THE INAPPROPRIATENESS OF THE CRIMINAL JUSTICE SYSTEM – INDIGENOUS AUSTRALIAN CRIMINOLOGICAL PERSPECTIVE

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The reality of the inappropriateness of the criminal justice system can be upon the procedures and processes of the formation of this conference in which we participate at. I would like to acknowledge that we are meeting on country that has traditionally been owned by Aboriginal people for many hundred centuries.

On this land, Aboriginal people have performed ancient and sacred ceremonies of celebrations and initiation. Aboriginal Culture is a living culture, and it continues to play a role in the lives of communities in New South Wales.

Many delegates here at this conference have met Aboriginal or Torres Strait Islander people in their own communities, and perhaps have even learnt something about Aboriginal culture. But, many of the delegates – perhaps even most of the delegates - won’t have had any first hand experience of our cultures, and this is not surprising.

The reality can easily be statistical. There are over 18 million people in Australia, but there are just over 300 thousand Aboriginal and Torres Strait Islander people – 2% of the general population – especially for those living in larger city’s and towns – having any sort of contact with Indigenous Australians. On top of Indigenous cultures have been almost invisible until the past few years in many institutions.

When we speak about the appropriateness of the Criminal Justice System, what form of inclusion did Indigenous people have to our law and justice policies and procedures. Three contemporary Australian historians’ research into race relations in Queensland titled their research “Exclusion, Extermination and Exploitation of Aboriginals Race Relations in Queensland” (Saunders, Evans and Cronin 1988, UQ Press). Their title gives apt expression of Indigenous inclusion. The inappropriateness of the current criminal justice system has links to the historical establishment of our Criminal Justice System today in which it serve to maintain order in Aboriginal communities.

Over the past century in Australia thousands of social researchers have developed many disciplines, in traditional criminology. Traditional criminology has been subjected to sharp attacks by researchers within the field of Indigenous Australian Criminology. Indigenous researchers’ criticisms of the traditionalists reached a crescendo in the 1980’s with the formation of The Royal Commission into Aboriginal and Torres Strait Islander Deaths in Custody. In the 1990’s it appears a new level is being reached, combining not only criticism this time of the ‘new’ criminology, but also a strong movement forward to formulating a Indigenous Criminology. The period of 1788 to 1909 will always have significant impact in links of the Indigenous people to the Criminal Justice System as it was throughout this time that our justice system was developed and excluded specifically for this papers purpose Indigenous Australian.

The Human Rights and Equal Opportunity Commission identified in the Inquiry into Separation of Aboriginal and Torres Strait Islander Children from their families a number of events which established the inappropriateness of a justice system is set with major manifestations today which discriminates against Indigenous Australians. This section will briefly touch upon the historical disadvantage which have permeated Indigenous people’s oppressed position in light of the criminal justice system. Each of the below headings have had considerable impact upon a people and a culture and their extermination, exclusion, and exploitation in the development of a just society.
A. The Colonisation
New South Wales Aboriginal people were the first to suffer the impact of European settlers which had little regard for Aboriginal people as a human race. The early colonisation – invasion in the 18th century became the starting point for massacres and the introduction if diseases took a severe toll on the Aboriginal people during this period.

In 1838, following some violent clashes which led to massacres of Aboriginal people, a bill for the protection of Aborigines was drafted with the provisions to protect their just rights and privileges as subjects of her majesty the queen.

B. Missions
Missions and reserves were initially set up as a way of controlling Aboriginal people by restricting them to defined areas and paving the way for European settlers to take over these lands. These missions and reserves meant the same thing to the people forced to live on them. Although not established by churches, reserves were often administered by them and eventually controlled by them.

Missionaries were dedicated to “civilising” Aboriginal people through teaching them to sing hymns, teaching scriptures and training them in ‘useful’ occupations like housework, horticulture, livestock management and some skilled trades.

C. Public Health Act
The Public Health Act 1902 and its regulation included power over people which included powers of detainment eg. Quarantine, compulsory removal to hospital treatment and compulsory screening for infection and covered all citizens. The Aborigine Protection Board and subsequent Aborigine Welfare Board powers encompassed the above regulations.

D. Early Aboriginal Police Relations
The Australian police forces evolved from the colonial military administrations of the convict settlements. It was the role of the early police forces to assist settlers moving into the interior. Policies of dispersal were put into practice to dislocate Aboriginal people from their lands. Punitive action as taken against those who resisted settlement, resulting in the annihilation of many Aboriginal people and group police used total control processes to exclude, exterminate and exploit Aboriginal people for centuries under paternalistic government acts.

E. Prisons
The New South Wales Prisons Act, 1840 was known by the English “separate” system. This involved the total isolation of each prisoner in a separate cell. The prisoner would remain isolated for twenty-four hours each day except for a brief period of silent exercise. It remained in vogue for more than 100 years despite the fact that many prisoners were driven to insanity. Prisoner administrators gave no thought to the potential effect of such isolation or the mental health of the prisoner. Aboriginal prisoners would have been subjected to this total isolation practice.
F. Developments in Child Welfare 1909

A number of Acts came into existence in the history of child welfare in Australia, which have affected the processes of our justice system in dealing with our young people.

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<tr>
<th>Year</th>
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<tr>
<td>1800</td>
<td>Female Orphan School</td>
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<td>1819</td>
<td>Orphan School for Boys</td>
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<td>1826</td>
<td>Orphan School Act</td>
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<td>Apprentices Act</td>
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<td>1849</td>
<td>Act for the Care and Education of Infants who were convicted of a felony or misdemeanor</td>
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<td>1866</td>
<td>Industrial Schools Act</td>
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<td>1876</td>
<td>Inquiry into Randwick Asylum for destitute children</td>
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<td>1881</td>
<td>State Relief Act</td>
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<td>1891</td>
<td>Children’s Protection Act</td>
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<td>State Children’s Relief Act</td>
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<td>1904</td>
<td>Infant Protection Act</td>
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<td>1905</td>
<td>Neglected Children and Juvenile Offenders Act</td>
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<td>1907</td>
<td>Children’s Relief Board</td>
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The following philosophy was carried out on in the dealings with Aboriginal children under these Acts. There were eleven categories of ‘neglected children’ under the Acts:

1. Those living in a brothel or with thieves or people with no visible means of support
2. Those with no visible means of support or no fixed address
3. Those who beg or are homeless
4. Those ill-heated, exposed, or without food, clothing, nursing or lodging
5. Those engaged in dangerous performances
6. Those found street trading
7. Those whose parents are drunkards
8. Those females who solicit upon
9. Those found in any place where opium is smoked
10. Those living in conditions indicating that they may lapse into a career of vice

Indigenous Criminology Current Information

This historical analysis is critical in understanding from the paradigm shift of thought the Indigenous Criminological theory is necessary in establishing a connection with the disadvantages in which Indigenous people continue to be suppressed in our current criminal justice processes.

These issues above reflect an opportunity to develop and establish core courses or a required courses in Indigenous Criminology in this country. These issues discussed briefly are reaching main stream disciplines of thought as an existing knowledge in its own right. However, unfortunately much Indigenous programs / courses are passed off as general knowledge. Indigenous people’s experience of the world is marginalized through segregation into specialised course work and occasional lectures.

Indigenous Australians representation throughout the criminal justice processes is the most significant analytical area of research which social scientist continue to probe, analyses and record data. In fact the reason for the inexhaustive data collection is maintained upon the
findings of Cunneen and Libesman (1995) There research argues that, “On an Australia wide basis an Aboriginal was 27 times more likely to be in police custody than a non-Aboriginal, and the figure 15 times in New South Wales, 13 times in Victoria and three times in Tasmania. Australia wide an Aboriginal was 11 times more likely to be in prison than a non-Aboriginal, and in New South Wales eight times, in Victoria 12 times and in Tasmania three times. (1995,59)

Indigenous Australians are vastly disadvantaged within every aspect of the criminal justice procedures. The research of Lincoln and Wilson had found from early studies conducted on the incarceration rates of Aboriginal Australians that “Aboriginal people are arrested more often than non-Aborigines; that they are most often charged with ‘good order’ offences; and that they are vastly over-represented in prisons.” (1994, 63)

Perhaps the Royal Commission into Aboriginal Deaths in Custody which gathered volumes of data in the analysis of the 99 Aboriginal deaths in custody became the impetus of research into the disadvantaged position Indigenous Australian Criminologists have been in. The findings of the Royal Commission identified the deaths of a majority of the Aborigines who died in custody as being preventable if basis procedures and a sense of duty of care was undertaken. The 339 recommendations handed to the Federal, State and Territory Governments were to consider the full implementation of the Royal Commissions recommendations. Fundamentally the most central theme throughout the recommendations had been self-determination.

**Indigenous People and Law Enforcements**

Indigenous Criminology can not be detached from these current political issues that revolve upon Indigenous issues and the criminal justice system. In one example that this paper will address “Indigenous People and Law Enforcement”. Indigenous Criminology takes the conceptual approach in Aborigines and the police as a fundamental topic in understanding the perspectives of policing from an Indigenous point of view.

Aborigines and Policing have become a synonymous term. For many, Indigenous people, police discretion is the primary factor and cause of high rates of apprehension of Aborigines. The way in which Aboriginal people are manifested by the number of Aboriginal and Torres Strait Islander person in custody, is a major manifestation of the inappropriateness of the Criminal Justice System in Australia, particularly where police powers can often be the determinant of an Indigenous person in police custody. Cunneen and Libesman’s research arguably point out that “the highest over-representation of Aboriginal people in police custody is in the area of public order offences where police discretion is the greatest determinant of who will be detained or arrested and what they will be charged with” (1995,60)

Police exert tremendous powers and control over a culture that is not understood by non-Indigenous people. Our class society continues to operate with mechanisms of oppressing the Indigenous people within Australia. Sidney Harring’s research in 1994 identified that class is variable in considering the impact it has upon policing Aborigines. Harring argues that class society alienates political power from most of its citizens and uses the criminal justice system to coercively maintain an order that it organically maintains (1994,76). It would be easy to dismiss the whole issue as a function of political oppression and powerlessness. But it is much more complicated.
It is interesting to note that much sociological literature surrounding Aborigines and policing has much to say upon the social, economic and political oppression in which Aborigines have. O’Neill and Handleys’ research in 1994 into Indigenous people in the criminal justice system is a very real experience in which many Aborigines face with to this day. They contend that “the introduced criminal justice system [continues to be] used by many to oppress Aboriginals. [Further they add] the way the criminal justice system is administered is a major manifestation of the rest of society’s prejudice against Aboriginals” (1994,409).

In many respects the labeling theory of crime which labels who is criminals is often the portrayal which police have had politically defined for them of who is a criminal and who is not by definition of racial background. In South Australia where the research into Aborigines and the police and criminal justice administrative are efficiently collated for analysis purposes. Researchers such as Bailey-Harris, Gale, and Wundersitz have analysed the attributing factors of why police arrest Aborigines gave two reasons, that is race and police discretion.

Indigenous Criminology is still in infancy of paradigm development. The effects of Indigenous Criminology has potential impact for Indigenous people, and communities. The conceptualisation of race as a variable for criminal justice intervention can not be ignored. Our corrective institutions are evidence of race discrimination. Aboriginal and Torres Strait Islander people are over represented in corrective service institutions.

Discrimination and racism have been important factors in considering the reasons for the significant high number of Indigenous people who are involved in the criminal justice processes. The impact and comparative difference in which racism has on Aboriginal people cannot in reality be proportionately equivalent with what non-Aboriginal people suffer from.

Commissioner Dodson explained the Indigenous perspective in the following:

Social Justice must always be considered from a perspective which is grounded in the daily lives of indigenous Australians. Social Justice is what faces you in the morning. It is awakening in a house with adequate water supply, cooking facilities and sanitation. It is the ability to nourish your children and send them to a school where their education not only equips them for employment but reinforces their knowledge and appreciation of their cultural inheritance: a life of choices and opportunity, free from discrimination. (1995)

Racism and discrimination for Indigenous people is a very real existence. It exists in many forms of socio-economic living, to existing in government institutions. Basically racism and discrimination exists in every aspect of life where one group has more power than the other. The main area where inequality and discrimination is widely apparent in Australia is the relationship between the criminal justice system and Aboriginal people.

Racists remarks, and stereotypical ideas and perceptions by a majority are common to a disadvantaged group. The level of racism can be appalling and very widespread in our society. In fact “racism is entrenched in every aspect of Australian society. It is tied up with historical, economic, political, cultural and religious interests.” (Adler, B. Barkat, A. Bena, S. Duncan, R. and Webb, P, 1981,9). McConnochie, Hollingsworth and Pettman in Race and Racism in Australia (1988) analyses the concepts of racism in Australia to the point of indicating minority groups who by biological difference and cultural difference are discriminated significantly in Australia. In addition the cycle of poverty has implications upon how we perceive, express, and develop racism in Australia. According to Foley, “Australia’s history since the British entry in 1778 to a land, peopled by [Indigenous population] has been one of racism and racial discrimination which persist strongly.” (1989,171)
In relation to the criminal justice system, Aborigines are subject to “constant humiliation, police intimidation and repression from the time they are born.” (Harris, 1972, 110) Lincoln and Wilson point out further that racism to Indigenous Australian’s within the criminal justice process is not just understood as subjective remarks. They argue that “police discretionary powers or racism in operation is one of the reasons for the high rate of Aboriginal incarceration.” (1994, 73) In 1997 the New South Wales Police Service endorsed the NSW Police Service Aboriginal Strategic Plan and Policy Statement. Under the same strategic plan in 1996 the strategic plan had as its fifth guiding principle the elimination of Racist and Discriminating behaviour within the NSW Police Service. In 1997 the Aboriginal Strategic Plan had been researched by the Minister’s Policy Advisors and found that police discretion impacts considerably upon the number of Indigenous people held in police custody within New South Wales.

The NSW Police Service Commissioner Ryan and Minister of Police endorsed the Strategic Plan in 1997 and now records the first guiding principle to be “the elimination of racist and discriminating attitudes not to be tolerated within the NSW Police Service.” These changes have occurred as a matter of priority in initiating innovative local policies to local area commands in reducing the over-representation of Aboriginal people in police custody in New South Wales primarily due to the bias of police discretion by police officers towards the Indigenous community.

Cowlishaw’s research into racism and discrimination within the Australian criminal justice system records that, “that police discretionary powers or racism in operation is one of the reasons for the high rates of Aboriginal incarceration.” (in Lincoln and Wilson, 1994, 73) Racism has contributed to the disproportionate high imprisonment rate of Aborigines into Australian goals and indeed a factor to take into consideration for the high imprisonment rates of Aborigines. Lincoln and Wilson found that, “the discriminatory attitudes and actions of many members of the police force are important contributing factors to the existence of disproportionate numbers of Aboriginal persons in...Australian goals”. (1994,75)

In 1990 an analysis of research was conducted in policing Aboriginal communities in NSW. During November 1990 five members of the Australian Section of the International Commission Jurist (ICJ) visited Bourke, Brewarrina and Walgett in North West NSW to report on Criminal justice administration with particular reference to Aboriginal people. The ICJ report recorded evidence supporting discriminating administration towards the Indigenous people. The ICJ documented;

That there are many complex issues involved in such a seemingly simple notion: including the nature and extent of the police intervention; local rates of offending; and official rationales for the allocation of police resources...The bottom line is relatively straightforward. Aboriginal communities have disproportionately large numbers of police stationed in their vicinity. Such differential allocation of policing resources to Aboriginal communities can be seen as discriminating. (Cunneen,1993,53)

Chan’s research into police racism has been quite clear in documenting that police racism refers to the process whereby police authoritative stigmatise, harass, criminals, or otherwise discriminate against certain social groups ‘on the basis of phenotypical or cultural markers, or national origin’ through the use of their special powers’. Like other forms of racism, police racism is not a static or simple phenomenon: ‘it arises in differing situations, takes many forms and varies intensity according to time and place. (1996,162)
In many ways racism and discrimination is dealt differently by each police officer, and in many cases police who do use bias discretion may feel that they are just doing their jobs as they have been taught. This form of racism though not factually evident from empirical research is in a general sense a form of indirect racism. In any case, police officers believe they are correct in their duties, as their definition of who is a ‘suspect’ and basic ‘common sense’ had been politically defined for them. This includes the fact that Aborigines are easy targets for police activity. Rees’ points out the issues associated with Aboriginal people as easy targets;

Many offenders are not difficult to apprehend, because alcohol is often involved and the crimes are not well committed. Due to community and leadership pressure the police seek to achieve a good ‘clean up’ rate of reported crime. This combination of factors can lead to what has been described as ‘loading up’ or ‘bulk billing.’ The Aboriginal offender is an easy target. A person may have committed two offences but finds that he or she is charged with 20. (in Lincoln and Wilson, 1994, 73)

Racism begins from early age for Aboriginals people. Cunneen’s extensive research into Aboriginal juveniles and the criminal justice processes in Australia records that Aboriginal Juveniles were experiencing racist language by police and “overall 81 percent of respondents complained of the use of racist language by police officers... the language allegedly used by the police officers included ‘Abo’, ‘coon’, ‘black dog’, black bastard’, ‘black sluts’”. (Cunneen, 1991,7-8) A recurring theme in the history of debates about public order legislation in Australia has been concerned about the manner in which Aboriginal people have been treated. Jochelson’s research indicates “more recently, particular reference has been made to situations where an arrest for a single minor offence such as offensive language or offensive behaviour, provokes altercation with police leading to further serious charges such as resist arrest and assault police.” (1997, 1) Commissioner Wootten in the inquiry into the death of David Gundy echo Jochelson’s concerns;

It is surely time that police learnt to ignore mere abuse, let alone “bad language”. In this day and age many words that were once considered bad language have now become common place and are in general use amongst police no less than amongst other people. Maintaining the pretence that they are sensitive persons offended by such language... does nothing for the respect of the police... Too often the attempt to arrest or charge an Aboriginal for offensive language sets in train a sequence of offences by that person and others resisting arrest, assaulting police, hindering police, and so on, none of which would have occurred if the police were not so easily offended. (1997, 1)

This language used by police often initiates violent behaviour by Aboriginal offenders. Chan’s extensive research into police racism elaborates upon the assumptions which police have on the Aboriginal community and the relationship with crime, in her research Chan identified that there is clear evidence of prejudicial attitudes and the regular use of racist language among police officers (1996,162) Chan points out that similar complaints are found in Australia. For example, police have been accused of forming stereotypical opinions about the criminality of certain groups (Ethnic Affairs Commission [NSWEAC] 1992,Section 2B4) Chan identifies throughout her research that Criminologists like Cunneen and Rob (1987) found that Aboriginal people have been blamed by sections of the New South Wales population for various forms of social disorder. Chan points out that “It is therefore not surprising that police officers form similar associations between Aborigines and criminality.” (1996,162) Clifford suggested further that the “real problem is not Aboriginal or social but lies with the discriminatory operation of the criminal justice system - that policemen are too ready to arrest Aboriginals or the poor and the courts are too prone to imprison them”. (1982,4)
Any fair reader of the pages of discrimination towards Aboriginal people throughout the criminal justice processes would identify a sense of disquiet, even shame, at the way in which the Australian legal system has operated in relationship to Aboriginal Australians. Harring argues towards the concept of due process, a fundamental ideal of our legal system, and currently an important issue. Harring indicates “[Indigenous people]...get none: the police arrest them, write up routine jail sentences, with a total lapsed time of five minutes or less. Every legal worker knows this, yet, again, this escapes critical analysis because ‘they are all guilty anyway’” (1994, 74). Harring outlines that “a critical factor in discrimination in enforcement patterns, as well as the deliberately overboard language used in the drafting of public order statutes so as to not only permit but actually encourage selective enforcement is well established in critical research on a day to day operation of criminal justice institutions...the solutions are structural and lie in Eggleston’s call for [Indigenous] self determination” (1994,74).

Direct racism towards Indigenous people often results in an escalation of violence, degrading words and statements derives violences. The following case study illustrates the racist violence Aboriginal people suffer from.

In Mullawa (W.A) in 1985 there was a clash at the local Railway hotel between an Aboriginal (Blinky Simpson) and a drunken publican, a former police officer. The publican gave derogatory remarks to Simpson; as a result of these words violence occurred and Simpson died the day after being slashed by the publican. A Western Australian report, announced “Simpson died in the publican’s arm, the court will decide what those arms were doing.” The Aborigines of Mullawa approached the hotel after Simpson’s death armed with the railway nails demanding to place justice upon the publican. However, the publican was driven out of town by detectives to Geraldine. He was not taken into custody, nor was he charged. He was let go freely after violence escalated from derogatory remarks without proper justice. (A.B.C., “Black Death”, Video Recording)

Similar incidents have occurred throughout Australia, in a further case study of Eddie Betts, (Perth, October 9, 1987) Eddie was the sixteenth Aboriginal to die in police custody as a result of discrimination. (Dodson, 1987,4) The death of Edward Murray in Wee Waa is certainly a further death in custody to consider suspicious circumstances by police custodial officers. As was the death of Mark Quayle, the Coroner’s findings reported for both these deaths were stated throughout the commission that they died at the hands of a person or persons unknown. The Redfern raids in February, 1990 which involved 135 police from the Tactical Response Group, Anti Theft Squad, The Rescue Squad and other officers including Redfern Police arrived in the early hours of the morning. The justification of the raid had been reportedly conducted at request from the community over concerns about the growing incidences of crime and heroine abuse in the area during the previous 3 months. Coincidentally on this point, it is worth considering that from the available evidence it appears that the raid netted one charge for the possession of an implement for the use of drugs, arising from the alleged confiscation of “two bongs”. (Cunneen, 1990,21) The Chief Superintendent Peate justified the raid in the following comments.

Our surveillance activities can’t operate in a place like the black community. You stand out like you know what. Where do you survey the activity of people when they are all the one breed? So you have then got to look at alternative methods and that was what today was all about. (Sydney Morning Herald 9/2/90,p.2, In Cunneen,1990,22)
On the 24 August 1989 the Human Rights and Equal Opportunity Commission’s National Inquiry into Racist Violence conducted a public hearing in Redfern to gather evidence for its inquiry into racist violence. According to Tiga Bales, police brutality ‘takes place almost every day in Redfern’, the violation of rights and the brutality ‘takes place is a regular occurrence’. (Taken from Cunneen, 1990,12) Davis’s comments are central in justifying these alternative methods of treatment “The criminal justice system is routinely concerned with processing petty offences with socially marginalised individuals. Aboriginal people are extremely disadvantaged as victims and offenders”. (1996, 69)

These events are major disadvantages for Aboriginal people. Aboriginal people have suffered oppression continuously and have resorted to violence as a means to get even. However, their violence leads them into the criminal justice system where they suffer larger repressive disadvantages. Foley comments stir the reality that the “Aborigines have been and continue to be consistently placed at a serious and systematic disadvantage in their contact with the criminal justice system. This is reflected in high arrest, charge and conviction rates and a disproportionate number of committal to goals.” (1989,171) These such examples are negative factors for Aboriginal people and inevitably these factors push the rate of Aboriginal offending and arrests up. The significant disadvantage comes from attitudes by esteemed non-Aboriginal people who hold enormous power over Indigenous people such as the following comments from a magistrate. It was only in 1979 that a New South Wales magistrate described Aboriginal people as “a race of pests.” (Cunneen, 1993,77)

Cowlishaw argues this point further that while in custody and prior to custody “…racist discrimination lay behind the deaths which was seen to come from the statistics on deaths in police or prison custody which indicated a huge over-representation of Aboriginals. [Cowlishaw adds]... the newspaper reported that if non-Aboriginals were dying in custody at the same rate there would have been 2,562 deaths in two years. “ (1991, 102) Throughout Cunneen’s and Libesman analysis within this area they record similar evidence to the argument of the rate of deaths in custody. They record, “Commissioner Hal Wootten notes his disparity between the rate of Aboriginal and non-Aboriginal deaths in custody: Had non-Aboriginals died in custody during the period investigated by the Royal Commission at the same rate as Aboriginals there would have been roughly 7,400 non-Aboriginal deaths rather than 400 which did occur. (Wootten, 1991, 21, Cited in Cunneen and Libesman, 1996,59)

In 1996 the National Directory of Aboriginal and Torres Strait Islander Organisation reported “Aboriginal...people continue to be heavily over-represented in statistics for the criminal justice system...At 30 June 1993, 1 in 7 prisoners were Aboriginal or Torres Strait Islander”. (1996,47) The ICJ report also noted that it was “invariable the practice’ for the police to arrest and charge persons for summary offences rather than proceed by way of summons or court attendance notice...” (Cunneen, 1993, 153). Interestingly the ICJ quoted approvingly from the Royal Commission into Aboriginal Deaths in Custody report criticising, unrealistic and onerous bail conditions which set the defendant up for failure. (Cunneen, 1993) (See also Dodson, his report documents the poor state of affairs with Indigenous Juveniles within the Justice System, Third Report 1995, Chapter 1, Juvenile Justice. p13-41)

The disadvantaged position Indigenous Australian’s suffer from is quite significant. In fact the Melbourne Age recorded “Aboriginal...youths were suffering from the discretionary powers of police [Mr Michael Mackay who conducted the research as a research fellow from the Monash University]... pointed out that the arrest rather than caution approach even extended to minor street offences such as offensive language or offensive behaviour” (in Tim Pegler,1996,10)
Harring’s extensive research into racism and ethnocentrism towards Indigenous Australians comment in the administration of justice are valuable to conceptualise, Harring records “the criminalization of a people: [relies upon] the massive use of criminal justice institutions to destroy Aboriginal culture and isolate and control Aboriginal people” (1994,69). Eggleston’s research into discrimination towards Indigenous Australians has been quite clear in showing “racial discrimination is in every area of criminal justice: police discrimination in arrest patterns, judicial discrimination in the total process, racial discrimination in prison, and special law that both criminalised and infantilised [Indigenous]...people” (In Harring,1994,69) The magnitude of the discrimination emerges in simple statistics,: for Western Australian Aborigines, while 2.5% of the population were defendants, 11% of criminal charges brought, and constituted 22% prison inmates of an Aboriginal population of 21,890, 7,357 were convicted of crimes, 33% of the total population. (Data taken from Harring,1994,69)

A further factor to consider upon the appropriateness of the criminal justice system can be easily understood in terms of the powerless status of Indigenous people within the Criminal Justice System in many ways their daily lives according to institutional culture consist of incidents which serve to only reinforce the fact that they do not belong to the mainstream of society. Hayes points out, “the life circumstances which contribute to, and are related to, their minority group status - unemployment, lack of stable family supports, social isolation, poor educational background, and insecure residential situation - are the very factors which will also exacerbate their differential treatment within the Criminal Justice System.” (1996, 317) In every aspect and arena throughout the Criminal Justice System for Aboriginal men, women and children each suffer severe disadvantage. Mukherjee claims that “there is significant over-representation of Aboriginal people in the criminal justice system.” (1996, 87)

Eggleston recorded in O’Neill and Handley, Retreat from Injustice, “Aboriginal people are much more likely than whites to be arrested for criminal offences and, despite improvements in the law, to be denied bail.” (1994, 413) A year later Michael Dodson, Social Justice Commissioner, Aboriginal and Torres Strait Islander Affairs made further references in his National report to the equal opportunity Commission of the powerless status Indigenous people continue to suffer from in terms of being disadvantaged with reference to alternative uses of imprisonment. Dodson arguably stated “Indigenous people are more likely to be arrested than receive a summons; more likely to be refused bail; more likely to receive a detention order.” (1995, 17)
Conclusion

The depth and extent of discriminate treatment suffered historically by Australia’s Indigenous people make it inappropriate to equate the experiences of Aborigines with those other minority Australians. Chan has recorded “certainly, the legal system, until recently, accommodated the dispossession of Aborigines of their own land, as it was impotent in stopping the murder of 20,000 Aborigines in the course of European occupation”. (1996, 162) In essence it was found the later factors primarily resulted from the invasion to the Australian shores and dispossession of the Indigenous people of this continent.

In reference to Cunneen and Libesman statistical research that Aborigines are 27 times more likely to be in custody than non-Aborigines, if there is any likelihood that this disproportionate figure will decrease non-Indigenous people must come to understand the real issues that have resulted to the Indigenous position in society today. It is easy to talk about improving Aboriginal - police relations and place it solely on either shoulders, however this will not work. The question which should remain very close to the surface with Aboriginal-police relations which is crucial. Is there an expectation that is essentially at stake in Aboriginal - Police relations? Chan points out there is, but defers any hope. She adds “there is no reason to expect that policy statements, cross-cultural training, recruiting police officers from minority groups, or the introduction of community policing strategies would make any difference, apart from improving the ‘public relations’ image of police organisations”.

Dodson’s argument can be reassuring in emphasising the appalling relationship, but both Indigenous people and criminal justice authorities need to consider Dodson’s statement. “The heart of any sound relationship involves a level of respect and understanding of each culture, lifestyle and very existence, it includes respect for and defence of each others basic human rights.” (Dodson, 1987,5) Dodson’s submission to the social justice package was founded on a rights-based approach - that is, Aboriginal and Torres Strait Islander people have certain human rights, and political, economic and social structures must be designed to up hold them. However, Dodson adds “What is happening now is just the opposite - the rights of Indigenous Australians are suffocating underneath a plethora of discriminatory laws, confused and iniquitous administratve arrangements, and a system that knows a lot about control but little about empowerment”. (1996, 26)

A continual recognition of Aboriginal culture, past and dispossession should be able to penetrate the criminal justice personnel, this is the relevance of Indigenous Criminology. Only when non-Indigenous people will want to understand the real issues of the disproportionate rate of Indigenous people in Australian goals, will we then begin to see the relationship beginning to change between Indigenous Australians’ and non-Indigenous Australians’ a proposed radical change must occur, a transformation of understanding Indigenous Criminology. If not the reality is Indigenous people will continue to be oppressed by the white ruling authorities, and custody levels will continue to escalate for Indigenous people. A crisis is approaching if there is no change;

Five years ago the Royal Commission into Aboriginal Deaths identified the over-representation of our kids at every level of the juvenile justice system as having “…potentially dangerous repercussions for the future”, [emphasis added] that dangerous future has arrived.
At one level it is a simple matter of arithmetic, consider this,

- 22 percent of the whole population is under 15 years of age, 40 percent of the Indigenous population is under 15.
- 7 percent of the whole population of Australia is under 5 years of age, 15 percent of Indigenous population is under 5.

Proportionately, we have about double the number of young people in our population than does non-Indigenous society. If we combine these demographic figures with the current imprisonment rates for Indigenous youth, and project them a few years into the future, the implications for our kids become clear:

- in 6 years, by 2001 there will have been a 15 percent increase in the number of Indigenous kids in detention.
- in 16 years, 2011 there will have been a 44 percent increase in the number of Indigenous kids in detention.

This is the crisis. It is on us already. It will simply become more acute in the future, as our kids, who are now babies, move with the relentlessness of mathematics into what has become their birthright as the Indigenous children of this country. (Dodson, 1995, 16-17)

Nevertheless, ignorance and prejudice have become the popular wisdom about Aboriginal people in Australia irrespective of startling evidence that show Indigenous people disadvantaged socially, politically and economically. Dodson argues,

> Turn on the talk back and you will hear the wisdom: Those greedy Aborigines are living in paid for houses, off hand outs or government subsidies jobs they did not deserve, busy getting our places at Universities and getting rich off the millions of dollar’s we the tax payers have paid into their pockets to piss up the wall or defraud. They are the problem. Fix that and you will not only restore society to a fair and equitable place - you will get rid of the budget deficit. (1996, 26)

The underlying issues identified throughout the paper represent a significant political opportunity to finally recognise the full scope of the injustice that so many Sociologist, Criminologist, and Social Researchers have documented. Yet, it must be clear that for a liberal nation - state to officially recognise two hundred and nine years of racism, class violence, dispossession of land, and the smashing of native communities as “underlying causes” carries a political price tag that few liberal governments including Australia’s own quite recently will not pay. For this reason, the impact of the Royal Commission into Aboriginal Deaths in Custody work and other commissions will be very limited. Harring adds further to this that “In the Commission’s published reports much of its work represent a broad range of petty issues, from building better jails with more physical precautions against suicide and painting jail cells less depressing colours than prison green, to standard recommendations of improved police / community relations”. (1994,82) These initiatives provides policy makers with band aid type solutions that do not fundamentally reach any of the major issues. There is a high likelihood the recommendations of the Commission will go the way of the Commission on the Recognition of Aboriginal Customary Laws, (Harring, 1984) which sit upon the shelves of many academic institutions being analysed by social researchers, never to be implemented.
The solution to these problems was not liberal reforms of existing criminal justice institutions and processes, rather Eggleston’s solution is urging “that Aboriginal peoples be given the right to self government, including the right to maintain their own forms of law” (In Harring,1994,69) LaPriarie adds “for some, Aboriginal control over justice appears to be the moral road to repudiation of previous government policies. The acknowledgement of overt discrimination in the state justice systems and the creation of new, Aboriginal controlled systems are the way to solve the contemporary ‘over-representations problem’ (1995,524).

The impetus in reminding Australians on Aboriginal issues relative to law and justice has occurred through the major volumes of literature on Aboriginal Customary Law by the Australian Law Reform Commission and the Royal Commission into Aboriginal Deaths in Custody. Quite recently the 700 page volume of ‘Bringing Them Home’ (1997) by the Human Rights Commission documented the traumatic and extensive inhumane political approaches of forcibly removing Aboriginal children from their families. Harring’s comments are vital to note that no one needs to remind critical sociologist of law that the creation of such Commissions serves liberal political functions that often are directly intended to defuse effective criticism that has put criminal justice institutions on the defensive. [She adds] there is no question this has occurred in Australia, testimony to the effectiveness of all the research effort, but also a challenge to keep up this research effort and not let it end in a few liberal reforms. (1994,82)

Aboriginal people have moved closer to some measure of self-determination, and the idea of Aboriginal control of their dispute resolutions mechanisms, beyond even the imagination of policy makers, only ten years ago. However, it has recently been introduced into government policy agendas. Beyond this, individual victories have been won on a case by case basis. While such victories are statistically illusory, the numbers of Indigenous people in jail are nowhere declining - each individuals’ freedom is victory that counts.

It is important to conclude by emphasising the plight for many Indigenous Australians, it is the past that permeates the present condition of police and Aborigines relations. The invasion of Indigenous Australia and ‘Terra Nullius’ has never been a greater crime in all Australian history. The protection era administered by the welfare system had it’s assumptions that the Aboriginal people were a dying race. The assimilation policy ignored that Aboriginal people had been in Australia from the beginning, that Indigenous people had indeed shaped the nation, its society and history from the time of white settlement. To fit in, Indigenous people had to stop identifying as Aboriginal. Non-Indigenous Australians’ need to be accountable whether this be by education or affirmative culturally significant policy, after all it is within our life time that white culture, the oppressor, has placed and is continuing to place Aboriginal people in the oppressive position they are in today.
Bibliography


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