

# Hyperincarceration and Indigeneity

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## Summary

Indigenous people have been subject to policies that disproportionately incarcerate them since the genesis of colonization of their lands. Incarceration is one node of a field of colonial oppression for Indigenous people. Colonial practices have sought to reduce Indigenous people to “bare life,” to use Agamben’s term, where their humanity is denied the basic rights and expression in the pursuit of sovereign extinguishment. Across the settler colonies of Australia, Aotearoa/New Zealand, Canada, and the United States, the colonial drive to conquer land and eliminate Indigenous peoples has left deep scars on Indigenous communities and compromised bonds to kin, culture, and country. Indigenous people have been made refugees in their own countries.

Contemporary manifestations of penal incarceration for Indigenous people are a continuation of colonial strategies rather than a distinct phase. The concept of “hyperincarceration” draws attention to the problem of incarceration and its discriminatory targets. It also turns our attention to the turnstile of incarceration in Western postmodernity. However, the prison is but one form of exclusion for Indigenous people in a constellation of eliminatory and assimilatory practices, policies, and regimes imposed by colonial governance. Rather than overemphasizing the prison, there needs to be a broader conceptualization of colonial governance through “the camp,” again in the words of Agamben. The colonial institutionalization of Indigenous people, including in out-of-home care, psychiatric care, and corrective programs, is akin to a camp where Indigenous people are relegated to the margins of society. We eschew a narrow notion of hyperincarceration and instead posit a structural analysis of colonial relations underpinning the camp.

**Keywords:** international criminology, hyperincarceration, indigeneity, Indigenous people, colonialism, postcolonial, deaths in custody, torture, Indigenous child removal, assimilation

**Subjects:** Criminological Theory, Critical Criminology, International Crime, Race, Ethnicity, and Crime

## Introduction

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Indigenous people in settler colonial states were profoundly impacted by the “punitive turn” that swept through most Western societies in the 1980s. Indigenous Australians are *the* most imprisoned people in the world (Anthony, 2017), outstripping rates of overrepresentation experienced by African Americans in the United States. While African American prison

inmates represent 2,207 per 100,000 of the African American adult population, Indigenous Australians are imprisoned at a rate of 2,303 per 100,000 (World Prison Brief, 2017). The rate of imprisonment for Indigenous Australians has doubled since the mid-1990s. Levels of Indigenous overrepresentation in Australia are closely followed by incarceration rates of First Nations people in Canada (Chartrand, 2018) and Māori in Aotearoa/New Zealand (Marchetti & Anthony, 2016). Following recent critical scholarship, notably by Loïc Wacquant (2001a, 2001b, 2009, 2014), we employ the notion of “hyperincarceration” to describe the phenomenon of overrepresentation in the criminal justice system.

For Wacquant (2001a, p. 95), hyperincarceration implies not a narrow treatment of “crime and punishment,” but an examination of the broader role of the penal system as an “instrument for managing dispossessed and dishonoured groups.” Wacquant (2001a, pp. 119–121) observes a “symbiotic” relationship between ghetto and prison, with both playing a role in this process of racial management and exclusion. He explains that socioeconomic-racial marginalization has placed African American men in a “*carceral continuum*” where they are caught in a “never-ending circulus” between prison and the ghetto (Wacquant, 2001a, p. 97, italics within). Similar to Wacquant, we hypothesize a symbiosis between Indigenous incarceration and a network of institutions designed to further the project of Indigenous extinguishment. To understand this process in the settler colonial polity we add two refinements to Wacquant’s thesis. By drawing on settler colonial theory, particularly the work of Patrick Wolfe (2006), and the ideas of Giorgio Agamben (1998) and his notions of the “camp,” “bare life,” and “inclusive exclusion,” we argue that hyperincarceration has been employed as a strategy of colonial power designed not just to control Indigenous people but also to perpetuate settler colonial strategies of sovereign extinguishment. While Wacquant (2001b, p. 186) frames solutions in terms of “expand[ing] social and economic rights” of the underprivileged, Indigenous justice advocates point to the need for decolonization of the political system and return of land and sovereignty to Indigenous populations (Alfred & Corntassel, 2005; Jackson, 2017).

Like Wacquant’s analysis of the United States, we suggest that the term “hyperincarceration” is more accurate in the Australian context than the notion of “mass incarceration” popularized in the work of David Garland (2001, p. 2), for whom contemporary mass imprisonment reflected a “systematic imprisonment of whole groups of the population.” However, it is the minorities, not the masses, who are most at risk of being caught up in the burgeoning carceral system. In Australia, for example, rates of *non*-Indigenous imprisonment have remained relatively stable over recent years. Indeed, in youth detention settings *non*-Indigenous rates have declined in recent years while the number of Indigenous children has steadily increased since the 1970s. As Wacquant (2014, pp. 41–42) writes, “*mass incarceration suggests that confinement concerns large swaths of the citizenry,*” but in reality the punitive surge was targeted at a specific demographic, that of “*lower-class black men trapped in the crumbling ghetto*” (italics within). In Australia also, “the masses” have been relatively unaffected by punitive populism. Instead the minority Indigenous population has borne the brunt of “punitive excess” and strategies of “governing through crime” and “governing crime” in Australia (Simon, 2007). Australian trends in hyperincarceration have seen an intensification

of controls over Indigenous people, who are being incarcerated in record numbers—at levels of incarceration that would not be tolerated if they impacted so heavily on the white community. Australian punitiveness is directed towards Indigenous people and other outsider groups such as refugees and asylum seekers who cannot lay claim to a place in the national imagined community.

In this article we explore the notion of hyperincarceration in Australia. As Cunneen et al. (2013) have suggested, Wacquant's thesis needs to be rethought to accommodate the unique history of Australian settler colonialism. The "logic of elimination," as Wolfe (2006) describes, characterizes the settler state's relation to Indigenous people. Rather than the "crumbling ghetto" that contains the lower classes in the United States, Australian Indigenous experience of "place" is complex and multilayered. We argue that hyperincarceration is not only constituted in the prison but also through the state constricting, through a multiplicity of strategies, Indigenous livelihoods on homelands, the practice of language and culture, and the freedoms of civil society. In broader society, they are "citizens without rights" (Chesterman & Galligan, 1997)—unable to exercise their rights as Indigenous people or assert the rights of non-Indigenous people (Anthony, 2009).

The Australian Indigenous experience needs to be viewed in the context of what Agamben (1998, p. 54) calls "inclusive exclusion"—a good term to describe the process of coercive assimilation that saw Indigenous people drawn into a diversity of sites designed to extinguish Aboriginal culture and sovereignty and crush Aboriginal resistance. Following Agamben (1998), we argue that the settler state is incapable of providing anything more than "bare life" to Indigenous people, on either the "inside" or the "outside." Agamben (1998, p. 42) explains that bare life is created through exclusion from the rule of law and its protections. Exclusion is a necessary feature of the sovereign will to exercise power (1998, p. 13). It removes rights "from all political life" such that: her/his "entire existence is reduced to a bare life stripped of every right by virtue of the fact that anyone can kill [her]/him without committing homicide"; she/he is in "perpetual flight" and yet "in a continuous relationship with the power that banished" her/him because of ongoing exposure "to an unconditioned threat of death." Her/his life is "caught in the sovereign ban and must reckon with it at every moment, finding the best way to elude or deceive it" (Agamben, 1998, p. 103).

Indeed, our pivotal argument is that the "in or out" dichotomy (inside prison or outside civil society with its attendant freedoms and protections) loses explanatory coherence in the settler colonial context. It cannot be taken as given that the experience of being "inside" diverges radically from that of being "outside" for Indigenous prisoners, or that regimes of control are more oppressive on one side of the fence than on the other. In both instantiations, Indigenous people are "stripped of every right" (Agamben, 1998, p. 103). We imagine control in the post-colony as an archipelago of intersecting camps founded on what Sylvester (2006, p. 66) calls "bare life biopolitics."

## Hyperincarceration as More than Overrepresentation of Indigenous People

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To speak of overrepresentation is to infer that the mass imprisonment of Indigenous peoples in Australia, Canada, Aotearoa/New Zealand, and the United States is an aberration, reflecting what one critical high-level Australian Government inquiry referred to as a “broken” justice system (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011). The logic of incarceration establishes hyperincarceration as no abnormality or unintended consequence (Cunneen et al., 2013).

The hyperincarceration of Indigenous peoples across settler colonies is the logical extension of several centuries of policies, laws, and practices designed to complete the dispossession of Indigenous people as bearers of Indigenous sovereignty. Canadian Yellowknives Dene scholar Coulthard (2014) describes the settler colonial relationship in terms of “structured dispossession”:

characterized by a particular form of *domination*; that is; it is a relationship where power – in this case, interrelated discursive and nondiscursive facets of economic, gendered, racial and state power – has been structured into a relatively secure or sedimented set of *hierarchical* social relations that continue to facilitate the dispossession of Indigenous peoples of their lands and self-determining authority. ... [It is] structurally committed to maintain ... ongoing state access to the land and resources that contradictorily provide the material and spiritual sustenance of Indigenous societies on the one hand, and the foundation of colonial state-formation, settlement, and capitalist development on the other. (2014, pp. 6-7, italics within)

Unlike in other colonies that sought merely to economically exploit colonial land and labor, in settler colonies the intention was to eliminate the Indigenous population, including its polity, and replace it with a settler population (Wolfe, 2013a).<sup>1</sup> They are social formations driven by a persistent tendency to drive out Indigenous people (Wolfe, 2013a). A settler colonial system, from this perspective, is not “malfunctioning” when it incarcerates Indigenous people at disproportionate rates, but fulfilling the role set out for it under settler colonialism. It is an outcome of deliberate intervention by the settler state. It makes no sense to speak, therefore, of some “normal” or acceptable level of involvement in what Indigenous people view as an alien white settler justice system, which has been imposed from outside, without Indigenous consent, and despite the fact that Indigenous people were already subject, and obedient, to a set of existing laws: *their own*.

The belief that settler justice systems urgently need to be transformed and decolonized, rather than simply reformed, or democratized has become a critical demand of Australian Indigenous and Māori anti-prison advocates (Jackson, 2017; MacIntosh, 2018; O’Brien, 2017). The objectives of the African American prison abolition movement, championed by Angela Davis (2005) since the 1970s, provides a vision but not a holistic strategy for Indigenous

justice. As we will suggest, it does not come to terms with the *colonial* reality that seeps beyond prison walls. Wacquant's analytic of hyperincarceration also does not come to terms with the status of *dispossession* for Indigenous people—forced movement off country. He examines the hypercriminalization of African Americans as primarily a product of their “class”—a term he uses as a broad synonym for “poor.” Their ghettoization is the visual embodiment of their poverty and the target of policing (Wacquant, 2014, p. 44). For Indigenous people, while they are poor, they are not impoverished. Connections to country, Indigenous relationality, cultures, and laws persist to create a “binarism” with the settler state (Wolfe, 2013b, p. 267). This is a distinguishing feature of settler colonialism—that invasion produces binarism that is at the heart of settler anxiety and necessitates ongoing settler colonial suppression of Indigenous relationality, based on a distinct ontological life-world (Wolfe, 2013b, p. 270).

Implicit in colonial processes of Indigenous dispossession is the problematization and criminalization of Indigenous people. Indigenous people have been rendered outside of the law not only in terms of their rights to their land and sovereignty, but also in relation to breaching the criminal laws of the state. This has resulted in the demonization and confinement of Indigenous people. Ascribing Indigenous people an offender identity and non-Indigenous people a victim identity legitimizes colonization as lawful *and* just. It enables colonizers to proclaim a civilizing mission in relation to the Indigenous savage, while the colonizer profits from the unlawful takeover of Indigenous land and destruction of Indigenous communities.

In British settler colonies, incarceration is not a *sui generis* form of control associated with the modern penitentiary. Rather, segregation and confinement are well-rehearsed settler colonial techniques for controlling Indigenous bodies and souls. It was a key strategy for the elimination of Indigenous relationality. For Wacquant, by contrast, the hyperincarceration of African Americans is a development that is unique to the neoliberal, post-Keynesian age in the United States (Wacquant, 2001a, p. 117; Wacquant, 2001b). Wacquant's work (2001a, p. 99) traces four “peculiar institutions” that have been forced on African Americans. They were predicated variously on “*labor extraction and social ostracization*” and not confinement on the pretense of elimination (Wacquant, 2001a, p. 99, italics within).

Our reading of Indigenous hyperincarceration is not intended to imply that prison was or is the only settler colonial device for elimination, but rather that it looms large in historical and contemporary settler colonial management of Indigenous people. The prison was one among a constellation of practices, policies, and regimes imposed on Indigenous people following, or in tandem with, the initial violence of the frontier. Frontier clashes were as devastating for Indigenous societies as they were pivotal for the advancement of the colonial project. Violence and coercion towards Indigenous people, including in penal custody, continue at high rates today, but have also featured in segregationist, protectionist, assimilationist policies governing Aboriginal people since the 19th century. While there are variances among the settler colonies, and key differences were shaped *inter alia* by place-based responses by Indigenous people (including responses of resistance, resilience, and survival), the colonizers had little imagination and spread the same ideas (and diseases) everywhere they set foot

(Dodson, 2010). For Indigenous people, colonial practices of domination and control, including through prisons, were foreign concepts, according to Māori scholar Moana Jackson (2017), and antithetical to Indigenous ways of being, relating, and doing: their ontologies, epistemologies, and axiologies. Where possible, Indigenous people have maintained their connections to their cultural identity and country and refused to partake in the colonial project (Simpson, 2014), including through expressions of Indigenous resurgence (see Alfred & Corntassel, 2005, p. 610). However, the living and breathing anxiety of settler colonialism seeks constantly to control and eliminate Indigenous relationality, including when it is making claims to practices of universality.

### Colonial Prisons: Historical Landscapes, Not Buildings

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Patrick Wolfe (2006) argued that colonization is a dynamic structure and process, rather than an event. By extension, colonization is everywhere for Indigenous people and not simply contained in prison walls or ghetto-like overcrowded, dilapidated public housing. Colonial strategies have had a corrosive influence on historical and present-day dispossession, extinguishment, and enforced mobility, and continue to shape government and white community attitudes and practices, including criminal practices (Agozino, 2018). Our concept of hyperincarceration as it applies to Indigenous people in settler colonies extends to segregation in both administrative and penal regimes since early invasion. Although the colonial tentacles reach far and wide, segregation has been a key instrument of state control.

Segregation of Indigenous people took root in the early days of colonization and has continued unabated ever since. In the 19th century, this would take on a formal guise. Across the British colonies, Britain unleashed a policy of *protectionism*, following its endorsement by the 1837 British Parliamentary Select Committee on Aboriginal Tribes. In Australia and Canada, the legislative inception of protectionism imposed a series of protectorates on Indigenous people in which “protectors” had legislative powers to police and manage all aspects of Indigenous lives, including their movement, associations, marriages, clothing, food, income, and work. It sought to instill non-Indigenous values and routines on Indigenous people through forced work and instruction. This was consistent with the colonizing task of civilizing Indigenous people (British Parliamentary Select Committee, 1837).

In Australia, protectionism was enacted through what became known as the “Aboriginal Protection Acts” or simply “Aboriginal Acts,” which continued well into the 20th century.<sup>2</sup> They placed Aboriginal people in an official state of legal “exceptionalism” where they were rendered outside of the rule of law (Agamben, 1998). A key feature of the Aboriginal Acts was the forced placement of Aboriginal people in confinement, including on government settlements, reserves, church missions, cattle stations (for forced labor), and other institutions. Paul Havemann (2005, p. 59) describes the legal exclusion and segregation of Aboriginal people in the following terms:

In the colonies Indigenous people ... have been the paradigm non-people, non-citizens, *homines sacri*. If not, at worst, exterminated with legal impunity, they have been excluded and condemned to placelessness in “zones of exception” such as reserves, mission schools or camps and other forms of segregation under the regime of the sovereign’s draconian “protection” (footnotes excluded).

The legal regime also gave protectors the power to remove Aboriginal children from their families and move them into boarding houses or non-Aboriginal families to learn European ways. These children are referred to as the “Stolen Generations” due to its widespread practice (Human Rights and Equal Opportunity Commission, 1997). These practices continue today where Aboriginal children across Australia, Aotearoa/New Zealand, and Canada are disproportionately more likely to be removed from their families, at a rate of ten times that of non-Aboriginal children. They are often placed with non-Aboriginal families or in privately operated residential institutions (Family Matters, 2018). In Canada, Australia, and Aotearoa/New Zealand, Indigenous children constitute at least 50% of children in the child protection system (Ainge Roy, 2018; Wahlquist, 2018).

In Canada, the “Indian Act” was amended to introduce protectionist provisions, especially following the decreasing British dependence on the military role of the First Nations in defending colonial interests. From the 1870s, the British sought to define the relationship with Canadian First Nations people in terms of its civilizing role, particularly through its mission to bring British Christianity and agrarian society to First Nations people. The 1876 Indian Act consolidated regulations and codified controls over the lives of First Nations people, including affording powers to Indian agents. The amendments provided mechanisms for the abandonment of traditional First Nations ways and assimilation. It involved the hypersegregation of Aboriginal Canadian children in boarding schools, where they would be made to stop speaking in their language and adopt Christian practices, which lasted until the 1960s (Partida, 2008; Smith, 2009).

In Canada, “Indian agents” served as administrative protectors of Aboriginal peoples and have been described as part of the “coercive tutelage” of colonial powers over the First Nations (Satzewich, 1997, p. 227). Their guardian powers affected the lives of *all* First Nations people in their jurisdictions and was supplemented with significant authority to make sweeping policy decisions, such as determining who was an Indian and managing Indian lands, resources, moneys, provision of agricultural instruction, cultural access, and spirituality. They had powers to recommend that an Indian Chief or councilor be deposed; control Indian movements off reserves; enforce attendance at residential schools; control religious and cultural practices inimical to “civilized” behavior; issue rations; and act as justice of the peace in relation to Indian infractions of the law (Satzewich, 1997, p. 231). The interventions of Indian agents were in fulfilment of the plan of the Department of Indian Affairs, and ultimately the British Crown, to promote “civilization” for First Nations people (Satzewich, 1997, p. 230).

Across the British settler colonies, social exclusion through *administrative* hypersegregation would come to be replaced with a system of *penal* hyperincarceration by the second half of the 20th century. The forthcoming section traces how this transition from the quasi-welfare

segregation on Aboriginal protectionist reserves and settlements dovetailed with the advent of integrationist ideologies. While freed from the clutches of protectionism, many Aboriginal people were released into the perils of modern policing and urban disadvantage in towns and cities.

### From Administrative to Penal Hyperincarceration

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Russell Hogg (2001, pp. 357–358) notes that by the late 20th century the policy of assimilation made it no longer necessary, or desirable, for governments to segregate Indigenous people in church missions, government settlements, or cattle stations and homesteads under the explicitly discriminatory legislation of the Aboriginal Protection Acts. Rather, Aboriginal people would be managed through mainstream policies and institutions, albeit with differential impacts that would see their rights restricted. Notable developments in this era, especially from the 1960s, were the sharp increase in Aboriginal child removals by the state (placing them predominantly in institutions or with white families) and penal incarceration of Aboriginal people under ostensibly neutral welfare and criminal law and procedure legislation respectively. Indigenous people who fell outside white norms were at a systemic disadvantage, demonstrating, as Guha (1997) observes, the colonial impulse to exclude the colonized even when imposing an inclusive hegemony. At this juncture it was implicit and institutional bias, pitched against the ontologies and epistemologies of Indigenous peoples, that would result in their overincarceration and constrained freedoms.

Street police and welfare authorities were the arbiters of responsabilization in this new order. They did not “simply impose the law, they imposed the law of an alien culture” (Blagg, 2008, p. 131). Public spaces were “worlded” by white power, which saw the inscription of colonizing worldviews, systems, rules, regulations, and practices (Spivak, 1996). The effect was disproportionate control and containment of Indigenous people. In the 1960s and 1970s, Aboriginal people faced arrest and punishment especially for minor offenses, including offensive language, resisting arrest, and assaulting the police (the “trifecta”), disorderly conduct, and failing to follow a police move-on order (Eggleston, 1976, p. 176; O’Shane, 1992, p. 5). Today, Aboriginal people, especially Aboriginal women, are disproportionately punished for summary offenses, including minor traffic and property offenses, breaches of court orders and protection orders, and disorderly conduct (Anthony & Blagg, 2013; MacGillivray & Baldry, 2015). Like protectionism, these new penal strategies were designed to move Indigenous people into various places of confinement:

The history of the “protection” of Australia’s Indigenous peoples is patterned with the governmentalities and biopolitics of power – the legislations, the definitions, the surveillance – and continual forms of material violence which have combined to keep Indigenous people’s inside detention – in reserves, on islands, in gaols – and outside – away from the wider/whiter community.

(Tedmanson, 2008, p. 149)



Although Foucault (1977) described imprisonment as punishing the soul rather than the body (which was the feature of earlier forms of punishment), the imprisonment of Aboriginal people manifested in systemic, and at times unfettered, violence. There is a well-documented history of Aboriginal deaths in police and prison custody, some in brutal circumstances (Allam, Wahlquist, & Evershed, 2018; Royal Commission into Aboriginal Deaths in Custody, 1991). On the streets, police exact violence on Aboriginal people who disobey unofficial curfews and rules around behavior and language (Anthony, 2018, pp. 48–49). Recently in Australia, torture of Aboriginal children in detention centers has been identified as a systemic problem that violates international conventions on the rights of children in custody (Royal Commission into the Detention and Protection of Children in the Northern Territory, 2017).

Imprisonment rates of Indigenous people have also accelerated in Canada, Aotearoa/New Zealand, and the United States from the late 20th century, although Australian Indigenous peoples have the unenviable title of being the most incarcerated people in the world today (Anthony, 2017). Indigenous people are “grossly over-represented” in state prisons and police custody (Royal Commission into Aboriginal Deaths in Custody, 1991, [1.3.3]; Blagg, 2008, p. 130). Across all these settler colonies prisons are places of institutional violence. While corporal punishment is not officially sanctioned, ceasing for Indigenous Australians as late as the 1960s (well after its cessation for non-Indigenous Australians in the 1930s), they are innately places of trauma and loss for Indigenous peoples. Through the deprivation of liberty and confinement they are technologies of displacement and colonial subjection.

## The Colonial Matrix of Power

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Hyperincarceration of Indigenous people reflects what postcolonial writers Anibal Quijano (2007) and Walter Dignolo (2007, p. 156) call the “colonial matrix of power.” Settler colonialism was less interested in the labor of Indigenous people than it was in their land. All institutions were bent towards fulfilling the manifest destiny of European settler colonization: uprooting native social order and implanting white social order (Wolfe, 2006). Within this matrix, prison was a vital node—whether possessing administrative or penal forms. However, it was by no means an exclusive node.

Settler colonialism differs from other brands of colonialism in that it embraces not simply the exploitation but the wholesale appropriation of land, as though it were always/already the property of the European, awaiting “discovery.” Settlement requires the extinguishment of Indigenous rootedness in land, not always the extinguishment of the people themselves: genocide remains one among a range of strategies, including forced assimilation, dispossession, enforced mobility, and concentration in places of confinement. The necessity of violence runs through settler colonization globally. As Dunbar-Ortiz (2014, p. 9) notes in relation to the United States:

Settler colonialism, as an institution or system, requires violence or the threat of violence to attain its goals. People do not hand over their land, resources, children, and futures without a fight, and that fight is met with violence. In employing the force necessary to accomplish its expansionist goals, a colonizing regime institutionalizes violence.

Settler colonial desire to uproot Indigenous owners and replace them in the soil—transplanting the Global North into the Global South—was legitimized via a particularly rich and thematically nuanced repertoire of self-exculpatory and self-aggrandizing narratives, including biblical-scale themes of redemption and renewal, promised lands flowing with milk and honey, and such like. Such narratives obscured the crimes of land theft and the necessary denial of Indigenous sovereign law. As Lisa Ford (2010) suggests, the eradication of Indigenous law became the “litmus test of settler statehood.”

Indigenous people were, paradoxically, both subject to white law and exempted from its protections. Colonialism claimed sovereignty while denying Indigenous peoples citizenship. Employing an Agambean framework, Morgensen (2011, p. 53) notes: “Western law incorporates Indigenous peoples into the settler nation by simultaneously pursuing their elimination.” For this to occur, Indigenous people had to be governed in a state of legal exception. They had to be placed in zones that applied only to them. This resonates with Agamben’s (1998, p. 19) notion of the camp as the zone “outside the normal order” where individuals are diminished to bare life. The zones of exception to the rule of law are not uniformly marked by a religious mission, a penal prison, a boarding school or residential institution for Aboriginal children, a state-administered reserve, or an over-policed long grass, bush camp, or urban block—they were all of these things set aside for Indigenous people. What ties together these dispersed sites is what Diken and Laustsen (2002, p. 291) refer to as the “logic of camp,” as the “zone of indistinction”: “notions of inside and outside ... tend to disappear into a zone of indistinction” (see Agamben, 1998, p. 65). The “logic” of the camp has spread outwards into society. For Indigenous people, settler colonization has seen the legal normalization of the state of exception.

## Don’t Reform, Decolonize

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The solution to hyperincarceration in settler colonial societies lies in the emancipation of Indigenous people from the clutches of settler camps of bare life. This is a different strategy to what Wacquant (2001b, p. 186) advocates in terms of a retreat from neoliberal society and the extension of social and economic rights to marginalized peoples. It is one that comes to terms with the cycle of Indigenous incarceration, which necessitates decolonizing the justice system, not simply reforming it. This means engaging with the question of Indigenous sovereignty, particularly in the form of demands for the return of land, and the devolution of power to community-owned and place-based Indigenous organizations, self-determining Indigenous affairs and operating according to Indigenous legal principles of healing and reintegration (Behrendt, 2001, 2002; Dodson, 2007, p. 24).

Indigenous theorists and activists tend to view decolonization in terms of a long-term process of building new relationships in the liminal spaces between the mainstream and Indigenous worlds where new, hybrid structures can be generated. Beginning the task of decolonization can be accomplished by supporting initiatives such as Indigenous courts where elders sit with judges to find solutions tailored to the needs and histories of local people. This must occur alongside re-narrating histories in the public domain, to expose colonial harms and give voice to struggle and resistance (Corntassel, Chaw-win-is, & T'lakwadzi, 2009). Affording Indigenous knowledge master status and exposing the history of settler colonization, including the role of its numerous camps of bare life, needs to be opened up for exploration, acknowledgment, and reparation.

Consistent with reparation is the recognition of preexisting and continuing Indigenous title to land as an important step in healing the suffering created by the colonial matrix of power. Critical Indigenous scholars and activists have called for resurgence involving expressions of Indigenous sovereignty and the reclaiming of land. They criticize reconciliatory gestures, siloed opportunities, and reforms in individual sectors for failing to address structural issues, including state power and authority and the colonial preoccupation with land as an economic resource (Coulthard, 2014, p. 171). Reinstating Indigenous relationships with land is critically connected to Indigenous well-being and the survival of laws and cultures (Sherwood & Edwards, 2006, p. 180). It facilitates the regeneration of "Indigenous nationhood" and the practice of "every day acts of resurgence and personal decolonization" to "envisage life beyond the colonial state" (Corntassel & Scow, 2017, p. 56; also see Corntassel, 2018). The resurgence of Indigenous "spirit and consciousness," made possible through reclaiming land and sites of power, confronts the colonial tactics of Indigenous elimination (Alfred, 2005, p. 131). It enlivens personal and communal healing that has been denied through an existence of bare life where hyperincarceration has loomed large.

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## Notes

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1. Wolfe (2013a) includes Israeli-occupied territories in the group of settler colonies. In Israel, Palestinians constitute 71% of the prison population (Anon, 2016; The Israeli Information Center for Human Rights in the Occupied Territories, 2018). This article's analysis, however, is situated in the British settler colonies of Australia, Aotearoa/New Zealand, Canada, and the United States.
2. See, for example, Aborigines Protection Act 1886 (WA); Aboriginal Protection Act and Restriction of the Sale of Opium Act 1897 (Qld); Aborigines Protection Act 1909 (NSW); Aborigines Act 1911 (SA); Aborigines Ordinance 1911 (NT); Aborigines Ordinance 1918 (Cth).

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