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Indigenous sentencing courts and Gladue reports

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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.