

Race, Crime and Justice
Revision of Lecture Notes

KEY TERMS

WEEK 1: Introduction and Historical Context	<ul style="list-style-type: none"> • Terra Nullius • Genocide • Protectionism • Segregation • Assimilation • Child removal policies • Stolen wages • Indigenous resistances
WEEK 2: Historical Context Part 2	<ul style="list-style-type: none"> • Reconciliation • Indigenous sovereignty • Self-determination • White race privilege • Psychological Terra Nullius • 'Bringing them Home' Report • Northern Territory Emergency Response • Indigenous Marginalisation
WEEK 3: Indigeneity and the Law	<ul style="list-style-type: none"> • The International Convention on the Elimination of all • Forms of Racial Discrimination • The Racial Discrimination Act • Customary Law • The whiteness of Law
WEEK 4: Indigeneity, Crime and Victimisation	<ul style="list-style-type: none"> • Crime rates • Victimisation rates • Government statistics • Self-report surveys • Mainstream criminological theory • Indigenous Criminology • Crime as resistance • Family violence
WEEK 5: Indigeneity and Mainstream Policing	<ul style="list-style-type: none"> • Over policing • Under policing of domestic and family violence • Discretion

	<ul style="list-style-type: none"> • The trifecta • Hostility between police and Indigenous peoples • Royal Commission into Aboriginal Deaths in Custody • Palm Island
WEEK 6: Indigenous Policing	<ul style="list-style-type: none"> • Night Patrols • Community Patrols
WEEK 7: Indigeneity and Mainstream Courts	<ul style="list-style-type: none"> • Focal concerns • Differential involvement • Indirect and direct discrimination • Positive discrimination • Base-line effects • Sentencing determinants • Recognition of Indigeneity and customary law
WEEK 8: Indigenous Courts	<ul style="list-style-type: none"> • Innovative justice • Therapeutic jurisprudence • Restorative justice • Circle sentencing • Problem-solving courts
WEEK 9: Indigeneity and Punishment	<ul style="list-style-type: none"> • Incarceration rates • Alternatives to imprisonment • Indigenous women • Indigenous prison • Correctional programs
WEEK 10: Ethnicities, Crime and Victimisation	<ul style="list-style-type: none"> • Crime rates • Victimisation rates • Media representations • Ethnic youth gangs

Week 1: Introduction and Historical Context

The Sociological Imagination and a Hypothetical Scenario

“The sociological imagination enables us to grasp history and biography and the relations between the two within our society. That is its task and its promise. To recognise this task and this promise is the mark of the classic social analyst”

The blood of tens of thousands of Indigenous Australians killed since 1788, and the sense of despair and hopelessness which informs so much of modern-day Indigenous society, is a moral responsibility all white Australian share. Our wealth, our lifestyle, the much touted “Aussie way of life”, have all been achieved as a direct consequence of Indigenous dispossession. And as Bruce Elder argues, we should all bow our heads in shame.

Invasion

The acquisition of British territories, *Terra Nullius* (land belonging to no one).

- As the indigenous inhabitants of a settled colony were regarded as “low in the scale of social organisation,” they and their occupancy of colonial land were ignored in considering the title to the land as a settled colony... Thus, a select committee on Aborigines in 1837 to the House of Commons that the state of Australian Aborigines was “barbarous” and “so entirely destitute...” of the request forms of civil polity, that any claims, whether as sovereigns or proprietors of the soil, have been utterly disregarded”

The meaning of land to Indigenous Australians

- No English words are good enough to give a sense of the links between an Aboriginal group and its homeland. Our word “home”, warm and suggestive though it be, does not match the Aboriginal word that may mean “camp”, “hearth”, “country”...and much else all in one. Our word “land” is to spare and meagre...The Aboriginal would speak of “earth” and use the word in a richly symbolic way to mean his “shoulder” or his “side”. I have seen an Aboriginal embrace the earth he walked on.... (Stanner).
- Land has a spiritual, cultural, political and economic value. It supports our identity, our spirit, our social relations, our cultural integrity and our survival. Removed from our land we are literally removed from ourselves (Dobson, 1997).

Terra Nullius resulted in the ‘**dispersal**’ of Indigenous peoples from their land via violent force including large scale massacres – it was far from a ‘peaceful settlement’.

- The habit of regarding natives as vermin, to be cleared off the face of the earth, has given to the average Queenslander a tone of brutality and cruelty in dealing with blacks...I have heard of men of great culture and refinement, of the greatest humanity and kindness to their fellow whites...talk, not only of wholesale butchery...but of the individual murder of natives, exactly as they would talk of a day’s sport or having to kill some troublesome animal (McCartney, Lincoln and Wilson, 2003: 44)

Indigenous resistance

- Use of guerrilla warfare tactics to resist the dispossession of their land however Indigenous people were frequently killed to provide a ‘lesson’ to other Indigenous people in the area not because they were engaging in open acts of violence against the colonisers

Large number of Indigenous deaths as a result of the on-going violence and malnutrition from being pushed from their lands.

Diseases further contributed to the deaths of Indigenous Australians - small pox had an especially devastating impact.

- “The number that it swept off, by their own accounts, was incredible. At the time a native was living with us; and on our taking him down to the harbour to look for his former companions, those who witnessed his expression and agony can never forget either. He looked anxiously around him in the different coves we visited; not a vestige on the sand was to be found of human foot; the excavations in the rocks were filled with the putrid bones of those who had fallen victims to the disorder; not a living person was anywhere to be met with....he lifted up his hands and eyes in silent agony for some time; at last he exclaimed, ‘All dead! All dead! And then hung his head in mournful silence’(Elder, 2003: 7-8).

It has been estimated that the number of Indigenous people living in **Australia pre-contact** was between **750,000 and 1.5 million**. By the **1920’s** the Indigenous population had declined to between **50,000 and 90,000**.

Social Darwinism - In the natural course of events, the atavistic (sub-human) natives would soon die out. It was only natural that the more highly evolved and thus superior European race would triumph.

However, as clear testimony to their strength, Indigenous peoples did not die out. And now, there were grave fears that inter-racial sex would lead to the ‘**contamination**’ of European blood.

The spread of Christianity - The need to establish a more sympathetic response to Aboriginal peoples.

Protection/Segregation

Phase 1 - 1840’s - 1930’s - ‘Smoothing the dying pillow’

- Protection-segregation policies were underpinned by two connected racial assumptions. The first was that there was a **significant biological difference between Aboriginal and non-Aboriginal people**. The second was that **Aboriginal people were inferior to white people**. Aboriginal people were a ‘dying race’, who should be kept separate and protected until they eventually (and inevitably) died off(Rimmer, 2006).

But it soon became clear that indigenous people were not going to ‘die off’ and what to do with all those ‘half castes’?

Key Period: 1890 -1911

- Regulated and controlled the lives of Aboriginal Australians (needed permission to marry, to be employed, to move about, compelled to live in a designation location such as on reserves, forced to ‘disperse’ to other locations.)
- Queensland Legislation made it lawful “for the Minister to cause every aboriginal... not being an aboriginal excepted from the provisions, to be removed, and kept within the limits of, any reserve”.
- *Exemption Certificates were granted only to those Aborigines who demonstrated to the Chief Protector’s satisfaction the capacity to survive in the outside world. In other words, they were*

imbued with capitalist values concerning money, time and work. But the standards required for exemption were high; certificates were not freely issued (Historian, Thom Blake).

Life on the Reserve

All aspects of Indigenous peoples' lives were strictly controlled:

- Needed permission to leave and strict conditions were applied once an indigenous person left.
- Restrictions placed on the time parents could spend with children
- Off-site employment required permission, the protector negotiated with contracts and wages were 'held in trust' (ask stolen). Those living on working reserves were not paid.

The 'Problem' of the half-caste, 1930's

- *"The half-caste is a danger to the population. He has already had a leg in (laughter) and we want to see the position does not get any worse. All jokes aside, I am of the opinion that the half-caste should be restricted in such a way as to prevent any further mixing with whites. We want our race kept white"*(Queensland, Hansard, 19 September 1939).
- The power of the 'protectors' - Regulation of sexual relations and marriage choices among Indigenous Australians.
- Estimating the share of Aboriginal Peoples under government control of some kind in the 1930's.
- *Those in 'supervised...' [which included government reserves and religious missions] ranged from 21 to 27% of the population of the Northern Territory, South Australia, and Western Australia, to between 33 and 41% of the eastern mainland....But outside the eastern states, between 40 to 46% of the population were 'nomadic' and beyond European control* (Markus, in McRae,et.al., 2003: 33).
- In QLD, by 1939, some 7000 Indigenous people have been removed from their lands and incarcerated on reserves.

The diversity of Aboriginal life between 1900 and 1940 makes generalisation difficult. Some continued to follow traditional ways in the driest parts of the continent, the areas of least economic benefit to Europeans. A minority lived in institutions such as children's homes, supervised government reserves, and church-run missions, others on reserves with minimal supervision. Some worked within the European economy, the greatest number in the pastoral industry. Some lived on the margins of "white Australia," in camps on pastoral properties, or on the outskirts of missions or country towns, frequently near the garbage tip, generally in material poverty. ... A few officials were able to establish a rapport with Aborigines, but most were separated from those under their authority by their sense of racial superiority and authoritarian disposition.

There were, however, common features of Aboriginal life which were of greater significance than this diversity. Few if any Aborigines had the opportunity to raise their economic status beyond that of an underclass. The ability to determine the course of their own life was limited, in many cases taken from them. Their inferior position was established in a legal system which deprived them of basic human rights. Some might find themselves outside the scope of a current definition or exempted from a piece of legislation, but at any time definitions might be altered, exemptions revoked and lives changed at the whim of administrators (Markus, 1994, pp. 138-139).