

**Aboriginal violence and state response: histories, policies, legacies in
Queensland 1860-1940**

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Abstract

During the long era of ‘protection’ (enacted in 1897, flourishing in the inter-war years and with effects continuing to this day) policy towards Australian Indigenous people suspected of inter-personal violence was ambiguous in its objectives and its means. Formally Indigenous peoples in Australia were British subjects entitled to the full protection of the law. As a consequence violence between Indigenous people was made visible through the conduct of inquests, police inquiries and in many cases subsequent arrest and charge with a criminal offence. Disposal of those charged or even suspected of crimes reflects tension between the universalising presumptions of the criminal law and the particularising effects of welfare regimes that ruled the lives of Indigenous people. Drawing on archives of inquests, courts and prisons in the Queensland jurisdiction before 1940, this article examines the policies and decision-making that characterised a state which remained determinedly colonial in its practises and ambitions. In conclusion, we consider briefly the question of how distinctive or how representative was Queensland practice as a state response to Indigenous violence during these decades of colonial subordination.

Debate over Indigenous violence reflects Australia's contemporary condition as a diverse immigrant society still coming to terms with the reality of a prior and continuing Indigenous claim over the land. This reality is reflected in the intensity of debate around the topic of Indigenous violence affecting women, children and the security of families and communities, in a literature of advocacy (Langton, 2008; Kimm, 2004), in the national media and political debate (Windschuttle, 2002; Jarrett, 2009; Nowra, 2007; Altman & Hinkson, 2007), and across a range of academic research and discourse (Sutton, 2001; Cowlishaw, 2004; Memmott, 2001; Cunneen, 2001). Through the account offered below we intend to build an understanding of Indigenous violence and responses to it that is not simply reductive – that is, does not explain what happened only in terms of the impact and survival of colonialism, or (as in other accounts nowadays) does not attribute a current state of affairs to the alleged inherent violence of Indigenous culture.

Our evidence is the long historical record of inquiries into the circumstances of Aboriginal deaths in Queensland, the basis of an 'Inter se database', which we describe later and which provides a ground from which to explore the social pathologies affecting Aboriginal communities after the frontier. Our previous research into inquest records suggests that after the decades of frontier conflict it was rare for an Aboriginal person to be accused or suspected of being the assailant in a violent incident resulting in death of a non-Aboriginal person (Finnane & Richards, 2004). In Queensland after the 1870s Aborigines as victims or assailants in violent incidents were most likely to be involved in a struggle within their own kin or community. In spite of the great deal of attention paid to the inter-racial dimensions of late nineteenth century violence (Banivanua-Mar, 2007; Wiener, 2009), then and now the little acknowledged story was one of intra-racial violence (Broadhurst, 2002; Sutton, 2009).

The degree of heat exhibited in intellectual and political discourse is arguably not limited to the last decade or even the last three decades, but is a characteristic of repeated unsettling discourse about the condition and future of Indigenous people in Australia since European settlement in 1788 (Atkinson, 1997; Reynolds, 1998; Karskens, 2009; Boyce, 2008). At the heart of that discourse has been a contest over the status of Indigenous violence as a marker either of tribalism and barbarity or as a sign of the impact of colonialism (Hiatt, 1996; Povinelli, 2002; Blainey, 1976;

Clendinnen, 2003). In this article we do not want to rehearse or review debates which are at the point of exhaustion about the reality of frontier violence or the violence of dispossession. The evidence of violence is overwhelming, the need to recognise the unpeacable nature of Australian settlement compelling (Richards, 2008; Nettelbeck & Foster, 2007; Foster et al., 2001; Foster & Attwood, 2003; Manne, 2003) .

But what happened to Aboriginal people in the aftermath of the frontier, between dispossession and the contemporary era of putative citizenship, policies of self-determination and the politics of affirmation and autonomy? The story for more than a decade has been dominated by the experience of the 'Stolen Generation', the people removed from their families and communities under welfare and assimilationist policies whose motivations and practices remain controversially contested (Haebich, 2000; Moses, 2004). Other stories have emphasised as well the struggle for survival, the constitution of new senses of Aboriginal society and community, the emergence of claims to land and land rights in the interstices of a society that has to be characterised as neo-colonial.(McGrath, 1987; Huggins et al., 1995; Goodall, 1996; Attwood, 1989; Attwood, 1994; Rowse, 1996).

Little attention has been paid in these histories during the period after the frontier to the realities of violence and crime within Indigenous communities. In this respect Australian scholars reproduce the reluctance of other settler society researchers to delve too far into histories that complicate the more readily addressed history of inter-racial conflict. Recent work on American homicide goes some way to redress that reluctance, with Roth (2009, pp. 104-6, 371-2) in particular noting the very high rates of intra-racial homicide among Native Americans during the extension of the American frontiers in the eighteenth and nineteenth centuries.

While historians have noted from time to time the evidence of Aboriginal intra-racial violence in colonial times (see especially Nance, 1981; Broome, 2005) there has been little attempt to explore its significance as a factor in the development of criminal justice or other systems of government administration. A contentious literature feeding off anthropological evidence has emerged in recent years reinstalling images of the violence of 'traditional' Aboriginal communities (most recently Jarrett, 2009). More nuanced debate about the status of this evidence has all the same reinforced the

picture of violent practices, ritualistic or otherwise, which characterised aspects of Aboriginal life before and after contact (Sutton, 2001; Cowlshaw, 2004; Povinelli, 2002; Rose, 1991; Flood, 2006). After the frontier, however, there is largely silence about the stories of violence that lie behind the imprisonment of large numbers of Aboriginal men in Australian prisons before the 1960s.

It is the story of imprisonment that tended to dominate the limited analysis of Aboriginal experience of the criminal justice system until quite recently. The disproportionate increase in Aboriginal imprisonment (involving both men and women) from the 1960s was a story around which decisions, policies and practices of the dominant white society could be quite justifiably analysed, criticised and reviewed. These were after all matters of state responsibility in which public accountability and resources were at stake and national reputation in question. The conditions which underlay the production before courts of large numbers of Aboriginal men were less addressed though never quite out of focus. Path-breaking studies by Eggleston (1976) and Gale (1972) drew on their field-work in South Australia, Western Australia and Victoria in the 1960s during the period of increasing incarceration of Aboriginal people. Their sober picture of social disadvantage during the transition from protection to citizenship was shockingly supplemented by Wilson in 1982 in a study which mapped the deterioration of the social condition of Queensland Aboriginal communities on the reserves and missions which had been long dominated by the state's Department of Native Affairs, and before that by the Chief Protector of Aborigines (Wilson, 1982).

In the only study ever to estimate the longitudinal characteristics of the prison population with respect to Aboriginality, Broadhurst (1987) showed a rapid rise of Aboriginal incarceration in Western Australia from 1965. What he did not directly address was the disproportionate share of the state's imprisoned population made up by Aboriginal people before that date, notably among women (more than half the 'daily muster' from 1957 to 1965) but also evident among men (12 to 18% across these same years). In going behind the data Broadhurst also pointed to the seriousness of much of the offending: parenthetically he noted that 'the great majority of violent Aboriginal crime is intra racial'. Broadhurst's study was not concerned directly with that question but his conclusion reinforced the point: 'the continued characterising of,

and over-emphasis on, Aboriginal offending as minor, trivial and a social nuisance masks the very serious rates of aggressive and harmful crime among Aborigines and the need to assist Aboriginal communities to assist themselves' (Broadhurst, 1987, pp. 189, 180). His observation is consistent with the more recent insistence of Weatherburn and colleagues on the contribution of serious criminal offending to high incarceration rates (Snowball & Weatherburn, 2007).

As this discussion implies, the critical issues of high rates of imprisonment and high rates of Indigenous violence demand a richer historical contextualisation (Hogg, 2001; Finnane & McGuire, 2001; Broadhurst, 1997; McGrath, 1993; Thomas & Stewart). Working from very scattered data we show below that it is nevertheless possible to build up an account of the contexts of Aboriginal violence and of responses to it in an Australian jurisdiction that has a sorry record of race relations and discriminatory justice. Our focus here is on historical data from the state of Queensland relating to Aboriginal violence *inter se*, but principally with respect to responses to that violence by policing, judicial, executive and administrative agencies. We note at the outset that our discussion will refer to Aboriginal peoples, since the Torres Strait Islander peoples (from the islands formally incorporated in Queensland from 1879) had a different experience of colonisation and appear much less frequently in the circumstances (and correlative archives) we consider here.

We discuss first some of the historical conditions under which Indigenous people came in contact with the criminal justice system and the changing policies that kept these notional 'British subjects' out of the mainstream. Second, we consider sources of data that enable us to estimate the degree of attention paid by the criminal justice system to Aboriginal people down to the 1940s. Last, we examine case material to illustrate the operation of the criminal justice system in responding to Indigenous violence during this era. We have confined our attention to the decades before 1940 for reasons of data access as well as historical sense. Access to relevant data archives (eg Police Gazettes and some court records) are not readily available within a 65 year period in Queensland (i.e., after 1943 at the time of writing). In addition, as we note later, the conditions of discrimination (a term we use advisedly) discussed here diminished in the war and post-war years as other policy directions (especially assimilation) became influential.

The historical context of jurisdiction

Queensland was established as a separate colony in 1859. It inherited the legal framework and criminal justice administration of its New South Wales parent. Part of that legacy was a presumption that Aboriginal people of the colonies were amenable to British justice, and entitled to its protection. In 1836 the Supreme Court of New South Wales rebutted a challenge to its jurisdiction over Aboriginal offences *inter se*. This was a decisive moment in the assertion of sovereignty over Aboriginal people in declaring Aborigines to be fully accountable to British criminal law notwithstanding their cultural difference and often great physical remoteness from the colonists (Ford, 2008; Kercher, 1998; McHugh, 2004; Neal, 1991). Translating judicial certainties into governmental realities remained another question altogether, especially for colonies like Queensland, Western Australia and South Australia which all had significant territory in the northern parts of the continent (Ward, 2003; Hunter, 2004). Colonisation of areas remote from the coastal metropolises was protracted and continued well into the twentieth century (Markus, 1990; McGrath, 1995). Some of the historical experience and patterns discussed in this article flow from the unevenness of colonisation and its governmental correlates.

The Queensland criminal justice system was characterised from the beginning by the full range of policing, prison and judicial institutions. In spite of the often well-deserved reputation of the colony for frontier conditions and violent colonisation, there was in fact a divided culture, with formal legal institutions and a culture of legal rights (Gouglas & Weaver, 2003; Wiener, 2009) contending with a colonial condition which continued to foster force beyond the reach of law. The existence of the Native Police, itself a signal of an uncompleted colonisation, created an additional layer of law enforcement and surveillance (Richards, 2008; Evans et al., 1988). At mid-century before and after self-government in 1859, Aboriginal people were prosecuted for offences which had their basis in cultural life that was well beyond the ken of settlers (Connors, 2005). Even after the abolition of public executions in the early years of the colony the colonial authorities were prepared still to make an exhibition of hanging Aboriginal offenders in order to set a deterrent to others (McGuire, 1998).

Considerable violence accompanied the extension of Queensland British settlement into the west and north throughout the 1860s and 1870s. Although a great deal is known about contact between the Native Police and Aboriginal people on Queensland frontiers there is too little systematic data to draw much more than speculative conclusions as to the scale and incidence of killings and other violence (Loos, 1982). However, the old idea that the Native Police were completely unaccountable and that there exist few records of their activities has been shown by Richards (2008) to be wrong (compare Palmer, 2000). The large number of police administration records, together with the evidence of inquests, has enabled the present authors to document significant evidence of the context and impact of Native Police and other police conflict with Indigenous people during the second half of the nineteenth century. If some official evidence is required to estimate the asymmetrical impact of police violence in colonial Queensland (as compared with the policing of non-Indigenous people, whatever their ethnic status and origin) then it may be found in the record of inquests on the death of Aborigines most likely as a result of police actions. Between 1860 and 1897 inquest data suggests that there were more than 50 Aboriginal deaths at the hands of police made the subject of coronial inquiry. By contrast the researchers were unable to uncover a single inquest (the Queensland records are virtually complete for the period) involving a question of police responsibility for a death involving a person other than an Aborigine (Finnane and Richards, 2004).

At the frontier and beyond, the evidence is incontestable that there were many killings by settlers as well as the Native Police, though occasionally also by regular police. Inside the frontier, in the major towns and settlements, Aboriginal people were subject to the common attention of police for minor infractions as well as major offences when these came to light, as discussed below. Until 1897 they were in other words subject to the law in the same degree as other colonists. But the establishment from 1897 of the Aborigines protection regime established a system of split responsibility for management of Aboriginal offending – an infra-legal system operating on government reserves and mission stations and the standard processes of criminal justice for the most serious offences. From 1897 the Aboriginal population was increasingly segregated on a number of reserves and missions under the administrative authority of the Chief Protector of Aborigines. Large-scale removals of Aboriginal people established under the 1897 Aborigines Protection Act meant a

permanent reaggregation of Queensland's Aboriginal population. Copland has shown that more than 80 per cent of removals (almost ten thousand people) were moved onto government reserves, the remainder to mission stations, most between the 1890s and the 1960s. (Copland, 2005, pp. 148-150). Here as elsewhere in Australia the dispossession of the colonial frontier was followed by large-scale displacement of populations (for NSW see especially Goodall, 1996). But the process in Queensland was more intense and regulated: displacement onto reserves also brought Aboriginal people into a new disciplinary regime, with its own system of punishment administered in penitentiary style by the Superintendent or later by a Visiting Justice (Kidd, 1997; Blake, 2001; Trigger, 1992).

This welfare system was subordinate, where serious offending was concerned, to the mainstream criminal justice system. For offences such as murder or manslaughter, even on reserve land, a suspect would be arrested and prosecuted in a common court of law. Even here however the regime of protection intruded – since the layered controls of the regime made Aboriginal people convicted of criminal offences continuing subjects of control, even once they had completed a sentence of imprisonment. We discuss the mechanisms of this response to violent offending later.

The Aboriginal population of Queensland, as in the rest of Australia was thought to be in decline from the early years of colonisation until the post-war years. The reasons included the violence of colonisation, the impact of disease and a likely fall in the rate of reproduction flowing from the profound disruptions of settlement. Significant problems in estimation flow from these historical circumstances and population data until the 1960s is incomplete. After the initial impact of dispossession and population decline, the policy and practice of protection, for all its mixed historical legacy, is likely to have assisted demographic recovery - recent research suggests growth in population after 1900 rather than decline (Briscoe, 2003, pp. 66-67). All the same, the total Aboriginal population may have been no more than 25,000 at any time from 1900-1940. Given the increase in total Queensland population during these years from just under .5 million to nearly 1 million persons, the proportion of the Aboriginal population was never more than 0.5% and declined proportionately across the period. Against such numbers, the data discussed below suggest levels of violence that demand attention and explanation.

Assessing the incidence of violence – problems of data and method

Historical data on homicide, like crime in general, is beset with empirical as well as methodological problems. Earlier attempts by social scientists to aggregate and compare historical data within and across jurisdictions suffer from their dependence on a narrow range of official statistics. (Mukherjee 1988; Archer and Gartner 1984). Large scale historical studies are more likely now to consider the widest range of sources, official, archival and media, to prepare their own estimates of violent death. For Randolph Roth (2009, p. xi), historian of American homicide, ‘there is only one way to obtain reliable homicide estimates, and that is to review every scrap of paper on criminal matters in every courthouse, every article in every issue of a number of local newspapers, every entry in the death records, and every local history based on lost sources, local tradition, or oral testimony.’ Of course the rationale for construction of such an estimate is a function of the questions asked, or hypotheses floated: in Roth’s case, sociological interest in the relationship between the patterns of violent death and ‘changes in people’s feeling about government and society’ (Roth, 2009, pp. xi-xii). In the context of this article our primary interest is in uncovering the patterning of colonial and later governmental response to Aboriginal violence. Given the historical context outlined above for Australian and Queensland jurisdictions, there is a range of records available for considering Aboriginal offending and contact with the criminal justice system. They includes the official police and prison reports (usually published as parliamentary papers), the archives of police and prisons administration, the records of police and criminal prosecutions, the record of inquests, and the records of the protection administration (under the Chief Protector of Aborigines), as well as reports in local newspapers. Across the Australian jurisdictions the recording of Aboriginal birth or identity before the 1970s was very uneven, the most comprehensive and continuous official reports being found in Western Australia (see (Gill, 1983), although we are unaware of any systematic study of the data available there other than Broadhurst’s (1987) study of the prison population after 1957. Capturing biographical data from multiple sources is a necessary element in any reconstruction of historical violence data that might illuminate social attributes of assailants and victims as well as patterns of institutional response.

We discuss below the patchwork of evidence of Aboriginal offending (principally with regard to violence offences) that these sources enables us to assemble. In the first place, we note that formal Aboriginal contact with the criminal justice system was of course through the police courts. Comprehensive bio-social data is available in the police station charge books which are remarkably well preserved in Queensland. A study of policing and prosecution conducted 20 years ago drew on a sample of these books for various courts, urban and rural and across time from 1861-1954 (Finnane & Garton). For reasons which demand further investigation the reporting of 'Aboriginal' birth declined across the period. And without very detailed local studies that would require accurate genealogical data it would be difficult to conclude how consistent was police recording practice in identifying Aboriginal descent (as opposed to say Queensland birth which accounted for the great majority of offenders). A review of this data shows that only 74 of the 12,330 individual charges sampled were of persons identified as Aboriginal in the station books. The majority of these persons were in fact in a single court, that of Nebo, a small country town in North Queensland, and across a period of more than 40 years. We are inclined to think that the police recording of Aboriginal identity of persons being charged was generally inconsistent and so data drawn directly from these records may be very unreliable except for the purpose of local studies. It may be for this reason that the police Annual Reports fail to distinguish Aboriginality in their tabulation of police charges, in spite of 'Country of origin' being tabulated in the 1880s and 1890s.

These shortcomings suggest that the main source of quantitative data relating to Aboriginal contact with the criminal justice system will be the prisons reports which do distinguish Aborigines for many decades. The basis of the data was presumably the reporting in prison entry books. One rationale for the identification may have been the obligations established by the Queensland probation reporting system after 1887 (White, 1979). This system entailed strict personal identification of discharged prisoners, whose exit from prison was also regularly reported in the Queensland Police Gazette, along with relevant personal details. Prison registers in other jurisdictions commonly noted the Aboriginality of prisoners on admission, even where the data was not subsequently reported in the official aggregate statistics¹.

A snapshot of data available in the Annual Reports of the Queensland Prisons Department during the first half of the twentieth century is summarised in Table 1 below. It shows that a relatively high proportion of Aboriginal prisoners in Queensland prisons in the early twentieth century generally declined over the decades to 1947. After that year reporting of Aboriginal status was no longer continued.

Table 1
Aborigines in Queensland Prisons (percent of total prisoners)*

Year	<i>Received during year</i>		<i>Number at end of year</i>	
	male	female	male	female
1906	7.13	0.65	7.27	5.00
1911	3.28	0.68	8.50	0.00
1916	6.13	8.11	4.57	0.00
1921	3.16	2.35	4.56	0.00
1926	1.00	0.00	2.99	0.00
1931	0.83	0.00	4.30	0.00
1936	1.24	0.00	3.05	0.00
1946	0.99	0.00	0.79	0.00

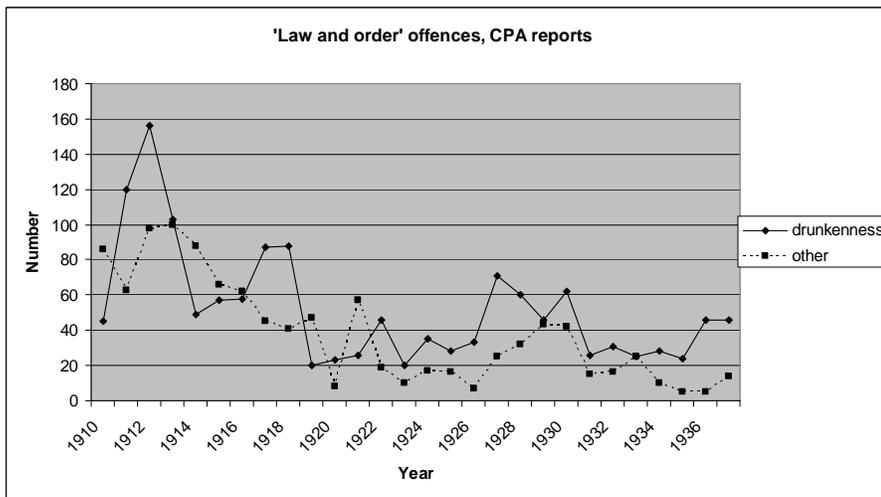
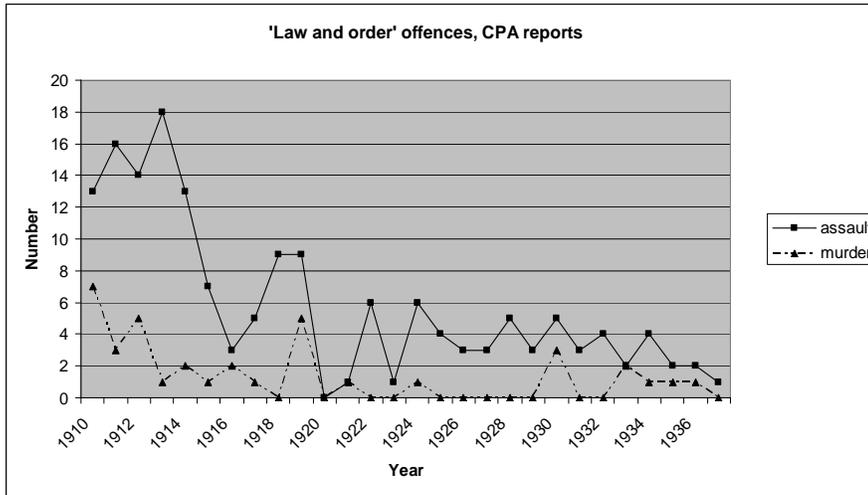
Source: Annual Reports, Queensland Prisons.

A simple explanation of the difference between the proportions of prisoners received and those at ‘end of year’ is that Aboriginal inmates were more likely to be in prison following conviction for relatively serious offences incurring heavier sentences. This may be demonstrated by noting that in the decade after 1898, the likelihood of a death sentence being *commuted* was much higher for Aborigines in Queensland than for any other racial group – meaning also that there was a relatively high proportion of Aborigines serving longer prison sentences as a result of that commutation. In view of contemporary concerns about the disproportionate levels of Aboriginal imprisonment, it should be noted here that the official data represented in Table 1 for the early twentieth century suggests disproportions in the order of 10 or 15 to 1, if the Aboriginal population made up no more than 0.5% of the Queensland population.

Whatever the seriousness of their offences, the *decline* in the proportion of Aborigines in Queensland prisons over the first half of the twentieth century may be attributed to the wide-ranging powers of the protection system. After 1897 the lives of the majority of Aborigines in Queensland were controlled by the Chief Protector of Aborigines (Kidd, 1997; Blake, 2001).

Graph 1

'Law and order offences', CPA reports



Source: Chief Protector of Aborigines, *Queensland, Annual Reports*. The data identified numbers of Aborigines subject to control of the CPA who were prosecuted for various offences.

The Chief Protector was empowered to keep a watch on Aborigines in contact with the police and courts and regularly reported on the numbers of Aborigines convicted, as indicated in Graph 1. As increasing numbers of Indigenous people were confined

on reserves, with an entire social administration, including from 1939 a 'native justice' system (Tatz, 1963), and prison-like disciplinary options for the reserve superintendents (May 1987; Blake 1998), it is not surprising to see a gradual fall in the reports of the total numbers of Aborigines convicted in the regular courts on offences resulting in police charges. There was a very significant scale of difference between the highly-regulated system of Aboriginal protection in Queensland and the less regimented (if still heavily policed) lives of Aborigines in neighbouring NSW. This can be seen by comparing the data on drunkenness and other minor offences reported by anthropologist Marie Reay in a unique study of the north-western NSW town of Walgett in the 1930s. There Reay reported no less than 563 police charges of drunkenness over the ten years from 1934, a figure for one small town that far exceeds the total numbers reported for Queensland as a whole by the Chief Protector of Aborigines (Reay, 1944, p. 300). While it is very likely that the Chief Protector's data was less than comprehensive (especially with regard to homicide charges as suggested later), the downward *trend* identified in the Chief Protector's statistics is consistent with the prisons data we have noted above.

Against the background of suggestive but inadequate official statistics, we have explored a range of alternative sources that might enable a more comprehensive assessment of the incidence of violence and impact of criminal justice historically on Aboriginal people. These sources include inquest data, criminal court depositions, and data from the Queensland Police Gazette, supplemented by newspaper reportsⁱⁱ.

Queensland has an important and long-running archive of inquest into deaths conducted by magistrates and coroners, data from which is now used in international studies on suicide and other violent death (Weaver & Wright, 2009). The inquest data may be complemented by the evidence of criminal court depositions and/or administrative materials of other kinds, especially of the Chief Protector's administration as well as the police department. As discussed below these data are particularly valuable for the twentieth century in revealing the mechanisms of non-judicial processing and response to Aboriginal offending that contributed to the limited use of imprisonment against Aboriginal offenders. Conversely these data thus also point to a long-standing avoidance of conventional justice in relation to offenders as well as victims. Finally the reporting of known offences, suspects and discharged

prisoners available in the published Police Gazettes (readily available to 1940) may be accessed in a way that has enabled us to document a substantial number of Aboriginal people coming in contact with the police and prisons.

Outside these published and archival sources the principal source of information about Aboriginal contact with the criminal justice system was newspaper reporting. Nineteenth century newspapers remain invaluable sources for policing and court data but accessing them for database construction has until recently been excessively time consuming, and rich social and personal data is often missing from cases. For this reason the *Inter se database* used in the discussion below draws principally on file evidence for the sources described above. It compiles available data on all policed or prosecuted cases involving Aboriginal people on charges involving violence – the data includes names of offenders and victims, dates of offence, warrant, arrest, and trial; verdict or other outcome, sentence or other outcome.ⁱⁱⁱ In addition the discussion below draws on another database, sourced in the register of death penalty cases (192 of them) involving both Aboriginal and non-Aboriginal convicted persons, between 1865 and the abolition of the death penalty in 1922.

Assessing the incidence of violence

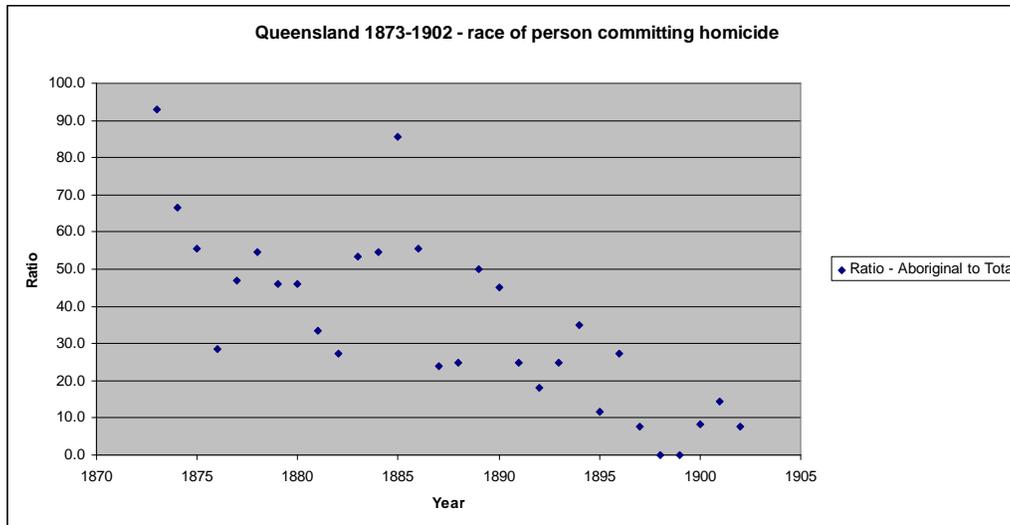
So far, the data we have examined points to disproportionate imprisonment at the beginning of the twentieth century and a decline during the following decades, likely connected with the increasing controls over the Aboriginal population under the Chief Protector's regime. But what do we know about the nature of the offending, especially in respect of serious offences that may have contributed to high levels of imprisonment at the turn of the nineteenth century?

Official data again enables some conjecture without providing much insight. For some decades from the early 1870s Queensland official statistics reported cause of death by violence according to racial identity of suspected persons. The data suggests a significant attribution of blame to Aboriginal suspects, as indicated in Graph 2. In the early part of this period, the mid 1870s to early 1890s, the high number of cases in which an Aboriginal person was considered the assailant in violent incidents causing death may seem consistent with the continuing violence of frontier regions as Queensland colonisation proceeded – although we have no official data confirming

the ethnic identity of victims in these statistics. The trend of decline correlates with the gradual introduction of a policy of protection, and segregation between the races, consolidated by statute in 1897 (Loos ,1982; Kidd, 1997).

Graph 2

Queensland 1873-1902 – race of persons committing homicide



Source: *Queensland, Vital Statistics, Annual Report of the Registrar-General, 'Causes of death' ('Murder')*. The data on 'manslaughter' does not include this 'racial' attribution. The estimated population ratios of Indigenous to non-Indigenous for the related census years are 167 (1871), 33 (1881), 15 (1891) and 5 (1901)

So far the data we have considered are free of any reference to the victims of violent offenders, or indeed of serious crime at all. To apprehend the characteristics of violent incidents involving Aborigines as offenders or victims, the researchers have researched available data from inquest records, criminal trials and the Queensland Police Gazettes. In the discussion below we refer to the data collected in this study as the *Inter se database*. As Table 2 indicates, throughout the period of great conflict during the early decades of colonisation inter-racial killing was common, even as reflected in the official record of those cases made the subject of coronial inquiry. But even so by far the majority of cases of Aboriginal deaths made the subject of coronial inquiry up to 1897 were concluded to be at the hands of Aboriginal assailants.

Table 2

Inquest Data 1860-1897: Violent death involving Aborigines

Victim	Suspect			
	Aboriginal	Non-Aboriginal	Police	Not known
<i>Aboriginal male</i>	196	24	43	25
<i>Aboriginal female</i>	58	7	6	
<i>Non-Aboriginal male</i>	178			
<i>Non-Aboriginal female</i>	6			

Source: Inquests, Queensland State Archives. The data differs slightly from (Finnane and Richards 2004) in respect of attribution of police killings, as that study also took account of trial data as well as inquest records.

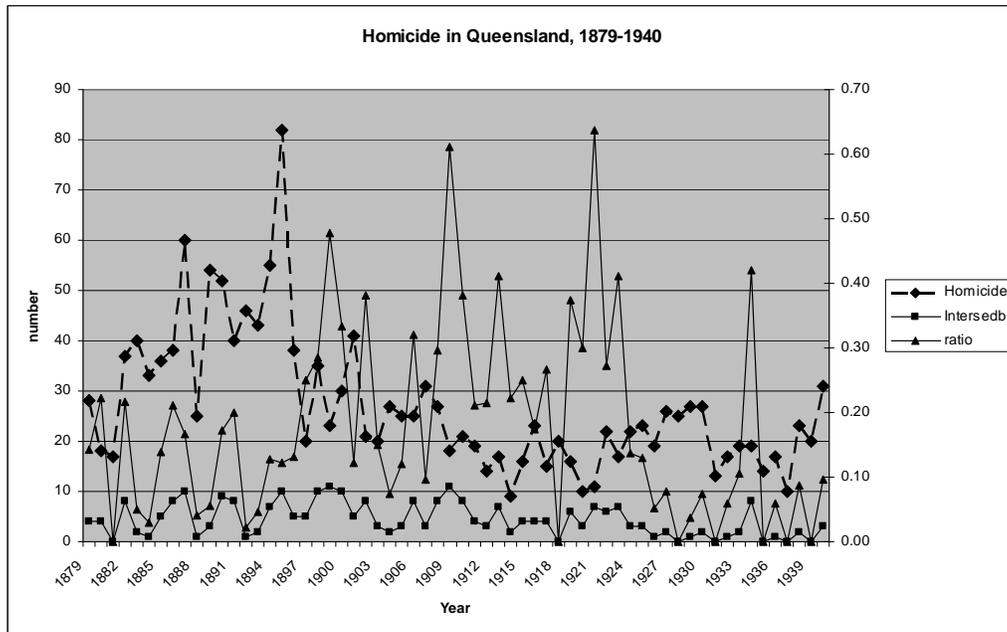
It should be emphasised that a coronial inquiry very frequently was unable to identify an individual or individuals responsible for death. Had it done so then we might expect to have seen many more Aboriginal people prosecuted, convicted and perhaps executed for murder in the nineteenth century. All the same, there were 55 Aborigines among the 192 people convicted of capital crimes in Queensland between 1865 and 1922, the year in which the death penalty was finally abolished, 9 years after the last execution in 1913. 44 of these capital convictions were for murder, 11 for the capital offence of rape (always of a white woman). Prosecution for rape was an inter-racial affair, only one black woman victim (a Melanesian) having her case brought before the courts in these years (as we discuss later). Successful prosecutions of Aboriginal offenders on a homicide charge usually involved cases in which the victim was another Aboriginal person. In the decades when inquests concluded that large numbers of non-Aboriginal people had been killed by Aborigines, violence was an all too common response. Thus revenge parties and other forms of swift justice, including those executed by the Native Police, were the more likely outcome of murderous attacks by Aborigines before the 1890s (Richards, 2008). But, with the frontier years largely behind them, after 1897 it was even more likely, owing to the increasingly apartheid-like structures of Queensland that Aboriginal violence would involve Aboriginal people only.

Against this background of nineteenth century colonial violence we turn now to a different perspective afforded by the need to consider what happened after 1897. To approach the data in context first let us compare the official record of charges of homicide (murder and manslaughter) in Queensland between 1880-1939 with the comparable case study data from the *Inter se database*.

In Graph 3 we compare these two series, and calculate a ratio of the respective data at each point. As there was only one Aboriginal female charged with a homicide offence across the period the data is for male offenders only. As the graph indicates for a significant number of years, chiefly clustered in the three decades after 1897, the proportion of Aboriginal homicide offenders to the total number charged in Queensland was at least one in four, in some years much greater than that. Given the great disparity in population it must be evident that the story told by such a graph is one that highlights serious levels of inter-personal violence in Aboriginal communities. Victims of this violence were both men and women – 30% of homicide victims were women, who made up only 3% of defendants. In that respect homicidal violence was of a type with the general community, then and now, when women make up more than a third of Australian homicide victims of mainly masculine assailants (Mouzos, 2002, p. 170)^{iv}.

Graph 3

Homicide in Queensland, 1897 - 1940



Sources: ‘Homicide’: Queensland Police Department *Annual Reports* (persons charged with offences of murder and manslaughter); ‘Interse db’: *Inter se database* (Finnane and Richards), sourcing inquest files, police department files and criminal court files; ratio of ‘Interse db’ to ‘homicide’ (right axis).^v

The absolute numbers might not appear large over a long period of time. But when we take account of the fact that the Aboriginal population was at most 0.5% of the Queensland population, it can be seen that for much of the period the rate of homicide among Aboriginal people must have been in some multiples above that in the general population. Such a conclusion is to some extent misleading if it ignores the cultural context of the data. In a number of cases between 1900 and 1940 the killing of an Aboriginal man resulted in the arrest by police of a large number of other Aborigines – six in 1913 (near Coen), five in 1921 (Cooktown), six again in 1923 (Herbert River), no less than eight in 1927 at Palm Island, and another seven in 1934 following a death at Wairuna. All these killings involved male assailants and a male victim. All were in North Queensland locations, and the deaths were all suspected by police to involve elements of custom, with consequences for the way in which both police and especially the Chief Protector of Aborigines proceeded. We discuss below some of those effects. Even taking into account these significant contributors to the high count of Aboriginal homicide charges, the relativities remain disproportionate and suggest a

high rate of violence involving death in Aboriginal communities through the early decades of the twentieth century. What is also noteworthy is the strong evidence of decline in violence by the 1930s. With the exception of the 1934 death at Wairuna, which had taken place outside the reserves on which increasing numbers now lived, the number of deaths in the 1930s was rarely more than one a year. As Gordon Briscoe (2003, pp. 66-7) has argued in a major review of Aboriginal population in Queensland at this time, the protection era appears at the very least to have contributed a greater capacity for Aboriginal communities to sustain their populations, and even grow them in some kind of security.

Responding to violence: the evolution of discrimination in criminal justice policy

There is strong evidence from a study of Queensland data to confirm the conclusion that the historical evolution of criminal justice policy was in the direction of *distinguishing* Aboriginal defendants rather than assimilating them into the category of ordinary offender. The degree to which this was an Australian pattern more generally cannot be addressed here (Finnane, 2007). The way in which this policy developed is instructive for our contemporary understanding of the variety of ways in which Indigenous offending presents itself. By this we mean that there is, and always has been, a significant difference between the treatment accorded Aboriginal offenders in respect of offences within their own communities and that accorded them when they interact with the non-Aboriginal community. In the latter case, penal policy has tended to be harsh and discriminatory - from the drastic response to inter-racial homicide in the late nineteenth century (Highland, 1994) to more recent characteristics of three strikes laws and other more banal effects of law and order politics (Cunneen, 2001). In the former case, of intra-racial violence, penal policy has been also discriminatory but in a way that may be seen to benefit the offender, perhaps at the cost of victims. These effects cannot be reduced to the social disadvantage associated with race (Black, 1989, pp. 61-2), but need to be understood in a thicker cultural context that distinguished the status of indigenous peoples from that of other non-white peoples in European settler societies. Let us examine briefly the way in which such patterns can be demonstrated historically as a product of the intercultural political environment of Queensland.

The most striking evidence of this two-faced aspect of penal policy is evident in the exercise of the death penalty in Queensland between 1865 and its final use in 1913. Two-thirds of capital convictions in Queensland during this period resulted in defendants having their sentences commuted to a sentence of imprisonment or other outcome. As we have noted above Aboriginal defendants made up a high proportion (55 of the 192 cases capitally convicted) of people sentenced to death after 1865. Yet of all racial groups, *including* European settlers, they were the least likely to be executed as indicated in Table 3 below.^{vi} This pattern was not however because settler justice and government were particularly sympathetic towards Aboriginal defendants. It was rather that a cultural discount operated in administering the death penalty (as it arguably did and has continued to do in sentencing generally) such that *inter se* homicide was regarded as not demanding the law's harshest remedy. The pattern can be seen especially clearly in the disposition outcomes for rape which remained a capital offence until the enactment of the Queensland Criminal Code in 1901. In a pattern which has long been noted in the historical literature on Queensland race relations (Harris, 1982; Evans, 1982; Barber, 1975; McGuire, 1998), most men executed for rape, in all cases involving white victims, were black, five of them Aboriginal and three Melanesian.

Table 3
Outcome of death penalty sentence, Queensland, 1865-1922

Outcome	Ethnicity					Total
	European	Aboriginal	Melanesian	Chinese	Other	
executed	32	11	11	6	5	65
	42.7%	20.4%	27.5%	60.0%	71.4%	34.9%
commuted	43	43	29	4	2	121
	57.3%	79.6%	72.5%	40.0%	28.6%	65.1%
Total	75	54	40	10	7	186

Source: *Record of death sentences, Brisbane, 1865-1922, PRI/18-19, QSA. The analysis excludes 6 cases (all European) sentenced to Her Majesty's Pleasure (5) or benefit of a free pardon (1).*

Of course, this is not to say that all black men convicted of rape were executed – in fact a majority of the Aboriginal men (6 of 11) convicted of rape also had their sentences commuted. In the only known case of a capital conviction on a charge of raping a black woman, that of a Melanesian woman in Bundaberg in 1889, the four convicted men, all themselves Melanesian, had their death sentences commuted to 3 years imprisonment.

What happened when sentences were commuted? Here also, the racial calculus came into play in the exercise of the prerogative of mercy. Contrary to the impression evident in previous discussion of punishment in Queensland (Barber, 1975; Banivanua-Mar, 2007), Aborigines and Melanesians under sentence of the death penalty were more likely than Europeans to benefit from commutation. That is, to emphasise the point, Aborigines and Melanesians were *more* likely than European defendants to have their sentences commuted, and moreover to have them commuted to shorter sentences than the Europeans who benefited from commutation. Most Aborigines with commuted sentences were given tariffs of 10 years or less – most European defendants were given life. But this was an offence-specific pattern, more likely for the offence of murder than of rape, where the reverse was true on an offence which seemed especially likely to invoke white anxieties and result in harsh sentences. The weight of evidence suggests that there was a racial discount in the sentencing process for capital cases through what we might call today ‘cultural’ considerations. Most of the Aboriginal men who had their death penalties commuted had killed one of their own. Available evidence suggests that at least 50 Aboriginal offenders were found guilty of the capital offence of murder of another Aboriginal person between 1864 and 1922, of whom 34 received a capital sentence, and in turn of whom a maximum of 5 were executed. When it came to murder, there was a practical policy of leniency when it came to sentencing Aboriginal offenders if they killed one of their own.

So much then for sentencing in capital cases. But the exercise of discrimination, positive or negative, was not limited to sentencing. To use terms from our contemporary nomenclature, post-sentencing and post-release outcomes were also subject to policy considerations that owed everything to the slow adjustment of government to the demands of administering a particular population with distinctive

attributes that had to be managed and controlled. Whatever the possible positive benefits of the protection regime in advancing a basic level of security, its disruptive effects in other ways are reflected also in penal policy, through the administration of a regime that made an Aboriginal reserve a penal option.

77% of the 350 cases (1879-1940) on the *Inter se database* involved a charge of murder or manslaughter.^{vii} Often such a charge was brought after an inquest into a suspicious death, in other cases following police investigation into a death reported by witnesses, both Aboriginal and non-Aboriginal. The highest numbers of these cases were in the 40 years from 1880-1919. For the cases for which we have a verdict available (about 80%, 171 cases), two-thirds were found guilty, the majority of these on a charge of murder rather than manslaughter. Guilty verdicts on murder charges necessarily resulted in capital sentences, but we have already noted the significance of clemency options in post-sentencing practice resulting in fewer Aborigines being executed for murder. In manslaughter cases the range of sentences was very wide, with the context of the offence mitigating sentence, drastically in some cases. Trial location and the costs of transportation of prisoners very likely shaped many decisions. In North Queensland in the 1890s we know of four murder or manslaughter convictions cases resulting in a week's sentence or less: in Burketown in 1890 (7 days for manslaughter), in Cooktown in 1891 (murder of a woman, sentenced 'to the rising of the court'), in Normanton in 1899 (manslaughter by an Aboriginal trooper, 7 days), and Cooktown in 1902 (7 days then 'to be sent to his country').

The sentencing rider 'to be sent to his country' demands context - of time and place and state policy. Not all homicides resulted in police prosecution, even where the evidence appeared strong. And not all acquittals or discharges or no bills resulted in suspects going free. For overlaying the justice process for Aborigines after 1897 was the extraordinary degree of administrative power delivered into the hands of those appointed as Protector of Aborigines, and ultimately the Minister. While a number of reserves were created under the Act after 1897, with numbers of people moved to them for welfare or disciplinary reasons, it was the gazettal of Palm Island (off the coast of Queensland) as a reserve in 1914 that was the origin of the most notorious settlement. Its penal purpose was explicit, as its historian Joanne Watson has shown, with Chief Protector Bleakley advising the government in 1917 that the island 'would

be ideal for the confinement of the ‘individuals we desire to punish’. ‘Being an island’, Bleakley said on another occasion, it ‘provided the security from escape required for such characters’ (Watson, 1995, p. 151).

With the creation of Palm Island reserve the administrative removal of offenders (with or without the benefit of trial on the allegations against them) became a common practice. The record may be incomplete but our review of the files indicates at least 15 Aboriginal men (one-third of those charged with a homicide in those years) were removed from various locations in northern and western Queensland between 1920 and 1938 following their alleged involvement in the death of another Aborigine. The practice pre-dated the creation of Palm Island – for a few years around the turn of the century Fraser Island had been the favoured destination for such removals in an early trial of this deportation scheme (Finnane & McGuire, 2001). In 1910 five Aboriginal men were named as suspects in the course of an inquest into the death of another man in North Queensland. The evidence was strong and there were many witnesses and confessional statements. The killing was allegedly in revenge for the death of one of their own countrymen, and some statements were made indicating that the killers had been waiting on police action in relation to that death. Following the inquest finding of ‘murder’ there was no police action until an inquiry from the Justice Department in Brisbane set off a round of correspondence disclosing that the Minister had authorised the Chief Protector to have the five men removed to the Aboriginal settlement at Barambah in the state’s south.^{viii}

It appears however that it was the creation of Palm Island that ‘normalised’ this option as a response to an alleged homicide, or indeed to a wide range of offending.

Copland’s meticulous investigation of Aboriginal removals in Queensland over a period of more than 100 years shows at least 425 ex-prisoners removed to Palm Island in the twentieth century – more than 40% of all ex-prisoner removals (Copland, 2005, pp. 210-212). For some offenders removal was a case of double jeopardy since they were deported to Palm Island after a no bill had been entered at a trial, or after they had been found not guilty; in other cases it was determined to remove them in lieu of the troublesome business of a trial. In the circumstances of what should have resulted in a manslaughter trial a man died two weeks after being assaulted in December 1925. Instead of pursuing a prosecution the police were ordered to remove the men

suspected of the killing to Palm Island after arrest; the Chief Protector also ordered the removal of the wife of one of the men. The powers of police and protectors were virtually absolute in the regime created by the Act of 1897. The trial in 1924 at Cairns of three men for the murder of another resulted in the conviction of two of the men (with a life sentence resulting, this being two years after the death penalty was abolished in Queensland). The third was acquitted after the failure of evidence resulting from lack of an interpreter. The immediate recommendation of the Cairns Police Inspector was a recommendation for the acquitted man to be removed as soon as possible to Palm Island, a recommendation resulting in a removal order enacted the same month.^{ix}

The rationale for administrative removal articulated a more general sense of unease with the application of British law to Aboriginal crime. Chief Protector Bleakley identified the two-fold punitive and disciplinary purpose of Palm Island, but the policy was articulated earlier by the influential administrator, medical doctor and amateur ethnographer, Walter Roth, the first Northern Protector of Aborigines appointed under the 1897 Act. It was Roth who spoke in his 1899 Report of the need to adjust law to circumstance, arguing that the government should follow the thinking that ‘influenced the conduct of the Imperial Government in dealing with the laws and customs of the native races of India – that is to say, a passive non-interference, except in cases where gross cruelty or the sacrifice of human life are concerned’.

Commenting on judicial practice in Queensland in dealing with serious charges against Aborigines he noted what we have shown to be evident, that judges tended to leniency in punishment (‘when they err, he said, it is on the side of mercy’). Roth went on to urge that ‘so-called “crimes committed as a rule in the exercise of such tribally-recognised laws and customs”, and committed by *blacks on blacks* [his emphasis], should be dealt with rather by an organised system of expatriation than by the verdict of a jury.’ The wide-ranging powers of an administrator under the Act enabled him to contemplate in addition that all ‘time-expired aboriginal prisoners shall be effectually prevented from getting back to their native countries’, since they failed to regard imprisonment as punishment, impliedly presenting a risk to their communities through failure to be exemplars of general deterrence. Finally Roth noted that he had already recommended to the Minister (and had this sanctioned)

removal to other districts of aboriginals who posed 'any risk to the safety of Europeans' (Walter Roth, 1900, p. 11; Evans, 1999; Blake, 1998).

Subsequently, Roth and other protectors became managers of crime risk, as well as administrators of punishment. Prior to the establishment of Palm Island, other settlements, especially Fraser Island, Barambah and Durundur were all destinations for removal of troublesome Aborigines, usually men, though in some cases their immediate families were moved with them. The crime management dimension of protection administration has been little discussed in the literature. Its scale can be captured in the annual report of the Chief Protector (Richard Howard) for 1907. There Howard noted that 'crime of a serious nature has not been very prevalent among the aborigines' before continuing with the reality of managing crime outside the judicial system:

Paddy alias Jimmy Butler was removed from South Townsville to Barambah for being a serious danger to females. Tommy Patterson and Monkey, suspected murderers, removed from Coen district to Barambah, at request of Police Dept. Tommy Lake, for being a danger to both black and white residents of Taroom, was, at the expiration of a period of imprisonment, sent to Barambah. Jimmy Garvey and Warry, suspected murderers, removed from Coen to Barambah, at request of Police Department. Oscar, for attempted rape and being unlawfully on premises, was imprisoned, and afterwards sent to Barambah.... Bumblefoot and Mungowly, for suspected murder of Kilpatrick at the Mitchell River, were arrested, tried and acquitted, but afterwards sent to Barambah (Howard, 1908, p. 15).

The protectors' published reports rarely allude to the complex circumstances lying behind the many instances of violence that prompted such actions. When they did so it was to the effect of presenting their decisions in the most positive light. Roth especially emphasising the literal protection that such decisions offered, in some cases to an offender who might be subject to payback; in others to local Aboriginal communities - as he observed in 1901 of one man who had reputedly murdered a woman, 'the women in the camps hold him in great dread, and he has been known to use threats towards them' (Walter Roth, 1902, p. 10)

This brings us to a concluding comment on the evidence of the distinctions at work in the management of criminal prosecutions of Aborigines for violence against their own kind. Earlier we noted that the evidence of leniency in some aspects of sentencing and the adjudication of mercy might have been at the cost of victims. There is some evidence on the other hand that where homicide cases went to trial they resulted more often in verdicts of guilty when the victim of the homicide was a woman.

Table 4

Homicide trials, Aboriginal male defendant, Queensland, 1864-1940

Gender of victim	outcome			Total
	Guilty Murder	Guilty Manslaughter	Discharged and other	
male	39 27.9%	34 24.3%	67 47.9%	140 100.0%
female	22 45.8%	15 31.3%	11 22.9%	48 100.0%
Total	61 32.4 %	49 26.1%	78 41.5%	188 100.0%

Source: *Inter se database*; 'Discharged and other' includes not guilty and cases where the prosecution did not proceed

All but 5 homicide trials of Aboriginal defendants between 1864 and 1940 involved male suspects. For the 188 (90%) of cases in which we can identify the gender of the victim it is possible to measure this tendency, with almost 4 out of 5 male defendants being found guilty in prosecutions of femicide compared to just over half where the victim was a male. Table 4 suggests this was the case for both murder and manslaughter cases. More detailed analysis might suggest the range of factors involved but given these were the results of jury trials the result is consistent with other historical evidence on the influence of masculine chivalry in justice processes during the later nineteenth century (Strange, 2003; Wiener, 2004).

Conclusion

The affront of Aboriginal violence *inter se* was a challenge to British authority in Australia from the earliest days of the convict settlement at Botany Bay. As occupation extended its reach into the continent this violence presented itself more commonly as a problem of government that required affirmative declarations of sovereignty through the courts as well as by executive direction. While the Supreme Court of NSW decided the matter in 1836 there remained a gap between such judicial assertion on the one hand and the capacity of government to enforce its authority over Aboriginal violence and disorder on the other. Pragmatic solutions won the day – Aboriginal violence against settlers was met with martial violence more often than law, until resistance was exhausted (Karskens, 2009); Aboriginal violence against other Aborigines was met with law, whenever it intruded into settler space (Ford, 2006). By the late nineteenth century the extension of colonisation into remote reaches of northern and central Australia meant that more and more Aboriginal violence *inter se* attracted legal and governmental attention. The pattern is similar to that observed in the few closely documented studies of responses to Indigenous crime in other settler societies, or at least other comparable ones with British law legacies, such as the North American or New Zealand (Asher, 1999; Randolph Roth, 2009; Hill, 1995; Dunstall, 1999).

Queensland stands at an important temporal and spatial junction in this process. It carried with it into separation from 1859 the legacy of metropolitan legalism (in Sydney as well as London), but in a context which was still aggressively colonialist and expansionist. A virtual state of war existed on the frontier for another two decades, while the full development of colonial bureaucracy (especially its policing apparatus) followed the extension of settlement. We have shown here how this development brought Aboriginal people, in life and death, into the fold of criminal justice processes. Given the great and growing difference in populations, particularly after the 1870s, it is striking just how many Aboriginal people populated the criminal court lists from that time, accounting for about one quarter of capital offences. As the data shows, this was less because of the extent of inter-racial offending (however important that remained in accentuating racial anxieties in the settler population, European and Asian), than it was a result of the policing of Aboriginal violence against their own kind.

The determination to police Aboriginal violence *inter se* flowed from a variety of factors. The legalism of colonial culture and its construction of an increasingly monocultural norm was important; so too was the pragmatic demand of settlers to quell disorder on the margins of their lands and towns, including addressing the violence directed at their own Aboriginal employees. The emergent programmes of Aboriginal protection, another form of pragmatism, but characteristically statist and colonialist in their reach, proved especially powerful in Queensland. They aimed at nothing less than a comprehensive program of population management, in which violence would be managed not through law in the courts but through administration and executive fiat mandated by the protection legislation. Individuals, families, bands and entire settlements would be removed into state-run or sanctioned reserves and missions.

The consequences of these developments are exhibited in the patterns we have outlined here. They help explain the extent of intrusion into Aboriginal lives, with objects both protectionist and coercive. On the other hand these same forces help explain the pattern of light justice when it came to punishment, with Aborigines more likely than Europeans to have capital penalties commuted, and commuted to shorter terms of imprisonment. Aborigines were legal subjects, amenable to the law, even benefiting from its protection and from the exercise of mercy. But as courts, police and administrators struggled to accommodate Aboriginal difference, repeatedly wondering whether arrest and trial and imprisonment was appropriate to remedy harms that seemed to flow out of another way of life altogether, they also reproduced that difference. In Queensland, with a rapidly developing regime of protection, that meant Aboriginal violent offenders after 1897 were increasingly at risk of total control, whether law and courts determined them guilty or not.

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References

- Altman, J., & Hinkson, M. (Eds.) (2007). *Coercive Reconciliation: Stabilise, Normalise, Exit Aboriginal Australia*. North Carlton, Vic.: Arena Publications.
- Archer, D., & Gartner, R. (1984). *Violence and crime in cross-national perspective*. New Haven: Yale University Press.
- Asher, B. (1999). *Beyond the Reservation: Indians, Settlers, and the Law in Washington Territory, 1853-1889*. Norman: University of Oklahoma Press.
- Atkinson, A. (1997). *The Europeans in Australia: a history. Volume One: The Beginnings*. South Melbourne, Vic.: Oxford University Press.
- Attwood, B. (1989). *The making of the Aborigines*. Sydney; London; Boston: Allen & Unwin.
- . (1994). *A life together, a life apart : a history of relations between Europeans and Aborigines*. Carlton, Vic.: Melbourne University Press.
- Banivanua-Mar, T. (2007). *Violence and Colonial Dialogue: The Australian-Pacific Indentured Labor*. Honolulu: University of Hawai'i Press.
- Barber, R. (1975). Rape as a capital offence in nineteenth century Queensland. *Australian Journal of Politics and History* xxi, 1 31-41.
- Black, D. (1989). *Sociological Justice*. New York: Oxford University Press.
- Blainey, G. (1976). *Triumph of the Nomads*. South Melbourne: Sun Books.
- Blake, T. (1998). Deported ... at the Sweet Will of the Government: The Removal of Aborigines to Reserves in Queensland 1897-1939. *Aboriginal History* 22, 51-61.
- Blake, T. (2001). *A dumping ground: a history of the Cherbourg settlement*. St Lucia: University of Queensland Press.
- Boyce, J. (2008). *Van Diemen's Land*. Melbourne: Black Inc.
- Briscoe, G. (2003). *Counting, Health and Identity: A History of Aboriginal Health and Demography*. Canberra: Australian Institute of Aboriginal and Torres Strait Islander.
- Broadhurst, R. (1997). Aborigines and crime in Australia. *Crime and Justice: A Review of Research, University of Chicago Press* 21, 407-468.
- Broadhurst, R. (1987). Imprisonment of the Aborigine in Western Australia: 1957/1985. In K. Hazelhurst (Ed.), *Ivory Scales*, , (pp. 153-189). Allen & Unwin.
- Broadhurst, R. 2002. Crime and indigenous people. In *The Cambridge Handbook of Australian Criminology*, ed. Adam Graycar and Peter Grabosky, 256-280,332-370.
- Broome, R. (2005). *Aboriginal Victorians: A History Since 1800*. Crows Nest, N.S.W: Allen & Unwin.
- Clendinnen, I. (2003). *Dancing with strangers*. Melbourne: Text Publishing.
- Connors, L. (2005). Traditional law and Indigenous Resistance at Moreton Bay 1842-1855. *ANZLH-Ejournal*, 107-117.
- Copland, M. (2005). *Calculating Lives: the Numbers and Narratives of Forced Removals in Queensland 1859 - 1972*. PhD, Griffith University.

- Cowlishaw, G. (2004). *Blackfellas, whitefellas, and the hidden injuries of race*. Malden, MA: Blackwell Pub.
- Cunneen, C. (2001). *Conflict, Politics and Crime: Aboriginal Communities and the Police*. Crows Nest, N.S.W: Allen & Unwin.
- Dunstall, G. (1999). *A Policeman's Paradise?: Policing a Stable Society, 1918-1945*. Palmerston North, N.Z.: Dunmore Press in association with the Historical Branch, Dept. of Internal Affairs.
- Eggleston, E. (1976). *Fear, favour or affection : Aborigines and the criminal law in Victoria, South Australia and Western Australia*. Aborigines in Australian society ; 13. Canberra: Australian National University Press.
- Evans, R. (1982). "Don't you remember Black Alice, Sam Holt?" Aboriginal Women in Queensland History. *Hecate*, 8, 2, 7-21.
- Evans, R. (1999). *Fighting words : writing about race*. St. Lucia, Qld.: University of Queensland Press.
- Evans, R., Cronin, K., & Saunders, K. (1988). *Race relations in colonial Queensland : a history of exclusion, exploitation, and extermination*. St. Lucia, Qld: University of Queensland Press.
- Finnane, M. (2007). The tides of customary law. *ANZLH E-Journal* (http://www.anzlhsejournal.auckland.ac.nz/pdfs_2006/Keynote_1_Finnane.pdf).
- Finnane, M. & Garton, S. (1992) "The work of policing: social relations and the criminal justice system in Queensland 1880-1914 - Part II", *Labour History*, 63, pp.43-64
- Finnane, M., & McGuire, J. (2001). The uses of punishment and exile – Aborigines in colonial Australia. *Punishment and Society*, 3, 2, 279-298.
- Finnane, M. & Richards, J. (2004). 'You'll get nothing out of it?': the inquest, police and Aboriginal deaths in colonial Queensland. *Australian Historical Studies*, 35, 123, 84-105.
- Flood, J. (2006). *The Original Australians: Story of the Aboriginal People*. Crows Nest, N.S.W: Allen & Unwin.
- Ford, L. (2006). Empire and order on the colonial frontiers of Georgia and New South Wales. *Itinerario*, 30, 3, 95-113.
- Ford, L (2008). Indigenous Policy and Its Historical Occlusions: The North American and Global Contexts of Australian Settlement. *Australian Indigenous Law Review*, 12, 1, 69-80.
- Foster, R., Hosking, R., & Nettelbeck, A. (2001). *Fatal Collisions: the South Australian frontier and the violence of memory*. Kent Town SA: Wakefield Press.
- Foster, S., & Attwood, B., (Eds.) (2003). *Frontier conflict : the Australian experience*. Canberra: National Museum of Australia.
- Gale, F. (1972). *Urban Aborigines*. Aborigines in Australian society 8. Canberra: Australian National University Press.
- Gill, A. (1983). Crime & society in Western Australia 1829-1914: a report on research completed between January 1980 and November 1983 with the aid of grants from the A.R.G.C. and the Criminology Research Council.
- Goodall, H. (1996). *Invasion to embassy: land in Aboriginal politics in New South Wales, 1770-1972*. St. Leonards, N.S.W.: Allen & Unwin in association with Black Books.

- Gouglas, S, & Weaver, J. (2003). A postcolonial understanding of law and society: exploring criminal trials in colonial Queensland. *Australian Journal of Legal History*, 7, 2, 231-253.
- Haebich, A. (2000). *Broken circles: fragmenting indigenous families 1800-2000*. Fremantle: Fremantle Arts Centre Press.
- Harris, C. (1982). The "terror of the law" as applied to black rapists in Colonial Queensland. *Hecate*, 8, 2. 22-48.
- Hiatt, L. (1996). *Arguments about Aborigines: Australia and the evolution of social anthropology*. Melbourne: Cambridge University Press.
- Highland, G. (1994). A tangle of paradoxes: race, justice and criminal law in North Queensland, 1882-94. In D. Philips & S. Davies (Eds.), *A nation of rogues?: Crime, law and punishment in colonial Australia*, . Carlton, Vic.: Melbourne University Press.
- Hill, R. (1995). *The Iron Hand in the Velvet Glove: The Modernisation of Policing in New Zealand*. Palmerston North, N.Z.: Dunmore Press in association with the New Zealand.
- Hogg, R. (2001). Penalty and Modes of Regulating Indigenous Peoples in Australia. *Punishment Society*, 3, 3, 355-79.
- Howard, R. (1908). Annual report of the Chief Protector ofAboriginals for 1907, Queensland Parliament.
- Huggins, J., McGrath, A., & Saunders, K.(Eds.), (1995). *Aboriginal Workers*. Labour history no.69. Sydney: Australian Society for the Study of Labour History.
- Hunter, A. (2004). The boundaries of colonial criminal law in relation to inter-Aboriginal conflict ('Inter Se Offences') in Western Australian in the 1830s-1840s. *Australian Journal of Legal History*, 8, 2, 215-36.
- Jarrett, S. (2009). Violence: An Inseparable Partof Traditional AboriginalCulture. The Bennelong Society Occasional Paper.
- Karskens, G. (2009). *The Colony: A History of Early Sydney*. Crows Nest, N.S.W: Allen & Unwin.
- Kercher, B. (1998). Recognition of indigenous legal autonomy in nineteenth century New South Wales. *Indigenous Law Bulletin* 4, 13, 7-9.
- Kidd, R. (1997). *The way we civilise: Aboriginal affairs - the untold story*. St Lucia, Qld.: University of Queensland Press.
- Kimm, J. (2004). *A fatal conjunction: two laws two cultures*. Annandale, NSW.: Federation Press.
- Langton, M. (2008). Trapped in the Aboriginal reality show [The Howard government intervention in Northern Territory Aboriginal communities. Paper in: Schultz, J (Ed.). Re-imagining Australia.]. *Griffith Review*, 19 (Autumn), 143-62.
- Loos, N. (1982). *Invasion and Resistance: Aboriginal-European relations on the North Queensland frontier 1861-1897*. Canberra: ANU Press.
- Manne, R. (Ed.). (2003). *Whitewash: on Keith Windschuttle's fabrication of Aboriginal history*. Melbourne: Black Inc. Agenda.
- Markus, A. (1990). *Governing savages*. Sydney: Allen & Unwin.
- May, D. (1987). A punishment place. In B. Gammage & P. Spearritt (Eds.), *Australians 1938* (pp. 95-107). Sydney: Fairfax, Syme & Weldon.
- McGrath, A. (1987). *"Born in the cattle": Aborigines in cattle country*. Sydney: Allen & Unwin.
- McGrath, A. (1993). Colonialism, crime and civilisation. In D. Walker (Ed.) with S. Garton and J. Horne *Crimes and trials*, , 12: Australian cultural history. Geelong: Deakin University.

- McGrath, A. (1995). *Contested ground: Australian Aborigines under the British crown*. St. Leonards, N.S.W.: Allen & Unwin.
- McGuire, J. (1998). Judicial violence and the 'civilizing process': Race and the transition from public to private executions in Colonial Australia. *Australian Historical Studies* 29, 111, 187.
- McGuire, J. (2001). Punishment and Colonial Society: A History of Penal Change in Queensland, 1859-1930s PhD thesis, St. Lucia, Qld: University of Queensland.
- McHugh, P. (2004). *Aboriginal societies and the common law : a history of sovereignty, status, and self-determination*. Oxford; New York: Oxford University Press.
- Memmott, P. (2001). *Violence in Indigenous communities*. Barton, A.C.T.: Crime Prevention Branch, Attorney-General's Department.
<http://www.ncp.gov.au/agd/www/Ncphome.nsf/Page/3AF90A4576B81394CA256B430001AF24?>
- Moses, A. (2004). *Genocide and settler society : frontier violence and stolen indigenous children in Australian history*. New York: Berghahn Books.
- Mouzos, J. (2002). Homicide. In A. Graycar and P Grabosky (Eds.), *The Cambridge Handbook of Australian Criminology*(pp. 157-196). New York: Cambridge University Press.
- Mukherjee, S. (Ed.). (1988). *Source Book of Australian Criminal & Social Statistics 1804-1988*. Bicentennial edn. Canberra: Australian Institute of Criminology.
- Nance, B. (1981). The level of violence: Europeans and Aborigines in Port Phillip, 1835-1850. *Historical Studies*, 19, 77 (October), 532-52.
- Neal, D. (1991). *The rule of law in a penal colony: law and power in early New South Wales*. Melbourne: Cambridge University Press.
- Nettelbeck, A. & Foster, R. (2007). *In the name of the law : William Willshire and the policing of the Australian frontier*. Kent Town, S. Aust.: Wakefield Press.
- Nowra, L. (2007). *Bad dreaming: Aboriginal men's violence against women and children*. North Melbourne, Vic.: Pluto Press.
- Povinelli, E. (2002). *The cunning of recognition: Indigenous alterities and the making of Australian multiculturalism*. Politics, history, and culture. Durham, N.C.; London: Duke University Press.
- Reay, M. (1944). A half-caste Aboriginal community in north-western New South Wales. *Oceania* 15, 296-323.
- Reynolds, H. (1998). *This whispering in our hearts*. St. Leonards, N.S.W.: Allen & Unwin.
- Richards, J. (2008). *The secret war: a true history of Queensland's native police*. St Lucia, Qld: University of Queensland Press.
- Rose, D. (1991). *Hidden Histories: Black Stories from Victoria River Downs, Humbert River and Wave Hill Stations*. Canberra: Aboriginal Studies Press.
- Roth, R. (2009). *American Homicide*. Cambridge, Mass: Belknap Press of Harvard University Press.
- Roth, W. (1900). Report of the Northern Protector of Aborigines for 1899. Queensland Parliament.
- Roth, W. (1902). Annual Report of the Northern Protector of Aborigines for 1901. Queensland Parliament.
- Rowse, T. (1996). *Traditions for Health: Studies in Aboriginal Reconstruction*. Casuarina, N.T: North Australia Research Unit.
- Snowball, L., & Weatherburn, D. (2007). *Theories of Indigenous violence: a preliminary assessment*. July, 11.

- Strange, C. (2003). Masculinities, intimate femicide and the death penalty in Australia, 1890-1920. *British Journal of Criminology*, 43, 2, 310-39.
- Sutton, P. (2001). The politics of suffering: Indigenous policy in Australia since the 1970s. *Anthropological Forum* 11, 2, 125. doi:10.1080/00664670125674.
- Sutton, P. (2009). *The Politics of Suffering: Indigenous Australia and the End of the Liberal*. Carlton, Vic: Melbourne University Press.
- Tatz, C. (1963). Queensland's Aborigines: Natural Justice and the Rule of Law. *The Australian Quarterly*, xxxv, 3, 33-49.
- Thomas, J., & Stewart, A. *Imprisonment in Western Australia: Evolution, Theory, and Practice*. Nedlands, Australia: University of Western Australia Press.
- Trigger, D. (1992). *Whitefella comin': Aboriginal responses to colonialism in northern Australia*. Melbourne: Cambridge University Press.
- Ward, D. (2003). A means and measure of civilisation: colonial authorities and Indigenous law in Australasia. *History Compass*, 1, AU 049, 1-24.
- Watson, J. (1995). "We Couldn't Tolerate Any More": The Palm Island Strike of 1957. In A. McGrath, K. Saunders, & J Huggins (Eds.), *Aboriginal Workers*, 69(pp. 149-70). Labor History.
- Weaver, J., & Wright, D. (Eds.). (2009). *Histories of Suicide: International Perspectives on Self-Destruction in The*. Toronto: University of Toronto Press.
- White, S. (1979). Howard Vincent and the development of probation in Australia, New Zealand and United Kingdom. *Historical Studies*, 18 (October), 598-617.
- Wiener, M. (2004). *Men of blood : violence, manliness and criminal justice in Victorian England*. Cambridge: Cambridge University Press.
- Wiener, M. (2009). *An Empire on Trial: Race, Murder, and Justice Under British Rule, 1870-1935*. Cambridge: Cambridge University Press.
- Wilson, P. (1982). *Black Death, White Hands*. Sydney: Allen & Unwin.
- Windschuttle, K. (2002). *The Fabrication of Aboriginal History*. Sydney: Macleay Press.

ⁱ See eg the Bathurst Gaol Prison Photograph Books, 1874-1930, NRS 1998 - reels 5084-5092, State Records NSW and other similar records for NSW prisons.

ⁱⁱ The *Queensland Police Gazette* was published from 1864. Like its companion volumes in other jurisdictions the Gazette was a primary mode of police intelligence for many years – it contains detailed crime reports, reports on missing persons, escaped prisoners, wanted persons, and committals to as well as discharges from prison. The recent digitisation of these volumes for their 'open period' to 1943, facilitates important historical research on policing, courts and punishment. Likewise the progressive digitisation of Australian newspapers being carried out by the National Library of Australia will add immeasurably to the historical archive of criminal justice data.

ⁱⁱⁱ At the time of writing this database includes 365 cases, 77% of them homicide charges, covering the years 1862-1940. We believe this is likely to cover more than 90% of the relevant cases. A related database is in preparation to enable comparison of data reported here with inter-racial violence and other non-Aboriginal intra-racial violence.

^{iv} Using official cause of death statistics for Queensland 1893-1908 for example, it can be calculated that 29.06% of homicide victims were female.

^v Queensland data published in (Mukherjee 1988) for homicide offences in magistrates and higher courts is quite inconsistent with the official data in the Queensland statistical reports and is not used here.

^{vi} We have used the Death Penalty register maintained at Brisbane as the basis of this analysis (see Table 3 and source). After 1865 there were 13 identifiable executions outside Brisbane – 7 Europeans, 3 Aborigines (all for rape), 2 Chinese, 1 Islander. We are unable to identify a related commutation rate for these executions, but the racial composition of those executed appears consistent with the analysis here. See also (McGuire 2001) Chapter 5 and Appendix 6.

^{vii} This analysis has been restricted to the years 1879-1940 which are also the years in which a consistent 'official' rate of prosecutions can be computed, as reported in Graph 3 above. The proportion of homicide cases in the *Inter se database* is the same for 1879-1940 as for 1862-1940.

^{viii} POL18N, 'Murder of Aboriginal Baker @ Jimmy Dummy', QSA. One of the men was in fact never arrested and removed, with the file 'put away' a year later after a final report from the police who had been directed to arrest the man.

^{ix} POL312N, 'Frank Douglas, murder of near Cooktown', QSA - in spite of some tension between police and the Chief Protector over the proceeding in this matter. The Chief Protector subsequently urged the Police Dept to ensure that police discuss potential removals in such cases with the local protector.