

Self-Determination Through Treaty: Distinct Legal Orders

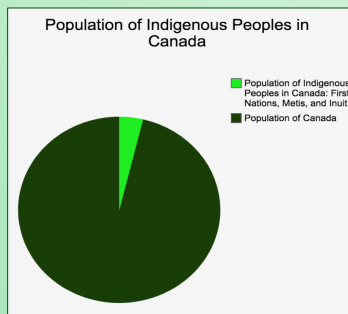
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INTRODUCTION

Numerous studies and reports have identified an overrepresentation of Indigenous peoples in the Canadian Criminal Justice System. This overrepresentation relates to indigenous peoples as both offenders and victims. Organizations and scholars have proposed changes that can be made to the system, and even alternative justice measures.

Since this information has been established, the question becomes: why is the overrepresentation still increasing?

OVERREPRESENTATION AS VICTIMS



In 2014, the rate of violent victimization among Indigenous people was more than double that of non-Indigenous people (163 incidents per 1,000 people vs. 74) (Statistics Canada 2014).

In 2015, Indigenous people accounted for 25% of homicide victims, at a rate which was about 7 times that of non-Indigenous people (8.77 victims per 100,000 population vs. 1.31) (Statistics Canada 2015).

OVERREPRESENTATION AS INCARCERATED



Although Indigenous adults represent only about 3% of the adult population in Canada, they are overrepresented in admissions to provincial and territorial correctional services; in 2015-2016, they accounted for 26% of admissions (Statistics Canada 2016).

REPORTS AND RECOMMENDATIONS

- *Law Reform Commission of Canada: Report on Aboriginal Peoples and Criminal Justice—Equality, Respect and the Search for Justice*, 1991
- *The Report of the Royal Commission on Aboriginal Peoples*, 1996
- *Report of the Aboriginal Justice Inquiry of Manitoba Aboriginal Justice Implementation Commission*, 1999
 - *Peace and Order: Describing and Implementing Treaty Justice in Saskatchewan*, 2003
 - *The Truth and Reconciliation Commission and its Calls to Actions*, 2015
- *The National Inquiry into Missing and Murdered Indigenous Women and Girls Interim Report*, 2017

THE SOLUTION DOES NOT LIE WITHIN COLONIAL LAW

“...echoed by almost all the reports, commissions, and inquiries, is that ultimately the answer to addressing the alienation of Indigenous people from the justice system is the development of distinct Aboriginal justice systems.” - *Jonathon Rudin, Indigenous People and the Criminal Justice System*

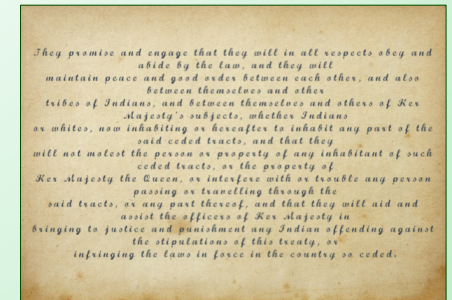
TREATIES MEANT FOR SOVEREIGN NATIONS, NOT DOMINANCE BY ONE



“Nearly one third of the text is devoted to British relations with Indigenous Nations. The Proclamation recognized Indigenous Peoples as 'Nations,' as distinct societies with their own forms of political organization, with whom treaties had to be negotiated.”

Sharon Venne, *Understanding Treaty 6: An Indigenous Perspective*

TREATY 6 CLAUSE



“They promise and engage that they will in all respects obey and abide by the law, and they will maintain peace and good order between each other, and also between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians or whites, now inhabiting or hereafter to inhabit any part of the said ceded tracts, and that they will not molest the person or property of any inhabitant of such ceded tracts, or the property of Her Majesty the Queen, or interfere with or trouble any person passing or travelling through the said tracts, or any part thereof, and that they will aid and assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this treaty, or infringing the laws in force in the country so ceded.”

Treaty 6

CONCLUSION

Each Treaty that has been negotiated in Canada has a similar clause about maintaining peace and good order. This should be interpreted as each Treaty Nation is entitled to self-determination over a legal system as this was never ceded or surrendered during negotiations with the Crown.