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## ABSTRACT

This paper attempts to lay the groundwork for the development of a theory of aboriginal criminality. As a starting point, the authors examine the state of research and theorising about the causes of aboriginal involvement in the criminal justice systems in Canada and Australia. In recent years, criminologists in both Canada and Australia have carried out a great deal of research aimed at developing policies to address problems associated with the vast over-representation of aboriginal people in the criminal justice system. Despite extensive research, no attempt has yet been made to systematically compare the experience of aboriginal people in the criminal justice systems of these two countries with the aim of developing a more generalisable cross-cultural theory. In search of a more adequate theoretical framework for explaining the apparent similar patterns of criminal justice outcomes found among aboriginal peoples in Canada, Australia and other countries, the authors discuss a number of different approaches that can be taken to developing a cross-cultural theory of aboriginal criminality.

## INTRODUCTION

This paper is concerned with laying the groundwork for the development of a theory that can help to more adequately explain similar cross-national patterns of recorded criminal behaviour by indigenous peoples.[1] The concern with developing a cross-cultural theory of aboriginal criminality[2] is motivated by the notable similarities that can be observed in the way in which indigenous peoples have been caught up in the criminal justice systems of different countries that have undergone the process of European colonisation. Criminologists in a number of different countries have examined the experience of aboriginal people and their patterns of involvement in the criminal justice system and the academic study of aborigines and the law is an 'established enterprise' (Waller 1984).

However, much of the research centres on small localised studies of offending behaviour, sentencing disparities and police or public attitudes. At the national level there is considerable evidence from police and prison figures to provide a general picture but there is little that synthesises all these data in a way that moves us from 'description to explanation' (Parker 1987). In addition, very little systematic comparative research has been carried out for the purpose of attempting to develop a more adequate cross-cultural understanding of these patterns.

Canada and Australia both have substantial aboriginal populations and both have similar British colonial histories. Their legal and criminal justice institutions are alike, based on the common law tradition. They are also federal states in which the responsibility for enacting and enforcing criminal laws are shared by state/provincial and federal governments. Because of these common features, these two nations provide a suitable context for undertaking systematic comparative research on aboriginal criminality.

Contemporary developments in Canada and Australia involving aboriginal

people and the criminal justice system add further justification for selecting these two nations. In recent years, the federal government of Canada and several provincial governments have funded commissions of inquiry to investigate and make recommendations aimed at improving the treatment of aboriginal people in the criminal justice system, and developing criminal justice policies that are more sensitive to the traditional legal customs and culture of Canada's aboriginal peoples (Law Reform Commission of Canada 1991; Alberta 1991; Manitoba 1991; Nova Scotia 1988).

Likewise in Australia, the treatment of aboriginal people in the criminal justice system at both the state and federal level has been long investigated. The Australian Law Reform Commission (1986) examined the possible use of customary law methods as a measure of reducing over-representation of aboriginal people in arrest and imprisonment statistics. More recently, public concern about the number of deaths of aborigines held in police and prison custody culminated in the *National Report* of the Royal Commission into Aboriginal Deaths in Custody (1991). While this royal commission, established in 1987, has been criticised sharply by aboriginal leaders and criminologists (Broadhurst and Maller 1990; Wilson and Lincoln 1991), its brief and findings are comparable to recent government inquiries that have occurred in Canada (McNamara 1992a).

In the academic arena, both Canadian and Australian criminologists have given a great deal of attention to research aimed at developing more adequate explanations of the causes of aboriginal over-representation, and at developing more adequate criminal justice and social policies affecting aboriginal peoples.[3] Despite the clear parallels, no systematic collaborative and comparative research has been carried out on these issues. Rather, the research and theorising around aboriginal criminality in Canada and Australia has remained quite insular. In the following sections, we provide an overview of the current state of research and

theorising about aboriginal involvement in the criminal justice system in Canada and Australia with the aim toward laying the groundwork for the development of a more adequate theory, or set of theories, that can help to explain similar cross-national patterns of recorded criminal behaviour by indigenous peoples.

## POLITICISATION OF ABORIGINAL CRIME AND JUSTICE ISSUES

The topics of aboriginal crime and justice are now receiving unprecedented interest in Canada and Australia, even prior to the UN-declared Year of Indigenous Peoples. There are many factors that have contributed in bringing academic, public and government attention to bear on issues surrounding aboriginal crime and justice in both countries. One significant factor is the strengthening political voice of aboriginal people and their leaders. In recent years, descendants of the original indigenous peoples have become increasingly politically active and demanding in their call for action aimed at undoing the harm caused by government policies of assimilation, cultural genocide and political cooptation, and also at the harm caused by a long history of institutionalised and widespread racism (Daniels 1986; York 1990; Read 1988; Langton 1983).

Canada, for example, is at a crossroads in its political history and the history of its treatment of aboriginal people (Boldt 1993; Wotherspoon and Satzewich 1993). This has been forced on Canada's federal and provincial governments by a series of events participated in by aboriginal people, the most symbolically significant of which include: the six-week armed blockade and confrontation between Mohawk warriors and the Quebec police and Canadian military at Oka, Quebec, in the summer of 1990; the death of the Meech Lake Constitutional Accord orchestrated by Canadian aboriginal leaders; the Donald Marshall Inquiry in Nova Scotia (Nova Scotia 1988); and the recently completed three-year Aboriginal Justice Inquiry in the

province of Manitoba (Manitoba 1991).

The Aboriginal Justice Inquiry of Manitoba was established in 1988 to investigate the manner in which aboriginal people were being dealt with in the criminal justice system and to make recommendations on how the system could be improved. The two Commissioners of the Aboriginal Justice Inquiry, one of whom is the only aboriginal judge in Manitoba, called for a massive overhaul of the province's criminal justice system and a fundamental change from the way in which aboriginal people have been perceived and treated by 'white society' in the past. In a recently published book, *Surviving as Indians: The Challenge of Self-Government*, Menno Boldt (1993: 13) sums up the current state of critical opinion on the fairness of Canadian courts in dealing with Canada's indigenous peoples, noting:

> Official statistics, which show Indians to be grossly overrepresented among those arrested, convicted, and imprisoned, lend support to Indian grievances that racism in the Canadian justice system is pervasive and runs deep. Indians have experienced it and proclaimed it for years, but, except for the recent provincial inquiries, the justice system has denied the validity of such grievances.

The recent events that have brought the issue of aboriginal crime and justice to the forefront in Canada have been watched closely by many Canadian criminologists, who have long recognised the problem of over-representation of aboriginal people in the Canadian criminal justice system (Bienvenue and Latif 1974; Hagan 1974, 1975a, 1975b, 1977). However, it is only more recently, in the wake of the increasing political power of aboriginal peoples and the growing concern of Canadian governments to address aboriginal matters, that criminological research on issues surrounding aboriginal crime and justice has begun to receive more extensive attention.

In Australia, a similar politicisation process has occurred. As a result of widespread public concern about Aborigines dying in police and prison cells, the

Royal Commission into Aboriginal Deaths in Custody (RCIADIC) was established on 17 June 1987. The Commission was given the brief to inquire into the reasons for this national tragedy at a time when Australia was approaching its Bicentennial celebrations. The Commission has been variously described as a 'lawyers picnic' (NAILSS 1989), costing at least $AUS 30 million. It recommended no criminal charges against custodial officers involved in the cases, despite evidence that some lied under oath, fabricated evidence, unlawfully arrested and detained aboriginal people, and in other cases, assaulted them (Lincoln and Wilson 1993). There were many protests and actions undertaken by aboriginal communities in an attempt to see justice done.

One of the major findings to emerge from the research conducted by the Commission was that the proportion of aborigines in both police and prison custody was similar to the proportion of aboriginal deaths in each form of custody (Grabosky et al 1988). This was interpreted as meaning that there were no differences between the black and white rates of custodial deaths. Those who had opposed the establishment of the Commission therefore asserted that the issue of aboriginal deaths in custody was not a problem of special significance.

However, the Commission's research found that across the country there were 75 aboriginal deaths per 100,000 of the adult aboriginal population and a 3.3 non-aboriginal deaths per 100,000 of the adult non-aboriginal population. In other words, aboriginal adults died in custody at a rate 23 times that of non-aboriginal people (Biles, McDonald and Fleming 1990) and if non-aborigines had been imprisoned at the same rate there would have been 8,500 deaths in the study period studied (Tickner 1992). The differences in custodial deaths were attributed to over-representation of aborigines in police cells and prisons — a finding that was not unknown previously in the Australian criminological literature. Any attempt to explain the social or cultural causes of over-representation became bogged down by

lack of resources and a legally-dominated inquiry.

The Commission did bring the position of aboriginal people to world attention. An Amnesty International team visited Australia in 1993 and characterised the Australian criminal justice system as making aboriginal people vulnerable to 'highly disproportionate levels of incarceration and to cruel, inhuman or degrading treatment' (Amnesty International 1993: 5). The political response has been the allocation of over $AUS 70 million to employment strategies, police services, cross-cultural training schemes, changes in custodial procedures, improvements in legal services and the establishment of a 'watchdog' to oversee the implementation of the 338 accepted recommendations (Tickner 1992). In addition, a reconciliation (treaty) council has been established to devise strategies for national redress of the historical disadvantage of aboriginal peoples flowing from the 'terra nullius' concept and more recently, a High Court decision in what is known as the 'Mabo' case has placed aboriginal land rights issues back on the public and political agenda.

Within this context of policitisation of aboriginal issues, we offer a critical overview of the research on aboriginal criminal justice that has been completed to date. This overview is undertaken, first, for the purpose of describing what is known about experiences of indigenous people and crime, and secondly, for the purpose of showing how criminologists have attempted to explain the problem of the over-representation of indigenous people in the criminal justice system.

## RESEARCH ON ABORIGINAL CRIMINAL JUSTICE ISSUES

Many attempts have been made to document the extent to which indigenous peoples, as compared to non-indigenous peoples, are processed through the criminal justice system. Determining the precise extent to which aboriginal people

are represented in the criminal justice system is hindered by the fact that official statistics generally include only status or registered Indians in Canada while few data exist on the involvement of non-status Indians, Métis and Inuit (Griffiths and Verdun-Jones 1989; Yerbury and Griffiths 1991). In Australia, aboriginality is not always identified in official data and indeed under-counting in both custodial and non-custodial settings is probable (Biles and McDonald 1992).

Despite this and numerous other data collection problems, over the past 20 years researchers have compiled a wide range of data on the socio-economic and demographic characteristics of indigenous peoples and the nature of their involvement in the criminal justice system. Research has looked at the manner in which indigenous peoples are processed and at the extent to which they are over-represented in custodial settings. Research to date has been mostly descriptive and anecdotal and the generalisations that can be made based on available data should be used with considerable caution. Provided below is a summary of the findings of recent research that has looked at patterns of criminal behaviour for indigenous peoples recorded in official statistics (derived from Amnesty International 1993; Australian Institute of Criminology 1988; Broadhurst 1987; Cunneen and Robb 1987; Eggleston 1976; Hazlehurst and Dunn 1988; Hazlehurst 1987; Griffiths and Verdun-Jones 1989; Manitoba 1991; Walker 1987; Yerbury and Griffiths 1991).

- indigenous peoples tend to commit less serious crimes and are imprisoned generally for offences against good order including driving, petty theft, resisting arrest and drunk and disorderly charges;
- in Canada, aboriginal peoples comprise seven per cent and up to 70 per cent of federal and provincial corrections institutions respectively, and in Australia the proportion is around 17 per cent nationwide;
- aboriginal peoples are arrested at a greater rate than others in the population (up to 29 times) and overall there is less likelihood that non-custodial

dispositions will be invoked;

- there is a considerably higher rate of recidivism among aboriginal groups which is estimated at up to 80 per cent in some regions;
- indigenous women are over-represented in police and prison statistics which can be up to 70 per cent of admissions in some states/provinces and this disproportion appears to be increasing;
- the age of incarceration of aboriginal youth appears to be declining and they too are over-represented in the juvenile justice system;
- in comparison with their non-indigenous counterparts, indigenous offenders are first identified by the criminal justice system at an earlier age, and in many jurisdictions, indigenous youth evidence rates of arrest between three and 90 times that of their non-indigenous counterparts;
- alcohol use is present in a high percentage (up to 90 per cent in some jurisdictions) of crimes committed by indigenous peoples;
- a high proportion of aboriginal violent crimes are intra- and interpersonal and are usually directed against family or community members; and
- there has been a trend toward more serious violence, namely rape and domestic assault, within communities and groups in recent years.

There are, of course, wide variations in the patterns of indigenous crime between and within Canada and Australia. The pattern varies according to the urban, rural or remote geographic location, socio-economic variables, cultural factors and local historical and political influences. However, at every step of the criminal justice processing, aboriginal peoples are disadvantaged and from arrest to disposition their relative position deteriorates even further.[4]

## Explanations of Aboriginal Over-Representation

In addition to documenting the extent of over-representation of indigenous peoples in the Canadian and Australian criminal justice systems, various attempts have been made at explaining it. There is a cluster of explanations that focus on some form of direct or indirect racism and discrimination within the system that results in such over-representation. When analysed more closely, the findings centre on racist bias, visibility, cultural factors, legal and extra-legal considerations and over-policing. Such explanations are often provided at the micro-level to explain differences found in specific data, but they fail to provide general explanatory value. In the following review we provide a summary of the findings of research in this area.

### *Racist Bias*

One of the most common explanations for over-representation is that there is systematic bias in the criminal justice system discriminating against aboriginal peoples. Racism in operation does appear to have cogency given many of the glaring examples that are found at the individual level (see Cowlishaw 1987). Parker (see Graham 1989: 67) suggests that 'the discriminatory attitudes and actions of many members of the police force are important contributory factors to the existence of disproportionate numbers of Aboriginal prisoners'. However, some studies have found no basis for racism in practice (Wundersitz, Bailey-Harris and Gale 1990).

The studies of John Hagan (1974, 1975a, 1975b, 1977) on the criminal justice processing and sentencing of native offenders in Alberta have provided a wealth of material in this area. In 1974 Hagan published a study of the sentences received by Indian and Métis inmates incarcerated in five Alberta correctional institutions. Although Hagan found that native offenders were represented at least four times as

often among newly-incarcerated offenders than among the general population, he concluded that this had less to do with racial discrimination than with the fact that native offenders were much more often convicted and sentenced to serve short prisons sentences for minor offences.

*Visibility*

In an early study which examined the statistics for persons 18 years of age and older who were arrested by the Winnipeg Police Department, Bienvenue and Latif (1974) found that although native Indians comprised only three per cent of the total population of Winnipeg, they accounted for 27.5 per cent of all male arrests and 69.5 per cent of all female arrests. In light of the fact that a major category of native over-representation in arrest statistics was for liquor offences, Bienvenue and Latif (1974) concluded that, relative to their non-indigenous counterparts, Indians were arrested for offences of a more minor nature and that a major contributor to this high arrest rate was the visibility of native Indians in the urban environment.

This visibility factor has also been found in Australia. Rees (1982) suggests that the combination of alcohol use, poor execution of crimes and police need to achieve high clear-up rates mean that aboriginal people may be apprehended more easily and be 'loaded-up' with additional charges. This unintended racism could be excused simply as laziness on the part of police but there does seem to be a systematic tendency for such targeting to occur, confounded by the visibility of aboriginal offenders.

*Cultural Factors*

Another area of indirect racism includes an incongruence between aboriginal cultural practices and the predominantly Anglo-Celtic criminal justice system. There are linguistic differences which may result in confusion in arrest and

interview situations (Foley 1984). As Rees (1982: 38-39) points out, 'Aborigines are particularly vulnerable to police interrogation techniques; secondly, police treat Aborigines differently and thirdly, Aborigines experience greater difficulty than other members of the community in exercising the right to refuse to answer questions'. However, these cultural differences should not be seen merely as misunderstanding at the level of interpersonal communication. They are embedded in social and cultural inequalities and in many jurisdictions, police training colleges have now instituted courses for their officers in cross-cultural awareness.

*Legal Factors*

Racism can come in the form of separate legislation for aboriginal peoples. McCorquodale (1987) provides a summary of all Acts passed in all Australian jurisdictions that concern indigenous people, or the ones that mention them as a specific group. A cursory glance at his digest shows how far-reaching the stretch of the law has been into the lives of aboriginal peoples. Some of these laws may appear favourable (like the various Fisheries Acts that enable person of Australian Aboriginal descent to fish in ways precluded to others). Other pieces of legislation are personally intrusive (like the various Dog Acts restricting the numbers of pets that could be owned). While much of this legislation can, and is no longer invoked there are rarely-used pieces of legislation, such as riotous assembly and consuming liquor in a public park, that are often exclusively used against aboriginal peoples.

*Extra-Legal Factors*

From his study of the treatment of native offenders by probation officers and the content of their pre-sentence reports, Hagan (1975b, 1977) concluded that although probation officers' recommendations for sentence were a source of unfavourable treatment for Indian and Métis offenders, particularly in rural areas, there was no

clear evidence that rural probation officers recommended more severe sentences for native offenders in their pre-sentence reports because of racial discrimination. Hagan explained the recommendations for more harsh sentences by the fact that the probation officers more often emphasised extra-legal factors in formulating their evaluations of offenders, and in particular, their assessment of the offender's 'demeanour' (or show of remorse and cooperation) and likelihood of success on probation.

A number of more recent studies aimed at addressing the question of native over-representation in the Canadian criminal justice system (Boldt, Hursh, Johnson and Taylor 1983; La Prairie 1990; Taylor 1982; Wynne and Hartnagel 1975) have also addressed this issue. For example, in their study of pre-sentence reports and the incarceration of natives in the Yukon, Boldt et al (1983) attempt to determine whether Hagan's (1975b, 1977) findings on the content and influence of pre-sentence reports written by rural probation officers in Alberta are consistent with data that exist for the Yukon. While Boldt et al (1983) found, contrary to Hagan, that 'extra-legal' factors did not play as important a role in the sentences handed out to convicted offenders in the Yukon, they do not offer a clear alternative explanation for the apparent vast over-representation of aboriginal offenders in the Yukon.

In Australia, Gale and her colleagues (1990) highlight the confounding effect of extra-legal factors as individuals pass through from arrest to disposition. The authors argue that while there appears to be no systemic discrimination, there are value judgements made by police and other justice personnel on the basis of social class, location of home and perceived ability to respond to directions. Aboriginal youth are more likely to be arrested rather than reported because police believe that they will not front to a panel or court. This label of arrest is then carried through the system where a caution is less likely for Aborigines because they were arrested in the first instance — and this initial contact is perceived as reflecting a more serious

offence or an intractable offender. The decision-making process then continues to discriminate in an unintended way. Thus, the police play an important role throughout the whole system as their initial action 'exerts a crucial influence on subsequent outcomes' (Wundersitz et al 1990: 14).

*Overpolicing*

Another significant aspect of racist discrimination comes from research which examines the role that police play in the criminal justice system and in local communities. Edmunds (1990: 6) points out that 'police practices that involve the unnecessary surveillance of all aspects of Aboriginal daily life, such as constant patrolling of living areas' needs to be reviewed. Her research raises the spectre of indirect racism through a combination of police surveillance practices and high police numbers that conflict with Aboriginal cultural practices and a high, visibile indigenous population in regional centres (see also Edmunds 1987).

The ratio of police to aboriginal persons has been documented extensively in some areas of Australia. The Human Rights and Equal Opportunity Commission report found that communities with high aboriginal populations also had high police numbers. In 1990 the ratio for Wilcannia was 1:73 and for Walgett it was 1:96 (both small rural townships with high aboriginal populations); whereas for the whole state of New South Wales the ratio was 1:459 (Amnesty International 1993). Amnesty International, when completing its report on Australia, witnessed several first-hand examples of overpolicing. They noted that this contributed to a 'sense of provocation within the context of the tensions that often characterize Aboriginal-police relations' (Amnesty International 1993: 23).

*Other Explanations*

The most significant and sustained efforts to develop a more adequate theoretically-grounded knowledge of the causes of indigenous over-representation in the Canadian criminal justice system, are those of Carol La Prairie (1984a, 1984b, 1987, 1990, 1991, 1992). La Prairie points out that the recent 'politicization of criminal justice issues within the agendas of land claims, self-government, and constitutional matters' has created a 'prevailing discourse' within which (both non-aboriginal and aboriginal) politicial interest groups have found it convenient to ignore many of the outstanding questions that still exist about the relationship between sentencing and over-representation. In her attempt to bring more adequate theory and research into the aboriginal justice debate, La Prairie provides an important and highly critical re-examination of the 'meaning' and causes of aboriginal inmate over-representation, including (La Prairie 1990: 429-30):

- that 'reliance on the standard of aboriginal population ratios, i.e. inmate versus general populations, has obscured other ways of understanding over-representation. For example, if one changes the standard to aboriginal and non-aboriginal age distributions in the general population, the "over-representation" picture might look quite different'; and
- that 'if one follows the theoretical approach of the critical criminologists and uses class (based on socio-economic level) as the standard and predictor of who goes to jail, aboriginal people may well be statistically under-represented'.

La Prairie also attempts to clarify the current state of theorising about the causes of over-representation. In doing so, she points out that there are three basic 'competing but not mutually exclusive explanations for the disproportionate representation of aboriginal people in correctional institutions', namely: differential

treatment by the criminal justice system; differential commission of crime; and differential offence patterns. Most importantly, La Prairie makes a case for the argument that focusing attention exclusively on the alleged discriminatory processing of aboriginal people in the criminal justice system — while perhaps serving a number of political agendas — does little to advance our overall level of theoretically-based knowledge of the causes of over-representation. In essence, she argues 'the need for the criminal justice system to redirect the issue (of aboriginal over-representation) to where it belongs — in the social, political and economic spheres'. La Prairie (1990: 430-31) suggests that we must also look to these spheres, or fundamental aspects of 'social structure and economic disparity', in order for us to better understand the causes of crime among indigenous people and aboriginal criminal offence patterns.

La Prairie's views are for the most part quite consistent with the conclusions that have been arrived at by other critical criminologists in Canada and Australia (Havemann, Crouse, Foster and Matonovich 1984; Havemann 1989; Brogden 1990; Wilson 1982; Cowlishaw 1987; Edmunds 1990). One of the common features underlying this recent critical work is the extent to which the authors' analyses of the problems of crime and justice experienced by aboriginal people are based on more in-depth critical and historical research. As we will see more clearly in the discussion taken up later in this paper, the work of these investigators is also linked together by the common thread that all of it is undertaken starting, either implicitly or explicitly, from a Marxian World-System perspective (Neuman and Berger 1988). Although more conventional-liberal and state-employed criminologists routinely acknowledge and incorporate the arguments advanced by more critical historically-informed criminologists (cf Hartnagel 1987; Griffiths and Verdun-Jones 1989; Griffiths, Yerbury and Weaver 1989; Yerbury and Griffiths 1991), they rarely follow through very far on these arguments, either in terms of developing more

adequately theoretically-informed research, or more appropriate (theoretically defensible) criminal justice policy.

All of this work points to the need for more systematic comparative research aimed at developing a better cross-national understanding of the problems that indigenous peoples face in the criminal justice systems imposed on them as a result of the process of European colonisation. With few exceptions, research carried out on aboriginal crime and justice in Canada and Australia has lacked a comparative dimension. More generally, owing at least in part to the underdeveloped state of the sub-field of comparative criminology in universities, criminologists have made sparse use of the cross-cultural theories of crime that are now being developed and tested by comparative criminologists. It is this comparative dimension that may provide more adequate avenues in which to develop an integrated theory. We will now examine more recent research and theorising that provides suggestions about the steps we need to take in order to develop a more adequate cross-cultural understanding of aboriginal criminal justice issues (see La Prairie 1992; Marenin 1992).[5]

## DEVELOPING A CROSS-CULTURAL THEORY OF ABORIGINAL CRIMINALITY

In the remainder of this paper, we offer a discussion of the considerations that need to be taken in order to develop and test a cross-national theory of aboriginal criminality. We begin with a review of the current state of cross-cultural theories of crime and some of the recent research undertaken by comparative criminologists aimed at testing these theories. We then turn to developing a theoretical framework for approaching the cross-national study of aboriginal criminality that attempts to integrate and build on the recent work of comparative criminologists and aboriginal crime researchers in North America and Australia.

## Cross-Cultural Theories of Crime

Within the field of comparative criminology there is ongoing debate and disagreement surrounding the need for and possibility of developing widely generalisable cross-cultural theories of crime. On the one hand, authors such as Beirne (1983a, 1983b), Groves and Newman (1989) and Beirne and Messerschmidt (1991), have pointed out the many conceptual, definitional and measurement problems associated with attempting to study crime cross-culturally. On the other hand, in recent years an increasing number of comparative criminologists have undertaken research which has been aimed at developing more generalisable cross-cultural theories of crime based on the systematic collection and analysis of cross-national crime data (Bennett 1991a, 1991b; Bennett and Basiotis 1991; Bennett and Lynch 1990; Heiland, Shelley and Katoh 1992; Rosenfeld and Messner 1991). The following review of different theoretical approaches to the empirical literature provides several suggestions about the steps that must be followed in any effort undertaken to develop a cross-cultural theory of aboriginal criminality.

Neuman and Berger (1988) assess the strengths and weaknesses of three competing cross-cultural theories of crime: the dominant Durkheimian-Modernisation perspective; the Marxian World-System perspective; and the emerging Ecological-Opportunity perspective. The key causal concepts and theoretical propositions associated with each of these perspectives are summarised by Neuman and Berger (1988: 282-89) as follows:

*Durkheimian-Modernisation (DM) Perspective*

- In the DM perspective crime is caused by a disruption or breakdown of a prior, stable normative order. The transition to 'modern' society creates a

temporary disequilibrium when modern values and norms come into contact with and disrupt older cultural patterns, weakening informal social controls and traditional normative restraints on criminal impulses.

- Urbanisation and rural-urban migration have a significant impact on normative patterns of criminal behaviour. In urban areas, 'modern' values are strongest and traditional norms, socialising agents and social control mechanisms are less effective. Consequently, anomie, social disorganisation, cultural heterogeneity, criminal subcultures and juvenile delinquency are more likely to develop.

*Marxian World-System (MWS) Perspective*

- The MWS perspective explains the past three centuries of socio-economic change in terms of historical events that spread the capitalist mode of production and social relations unevenly across the globe. The world system is the unit of analysis, and the interrelations or inequalities among social formations are used to analyse structures and processes within and between nations. In addition, social change is shaped by a semi-autonomous international system of states and internal political factors.
- Economic inequality and social classes are key elements of the MWS explanation of crime. More specifically, this explanation argues that the expansion of the capitalist mode of production creates new inequalities and gives rise to new social classes. Capitalist social relations replace pre-capitalist patterns of economic self-sufficiency and communal methods of dispute resolution. Legal mechanisms redefine property rights to facilitate capitalist expansion and help create, maintain and control a new rural and urban proletariat.
- According to the MWS perspective, urban crime is generated by the uneven

expansion and contraction of the capitalist production process within and between nations, not by anomie, social disorganisation or urbanism per se.

*The Ecological-Opportunity (EO) Perspective*

- The EO perspective on cross-national crime synthesises an ecological approach to social change and an opportunity theory of criminal behaviour. The EO approach connects macro-level changes in economic and social structure to a micro-level explanation of crime through the concept of opportunities. Crime increases when evolutionary processes create a societal surplus which expands the quantity of material goods available to be stolen.
- The EO perspective explains collective political behaviour by the same processes that generate crime. Both take place in a structural context of competing interests and the rational calculation of costs and benefits.

In the five years that have passed since Neuman and Berger (1988) provided their review of the current state of theoretical perspectives in comparative criminology, theorists have continued to develop and test different variants of these three approaches, while at the same time introducing other relevant theoretical perspectives. For example, most recently, Heiland and Shelley (1992) have offered a restatement and defence of the Durkheimian-Modernisation perspective, while at the same arguing the need for incorporating a theoretical perspective that takes into account the potential connection linking civilisation (or the 'civilising process'), modernisation and crime. In their defence of the DM perspective, Heiland and Shelley (1992: 6) remark that:

> The modernization concept has great explanatory powers because it permits a multi-dimensional model. To analyze the process of modernization, it is possible to combine empirically verifiable data along with historical and ethnographic description.

Furthermore, Heiland and Shelley (1992: 6) argue that:

> Examining crime and crime control from the modernization perspective does not focus on societal transformation as a consistent (one-way evolutionary) process. Rather, it focuses on the confusion, the relapses, and the regional differences in modernization. It suggests that modernization proceeds at different rates and in some areas or subcultures, it may be only a very partial process. Many societies do not completely modernize but retain elements of traditional and pre-modern societies. In former colonies, the traditions of the pre-colonial past merge with those of the colonial power. The norms that emerge may reflect the adaptation of those of the colonial power rather than the modernization of the legal system.

The social process attached to colonialism noted by Heiland and Shelley (1992) above is expanded upon in considerably more detail by Wright (1992: 150) in his discussion of 'syncretism', or 'the growing together of new beliefs and old ... (as) a way of encoding the values of a conquered culture within a dominant culture'. In his study, *Stolen Continents: The 'New World' Through Indian Eyes,* Wright (1992) examines the impact of European contact and conquest on the indigenous peoples of North and South America, and the centuries of accommodation and resistance that have followed.

This connection is drawn out at this point in our discussion to show that adopting a Durkheimian-Modernisation perspective does not lead inevitably to accepting a consensus-based functionalist view of the causes of aboriginal crime. As Heiland and Shelley indirectly point out, the modernisation perspective allows for an examination of how processes associated with modernisation can affect the behaviour of individuals (and perhaps the amount and type of crime committed) within different subcultural groups. Heiland and Shelley (1992: 7) also argue that the concepts of modernisation and civilisation can be combined in a complementary manner to develop a more adequate theoretical perspective for explaining changing patterns of crime and social control. According to the synthesis they propose:

> The paradigm of civilization claims that two substantial processes have occurred. First, civilizing has altered interpersonal relations and

> individual standards of conduct. It has altered the attitude towards the use of violence against others (which helps to explain the DM finding of the shift from violent crime to property crime). The theory of civilization as well as the concept of modernization, both expect a structural change in the forms and patterns of crime, as well as an increase in the level of crime.

In recent years, the other theoretical approaches outlined by Neuman and Berger (1988) have been similarly defended and expanded upon by comparative criminologists concerned with developing more adequate cross-cultural theories of criminal behaviour and social control. In his call for a 'critical comparative criminology', Gordon West (1990: 99) argues the need for a guiding theoretical framework 'based on a world system and/or dependency model', coupled with an active concern for the protection of human rights. West criticises the dominant modernisation perspective associated with 'traditional comparative criminology' for its naive assumptions about linear-evolutionary social progress. To take its place, he elaborates a 'global critical justice problematic' that builds on the ideas of MWS or dependency theorists, critical feminists and human rights advocates. West (1990) concludes by calling on comparative criminologists to become involved in research and political activities that contribute to greater (global) social and economic equality. Specifically, he (1990: 108) notes that:

> In part through cultural imperialism and lack of local resources, in many third world countries such as Nicaragua, there is not, as yet, an indigenous criminology (a specific theory, or even much written from a criminological perspective), but there certainly are crime and justice experiences which need explication and explanation, and raise comparative questions. These criminological practices demand a critical comparative criminology capable of revealing the theory implicit in such practices and their necessary preconditions, one which is historically and cross-culturally grounded.

It is possible to derive specific theoretical propositions from the MWS perspective for testing with quantitative empirical data. For instance, Neuman and Berger (1988: 287) note that while the DM perspective 'predicts an homogenization

of international crime rates for nations at similar levels of development, and explains anomalies (eg Japan, Switzerland) post hoc in cultural, historical, and geographic terms', the MWS perspective 'argues that the effect of industrialization on crime depends on how modes of production articulate with one another'. Although a great deal of potentially interesting work could be undertaken aimed at the quantitative empirical testing of propositions derived from the MWS perspective, for the most part critical comparative criminologists have moved in the direction (advocated by West 1990), of undertaking comparative-historical research aimed at documenting the manner in which the global expansion of capitalism affects changing definitions of crime and dominant mechanisms of social control. As noted earlier, a number of researchers in Canada (cf Brogden 1990; Havemann 1988; Manitoba 1991) have also adopted elements of this perspective.

Within the last five years there has been a substantial amount of research aimed at testing propositions derived from the EO perspective and integrating it with other theoretical perspectives in an attempt to explain cross-national crime patterns for different types of crime. In a recent article, Bennett (1991a) looks at cross-national time-series data that allow him to evaluate competing DM and EO models 'by analyzing the effects of level of development and rate of (economic) growth on crime rates'. Using theft and homicide rates for 38 developed and developing countries, Bennett analyses the extent to which they are correlated with level of development, rate of economic growth, form of economic growth, urbanisation, proportion of juveniles and degree of economic inequality. Bennett's data analysis points to a number of 'unexpected curvilinear relationships' linking these dependent and independent variables; which tends to contradict (or refute) propositions derived from the DM perspective and 'offer qualified support' for a newly-specified 'opportunity model'.

Several similar attempts at testing hypotheses derived from specific (and

often integrated) modernisation, opportunity and routine activities models, have been undertaken by quantitatively-oriented comparative criminologists in recent years (Bennett 1991b; Bennett and Basiotis 1991; Rosenfeld and Messner 1991). Contrary to the critique advanced by radical criminologists (eg West 1990) that this type of quantitative research tends to be overly-simplistic and naive, a strong argument could be made for the case that the collection and analysis of cross-national crime data is indispensable if we are ever going to be able to more adequately explain the existence of different types and rates of crime in different historical and social settings. As Neuman and Berger (1988: 301) conclude:

> Comparative criminology is currently plagued by a hiatus between theory and research. The different levels of theoretical explanation need to be explored with data that simultaneously employ variables at the structural/contextual and individual levels ... Such data is not likely to become available for many countries. Regardless, quantitative studies must be complemented by in-depth historical research in order to examine the specific processes occurring within nations. Quantitative cross-national studies with aggregate data remain appropriate to evaluate the alternative perspectives, but it is important to be explicit about the 'metatheoretical' assumptions underlying such research.

**Toward a Cross-Cultural Theory of Aboriginal Criminality**

Although elements of several different cross-cultural theories of crime are implicit in Canadian and Australian research on aboriginal crime, no attempt has yet been made by researchers to develop a more explicit integrative comparative theoretical framework for helping to explain the criminalisation of indigenous peoples. However, this does not mean that criminologists have not recognised the need for moving in this direction. In his review of 'Contemporary Crime and the American Indian', May (1982) noted the need for 'comparative studies' that would better help to explain the underlying causes of the high rate of aboriginal crime in different

jurisdictions. Despite the useful suggestions for future research offered by May (1982), little appears to have been done in the last decade to advance cross-cultural research and theorising directed at explaining similar cross-national patterns of recorded criminal behaviour by indigenous peoples.

Two notable exceptions to this are the recent discussions offered by La Prairie (1992) and Marenin (1992) on what they feel should be the direction taken by theorising and research on aboriginal criminal justice issues. La Prairie (1992) introduces a discussion of John Braithwaite's (1989) reintegrative theory of shaming as a way of connecting the different types of research and research findings that now exist on aboriginal crime. La Prairie (1992: 285) notes that:

> Braithwaite addresses the most central issues in the etiology of crime by focusing on the effectiveness of shaming. He suggests that who commits crime depends largely on the degree to which individuals are 'connected' to the institutions of family, school, work, and community because their interdependence with these institutions dictates the power of shaming ... Inherent in societies with high levels of crime is the belief that the control over some members, through informal structures and traditional institutions has been weakened dramatically. Braithwaite contends that reintegrative shaming will work best in societies where interdependency, communitarianism, and cultural homogeneity exist.

La Prairie indirectly connects Braithwaite's theory with cross-cultural theories of crime in her remark that his theory 'is useful when examining the high rates of aboriginal crime both on and off-reserve and the corresponding weakening of traditional aboriginal institutions through processes of colonization and modernization, and more recently, through mass communication'. La Prairie argues that many of the research findings that have been reported show 'disproportionate levels of crime and violence, both on and off-reserve', and suggest that these are the result of 'a serious rupture of traditional control mechanisms in contemporary aboriginal communities'. La Prairie implies in her discussion that both the processes of colonisation (MWS theory) and modernisation (DM theory)

have contributed to creating the social and economic conditions faced by indigenous peoples, and that these conditions have in turn led to serious ruptures in (and sometimes even the total disintegration of) more traditional ('communitarian') aboriginal methods of dispute settlement and social control.

In his recently completed study aimed at 'Explaining Patterns of Crime in the Native Villages of Alaska', Otwin Marenin (1992: 339) develops a 'situation-specific perspective' that focuses on 'the interactive dynamics of dominant and dominated cultures' as one element needed in order to explain specific patterns of aboriginal crime. Specifically, in outlining his view on the type of theoretical perspective that is needed in order to help better explain high rates of aboriginal crime, Marenin (1992: 340) notes that:

> explanations deduced from general approaches are insufficiently specific to account for divergent patterns of criminality among and within native American communities. Explanations of criminality which use dependency or cultural dislocation or alcohol use as crucial explanatory concepts need to be 'linked down' theoretically to specific situations in native American communities and to observed patterns of criminal behaviour. Explanations need to account for the process by which native groups were and continue to be incorporated into the larger environment and need to show how criminogenic conditions and individual criminality arise from the dynamics of interaction between dominant and dominated groups.

Marenin's approach is consistent with and displays elements of several different more general cross-cultural theories of crime. His reference to the need to study the dynamics of interaction between dominant and dominated groups is consistent with MWS theory, while his emphasis on the need to examine the specific situations that exist in different aboriginal communities is in keeping with the method followed by adherents of the EO perspective, who are concerned with learning about the different opportunity structures for crime that exist in different communities and different countries, and with how the 'routine activities' engaged in by people either increase or decrease their chances of becoming involved in

crime, either as an offender or a victim.

When looked at as related contributions, the recent work of comparative criminologists and aboriginal crime researchers in North America and Australia can be seen to provide the basic ingredients required in order to develop a more adequate theoretical framework for approaching the cross-cultural study of aboriginal criminality. In our opinion, at the most basic level, what these diverse bodies of work indicate is that while we may never be able to build a 'general theory of aboriginal crime', we may well be able to carry out different types of research that contribute in helping to explain the (individual, community, regional, national and even global) causes of the over-representation of indigenous peoples in the criminal justice systems of many different countries around the world.

One of the indispensable first steps in this effort resides in the need to undertake more comparative historical work, taking into account the insights offered by MWS theory (McMichael 1990). In particular, we need to learn more about how, historically and in different countries, European colonisers have applied their laws to indigenous peoples, and how in turn indigenous peoples have struggled to resist having these laws imposed (Berger 1991; Bienvenue 1983; Bourgeault et al 1992; Dyck et al 1985; Fisher 1980; Hazlehurst 1993; Smandych and Linden, in press; Wright 1992). At the same time, however, more quantitative and qualitative/ethnographic research is needed in order to learn more about the 'specific situations' faced by indigenous peoples today in the different countries in which they appear to be more often criminalised than non-indigenous peoples who are now members of the currently more dominant cultural group.

This present paper has canvassed the extant literature on aboriginal over-representation and the theories or middle-range explanations that have been advanced to explain the different arrest and imprisonment rates. What we shall be attempting in the future as the second stage of the research is to examine aboriginal

offending patterns, some of which lies outside the official picture of over-representation. In this second stage we will draw on ethnographic, historical and anthropological, as well as criminological, data to examine social, local, political, cultural and historical differences in criminal behaviour among aboriginal groups, examine the meaning of such criminality and analyse the explanations posited for the differences in criminal activity.

## NOTES

1. In line with the definition found in the report of the Independent Commission on International Humanitarian Issues, *Indigenous Peoples: A Global Quest for Justice* (1987: 6), we define 'indigenous' or 'aboriginal' peoples as people who are 'the descendants of the original inhabitants of a territory taken over through conquest or settlement by aliens'. In the Canadian context 'aboriginal people' include status and non-status Indians, Metis and Inuit. In Australia, the term 'aboriginal people' includes Aboriginal people as well as Islanders from the Torres Strait, Tiwi and Melville Islands.
2. Only official or recorded data are used in this comparative study. More recent evidence emerging from both Canada and Australia suggest that there is an extensive hidden level of black-on-black violence (rape, domestic assault, self-mutilation) occuring in aboriginal communities (see Wilson 1982; Bell and Napurrurla Nelson 1989; Atkinson 1990; Tatz 1990; Broadhurst 1987; Hartnagel 1987).
3. In aboriginal research generally the findings usually point to the relative poor status of aboriginal peoples compared with their non-aboriginal counterparts on a range of indicators. However, it should be stressed that this is not an 'aboriginal problem' but one of professional accountability and of non-aboriginal criminal justice structures and processes. As Braithwaite (1992: 2) points out, the 'Western criminal justice system is an abject failure' and is a 'major institutional cause of the tearing, bleeding rift between black and white communities'.
4. Walker (1987) and others have provided evidence that aboriginal peoples may receive 'lighter' sentences for than their non-aboriginal counterparts. However, caution is needed in interpreting these findings as evidence to the contrary is also available.
5. It is important to note that this paper centres of aboriginal involvement in the criminal justice system, ie the official picture. The other area yet to be explored in this cross-cultural context is that of aboriginal criminal behaviour and the cultural, socio-historical and political explanations for such patterns of criminality as shown in the research evidence. As Braithwaite (1979) reminds us that crime is not homogeneous and should be disaggregated in any generalised analysis.

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