

10 Terminating Canada's Failed System of Injustice

Unmasking Colonialism, Redefining Relationships, and Re-establishing Balance

Chapter Outline

This chapter examines the many injustices Indigenous people have experienced at the hands of the Canadian criminal justice system, as well as the failure of the system to effectively serve this population. The authors argue that the current crisis related to law and justice that Indigenous people face is a continuation of colonization. They do not view colonization as a historical issue only but rather the justice issues as a continuing perpetuation of colonization.

The chapter begins by examining the high incarceration and victimization rates of Indigenous peoples in Canada, neither of which has been significantly impacted by government initiatives. Typical responses to Indigenous encounters with the justice system are discussed, as well as responses by police, the courts, and corrections. It is noted that the negative results of these encounters have resulted in high incarceration and repeat offence rates. Also discussed are the impacts that historical events, such as treaties, residential schools, and the Indian Act, have had on Indigenous peoples' interactions with the justice system. The authors demonstrate that the problems encountered by Indigenous people, including victimization and over-representation, are a direct result of colonization.

The chapter goes on to examine the differences between Indigenous and Euro-Canadian understandings of justice. The Euro-Canadian justice system sees justice as achieved when one is convicted of a crime, demands that justice-related problems be addressed according to the colonial means of the Canadian state, and views the rulings of the courts as absolute. In contrast, Indigenous people's views of justice are informed by a vision of right relations between all aspects of creation. Accordingly, justice is a way of relating with all others that is based on peace and respect. The chapter also examines initiatives such as alternative sentencing.

The chapter addresses issues of colonial continuity and participatory justice programming. The chapter also considers current challenges and issues of racism such as missing and murdered Indigenous women, police abuse such as "Starlight Tours" and the outcomes of recent trials such as the Colten Boushie and Tina Fontaine cases.

The chapter concludes with a key message: relationships based on a commitment to pursue peace and respect need to be re-established between Canadians and Indigenous peoples. This will serve to improve the Canadian criminal justice system and rebuild Indigenous communities by having Indigenous and non-Indigenous people work together to improve the situation.

Learning Objectives

- To recognize that the criminal justice system is failing Indigenous peoples in Canada
- To acknowledge the high incarceration rates and high victimization rates of Indigenous peoples in Canada
- To recognize the standard response to Indigenous criminal justice that has come from the police, the courts, and corrections facilities
- To determine how an Indigenous system of justice can be re-established

Study Questions

1. Where in Canada are the highest incarceration rates of Indigenous peoples? Why is this so?
2. What are the rates of victimization of Indigenous peoples? What are the gender differences, if any?
3. What has been the approach to policing in Canada with respect to Indigenous peoples? Have things changed over time?
4. How have courts reacted to Indigenous peoples? Have things changed over time?
5. How has the correctional system reacted to high numbers of Aboriginal peoples? Have things changed over time?
6. What impact have treaties had on Indigenous involvement in the justice system?
7. What impact has the Indian Act had on Indigenous involvement in the justice system?
8. What impact have residential schools had on Indigenous involvement in the justice system?
9. What strategies can be used to re-establish peace, friendship, and an Indigenous system of justice?
10. Provide an overview of either the Colten Boushie or the Tina Fontaine cases. What are the key issues and how could these issues be overcome?

Additional Resources

Readings

Gavigan, Shelley A.M. 2012. *Hunger, Horses, and Government Men: Criminal Law on the Aboriginal Plains, 1870–1905*. Vancouver: University of British Columbia Press.

Hendry, Jennifer, Melissa Tatum, Miriam Jorgensen and Deirdre Howard-Wagner. 2018. *Indigenous Justice: New Tools, Approaches, and Spaces*. London: Palgrave Macmillan.

Milward, David. 2013. *Aboriginal Justice and the Charter: Realizing a Culturally Sensitive Interpretation of Legal Rights*. Vancouver: University of British Columbia Press.

Monchalin, Lisa. 2016. *The Colonial Problem: An Aboriginal Perspective on Crime and Injustice in Canada*. Toronto: University of Toronto Press.

Roach, Kent. 2019. *Canadian Justice, Indigenous Justice: The Gerald Stanley and Colten Boushie Case*. Montreal: McGill-Queen's University Press.

Websites

Government of Canada: Department of Justice “Indigenous Justice Program”

<http://www.justice.gc.ca/eng/fund-fina/acf-fca/ajs-sja/index.html>.

This site provides an overview of the Indigenous Justice Program that offers alternatives to mainstream justice processes in appropriate circumstances with Indigenous community-based justice programs

Missing and Murdered Indigenous Women and Girls <https://www.mmiwg-ffada.ca/>

This site provides an overview of the MMIWG Commission including the final report.

Indigenous Overrepresentation <https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/jan02.html>

This site provides an overview of the statistics of overrepresentation of Indigenous peoples in the criminal justice system.