Criminal Justice as a Colonial Project in Contemporary Settler Colonialism

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Abstract

This paper offers an Indigenous-centred, critical perspective on the Colonial Projects (Thomas, 1994) employed in settler-colonial contexts to negate, or at the very least nullify, the negative impact of two inter-related 'wicked problems' that are deemed peculiar to these jurisdictions: the high levels of Indigenous over-representation in the criminal justice system, and the impact of Indigenous resistance to the hegemony of the imposed, criminal justice systems deployed by settler-colonial states. The paper is comprised of three inter-related parts; the first two outline the construction and deployment of Colonial Projects in the colonial and neo-colonial contexts, wherein it is argued that the matrix of criminal justice was foundational to the state's attempted eradication of, and eventual socio-economic marginalisation of Indigenous peoples. The final part offers an argument that the continued success of criminal justice as a (neo)colonial project, stems from its parasitic relationship with the discipline of criminology. Together, these supportive colonial projects deployment against Indigenous peoples demonstrates that structural violence continues to be a significant component of social control in the neo-liberal, neo-colonial context.

Key Words
Colonization, colonial project, authoritarian criminology, Maori.

Introduction

> The challenge of 'being Indigenous', in a psychic and cultural sense, forms the crucial question facing Indigenous peoples today in the era of contemporary colonialism – a form of post-modern imperialism in which domination is still the Settler imperative but where colonizers have designed and practiced more subtle means (in contrast to the earlier forms of missionary and militaristic colonial enterprises) of accomplishing their objectives (Alfred & Corntassel, 2005: 297-289).

The quote from Alfred and Corntassel that starts this paper marks out the problem-field in which the notes assembled in the following pages are to be inserted. What follows are 'notes' inasmuch as they represent the tentative explorations of a working paper on a criminological question that has only recently been explored seriously by 'western' criminology: what role, if any, does criminal justice play in the Settler Colonial states subjugation of Indigenous peoples (for recent, Indigenous examples see Agozino, 2003; Tauri, 2012)?

This paper offers an Indigenous-centred, critical perspective on the *Colonial Projects* (Thomas, 1994) employed in settler-colonial contexts to negate, or at the very least

nullify, the negative impact of two inter-related 'wicked problems' that are deemed peculiar to these jurisdictions: the high levels of Indigenous subjugation within and by the criminal justice system, and the impact of Indigenous resistance to the hegemony of the criminal justice systems imposed by settler-colonial states. The paper is comprised of three inter-related parts; the first two outline the construction and deployment of Colonial Projects in the colonial and neo-colonial contexts, wherein it is argued that the matrix of criminal justice was foundational to the state's attempted eradication, and eventual socio-economic marginalisation, of Indigenous peoples. The final section offers an argument that the continued success of criminal justice as a (neo)colonial project, stems from its parasitic relationship with the discipline of criminology. Together, the continued deployment of these mutually supportive colonial projects against Indigenous peoples demonstrates that *structural violence* (Galtung, 1969) continues to be a significant component of social control in the neo-liberal, settler-colonial context.

Colonial Projects and Settler Colonialism

> The civilising process is not about the uprooting, but about the redistribution of violence
>
> Zgmunt   Baumann   (1995: 141)

In his critical commentary on the role of the discipline of Anthropology in the subjugation of Indigenous peoples, Nicholas Thomas identified a set of processes of social control, which he refers to as *colonial projects* that were fundamental to the successful establishment of a settler colony and disenfranchisement of the Indigenous inhabitants. Thomas (1994: 105) describes these projects as "socially transformative endeavour(s) that [are] localised, politicised and partial, yet also engendered by longer historical developments and ways of narrating them". Furthermore, they are:

> often projected rather than realized; because of their confrontations with indigenous interests, alternating civilizing missions and their internal inconsistences, colonial [and neo-colonial] intentions are frequently deflected, or enacted farcically and incompletely (Thomas, 1994: 106).

Thomas argues that from the moment of first contact European colonisers utilized colonial projects to expedite the eradication, or failing this, the subjugation of the Indigenous peoples they encountered in new territories. During the initial phases of colonization, mutual benefit from trade in goods and religion were key projects for advancing the 'civilizing' mission of colonialism (Cassidy, 2003). Religious conversion in particular, was considered vital for transforming Indigenous peoples from savage beings into 'proper Christian subjects' (Kidd, 1997) and better enable them to participate in the post-colonial society to come. Later, the impact of Enlightenment

thinking saw science and education displace religion as key colonial projects in the colonising endeavour (Lynch, 2000). Through these projects the ideological and practical focus of settler colonial strategy changed from *saving our souls*, toward policies and interventions that facilitated our removal from our lands, and preparing us to participate in the emerging capitalist economy. Underpinning these policies was the development of social Darwinian-inspired ideological rationales that presented Indigenes as inherently inferior - biologically, genetically and intellectually - to Europeans. Malik (1996) and Wolfe (2010) refer to this change in ideological construction of Aboriginality as the *racialization of colonialism*.

A key colonial project that arose from the racialization of colonial ideology was the establishment of *identity categories* (Maddison, 2013). These included the introduction of *measurements of indigeneity* based on blood quantum (for example 'full', '3/4', 'half-Maori' and so forth: see Meredith, 2006). Relatedly, a raft of projects arose aimed specifically at 'breeding out' the Indigenous, exemplified in a range of eugenics programmes, such as forced sterilisation, that were deployed across Canada, Australia and the U.S in the latter half of the 19th, and early part of the 20th centuries (Grekul et al, 2004; Lawrence, 2000). These eugenics programmes were in turn supported by a range of projects focused on eradicating Indigenous peoples ability to practice their culture, most notably in the form of child removal programmes and residential/native schools, especially in the Canadian, U.S and Australian contexts (see Bartrop, 2001; Trocme, Knoke & Blackstock, 2004; Woolford, 2013). The eradication of Indigenous culture through education policy was supported by the introduction of legislation in all settler colonial jurisdictions aimed specifically at banning or criminalising the practice of Indigenous ritual and culture. Notable examples include legislation banning the potlatch ceremony in Canada (Jonaitis, 1991), the Sun Dance in the U.S (Jorgensen, 1972), and Maori religious practice in New Zealand (Stephens, 2001). And lastly, there are the colonial projects that can be collectivized under the heading of 'structural violence', exemplified by direct military action, forced removal of children, and the policies and actions emanating from the developing criminal justice system, much of which was imported intact from the jurisdictions of the European colonisers (Merry, 2000; see discussion below on structural violence).

The numerous colonial projects that littered the settler colonial landscape formed a complex 'web' of subjugating strategies across a range of social and economic policy platforms. Underpinning these were colonial states' ~~judicious~~ deployment of structural violence (Churchill, 1997). It was a web from which a single colonial project could be deployed discretely to overcome 'wicked problems' that evolve from state-Indigenous interactions; wicked problems being those social issues that arise, at least in the eyes of the state, as exclusive to problem populations and, as a result, define them as such. Or, as often happened, the state combined projects in co-ordinated *campaigns of subjugation*, such as the combined strategies of police deployment, child removals and reservations schools deployed in the American, Canadian and Australian jurisdictions throughout the late nineteenth and early twentieth centuries. The sophistication of the web and in particular, its co-ordination, is beautifully captured by Strakosch and Macoun (2012: 45) who write that:

There are a number of ways to eliminate Indigenous political difference: by physically eliminating Indigenous peoples; by severing their physical connections to lands that lie at the heart of their political systems; by breaking down families and communities; by drawing Indigenous polities into the state and reforming them; and by entering into explicit, contractual exchanges (such as treaties) which publicly erase the political distinctions between coloniser and colonised.

Furthermore, the centrality of structural violence to the pursuit of 'colonialist' justice (or perhaps more accurately, social control), and the interconnected nature of its deployment is exemplified in Fanon's (1963: 38) statement that:

The colonial world is a world cut in two. The dividing line, the frontiers are shown by barracks and police stations. In the colonies it is the policeman and the soldier who are the official, instituted go-betweens, the spokesmen of the settler and his rule of oppression.... [i]n the colonial countries.... the policeman and the soldier, by their immediate presence and their frequent and direct action maintain contact with the native and advise him by means of rifle-butts and napalm not to budge. It is obvious here that the agents of government speak the language of pure force (Fanon, 1963: 38).

Colonial Projects in the Neo-Colonial Context

Our respective geographical locations are framed by nation states such as the USA, Canada, Australia and New Zealand where colonization has not ceased to exist; it has only changed in form from that which our ancestors encountered (Moreton-Robinson, 2009b: 11).

How are we to contextualise the ground upon which the neo-colonial marginalization of Indigenous peoples within Settler Colonialism is constructed and maintained? Some perceive it as a *figuration* (see Powell, 2011) or, as discussed above, a *structure* (Galtung, 1969; Strakosch and Macoun, 2012) that is supported by both real and symbolic violence against Indigenous peoples that has, over time, become 'cultural'; evolving from a *process* to a *permanence* within the body politic of settler colonial societies (Galtung, 1990). As postulated recently by Woolford (2013: 172-173; 174, see further discussion below), these various *modes of epistemic violence* (Kitossa, 2014) exist within an overarching web that facilitates the colonial subjugation of Indigenous peoples, via a "mesh that stretches itself across the content, operating through various nodes or sites that change, or take different shape, across time and space" (see also Stoler, 2008).

Structurally, settler colonialism is visualised by Woolford (2013: 172) as a "series of nets that operate to constrain [Indigenous] agency", and are inter-linked at the macro,

meso and micro levels. The first (macro)-level net spreads across the entire socio-cultural realm of a Settler Colonial society and involves the dominant subjugating processes of social activity, including the economy, government (including the development of laws and subscription of the right to use violence) and religion. Woolford (2013: 172) contends that "[i]t is at this broad level that dominant visions of the colonial order are negotiated: for example, the formulation of the so-called Indian problem in Canada", and by extension the 'Aboriginal problem' in Australia, the 'Indian problem' in the U.S, and the 'Maori problem' in New Zealand. In the context of criminal justice, we have the wicked problem of Maori/Indigenous over-representation, represented in governmental discourse as a 'fact of (criminal justice) life' that poses a significant social problem, and threat to social order that requires significant intervention. The 'Maori problem' is described in governmental and media discourse as being so significant that New Zealand's crime problem would likely disappear if not for the high level and ongoing nature of Maori offending, because we are 'full of crime' (Otago Daily Times, 2012). At this level of netting significant ideological and policy-related resource is concentrated at the 'Maori problem'. This comes various forms, including high rates of surveillance of Maori by the institutions of social control, and political attention to the vote winning potentialities of addressing the wicked problem of Indigenous crime.

Supporting the macro-level is what Woolford (2013: 172) described as the *upper-meso level*, namely the bureaucratic field of government, where "one finds the institutional netting that brings together various state and state-sponsored agencies that are essential to the operations of contemporary settler colonialism, namely policing, the legal system, the military and health, education and welfare policy sectors. Supporting the upper-meso institutions is a layer that features the service delivery mechanisms that enable the practice of settler colonialism to be facilitated. In the education sphere this includes:

> a variety of schools (e.g., reservation and non-reservation; federal and mission, day and boarding) form a network of interactions, as they cooperate and compete with one another, depending on various circumstances (Ibid: 172).

At the upper-meso level of criminal justice we observe the strategic deployment of militaristic-style policing of Indigenous protest, the significant focusing of policing resources and power in the form of stop-and search powers and 3-strikes legislation against Indigenous individuals and communities (Cunneen, 2006). Policing, corrections, child care and protection services, the policy industry and the courts all provide avenues through which Indigenous peoples are governed 'differently' in terms of the depth, form and effects of 'policing'. This 'project' represents a contemporary manifestation of the racialized policies of 'policing' developed during the colonial context (Auger, Doob, Auger & Driben, 1992; Cunneen, 2006; Harding, 1991; Moyle, 2013; Tauri, 2009; 2014).

Finally we arrive at the micro-level layer of netting where the structural violence of Settler Colonialism is operationalised and delivered on the ground. In the education

sphere this occurs via the implementation of repressive policies by specific schools (Woolford, 2013: 172):

> [W]hich connects parents, children, teachers, principals, and communities in interactions defined by regionally-adapted techniques of governance and control, and a local actor-network that involved not just humans, but also non-human actors like disease, poverty, animals, and territory in local experiences of assimilative schooling.

Within the criminal justice sector the micro-level net is operationalised through, amongst many possible examples, the targeted stratagem's of police district commanders against problem populations, the purposeful targeting of Indigenous individuals and communities by racist (or poorly trained) police officers, the uneven application of discretionary powers. Other practices include individual departments choosing to ignore existing Indigenous practices and programmes, preferring instead imported western, Eurocentric crime control initiatives (see Tauri, 2011 and further discussion later in this paper).

We contend that, similar to Woolford's education-focused case study, the criminal justice system is a key colonial project within the armoury of the settler colonial state. It is a project built around a sophisticated web across the macro, meso and micro levels of settler colonial society or more particularly, settler-colonial 'government'. Furthermore, we argue that the criminal justice system's importance as a colonial project has intensified in the last century because of the supposed diminished ability of the contemporary neo-liberal state to legitimately deploy *direct violence* (for example, military operations), or *hard-line assimilatory policies* that characterised previous colonialist attempts to subjugate Indigenous peoples. In other words, the killing times are over, but epistemic and structural violence are still essential colonial projects in the on-going, contested process of settler colonization, and its form, more often than not, manifests through the application of crime control policies, legislation and practices (Churchill, 1997; Cribben, 1984).

Following the post-war internationalization of human rights, the planned use of violence as a social policy tool for controlling problem populations, was deemed unacceptable (Bauman, 1995). Similarly, the racist assimilatory policies that had sought the eradication of our Indigenous souls, rather than the destruction of our physical bodies, were also challenged and, rhetorically at least, replaced with more acceptable policy discourses, such as 'integration' and 'reconciliation'. In the context of contemporary settler colonialism, structural violence is expressed much differently in practice when compared to its deployment during the colonial era. Today the structural violence of the colonizing project is perpetrated against Indigenes in the form of militaristic-style policing strategies, the biased application of public disorder offences and discretionary powers, and the criminal justice-led large-scale removal of

Indigenous children and youth to detention centres, and Indigenous adults to the prison system (Cunneen, 2006)[i]. The colonial projects that enable the deployment of structural violence by the developing colonial state, supported by the ideology of (genocidal) eradication, have become, at least at the surface of practice rather than intent, *bio-political* inasmuch as the state now seeks to govern and contain Indigenous peoples through ever more sophisticated projects that focus on administering life, rather than eradicating it in order to "[R]ationalise problems posed to governmental practice by phenomena characteristic of a set of living beings forming a population: health, hygiene, birth rate, life expectancy, race" (Dean, 2010: 118-119).

Doing Imperialism Quietly? Criminal Justice and Structural Violence and Settler Colonialism

> Around the turn of the century there emerges a mythic, masterful silence in the narratives of empire, what Sir Alfred Lyall called '*doing our Imperialism quietly*'
>
> Bhabha (1994: 177 – emphasis added).

Importantly, for the arguments made in this paper, Settler colonialism is not defined or constructed through a "moment of transformative restructuring" that leads to the context moving to a decolonising moment, or for that matter, 'post' the subjugation of resident Indigenous peoples. As Strakosch and Macoun (2012: 43) contend:

> [This] has not occurred in settler colonies such as Australia, Canada and New Zealand. This [post-colonialism] locates 'real' colonialism in the past, and assumes that now policy must deal with the 'legacies', 'heritage' or 'reverberating aftermath' of colonialism in today's world.

In all settler-colonial societies crises are regularly projected 'out from' Indigenous communities, on to the state, whose task it is to fix whatever is ailing its Indigenes at a particular socio-historical moment. As Moreton-Robinson (2009a: 61) describes it, these crises are "constructed as something extraordinary and aberrant requiring new governmental measures" (such as the Australian Federal governments Northern Territory Emergency Response, see Altman & Hinkson, 2007). This process, which Moreton-Robinson describes as the 'state-of-exception thesis' and Boulden and Morton (2007: 163) as 'emergencies', are managed as events that have "…. a political style, one that we have become increasingly use to since September 11". It is an alarming world, alerting people to immediate dangers to life, health and property. Sometimes the dangers are real, sometimes they are imagined; and sometimes they are a complete red herring. These (often contrived) emergencies employed in part to rationalise the state's *exceptional interference in the lives of Indigenous peoples*, have a long colonialist history. They serve both an ideological and functional role in colonial and neo-colonial contexts, including rationalizing the use of structural violence to support the ongoing subjugation of Indigenous peoples.

Nowhere is this more evident than in the structural violence of the criminal justice systems of settler-colonial state, especially the role the sector plays in *sequestering*

Indigenous peoples within state-controlled, closed institutions. The role of criminal justice system in the modern European state is well established as reflective of the desire for internal control of populations and of their labouring capacity (Wacquant, 2009), characterised by the workings of the sequestering institutions so powerfully identified by Foucault (2000) – most notably prisons, asylums and workhouses. In the settler society context, we might add to this list of closed institutions: youth borstals, residential schools and the penal reserves and reservations of North America and Australia (such as Palm Island, see Anthony, 2009. See also Churchill, 1997; Harris, 2004; van Krieken, 1999), which were used as 'camps' for concentrating large groups of Indigenous individuals, and sometimes entire Indigenous communities who were deemed surplus to the developing capitalist mode of production (Rombough and Keithly, 2005). More recently, the significant, and consistent over-representation of Indigenous peoples in youth detention centres and adult prisons, has been referred to by O'Connor (1994) as the 'new removals' and by Cunneen (1997: 2) as the 'new stolen generations' where "[t]he high levels of criminalization and subsequent incarceration of Indigenous young people in Australia effectively amounts to a new practice of forced separation of Aboriginal and Torres Strait Islander children and young people from their families".

When taken together these examples of sequestration correspond with what Harris (2004) calls the *management of dispossession*, a slowly evolving set of colonial projects located principally at the meso-level of Woolford's schema due to their primary purpose - the removal of the Indigenous individual from his or her cultural context. These projects evolved within the settler colonial contexts as primary sites for disciplining Indigenes at the point where "physical power moved into the background (while remaining crucial), and the disciplinary strategies associated with the management of people, nature, and space, came to the fore" (Harris, 2004: 174).

Arguably, the settler-colonial state has become much more subtle and manoeuvrable in terms of the development and employment of Colonial Projects. No longer able to maintain legitimacy by deploying racist, assimilationist strategies, such as the forced removal of our children under targeted policies[ii], or specific legislation banning language and cultural practices, or indeed replicating the physical genocide of the Indian Wars carried out in Canada and the U.S, or the killing times in Australia (Barkan, 2003; Neu, 2000; Riethmuller, 2006), the neo-liberal settler state nonetheless deploys structural/epistemic violence as a colonial project against Indigenous communities. In the guise of youth detention, prison, and child care and protection processes (O'Connor, 1994), the colonial projects of removal and sequestration remain significant structural violent strategies deployed by the settler-colonial state in its ongoing 'war of manoeuvre' against Indigenous resistance to assimilation (and arguably, annihilation).
The Interconnectivity of the Criminal Justice Web

Colonial projects intertwine and overlap, continuously morphing into new 'technologies of control' that enable the settler-colonial state to control populations that are deemed a 'problem'. Thus, in the Canadian context, we can trace the residential school morphing into the prison industrial complex, which is arguably now a primary site through which the colonial policies of integration and assimilation are perpetuated in the neo(liberal)colonial context (Cunneen, 2006; Proulx, 2002). In relation to criminal justice, we see the silent yet nonetheless 'violent' imperialism of settler-colonialism present in Mallea's (2000: 27) description of service delivery in Canadian prisons where:

> European culture dominates in the prison system and there is racism among the staff... Prisons provide the same extreme form of isolation which was the experience by children in the residential schools... One program called Teen Challenge is now operating within some Manitoba prisons. Teen Challenge is a drug rehabilitation program based on fundamentalist Christianity. It bans the practice of Native spirituality within the program and preaches that such spirituality… is the occult.

Mallea's description of authorised in-prison programmes in Manitoba relates to the argument made here, that criminal justice is a key project for the dissemination of structural violence, through the fact, that the site of isolation from ones cultural context and pseudo-religious/scientific-programming – the prison – becomes a primary venue for the continued subjugation of the Indigenous life-world. One could argue that this attempt is no less violent than projects utilised during the colonial context; if one accepts that the forced imposition of non-Indigenous religious belief and practice is 'violent', coupled with the 'violence' of the imposition of psycho-therapeutic service mechanism of a Eurocentric drug rehabilitation programme, and removal and isolation from one's Indigenous community in a decidedly 'non-Indigenous' institution. By banning Indigenous spirituality from the context of rehabilitative service delivery, the violence of isolation that occurs with incarceration, is exponentially enhanced through the concomitant the violence generated by denigration of the Indigenous life-world.

The (Ordinary) Structural Violence of Settler Colonial Criminal Justice

> The etiological myth deeply entrenched in the self-consciousness of our Western society is the morally elevating story of humanity emerging from pre-social barbarity
>
> <div align="right">Zgmunt Bauman (1989: 12).</div>

> In the contemporary space an Aboriginal resistance and survival struggle continues. However, the colonial project also continues. The state still has assimilation agendas, intent upon the removal of Aboriginal peoples from traditional lands and the absorption of Aboriginality into a 'white Australia'
>
> <div align="right">Irene Watson (2009: 1).</div>

We can anticipate significant disagreement from some with the argument that criminal justice represents as key site through which the settler colonial state manifests the colonial project of structural violence against Indigenes. An early example of this view is espoused by Anthony Giddens (1985) who, during his critique of Foucault's perspective on power and the state, argued that the French theorist's emphasis on coercive, closed institutions was too constricted to enable a sophisticated analysis of power and social control in contemporary Western societies. Giddens' (quoted in Gledhill, 2000: 17; emphasis Gledhill) preferred instead "a more general shift in the sanctioning capacities of the state from the *manifest use of violence* to the *pervasive use of administrative power*". This change in modes of social control from violence (or at least the threat of it) to the use of administrative, disciplinary technologies to elicit internal pacification of the population, is evidenced by contemporary police forces and the *science of policing* replacing *violent policing*, such as the deployment of military troops and military action, as fundamental to the practice of social regulation. It also signals the compartmentalisation of policing within the sophisticated, bureaucratic mechanisms of codified law, incarceration, parole and probation. Giddens gives much weight in his analysis of contemporary social regulation to the supposed diminution of violence resulting from the contemporary states steady movement towards facilitating internal pacification of the 'population' through administrative power. As such, he argued that a distinguishing feature of this mode of regulation of a population is the withdrawal of the military from direct participation in the internal affairs of the state. Within Giddens' schema, criminal justice, including policing, when compared to the violence deployed in support of the colonial enterprise, represents a form of 'quiet imperialism'.

Indigenous and critical sociological scholarship exposes the Eurocentric bases of this type of theorising of the 'pacifist' exercise of power by the contemporary settler state. For example, an extensive literature demonstrates the explicit violence of policing in neo-colonial jurisdictions, both historically and contemporarily (see Churchill, 1997; Wilson, 1998 for the North American context, Watson, 2009 for the Australian, and Jackson, 1988; Pratt, 1992 for New Zealand). Violence as a coercive tool of social control is fundamental to the formation and *enduring hegemony* of the modern (neoliberal) capitalist state. Indeed, as Bauman (1989) succinctly demonstrates in his sociological study of the Holocaust, violence as a project for controlling a population is not only possible in a 'rationally'-derived polity, but is in fact the end point of the development of this so-called science of state craft:

> Once the hope to contain the Holocaust experience in the theoretical framework of malfunction (modernity incapable of suppressing the essentially alien factors of irrationality, civilizing pressures failing to subdue emotional and violent drives, socialization going awry and hence unable to produce the needed volume of moral motivations) has been dashed, one can be easily tempted to try the 'obvious' exit

from the theoretical impasse; to proclaim the Holocaust a 'paradigm' of modern civilization, its 'natural', 'normal' (who knows – perhaps also *common*) product, its 'historical tendency' (Bauman, 1989: 5-6: emphasis Bauman's).

Bauman (Ibid: 6: emphasis Bauman's) further argues that "[i]n this version, the Holocaust would be promoted to the status of a *truth* of modernity (rather than recognised as a possibility that modernity contains)". In effect, Bauman counters Giddens' (mis)representation of modern state-craft characterised by the diminution of violence as a biopolitical strategy of control or as something that, when it does arise, represents an aberration, the rending of evil through the fabric of civility that cloaks 'western civilization'. Instead, as Bauman (1989: 18) contends, there is nothing inherent in the instrumental rationality of contemporary state-craft that makes it singularly incapable of deploying structural violence, in fact:

> The bureaucratic culture which prompts us to view society as an object of administration, as a collection of so many 'problems' to be solved…. as a legitimate target for 'social engineering'… was the very atmosphere in which the idea of the Holocaust could be conceived, slowly yet consistently developed, and brought to its conclusion.

To consider contemporary settler colonial policing as part of the diminution of violence as a key colonial project within the settler-colonial context, is to gloss over the fact that structural violence continues to be a significant strategy in the settler state's ongoing pacification of their Indigenous peoples and other dispossessed populations. The evidence of the continued importance of this particular colonial project to the settler-colonial state is extensive: we see it used in its commonly described 'direct' form as a response to Indigenous activism, such as at Bastion Point and Wounded Knee in the 1970s (D'Arcus, 2001; The Waitangi Tribunal, 1987), Oka in the 1990's (Kalant, 2004) and most recently against the Mi'kmak First Nation's resistance to gas mining in the Canadian province of Nova Scotia. The violence deployed in these contexts was strategic, planned, and purposeful. As such, it stands in stark contrast to the supposed benign use of administrative power that Giddens' and others present as characteristic of western, (neo)liberal government (Hayek, 1944; for critical discussion of this perspective see Oksala, 2011; Springer, 2011). Second, we can observe in the structural violence of contemporary criminal justice systems the pervasive, militaristic-style over-policing of people of colour in Western jurisdictions, evidence of bias and racism in the way police use their discretionary powers, courts their discretion in terms of prison sentences or community sentences, and correctional services through the denial of the legitimacy of the Indigenous cultural context as a source of rehabilitative practices (Aboriginal Justice and Advisory Committee, 2000; Cunneen, 2006; Harding, 1991; Perry, 2006; Webb, 2004).

Recently, a number of commentators have begun theorising the contribution of law and justice institutions in the "historical and ongoing contested subjugation of Indigenous peoples", most notably Smandych (2013: 92), Veracini (2007) and Wolfe (1999). The work of all three demonstrates that a key logic of settler colonialism is the elimination

of the Indigenous peoples. Cited in Smandych (Ibid: 93), Wolfe conceptualises the Settler Colonial logic of elimination as more than just the liquidation of Indigenous peoples, but also:

> In common with genocide as Raphael Lemkin characterised it, settler colonialism has both negative and positive dimensions. Negatively, it strives for the dissolution of native societies. Positively, it erects a new colonial society on the expropriated land base. In its positive aspect, elimination is an organizing principal of settler-colonial society rather than a one-off (and superseded) occurrence. The positive outcomes of the logic of elimination can include officially encouraged miscegenation, the breaking-down of native title into alienable individual freeholds, native citizenship, child abduction, religious conversion, resocialization in total institutions such as missions or boarding schools, and whole range of cognate biocultural assimilations.

Why, might we ask, does Wolfe represent native schools, child removal and other similar Colonial Projects, as 'positive' manifestations of the colonialist logic of elimination? Smandych (2013) attempts to address this issue by arguing that when compared to physical genocide via warfare, these strategies are 'positive' in that they do not seek to *replace* Indigenous societies in their entirety, but to control and corral; paradoxically, by (forcibly) bringing Indigenous people together in these institutional settings, resistance and socio-cultural regeneration is enabled. As Smandych (2013) relates, resistance and counter-resistance by both settler colonialists and Indigenous peoples, continues to structure and reframe settler colonial societies, and ensures that the 'end point' of the logic of elimination remains elusive. And importantly, as Smandych (2013: 93) further argues, the logic of elimination "continues into the present" in the guise of the supposedly 'quiet imperialist' projects discussed previously. But as we have discussed here, the centrality of the criminal justice to the ongoing colonialist agenda, demonstrates the continued importance of 'old colonial projects' - most especially of structural violence, to the settler colonial context.

Closing Comments

How is it then, that supposedly 'liberal', democratic, Western nations such as New Zealand, Australia, Canada and the U.S are portrayed in this paper as anything but 'liberal' when it comes to their use of the structural violence to effect the (continued) marginalisation of their Indigenous peoples? For an answer we might refer to Foucault's conceptualization of the 'illiberality of liberal government', where supposed liberal governments act in ways that mirror authoritarian regimes by implementing policies with prejudice, and sometimes with violence, against targeted sections of the population:

> [A]s was evident in recent revelations about the way in which liberal-democratic states (like those in Scandinavia) have, in the course of the twentieth century,

practised forced sterilization in the name of a eugenic Utopia on certain of their populations. Even more pervasive has been the tendency within certain states (Australia, Canada), having ceased to attempt actual genocide, to commit forms of cultural genocide upon indigenous people within their borders in the name of their own well-being, such as in the case of the removal of children from their parents and families. While the bio-political imperative does not account for all that bedevils liberal-democratic states, it is remarkable how much of what is done of an illiberal character is done with the best of bio-political intentions (Dean, 2010: 156).

Perhaps, it is simply a continuation of the overwhelming 'will to control' that was so crucial to the original pioneering endeavours of the early colonialists. Or is it because we Indigenous peoples are what might be called an unfinished project that impedes the neo-colonial (and neoliberal) state from announcing the end of colonialism? It should be remembered that we were meant to accept the gift of civilization, but instead had the temerity to resist, seeing colonization for what it really meant – the eradication of ourselves and our culture. We were also meant to die out; unable to cope with the ravages of western disease and the superiority of 'western civilization', but instead we reproduced at much higher rates than the colonialists. When these events failed to transpire it was believed that policy and the march of the capitalist free market economy – the supposed end points of social and political evolution – would force our assimilation or integration into 'civilization'. These sophisticated projects would compel us to forever discard our archaic cultural practices and languages. Instead, we revitalized our cultures, exerted our rights to self-determination and began actively challenging the hegemony of many of the colonial projects utilised to control us and reduce our risk to society. The criminal justice system was, and is, one of the most significant projects in this schema (Tauri, 2005).

As unfinished business, we are an embarrassment to the settler colonial state because our very existence calls into question the legitimacy of settler colonialism and the effectiveness of the supposedly benign, enlightened types of colonial projects now in vogue. Unfortunately, the criminal justice system makes a lie of claims that the settler colonial state no longer has need of structural violence to control its problematic Indigenous populations, or that settler colonialism represents a quieter (meaning less assimilatory) process of subjugation. Instead, the policies and actions of the agents and agencies of crime control demonstrate that structural violence remains a significant tool of subjugation of Indigenous peoples in contemporary settler colonialism.

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i   Clear exceptions to the new form(s) of 'humane colonialism' arise from time to time, demonstrating that the ideals and practices of 'old colonialism' never fully vanish from use. Instead, they change shape and form in response to re-configured versions of the wicked problems that arise from time-to-time in neo-colonial contexts. The most recent significant example was the Australian Federal government's implementation in 2007 of the Northern Territory Emergency Response in relation to a perceived rise in Aboriginal sexual and physical child abuse (Altman & Hinkson (eds.), 2007; Altman & Russell, 2012).

ii   The strategy of child removal as a colonial project is no longer characterised by direct violence, such as the Australian policy of using police and armed forces to enter Aboriginal communities to make forced removals that was prevalent from the late 1900s to the mid-twentieth century (Cunneen, 1997). It can be argued that the process has been replaced with one akin to Bauman's (1989) rationalized process of modern bureaucracy and the rise of risk-based systems for analysing

populations. In this context, the 'direct violence' of old-style removals has been replaced with risk-based evaluation that aids to identify 'high-risk' individuals, families and communities in need of surveillance and intervention. In all settler colonial contexts, Indigenous communities are judged high-risk in relation to child care and protection matters (Moyle, 2013). This results in high levels of surveillance, high rates of reporting, investigation and of child removals.