230950

AN APPROACH TO ABORIGINAL CRIMINOLOGY

(John Barry Memorial Lecture 1981)

by W. Clifford
Director,
Australian Institute of Criminology

Australian Institute of Criminology 1982

Published and printed by the Australian
Institute of Criminology, 10-18 Colbee
Court, Phillip, A.C.T. Australia, 2606

Clifford, William, 1918-.
An approach to Aboriginal criminology.

Bibliography.
ISBN 0 642 89187 7.

(1) Aborigines, Australian - Crime
I. Australian Institute of Criminology
II. Title. (Series: John Barry memorial lecture).

364.3'49915

INTRODUCTION

Having known most of those who have preceded me with such distinction on this platform, I am conscious of the honour and aware of the obligation of the invitation which I have been privileged to receive. I realise that there are others far more worthy to be addressing you tonight. My subject is, indeed, one which attracts the experts of this era. Yet there may be none more in need of the opportunity to come to terms with the lingering mystique of J.V. Barry.

I never had the good fortune to meet Sir John. I always seemed to just miss him. He was negotiating with my predecessor at the United Nations for a United Nations Institute for the Prevention of Crime to be set up in Australia. He did not succeed and the UN Institute went to Japan. However, when I reached Japan as the last UN adviser to the Institute there, I had just missed a visit which Sir John had paid as an outside expert - and I was made to feel that it had been my loss. Then, when I arrived to take over the Australian Institute of Criminology I found that my library had already been named the J.V. Barry Memorial Library and his photograph faced me in the hall. A few months ago, in a secondhand bookshop in Christchurch, New Zealand, I found a copy of the posthumously published three lectures which he had been invited to deliver there just before he died - and when I returned to my office a friend in Hobart had sent me for our library collection a mimeographed lecture of Sir John's - on the subject of old age. [1]

Sir John Barry has, therefore, been before me, around me, and I like to think, behind me in what I have been doing for the past 15 years at least. Tonight, in doing something to perpetuate his memory, I feel that I am somehow fulfilling his expectations. I am sure he will know that I am seeking to encourage rather than exorcise his ghost. It is reassuring to know that such a distinguished lawyer continues to influence current affairs.

And the title suggested to me for the lecture tonight brings us to the very heart of current affairs. It is tragic, challenging and emotive. The Aboriginal problem and the modern plight of these ancient people has developed in recent years into a virtual growth industry for politicians, civil rights interests, the artistic sub-cultures, publishers, lawyers and academics alike. The anthropology has been popularised and political scientists, sociologists, psychologists, as well as a whole range of doctors, health officials, mining companies and social workers are immensely concerned and deeply involved in the struggle for the survival and identity of a race once thought to be quietly dying out. What a difference to those early years of indifference and open hostility. Yet in relative terms there are a great many features of the modern Aboriginal situation that make it seem worse than it may ever have been. So at the Third General Assembly of the World Council of Indigenous Peoples the main speakers for the Aboriginals talked of their need for support in a struggle against "genocide, dispossession and suppression".

At the cutting edge of the contact between black and white communities in this country is the law and particularly the manner of its enforcement. Its gross injustice to the Aboriginal, in its present form - or the dangers of the injustice to others of allowing too many exceptions for Aboriginals - are issues that have been paraded by scholars, agencies and departments again and again. The resolution of the problem will undoubtedly be as political as it is technical or scientific - and whatever happens the well-aired debate can be expected to continue.

Aboriginal criminology should mean a concern with the concepts of crime amongst Aboriginals and their methods of social control. But because this is a community subject to the laws of a wider society, one needs to be equally concerned with Aboriginal perceptions of white man's law and the effects of its enforcement on Aboriginal communities. Just how fair is it? In any such study, however, the subject is turned upside down by one phenomenon of such immense importance that it forces us to give it prior attention - namely the extent to which Australia's criminal justice systems are overburdened with arrested and convicted Aboriginals.

IMPRISONMENT IN CRIMINAL STATISTICS

Allow me a moment on crime generally and on the significance of imprisonment rates. When the United Nations took over the subject of crime in 1950 or so, the first move was to discover the size of the problem. You know that they developed indicators for population, malnutrition and illiteracy. They wanted one for crime. Logically, criminal statistics had to be developed to inform academic and public policy. After several years of concentrated work and some expensive investments in the time of the world's most appreciated talent in crime and statistics, the exercise was abandoned. The official figures for crime could not measure the amount of crime in a society - only what the police and courts had done about that amount of crime which was reported. Changes in the laws of different countries, changes in police policies and discretion, no less than varying standards of evidence, made it clear that concepts and practice undermined the validity of official statistics as measures of crime. Since then we have improved our methods, developed a variety of self-reporting and victimisation studies and learned to what extent official figures can mislead if not read against changes in population, health, education, welfare and housing - as well as against changes in political authority, police forces and resources generally available for criminal justice. So, although we still call for more efficient and effective criminal statistics - including Uniform Crime Statistics - in this country, we have no illusions about their limitations. They don't tell us too much.

Then in 1971, whilst I was still responsible for this work at the United Nations, I sought one simple index which would be reasonably valid, which would be difficult to twist in interpretation and which would be indicative of the level of criminal justice in the various systems of government around the world. Of course, the level

of recognition of human rights came into this too. After checking with statisticians and criminal justice experts, I decided to ask all Member States to inform the Secretary-General how many persons were held in prison on 1 December 1971. You might play around with other figures but it is a simple counting exercise to give a figure for those who had to be fed on that day. Then, by comparing this figure with national populations, we could get some ideas of punitiveness in world societies. Of course one could lie - our task was to find a method valid if people were honest. The figure could still be artificially reduced, of course, by having political detainees who were not called "prisoners", by abstracting those on remand, or simply by writing down the true figure to a lower level by just not including some institutions. Obviously many Member States did not reply at all. But over forty, i.e. one third, did - and this gave us a basis on which to evaluate our criterion. It proved more indicative than we had expected; and for the first time, when the figures were published, it aroused great interest in the differences - in a place like Holland with only 20 per 100,000 imprisoned, as against 80 per 100,000 in the U.K., 250 per 100,000 in the U.S.A. and 400 per 100,000 in some States of Africa. Above all, it had a very valuable effect in raising awkward speculation about countries that were not willing to give the figures and over the years the number of States reporting has increased so that gradually we have a valuable indicator of the state of criminal justice in a large number of countries.

I continued this work in Australia when I arrived, seeking first to get the figures for daily average prison populations from States and then to obtain comparable regional figures. I would be less than fair here, however, if I did not pay tribute to the yeoman work of my Assistant Director of Research, David Biles, who worked with me on getting the coordination and cooperation of States and who has since been responsible for developing what amounts to a sensitive Australian indicator since 1976. He also followed up the work I did in the region to get comparable figures, so that his tables are now the basis for much of the analysis of prison trends in this country and the region. To complete this picture, I should also give credit to Dr. Mukherjee and Ivan Potas, who have collated with the cooperation of the State Administrators similar quarterly figures for juveniles under detention and for the use of probation and parole. To show you how sophisticated all this has become, I would like to reproduce the figures from the June issue of our AIC newsletter the "Reporter". This I have provided in Appendix 1.

The point I wish to make before continuing is that rates of imprisonment are the best criminal justice indicator we have got at the moment. Moreover, we believe that they are eloquent reflections of the levels of tolerance and punitiveness in society, particularly as the link to crime rates is not as direct as one might expect. Therefore, when, in a society, rates of imprisonment rise for a particular group in that society, we need to worry about discrimination in our system. Whilst I hardly need to repeat here what has been widely publicised about Aboriginal rates of imprisonment to make the case, I do believe we should be collecting regular information for minorities' imprisonment. So far this has not been possible. Indeed, it has been resisted as a

form of apartheid. The Northern Territory, for example, began to separately identify Aboriginals only in August 1980. But now Aboriginals themselves are calling for separate identification in the statistics. They want to show what is happening to them.

DISCRIMINATORY JUSTICE

Modern criminology began with the conviction that some men were different to others - genetically different. Lombroso, a Jew working in a Catholic Italian environment was fascinated by a correlation he perceived between physical stigmata and anti-social behaviour. It was the closeness of the eyes or the shape of the ear lobes or the breadth of the forehead which denoted an atavism conducive to crime. Too many highly respected clergymen and politicians fitted this physical pattern, however, for the theory to persist for long in its original form; it has survived in some rather unpopular biological concepts of chromosomal differences and levels of inherited intelligence. But in a modern climate of preoccupation with white collar crime, corporate crime, corruption and abuses of power, we might wish to look more closely at the way Lombroso's contentions were refuted. Maybe we were too ready to conclude that because there are so many respectable people with the same physical characteristics they were not criminal. How did we know they were not criminal? Respectability and status may be no guide to integrity any more than low socio-economic status may indicate criminality. There is selectivity in any criminal justice system. On the other hand, physical and mental disabilities may affect the capacity to plan crime efficiently or to cover offences, to benefit from legal technicalities or simply to escape by running fast enough - or in the right direction. So, unsuccessful criminality may well be correlated with all kinds of physical and mental disabilities. Nor need they be actual disabilities. Differences may be enough. Many commentators have stressed the high visibility of Aboriginals. Their very conspicuousness in Australian society may contribute to their inability to avoid blame or prosecution and this is probably compounded by their relative lack of cunning.

When dealing with the disproportionately large numbers of Aboriginals coming before the courts[2], the superficial conclusion could well be that colour and criminality are indeed blended - or that deprivation goes hand in hand with delinquency. These are conclusions which might be substantiated by using the corresponding data from the United States where blackness and deprivation correlate with convictions: but the naivety of such conclusions is demonstrated by the large numbers of blacks and deprived who do not commit crime. Deprivation, sub-standard housing, ill health and malnutrition are frequently correlated with drinking and anti-social behaviour; but the fact that not all or even most people so afflicted find their way to courts belies any causative link. Rather has it been suggested that the real problem is not Aboriginal or social at all but lies with the discriminatory operation of the criminal justice system - that policemen are too ready to arrest Aboriginals or the poor and that the courts are too prone to imprison them. Conversely, those within the criminal justice system complain that it is overloaded with Aboriginals or the poor simply

because it is burdened by society with a number of social and political problems which society cannot solve.

Whether the criminal justice system is a discriminating instrument of power or a social scapegoat for problems which society cannot solve, we might regard it as a useful barometer of the state of balance between law and order on the one hand and human rights on the other. In going more deeply now into the effect of criminal justice systems on minorities, we are opening up a new dimension of fact finding for improving our knowledge of human rights in practice. Obviously the Queensland case of Alwyn Peter in which, earlier this month, the cultural and social disadvantages of Aboriginals was taken as a generator of diminished responsibility, could greatly change the reach of the criminal law.

Drunkenness has been identified as being at the core of the problem by social workers, sociologists, law enforcement personnel and Aboriginals alike. And the fact that white people in Australia can institutionalise their drinking in clubs, or do it more privately, makes them less vulnerable to arrest than Aboriginals, who are more frequently on the streets. There is more to it than this, of course. The apparent irresponsibility of drinking Aboriginals keeps alive convictions about the suitability of Aboriginals being allowed to drink, long after prohibition laws were repealed.

Similar considerations apply to the disproportionate arrest of Indians in Canada, Maoris and Island people in New Zealand, and Malays in Sri Lanka. Typically 30-40 per cent of prisoners in these countries are from minority groups. However, though certain minorities in other countries have typically disproportionate rates of imprisonment, Australia's own rate (according to the 1976 Census data - only recently available) of 726.5 Aboriginals in prison on that day per 100,000 is a good deal higher than the others. When in some states that rate exceeds 1,000 per 100,000, we are beyond all recorded limits. That is why it becomes reasonable to speculate that it may be the highest rate of imprisonment in the world. The Australian figure may be affected to some extent by the smallness of the total Aboriginal population, but it should be, nevertheless, a cause for great concern unless one is prepared to regard this whole segment of our Australian population as basically criminal. The figures are too strikingly condemnatory to be accepted at such face value.

If one wants to understand the problem it has to be understood as being more than just a minority problem. For not all minorities are disproportionately criminal. There is a great deal of information available about those small minority groups in the several immigrant countries across the world which rarely come before the courts. I refer, of course, to the Jews and Chinese or Japanese in the U.S.A. and here in Australia, to the Burghers in Sri Lanka, the Armenians in the Middle East countries. And, as Francis has recently shown in a book on migrant crime in Australia, our immigrant minorities are less than proportionately represented amongst offenders - most of whom are native born Australians.[3]

The disproportionate representation of a minority amongst accused and convicted persons probably depends upon the extent and intensity of community cohesion. We may argue for a long time about what is cohesive and what is not and, as we know to our cost, both secret societies and an organised Mafia are products of a separate type of community cohesion. Yet there have to be internalised social controls to reduce the imposition of the law and where these decline, the law enforcement increases. Disintegration of social cohesion amongst Aboriginals has been laid at many doors - economic neglect, malnutrition, housing, migration and drink, to mention only a few. In May this year a committee looking into the high rate of imprisonment in Western Australia drew attention to two laws which in that committee's view had undermined Aboriginal cohesion - namely the 1965 Federal Pastoral Industrial Award which prevented employment at less than national minimum rates of pay, forced stations to reduce labour and led to an increased drift of Aboriginal families away from rural stations - and the 1970 repeal of the Licensing Act of 1911, which did away with the prohibited sale of alcohol to Aboriginals. Others, of course, would challenge interpretations such as these as facile and negative, since the removal of discriminatory legislation from the statute books is important for the self-respect of Aboriginals and essential to their dignity and to that recognition of human rights necessary to build up self-respect and a community pride. Since there has been no follow-up research, one is at liberty to take any position one likes on the supposed inherent value of such points of view. However, it is important not to over simplify. Tribally oriented Aboriginals have been disrupted communally and their internal controls demolished by giving individual rights which undermine the group obligations cementing traditional, religious and kinship relationships. This has not only happened in Australia. There is a United Nations report detailing this unfortunate neglect of Article 29 of the Declaration of Human Rights (which refers to obligations) in the Asian and Pacific region.[4] Nor should one overlook here the effects of education generally - which I can but mention in passing.

In towns and fringe areas, of course, it would be wrong to justify differences between Aboriginals and others and reserves from which people can be exiled for vagrancy or sent to places like Palm Island evoke concern for human rights which over-ride custom. However, to avoid getting this out of perspective, we should not overlook the fact that, even in white society, the single minded pursuit of rights without reference to obligations has had its own detrimental consequences.

There has, without any doubt, been a measure of police discrimination in the past to account for so many Aboriginals crowding the courts and the prisons. It has been referred to as a form of institutionalised racism. The risk of this is less today with an active Aboriginal Legal Aid Service and a greater awareness by Aboriginals themselves of their rights. There have also been improvements in police training and organisation to reduce the flow. Conceptions of the need for this in police circles differ State by State. I believe the Northern Territory Police get 25 hours of training on Aboriginals, but elsewhere the exposure is more limited. And whatever the police do, the problem persists - as do the complaints.

Here we are dealing with relative standards. The standards of fairness tolerated yesterday, change today as expectations rise.

THE RATE OF IMPRISONMENT

Whilst it has long been known that Aboriginals, as 1 per cent of the Australian population, provided nearly 30 per cent of the prison population, the details have not been easy to obtain because of the move to non-discriminatory recording leading to an abandonment of separate categorisation for Aboriginals. Thanks to the Western Australian Government's willingness to look critically at its own high rate of imprisonment we now know more - and the more we know confirms the earlier impressions of there being a problem, not only for Aboriginals but for the criminal justice systems of this country.

As at 30 June 1980, Western Australia had 920 non-Aboriginals sentenced and in prison - as against 439 Aboriginals. That is to say that 32.3 per cent were Aboriginals. During 1979/80 Western Australia imprisoned Aboriginals at a rate of 1,300 per 100,000 as against 81 per 100,000 for other races. Corresponding data for the same date in other States is not easy to find but it may be taken that the Northern Territory would show similar high proportions of Aboriginal prisoners, whilst other States would be lower. In March 1981 New South Wales had 217 of its 3,670 prisoners Aboriginal, i.e. just under 6 per cent. If the A.C.T. and N.S.W. populations be combined, the Aboriginal imprisonment rate was 600, compared with 72 for non-Aboriginals. South Australia, in November 1980, had 14.3 per cent Aboriginals (122 out of 852). The Aboriginal imprisonment rate was about 1,000 and the non-Aboriginal rate was 60.[5] These are dramatic rates of imprisonment by any standards and for any community. Just to quote them is to question their justification. You have to believe either that Aboriginals are the most criminal of minorities in the world or that there is something inherently wrong with a system which uses imprisonment so liberally. The Western Australian average Aboriginal imprisonment rate during 1979/80 was approximately 30 per cent higher than that of South Australia in June 1980 and nearly three times that of N.S.W. in March 1981. However, since Western Australia's average non-Aboriginal imprisonment rate during 1979/80 was about 20 per cent higher than the rates for N.S.W. and South Australia on the same dates of comparison, the Aboriginal disparity in Western Australia is part of a much greater use of imprisonment for all types of offenders in that State. At the same time, it should be noted that offences committed by Aboriginals imprisoned in N.S.W. include more violence than those offences for which Aboriginals are imprisoned in Western Australia - 20 per cent in N.S.W. have a violent property offence as their most serious offence but only 2 per cent in Western Australia. And it is always necessary as any statistician knows, to qualify aggregate figures by depth studies of the different geographical areas. Doubtless in the Kimberleys or in parts of the Northern Territory the higher proportions of Aboriginals would reduce the disproportion. The evidence is, however, that it would still be staggering!

If comparison here is unfavourable to Western Australia, at least that State is to be congratulated not only for recording it but for recently making it public. Similar candour and concern by other States would be very welcome.

ABORIGINAL OFFENCES

For what offences are Aboriginals imprisoned? Information is still difficult to come by, but in Appendix II I give such information as we have now.

It is obvious that the offences are not all minor - though even this statement cannot be made without a great deal more knowledge of the actual circumstances of the offences with serious labels. The 7 homicides for which Aboriginals were held in prison on 30 June 1976 in South Australia, however, would seem to be disproportionate to the 53 non-Aboriginal cases. The same is true of the 5 serious assaults as compared with only 17 non-Aboriginal. Similarly the Magistrates Courts of Western Australia, in 1976, processed 313 cases of assaults by Aboriginals, as compared with only 118 by non-Aboriginals and 2 robberies by Aboriginals, as against 11 by non-Aboriginals: again an apparent disproportion. In evidence given in the Alwyn Peter's case in Brisbane, Dr. Paul Wilson gave information from a statistical analysis of violent crime on 17 Aboriginal reserves covering the past 3 years, which suggested that the rate of murder was ten times the Australian average, the assault rate was five times the average and that the rate of crime on the Queensland Aboriginal Reserves due to the crowding of different tribes together was as bad if not worse than that in the ghettos of New York. Senator Bonner gave evidence in the same case that forcing Aboriginals onto reserves had created social disorder.

These figures cannot provide a total or detailed picture, of course. If we want to compare crime on reserves with crime in remote Aboriginal conditions, we have to look at concepts and practices which are not part of our own crime statistics - and we have to know which offences are dealt with internally and which are elevated to drama by Western labels.[6] Nor can manipulation of the systems be excluded from either Aboriginal or Western contexts. It has been alleged that the penal system is sometimes used to ensure that some people are convicted and, therefore, become disqualified for local government positions. The rigidity of application of the law will always depend on local enforcement policies, of course: we can only operate on the information available and even if this is incomplete, it is illustrative of a situation widely known and understood.

The predominance of drunkenness offences is reflected in these figures and the high proportion of sentences of imprisonment for drunkenness is shown for Western Australia only. Those with experience know that alcohol was associated with many of the more serious offences. Assaults, unlawful use of motor vehicles, disorderliness, offences against the police, are all offences which in the case of Aboriginals are likely to be associated with drinking.

In one area, for example, house breaking took place to obtain stocks of liquor and much violence leading to aggravated assault and homicide has flowed from the indulgence in alcohol. N.S.W. in particular has noticed a shift from generally minor to more serious offences in recent years and in the North-West Reserve of South Australia there is an increased incidence of wilful property damage.

Parker suggested in the early 1970s that most Aboriginal "crime" consisted of offences against good order - many of them prompted by drunkenness and this study confirmed that drunkenness is often associated with the more serious assaults, including homicide.[7] It also emphasized the inter-relationship between inadequate housing, unemployment, ill health, poor education and crime. The Commonwealth Department of Aboriginal Affairs Newsletter No. 2 of December 1975 observed that -

> "In Aboriginal Affairs there is widespread recognition among both research workers and officials that Aboriginal health problems for example will not substantially improve before housing and hygiene are improved and that these are in turn somewhat dependent on improved knowledge about hygiene which comes with education."

This theme of the inter-relationship of problems persists in the literature and links-in both drunkenness and crime. Thus a study of both Aboriginal and white children under 6 admitted to the Bourke District Hospital in Queensland from September 1971 to August 1972 by Kamien and Cameron, shows that, even in the same lower economic group, more of the Aboriginal children came from overcrowded and inferior accommodation: and Dr. Kamien, studying drinking patterns in rural community in N.S.W. in 1975, suggested that 50 per cent of all the males were heavy drinkers and that, for teenagers, getting drunk for the first time was a kind of initiation to manhood.[8] The author compares the situation to that of the poor in England during the Industrial Revolution when drink was the only escape from misery. In the Queensland case of Alwyn Peter a former police officer and manager of the Weipa Reserve told of elderly women and children as young as 11 years of age getting drunk frequently.

This association of the dullness of life with drinking patterns is persuasive, if not entirely conclusive. Alcoholism is high amongst the mountain people in Switzerland who live for months with winter snow. Up to 70 or more per cent of crimes in communist countries are drink related. Drink was the refuge of the Irish during the famines of the 19th century, and the crowded pubs during the depression of the 1930s in Lancashire and no doubt in Australia, has been documented. The Rev. P.G.E. Albrecht of the Finke River Mission in Alice Springs has suggested that for Aboriginals, as for whites, alcohol is often an escape mechanism, a relief from boredom, from the loss of identity and role, as well as from psycho-social problems. He says that social drinking, so familiar to whites, serves no purpose for the Aboriginal - which is why he drinks to get drunk: but drinking to get drunk is a worldwide phenomenon among the poor and depressed.

Albrecht is equally exercised by the facility which drinking permits for a tribal Aboriginal to spend all his money and then rely on the traditional hospitality of his people for his sustenance.[9] He is thus exploiting two systems at the same time.

Whilst many writers have pointed to the futility of trying to deal with this matrix of political, economic and social problems by means of the criminal justice system, few have shown how to withdraw the traditional reaction of law enforcement when offences are clearly committed. Incapacitation, public nuisance of a serious nature and outright violence are not easy to overlook. Police are often under pressure to "do something". Decriminalising some forms of behaviour and tolerating others can offer marginal improvement but a great deal more is going to be required to bring down the arrest and imprisonment rates. Even recognising customary law and/or providing for Aboriginal Community Courts to administer the law of the land in Aboriginal areas is not going to make a real impact without a frontal attack on the social problems which help so much to produce the behaviour. That is why so many, impatient with the problem, have considered it to be essentially political and have taken the view that without political action there will be no general improvement.

Even the most dedicated geneticist cannot believe that the massive disproportion of Aboriginals before our courts and in our prisons denotes a different kind or special degree of criminality. When behaviour so widespread as to be practically normal amongst Aboriginals is labelled criminal by our law, there is a need for rethinking the law. When imprisonment does not deter but is shouldered by the Aboriginal as an inevitable yoke to be carried as a consequence of his residence in a white society, we would be moronic to go on using it punitively and ineffectively. On the other hand, even the most impassioned environmentalist would not go so far as to advocate total permissiveness towards behaviour which Aboriginals themselves recognise as being socially suicidal. The statute books may be cleared of minor offences so as to reduce the flow: but as the Northern Territory has discovered, there has to be a procedure for picking up helpless alcoholics. Police may be taught to act with restraint, but their basic commitment to taking action without fear or favour means that they will bring in more of those who come before them on the streets, outside the pubs, or in public places.

One interesting feature of the difficult situation where Aboriginal and white communities merge is the evidence that there is far greater tolerance of deviant behaviour by Aboriginals - which could have something to do with deeper kinship ties and the consequences of them taking action themselves. In the study already referred to of offences in the North-West Reserve of South Australia, it emerged that even where the communities had their own wardens, the greatest number of complaints were still laid by white people. Since drunkenness is so pervasive, has become to a great extent institutionalised and interlinked with the traditional system of obligations in some areas, there have been instances of Aboriginals requesting and preferring action to be taken by outside authorities to avoid internal consequences. I have myself discussed the situation

in some Queensland communities where policing was better if backed-up by a white presence. Maybe a scapegoat is necessary to justify the action which has to be taken - a scapegoat who is not subject to the possible kinship reactions to such punitive measures. Certainly this is the feeling that Dr. John Howard has gathered in Broome where he works to develop a system of local laws based on customary principles.

THE ABORIGINAL APPROACH TO CRIME

How does all this accumulation of data appear to the Aboriginal? Does he accept the legal labels given him by a white society or is this labelling just another part of the black man's burden in a predominantly white Australia? Is the breach of the "white fella's law" - and its imprisonment consequences - just another sad, but accepted, incident in the Aboriginal process of maturation in modern society - or does it have a deeper traditional significance? These questions are not easy to answer for even one Aboriginal person - if his total psychology be brought into account. They are more difficult to answer for a whole community and quite impossible for a wide variety of different communities.

No amount of learning and experience helps us to cross cultural barriers. That does not mean that we should not seek to increase our mutual understanding. As a non-Aboriginal and, perhaps even worse, as a non-Australian, I cannot possibly escape my own ethno-centric background. I can only proffer my experience as an internationalist, as a person who has served people of diverse cultures at an international level. This means that I can offer only perspective as a substitute for identification, that I have to replace intension with extension - the broad canvass for detail.

It seems evident, from the many surveys and probings of Aboriginal opinion, that whether the Aboriginal feels a victim of white discrimination or accepts the legal labels attached to him, he knows only too well that he has a serious and a community problem. He may interpret it politically or be apathetic. Yet he finds neither solace nor contentment in the disruptive extent of drinking in his midst nor in the petrol sniffing amongst the young, the juvenile delinquency and the occasional more serious violence.

Faced with such problems and knowing their relationship to health, housing and welfare, Aboriginal leaders and Federal and State Authorities alike have moved to find resources and to place them more and more in the hands of Aboriginal communities with the intention of them working to improve themselves. Councils and communities are provided with funds to encourage a variety of different forms of community development. The adequacy and management of such funds may be in question but their objectives are clearly designed to effect community changes which will inter alia (and perhaps in the long run) reduce the petrol sniffing, drunkenness and crime. In this same context comes the proposal for a recognition of customary law. The hope is that Aboriginals themselves may be able to improve behaviour by using the customary controls where statute has failed.

Incidentally this success of customary law in controlling behaviour and the failure of statute is confirmed daily in our own societies. We now know that whilst legislation may satisfy the taxpayer and allow the politician to show that something is being done, the enormous indulgence in legislation increases modern bureaucracies without making them effective - and even assiduous police enforcement does not change behavioural patterns unless there is powerful sub-cultural support. Formal without informal controls does not work. Customary law does - and not only because of the small size of the community. So, in this discussion, let us lay to rest once and for all the idea that a supposedly technically superior statute law has any claim to being necessarily better or more just than customary law.

In some respects this move to a greater recognition of customary law is a move towards a more extensive use of conciliation within the community. Wherever this can work the dealing with cases as kin or personal disputes - and informally - is in a direct line with a growing modern movement across the Western world to divert as many offenders as possible from the formal courts and from the criminal justice system in general. Customary law lends itself to this.

Typically (though it is dangerous to generalise about so many different tribes and customs), the tribal Aboriginals, like any people with traditional customs to govern behaviour, will treat as many cases as possible as being more civil wrongs than criminal offences. That is to say that they will look to compensation and damages rather than punishment as a way of correcting wrongs and conformity will be powerfully enforced by public opinion, ridicule and shame. In Aboriginal conditions, the Dreamtime, the myths, and a variety of ceremonials are used to induce acceptable behaviour. However, nomadic peoples have few goods to use for compensation, so that a critical question arises where custom is allowed free play. There are tribes which may allow the women to deal in a physical way with a female offender - especially if she has broken the kinship rules. Correspondingly, physical chastisement has been imposed by the men on one of their number who may have stepped out of line and has been thought to be in need of correction. A judge in South Australia, who recently chaired a committee on Aboriginal offending found the "pay back" principle to be far more widely established than modern law supposed. This is supported by the attempts to hide bodies in Kalgoorlie mine shafts and evidence from other areas of traditional remedies being applied outside the formal law. There are also instances of magic being used to confine persons within prescribed circles for days on end whilst they are instructed in song and speech on how to behave. Whilst the principle of restitution remains paramount, therefore, as a means of reconciling the parties to a dispute, the recourse to physical sanctions for troublemakers can give rise to difficulties when a recognition of customary law is being considered. For example, it is often asked whether, where the means do not exist for appropriate compensation, the offended parties will still be permitted satisfaction by way of ritual spearing. Some say "why not?". Others feel that this would mean exposing Aboriginals to liabilities from which other Australians are protected.

The non-compensatable offences in customary law are likely to be few and sacred. These in the past were often dealt with by dealth, exile or mystical constraints which might induce death. Then, underlying all classifications of behaviour as either wrong and compensatable or totally taboo, there is, as already mentioned, an intricate kinship system. This kinship system is very meaningful for Aboriginals, since it is linked to an inter-related spiritual and physical world. But from a strictly Western legal viewpoint, it creates some problems since it defines norms in a very discriminatory fashion. Some kinds of behaviour may be tolerable or intolerable according to the kinship roles of those involved. Innocuous language in a Western sense may not only be outrageous but a possible cause of violence when used to persons who should not be spoken to. Similarly, kidnapping and even homicide - serious offences in Western law - might be enjoined as obligations by kinship imperatives.

From this truncated and admittedly superficial outline of Aboriginal concepts of crime, it is quite clear that ideas of justice and retribution or rehabilitation are quite different. Aboriginals are not the only people for whom abstract justice in the Western form has no meaning. Justice in the West is blind - a principle has to be satisfied. But for other cultures in Africa, Asia and the Pacific, justice can be done only in relation to the persons involved and with full recognition of their kinship ties and obligations. For so many people, including Aboriginals, justice, to be fair, cannot be blind. That would be a contradiction. All circumstances, including the social consequences of retribution, have to be brought into account, not only in sentencing but in determining guilt. It is interesting to speculate that in the Alwyn Peter's case under the banner of diminished responsibility due to economic, social and cultural conditions, this non-Western concept of justice could have been introduced - at least in argument. It was not, of course, because the accused had already pleaded guilty to manslaughter.

Moreover, the ends of justice are different. Unlike the West there need be no attempt to satisfy an outraged principle - only a concern with peacemaking, restoring the status quo, getting back the social balance which has been disturbed by intolerable behaviour. Thus, in certain tribes of Papua New Guinea, when compensation is paid, the injured party has, in return, to give a small present to the offender. Peace making is thus underlined. Little wonder then that fines that do not include restitution and terms of imprisonment which house and feed the offender but satisfy none of his victims, seem alien and useless.

Yet this should not be carried too far. Custom is dynamic and contacts with Western law have produced changes and an inter-penetration of ideas. For example, the supposed penal character of imprisonment and detention for the Aboriginal offender has sometimes been derided. Aboriginal juvenile delinquents, for instance, have been thought to get into trouble specifically to earn an air trip to the larger centres and to obtain the benefits of good food, a warm bed and perhaps games and television. There may well be a few such examples but they are not general. Talk to the staff of such institutions and

discover how many such Aboriginal children cry themselves to sleep at night and, indeed, frequently try to escape. If imprisonment has no penal effect on Aboriginals, why do some Aboriginal communities actually withhold the payment of fines for those members who have got into trouble once too often - and whom they want to teach a lesson? They may be imitating the white response to a problem but it is also clear that they do not expect to do something thought to be pleasurable to the offender. There are so many Aboriginals imprisoned that it would be surprising indeed if the stigma of imprisonment was anything like as great as it is in a white community: yet the stigma is still there and may be perceived in the way that Aboriginal justices will have liberal recourse to this penalty until they have learned how to use it more sparingly and with more effect.

Justice in the Bible originally meant righteousness and we have to be careful in a plural society that when we use the term "justice" we are not merely bolstering selected moral imperatives which are not part of a consensus. In common parlance today, justice means one of three things, i.e. (1) equal access to rights and a protection against arbitrary proceedings, (2) getting one's just deserts or (3) being dealt with according to needs. Differences of role and status in an Aboriginal society cut across such simplifications; obligations count for more than rights and discrimination enters the implementation of a policy based purely on needs. We have not sorted out such concepts satisfactorily for ourselves in the West. Let us not be surprised that their meanings are different, not only in an Aboriginal minority but in any deprived sub-culture which has caught the heavy end of our criminal justice in action.

In the same context, tribally oriented Aboriginal ideas of rehabilitation or reintegration are different. First as to causes of crime, they are unlikely to blame either genetics or the social environment for a person's behaviour and they are more likely to look for his control to his kin. Misbehaviour by any one person is a breakdown of kin responsibilities (omitting, of course, the spiritual dimensions of human behaviour). An offence committed may be much less serious than the breach of kinship obligations which it entails - or it may be no offence if it is a form of obedience of kinship rules and expectations. So that an offence is not an individual problem but a kin problem. The offender's kin have a problem with the kin of the offended. It is damaged kinship relationships which have to be repaired and the status quo restored. Once this has been done, the individual is automatically restored to community favour. On the other hand, if the offence is a sacred one, then a restoration to favour may be impossible because of the danger incurred by the breaking of a taboo. The individual is on his own and even his own kin may then turn against him.

Now in modern Australia, only the Aboriginals who are in tribal circumstances are enmeshed in this kind of customary system. It has been argued that even in towns the customary obligations are respected but the further away from a rural community one travels, the more difficult it must become to observe community obligations. Moreover, contact with other cultures affects the way in which traditional

obligations are conceived or interpreted. Even in tribal conditions the white man's law has become a reality and elders may decide when to deal with a problem internally by custom and when to invoke the white man's law. When serious crimes against the white man's law are committed, internal controls may be breached by the police investigating to enforce the law of the land. But, as has often been shown, the differences between crimes as perceived by custom and crimes as defined by statute can be considerable. Moreover, it should not be overlooked that since, unlike many other indigenous peoples, the Aboriginals have no traditional place for alcohol, they have no customary procedures for dealing with this new problem. However, as we all know, most Aboriginals are no longer totally tribal. Many in the rural areas are affected by Western culture contacts, some are thoroughly urban and some are in-between. The complexity of a possible recognition of custom (other than in mitigation of offences at the time of sentence) which now confronts the Australian Law Reform Commission has been publicised. Thus in May this year a spokesman for the Dandenong and District Aboriginal Housing Cooperative said killings, spearings and other physical punishments were no longer tolerated by Victorian Aboriginals and they accepted white laws, though they objected to the amount of imprisonment. The Director of the Aboriginal Advancement League was reported, however, as saying that some of the traditional laws were not so bad and if white Australians condemn spearing as barbarous, the Aboriginals condemn prisons as barbarous. Spearing was wanted by some remote Aboriginals, who saw it not only as a punishment but as a dispute-resolving device. Miss Marcia Langton, who works with the National Aboriginal Conference Secretariat, was reported by the Canberra Times on 19 May as telling the Australian Law Reform Commission that its working paper was dangerous and outdated because there should be no distinction of Aboriginals as traditionally oriented groups and others. This was wrong, she said, for even in the cities Aboriginal groups upheld traditional rules. And this, of course, is true in essence, though urban rules may differ (according to a comment made to me by Professor Colin Tatz) in flavour, detail and operation. Further support for family ties and kinship obligations applying in town was provided by the Victorian Aboriginal Legal Aid Service. In Perth, the A.L.R.C. was told by some Aboriginals that they did not wish to be regarded as subject to tribal law. And at one meeting held on Aboriginal Criminological Research at the Australian Institute of Criminology, we were told by a prominent Aboriginal that, despite all the complexities involved, a crime was a crime and Aboriginals knew it. He said that they were concerned with longer term prevention, which meant dealing with the drinking, bad housing, malnutrition and need for proper employment.

CRIMINOLOGICAL PERSPECTIVES

Criminology in Australia may be credited with the discovery that Aboriginal imprisonment rates are not only disproportionately high but beyond any possible rational explanation which ignores the defects of the criminal justice system itself. The major work of Elizabeth Eggleston compared Aboriginal and white people in rural townships in Western Australia.[10] The N.S.W. Bureau of Crime Statistics has published information on the possible incidence and nature of

Aboriginal crime in selected towns which was recently used to good effect by the Federal House of Representatives Standing Committee on Aboriginal Affairs; and the Office of Crime Statistics in South Australia has entered the field recently. But the concern with rates of imprisonment flowed originally from the quarterly survey of all imprisonment by the nation's Correctional Administrators cooperating with the Australian Institute of Criminology already mentioned. We now have to ask whether, having identified and publicised the problem, criminology can provide some of the answers. It would be easy to dismiss the whole issue as a function of political oppression and powerlessness. I believe it is much more complicated.

In the first place we need comparative data. Latching onto the imprisonment of minorities may mean that we can open up a whole new perspective on human rights. The minorities do not have to be racial; they may be social or economic. It may mean that we are led into a new concept of group dynamics because of the differential consequences of outside pressure on internal cohesions. Different minorities respond differently. And thirdly, it could be that we will develop a new approach to the question of bias in public policy. Perfect equality, like absolute justice, is impossible: so what are the acceptable limits of variation within a system? Public administration as a whole may benefit from analyses of this kind which probe further the social and psychological characteristics of management and decision making at all levels.

I have argued elsewhere[11] that, whilst the principles of criminology are common and universal and whilst the methods should have a single criterion across the world (as valid and invalid), there is a case to be made for different types of criminology to suit situations where concepts and resources are different from those of the West. There is a real need in this country for the development of a distinct Aboriginal criminology. Eventually this can only be properly realised by having Aboriginals themselves fully trained to apply the general principles of criminology to their own basic concepts, norms of social behaviour and methods of tolerating or dealing with deviation. Some might say that Aboriginal crime is a "white fella" construct and in its present manifestations this is largely true - just as it is equally true that the crime problem of the different migrant groups is an Australian creation. The over-riding law always creates crimes which are not always recognised as such by constituent sub-cultures. But if the Aboriginals were the dominant group in Australia tomorrow, they would still have their own crime problem even though it would be different to that which exists today. More than that, there would be an overlap, because beneath all the cultural differences across the world there exists a layer of quite remarkable agreement on the nature of intolerant behaviour. The most serious crimes are still murder, sexual assault, robbery and stealing. Underlying the variations in interpretations of these terms in different cultures, there is a basic uniformity of condemnation and reaction. It is this situation in an Aboriginal setting which Aboriginal criminologists would be investigating. They would also be looking closely at the dynamic process of acculturation, urbanisation and development and its effects on the behaviour considered wrong, whether by Aboriginals, society at large, or both. As with

criminology elsewhere, they would be looking not only at the meaning and significance of crime but also at the meaning, significance and adequacy of the systems developed to prevent, prosecute and punish criminal behaviour.

Pending the development of an Aboriginal serviced Aboriginal criminology, we on the outside can but speculate on how our principles can be applied to an improvement of the present situation. Obviously we can begin with the proposition that imprisonment is a last resort, should be used much less frequently than it is now - even for non-Aboriginals, that bail should be a right and bail hostels should be provided to avoid unnecessary incarceration and that some form of obligatory community service is preferable to imprisonment in lieu of payment of a fine. These are sound principles which have been established all over the world. Again we know that there is no evidence that long term imprisonment is more of a deterrent than short term imprisonment and that remands in custody are over-used and have less effect in teaching the offender a lesson than is usually supposed. All this will help but it is unlikely to have an effect on the incidence of drinking which is at the root of the problem.

Secondly, it is possible to support the moves for a reception of customary law and traditional courts in tribal areas, for courts with Aboriginal assessors in the fringe areas and for a widening of the various schemes already in force for the appointment of Aboriginal Justices of the Peace and magistrates, probation officers, auxiliary police and social workers, but again these will be peripheral to the basic problem of social deprivation and drunkenness. Here, in addition to a major social rehabilitation, we need a great many more case studies of offenders and their backgrounds. All the money in the world becoming available tomorrow and being placed wholly in the hands of the Aboriginals themselves will not, itself, create a miracle of social reform: at least one more generation would be required and a vast extension in schooling and employment opportunities. Then, supposing that there are enormous economic, social and cultural improvements, there will still be crime. We know that affluent societies have problems of crime even greater than the poorer people. Greed has its own complications and the affluent can be as bored and as alcoholically addicted as the poor. The affluent have also found an increasing number of potent drugs which debilitate society as well as the individual. As far as I know, these have not yet found their way, in any significant sense, into Aboriginal societies. For reasons of prevention as well as cure, we need to know more, therefore, about the movement into drinking patterns and the models of behaviour set by adults for the children. I am not aware of any research on the physiological characteristics of heavy Aboriginal drinkers and how, if at all, they differ from other people. Or again, we need to know more about the difference between what has been called "incentive-motivated aggression" and "annoyance-motivated aggression".[12] It seems that there is a threshold of tolerance when people are drunk which is pierced only by provocation. And it may be useful to work on this so that even drinking might not mean violence, arrest and incarceration.

A third direction for Aboriginal criminological research to take would be a series of studies of the significance of deviation in Aboriginal society. Are they really as helpless as is often supposed in the face of the challenge of deprivation and drink? The resilience and ingenuity of the people has probably found outlets and opportunities which are still insufficiently documented. Comparisons between different communities, their ways of tackling their problems, their successes and failures, would help to build up a data bank invaluable for the development of better approaches to the problem. As mentioned, there is evidence that drinking styles have permeated the institutional situation of Aboriginal society affecting to some extent the role and significances of drinking. We have to know more about this.

Again, a great deal more controlled experimentation is needed. Where communities seriously want to overcome their drink affliction, they should be assisted by special units made available for drying out and rehabilitation on an intensified and massive scale. I have been made aware of the efforts being made in Broome to provide pub patrols and other local services to obviate the need for police intervention. I understand that the experience of these is not always reassuring - but the efforts are in the right direction. When, years ago, Iran wanted to make a frontal attack on its drug problem, it set up a special marquee in one of the main squares in Teheran and staffed it with doctors, nurses and beds available to anyone who wanted to come in and use it - with no questions asked. Similar facilities for drinking and malnutrition could be made available. They would be expensive, but no more so than what is now paid for imprisonment and if they reduced dependency over time, they would represent a great saving. In this same context an evaluation is needed of schemes like those developed for young offenders to do community work by the elders of the Kadjina and Yungngora communities near Fitzroy Crossing in the Kimberleys.

There would need to be provisions for a careful follow-up to discover what actually worked over a period of five years, but this need not be too difficult to provide for. Other experiments could be tried like diversionary drugs. If it be true that drinking habits are aimed less at sociability than at oblivion, it might be possible to provide for this in an institutionalised way. Then there are many new approaches which have been tried but never properly evaluated. For example, the South Australian Police have gone some way towards developing more effective liaison with Aboriginal communities and better policing. This experience needs to be more fully recorded and evaluated with a view to its improvement. Other police forces might follow the example. Then there are those police forces which have organised auxiliary Aboriginal police and have experiences to share. So much has been tried with relatively scant feed-back in terms of criteria for effectiveness. The current Western Australian experiments with a statute to allow local Aboriginal communities to make their own by-laws, have their own Justices of the Peace and adjust to the imperatives of custom, is being followed up, however, by a magistrate with unimpeachable anthropological qualifications and this is very reassuring. Hopefully a similar experiment due to begin at Hooker Creek

in the Northern Territory will be similarly monitored.

Finally, we know too little of the effects of imprisonment on the Aboriginal and too little of the relationships between traditional and "white fella" sanctions. It has been suggested that when fines are used in lieu of imprisonment, it may not only be that people still go to prison because they fail to pay when they have no money - but that they sometimes do not pay because it is "not in their scale of priorities". We need more of a follow-up of the Aboriginal meanings of probation, work orders and remand. Here again is an enormous field of inquiry waiting to be opened up. It may involve an incorporation of secrets or of spiritual meanings, but there are ways in which inquiries can be conducted into such affairs by the local communities themselves if the appropriate guidance is forthcoming.

All these are directions in which available funding has not gone in the past. However, a start has already been made by the Criminology Research Council which has funded a study of this type in the Northern Territory. But that Council has hardly any money for Aboriginal research as such. It operates with $100,000 only for all kinds of criminological research throughout the country. It is necessary for other more specifically Aboriginal research resources to be devoted to the kinds of criminological investigations and experiments I have mentioned, with a view to guiding public policies into more effective channels and involving more the Aboriginals themselves.

A great deal of this has been said before. I seek not to be original, but to provide criminological perspectives.

CONCLUSION

I would like now to conclude by drawing together the facts about Aboriginal imprisonment, deprivation and customary law into a problem matrix which can also be an opportunity. It seems to me that we are dealing with issues which are more fundamentally human and social than they are Aboriginal.

The fact that so many Aboriginals are imprisoned, for example, draws attention to the inordinate use of imprisonment generally to solve the problems of deviancy in this society and in so many other societies across the world. Whether we consider the widespread imprisonment of Aboriginals to be oppressive or an unfortunate burdening of the criminal justice system with problems that other services cannot solve, we still are forced to see that imprisonment has been in no way an effective approach. So, from the very depths of their incarceration, the Aboriginals may have demonstrated to the world the futility and more than that, the inordinate cost of relying on prisons to hide away problems or improve future behaviour. Secondly, a great opportunity arises from this collection of information and its consequences to lead the international bodies of the world in a heart searching investigation of the effects of imprisonment on minorities

within their own borders. I believe that Australia, in publishing its own misuse of imprisonment, could challenge other nations to be as honest and as concerned about these skeletons - not in the proverbial cupboards but in prison cells. Internationally, Australia could lead a new sweep of the human rights movement at the same time as it sought to put its own house in order. Recriminations are negative: an honest remorse and a determined move for improvement in the position of minorities vis-a-vis criminal justice across the world could redound to the credit of a more enlightened Australia.

Finally, the Aboriginal issue of customary law and its recognition offers great opportunities for an improvement of our approach to legislation for crime prevention. Let's stop pretending that our technically precise statutes are the kind of social controls we think they are. The modern addiction to voluminous legislation, national and international across the world, is unrealistic. The weight of paper alone threatens the laws of gravity. We continue quite irrationally to float along in a dream world of statutory bliss, imagining that written law has any real effect on behaviour. We even continue to indulge in the legal fiction that ignorance of the law is no excuse, whilst we condone specialisation by lawyers who admit that they cannot possibly know the law in general. Behaviour is not changed by written law - but written law is changed by behaviour, as we see when pressure groups lobby for legislation or when social practice and custom makes so many written laws unenforceable without such vigorous police action that it looks like repression.

Let us face the reality that our twentieth century has suffered from this retreat from the true meanings of social control into the realm of documentary fantasy. Crime challenges legislation because the only laws which work are those backed by morals, custom, professional ethics and sub-cultural values: without these we have an impressive statute which even an augmented police force cannot easily administer: even totalitarian countries recognise this - which is why they set up so many street, courtyard, factory and school committees to bring communal pressures behind the written law.

On the other hand, customary law is effective - so effective that it contains some of the elements we need to restore meaning and effectiveness to our own Western systems. These have proved as socially ineffective as they have proved technically sophisticated. If we now wish to get nearer to the desirable balance between law and order and human rights, we need to develop customs and practices in ways previously neglected. When we think of Aboriginal customary law, therefore, we are not graciously recognising an inferior species of social control, but looking at a source of inspiration for the invigoration and improvement of the law of the land generally.

Aboriginal problems with the criminal justice system are, therefore, opportunities for Australian initiatives and development in the prevention of crime and the improvement of criminal justice. That is why we need Aboriginal criminology.

APPENDIX I.

STATISTICS

Juveniles under detention

By Satyanshu Mukherjee
Senior Criminologist

Statistics on Persons in Juvenile Corrective Institutions for the quarter January to March 1981 are shown in Tables 1 to 3. It is a matter of great satisfaction to report that Northern Territory is back in the series and its contribution is welcomed.

Definitions of terms used in the tables can be found in the March 1981 issue of the *Reporter*.

Table 1 Persons Aged 10-17 in Juvenile Corrective Institutions by Sex, January to March 1981

		31 January		*28 February*		*31 March*	
		M	*F*	*M*	*F*	*M*	*F*
N.S.W.	n	536	104	608	108	606	130
	r	151.6	31.3	181.1	32.6	171.4	39.2
Vic.	n	237	86	262	92	267	81
	r	84.3	32.2	93.2	34.5	95.0	30.3
Qld.	n	108	17	103	17	123	22
	r	68.0	11.2	64.5	11.2	77.0	14.4
S.A.	n	84	11	74	7	74	7
	r	88.6	12.4	78.1	7.9	78.0	7.9
W.A.	n	139	19	141	19	159	17
	r	149.0	21.7	151.1	21.7	170.4	19.4
Tas.	n	23	3	18	5	19	4
	r	71.1	9.7	55.6	16.2	58.7	12.9
N.T.	n	5	1	3	—	1	—
	r	54.8	11.8	32.9	—	11.0	—
A.C.T.	n	14	6	16	10	19	12
	r	83.7	38.3	95.6	63.8	113.5	76.6
AUST.	n	1146	247	1225	258	1268	273
	r	110.1	25.1	117.7	26.3	121.8	27.8

Table 2 Persons Aged 10-17 in Juvenile Corrective Institutions by Detention Status, January to March 1981

	31 January		*28 February*		*31 March*	
	Not Awaiting	*Awaiting*	*Not Awaiting*	*Awaiting*	*Not Awaiting*	*Awaiting*
N.S.W.	467	173	519	197	538	198
Vic.	273	50	292	62	296	52
QLD.	88	37	89	31	96	49
S.A.	69	26	59	22	52	29
W.A.	125	33	138	22	145	31
Tas.	14	12	14	9	16	7
N.T.	3	3	3		1	
A.C.T.	14	6	20	6	26	5
AUST.	1053	340	1134	349	1170	371

Table 3 Persons Aged 10-17 in Juvenile Corrective Institutions by Reason of Detention, January to March 1981

	31 January		*28 February*		*31 March*	
	Offender/ Alleged Offender	*Non Offender*	*Offender/ Alleged Offender*	*Non Offender*	*Offender/ Alleged Offender*	*Non Offender*
N.S.W.	579	61	655	61	635	101
Vic.	164	159	201	153	199	149
QLD.	96	29	86	34	100	45
S.A.	93	2	74	7	69	12
W.A.	155	3	158	2	174	2
Tas.	24	2	21	2	20	3
N.T.	6	—	3	—	1	—
A.C.T.	12	8	16	10	18	13
AUST.	1129	264	1214	269	1216	325

Probation and parole

Compiled by Ivan Potas
Senior Research Officer

The following table provides the number and rates of adult persons on probation and parole as at the first day of December 1980.

Table 1

	General Pop.[1] *'000*	*Probation*[2] *Number*	*Rates*[4]	*Parole*[3] *Number*	*Rates*[4]
N.S.W.	5,181	8,334[5]	160.9	2,298[6]	44.4
VIC.	3,905	2,920	74.8	781	20.0
QLD.	2,273	2,904	127.8	447	19.7
S.A.	1,302	2,419	185.8	183	14.1
W.A.	1,277	1,563	122.4	569	44.6
TAS.	426	1,646[7]	386.4	63	14.8
N.T.	124	230	185.5	80[8]	64.5
A.C.T.	228	159	69.7	52	22.8
AUST.	14,716	20,175	137.1	4,473	30.4

1 Estimated population as at 31 December 1980 (subject to revision).
2 Only those under actual supervision are included in these data.
3 As a general rule licensees – other than Governor's Pleasure licensees are counted as parolees if supervised.
4 Rates are calculated per 100,000 of the general population.
5 Includes 220 known youth and community service cases.
6 Includes 120 licencees.
7 Includes 208 prisoners released on probation, but excludes 127 juveniles.
8 Includes 2 special licencees and 5 Federal licencees.

Asian and Pacific series

Compiled by David Biles

Correctional administrators in the countries listed below have supplied the basic information which is incorporated in the following table. The footnotes contain a number of explanations that should be borne in mind when making comparisons between countries.

Table 1 Total Prisoners as at 1 January 1981

	Males	*Females*	*Total*	*Population (in thousands)*	*Rate*[1]
Australia[2]	9,236	306	9,542	14,716	64.8
Canada[3]	9,428	121	9,549	23,810	(40.1)[3]
Fiji	1,209	31	1,240	619	200.3
Hong Kong	4,747	117	4,864	5,068	96.0
Indonesia	34,954	769	35,723	130,000	27.5
Japan	49,051	1,655	50,706	116,133	43.7
Malaysia	9,078	177	9,255	13,000	71.2
New Zealand	2,685	115	2,800	3,149	88.9
Philippines	14,511	194	14,705	50,000	29.4
Singapore	2,713	85	2,798	2,410	116.1
Sri Lanka	10,687	386	11,073	14,500	76.4
Thailand	72,668	3,619	76,287	46,000	165.8
Western Samoa	173	7	180	155	116.1

1 Per 100,000 of population.
2 Australian statistics in this table are based on the daily average number of prisoners for the month of December 1980.
3 Federal prisoners only.

Australian prison trends

By Marjorie Johnson
on behalf of David Biles
Assistant Director (Research)

The number of prisoners in all States and Territories for April 1981 with changes since January 1981 are shown in Table 1.

Table 1 Daily Average Australian Prison Populations April 1981 with Changes since January 1981

	Males	*Females*	*Total*	*Changes since Jan. 1981*
N.S.W.	3,272	130	3,402	+ 156
VIC.	1,791	56	1,847	+ 133
QLD.	1,703	38	1,741	+ 42
S.A.	823	29	853	+ 53
W.A.	1,405	69	1,474	+ 98
TAS.	256	3	259	+ 32
N.T.	291	12	303*	+ 12
A.C.T.	51	--	51**	+ 2
AUST.	9,592	337	9,929	+ 528

* 6 prisoners in this total were serving sentences in S.A. prisons.
** 42 prisoners in this total were serving sentences in N.S.W. prisons.

Table 2 shows the imprisonment rates (daily average prisoners per 100,000 population), for April 1981. The national rate of 67.2 compares with 63.9 found in January 1981.

Table 2 Daily Average Prison Populations and Imprisonment Rates by Jurisdiction – April 1981

	Prisoners	*General Pop.* '000*	*Imprisonment Rates*
N.S.W.	3,402	5,201	65.4
VIC.	1,847	3,914	47.2
QLD.	1,741	2,285	76.2
S.A.	852	1,304	65.3
W.A.	1,474	1,283	114.9
TAS.	259	427	60.7
N.T.	303	125	242.4
A.C.T.	51	230	22.2
AUST.	9,929	14,769	67.2

* Estimated Population as at 31 March 1981 (subject to revision.)

Table 3 Total Prisoners, Federal Prisoners and Remandees as at 1 April 1981

	Total Prisoners	*Federal Prisoners*	*Prisoners on Remand*	*Percentage of Remandees*	*Remandees per '000 of Gen. Pop.*
N.S.W.	3,379	121	521	15.4	10.0
VIC.	1,831	40	144	7.9	3.7
QLD.	1,755	33	108	6.2	4.7
S.A.	857	14	128	14.9	9.8
W.A.	1,472	36	125	8.5	9.7
TAS.	256	2	8	3.1	1.9
N.T.	307	15	31	10.1	24.8
A.C.T.	51	3	9	17.6	3.9
AUST.	9,908	264	1,074	10.8	7.3

SOURCE: "Reporter", Australian Institute of Criminology Quarterly, Volume 2, Number 4, Canberra, A.I.C., June 1981.

TABLE 1. THE BREAK-DOWN OF INCIDENCE OF CHARGES BY OFFENCE CATEGORIES FOR 5 STUDIES OF ABORIGINAL COURT APPEARANCES.

STUDY[15]	Eggleston 1965[16]		Collett & Graves 1972[17]		Ligertwood 1977[18]		Office of Crime Statistics 1979[19]		N.W. Reserve 1980	
OFFENCES	N	%	N	%	N	%	N	%	N	%
Drunkenness (Alcohol)	630	(45)	413	(62)	22	(19)	1294	(44)	11	(9)
Traffic	143	(10)	23	(3)	40	(35)	166[21]	(6)	19	(16)
Disorderly Behaviour	265	(19)	90	(14)	0	(0)	622	(21)	1	(1)
Stealing (Break & Enter)	40	(3)	22	(3)	26	(23)	174	(6)	28	(23)
Native Welfare[20]	500		199		-		-			
Assault	89	(6)	13	(2)	2	(2)	171	(6)	5	(4)
Offences Against Police	69	(5)	24	(4)	5	(4)	49	(2)	1	(1)
Unlawful Use of M. Vehicle	17	(1)	8	(1)	13	(11)	115	(4)	26	(21)
Major Offences	27	(2)			1	(1)	44	(1)	0	(0)
Minor Offences	133	(9)	69	(11)	6	(5)	310	(10)	31	(25)
TOTAL	1913		813		115		2945		122	

SOURCE: Judith WORRALL, "European Courts and Tribal Aborigines - A Statistical Collection of Dispositions from the North-West Reserve of South Australia", Paper delivered to the ANZAAS Conference, Criminology Section, Brisbane, 13th May 1981.

APPENDIX II.

APPENDIX 14

ABORIGINALS AND NON-ABORIGINALS IN PRISON, MAJOR OFFENCES, SOUTH AUSTRALIA, 30 JUNE 1976

	Under sentence		*Not under sentence*	
	Aboriginal	*Non-Aboriginal*	*Aboriginal*	*Non-Aboriginal*
Homicides—				
Murder	5	38	..	3
Other homicides	2	15	..	2
Assaults—				
Assaults, serious	5	17	(*a*)	4
Assault, police	7	2	..	(*a*)
Assault, minor and unspecified	9	7	..	5
Rape	4	11	..	..
Other assaults	2	18	2	4
Robbery and extortion—				
Robbery with serious assault	5	29	(*b*)	9
Fraud, forgery and misappropriation	..	28	..	9
Theft, breaking and entering—				
Motor vehicle, unlawful use of	19	36	(*c*)	3
Theft, other	4	21	(*c*)	10
Breaking and entering	9	123	6	33
Other theft, breaking and entering	..	12	(*b*)	4
Property damage—				
Wilful damage	(*d*)	(*d*)	..	(*d*)
Other property damage	2	3	..	(*b*)
Driving and related offences—				
Driving whilst suspended (licence)	(*e*)	20	(*e*)	..
Other driving etc. offences	6	38	2	(*b*)
Other offences—				
Drunkenness	4	7	..	..
Indecent behaviour	5	4	..	2
Breach of probation, parole, bail, etc.	9	19	..	2
Suspended sentence revoked	4	13	..	..
Other	1	31	3	9
Males	94	489	11	95
Females	8	3	2	4
Total	**102**	**492**	**13**	**99**

(*a*) Not available for publication; included in 'Other assaults'. (*b*) Not available for publication; included in 'Other offences'. (*c*) Not available for publication; included in 'Other theft, breaking and entering'. (*d*) Not available for publication; included in 'Other property damage'. (*e*) Not available for publication; included in 'Other driving etc. offences'.

Source: *Department of Aboriginal Affairs Statistical Section Newsletter* No. 5, June 1978, p. 34.

SOURCE: "Aboriginal Legal Aid", House of Representatives Standing Committee on Aboriginal Affairs, Australian Government Publishing Service, Canberra, 1980. p. 229.

APPENDIX 10

CHARGES PROCEEDED WITH AND DECIDED IN MAGISTRATES' COURTS(*a*), WESTERN AUSTRALIA, 12 MONTHS ENDED DECEMBER 1973 TO 1976

Table 1: Charges resulting in imprisonment

	Aboriginal				*Non-Aboriginal*			
Offence	*1973*	*1974*	*1975*	*1976*	*1973*	*1974*	*1975*	*1976*
Unlawful carnal knowledge	3	9	(*b*)	..	13	5	4	9
Indecent assault	..	(*b*)	..	..	(*b*)	..	..	..
Indecent dealing	(*b*)	(*b*)	(*b*)	..	14	8	19	5
Assault	309	281	305	313	136	131	131	118
Other offences against the person	(*c*)	(*c*)	4	(*c*)	3	1	2	3
Robbery	7	..	3	2	3	4	(*d*)	11
Burglary, breaking, entering				348				
and stealing	184	172	227	63	716	521	605	619
Unlawfully on premises	90	82	83	214	62	77	72	51
Stealing	351	244	180	351	1 302	923	1 082	1 267
Unlawfully using motor vehicles	291	266	321	..	338	308	322	404
Unlawfully using other vehicles	..	..	..	..	(*d*)	..	3	2
Arson	..	..	..	49	..	..	..	..
Wilful damage	72	79	41	(*c*)	42	38	42	80
Other offences against property	..	..	(*c*)	4	3	(*c*)	(*c*)	..
Forgery	4	(*e*)	3	..	44	21	31	178
Other forgery and offences against the currency	(*c*)	(*c*)	..	..	32	32	6	4
Drunkenness	1 731	1 590	1 190	1 167	462	428	131	118
Habitual drunkenness	270	257	75	38	36	29	(*f*)	5
Disorderliness	932	545	606	632	80	42	51	63
Vagrancy	87	98	57	26	102	87	66	27
Indecent behaviour	3	(*f*)	4	4	10	6	7	3
Escaping legal custody	104	79	104	122	104	108	93	127
Offences against the police	155	81	130	118	67	84	65	58
Other offences against good order	(*c*)	3	(*c*)	..	31	14	19	30
Breach of traffic act	120	103	156	172	264	246	180	321
Breach of liquor laws	6	11	15	13	(*c*)	(*c*)	6	3
Gaming	..	..	..	..	..	3	(*c*)	..
Maintenance	3	..	8	(*c*)	4	(*c*)	3	..
Other offences	7	32	18	50	68	184	143	184
Total	**4 729**	**3 932**	**3 530**	**3 686**	**3 936**	**3 300**	**3 083**	**3 690**

(*a*) Figures relate to the number of charges recorded and not to the number of persons charged. (*b*) Not available for publication; included in 'Other offences against the person'. (*c*) Not available for publication; included in 'Other offences'. (*d*) Not available for publication; included in 'Other offences against property'. (*e*) Not available for publication; included in 'Other forgery and offences against the currency'. (*f*) Not available for publication; included in 'Other offences against good order'.

Source: Department of Aboriginal Affairs Statistical Section Newsletter No. 5, June 1978, p. 28.

SOURCE: "Aboriginal Legal Aid", Op. Cit. p. 224.

REFERENCES

1. Sir John Vincent William BARRY, "The Courts and Criminal Punishments", A.R. Shearer, Government Printer, Wellington, New Zealand, 1969. Foreword by J.L. Robson, Secretary for Justice.

2. See "South Australia Statistics from Courts of Summary Jurisdiction 1 July - 31 December 1980", issued by Attorney-General's Department, Series 11 No. 7, September 1981.
In South Australia, which has less than 1 per cent of its population Aboriginal, for the last six months of 1980 Aboriginals accounted for 17 per cent of all assaults on police; 14.8 per cent of all common assaults; 10.4 per cent of all larcenies; 15.8 per cent of wilful damage charges; 23.2 per cent of the abusive language cases; 29.3 per cent of the disorderly behaviour charges and 34.8 per cent of the cases of drunkenness heard in magistrates courts.

3. Ronald David FRANCIS, "Migrant Crime in Australia", St. Lucia, University of Queensland Press, 1980.

4. Human Rights in the Administration of Justice: A Report on U.N. Course, Australian Institute of Criminology, Canberra, 1978.

5. Report of the Committee of Inquiry into the Rate of Imprisonment, 1981. pp. 41-43

6. After reading this paper Professor Colin Tatz gave personal examples of some cases (identical with many dealt with within the community) becoming murder or manslaughter just because the police were called in. His Honour Judge Kingsley Newman of South Australia has just chaired a committee in Alice Springs which uncovered more instances of "pay back" assaults than had been officially recorded.

7. D. PARKER, "The Criminality of Aborigines in Western Australia", Report Produced for the Department of Native Welfare, W.A., 1970-1979.

8. M. KAMIEN, "Aborigines and Alcohol - Intake Effects and Social Implications in a Rural Community in New South Wales", Medical Journal of Australia, 1975 : 1 : pp. 291-98.

9. Rev. P.G.E. ALBRECHT, "The Social and Psychological Reason for the Alcohol Problem Among Aborigines and the Implications this has for the Introduction of Alcohol into an Aboriginal Community", Paper delivered to a Research Seminar on Aboriginal Health Services at Monash University Centre for Research into Aboriginal Affairs, 14-17 May 1972.

10. E. EGGLESTON, "Fear, Favour or Affliction", Australian National University Press, Canberra, 1976.

11. See for example W. CLIFFORD, "An Introduction to African Criminology", Oxford University Press, 1974.

12. Dolf ZILLMAN, "Hostility and Aggression", Hillsdale, New Jersey, Lawrence Erlbaum Associates, Publishers : 1979. pp 368-9.

AUST INST OF CRIMINOLOGY
MON13295

J. V. Barry Memorial
Library