Colonial Goals Through Colonial Gaols: The Imperative of Indigenous Self-Centred Self-Determination for Indigenous Decarceration

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The high levels of imprisonment experienced by Indigenous peoples in colonial states are now a widely documented phenomenon (eg. Anaya 2011, Blagg and Anthony 2019, Chartrand 2019, Cunneen and Tauri 2019, Jackson 2017, Pearson 2017). In Australia, for example, if non-Indigenous people were incarcerated at the same levels as Aboriginal and Torres Strait Islander people, the non-Indigenous prison population would have reached almost 400,000 people in the final quarter of 2022 – instead, it was 27,868 (see Australian Bureau of Statistics 2022a, 2022b). Other jurisdictions report similar trends.

In Canada, Indigenous incarceration levels recently reached the highest levels ever recorded by the Office of the Correctional Investigator (2020). In Aotearoa New Zealand, Māori people represent 17.4 per cent of the national population (Tatauranga Aotearoa 2022), but 53.2 per cent of the prison population (Ara Poutama Aotearoa 2022). In Kanaky (New Caledonia or *Nouvelle-Calédonie*), despite the refusal of the French colonial state to collate ethnically disaggregated statistical data on the prison population (Anaya 2011: 21), both Indigenous Kanak representatives (Congrès Populaire Coutumier Kanak 2012: 2-3) and the Office of the United Nations (hereinafter UN) Special Rapporteur on the Rights of Indigenous Peoples (Anaya 2011: 15) have reported that up to 90 per cent of Kanaky's prison population are Indigenous – a vast disparity when compared with the 41.2 per cent of Kanak people in Kanaky's general population (Institut de la Statistique et des Études Économiques Nouvelle-Calédonie 2019).

In the latter half of the 20th century, a spate of colonial state-commissioned inquiries began to highlight the profound levels of incarceration being experienced by Indigenous peoples in colonial prison systems (eg. Commonwealth 1991, Dussault and Erasmus 1996, Hunn 1960, Jackson 1987). In response, recent decades have seen significant research attention in colonial

states focused on resolving the so-called ‘unbalanced ratio’ (*R v Gladue*: 65) of Indigenous imprisonment.

Positivism dominates the criminological research in this field, ‘inscribing disciplinary boundaries that have the intention and effect of problematising colonised populations and legitimising the Western criminal justice system’ (Anthony and Sherwood 2018: 1). Approached from this positivist frame, disproportionately high levels of Indigenous incarceration in the prisons of colonial states are a by-product of disproportionately high levels of Indigenous offending (eg. Weatherburn 2014: 53). In his seminal 1987 paper for the Aotearoa Department of Justice, critical Māori legal scholar Moana Jackson identifies the ways in which adopting this offender-based approach to understanding Indigenous hyperincarceration ‘distorts and oversimplifies’ (Jackson 1987: 15) the causes of the phenomenon. Positivist criminological research opts to focus on solving the so-called ‘Indigenous problem’ (Cunneen and Tauri 2019: 364) rather than turning its gaze to critically consider the systems and structures of the colonial prison itself (Jackson 1987: 19). This paper adopts the latter critical focus.

As historian Patrick Wolfe has so cogently described, the invasion and occupation of Indigenous lands is a ‘structure, not an event’ (Wolfe 2016: 33). Far from Indigenous hyperincarceration being an unfortunate and unintended consequence of past colonising ‘events’ (the positivist criminological view), in this paper I frame Indigenous imprisonment as part of an ongoing process of colonisation (Chartrand 2019: 69). Indeed, as Yuin carceral survivor and abolitionist Vickie Roach (2022) observes, Indigenous hyperincarceration is not evidence of a failure in colonial carceral systems, but proof these systems are working *effectively*. Drawing on case studies of Indigenous nations-colonial state relations at sites of colonial carceral control, I demonstrate that while terms such as ‘mass imprisonment’ (eg. Leigh 2020) or ‘hyperincarceration’ (eg. Anthony and Blagg 2020: 2) capture elements of the profound injustice embedded in the imprisonment of Indigenous peoples by colonial states, these qualifiers also operate to normalise the imposition of colonial values and interests on Indigenous nations – and, to rationalise the perpetual violation of the right of Indigenous peoples to self-determination.

Colonial gaols are repositories of colonial goals. The incarceration of Indigenous peoples in prisons, disproportionate or otherwise, is not a *symptom* of colonialism: it *is* colonialism (Adema 2016: 13). As carceral survivors and abolitionists Debbie Kilroy and Tabitha Lean observe, ‘there

is no acceptable number of Blak people in custody' (Kilroy and Lean 2022: 95). The case studies in this article illustrate that high levels of Indigenous incarceration are not an anomalous or transitory phenomenon at sites of colonial carceral control. Critical scholar Efrat Arbel summarises: 'There is nothing extraordinary about the steadily rising rates of Indigenous incarceration; they are as predictable and fixed as the colonial structures that produce them' (Arbel 2019: 438). In response to this ubiquitous relationship between colonialism and Indigenous incarceration, I contend that even as the 'brutalities of the police and prisons *started* with colonization' (Roach 2022: 36), addressing the problem of colonial carceral control *begins* with decolonisation. I suggest that at the heart of this decolonising process is the right of Indigenous peoples to self-determination.

Indigenous scholars, communities, activists and advocates have long argued the imperative of Indigenous self-determination for Indigenous decarceration (eg. Criminalization and Punishment Education Project 2020, Ironfield 2021, Jackson 1987, Referendum Council 2017, Roach 2022, Tauri and Webb 2012). Even colonial state-commissioned reports such as Australia's Royal Commission into Aboriginal Deaths in Custody (Commonwealth 1991) and Canada's Royal Commission on Aboriginal Peoples (Dussault and Erasmus 1996) identify the centrality of Indigenous self-determination for ameliorating Indigenous overrepresentation in prisons. A review of states' practice at sites of colonial carceral control, however, reveals a different narrative.

In this article, I explore the gap between colonial state rhetoric and Indigenous nations' reality when it comes to Indigenous self-determination at sites of colonial carceral control. I use the term 'colonial state' to describe the nation state whose criminal jurisdiction is being asserted over Indigenous nations. I use the term 'Indigenous nations' to refer to Indigenous peoples as collectives that are socially, politically, culturally and historically distinct from colonial states. I have selected the terminology of 'Indigenous nations' to reinforce the just claims of Indigenous peoples to exercise their fulsome right of self-determination on a sovereign-to-sovereign basis. Conversely, in order to disrupt inferences of colonial occupying state legitimacy, wherever possible I avoid referring to colonial states as 'nations'.

I write from the position of a critical Anglo-Australian legal scholar. My research focus is on the systems and structures of colonial states – what Wolfe (2016: 33) so cogently describes as structures of invasion. I contend that wherever colonial states assert carceral control over

Indigenous peoples, the so-called ‘Indigenous self-determination’ acceded to by the colonial state constitutes only a pale subset of ‘self-determination’ – one which proceeds upon a presumption of colonial state legitimacy and insists on the paramountcy of colonial state interests (Billington 2022: 123-50). I call this Colonial Self-centred self-determination. Even when exercised by Indigenous peoples, Colonial Self-centred self-determination extends only insofar as it is exercised ‘within the jurisdiction and construct of the dominant state’ (Watson 2015: 91). As Aboriginal legal scholar of the Tanganekald, Meintangk and Boandik peoples Irene Watson observes, for Indigenous peoples ‘this is not self-determination at all’ (Watson 2015: 91). To be *Indigenous* self-determination the right of self-determination must be delinked from the colonial matrix of power (see Mignolo 2007).

Drawing on Fanon’s (2008: 8) conceptualisation of ‘Self’ and ‘Other’ in the colonial confrontation, this article explores the imperative of Indigenous Self-centred self-determination for Indigenous decarceration. Unlike Colonial Self-centred self-determination, Indigenous Self-centred self-determination eschews the imposition of Colonial Self-centred limitations on the rights of Indigenous nations; it acknowledges that Indigenous peoples alone are competent to circumscribe their right self-determination. Indigenous Self-centred self-determination rightly positions Indigenous peoples as those Inuit legal scholar Dalee Sambo Dorough (2019) describes as the rightful and final arbiters of their right of self-determination. I expound on these terms further below.

I present this article in three parts. In Part I, I briefly outline the nature and content of the right of self-determination and consider the historico-legal context in which the right of self-determination, thus described, has developed. Building on Fanon’s (2008: 8, 73) conceptualisation of Self and Other, I argue that a fundamental centring of the values and interests of the Colonial Self remains imbued in the fabric of colonial state conceptions of self-determination – imagining and imposing ‘(colonial) ceiling[s]’ (Short 2008: 162) on scope for Indigenous self-determination at sites of colonial carceral control. This, I contend, is *Colonial* Self-centred self-determination. It is not Indigenous self-determination; it cannot facilitate Indigenous decarceration. To be *Indigenous* self-determination, this primordial right of peoples must be grounded in the values, interests and objectives of the Indigenous Self.

In Part II, I ground my analysis of the imperative of Indigenous Self-centred self-determination for Indigenous decarceration in two case study jurisdictions: Australia and Kalaallit Nunaat (Greenland or *Grønland*). I have selected these jurisdictions as representative of two ends of an apparent spectrum of colonial state approaches to engagement with the right of Indigenous peoples to self-determination: the UN Special Rapporteur on the Rights of Indigenous Peoples has found that the Australian colonial state is failing to 'duly respect' (Tauli-Corpuz 2017: 18) the right of Aboriginal and Torres Strait Islander peoples to self-determination; contrariwise, the Special Rapporteur has referred to the Danish colonial state's engagement with the rights of Inuit peoples in Kalaallit Nunaat as 'exemplary' (Tauli-Corpuz 2019: 13). Yet, in *both* jurisdictions the colonial state asserts carceral control over Indigenous nations. Drawing on these case studies, I demonstrate the incommensurability of Indigenous Self-centred self-determination and Indigenous incarceration.

Colonial state prison reform agendas that focus on 'correcting' the so-called 'unbalanced ratio' (*R v Gladue*: 65) of Indigenous imprisonment in colonial carceral systems invite us to naturalise colonial state assertions of carceral control over Indigenous nations as *fait accompli* (Billington 2022: 59-61): a natural and inevitable concomitant of the Colonial Self's presence on Indigenous land. Yet, there can be no normal, balanced, proportionate or non-harmful level of Indigenous imprisonment in colonial carceral systems:

> It makes no sense to speak ... of some 'normal' level of [Indigenous] involvement in an alien white settler justice system, which has been imposed from the outside, without Indigenous consent, and despite the fact Indigenous people were already subject, and obedient, to a set of existing laws: *their own* (Blagg 2016: 234).

The most pressing issue in relation to Indigenous incarceration, then, is not 'solving the Indigenous problem' (Cunneen and Tauri 2019: 364), it is dismantling colonial carceral control (Kilroy and Lean 2022). In Part III, I conclude that pursuing Indigenous decarceration requires a fundamental shift in the terms upon which colonial states engage with Indigenous nations, not merely a revision of the content of the conversation (Mignolo 2007: 459). That is, Indigenous decarceration requires Indigenous Self-centred self-determination.

1 Locating the Colonial Self in Self-Determination

Self-determination has been described as the 'need to pay regard to the freely expressed will of peoples' (*Western Sahara (Advisory Opinion)*: 33); it encompasses all aspects of the right of culturally and politically distinct peoples to pursue their economic, social and cultural development in a manner consistent with their shared values. By its nature, the right of self-determination forestalls the 'subjugation, domination and exploitation' (*United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples*: art 1) of peoples by alien peoples and cultures.

As a precept of international law, self-determination has been referred to as equal measures of simplicity and complexity (Emerson 1971: 459). On the one hand, self-determination is a fundamental tenet of the international legal system, enshrined in the formative document of one of the world's most influential global organisations: the UN. Article 1 of the *Charter of the United Nations* (hereinafter *UN Charter*) affirms that the UN's purposes include the 'development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples'. Self-determination also appears in the opening article of both the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*: 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'.

Despite its foundational nature, self-determination remains one of the most contentious precepts in the international legal system (McCorquodale 2011: 5). In 1945 as the final wording of the *UN Charter* was being drafted, delegates continued to argue that including a right of peoples to self-determination in the *UN Charter* would be 'tantamount to international anarchy' (see Cassese 1995: 40). What is it about 'self-determination' which makes this formative right of peoples so contentious? Examining this issue requires not merely asking *who* holds the right of self-determination, but also asking deeper questions about *who decides* who holds the right of self-determination (Billington 2022: 132-5).

Even a brief review of the literature makes clear that it is not so much the theoretical content of the right of self-determination as the precept's application which makes this principle so hotly contested. Self-determination's application raises issues of whom among the world's peoples has the right to determine their own destiny. In the context of colonial states this dynamic may be

particularly acute – an issue starkly highlighted during the development of the *United Nations Declaration on the Rights of Indigenous Peoples* (hereinafter UNDRIP). Many colonial states lobbied relentlessly against the inclusion of *any* recognition of the right of Indigenous peoples to self-determination in UNDRIP (see Davis 2008, Moreton-Robinson 2015: 173-6), arguing variously that recognising self-determination as inhering to Indigenous peoples would undermine state sovereignty, national integrity and even the UN system itself (Lightfoot 2016: 33-65).

Colonial states have long preferred to conflate the 'peoples' to whom the right of self-determination inheres with the whole mass of individuals residing within colonial state-determined territorial borders. This construction of self-determination operates to debar any entity but the colonial state itself from exercising a fulsome right of self-determination. Proponents of this view argue that a failure to fuse 'peoples' and state-determined territoriality provides continual 'fuel for strife' (Falk 2002: 31) in both international and domestic spheres. International jurist Antonio Cassese summarises:

> The dynamic is simple: self-determination is attractive so long as it has not been attained; alternatively, it is attractive so long as it is applied to others. Once realized, enthusiasm dies fast, since henceforth it can only undermine perceived internal and external stability (Cassese 1995: 5).

In late-2007, UNDRIP finally and formally acknowledged that Indigenous peoples 'have the right to self-determination' and that, by virtue of that right, 'they freely determine their political status and freely pursue their economic, social and cultural development' (UNDRIP: art 3). Even in its current form, however, UNDRIP attempts to constrain the exercise of 'Indigenous self-determination' by construing this right as somehow distinct from the right of self-determination held by other 'peoples' – that is, held by peoples whose identity is fused with state-determined territorial borders. UNDRIP art 46(1) states:

> Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states.

As Watson summarises, in the international legal sphere colonial states continue to 'work together in the translation and interpretation of Indigenous Peoples' rights … [to] ensure that we

[Indigenous peoples] remain objects in international law, subjugated to their power' (Watson 2015: 3).

The insistence by colonial states that they hold some self-evident and unimpeachable authority to delineate not only the boundaries of their *own* right of self-determination, but also to circumscribe the identity and rights of the 'Other', is a central premise of what I refer to as Colonial Self-centred self-determination: a construction of the right of self-determination which, even though it may be applied to the Indigenous Other in theory, still centralises the values and interests of the Colonial Self in practice.

To be 'Other' is to be other than 'Self' – a critical consideration in the construction and application of the right of *self*-determination. Frantz Fanon, in his seminal work *Black Skin, White Masks* (2008), explores this concept of 'Self' and 'Other' in the context of the colonial confrontation. Conceptualising the psychological relations between 'colonised' and 'coloniser' in Madagascar, Fanon explains:

> A Malagasy is a Malagasy; or, rather, no, not he *is* a Malagasy, but, rather, in an absolute sense, he 'lives' in his Malagasyhood. If he is a Malagasy, it is because the white man has come, and if at a certain stage he has been led to ask himself whether he is indeed a man, it is because his reality as a man has been challenged. In other words, I begin to suffer from not being a white man to the degree that the white man imposes discrimination on me, makes me a colonized native, robs me of all worth, all individuality, tells me that I am a parasite on the world, and that I must bring myself as quickly as possible into step with the white world (Fanon 2008: 73).

That is: the Indigenous Other is called into being *by* the Colonial Self through perceived relationality *to* the Colonial Self. The 'black soul' is, observes Fanon, 'a white man's artifact' (Fanon 2008: 6).

To speak of Indigeneity is to infer colonialism (Simpson 2007: 67, Whittaker 2020: 53). Prior to the colonial confrontation there were no *Indigenous* peoples – only peoples (Anaya 2004: 3-5; Maddison 2009: xi-v). It is in the colonial confrontation that the Colonial Self and the Indigenous Other become two sides of the same coin. Despite the apparent mutuality of this arrangement (the Colonial Self is called into being through its relationship to the Indigenous Other and the Indigenous Other through its relationship to the Colonial Self), the relationship between

Self and Other cannot be construed as a relationship among equals. It is not, for example, a relationship between the Colonial Self and the Indigenous Self.

The Colonial Self has what Fanon refers to as an 'authority complex' (Fanon 2008: 73). Critical criminologist Phil Scraton has observed that 'no group conceives itself as the One, the *essential*, the *absolute*, without conceiving and defining the *Other*' (Scraton 2005: 3). In a relationship between Colonial Self and Indigenous Other, the Colonial Self perceives its-Self as the referent – the standard with which the Indigenous Other must bring itself 'into step' (Fanon 2008: 73).

In a masterful dissection of the coloniality of international law, critical legal scholar Antony Anghie (2003) argues that international law did not merely co-develop during periods of colonial expansionism but was (and is) a system of laws forged out of an attempt to construct a legitimising narrative for European invasion and occupation of the lands of non-European 'Others'. International law is, as Watson observes, a 'colonialist web' (Watson 2015: 18). Within the framework of international law, the Colonial Self imposes its values and interests on Indigenous Others, not only through international law itself but also by circumscribing international law's *exceptions* (see Blagg and Anthony 2019: 7). The right of self-determination is imbued with this structure of invasion and dispossession. It is the standards of 'the white world' (Fanon 2008: 73) – the values and interests of the *Colonial* Self – which are embedded in the construction and application of the right of self-determination, even as that right applies to Indigenous peoples. So-called 'self-determination' is, in fact, Colonial Self-centred.

Since the mid-20th century, efforts to rationalise a Colonial Self-centred approach to Indigenous self-determination have led to the suggestion that the right of self-determination is comprised of two discrete domains – internal self-determination and external self-determination. Construed through this 'narrow' (Falk 2002: 111) lens, self-determination in all its fullness (that is, in both its internal and external aspects) inheres only to 'peoples' whose identity aligns with state-determined territorial borders (that is, to nation states themselves). When exercised by Indigenous peoples, this construction of self-determination maintains that exercises of 'self-determination' are only legitimate to the extent that they do not disrupt the values and interests of the Colonial Self. Use of the term 'internal' to describe this pale subset of so-called self-

determination is apt: it can be exercised only *within* the 'jurisdiction and construct of the dominant state' (Watson 2015: 91) and will not be permitted to disrupt it.

Colonial Self-centred self-determination is a framework for 'colonial business as usual' (O'Neil 2020: 66). Watson, again, writes:

> In the effort to maintain their boundaries, regardless of the injustices to the humanity of First Nations Peoples, states have given approval to a limited right to self-determination, exercised within the jurisdiction and construct of the dominant state. This form of self-determination is subservient to the rules of the state. This is not self-determination at all (Watson 2015: 91).

For Indigenous peoples, Colonial Self-centred self-determination is not self-determination at all. To be *Indigenous* self-determination this primordial right of peoples must be delinked from the colonial matrix of power (see Mignolo 2007). To be *Indigenous* self-determination, self-determination must be Indigenous Self-centred. The Colonial Self is not competent to circumscribe Indigenous Self-centred self-determination. Indigenous peoples alone have the authority to be the 'final arbiters' (Sambo Dorough 2019: 4.45) of their right of self-determination.

In the remainder of this article, I examine the imperative of Indigenous Self-centred self-determination for Indigenous decarceration through the lens of two case study jurisdictions: Australia and Kalaallit Nunaat. Australia and Kalaallit Nunaat provide cogent studies of the incommensurability of Indigenous incarceration by colonial states and Indigenous Self-centred self-determination. Drawing on examples from these jurisdictions, I analyse why Colonial Self-centred self-determination *is not* Indigenous self-determination and *cannot*, therefore, facilitate Indigenous decarceration.

2 Colonial Self-Centred Self-Determination and Colonial Carceral Control

A Australia

Australia has a long history of imposing a '(colonial) ceiling' (Short 2008: 162) on the right of Indigenous peoples to self-determination. From the first (and bloody) steps of Lieutenant James Cook onto Dharawal Country in April 1770 through to modern day efforts to 'recognise' the rights of Aboriginal and Torres Strait Islander peoples to *internal* self-determination, Australia provides

a clear demonstration of the Colonial Self imposing its-Self where the Indigenous Self belongs: in the construction and application of Indigenous self-determination.

From the earliest days of Australia's invasion and occupation by the British, the Anglo-Australian legal system has been deployed by colonial occupiers as an instrument of 'lawfare' (Comaroff 2001: 306) in relations with Indigenous nations. In the late-18th and 19th centuries, frontier violence perpetrated by white invaders was either ignored or justified by the colonial legal system, while acts of Indigenous resistance were criminalised and swiftly punished (Anthony 2013: 32-5). In 1816, Governor Lachlan Macquarie recorded what he perceived as the 'Strong and Sanguinary Hostile Spirit' of Aboriginal nations in and around the expanding colony of New South Wales. His response was to dispatch the military to imprison as many Indigenous people as possible. In the event of the 'smallest show of resistance', Macquarie authorised the officers to 'fire on them [Aboriginal people] to compel them to surrender; hanging up on Trees the Bodies of such Natives as may be killed on such occasions, in order to strike the greater terror into the Survivors' (Macquarie 1816). A monument to Macquarie's so-called 'achievements' still stands in Sydney's Hyde Park.

As The Killing Times continued (see University of Newcastle Colonial Frontiers Massacres Project Team 2022), the legal system of the colonial occupiers continued to evolve to maintain and rationalise the imposition of Colonial Self-centred values and interests on Aboriginal and Torres Strait Islander peoples. Murders and massacres of Indigenous people by occupier colonists were rationalised as accidents, self-defence and justifiable homicides (eg. Sydney Gazette and New South Wales Advertiser 1803, Watson 2015: 82-4, 109-11). At the same time, the colonial criminal law system expanded its reach to punish Aboriginal and Torres Strait Islander people who transgressed the values and interests of the Colonial Self (Sydney Gazette and New South Wales Advertiser 1836). Indigenous peoples were 'rationally repressed as if they were guilty of unspecified crimes – rational because it was in the interest of Europeans to do so' (Agozino 2003: 27).

The lawfare tactics of the colonial state have continued to evolve over the past two centuries of Australia's colonial occupation (see further Billington 2022: 62-80). The underlying Colonial Self-centrism of Anglo-Australian law, however, remains unchanged (see Moreton-Robinson 2007). Frontier violence and summary justice may have been largely replaced by

carceral violence and cultural genocide, but it is lawfare different in form only, not in function. Indeed, as Blagg and Anthony observe, 'the colonial present is … as persistent (and destructive) as at any earlier stage of white settlement' (Blagg and Anthony 2019: 7). Giannacopoulos refers to this as the *nomocidal* nature of the Anglo-Australian legal system: 'the killing function performed by law in reproducing colonial conditions in contemporary Australia' (Giannacopoulos 2020: 250).

Anglo-Australian law's Colonial Self-centrism produces a wide range of paradoxes in the Australian colonial state's engagement with Indigenous nations. At the same time the Australian Government was holding an (unsuccessful) constitutional referendum to establish an Indigenous Voice to Parliament, for example, Aboriginal and Torres Strait Islander peoples were the most incarcerated people on the planet (Anthony 2017, Pearson 2017: 5:59-6:08). Colonial state apologies have been issued to Aboriginal and Torres Strait Islander people for the generations of children that have been removed from their families (Rudd 2008), even while Indigenous children *continue to be* removed from their families at alarming rates (Tauli-Corpuz 2017: 4, 13, 15-6). DjabWurrung Gunnai Gunditjmara woman and senator Lidia Thorpe summarises: 'How dare you ask for forgiveness when you still perpetrate racist policies and systems that continue to steal our babies. That is not an apology' (@SenatorThorpe 2022).

Indigenous Kanak representatives in Kanaky refer to this as '*double langage*' (Congrès Populaire Coutumier Kanak 2018: 2) or 'double speak' by colonial states. It is, as I examine further in relation to Kalaallit Nunaat shortly, typical of colonial state engagement with Indigenous nations at sites of colonial carceral control – a reflection that what the colonial state is referring to as 'Indigenous self-determination' remains Colonial Self-centred. As Goenpul critical scholar and activist Aileen Moreton-Robinson writes:

> The possessive logic of patriarchal white sovereignty is compelled to deny and refuse what it cannot own—the sovereignty of the Indigenous other. This ontological disturbance/fracture is one of the reasons why the state deploys virtue when working hard at racial and gendered maintenance and domination in the guise of good government (Moreton-Robinson 2015: 179).

Colonial state double speak fosters an illusion of Indigenous self-determination at sites of colonial carceral control through a process of 'giving with the one hand and taking with the other' (Watson 2015: 94).

In Australia, the colonial state continues to insist that so-called 'Indigenous self-determination' must be Colonial Self-centred. Laundering the values and interests of the colonial state through valorising narratives of so-called law, justice, democracy and welfare (Anthony 2019: 35), the Colonial Self emerges from the process as a newly minted repository of the global good. Insofar as Indigenous nations resist, undermine and challenge this Colonial Self-centric 'good', the values and interests of Indigenous peoples are problematised (Anthony and Sherwood 2018). This Colonial Self-centrism effectively decouples even so-called 'reconciliation' processes from justice outcomes for Aboriginal and Torres Strait Islander peoples (Davis 2021), by insisting that the values and interests of the Australian colonial state must, at all times, remain paramount.

Indigenous Self-centred self-determination is imperative for Indigenous decarceration. It is unsurprising, then, that Indigenous peoples in Australia experience levels of incarceration 'so extraordinary, it almost defies belief' (Weatherburn 2014: 2) – a rate of 2,470 per 100,000 of the Aboriginal and Torres Strait Islander adult population or almost twelve times Australia's national prison population rate (Australian Bureau of Statistics 2023b). This means that despite comprising 3.2 per cent of the Australian population, Aboriginal and Torres Strait Islander people represent 33 per cent of prisoners in Australian gaols (Australian Bureau of Statistics 2022a, 2023b).

Colonial carceral systems are composed of 'more than stone and iron' (Adema 2016: 39) – they are constructed from ideology that is inherently Colonial Self-centric. Indigenous peoples dwelt on the Australian continent for more than 60,000 years, absent the prison. Conversely, it took less than a decade of colonial occupation for the first prison to be erected in the colony of New South Wales (Collins 2003: ch 4). Indeed, the first European settlements in Australia were, themselves, penal colonies (see further Billington 2022: 62-80).

Gaols are integral to alien systems of so-called 'justice' in colonial states (Blagg 2016: 234), dispersing colonial logics into 'something necessary and normal' (Chartrand 2019: 78). Gaols are infused with the values and interests of the Colonial Self, *not* the Indigenous Self. The Anglo-Australian prison complex is wholly foreign to the legal systems and structures of

Aboriginal and Torres Strait Islander peoples. Indigenous incarceration in these systems is, as Australian barrister Richard Edney (2001: 7) has cogently observed, the *antithesis* of Indigenous self-determination. This is the case not only in Australia, but wherever colonial states assert carceral control over Indigenous nations.

B Kalaallit Nunaat

The legal relationship between Inuit peoples and the Danish colonial state may be considered by many the inverse of what has been discussed thus far in relation to Indigenous nations-colonial state relations in Australia. While the Australian colonial state's relationships with Aboriginal and Torres Strait Islander peoples have been highlighted for their persistent failures to respect Indigenous peoples' self-determination (eg. Kilroy and Lean 2022, Moreton-Robinson 2015: 182–3, Tauli-Corpuz 2017, Watson 2015), Indigenous Inuit peoples in Kalaallit Nunaat have been described as enjoying 'one of the most far-reaching self-determination arrangements of all Indigenous peoples worldwide' (Kuokkanen 2015: 13). In 2023 when the UN Special Rapporteur on the Rights of Indigenous Peoples Francisco Calí Tzay was finally able to undertake a long-delayed country visit to Kalaallit Nunaat, he noted that there was a 'unique implementation model of the right to self-determination of Indigenous Peoples by Greenland and Denmark' (Calí Tzay 2023: 2). This arrangement was described by Calí Tzay's predecessor as 'exemplary' (Tauli-Corpuz 2019: 13).

Yet in Kalaallit Nunaat, the Danish colonial state continues to assert carceral control over Inuit peoples. This apparently peaceful co-existence of Danish carceral control with Indigenous self-determination in Kalaallit Nunaat would seem to contradict any assertion that Indigenous incarceration and Indigenous self-determination are incommensurable. In the remainder of Part II, I critically analyse this apparent contradiction, scrutinising the nature of both Inuit self-determination and Danish colonial carceral control in Kalaallit Nunaat. I conclude that Colonial-Self centrism remains embedded in the fabric of Inuit-Danish relations in Kalaallit Nunaat, undermining the potential for Indigenous Self-centred self-determination and, thus, for Indigenous decarceration.

i Inception and Consolidation of Colonial Occupation

As the situation of Indigenous peoples in Kalaallit Nunaat has been described as 'unique' (Calí Tzay 2023: 2), before commencing this analysis it will be worthwhile to briefly describe Kalaallit Nunaat's recent colonial history. First, it is important to note that unlike the situation of most Indigenous peoples, Inuit peoples constitute a population majority in Kalaallit Nunaat: an estimated 89 per cent of Kalaallit Nunaat's population of 56,562 are thought to be Inuit (Løvstrøm 2023: 456). The Kalaallit are the most numerous Inuit people in Kalaallit Nunaat, and it is Kalaallisut (the language of the Kalaallit) which is the country's official language. Other Inuit languages are also spoken in Kalaallit Nunaat, including Inuktun and Iivi oraasia (Løvstrøm 2023: 456, Olsen and Lyberth 2020).

The starting point of Kalaallit Nunaat's modern colonial history is generally placed in 1721, when Lutheran missionary Hans Egede received permission from the King of Denmark and Norway to travel to Kalaallit Nunaat and 'Christianise' the Inuit peoples (Jensen 2015: 441). These early years of colonial occupation in parts of Kalaallit Nunaat were marked by deadly epidemics, transferred to Inuit peoples by visitors from Europe. In 1734 alone, around one-quarter of Kalaallit Nunaat's population died of smallpox following a visit to the region from an infected child from Denmark (Minton 2021: 96).

Up until 1954, Kalaallit Nunaat was considered a non-self-governing territory of the Kingdom of Denmark. Around that time, a concerted policy of 'Danization' (Petersen 2008: 208) saw this separate status of Kalaallit Nunaat abandoned by both Denmark and the international community for one of 'integration' into the Danish Kingdom (Greenland-Danish Self-Government Commission 2008: 2). This assimilationist approach to relations with Inuit peoples included the removal of Inuit children from their families to Denmark in efforts to 'mould them into "little Danes"' (*Eye on the Arctic* 2022). Again, as in Australia, reluctant apologies for such actions have been recently offered by the colonial state (Villadsen 2018), even as Inuit children continue to be removed from their families and placed in out-of-home care at seven times the rate of Danish children (Calí Tzay 2023: 3-4).

During the 1960s era of global decolonisation, Denmark faced increasing pressure from both Inuit peoples and the international community to explore options for greater Greenlandic independence. In 1973 political and diplomatic pressure peaked, as Kalaallit Nunaat's 'integrated' status with the Kingdom of Denmark saw the country forced to join the European Economic

Community (hereinafter EEC). At that time, almost 75 per cent of Kalaallit Nunaat's population opposed EEC membership (Gad 2014: 99, 105). It is in this context that establishing a form of 'home rule' for Kalaallit Nunaat became a priority. By late-1978, the *Greenland Home Rule Act* (hereinafter HRA) had successfully made its way through the Danish Parliament (*Folketing*) and been approved by referendum in Kalaallit Nunaat. With the establishment of Greenlandic Home Rule, the Greenland Home Rule Government – the *Naalakkersuisut* – was born.

ii Indigenous Self-Determination in Kalaallit Nunaat

The HRA provided a key catalyst for Denmark's burgeoning reputation as innovative and respectful in its relations with Indigenous peoples. The HRA governed Danish-Greenlandic relations between 1979 and early-2009, offering scope for the gradual resumption of responsibilities for the local affairs of Kalaallit Nunaat into the hands of democratically elected local government officials. By the time it was superseded by the *Act on Greenland Self-Government* (hereinafter SGA) in June 2009, the HRA had facilitated the successful transfer of responsibility for many of Kalaallit Nunaat's affairs from Danish colonial control into the hands of the Naalakkersuisut. These areas of responsibility included: 'taxation, regulation of trade including fisheries and hunting, education, supply of commodities, transport and communications, social security, labour affairs, housing, environmental protection, conservation of nature and health services' (Søvndahl 2003: 3).

With Inuit peoples comprising a substantial population majority in Kalaallit Nunaat, many describe Home Rule in Kalaallit Nunaat as a success in the exercise of Indigenous self-determination (eg. Human Rights Council 2022: 4, Tauli-Corpuz 2019: 13). Within thirty years of the HRA coming into force, most areas of law and policy within the ambit of the HRA had been transferred to the Naalakkersuisut. In 2008, the majority of the population of Kalaallit Nunaat voted to extend and enhance the Home Rule provisions, and the SGA entered into force.

The SGA is the current legal framework governing relations between Denmark and Kalaallit Nunaat. The SGA is an Act of the Danish Folketing and, unlike the HRA, refers explicitly in its preamble to the right of '*Grønlandske folk*' (that is, the Greenlandic people) to self-determination (*selvbestemmelse*). This codification of the right of Grønlandske folk to self-determination led the UN Expert Mechanism on the Rights of Indigenous Peoples to recently refer

to the SGA as a 'remarkable step in the protection of the rights of [I]ndigenous peoples … [which] should serve as a model to be pursued by other States' (Human Rights Council 2022: 4). This remark may suggest an erroneous conflation of the right of Grønlandske folk to self-determination (enshrined in the SGA) and the right of Inuit peoples to self-determination (*not* recognised or protected by the SGA) and requires some attention.

Grønlandske folk are Danish citizens with residency in Kalaallit Nunaat (Loukacheva 2010: 181-2, Petersen 2008: 209). Grønlandske folk *may* include Inuit peoples, but the term is not synonymous with 'Inuit peoples'. Indeed, Research Professor of Arctic Indigenous Studies at the University of Lapland Rauna Kuokkanen (2015: 6) notes that negotiations over the wording of the SGA did not include *any* discussion of Inuit values or systems of governance. In her 2015 interview series with Grønlandske folk on the opening years of the SGA, Kuokkanen identified significant confusion regarding the relationship between the self-determination of Grønlandske folk as a people and the right of Inuit peoples to self-determination:

> when the agreement and SGA was presented, this had to be explained to the people … that when we say recognised as a people, in its own right, well this actually also includes the Danes that … have only lived here for six months. And that is perhaps a bit counter-intuitive … that those who only live here for two or three years, are also Greenlandic, part of the Greenlandic people [Grønlandske folk] (Kuokkanen 2015: 8).

Natalia Loukacheva, who is an expert in Polar Law and the former Canada Research Chair in Aboriginal Law and Governance, has also written extensively of the constitution of Grønlandske folk as a people:

> [E]thnic Danes … who have lived, and still live, in Greenland for more than 6 months will also be part of 'the Greenlandic people' ... A French person, or a person of any other nationality, will not be part of the Greenlandic people, even though he or she might have lived in Greenland for years, until he/she opts for Danish citizenship first and obtains it. So Danish citizenship is also for the time being at least a prerequisite for being part of the Greenlandic people in a legal sense ...
>
> These examples show that the recognition of the Greenlandic people does not only extend to the [I]ndigenous people of Greenland, but also to people of other ethnic origin, primarily Danes living in Greenland (Loukacheva 2010: 181-2).

The differences between 'Grønlandske folk' and 'Inuit peoples' are not mere semantics.

The Naalakkersuisut is *not* an Inuit government; it is a 'public government, which legislates not with a particular "Inuit" interest in mind' (García and Morales 2017: Appendix B). Indeed, the relationship between the Naalakkersuisut, Inuit peoples and the Danish Government has been described by the Inuit Circumpolar Council (hereinafter ICC) as 'uneasy' (ICC et al 2011: 2-4). The Naalakkersuisut is, itself, based – 'element for element and law for law' (Nielsen 2001: 232) – on the Danish administrative system. High governmental positions are rarely held by Inuit people (García and Morales 2017: Appendix B, 51). Numerous scholars, Inuit representatives and Inuit communities have identified the myriad ways that the failure of the SGA to enshrine the right of *Inuit* peoples to self-determination undermines the protection of Inuit rights – land rights in particular (eg. García and Morales 2017: Appendix B, *Hingitaq and Others v Denmark*, ICC et al 2011). The co-optation and politicisation of the 'means and resources' (Hook 2012: 20) of Indigenous identity in Kalaallit Nunaat, on terms largely dictated by the Danish colonial state, means Grønlandske folk (that is, Danish citizens with Danish colonial state-bestowed residency in Kalaallit Nunaat) enjoy far greater protections for their right of self-determination than Inuit peoples.

In Kalaallit Nunaat, Indigenous self-determination remains entwined with the colonial matrix of power. It is the Danish colonial state that decides who 'the peoples' are to whom the right of self-determination inheres, imagining and imposing '(colonial) ceiling[s]' (Short 2008: 162) on the right of Inuit peoples to self-determination. As in Australia, scope for Indigenous self-determination is inhibited by the ingrafting of the Colonial Self where the Indigenous Self belongs. So-called 'Indigenous self-determination' in Kalaallit Nunaat remains Colonial Self-centred.

Having isolated the Colonial Self-centric nature of Indigenous self-determination in Kalaallit Nunaat, it is time to return to my fundamental proposition that Indigenous Self-centred self-determination is requisite for Indigenous decarceration. Considering the Colonial Self-centred nature of Indigenous self-determination in Kalaallit Nunaat, one would expect incarceration levels to be high; after all, as Arbel asserts, high levels of Indigenous incarceration 'are as predictable and fixed as the colonial structures that produce them' (Arbel 2019: 438). I have already

demonstrated that this is the case in Australia; as I demonstrate below, this is also the case in Kalaallit Nunaat.

iii Colonial Carceral Control in Kalaallit Nunaat

Danish approaches to prison systems have long been distinguished in the literature from Western prison templates, such as those seen in the 'CANZUS' quartet of countries: Canada, Australia, Aotearoa New Zealand and the United States of America (eg. Grant 2016). Sometimes termed 'Scandinavian exceptionalism', prisons in countries in the Danish region tend to be characterised by open prison models, 'collegial' approaches to prisoner-prison staff relations and strong social service systems (Reiter et al 2018: 93-4). Low(er) prison population rates are also a distinguishing feature of Scandinavian exceptionalism, with Scandinavian prisons evidencing some of the lowest incarceration rates in the world. While the average global prison population rate is 140 per 100,000 (Fair and Walmsley 2021), the combined average prison population rate of Iceland, Finland, Norway, Denmark and Sweden is 56 people per 100,000 – two and a half times *lower* than the global figure. Kalaallit Nunaat is an exception to this regional trend.

In a region characterised by low prison population rates, people living in Kalaallit Nunaat are substantially more likely to be imprisoned than other people in the region: more than three times more likely than in Denmark or Sweden, more than four times more likely than in Finland or Norway and almost eight times more likely than in Iceland (see Fair and Walmsley 2021):

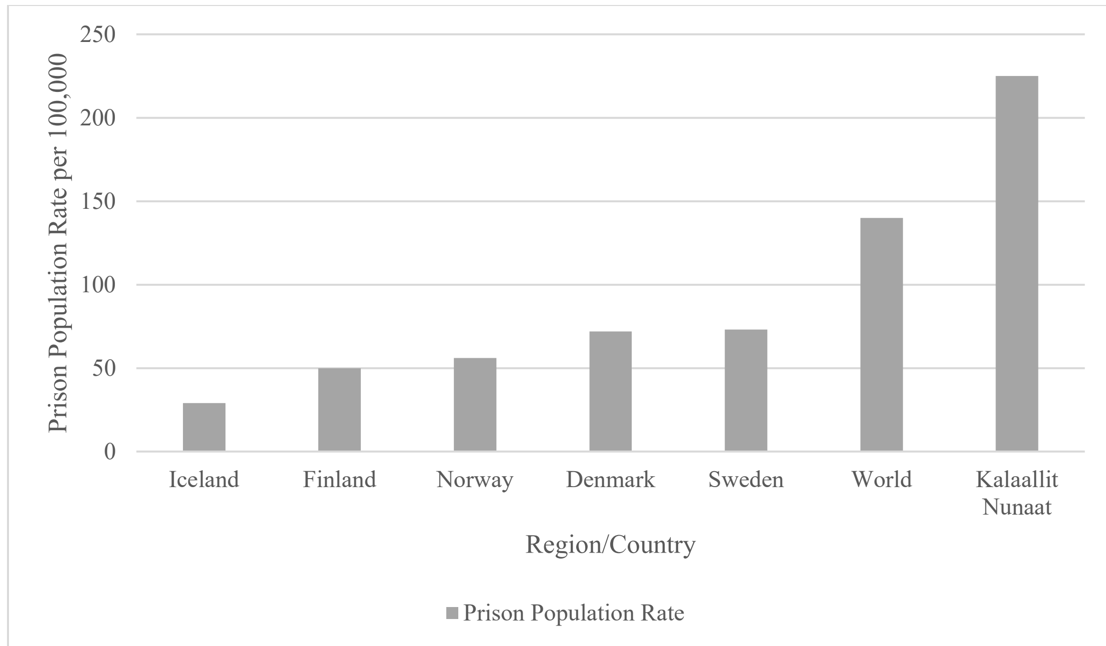

Figure 1: Comparing Prison Population Rates, 2021: Iceland, Finland, Norway, Denmark, Sweden, the World and Kalaallit Nunaat

Criminologist Annemette Nyborg Lauritsen (2012, 2014) has called Kalaallit Nunaat's apparent exemption to Scandinavian exceptionalism *den Store Grønlandske Indespærring* – the Great Greenlandic Confinement. Kalaallit Nunaat's high levels of incarceration, while inconsistent with the relatively low incarceration levels exhibited in the region, are entirely consistent with incarceration trends exhibited in other jurisdictions where colonial states assert carceral control over Indigenous nations.

High levels of Indigenous incarceration by colonial states are not an exception to the rule. Indigenous hyperincarceration is not evidence of an aberration, a failure or a malfunction of colonial prison systems (Blagg and Anthony 2019: 15). On the contrary, as Roach (2022) expresses, Indigenous hyperincarceration in colonial carceral systems is proof these systems are working *effectively*, consistent with their Colonial Self-centric episteme. In this context, Indigenous hyperincarceration can be understood as both a *defining* and *predictable* feature of colonial prisons – the 'logical outcome of several centuries of policies, laws and practices designed to complete the dispossession of Indigenous people as bearers of sovereignty' (Blagg 2016: 234). Critical scholar Vicki Chartrand observes:

> Civilizing Indigenous difference remains the deep logic of settler colonial authority … [S]hifts and ruptures are often simply concessions and reforms rather than actual moves toward self-determination. This does not suggest that Indigenous difference and autonomy has been erased or vanished but that rather little has been done by the nation-state to dismantle the settler colonial relationship (Chartrand 2019: 77-8).

Kalaallit Nunaat provides a cogent demonstration of just how insidious the Colonial Self is in effacing its values and interests against seemingly neutral mechanisms of so-called law, justice and welfare (see Agozino 2003). Recalling the inherent coloniality of exercises of carceral control over Indigenous nations (see Agozino 2003, 2004, 2010), it is unsurprising, then, that even under the so-called 'far-reaching' (Kuokkanen 2015: 13) provisions of the SGA, the administration of justice in Kalaallit Nunaat remains under the control of the Danish colonial state (Calí Tzay 2023: 2) and the Danish High Court is Kalaallit Nunaat's highest court of appeal (Mallén et al 2016: 12).

As I noted above, in relations between the Colonial Self and the Indigenous Other, the Colonial Self perceives its-Self as the referent – the standard with which the Indigenous Other must bring itself 'into step' (Fanon 2008: 73). Colonial prisons are part of Colonial Self-centric systems of so-called 'justice' – systems that are imbued with the values and interests of the Colonial Self, *not* the Indigenous Self. Maintenance of this Colonial Self-centric posture has profound ramifications, both for Indigenous Self-centred self-determination in Kalaallit Nunaat, and for Indigenous decarceration. The ongoing consequences of this dynamic for Inuit peoples are cogently illustrated in the literature.

In a study comparing perceptions of crime in Denmark and Kalaallit Nunaat, Danish criminologist Flemming Balvig (2015: 21, 34) found that while people in Kalaallit Nunaat appeared to have experienced higher exposure to certain types of crime when compared with people living in Denmark, more than three quarters of Grønlandske folk believe measures imposed by criminal law should have a primary focus of resocialisation and providing help (*hjælpe*) so that perpetrators do not commit crimes again in the future. This is referred to in the literature as 'the perpetrator principle' or '*gerningspersonprincippet*' (Balvig 2015: 68, Lauritsen 2012: 50). In contrast to the 77 per cent of Grønlandske folk in Kalaallit Nunaat who believe in *gerningspersonprincippet*, just 29 per cent of Danish people living in Denmark agree *gerningspersonprincippet* should guide criminal sanctions (Balvig 2015: 35). Balvig's (2015: 35) study further identified that while just 15 per cent of people living in Kalaallit Nunaat believe the

primary function of criminal sanctions should be punishment, almost 60 per cent of Danish people surveyed hold this view.

A yawning divide exists between Danish and Greenlandic conceptions of criminal justice. Under the terms of the SGA, a people who largely consider *punishment* to be the primary purpose of criminal sanctions is asserting carceral control over a people who hold *resocialisation* to be the '*essentiel*' (Naalakkersuisut 2017: 28) (essential) element of criminal justice (see Balvig 2015: 37-8). In this context, it is perhaps unsurprising that there is ample emerging evidence to suggest Denmark's open institution model in Kalaallit Nunaat is more rhetoric than reality – prisons 'disguised' (Lauritsen 2012: 54) as open institutions (Balvig 2015: 60-1, 68; Danish Institute for Human Rights 2018: 29). Indeed, Balvig's (2015: 61) research suggests that the use of the 'open institution' model may actually hinder, rather than help, the healing goals of Kalaallit Nunaat's open institutions, denying inmates *hjælpe* on the basis that they are able to access society themselves during the day.

Indigenous incarceration in colonial carceral systems is not merely 'the result of a colonial past', it is 'part of the colonial process itself' (Chartrand 2019: 69); it is not a 'symptom' of colonialism, it *is* colonialism (Adema 2016: 13). With people in Kalaallit Nunaat incarcerated at more than four times the regional average, the Danish colonial state is continuing to ingraft the Colonial Self where the Indigenous Self belongs: in the construction and exercise of Indigenous self-determination.

3 Conclusion: The Imperative of Indigenous Self-Centred Self-Determination for Indigenous Decarceration

Colonial Self-centred self-determination does not precede Indigenous decarceration. Australia and Kalaallit Nunaat provide cogent examples of this principle. As I noted above, it has long been clear from the literature that Indigenous self-determination is imperative for Indigenous decarceration. This sample of states' practise at sites of colonial carceral control, however, reveals a failure by colonial states to engage with Indigenous nations in ways that respect their right of self-determination. It should not be surprising, then, that Indigenous incarceration levels continue to swell (eg. *R v Ipeelee*: 61, Weatherburn 2014).

Colonial gaols are, fundamentally, repositories of colonial goals. Within these structures of coloniality, high levels of Indigenous incarceration are not 'anomalous nor transitory' (Arbel 2019: 438), they are inevitable. The most pressing issue in relation to Indigenous incarceration, then, is not 'solving the Indigenous problem' (Cunneen and Tauri 2019: 364); it is dismantling colonial carceral control (Kilroy and Lean 2022). As the case studies in this article suggest, this deconstruction will necessitate more than a piecemeal agenda for prison 'reform' that fails to disrupt the Colonial Self.

Indigenous decarceration necessitates Indigenous Self-centred self-determination. Any discourse of so-called 'Indigenous self-determination' which remains anchored in the values and interests of the Colonial Self is not Indigenous self-determination at all, and thus cannot facilitate Indigenous decarceration. Indigenous decarceration demands a fundamental shift in the *terms* upon which colonial states engage with Indigenous nations at sites of colonial carceral, not merely a revision of the content of the conversation (see Mignolo 2007: 459).

Even as the 'brutalities of the police and prisons started with colonization' (Roach 2022: 36), so too Indigenous decarceration must begin with decolonisation. This article demonstrates that the inherent right of Indigenous peoples to exercise their right of self-determination in a manner that centralises the values, interests and objectives of the Indigenous Self does not depend on colonial state 'recognition' for its existence (see Behrendt 1995: 99, Sambo Dorough 2019, Watson 2015: 2-8). It is also clear, however, that the myriad failures of colonial states to engage with Indigenous peoples in ways that adhere to a standard of Indigenous Self-centred self-determination continue to have profound and devastating consequences for Indigenous nations. Indigenous peoples must be allowed to act as the 'final arbiters' (Sambo Dorough 2019: 4:45) of their own right of self-determination – then, and only then, can Indigenous decarceration become a reality.

Endnotes

[1] Indeed, as Anglo-Australian electoral law prevents those serving sentences of imprisonment greater than three years from participating in federal referenda (*Commonwealth Electoral Act* 1918 (Cth): s 93(8AA), *Referendum (Machinery Provisions) Act* 1984 (Cth): s 22(2)(c)), between 28 and 59 per cent of sentenced incarcerated Aboriginal and Torres Strait Islander adults were ineligable to take part in the Voice referendum at all (see Australian Bureau of Statistics 2023a: Tables 11).

References

Books, Articles and Reports

Adema S 2016 *More than Stone and Iron: Indigenous History and Incarceration in Canada, 1834–1996* Doctoral Thesis Wilfrid Laurier University Waterloo

Agozino B 2003 *Counter-Colonial Criminology: A Critique of Imperialist Reason* Pluto Press London

——— 2004 'Imperialism, Crime and Criminology: Toward the Decolonisation of Criminology' *Crime, Law & Social Change* 41: 343-358

——— 2010 'What is Criminology? A Control-Freak Discipline' *African Journal of Criminology & Justice Studies* 4/1: 1-20

Anaya S J 2004 *Indigenous Peoples in International Law* Oxford University Press Oxford (2nd edn)

Anghie A 2004 *Imperialism, Sovereignty and the Making of International Law* Cambridge University Press Cambridge

Anthony T 2013 *Indigenous People, Crime and Punishment* Routledge Abingdon

——— 2017 'FactCheck Q&A: Are Indigenous Australians the Most Incarcerated People on Earth?' The Conversation Available at: https://www.theconversation.com/factcheck-are-the-first-australians-the-most-imprisoned-people-on-earth-78528 (accessed 14 August 2023)

——— 2019 'Settler-Colonial Governmentality: The Carceral Webs Woven by Law and Politics' in Maddison and Nakata eds: 33-53

Anthony T and Blagg H 2020 'Hyperincarceration and Indigeneity' *Oxford Research Encyclopaedia Criminology and Criminal Justice* Oxford University Press Oxford

Anthony T and Sherwood J 2018 'Post-Disciplinary Responses to Positivism's Punitiveness' *Journal of Global Indigeneity* 3/1: 1-33

Ara Poutama Aotearoa (2022) *Prison Facts and Statistics* Department of Corrections New Zealand Government Available at: https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics/prison_stats_december_2022 (accessed 7 March 2023)

Arbel E 2019 'Rethinking the "Crisis" of Indigenous Mass Imprisonment' *Canadian Journal of Law and Society* 34/3: 437-56

Australian Bureau of Statistics 2022a *Australia: Aboriginal and Torres Strait Islander Population Summary* Available at: https://www.abs.gov.au/articles/australia-aboriginal-and-torres-strait-islander-population-summary (accessed 7 February 2023)

——— 2022b *Corrective Services, Australia*, *September Quarter 2022* Available at: https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/sep-quarter-2022 (accessed 7 February 2023)

——— 2023a *Prisoners in Australia*, *2022* Available at: https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#key-statistics (accessed 13 July 2023)

——— 2023b *Corrective Services, Australia*, *June Quarter 2023* Available at: https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/jun-quarter-2023 (accessed 3 November 2023)

Balvig F 2015 'Kriminalitet og Retsbevidsthed – I Grønland' *Nordisk Tidsskrift for Kriminalvidenskab* 102/1: 7-78

Behrendt L 1995 *Aboriginal Dispute Resolution* Federation Press Sydney

Billington L N 2022 *A Response to Colonial Carceral Control: Conceptualising a Decolonial Approach to Self-Determination* Doctoral Thesis University of Technology Sydney

Blagg H 2016 'From Terra Nullius to Terra Liquidus? Liquid Modernity and the Indigenous Other' in Ericksson A ed: 230-46

Blagg H and Anthony T 2019 *Decolonising Criminology: Imagining Justice in a Postcolonial World* Palgrave Macmillan London and New York

Cassese A 1995 *Self-Determination of Peoples: A Legal Reappraisal* Cambridge University Press Cambridge

Chartrand V 2019 'Unsettled Times: Indigenous Incarceration and the Links Between Colonialism and the Penitentiary in Canada' *Canadian Journal of Criminology and Criminal Justice/Revue Canadienne de Criminologie et de Justice Pénale* 63/1: 67-89

Collins D 2003 *An Account of the English Colony in New South Wales From Its First Settlement, in January 1788, to August 1801: With Remarks on the Dispositions, Customs, Manners, &c. of the Native Inhabitants of That Country. To Which Are Added Some Particulars of New Zealand; Compiled by Permission, from the Mss. of Lieutenant-Governor King; An Account of a Voyage Performed by Captain Flinders and Mr. Bass; by Which the Existence of a Strait Separating Van Diemen's Land from the Continent of New Holland Was Ascertained* University of Sydney Library Sydney (Reprinted)

Comaroff J L 2001 'Colonialism, Culture, and the Law: A Foreword' *Law and Social Inquiry* 26/2: 305-14

Commonwealth 1991 *National Report: Royal Commission into Aboriginal Deaths in Custody* Australian Government Canberra

Craft A and Regan P eds 2020 *Pathways of Reconciliation: Indigenous and Settler Approaches to Implementing the TRC's Calls to Action* University of Manitoba Press Winnipeg

Criminalization and Punishment Education Project 2020 'Indigenous Knowledge and Abolition: Criminalization, Decolonization and Lessons from Indigenous Justice Systems' Available at: https://cp-ep.org/indigenous-knowledge-and-abolition-live-webinar-april-30-7pm-9pm/ (accessed 12 August 2020)

Cunneen C and Tauri J M 2019 'Indigenous Peoples, Criminology, and Criminal Justice' *Annual Review of Criminology* 2/1: 359-81

Danspeckgruber W ed *The Self-Determination of Peoples: Community, Nation and State in an Interdependent World* Lynne Rienner Publishers Colorado

Davis M 2008 'Indigenous Struggles in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples' *Melbourne Journal of International Law* 9/2: 439-71

——— 2021 'The Truth about Truth Telling' *The Monthly* 1 December

Dussault R and Erasmus G 1996 *Report of the Royal Commission on Aboriginal Peoples* Canadian Government Ottawa

Edney R 2001 'Self-Determination and Aboriginal Imprisonment' *Best Practice Interventions in Corrections for Indigenous People Conference* Australian Institute of Criminology Sydney

Emerson R 1971 'Self-Determination' *American Journal of International Law* 65/3: 459-75

Ericksson A ed 2016 *Punishing the Other: The Social Production of Immorality Revisited* Routledge Abingdon

Eye on the Arctic 2022 'Failed Danish Social Experiment Haunts Greenlandic Survivors Taken from Families 70 Years Ago' CBC Radio Available at: https://www.rcinet.ca/eye-on-the-arctic/2022/02/15/failed-danish-social-experiment-haunts-greenlandic-survivors-taken-from-families-70-years-ago/ (accessed 16 February 2022)

Fair H and Walmsley R 2021 *World Prison Population List* Institute for Crime and Justice Policy Research London (13th edn)

Falk R 2002 'Self-Determination Under International Law: The Coherence of Doctrine Versus in the Incoherence of Experience' in Danspeckgruber W ed: 31-66

Fanon F 2008 *Black Skin, White Masks* Trans C L Markmann Pluto Press London

Gad U P 2014 'Greenland: A Post-Danish Sovereign Nation State in the Making' *Cooperation and Conflict* 49/1: 98-118

García A P and Morales A H 2017 *Greenland Compliance with the ILO 169 and UNDRIP* Masters Thesis Aalborg Universitet Denma

Giannacopoulos M 2020 'White Law/Black Deaths: Nomocide and the Foundational Absence of Consent in Australian Law' *Australian Feminist Law Journal* 46/2: 249-63

Grant E 2016 'Designing Carceral Environments for Indigenous Prisoners: A Comparison of Approaches in Australia, Canada, Aotearoa New Zealand, The US and Greenland (Kalaallit Nunaat)' *Advancing Corrections Journal* 1: 26-47

Greenland-Danish Self-Government Commission 2008 *The Greenland-Danish Self-Government Commission's Report on Self-Government in Greenland: Executive Summary* Greenland-Danish Self-Government Commission Nuuk

Hook D 2012 *A Critical Psychology of the Postcolonial: The Mind of Apartheid* Routledge Abingdon

Hunn J 1960 *Report on Department of Māori Affairs: With Statistical Supplement* New Zealand Government Wellington

Institut de la Statistique et des Études Économiques Nouvelle-Calédonie 2019 'Une Mosaïque Pluriethnique' Available at: https://www.isee.nc/population/recensement/communautes (accessed 14 November 2020)

Ironfield N ed 2021 'Abolition on Indigenous Land: Alternative Futures and Criminology's Role' *John Barry Memorial Lecture in Criminology* University of Melbourne

Jackson M 1987 *The Maori and the Criminal Justice System: A New Perspective, He Whaipaanga Hou* Department of Justice Policy and Research Division Wellington

——— 2017 'Why Did Māori Never Have Prisons?' *JustSpeak* Wellington

Jensen L 2015 ‘Postcolonial Denmark: Beyond the Rot of Colonialism’ *Postcolonial Studies* 18/4: 440-52

Kilroy D and Lean T ‘The Not So Easy, Simple Solution’ *Journal of Prisoners on Prisons* 30/1: 91-5

Kuokkanen R 2015 ‘“To See What State We Are In”: First Years of the Greenland Self-Government Act and the Pursuit of Inuit Sovereignty’ *Ethnopolitics* 16/2: 179-95

Lauritsen A 2012 ‘Greenland’s Open Institution: Imprisonment in a Land Without Prisons’ *Journal of Scandinavian Studies in Criminology and Crime Prevention* 13/1: 47-56

——— 2014 ‘Den Store Grønlandske Indespærring’ *Dansk Sociologi* 25/4: 36-53

Leigh A 2020 *The Second Convict Age: Explaining the Return of Mass Imprisonment in Australia* Institute of Labor Economics Canberra

Lightfoot S 2016 *Global Indigenous Politics: A Subtle Revolution* Routledge Abingdon

Loukacheva N ed 2010 *Polar Law Textbook* Nordic Council of Ministers Copenhagen

Løvstrøm Q 2023 ‘Kalaallit Nunaat (Greenland)’ in Mamo D ed: 455–64

Macquarie L 1816 *The Governor’s Diary and Memorandum Book Commencing on and from Wednesday the 10th Day of April 1816 – At Sydney, in NS Wales, Wednesday 10 April 1816* Available at: https://www.mq.edu.au/macquarie-archive/lema/1816/1816april.html#apr10 (accessed 29 March 2023)

Maddison S 2009 *Black Politics: Inside the Complexity of Aboriginal Political Culture* Allen & Unwin Sydney

Maddison S and Nakata S eds 2019 *Questioning Indigenous-Settler Relations: Interdisciplinary Perspectives* Springer New York

Mallén A et al 2016 *Criminality, Incarceration and Control in Nordic Island Societies: The Faroe Islands, The Åland Islands, Iceland and Greenland* Scandinavian Research Council for Criminology Oslo

Mamo D ed 2023 *The Indigenous World, 2023* International Work Group for Indigenous Affairs Copenhagen

McCorquodale R 2011 *International Law Beyond the State: Essays on Sovereignty, Non-State Actors and Human Rights* CMP Publishing London

Mignolo W D 2007 ‘Delinking: The Rhetoric of Modernity, the Logic of Coloniality and the Grammar of De-Coloniality’ *Cultural Studies* 21/2-3: 449-514

Minton S J ed 2021 *Residential Schools and Indigenous Peoples: From Genocide via Education to the Possibilities for Processes of Truth, Restitution, Reconciliation, and Reclamation* Routledge Abingdon

Moreton-Robinson A 2007 *Sovereign Subjects: Indigenous Sovereignty Matters* Routledge London and New York

——— 2015 *The White Possessive: Property, Power, and Indigenous Sovereignty* University of Minnesota Press Minneapolis

Naalakkersuisut 2017 *Strategi og Indsatsplan på Justitsområdet* Naalakkersuisut Nuuk

Nielsen J K 2001 ‘Government, Culture and Sustainability in Greenland: A Microstate with a Hinterland’ *Public Organization Review* 1/2: 229-43

Office of the Correctional Investigator 2020 *Indigenous People in Federal Custody Surpasses 30%: Correctional Investigator Issues Statement and Challenge* Canadian Government Ottawa Available at: https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx (accessed 29 March 2023)

Olsen T and Lyberth S 2020 'More Respect for Diversity' *Inuit Tusaataat: Juullimut Pilluaqqussut* 15: 4

O'Neil C 2020 'Monitoring That Reconciles' in Craft A and Regan P eds: 66-86

Pearson N 2017 in *Q&A*

Petersen H 2008 'Privileges, Rights and Advantages: Inuit, Danish, and European Subjects in the Making' *Scandinavian Studies in Law* 53: 205-18

Q&A 2017 '1967 and Mabo – Moving Forward' Season 10, Episode 16. ABC Sydney

Referendum Council 2017 'Uluru Statement from the Heart' Available at: https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF (accessed 13 July 2023)

Reiter K, Sexton L and Sumner J 2018 'Theoretical and Empirical Limits of Scandinavian Exceptionalism: Isolation and Normalization in Danish Prisons' *Punishment and Society* 20/1: 92-112

Rice J, Graham C and Detweiler E eds 2018 *Rhetorics Change/Rhetoric's Change* Parlor South Carolina

Roach V 2022 'The System is Not Failing, It is Working to Harm First Nations People' *Journal of Prisoners on Prisons* 30/2: 35-8

Rudd K 2008 'Apology to Australia's Indigenous Peoples' Australian Parliament Canberra

Sambo Dorough D 2019 'Arctic Circle Assembly Opening Speech' Arctic Circle Assembly Reykjavik Available at: https://youtu.be/WUtF1-5a48w (accessed 18 October 2019)

Scraton P 2005 'The Authoritarian Within: Reflections on Power, Knowledge and Resistance' *Inaugural Professorial Lecture* Queen's University Belfast

@SenatorThorpe 2022 (Twitter 14 February 2022 1:28pm AEST) Available at: https://twitter.com/SenatorThorpe/status/1493049463166083072?s=20&t=dIOHkkymwV9uxjvm6cszjA (accessed 16 February 2022)

Short D 2008 *Reconciliation and Colonial Power: Indigenous Rights in Australia* Ashgate Farnham

Simpson A 2007 'On Ethnographic Refusal: Indigeneity, "Voice" and Colonial Citizenship' *Junctures* 9: 67-80

Sydney Gazette and New South Wales Advertiser 1803 'Sydney' *Sydney Gazette and New South Wales Advertiser* 1/6(10 April): 3

——— 1836 'Jack Congo Murrell' and 'Boomarree' *Sydney Gazette and New South Wales Advertiser* 14 May: 2

Tatauranga Aotearoa 2022 *Māori Population Estimates* Stats New Zealand Auckland Available at: https://www.stats.govt.nz/information-releases/maori-population-estimates-at-30-june-2022/ (accessed 7 March 2023)

Tauri J M and Webb R 2012 'A Critical Appraisal of Responses to Māori Offending' *The International Indigenous Policy Journal* 3/4: 1-16

University of Newcastle Colonial Frontiers Massacres Project Team 2022 'The Killing Times' *The Guardian* Available at: https://www.theguardian.com/australia-news/ng-interactive/2019/mar/04/massacre-map-australia-the-killing-times-frontier-wars (accessed 29 March 2023)

Villadsen L S 2018 'Keep Calm, Carry On, and above all: Don't Apologize! Changing Rhetoric in the Service of Stalling Political Change' in Rice J et al eds: 318-35

Watson I 2015 *Raw Law: Aboriginal Peoples, Colonialism and International Law* Routledge Abingdon

Weatherburn D 2014 *Arresting Incarceration: Pathways out of Indigenous Imprisonment* Aboriginal Studies Press Canberra

Whittaker A 2020 'So White. So What.' *Meanjin* 79/1: 50-61

Wolfe P 2016 *Traces of History: Elementary Structures of Race* Verso New York

Cases, Statutes and United Nations Materials

Act on Greenland Self-Government, Act No 473 of 12 June 2009 (Denmark)

Anaya J 2011 *Report of the Special Rapporteur on the Rights of Indigenous Peoples: The Situation of Kanak People in New Caledonia, France* UN Doc A/HRC/18/35/Add.6

Calí Tzay F 2023 *Visit to Denmark and Greenland, 1-10 February 2023, End of Mission Statement* Available at: https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/sr/statements/eom-statement-denmark-greenland-sr-indigenous-2023-02-10.pdf (accessed 29 March 2023)

Charter of the United Nations

Commonwealth Electoral Act 1918 (Cth) (Australia)

Congrès Populaire Coutumier Kanak 2012 *Rapport et Recommandation au Conseil des Droits de l'Homme en Prévision de l'Examen Périodique Universel de la France* Organisation Non Governementale les Droits Autochtone Kanak Kanaky

——— 2018 'Palais des Nations, 11em session du Mécanisme d'Experts sur le Droits des Peuples Autochtones' Letter to the United Nations Expert Mechanism on the Rights of Indigenous Peoples Available at: https://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0d0c/29081dff.dir/EM18KANAK70711.pdf (accessed 29 March 2023)

Danish Institute for Human Rights 2018 *Report Prior to Adoption of List of Issues – Denmark* UN Committee Against Torture Geneva Available at: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/DNK/INT_CAT_IFR_DNK_30175_E.pdf (accessed 29 March 2023)

Greenland Home Rule Act, Act No 577 of 29 November 1978 (Denmark)

Hingitaq and Others v Denmark [2006] European Court of Human Rights Application No 18584/04 by Hingitaq 53 against Denmark (Admissibility Decision)

Human Rights Council 2022 'Treaties, Agreements and Other Constructive Arrangements, including Peace Accords and Reconciliation Initiatives, and their Constitutional Recognition: Study of the Expert Mechanism on the Rights of Indigenous Peoples' UN Doc A/HRC/51/50

International Covenant on Civil and Political Rights 1976 999 UNTS 171

International Covenant on Economic, Social and Cultural Rights 1976 999 UNTS 3

Inuit Circumpolar Council, Hingitaq 1953, and Kattuffik Ataata 2011 *Indigenous/Human Rights and Powers of Public Government; The Situation of the Indigenous Community of the Thule District; The 'Legally Fatherless'* Relative to the 1st Universal Periodic Review of Denmark Available at: https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session11/DK/JS2_JointSubmission_2-eng.pdf (accessed 2 September 2022)

Referendum (Machinery Provisions) Act 1984 (Cth) (Australia)

R v Gladue [1999] 1 SCR 688 (Canada)

R v Ipeelee [2012] 1SCR 433 (Canada)

Søvndahl T 2003 *The Greenland Home Rule Arrangement in Brief* Expert Seminar on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Peoples Geneva

Tauli-Corpuz V 2017 *Report of the Special Rapporteur on the Rights of Indigenous Peoples on Her Visit to Australia* UN Doc A/HRC/36/46/Add.2 United Nations Geneva

——— 2019 *Report of the Special Rapporteur on the Rights of Indigenous Peoples* UN Doc A/74/149 United Nations Geneva

United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples 1960 GA Res 1514(XV) UN Doc A/RES/1514(XV)

United Nations Declaration on the Rights of Indigenous Peoples 2007 GA Res 61/295 UN Doc A/Res/61/295

Western Sahara (Advisory Opinion) [1975] ICJ Rep 12