

Decolonising Indigenous–State Criminal Justice Relations in Settler-Colonial Contexts: Epistemic Justice as a Foundation for Transformative Practice

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Abstract

Amid growing calls to reorient criminology's intellectual compass, this paper critically examines how the discipline's historical engagement with Indigeneity has shaped Indigenous–state criminal justice relations in settler-colonial contexts. Fractured Indigenous–criminal justice relations reflect criminology's systematic marginalisation of Indigenous lived experiences, knowledge systems, and self-determined participation in theory building and methodological development. Indigenous scholars and allied researchers have responded to these limitations through strategic decolonial interventions that have transformed Indigenous criminology from a field once criticised for its alleged lack of empirical rigour into one characterised by increasing theoretical sophistication and methodological coherence. Situated within this growing body of decolonial scholarship, the present analysis advances a historical–settler colonial continuum approach that draws on settler colonial theory to make tangible the connections between contemporary Indigenous–criminal justice experiences and the enduring socio-economic, legal, and institutional legacies of colonial domination. Emerging from this analysis is a framework that illuminates the colonial foundations of criminology, demonstrating how the settler-colonial state structures Indigenous–state relations and perpetuates Indigenous victimisation and criminalisation. Translating these theoretical insights into practice, the United Nations Declaration on the Rights of Indigenous Peoples provides the rights-based architecture through which Indigenous participation in criminology is reimaged. As a vehicle for advancing

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Indigenous epistemic justice in criminology, the Declaration re-orientes Indigenous participation in the field from an act of institutional benevolence to the exercise of Indigenous prerogative, laying the foundation for self-determined, culturally relevant, and non-discriminatory criminal justice practice.

Keywords: decolonisation, settler colonialism, epistemic injustice, Indigenous justice, enduring indigeneity, criminal justice

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Positionality Statement

I am an Indigenous person from Zimbabwe and a member of the Shona (Zezuru) people who has lived in the diaspora for over a decade. My sense of being and scholarship are deeply grounded in the Indigenous, Global South experiences, knowledge systems, and epistemologies with which I have had the honour to engage throughout my academic and professional journey. Drawing on Goyes and South's (2021) observation that "there are enclaves of the South within the North" (p. 116), and that "the term [Global South] does not inherently refer to geographical south" (Chitadze, 2019, p. 42), I adopt Haug et al.'s (2021) understanding of the Global South as a space of resistance to Northern colonial dominance. From this perspective, I do not consider the struggles and epistemologies of the Global South to be confined to geography; they also encompass Indigenous Peoples living within the so-called Global North who continue to confront analogous structures of settler-colonial domination. It is from this intellectual and experiential location that I approach questions of Indigenous justice, settler colonialism, its institutional manifestations, state power, and knowledge production. Situated at this intersection, my scholarship examines Indigenous-settler colonial relations across social institutions. By interrogating settler-colonial knowledge production as a mechanism through which these relations are structured and maintained, I foreground Indigenous epistemic justice as a



pathway for reimagining them in ways that honour Indigenous sovereignty, cultural frameworks, and knowledge systems.

Introduction

Criminology's epistemological foundations, rooted in the Global North and universalised across settler-colonial contexts, have marginalised Indigenous knowledge systems and entrenched frameworks that pathologise Indigenous communities rather than understand them on their own terms. As a theoretical inversion, the historical-settler colonial continuum approach traces the enduring links between foundational structures of settler colonialism and contemporary Indigenous-criminal justice relations. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides the leading international human rights framework through which this theoretical intervention is operationalised, giving practical effect to the principles of Indigenous self-determination, free, prior, and informed consent, and Indigenous intellectual property rights in criminological research and criminal justice practice.

Since its enactment nearly two decades ago, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has played a pivotal role in shaping consultation frameworks in natural resource governance and other collaborative initiatives, including research (Food and Agriculture Organization of the United Nations, 2016; Papillon & Rodon, 2017). Its provisions have strengthened Indigenous governance over intellectual property (Tsosie, 2019), advanced Indigenous control, access, and governance of personal data (Guerzoni & Walter, 2023; Mukosi, 2022), and informed the application of free, prior, and informed consent in scientific research (Fitzpatrick, 2016; Garrison et al., 2019; Healey, 2019). Of relevance to this article, Bargallie et al. (2020) have also explored the applicability of UNDRIP as a framework for engaging Indigenous Peoples in criminology.

Building on these developments, this article is among the first to advance a comprehensive Indigenous theoretical inversion of criminology alongside an accompanying rights-based methodological framework grounded in the United Nations Declaration on the Rights of Indigenous Peoples. The framework conceptualises Indigenous participation in criminology and criminal justice research through three interrelated rights-based regimes: Indigenous self-determination; free, prior, and informed consent; and Indigenous intellectual property rights.

Mapping the Landscape: The Current State of Indigenous Criminology

In recent years, Indigenous scholars and allied researchers have extensively documented how adverse Indigenous–criminal justice relations in settler-colonial states represent enduring afterlives of colonialism (Cunneen & Tauri, 2023; Monchalin, 2019; Nielsen & Robyn, 2019). Moving beyond deficit-based portrayals, this growing body of scholarship has empirically foregrounded Indigenous knowledge systems, cultural frameworks, and lived experiences, including survivor testimonies and storytelling as vital interpretive tools for understanding Indigenous experiences with the criminal justice system and integrating Indigenous knowledge into criminological inquiry (Behrendt, 2019; Bennett, 2022; Kennedy et al., 2009).

Traditional Indigenous justice mechanisms have endured despite generations of assimilationist policy and continue to inform contemporary justice practices among Indigenous Peoples (Cunneen & Tauri, 2019; Nielsen, 2009). Although further empirical research remains necessary, there is growing convergence of interests between Western criminal justice frameworks and Indigenous justice ideals centred on restoration, healing, consensus-building, and relational accountability. Widely examined North American examples include the Navajo Peacemaking Program in the United States, as well as Indigenous sentencing courts and restorative justice initiatives in Canada. These initiatives have generated important empirical and practical insights into addressing mass incarceration, punitive excess, recidivism, and systemic harms that have long plagued settler-colonial justice systems (Coker, 2006; Mirsky, 2004; Monchalin, 2019; Mukosi, 2020; Lujan, 2004). Canada offers a particularly instructive example, where Indigenous programming in federal and provincial prisons has helped incarcerated Indigenous Peoples address the enduring effects of residential schools and child welfare interventions (Tetrault, 2022; Wellman, 2017). Indigenous approaches emphasising restitution, restoration, and compensation have likewise proven effective alternatives to incarceration, particularly in Native American tribal jurisdictions where restoring social harmony remains a central objective of justice (Luna-Firebaugh, 2023). Beyond justice institutions, Indigenous pedagogies such as learning circles and place-based teaching have enriched criminological education and strengthened Indigenous students' intellectual, social, emotional, and academic development (Nielsen & Jarratt-Snider, 2020; Ragoonden & Mueller, 2017; Root et al., 2019).



Taken together, these developments invite a critical reassessment of whether criminology is prepared to meaningfully accommodate the growing relevance of Indigenous knowledge systems and, if so, the theoretical and methodological frameworks necessary to translate that recognition into disciplinary transformation. This critical reassessment requires answers to two key questions. The first question is whether theoretical transformation is possible within criminology's Eurocentric foundations, and if so, what framework can explain Indigenous experiences in settler-colonial criminal justice systems. The second question is what practical approaches may inform methodological innovations to support Indigenous participation in criminological research and criminal justice practice.

Unearthing Criminology's Colonial Foundations

Criminology emerged from Eurocentric intellectual traditions that sought to explain crime through the social, political, and epistemic priorities of Western modernity (Aliverti et al., 2021; Carrington & Hogg, 2017). Classical theory located deviance within rational individual choice and framed the centralised state as the rightful enforcer of social order, thereby providing ideological justification for the subjugation and 'civilising' of Indigenous Peoples during imperial expansion (Akers, 2013; Carrington & Hogg, 2017). Positivist criminology extended this harm through scientific racism, using pseudo-biological measures to criminalise colonised populations and naturalise racial hierarchy in the name of empirical inquiry (Carrington et al., 2018; Gibson, 2020).

Even as structuralism has redirected criminological attention toward inequality, the field remains anchored in Euro-American industrial contexts, universalising Northern urban experiences (Goyes & South, 2021; Henson et al., 2022) and driving Indigenous Peoples to the margins of the discipline, both as academics and equitable research partners (Deckert, 2024). These epistemic foundations have long positioned criminology as a regulatory discourse that defines deviance in ways that preserve colonial state authority and exclude Indigenous Peoples from recognition as sovereign actors (Deckert, 2016; Najdowski, 2023).

The global diffusion of these theoretical frameworks consolidates criminology's Northern dominance, as Western knowledge institutions continue to privilege English-language scholarship while sidelining Indigenous epistemologies as local, cultural, or unscientific (Aliverti et al., 2021; Hebberecht et al., 2010). This imbalance sustains what Deckert (2016)

describes as methodological apartheid, positioning Indigenous Peoples as data rather than theorists and as problems for governance rather than holders of solutions (Griffiths, 2021). Even critical innovations, including Foucauldian approaches, often reproduce liberal assumptions of subjectivity and governance that obscure the coercive realities of settler colonialism (Budreau, 2011; Hindess, 2005).

Consequently, criminology has lacked the conceptual tools to address how criminal justice systems in settler colonial states continue to operationalise assimilation, control, and dispossession through contemporary mechanisms of surveillance, classification, and punishment (Blake, 1999; Ross, 1998). This enduring theoretical Eurocentrism has materially and epistemically negated Indigenous realities, normalising their over-criminalisation and systemic victimisation while obscuring the colonial roots of these harms.

The settler-colonial state, criminology, and criminal justice function as interconnected sites of governance through which Indigenous criminalisation is produced, legitimised, and enacted (Blagg, 2008; Cunneen, 2006), while harms experienced by Indigenous Peoples are routinely obscured, normalised, or neglected (Amnesty International, 2022). Drawing on Tauri (2014), these dynamics operate across macro, upper-meso, and micro levels. At the macro level, law, policy, and ideology construct racialised understandings of Indigeneity; at the upper-meso level, these assumptions are institutionalised through bureaucratic and criminal justice institutions; and at the micro level, they are enacted through everyday practices and interactions. Together, these processes reproduce structural violence and sustain settler-colonial governance of Indigenous Peoples.

Epistemic Injustice and Erasure of Indigenous Voices

Epistemic injustice manifests in two primary forms: testimonial and hermeneutical injustice (Fricker, 2007). Testimonial injustice occurs when a speaker's credibility is unjustly discounted due to identity-based prejudice. Hermeneutical injustice arises when individuals or groups are structurally excluded from the interpretive resources needed to make sense of their experiences. While Fricker (2007) conceptualises hermeneutical injustice as an antecedent, Byskov (2021) suggests that testimonial injustice may precede it. Regardless of sequencing, the two forms are conceptually interdependent and mutually reinforcing.



Criminology's methodological disengagement from Indigenous voices constitutes a form of hermeneutical injustice, leaving the discipline without the conceptual resources necessary to understand Indigenous sovereignty, relational accountability, or the colonial origins of contemporary violence (Goyes & South, 2021; Jacobs, 2021; Smith, 2021). Indigenous exclusion is therefore not an incidental gap in knowledge production but a structural mechanism that sustains punitive policy orientations, legitimises surveillance and control, and reinforces the marginalisation of Indigenous Peoples within settler colonial societies (Carrington et al., 2018; Cunneen & Tauri, 2019; Deckert, 2016). In this way, criminology procedurally and ideologically reproduces the colonial harms it claims to examine.

Eurocentric criminology operationalises its authority by determining whose knowledge counts and whose does not (Aliverti et al., 2021; Carrington & Hogg, 2017). Through the temporal erasure of colonial legacies, the spatial privileging of metropolitan Northern contexts, and the construction of Indigenous Peoples as deviant objects of analysis, the discipline secures its own epistemic boundaries that disqualify Indigenous ontologies from participation in the production of criminological knowledge (Cunneen & Tauri, 2019). These disciplinary logics institutionalise Northern assumptions as universal, rendering Indigenous worldviews theoretically unintelligible within criminology's dominant frameworks (Goyes & South, 2021; Deckert, 2016).

Methodologically, the exclusion of Indigenous knowledge within Western positivist research practices operates in two primary ways. First, Indigenous Peoples and their encounters with criminal justice systems receive limited or no sustained scholarly attention (Anthony, 2017; Rudin, 2021). Second, where Indigenous experiences are examined, research often remains detached from Indigenous epistemologies and is conducted without meaningful engagement with Indigenous participants (Deckert, 2016; Goyes & South, 2021).

Goyes and South's (2021) analysis exemplifies the first pattern, revealing "a dearth of criminological research concerned with Indigenous issues" (p. 117). This absence reflects broader dynamics of historical marginalisation operating within society at large. The second pattern is illustrated by Deckert (2016), who shows that even where Indigenous-focused research exists, scholars publishing in top-ranked criminology journals frequently rely on 'silencing research methods' that largely disengage from Indigenous participants, contributing to testimonial

injustice. The absence of sustained, culturally appropriate engagement with Indigenous Peoples within criminology helps explain why Indigenous communities are routinely reduced to statistical variables and risk categories, distanced from the interpretation of their own lived realities. Administrative records and deficit-based metrics come to dominate knowledge production, framing Indigenous communities as criminogenic populations requiring external management rather than as holders of knowledge about justice, harm, and accountability (Aliverti et al., 2021; Smith, 2021; Walter, 2005). These practices reflect the second manifestation of epistemic injustice: testimonial injustice, by withholding epistemic credibility from Indigenous speakers and preventing their perspectives from meaningfully shaping scholarly and policy discourse (Byskov, 2021; Cunneen & Tauri, 2019; Fricker, 2007).

Theoretical Inversion: Historical–Settler Colonial Continuum Approach

The explicitly acknowledged challenges within criminology serve as “a driving force for theoretical and methodological innovation to expand the field’s imaginations” (Aliverti et al., 2021, p. 304). Echoing this call, Goyes and South (2021) emphasise that “Indigenous criminology requires more than merely identifying this field as a gap in criminology; it demands the provision of conceptual, methodological, and theoretical tools for its advancement” (p. 24).

Indigenous scholars have advanced several theoretical inversions to address this disciplinary deficit. Prominent justice-oriented frameworks include rematriation, which reconceptualizes justice through women-centered relationality and the restoration of Indigenous governance (Nielsen & Jarratt-Snider, 2023); survivance, which foregrounds Indigenous persistence and resistance to colonial victimization (Vizenor, 2008); healing as justice, which emphasizes culturally grounded processes of recovery, restoration, and reintegration (Afzhoor & Akçay, 2025; Ragoonden & Mueller, 2017); and historical trauma theory, which recognizes the intergenerational transmission of colonial trauma (Maxwell, 2014). In the same spirit, a historical–settler colonial continuum approach directs criminology toward the enduring effects of colonial domination, including land dispossession, cultural assimilation, and legal control, in understanding Indigenous criminal justice relations.

Colonialism, succinctly defined, is “a practice of domination, which involves the subjugation of one people to another” (Kohn & Reddy, 2006, p.



1). While settler colonialism shares these traits, it constitutes a distinct formation. Veracini (2011) cautions that “colonialism is not settler colonialism” (p. 1) and identifies distinctions between them.

Traditional colonialism seeks to exploit Indigenous Peoples and resources through systems of domination, whereas settler colonialism seeks to secure Indigenous lands through the elimination, displacement, or assimilation of Indigenous peoples (Wolfe, 2006; Glenn, 2015). Consequently, resistance to colonialism often targets exploitation, while resistance to settler colonialism focuses on survival, persistence, and the maintenance or revitalisation of Indigenous institutions, cultures, and governance systems (Veracini, 2011).

Frantz Fanon described colonialism as a “Manichaeian world,” organised around a rigid binary between good and evil that naturalises domination and dehumanisation (Persaud, 1997). Settler colonialism gradually obscures this binary, transforming overt institutional violence into normalised indifference toward the hyper-criminalisation and victimisation of Indigenous Peoples. Nielsen and Robyn (2019), together with Bennett (2022), illustrate this historical-settler colonial continuum by showing that although the brazen criminal acts of historical colonialism may no longer be visibly sanctioned, they persist in contemporary forms such as hate crimes against Indigenous Peoples.

The historical-settler colonial continuum approach does not seek to reinvent settler colonial theory or suggest that it is insufficient. Rather, it builds upon the framework to make the criminogenic effects of colonialism more visible within criminological inquiry. Specifically, it seeks to: (1) connect contemporary Indigenous-criminal justice experiences to the enduring socio-economic, legal, and institutional legacies of colonial domination that continue to shape Indigenous Peoples' interactions with settler-colonial criminal justice systems; and (2) identify pathways through which criminology may move beyond its limited explanatory frameworks of crime, delinquency, and victimization by grounding theory and criminal justice practice in Indigenous experiences, knowledge systems, and histories, while recognizing them as sources of theoretical insight.

The marginalisation of Indigenous voices within criminological discourse is reflected in their significant overrepresentation within criminal justice systems whose origins, structure, and continued operation mirror the enduring legacies of colonialism and imperialism (Aliverti et al., 2021). By unmasking these historical continuities as the “criminogenic effects of

colonialism” (Cunneen & Tauri, 2019, p. 370), a historical-settler colonial continuum approach situates Indigenous criminalisation and victimisation within the enduring structures of settler colonialism rather than within Indigenous pathology or predisposition to criminality (Kohn & Reddy, 2006). However, scholars caution against portraying Indigenous Peoples exclusively as passive victims of colonial systems. Macoun and Strakosch (2013) warn that an overemphasis on victimisation risks reproducing the settler colonial logic of elimination by positioning Indigenous Peoples as objects of colonial harm rather than as enduring sovereign actors.

Parallel concerns emerge within BIPOC scholarship, which cautions against reproducing the “wounded subject position” (Pham et al., 2025), while critical race scholarship similarly emphasises the enduring nature of resistance to structural racism (Hoag-Fordjour, 2020).

Kauanui’s (2016) notion of enduring Indigeneity foregrounds Indigenous persistence, refusal, and resurgence within and against colonial structures (see also McKinnon, 2020; Lindroth, 2019). Indigenous Peoples are knowledge holders rather than solely offenders or victims (Goyes & South, 2021; Cunneen & Tauri, 2019; Jacobs, 2021; Smith, 2021). A historical-settler colonial continuum approach exposes how Indigenous criminalisation and victimisation are not reflections of inherent predisposition or tendency, but outcomes of enduring colonial structures.

Colonialism operates on a continuum that extends beyond historical domination and elimination into the ongoing structuring of Indigenous-state relations (Lefevre, 2015; Macoun, 2023; Wolfe, 2006). Colonial land dispossession destabilised Indigenous economies and governance systems, while assimilationist institutions disrupted kinship structures and cultural transmission, and legal imposition invalidated Indigenous authority while alienating Indigenous Peoples from traditional justice systems (Friedland, 2009; Li, 2010). Together, these processes generate structural conditions that are routinely misconstrued as Indigenous pathology or predisposition to criminality (Kohn & Reddy, 2006).

Land Dispossession

Kohn and Reddy (2006) explain that colonial domination requires the restructuring of Indigenous life so that survival becomes dependent on the coloniser. Although the violent land invasions characteristic of extractive colonialism may largely belong to the past, their economic legacies endure through laws and policies of dependency that constrain Indigenous



economic autonomy and contribute to the broader criminalisation of Indigenous survival and resistance.

In the United States, the Dawes Act of 1887 reduced Native American landholdings from approximately 138 million acres to 52 million acres, with control disproportionately concentrated in the hands of Indigenous men. This restructuring disrupted complementary gender relations that had sustained relative egalitarianism within many Indigenous households and communities, replacing communal land tenure with individualised allotments while transferring remaining lands to settlers. Behrendt (2022) directly links these transformations to emerging patterns of victimising asymmetry that intensified gendered violence, particularly against Native American women:

... [Interpersonal violence] increased because of settler colonial policies and regulations that changed the gendered landscape for Indigenous nations in North America [...] the imposition of historical and ongoing settler colonial structures of heteropatriarchy upon entire Indigenous communities in varying periods and locales eroded egalitarian, traditional values. (pp. 6–7)

In South Africa, the Natives Land Act of 1913 functioned as a system of economic assimilation by design. Indigenous communities were forcibly confined to reserves lacking arable land and viable employment opportunities. These spaces were engineered to produce dependency rather than to sustain life (Kariseb & Muhumuza, 2018). Frankel (2001) argues that apartheid policing operated primarily as a regime of surveillance and punishment. Echoing these patterns across the so-called Global South, South Africa provides a compelling illustration of how settler-colonial logics continue to shape Indigenous–state relations. The Sharpeville massacre in 1960 illustrates how violence followed whenever Indigenous Peoples asserted territorial rights. Black South Africans protested against the pass laws designed to enforce spatial confinement. The state responded with mass execution as a defence of settler authority over space (Frankel, 2001).

The enduring historical–settler colonial continuum is reflected in the reproduction of apartheid-era violence within contemporary criminal justice responses to Indigenous labour resistance. The 2012 Marikana massacre, in which South African police killed 34 striking Indigenous mine workers demanding equitable economic participation and humane working

conditions, illustrates how Indigenous claims to land, labour, and resource justice continue to be criminalised (Twala, 2012).

Similarly, the historical-settler colonial continuum is evident in Botswana's displacement of San communities into resettlement sites such as New Xade, Kaudwane, and Xeri, severing access to land and self-sustaining economies. Hitchcock and Vinding (2004) show that these sites produce reserve-like conditions through overcrowding, surveillance, and economic stagnation. Within these spaces, non-Indigenous actors exercise disproportionate authority over Indigenous lives, while control over food, education, and mobility exposes San communities to criminalising surveillance and sexual violence.

Cultural Assimilation

For Indigenous Peoples, children embody the continuity of Indigenous identity, governance, and land-based belonging; for this reason, they became central targets of eliminationist assimilation policies (Finestone, 2022; Snelgrove, 2014). As a result, assimilation functioned as a strategic tool for disrupting intergenerational knowledge transmission by removing children from their communities and replacing Indigenous socialisation processes with Western norms (Mukosi, 2022). As with broader socio-economic restructuring, cultural assimilation imposed gendered value systems that subordinated Indigenous women while undermining collective structures of care and responsibility (Reinhardt, 2017).

The United States used boarding schools as a primary vehicle for cultural assimilation. At least 523 such schools operated between 1869 and the 1960s, and by 1926, nearly 83% of Native school-age children were compelled to attend (Adams, 1995). Canada similarly operated the Indian residential school system from the 1880s to 1996, exposing Indigenous children to widespread victimisation whose scale continues to be revealed through the ongoing discovery of children's remains (Austen & Bilefsky, 2021; MacDonald & Gillis, 2017).

To resist the assimilationism imposed through boarding schools, Native students employed diverse forms of resistance, including retaliation against authority, literary expression through publications such as the *Chemawa American*, political organising through movements such as Pan-Indianism, legal activism, and cultural activism (Megerssa, 2014). Native students also resisted by running away and continuing to speak Indigenous languages in secret (Truth and Reconciliation Commission of Canada, 2015).



Historical trauma stemming from assimilationist policies has been linked to emotional distress, substance abuse, and anger, increasing the likelihood of Indigenous contact with the criminal justice system (Heart & Chase, 2016). These trauma-related vulnerabilities are well documented among Indigenous Peoples affected by forced child removal and cultural disruption, compounding across generations while being repeatedly misinterpreted as Indigenous pathology (Bombay et al., 2014; Heart, 2003).

Yet, focusing on trauma alone risks reproducing deficit-based accounts that obscure Indigenous agency and knowledge. The resulting pattern is heightened vulnerability to policing, prosecution, and incarceration among both survivors and their descendants, but understanding these outcomes requires attention not only to the enduring impacts of cultural destruction but also to the knowledge Indigenous communities bring to processes of healing.

While structuralist theories link crime and delinquency to the erosion of traditional social controls associated with urbanisation (Carrington & Russell, 2016), they pay insufficient attention to the settler-colonial reorganisation of Indigenous space. The disruption of Indigenous social, economic, and governance systems through dispossession and displacement generated enduring forms of colonial violence and criminogenic conditions that continue to shape contemporary Indigenous experiences of criminalisation, victimisation, and justice.

Criminology research needs to engage Indigenous culturally grounded practices of care, healing, accountability, and collective wellbeing to offer essential pathways for developing trauma-informed criminal justice responses that align with the lived realities and priorities of Indigenous victims and offenders (Oudshoorn, 2016).

Imposition of Western Legal Values

Indigenous Peoples developed culturally grounded ways of addressing social harms long before colonial contact (Cunneen & Tauri, 2019). Native Americans in the United States, Māori in New Zealand, Torres Strait Islanders in Australia, and Indigenous communities in Southern Africa relied on justice processes rooted in local worldviews and collective responsibility (Jacobs, 2021; Louw, 2007; Nielsen, 2009). These systems emphasised restoration and accountability within relationships, fundamentally differing from the adversarial and punitive orientation of Western criminal justice.

In the United States, the replacement of Indigenous legal orders with Euro-American frameworks became central to securing settler dominance over Indigenous Peoples and territories. Criminal law functioned as a disciplinary mechanism that coerced Indigenous deference to colonial authority (Ross, 1998). A historical-settler colonial continuum approach emphasises that these interventions were never neutral reforms, but enduring strategies that continue to erode Indigenous sovereignty and consolidate settler jurisdictional control (Gorrie, 2022). Through treaty provisions, congressional acts, and judicial rulings, a foreign legal order was imposed that continues to facilitate hate crimes and alienation from culturally appropriate justice systems.

Jacobs (2021) explains that the imposition of Western legal systems was driven by racist assumptions that Native communities lacked the competence to govern themselves. The so-called “Friends of the Indians” movement promoted the adoption of Euro-American law as a means of civilising Indigenous Peoples, treating Indigenous legal traditions as obstacles to assimilation and settlement (Love, 1991).

From the nineteenth century to the present, federal jurisdiction over Indigenous criminal matters continues to expand incrementally. In 1885, Congress passed the Major Crimes Act, which transferred jurisdiction over serious crimes committed by Native and non-Native defendants in Indian Country to the federal government. The Major Crimes Act emerged because of a prior case, *Ex parte Crow Dog* of 1883, in which the United States Supreme Court recognised Lakota authority to address harms through restitution rather than incarceration. The Act, therefore, furthered the settler colonial objective of displacing restorative Indigenous law with carceral Western norms that redefined harm, agency, and justice.

Jurisdiction is central to criminal justice because it determines who exercises power to enforce community safety and accountability. For Indigenous Peoples, jurisdiction protects against hostile external policing, affirms sovereignty, and allows culturally meaningful responses to victimisation (Pevar, 1983). Today, jurisdiction over crimes involving Native victims or offenders on tribal lands is fragmented across federal, state, and tribal governments, producing a complicated and often inaccessible pathway to justice (Amnesty International, 2022). Tribes that seek expanded jurisdictional authority are required to adhere to Western legal standards and have restrictions on the penalty they can impose: a maximum of three years’ imprisonment or fines of fifteen thousand dollars under the Tribal Law



and Order Act of 2010 and the Violence Against Women Act of 1994 (re-authorised in 2022).

Despite these constraints, Indigenous justice systems have endured. Nielsen and Silverman (2009) note that these systems are simultaneously the oldest and newest forms of justice because they have persisted underground and are now resurging in contemporary governance. However, in most settler colonial states, including the United States, significant gaps remain in research documenting Native justice initiatives and evaluating their effectiveness.

Future inquiries must partner with Indigenous communities to better understand these systems and support the development of community-driven, culturally grounded responses that confront the persistent legacies of settler colonial criminal justice.

Comparative analyses of the mechanisms through which settler-colonial states have undermined Indigenous justice systems, legal traditions, and sovereignty can deepen theoretical understandings of Indigenous–criminal justice relations. By centring Indigenous lived realities, such analyses illuminate how colonial structures continue to shape contemporary experiences of criminalisation, victimisation, and justice.

Having, with that, responded to the first research question posed, that is, the question of whether theoretical transformation is possible within criminology’s Eurocentric foundations, and if so, what framework can explain Indigenous experiences in settler-colonial criminal justice systems, it is time to address the second question of what practical approaches may inform methodological innovations to support Indigenous participation in criminological research and criminal justice practice.

Defining Decolonisation in the Context of Criminological Research

A decolonial approach is necessary to inform methodological innovation and participatory frameworks for engaging Indigenous voices in criminology research. As Zavala (2013) observes, decolonising research strategies are less concerned with rigid definitions or methods than with creating the conditions that make decolonising research possible. The lack of precision surrounding decolonisation across disciplines has therefore been regarded as both “problematic and necessary” (Guerzoni & Walter, 2023, p. 493; Zavala, 2013), since essentialist definitions cannot capture the diverse ways decolonisation has been theorised and practised across Indigenous communities and academic traditions (Sium & Ritskes, 2013; Walter, 2005).

Given criminology's Western methodological orientation, the UNDRIP offers an avenue for decolonisation by securing Indigenous voices within the discipline through the protection of Indigenous free, prior, and informed consent, self-determination, and intellectual property rights. While scholars have long advocated for the protection of these Indigenous rights in research, the UNDRIP consolidated and codified them into identifiable rights-based standards capable not only of preventing harm when followed, but also of strengthening grounds for accountability and legal remedies when violated (see *Havasupai Tribe v. Arizona Board of Regents*, 2008).

Indigenous Right to Free, Prior, and Informed Consent in Criminology Research; Articles 11.2, 19, 32.2

Decolonising criminal justice entails consulting Indigenous voices in the development of criminological research agendas and curricula. Decades of exploitative and extractive research practices have generated deep Indigenous apprehension toward Western research institutions and methodologies. The UNDRIP provides an important framework for repairing these fractured researcher-Indigenous relationships by requiring the free, prior and informed consent (FPIC) of Indigenous Peoples before adopting or implementing legislative or administrative measures that may affect them.

The United Nations Permanent Forum on Indigenous Issues regards FPIC as an “evolving principle” adaptable to different realities. Consequently, FPIC has become prominent in guiding state agencies, non-governmental and multilateral entities, as well as researchers, particularly in the sciences (International Business and Human Rights, n.d.; George et al., 2019; Garrison et al., 2019). Bargallie et al. (2020) highlight the value of FPIC to criminology and criminal justice research by including Indigenous voices in research that directly shapes policy developments. Once researchers decide to engage Indigenous voices in criminology and criminal justice research, FPIC provides the following consultative framework for engagement (Food and Agriculture Organization of the United Nations, 2016):

- *Free from coercion, intimidation, manipulation, bullying, or pressure in obtaining consent.*
- *Early and ongoing consultation with Indigenous communities before, during, and after participant recruitment throughout the research process.*
- *Full and effective participation of wider Indigenous communities in authorising research.*



- *Dissemination of research materials in community-accessible formats that reflect local language norms and styles of communication.*
- *Informing communities about alternative approaches so they can meaningfully assess the proposed research approach.*
- *Respecting community decisions regarding the continued use, return, or destruction of data and materials where consent is withdrawn.*

Indigenous Rights to Self-Determination; Articles 3, 4, 5, and 18

The UNDRIP recognises Indigenous Peoples' "right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves" (Article 18). Within justice-related research, scholars such as Smith (2005) and Bennett (2022) have long argued that research involving Indigenous Peoples must be guided by Indigenous voices, priorities, and knowledge systems.

Given criminology's tendency to research sensitive and deeply harmful issues, Guerzoni and Walter (2023) foreground Indigenous data sovereignty as a self-determination tool that enables Indigenous Peoples to govern the collection, access, analysis, interpretation, management, dissemination, and reuse of their data. Accompanying data sovereignty are the CARE principles, which protect Indigenous collective benefit in research and affirm Indigenous authority to control their data, while requiring researchers to remain fully transparent about how Indigenous data are used and to adhere to ethical responsibilities throughout the data lifecycle and broader data ecosystem (Guerzoni & Walter, 2023).

Practically, meaningful integration of the right to self-determination into criminology requires moving beyond narrow Western conceptions of the "scholar" as only someone formally trained within academic institutions. Indigenous communities possess their own experts, including Elders, survivors, cultural practitioners, spiritual leaders, and other knowledge holders whose lived experiences and knowledge systems offer critical insight into Indigenous experiences of victimisation, justice, healing, and responses to harm (Kennedy et al., 2009). Failing to accord Indigenous knowledge holders the same recognition and regard as scholars risks reproducing the very researcher–subject dynamics through which Indigenous Peoples have historically been marginalised, objectified, and harmed (Putt, 2013).

Indigenous self-determination has also shaped criminology curricula and teaching priorities through place-based and community-engaged approaches to learning (Root et al., 2019). These approaches include involving local Indigenous communities in criminology curriculum development and inviting Indigenous guest speakers, survivors, and community knowledge holders to share perspectives on over-incarceration, policing, victimisation, restorative justice, healing, and Indigenous justice practices. Alongside broader institutional efforts such as hiring Indigenous faculty and staff and recruiting Indigenous students, these initiatives form part of the broader project of “decolonizing criminology and criminal justice curricula” (Murdoch, 2022).

Indigenous Intellectual Property Rights; Articles 11.2 and 31.1

For decades, Indigenous Peoples have confronted the appropriation and misuse of their cultural and intellectual property under Western intellectual property regimes that privilege individual ownership over collective rights. Within Indigenous communities, testimonial experiences, cultural expressions, and traditional knowledge often carry collective cultural significance beyond the individual.

The UNDRIP resolves any ambiguity surrounding Indigenous intellectual property rights by affirming Indigenous Peoples’ rights to “maintain, control, protect and develop” their cultural heritage and traditional knowledge (Article 31(1)). It further recognises Indigenous entitlement to mechanisms of redress, including restitution, for cultural, intellectual, religious, and spiritual property taken without free, prior, and informed consent or in violation of Indigenous laws, traditions, and customs (Article 11(2)).

Comprehensive free, prior, and informed consent processes, therefore, play a critical role in protecting Indigenous intellectual and cultural property within criminology research and practice. While some research may involve personal experiences with limited collective implications, engagement with Indigenous cultural knowledge or shared community experiences often requires consultation with Indigenous leadership and adherence to established community research protocols. The Navajo Nation Human Research Review Board exemplifies such governance mechanisms (Navajo Nation Human Research Review Board, n.d.).

The collective benefit principle within the CARE framework for Indigenous data sovereignty further supports Indigenous intellectual



property protections by emphasising equitable outcomes, reciprocity, and shared value. Researchers and instructors should fairly compensate Indigenous knowledge holders, obtain ongoing permission before using Indigenous knowledge, and ensure equitable authorship, recognition, and benefit sharing (Guerzoni & Walter, 2023). Such practices recognise the value of Indigenous time, expertise, and cultural knowledge while maintaining ethical obligations to share any future benefits arising from the research.

Conclusion

In its current form, criminology remains limited in its capacity to explain Indigenous criminalisation and victimisation and to meaningfully engage Indigenous knowledge and participation through its methodologies. These theoretical and methodological limitations are reinforced by the discipline's epistemological foundations, which continue to marginalise non-Western and Indigenous knowledge systems and cultural frameworks. As a result of this persistent exclusion from defining and shaping criminological knowledge, Indigenous Peoples continue to experience disproportionate and harmful encounters with criminal justice systems. An accurate contextualization of Indigenous Peoples' relationship with the criminal justice system, therefore, requires examining the historical settler colonial continuum to trace the overrepresentation of Indigenous Peoples as both victims and offenders to the ongoing and structural functions of colonial governance. To address these limitations, criminology must adopt a rights-based approach rooted in the principles of the UNDRIP and decolonisation, enabling partnerships with Indigenous Peoples grounded in self-determination, epistemic authority, and meaningful participation.

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