

## BOOK REVIEW

Marianne O. Nielsen and Robert A. Silverman (eds.), *Criminal Justice in Native America*. Tucson: University of Arizona Press. 2009. 242 pp.

L. Jane McMillan

Veteran editors of several volumes addressing Native and Aboriginal criminal justice issues in North America, Nielson and Silverman specifically commissioned the fourteen chapters in *Criminal Justice in Native America*, this time calling on scholars of Native ancestry to compose about half of the contributions. As in their past collections, the editors retain a minimalist approach using only introductory and concluding chapters to connect the works within. The preface indicates the book is organized in sections; however, the delineation of such sections is absent in the text, but an index catalogues the central themes laid out in the introduction. This compilation sets out to address the consequences of colonialism and the failure of the American criminal justice system to provide justice for Native Americans. Writing from a variety of disciplinary and methodological perspectives, with focuses on law and legislation, crime rates, youth, gender, policing, courts, and corrections, the chapters are organized to provide the reader with an overview of the historical and social context of Native over-involvement with the criminal justice system. Self-determination and adequate resources are the suggested recourses to addressing the crises of oppression, discrimination, racism and overrepresentation experienced by Native Americans as they encounter the justice system. One significant disappointment is that the details and analysis of what self-determination entails, strategies to achieve it, how adequate resources may be acquired and what changes are anticipated, are not addressed.

Silverman's chapter is an expansion of an earlier five-year study to a twenty-one year study that summarizes patterns of crime using the somewhat dubious arrest rates to conclude that Native crime rates are fairly stable, and they tend to follow the patterns of general decline for all Americans. The next three chapters address the inadequacies of the criminal justice system and the problems it in fact exacerbates when Native youth and women come before the law as victims and offenders. In the first of her two chapters Jon'a Meyer highlights the legislation

and fiscal restraints that remove the possibility of Native communities to control adjudication of juvenile disputes, force youth into the federal system and eliminate the potential for reaching the rehabilitative and reintegrative goals that are culturally prescribed in Indian Country. The challenges for Native women are laid bare by Fox and Hamby, who both point to the colonial antecedents of victimization and remind the reader that such victimization is not a thing of the past, indeed the contemporary prevalence of violence against Native women is particularly abhorrent and points to ongoing discrimination and oppression. These points are particularly useful for undergraduate student readers trying to grasp systemic discrimination. The authors offer thin outlines of programs, but a more thorough discussion and analysis of the obstacles to prevention and intervention within the context of tribal law, resource shortfalls and self-determination, would be instructive for those more familiar with systemic problems and focused on transforming justice's hegemony.

From Perry's article on hate crime until the conclusion by Nielson, the writing improves and the chapters provide coherent histories and theoretical positions that are supported with empirical evidence. Perry rightly calls for a broader operational definition of hate crime that extends the definition to address the power relations endemic to the act of hate crime as a way to destabilize the normative, institutionalized racial violence that plagues Native life experiences marked by intergenerational grief and trauma. She calls for mobilization around cultural identity and political sovereignty to answer the psychological fallout from federal policies that demeaned culture and used violence to force assimilation and create situations of ongoing segregation in Native America.

The voices of Native America emerge in the discourses and offer important, grounded insights that are too often excluded from volumes where Indigenous experiences are marginalized or ignored. This collection benefits from the inclusion of the authors' local knowledge. Robyn's piece on uranium mining as a state-corporate crime contributes to the growing body of works examining environmental racism and the use of state power, often in violation of treaty rights, to assist the corporate plunder of Indian lands and resources.

Several chapters stand out for their clarity and excellent summaries of the complicated legal histories of Native American justice and reveal the contradictions of jurisdiction and jurisprudence in Indian country that stem from the consequences of colonization and the failure of state recognition of Native entitlements. Cardani's chapter provides a helpful chart summarizing criminal

BOOK REVIEW  
L. Jane McMillan

---

jurisdiction in Indian country and highlights the inconsistencies in rulings as well as the jurisdictional conflicts that interfere and prevent tribal sovereignty. Zion makes another important contribution to his body of work on traditional law and tribal courts as he outlines the historical emergence of tribal courts and delineates the debates central to tribal jurisdiction and court reform. Zion addresses the thorny issues of authenticity, cooptation and adaptation in tribal courts, and speaks to the challenges of evaluating the efficacy of tribal courts using western standards as the instruments to measure performance. Encouragingly he notes a trend toward increasing use of customary law and traditional dispute-resolution methods in tribal courts, but does not give us any insight as to the mechanisms that enhance the legitimacy of such practices for those who administer and use them. Meyer's second piece focuses on tribal justice models and is the stronger of her two contributions; it fits well as a detailed examination of larger questions raised in Zion. Meyer unpacks the concept of peacemaking as processual justice in Navajo country and highlights its significance for maintaining tribal identity and for its potential to transform disputes without romanticizing how peacemaking differentiates tribal justice from its state and federal counterparts.

Two chapters examine the challenges of tribal policing and the problems of using professionalized, adversarial and hierarchical policing approaches in Indian country as they are often at odds with local crime control and restorative justice models and tend to be complicated by assertions of tribal sovereignty. The question raised in the tribal court chapters and also in the context of policing, is this: while there is a critical need for law enforcement services, what are the appropriate formats and can they be used to advance sovereignty, the right to self-government and improve the lives of tribal members? Archambeault's essay on the utility of healing traditions in corrections reveals the contentious issues surrounding the introduction of Native culture, beliefs and healing practices through incarceration. He promotes the potential of using traditional methods and ceremony with offender populations, a subject that will captivate many students.

Generally this text accomplishes its promise to introduce students to the relationships between Native peoples and the prevailing criminal justice system. While it is true that there has been little acknowledgement of the positive contributions of Native Americans to the criminal justice system, this book does not go far enough in explicating those contributions and in demanding state and federal recognition of their value and potential. References to a movement that counters colonization and revitalizes traditional and customary practices are made throughout the text, but the identity of players in the movement are indistinct. The

questions of who, what, when, where and how, are not thoroughly expounded. Is there a comprehensive social movement working to establish parallel or alternative justice systems or are Native juridical practices merely experiencing a conurbation within the American Justice system?

The burden of healing the consequences of colonization is placed on Native individuals and communities. These authors point to the responsibility of government to address and dismantle paternalistic relations and systemic discrimination that limit the choices available to Native peoples and cause greater harm as they encounter the justice system. The stories of the political will to empower Native communities and facilitate their achievements in tribal justice through adequate resource allocation and recognition of the efficacy and legitimacy of their practices, both from within and from outside, need to be told again and again. Nielsen and Silverman demonstrate that tribal justice continues to be fettered by the hegemonic American legal system. Arguing that self-determination and adequate resources are the recourses to address the crises of oppression, discrimination, racism and overrepresentation experienced by Native Americans demonstrates that justice, however it is culturally constructed, for Native peoples is elusive and our attention should turn to improving access, supporting alternatives and recognizing assertions of sovereignty.

