



Grappling with the state: Self-determined Indigenous Justice

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Outline

- Sociohistorical context – settler colonialism, introduced systems of governance, and justice
- Health, wellbeing, and justice
- Canada's response to Indigenous over-incarceration:
 - Indigenization
 - Accommodation
 - Parallel Systems
- Towards self-determined justice systems

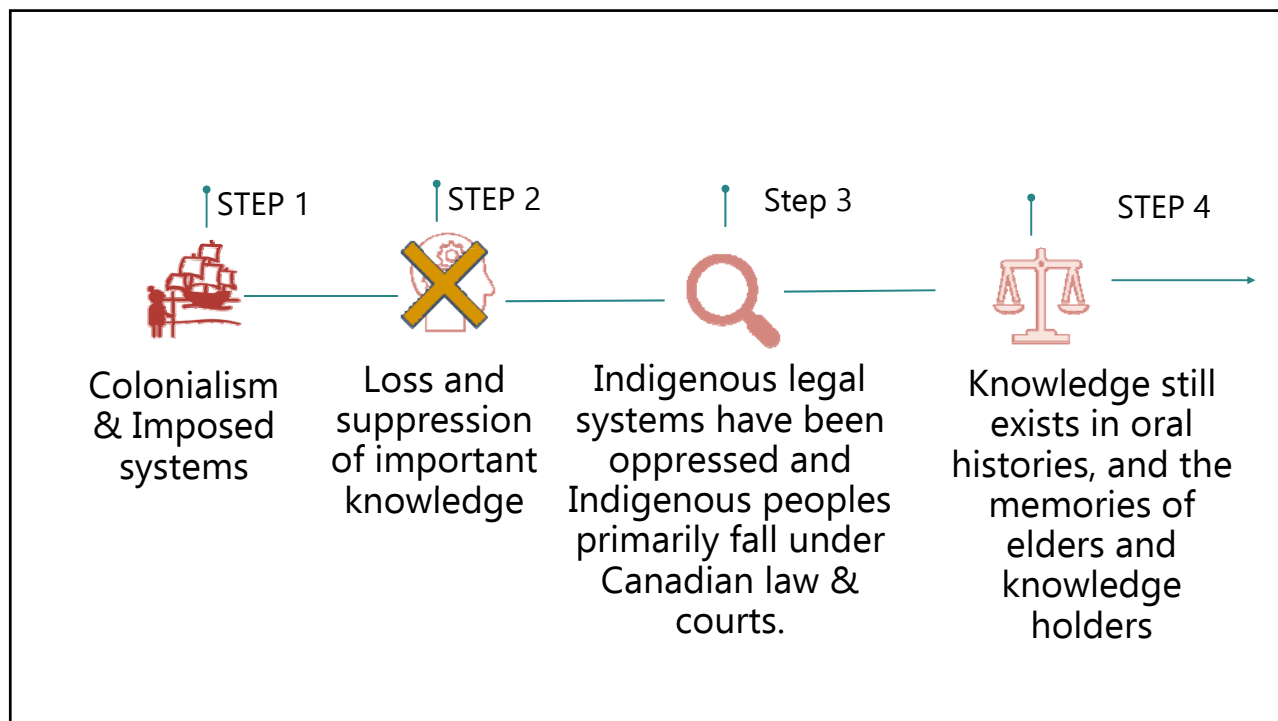
Settler Colonialism

- Dispossession, Dependency & Oppression (Manuel, 2017)
- Wolfe (2014) “a form of the colonial experience whereby Indigenous peoples had to be either eliminated or contained and controlled in order to make land available as private property” (as cited in Cunneen & Tauri, 2016, p. 47).
- Entrenched & Embedded
- Hierarchies of power, domination, dispossession (Bonds & Inwood, 2005; Coulthard, 2014).

Colonialism as Criminogenic

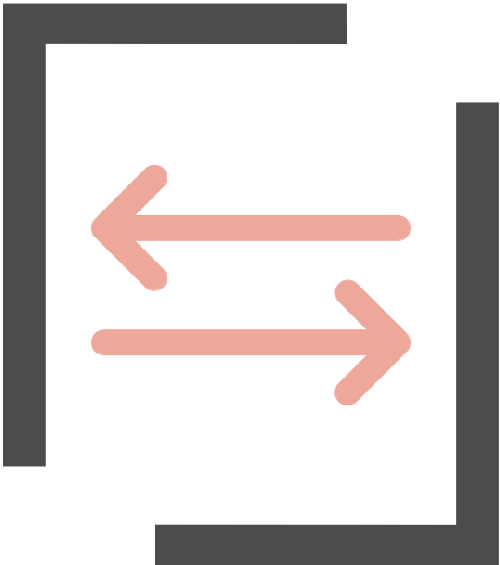
“Colonialism can be considered **criminogenic** to the extent that it actively produces **dispossession, marginalization and cultural dislocation**”

(Cunneen & Tauri, 2016, p. 57)



Imposed systems

- Imposed systems of governance, justice & law
- Result in the creation of a: “hierarchy in which Indigenous peoples become the criminalized, inferior, unruly other stuck in the past” (McGuire & Palys, 2020, p. 7).
- “Delegitimization of Indigenous law” (Cunneen & Tauri, 2016, p. 51).



Laws are not stagnant

- Subject to change through time (Borrows, 2005; Napoleon, 2014).
- Colonial disruptions= need for recovery, reclamation of laws/values (Napoleon & Friedland, 2016).
- Law needs to adapt to “new contexts and circumstances” (Napoleon, 2014, p. 139).

The (In)-justice system

OCI (2022) update:

- "Indigenous peoples account for **32%** of federally incarcerated persons and Indigenous women account for **50%** of all women in federal custody, yet comprise just 5% of the overall Canadian population ...
- Indigenous incarcerated persons have a:
 - Higher rate of custody versus community supervision (**68.3% custody**)
 - Over-represented in maximum-security institutions (**38%**)
 - Over-represented in Structured Intervention Units placements (**50%**) ...
 - More likely to self-injure (**55% of all incidents**); More likely to attempt suicide (**40%**)
 - Serve a higher portion of their sentence incarcerated – Statutory release (**78.6%**)
- ...

Calls to Action, reports & investigations – a few:

- Aboriginal Peoples and Criminal Justice (1991)
- Justice on Trial (1991)
- Arbour Report (1996)
- The Royal Commission on Aboriginal Peoples (1996)
- Report of the Aboriginal Justice Inquiry of Manitoba (1991, 1999)
- The Ipperwash Inquiry (2007)
- The Truth and Reconciliation Commission (2015)
- Auditor General of Canada – Preparing Indigenous Offenders for Release (2016)
- Standing Committee on Public Safety and National Security – Indigenous People in the Federal Correctional System (2018)
- The National Inquiry into Missing and Murdered Indigenous Women and Girls (2019)
- Office of the Correctional Investigator – yearly reports

Why would
Canada not
want healthy
& thriving
Indigenous
communities?

Power,
domination,
and wealth



Health, Wellbeing & Justice

- 'Unhealthy' and 'unwell' Indigenous peoples sustain settler colonial processes (Manuel, 2017)
- Healthy & thriving Indigenous communities = a threat



1

1. Deny

2

2. Deflect

3

3. Defer/Delay
(Palmer, 2017)

Indigenization

- Palys (1993); McGuire & Palys (2020)
 - More Indigenous faces working within the CJS
 - Distraction re: ongoing harm
 - Some acceptance re: FN Police – CDN FN Policing program
 - Distraction from continued harm
- Cunneen & Tauri (2016)
 “façade of cultural sensitivity” (p. 161).

Accommodation



Okimaw Ohci Healing Lodge
 (Correctional Service Canada, 2019)

Making room for so called Indigenous programs/ IJ programs

CJS: use of sweat lodges and ‘indigenous’ healing practices in prisons; Elders as spiritual advisors; Healing lodges, etc.

Should not accept ‘one-size fits all’ ‘pan-indigenized’ programs

Parallel Systems

'Parallel systems," DOJ's
Aboriginal Justice Strategy
now Indigenous Justice
Program:

- Generally- minor offences
- Plead guilty
- Operate within the confines
of the existing CJS

Community-Driven Justice

Toronto Aboriginal Legal Services breaks
the mold re urban communities

VATJS survives the DCC and develops
domestic abuse programming

Qwi:qwelstom ventures into sexual
offending

But growth limited, contained



"old gifts in new wrapping"
(McGuire & Palys, 2020, p. 72)

Self-Determination & Justice

- "Implications for state-based CJS" (Cunneen, 2011, p. 310)
- Hybridity in criminal law: "more fluid approach to the question of sovereignty" (Cunneen, 2011, p. 310).
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007)

Dispute resolution

Varied

Colonially imposed systems, processes of assimilation/oppression, damaged existing systems (Napoleon, 2012)

Adaptability to today; revitalization

Diverse Indigenous cultures= diverse mechanisms of dispute resolution grounded within community (Borrows, 2005; Napoleon, 2012)

DECOLONIZATION=
SELF-DETERMINED
IJS'S

- Co-existence of self-determined IJS's and Canadian system as seldom presented as possible
- But, moving forward requires critical thought, facing and unraveling trauma & reclaiming control over justice
- There is not one straightforward solution



Decolonizing Justice

- We must reject imposed systems – and 'easy' solutions
- Build capacity, education & understanding of the impact of colonialism

"we have not resisted, fought & survived genocide, to opt for mere accommodation" (McGuire & Palys, 2020, p. 76)

Laying the foundations

Simpson (2016): " I worry that too much of our energy goes into trying to influence the system rather than **creating the alternatives**" (p. 240)

**ACCESSING
JUSTICE**
AND RECONCILIATION

Foundations for self-determined systems

- **Mi'kmaq:** responsibility: (1) to provide restitution and (2) to develop empathy;
- **Tsih'qot'in:** maintaining community safety important; deterrence and temporary or permanent separation (Friedland, 2014)

Imagining Just Futures

- Revitalization
- Removing the shackles of colonialism
- Nation-based strength
- Resurgence & decolonization

Thank-you!

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