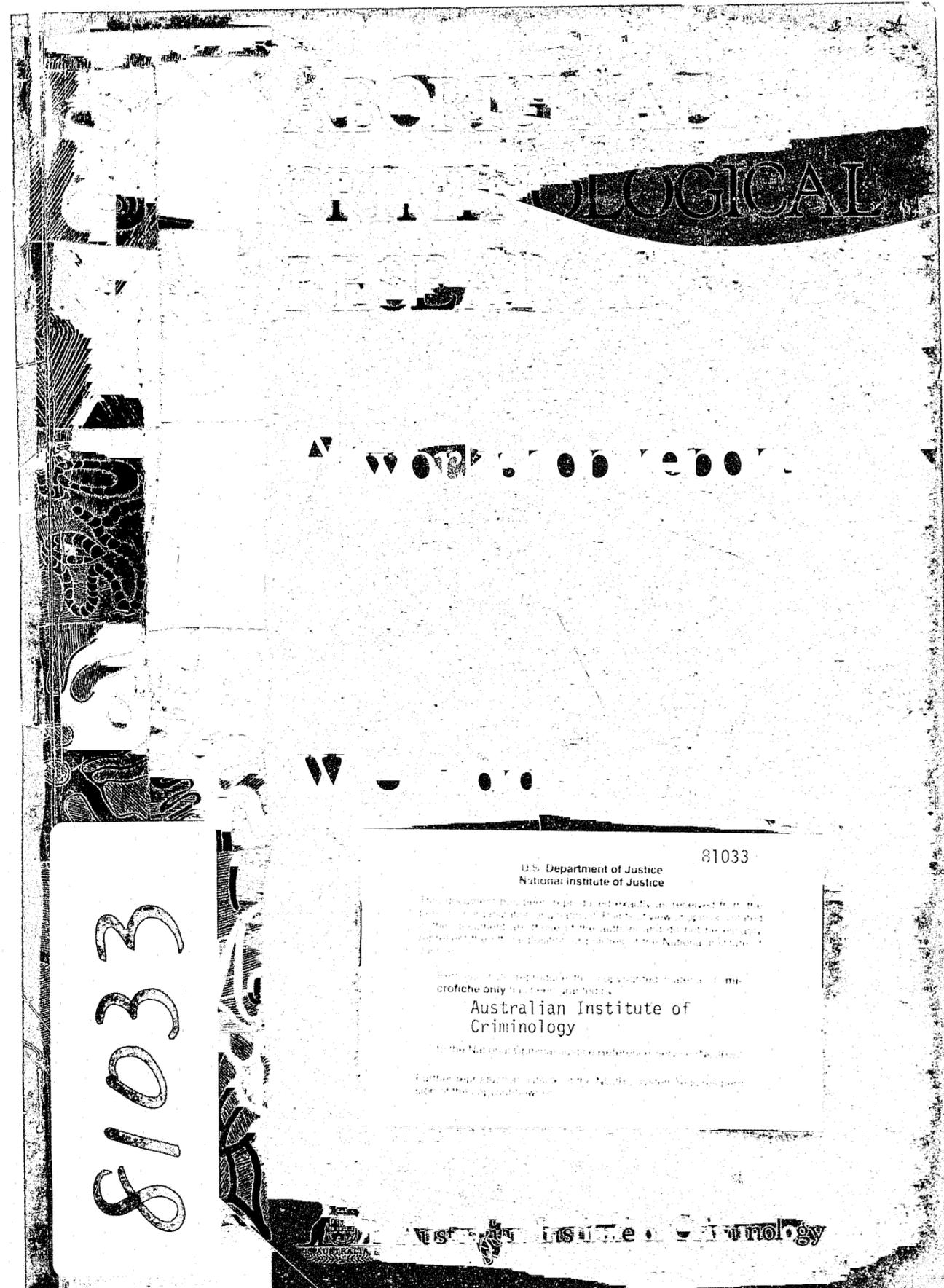


ABORIGINAL CRIMINOLOGICAL RESEARCH

Report of a Workshop
Held 3-4 March 1981

W. Clifford

Australian Institute of Criminology - Canberra 1981



U.S. Department of Justice
National Institute of Justice

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CONTENTS

	Page
Introduction	1
Orientation Paper on Aboriginal Criminological Research	5
Initial Discussion	8
Crime	11
General	11
Extracts from Australian Law Reform Commission Discussion Paper No. 17	13
Information from Northern Territory Government Submission to House of Representatives Standing Committee on Aboriginal Affairs	17
Information from N.S.W. Bureau of Crime Statistics and Research	18
Law Enforcement	22
Courts	24
Corrections	28
Types of Research	33
Miscellaneous	35
Conclusion	36
References	37
List of Participants	38
Bibliography	40

INTRODUCTION

The Australian Institute of Criminology has been in full operation since 1975. In that time it has directed attention on several occasions to the plight of Aborigines who constitute about one per cent of the population but about thirty per cent of the prison population in Australia. The relatively high proportions of Aborigines arrested, brought before the court, and the lower but still disproportionately high numbers of them imprisoned, could mean -

- (a) That Aborigines are more "criminal", than the white races.

This would necessarily mean more "criminal" in terms of white man's law. The extent to which there is an overlap with the Aborigines' own prohibited behaviour may well be disputed. (See (d) below).¹

- (b) That the system itself is, in some way not yet fully understood, biased against Aborigines.

This is not usually so cautiously expressed - the facts of disproportionate convictions being taken to reflect obvious discrimination. However, the universality of the phenomenon suggests that whatever discrimination occurs in individual cases, it may be an inadequate explanation of the general situation.

Courts and police frequently argue that it is not their fault that they have to apply the law and that Aborigines more conspicuously offend. Nor is it an accident that in most countries where there are minorities which lack community cohesion they appear more frequently before the courts. Other minorities which are internally cohesive are conspicuous by their relative absence from the courts.²

- (c) That the Aboriginal community has a number of social problems which bring Aborigines more frequently into conflict with the law.

Obviously the alcohol drinking and frequency of court appearances could be the symptoms of degradation and impoverishment of a way of life largely destroyed.

- (d) That the customs of Aborigines and the law of the land are in conflict, so that "crimes" as defined by the law are not necessarily prohibited behaviour according to Aboriginal custom. (See (a) above).

Obviously (a) and (b) are related to (c) and (d) but the four explanations are by no means exhaustive. Others are possible. Higher numbers of Aborigines in prison could be produced by defaulting on the payment of fines to a greater extent than might occur with white offenders. The mere fact that Aborigines on the fringe of towns are unlikely to have their own clubs or that they have lifestyles which are

more likely to bring them into the streets, means that their drunkenness or misbehaviour would lead to a court appearance more frequently than with white people. Mobility cannot be overlooked with so many moving into urban areas temporarily and being therefore more vulnerable when they are too drunk to look after themselves. And, of course - as already suggested - the Aboriginal problem in Australia may be a reflection of the minority problem in many other countries, i.e. minorities are likely to be disproportionately represented in arrests, court appearances and imprisonment wherever they are, e.g. Indians in Canada, blacks in America, coloureds in South Africa etc. The writer has personal experience of a similar problem with gypsies in Czechoslovakia and a Turkish minority in Cyprus. In general, it is known that lower or less advantaged socio-economic groups feature more prominently amongst those processed by the criminal justice system.

None of these explanations are really satisfactory as they stand. Very few of them have been subjected to any rigorous research and the generalisations which they represent need testing. Unfortunately, in an Australian setting, one of the difficulties of testing these propositions is that, to avoid discrimination, the Aborigines are not usually separately identified in the records and statistics which are kept. To identify them properly, one would have to have an agreed definition of "Aborigine"; and to be in a position to trace the cases as they came through the criminal justice procedure.

To focus attention on these problems, the Australian Institute of Criminology has previously held the following training projects:

- (1) From 1-5 March 1976 a specialised workshop was held on the subject of "The Use of Customary Law in the Criminal Justice System". This workshop was attended not only by experts from Australia but from New Zealand and Papua New Guinea. This workshop addressed the question of how best to approach the problem of accommodating customary law and practices within the framework of enacted or judicially interpreted law.
- (2) From 2-11 June 1976 a more generalised seminar on "Aborigines and the Law" was held - aimed at discussing the problems encountered by the Aborigines when they come into contact with the Australian legal system. Here the Institute tried to ensure a wide representation of Aboriginal opinion and participants included representatives of police, legal services, Aboriginal communities, community welfare services and Departments of Aboriginal Affairs.
- (3) From 1-3 November 1977, a further seminar was held on "Aboriginal Culture, Traditions and Values", again focussing attention on the difficulties being encountered by Aborigines in coping with the criminal justice system.

The Institute recommended to the Criminology Research Council that local research on Aborigines and crime might be funded and such projects were solicited by the Council by advertisement. In addition, the Council authorised the Director to discuss with the Department of Aboriginal Affairs the prospects of joint funding. Also, a consultant

has been engaged by the Institute to design and make a project proposal.

One of the difficulties in becoming involved in Aboriginal criminological research has been the complication in finding sufficient expertise with experience of both anthropological and criminological disciplines. Moreover, in the last few years, the financial restraints placed upon the Institute and the curtailment of its staff have prevented it extending its interests as widely as it would have liked. The present Workshop was, therefore, an attempt to examine the extent to which the Australian Institute of Criminology could become involved in developing criminological research with and amongst Aborigines, within the limitations of its present budget. Mr. Terry Walsh, a Perth Barrister and Solicitor and a member of the Board of Management of the Australian Institute of Criminology, had pressed the Board to examine this area in the light of the available possibilities and to do whatever could be done to provide a service. He had envisaged such less expensive research projects as the use of the Institute as a data gathering, collating, coordinating and perhaps advisory service for all those who may be able to get involved in the work. To examine this question further, the Institute had itself advertised for and obtained the consultant services of Mr. Robert Holland, a police officer from Queensland with academic qualifications in anthropology and considerable experience of Aboriginal affairs. Mr. Holland had made a proposal for a survey of Aboriginal attitudes to the police and police attitudes to the Aborigines, with a consequent study of the police policies and structures which had developed from such attitudes over the years. This study had been circulated to all police administrations, Departments of Aboriginal Affairs, Departments of Community Services and interested academics, with a request by the Institute for both comments on the proposal and ideas on priorities for research on crime amongst Aborigines.

Following on the reception of these comments, the Board of Management had decided that there could be a Workshop to discuss not only Mr. Holland's proposal but the broader issues of the role of the Institute and the possibilities for research in this area in Australia.

The Workshop was arranged on a date which would permit the Board of Management of the Institute, with members drawn from all States, to attend the Workshop and not only contribute their own ideas, but obtain the value of the experience of others who had been invited.

An attempt was made to bring together the best expertise in Australia. Unfortunately not everyone invited was able to attend because of the inconvenience of the dates or because the resources of the Institute were limited, but as will be seen from the list of participants, a very broad range of criminological and anthropological expertise and/or experience was concentrated on the questions before the Workshop. The form of the workshop consisted of an orientation paper (a copy of which follows) given by Mr. W. Clifford, the Director of the Institute, who acted as moderator for the meeting, and a series of unstructured discussions, in the course of which the participants themselves set out a rough pattern of areas for consideration based upon -

- (a) The stages of procedure through the criminal justice system, i.e. meaning of crime, law enforcement, courts, corrections; and
- (b) The types of research and programmes to be considered e.g. description, empirical, evaluative research, case studies and the collection and collation of data on which further work could be based.

ORIENTATION PAPER ON
ABORIGINAL CRIMINOLOGICAL RESEARCH

Presented to the Workshop
by
W. Clifford

The fascination of crime and its treatment amongst the Aborigines of Australia is matched by the complications of studying it. A combination of anthropological and criminological expertise is not easy to find. There have been some studies of Aboriginal law but these are few and far between and complicated by the fact that they are rapidly dated. There is a dynamism within customary law which complicates the problem of attempting even a rough and ready kind of codification. Criminologists, on the other hand, have paid very little attention to crime amongst simple communities. Their interest in crime and culture stemmed less from a concern with anthropology generally than with an observation of the complications of crime arising from cultural conflict amongst American migrants.

It is a truism that a social researcher, by his presence, sometimes changes the situation which he is seeking to describe. This is particularly true with those researchers who hope to study Aboriginal custom and Aboriginal concepts of criminal behaviour. It is not easy to live with a nomadic group anyway and an alien presence affects the behaviour of Aborigines.

In attempting to obtain Aboriginal views on uranium mining, the Ranger Inquiry conducted in Australia a few years ago, besides overcoming language problems, had to be careful to avoid the Aboriginal politeness of agreeing with statements so as to be courteous to the person making them. The Courts have learned to treat with caution so called "confessions" which may be no more than an Aboriginal respect for authority - a respect which enjoins agreement to avoid open contradiction. Again, there are subjects which are customarily excluded from the ordinary conversation between sexes or age groups and there are sacred matters which foreigners should not be allowed to know about. Initiation to a tribe, after having associated with it for years, has been one way in which certain anthropologists have approached this difficulty, but this has only created two further difficulties. Firstly, they learned only about the tribe into which they had been initiated; and secondly, having been initiated, they were in no position to use their knowledge in a way which might communicate the secrets to anyone else.

It is, of course, possible to make generalisations. Like any people living on the edge of subsistence, the tribal Aborigine will define crimes as being sacred offences, i.e. those which incur death or exile, and he will include most of the things which a Western community would call a crime amongst his civil offences, i.e. behaviour which can be controlled by compensation or peace-making within the

community. Insulting language or violations to kinship taboos will be considered very seriously and compensation will be required in some form to restore the status quo. There will be no attempt to vindicate abstract principles of justice and law, but a very pragmatic approach to solving the problems in a way which will allow tribal life to continue. Like people living in simple and small groupings anywhere, conflict will be avoided simply because it may lead to divisions amongst the tribe and possible separation. Conflicts could amount to dangerous constitutional crises likely to expose the separated individuals to all the dangers of living in a hostile environment without community support.

In general terms, it is possible for there to be an accommodation between the white man's law and Aboriginal custom and this has been achieved to a great extent in certain areas of the Northern Territory and Western Australia where statutes have been adapted to promote recognition of customary law and magistrates have adapted the discretion permitted to them to accommodate some of the complications arising when there is a conflict between the requirements of custom and the dictates of the national law. This practical experience has shown that sometimes the differences can be exaggerated and that the serious crimes, which are prohibited by most penal laws in the world, are also prohibited by Aboriginal custom - murder, robbery, abduction - are not tolerated by Aborigines any more than they would be tolerated by a Western society.

Tribes far from white settlements may have crime and deal with it in their own way. They are only likely to bring their problems to the white police when they have a difficulty about settling the matter internally. That they do use the police to reinforce tribal authority when it suits them to do so is well documented. It would be difficult for a researcher to get close enough to a tribe to be able to assess the extent of unreported crime - or the criteria for calling on the white police for help. Yet such knowledge is needed before statements are made about crime and the customary law. In towns, the mingling of races sometimes means that what may be regarded as Aboriginal problems with the law may be equally the problems of other ethnic groups - or the problems of everyone at similar socio-economic levels.

Problems arise in relation to property, kinship and obligations within the tribal setting. Sometimes the customary law is more rigorous than Western law in this respect. For example, a man is not allowed to address his mother-in-law and if he does so, even under the influence of drink, he incurs a serious penalty which would not be recognised by the general Australian law. Where drunkenness has been decriminalised, there may be no offence at all under the general law, but such behaviour could not be condoned by tribal groups without a loss of traditional respect. Again, the marrying of young girls to much older men could be an offence in the general law, when it was normal custom - so some accommodation is necessary. However, this cannot be carried too far and respect for the values of another society can produce moral dilemmas as, for example, when infanticide or the disposal of old people may contravene some of the more important laws of the land.

So far, criminological interest in Aboriginal affairs has been concentrated less on crime than on the criminal justice system. The

few statistics available and the experience of people close to Aborigines and aware of their frequent appearances in court have highlighted the bias of the criminal justice system which makes Aborigines appear to be much more criminal than other communities when, in fact, the reverse is probably true. Attempts have been concentrated, therefore, on improving the present complicated situation by adaptations of the law or procedure, by attempts to appoint Aboriginal police auxiliaries, Aboriginal probation officers or Aboriginal justices of the peace. Conferences and discussions on police/Aboriginal relations have made considerable headway, but frequently even in these approaches there is an unfortunate lack of knowledge of the real underlying problem in sociological or psychological terms that would be appropriate to the situation and a paucity of information as to the numbers of cases reported and unreported. What has been widely publicised has been the inappropriateness of some of the white man's penalties for Aboriginal offences. Not only does imprisonment seem to many tribesmen, struggling to survive, an odd way to deal with offenders, i.e. by feeding and housing them; but sometimes the leniency of the white man's courts has outraged the Aboriginal sense of justice. Very little attention has been given to the problems experienced in dealing with Aborigines within the prisons themselves and here a great deal of experience has been gathered which could be collected and analysed.

In looking to the future, therefore, it seems that one should -

- (a) attempt to document for purposes of research whatever cases are passed through the criminal justice system in which Aborigines are involved;
- (b) encourage the development of Aboriginal criminology as a special branch of anthropology and criminology. This should be part of an attempt to expand a combination of anthropological and criminological expertise;
- (c) develop oral history studies with older Aborigines on the meaning of crime within Aboriginal communities and, where possible, the definition of sacred offences or at least the action taken when such an offence was thought to have been committed;
- (d) promote action projects to improve given situations of conflict in such a way that experience can be carefully recorded and monitored to feed back further information for future research.

INITIAL DISCUSSION

The Workshop first examined the proposal of Mr. Walsh that the Australian Institute of Criminology should monitor the work already being done in Australia on Aborigines and crime. This would include the work on the relationship between customary and the national law, sociological studies of social control and studies of particular problems such as the use and abuse of alcohol, cultural concepts of intolerable behaviour and the data available in departmental reports.

It was observed that there were many other agencies which, whilst not dealing specifically with crime, were collecting data on closely related and even overlapping subjects, e.g. the Institute of Aboriginal Affairs, the Institute of Aboriginal Studies, the Department of Aboriginal Affairs. There would be a need for care in ensuring proper collaboration and avoiding the limits of jurisdiction. The data already gathered by Dr. Grabosky at the South Australian Office of Crime Statistics on crimes committed by Aborigines and the disposal of these cases received particular mention.

The discussion showed that there was a fair amount going on which could be monitored. At the moment much of the work was local and information was not available on a national basis. For example, the first Aboriginal police cadets have been appointed in the Northern Territory. Aborigines had been appointed as probation officers, police auxiliaries or aides, there had been schemes to limit alcohol consumption and attempts to organise the young people into sports clubs. There had been a sophisticated study by the Aboriginal Legal Service in Queensland. There was a need to collect all this and disseminate it - to ask if it will work elsewhere. If petrol sniffing was a problem in one community, it should be possible to find out quickly what other communities had done about it. Most people working in this area will be interested in the evaluation being carried out of the effects of decriminalising drunkenness. In New South Wales this was being done by the N.S.W. Bureau of Crime Statistics and Research. Information on this subject could also be supplied by the Northern Territory Police.

However, the need to always involve the local Aboriginal community was stressed. Communities of Aborigines are really sick of researchers who visit them with questions but whom they never see again. The communities need to be able to see the results of any such work. Moreover, there was a danger for any research in raising the community's expectations. In Maggie Brady's research project,³ however, the community had been given the results of a survey of other communities and an account of what they had done about petrol sniffing - and this had been much appreciated. It was mentioned that whether or not the Aborigines wanted the research, it was sometimes information badly needed by the Aboriginal Legal Services. Information was also needed on the status of various Aboriginal policies and their effects - what at any time is the "state of play" - and its significance for court appearances and crime generally.

Another side to the issue was the fact that a great deal of information existed within the files of the Legal Aid Offices and this would be useful. It was observed that Aborigines could be classified into three, four or even five distinct groups, not all of which were exclusive, e.g. urban, rural, remote, fringe dwellers etc. A collection of information would have to be classified to show such differences - sometimes serious crime was committed not by the tribal Aborigines but by those on the fringes of towns. In Victoria a study of recent offences of Aborigines had shown a definite movement from the minor offences like assault, drunkenness, disorderly behaviour etc. into the more serious crimes of stealing - and stealing aggravated by violence or by breaking and entering.

One suggestion for limiting the range of the data collection by the Institute to the areas within its jurisdiction was that it should be called a collection of data of "criminal justice innovations and crime prevention programmes".

Attention was drawn to the fact that the present difficulty of collecting data, because of the fact that Aborigines were not separately enumerated, was appreciated by the Aboriginal communities which had recommended identification in the statistics. To avoid any possible discrimination, authorities in some States had ceased classifying Aborigines separately, but this was not necessarily what the Aborigines themselves wanted. It prevented proper research into means of dealing with their crime problem. Having considered the subject, the National Aboriginal Conference had seen more benefits than disadvantages from separate identification and had recommended it. Similarly, the Ruddock Committee Report had called for identification.⁴

It should be possible to collect information without too much difficulty. The Aborigines in the Western Australian prison system, for example, should not be too difficult to enumerate. The need was for information as to who they were, their ages, sex, district etc., what offences they had committed, by which courts they had been sentenced. Such local information was essential for local policy making and could be obtained. Then inter-state comparisons were needed. Perhaps local State Departments or data-gathering bodies could obtain this information and the Institute could be provided with copies for a national picture. The proposed National Uniform Prison Census to be considered by Correctional Ministers in May this year might be able to provide some of the answers to the questions about Aborigines in prison.

Finally, Mr. Walsh sought the Workshop's answers to two basic questions:

1. Is there a need for a central body to collect and process information on Aborigines for the purpose of Aboriginal Criminological Research?
2. If there is such a need, then is the Australian Institute of Criminology the appropriate body to perform this function?

To both these questions the Workshop gave an unqualified affirmative answer. There was a need and the Australian Institute of

Criminology was the most appropriate and best placed organisation to fulfil the need.

The meeting also agreed that it should be possible for information gathering questionnaires to be prepared by the Institute for other agencies, departments and organisations to complete, gathering in this way, and later disseminating figures and details of the situation nation-wide on which each State could draw for its own purposes. However, it was appreciated that the Workshop participants were in no position to speak for bodies which they did not represent.

It was realised that since funds were not available for new services and staff ceilings made it impossible for additional recruitment, the Australian Institute of Criminology would be obliged to work within the present limits. Its library and publications branches could help to a certain extent; space could be made available and a member of staff may be used to supervise the work. However, it would have to look elsewhere for the resources to develop the work. If it took the form of self-help community projects, then the Department of Aboriginal Affairs might be able to help. Also the Institute serviced the Criminology Research Council which had wanted for a long time to support research into crime in Aboriginal communities. It had, whilst the Workshop was sitting, funded to the extent of \$8,000 a study by Professor Colin Tatz, to be carried out in cooperation with the Institute for Aboriginal Studies, of the impact of Australian criminal law on remote Aboriginal communities in the Northern Territory. Again funds were very restricted, but small amounts could be obtained if the proposals were methodologically sound.

In order to proceed to a more detailed study of the issues involved, the Workshop considered setting up small working groups, but eventually decided it would be better to remain in plenary session and to divide up the areas for discussion into "crime", "law enforcement", "courts", "corrections" and the different styles of research and programming. Some of these were bound to overlap.

CRIME

General

What is a crime and what kinds of behaviour should be regarded as crimes for the purpose of research? This matter was given very careful attention since it was fundamental to the idea of Aboriginal Criminological Research. On the one hand the law defined crime and therefore the types of behaviour labelled as criminal might be different in customary law and the law of the land. If crime prevention were a consideration then the context of informal social controls had obvious application.

The workshop could not delve far into the precise definition of crime. Theoretical and technical problems of some complexity emerged. Aboriginal and European concepts not only of crime but of justice differed. It was necessary, therefore, to accept the existing statute law as constituting a workable definition and to consider the complications of applying this in principle to Aborigines. The complications were introduced very largely by the enormous range of the levels of Europeanisation. Urban Aborigines should be treated like anyone else. But rural Aborigines were different - especially those living in tribal communities.

In passing, it was observed that modern statute law still had a great deal to learn from custom and tradition about preventing crime. The formal statute law, however firmly applied, was not proving all that successful in preventing crime in the cities - probably because it suffered from the erosion of the informal customary social controls of family, neighbourhood and peer groups which are needed to support formal law; any legal protection of rights without informal social or customary support in the form of stressing and enjoining the corresponding obligations was unlikely to be effective.

In the remote areas where people lived according to a traditional lifestyle, customary law still prevailed and governed some aspects of the behaviour of Aborigines living there. However, in traditional Aboriginal society, customary law applied to nomadic groups of probably not more than 50 persons. Many Aborigines have, for varying reasons, been grouped into larger communities. The nomadic lifestyle of the past has been replaced. Hunting and fruit gathering have yielded to the shopping at the store. These changes have had an impact on customary law. Estimates of the Aboriginal population vary and some suggest there are as many as 200,000*. One estimate by the Australian Law Reform Commission has tentatively suggested that there are no more than 20,000

* The 1976 Census enumerated some 160,915 Aborigines, i.e. 1.2 per cent of the population. Differences of opinion arise from the existence of tribal groups which are remote and may not be counted - or from the definition of "Aborigine".

Aborigines living in traditionally oriented communities. Most of these are in the Northern Territory, the Kimberley district of Western Australia, in Northern Queensland and Northern South Australia. There, there was sometimes a conflict between customary law and Australian law. The meanings of crime may differ in each. Elsewhere the variations of contact and conflict extended.

The Australian Law Reform Commission Discussion Paper No. 17 provides the following estimates of the numbers traditionally oriented from information collected from the Statistical Section of the Department of Aboriginal Affairs.⁵ This excludes communities in urban areas:-

ABORIGINAL COMMUNITIES - 1979⁶⁴
POSSIBLY TRADITIONALLY ORIENTED COMMUNITIES

Community Size	Possibly Traditionally Oriented	Total Population	Other	Total Population
0 - 50	90	2209	92	2219
51 - 100	24	1699	26	1939
101 - 200	18	2438	32	4659
201 - 300	14	3166	15	3713
301 - 500	6	2502	12	4281
501 - 1000	5	3633	14	8928
1001 or more	1	1032	5	6545
Total	158	16679	196	32284

64. Table compiled from information supplied by Department of Aboriginal Affairs, Statistical Section. Communities in urban areas are not included.

When looking at the question of crime amongst Aborigines it was necessary to consider:

1. The extent to which customary law is an element in the offence.
2. The extent to which alcohol is involved in the offences.

Experience suggests that this may be about 50 per cent of all offences. The Assistant Commissioner of the Northern Territory Police believed that alcohol related offences might well account for 75 per cent of all Aboriginal offences.

3. The extent to which petrol sniffing is a factor in the offence.

As a kind of background to the Workshop here reported, the Federal Parliament discussed on 26 March the report on Aboriginal Legal Aid made by the House of Representatives Standing Committee on Aboriginal Affairs. Some abstracts of this are provided below but speaking on the report Mr. Viner, the Minister for Employment and Youth Affairs, said that Aborigines were still "significantly over represented" in the criminal justice system 14 years after a report on this disproportion had been made by the late Dr. Elizabeth Eggleston.

Extracts from Australian Law Reform Commission Discussion Paper No. 17

As regards the extent of crime amongst Aborigines the Workshop had been provided by Mr. Bruce DeBelle with appropriate abstracts from the Australian Law Reform Commission's discussion paper on Aboriginal Customary Law. The relevant paragraphs 67-73 are reproduced here:-

"Offences Committed by Aborigines

"67. A Metropolitan Area. As almost all Aborigines in cities and towns are not traditionally oriented it is to be expected that customary law rarely, if ever, is relevant to the commission of offences amongst Australian law in cities and towns. Statistical information as to the kinds of offences with which Aborigines are charged is limited. Such statistics as are available suggest that the majority of offences committed by Aborigines do not involve elements of customary law. It is well known that most offences are related to alcohol, public drunkenness (in those States where it is still an offence) being the offence most frequently committed. The situation in Adelaide, for example, is demonstrated by detailed statistics prepared by the Office of Crime Statistics in South Australia for Adelaide Magistrates' Court in the six months ending 30 June 1979. Aborigines constitute 5% of persons charged with offences in the Adelaide Magistrates' Court. The analysis of those charges is as follows.⁷⁵

75. Office of Crime Statistics for South Australia, Statistics from Courts of Summary Jurisdiction, Selected Returns from Adelaide Magistrates' Court, 1 January to 30 June 1979. A statewide analysis has been recently published.

Table 4

CHARGES AGAINST ABORIGINAL DEFENDANTS*
Adelaide Magistrates' Court
1 January - 30 June 1979

	%	Number
Drunkenness	39.8	82
Loitering/Offences Against Enforcement Order	8.3	17
Indecent Language	7.3	15
Disorderly Behaviour	6.8	14
Resist Arrest	5.3	11
Unlawful Use of Motor Vehicle	4.9	10
Fraud/Forgery/False Pretences	4.9	10
Assault Police	3.4	7
Driving under the Influence/.08	2.9	6
Vagrancy/Unlawfully on Premises	1.9	4
Larceny	1.9	4
Breach of Recognizance	1.5	3
Common Assault	1.0	2
Wilful Damage	1.0	2
Other	9.1	19
	100	206

* Charges listed in this table were brought against those persons identified as Aboriginal on Apprehension Reports. Additional charges may have been brought against an unknown number of Aboriginal defendants who were not so identified.

"68. Public drunkenness constitutes almost 40% of offences. Alcohol is very likely to be an element in the commission of offences such as indecent language and disorderly behaviour and will be an element in others. If the figures for the offences of driving under the influence of liquor, indecent language and disorderly behaviour are added to drunkenness, 57% (approximately) of the offences involve alcohol. Offences against property constitute a relatively small 8% (compared with the overall percentage which is at least 14.6%). Offences involving fraud and forgery were 5%. It should be noted that only serious traffic violations have been recorded in these statistics. These figures appear to be representative of the position of other jurisdictions. Studies made of Western Australian Statistics by Eggleston in 1965 show that the five offences with which Aborigines were most frequently charged were drunkenness, disorderly conduct, traffic offences, stealing and Native Welfare offences in that order.⁷⁶

76. Eggleston, 14 and Appendices.

"69. A Country Town. One of the relatively few detailed studies of Aboriginal crime in a country town investigates the situation in Port Augusta, South Australia.⁷⁷ The report analyses conviction statistics for 1971 of the Port Augusta Magistrate's Court. Convictions for more serious crimes are not within the jurisdiction of that court. The Aboriginal population of Port Augusta was then 600, about 5% of the total population. However, Aborigines represented 32% of all those convicted in the court and 97% of those convicted Aborigines were adults. The predominant offence was drunkenness (65% of all offences committed by Aborigines). Offences against property were a very small percentage and no convictions for fraud or forgery were recorded. Alcohol was an element in the commission of the offence in 94.5% of cases (96.4% of adult crime and 55% of juvenile crime). The authors believe that there was some relationship between the receipt of pension cheques and the rate of offending 'because on more occasions than not a large rate of convictions does follow a pension day, especially the Thursday one'.

"70. A study of the socio-economic background of the offenders disclosed four groups of Aboriginal offenders. About one-third of Aborigines in Port Augusta had employment and lived in houses in the town. They 'aspire[d] towards white standards of living and [had] lost some of their identity with other Aborigines'. They accounted for only 6.9% of the Aboriginal crime. The second group were the 220 inhabitants of the Davenport Reserve, who could be described as 'fringe dwellers'. This group was very poor and was heavily dependent on receipt of pensions with the family tending to be mother-centred because of the itinerant nature of the father's work. The high incidence of alcohol related offences has a very substantial impact on any traditional tribal influences which remain. The third group was identified as "'sandhills dwellers" who mainly live in the sandhills near the Davenport Reserve at night and hotels during the day'. They were grouped with Aborigines of no fixed abode and constituted 11.7% of Aboriginal offenders. A fourth group were itinerants and constituted a very high percentage (58%) of Aboriginal offenders in Port Augusta.

"71. Remote Communities. An analysis has been made of the nature of criminal charges heard by magistrates in South Australia⁷⁸ when sitting at three Aboriginal communities in the north-west region of that State. They are all remote communities.

77. A.A. Graves and A.C. Collett, A Study of the Nature and Origin of Aboriginal Petty Crime in Port Augusta (1972).

78. A.L.C. Ligertwood, The Pitjantjatjara and the Law, mimeo report on observations in 1977 and 1978. The statistics were informally recorded from the magistrate's court lists but are believed to be complete.

Table 4

CHARGES AGAINST ABORIGINAL DEFENDANTS*
Adelaide Magistrates' Court
1 January - 30 June 1979

	%	Number
Drunkenness	39.8	82
Loitering/Offences Against Enforcement Order	8.3	17
Indecent Language	7.3	15
Disorderly Behaviour	6.8	14
Resist Arrest	5.3	11
Unlawful Use of Motor Vehicle	4.9	10
Fraud/Forgery/False Pretences	4.9	10
Assault Police	3.4	7
Driving under the Influence/O.B.	2.9	6
Vagrancy/Unlawfully on Premises	1.9	4
Larceny	1.9	4
Breach of Recognizance	1.5	3
Common Assault	1.0	2
Wilful Damage	1.0	2
Other	9.1	19
	<hr/>	<hr/>
	100	206

* Charges listed in this table were brought against those persons identified as Aboriginal on Apprehension Reports. Additional charges may have been brought against an unknown number of Aboriginal defendants who were not so identified.

"68. Public drunkenness constitutes almost 40% of offences. Alcohol is very likely to be an element in the commission of offences such as indecent language and disorderly behaviour and will be an element in others. If the figures for the offences of driving under the influence of liquor, indecent language and disorderly behaviour are added to drunkenness, 57% (approximately) of the offences involve alcohol. Offences against property constitute a relatively small 8% (compared with the overall percentage which is at least 14.6%). Offences involving fraud and forgery were 5%. It should be noted that only serious traffic violations have been recorded in these statistics. These figures appear to be representative of the position of other jurisdictions. Studies made of Western Australian Statistics by Eggleston in 1965 show that the five offences with which Aborigines were most frequently charged were drunkenness, disorderly conduct, traffic offences, stealing and Native Welfare offences in that order.⁷⁶

76. Eggleston, 14 and Appendices.

"69. A Country Town. One of the relatively few detailed studies of Aboriginal crime in a country town investigates the situation in Port Augusta, South Australia.⁷⁷ The report analyses conviction statistics for 1971 of the Port Augusta Magistrate's Court. Convictions for more serious crimes are not within the jurisdiction of that court. The Aboriginal population of Port Augusta was then 600, about 5% of the total population. However, Aborigines represented 32% of all those convicted in the court and 97% of those convicted Aborigines were adults. The predominant offence was drunkenness (65% of all offences committed by Aborigines). Offences against property were a very small percentage and no convictions for fraud or forgery were recorded. Alcohol was an element in the commission of the offence in 94.5% of cases (96.4% of adult crime and 55% of juvenile crime). The authors believe that there was some relationship between the receipt of pension cheques and the rate of offending 'because on more occasions than not a large rate of convictions does follow a pension day, especially the Thursday one'.

"70. A study of the socio-economic background of the offenders disclosed four groups of Aboriginal offenders. About one-third of Aborigines in Port Augusta had employment and lived in houses in the town. They 'aspire[d] towards white standards of living and [had] lost some of their identity with other Aborigines'. They accounted for only 6.9% of the Aboriginal crime. The second group were the 220 inhabitants of the Davenport Reserve, who could be described as 'fringe dwellers'. This group was very poor and was heavily dependent on receipt of pensions with the family tending to be mother-centred because of the itinerant nature of the father's work. The high incidence of alcohol related offences has a very substantial impact on any traditional tribal influences which remain. The third group was identified as "'sandhills dwellers" who mainly live in the sandhills near the Davenport Reserve at night and hotels during the day'. They were grouped with Aborigines of no fixed abode and constituted 11.7% of Aboriginal offenders. A fourth group were itinerants and constituted a very high percentage (58%) of Aboriginal offenders in Port Augusta.

"71. Remote Communities. An analysis has been made of the nature of criminal charges heard by magistrates in South Australia⁷⁸ when sitting at three Aboriginal communities in the north-west region of that State. They are all remote communities.

77. A.A. Graves and A.C. Collett, A Study of the Nature and Origin of Aboriginal Petty Crime in Port Augusta (1972).

78. A.L.C. Ligertwood, The Pitjantjatjara and the Law, mimeo report on observations in 1977 and 1978. The statistics were informally recorded from the magistrate's court lists but are believed to be complete.

Table 5
 CHARGES AGAINST ABORIGINAL DEFENDANTS
 Oodnadatta Court of Summary Jurisdiction
 7 March 1977 to 30 March 1978

	Juveniles	Adults	Total
Breaking and Entering	51	29	80
Larceny/Receiving	3	21	24
Other Indictable Offences		3	3
Traffic Offences	14	21	35
Assault	3	4	7
Wilful Damage	2	7	9
Unlawfully on Premises	2	1	3
Police		7	7
Alcohol		31	31
Registration and Insurance of Motor Vehicles and Driving Licences	1	43	44
Total	76	167	243

"Nearly half (46.5%) of the offences involved property, the most prevalent being breaking and entering by juveniles which represented two thirds of juvenile crime. One third of all offences involved breaches of traffic law and laws regulating the driving of motor vehicles. Although liquor offences represented no more than 12.75% of all offences, drunkenness was reported to be a very serious problem in these communities.

"72. Children. Little statistical information is available but, in South Australia, statistics are available for Juvenile Courts throughout the State.⁷⁹ They indicate that 394 Aboriginal children appeared (constituting 11% of all appearances), of whom 80% were aged between 14 and 18 years and 43% were aged between 16 and 18 years. A small percentage (15%) were female. Almost half of these offenders were from northern South Australia. These figures suggest a high level of Aboriginal juvenile delinquency. The high incidence of offences by juveniles aged 14 to 18 years is consistent with patterns in white Australian society. Most of Aboriginal adult crime is committed by Aborigines under the age of 25 years. In remote communities there is often a high level of delinquency mainly involving property offences such as breaking and entry and illegal

79. Office of Crime Statistics for South Australia, Crime and Justice in South Australia, Quarterly Reports for year ending 31 December 1979.

use of motor vehicles, often those belonging to the community. Petrol sniffing is a particular cause of concern, although by no means a universal problem, being apparently confined to northern and north-western South Australia and parts of the Northern Territory. Not being a criminal offence, it is difficult to control in the absence of any parental or familial authority. The breakdown in traditional authority has been noted earlier. It is manifested in such matters as a desire to be free from obligations of promised marriages and young men seeking to avoid the initiation ceremonies. If traditional authority structures are not replaced, many young Aborigines may be left without satisfactory means of obtaining direction or stability.

"73. A national Symposium on the Care and Treatment of Aboriginal Juveniles in Corrective Institutions held in May 1977 called attention to the fact that 'the level of juvenile delinquency is at crisis proportions in many Aboriginal communities'. A particular cause of concern is the sentencing of recalcitrant young Aboriginal offenders from remote communities. Usually the first few offences result in warnings, bonds or fines. Magistrates face a particular problem with repeated offenders. When all other sentencing options have failed, they must consider a period of detention in some institution. Usually, a training centre or similar institution is a vast distance from the offender's community. In South Australia the nearest remand home to communities in the North-West Reserve is in Adelaide, some 1750 kilometres distant. It is difficult to imagine a more inappropriate sanction for a young Aboriginal offender from a traditional community than to remove him from all contact with his community and any traditional influences to an entirely foreign environment. Concerns expressed by magistrates have in part been met by the establishment by Aborigines of a rehabilitation scheme at Umpukulu in the North-West Reserve for children from Amata who have been involved in delinquency of all kinds including petrol sniffing. Other communities in the area are considering like schemes. The high level of delinquency by young Aborigines calls attention to the need for the provision of alternative care institutions in remote areas."

Information from Northern Territory Government Submission to House of Representatives Standing Committee on Aboriginal Affairs.

The Ruddock Committee Report on Aboriginal Legal Aid was published in July 1980. This (from p. 36) gave the following details of arrests provided by the Government of the Northern Territory:-

"Arrest rates

112 Arrest rates for the Northern Territory and New South Wales given in the following tables show that Aboriginal arrest rates are disproportionate to arrest rates for the rest of the community. In the Northern Territory Aborigines comprise 25% of the population; however, 78% of those arrested in 1977 and 1978 were Aborigines.

Northern Territory arrests: 1 January 1977 to 31 December 1978

	Population	Indictable offences	Summary offences	Protective custody
Aboriginal	25 000	1 964	5 798	21 838
European	75 000	1 421	4 644	2 431
Total	100 000	3 385	10 442	24 269

Source: Northern Territory Government submission

"If the number of drunkenness offences or protective custody arrests for both Aboriginals and non-Aboriginals is extracted from the table above the number of Aboriginal arrests is still very high, comprising 56% of all those arrested for indictable and summary offences.

Information from N.S.W. Bureau of Crime Statistics and Research

At para. 131 of the Ruddock Committee Report the Committee reproduced figures provided by the N.S.W. Bureau of Crime Statistics and Research showing that the number of arrests in the "Aboriginal" towns of New South Wales far exceeds the number of arrests elsewhere:-

"113 The following figures compiled by the New South Wales Bureau of Crime Statistics and Research show that the number of arrests in 'Aboriginal' towns in New South Wales far exceeds the number of arrests elsewhere.

Frequency of arrests by area, 1978

	Number of arrests	Population	Number of arrests per 1000 population
Inner city	24 462	284 238	8.6
Suburban	8 645	2 364 962	3.7
'Aboriginal' towns	6 738	43 497	154.9
Rest of State	10 542	2 084 411	5.1
Total	50 387	4 777 108	..

Source: New South Wales Government submission.

Similar patterns of disproportion were shown in a 1974 report of the N.S.W. Bureau.⁶

There is also evidence from a report provided to the Australian Department of Aboriginal Affairs by the Law and Justice Study Center, Battelle Human Affairs Research Center, Seattle, Washington, on "Aboriginal and American Indian Relations with Police".⁷ This gives an instance of thirteen Aborigines from the Yalata Mission being charged with 121 offences at Nundroo in South Australia, the charges ranging from assault to obscene language. When representation was available from Aboriginal Legal Aid most charges were dropped and there were only 18 convictions for minor offences.⁸

The general pattern of the disproportional arrest and imprisonment of Aborigines is known and it is equally clear that these figures reflect deeper politico-socio-economic problems. Yet the range of Aboriginal illegality and the response by police need more careful documentation and analysis. To obtain an idea of the extent of crime in each area, it was suggested that a researcher accompanying a magistrate on his visits (perhaps four times a year) could obtain a great deal of information about the types of cases and their disposal - and experience showed that magistrates would readily cooperate.

There was some difference of opinion as to whether the really serious problem of Aboriginal crime consisted of the serious types of offences committed by Aboriginal people living in towns or in the fringe areas - or whether it was the large amount of minor "nuisance" types of offences committed in the more rural areas. Sometimes the very mobility of Aborigines meant that the two could not be separated. A Victorian study had shown that the trend in Aboriginal crime generally was towards more serious crime. Yet 40 per cent of the prison populations seem to be there for offences related to drunkenness. In Carnarvon particularly, about 95 per cent of those going to prison were going to prison for drink-related offences.

To obtain a clear view of the crime it was necessary for the Institute to encourage research into the patterns of crime in the large rural towns like Derby in Western Australia. A twelve month study of the offences committed, those involved and why they go to prison, would throw a great deal of light on the situation. Another approach to obtaining a clear idea of crime would be for the Institute to prepare a questionnaire for distribution to the officers of Aboriginal Legal Aid Services. Whilst the police officers at the Workshop could not commit their Commissioners, they felt that an approach to all Police Commissioners by the Director of the Australian Institute of Criminology would make it possible to obtain the figures for Aboriginal arrests, male and female, the number of convictions and the numbers taken into protective custody for being drunk.

To get the crime problem into perspective it was thought to be necessary for there to be a deeper study of the alcohol problem. In Australia there was a need for reports in all the alcohol related offences to be brought together and analysed. Data could be collected on alcohol as a problem generally in all types of countries and cultures because alcoholism amongst Aborigines was one aspect of the world's

problem of alcohol abuse. Also it would be a mistake to overlook the way in which, these days, in certain Aboriginal communities, alcohol was used to serve kinship cohesion, develop credit systems or to discharge community obligations. Relationships were sometimes reinforced by the allocation of the pension cheque for the purpose of buying alcohol or by the way alcohol itself was given as a present. This had been demonstrated by a study conducted at Adelaide University. It had been found that beer cans which were issued were sometimes used for betting - and that the use of alcohol affected social relationships. Again it would be necessary to look at alcohol as a symptom of deeper problems and not treat it as a cause in itself. There may be nothing wrong in the alcohol per se but in the "Drunken Compartment". Reference was made to a book on this subject.

Various participants gave examples of Aborigines moving to better accommodation with improved social services and leisure activities - but the drink problem continued. However there was a need to collect the data on the "good" as well as the "bad" communities in this respect.

Responding to a suggestion that Aboriginal people are not giving enough attention to the stations which have been given to them in the Northern Territory due, amongst other things, to excessive drinking, it was noted that Mr. B.W. Rowland, Q.C. had recently reported to the Minister for Aboriginal Affairs on the Aboriginal Land Rights (Northern Territory) Act 1976-80. In that report Mr. Rowland advised that it had been submitted to him that one or two of the Aboriginal stations "are in a rundown condition". Mr. Rowland said that he had also been told that there are some white-owned stations that could be similarly described. He said that he understood that some of the Aboriginal-owned stations were free from disease and that some were not; and again the same situation applied to white-owned stations. He commented that there was no evidence that health and environmental controls will be ignored on the Aboriginal leases.

Also in looking at the extent of crime, it was necessary to collect the information available on the effectiveness of self-imposed controls amongst the Aboriginal communities in the different States. There were wet canteens, limits placed on daily consumption and sometimes total prohibitions of alcohol. Sometimes they had worked, sometimes not, but comparative experiences of such schemes had not been collected. Maybe the proximity of the community to town affected the extent to which such controls could succeed.

Affecting the question of crime in the community would be the extent to which a natural community really existed. Simply moving people into a common housing area did not create a community: and this was obviously important for the strength of local social controls to inhibit crime.

More information was needed on the extent to which the decriminalisation of drunkenness has affected the situation. It was found in the Northern Territory that decriminalisation had not decreased drunkenness; but now the drunks are more likely to die without adequate attention. There were benefits for the police in not having to do more than keep the drunks in custody and then release them. It has also

saved much court time. In New South Wales data has been collected since decriminalisation on people detained for detoxification. Repetitive "offenders" are a great concern since, with every pick-up, they are visibly dying and the question of voluntary or mandatory treatment arises.

The effect of alcohol on the community was serious. One participant, himself Aborigine, had convened a conference of a whole community. They had expressed their great concern for the alcoholics in their midst saying "If we do not do something for these people they will die". Pension cheques are wholly cashed for alcohol. As the parents slowly die of drink, the children are on the streets missing food, care and clothing.

Maggie Brady of Flinders University gave the Workshop an account of her study of crime in an Aboriginal Community being funded by the Criminology Research Council. A community on the far west coast of South Australia had asked for help because 75 per cent of all 16-18 year olds in the community were appearing before the courts and they were concerned about the incidence of petrol sniffing amongst young people. The ancestral evidence was compared with departmental information and the family backgrounds of all the young people 10-18 years of age were studied and the results fed back to the community. The sample had been too small for statistical significance but it had been possible to establish that petrol sniffing began around the age of 8 and went in to their teens (fourteen age period). Those appearing at court for offences began about 14 or 15 years of age: girls who were also petrol sniffing did not usually end up in court however.

After consultation, the community had agreed to publish the names of offenders - these were written up in the community store. It did not appear to make much difference to the situation however. As the discussion continued, it was stressed that to get a clear idea of crime in Aboriginal communities it was necessary to include a whole range of minor infringements of law and custom which, though not crime in the white sense, were very significant for Aborigines.

LAW ENFORCEMENT

Under this heading Mr. Holland outlined his project for a study of Aboriginal perceptions of the police and police perceptions of Aborigines, which would lead on to a study of police structures, policing policies, the types of offences which are accepted by the Aborigines as constituting criminal offences and Aboriginal attitudes to present law. There had been a great deal said and written on these subjects but systematic research had not been done to obtain precision and the policy guidance which this would produce.

It was said that the New South Wales police would wish to have more discussion of the project. A Western Australian comment was that it needed a reconsideration as it now gave the impression of someone making the rounds of communities too quickly. That State was unimpressed by any study which looked as if someone was making whistle stops to collect data. The New South Wales Youth and Community Service commented that the study, as at present proposed, was too large: and expressed disquiet about the hope of any valid results in the time proposed. For real access to the communities much more time would be needed. A professor working with Aborigines there had recently said that it had taken him 18 months to obtain worthwhile information. One researcher at the meeting had taken two years over a very limited project. In Victoria, a different approach had been taken, but they had had to spend a great deal of time training Aborigines to collect the data required. However, in fairness to Mr. Holland, the moderator pointed out that Mr. Holland had been asked by the Institute to limit his proposal to something which might be accomplished in a limited period - not more than one year. It had been appreciated that depth research would take a lot longer.

In an ensuing discussion of police structures, the point was made that seniority, or a need for someone with a good administrative or clerical record, might exclude the most experienced or qualified person being appointed to an area where a knowledge of Aborigines was essential.

The schemes being operated by police in some States for ensuring that an Aboriginal suspect is questioned in the presence of a friend or Justice of the Peace were described. Sometimes it was not always easy to find such a person when he was required. Occasionally the offence might be one which an Aborigine would consider a "shame offence" and he would not wish to have anyone there who knew him. In the Northern Territory the Chief Justice had prescribed rules for the guidance of police officers taking statements from Aborigines. Some of these were in standing orders, so that when questions about statements arose, it was really a matter of deciding whether standing orders had been adhered to. It seemed that with all the interest being shown in the question of police investigations of Aborigines, there would be scope for research - studies of procedures and their implementation. At a previous seminar at the Australian Institute of Criminology, Mr. Wallwork, a participant

of the Workshop, had referred to a number of cases where the courts had required that the accused must be shown to have clearly understood the meaning of the statement he is alleged to have made. This question of meanings obviously differed with the degree of acculturation of the Aborigine but it left a complicated area of law enforcement, more experience of which was available than had been collected so far.

It was mentioned for the information of the Workshop that in a study conducted in New South Wales (with the Ethnic Affairs Commission) of the 20 racial groups with which police officers would most like to work, the Aborigines had come very high in the preferred list. However, the disappointing experience of police forces of trying to recruit and keep Aboriginal officers showed a need for research on what is needed to keep Aborigines culturally content within the police.

This and other problems with racial minorities were not peculiar to Australia. It was recommended that attention be paid to experience overseas where a great deal of information had already been gathered. For example, the Royal Canadian Mounted Police had recorded and studied their experience in dealing with the INUIT community. Elsewhere the question of whether a police officer should be sent to work in his own community had been extensively covered.

For further reference to police/Aboriginal relationships, there is the 1977 publication of the Australian Institute of Criminology on "Aborigines and the Law" which provides information on the seminar on this subject held in 1976. This shows, for example, that in South Australia a range of special provisions had been made. At the top level, an Aboriginal Police Steering Committee brings advice to the police from a variety of Aboriginal organisations. The Community Affairs and Information Service officers of that police force act as Liaison and Field Liaison Officers for Aboriginal Affairs and, as at 1976, thirteen police officers were acting as District Liaison Officers. Aboriginal field officers are appointed to assist Aborigines in police custody and special training is given to police officers, including some language courses. This South Australian approach had been considered "the most progressive attempt to date to come to terms with this serious problem".

Before and since then, there had been developments in other States. In Queensland, Aboriginal communities have their own police, with white officers being available, as required, for training and guidance. The advantages and disadvantages of this need further study. In Western Australia, police auxiliaries had been appointed and the law amended to provide for local communities to have their own courts.

COURTS

The Aboriginal people are very well acquainted with the court system of Australia but its relationship to their own traditions is something with which they are less familiar. Yet there is an historical link extending back to at least Francis Bacon's belief that custom was man's "principle magistrate".

English Common Law has always been proud of the way it has evolved from custom in contrast to the continental systems of codified law. For the future then, the courts - their procedures - their standards of proof and their decisions on the disposal of Aboriginal cases were a central area for legal, anthropological, criminological and sociological research. The day-to-day problem had been well presented by Mr. Wallwork at the Australian Institute of Criminology Seminar on "Aborigines and the Law" in 1976. He had said then:

"In the northern half of Western Australia ... there are many towns which hold courts of petty sessions on at least Saturday and Monday mornings and usually on some other days of the week. In these courts people of Aboriginal descent appear charged with what are regarded as minor offences. There are usually only two lawyers in the area, which is very great. These persons cannot appear in more than one or two courts on any one day and the position is that people come before the courts and plead guilty, without legal advice, to what they think are minor charges.

Often the person is charged with three or four charges arising out of the same incident. Perhaps it started as a brawl in a hotel and was broken up by the police. The offender is charged first with disorderly conduct. If he resists arrest, he is charged with resisting arrest. If he escapes from the police after arrest he is charged with escaping from legal custody. Then, if he perhaps takes someone else's car to get away and crashes it, he is charged with unlawfully assuming control of a motor vehicle and perhaps dangerous driving.

It has happened that on a plea of guilty to charges such as these, the offender has received prison sentences of, say, three months on each count; adding up to a total of 15 months. If this occurs to the offender on only one occasion it may not be all that bad, but many juvenile offenders repeat again and again with the result that, by the time they are 24 or 25 years old, they have very bad records of convictions and have spent a large part of their adult lives in gaols. The result is that they have no stable marriage or family relationship and are likely to offend again and go back to prison."

Mr. Wallwork's conclusion had been that there should be much more legal aid.

The discussion opened, therefore, with a consideration of legal aid and its significance. It was decided that legal aid for Aborigines had different effects in different areas. In rural areas where a community felt that an offender had deserved punishment, they resented the intervention of legal officers to defend him. Elsewhere, of course, Aborigines who felt that an offender was doing no more than custom required or was a good man unhappily enmeshed in legal procedures, they warily welcomed the availability of legal aid.

It was said that, in the Northern Territory, legal aid had helped to balance pleas and it had not been misused by (for example) younger tribal Aborigines using it to bring actions against the elders for actions made necessary by custom but not permitted by the law of the land, e.g. physical chastisement. There had been no evidence of legal aid funds being used to pay Aboriginal fines. On the other hand some areas reported that trouble had arisen where court officials and Aboriginal legal service officers had seemed to determine the disposal of juvenile Aborigines coming before the courts without consultation with parents. Pleas in mitigation may be made without reference to parental view at all - and parents greatly resented this.

In Western Australia, legal aid had helped to reduce the numbers of Aborigines being sent to prison. However, when Aborigines were defended with Federal money, there was always the possibility of State objections to such Federal interference. Since the Workshop was held and whilst this report was in draft form, the Federal Parliament debated (on 26 March 1981) the House of Representatives Standing Committee on Aboriginal Affairs' report on Aboriginal Legal Aid. In this the Federal Government undertook to continue its provision of funds for Aboriginal Legal Services, raising them from the \$4.9 million in 1979/80 to \$5.3 million in the current financial year. The majority of the Committee members had supported a means-test charge.

In the Workshop debate the point was made that legal aid anyway gave an incentive for accused persons (Aboriginal or otherwise) to plead not guilty - with such aid readily available why should they plead guilty. Against this, the need for legal aid had emerged from the inordinate numbers pleading guilty and the ways in which they were processed so quickly into prison.⁹ Therefore, there was a need to understand the precise effects of legal aid. Whilst research had not been as extensive as was necessary, the Standing Committee of the House of Representatives had conducted its own searching inquiry into Aboriginal legal aid and had endorsed it as a continuing need.

It was suggested that an obviously possible, but little understood, consequence of Aboriginal legal aid was that the police might simply not do their duty unless they could not avoid it. If it was an Aboriginal case and there was the obligation to bring in legal aid and accept all the consequences, the likelihood was that the police might avoid the case wherever possible. This was a possibility rejected, however, by some of the police present at the Workshop.

The Workshop was given some information about the use of Aboriginal Justices of the Peace - in Queensland and Western Australia. In Queensland they were brought in for the taking of statements from

Aborigines by the police. When administering the law in their own settlements or communities, they tended to be very strict.

Communities in Queensland have their own law, their own police, frame their own charges and try the cases. They have limited powers of punishment but have their own local lockup and can sentence up to 14 days. At times they will treat a case more severely than would a white magistrate. For example, where a young man merely threatened in the course of a quarrel to throw a baby out of the window but thereby alarmed the close relatives, he was charged and given seven days imprisonment. An example of this type of local community control was Palm Island which has about 2,000 inhabitants, only 70 of which are white. It has two European and ten Aboriginal police officers. It was observed that in the State generally a previous criminal record was no barrier to appointment as an Aboriginal community police officer. In fact many, if not most, are likely to have criminal records though usually for minor offences. But some have spent up to three years in prison.

Western Australia has statutes which permit, where appropriate, Aboriginal communities to make their own by-laws; and for breaches of those by-laws to be dealt with by justices of the peace appointed from those communities. A white magistrate is for the time being appointed to guide and advise; but local by-laws can be made to deal with local circumstances - and sometimes cases which may not, in other circumstances, constitute a breach of the peace may be so regarded in local terms. For example, a man whilst drunk, breaking the taboo of speaking to his mother-in-law, may create community resentment to the point where it could occasion a breach of the peace - and he will be dealt with accordingly.

It was observed that in the Northern Territory more than 90 per cent of all complaints received were by Aborigines against Aborigines (Alice Springs has a population which is less than 20 per cent Aboriginal).

An important observation made on the operation of these local community courts was that justice was swift. There were no remands and cases were quickly disposed of. Not surprisingly, Aborigines are confused when, in the other courts, cases are remanded several times and in extreme cases, a trial procedure may last a whole year. In dealing with Aboriginal cases there was an obvious need of immediacy.

Sometimes of course, in all courts, Aboriginal custom was used in mitigation of an offence when, in fact, there may have been no customary influence at all. It is a justification ex post facto. For example, where a woman has been killed, the explanation is often that she was killed because she had broken the secrecy of the tribe. She is dead and cannot deny this: but the real truth may be that she was killed in a brawl or for other reasons and the breaking of secrecy was a convenient afterthought. It was observed that drunken brawls ipso facto eliminate all customary elements in a case. Amongst remote communities personal fights arising from custom would not be allowed to come to the notice of the police - injuries would be accepted because of the custom. Therefore a drunken brawl is not customary and when a murder or serious assault eventuates, the appeal to custom is an afterthought. In Aboriginal customary law, there has never been a prohibition of drunkenness because

the Aborigines are a people who did not experience drunkenness until contact with the white man. There was "pitchery", a kind of drug which was chewed but no alcohol.

The question of the extent to which Aboriginal customary law should receive official recognition was already being addressed by the Australian Law Reform Commission. Mr. Bruce DeBelle, the Commissioner with the responsibility for this work, was a Workshop participant and made the experience of the Australian Law Reform Commission available at suitable times during the discussion.

Looking at the approaches to the issue of Aboriginal courts, it was remarked that, in turning over the institutions to Aborigines, the Queensland Government had, in effect, adopted the Papua New Guinea model of village courts. The difference was that no formal machinery existed for the regular supervision of these courts and review of their decisions by a magistrate. In Western Australia the pattern was rather different but the direction was similar. In both cases, however, there was in process, a local development of legal concepts and practices - a new kind of Common Law which needed careful recording and analysis.

CORRECTIONS

In 1976 the resolutions of the Australian Institute of Criminology seminar on "Aborigines and the Law" had begun with the statement that:

"Aborigines and Islanders are the most incarcerated people in the world. Grossly disproportionate numbers of Aborigines and Islanders are processed through the Australian legal system. That this is so, is a crime against humanity."

Discussion paper No. 17 of November 1980 published by the Australian Law Reform Commission on "Aboriginal Customary Law - Recognition?" at page 45 reproduced a table from the Census of 30 June 1971 showing that the imprisonment rate of Aborigines and Torres Strait Islanders at the time was 100 per 10,000 = 1,000 per 100,000. Since the Workshop was held, the Australian Bureau of Statistics has supplied the Australian Institute of Criminology with the following raw data from the 1976 Census, showing that 726.5 per 100,000 is a more accurate figure. Such figures seem to confirm the statement that Australia's Aborigines were, if not the most incarcerated people in the world, then at least second to no other.

Rates of imprisonment per 100,000 of the population have been collected by the United Nations and the Australian Institute of Criminology now for some years and according to the available data the range of imprisonment rates is from 20 per 100,000 people in Holland to a maximum of about 400 per 100,000 in some African states. In Australia in October 1980 the highest rates were the Northern Territory with 229.8 per 100,000 and Western Australia with 111.5 per 100,000. Third came Queensland with 74.1 per 100,000. New South Wales had 62.2, Victoria 45.5, South Australia 66.2, Tasmania 58.6 and the Australian Capital Territory (where the absence of a prison probably inhibits the courts) 22.7 per 100,000. It is probably no coincidence that the States with the highest rates of imprisonment are those with most Aboriginal and Torres Islander inhabitants.

In Asia as at 1 September 1980 Fiji had the doubtful honour of being in the lead. It was imprisoning 218.1 per 100,000. Singapore followed with 137.6 per 100,000 of its people in prison. Then came Hong Kong with 109.3, New Zealand with 90.5 and Australia with a modest 66.6 per 100,000. However the total figure for Australia masks the significance of imprisonment for the Aborigines. When 726.5 per 100,000 are being imprisoned, there is something seriously "out of joint". It is true that similar figures per 100,000 have not been collected for corresponding minority groups in other countries and that with absolute figures so small the proportions may not be entirely what they seem to be. Even so, Australia needs to be very seriously concerned about an imprisonment rate of Aborigines which exceeds so dramatically the

PRISON POPULATION - 1976 CENSUS.

	<u>Non-Abl. Prisoners</u>	<u>Non-Abl. Population</u>	<u>Imprison- ment rates (per 100,000) Population</u>	<u>Abl. Prisoners</u>	<u>Abl. Population</u>	<u>Imprison- ment rates (per 100,000) Population</u>	<u>Ratio of imprison- ment rates - Abl. to non-Abl.</u>
N.S.W.	3,414	4,736,658	72.1	266	40,450	657.6	9.1
VIC.	1,670	3,632,224	46.0	64	14,759	433.6	9.4
QLD.	1,335	1,995,858	66.9	254	41,345	614.4	9.2
S.A.	605	1,234,046	49.0	117	10,714	1,093.4	22.3
W.A.	664	1,118,734	59.3	351	26,126	1,343.7	22.8
N.T.	83	73,339	113.2	106	23,751	446.5	3.9
A.C.T.	5	196,797	2.6	0	827	-	-
TAS.	277	399,927	69.3	11	2,942	373.9	5.4
Totals:	<u>3,053</u>	<u>13,387,583</u>	<u>60.2</u>	<u>1,169</u>	<u>160,914</u>	<u>726.5</u>	<u>12.1</u>

SOURCE:

1976 Census data.

national figures for imprisonment across the world. Mr. Jacobs, Deputy Chairman of the National Aboriginal Conference, felt that half of those in prison were there for petty offences.

An urgent need was for a full account to be presented of present prison populations. This should be not merely a statistical survey but an attempt to show who they were, where they came from, why they were in prison and by what actions and procedures they had got there. The proposed National Uniform Prison Census would go part of the way but for effective policy-making much more was required. The difficulties of non-identification had to be overcome. Legal Aid Commissions did not show their Aboriginal cases separately and Queensland authorities did not distinguish cases by race. But as the Aborigines themselves wanted separate counting this should be given full consideration.

Another problem was to identify the true recidivists. Sometimes the figures were inflated by large numbers of cases being referable to a single person.¹⁰ It was believed that if ever it became possible to follow individuals through the criminal justice system a great deal of light would be thrown on the Aboriginal crime problem.

It was suggested that the high proportion of Aborigines in prison implied that imprisonment represented a kind of "social sanitation system". Significantly many of those who were sent to prison came from the fringes of towns and obviously imprisonment was one way to get rid of problems - for a time at least. On the other hand imprisonment often suited the Aboriginal communities themselves and they could be hostile to legal officers who sought to prevent what they regarded as a deserved sentence of imprisonment. Sometimes communities would organise a collection to pay the fine of one of their members. But if they thought he needed a lesson they would refuse to do this so that he would go to prison in default. Significantly, Mr. Jacobs of the national Aboriginal Conference called for a spade to be called a crime a crime. He said he was opposed to the recognition of tribal law in so far as this would weaken the need for a strong reaction when necessary. Unfortunately the prison system does not deter. He accepted that there may be imprisonment used as a form of social sanitation but he felt there was a need for both according to circumstances.

There may be a need to look closely at the work which had been done already on the traditional sanctions used by Aborigines. Reference was made to the work of Professor Berndt, who had found *inter alia* that beating (running the gauntlet) was used and that public scorn was frequently used. There was a difference of view as to spearing. Some participants had never seen anyone speared - others had seen two or three cases. It was stressed that the significance of spearing had to be related to the lifestyle of a nomadic tribe where everyone must be able to walk. In such tribal conditions a spearing was painful - and could be disabling. It did not have quite the same effect now. Yet spearing - or the threat of it - was a kind of control of vengeance within the society, since it had its ritual limitations. The threat that it might come to a spearing often helped to settle disputes. At a critical juncture in the argument, spears would be shaken and a move made to take off their trousers. Frequently such gestures alone were sufficient to induce a settlement between the parties.

At times fines were being used to induce regular work habits: so that, in one area where an Aborigine did not turn up for his work on the windmill, he was fined a day's pay for each day he defaulted.

It was estimated that Alice Springs would probably have about two persons per weekend taken into custody on warrants for not paying fines. Occasionally the community knew very well how to make the fines effective. So the Council at Hooker Creek told the magistrate that he was not fining heavily enough those convicted of bringing liquor into the area. He was imposing \$50 fines but the Council asked him to consider \$250 fines. A \$50 fine could easily be raised by a combination of clan members but if the fine were \$250 they could not do this and they would have to seek help from other clans. Since this would cause a loss of face, an offender's clan would not like it at all and would be more likely to bring pressure on the offender to change his ways. They also wanted not only the imported liquor, but also the vehicle used, to be confiscated. In another part of the Territory there had been a demand by the community for a \$1,000 fine for bringing in liquor. It was suggested that the Institute could easily collect a great deal of evidence on fines and their significance for Aborigines by writing directly to Chief Magistrates.

There was a return in this part of the discussion to the question of whether Aboriginal legal aid services sometimes paid fines for their offenders. It was said that in one area the legal aid budget had been overdrawn because of the use of the funds for fines. In the north of South Australia fines imposed were regarded as group fines.

If Aborigines were imprisoned for non-payment of fines, this was not because efforts were not being made to avoid it. In Western Australia it was said that the courts "fall over backwards" trying to make it easy to pay by very small instalments - and time was given for the payment to be made within an offender's means. Frequently, of course, offenders do not wish to pay and will tell the court that they have no intention of paying before they leave the court. In such cases it may be very difficult to avoid a prison sentence in default.

There was a lively debate on whether the prison is a real deterrent or not for Aborigines. Some people said they did not mind going to prison but others said that this could hardly be reconciled with the lengths to which they seemed prepared to go to avoid it - or to escape from it when they were there. Perhaps prison was not a deterrent but Aborigines did not like going there - especially the adults. Children were different and it was frequently said that they looked forward to the ride in a 'plane to the place where the institution was. Moreover such institutions usually had television or activities which were not available at home. Yet, despite all this, the staff had examples of such children crying themselves to sleep and if they really enjoyed it so much, why did they still do everything possible to avoid being picked up? Obviously different children responded differently. Much would depend upon whether they were happy at home - and, of course, upon their level of acculturation.

It was important not to lose sight of the fact that Aboriginal youths felt they had "got off" if they did not go to prison - even if

they were convicted, fined or placed on probation. In this, however, they may be like delinquent youths everywhere. There was disagreement about whether all Aborigines regarded a penalty for an offence as another form of victimisation by the white man. Some thought that this was the reaction of only a vocal minority: the majority of Aborigines, they felt, understood perfectly well the justness of their punishment for the offences committed. Others believed that even if they did not feel victimised at first, they would soon learn to feel victimised as they were old enough to appreciate the total situation. At any rate, Aborigines generally felt excluded from white society and this was a factor in their appearances before the courts.

Reference has been made in books and at meetings to the possibility that the payment of meal allowances (for prisoners) to the police at some outlying stations might be responsible for a certain amount of Aboriginal incarceration - since the allowance provided an incentive to keep the local lock-ups full. Such allowances are still paid in Western Australia but a person cannot be held long before being released on bail or otherwise. In some parts of Queensland the allowance is actually paid to the Salvation Army when they are called upon to provide meals for prisoners. In the Northern Territory this did not happen and an inspector checks that bail is offered as soon as possible. The meeting did not seem too impressed with the idea that allowances being paid to police had a significant role in the size of the imprisonment problem.

TYPES OF RESEARCH

So far the discussion had roughly fitted the problem of Aborigines and crime into the several phases of criminal justice procedure. Obviously at each of those levels there was scope for descriptive, empirical, evaluative and action-oriented research.

Simple as they may appear, the literature was still lacking adequate descriptive studies. Anthropologically the knowledge of Aboriginal communities and their customs needed to be extended. This would go far beyond the areas of direct concern to criminologists but there were not enough studies of how the problems arose, how they got into the courts, the extent to which they were reported at all. Little was known of the effects upon the different types of Aboriginal communities of an offence (customary or criminal law) being committed by one or more of its members. Their attitudes to the offence, the extent of their protection or rejection of offenders, needed more study. How did they adjust to the absence of members imprisoned? How did they receive them on release? Relatively few of the court cases had been reported in such detail as to show the roles played by the different persons involved - from the viewpoint of the Aborigine himself. Finally, a great deal more was needed to present the picture of the Aborigine in prison - the way he adjusts, his relationships with staff and other prisoners, his problems - and the problems of prison management. The difficulties on release of getting him reintegrated. On all of these much more work could be done. Maybe in a variety of other publications and studies some of this had been covered. A broad review was required with an earmarking of the areas where there were gaps and descriptive studies could be useful.

Then there is a wide area of descriptive research possible within the police, courts and prisons. What does the Aboriginal problem mean to the police forces? What does it mean to their individual officers? What is the gap (if any) between the public image which is built up and the day-to-day routines? Similarly, magistrates or court officials could provide a great deal more information than is now available about the meaning of the Aboriginal case in the court lists - the differences which arise - the complications of ensuring justice as they see it. Since many magistrates visit Aboriginal communities, there is scope for straightforward description of their work, which would add greatly to the knowledge available. Finally, within the prison setting, there is scope for any number of descriptive studies from many angles. There is little known of the interrelationships within the prison setting, the extent to which contacts are maintained with kindred on the outside, the cultural impact of certain types of regulations and, of course, the exercise of their rights in prison by Aborigines. To what extent are Aborigines affected by the prison experience or exploited by other prisoners: what is the significance for them of the drug taking or homosexuality in prison? How do they react to industrial troubles?

Linked with and overlapping these other descriptive studies would

be case-studies of various kinds. These could include case-studies of particular Aboriginal communities, case-studies of particular features of the criminal justice system - or life histories of recidivists. In this connection much work could be done on the pre-sentence reports made by probation officers or the case-histories in welfare offices. Most State Community Welfare Departments have a wealth of such information which has never been collated or analysed. There would be sensitivity about privacy, as there has been with case-histories of mental disorder or alcoholism but it should be possible to provide adequate safeguards. This has been done in connection with a large number of criminological studies in the past.

Empirical studies of the Aboriginal crime problem were yet to be undertaken but there were signs that there was now more interest. Hypotheses about Aborigines and crime were legion and just cried out to be tested by appropriately designed studies. Again from the meaning of crime through the whole range of criminal justice procedures, there were opportunities for empirical work.

Evaluative studies were always difficult it was thought - but there was a great need for many of the programmes already attempted to be evaluated. The Aborigines' efforts to help themselves - and the efforts of the several agencies set up to help - them needed to be measured for effectiveness. In this connection the Aboriginal Legal Aid Service would probably welcome a well designed evaluation of its work. Certainly for the development of policy, more evaluation was needed.

Most promising for the future collection of data on Aborigines, however, were projects so designed that they would be undertaken with or by the local communities themselves, with provisions for "before and after" comparisons. Such action projects also have more likelihood of being funded if they are genuine community projects. Since most communities are only too well aware of the crime problem and anxious to take preventative measures, such work could be devised to ensure that there would be research and developmental features. As before, these could be conceived as educational or welfare, housing or leisure projects. In particular, those designed to alleviate the drink problem might be expected to please the communities and reduce crime.

MISCELLANEOUS

The Workshop discussions ranged over wider areas than any report could possibly, or profitably, cover. For example, the fact that so many Aborigines were pensioned - and that the drinking problems were directly related to the dates and times of payment - led to the question of whether drinking and criminal behaviour were not direct functions of the governmental hand-outs. Were we not creating the problems? On the other hand, payments in kind were deplored as being patronising and interfering with a person's right to decide what to do with his own money. Sometimes communities had managed to exercise control over the money but often it was people on the fringe of towns, who were not in communities, who had the greatest problems.

The Workshop noted that a great deal of work was being undertaken within the various departments on the delivery of services and that all this would have relevance for the problems of drink and crime. In some housing areas, where the arrears had mounted to thousands of dollars, financial counsellors were now being appointed.

Also the observation was made that there may be profit in looking more particularly at the situation of Aboriginal women, if it was hoped to deal with drinking and crime. Very few women are sent to gaol in the rural areas. In fact, there is only one Aboriginal woman in the female prison in Brisbane.

CONCLUSIONS

That the Australian Institute of Criminology should consider setting up within the limit of its resources, a data centre and advisory service on Aboriginal criminal justice research, innovations and crime prevention programmes.

That this report should be circulated to all authorities concerned with the collection of data on Aborigines to solicit help and in particular to draw attention to the need (which is supported by Aborigines) for Aboriginal identification in the statistics which were gathered.

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1. But of course the same problem of different perspectives on wrongness of behaviour occurs with most sub-cultures which by definition have different standards.
2. There is a danger here of taking absence from courts as implying cohesion but the sociological studies appear to substantiate a connection, e.g. differences between Chinese and Aborigines in Australia or Chinese and Puerto Ricans in the U.S.A. - or between Jews and Gentiles in European States.
3. This project entitled "Aboriginal Adolescent Offender Study" was undertaken by Dr. R.D. Morice, Lecturer in the Department of Psychiatry at Flinders University, with a grant from the Criminology Research Council in February 1979. Maggie Brady was the field researcher.
4. Aboriginal Legal Aid, Report of House of Representatives Standing Committee on Aboriginal Affairs, July 1980, Recommendations 1-3.
5. The Law Reform Commission, "Aboriginal Customary Law - Recognition?", Discussion Paper No. 17, Sydney, November 1980, p.33.
6. M.F. Farquhar and T. Vinson, "Minor Offences - City and Country", Mimeographed report N.S.W. Bureau of Crime Statistics and Research, 1974.
7. Reproduced in Duncan Chappell and Paul Wilson (eds.), The Australian Criminal Justice System, Second Edition, Sydney, 1977, as Fay G. Cohen, Duncan Chappell and Paul R. Wilson, "Aboriginal and American Indian relations with police", pp. 112-154.
8. Ibid., p. 116.
9. For a full airing of this difference of view about the effects of Aboriginal legal aid and a strong presentation of the view of the Aboriginal Legal Service see "Aboriginals and the Criminal Law", Proceedings of the University of Sydney Institute of Criminology, No. 44, 2 July 1980, esp. pp. 61 ad seqq.
10. Fay G. Cohen, et al., op cit., p 116.

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