

University of New South Wales Law Research Series

INDIGENOUS CRIMINOLOGY

CHRIS CUNNEEN AND JUAN TAURI

Primary citation

In, A Brisman; E Carrabine, and N South (eds), *The Routledge Companion to Criminological Theory and Concepts* (2018 Routledge) 306-310

please ensure the primary citation is used

[2018] UNSWLRS 7

UNSW Law
UNSW Sydney NSW 2052 Australia

E: unswlrs@unsw.edu.au
W: <http://www.law.unsw.edu.au/research/faculty-publications>
AustLII: <http://www.austlii.edu.au/au/journals/UNSWLRS/>
SSRN: <http://www.ssrn.com/link/UNSW-LEG.html>

Cunneen, C. and Tauri, J. (2017) 'Indigenous Criminology', in Brisman, A., Carrabine, E. and South, N. (eds) *The Routledge Companion to Criminological Theory and Concepts*, Routledge, Milton Park. ISBN 9781138819009, pp 306-310

Indigenous criminology

After centuries of colonisation, Indigenous peoples in the settler colonial states, including Australia, New Zealand, Canada and the USA, experience profound socio-economic disadvantage and political marginalisation. Nowhere is the impact of colonialism more obvious than with Indigenous peoples' experience of criminal justice, one that is characterised by high rates of victimisation, arrest, conviction and imprisonment. While the significant over-representation of Indigenous peoples in settler colonial systems of crime control is acknowledged by both policy makers and mainstream criminologists alike and has resulted in significant research and policy, overall the situation has worsened over past decades. Critical Indigenous commentators and non-Indigenous collaborators argue that the failure to address over-representation in part sits with the paternalistic tendencies of settler colonial governments, and the Eurocentric bias of many within mainstream criminology. Dominant explanations of the causes of this problem, and policies and interventions designed to alleviate it, tend to *pathologise* Indigenous peoples, presenting them as individuals prone to criminality, and their cultural knowledge, philosophies and social practices as *criminogenic*. Furthermore, some prominent criminologists have suggested that Indigenous knowledge, at least that which impacts the development of crime control policy, is an impediment to the development of effective interventions for reducing Indigenous over-representation (e.g. Weatherburn, 2014; for a critique of these approaches see Cunneen and Tauri, 2016)

An Indigenous approach to criminological inquiry has emerged within settler colonial contexts, partly in response to the perceived weaknesses and bias of the policy sector and ‘mainstream’ criminological approaches described above (Cunneen and Tauri, 2016). The antecedents of this criminological movement were provided by Indigenous political and social activists from the early 1970s which focused on the role of the criminal justice system in the subjugation of Indigenous peoples. Activist critique of criminal justice focused on the colonial foundations of its core institutions and practices, including the role of policing, courts and prison (e.g. Jackson, 1988). Building on the work of this group, over the past two decades Indigenous scholars (e.g. Ross, 1998; Tauri, 2012) and a group of critical, non-Indigenous collaborator’s (e.g. Blagg; Cunneen, 2001), have begun to construct a distinctly *Indigenous Criminology* - an Indigenous approach to explaining and responding to social harm in the contemporary settler colonial context. A further contribution of Indigenous activism to the development of an Indigenous Criminology, was the establishment and findings of a number of national inquiries including the Canadian Royal Commission into Aboriginal Peoples, and the Australian Royal Commission into Aboriginal Deaths in Custody.

Key Dimensions of an Indigenous Criminology

When we speak of an Indigenous Criminology, we are talking more of an analytical and epistemological ‘approach’ to analysing relations between Indigenous peoples, the criminal justice system and the criminological academy, than a fully elaborated theory of Indigenous criminality, Indigenous victimisation, over-representation, and/or empowerment. An Indigenous criminological approach can be distinguished by the following key analytical frameworks:

Firstly, an Indigenous approach to criminological analysis is one that is firmly based in *historical and contemporary conditions, and the impact of colonialism and its contemporary manifestations in settler colonialism*. Building a criminology ‘from the ground up’ that privileges the Indigenous perspective and requires a meaningful analysis of colonialism as an explanatory factor in Indigenous peoples experiences of settler colonial justice. It is a theoretical and practical necessity for a) understanding the antecedents of contemporary levels of over-representation, and b) for developing meaningful solutions.

Secondly, of fundamental importance to the study of Indigenous experiences of crime control is the ideal that *Indigenous knowledge, and the processes for gathering, analysing and disseminating it, are vital for understanding the Indigenous context*, and Indigenous experience of settler colonial crime control.

Thirdly, *Indigenous criminological research gives back by ‘speaking truth to power’*. A principle that is common to Indigenous-inspired ethics for conducting Indigenous research, is the need to give back to the communities from which knowledge is taken; even if you are a member of that community. Some of the ways in which Indigenous researchers give back that have been identified in the literature include: i) taking on the political role as agents of change, and, ii) as organic intellectuals involved in unmasking dominant ideologies and colonising practices of the state and other institutions, including the Academy.

Fourthly, *Indigenous criminological research with Indigenous peoples should be ‘real’*. Arguably, some members of the western academy have become adept at ‘faking’ the appearance of respectful consultation/research. Of late, Indigenous scholars have exposed the nature and extent of this problem as it recurs in criminological research on the ‘Indigenous problem’.

More importantly, the negative impact of deceptive or dishonest consultation and engagement, in terms of meaningless Indigenous strategies, biculturalised interventions and such like, is *very real* and often damaging for the Indigenous communities upon whom they are forced. Therefore, it is essential that we ensure the knowledge about Indigenous peoples that we assemble and disseminate, reflects their experiences, and has a positive impact on their lives. For this to happen we need to ensure that our work is 'real', meaning it must come *from within* Indigenous peoples and their communities.

Fifthly, the importance of Indigenous rights forms a cornerstone to criminological research and policy development. The *Declaration on the Rights of Indigenous Peoples* elaborates these rights. Of particular relevance to Indigenous Criminology are self-determination; participation in decision-making and free, prior and informed consent; non-discrimination and equality; and respect for and protection of culture. Each of these principles provides a guide for both assessing contemporary criminal justice systems and respecting Indigenous demands for reconceptualising justice.

The 'Added Value' of an Indigenous Criminology

The added value of an Indigenous approach to criminological analysis can be identified through the case study of the Maori jurist and activist Moana Jackson's (1988) exploration of Indigenous experiences of crime control policy in New Zealand. Jackson's research on Māori experiences of crime control represents the only significant empirical project of its kind undertaken in New Zealand to date. The study was carried out over three years and involved individual interviews, and focus groups with a range of Māori with experience of the justice system. To understand Māori offending, Jackson (1988) argued that theoretical explanations and policy responses had to contextualise Māori experiences in relation to a history of

colonisation. This emphasises the importance of understanding how colonisation shapes contemporary social relations and contexts, rather than seeking to limit analyses to that of individual pathology, and decontextualised from the wider social, political and economic relations of New Zealand society.

Many recommendations contained Jackson's report were ignored or dismissed by the government at the time as being 'separatist'; including referring cases to Māori providers, holding meaningful hearings on *Marae* (meeting houses), cultural advisory groups for justice agencies, affirmative action to secure employment of those with knowledge of *te ao Māori* (Māori culture, language, etc), and meaningful bicultural training (Jackson, 1988). At the time, the primary policy response largely revolved around the controlled integration of 'acceptable' Māori concepts and cultural practices into confined areas of the justice system. Government officials expressly recommended against transferring criminal justice-centred processes into distinctly Indigenous settings, such as *marae*. Officials argued that court trials could not be easily transposed to Indigenous cultural setting while ensuring the integrity of the state process remained 'intact'.

However the intervening 30 years, the majority of these recommendations have in some form or other been implemented. The state has moved to utilise *marae* to deal with Indigenous justice matters, firstly, as a site for the delivery of rehabilitation programmes and restorative justice interventions, and of late through the establishment of the Rangatahi (youth) courts. The key point is that Jackson's highly politicised research changed the criminal justice landscape in New Zealand immeasurably and opened the space for Indigenous-centred research and responses to issue of crime control.

The Future of Indigenous Criminology

Cunneen and Tauri (2016) have recently identified a number of issues that require the theoretical and empirical attention of the evolving Indigenous Criminology movement. Paramount is the development and empirical investigation of a 'theory of colonisation', of the impact of colonial and neo-colonial policies of settler-colonial government, on Indigenous communities. Also of importance for an Indigenous critique of crime control policies is the reinvigoration of Indigenous social and political activism, such as Canada's *Idle No More* movement, and the ongoing battle of members of the Indigenous academy to centre Indigenous experiences, knowledges and methodologies as essential to criminological explorations of the Indigenous world.

References

- Blagg, H (2008) *Crime, Aboriginality and the Decolonisation of Justice*. Sydney: Hawkins Press.
- Cunneen, C (2001) *Conflict, Politics and Crime*. Sydney: Allen and Unwin.
- Cunneen, C and Tauri, J (2016) *Indigenous Criminology*. Bristol: Policy Press.
- Jackson, M (1988) *Maori and the Criminal Justice System: He Whaipanga Hou*. Wellington: Department of Justice.
- Ross, L (1998) *Inventing the Savage: The Social Construction of Native American Criminality*. Austin: University of Texas Press.
- Tauri, J (2012) 'Indigenous Critique of Authoritarian Criminology'. In K. Carrington; M. Ball; E. O'Brien and J. Tauri (eds) *Crime, Justice and Social Democracy: International Perspectives*. London: Palgrave Macmillan, pp 217-233.
- Weatherburn, D (2014) *Arresting Incarceration: Pathways Out of Indigenous Imprisonment*. Canberra: Aboriginal Studies Press.

Further reading

Agozino, B (2003) *Counter-Colonial Criminology: A Critique of Imperialist Reason*. London: Pluto Press.

Cunneen, C and Tauri, J (2016) *Indigenous Criminology*. Bristol: Policy Press.

Kitossa, T (2012) 'Criminology and Colonialism: Counter Colonial Criminology and the Canadian Context', *The Journal of Pan African Studies*, 4(1): 204-226.

Milward, D (2012) *Aboriginal Justice and the Charter*. Vancouver: UBC Press.

Porter, A. (2016) 'Decolonizing Policing: Indigenous Patrols, Counter-Policing and Safety', *Theoretical Criminology*, published online January 21, 2016, doi: 10.1177/1362480615625763

Ross, L (1998) *Inventing the Savage: The Social Construction of Native American Criminality*. Austin: University of Texas Press.