

Crime, Aboriginality and the Decolonisation of Justice

By Harry Blagg

Hawkins Press, Sydney 2008, 232 pages

Harry Blagg has written a unique book that fills a yawning gap in Australian criminal justice literature. With Aboriginal imprisonment rates rising, some communities experiencing debilitating levels of violence, and young Aboriginal people facing profound and accumulating disadvantage, a book setting out an alternative vision for Aboriginal justice is long overdue. Following in the tradition of Chris Cunneen's seminal text *Conflict, Politics and Crime* (Cunneen 2001), Blagg moves beyond that book's critical focus on police relations, to explore all facets of criminal justice practice and articulate a comprehensive 'decolonisation' agenda.

Although not devised as a teaching text, *Crime, Aboriginality and the Decolonisation of Justice* offers a much-needed resource for advanced undergraduate teaching. My students found the book engaging and informative. Unlike most purpose-written texts, this is not a book that presents all sides of a debate and then politely sits on the fence. Harry Blagg is on a mission to challenge orthodox criminology and advocate systemic changes to the way we 'do justice for', or more accurately *with*, Aboriginal people. Approaching the book as a teaching text, I found the ordering of chapters perplexing at first, expecting the familiar trajectory from law to policing to courts, community corrections and prisons. It seems that undermining this 'natural order' is part of Blagg's decolonising agenda, as the chapters move inexorably towards the most fundamental re-ordering of all, the promotion of Indigenous-led governance built on a foundation of Aboriginal law.

Crime, Aboriginality and the Decolonisation of Justice begins in the place that any discussion of Aboriginal people and criminal justice needs to begin, with the Royal Commission into Aboriginal Deaths in Custody, then immediately distances itself from orthodox criminological approaches. Blagg rejects empiricist analyses which seek to explain Aboriginal over-representation through catalogues of 'risk factors', preferring to locate his discussion 'within an historical framework formed by processes of colonial dispossession, genocide and assimilation, and forms of resistance to these processes' (p 1). Decolonising solutions are to be sought by conceiving of mainstream criminal justice institutions as 'nodal points in a broader fabric of colonial relationships' (p 2) and acknowledging Aboriginal people as definers of their own realities.

From this clearly articulated starting point, Blagg sets out his method in a crucial, but rather long, chapter on 'criminal justice as waste management'. He locates the

potential for new 'hybridised' forms of Indigenous self-governance within a fluid and globally connected world, characterised by tolerance of legal and cultural pluralism, and increasingly fragmented forms of authority. He distinguishes his post-colonial perspective from post-modernism, with its rejection of cultural essentialism, and acknowledges the 'strategic essentialism' inherent in the mobilisation of Aboriginal cultures as a means of political resistance to colonisation. This allows him to conceive of a singular 'Aboriginal domain' which consists of a diverse mosaic of cultural and legal forms, while still being fundamentally distinguishable from the 'non-Aboriginal domain' of laws and institutions imposed through colonisation. Far from a vision of Aboriginal identities surviving in 'outback ghettos' or 'cultural museums', Blagg sees Aboriginal people actively creating hybrid economies, engaging in dynamic cross-cultural dialogue and creating 'pods of justice'. These fusions take place at the many points of intersection between the Aboriginal and non-Aboriginal domains, in liminal spaces in which rules, certainties and modalities of authority are open for renegotiation. This dynamic is summed up in the following quotation (p 50):

If colonial societies feared one thing more than any other it was 'hybridity', the dangers of racial and cultural pollution and miscegenation. Yet future improvements in relations between Aboriginal and non-Aboriginal people may rest on generating forms of hybrid structure in the liminal space between domains that, while opening up room for dialogue, do not attempt to dismantle or co-opt the Indigenous domain.

The discussion then moves through a range of crime and justice problematics, providing a wealth of case material drawn from years of applied research, consultation and scholarship in Aboriginal communities; reviewing the findings of official inquiries; assessing key debates; and systematically building the case for fundamental change. The next chapter attributes the tragic tendency towards self-destructive behaviour observed among Aboriginal youth to the fracturing of Aboriginal identities, and argues the need for 'reconnection with culture and healing the rifts between generations' (p 73). The following chapter considers the proposition that restorative justice might present an opportunity for healing and reconnection, concluding instead that reinvigorating traditional (often non-restorative) practices may hold more potential for rebuilding Aboriginal identities and forms of social control.

The next two chapters tackle the need to restructure relationships between police and Aboriginal people. The emergence of Aboriginal self-policing is seen as consistent with global transformations which are characterised by a proliferation of policing modes and fragmentation of authority. Blagg sees community-led policing as a 'buffer' between Aboriginal people and mainstream law enforcement with the potential to mediate and solve problems in an Aboriginal way, while still required to

negotiate boundaries with mainstream police, and draw selectively on its resources. The following chapter returns to some of the themes already discussed in relation to restorative justice, outlining hybrid initiatives to reduce the alienation experienced by Indigenous people in criminal courts. Blagg concludes that Circle Sentencing schemes and Aboriginal Courts which aim to increase Aboriginal involvement and satisfaction with sentencing have been favourably received. But he notes that Aboriginal authority could be extended further by involving community elders in the full trial process, and incorporating some aspects of customary law.

Writing in the wake of the Northern Territory intervention, Blagg tackles the issue of family violence with a view to myth busting, and as a case study on the limitations of non-Aboriginal solutions. Indigenous perspectives on inter-personal violence, he explains, are informed by collective understandings of the 'founding violence' of colonisation, and a preparedness to acknowledge that perpetrators are often 'hurting too'. He attributes much of the violence that is now the subject of national attention as 'less the product of Aboriginal culture ... but rather a manifestation of the damage caused to the fabric of Aboriginal law and society by the intrusion of some of the most negative and destructive aspects of non-Aboriginal culture' (p 178). Those influences include drugs and alcohol, unregulated sexual relationships, and the effects of institutionalisation and subordination within white society. Faced with the prospect of Aboriginal women being stranded in a state of 'lawlessness', unprepared to engage mainstream processes that are insensitive to Aboriginal concerns, while denied access to traditional sources of protection and redress, Blagg concludes that 'initiatives with the greatest likelihood of success are those that genuinely engage with Aboriginal law and culture and see these as a vehicle for change' (p 151). Furthermore, he argues that community-led approaches open up spaces for more, not less, engagement with mainstream services, as Aboriginal people seek out resources that they believe can assist.

The last three substantive chapters develop the argument that solutions to Aboriginal problems can only be found through holistic forms of Indigenous governance based on (but not limited to) local customary practice. After reviewing the findings of various law reform inquiries, Blagg advocates a form of legal pluralism that allows Aboriginal people to engage with the mainstream system 'from a position of cultural strength' in order to create localised and relatively autonomous 'pods of justice'. In the chapter on 'governance from below', Blagg charts the emergence of community justice mechanisms which operate in 'the liminal space between Indigenous and non-Indigenous domains, creating hybrid initiatives of the kind that leave Aboriginal law alone while helping to resolve the issues that Aboriginal law alone cannot resolve' (p 180). These community-owned initiatives force policy makers to come to terms with the possibility of incommensurate meanings between the Aboriginal and non-

Aboriginal domains, and confront the diversity of Aboriginal aspirations: 'The new approach to partnership requires that we accept the *radical alterity* of Aboriginal people and do not try to squeeze them in to structures and processes evolved in the non-Aboriginal domain' (p 201).

While rights talk takes a back seat to the language of decolonisation, the fundamental principles of self-determination and substantive equality underpin the arguments for Indigenous-led justice. Blagg credits the 'success of human rights discourse in providing a transnational meta-narrative' (p 24) for the emergence of a global network of Indigenous groups united in their quest for self-determination and cultural rights. His conceptualisation of Aboriginal and non-Aboriginal domains connected by a 'continuum of hybridity' can also be read as a continuum of self-determination. While community justice solutions that fit with established human rights principles are the ultimate goal, Blagg acknowledges that tensions may arise. He notes the 'genuine danger that the appeal to international human rights law — may have the unintended consequence of reinforcing those tendencies within the Australian system to criminalise and imprison Aboriginal people, this time in the name of defending the rights of women and children' (p 164). The resolution of these conflicts is to be pursued through dialogue, rather than the imposition of an arsenal of universal rights.

Harry Blagg has set out an agenda for a decolonised approach to justice built on a foundation of reconciliation, respect and localised self-determination. This is just the sort of book we need in the post-Apology period to frame an inclusive discussion about redefining Australian sovereignty. As Blagg explains, '[s]elf-determination does not necessarily imply complete independence, indeed such a process could be devastating for communities: it speaks, instead, to Aboriginal aspirations for a renewed social contract between Aboriginal and non-Aboriginal Australia' (p 189). This project of renewal amounts to nothing less than a 'Copernican revolution', requiring a decentring of colonial power and the drawing in of Aboriginal law and cultural knowledge from the margins.

Crime, Aboriginality and the Decolonisation of Justice is a densely argued text, which is no doubt open to critical debate on a number of fronts: these include the availability of traditional protections to Aboriginal women in particular communities, the relative merits of socioeconomic versus diversionary strategies to reduce Aboriginal imprisonment, the resolution of conflicts between particularist practices and universalising human rights norms, the capacity of Aboriginal communities to provide their own systems of care and control, the readiness of mainstream institutions and the public at large to accept a decentring of colonial power, the merits and dangers of 'strategic essentialism' as a unifying political strategy, and

the possibilities for culturally and geographically disparate Aboriginal populations to participate in a new social contract built on a foundation of community-based governance. These discussions can only enliven Indigenous scholarship and activism. It is the articulation of a *process* for systemic change, and the breadth and consistency of its decolonising vision, rather than the prescription of a definitive set of *solutions*, that mark Blagg's achievement in this book. ●

Reference

Cunneen C (2001) *Conflict, Politics and Crime: Aboriginal Communities and the Police*
Allen and Unwin, Sydney

Leanne Weber
Senior Lecturer in Criminology
School of Social Sciences and International Studies
University of New South Wales
<l.weber@unsw.edu.au>

Download Citation | On Dec 1, 2008, Leanne Weber and others published Crime, Aboriginality and the Decolonisation of Justice By Harry Blagg | Find, read and cite all the research you need on ResearchGate.Â Law Number 11 Year 2012 on Juvenile Justice System and Law Number 35 Year 2009 on Narcotics have to give freedom to the judge to apply the principle of ultimum remedium. However, the application of the principle of ultimum remedium still needs to be studied more in practice.