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# Decolonizing restorative justice

*Alana Abramson and Muhammad Asadullah*

> Everything about Indigenous research tells us we have to locate ourselves in our research. First, we write our own stories and share our position in the world before we write about the world. This is a big task because first we have to come to terms with who we are and how we come to do the work we do.
>
> (Linklater, 2014, 11)

Positionality is the notion that personal values, views, and location in time and space influence how one understands the world (Sánchez, 2010). Gender, race, class, sexual orientation, education, and experience influence how one thinks about things at any given moment. Both positionality and privilege, which according to Memmi (1965) is at the heart of colonial relationships, are essential to consider when writing about decolonization and restorative justice (RJ). We, as authors and researchers, actively consider how our positionality and privilege impact our understanding of our work. Here we attempt to both locate ourselves and articulate where we are in our process of decolonizing ourselves.

## Alana Abramson

My paternal grandfather and both paternal grandparents immigrated from Europe following Jewish persecution and war, respectively. My paternal Cree/Métis grandmother was born on Treaty 1 land, the traditional territory of the Anishinaabeg, Cree, Oji-Cree, Dakota, and Dene peoples, and the homeland of the Métis Nation (St. Bonifice, Manitoba, Canada). For most of my life, I have lived on the unceded, stolen traditional territory of the Semiahmoo First Nation, Katzie, and Kwantlen First Nation (colonially known as Surrey, British Columbia, Canada). Raised in a stable home, I benefit directly from the unearned privileges of being a white-presenting, middle-class, cisgender, able-bodied, educated person. However, experiences of violent victimization and conflict with the law as a teen inspired a keen passion for transformative justice. I have been mentored and inspired by both Indigenous and non-Indigenous scholars and practitioners in the field of RJ and they have instilled in me the importance of working to decolonize myself and the field.

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### *Muhammad Asadullah*

I was born in and spent my formative years in my ancestral land Bangladesh. All of my great-grandparents and grandparents were born and buried in Bangladesh. My worldviews on justice and RJ have been shaped by my mother, Dr Howard Zehr, Dr Brenda Morrison, and my undergraduate students. I consider myself a co-learner with my students. Since 2015, I have regularly taught Introduction to Restorative Justice courses. Teaching this introductory undergraduate course has been a healing journey. My fieldwork in Bangladesh on RJ played a catalytic role in terms of my journey to the field of decolonization. In 2019, I formally incorporated decolonizing RJ into the syllabus. My faith and spiritual tradition, and my Bengali heritage have also impacted my worldview on the idea of justice. Recently, the work of twelfth-century scholar Abu Hamid Al-Ghazali and contemporary scholars Dr Fania Davis and John Borrows have influenced my worldviews.

## The impact of restorative justice and Indigenous peoples

Critiques raised by Indigenous and non-Indigenous scholars and communities about RJ are not new and underscore the importance of a decolonizing approach. According to Tauri (2018), the first published critiques informed by Indigenous perspectives began appearing in the mid-1990s: by Blagg (1997), Cunneen (1997), Lee (1997), and Tauri (1998) himself. McGuire (2022) notes that Friedland (2014), Palys and McGuire (2020), and Tauri (2016) discuss the ways that RJ approaches "often co-opt various pan-indigenized aspects of indigeneity" (p. 34).

The problems associated with RJ in relation to Indigenous peoples arguably stem from the central phenomenon of colonial powers culturally appropriating Indigenous ways of knowing and being. While the stated intentions of government and community RJ initiatives may have been to benefit Indigenous peoples, the negative consequences must be assessed against any real or promised benefits. In this chapter, we discuss six ways RJ has and continues to harm Indigenous peoples.

### *Cognitive injustice*

The majority of RJ practices are rooted in Eurocentric worldviews and have been detrimental to the development of ideas and knowledge from non-Eurocentric worldviews (Blagg, 2017). Boaventura de Sousa Santos (2016) refers to Eurocentric knowledge domination as "cognitive injustice" (p. 142). According to Blagg and Anthony (2019), there is "nothing radical or progressive" (p. 140) in the definitions, philosophies, and paradigms of RJ. Additionally, this approach of Eurocentric knowledge hegemony reinforces the "origin myths" that RJ emerges from Indigenous traditions (Tauri, 2014, p. 40). Debates around the "Māoriness" of Family Group Conferencing in New Zealand (Tauri, 2016, p. 54) and the 'Indigenousness' of Sentencing Circle in Canada have become moot points. Cunneen (2002) explicitly expressed his scepticism about sentencing circles in Canada and states,

> While there is no doubt that the circle sentencing process has enabled greater participation of indigenous Canadians in the formal sentencing processes of the criminal justice system, there is doubt about the extent to which it represents a shift in power relations. Judges are still exercising a judicial function and have an obligation to impose a 'fit and proper' sentence within the sentencing guidelines of the Canadian Criminal Code.
>
> *(p. 45)*

### *The conflation of Indigenous justice and restorative justice*

Another harmful impact of Eurocentric knowledge domination of RJ is that people confuse the concepts of Indigenous justice (IJ) and RJ. There are many reasons why the two terms have been used interchangeably. Abramson et al. (2021) found that many Indigenous and non-Indigenous justice workers felt IJ and RJ are "pretty much the same". However, as Chartrand and Horn (2016, 14) note, the relationship between RJ and Indigenous legal traditions is complex and nuanced and while there is a need to discuss and understand each as independent from the other, the truth is that these justice systems blend into each other.

### *Restorative justice as cultural appropriation*

Diangelo (2020) notes that "cultural appropriation in today's modern and globalized world is always tricky […]. Advancements in travel, technology and widespread use of the internet means we are more culturally connected […] than we have ever been before" (p. 114). Further, Diangelo (2020) states there is tremendous variability within cultural groups with respect to what counts as cultural appropriation of another's cultural objects, motifs, symbols, rituals, artefacts, and other elements.

However, when one culture continues to benefit from historical acts of colonization, land theft, mass kidnapping and enslavement, attempted genocide, forced assimilation, segregation, legalized racial discrimination, and the reinforcement of negative racist stereotypes, adopting or exploiting elements from the nondominant culture is considered an act of cultural appropriation (Diangelo, 2020). What makes cultural appropriation harmful is not the intent to learn from non-dominant cultures but the power imbalance from which this practice is derived and the benefit that the dominant culture gains from the appropriation. While not everything called RJ was the direct result of cultural appropriation, there are examples from many countries that must give all who advocate for RJ reason to pause. Dashman et al. (2021) note that

> RJ is based on indigenous [sic] practice and philosophy. Anytime we as white practitioners fail to acknowledge the roots of this knowledge, we are engaging in cultural appropriation and in doing so, replicating the same power dynamics and oppression that has shaped the criminal justice system and broader society.
>
> *(p. 23)*

While some initiatives under the banner of RJ have been developed in partnership with Indigenous peoples, non-Indigenous peoples have benefited disproportionately from what Tauri (2018) calls the "RJ industry", i.e., non-Indigenous players have created for-profit businesses that claim to provide more "culturally responsive" approaches to justice. The erroneous reference to RJ as an IJ approach has become normalized in the field. Mainstream rhetoric maintains that RJ has been gifted by, borrowed from, or inspired by Indigenous peoples while the stalwart counter-narrative that certain aspects of Indigenous ways of knowing have been stolen, colonized, co-opted, and sold back to Indigenous people has been largely ignored. Meanwhile, the number of Indigenous people in prison continues to rise in countries like Canada and New Zealand that claim to embrace RJ. Littlewolf, Armster, and Paras (2020) frame the current state of RJ as colonial and not truly honouring Aboriginal/Indigenous roots as it remains situated in a Western white-supremacist, cisgender, male-dominated system.

The muddy waters between IJ and RJ have led to the unhelpful and inaccurate conflation of the terms. While there are similarities between some Indigenous customary laws and RJ,

it is inappropriate to use these terms interchangeably. Chartrand and Horn (2016) have noted that "there are important features that make Indigenous legal traditions quite different from RJ processes, including how Indigenous legal traditions often use proactive/preventative strategies mediated through kinship networks" (p. 3). The term IJ itself is problematic, given the lack of distinction between the many thousands of nations with unique languages, cultures, and histories. There is evidence of pan-Indigenous approaches in the justice system which can be found alongside the development of RJ in Canada. Starting in the 1980s, the Canadian government introduced so-called 'accommodation strategies' which attempted to integrate certain Indigenous traditions and processes into the existing legal system (Palys & McGuire, 2020). The incorporation of sweat lodges, smudge ceremonies, and Indigenous Elders within prisons, and the creation of Indigenous courts and halfway houses were intended to be more culturally responsive to Indigenous peoples (Milward, 2015). However, the adoption of some nations' traditions over others and tokenistic integration of cultural aspects into a system that was created by and for non-Indigenous peoples has resulted in distraction from fundamental issues of colonization.

Palys and McGuire (2020) contend that RJ exemplifies the appropriation and pan-indigenization of Indigenous cultures as it is represented by the amalgamation of 'traditions', such as circles and overall focus on 'holistic' understandings of the world. Vielle (2012) notes that, "[t]he strength of Indigenous community-based mechanisms of justice cannot easily be reproduced in societies where individuality and autonomy are celebrated" (p. 186), and that equating "RJ with Indigenous approaches to law and justice is harmful and dangerous for it risks rendering the scholarship homogenizing and universalizing RJ, to the detriment of local preferences and practices" (p. 174).

Tuck and Yang (2012) describe internal colonization as the use of interpersonal and structural control mechanisms to serve the dominant structure. Given that RJ espouses the importance of giving conflict back to those most affected (Christie, 1977), empowering those directly impacted by harm (van Wormer, 2004), and transforming people and structures (Van Ness & Strong, 2010), it can easily be marketed to Indigenous communities as a way to reclaim responsibility for justice in pursuit of the broader goal of self-determination. For example, Tauri (2016) notes that Māori people are given little choice but to accept this culturally appropriated gift and are tricked into thinking they are reclaiming their ways when the government remains in control. While there are cases of Indigenous and non-Indigenous RJ advocates engaging in what Tuck and Yang (2012) call the "hard, unsettling work of decolonization" (p. 5), for the most part, the wave of RJ continues to swell at the expense of Indigenous peoples.

By non-Indigenous acts of tokenizing some pieces of Indigenous culture and integrating them into existing colonial structures, settler countries are well on their way to what Diangelo (2020) would describe as "an erasure of the nondominant culture's origin story of the practice, while the dominant culture is able to profit – whether financially or socially – by the act of appropriation" (p. 118). In addition to this erasure and unequal benefits, there is evidence of harm to Indigenous individuals who participate in RJ processes and impediments to the pursuit of self-determination.

### *Restorative justice as an extension of the current justice system*

RJ approaches are often described as attempts to "reinstate old ways of addressing current problems" (Linklater, 2014, p. 99) or reclaim Indigenous practices that can better address harm compared to the colonial legal system. However, Indigenous-led empirical research reveals the disempowering and harmful impact RJ practices have had on many Indigenous individuals

and communities. The phrase "good intentions are not enough" rings true when examining research by Moyle and Tauri (2016), which demonstrated that Māori participants of Family Group Conferencing (FGC) processes reported a lack of cultural responsivity and capability, particularly on the part of non-Māori professionals.

Similarly, Vielle (2012) noted that FGC appears to effectively encourage young people to take responsibility for their actions by diverting them from the traditional court system in New Zealand, they are far less successful in following up and facilitating the rehabilitation of young persons involved. Vielle's findings also suggest that many of the problems of the legal system are replicated through RJ processes, such as lack of attention to victim and community needs and voices, lack of flexibility, and over-reliance on government actors.

Moyle (2013) found that Indigenous participants do not necessarily experience RJ as culturally responsive. The "one world view, one size fits all" approach to engaging with what is a socio-culturally diverse clientele and the lack of skill and knowledge of non-Indigenous practitioners meant that the experience of Indigenous participants was largely negative (Moyle, 2013). This comes as no surprise, given the drive for efficiency and the lack of meaningful consultation with Māori. Shah and Stauffer (2021) note that

> there is a tendency in the western mindset to learn a practice or skill and then assert that it is **the way** or model. This replicates the colonial mindset and erases the many traditions and nuances of different indigenous circle traditions.
>
> *(p. xxiv)*

Concerns about RJ practices causing harm to Indigenous people – despite promises to do better than contemporary legal systems – can also be found in research related to female victims of family and sexualized violence. McGillivray and Comaskey (1999) found that Indigenous women in Canada continued to support the punishment and imprisonment of men based on the assumption that "jail is a guarantee of some period of immediate safety" (p. 21). While retributive approaches do little to reassure women of their safety, without attending to the social inequality that functions as a pre-condition of gendered violence, RJ cannot offer much more.

Balfour (2008) argues that Canadian sentencing reforms that include restorative principles, which aim to address the hyper-incarceration of Indigenous peoples, have worsened rather than slowed the rates of victimization and incarceration for Indigenous women. She notes that, although hundreds of RJ initiatives operate in Canada, they mainly focus on diverting first-time youthful offenders rather than more pressing matters of violence. These processes are closely linked to the colonial system where judges have the final say. As noted by Thomas, formerly of the United Native Nations, RJ in Canada is a, "mutilated version of First Nations diversity, 'beads and feathers' culture" where homogenized models of 'traditional justice' may be imposed upon Indigenous communities by white judges and lawyers (BC Association of Specialized Victim Assistance and Counselling Programs, 2002).

### *Restorative justice did not halt the mass incarceration of Indigenous peoples*

Proponents of RJ often claim these approaches will reduce the number of Indigenous people involved in the criminal legal system. In Canada, the Gladue principles emerged from a 1996 Supreme Court decision whereby judges were instructed to consider the unique systemic or background factors which may have played a part in bringing a First Nations or Indigenous person in contact with the law. In sentencing, judges must also seriously consider alternatives to incarceration in favour of culturally appropriate restorative and

traditional IJ processes. The Gladue principles are meant to be both preventative and remedial in addressing the over-criminalization of Indigenous people. Despite the Court's decision in *R.v.Gladue* and its subsequent call to action in *R.v.Ipeelee* in 2012, the Gladue principles are perceived by Indigenous offenders to be ineffective and inconsistently applied (Iacobucci, 2013; Pfefferle, 2008; Roach, 2009).

With regard to reducing the incarceration rates of Indigenous people, there is no evidence to suggest RJ decreases prison populations for anyone (Wood, 2015). In Canada, MacIntosh and Angrove (2012) found that non-Indigenous offenders have benefited more from the 1996 sentencing reforms than Indigenous offenders, and hyper-incarceration has worsened since *R.v.Gladue* (p. 33). While the growth of RJ programmes in Canada partially explains the decrease in youth on probation and in prison (Department of Justice, 2016), the number of Indigenous youth in custody continues to grow (Malakieh, 2019). In fact, despite RJ and IJ programmes being available since the early 1990s, the justice system continues, at every stage, to worsen the crisis for both Indigenous adults and youth as victims and accused/offenders (Malakieh, 2019).

## *Obstructions to Indigenous self-determination*

While the impact of RJ has been detrimental to many Indigenous individuals, the rise of Western conceptions of RJ has negatively impacted the difficult journey towards Indigenous self-determination. Tauri (2018) is clear that RJ has served as a contemporary colonial project that has

> thus far failed deliver on the promises it has made to deliver more culturally appropriate justice practice, and a measure of jurisdictional empowerment that allows Indigenous peoples a greater role in dealing with the offending and victimization of our own.
>
> *(p. 352)*

Evidence of attempts to assimilate select pan-Indigenous practices into legal systems in Canada and other settler nations since the 1980s takes the form of attempts to hire more Indigenous law enforcement officers, the creation of "Indigenous courts" and implementing "circle sentencing" and bringing Elders and "teachings" into carceral spaces (Milward, 2015). These ornaments hang off the colonial system and are boasted about by governments as culturally responsive means to address the over-criminalization of Indigenous people. However, these initiatives have done nothing to shift the balance of power from the colonial state to the Indigenous communities from which these practices were "borrowed".

Littlewolf (2022) said, "RJ is a life way for Indigenous people" and the "colonization of RJ has meant to take the spirit out of it" and make it inaccessible to Indigenous people. As the field has become increasingly professionalized, Indigenous people can be overlooked amongst the growing hierarchy that favours degrees or certificates in (so-called) RJ. Anderson (2020) notes that describing RJ as an alternative justice approach is problematic as "in reality [RJ] is a way of being and a way that communities once operated, therefore, viewing RJ as an alternative makes it easy to co-opt its processes and, in essence, water them down" (p. 144).

State actors still function as gatekeepers deciding which cases are "appropriate" for IJ initiatives. Policies and funding limit the impact IJ programmes can have and their work is further complicated by artificial timelines that impose how long they are "allowed" to work on a case (Abramson et al., 2021). Evaluations of performance are still conducted through a Western lens that focuses on recidivism as a sign of a successful justice programme. Reductionist and over-simplified ways of assessing the impact of Indigenous justice initiatives affect funding all while

these operations attempt to engage in justice work within communities where people lack clean water, secure housing, and experience the intergenerational traumatic impacts of colonization. This exemplifies what Manuel (2018) has noted about the state-designed system of Indigenous self-government in which "we administer our own poverty" while being fooled into thinking we have control (p. 21). Governments pat themselves on the back for Indigenous justice initiatives while refusing to discuss true self-determination, nation to nation.

These six issues related to RJ and Indigenous people highlight the need for a decolonizing framework and the importance of learning from wise practices as outlined below.

## Decolonization

Discussions of decolonization require naming a basic and essential fact: colonialism is not a 'thing of the past', it is not one event or one oppressive system (Monchalin, 2016). Colonialism is ongoing (Coulthard, 2014) and woven into the very fabric and machinery of colonial countries' institutions, systems, laws, and policies. Globally, decolonization is conceptualized differently, and there is no catch-all definition – nor should there be. Colonialism exists differently throughout the world and decolonization must be informed by local contexts. Just as colonialism exists in micro, meso, and macro forms, definitions of decolonization encapsulate micro-level and macro-level action (Asadullah, 2021). According to McGuire (2022), "[d]ecolonization requires a thorough understanding of the pervasiveness of colonialism, racism, and oppression while also ensuring a critical eye on colonial rhetoric and politics" (p. 51). Decolonization discourse exists in several settings – policing, court, mental health and RJ (Asadullah, 2022). Some scholars describe decolonization on a micro level, as work that can be done within oneself, which differs depending on who you are. Regan (2010) describes decolonization as "unsettling the settler within" and offers detailed methods of unsettling, which include "living in truth" (p. 218), as well as naming and dismantling colonial mentalities, harms, systems, and 'solutions' historically and today. Monture-Angus (1999) conceptualizes decolonization as "a state of being free from responding to colonial forces" (p. 73). McGuire (2020) articulates decolonization as: "Gam yen asing k'aa.ngasgiidaay han hll guudang Gas ga" which translates as "*I will never again feel that I am less than*" (p. 18).

On the meso and macro level, scholars assert that decolonization requires first recognizing the fact that all land in what is called Canada is Indigenous land (Coulthard, 2017). Moving from recognition, decolonization involves the transfer of power and decision-making from settler-colonial governments to Indigenous Nations/peoples (McFarlane & Schabus, 2017). As noted by Coulthard (2017), colonialism centres on the violent disruption in relationships between land and Indigenous peoples. For some, decolonization requires handing land back to Indigenous Nations (Tuck & Yang, 2012; Valandra & Hokila, 2019). The centrality of land, power, wealth, and control is a reason why decolonization is deemed to "never take place unnoticed" (Fanon, 1963, p. 36). Decolonial action in Canada is not new as, throughout history, Indigenous peoples resisted and rejected colonialism in many different ways (Steinman, 2016). Coulthard (2014) explains "Indigenous resurgence is at its core a prefigurative politics – the methods of decolonization prefigures its aims" (p. 159). For Haida scholar McGuire (2020), the assertion of the inherent right to Indigenous justice, albeit within the confines of a colonial institution, is itself a decolonial act (p. 18).

In considering a framework for decolonizing RJ, it is important to note that simply acknowledging colonial harms and violence will not necessarily lead to decolonial work (Coulthard, 2014; McGuire, 2022; Tuck & Yang, 2012). Action must be taken on the micro, meso, and macro levels to address the harm related to historical and contemporary RJ initiatives.

Victor (2007) argues that, if RJ fails to engage in decolonization processes, it will be "nothing more than colonial justice wearing a different colored hat making use of different enforcers" (p. 16).

## Decolonization and restorative justice

Whether RJ can be decolonized is debated. Blagg (2019) argues that RJ "may not survive a decolonising turn because, despite claims to the contrary, it is a modernist, Euro-north American concept concerned with reforming what remains an essentially Western paradigm of justice" (p. 133). Valandra and Hoksila (2019) challenge those in the field of RJ to begin with the following decentering question: "Other than adopting Circles or paying token homage to Indigenous peoples' influence on RJ, what is RJ doing to undo The First Harm [structural marginalization and settler colonialism] perpetuated against Indigenous people?" (p. 328). Further, "Why is [RJ] silent with respect to settler colonialisms' harms against Indigenous Peoples?" (Valandra & Hoksila, 2019, p. 336).

We, the authors, believe that a decolonizing approach to RJ is feasible if we take these critiques and questions seriously. A decolonizing approach to RJ would acknowledge the devastating impact of colonization including the dominance of Eurocentric worldviews. A decolonizing approach would also recognize that many government-led RJ interventions have contributed more harm to Indigenous peoples in New Zealand, Canada, and Australia.

## A proposed framework for decolonizing restorative justice

Along with the do-no-harm principle, Asadullah (2021) offers a framework for decolonization (Figure 34.1) with four key components: 1) roots, 2) trunk, 3) branches, and 4) fruit.

The roots convey the trauma-informed and anti-oppressive foundation of this framework. Key tasks for root development are active listening and consultation. The trunk embodies local knowledge and leadership; relationship building is the key task of this phase. Branches represent culturally and socially relevant justice practices across similar settings. The key task in this phase is learning from community praxis across somewhat familiar cultural and social settings. In practical terms, a shift from terms like IJ to Indigenous-led justice can prevent conflation with RJ and the tendency towards pan-Indigenization. The 'fruit' in this framework are the by-products, whereas the adoption of a trauma-informed approach and anti-oppressive framework that involves the leadership of local Indigenous peoples coupled with lessons from the wise practices across somewhat similar cultural and spiritual settings would result in socially, culturally, and spiritually conducive RJ practices.

## Some wise practices

The concept of wise practices over best or promising practices captures Callio's (2021) suggestion that "wise practices do not aspire to be universal, but instead are idiosyncratic, contextual, textured, and not standardized" (p. 29). In response to the growing call by academics and practitioners for more decolonized RJ practices, there has been a renewed interest in justice traditions that uphold Indigenous traditions and local knowledge and practices. Two such wise practices are discussed below.

## Salish practices in Bangladesh

Salish – a Bengali word commonly translated as mediation – is a community-based conflict resolution practice in Bangladesh. Even though traditional salish has been distorted due

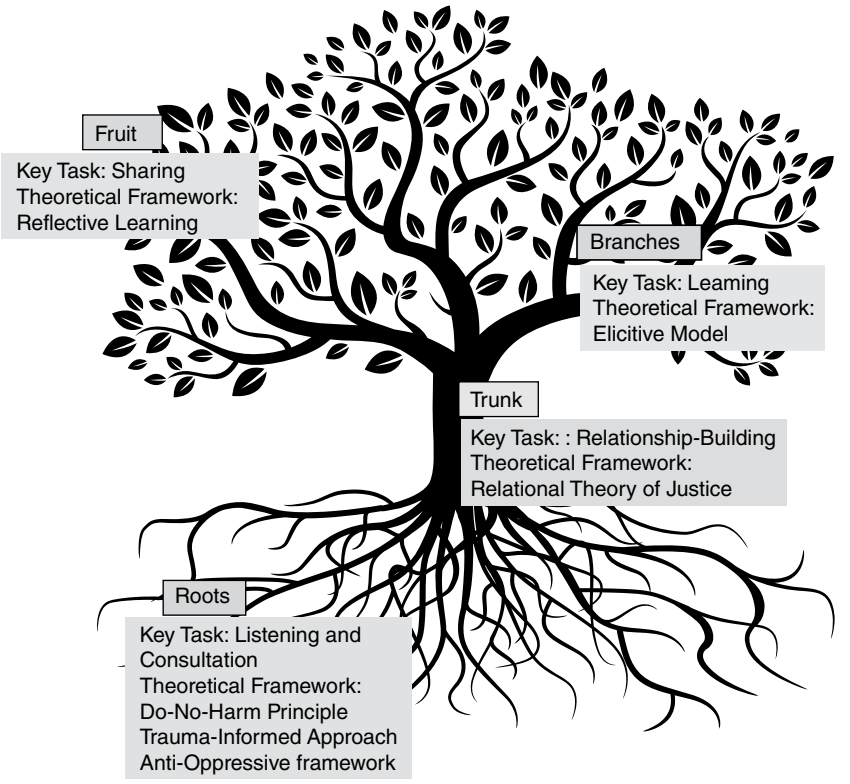


*Figure 34.1* Decolonizing tree framework. (Asadullah, 2021, p. 19)

to colonization and the abuse of power by local leaders, NGO-led salish is still functional (Golub, 2003). Asadullah and Morrison (2021) explore the historical development of salish in Bangladesh, and the roles played by civil society organizations and international non-governmental organizations in its revival in recent years. Salish is, for instance, a community-owned mediation mechanism that has been in practice for a long time. The mediator, known as the salishkar, might not have prior legal experience; they, however, yield considerable social or religious authority. In practice, victims bring their grievances to the attention of the mediator who then contacts the offender three times. This stage is followed by the collection of information by the mediator listening to the parties involved. Finally, the mediator offers several solutions with the desire that the resolution ought to be acceptable to both parties. In Bangladesh, salish may perform the dual responsibility of mediation or arbitration, depending on the circumstances (Asadullah & Morrison, 2021). Notwithstanding the culturally grounded history of salish, it has been impacted by urbanization and misuse of power by undemocratic and religious leadership (Ahmed, 2013). Along with locally rooted NGO-led salish practices, there are IJ practices in the Chittagong Hill Tracts region of Bangladesh (Asadullah, 2013; Roy, 2005).

The authors consider both NGO-led salish and IJ practices in the Chittagong Hill Tracts in Bangladesh as wise practices because of their historical, cultural and spiritual roots with the local people in Bangladesh.

## Pakhtoon Jirga in Pakistan

Jirga is another form of conflict resolution practised among the Pakhtoon tribes along the Afghanistan and Pakistan borders (Yousaf & Poncian, 2018). Yousufzai and Gohar (2005) offer some insights into the long tradition of jirga that serves the purpose of strategic communication channels as a mediation process. This communication may not always lead to an agreement over the issues of contention; it nonetheless provides a platform for peaceful discussion. It is composed of Spingiris (Elders) who act as mediators. One of the essential prerequisites of jirga is the conformity of the parties to the code of Pakhtoon life. Geographical proximity plays a crucial role in deciding how the jirga will address the issue because it acknowledges different practices within the community. Depending on the situation, jirga will first be convened among the Elders of different parties who decide what course of action to take. What makes jirga distinct, in addition to its local ownership, is transparency, the confidence of the community, unanimity, freedom of speech, accountability process, and finally the message of peace (Yousufzai & Gohar, 2005). The authors consider Pakhtoon jirga a wise practice because of its rootedness with Indigenous peoples in the Khyber Pakhtunkhwa area of Pakistan. Pakhtoon jirga is also socially, culturally and spiritually grounded in Pakistan.

## Conclusion

Discussions and debates around decolonized approaches are instrumental to the future of RJ. Since the 1970s, Western expressions of RJ have, with over 100 countries partaking, become a global phenomenon (Asadullah & Morrison, 2022). RJ advocates, academics, and practitioners need to be aware of the impact of the Eurocentric paradigm of RJ on Indigenous peoples around the world. They also need to understand the consequences of the co-option of RJ by government and justice stakeholders. Scholarly work and innovative practices from the Global South need to be at the forefront. It is imperative for RJ advocates to understand that Indigenous-led justice has its own ethos and distinctiveness. Any attempt to conflate it with RJ would contribute more harm. We believe that the adoption of a trauma-informed approach and anti-oppressive framework that involves the leadership of local Indigenous peoples coupled with lessons from wise practices across somewhat similar cultural and spiritual settings would result in socially, culturally, and spiritually conducive and decolonized RJ practices.

## References

Abramson, A., Asadullah, M., Pastran, X., Fulks, J., & Baumgartner, M. (2021). *Exploring Indigenous-led justice and restorative justice in British Columbia and Saskatchewan: A comparative action research project*. Ministry of Justice, the Government of British Columbia.

Ahmed, F.E. (2013). The compassionate courtroom: Feminist governance, discourse, and Islam in a Bangladeshi "Shalish". *Feminist Formations*, *25*(1), 157–183.

Anderson, D. (2020). Co-opting restorative justice in higher education. In Valandra, E. & W. Hoksila (Eds.), *Colorizing restorative justice: Voicing our realities* (pp. 143–159). Living Justice Press.

Asadullah, M. (2013). Indigenous-led justice system in the Chittagong Hill Tracts: An exploratory listening project in Bangladesh. *Alaska Journal of Dispute Resolution*, *1*, 87–100.

Asadullah, M. (2021). Decolonization and restorative justice: A proposed theoretical framework. *Decolonization of Criminology and Justice*, *3*(1), 27–62.

Asadullah, M. (Ed.) (2022). *Decolonization and justice: An introductory overview*. Open Book Press.

Asadullah, M., & Morrison, B. (2021). Exploring the growth and development of restorative justice in Bangladesh. *The International Journal of Restorative Justice*, *4*(2), 253–282.

Balfour, G. (2008). Falling between the cracks of retributive and restorative justice: The victimization and punishment of Aboriginal women. *Feminist Criminology*, *3*(2), 101–120.

BC Association of Specialized Victim Assistance and Counselling Programs. (2002). *Restorative justice, domestic violence and sexual assault in Canada: A summary of critical perspectives from British Columbia*. Ending Violence BC.

Blagg, H. (1997). A just measure of shame? Aboriginal youth and conferencing in Australia. *British Journal of Criminology*, *37*(4), 481–501.

Blagg, H. (2017). Doing restorative justice 'otherwise': Decolonising practices in the global south. In I. Aertsen & B. Pali (Eds.), *Critical restorative justice* (pp. 61–78). Hart Publishing.

Blagg, H., & Anthony, T. (2019). *Decolonising criminology: Imagining justice in a postcolonial world*. Palgrave Macmillan.

Callio, B. (2021). A wise practices approach to Indigenous law, governance, and leadership: Resistance against the imposition of law. In R. Hamilton, J. Borrows, B. Maniprize, R. Beaton & J. Nichols (Eds.), *Wise practices: exploring Indigenous economic justice and self-determination* (pp. 19–43). University of Toronto Press.

Chartrand, L., & Horn, K. (2016). *A report on the relationship between restorative justice and Indigenous legal traditions in Canada*. Department of Justice Canada.

Christie, N. (1977). Conflicts as property. *British Journal of Criminology*, *17*(1), 1–11.

Coker, D. (1999). Enhancing autonomy for battered women: lessons from Navajo peacemaking. *UCLA Law Review*, *47*(1), 1–112.

Coulthard, G.S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. University of Minnesota Press.

Cunneen, C. (1997). Community conferencing and the fiction of indigenous control. *Australian and New Zealand Journal of Criminology*, *30*(3), 292–311.

Cunneen, C. (2002). Restorative justice and the politics of decolonization. In E.G.M. Weitekamp & H.-J. Kerner (Eds.), *Restorative justice: Theoretical foundations* (pp. 32–49). Willan.

Dashman, M., Culberg, K., Dean, D., Lemler, A., Luinamsky, M., & Shackfood-Bradley, J. (2021). Bringing a racial justice consciousness to the restorative justice movement: A call to white practitioners. In T. Lewis & C. Stauffer (Eds.), *Listening to the movement: Essays on new growth and new challenges in restorative justice* (pp. 21–35). Cascade Books.

Department of Justice. (2016). *Youth criminal justice in Canada: A compendium of statistics*. https://publications.gc.ca/collections/collection_2018/jus/J4-58-2016-eng.pdf

Diangelo, R. (2020). *Me and white supremacy: Combat racism, change the world, and become a good ancestor*. Sourcebooks.

Fanon, F. (1963). *The wretched of the earth*. Grove Press.

Friedland, H. (2014). *IBA accessing justice and reconciliation*. https://dspace.library.uvic.ca/bitstream/handle/1828/12636/Friedland_Hadley_ILRU_2014.pdf?sequence=1&isAllowed=y

Golub, S. (2003). *Non-state justice systems in Bangladesh and the Philippines*. http://gsdrc.org/docs/open/ds34.pdf

Iacobucci, F. (2013). *First Nations representation on Ontario juries*. https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/iacobucci/First_Nations_Representation_Ontario_Juries.html

Lee, G. (1997). The newest old gem: Family group conferencing, *Justice as Healing*, *2*(2), 1–3.

Linklater, R. (2014). *Decolonizing trauma work: Indigenous stories & strategies*. Fernwood.

Littlewolf, E. (2022, February 22). *Decolonizing restorative justice: Repairing the first and second harm*. Panelist. [Online Presentation]. https://www.nyscasa.org/event/decolonizing-restorative-justice-repairing-the-first-and-second-harms/

Littlewolf, W., Armster, M. P., & Paras, C. (2020). Burn the bridge. In E. Valandra & W. Hoksila (Eds.), *Colorizing restorative justice: Voicing our realities* (pp. 87–100). Living Justice Press.

MacIntosh, C., & Angrove, G. (2012). Developments in Aboriginal law: The 2011-2012 term – charter rights, constitutional rights, taxation and sentencing. *The Supreme Court Law Review*, *59*(2), 1–50.

Malakieh, J. (2019). *Adult correctional statistics in Canada, 2017/2018*. https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016-eng.htm

Manuel, A. (2018). From dispossession to dependency. In P. McFarlane & N. Schabus (Eds.), *Whose land is it anyway? A manual for decolonization* (pp. 18–21). Federation of Post Secondary Educators of British Columbia.

McFarlane, P., & Schabus, N. (Eds.) (2017). *Whose land is it anyway?*. Federation of Post-Secondary Educators of British Columbia.

McGillivray, A., & Comaskey, B. (1999). *Black eyes all of the time: Intimate violence, Aboriginal women, and the justice system*. University of Toronto Press.

McGuire, M. (2019). Visions of a Haida justice system. *International Journal of Critical Indigenous Studies*, *12*(2), 18–33.
McGuire, M. (2020). *XaaydaGa Tll Yahda TllGuhlGa: Decolonizing Justice: The formation of a Haida justice system* [MA Thesis, Simon Fraser University]. https://theses.lib.sfu.ca/file/thesis/5881
McGuire, M. (2022). Reflections on decolonization and XaaydaGa Tll Yahda TllGuhlGa: A Haida justice system. *Decolonization of Criminology and Justice*, *4*(1), 31–56.
Memmi, A. (1965). *The colonizer and the colonized*. Beacon Press.
Milward, D. (2015). Sweating it out: Facilitating corrections and parole in Canada through Aboriginal spiritual healing, *Windsor Yearbook of Access to Justice*, *29*, 27–54.
Monchalin, L. (2016). *The colonial problem: An Indigenous perspective on crime and injustice in Canada*. University of Toronto Press.
Monture-Angus, P. (1999). Women and risk: Aboriginal women, colonialism, and correctional practice. *Canadian Woman Studies*, *19*(1/2), 24–29.
Moore, S.A. (2018). Radical listening: Transdisciplinarity, restorative justice and change. *World Futures*, *74*(7/8), 471–489.
Moyle, P. (2013). *From family group conferencing to whānau ora: Māori social workers talk about their experiences* [Master's thesis, Massey University]. https://mro.massey.ac.nz/bitstream/handle/10179/4731/02_whole.pdf?sequence=1&isAllowed=y
Moyle, P., & Tauri, J.M. (2016). Māori, family group conferencing and the mystifications of restorative justice. *Victims & Offenders*, *11*(1), 87–106.
Palys, T., & McGuire, M. (2020). Toward sovereign indigenous justice: On removing the colonial straight-jacket. *Decolonization of Criminology and Justice*, *2*(1), 59–82.
Pfefferle, B. (2008). Gladue sentencing: Uneasy answers to the hard problem of Aboriginal over-incarceration. *Manitoba Law Journal*, *32*, 113–143.
Porter, L. (2006). Planning in (post) colonial settings: Challenges for theory and practice. *Planning Theory & Practice*, *7*(4), 383–396.
Regan, P. (2010). *Unsettling the settler within: Indian Residential Schools, truth telling, and reconciliation in Canada*. UBC Press.
Roach, K. (2009). One step forward, two steps back: Gladue at ten and in the courts of appeal. *Criminal Law Quarterly*, *54*, 470–505.
Roy, R.D. (2005). *Traditional customary laws and Indigenous peoples in Asia*. https://www.refworld.org/pdfid/469cbfb70.pdf
Sánchez, L. (2010). Positionality. In B. Warf (Ed.), *Encyclopedia of geography* (pp. 2258–2258). Sage.
Santos, B.S. (2016). *Epistemologies of the South: Justice against epistemicide*. Routledge.
Shah, S., & Stauffer, C. (2021). Restorative justice: Taking the pulse of a movement. In T. Lewis & C. Stauffer (Eds.), *Listening to the movement: Essays on new growth and new challenges in restorative justice* (pp. xv–xxxii). Cascade Books.
Steinman, E.W. (2016). Decolonization not inclusion: Indigenous resistance to American settler colonialism. *Sociology of Race and Ethnicity*, *2*(2), 219–236.
Strang, H., & Sherman, L. (2015). The morality of evidence: The second annual lecture for restorative justice. *Restorative Justice: An International Journal*, *3*(1), 6–27.
Tauri, J. M. (2018). Restorative justice as a colonial project in the disempowerment of Indigenous peoples. In T. Gavrielides (Ed.), *Routledge International Handbook of Restorative Justice* (pp. 342–358). Routledge.
Tauri, J. (2016). Indigenous peoples and the globalization of restorative justice. *Social Justice*, *43*(3), 46–67.
Tauri, J. (2014). An Indigenous commentary on the globalisation of restorative justice. *British Journal of Community Justice*, *12*(2), 35–55.
Tauri, J. (1998). Family group conferencing: A case study of the indigenisation of New Zealand's justice system. *Current Issues in Criminal Justice*, *10*(2), 168–182.
Tuck, E., & Yang, K.W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education & Society*, *1*(1), 1–40.
Ucker, E. (2020). We're just doing our jobs: A provocation for restorative justice professionals. In T. Lewis & C. Stauffer (Eds.), *Listening to the movement: Essays on new growth and new challenges in restorative justice* (pp. xxxiii–xxxv). Cascade Books.
Valandra, E., & Hokila, W. (2019). Undoing the first harm: Settlers in restorative justice. In E. Valandra & W. Hoksila (Eds.), *Colorizing restorative justice: Voicing our realities* (pp. 325–370). Living Justice Press.

Van Ness, D., & Strong, H. (2010). *Restoring justice: An introduction to RJ* (4th ed.). Matthew Bender & Company.
van Wormer, K. (2004). Restorative justice: A model for personal and societal empowerment. *Journal of Religion & Spirituality in Social Work*, *23*(4), 103–120.
Victor, W. (2007). *Indigenous justice: Clearing space and place for Indigenous epistemologies*. http://fngovernance.org/ncfng_research/wenona_victor.pdf
Vielle, S. (2012). Frenemies: Restorative justice and customary mechanisms of justice. *Contemporary Justice Review*, *16*(2), 174–192.
Wood, W. (2015). Why restorative justice will not reduce incarceration. *British Journal of Criminology*, *55*, 883–900.
Yousaf, F., & Poncian, J. (2018). Detriments of colonialism on Indigenous conflict resolution: An analysis of Pakistan and Tanzania. *Contemporary Justice Review*, *21*(4), 455–473.
Yousufzai, H.M., & Gohar, A. (2005). *Towards understanding Pukhtoon Jirga*. Just Peace International.