

Decolonizing Justice: Restorative Practices in Indigenous Legal Systems

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Abstract

This paper explores how indigenous ways of justice can heal the communities and can address unfairness that happens to the indigenous people. This way, it means sentencing circles and special courts in the region, fixing the real problems, taking responsibility, and ending up making strong communities instead of punishing people. The traditional indigenous value and the present legal system have a good connection if these practices occurred. However, there are some challenges to it; more command and control should be given to Indigenous communities, which they can provide even better support to their culture and ways to govern them and include them in the mainstream system. Further, it studies how these restorative practices, like fixing problems rather than punishing people, including licensing, will protect the culture of native people and create better and fairer rules, for instance, in an area of resources and tourism. The restorative justice system can be used in a more prominent manner than just a legal framework, which examples clearly illustrate to us. The reading construct that recognizing and empowering indigenous forward justice systems will not only heal the wound of colonialism but also help create an inclusive society and a more equitable future. Using the Indigenous programs like sentencing circles, urban Indigenous courts, and programs that protect Indigenous culture helps to bridge the harm done by colonizers, which creates better relationships and trustworthy jurisdiction.

Introduction

Restorative justice promotes healing and understanding instead of punishing someone and promotes a different approach to dealing with the situation in a more appropriate manner. Mainly belonging to the old traditional legal system, it exists in indigenous communities, like

building relationships through connecting with one another and maintaining them accordingly. On the other hand, a punishing way of system came across through European countries. Indigenous culture is to practice taking responsibilities, healing, and bringing the offenders back to living communities. This paper looks in-depth at the legal traditions like sentencing circles, special Indigenous courts, and self-governance. With the help of the scholars, we can understand how we can work towards decolonization and reconciliation in this country.

Methodology

The following paper takes a qualitative research method to analyze how we can use restorative practices within Indigenous legal systems. After reading all the articles and sources available at the library to understand the academic articles, case studies, and legal analyses, its core idea and how the justice system can be implemented. The authors as mentioned are Boothroyd (2021), Dalton (2020), Metallic (2022), Michel (2020), Reed (2023), and Cunliffe and Cameron (2007). How can two systems be connected? Traditional Indigenous practices and legal modern systems will provide valuable techniques to build justice, such as community healing and legal pluralism, by also including Indigenous languages. This paper will explore how both the law and the work can work together by looking at the past and present situation, which still exists today and shapes the legislative framework. My research paper also considers the past and the current issue that is put forward in bringing up the legislative what it is today. Additionally, use analysis to find common ground through thematic instances, community healing, having multiple legal systems (legal pluralism), and Indigenous languages; city courts and Indigenous self-governance are a few that have put some ideas into real life that showcase it can fix the complex issue that was damaged by the unfair systems practices and promote

reconciliation. Lastly, historical and systemic factors like residential schools and their impact, colonial laws to grasp the understanding, and finding any possibilities within Indigenous justice systems.

Restorative Practices in Indigenous Legal Systems

Restorative practices like focusing on healing, community involvement, and traditional knowledge are better alternatives in comparison to western modern law of punishing and help build a stronger and more inclusive community. Western-style legal processes are about punishment; however, there is a strong alternative to that in Indigenous community-based justice systems called sentencing circles, as explained by Cunliffe and Cameron (2007), promoting shared responsibilities by bringing together those who harm and those who are affected by that harm by exchanging dialogue and asking how we can move forward. This way of approach helps in rehabilitating & building relationships, quite a different prospect to look beyond then just punishing (Cunliffe & Cameron, 2007). However, the most important challenge here is the offender's incorporation to join in the communities, which will be difficult as it is a matter of safety and security.

Urban Indigenous courts have proven that restorative practices work well in the present context in a well-suited modern system. Boothroyd (2021) talks about the courts giving power to the Indigenous communities where they can practice their free rights of traditional legal ideas in urban settings (Boothroyd, 2021). For Hardship to succeed, firstly, they need to operate independently, and secondly, the current legal system should stop that they are easing into Indigenous practices, which are not exactly implemented. The most important thing for the Indigenous legal systems is "language.". Metallic (2022) explains that Indigenous languages hold

and play a crucial role in understanding culture as well as legal knowledge, providing a different, unique idea to tackle justice and relationships among communities. This unique idea about language is very valuable in building relations and towards governing laws, which shows that impact on the modern colonization system can be improved over time (Metallic, 2022). By taking these things into consideration, our present Canadian jurisdiction can provide protection for Indigenous values and will try to create a just society, where everyone is included.

Restorative justice practices are the best way to understand that it connects our problem of today's modern system with old traditional values. Not just deal with the harm that happened from crime but also take us to the bigger picture where systemic issues that keep iniquity going. Reed (2023) states there are Indigenous-led programs, such as community-based conflict resolution, that encourage healing and fairness, which match with the traditional values and beliefs. Not only does it concentrate on the individual but also healing patterns throughout the Indigenous restorative justice systems, which can be implemented and need support for a real change policy.

Barriers to Decolonizing Justice

There are some advancements seen around recognizing Indigenous justice practices; however, you'll see a major obstacle to implementing them in a full-fledged manner. As said, one of the major problems that the communities are facing across Canada is that Indigenous-led programs struggle to keep going on a full scale due to scarcity of resources and not enough cash funds to develop and maintain restorative practices. Dalton (2020) explains that Western legal systems always have an upper hand due to the limitation of budget allocation. Systemic racism is present in Canadian institutions, meaning how they systematically control the voices of

Indigenous people as and when the police are made or commence. Michel (2020) points out we need to work simultaneously to eradicate the hurdle, and efforts need to be made for multiple legal systems that work together. Another likely problem that needs attention is the conflict between the two entities, that is, the federal and provincial governments, which technically makes it hard to incorporate the Indigenous law into the livestream. In Reed (2023), comments on the policy that needs to be clearly defined in terms of who is in charge and who is the authority governing it. With the help of this policy, they introduce their Indigenous justice systems in mainstream present-time Canadian jurisdiction law; otherwise, it will be a loss for the Indigenous communities to exercise their rights of self-governing. However, this type of obstacle shows we need to really collaborate on our work, come up with appropriate adequate funding, and use different ways to include everybody in the justice system to truly put forth the needs of reconciliation and decolonization.

Due to current systemic problems, restorative practices for Indigenous communities are very difficult to use in general. Dalton (2020) criticizes the restriction that the government has placed upon resources, how they are used and shared, which clearly shows the biased colonial system still exists, limiting the natives of self-governance. This kind of current affairs makes things worse, avoiding the legal rights of Indigenous communities from holding their own lands and resources (Dalton, 2020). If the government wants to solve the problems of the injustice system, that means it would require a bigger change in the jurisdiction system, which the institution will somehow resist having a major change. According to Michel (2020), he supports "legal pluralism" and conveys there should be an equal share between the Indigenous and Canadian systems in the current jurisdiction legislature, not particularly, but to achieve decolonization. To reach such a deal, a lot of effort needs to be put into negotiation and mutual

respect, which is less likely to happen soon. The author stresses that acknowledging the Indigenous laws in the present-day Canadian system will bring real reconciliation (Michel, 2020).

Restorative justice is not just a general legal problem; it can be seen as a cultural and social issue. Reed (2023) proposes restorative licensing might stop the exploitation of an indigenous culture, especially around tourism. To promote the economic fairness among the native communities, focuses should be on Indigenous values and on finding ways to preserve them. To see it happening on the ground requires a massive policy change and large-scale commitment from the governing bodies of Canada (Reed, 2023). In the past, injustice, for instance, the systematic removal of Indigenous children from their families, till date, the native families are affected and have not been able to reclaim their legal traditions. The residential school history, as Boothroyd (2021) explains, in a very structured manner, they tore apart Indigenous governance and weakened them from the core (Boothroyd, 2021).

Implications and Opportunities

By implementing restorative practices in Canada, we strengthen the legal system to achieve reconciliation and justice. Identical sentencing circles and urban courts demonstrated that communities could come together in dealing with negative harm, building empathy, and fostering responsibility in the society. Boothroyd (2021) argues that this implementation will power our community bonds and understanding, creating a fairer and constructive jurisdiction (Boothroyd, 2021). In addition, Metallic (2022) states that the idea of Indigenous languages is quite a revolutionary change in the Canadian legal system by including the cultural values. The strategy to govern the Indigenous communities, as Dalton (2020) and Michel (2020) state, is to

break through the colonial system and give back the fundamental rights back to the hands of Indigenous communities. In Reed's (2023) proposal, restorative licensing will make a difference for fair practices in all sectors, not only helping the environment but also widely preserving the Indigenous culture. Another more interesting resource we can indulge in to improve our current legal system is through "Indigenous storytelling," where all the ideas can be put through, for instance, how to govern, ethical rules, and community values that are close to restorative justice. we provide an alternative to the modern legal systems with a touch of Indigenous cultures and create a stronger self-governing system. A real change needs a dedicated amount of time and effort to put it in, which requires a partnership between Indigenous communities and the governing bodies of the Canadian legislature. As Michel (2020) states, a better-looking restorative justice system is a system where mutual respect grows and a sense of shared responsibility prevails, which will create more opportunities to discuss things and collaborate on work where the leader from the Indigenous community can be a good guide on how the whole tradition practices actually work and can be included in the modern-day justice system. In Reed (2023), explore that the culture of the indigenous people needs protection and preservation; that can be achieved through restorative licensing. Not only will it help the economy, but it will also promote cultural empowerment. Policies should commence with both the point of view of Indigenous and non-Indigenous groups, wherein they come together, understand, and regulate the injustice system & their action, which eventually creates a long-term reconciliation.

To precisely use restorative justice, we need to put some genuine effort towards training and educating the masses. Lawyers, policymakers, and community leaders will need training to implement accordingly and effectively. Collectively, among communities, schools, and universities, it can be very productive to build this knowledge and skill. On the other side, we

should not neglect the effects on the economic system while practicing restorative justice. This restorative justice can play a key role in fixing the unfair system by taking small steps like having fewer people in jail and allocating more resources to community programs. Reed (2023) talks about the method being used to tackle this problem being much fairer and having an honorable stance for economic stability.

Future Directions

The Future of Indigenous Restorative Practices: If implemented, it will bring the transformation in the current law system. Future studies will show some positive outcomes in the long run, especially how well they have managed the offenders for not redoing the offense that they did in the past and helped them welcome back into the community with dignity. Moreover, the collaboration between the Indigenous and non-Indigenous legal professionals will erupt with respect and build trust, which will encourage learning; that's where we'll see changes. It is very necessary that we change our legal system and bring legal reforms; a change is a must in our policy. The policy needs to be prioritized by the government, needs to be recognized and used as Indigenous laws, and moreover, funding is needed to support all this justice program, which will run exclusively by the Indigenous professional. This will only happen when the government bodies come together to fulfill the underlying reasons for inequality.

We need to consider our Indigenous youth as a big asset, as they are going to be the voice in the future of justice. Getting young blood in force will make sure the reconciliation process is on, and it's the same for restorative practices as well. Programs that are provider-teaches and empower our indigenous youth to get the knowledge and foundation for future leaders who are going to lead the communities. Boothroyd (2021) states that transferring the knowledge and

habits towards the next generation is the key to keeping the tradition alive while adapting the current modern victuals around us and tackling it accordingly. Simultaneously, Metallic (2022) points out the importance of the inclusion of certain factors, like Indigenous languages and traditions, in the youth education system, which will help us to build the generation who comes next with strong determination, pride, and responsibility. By helping indigenous young generations, they can be the next acting advocates and leaders; restorative practices can be altered and take towards the common goal where both present and future look very challenging.

Conclusion

A strong way to decolonize this justice system is to introduce Indigenous legal systems, which will be a positive step towards reconciliation. The whole system concentrates on healing, rebuilding communities, and protecting indigenous culture, which has in the past been marginalized in the current modern system. This tradition challenges the current Canadian legal system, which believes in punishing people for their wrongdoing. Clearly, we need to avoid the systemic obstacles and colonial system, allowing self-governance and restorative justice to work. Advocacy, policy changes, and real collaboration between Indigenous people and government will build a better jurisdiction honoring Indigenous traditions and include everyone.

Recognizing Indigenous legal traditions is just not making restorative practices out in use; moreover, it will create a stay accountable and get a necessary response. The relationship progress between the government entity and Indigenous community must keep in check how well the partnership is doing and make sure the decision-making should be done by Indigenous leadership. Michel (2020) highlights that the indigenous governance should be independent,

respected, and not treated as less important or too controlled by any government bodies; it should let them exercise their authority in free will. Indigenous voices at every level need to be heard by the national policy changes. Canadian diverse culture will only truly reveal itself when the integration of Indigenous traditional values with the Canadian jurisdiction legal system combines, and addressing problems will show a true reconciliation. Reed (2023) shows that programs run by the indigenous communities have proven more successful than modern systems because they fix the individual problems and help heal the bigger picture and unfair system. Traditional law in the Canadian system, for instance, Indigenous languages or community-based justice programs, will have inclusivity for everyone.

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