hope to show how whiteness reverberates through society. Like the ambient hum of an air-conditioning system, it is, for most white people, something that is only brought to awareness when it is interrupted, as it was in Bristol. By amplifying and exposing aspects of whiteness, I hope to demonstrate its pervasive but often unnoticed presence to foster better resistance to racism and build dissent against the crimes of white supremacy.

In May 2020, the Black Lives Matter (BLM) campaign reignited and went global after white police officers in the US were filmed killing George Floyd, a Black man they had arrested on suspicion of using a counterfeit banknote in his hometown of Minneapolis. A few weeks later, in June 2020, young people called a BLM protest in the town that I live in (just outside London) and I found myself painting placards with my daughter. Together with my partner, we joined a large crowd of mostly young white people marching through a town that probably thought of itself as a stranger to racial malice. That was the first white privilege to take a hit.

A few days later, television screens across the world relayed dramatic pictures from Bristol – a port city in the West of England with a large Black community dating back to its historic association with the slave trade. Decades of local campaigning for the removal of Colston's statue had exhausted all the conventional democratic channels. Inspired by the gathering international momentum of BLM protests, anger and organization teamed up and a large crowd cheered as he was pulled from his plinth, dragged to the dockside and dumped in the Bristol Channel.

DOI: 10.4324/9781003176619-52

Some days later, the statue was pulled up from the bottom of the dock, the same dock where boats Colston had sponsored left for West Africa to collect their cargo of Black men, women, and children who were sold into slavery in Britain's Caribbean colonies. Colston's riches and reputation for philanthropy were the results of cramming more than 100,000 people into his boats to maximize the profit he would make when the survivors were sold as slaves. As these people were sold, the initials of Colston's Royal African Company (RAC) were branded on their chests to signify their status as property rather than people. I am glad that the first time I see Colston's statue it is horizontal in a Bristol museum, dented and daubed with profanities. Its work as a monument is undone and remade, unsettled and reclaimed, as the copious museum notation surrounding the display makes clear. A small decolonizing of space and thought has been triggered.

In January 2022, four young white people are acquitted of committing criminal damage to the statue by a jury in Bristol. Their defence was to situate their actions in the context of history as a contested rather than received narrative and to argue that the continued presence of the statue in Bristol amounted to an 'indecent display' they were justified in removing. The jury's decision to accept this defence was greeted with hostility and outrage in the right-wing and nationalist UK media.

In August 2021, a young white man was sentenced at Leicester Crown Court for downloading 67,788 documents from neo-Nazi, white supremacist, and antisemitic websites. The police described him as a white supremacist with Nazi sympathies and he was charged with possessing a record of information likely to be useful to a person committing or preparing an act of terrorism under section 58 of the Terrorism Act. In court, after considering reports, the judge in the case opted for a suspended custodial sentence, but it was the judge's remarks in court that propelled the case into the newspapers. He suggested the 21-year-old man's actions amounted to 'teenage folly' and ordered that he be returned to court in four months where the judge himself would test his reading of a personally recommended list of authors, saying to the young man "have you read Dickens? Austen? Start with *Pride and Prejudice* and Dickens's *A Tale Of Two Cities*. Shakespeare's *Twelfth Night*. Think about Hardy. Think about Trollope." (Barnes, 2021; Earle, 2021; Tickell 2021). Despite evidence of the young man's sustained involvement in neo-Nazi activities, the increasing frequency of lethal attacks by white supremacists in the UK, Germany, Norway, the US, and New Zealand, and evidence of the increasing traction of fascist ideology across Europe, the judge did not sense the threats in his actions. Rather than recognize the huge reservoirs of white racial animosity that sustained the young man's interests, he felt sorry for him and found him a pitiable individual; he identified with him. He saw a young, vulnerable white man and diagnosed that a misplaced sense of racial identity required gentle redirection toward the patron saints of English whiteness, as represented by the pantheon of classical English literature – Charles Dickens, Jane Austen, Thomas Hardy, and William Shakespeare. In January 2022, three appeal court judges quashed the sentence and imposed an immediate custodial sentence on the young man after protests from anti-racist organizations. What alarmed and angered me at the time of the original sentence were comments from UK criminologists on social media commending the judge's bravery for resisting an immediate punitive prison sentence in favour of a 'creative' non-custodial alternative (see Earle, 2021) ignoring and erasing the racial connotations of the whiteness of all the protagonists.

This short tableau of scenes in the UK where race, racism, and colonial history made headline news is presented to offer an indicative insight into characteristic features of whiteness that, even now, are rarely part of criminology's broadening gaze. In the following sections, I explore some of the theoretical, conceptual, and practical challenges faced by criminologists in the UK, but mainly in England, as we seek to reconcile our practice with the white

imperial legacies (Stoler, 2016) of the discipline. Race, racism, and colonialism are "marked by specialisations" (Tuck & Yang, 2012, p. 21) and varieties of denial, deflection, and avoidance of these historical features, including their locational specifics, often manifest in British criminology as casual deference to the US 'pariah' account of racism. The racial dynamics of the US carceral apocalypse dominate teaching and scholarly outputs at the expense of more direct and sustained engagement with British and European colonial legacies (Phillips et al., 2019). Among many theoretical and practical deficiencies, this completely fails to develop meaningful anti-colonial solidarity by reinforcing tendencies within whiteness toward an empty politics of virtue and "moves to innocence" (Malwhinney as cited in Tuck & Yang, 2012, p. 3; see also Wekker, 2016). Recognizing these tendencies in my own practice, I begin by outlining some of my understanding and misunderstandings of racism.

Racism, whiteness, coloniality

Racism – and its corollary of race – delivers an understanding of global humanity as a hierarchy with white people and cultures of European heritage at the top. With the logic of race, the position of white people and cultures is presented as a 'natural' or 'innocent' superiority arising from various combinations of innate biological characteristics and meritocratic cultural ascendancy. Racism and race, therefore, represent an enduring and profound 400-year-old crisis in the narration of what it means to be human and how we can think about human life on Earth. Race appears to offer a resolution to that weighty and persistent existential puzzle – who are we? – and does it on a unifying planetary scale such that race and anti-black violence, which inevitably accompanies such a concept (Mbembe, 2017), become central to the very idea of global order (Barder, 2021). It is sustained at the level of personal experience to become part of the general 'grid of intelligibility' structuring our sense of the human (Hall, 1996; Smith, 2016). As the various European colonial projects developed, race became *the* vernacular for human difference – the language of colonization (Turda & Quine, 2018). It is no exaggeration to think of the emergence of a racial imaginary as Copernican in scale and consequence (Barder, 2021). As Du Bois (2007a, 2007b) was quick to notice, the driving force behind the twentieth-century colour line was "the new religion of whiteness sweeping the world" (Lake & Reynolds, 2008, n.p.). Race has become the structuring regime of the modern world, the decisive antagonism that has shaped the world I live in, and my own life tells me so.

Although I was born in Ghana, Africa's first postcolonial nation, in 1958, for the first five decades of my life, my whiteness was largely invisible to me because I lived all but the first three years of those decades in an England that was only slowly recognizing itself as multicultural. Had I lived in Ghana, the 'fact' of my whiteness would have been, literally, self-evident and problematic to varying degrees (see Pierre, 2013 for how race, colonial whiteness and its legacy structure Ghanaian society). My Irish nationality, via my father's, was not a choice but a necessity. At primary school in 1968, I was deemed ineligible for inclusion in a group UK passport to visit France when my birthplace in Accra was declared on the application documents. My mother was shocked to learn that because she had failed to register my foreign birth as required under the 1914 British Nationality and Status of Aliens Act, I was formally an unregistered alien. An Irish passport was more readily and quickly available because Ireland had no such registration requirement and my status as an 'alien' was thus short-lived and easily resolved. Another of the variable privileges of whiteness.

These small biographical details have slowly, belatedly, alerted me to the contingencies of whiteness (Baker, 2021) because of their explicit connection to racial narratives, either in terms of the primacy of natality (you are defined by where you were born) or the colonial otherness of

Irishness. Growing up in England from the age of three, I was shielded from racialization by the way whiteness is evacuated from the racial equation. It was only much later in life – as I turned 50 – when I started to work with a Black/mixed-race academic on questions of race, ethnicity, and identity (Phillips & Earle, 2010) that I felt the need to theorize whiteness rather than simply live within it. That was another white privilege that needed to take a hit.

Most privileges are largely invisible to people who enjoy them, as I discovered relatively early in life – during the 1970s and 1980s – when it came to some of the privileges of hegemonic masculinity (Connell, 1987). Women I knew and respected and women I loved were active in feminism and were theorizing their activism around the slogan 'the personal is political' because of men's political indifference to it and their continual exposure to its repetitive, persistent, and sometimes violent hypocrisies. I learned how 'normal life', everyday life, was imbued with gender dynamics, hierarchies of value, and patterns of practice that required change. Liberation was the term some feminists used. Often, these liberation struggles included a socialist register that anchored the fight for equality, justice, and freedom in the oppressive and exploitative class structure of capitalist society. But in these relationships with white women, the dynamics of race and racism did not surface or call me to change or understand my privileges because I felt as innocent of its structures as I did of its practices. The last thing I thought of myself as was a white supremacist. I felt no direct personal equivalence in my alignment with whiteness, the dominant position of the racial order and my alignment with women's refusal of the patriarchal classification of their lives and being. My critical awareness of the racial order was not accompanied by the same sense of obligation to recognize its dividends (whiteness), resist its tyrannies, and disinvest in its mechanism. This is not an uncommon failure among white people. As Táíwò (2022) argues, the identity politics pioneered by the Combahee River Collective and other Black feminists in the 1970s and 1980s were widely taken up by white feminists in the women's movement but with the positionalities of race largely abandoned (Ware, 2005). New theorizations of intersectionality, developed again largely by Black feminists (Crenshaw et al., 2019), have resisted these erasures and sought to reverse their evacuations, only to find their theorization once more being 'de-raced' as their insistence on the combination and intersecting vectors of power is misrepresented, co-opted or recuperated by more singular interests around gender or class (Jonsson, 2020), as if these can ever exist independently of race. This reflects the way that – across Europe and the US – a powerful, reactionary, right-wing, and racist political culture has secured a widespread ascendancy in which struggles for racial justice have become stagnant, particularly among white people and white majority nations (Meer, 2022; Valluvan, 2019). Personal commitments to challenging racism and accepting that it secures benefits for white people at the expense of Black people have been ridiculed and caricatured as 'political correctness' or 'woke culture' rather than being embraced as part of the difficult work of undoing the colonial and seeking to become something as simple as a decent human being. The momentum developed by BLM challenged this inertia.

In the next section, I try to explore white people's orientations to colonialism in the UK by engaging with some of George Orwell's work. I seek to show how George Orwell made contributions to anti-colonial analysis that are somewhat overshadowed by his iconic status as the author of the classic dystopian fictions *1984* and *Animal Farm*.

An 'evil state of affairs': white acquiescence and 'abolishing part of myself'

George Orwell's insights on colonialism are worth revisiting in the convivial sense of returning to something with further social and radical intentions to renew theory (Gilmore-Wilson,

2022). In 1937, before World War II and the British Empire's slow collapse began to gather pace, Orwell (1962) wrote:

> Under the capitalist system in order that England may live in comparative comfort, a hundred million Indians must live on the verge of starvation – an evil state of affairs, but you acquiesce in it every time you step into a taxi or eat a plate of strawberries and cream. *(p. 140)*

Orwell was writing just six years before the worst famine in Indian history devasted British-ruled West Bengal in 1943/1944, killing nearly two million people, and nearly 100 years after An Gorta Mór, 'the great hunger' of 1845–1852, in British-ruled Ireland, where about one million people died and a population of eight million was reduced to six million through emigration, setting a diasporic pattern familiar to many colonized nations. In March 2021, the Irish government announced that the population of the island of Ireland had for the first time exceeded that of 1851. Colonial violence casts a very long shadow.

Orwell's brief service in the colonial police in Burma had alerted him to the long-standing, exploitative and extractive basis of Britain's imperial projects. He goes on, in his next sentence, to briefly consider the implications of the impoverishment that might accompany the reversal of Britain's colonial ascendancy. "The alternative is to throw the Empire overboard and reduce England to a cold and unimportant little island where we should have to work very hard and live mainly on herrings and potatoes" (Orwell, 1962, p. 140).

Orwell's understanding of Britain's class structure and politics is sharpened by his personal experience of both its domestic and imperial dimensions. After five years in the Indian police force, he spat, "I hated the imperialism I was serving with a bitterness which I can probably not make clear" (Orwell, 1962, p. 145). Orwell knew that having been a working part of the imperial machine provided him with special insights into its mechanics and sentiments, insights into the differences of life in the metropole of empire (London, England, Britain) and in the colonies (India, Africa, the Caribbean, Aotearoa New Zealand, Australia). The enduring myth of Britain's civilizing mission was transparently false to him because of his first-hand knowledge of its brutality, sadism, and double-dealing. He was acutely aware that the elevated material position of the British state in world affairs was the product of exploitation, economic extraction, and systemic violence on a global scale. In 1939, on the outbreak of war in Europe, he addressed his readers among the left wing of British politics, berating them for their insular neglect of capitalism's global reach: "What we forget is that the overwhelming bulk of the British proletariat does not live in Britain but in Asia and Africa […]. This is the system we all live on." (Orwell, 1968, p. 397). For Orwell, the prospects of reckoning with racial capitalism were so profound as to be existentially threatening. He could see that the abolition of extracting profit from across the colonies would mean more than a few "uncomfortable changes" (Orwell, 1962, p. 142) to some ingrained habits in Britain. Orwell recognized that for the average white middle-class person, the abolition of Empire and the abolition of the class system involved "abolishing part of oneself" (Orwell, 1962, p. 142).

I find this diagnosis persuasive for being constructively unsettling in ways that are consistent with those identified by Tuck and Yang (2012) in their examination of the way decolonization is sometimes recuperated and disarmed as a simple metaphor for generic change. By identifying the ontological implications of anti-colonial struggle and how it affects our sense of being in the world, Orwell's analysis connects both to Fanon's legacy of anti-colonial analysis and to feminist concerns to link the personal to the political. However, for Orwell, its implications would simply propel radical politics in Britain into a cul-de-sac because a political programme

"asking us to commit suicide" (Orwell, 1962, p. 148) would encounter a variety of relatively predictable presentational problems (Robbins, 2017). Orwell's gloomy prognosis was overtaken by the triumph of European fascism in Germany, Italy, and Spain, which triggered a war that engulfed much of the planet. After the war, as the colonies of various European states in Africa and Asia asserted their determination to reclaim their own futures rather than simply provision Europe's, the issue of who and what needed to be abolished was largely displaced by the Cold War until the collapse of the Soviet Union in 1989. This signalled the historic closure of the post-war impasse between labour and capital in favour of capital and the global ascendancy of its neoliberal form.

If you are a criminologist in the UK, the prospect of working in 'a cold and unimportant little island' off the northern coast of western Europe has been gathering pace since the vote in 2016 to leave the European Union, even if the diet of herring and potatoes has not. Seen by many as an act of national self-harm, this rupture was accomplished not by radical leftists inspired by George Orwell realizing that imperial abolition offered a new future and constructive departure from the present, but by opportunist Conservatives keen to guide the UK back to greatness, back to Great Britain. The ultra-nationalist UK government of 2022 is an alliance determined to celebrate British imperialism and reinvent its past as a viable future even though the prospects of doing so without the sustained violence and overwhelming force that delivered the supremacy and riches of the eighteenth, nineteenth, and half the twentieth century are not so much remote as profoundly delusional. The fact that the 'front bench' (political leadership) of the Conservative party is the most ethnically diverse to ever sit in the palace of Westminster,[1] cannot conceal Brexit as a politics of forlorn white revival built largely on the seductive perversities of colonial disavowal, wilful race blindness, and imperial hubris. This is explored next.

'When they see us': criminal justice, white optics, black lives

Historically, racism coincides with and underpins the global reach of colonialism. It establishes a hierarchical conceptualization of an unfolding humanity, effectively inventing an exclusive and excluding concept of the individual 'man of property'. Thinking with race and seeing with race offers an unprecedented conceptual unification of the self, the body, and the world of property relations (Raengo, 2013). It resonates powerfully with a colonial project that has always insisted on its global ambitions to own the world in the name of whiteness. Du Bois (2007b) identified this trajectory as tipping Europe into the first imperial war of the twentieth century.

Whiteness was the primary ontological vehicle for propelling the colonial ambition to make a world whole in its civilizational image of itself. As Fanon (1967) explains, it provides a way of being in the world (ontology) that corresponds with a sense of self (identity), the body (physicality and embodiment) and a place, the whole new world – planet Earth. In this totality, it has no equivalent and can have no alternative. It simply needs not to be. Decolonization cannot be to colonization what atheism is to religion, a critique anchored in the conceptual terminology it seeks to transcend. As Tuck and Yang (2012) argue, decolonization must retain its fundamental incommensurability and decline the temptations of commensuration (Espeland & Stevens, 1998), of being reduced to the terminology, trajectory, and practice of the colonial imagination.

But for that to happen, it needs to be properly understood. One of the ways this can happen in criminology – and perhaps a helpful starting point – is for white criminologists to recognize the way whiteness as a racial identity derives its meaning and power not from being a phenotypical description but a social construct engineered to reproduce inequality, a construct they

are party to maintaining. The actuality of whiteness is a basic fact that Black authors have been writing about since at least 1830 when David Walker penned *Whites as Heathens and Christians* (Roediger, 1997). The continued neglect of Du Bois's oeuvre (Morris, 2015) and its segregation into various subfields of sociology or criminology foster this acquired ignorance of whiteness among white scholars. As Roediger (1997) notes "the tendency of many [white] writers to believe that 'whiteness studies' is a recent creation in which white scholars have pioneered runs directly counter to [the evidence]" (p. x). Walker (1992) puts it simply when one of her fictional characters observes, "No, no […] [t]hey behave this way not because I'm black but because they are white" (p. 38).

As Roediger (1997) insists, Black people have been thinking and writing about white people and whiteness for a very long time but the exclusive arrogance of whiteness is to dismiss this fact because it does not correspond with the blackness of their imagination. The fact is, Black people have always needed to 'read' whiteness and white people's behaviour, not least to more safely navigate its various terrors and entrapments. Bell hooks (1997) describes the ability and preference of white people to imagine "that black people cannot see them" as an illusion that is at once durable, powerful, and fragile, indicative of a profound fear of actually being seen, of knowing there is something to be seen – whiteness.

While the consequences of racialized visibility are a matter in plain sight to non-white people, they are amplified to life-threatening, life-reducing, and life-denying effects by criminal justice. The title of Ava Du Vernay's Netflix series *When They See Us* attests to the ubiquity of this truth among Black Americans. It tells the story of five New York teenagers arrested in 1989 and convicted for a rape they did not commit. Brutalized, abused, and incarcerated, they were only exonerated after years of campaigning exposed the lies and calculating corruption of white police officers and white prosecutors who could not and would not concede their actions were driven by racial animosity. To varying degrees of lethality mediated by national specificities (UK police officers are usually unarmed), these dynamics operate in the racial differentials and disproportionalities encountered in the UK's criminal justice system. The phrase 'when they see us' has an international semantic utility (Raengo, 2013), i.e., something of its kind has been in use from the Dutch and English slave forts built along the coast of West Africa in the sixteenth and seventeenth centuries to the streets of twenty-first-century London, where stop-and-search operations target young Black people at a rate nine times higher than their white counterparts (Dodd, 2020).

So, whiteness is about skin colour, but it is not just about skin colour. It is better understood as a shifting position in a set of social relations established by colonialism. This recurring, relational positionality comes to mind in the UK where terms such as White Irish or Anglo-Irish have varying connotations of whiteness, coloniality, resistance, and relative privilege – various kinds of alignments with white supremacy. Whiteness in other countries will have other variants and combinations (Baker, 2021; Kalmar, 2022). For example, the field of Hispanic whiteness studies now differentiates itself from the studies of Lusophone whiteness, which derives from features of Portuguese colonialism (Persánch, 2020). Matache (2017) discusses how some Roma people in Europe deploy the concept of 'gadjo-ness' (white privilege) to refer to how their experience of racialization and othering operates against the conventions of dominant white norms. Thus, whiteness is neither an epidermal nor a racial fact indicating fixed physical characteristics. Whiteness is about the way the accumulated cultural capital of certain 'modern', 'civilized' people – usually associated with some kind of European heritage – operates with a distinctive social dividend, sometimes referred to as white privilege.

Asking (demanding?) white criminologists to explain and develop understandings of whiteness is important because the central principle of racism is the *superiority* of the white race,

although this goes largely without saying (among white people). It is important because the prevailing theoretical and empirical literature on white identities reveals that one of their determining characteristics is the claim of invisibility and irrelevance which implies the disavowal of race, colourblindness, and other varieties of post-racial nonsense (Garner, 2007). For most of the eighteenth, nineteenth, and twentieth centuries the idea of being part of – and talking about belonging to – 'the white race' was mainstream, uncontroversial, and integral not only to the rhetoric of the major political powers of Europe and the US but people's everyday experience. This is because for much of the nineteenth and twentieth century, race – just as much as states or nations – was seen as one of humanity's foundational *political* units (Barder, 2021; Lake & Reynolds, 2008; Vitalis, 2015) and the main way of making sense of one's place in the world. When white scholars neglect whiteness they implicitly de-racialize themselves as part of the ascendant white majority, saying in effect, 'race does not exist, we want no part of it', even as the various benefits surround them. As a result, race becomes other people's business and other people's experience. The whiteness of mainstream academic activity in criminology, and other disciplines, is rendered invisible. I close this section by indicating some dimensions and characteristics of white criminology in action.

White criminology: part one

Gresham Sykes's landmark study of prison sociology, *The Society of Captives*, was published in 1958 and, in 2018, a 60th-anniversary symposium, *Sykes at 60*, was called by the Cambridge Centre for Criminology to celebrate and reflect on his work. I was thrilled to receive an invitation to participate. Aware that my invitation rested on my participation in Coretta Phillip's (2018) landmark prison study, I shared the invitation with her, indicating that I had accepted after establishing with the organizers that Coretta had been invited but declined due to other commitments. Coretta congratulated me but had seen something I had not. Every contributor on the proposed timetable was white and there was no reference to race or racism in the outlined programme tracing developments in the US penal field since Sykes' book was published. The event typified nearly everything Coretta and other scholars of colour found difficult in criminology's approach to race – white academics inviting other white academics to talk about white academics' work while being oblivious to the whiteness of it all. With the intensification of the US prison system's notoriously racialized characteristics over the preceding 60 years, the omission of Black people's experience from the draft programme notes and the platform should have been unthinkable. Instead, the unsuccessful attempt to engage a leading UK scholar on racialized imprisonment produced a lucky break for me as well as a powerful example of white innocence and privilege. Belatedly recognizing my complicity, I signalled my intention to withdraw from the conference because an all-white platform of academics talking about a white American scholar was likely to reproduce aspects of the whiteness that sustained the appalling racialized dynamics of the US penal system. To their credit, the organizers redoubled their efforts to invite a Black US scholar and on the day two such speakers gave the most powerful and lucid critical accounts of the US penal nightmare, Sykes' position in its trajectory, and carefully detailed the deadly and life-denying racial currents pulsing through its penal horrors (Miller, 2021). What was a revelation to me (whiteness, blindness, complicity) was simply another routine, wearying example of the injuries of race that afflict Black and racially minoritized scholars in criminology in the UK. The same academic currents that lifted me drag against them. That force also consists in the good intentions of white scholars, such as myself, who seek out over-burdened, under-rewarded Black scholars to fix the problems of whiteness. We can only reduce it by taking whiteness seriously.

White criminology: part two

In November 2021, three white British criminologists – associated with a current of critical criminology to which they refer as 'ultra-realist' – published 'A Critical Assessment of the Black Lives Matter Movement in Britain' in the inaugural edition of the *Journal of Contemporary Crime, Harm and Ethics* (see Hodgkinson et al., 2021). Intemperate and indulgent of weak scholarship, narrow and partisan in content, it serves as a convenient exemplar of tendencies in white criminology in the UK. It displays the characteristic resentments, projections, and acquired, indignant 'performative ignorance' of whiteness (Ware, 2008). It includes a superficial and selective dismissal of Critical Race Theory (CRT), the customary (false) accusations of the neglect of social class analysis and the charge of inadequate theorization of neoliberalism. Typical of its confusions and insecurities is the customary pre-emptive defence that "some CRT scholars may dismiss our argument because we are three white, male academics", a practice they rebut with the assertion "our ethnic background is irrelevant", adding, lest they be misunderstood, that they surely embody "Martin Luther King's assertion that we ought to focus on the content of one's character and not the colour of their skin" (Hodgkinson et al., 2021, p. 92). Discussing slavery, they echo, approvingly, the Conservative government's discredited report on race in the UK that claimed slavery had the under-recognized 'benefit' of demonstrating the enormous resilience of Black communities. The authors accuse BLM of neglecting wider histories of enslavement and ignoring evidence that "white Europeans were taken to Africa to be sold as slaves" (Hodgkinson et al., 2021, p. 93). Their account deploys neo-fascist myths of equivalence (Finchelstein, 2020) and Islamophobic accounts that protest "the European experience of slavery has been almost entirely forgotten today" because "[b]arbary coast corsairs also enslaved white Europeans to sell in slave markets in the middle east" (Hodgkinson et al., 2021, p. 94). The citation used to support this feverishly repeated theme is a contrarian journalist, Simon Webb, whose book, *The Forgotten Slave Trade*, is listed in the references without its full inflammatory title, *The White European Slaves of Islam*.

The authors claim their approach is popular and enjoys growing support among the increasing number of criminology students in their universities (J. Treadwell, personal communication, 20 December 2021) but other approaches are possible that depend less on the energetic erection and clumsy demolition of flimsy straw figures.

For the end of whiteness and the future of conviviality with or without criminology

By contrast, for example, when BLM protestors pulled Colston from his plinth and dumped him in the Bristol dock, new vistas were opened, histories of racism were exposed, and questions were asked. Criminology has a role in building on those questions. It cannot do it without Fanon and the wider traditions of Black radicalism, anti-colonialism, and conviviality (Johnson & Lubin, 2017; Ndlovu-Gatsheni & Ndlovu, 2022; Steiner, 2021). It might do worse than start with an adaptation of three of Aimé Césaire's (1972) four opening arguments about civilization in his essay 'Discourse on Colonialism':

> A [criminology] that proves incapable of solving the problems it creates is a decadent [criminology].
>
> A [criminology] that chooses to close its eyes to its most crucial problems is a stricken [criminology].
>
> A [criminology] that uses its principles for trickery and deceit is a dying [criminology].
>
> *(p. 31)*

Every form of politics rests to some extent on an ontology – on a theory of human being. For Fanon (1967), this emerges from active engagement in struggles for social transformation and building institutions and ideas that nourish and liberate the formerly colonized. What is needed is a criminology guided by Fanon's radical humanism, a humanism made – in Césaire's (1972) illuminating phrase – "to the measure of the world" (p. 73). This world is not the one measured out in the white judge's fantasy of civilizational instruction, through the eyes of Charles Dickens, Jane Austen, Thomas Hardy, and William Shakespeare. This is merely coloniality in everyday microcosm.

Fanon (1967) is clear that there can be no personal solution to the problem of whiteness, no question of 'abolishing oneself', as Orwell imagined. What is required is 'a restructuring of the world' in which colonial paradigms are transcended rather than merely inverted. Over 100 years have passed since Du Bois gestured at the whiteness of the colonial world by suggesting that:

> [Although] we may sympathize with world-wide efforts for moral reform and social uplift, but before them all we must place those efforts which aim to make humanity not the attribute of the arrogant and the exclusive, but the heritage of all… in the world where most are colored.
>
> *(Du Bois as cited in Gilroy, 2005, p. 38)*

We can only shatter the connection built and sustained across four centuries between race and Western European notions of civilization and human difference by evolving a critical conviviality where conceptions of personhood are not anchored in hierarchies of power. For a capacious discipline like criminology, this involves white criminologists making room and giving up space, becoming more hospitable and cherishing alternative social imaginaries (Cunneen & Tauri, 2016). If decolonization is to change anything and everything, we must, to paraphrase Ben Okri (1997, p. 5), "in some way or another breach or confound the frontier of things" and accept that criminology, like Colston's statue, may not survive the process. In Bristol, the people are deciding what, if anything, to put on the plinth.

Note

1 The names of Sajid Javid (Sec. of State for Health and Social Care), Rishi Sunak (Chancellor of the Exchequer), Priti Patel (Home Secretary), Alok Sharma (International Development Secretary) and Kwasi Kwarteng (Minister for Business, Energy and Industrial Strategy) [in June 2022] indicate the colonial provenance of their family backgrounds, while the sixth minority ethnic member of the Cabinet, James Cleverly, is mixed race, having a mother from Sierra Leone and a white British father. Rishi Sunak's private wealth, along with that of his wife Akshata Murthy, make him the richest Chancellor in British history.

References

Baker, C. (2021). The contingencies of whiteness: Gendered/racialized global dynamics of security. *Security and Dialogue*, *52*, 124–132.

Barder, A. (2021). *Global race war: International politics and racial hierarchy*. Oxford University Press.

Barnes, L. (2021, January 19). Ben John: Right-wing extremist gets suspended jail sentence. *BBC News*. https://www.bbc.com/news/uk-england-leicestershire-60051861

Césaire, A. (1972). *Discourse on colonialism*. NYU Press.

Connell, R. (1987). *Gender and power*. Polity.

Crenshaw, K.W., Harris, L., HoSang, D., & Lipsitz, G. (2019). *Seeing race again: Countering colorblindness across the disciplines*. University of California Press.

Cunneen, C., & Tauri, J. (2016). *Indigenous criminology*. Policy Press.
Dodd, V. (2020, October 27). Black people nine times more likely to face stop and search than white people. *The Guardian*. https://www.theguardian.com/uk-news/2020/oct/27/black-people-nine-times-more-likely-to-face-stop-and-search-than-white-people
Du Bois, W.E.B. (2007a). *The souls of Black folk*. Oxford University Press.
Du Bois, W.E.B. (2007b). *Darkwater: Voices within the veil*. Oxford University Press.
Earle, R. (2021, November 29). Courting disaster and indulging the whiteness of the criminological imagination. *The BSC Blog*. https://thebscblog.wordpress.com/2021/11/29/courting-disaster-and-indulging-the-whiteness-of-the-criminological-imagination/
Espeland, W., & Stevens, M. (1998). Commensuration as a social process. *Annual Review of Sociology*, *24*, 313–343.
Fanon, F. (1967). *Black skin, white mask*. Pluto Press.
Finchelstein, F. (2020). *A brief history of fascist lie*. University of California Press.
Garner, S. (2007). *Whiteness: An introduction*. Routledge.
Gilmore-Wilson, R. (2022). *Abolition geography: Essays towards liberation*. Verso.
Gilroy, P. (2005). *Postcolonial melancholia: The Wellek lectures*. Columbia University Press.
Hall, C. (1996). Imperial man: Edward Eyre in Australia and the West Indies, 1833–66. In B. Schwarz (Ed.), *The expansion of England: Race, ethnicity and cultural history* (pp. 130–170). Routledge.
Hodgkinson, O., Telford, L., & Treadwell, J. (2021). A critical assessment of the Black Lives Matter movement in Britain. *Journal of Contemporary Crime, Harm and Ethics*, *1*(1), 88–107.
hooks, b. (1997). Representations of whiteness in the Black imagination. In D. Roediger (Ed.), *Black on white: Black writers on what it means to be white* (pp. 38–53). Schocken Book.
Kalmar, I. (2022). *White but not quite: Central Europe's illiberal revolt*. Bristol University Press.
Johnson, G., & Lubin, A. (Eds.) (2017). *The futures of Black radicalism*. Verso.
Jonsson, T. (2020) *Innocent subjects: Feminism and whiteness*. Pluto Press.
Lake, M., & Reynolds, H. (2008). *Drawing the global colour line: White men's countries and the international challenge of racial equality*. Cambridge University Press.
Matache, M. (2017, June 19). Dear Gadjo (non-Romani) scholars. https://fxb.harvard.edu/2017/06/19/dear-gadje-non-romani-scholars/
Mbembe, A. (2017). *Critique of Black reason*. Duke University Press.
Meer, N. (2022). *The cruel optimism of racial justice*. Bristol University Press.
Miller, R. (2021). *Halfway home: Race, punishment and the afterlife of mass incarceration*. Little Brown.
Morris, A. (2015). *The scholar denied: W.E.B. Du Bois and the birth of modern sociology*. University of California Press.
Ndlovu-Gatsheni, S., & Ndlovu, M. (Eds.) (2022). *Marxism and decolonization in the 21st Century: Living theories and true ideas*. Routledge.
Okri, B. (1997). *A way of being free*. Phoenix.
Orwell, G. (1962). *The road to Wigan pier*. Penguin.
Orwell, G. (1968). *Collected essay, journalism and letters*. Penguin.
Persánch, J.M. (2020). (Preámbulo) De whiteness a blanquitud y branquitude – (Preface) From whiteness to blanquitud and branquitude. *Journal of Hispanic and Lusophone Whiteness Studies*, *1*, Article 1. https://digitalcommons.wou.edu/hlws/vol1/iss2020/1
Phillips, C., & Earle, R. (2010). Reading difference differently? Identity, epistemology and prison ethnography. *British Journal of Criminology*, *50*(2), 360–378.
Phillips, C., Earle, R., Parma, A., & Smith, D. (2019). Dear British criminology: Where has all the race and racism gone? *Theoretical Criminology*, *24*(3), 427–446.
Pierre, J. (2013). *The predicament of Blackness: Postcolonial Ghana and the politics of race*. University of Chicago Press.
Raengo, A. (2013). *On the sleeve of the visual: Race as face value*. Dartmouth College Press.
Robbins, B. (2017). *The beneficiary*. Duke University Press.
Roediger, D. (1997). *Black on white: Black writers on what it means to be white*. Schocken Book.
Smith, A. (2016). *Racism and everyday life: Social theory, history, race*. Palgrave.
Steiner, T. (2021). *Convivial worlds: Writing relation from Africa*. Routledge.
Stoler, L. (2016). *Duress: Imperial durabilities in our times*. Duke University Press.
Táíwò, O. (2022). *Elite capture: How the powerful took over identity politics (and everything else)*. Pluto Press.
Tickell, A. (2021, September 8). *English literature, racism and rehabilitation*. https://www.open.edu/openlearn/history-the-arts/literature/english-literature-racism-and-rehabilitation

Tuck, E., & Yang, K. (2012). Decolonization is not a metaphor. *Decolonisation: Indigeneity, Education and Society*, *1*(1), 1–40.
Turda, M., & Quine, M. (2018). *Historicizing race*. Bloomsbury.
Valluvan, S. (2019). *The clamour of nationalism: Race and nation in 21st century Britain*. Manchester University Press.
Vitalis, R. (2015). *White world order, Black power politics: The birth of American international relations*. Cornell University Press.
Ware, V. (2005). *Beyond the pale: White women, racism and history*. Verso.
Ware, V. (2008). Towards a sociology of resentment: A debate on class and whiteness. *Sociological Research Online*, *13*(5), 117–126.
Wekker, G. (2016). *White innocence: Paradoxes of colonialism and race*. Duke University Press.

Index