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Postcolonial Perspectives for Criminology

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# Postcolonial Perspectives for Criminology

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## **Abstract**

This chapter argues for the importance of a postcolonial perspective in criminology. It is a perspective that has the potential to offer new theoretical insights, and to expand the discipline in an engaged and reflexive endeavor that is cognisant of cultural and historical difference.

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# Postcolonial Perspectives for Criminology

Chris Cunneen

## Introduction

This chapter argues for the importance of a postcolonial perspective in criminology. It is a perspective that has the potential to offer new theoretical insights, and to expand the discipline in an engaged and reflexive endeavour that is cognisant of cultural and historical difference. To date, postcolonial theory has had greater impact in areas such as literature, law, politics and sociology than it has in criminology. Rather than delve into the intricacies of postcolonial theory, I want to approach it here as a *perspective* that can significantly enhance the vision of criminology. Following writers like Edward Said and Gayatri Spivak, I suggest that postcolonialism is a perspective that demands we recognize the ongoing and enduring effects of colonialism on both the colonized and the colonizers. Colonization and the postcolonial are not historical events but continuing social, political, economic and cultural processes. The postcolonial exists as an *aftermath* of colonialism and it manifests itself in a range of areas from the cultures of the former imperial powers to the psyches of those that were colonized. In this chapter I explore the potential of a postcolonial perspective: from understanding the relationship between colonization, state crime and the over-representation of marginalized peoples, to an appreciation of indigenous art as a site for criminological investigation.

Legal theorists have used postcolonial approaches to understand the role of law in the colonial process, as well as how the ideological effects of colonial laws continue to have relevance today, and may well continue to have exploitative consequences. They have sought to demonstrate the effects of transplanting western laws onto colonial peoples as part of the process of empire building in a range of areas from intellectual property law and land law to international law and questions of sovereignty. More fundamentally, scholars have questioned the claims to universality of western-based law and jurisprudence. Yet, with few exceptions (eg, Agozino 2003, 2004, 2005; Blagg 2008; Cunneen 2007, 2008; Morrison 2006; Sumner 1982), these ideas have not been taken up to any great extent or as a systematic approach within criminology. Part of the problem is that 'taking the American and European criminological tradition as our point of departure, whether right or left realism, critical theory or administrative criminology—is that they all tend to operate without a theory of colonialism and its effects' (Blagg 2008: 11; see also Cohen 1988). Having said that, it is clear that postcolonial perspectives have informed many writers—particularly those working on issues of race and criminalization and in discussions of crime, development and underdevelopment—from Hall *et al.* (1978) and Sumner (1982) onwards. Sumner, for instance, argued that an historical perspective on criminal law 'must inevitably turn us towards colonialism ... crime is not behaviour universally given in human nature and history, but a moral-political concept with culturally and historically varying form and content' (Sumner 1982: 10). This relativist position on the nature and definitions of crime is distinct from a 'labeling' perspective because a postcolonial perspective sees crime as a category

contextualized through the material practices and ideologies of colonial states and by the resistances of colonized peoples.

Postcolonial writers have generally drawn a distinction between two major forms of colonialism: those lands that were colonized for the purposes of settlement (eg, north America, New Zealand, Australia, and South Africa) and those that were colonized for the purposes of economic exploitation (eg, large parts of Africa, the Indian subcontinent and south-east Asia). It is worth considering in more detail the implications of this conceptual division for criminology, particularly in relation to the long-term outcomes of these differing forms of colonialism. One clear historical effect is that in the former settler countries there are ongoing demands by indigenous minorities for political recognition of self-determination, reparations and compensation for historical injustices and effective responses to contemporary forms of discrimination. Indigeneity is a key concept in our understanding of how criminal justice systems function in former settler societies as well as a site for innovative approaches (eg, circle sentencing, restorative justice, etc.). In addition, to the extent that slavery was a key strategy for economic development in some settler societies (eg, the United States) the long-term impoverishment of formerly enslaved peoples provides a fundamental link to current patterns of over-representation of racial minorities in the criminal justice system.

For large parts of the world, colonialism involved significant economic exploitation of labour and resources, and fundamental changes to social structures and political life. What is the role of criminology in understanding the nature of crime and crime control in the non-western former colonies from the Caribbean to the Pacific, Asia and Africa? Can criminology have a role unless it develops a theory of colonialism and its effects? The dominant intellectual frameworks of criminology were established in the west with a view of understanding and explaining the phenomena of crime and crime control within specific western contexts. Part of the process of 'decolonizing' criminology is to see that criminology is a product of a particular set of narratives within western social sciences—a set of narratives that were 'fashioned in relation to the experience of the [European] Diaspora and in the construction of complexly stratified societies within and around the urban conurbations of Western cities' (Blagg 2008: 202). The criminological imagination falters when confronted with genocide and dispossession, and with peoples who demand that their radical difference, their laws and customs, their alterity to the west be recognized. We are beginning to see the silences of western criminology being challenged with the specific development of a postcolonial perspective in African criminology, particularly in the writings of Biko Agozino (2003, 2004, 2005).

To the extent that the 'colonial question' has engaged criminology it has been partly through the concept of *diaspora* and the movement of former colonised peoples from the periphery to metropolitan centres. Colonialism and former colonized peoples have had a presence in criminology (and critical legal studies and cultural studies, where they intersect with criminology) where the *diaspora* of former colonized peoples have appeared in western states (usually as a 'crime problem'). The concept of the *diaspora* provided critical writers like Hall (1978; see also Morley and Chen 1996) and Gilroy (1987) with the opportunity to link racialized crime constructs with colonialism. For Hall *et al.* (1998), black youth and the black working class in Britain had two intersecting histories: the history of the British working class and the history of Caribbean labour. We also see a similar perspective in the analysis of those working on race and criminalization from Keith (1993) and Solomos (1988, 1993) through to Bowling and Phillips (2002) where the criminal justice system is analysed as one of the key mechanisms through which ideas about race are constructed. More recently, some criminologists exploring globalisation (Aas 2007a, 2007b; Findlay 1999, 2008) have noted that criminology is still primarily developed in the former colonial centres, and that the criminological enterprise lacks a coherent theoretical understanding of colonialism and postcolonialism. Despite some exceptions like

those noted above, much of the work on globalization and criminology is still distinctly Eurocentric. Human trafficking, the war on terror, illegal immigrants and the transnational flow of peoples are still approached largely as a 'problem' for western states.

What would a postcolonial perspective on criminology look like? At the outset, I would emphasize that a postcolonial perspective for criminology can provide both theoretical insights and grounded policy analysis. A postcolonial perspective in criminology does not need to eschew evaluative approaches or empirical research but it should proceed from a critical and reflexive framework that questions the centrality of a western understanding of crime and control. A postcolonial vision for criminology can engage with public policy formulation and debates, but it does so from a theoretical grounding that recognizes the importance of history, particularly through understanding of the long-term impact of colonization and imperialism, and it does so through an analysis of the structures of sentiment and ideology that determine the intersections of race, crime and punishment. A postcolonial perspective suggests a number of issues and conceptual standpoints. I do not lay claim in this essay to be any more than suggestive of some possible avenues for exploration.

## Human Rights and State Crime

Broadly speaking, a postcolonial perspective opens up criminology to a more intellectually robust understanding of human rights and state crime. It also provides an opportunity to question the historical foundations of criminology as part of the imperialist project (Morrison 2006). I want to explore the potential relationship between state crime and human rights through reference to indigenous peoples in colonial settler societies. As I explore further below, indigenous people have been victims of profound historical injustices and abuses of human rights over the last several centuries that can be at least partially understood in the context of state crime—the modern political state developed through the systematic abuse of peoples who are now minorities within developed states. Furthermore, contemporary criminal justice systems within those states are often seen as disregarding or undermining respect for indigenous people's human rights. A postcolonial perspective also allows us to understand how contemporary indigenous claims to human rights protections can impact on current criminal justice processes, and how those claims might broaden our understanding of reform and change within the criminal justice system.

### *Historical Injustices and Human Rights Abuses*

We know the widespread role of state institutions, often sanctioned by law, as the perpetrators of some of the greatest crimes against humanity. Modern political states have been responsible for the murder of millions of people even when deaths in wars, judicial executions, etc. are excluded (Green and Ward 2004: 1). The modern political state has been integral to the commission of genocide and other human rights abuses. Genocide and modernity have gone hand in hand (Bauman 1989), and the specific modernity of genocide is that the vastness and totality of 'final solutions' could only be pursued by the modern state with access to resources, administrative capacities and lawmaking functions (Gellately and Kiernan 2003: 4). This is at the heart of our contemporary understanding of state crime. That genocide, the 'crime of all crimes', should have been absent from criminology for so long deserves full explanation in itself (Morrison 2004). A part of the problem has been the positivist approaches in law and criminology that define 'crime' as a breach of state criminal law, and count

crimes from the data driven by state agencies. Within such state-centric discourses it is difficult to conceptualize the incidence and nature of state crime.

A postcolonial perspective broadens our understanding of state crime because it draws attention to the connections between the colonial development of the modern political state and the globalized nature of gross violations of human rights of indigenous and former colonized peoples. In other words, the modern political state is built on the human rights abuses of colonized and enslaved peoples. Indeed racism, slavery and its consequent effects in Africa and America could be the subject of much criminological research. If we turn our attention specifically to the claims concerning historical injustices and human rights abuses against indigenous peoples we find that there are multiple layers of state crime. At the highest level is the claim that particular colonial practices against indigenous people constituted genocide. Below genocide are claims of mass murder, racism, ethnocide (or cultural genocide), slavery, forced labour, forced removals and relocations, the denial of property rights, and the denial of civil and political rights (Cunneen 2007).

In many cases claims for reparations and remedies for these abuses dominate political relations between indigenous peoples and the state in countries like Canada and Australia. A postcolonial perspective places contemporary demands for reparations and compensation for historical injustices as a legitimate subject area for criminology. If we see these systematic abuses as a form of crime then demands for redress are not simply questions of law and politics, they are also questions with which criminology might fruitfully engage. Such an engagement might involve documenting and understanding the way state agencies were involved in various practices (such as mass murder), or analysing the techniques through which states deny culpability (Cohen 2001), or developing conceptual frameworks and analysis of how processes for reparations might work—particularly given criminology's interests in punishment, offender-victim relations, and restorative justice.

## *Human Rights Abuses and the Contemporary Relations between Indigenous Peoples and Criminal Justice Systems*

Contemporary indigenous peoples are found across many nations and total some 370 million people. As distinct peoples they have retained social, cultural, economic and political characteristics that distinguish them from the dominant societies in which they live. Indigenous peoples are also among the most disadvantaged and vulnerable groups of people in the world (Permanent Forum on Indigenous Issues 2006). The experiences of colonization varied depending on when it occurred, where and by whom. However there are commonalities found in indigenous peoples' relations with dominant criminal justice systems in former colonial settler societies both in the English-speaking societies of north America, Australia and New Zealand, as well as the former settler colonies of central and south America. A common factor relevant to criminology is the massive over-representation of indigenous peoples in state criminal justice systems. Generally the data (where available) shows that indigenous people are more likely to be apprehended by police, more likely to be prosecuted, more likely to be convicted, and more likely to be sentenced to imprisonment (see Cunneen 2007: 247-8 for a summary). There have been major inquiries into the relationship of indigenous people with the criminal justice system, particularly in Australia (the Royal Commission into Aboriginal Deaths in Custody) and Canada (the Manitoba Aboriginal Justice Inquiry, and the Royal Commission into Aboriginal Peoples).

A postcolonial perspective in criminology approaches the question of racial and minority over-representation from a position grounded in the experiences of colonized peoples. Those experiences

tend to see over-representation not as a matter of crime and punishment *per se*, but rather as an extension of dispossession and the abuse of human rights. A postcolonial perspective forces criminology to leave the relatively comfortable zone of positivist definitions of crime and to consider how marginalized peoples may view criminal justice intervention as unjust. Western liberal democratic states define their criminal justice systems as neutral, fair and universal in their application, indeed their legitimacy demands that these principles be upheld. Yet it is clear that many indigenous peoples see state criminal justice systems as oppressive. In general positivist approaches in criminology assume the legitimacy of the criminal justice system and seek to answer questions relating to frequency and causes of crime and the efficacy of criminal justice responses. A postcolonial perspective starts by questioning these assumptions and analysing how criminal justice systems can have the effect of entrenching the marginalization of minority peoples.

## *Collective Rights and Criminal Justice Systems*

The process of reasserting indigenous collective rights, such as recognition of indigenous law and governance, self-determination, or self-government, may require significant institutional change on the part of state criminal justice agencies. Given that a central component of the indigenous critique of policing and the criminal justice system has been that indigenous rights have been ignored, it would be naive to think that the political demands of indigenous peoples would not also require substantial institutional reform. Henriksen (1998: 32) has discussed four existing ways of arranging indigenous autonomy and self-government, including:

- indigenous autonomy through contemporary indigenous political institutions (for example, Saami parliaments in the Nordic countries);
- indigenous autonomy based on the concept of an indigenous territorial base (for example, the Comarca arrangement in Panama, the Torres Strait Regional Authority in Australia, or Indian jurisdictions in the United States);
- regional autonomy within the state (for example, the Nunavut territory in Canada or indigenous autonomous regions in the Philippines);
- indigenous overseas autonomy (for example, Greenland home rule).

I simply make the point that political claims to self-determination have significant implications for state-based criminal justice systems. Rather than seeing these claims as a problem—as existing states and their institutions tend to do—a postcolonial perspective for criminology can envision the potential fragmentation of centralized criminal justice systems as an opportunity for responsive change and greater community-driven development.

The right of self-determination is also often linked to indigenous claims of sovereignty. Sovereignty can have multiple meanings in the context of indigenous political claims. It can refer to the historical claim that indigenous people have never relinquished sovereignty—particularly pertinent in Australia where there were no written treaties recognized by the Crown. Or it can be used to refer by indigenous people to the residual and unextinguished rights to self-government and autonomy that were recognized to varying degrees through treaties in New Zealand and north America. More generally, the political claim of a right to self-determination implies the right and ability to exercise some level of sovereign power—even if within the boundaries of existing nation states.

Sovereignty in international law is usually seen as inextricably tied to territory:

Sovereignty demands a territory over which the governmental authority of the sovereign extends. Control over territory is the most essential element of sovereignty... Territory thus represents both the encompassing limits of a state's jurisdiction over its resident population and the barriers to outside jurisdiction [Royster 1995: 1-2].

However, sovereignty is also a dynamic concept with transformed meanings in different political and historical contexts. It is neither static nor absolute. Despite the apparent claims of the nation state to a concept of sovereignty that privileges a particular political relationship and concept of power, sovereignty is in a state of flux. From an indigenous perspective, it can be conceptualized in terms of jurisdictional multiplicity and divisibility rather than monopoly and unity. A postcolonial perspective sees sovereignty in terms of multiplicity and decentred state power, particularly in relation to defining and controlling crime.

While sovereign power remains central to the nation state, trends towards globalization have also seen the state deal with competing modes of governance. Although 'the liberal-democratic nation-state retains a central role in redistributing elements of sovereign power and national jurisdiction' (Stenson 1999: 67), there has also been a 'redistribution' of sovereign powers. In the criminal justice area, we can see sovereign power moving out of the state to international bodies for courts and policing (United Nations and regional-based courts, regulatory bodies, investigatory bodies, and so forth). Sovereign power can also be seen as moving downwards to more regional and local spheres of government and governance such as multi-agency crime control partnerships (Stenson 1999: 68).

The redistribution of sovereignty may also provide avenues and gaps for the development of shared jurisdictions or shared sovereignty. The challenge that indigenous claims to sovereignty and self-determination pose for criminology are both theoretical and practical. The theoretical challenge is to understand that basic categories and definitions of crime are fundamentally circumscribed by historical and political contexts. The very legitimacy of the institutions used to control crime is not universally accepted. The praxis issue this raises is: how do we develop legal institutions which are capable of dealing with multiple jurisdictions and differential citizenship claims? In other words, how do criminal justice institutions develop in a manner that can deal fairly with competing citizenship demands and maintain legitimacy for different social groups?

Finally in this discussion on human rights, it is worth making the point that the concept of universal human rights has been much debated within critical and postcolonial theory (see for example Davies 2002: 186-93). In liberal democracies, the rule of law is understood as a universal principle and a fundamental good. Equality before the law and equal protection of the law are seen as the defining features of a legal system built on the rule of law. A postcolonial perspective does not necessarily argue against these principles and the rights they bestow but rather demonstrates the way in which marginalized and colonized peoples are constrained in their capacity to enjoy these protections and rights. Part of the constraint arises from the social and economic position of marginalized groups, as well as racialization and the lack of tolerance of cultural diversity. There is a palpable tension between a universal principle like equality before the law and the recognition of cultural difference, and this tension is constantly played out in law, policy and practice.

## *The State, 'Nation' and Crime*

A postcolonial approach demands that we consider issues of state power, and one area where state power is often neglected is in its power to define citizenship and belonging. There is an extensive

literature on the relationship between nation and the 'imagined community' (Anderson 1996). A postcolonial approach emphasizes the way the state defines itself as synonymous with the nation. Nationalism constructs the 'people', but does so through a process of excluding and forgetting. The limits of belonging to the nation can also become the boundaries of the moral community. To be outside the moral community is to be susceptible to the violence of the state. Discourses on nationalism and the state also bear directly on definitions of crime and criminality. Sumner (1990) has argued that the censure of crime attempts to unify and publicize a vision of the nation and its morality. Crime is seen as a threat to national unity, and criminalization is a key part of the building of the nation through processes of exclusion. Thus, 'notions of crime control, the crime wave, the crime zone, crime as a social problem, and the breakdown in law and order, [are presented] as signs of a moral malaise threatening the constitutional integrity of the state' (Sumner 1990: 49).

Related to this concept of censure is the view that the criminal justice system has a determining role in actually constituting social groups as threats and in reproducing a society built on racialized boundaries. In Keith's (1993: 193) terms, 'the process of criminalisation itself now constitutes a significant racialising discourse'. Over the last decade the impact of globalization has led to discussion of the deep-seated insecurity within liberal democracies and the role of the state in representing itself as the guardian of sovereignty and internal and external security (Bauman 2000; Lianos and Douglas 2000). These three processes are inter-related: punishment is a moral censure reinforcing the boundaries of the nation, crime is fundamentally racializing in drawing its exclusionary boundaries, and the state, at a time of diminishing power in the face of globalization, is eager to exert its power in maintaining internal order. A postcolonial perspective insists in arguing the relevance of these processes to criminology.

Exclusionary practices in the west are about keeping out the human tide of people moving from the third world (Weber 2002; Weber and Bowling 2008), as well as controlling racialized minorities *within* the national boundaries. The racialized minorities within first world nation states may include both ethnic and racial groups who have immigrated or arrived as refugees (the *diaspora* of the formerly colonized and enslaved), as well as indigenous groups. The racialization and criminalization of minority groups excludes and isolates those groups of people from the assumed national consensus. The exclusionary processes of criminalization undermine citizenship rights (where they have been granted). Criminalization legitimates excessive policing, the use of state violence, the loss of liberty and diminished social and economic participation. Criminalization also permits an historical and political amnesia in relation to the effects of colonial processes and role of imperial powers in structuring international economic and political relations. Racialized groups are transformed into a 'law and order' threat to national unity and the longer-term reasons for their economic and social dislocation conveniently forgotten.

A postcolonial perspective enables a much wider focus for criminology: questions of sovereignty and citizenship become core concerns; an analysis of criminal justice as a set of racializing practices become fundamental; and human rights are not seen as a peripheral component of criminology but essential to the task of explaining the position of marginalized peoples.

## The Postcolonial Critique of Positivism

The importance, noted above, of seeing formal rights within the context of substantive inequality raises a more general issue of the relationship between western law and marginalized peoples. Postcolonial legal theorists have engaged in a broad-ranging challenge to liberal positivism (see, for example,

Fitzpatrick 1992; Darian-Smith and Fitzpatrick 1999; Kapur 2005). Notions of legal neutrality, formal equality, legal objectivity have been met with the objective conditions of substantive inequality, particularly as they are reflected in the conditions of marginalized populations (Roy 2008: 319). Western legal traditions based on liberal positivism have generally excluded the possibility of other law co-existing within its territory (Davies 2002: 277). These claims to absolute sovereignty have undermined the legitimacy of the laws of colonized peoples—which are often characterized as partial, incomplete, and customary (Cunneen and Schwartz 2007). The questions raised by a developing postcolonial jurisprudence have barely impacted on criminology.

The critique of legal neutrality and objectivity and the questioning of the exclusive and universal claims of western law have diverse implications for criminology. Both definitions of crime and the institutional determination of criminality can no longer be seen as separate from, or independent of, the broader claims of western discourses of dominance. Crime and crime control are embedded in the experiences of colonisation. This has significant implications for how we might explain the over-representation within criminal justice systems of colonized, formerly colonized, or enslaved peoples. Positivist criminology understands racial or ethnic over-representation as the result of essentially individualized factors that can be determined from aggregate populations (eg, rates of offending and reoffending, living in crime-prone neighbourhoods, single parent families, prior child abuse or neglect, high levels of unemployment, low levels of education, and so forth). These factors can be separated, quantified, measured and put through a regression analysis. 'Race' is reproduced, not as a social relation, but an individualized factor that may or may not shows signs of statistical significance.

By way of contrast, a post-colonialist perspective argues that the individualized factors identified above are embedded in the historical experience of colonization and dispossession. It is the relationship between the processes of colonization and criminalization that need to be excavated and explained. A postcolonial approach refuses to take offending rates at face value, arguing that such rates are not 'knowable' apart from the agencies that identify and process crime. We cannot discount the contribution of institutional practices and legal frameworks within which criminalization and the use of imprisonment are embedded (Cunneen 2006: 340). Further, these institutional practices are caught within broader dominant relationships which reproduce marginalized peoples as criminal subgroups.

A post-colonialist approach emphasizes the perspective of the marginalized in both understanding and in responding to 'over-representation' in the criminal justice system. For example, Blagg (2008), when discussing Australian indigenous peoples and criminal justice, argues that white society's decision to name actions as 'criminal' silences the kind of dissent possible when these actions are named another way. The criminalization of indigenous resistance to colonization silences criticism of the mass dispossession and the theft of land. 'Many Aboriginal people maintain that dispossession, loss of land and culture, the desecration of Aboriginal sites, the breakdown of skin and moyete systems (traditional rules for identifying appropriate marriage partners), the unwillingness of white authorities to acknowledge the jurisdiction of Aboriginal law have *direct and immediate* relevance to both criminal behaviour and to processes of criminalisation' (Blagg 2008: 16). He argues that attempts by the state to eliminate, restructure and reconstitute Aboriginal identity in the interests of the colonizer is the core issue rather than criminal offending *per se* (Blagg 2008: 3).

The contrasting approaches between positivist and postcolonial approaches to over-representation have important ramifications for policy, particularly when government-funded institutes are dominated by one paradigm. Blagg's attack on positivism is a reaction to what he perceives as the approach by positivist criminologists to 'tick the Aboriginal box' when researching indigenous justice issues such as over-representation, without ever attempting to understand indigenous perspectives. It is not that indigenous people are ignored—quite the contrary they are the object of intense scrutiny and

intervention. However their understanding and explanations for their own predicament viz-a-viz western law and justice is ignored. For criminological positivists, race and Indigeneity become reduced to potential risk factors for involvement with the criminal justice system, akin to prior offending history or age.

## Rethinking Evidence: Non-Literate Societies and the Role of Art and Performance

I noted above that postcolonial approaches seek to instate the voices and perspectives of the colonized within criminological discourse. One example of how this might be achieved is through an understanding of the role of art and performance in indigenous societies. In societies that do not rely on written texts, law is often expressed through various forms of art—such as painting, sculpture, dance and song, which have a special place in reproducing social, moral and religious meanings. In short, if law is not reproduced through the written text it will be reproduced in other forms (Cunneen 2010). A postcolonial perspective, particularly combined with a cultural criminological approach, offers the potential to revalorize alternative conceptions of the expression of law. Understanding how law is constituted through art and performance, rather than law as written text, has implications for how we consider criminological and legal ‘evidence’.

As I have argued elsewhere (Cunneen 2010), there is a sense in which indigenous art *unhinges* colonial law as an abstract expression of power and grounds it firmly in the lived experiences of Aboriginal people. Art can become a rich source of ideas, documentation and insight into the inner workings of the state and more specifically criminal justice institutions, and the modes of resistance engendered by oppression. Methodologically, art becomes both a window on the experiences of victimization, and a source of documentation of disturbing criminal events (such as mass murder) where the criminal justice institutions of the colonial state have chosen to ignore or deny the existence of such events. A postcolonial approach to criminology provides the opportunity to shift the epistemological priority given to certain forms of knowledge, and to treat seriously the importance of alternative ways of seeing and knowing.

To take just one example: Aboriginal art has been an important tool for reproducing knowledge about massacres—particularly where the existence of mass murders has been denied by the colonial state. The work of artists contributes to the evidence and continuity in knowledge of local accounts by indigenous people of massacres that are not necessarily recorded or acknowledged in any colonial official documentation. Art becomes a material dimension to the oral history and oral testimony of indigenous people. There is thus a materiality to historical accounts separate from the official written historical documents that tend to privilege (and exculpate) the colonial authorities. For criminologists interested in state crime, the image functions as an evidentiary tool for the existence of officially sanctioned crime. For example, there has been longstanding official denial of the massacres of indigenous people in the Kimberleys of Western Australia during the early twentieth century. Yet the existence of these massacres and the events surrounding them has been reproduced in oral stories, as well as dance and art. Traditional art forms by painters like Rover Thomas, Timmy Timms, and Queenie McKenzie depict a number of massacres in the Kimberleys. Dance ceremonies convey similar knowledge (see Cunneen 2010: 122-7).

A different contemporary set of perspectives on crime and victimization is portrayed through various indigenous interpretations of the meaning of theft. Counting, describing and analysing property crime is the daily domain of criminologists. Yet indigenous depictions and understandings of theft provide an

alternative way of seeing. For example, Ian Abdulla paints of the theft of food by indigenous people from 'white people'. There is a naturalness to this 'crime' that is viewed both as survival and depicted without any sense of shame, guilt or remorse (Arthur and Morphy 2005: 124). Theft also has radically different interpretations than simple definitions of 'property'. Colonial expectations of the disappearance of indigenous people led to large-scale collections of cultural artefacts and human remains of indigenous people in public museums and private collections. Over the last several decades there has been a movement to return human and cultural remains to their communities. Indigenous artists have depicted the colonial theft of indigenous body parts and cultural artefacts (see for example Judy Watson's three 1997 paintings titled *Our Bones in Your Collections*, *Our Hair in Your Collections* and *Our Skin in Your Collections*, Art Gallery of New South Wales, nd: 168). Perhaps the most distressing and destructive part of colonial processes in settler societies was the forcible removal of children from their families and communities ('the Stolen Generations'). The policy has been referred to as genocide and has been subject to litigation and demands for reparation (for a summary see Cunneen 2008). Indigenous women artists in particular have dealt with themes arising from the Stolen Generations. Many of these works are incredibly personal and poignant and deal with the trauma and pain caused by these forced removals (for further discussion see Cunneen 2010: 132-3).

A postcolonial perspective rethinks the meaning of evidence and provides an opportunity to break the positivist epistemological frame which tends to dominate both criminological and legal theory and practice. Indigenous cultures utilize rich and complex oral and artistic traditions as an essential part of the communicative process. In contrast to performance and painting, techniques of writing, record-keeping and official documentation have been an essential part of imperial culture. Indeed, record-keeping was integral to the project of colonization: it is the tool for describing, itemizing and controlling the colonized Other. It is also the stuff of mainstream criminology—for example, the crime figures that endlessly repeat the offending rates of minority peoples. To understand the perspective of colonized and marginalized peoples we need to look more broadly at what constitutes evidence—evidence of crime and victimization from the perspective of the marginalized.

## Identity and Healing

The notion of the 'Other' is key to postcolonial perspectives. It is a concept that assisted in understanding how categories and images of non-European peoples have been constructed by the west in the social, legal and economic interests of the west. The dichotomy of European and Other have seen non-European peoples relegated to inferior status—their culture and laws subservient to the universal claims of western civilisation. Postcolonial perspectives require a particular focus on the construction of race and the way race is constituted and given meaning through various discursive practices. This point has particular resonance for criminology given, as we have already noted, that the institutional practices of the criminal justice system can be seen as a significant constitutive process in the construction of race. Criminology as a discipline, and a discursive practice that produces racialized difference, is also problematized. The racialized construction of offenders not only defines the offender in terms of race, it also constructs the *apparent* non-racialized vision of the normal, respectable and responsible citizen.

When we see criminology as a racialized discourse, as a system of meanings that produce knowledge and practice about crime and race, we can begin to understand how the discipline controls both the mode of representation and their meaning. The discourse controls the process through which we understand crime and deviance (eg, the legitimation of statistical representations of, for example, juvenile crime and its causes) and the symbolic meanings we attach to those representations (for

example, black youth as crime-prone). In the case of racialized criminality we see simultaneously the offender as racial and the racialized individual as criminal. As Fanon once remarked, 'not only must the black man be black; he must be black in relation to the white man' (Fanon 1967: 202). The colonized is forced to exist individually and as an embodiment of race: an embodiment that is increasingly overlaid with significations of criminality. A postcolonial perspective places the problem of identity as a core category within criminology.

One consequence of the importance of identity for colonized peoples, and the need to reconstruct identity in the face of colonial strategies to circumscribe, define and control the identity of the colonized, is the approach taken towards reforming and rehabilitating offenders. From my experience working with indigenous groups, there is a different understanding about how you change unacceptable criminal behaviour. Generally, there is a greater focus on healing and community-controlled programmes for offenders. One of the consequences of this is the tension that is created between indigenous approaches and state-controlled interventions. In the current period we see an institutional emphasis on criminogenic needs and the various behavioural modification programmes put in place as a result of the identification of these needs. Approaches defined by criminogenic need are clearly in the ascendancy, as opposed to approaches that are more community driven or rely on community involvement and directly target greater social inclusion. This emphasis has important ramifications for marginalized groups because, although they are most likely to be the subjects of these programmes as offenders, they are also less likely as community members to be part of the professionalized interventions.

I am not suggesting that therapeutic approaches should be completely avoided. However, the danger is that government favours those approaches that it can closely administer, control and monitor—and these tend to be programmes reliant on expert interventions that further privilege-dominant definitions of crime and disavow the voices of marginalized peoples. They also tend to be programmes that are 'off-the-shelf' and perhaps only slightly modified for specific experiences of marginalized peoples. They are generally not programmes that are organic to indigenous people and their communities, or their needs and experiences. If we reflect on indigenous developed programmes<sup>1</sup> it is evident they start at a different place to conventional individualized programmes. Indigenous programmes start with the collective indigenous experience. Inevitably, that involves an understanding of the collective harms and outcomes of colonization, the loss of lands, the disruptions of culture, the changing of traditional roles of men and women, the collective loss and sorrow of the removal of children and relocation of communities. Individual harms and wrongs are placed within a collective context. On the one hand, offenders are dealt with as individuals responsible for their own actions; their pain and the forces that propel them to harmful behaviour towards themselves and others are confronted. However, they are *understood* within a collective context of the experience of indigenous peoples in a non-indigenous society. The explanatory context, the explanation for behaviour, is within the collective experiences of the marginalized.

In this sense indigenous programmes are unique because they seek individual change within a collective context. Mainstream programmes (such as cognitive behavioural therapy programmes) cannot achieve that—they do not understand individual change as part of a collective experience. This is why indigenous programmes and indigenous people prioritize the concept of healing: healing is quintessentially and simultaneously an individual and collective experience. It is far more expansive than a notion of rehabilitation: it is concerned with simultaneously healing one's self and community.

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<sup>1</sup> In the Australian context these are programmes like Red Dust Healing, Ending Offending, Ending Family Violence, and Journey to Respect.

Individual and collective grief and loss become core issues that programmes need to address rather than only focusing on criminogenic need. Mainstream programmes simply ignore the nexus between oppression and liberation, between collective grief and loss and individual healing. Indigenous healing programmes start from this nexus; they begin with understanding the outcomes and effects of longer-term oppression, and move from there towards the healing of individuals.

Many of the innovative developments in indigenous justice (such as community justice groups or women's community patrols) arise from a *disbelief*: a disbelief in the functionality and the legitimacy of state-centred institutional responses. For the most part, criminalization and incarceration are seen as destructive avenues that cause further family and social disintegration and do not change the behaviour of the perpetrator. The disbelief in the criminal justice system as reformatory or rehabilitative is hardly surprising given that most colonized and formerly colonized peoples have had firsthand experience of police, courts and prisons over many generations.

## Conclusion

I have set out to develop an approach to criminology that would enable the discipline to break free from the charge of Agozino (2004) and others that criminology inherently serves the interests of colonialism. A postcolonial perspective can develop and enrich criminology, bringing to light the discipline's silences and absences, foremost among these being questions of genocide, human rights and imperialism. This approach allows us to explore fundamental questions such as the relationship between race and criminalization, the development of identities of resistance, and various processes of transformative justice. It draws our attention to broader questions of social and political power, to matters of legitimacy, political authority and consent—all of which presuppose how we understand and define crime and crime control.

A postcolonial criminology necessarily requires consideration of the long-term outcomes and effects of colonialism, and there are manifold issues for criminology that emerge from this including indigenous political demands for self-determination, the position of formerly colonized and enslaved peoples within the metropolitan centres of former colonial powers, and the role and function of western criminology in developing or third world nations. A postcolonial perspective also focuses our attention on questions of genocide and human rights. An analysis of the systematic abuse of human rights has both an historical and contemporary dimension. A criminology informed by a postcolonial perspective has much to offer discussions and debates around redress, reparations and compensation for historical injustices—in most cases these are after all claims by victims for an effective response to criminal acts. A postcolonial criminology also has much to offer an analysis of contemporary debates around human rights abuses of racialized minorities from deaths in custody to institutional racism.

Finally, I want to suggest that a postcolonial criminology offers insights for policy engagement. Law and criminology tend to situate marginalized groups within a false universalism in terms of their capacity to seek protection of law and their experience as law's subjects (as either victims or offenders). Yet a postcolonial perspective shows that marginalized peoples have less capacity to utilize legal protections, that principles of fairness and equality seem remarkably absent when the marginalized are being criminalized, and that crime and justice are experienced within particular socio-cultural and historical frameworks. Criminology has a suite of standard offerings from sex offender treatment programmes to domestic violence policies. A postcolonial criminology might require us to radically rethink why these policies, programmes or initiatives are not taken up, or are less effective, or simply do not work with particular marginalized and racialized communities. Ultimately we are required

to ask broader questions about crime, victimization, punishment and justice, and to provide a more nuanced understanding of social reality.

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