

AN INDIGENOUS COMMENTARY ON THE GLOBALISATION OF RESTORATIVE JUSTICE

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Abstract

The study and impact of the globalisation of crime control policy and related products have recently begun to receive significant attention from critical Indigenous scholars. The reasons for the increasing focus on this issue include the restorative justice industry's increasing utilisation of so-called 'Indigenous' philosophies and practices in the design of its various products; and the increasing global popularity of supposedly 'Indigenous-inspired' restorative justice initiatives, not only in settler colonial contexts, but throughout Western jurisdictions, as a response to crime control issues relating to minorities. The purpose of this paper is to provide an Indigenous critique of the globalisation of restorative justice and the industry's utilisation of Indigenous practices, symbols and philosophies in the marketing of its products. The paper will focus on the impact that the international transfer of restorative products is having on relationships between Indigenous peoples and central governments in settler colonial jurisdictions, particularly New Zealand and Canada, and on Indigenous peoples' drive for greater self-determination in these jurisdictions.

Keywords

family group conferencing; globalisation; Indigenous peoples; restorative justice

Introduction

This paper is intended as a small offering in response to the challenge posed by Muncie (2005), O'Malley (2002) and Stenson (2005) for criminological analysis of the globalisation of crime control to move from obsessive macro-theorising about 'its' *shape and depth*, and instead begin analysing the micro-level impact of all this globalised, criminological activity. The manuscript also serves as a response to Aas' call for our discipline to:

'...take up an old debt of omission and explore more systematically connections between globalisation and colonisation [which is] essential if we are address the imbalances of power and the dynamics of othering and social exclusion in the present world order.' (2009:413)

A further motivation for this paper is my wish to privilege the experiences of Indigenous peoples of contemporary manifestations of globalised European Justice⁸, for as Felon and Muguia (2008:1657) rightly argue:

'In the telling of man's [sic] global project, the story of indigenous peoples has been woven into the fabric of globality, yet the leading experts on globalisation have either ignored the role of indigenous peoples or reduced their existence to pre-packaged terms such as the 'fourth world' or as ethnics in 'developing nations' or even hidden in the broader 'periphery'.'

It is the modest intention of the author that through this paper Indigenous peoples' 'real world' experiences of the globalisation of restorative justice will draw the discipline's attention to the meso and micro-level impacts of the inter-jurisdictional travels of their theories, crime control products, and legislation. Arguably, privileging Indigenous peoples' experiences of the globalisation of crime control is important for the development of criminological analysis of the phenomenon. After all, the Indigenous peoples of Africa, the Americas and the South Pacific have experienced an almost continuous process of cross-border transfer of crime control products throughout the last 200 years or more. Furthermore, imported criminal justice systems were a significant tool in the colonialists' attempts to eradicate Indigenous life-worlds, strategies that manifest in the contemporary moment in the form of violent policing strategies, and our significant over-representation in criminal justice statistics. And yet despite all this, the Indigenous voice is often silenced in the vast lexicon produced by the Western Academy (Tauri, 2012). Therefore, the time has come for us to speak for ourselves; to challenge the often negative impact of the

⁸ Further rationale for privileging the experience(s) of Indigenous peoples residing in Settler Societies include the significant, over-representation of First Nation peoples in all Settler Society criminal justice systems (Cunneen, 2006; Tauri, 2004); the vast amount of evidence of bias, racism perpetrated against Indigenous peoples by the agents of crime control, not to mention the part played by them in the genocidal phases of colonisation that Indigenes refers to as the 'killing times'; the historical lack of focus by Eurocentric criminology on research with Indigenous peoples, that enables their experiences to be reflected through the research generated by the discipline; and finally the right of Indigenous peoples *to speak for themselves about issues that concern them*, a right recently confirmed through the United Nations Declaration on the Rights of Indigenous Peoples (United Nations, 2008).

products generated by the Academy and the restorative justice industry, upon our communities, and dispersed amongst us as though they are *offerings from the criminological gods* for the benefit of the less fortunate (Agozino, 2003; Tauri & Webb, 2011).

The paper begins with a brief overview of the globalisation of crime control products; followed by a critical discussion of the processes through which the Indigenous life-world has come to play a significant part in the developing globalised RJ Industry, elements of which rely heavily on Indigenous culture for the marketing of their products. I argue that the increasing inter-jurisdictional transfer of specific crime control products is having a profound impact on Indigenous peoples residing in settler colonial societies, firstly, through the purposeful, and often exaggerated and inappropriate use of elements of Indigenous life-worlds in the construction and subsequent marketing of crime control products; and secondly, through the impact this activity is having on the ongoing struggle of Indigenous peoples to resurrect our traditional justice processes and/or achieve some measure of jurisdictional autonomy (Tauri, 2011).

A Brief Comment on the Globalisation of Crime Control Products

'Criminologists are, together with other criminal justice professionals, becoming increasingly eager exporters of knowledge.' (Aas, 2009:409)

During the past twenty years globalisation has become established as a legitimate area of criminological inquiry, albeit one that is responded to in equal measures of admiration and suspicion (Hopkins, 2002; Newburn & Sparks, 2004; Robertson, 1990; Scholte, 2005). For some, the prevalent image of globalisation as ever-increasing flows of capital, people, data and *cultural artefacts* is a welcome development that presents new opportunities for breaking down perceived barriers related to ethnicity, class, language and culture (see Watson, 2004), overcoming poverty and inequality, and for the development of effective responses to universal issues such as crime and (in)security (Jones & Newburn, 2001; Newburn, 2010). For others, globalisation represents an unfolding tyrannical rule of peoples by a global economic regime that works exclusively for the benefit of Capital, reflected in an ever-increasing exploitation of cultural context for the benefit of policy entrepreneurs and the state (Hay & Watson, 1999; Held & McGrew, 2000; Odora Hoppers, 2000; Teeple, 1995).

According to authors such as Friman (2009:1-2) and Nelken (2004:373), crime has 'gone global'. This statement signals that the scale and scope of the contemporary epoch of globalisation is unprecedented and unmatched in its degree of globality. The evidence of this phenomena is apparently everywhere, including the transfer of a range of criminological strategies, technologies, policies and interventions including Zero Tolerance (Newburn, 2010; Wacquant, 2009), and Broken Windows (Shichor, 2004) policing strategies, and Mandatory Sentencing (Lynch & Sabol, 1997), and related '3-strikes and you are out'-style legislation (Jones, 2003; Schiraldi, Colburn & Lotke, 2004). All of these artefacts are accompanied by sophisticated marketing rhetoric and media friendly sound-bites that betray (or perhaps more accurately, reflect) their conservative birth-right:

‘tough on crime’, ‘sensible sentencing’, ‘life means life’, ‘holding offenders accountable’, and so on. However, it is important to note that the growing international market in crime control artefacts is not solely dominated by ‘tough on crime’ conservatives and their (supposedly) punitive policies and interventions. Arguably one of the most significant players on the international market – to use perhaps a rather inaccurate collective term for what is a broad, often disparate movement – is the *Restorative Justice Industry* (Cunneen & Hoyle, 2010; Daley & Immarigeon, 1998).

The Globalisation of Restorative Justice

According to popular origin myths, the antecedents of contemporary RJ began in Canada in the late 1970s when a parole officer from Kitchener, Ontario introduced a process that enabled victims and offenders to meet face-to-face (Peachey, 1989). From there it steadily grew, with the development of community boards in San Francisco in the 1980s; the proliferation of justice boards throughout North America through the 1980s/1990s; Family Group Conferencing (FGC) in New Zealand in the early 1990s, and Sentencing Circles in Canada. All this activity has since been followed by an explosion of RJ-related activity across North America, Western Europe, and of late throughout parts of Asia and South America. That RJ is now a full-blown *industry* that plays an increasingly important role in the globalised crime control market is undisputable. For example, Miers (2007:447) writes that “viewed globally, informed observers estimate that, by 2000, there were some 1,300 (RJ) programmes across 20 countries directed at young offenders”.

The contemporary development of the RJ Industry has played a significant part in both the Academy’s commodification of Indigenous life-worlds and the global spread of RJ products. For example, Deukmedjian (2008:122-123) recounts the introduction by the Royal Canadian Mounted Police of RJ into its practices via community justice forums that were based heavily on the police-centred, Australian formulated ‘Wagga Wagga’ model. The global trajectory of this model of RJ, based on the so-called ‘Maori’ approach to justice, can be traced from its successful insertion into the U.S in 1994 in Anoka, Minnesota (McDonald, Moore, O’Connell & Thorsborne, 1995). As Deukmedjian (2008:122) recounts, this successful foray into the U.S “inspired McDonald and O’Connell [two of the architects of the Wagga Wagga model] to form the Transformative Justice Australian advocacy and consultancy group” that subsequently travelled throughout North America in the mid-1990s marketing a standardised form of FGC to both practitioners and policy makers. Their travels included meetings with Indigenous elder’s councils in Ottawa and other Canadian jurisdictions (Rudin, 2013, personal communication). Eventually the Wagga Wagga model became the standard for RJ-related service delivery by the RCMP throughout Canada (Chatterjee, 2000). Further highlighting the rapid globalisation of the FGC as part of the developing market in RJ products, both Chatterjee (1999) and Richards (2000) recounting that RCMP officials visiting New Zealand and Australia in 1996 to see first-hand the FGC model in action, after which they negotiated a cost-sharing agreement with the Department of Justice (Canada) for 3.75 million each, for roll-out in 1997 of the RJ initiative known as *Community Justice Forums* (Deukmedjian, 2008). Subsequently, the RCMP contracted Transformative Justice Australia to train members to run the new RJ programme, which was very much a derivative of the New Zealand FGC and Australian Wagga Wagga conferencing models.

Restorative Justice and the Commodification of Indigenous Life-Worlds

'Family group conferencing was a gift from the Aboriginal people of New Zealand, the Maori.' (Ross, 2009:5)

The appropriation of components of Indigenous life-worlds by state functionaries and criminologists for the purpose of indigenising crime control products and culturally sensitising systems and products, is well documented in the extant literature (see Havemann, 1988; Tauri, 1998; Victor, 2007). Arguably, the most influential *colonising project* of this kind in contemporary times came with the passing of the *Children, Young Persons, and Their Families Act 1989* (the Act) by the New Zealand Government, and with it the introduction to the world of the FGC forum. Advocates of the FGC process make a number of claims about the relationship between the format of the process, traditional Maori justice practices, and the role the forum has played in responding to Maori concerns with the formal criminal justice system (see Jackson, 1988). For example, it is often claimed in Australasian-focused literature that:

- i) the Act was influenced by Maori concerns for the prevalence of institutionally racist and culturally inappropriate practices within the New Zealand criminal justice system (Fulcher, 1999; Goodyer, 2003; Ministerial Advisory Committee, 1988);
- ii) because the conferencing process and Maori justice practice have 'restorative elements', it provides the state with a culturally appropriate forum for addressing the justice needs of Maori (Hassell, 1996; McElrea, 1994; Olsen, Maxwell & Morris, 1995); and
- iii) the conferencing process provides evidence of the system's ability to culturally sensitise itself, and also empower Maori to deal with their youth offenders in culturally appropriate ways (Doolan, 2005; Morris & Maxwell, 1993).

Over the past two decades the oft-made claims of the Maori/Indigenous origin of the FGC forum and its ability to culturally sensitise New Zealand (and other Settler-Colonial Society) youth justice systems, has largely been uncritically replicated in the international restorative justice and wider criminological literature (see Braithwaite, 1995; Carey, 2000; Griffiths & Bazemore, 1999; Leung, 1999; Lupton & Nixon, 1999; McCold, 1997; Roach, 2000; Strang, 2000; Umbreit, 2001; Weitekamp, 1999; Zehr, 1990). Specific examples of the way in which, to use Daly's (2002) expression, the 'origin myth' of this particular RJ forum, especially the constant refrain to its supposed 'Maoriness', are reflected in the following statements from well-known advocates of the FGC forum, and of the RJ movement:

'The river [of 'restorative justice'] is also being fed by a variety of indigenous traditions and current adaptations which draw upon those traditions: family group conferences adapted from Maori traditions in New Zealand, for example.' (Zehr, 2002:62)

'[T]he principles of restorative justice are particularly consistent with those of many indigenous traditions...including...Maori people in Australia and New Zealand and the practice of...family group conferencing by Maori people in Australia.' (Umbreit, reported in Richards, 2007:385)

Perhaps the most startling elements of the origin myth of the New Zealand FGC, from a critical Indigenous perspective, is the claim that the forum was designed in part to *enable Maori families to manage the offending of Maori juveniles* (see, in particular, Morris & Maxwell, 1993 and Serventy, 1996).

The constant reiteration of the origin myth within the restorative justice literature of (mostly) Western European criminologists and practitioners, has resulted in it acquiring the status of a seemingly uncontested, taken-for-granted 'truth' (see Pavlich, 2005), one that RJ advocates refer to constantly in their accounts of the emergence of restorative justice practice in the contemporary moment. And yet somehow, while focusing on the 'Maoriness' and the 'restorativeness' of the FGC forum, these same authors consistently overlook readily available evidence that problematises almost all aspects of the origin myth (see discussion below), including, for example, the following 'confession' by Doolan (2005:1), one of the primary architects of the 1989 legislation, that "those of us who were involved in the policy development process leading up to the new law had never heard of restorative justice". He further states that empowering Maori families to have any form of 'control' over responses to the offending of their youth was not a major consideration of policy makers. Instead, Doolan goes on to affirm that the primary goal of the new forum was making young people responsible for their offending behavior and decreasing the use of the Youth Court.

In comparison to the grand mythologising of many RJ exponents, there is the growing literature from critical Indigenous and non-Indigenous commentators that directly contests the monolithic origin myths of restorative processes such as the FGC. These commentators provide evidence of high levels of dissatisfaction amongst Indigenous communities with the introduction of restorative justice interventions more broadly, and of the FGC forum in particular (see Blagg, 1998; Cunneen, 1997, 2002; Moyle, 2013; Tauri, 1998, 2004; Zellerer & Cunneen, 2001). These critics also take advocates of RJ to task for making "selective and ahistorical claims... about indigenous social control conforming with the principles of restorative justice, while conveniently ignoring others" (Cunneen, 2002:43; see also Pratt, 2006 for discussion of the tendency in RJ literature to romanticise Indigenous justice by ignoring evidence of the use of non-RJ type punishment practices by Indigenous communities).

In her ground breaking critique of the philosophical foundations of the modern RJ Industry, Richards (2007) provides a succinct analysis of the ways in which the Industry formulates and sustains origin myths of forums like the FGC. Richards achieves this by demonstrating the extent to which the *Daybreak* Report, authored by the Ministerial Advisory Committee for the New Zealand Department of Social Welfare (Ministerial Advisory Committee, 1988) is continuously, and erroneously portrayed by members of the RJ movement as both the impetus for the introduction of restorative justice in New Zealand, and as providing evidence of extensive Maori input into the development of the

FGC (for examples of this perspective, see Braithwaite, 1995; Doolan, 2002; Fulcher, 1999; and Lupton & Nixon, 1999). Richards analysis of the *Daybreak* report shows that the oft-repeated notion that Maori communities 'mobilised against Pakeha', were successful in pressuring the New Zealand government into adopting a more culturally suitable criminal justice system, in the form of a 'Maori inspired' FGC, is a significantly romanticised and exaggerated version of what took place. In summary, Richards (2007) demonstrates that:

- the initial working party appointed to consider what changes were necessary in New Zealand's youth justice/child welfare system was formed without Maori representation; and
- no specific recommendation was ever made by the Ministerial Advisory Committee that the Department implement family group conferencing.

Undoubtedly, suggestions made by the Committee for reconfiguration of New Zealand's youth justice system clearly resonate with the core philosophies and practices associated with RJ. It is also true that we are able to make broad comparisons between the governmental forum (FGC), and certain aspects of Maori customary justice practice. The Committee recommended, for example, that the *Children and Young Persons Act* (1974) be amended to include greater consideration of the role of the family when dealing with Maori children, and the increased participation of Maori families in matters relating to child welfare and juvenile justice (Ministerial Advisory Committee, 1988). Later in the report, the Committee (1988:29) returns to these issues, claiming that a "substantial ideological change" would be necessary in order to amend the *Children's and Young Persons Act* (1974) to cater to Maori needs. However, as Richards demonstrates, the Committee *did not* make any specific recommendations, preferring instead to present a range of principles that they believed should shape changes to the legislation. Furthermore, the original *Children and Young Persons Bill*, precursor to the CYPF Act 1989 made no reference the Committee's proposals. Finally, Richards relates that Annex 2 of the report focuses specifically on what the Committee believe should be done in regards to child welfare and youth justice practices. In this section, the Committee (1988:54), rather than advocating significant empowerment of Maori to practice their own justice, or 'control' responses to their families and youth offenders, clearly stated that "[f]urther, we believe that the establishment of new Courts and special Judges would be unnecessary." By rejecting any significant changes to status quo, and advocating for 'cultural sensitivity training' for court officials, and the construction of a state-centred forum, the Committee was following a strategy with a long history in the colonial context; namely the utilisation of components of Maori cultural practice through a process of indigenisation to provide the appearance of cultural sensitivity (see discussion below and Havemann, 1988; Tauri, 1998).

When considering all the above, it is evident that both the focus of the Committee and the contents of the *Daybreak* report is thus "less romantically - and more prosaically-oriented than 'restorative justice' advocates often imply" (Richards, 2007:109). Furthermore, the notion that the FGC forum emerged in New Zealand in response to an "*uprising of indigenous communities keen to implement traditional justice processes,*" is not endorsed by the very report that is often cited within the RJ literature to support this contention. It is, therefore, an exaggeration to declare that the *Daybreak* report is responsible for the

implementation of the FGC forum in New Zealand as supporters of restorative justice often claim. And with this realisation, comes the collapse of the origin myth of one of the most significant forums behind the contemporary globalisation of crime control, especially of restorative policies and interventions.

Indigenous Response to the Grand Mythologising of Restorative Justice

Over the past 15 years the origin myth of the FGC forum has been heavily critiqued by critical Indigenous and non-Indigenous scholars alike, including Blagg (1997) and Cunneen (1997) in the Australian context; Lee (1997), Rudin (2005) and Victor (2007) presenting Indigenous Canadian perspectives⁹, and Love (2002) and Tauri (1998, 2004) from a critical Maori perspective. These authors expose a number of significant issues including much of the empirical research on Indigenous satisfaction is exaggerated, and that Indigenous experiences of this type of forum do not match the glowing reports of their cultural appropriateness and ability to meet Indigenous aspirations for jurisdictional empowerment reported in the academic literature and through the pronouncement of RJ advocates (for example, see Love, 2002; Tauri, 1998, 2004; and Walker, 1996 for detailed discussion of the exaggerated claims of 'cultural sensitivity' in the Maori context). Schmidt and Pollak (2004:133) underline Maori criticisms of both the origin myth and the 'myth of empowerment' so prevalent in RJ literature on the FGC forum, when they write that:

'Maori writers such as Love (2002), Tauri (1999) and Walker (1996) have challenged the popular notion that the adoption of conferencing was a victory. Rather, they argue that FGC has co-opted and incorporated Maori perspectives, leaving intact the structural power relationships within child welfare.'

Much of the government-sponsored research underscores the co-optive nature of the FGC process and the marginalisation of whanau (family) members and 'cultural experts' (for example, in the New Zealand context re: FGC practice, compare Morris and Maxwell, 1993 and Tauri, 1998 and Maxwell et al., 2004; and Tauri, 2004). Alternatively, it has been argued that both the 1989 Act and the FGC process were influenced by Governments' need to be seen to be 'doing something constructive' in the face of a perceived rise in juvenile offending, particularly amongst Maori youth, and continued criticism of the operations of the formal system (Richards, 2007; Tauri, 1998, 1999).

Despite the contested nature of the findings of research on the FGC process and its empowerment (or not) of Maori, what is evident is that over the past decade the FGC has become an increasingly popular commodity on the international crime control market.

⁹ In relation to Canada, Rudin (2005:97) demonstrates that much the same myth-making is happening in relation to Eurocentrically-derived 'indigenised' programmes developed there, as is happening with the FGC forum, when he argues that: "The belief that sentencing circles are a form of Aboriginal justice displays a serious misunderstanding of the hallmarks of an Aboriginal justice programme...the use of circles was pioneered by judges in the Yukon, particularly Judge Barry Stuart", and "it must always be kept in mind that sentencing circles are not an Aboriginal justice initiative or programme; they are judge-made and judge-led initiatives".

This is particularly evident in the settler-colonial jurisdictions of Canada, Australia and the United States of America. It should be noted that all these jurisdictions have significant over-representation of Indigenous peoples in their criminal justice systems. As related earlier, evidence exists that New Zealand's FGC forum and its Australian derivative were purposely and at times aggressively marketed in other settler-colonial jurisdictions. The marketing of these products was aided significantly by the fact that much of the academic literature uncritically promoted the origin myth discussed previously (see Consedine, 1995; LaPrairie, 1996; Morris & Maxwell, 1993; Olsen et al., 1995 and Umbreit & Stacey, 1996. For more contemporary manifestations of the reiteration of the myths see Maxwell, 2008; Ross, 2009 and Waites, MacGowan, Pennell, Carlton-LaNey & Weil, 2004). The Indigenous origin myth has recently featured in commentaries on the spread of RJ forums across Great Britain and Western Europe (Barnsdale & Walker, 2007), and central and South America (Scuro, 2013). The transfer process appears to be taking place in an organised manner, involving a range of policy workers, franchise companies and RJ advocates. These 'activists' are heavily involved in creating viable markets for crime control products through the commodification of 'culture', in particular Indigenous cultural practices (see Lee, 1997; Takagi & Shank, 2004; Tauri, 2004, 2013, for analysis of these practices).

Undoubtedly, the exportation of the FGC forum to various Western jurisdictions has been heavily influenced by the arguments discussed earlier. Particularly important is the fiction that the FGC product provides a forum that empowers Maori/the Indigenous Other, and signals the ability of the imposed criminal justice ordering to culturally sensitise itself. This process is driven by the *co-option* (intentional or otherwise) of Indigenous/Maori cultural practices and the purposeful *utilisation* of these selected cultural elements (such as 'circles') as a key marketing tool for marketing this type of product across Western European crime control markets, and more recently across Asia and Latin America (Tauri, 2013).

Indigenous Justice and the Fictions of the Restorative Justice Industry

'The final belief is to believe in a fiction, which you know to be a fiction, there being nothing else, the exquisite truth is to know that it is a fiction and that you believe it willingly.' (Shanley, 1997:685)

Given the previous discussion, what are we to make of the following comment from Gabrielle Maxwell, one of New Zealand's staunchest advocates, both nationally and internationally, of the FGC forum?

'In New Zealand there has been criticism that family group conferences have not been managed in ways that conform to traditional practice of Maori or those from other cultural backgrounds. It has been suggested that the high proportion of Maori staff managing the process and the inclusion of Maori greetings and blessing is little more than tokenism and can rarely be described as a truly Maori process. This is despite the undisputed origins of

many aspects of the conference process in traditional Maori procedures (Consedine, 1995). On the other hand, on occasion, the management of the conference process is sometimes passed over to a Maori social service group.' (Maxwell, 2008:87)

In this quote we observe many of the issues Maori and other critical Indigenous/non-Indigenous commentators have identified with much of the Academy and RJ advocates' writing on the FGC forum. Firstly, the most obvious issue is the claim that the FGC's Maori foundations are undisputable. The previous discussion, especially the work of Richards exposes that this claim is an exaggeration. In reiterating the origin myth and presenting it as 'undisputable', Maxwell ignores a significant amount of literature exposing this fallacy that has been published since Consedine's book was released. This fact highlights another of the criticisms levelled by Indigenous scholars at some members of the RJ Industry, namely the lack of engagement with the critical Indigenous/non-Indigenous literature (see Tauri, 2012; Tauri & Webb, 2011). Secondly, Maxwell's own published research on the FGC process contained criticisms by Maori FGC participants with the tokenistic way in which Maori culture was afforded space in the process by state officials, usually confined to allowing elders to recite karakia (prayer) at the beginning and end of the process (see Morris & Maxwell, 1993; Maxwell et al., 2004). This situation is far removed from the claims by advocates that the process provides a meaningful forum for the empowerment of Maori (for example, see Maxwell, 2008). Thirdly, in the above quote Maxwell is replicating a fundamental weakness in the FGC/Maori justice scholarship; namely ignoring the lack of direct Maori input into the design of the Act and the FGC forum. Also overlooked is the fact that officials involved in the developing the process, most notably the chief policy architect, Doolan, have acknowledged that the focus of work on the 1989 Act was never on developing a Maori justice process, or indeed a restorative one.

Restorative justice advocates are constantly, and erroneously equating Maori requests for a 'traditional forum' (more especially in Moana Jackson's 1988 report *He Whaipanga Hou* than in *Daybreak*), with Maori justice philosophies being *foundational to the formulation of the forum itself*. To do so is to ignore the reality of policy making in the New Zealand context, in particular the historical tendency for the criminal justice sector to indigenise Eurocentric crime control processes (see Jackson, 1995; Tauri, 1998, 2009; Tauri & Webb, 2011; Williams, 2000). It also ignores the fact that the supposed Maori and restorative elements were identified long after the formulation and implementation of both the Act and the forum (Tauri, 2004). As Daly (2002:63) effectively argues "the devising of a (white, bureaucratic) justice practice that is *flexible and accommodating* towards cultural differences does not mean that conferencing *is* an indigenous justice practice". Daly (2002:4) then goes further, revealing that Maxwell herself is aware of this distinction when she includes the following quote from Maxwell and Morris' original 1993 study:

'A distinction must be drawn between a system, which attempts to re-establish the indigenous model of pre-European times, and a system of justice, which is culturally appropriate. The New Zealand system is an attempt to establish the latter, not to replicate the former. As such, it seeks to incorporate many of the features apparent in whanau [extended family]

decision-making processes and seen in meetings on marae today, but it also contains elements quite alien to indigenous models.'

The Canadian scholar Stephanie Vieille (2012:174) highlights a fundamental flaw in this perspective when she writes that:

'Even though both FGCs and tikanga appear to adopt similar approaches to doing justice, for instance, by putting emphasis on active participation of victims, offenders, and the community, their underlying values differ significantly. This is illustrative of a wider and problematic tendency to equate Indigenous approaches and mechanisms of justice with the all-encompassing restorative justice approach.'

How do we begin to explain the ongoing recitation of the origin myth by RJ proponents, when significant evidence that contradicts it is ignored? In part, understanding the situation requires recognition of how important the origin myth is to the marketability of RJ products like the FGC.

Marketing the Indigenous

In much the same way as Kathryn Shanley in her 1997 article *The Indians America Loves to Love and Read*, I argue that:

'...we *can* identify neo-colonial cultural appropriations, thefts of 'cultural property' [and that] such cultural appropriations inextricably belong to overall totalisation efforts – the political and ideological domination of indigenous...peoples.' (p. 676; emphasis included)

The appropriation of Indigenous life-worlds is carried out in many different ways, sometimes in a blatant, unapologetic 'stealing' of Indigenous artefacts, such as when sports teams utilise Indigenous names and symbols (see recent debates regarding the Washington Redskins, especially in *The Huffington Post*, 2013), and at other times through sleight of hand, as in the case of the New Zealand state, non-Indigenous academics and, eventually, restorative justice corporations marketing of the FGC process. The sleight of hand terminology is purposeful as it denotes the *magic* that often forms the basis of criminological musings, and the constructions of crime control policy.

As an Indigenous person I find it easy to understand why Western criminologists, policy makers, academics and private RJ companies seek to appropriate elements of the Indigenous culture context to bolster the marketability of their products. After all, one of the fundamental rules of modern marketing is 'sex sells', and indeed the Indigenous life-world can be very sexy and *erotic*. This process - the Western criminological enterprise utilising Indigenous motifs, phrases, practices to indigenise and market their products, should be presented for what it really is, *the eroticisation of Western crime control* (see Acorn (2004) for discussion of the eroticisation of justice, specifically in relation to RJ).

It is evident that many RJ practitioners and advocates are driven by a desire to do good, but what is also driving this process is the desire to strengthen the marketing potential of products on the competitive international crime control market. But let's be clear what it is *not* about, at least in the first instance, the empowerment of Indigenous peoples. Nor is all this activity about returning to Indigenous peoples the 'gift' of once again being able to practice our traditional responses to social harm (Tauri, 2013). It is within this understanding of the development of products that are marketable in settler colonial crime control markets, that enables us to begin to answer the criminological question, so what? Why is this issue important both for Indigenous peoples and critical criminological inquiry?

So What?

'[G]lobalisation' in Indigenous eyes reflects a deepening, hastening and stretching of an already-existing empire.' (Alfred & Corntassel, 2005:601)

There is growing anecdotal evidence that the global transfer of crime control policy is negatively impacting Indigenous peoples (see Tauri, 2004 on New Zealand and Victor, 2007 on Canada). This is particularly evident in the restorative and youth justice contexts. From a distance it appears that the process is impacting Indigenous peoples in a number of ways, including:

- containment of Indigenous critique of neo-colonial state formal justice systems through the production of state-centred indigenised policies and programmes (Tauri, 2013); and
- blocking Indigenous activities aimed at enhancing their jurisdictional autonomy and ability to develop their own responses to social harm, via the importation of 'culturally appropriate' crime control products (Victor, 2007).

In 1997 Gloria Lee, a member of the Cree First Nation in Canada, published an article titled *The Newest Old Gem: Family Group Conferencing*. Lee expressed concerns about the recently imported family group conferencing forum being forced upon Canadian Indigenous peoples at the expense of their own justice mechanisms and practices. In particular she argued that "First Nation communities are vigorously encouraged to adopt and implement the Maori process and to make alterations to fit the specific community needs, customs and traditions of people who will make use of the new process" (Lee, 1997:1). Lee's concerns with the nature of the importation of the FGC/conferencing process into the Canadian jurisdiction, and the impact it might have on Indigenous peoples justice aspirations in that country have been shown to be valid.

The importation of the FGC forum into the North American context provides a neat case study on the impact of the globalising activities of policy entrepreneurs and RJ advocates. Almost twelve years since the publication of Lee's article many Canadian Indigenous peoples are still struggling to gain state support for the implementation of their own justice processes. The increasing employment of Indigenous life-worlds in the marketing of RJ products should be considered a significant component of the neo-colonisation of

Indigenous peoples: having faced a sustained period of colonisation, during which their systems of justice were all but destroyed, Indigenous now have to deal with a *new colonising project*. This particular project involves the purposeful exportation of restorative products from Australasia to the North American continent. The marketing of this product, and others like it, such as sentencing circles, is heavily reliant on exaggerating the Indigenous foundations of the products themselves.

We can demonstrate the potential negative impact of this process by citing just one case study, that of the Stolo First Nation of British Columbia and their experience of the importation of the 'Maori justice process, FGC' by the RCMP in the mid 1990's. Katz and Bonham (2006:190) relate that in 1997, the Royal Canadian Mounted Police adopted a policy which gave the police the discretion to utilise restorative justice. Based on family group conferences used in Australia and New Zealand, as presented around Canada by 'Real Justice' advocates such as Moore and O'Connell (Rudin, private communication, 2012), the RCMP subsequently developed guidelines for community justice forums (Chatterjee & Elliott, 2003). The forum that was marketed around North America at the time was based on the police-oriented 'Wagga Wagga model' developed by Terry O'Connell (see O'Connell, 1993).

Dr Wenona Victor, a criminologist and activist from the Stolo Nation of the Fraser Valley in British Columbia, underlines the impact the transfer of FGC's to Canada had on First Nation justice aspirations in that jurisdiction, thus demonstrating not only the effectiveness of the marketing process, but also the concerns Lee expressed in the late 1990s. Dr Victor describes receiving training on implementing FGC within Stolo territory, a process that had been sold to them as "developed by the Maori, the indigenous people of New Zealand":

'On the first day [of FGC-related training] we all eagerly awaited her [the trainer's] arrival. We were somewhat surprised to see an extremely "White" looking lady enter the room; however, we have blonde blue-eyed, even red-headed Stolo among us, and so, too, we presumed, must the Maori. However, it did not take us long to come to realise this lady was not Maori and was in fact Xwelitem [European]. Ah, the Maori had sent a Xwelitem; okay, we do that too, on occasion. It is one of the many ironies of colonisation whereby Xwelitem often become our teachers...[t]here are times when it is an Xwelitem who is recognised as the Stolo 'expert' and therefore, is the one talking even when there are Elders present. But by the end of the three day training course I was convinced the Maori had lost their minds! There was absolutely nothing Indigenous about this [FGC] model of justice whatsoever!' (Palys & Victor, 2007:6)

Through the experiences of Maori and the Stolo, we might view restorative justice products such as these in terms of Tsing's (2005) "packages of political subjectivity", meaning that they are:

'[C]reated in a process of unmooring in which powerful carriers reformulate the stories they spread transnationally...These packages carry the

inequalities of global geo-politics even as they promote the rhetoric of equality. Those who adopt and adapt them do not escape the colonial heritage, even as they explore its possibilities.'

The exports in question, including the FGC, are seen by some Indigenous peoples, as a welcome and overdue extension of formal state justice processes beyond the Eurocentric bias of its response to social harm, and of enabling 'other' ways of doing justice (Hakiaha, 1999; Maori Council, 1999; Quince, 2007). However, we must be careful not to oversell the homogenising impact of these supposedly Indigenous-derived products. We must always be mindful of what Aas (2009:412) refers to as the "geo-political imbalances of power between 'exporters' and 'importers' of penal policies and interventions". We need to be wary of the parasitic relationship between some importers (government/think-tank/administrative criminologist/private security company, etc.), exporters (another nation state/government agency) and the 'customer', who is all too often a community or an individual who has been given little choice in receiving these cultural appropriated 'gifts'. As Tsing (2005:76) argues, we should always keep in mind "the particularity of globalist projects"; critically analysing who constructs them, and for whose (primary) benefit they are subsequently exported and implanted on the globalised crime control market.

Final Comments

This paper was intended to contribute to ongoing Indigenous resistance¹⁰ to the homogenising impact of much of the Western crime control industry's activity. Hopefully, it will also serve as a wake-up call to criminologists and RJ advocates to 'get real' about the often negative impact of their marketing of their products is having on Indigenous peoples residing in settler-colonial contexts (Tauri & Webb, 2011).

The business of crime control is complex, multi-dimensional, global and profitable. Like any business enterprise, participants seek to market their products in ways that distinguish them from those of their competitors, be they franchise companies or policy entrepreneurs from other jurisdictions. As exposed in this paper, one key selling point for the RJ Industry is the supposed Indigenous foundations of key products such as FGC, and sentencing circles. As the saying goes, "sex sells" and the Indigenous world is 'different' and erotic, and therefore considered extremely effective for marketing initiatives in

¹⁰ One issue I have not dealt with in detail is Indigenous resistance to the 'travels' of neo-colonial policies and interventions such as those manufactured by the RJ Industry. That particular topic warrants an entire paper of its own; there simply is not the room here to do the topic justice. However, I wish to state that it was not my intention to imply that Indigenous peoples are always non-responsive recipients of 'White Man's Law'. After all, we are not without agency. Sometimes we acquiesce, fully accepting and implementing appropriated products of the 'West', and playing powerful roles in their construction, dissemination and utilisation. The periphery is not simply the site of unchallenged reception of imported policies and interventions: it can be, and often is, "a space that defies simplistic perceptions of chaos and social exclusion; it is marked by potential, innovation and creativity, organisation of new social movements and new conceptions of citizenship" (Aas, 2009:415). This we can see playing out in the *Idle No More* movement in Canada, and the 'South American Spring' that emerged in Brazil in late June 2013.

jurisdictions dealing with an Indigenous over-representation problem. The techniques utilised by the Industry has been well identified in the extant literature; be it the appropriation of Indigenous terms and language, or specific, boutique cultural practices. Or, as often happens, providing restricted space for Indigenous cultural practice within Eurocentric, standardised programmes. From an Indigenous standpoint, all this activity amounts to the continued subjugation of our life-worlds, in this case, for the benefit of policy makers, and RJ entrepreneurs.

The impact the globalised crime control market on Indigenous peoples is very real, and at times negative and subjugating. Those making money selling their biculturalised products to state and Federal governments should consider the consequences of the continued appropriation of the Indigenous life-world for the benefit of themselves and the Industry they participate in. Perhaps it is time for all these non-Indigenous profiteers to begin looking to their own cultural contexts for the next 'big thing' in restorative practice. After all, we are often told by the demi-God's of RJ about the lost restorative practices of Western European culture (Weitekamp, 1999), so why the need to plunder our cultural context? Given the contents of this paper, and the growing critical Indigenous literature, they can be sure that the critical Indigenous gaze is now firmly turned towards them.

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