

## International Journal of Critical Indigenous Studies

Volume 12, Number 2, 2019

### *Visions of Tll Yahda*

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#### About the author

Michaela McGuire (Jaad Gudgihliwah) is a Master's student studying in the School of Criminology at Simon Fraser University. She is of the Gaag'yals KiiGawaay clan, and a citizen of the Haida Nation. Her research interests include Haida justice, decolonisation, Indigenous rights and sovereignty, self-governance, Indigenous women and corrections. Michaela is currently living on Haida Gwaii doing research for her thesis, in which she will examine the creation and implementation of a Haida justice system informed by Haida law.

#### Abstract

Before contact, Indigenous peoples had their own notions of justice and ways of responding to wrongdoing. However, these systems have been repressed by colonial forces and imposed governance. The present research utilised semi-structured interviews with a diverse group of Haida people who shared their insights into visions of a Haida justice system (HJS). The guiding research questions included: What does justice mean to Haida people? What do Haida people envision in terms of Haida justice? What could some potential first steps be towards Haida Justice? Four main themes emerged: Culture is keeping us from collapsing under the weight of colonial oppression; Haida law, values and ways of being; old ways of doing justice; and, visions of tll yahda—Haida Justice. This study provides an examination of Haida culture, law and justice. Results demonstrate the importance of accountability, witnesses, potlatch, culture and resolution.

#### Keywords

Indigenous justice, Haida, self-determination, sovereignty, Indigenous Law



Canada has been complacent in the subjugation of the Indigenous peoples who live within its borders. Through the *Indian Act* and its imposition of colonial governance and law, existing Indigenous social and legal systems were severed. Since first contact, the colonial goal has been to cause Indigenous peoples “to cease to exist as distinct legal, social, cultural, religious and racial entities” (Truth and Reconciliation Commission [TRC], 2015, p. 1). The sovereign way of life was attacked, varied Indigenous nations were conflated, and the Canadian government regulated who could claim “Indian” status (Lawrence, 2003). This regulation of identity has resulted in the displacement of thousands of Indigenous peoples from their families, culture and ways of life. Property rights and lands were appropriated by the Canadian government, and Indigenous peoples were dispossessed (Alfred, 2009; Royal Commission on Aboriginal Peoples [RCAP], 1996a, 1996b, 1996c). These direct attempts at disempowerment have had intergenerational consequences.

Prior to the imposition of Canadian legal and governmental systems, Indigenous peoples of the northwest coast had their own complex governmental systems, including hereditary chiefs and matriarchs, as well as the potlatch, the primary economic system (RCAP, 1996a, 1996b, 1996c). The potlatch ban severed cultural traditions and ceremony and impacted existing legal and social systems (TRC, 2015). Indigenous ways of enacting governance (including justice) were intentionally and forcefully eroded and replaced (Green, 2011). These attempts at assimilation have had severe and lasting impacts. However, pre-existing Indigenous law and governance systems were only silenced, not eliminated.

As a result of the *Indian Act*, Canadians often assume “Indigenous” as a homogenous identity. Before contact there were hundreds of sovereign nations that preceded Canada’s existence as a country; subsequently, the diversity among Indigenous nations is just as distinct as that between Canada and other countries (Stacey, 2018). The homogenisation of Indigenous nations served as a means to more easily assimilate Indigenous peoples. This lack of recognition leaves little room for decolonisation and true and meaningful nation-to-nation relationships. The Haida Nation is made up of diverse peoples; however, we are all of the same nation. Decolonising involves taking back what is rightfully ours and having the conviction “to stand up and assert our [rightful] place in our homelands” while continuing “to challenge Canada in a respectful way” (Monchalin, 2016, p. 293). Reasserting our nationhood is a necessary step towards reclaiming what is rightfully ours.

Indigenous rights, title and sovereignty are inclusive of our right to determine our own ways of doing justice. An understanding of rights and title are integral to this exploration of Haida justice. The Canadian constitution fails to recognise Indigenous nationhood, compounding existing colonial consequences. The *Constitution Act* (1982) does recognise Indigenous rights and title under s.35(1); however, the onus is on nations to prove their title and distinctiveness as peoples in courts that represent Canada, not the nations that preceded this country’s existence. These imposed hierarchies result in the privileging of the crown (Borrows, 2001, 2016). Not only does this negate the present cultural identity of Indigenous nations, but it asks them to uncover a past presence on land that has been forcefully occupied and stripped of archaeological evidence. The presence of the crown is a constant and over-powering image in Canadian courtrooms as Indigenous peoples lay claim to what is rightfully theirs. Reclaiming our inherent rights necessitates the recognition of Haida title. Without title there can be no justice, and subsequently no sovereign justice system. Decolonisation involves a nation-to-nation relationship that cannot exist without recognition and action by the crown. We must ask our coloniser for justice, in their courts, and under their laws. Clearly, the scales of justice are not in our favour.

Indigenous peoples have an inherent right to decide their own futures. The RCAP (1996b) argues that “no government can be imposed upon a people without their consent; this would be a denial of their right to self-determination” (p. 4) that has been recognised by international law. Canada is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which recognises the right of Indigenous peoples “to maintain and strengthen their distinct political, legal, economic, social and cultural institutions” (United Nations, 2007, pp. 4–9). The Canadian government is known for its public proclamations of support for “Indigenous self-government and laws” (Department of Justice Canada, 2018, pp. 3–4). Empty apologies and recognition in government statements and legislation do little to move things forward in terms of sovereignty. Alfred (2015) explains that

reconciliation basically says, “Native people, you’re so poor for what happened. We feel so sorry for you. The residential schools, the racism—they were terrible things that our ancestors did, terrible things that those priests and nuns did. We’re going to help you. We’re going to elevate you by giving you access to money and programs so that you can be just like us.” That is reconciliation in Canada. (p. 8)

Reconciliation may be seen as a new form of assimilation. These fallacies serve to alleviate settler guilt at the expense of true support and decolonisation. Such decolonisation would move beyond acknowledgement to action, support and capacity building.

### **Indigenous legal systems**

Instead of thinking about Indigenous rights as “historical rights”, they should be more adequately understood as “human rights” (Borrows, 2017, p. 115). Relegation of Indigenous rights and law to the past undermines the capacity for change (Borrows, 2017). Colonialism has severely disempowered Indigenous peoples, resulting in their precarious positionality in Canada.<sup>1</sup> Despite Canada’s continual attempts to extinguish or ignore Indigenous laws, “Indigenous legal order continues to bubble through the cracks of its overlying cover” (Borrows, 2001, p. 16). The need to recognise the self-governing powers of Indigenous peoples, including the right to establish sovereign justice systems, has been recognised (La Prairie, 1999; RCAP, 1996a; TRC, 2015). There can be no one-size-fits-all solution, and support should be given for nations to implement their varied approaches to self-determination (RCAP, 1996a).

The system that is meant to protect us from harm is the same system that has been responsible for our oppression. Monture-Okanee (1994) suggests that “the [colonial] legal system is at the heart of what we must reject” as Indigenous peoples (p. 223). The TRC (2015) calls upon all levels of “[government] to commit to the recognition and implementation of Aboriginal justice systems in a manner that is consistent with the treaty and Aboriginal rights of Aboriginal peoples, the Constitution Act, 1982, and the United Nations Declaration on the Rights of Indigenous people” (p. 181). Indigenous nations had and have a myriad of ways of doing justice that are reflective of their respective cultural and political identities. As a participant in the present research suggested, a *Haida justice system* (HJS) “is a part of our sovereignty ... You can’t really implement that sort of a dramatic change when we’re relying on the exact system that is oppressing us” (Rebecca).

### **The Haida Nation**

This article will focus on the Haida Nation and examine visions of a HJS. The Council of the Haida Nation (CHN) is the national governing body of all Haida citizens. The CHN’s

mandate includes striving for the “full independence, sovereignty and self-sufficiency of the Haida Nation”, and considerable strides have been made towards this goal (Mandate, 2019). Presently, there is no justice branch of the Haida Nation; however, the ability to determine our own responses to wrongdoing should be considered an essential component of our right to self-determination.

The present exploratory research project sought to examine visions of a HJS as a first step towards my master’s thesis, which will explore the formation of HJS in more depth. Specifically: What does justice mean to Haida people? What do Haida people envision in terms of Haida justice? What would be some potential first steps towards Haida justice? I discovered that justice in the Haida language is *tll yahda*,<sup>2</sup> which translates to “make right”, and I believe this demonstrates a key difference in understanding of wrongdoing. This research utilises the framework of the impacts of imposed colonial systems to situate and unpack participants’ visions of a HJS.

## Methods

I received ethics approval through a research ethics board delegated review, and I also did my best to abide by the central Haida law of *yahguudang* (respect). There is a varied and ongoing history of academics taking advantage of Indigenous communities through misrepresentation and appropriation of knowledge, as well as little benefit to Indigenous participants (Cunneen, Rowe, & Tauri, 2017; Wilson, 2018). Myriad Indigenous methodologies have been advanced as a means to reclaim research. These methodologies are integral for the reclamation of research; however, I am focused on identifying a specific framework for research based upon Haida values for work in my community. Indigenous methodologies do offer some relevant guiding practices for the present research, including centralising Indigenous knowledge and decolonising research, as well as a focus on respect and interconnectedness (Kovach, 2009; Singh & Major, 2017; Smith, 2012).

As a Haida and an academic, I am situated within a unique position: I do not consider myself as an insider nor as an outsider. I identify as what Singh and Major (2017) define as researchers “who are newly exploring their Indigenous identity, and who find themselves negotiating a space that is between Indigenous and non-Indigenous, and seeking a sense of belonging in their journey” (p. 12). Decolonising my research involves rejecting the shame, hate and misplacement that I have felt as a result of colonial policies and systemic racism, and reclaiming my space.

This study included semi-structured interviews with a purposively chosen diverse sample of seven Haida people chosen to ensure high-quality data representative of the broader population (Guest, Bunce, & Johnson, 2006). Participants included women and men ranging in age from their early twenties to late fifties, with varied life experiences. Insider research within small communities can be done in a way that maintains trust and rigour, while protecting participants’ identities (Heslop, Burns, & Lobo, 2018). My home community is Skidegate, and as I was based in Vancouver at the time of this research, I was limited in my ability to reach out to the other Indigenous community on Haida Gwaii (Massett).<sup>3</sup>

There are challenges to being both an insider and a researcher that necessitate “consistent reflexivity” to ensure both roles are maintained properly (Styres, Zinga, Bennett, & Bomberly, 2019, p. 635). I am not immune from the aforementioned distrust of researchers. Building and maintaining trust while also abiding by institutional, Haida and

my own values was challenging. Coburn (2013) suggests that “Indigenous research is a form of resistance to centuries of colonial domination” (p. 52). In moving forward with this research, I hope to find my place and to demonstrate that my the research is not part of the problem, but part of the solution.

Qualitative research is not linear, and thus there were multiple points at which I felt overwhelmed and my analysis became “muddled” as a result of the rich data (Chenail, 1997, p. 2). The transcription<sup>4</sup> process was key to becoming familiar with my data. Coding is a “cyclical act” of data analysis” (Saldana, 2016, p. 7). Qualitative research is often in line with Indigenous methodologies, given the focus on rigour, analysis and reflexivity (Singh & Major, 2017). In order to ensure that I was showing *yahguudang* (respect) for the knowledge shared with me, I cross-referenced and utilised Haida academic and cultural knowledge wherever possible.

## Results and Discussion

Through a process of coding and cross-examining the data with recorded oral histories, four main themes emerged, namely: (1) Culture is keeping us from collapsing under the weight of colonial oppression; (2) Haida law, values and ways of being; (3) Old ways of doing justice; and (4) Visions of *tll yahda*—Haida Justice. The importance of historical and ongoing harm, Haida ways of seeing the world, and hope for the future were demonstrated by participants. These themes, addressed below, represent the most salient and succinct representation of the findings.

### ***“Culture is keeping us from collapsing under the weight of colonial oppression”<sup>5</sup>***

Culture has served as a protective force against the devastating impacts of colonialism, and it is interrelated with Haida law and justice. The Haida and unexpected allies—such as early ethnographers—were able to protect our culture from being completely decimated by colonial harm (Collison, 2014). As participant Ben noted: “all of Haida existence is culture”; it is an integral part of Haida identity.

The impacts of colonialism discussed include residential and day schools, the “Sixties Scoop” (a practice that occurred in Canada in the 1950s and 1960s of taking, or “scooping up”, Indigenous children from their families and communities for placement in foster homes or adoption), cultural losses, and ongoing trauma, including issues around race and identity, physical and sexual abuse and addiction. Colonialism is “a process that shapes people”; it has “shaped all of our lives” in different ways (Alfred, 2015, p. 3). Participant George suggested that “there are so many factors to people’s traumatic experiences, it’s not all rooted in residential school”. Rebecca commented on the impact of colonialism on Haida life:

we didn’t have these issues ... pre-European contact. This has been created by the oppressive system—it is due to that lack of culture and intergenerational trauma ... This is creating such significant relationship and identity issues that it has led our people to act in ways that are completely separate from our ... beliefs. I hope that a Haida justice system could really break that down and finally reveal the reasoning behind that—and then implement a way to heal those people.

This statement reveals how interrelated the impacts of colonialism are with the Haida perspective of justice. Colonisation severed Indigenous families and imposed a divergent understanding of the world. Participants viewed colonisers’ actions as a violation of Haida justice.

The effectiveness of colonialism manifests in the ongoing impacts of colonial policies in fracturing the Haida community. Contact and introduced diseases decimated the Haida population and have had a lasting impact on Haida peoples. Participant Jennifer explained this impact further:

... that is one of the greatest success stories of the Canada project... We went from upwards of 30,000 to less than 600 on Island by 1915. These people, the survivors not only survived a biological genocide, they fucking made sure that we survived a cultural genocide.... Our identity is still here, we just have to bring people back to it.

Lawrence (2003) suggests that the impact of legislating “Indian” identity is multigenerational and may compound existing harms. This impact of the *Indian Act* was noted as an important justice issue that needed to be remedied. Through contact, colonialism and the *Indian Act*, Canada enforced its systems of justice. Participants rejected the notion that colonial policies can meet Haida interests and suggested that the Canadian system needs to be held to account for the harm it has caused. From a Haida perspective, the multitude of hardships that stemmed from colonisation warrant injustice towards the Haida by the Canadian state.

Haida way of life is intertwined with culture. “Culture is every little piece of Haida life so fishing, hunting, cooking, weaving are as important as singing, dancing and carving masks” (Ben). Moreover, many participants mentioned their respective journeys towards cultural healing. Ben explained that partaking in culture “is one of the most meditative things [he does] ... it can ground you if you’re feeling lost”. Reflecting on the role of culture in her own life Rebecca explained:

No matter what I’ve been through I’ve always agreed to participate in ceremony ... there is a strength to it, that you can’t really describe ... especially with mask dancing, there is an incredible feeling when you fully surrender to it, you can feel that supernatural connection and understanding, I think, of what it means to be Haida.

Despite this reclamation, participants mentioned multiple ways in which cultural losses impact the community. Haida culture is not easily defined and is deeply personal. To expect us to box up an easily understood version of our culture is to relegate a complex and ever-changing entity to a spectacle for observers. However, there is still “a lot of cultural denial ... it is not as intertwined in our lives. A few generations before us it was; well, a few generations before colonialism honestly” (Ben). Cultural losses are illustrated in violations of Haida and criminal law, as Ben explained how “we haven’t shed that colonial imprint that leads a lot of people to commit all sorts of crimes against this community”.

### ***Haida law, values and ways of being***

Indigenous laws are incredibly diverse; however, there are commonalities among them that can be utilised to illuminate some of the key differences between Indigenous and Canadian law. These are largely “unwritten” and passed down through oral histories, lineages, and stories (RCAP, 1996b). Indigenous nations place an emphasis on not only the family but also the clan and community (RCAP, 1996b). Thus, wrongdoings or violations of law do not only impact the individual.

Haida law and culture are interconnected in every way. Haida laws mentioned by participants include: *yahguudang*, *ad kyanang kunGasda* (to ask first), the world is as sharp as the edge of a knife (balance), everything depends on everything else,

responsibility, and *tll yahda*. The most frequently cited law was yahguudang. Rebecca effectively described the importance of respect when she said, “everything stems from yahguudang. I think that’s what separates us from the rest of the world”. Haida laws are interwoven in Haida oral history, culture and values.

All of these laws are further exemplified in Haida worldview and relationship to the land. As Jennifer explained, “we are no better than the smallest grain of sand ... you have to respect everything and it is only then that you are worthy of respect yourself”. This reciprocity is illustrated in Haida oral histories. In one story “a little girl gave food to a raven, ... to reward her they gave her a great deal of food ... through these things her father became a rich man” (Swanton, 1905, p. 194). This story demonstrates the Haida worldview and reciprocal relationship between all beings. When you violate yahguudang, you are breaking a law, and in order to make it right you need to make payment and demonstrate accountability for your actions.

Haida life was regimented, and laws and protocol impacted everyday existence.

There were a lot of little things that you could do that would breach respect or protocol amongst clans, amongst men and women or eagles and ravens ... if you breach those things—that might seem small in today’s sense—you had to pay ... like restitution I guess, an eye for an eye. (Sam)

Violations of Haida law were taken extremely seriously and had a ripple effect. “If you were a nephew and you misbehaved your uncle would have to die, and you would have to carry that with you” (Sam). Maternal uncles and aunties played a key role in children’s lives and acted as second parents and mentors for children. In modern day, these consequences are still felt, as Rebecca explained: “Everything depends on everything else, it all circles back to one another. Not just in nature, but in our community, everything comes back to you and your clan. So we all have that responsibility to act and to live in yahguudang.” Haida laws and values are interwoven within the community.

Haida law stems from our ways of being, as exemplified through oral history and potlatch. “Haida law is honouring your ancestors and your descendants in the choices you make ... You see law as reflected in every corner of your existence when you’re a Haida person” (Participant Jack). Haida stories “reaffirm not only the events of the past, but also a person’s place within society ... who holds rights, privileges and territories and how they acquired them are maintained through the recounting of these stories in a ‘waa|Gahl or potlatch” (Steedman & Collison, 2011, pp. 17–18). Haida law sets high standards, and it is violated when someone fails to act in accordance with those standards. Whereas Canadian law is more negatively worded and tells people what not to do, Haida law is present in our everyday interactions and is formalised through the potlatch.

Despite colonial attempts of destruction, the potlatch system remains intact. Swanton (1905) describes the role of potlatch as “the great event upon which a Haida’s social life turned” (p. 155). However, as Jack noted, “our form of governance and legal structure was oppressed by the Canadian occupiers”. These oppressive systems were unsuccessful. “We’re very lucky to live in isolation, where we were able to sort of duck behind the potlatch ban and practice things secretly—and keep so much of it alive” (Rebecca). Reciprocity is exemplified in potlatch law. Jack said that through potlatch, “everybody is making law together, without witnesses there is no law ... Strengthening the potlatch system ... is the most efficient, elegant, and beautiful way of administering justice”. This system is not only legal, but it was the centre of Haida life in which social and political processes took place.

Participants demonstrated a lack of faith in the ability of Canadian law to respond to Haida justice issues. Monchalin (2016) posits that colonialism is integrated within the very framework of the CJS and upholds “existing power structures” that were “initially set up to eliminate Indigenous peoples” through processes of genocide and assimilation (p. 144). The Canadian system is based upon a religious, hierarchical ideological foundation that has continually dispossessed Indigenous Nations (Monchalin, 2016). Jennifer noted how “the criminal justice system [CJS] is built to defeat Indigenous people and it is highly racist”. Haida worldview does not always align with Canadians. Participant Sarah explained:

the Canadian system doesn't really do anything to help people. Often things go to court and people have to retell their stories and there isn't enough evidence ... so nothing gets resolved. If they do get into trouble, that doesn't really resolve anything for the victim and person who harmed them.

State-imposed superiority subjugates Indigenous peoples, relegating them to the periphery of society (Borrows, 2016). The participants demonstrated a lack of faith in the ability of the CJS to respond effectively.

When people violate Haida law, they must ensure that they make tll yahda in the presence of witnesses. Sam mentioned that given the interconnected nature of Haida community “violations of Haida Law [and in some cases Canadian law] have a ripple effect. Thus, there is a potential for clans to rebuild or take on a bigger role than they are, to deal with these kinds of violations”. Clans can hold their own accountable for their actions more effectively than the CJS. Rebecca told a story about someone who did wrong during a community event. After realising what he had done, he got up and apologised immediately “and that's the way we handle a misstep like that in terms of Haida justice”. In olden times, that escalated to a “face-saving potlatch”, noting that “the lengths we will take to correct a wrong is what makes us Haida”. The expectation in the Haida community is that if you do wrong you have to make it right and take accountability or, your clan will be held responsible.

### ***Old ways of doing justice***

Indigenous peoples had their own ways of responding to wrongdoing that pre-date Canada and the notion of criminal law. There is a misconception among the general public that all old forms of justice were peaceful and harmonious. This misconception is problematic because it leads the general public to view Indigenous justice systems as too soft to adequately respond to wrongdoing. Along with the opportunity for redemption, many Indigenous nations had “harsh punitive sanctions, including the death penalty, banishment and corporal punishment” (Milward, 2008, pp. 110–111). Cunneen (2011) argues that overall, Indigenous justice programs are more concerned with “individual change as a part of a collective experience” than settler approaches (pp. 320–321). Collective responsibility and accountability are relatively non-existent within the introduced system. Canadian society ostracises those who do wrong and offers little redress.

Stories that were shared about old ways of doing justice present the reality of a strict protocol driven society. Sarah described one such story:

A man had sexually assaulted a young woman. And he was taken away by a group of women and whipped with spruce branches ... [pause] ... on his penis ... I bet he never did it again. Definitely more of a direct accountability than what happens today.



The consequences of wrongdoing were much more severe under old Haida law. Jack shared the oldest story that he knew from his family: “Five or six generations ago, she could remember heads of our enemies floating in the inlet. That’s old school Haida. That’s the oldest tangible memory that has been passed on to me.” However, Jack further explained that

... people like to focus on the violence, because violence is fascinating and makes for a really good story. But to me, that violence is exceptional. And that’s why we remember it—it was the exception to the norm—of doing things through feast, potlatch, and conversation, and you can see that reflected in our society today, in the time that we take to talk to one another. And the stories that are so famous, that involve so much violence and bloodshed. Those are the stories that warn us of what happens when we fail to talk with one another. And just fail to show proper respect for each other.

The importance of community dialogue and protocol may be essential to the formation of a HJS. These stories should not be misunderstood as being practical for the modern day; like all peoples the Haida’s understanding of culture, law and punishment are subject to change through time.

Haida laws are exemplified in oral histories. The following story was noted by multiple participants as having important lessons regarding Haida justice. A young man was exceptionally good at spearing sea-lions and in turn, “the others ... became jealous of him, and ... abandoned him” (Swanton, 1905, p. 195). However, “while he was weeping, the supernatural beings of the place invited him into [their] house” (Swanton, 1905, p. 195). The man was given the power by these supernatural beings to disrupt the lives of those who had abandoned him, except for “his youngest brother-in-law” who had not wanted to abandon him (Swanton, 1905, p. 195). He tricked his “mother in law, who had not been good to him”, and in response to his trickery, she eventually began to “pretend she was a shaman” (Swanton, 1905, p. 195). She “died of shame” when she learned that it was her son-in-law who had been tricking her (Swanton, 1905, p. 195). The son-in-law “potlatched ten times”, demonstrating his wealth in the community (Swanton, 1905, p. 195). This story is intertwined with Haida laws and values. The men were held accountable for their actions (violation of Haida law in abandoning him) as is demonstrated by the young man’s direction to have “killer whales upset the canoes of his brothers-in-law,” killing them (Swanton, 1905, p.195). The youngest brother-in-law who had not wanted to abandon him was saved and rewarded, demonstrating the law of everything depends on everything else.

The banishment of individuals to isolated areas was mentioned as a means of punishment for wrongdoing. In some cases, participants shared that those who were banished had a chance of redemption. Participants suggested that banishment had its benefits, but that there needed to be a *support system* in place for them when they came back, and that it should involve *something meaningful*, such as learning about the land and cultural practices (George; Sarah). Jennifer recalled a story of a family deciding to offer support and hold their family member accountable upon return from a term of imprisonment for sex offences.

### ***Visions of tll yahda: Haida justice***

Many participants brought up the importance of tll yahda, before being asked. Thus, tll yahda represents an important framework for understanding the Haida perspective on justice. For instance, Sarah shared a story about her son, who said:

... something rude to an Elder, I got mad at him, and explained that what he did was wrong. I made him go and apologise and he chopped wood for days for that person, I then had him go fishing and pay him in fish. I made him continue to pay until he had made enough payment to right his wrong. I know those things do happen, but the impact of colonisation has muddied our understanding of Haida law, and impacted our ability to hold ourselves and our children accountable.... If your kid does something wrong that reflects poorly on you, but they can make it right through payment and apology.

Moreover, tll yahda also occurs through violations of protocol. Jennifer described one such instance when she pronounced a hereditary leader's name incorrectly. Immediately, her mentors jumped up and began singing, and her clan members

... started running up and started throwing money in a hat ... I did something wrong, that not only reflects on me, but my clan ... in accepting the payment, and the acknowledgement, that relieves me of carrying the embarrassment of my clan, and really it never has to be spoken of again.

There were multiple other examples of violations of Haida protocol being made right by payment, apology and reciprocity. Haida understanding of wrongdoing differs from colonial justice as it includes violations of social and cultural norms. Sam noted that tll yahda "involves working on navigating conflicts instead of ignoring them". Addressing community issues through tll yahda may be essential. Rebecca mentioned that "you can't quietly apologise to somebody". This demonstrates the aforementioned role of witnesses in potlatch law. As Jack explained: "When people step too far out of line or do something that doesn't show honour and respect, then their family potlatches to ensure that it is known that that was unacceptable behaviour."

Indigenous legal systems pre-date Canada, and although they were repressed, these systems continued to exist. Jennifer suggested that "some are still practised today, but it is really about looking deeply into them and thinking about how they can be adapted". Their existence continues to be challenged through colonial institutions and the dominant Canadian legal paradigm. Imposed legal systems force Indigenous peoples to "reconstruct Indigenous legal concepts in a way to accord with dominant legal discourse" (Moulton, 2016, p. 3), which is a continuation of the colonial strategy of suppression and domination (Victor, 2007). Devaluation of Indigenous law exists to ensure the maintenance of "settler dominance" within legal and political arenas (Moulton, 2016, p. 15). In contrast to settler law, Haida law is not limited to the individual but is a "common responsibility to look after Haida Gwaii and its waters" (Sam). Maintaining our relationships to each other and to Haida Gwaii "will sustain us during times of severe instability" (Sam). These ways of being continue to exist in the shadow of the colonial system.

Impacts of colonialism are further evidenced in the present-day justice needs of the Haida. Haida themselves are not immune to the impact of greed:

I think that colonisation has kind of impacted people in that way ... people taking too much and violating Haida law. Overfishing and overharvesting and not paying respect to themselves or Haida Gwaii. (Sarah)

The notion of families protecting their own was noted as a caveat to making things right, as Ben explained: "If you're going to hold people accountable there can't be some grey area in terms of who gets held accountable." Although there was support for some aspects of old ways of law and justice, there was general disapproval of the notion of familial rank

and social clout as protecting people from being held accountable for their actions. In forming a contemporary HJS, steps must be taken to protect against this kind of favouritism and hierarchical exemption from accountability.

Knowledge about Haida history and the impact of contact were commonly noted as serving a protective factor against ongoing harm. "Governance over our lands and waters and recognition" by Canada "that someone intentionally tried to wipe us out might be a true start to meaningful justice" (Rebecca). "Arming yourself with history" allows for real and meaningful conversations to occur (Jennifer), that counter ignorance with truth. Education was frequently cited as important in the recovery of the community from colonial harm.

When asked about whether he thinks forming a HJS is possible, Jack responded:

the big thing is that we're living here. And we're never going to move. That's really the reason that it is possible. Establishing a legal system like this, all the healing that we would have to do, it's a lot of work. But the thing is we have time ... we have the rest of eternity to do this work.... We have demonstrated that it is possible and that self-government is not only possible but can result in a surplus, an overwhelming bounty of resources for all people in society. We have demonstrated that through potlatch for thousands of years.

This sentiment of Haida pride, nationalism and political power was reflected by other participants as well. Forming the capacity for Haida justice was recognised as an important, challenging and integral next step regardless of the time it takes to establish.

Accountability was found to be an essential component to visions of a HJS. Sarah shared a personal experience of abuse that she would like to see made right. She noted that she had thought about going through the imposed system but, based on her experiences of supporting other women, was reluctant to do so. Instead, she hopes to have a small gathering of supporters with her so that she could

let him know the harm that he caused me and subsequently my family ... I don't know how it would be made right. I think a meaningful apology based on an understanding of the harm that he caused me would be a good start.... It comes down to clans and families holding their own accountable and having them take responsibility.

Sarah further explained that she thought "that kind of making things right could be useful to a lot of other women in similar situations". Reflecting on her own experiences, Rebecca said that there needs to be accountability fostered in the community:

We continually celebrate these men and the fact that nobody is admitting to their mistakes. Their family won't admit to it, the community won't admit to it.... And this is impacting a whole generation of matriarchs to be. I think that humbling them in a traditional way, where they sort of have to build themselves back up, and right their wrongs by following ceremony and Haida law could be effective.

These stories are reflective of the impact colonialism has had on the role of women in Haida society. Jennifer noted the role of forgiveness in her own healing from abuse. Offender accountability was an essential component as necessary for a HJS. These women recognised the limitations of the current system in terms of allowing offenders to return and tll yahda with the community. Jack described matrilineal lineage in saying that "the whole society and all property, rights, names, and everything is passed down through our women". The role of uncles and aunties was also passed on matrilineally. Green (2011) suggests that the role of Indigenous women has been assaulted through

colonialism and that “women suffer from the magnified impacts of the deterioration of community and culture because of gendered roles ... and because of women’s vulnerability to male violence” (pp. 18–19), as they are frequently targeted. Sarah further suggested that women need to be empowered and should play an “active role in forming a HJS”.

The community itself may play a vital role in *tll yahda*. Sarah explained the importance *tll yahda* could have in the community in terms of “trying to keep that balance between relationships ... trying to create a space where you can deal with conflict and come to solutions, and not just sort of let things linger”. Two different modern-day potlatches to remedy wrongdoing were mentioned. George noted that there is a potential for potlatch to be used as a part of *tll yahda*: “bringing those types of things forward to where we are now could play a huge role in a HJS”. With Haida justice, there needs to be “a resolution ... for Haida justice, both parties need to walk away and know that’s the end” (Sarah). This kind of resolution was reflected by multiple participants when they noted that once a violation was made right, no-one needed to talk about it again. In one potlatch, things were made right following a violation of Haida law within a clan. Sarah explained the impact of this potlatch: “It was using Haida law, witnesses and payment to move things forward, and resolve disagreements.” The main recommendation offered by participants as the first step towards Haida justice was community consultation.

Haida Gwaii itself was noted as vital to healing, culture and an important element of *tll yahda*. Unfortunately, not all Haida peoples have the means to see all of Haida Gwaii, which may impact their ability to fully grasp their place in the world as Haida peoples. Moreover, some families have been devastated by the impacts of colonialism and have lost important cultural knowledge in terms of food gathering and processing. Alfred (2015) describes the importance of a land-based cultural program in his own community as “absolutely crucial to the cultural survival and the nationhood of our people” (p. 11). The culture and the land itself are vital components to *tll yahda*.

### **Concluding thoughts**

The resurgence and strengthening of Haida culture and law have laid the foundation for the reformation of a HJS. There is a tendency within the settler state to subjugate Indigenous governance and justice as lesser than, in order to assert colonial systems (Green, 2011). Indigenous nations have “found many ways to resist, ignore or overcome restrictions imposed by the federal government” (Coates, 2008, p. 5). The preceding exploration of Haida law and culture illustrates how intertwined they are with Haida justice. You can make it right if you apologise, make payment, and take accountability for your actions in front of witnesses. These concepts, along with Haida law and culture, are the foundation for a HJS. As Sam suggested: “The potential for Haida justice is there, but it has to be done in increments. I think we can build capacity for Haida justice, for sure.”

The present research explored Haida conceptualisations of justice. Participants noted issues around the *Indian Act*, identity and cultural losses, as well as over-harvesting and greed as key justice issues. Justice for the Haida means not only responding to criminal issues, but also violations of Haida law. The Canadian government was recognised as having violated Haida law through imposing colonial systems without consent, genocide, cultural genocide through Identity provisions, the *Indian Act*, residential and day schools, the foster care system, and the Sixties Scoop; and the participants’ commentary suggests that Canada should be held accountable for its actions. Green (2011) explains that “when Canada is prepared to move from denial and repression to implementation of Indigenous

human rights, it will also move from bullying to commitment to post-colonial relationships” (p. 26). The overriding sentiment was that without recognition of Haida rights and title, there can be no justice. In terms of criminal issues, participants noted the importance of addressing trauma, substance use, and both sexual and physical abuse. The solutions discussed by participants would allow for recognition of harm, punishment, accountability and reparation that is often not addressed in the Canadian system.

The Haida have complex justice needs. Perhaps we would be foolish to expect a CJS created by a government that has criminalised us for hundreds of years to adequately meet our justice needs. Nevertheless, Canada continues to modify their existing systems through various processes of Indigenisation (Guitierrez, Chadwick, & Wanamaker, 2018; Martel & Brassard, 2008; Roberts & Reid, 2017). Attempts to simplify, amalgamate and pan-indigenise Indigenous peoples in order to exert control are evidenced in the development of “diversion programs, alternative measures sentencing circles, Aboriginal courts and Aboriginal prisons” (Victor, 2007, p. 16) as sorry attempts at responding to varied justice needs. These changes do little to remedy the fact that the CJS is an imposed system.

The main recommendations from the present study for first steps towards a HJS involved extensive research and consulting key stakeholders and knowledge holders while ensuring female leaders’ involvement. Ben (and other participants) noted the importance of really diving into “stories that have a Haida justice portion to them [to] get a thorough understanding of what those stories are telling you about justice.... Then try to adapt them in terms of what they could look like in a modern sense”. By examining these stories I will be able to further develop the present research. Alfred (2015) notes that “the concept of native peoples in a nation-to-nation relationship with the government of Canada exists historically and legally” (p. 4). The Haida proclamation is representative of how Haida law, culture and sovereignty is intertwined with our very existence. The Haida proclamation is as follows:

The Haida Nation is the rightful heir to Haida Gwaii. Our culture is born of respect; and intimacy with the land and sea and the air around us. Like the forests, the roots of our people are intertwined such that the greatest troubles cannot overcome us. We owe our existence to Haida Gwaii. The living generation accepts the responsibility to ensure that our heritage is passed on to following generations. On these islands our ancestors lived and died and here too, we will make our homes until called away to join them in the great beyond. (Constitution of the Haida Nation, 2018, p. 1).

We must continue to ensure that this legal right is recognised by asserting ourselves as a sovereign nation. The present research demonstrates that Haida tll yahda is a necessary and essential component of that sovereignty. Future research will examine Haida tll yahda in more detail; specifically, the institutions, policies and procedures that need to be put in place for Haida justice.

### **Acknowledgements**

I would like to extend my appreciation to the participants in this study, the Haida Nation and Haida Gwaii itself for guiding me through this research. I would also like to thank Dr Ted Palys for supervising this project and for his thoughtful comments on earlier drafts. Haawa, Haawa, Haawa for your mentorship, guidance and patience.

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<sup>1</sup> As is evidenced by their marginal socio-economic, health and educational status, as well as their overrepresentation in the child welfare and justice systems (Shantz, 2010; TRC, 2015).

<sup>2</sup> This translation was taken from the Skidegate Haida Immersion Program (SHIP) Xaayda Kil Glossary (2016, p. 448).

<sup>3</sup> Two of the eight participants were from Massett. Steps will be taken to remedy this issue in further studies where geographic location is not a limitation.

<sup>4</sup> Pseudonyms were assigned and used throughout transcription and in file names.

<sup>5</sup> Quote from participant Rebecca.