

When does restorative justice empower Indigenous communities and when does it co-opt them?

Across the globe, Indigenous peoples are demanding not just recognition, but self-determination: the right to govern their own affairs, including through their own legal systems. While the international community has adopted the United Nations Declaration on the Rights of Indigenous Peoples and many countries have formally acknowledged Indigenous rights, their implementation often falls short. One of the most complex and symbolic battlegrounds in this struggle is criminal justice.

In recent decades, restorative justice has been widely promoted as a progressive alternative to punitive, state-centered criminal justice systems. Advocates often highlight its supposed roots in Indigenous traditions of conflict resolution and framing it as a return to more relational, community-oriented approaches. However, this association has frequently proven problematic for Indigenous self-determination. In many contexts, restorative justice has been implemented not by Indigenous communities themselves, but by state institutions, often without meaningful transfer of legal authority or cultural control. As a result, restorative justice programs can function less as tools of empowerment and more as instruments of symbolic Indigenousization where the inclusion of Indigenous language, rituals, or aesthetics masks the persistence of state-dominated legal structures. Such initiatives may undermine self-determination by appropriating Indigenous practices into frameworks that Indigenous communities neither design nor control. This research project explores a critical and underexamined question: How does the degree of legal and institutional autonomy influence the authenticity of restorative justice within Indigenous self-determination in criminal justice?

At the heart of this inquiry lies a tension. On one hand, restorative justice is praised as a practice rooted in Indigenous values. On the other, it is frequently implemented by the very state institutions that once suppressed and continue to regulate Indigenous legal traditions. What happens when these traditions are revived, but only on the state's terms?

To explore this, the project compares two sharply contrasting case studies: New Zealand's Family Group Conference (FGC), introduced in 1989, is often considered a model of restorative justice inspired by Māori customs. It has been adopted by several countries, particularly those with significant Indigenous populations. However, critics argue that because it operates entirely within a state framework, it lacks true cultural autonomy. While Māori values are acknowledged, decision-making power remains with state authorities. On the other hand Mexico's System of Communal Security, Justice, and Reeducation (SCSJR) offers a very different model. Operated by Indigenous and Afro-Mexican communities in Guerrero, the SCSJR features elected local justice officials, autonomous police forces, and legal systems grounded in community traditions. It claims to follow precolonial principles of restorative justice, deeply embedded in Indigenous worldviews.

By comparing these two models, the project asks whether institutions reflect the values and authority of the communities they are meant to serve or whether they function as symbolic gestures that reinforce the dominance of the state.

The stakes are high. In many countries, Indigenous people are overrepresented in prisons and often marginalized in courts. These disparities are not coincidental but are the outcomes of long-standing colonial legacies in which Indigenous peoples' legal traditions were suppressed, their authority undermined, and their communities criminalized.

This study is limited to restorative justice because it represents one of the most visible, politically charged, and symbolically loaded intersections between Indigenous legal traditions and state institutions. Restorative justice is often presented as a decolonizing tool yet it is also susceptible to appropriation. Focusing on this field enables a precise analysis of how legal autonomy and cultural authenticity intersect.

By mapping how autonomy, tradition, and institutional design interact, this research supports the development of justice systems that not only speak the language of restoration, but genuinely enhance Indigenous legal self-determination. It offers an original framework to help distinguish between restorative institutions that empower and those that co-opt.