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# Aborigines and Crime in Australia

ABSTRACT

Aborigines are 16 times more likely in Western Australia to be victims of homicide and 6.5 times more likely to report crimes against the person to police than are non-Aborigines. Aborigines are 9.2 times more likely to be arrested, 6.2 times more likely to be imprisoned by lower courts, 23.7 times more likely to be imprisoned as an adult, and 48 times more likely to be imprisoned as juveniles than non-Aborigines. The increased overrepresentation from arrest to imprisonment appears largely a function of the very high levels of recidivism found among Aborigines: 88 percent of male Aborigines are rearrested compared with 52 percent of non-Aborigines, and 75 percent of Aborigines return to prison at least once compared with 43 percent of non-Aboriginal males. States with a high Aboriginal "cultural strength" and socioeconomic "stress" index are the most punitive. "Cultural strength," "stress," and imprisonment are highly correlated and associated with those states with the most "frontier" characteristics.

This essay provides an overview of the current state of crime and imprisonment in Australia as it relates to the different experiences of the descendants of the indigenous and settler/migrant populations. Although Australia is a "multicultural" society with about one-fifth of the population born overseas (mostly from Europe and an increasing proportion arriving from Asia), the dominant focus of research has been on differences between the indigenous minority Aboriginals and Torres Strait Islanders and the predominantly European non-Aboriginals.

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Statistical sources on the ethnicity of the Australian population are usually limited to "country of birth" data, and the analysis of ethnicity and crime has largely been confined to comparisons with the Aboriginal and non-Aboriginal populations.[1]

The focus on Aborigines is partly historical but also a function of their well-documented overrepresentation in the criminal justice system. The surviving descendants of the indigenous population, or Aborigines, represent only 1.6 percent of the total Australian population and are significantly overrepresented (by 12:1) in the penal system.

Aboriginal incarceration became the focus of national and international attention with the establishment in 1987 of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) following intensive lobbying by Aboriginal groups. The fundamental allegation was that Aborigines had been maltreated by police and prison officers (including accusations of murder) and as a result had a higher risk of death in custody. The RCIADIC was to determine the extent to which racial discrimination was a cause of the high rate of Aboriginal imprisonment and death in custody. Higher rates of Aboriginal custodial deaths were not found once their much higher levels of incarceration were taken into account. The frequency of Aboriginal incarceration suggested that their "lifetime" risks of a custodial death were probably greater than those of non-Aborigines (see Broadhurst and Maller 1990*a;* Biles and McDonald 1992).

The RCIADIC reported in 1991 and made sweeping recommendations aimed at reducing Aboriginal involvement in the criminal justice system and addressed the "underlying issues" related to the historical and political dispossession of the Aboriginal people and their subsequent impoverishment and disenfranchisement. Ongoing monitoring of Aboriginal deaths in custody and rates of imprisonment continues with the establishment of a special unit of the Australian Institute of Criminology. The detailed research of the RCIADIC is summarized by Biles and McDonald (1992).

In the post-RCIADIC climate, attention has shifted from deaths in custody and imprisonment to concern with juvenile offending. Aboriginal juveniles are even more overrepresented in juvenile corrections facilities. Some jurisdictions, notably Western Australia (WA), have introduced "three strikes" or repeat offender legislation to curb persistent juvenile and adult offenders, of whom the bulk are Aborigines (see Broadhurst and Loh 1993).

[1] On migrant crime in Australia, see Geis and Jesilow (1988).

In the Australian debate about racial bias in the criminal justice system, the focus of research has been dominated by Aborigines' gross overrepresentation in the prison system. Most research has focused on differences in imprisonment. This is because until recently prison data were the only ready source distinguished by race. Prison data remain the only national source, and the WA police the only provider of detailed arrest and victimization data. However, WA police data have only been available since 1992 for arrest (1993 for victim reports).

Another underused source is the 1994 National Aboriginal and Torres Strait Islander (NATSI) survey that provided self-report arrest and assault victimization data for all jurisdictions. It offers considerable scope for the analysis of the influence of sociodemographic variables (including health, housing, education, and cultural factors) on crime. The survey, however, is confined to Aborigines, is not comparative, and its findings are yet to be exploited.

There has been a remarkable absence of special purpose quantitative studies on the problem of race bias in the Australian criminal justice system along the lines pursued, for example, by Junger and Polder (1992) in the Netherlands or Hood (1992) in England. Juvenile arrest studies in South Australia (SA) by Duguid (1992) and Gale, Bailey-Harris, and Wundersitz (1990) and sentencing studies by Walker (1987) and Broadhurst (1993) provide only limited and contradictory insights and do not always fully exploit multivariate methods of analysis. Adequate racially disaggregated data, which include prior conviction information, are potentially available from SA court records, and WA's integrated crime statistics would enable rigorous analysis of race effects.

Australian research, in both the absence of ready data and a preoccupation with imprisonment, has tended to examine the issue of race bias via deduction from historical and secondary sources or via qualitative and observational methods often motivated by advocacy (see Foley 1984; Cunneen 1992). Despite these serious data limitations, the two principle assumptions have been, first, that the police are more likely to arrest and charge Aborigines than non-Aborigines and, second, that the courts are more likely to be punitive in their treatment of them. Counter to these assumptions is the proposition that Aborigines commit relatively more crime and of a more serious kind, thus accounting for their overrepresentation (Brunton 1993).

In support of the first assumption, arrest patterns show that Aborigines are arrested more often than non-Aborigines, especially for crimes against the person, and lend support to the view that Aboriginal crime

is more serious than non-Aboriginal crime. Nevertheless, it is also observed that Aborigines are seldom arrested for serious fraud and drug offenses but are frequently arrested for minor public order offenses. The data also show that Aboriginal victimization, in respect to crimes against the person reported to police, is perhaps seven times greater than for non-Aborigines (and is mostly intraracial). Given these differences, higher risks of arrest and incarceration for Aborigines might be expected, especially in light of the greater frequency of arrest for public order offenses. Thus there is support for the counterview that high rates of Aboriginal arrest and incarceration are due, in part at least, to the higher incidence and severity of crime among Aborigines.

The first assumption is supported by analysis of WA arrest data, which shows that Aborigines are 9:1 times more likely to be apprehended when compared with non-Aborigines. Duguid (1992) has argued that the greater risk, however, cannot solely be attributed to extralegal factors. If Aborigines were to be incarcerated at approximately the same rate at which they were arrested, we would expect the risk of incarceration to be about the same at 9:1. However, the actual risk of Aboriginal incarceration in WA is about 23:1 or more than twice the proportion expected given arrest risk differentials. Accordingly, the second assumption, that courts are more punitive, appears relevant because, once convicted, Aborigines are estimated to be *about* five times more likely to receive a sentence of imprisonment than non-Aborigines.

The logic that apparently increasing differential risks of victimization, arrest, and incarceration imply disparity between the races is amplified the deeper the Aborigines enter the criminal justice system, and it appears as if system bias may be the inevitable cause. Despite the compelling nature of this evidence, it is not proof of bias because it critically fails to control for prior offending, which is especially relevant considering that Aborigines have significantly higher probabilities of rearrest and longer criminal careers. In any event, the logic breaks down when the expected amplification by the courts is not reflected in the differential risk of incarceration. Given an arrest differential of 9:1 and a five-times-greater chance of a custodial disposition, the logic of increasing risks would anticipate a differential risk of incarceration of approximately 45:1. Differential risks of incarceration at 23:1 fall well short of the predicted disparity and suggest contraction, not amplification, of risks. Interestingly, differential risks are much lower for noncustodial sanctions (12:1) than imprisonment, and relative to their

risks of imprisonment non-Aborigines are only twice as likely to receive these sanctions than Aborigines. Thus despite the imprecision of such gross system estimates, it is difficult to sustain the proposition that overrepresentation of Aborigines in prison is the product of bias amplified by the criminal justice process.

Here is how this essay is organized. Section I defines Aboriginality and discusses common explanations of Aboriginal involvement in criminal justice, including the limited research on racial bias. In Section II, police offense reports are used to explore differences in the prevalence of personal crime victimization including the frequency of cross-race offending. Recent findings of a national self-report survey of Aborigines are compared to findings of national and state crime victim surveys. Section III summarizes trends in arrest patterns from 1990 to 1994 including interstate police custody rates and describes longitudinal estimates of the probability of rearrest. All levels of court activity are described in Section IV, as are attempts to measure differences in dispositions and penalties. Court data are inadequate to examine the issue of bias, and only very approximate measures of Aboriginal overrepresentation can be calculated. Correctional data are the most comprehensive, enabling interstate and international comparisons to be made in Section V. Section VI examines theories to explain the scale of punishment and the causes of Aboriginal overrepresentation.

## I. Aboriginality and Biased Decision Making

Aboriginality has three elements as defined for official purposes by the Australian government.[2] These are that a person is of Aboriginal descent, identifies himself or herself as an Aboriginal, and is accepted by the Aboriginal community with which the person is associated. Australian Bureau of Statistics (ABS) census and statistical collections usually rely on the first two defining characteristics. Police tend to rely on physical identification, and prisons and other criminal justice agencies rely on self-reports. The third criterion is a difficult (and statistically redundant) means of defining Aboriginality, although germane in matters such as land title and religious activities. No precise definition of non-Aboriginality is applied except that it includes all persons who do not identify themselves as Aborigines.

[2] Throughout the text I use Aboriginality or Aborigine as synonymous with Aboriginal and Torres Strait Islander peoples. Names of states are abbreviated as follows: Western Australia (WA), Northern Territory (NT), New South Wales (NSW), and South Australia (SA).

*A. Definitions and Population*

The problem of definition is relevant to the rates that characterize Aboriginals' contacts with the justice system. Rates depend on estimation of denominator populations, and arguments have been advanced that changing levels of identification (willingness to identify as Aboriginal and the scope of the ABS census) have affected estimates of the size of the Aboriginal population. The demographic history of the descendant Aboriginal population is a source of controversy and dispute, and there is considerable difficulty in estimating age-specific and intercensus populations for Aborigines. Examining historical trends in Aboriginal crime or imprisonment is especially fraught.

Significant variations arise in estimates of Aboriginal involvement in the justice system, particularly "overrepresentation" or disparity measures, because of the variety of population denominators employed. These variations in population estimates are further complicated by differences in whether census or other measures are employed. To standardize my approach I use estimates of the resident Aboriginal population provided by the ABS for census 1991 and the NATSI survey for 1994 and for intercensus 1986–91 experimental estimates provided by the demographers Benham and Howe (1994) or by extrapolation from the 1991 census.

The Aboriginal population differs markedly from the general Australian population in that they are significantly younger, live in larger households (with more dependents), are less likely to own a home, have much higher levels of unemployment, and are more likely to reside in rural areas. Their average income is two-thirds the national average, and high school and higher education retention is well below national participation rates. Life expectancy is estimated to be between fifteen and seventeen years less than that of the whole population, with significantly increased risks of infant and perinatal mortality, hospital admission, diabetes, eye disease, and other morbidities. Moreover, Aboriginal lifestyles, customs, and worldview differ in important respects from those of Europeans with direct consequences for the administration of justice.[3]

[3] Fuller discussion of the characteristics of Aboriginal law is not attempted here. Conceptually, it is fundamentally different from English law, especially in distinguishing between secular and sacred areas. The roles of kinship, restitution, and private versus collective action are striking, as are aspects such as strict liability and the character of punishments. See the Australian Law Reform Commission (1986) for fuller discussion and coverage of civil matters like property, marriage, child custody, gaming, and fishing rights.

The Aboriginal population is significantly more rural, with only 27 percent living in major urban centers compared to 63 percent of all Australians. Nearly a third (32 percent) of Aborigines reside in rural or remote districts compared to 15 percent of all Australians. Significant differences in the extent that Aborigines reside in major urban centers (cities over 100,000 persons) occur according to state. The NT is the least "urbanized" state, with 65 percent of its Aboriginal population living in rural areas (see Australian Bureau of Statistics 1994*a*).

*B. Explanations of Aboriginal Crime*

Before examining the data, it is necessary to consider the explanations usually given to account for differences in Aboriginal and non-Aboriginal representation in crime statistics. Until relatively recently, the main explanations were based on heredity ("born" criminal), later deprivation (strain/stress), labeling (cultural or racial stereotypes), conflict (different values), and multifactorial and synthesized theories of crime causation.

The hereditary thesis with its origins in phrenology is now fully discredited (Fink 1938). It remains, one suspects, a popular notion among large segments of the Australian public, especially when blended with the other "causes." The notion of biological causes of Aboriginal crime is now more likely to be explained in terms of vulgarized cultural heritage: the tendency to go "walkabout" (interrupts employment), communal sharing and an absence of personal property (leads to a disregard for property), the lack of cultural wisdom or control regarding European imports such as drinking (cannot handle alcohol), and "payback" (an example of lawlessness).

The appeal of deprivation or strain theory explanations rests on the manifest poverty, alienation, all-pervading anxiety, stressed conditions, and "dispossession and powerlessness" of Aboriginal people. An extension of this idea argues that the frustrations caused by deprivation, especially those caused by dispossession, often turn inward on the self and behavior loses meaning and becomes self-destructive. Dispossession is particularly destructive because it breaks the symbiosis between land and culture, past and present; more important, it interdicts the association between the material and the spiritual culture. Because of this, deviance or criminal behavior is one of the few ways open to those deprived of the normal capacity to assert identity or acquire the material benefits of the Australian lifestyle or to escape the stigmatization of poverty and low self-esteem through alcohol abuse.

High rates of unemployment, poor education, poor health, and high crime all testify to the extent of deprivation and thwarted opportunity. The poverty cycle is associated with race and crime; hence Aborigines become associated with crime and are "labeled" and then are expected to confirm the stereotype characterized above. In practice this means all Aborigines come under more intensive surveillance, especially by police, because of their "lawlessness" or "dangerousness," and a self-fulfilling prophecy is generated (see New South Wales Anti-discrimination Board 1982).

Interest in conflict theory has also been revived by the stimulus of revisionist history that has documented the struggle or "warfare" between the races over land use (e.g., Gill 1977; Green 1981; Reynolds 1981; Rose 1991). This reevaluation of Aboriginal-settler relations destroyed the myth of settlement without conquest and culminated in the celebrated 1992 High Court case of *Regina v. Mabo*, which established common-law native land title, overturning the long-established doctrine of *terra nullias* (Bartlett 1993; Rowse 1994). The essential theme of conflict theory, whether applied to minorities or social class, is that the legitimacy of the law is rejected by the "deviant" group on the grounds that it fails to recognize or represent their values. Conflict theory can be applied to Aboriginal aspirations for land versus the imperative to exploit the land in the national interest.

Direct reference to the economic nature of the struggle in contemporary times has been neglected in criminological accounts. Aboriginal overinvolvement in arrest and imprisonment appears very closely related to, and coincides with, economic expansion—and renewed competition over land use in the hitherto remote and "unsettled" parts of North West Australia (Broadhurst 1987, 1988).

Another neglected possibility, often ignored, describes crime as a form of resistance or proto-revolution. Cunneen (1988), however, uses the idea to describe "race riots" in northern NSW. Thus the "criminal" behavior of some Aborigines, while not organized and disciplined in the conventional manner or sense of a "revolutionary" or millennial movement, spontaneously has all the requisite ingredients of political struggle—anger is not directed randomly but at the state and the symbols of authority for limited political purpose.

Undoubtedly, some Aboriginal crimes have elements of rebellion and protest. This is most obvious in the occasional melee or "riot" in country towns (or the inner city) mostly directed at police and publicans. This resistance has been acknowledged by police in some com-

munities as amounting to "aggressive resistance towards police" (Police Inspector Rippon, quoted in Hazelhurst 1987, p. 243). This is the explanation that most frightens the propertied classes of provincial centers and perhaps accounts for intense agitation for more "law and order."

It has been argued that self-help strategies (i.e., Aboriginal courts and community policing) and depolicing of Aboriginal communities may have prospects of reintroducing stronger civil (and by definition more appropriate and legitimate) mechanisms of social control that will ultimately reduce overuse of imprisonment. At the same time withdrawal of policing would allow a rapprochement in the practice of law enforcement for "the relationship between law and self-help is inverse, it follows that the larger and more intrusive a police force is, the weaker self-help will be, a pattern that in the long term exacerbates the problem of crime" (Black 1980, p. 195). Extensive policing of Aboriginal communities has contributed to the demise of effective self-regulation or internalized controls and inevitably intensifies state intervention.

Under the rubric of "self-determination," there is now considerable agreement among many experts (e.g., Australian Law Reform Commission 1986; Hazelhurst 1987; RCIADIC 1991*a*, 1991*b*) that greater involvement of Aboriginal people in their "own" policing and criminal justice processing should be encouraged.

*C. Racial Bias*

Despite the interest generated by the RCIADIC in Aboriginal justice issues, there have been few specific efforts empirically to test for evidence of racial bias in the administration of justice. The RCIADIC systematically measured disparity but was not able to carry out rigorous quantitative studies of racial bias among police, courts, or correctional authorities. Generally, it was assumed that the huge differential risks between Aborigines and non-Aborigines in imprisonment were, if not the direct result of racial prejudice, at least the indirect result of the "underlying issues" of poverty, unemployment, disenfranchisement, and dispossession.

One of the few specific attempts to test racial "bias" by police was undertaken by Gale and Wundersitz (1987) and also by Gale, Bailey-Harris, and Wundersitz (1990) who studied differences in the arrest rates of Aboriginal and non-Aboriginal juveniles in Adelaide for the year 1983–84. They found in their matched study (drawing on some 7,156 cases of whom 289 were Aborigines) that there was "no statisti-

cal evidence to indicate that, at the point of arrest, police overtly discriminate against Aborigines on racial grounds" (Gale and Wundersitz 1987, p. 92). Instead, they found unemployment was "independently associated with the likelihood of arrest" (Aborigines were more likely to be unemployed), and the pattern of arrest (as opposed to being cautioned or summoned) did differ significantly for Aboriginal youths. Limitations in the official data available did not enable them to explore the issues with adequate rigor, and they concluded: "Whatever the root causes, Aboriginal youths continue to be disadvantaged by the discretionary process operating at the point of entry into the juvenile justice system" (Gale and Wundersitz 1987, p. 93). In a later account Gale, Bailey-Harris, and Wundersitz (1990) found from direct observation and other sources that police/Aboriginal contacts were highly affrontive, hostile, and presumptive on both sides. The consequences are to heighten the likelihood of arrest even in those situations where no manifest offense or public disturbance has occurred.

A subsequent detailed reanalysis of the Gale and Wundersitz study by Duguid (unpublished, 1992), confirmed strong differences in the probabilities of arrest for the races; that is, higher risks of rearrest for Aborigines. Duguid's study was able to draw on extended data from the period 1980–84 and to control for all variables available from children's court and panel appearances (age, sex, race, offense, arrest or summons, neighborhood, employment, family structure, address, previous appearances, and number of charges), as well as to address the problem of sparse data.

Like Gale and Wundersitz (1987) and Gale, Bailey-Harris, and Wundersitz (1990), Duguid was unable to demonstrate that this higher risk was the result of unfairness (harshness in the case of police). This was because key factors in legitimate application of police discretion to arrest—such as ensuring the appearance of the offender, preventing the continuation of further offenses, and the hindrance of justice (e.g., destruction of evidence)—are not measured by the more general variables used in the inferential statistical analysis. Duguid maintained, nevertheless, that while "Gale, Bailey-Harris, and Wundersitz (1990) found no statistical evidence that Aborigines were more likely to be arrested rather than reported, after taking into account the nine variables identified by them and also used . . . I have found overwhelming evidence for this. On this point we have reached opposite conclusions" (Duguid 1992, p. 4).[4]

[4] "Reported" in this context means summonsed or cautioned instead of being arrested and taken into custody.

Duguid's less well known but equally important follow-up of the study by Gale, Bailey-Harris, and Wundersitz (1990) provides clear statistical support for the proposition that "race" or Aboriginality increases the risk of arrest for Adelaide juveniles. However, "Aboriginality" may be a factor or variable that catches a number of stigmatizing characteristics (such as truancy, unemployment, substance abuse) and in this sense operates as a shorthand "predictive" model for police as to who is a high-risk juvenile.

Supportive quantitative studies on police interaction with Aborigines, which would enable precise tests of bias, are notably absent (see, however, the qualitative studies of New South Wales Anti-discrimination Board 1982; Foley 1984; Roberts, Chadbourne, and Murray 1986; RCIADIC 1991*b*). The available work shows an interaction between unemployment and increased chances of involvement with the law and consequently suggests that poverty mediates the response to Aborigines. However, given Duguid's important reanalysis, calculating exactly the probabilities and accounting for the problems of sparse data and the assumptions of logistic regression combined with the qualitative field data, we know that "Aboriginality" is a powerful discriminator. Thus without contrary data on how discretion is practiced, action is needed to make the system fairer for Aborigines.

## II. Crime Victimization

Although three National Crime and Safety (NCS) surveys (and several state surveys) have been conducted in Australia in 1975, 1983, and 1993 by the Australian Bureau of Statistics, there has been no comprehensive attempt to estimate the proportion of victims who are Aborigines (Australian Bureau of Statistics 1979, 1983, 1992*b*, 1994*b*). The relatively small proportion of Aborigines in the Australian population has prevented separate estimates for them. Consequently, the only data available on the "race" of victims is derived from WA police records of citizen reports of crime (and only in relation to offenses against the person), available on a regular basis since 1991 (Broadhurst, Ferrante, and Susilo 1992).

### *A. Victim Surveys*

This dearth of data has been partly rectified by the 1994 NATSI survey (Australian Bureau of Statistics 1995*a*). This is the first comprehensive survey of Aboriginal society (outside the population census) conducted in Australia that yielded information on a range of subjects, including language and culture, family, land use, education and train-

ing, employment and income, health, diet, alcohol use and health services, and law and justice.

Of the questions related to crime and justice, importantly, one replicating the 1993 NCS question on assault was asked. "In the last year has anyone attacked or verbally threatened you?" appeared regularly in previous crime victim surveys conducted by the ABS both nationally and in WA in 1991, SA in 1991, and NSW from 1990 to 1994.[5]

The survey found that 12.9 percent of the Aboriginal population said they were the victim of an attack or verbal threat. The 1993 NCS estimated 2.5 percent of all Australians were the victims of such assaults, and thus the NATSI survey found assault approximately five times more prevalent among Aborigines than all Australians.[6] For WA the NATSI survey found a slightly higher estimate of assault at 13.5 percent due to a higher rate of verbal threats reported by males. The 1993 NCS estimated 2.2 percent of Western Australians were the victims of assault, and thus Aborigines are about six times more at risk of assault than all Western Australians. This is similar to the differential risk calculated from official police records of offenses against the person discussed below.

Nearly three-fifths of WA Aboriginal assault victims (7.9 percent) reported being physically attacked. Males (9.4 percent) were more likely to be physically assaulted than females (6.3 percent), and young adults (18.7 percent of those aged 20–24) were more at risk than older age groups (6.2 percent of those aged 44 and over). Assaults were more likely to be reported to the police if they involved a physical attack rather than a verbal threat, and males were less likely than females to report an assault. For example, 45.6 percent of females reported a physical assault to police compared to only 24.6 percent of males. Moreover, males were more likely not to report because the assault was not considered serious enough (17.9 percent of males compared to 5.7 percent of females) or they did not wish to involve police (23.5 percent of males compared to 4.4 percent of females). Similar differences in the willingness of victims to report to the police were observed by age,

[5] Other questions dealt with family violence, police performance, and legal aid and are reported when relevant below. The survey contacted 17,500 respondents or approximately 6.6 percent of the Aboriginal and Torres Strait Islander population.

[6] The NATSI and 1993 NCS are not directly comparable. The NATSI survey was conducted face-to-face, while the NCS was a drop-off/mail-back strategy. The NATSI included all persons over the age of thirteen years, while the NCS applied only to those fifteen years and over. The NATSI survey is likely to encourage more reporting than the NCS.

with older offenders more likely to report to police and less likely to say that the assault was not serious.

Interestingly, WA Aborigines appear less willing to report a physical assault to police than do Aborigines elsewhere. The NATSI survey estimated that overall, 43.6 percent of Aborigines reported a physical assault (30.6 percent reported verbal threats) to police but only 33.4 percent of WA Aborigines did so (29.8 percent reported verbal threats). The lower rate of reporting applied across sex and age groups. It appears that the least willing to report (in any jurisdiction) were the youngest age group.[7] However, the proportion of Aboriginal assault victims willing to report to police does not appear to differ from the reporting rate of non-Aborigines. The 1993 NCS found that 32.1 percent of respondents Australia-wide and 35.3 percent of those in WA reported their assault (physical or verbal) to police (Australian Bureau of Statistics 1994*b*).

It is often speculated that ethnicity or minority group status will affect the willingness of victims to report crimes to police. But comparing the NCS and NATSI survey estimates of the willingness of victims to report shows (at least for assault) that, in this respect, generally differences between Aborigines and non-Aborigines are small. For specific groups, disaggregated by sex, age, and race, some variations in reporting rates and in the severity or injuries may occur.

*B. Crime Victims—Crimes Reported to Western Australia Police in 1993*

In 1993 the WA police recorded 13,620 offenses (5.6 percent of all reported offenses) against the person (homicide, assault, sex offenses, robbery, kidnapping, and other "violent" offenses), involving 11,283 separate victim reports, of which 56 percent were reported as being cleared by police by charge or other means including unfounding of the alleged offense. Victim reports, which may loosely be referred to as "distinct" victims, are used as the basis for describing the relationship between victim and offender, where known (including sex and race). Each "victim report" may include more than one victim and more than one alleged offender, but for present purposes only the first victims' and the first offenders' details were recorded.

After adjustment for missing records (12.5 and 2.7 percent, respec-

[7] Reporting rates are based on the last incident and in the case of WA are complicated by a high "not stated" response. Nationally, the nonresponse rate for this question (physical assault) was 3.9 percent, but in WA it was 10.3 percent with young males accounting for most of the nonresponse.

TABLE 1

Rates per 100,000 Relevant Population of Victimization for Offenses against the Person, 1993

| Group | Against Person | Homicide |
|---|---|---|
| Aborigines | 3,699.0 | 33.28 |
| Non-Aborigines | 570.5 | 2.02 |
| All | 677.1 | 2.86 |

SOURCE.—Harding et al. (1995).

tively, lacked sex and race data), Aborigines were victims in 15.2 percent of offenses reported to police. Aborigines make up about 2.63 percent of the WA population, and thus are 5.78 times more likely to be a victim of violence than would be expected. As table 1 shows, differential risks of victimization for the races can be calculated for all offenses against the person.[8] For non-Aborigines the rate of reported violent crime is estimated to be 570.5 per 100,000 and for Aborigines 3,699.0 per 100,000, and therefore Aborigines are 6.5 times more likely to be a victim of a violent crime than non-Aborigines.

In relation to homicide (excluding driving-caused deaths) forty-eight homicides were reported in 1993 to police at a rate of 2.9 per 100,000 population. Of these forty-eight cases, fifteen were Aborigines, yielding a rate of 33.3 per 100,000, and 33 were non-Aborigines at a rate of 2.0 per 100,000—a differential risk of homicide of 16.5:1. Thus Aborigines were over sixteen times more likely to be a victim of homicide than were non-Aborigines.

Sex- and age-specific rates of "violent" victimization reveal that Aboriginal females were substantially more at risk than any other group. Female Aborigines' risk of victimization peaked at 10,255 per 100,000 or about one in ten for those aged 20–24 years. Male Aborigines risk peaked at 3,688 per 100,000 for those aged 25–29. Non-Aborigines risk of victimization peaked in the 15–19 years group for either sex with rates of 1,386 per 100,000 for teenage males and 1,101 per 100,000 for teenage females. The data show that risks of victimization decline with age for all groups, but intriguingly the differential risks (the ratio of Aborigine/non-Aborigine) tend to increase with age so

[8] Of the 11,283 offense reports, 310 did not contain data on race, and allocating these to either race on a pro rata basis permits rates of violent crime to be estimated.

that middle-aged Aborigines are ten times more at risk than are middle-aged non-Aborigines. The age-specific rates of victimization for those aged 10–14 years were 1,506 per 100,000 for Aborigines and 687 per 100,000 for non-Aborigines, a differential risk of 2.2. But by age 35–39, the rate for Aborigines was 5,257 per 100,000 and that for non-Aborigines was 422 per 100,000, a differential risk of 12.4 (Harding et al. 1995).

Aboriginal victims were significantly more likely to sustain serious injury—a factor that may account for their relatively high level of reporting to police. While 37.1 percent of non-Aborigines reported no physical injuries as a result of their victimization, only 14.3 percent of Aboriginal victims reported no injury (Harding et al. 1995).

1. *Victim-Offender Relationships.* The availability of detailed information from the Offence Information System (OIS) makes it possible to determine the proportion of offenses against the person that occur in interpersonal or domestic relationships. Such offenses, sometimes called incidents of "domestic violence," can be approximately determined by reference to information on the relationships of victims to offenders, if this is known. This information also allows the incidence of so-called stranger violence to be estimated.

Patterns of relationships differ markedly by the nature of the offense and the sex and race of the victim. Table 2 reports victim-offender relationships by race for five broad categories of victim-offender relationship and several serious offenses against the person. Robbery is not included since there is usually no relationship between the victim and the offender recorded by police. Women are more likely to be victimized by someone known or related to them, whereas men are more prone to "stranger" violence. For males, "sex assault" and "homicide" are the only offenses where the victim knew the offender more often than not. Table 2 shows that Aborigines (like females) were also more likely to be victimized by someone known or related to them than non-Aborigines. Aboriginal victims are more likely to be offended against in domestic or "family" situations or by someone they know.

For assault offenses the proportion of family members or spouses who offended against the victim provides some guide to the extent of reported offenses of "wife-bashing" and other "domestic violence." The available data, of course, cannot be a guide to unreported offenses, but permit an estimate of the prevalence of "domestic violence" from known (recorded) offenses against the person.

Based on the 750 offenses against the person in which the offender

TABLE 2

Victim-Offender Relationship (by Race of Victim)—Selected Offenses against the Person, Western Australia, 1992–93 (in Percent)

| Offense | *N* | None | Spouse | Family | "Friend" | "Other" |
|---|---|---|---|---|---|---|
| Homicide:* | | | | | | |
| Aboriginal victim | 31 | 29.0 | 22.6 | 22.6 | 16.1 | 9.7 |
| Other victim | 73 | 41.1 | 17.8 | 12.3 | 9.6 | 19.2 |
| Serious assault:† | | | | | | |
| Aboriginal victim | 1,322 | 26.3 | 30.3 | 16.9 | 10.2 | 16.3 |
| Other victim | 3,285 | 61.7 | 5.3 | 4.4 | 8.2 | 20.4 |
| Common assault: | | | | | | |
| Aboriginal victim | 1,587 | 33.8 | 22.7 | 16.8 | 7.8 | 18.9 |
| Other victim | 9,279 | 63.9 | 4.6 | 3.6 | 6.2 | 21.8 |
| Sex assault:‡ | | | | | | |
| Aboriginal victim | 232 | 34.0 | 3.1 | 32.8 | 19.0 | 12.1 |
| Other victim | 1,685 | 36.4 | .8 | 25.3 | 17.3 | 20.2 |

SOURCE.—Ferrante, Loh, and Broadhurst (1994).

* Includes attempted murder but excludes driving as cause of death.

† Includes grievous and aggravated bodily harm.

‡Includes sex offenses against children.

was the spouse of the victim, Harding et al. (1995) calculated crude estimates of the prevalence of reported domestic violence in the WA adult population for adult Aboriginal females of 3,075 per 100,000 compared with a rate of 58.9 per 100,000 for adult non-Aboriginal females.[9] Adult Aboriginal females were fifty times more at risk of spousal violence than adult non-Aboriginal females.

2. *Cross-Race Violence.* Data collected by the OIS on the race of the victim and the race of the alleged offender (where known) enable us to examine to what extent these offenses of violence are inter- or intraracial. The classification of race is collapsed into Aboriginal and non-Aboriginal. Consequently, the extent to which victims and offenders interact from Asian and non-English-speaking backgrounds is not detailed. The description is also limited to offenses against the person where the relevant data are most complete for 1993.[10]

Data are reported when both victim and offender information are

[9] The category "domestic" includes wife or husband, de facto and estranged spouse.

[10] Of the 176,921 offense reports recorded by police in 1993, descriptive information on 33,042 alleged offenders was obtained. Of these, 19.9 percent were females and 30.8 percent were Aborigines. For a large number of cases the victim's sex (48.1 percent) or race (51.0 percent) was not recorded because the offenses were not against persons.

TABLE 3

Relationship between Race of Victim and Race of Offender, 1993 (in Percent)

| | Assault | Sex Offenses | Robbery | Homicide |
|---|---|---|---|---|
| Intraracial | 77.4 | 94.2 | 75.0 | 88.7 |
| Interracial | 22.6 | 5.8 | 25.0 | 11.3 |
| *N* | 4,191 | 703 | 324 | 53 |

SOURCE.—Ferrante, Loh, and Broadhurst (1994).
NOTE.—Missing race cases are excluded.

available on the offense report; in about half of the reported cases data on the race of the victim or offender are missing. Table 3 summarizes the extent to which robbery, assault, sex offenses, and homicide offenses are cross-racial. For these offenses, victim and alleged offender information is absent in 48.2 percent of assault, 56.8 percent of sex, and 75.6 percent of robbery offenses. Considering only those cases where both victim and offender race were present, interracial offenses against the person occur in about one in seventeen sex offenses, about one in five assaults, one in four robberies, and about one in nine homicide offenses. Except for the rarer offenses of homicide and kidnap, these ratios appear stable, with little year-to-year variation. For example, in 1992 a larger proportion of homicides (36.2 percent) were interracial.

Information is based on the victim's report of the offense and thus is subject to error by misidentification of the alleged offender's race. Moreover, the nature of official records limits ability to generalize about interracial offenses because of the underreporting of offenses (similar difficulties occur with the victim-offender relationship data). Caution needs to be exercised, therefore, in interpreting the data because differential rates of reporting to the police by Aborigines and non-Aborigines cannot be ruled out even though NCS and NATSI survey data indicate few differences. Ethnic minorities may be more likely to underreport offenses when the alleged offender is from the majority ethnic group, and ethnic majority victims may be more likely to report offenses when the alleged offender(s) is from a minority group. Such differential rates of reporting offenses are likely to accentuate interracial offenses against the person.

Interracial violence reported to police is mostly characterized by a

non-Aboriginal victim assaulted by an Aboriginal offender. Of the 945 victims (22.6 percent of all assaults) of cross-race assault, 93.3 percent were non-Aborigines and 6.7 percent Aborigines. For the other offenses summarized in table 3, a similar pattern is apparent. For example, of the forty-one victims of cross-race or interracial sex offenses, 75.6 percent were non-Aborigines, and 24.4 percent Aborigines; of the eighty-one victims of interracial robbery offenses (or 25.0 percent of robbery offenses), only one (1.2 percent) was an Aboriginal victim of non-Aboriginal offenders; and of the six interracial homicides, five (83.3 percent) were non-Aboriginal victims, and one (16.7 percent) was an Aboriginal victim.

The predominant pattern of interracial offending is Aboriginal offenders against non-Aboriginal victims, while almost all Aborigines were victimized by Aboriginal offenders. It is important to stress that these data do not indicate the degree to which race itself was a motive in offending. The extent to which such offending represents racial conflict requires detailed research not attempted here. Given the conflictual nature of most Aboriginal police relations it would also be unwise to conclude that these statistics reflect an accurate picture of the nature of interracial offending.

## III. Police and Aborigines—Arrests

Information about police apprehensions or arrests is a crucial measure of law enforcement activity. For offenders it is the gateway to further involvement in the criminal justice system. Arrest data are the basic official measure of offending behavior and in Australia are available by race only from WA police. This section describes Aboriginal and non-Aboriginal apprehensions or offenses charged by police during 1990–94 and probabilities of rearrest and briefly summarizes the NATSI survey estimates of the prevalence of arrest. Large differences in the risk of arrest between Aborigines and non-Aborigines are observed, and contrary to expectations that the recommendations of the RCIADIC would decrease the relative risks between the races, there have been increases. Based on 1994 WA police records, Aborigines were 9.2 times more likely to be arrested than non-Aborigines.

A distinction between arrests (or all offenses charged, but not multiple counts of those offenses) and individual persons arrested is made. This distinction provides a more detailed description of the data. Reference is also made to "counts." These are all alleged offenses, inclu-

TABLE 4

Trends in Recorded Arrests, 1990–94

| | 1990 | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|---|
| Persons arrested: | 39,178 | 40,539 | 37,463 | 34,602 | 35,328 |
| Aborigine | 6,490 | 7,212 | 6,970 | 6,919 | 7,262 |
| Non-Aborigine | 30,995 | 32,479 | 30,059 | 27,273 | 27,571 |
| Unknown race | 1,693 | 848 | 434 | 410 | 495 |
| All apprehensions (arrests) | 86,079 | 91,680 | 83,517 | 78,859 | 77,987 |
| All offenses charged (counts) | 109,779 | 115,495 | 107,360 | 101,528 | 99,549 |

SOURCE.—Ferrante, Loh, and Broadhurst (1994); and personal communication with N. Loh, August 1995, for 1994 arrest data.

sive of multiple incidents of the same type of offense, for which charges have been laid.

Individuals arrested during the counting period are counted once, even though they may have been arrested on more than one occasion or for more than one offense or charge. By counting distinct persons we can tell how many people were involved in alleged offending ("prevalence," rather than how many alleged offenses had been brought to charge, "incidence"). To describe distinct persons, I count only the charge that was the most serious, if there was more than one during the period.[11]

*A. Arrest Data by Aboriginality*

The 1993 police data record 34,602 distinct persons, charged with 78,859 separate alleged offenses (an average of 3.4 for Aborigines, 2.0 for non-Aborigines, and overall 2.3 charges per person) involving a total of 101,528 counts. Compared to previous years, as table 4 shows, these figures represent significant decreases in apprehensions. The number of distinct persons arrested compared to 1992 fell by 7.6 percent, the number of apprehensions by 5.6 percent, and the number of total charges by 5.4 percent. The total decreases from 1991 to 1994 were larger. Most of the decline can be attributed to reductions in non-Aboriginal, particularly juvenile, arrests. A significant 42.5 percent re-

[11] Although apprehensions involving minor traffic offenses (e.g., speeding and parking offenses) are not included, the data include other traffic-related offenses not usually regarded as crimes. The data do not include juvenile first offenders who appear before the children's (suspended proceedings) panel or who are cautioned. Thus it excludes apprehensions of young offenders who are diverted to alternative procedures.

TABLE 5

Prevalence of Arrest by Race for Western Australia, 1994

| | Population | Number of Arrests | Population Arrested (Percent) | Rate per 100,000 | Risk Ratio |
|---|---|---|---|---|---|
| Aboriginal population | 47,251 | 7,364 | 15.58 | 15,584 | 9:22 |
| Non-Aboriginal population | 1,654,649 | 27,964 | 1.69 | 1,690 | . . . |
| Western Australia population | 1,701,900 | 35,328 | 2.07 | 2,075 | . . . |

SOURCE.—Personal communication with N. Loh, August 1995, for 1994 data. Population estimates: Western Australia estimated resident population at June quarter, 1994 (preliminary estimates) are from Australian Bureau of Statistics (1995*b*); Aboriginal population June 1994 is from table C of Australian Bureau of Statistics (1995*a*).

NOTE.—Cases of unknown race are allocated on a pro rata basis.

duction in juvenile arrests from 6,321 or 16.2 percent of all arrests in 1990 to 3,633 or 10.5 percent of all arrests in 1993 is mostly attributed to the introduction of cautioning from August 1991 onward, and the extension of eligibility to appear before a children's (suspended proceedings) panel to juveniles aged seventeen.

In 1.2 percent of cases in 1993, race was not recorded. After adjustment for these unknown cases, one in five distinct persons arrested (20.2 percent) was an Aborigine. However, while 17.9 percent of adults arrested were Aborigines, 30.9 percent of juveniles arrested were Aborigines. The proportion of Aborigines among total arrests has increased since 1990 from 17.1 percent to 20.6 percent in 1994 despite a general decline in arrests and charges.

Differences in the risks of arrests between Aborigines and non-Aborigines are striking. Although as noted, Aborigines make up an estimated 2.63 percent of the WA population, they comprise one-fifth of all individuals arrested. Estimates of the annual prevalence of arrests for 1994 are shown in table 5. Nearly 16 percent of the Aboriginal population was arrested at least once compared to just under 2 percent of the non-Aboriginal population.

Aboriginal estimates of the prevalence of arrest were obtained from the NATSI survey, which asked respondents (over the age of thirteen) if they had been arrested (and how often) in the last five years. Over a quarter (25.4 percent) of WA Aborigines reported being arrested compared to 20.4 percent of Aborigines nationally. About two-thirds of those arrested (15.8 percent) of WA Aborigines reported being arrested more than once in the past five years. By recalculating the estimates of prevalence in table 5 based on the denominator population

aged over thirteen years, a comparison with the NATSI estimates can be made. On this basis the annual prevalence rate of recorded arrest is approximately 22 percent and close to the 25.4 percent (over five years) estimated by the NATSI self-report survey.

Variations in the prevalence of arrest by jurisdiction were observed; for example, in Tasmania only 12.6 percent of the Aborigines reported an arrest, whereas 28.5 percent of Aborigines in SA did so. Factors such as age, sex, and employment status also varied the risks of arrest, especially for those who reported being arrested more than once (Australian Bureau of Statistics 1995*a*, NATSI table 53).

Arrest rates declined significantly from 1990 to 1994 for both races and overall. However, decreases were much larger for non-Aborigines than for Aborigines, and relative differences in the risks of arrest for the races have increased. In 1990, Aborigines were 7.7 times (risk ratio) more likely than non-Aborigines to be arrested, but by 1994 Aborigines were 9.2 times more likely to be arrested. From a policy point of view it appears that diversionary schemes (such as cautioning) have had a more substantial impact on non-Aboriginal rates of arrest than on Aboriginal rates (see Broadhurst and Ferrante 1993). Age-specific rates for the races highlight the substantially higher risks of arrest for Aboriginal youth, especially those ten to fourteen years of age. The age-specific rate for this group was estimated to be about 263 per 100,000 for non-Aborigines but 7,240 per 100,000 for Aborigines.

The mean age of those arrested was 27.4 years, although females tended to be slightly older (28.1 years) and Aborigines somewhat younger (25.8 years). Age-standardized rates for arrest peak at 6,985.1 per 100,000 among those nineteen to twenty-four years of age, irrespective of race. For non-Aborigines, rates of arrest for this age group were 5,870 per 100,000 but for Aborigines they were an incredible 42,182 per 100,000.

Differential risks of arrest are greatest for the ten-to-fourteen age group (27.5:1) and lowest for the fifteen-to-eighteen (6.9:1) and nineteen-to-twenty-four (7.2:1) age groups The high rate of arrest for the younger Aboriginal age groups is also reflected in very high rates of juvenile detention (see below). Although significant declines in rates of arrest have occurred for juvenile Aborigines since the introduction of cautioning, these have been offset by only modest declines (even increases) for older age groups.

Police arrest records strongly suggest extremely high levels of contact and conflict with Aboriginal youth, which is borne out by the

TABLE 6

All Charges involving Aborigines, Females, and Juveniles, by Offense Group, 1993 (in Percent)

| Offense Group | Aboriginal | Juvenile | Female |
|---|---|---|---|
| Against the person | 40.3 | 15.8 | 12.2 |
| Break and enter/theft | 29.8 | 32.9 | 21.3 |
| Property damage | 39.2 | 29.4 | 13.1 |
| Good order | 45.3 | 16.4 | 17.7 |
| Drugs | 5.4 | 9.6 | 16.0 |
| Driving | 21.1 | 9.5 | 10.9 |
| Other offenses | 38.3 | 14.5 | 19.1 |
| Unknown | 24.1 | 20.3 | 15.3 |
| Total | 28.6 | 17.7 | 15.8 |

SOURCE.—Ferrante, Loh, and Broadhurst (1994).
NOTE.—Missing race, sex, and age cases are excluded.

NATSI survey questions relating to police harassment and assault. Of the WA Aborigine sample, 10.2 percent stated they were "hassled by police," and 3 percent claimed they were physically assaulted by police in the last year. Young men made up the bulk of complainants: 31.1 percent of males aged fifteen to nineteen years said they were "hassled" and 8 percent claimed they had been physically assaulted, and for males aged twenty to twenty-four years 23.1 percent claimed they were "hassled" and 8.8 percent assaulted (Australian Bureau of Statistics 1995*a*, NATS1 table 57).

*B. Race and Offense Type*

Aborigines were least likely to be charged with fraud offenses (only 7.7 percent of charges) but more likely to be charged with vehicle theft (50.8 percent of charges) and break and enter offenses (40.7 percent). One-fifth (20.8 percent) of receiving charges and 24.8 percent of other thefts involved Aborigines.

Table 6 summarizes data for the proportions of Aborigines, juveniles, and females arrested for various offenses. For example, 40.3 percent of offenses against the person were laid against Aborigines, while 59.7 percent were against others; 15.8 percent of such charges were against juveniles, while 84.2 percent were against adults; and 88.2 percent of these offenses were allegedly committed by males, while 12.2 percent were by females.

Aborigines are more likely to be charged with offenses against the person, property damage, and good order offenses and less likely to be charged with driving/motor vehicle and, in particular, drug offenses than their overall representation in the data. Juveniles are more likely to be charged with break-and-enter/theft and property damage than other offenses. Female offenders are more likely to be charged with break-and-enter/theft offenses.

### *C. Police Custody in Western Australia and the National Survey of Police Custody*

Of the 34,602 persons arrested or apprehended in 1993, fourteen per cent were held in custody, three-fifths were bailed (52.8 percent), and one-fifth (21.8 percent) were issued with a summons. Custody information was not recorded for eleven percent of arrests. Aborigines are more likely to be held in custody (20.3 percent; 13.0 percent of non-Aborigines) and significantly less likely to be summonsed (10.6 percent; 24.9 percent of non-Aborigines). Slightly more Aborigines (56.4 percent) than non-Aborigines (52.5 percent) were admitted to bail. These data underestimate incidents of police custody because they exclude multiple incidents of custody and detention for drunkenness.

The second National Police Custody (NPC) survey of August 1992 shows WA had the highest rate of Aboriginal detention followed by SA and the NT, whereas Tasmania and Victoria had the lowest. Over-representation ratios varied from a low of 3:1 for Tasmania to a high of 52:1 for WA (see table 7). The NT had the highest non-Aboriginal police custody rates, and Victoria the lowest.

### *D. Rearrest Probabilities*

Estimates of the risk of rearrest for persons arrested are based on apprehension records of the Western Australian Police Service collected over the period April 1, 1984, to June 30, 1993 (Broadhurst and Loh 1995). About 757,000 charges were found, involving 518,915 arrests and 208,059 individuals.[12] As the aim was to estimate probabilities of rearrest, it was important to establish the order and timing of arrest.

[12] An arrest was defined as a charge laid on a given date. If more than one charge was laid on the same day, it was counted as only one arrest. The rule assumed that an individual would not be arrested more than once a day. Finding an arrest record prior to the initial collection start date (April 1, 1984) depended on determining the sequential fingerprint-based identification numbers that were issued prior to that date by the Bureau of Crime Intelligence.

TABLE 7

National Police Custody Rates per 100,000, by State, 1992

| State | Total Rate | Aboriginal Rate | Non-Aboriginal Rate | Over-representation Ratio |
|---|---|---|---|---|
| Northern Territory | 1,001 | 3,628 | 253 | 14:3 |
| Western Australia | 310 | 7,001 | 135 | 51:9 |
| South Australia | 226 | 3,720 | 178 | 20:9 |
| Queensland | 205 | 2,094 | 157 | 13:3 |
| New South Wales | 98 | 1,246 | 79 | 15:8 |
| Victoria | 80 | 772 | 76 | 10:2 |
| Tasmania | 86 | 242 | 82 | 3:0 |
| Australian Capital Territory | 105 | 452 | 103 | 4:4 |
| Australia | 152 | 2,801 | 107 | 26:2 |

SOURCE.—McDonald (1993).

Thus the sample was refined to exclude all individuals who had an arrest record prior to the start date. Some 62,000 cases were for that reason excluded, leaving 146,038 individuals in the database; twenty-one cases were arrested on the censor date. Those individuals had acquired 313,308 arrests by the cutoff date. Cases arrested in 1984 were followed a maximum of 9.25 years, those in 1985 for 8.25 years, and so on until the cutoff date. Subjects, on average, were followed up for 4.9 years.

Because the probability of arrest is dependent on the follow-up time, the data are said to be censored, since insufficient time had elapsed in some cases between arrest and the chances of rearrest. At the extreme, an individual arrested on June 30, 1993, would have had no opportunity to be rearrested, and ordinarily including such cases would seriously bias estimates of rearrest. A statistical method, known as failure or survival rate analysis, is used to account for such bias and permits accurate estimates of the ultimate probability of arrest (see Broadhurst and Loh 1995).

An important caveat is that the data are not adjusted for time spent in custody. Linked data containing prison records will enable the follow-up time to be corrected to count only the time that an offender is at liberty. Consequently, estimates are conservative since, for the more serious offenders, "time out" caused by imprisonment is not taken into account. In addition, arrests that occur outside the jurisdiction are not

included and for some cases a full history of police charges is therefore not available.[13] Although WA is a relatively isolated and closed jurisdiction, compared to others, considerable interstate travel occurs. At present, no adequate national database exists for tracking offenders across jurisdictions. These missing arrest data tend to produce underestimates of the probability of rearrest.

Data were available only for a few items for each arrest event: race, sex, age, bail status, place of birth, occupation (including a partial record of those "unemployed"), offense, and offense count. Thus while the data refer to a large population of arrested persons, they do not contain many factors (e.g., education, employment, mental health, marital status, and drug or alcohol use) often found to be associated with differential risks of rearrest.

Overall, male non-Aborigines made up 66.8 percent of the "first time" arrest population, male Aborigines 3.8 percent, female non-Aborigines 21.5 percent, female Aborigines 2.3 percent, and unknown race or gender 5.6 percent. Females accounted for 24.4 percent of non-Aboriginal arrestees, 37.6 percent of Aboriginal arrestees, and 21.6 percent of those of unknown race. Thus, after adjusting for missing or unknown race, 6.4 percent of the population arrested for the first time since 1984 were Aborigines. Excluding those with arrests prior to 1984 underestimates the proportion of Aborigines in the arrest population at any time. One in five (20.2 percent) of the individuals apprehended annually are Aborigines, and approximately 2.63 percent of the WA population is of Aboriginal descent. Aborigines are therefore overrepresented in the first arrest population by a factor of about 2.4 and by a factor of about 7.7 in the general arrest population.[14] The very high recycling suggested by these differences is confirmed for Aboriginal arrestees.

Table 8 shows the probabilities of rearrest were 0.52 for male non-Aborigines, 0.36 for female non-Aborigines, 0.88 for male Aborigines, and 0.85 for female Aborigines. The difference between female and male Aboriginal rearrests was not significant, but differences between the races and non-Aborigines were statistically significant.[15]

[13] For a comprehensive discussion of the center's offender-tracking data collection and data-linking process, see Ferrante (1993).

[14] The 1994 Aboriginal population estimate in WA was 47,251 and we found at least 18.7 percent of this population arrested for the first time between 1984–93.

[15] As judged by the 95 percent confidence intervals reported for the Aboriginal sex groups.

TABLE 8

Probabilities of Rearrest by Sex and Race, 1984–93

| | Non-Aborigine | Aborigine | Unknown |
|---|---|---|---|
| Males: | | | |
| Probability of rearrest | .518 | .883 | . . . |
| Confidence interval | .51, .52 | .85, .90 | . . . |
| Median time to rearrest (years) | 17.2 | 10.7 | . . . |
| Number of individuals | 97,572 | 5,518 | 6,076 |
| Number of individuals rearrested | 38,013 | 4,042 | 340 |
| Females: | | | |
| Probability of rearrest | .361 | .849 | . . . |
| Confidence interval | .34, .38 | .79, .89 | . . . |
| Median time to rearrest (years) | 26.9 | 18.7 | . . . |
| Number of individuals | 31,440 | 3,323 | 1,672 |
| Number of individuals rearrested | 7,233 | 1,958 | 94 |

SOURCE.—Broadhurst and Loh (1995).
NOTE.—Arrestees of "unknown race" omitted.

Rearrest probabilities were calculated for the major offense classification groups; while differences were observed for non-Aborigines, offense type did not significantly vary rearrest probabilities for Aborigines. Age, occupation, bail status, place of birth, and number of arrests also varied the probability and speed of rearrest for either race. Younger offenders, those in "blue-collar" occupations, offenders born in WA,[16] and those held in custody were likely to have higher risks of rearrest than others. In addition, the more often one is arrested the greater the risk of rearrest.

1. *Criminal Careers and Race.* The number of subsequent arrests to the cutoff date gives a rough indication of the proportion of the population who persisted with offending. For example, of the 5,518 male Aborigines arrested for the first time, 2,251 (40.8 percent) had been arrested at least five times by the cutoff date, and 8,262 (or 8.5 percent) of the 97,572 male non-Aborigines had been arrested at least five times. The proportions of females with at least five arrests were 2.9 percent of non-Aborigines and 23.8 percent of Aborigines.

A prior record of offending substantially increases the risk of subsequent offending. Given further arrests in this population the probabil-

[16] "Natives" of WA had higher chances of rearrest because they were less subject to processes of attrition which led some offenders (especially those born in the United States and New Zealand) to disappear from the sample by leaving the state.

TABLE 9

Probabilities of Rearrest by Number of Arrests, 1984–93

| Number of Arrests | Non-Aborigines | | Aborigines | |
|---|---|---|---|---|
| | Probability of Rearrest | Individuals Arrested | Probability of Rearrest | Individuals Arrested |
| Males: | | | | |
| 1 | .52 | 97,572 | .88 | 5,518 |
| 2 | .68 | 38,013 | .92 | 4,042 |
| 3 | .78 | 20,033 | .94 | 3,244 |
| 4 | .84 | 12,268 | .95 | 2,649 |
| 5 | .86 | 8,262 | .96 | 2,251 |
| 6 | .89 | 5,818 | .97 | 1,942 |
| 7 | .89 | 4,259 | .98 | 1,691 |
| 8 | .92 | 3,229 | .98 | 1,493 |
| 9 | .94 | 2,538 | .98 | 1,311 |
| 10 | .94 | 2,045 | .99 | 1,175 |
| 11 | .94 | 1,658 | .98 | 1,049 |
| 12 | .96 | 1,357 | .99 | 943 |
| 13 | .97 | 1,156 | .98 | 860 |
| 14 | .98 | 979 | .99 | 789 |
| Females: | | | | |
| 1 | .36 | 31,440 | .85 | 3,323 |
| 2 | .56 | 7,233 | .89 | 1,958 |
| 3 | .70 | 2,814 | .88 | 1,366 |
| 4 | .77 | 1,496 | .94 | 1,026 |
| 5 | .82 | 907 | .91 | 792 |
| 6 | .81 | 593 | .93 | 633 |
| 7 | .89 | 416 | .95 | 519 |
| 8 | .83 | 311 | .96 | 440 |
| 9 | .90 | 228 | .97 | 366 |
| 10 | .92 | 183 | .95 | 312 |
| 11 | .90 | 154 | .97 | 274 |
| 12 | .92 | 119 | .96 | 234 |
| 13 | .97 | 94 | .98 | 209 |
| 14 | .95 | 85 | .97 | 183 |

SOURCE.—Broadhurst and Loh (1995).

ity of rearrest increases. In the case of Aboriginal offenders, rearrest probabilities approach absolute certainty of arrest after several episodes. Table 9 shows that given one prior arrest, the probabilities of each successive arrest increase rapidly for non-Aborigines to the point where differences in recidivism by race and sex disappear. In the case of male non-Aborigines, the time to fail falls rapidly from nearly a year-and-a-half for the first rearrest to a few months by the seventh

arrest. However, relatively large proportions of non-Aboriginal offenders, even those with three or four arrests, desist from offending. Although probabilities approach certainty of arrest, given several prior arrests, small numbers continue to desist (or perhaps die or leave the jurisdiction).

In contrast, male Aboriginal offenders reach virtual certainty of rearrest very rapidly (after three or four arrests), and the time to fail falls from less than a year to a couple of months. Although far fewer females persisted with offending than males, their reoffending behavior (in terms of the risks of recidivism) was more similar to their male counterparts than dissimilar. In rough terms, female probabilities of rearrest (given one to *n* arrests) are about one step behind the males. Eventually, females reach near certainty of rearrest, coupled with rapidly declining failure times.

2. *Rearrest and Reimprisonment.* Rearrest patterns are very similar to reimprisonment patterns (see Broadhurst and Maller 1990*b*; and Broadhurst 1993). The similarity raises the possibility that imprisonment or other penal interventions may have little direct bearing on the probabilities of rearrest.

## IV. Aborigines and the Courts

National adult court data are not available, and WA data sources are limited by incomplete coverage (especially of lower courts) and poor identification of race and other information. In WA there have also been breaks in the published annual statistics produced, thus prohibiting useful trend analysis. Consequently, the latest summary data are available only for the 1992 (Broadhurst, Ferrante, and Loh 1993) and 1991–92 reporting years (Australian Bureau of Statistics 1994*c*). Detailed breakdowns of penalties by race were not available from the ABS.

For all courts (including juvenile courts) in 1991–92, as table 10 shows, the ABS recorded 120,938 convictions of which 24.6 percent involved Aborigines and 16.9 percent of individuals convicted were Aborigines. Aborigines at each appearance at court averaged 4.2 charges compared to 2.6 for non-Aborigines.

Nearly all persons charged were convicted (if not of all charges laid), and this did not vary with race (92.5 percent of Aborigines and 92.3 percent of non-Aborigines). Of all convictions, 14.9 percent resulted in a penalty of imprisonment, but 21.9 percent of Aboriginal convictions led to imprisonment.

Since comprehensive breakdowns by race and penalty are not avail-

TABLE 10

Australian Bureau of Statistics Summary, All Courts, by Race, 1991–92

| Court | Aborigines | Aborigine (Percent) | All* |
|---|---|---|---|
| Charges | 30,242 | 24.5 | 123,465 |
| Distinct persons charged | 13,601 | 23.1 | 58,821 |
| Individuals charged | 7,147 | 16.9 | 42,323 |
| Convictions | 29,816 | 24.6 | 120,938 |
| Distinct persons convicted | 13,400 | 23.2 | 57,822 |
| Individuals convicted | 7,058 | 16.9 | 41,672 |

SOURCE.—Australian Bureau of Statistics (1994*d*).

NOTE.—"Distinct persons" refers to a person appearing in court on a given day, that is, a person may appear many times in the counting period. "Individuals" refers to the number of separate persons appearing in court by the most serious offense with which they are charged/convicted regardless of the number of times they appear in court during the counting period.

* Of all charges, 7.2 percent did not contain information on race—unknown race is included in this category.

able for all courts, differences between the races in relation to disposition must be estimated from lower court outcomes derived from police records for the 1992 counting period. According to ABS estimates, 70.2 percent of charges are dealt with by magistrate or lower courts, 5.2 percent by higher courts, and 24.6 percent in children's courts. Since the bulk of adult matters (93 percent) are heard by the lower courts, outcomes and dispositions by race from this source can be assumed to give a reliable guide to differences between Aborigines and non-Aborigines. Before doing so, the penalty outcomes for juvenile convictions dealt with by the children's courts are briefly summarized (for details, see Harding et al. 1995).

*A. Penalties for Juvenile Offenders—1993*

A highly significant decline in the workload of the children's courts has been observed since the introduction of police cautioning in 1991. Between 1990 and 1993, the number of juveniles convicted fell 44 percent from 10,513 to 5,889. For 1993, the proportion of juvenile Aborigines was estimated by the ABS at around 23.7 percent of distinct persons convicted (after adjusting for unknown race). Juvenile Aborigines were on average significantly younger (mean age 15.3) than non-Aborigines (mean age 16.1).

TABLE 11

Outcome in Children's Courts by Sex and Race, 1992—Distinct Persons (in Percent)

| Outcome | All | Males | Females | Aborigines | Non-Aborigines |
|---|---|---|---|---|---|
| Dismissed | 44.4 | 42.3 | 52.9 | 27.9 | 50.3 |
| Fine | 17.2 | 17.9 | 14.0 | 13.1 | 16.4 |
| Noncustodial | 31.3 | 31.9 | 29.2 | 44.0 | 28.2 |
| Custodial | 5.8 | 6.4 | 3.1 | 14.5 | 3.5 |
| Other | 1.3 | 1.4 | .7 | .5 | 1.6 |

SOURCE.—Broadhurst, Ferrante, and Loh (1993).
NOTE.—Percents sum to 100.0.

The outcome of alleged offenses heard by the children's courts is summarized in table 11 into four broad groups of penalties: dismissed (various forms of dismissal, including discharged with no penalty and dismissed with no conviction record), fines, noncustodial orders (probation, community service orders, combined orders, good behavior bonds, and suspended sentences), custodial orders of imprisonment or detention, and others, including loss of motor driver's license and restitution or compensation.

Table 11 shows that the disposition varied considerably depending on the sex or race of the child or juvenile (after adjustment for missing cases). Females were more likely to be dealt with by way of dismissal and very much less likely to be placed in custody. For the sex-race subgroups, differences are greater than shown in table 11 since Aboriginal male juveniles are more likely to be placed in custody (16.6 percent compared to 4.0 percent) or to receive a noncustodial order (42.9 percent compared to 29.2 percent), but less likely to be fined (13.4 percent compared to 17.1 percent). For females, the race differences are even more marked: Aborigines are less likely to be dealt with by way of dismissal (31.9 percent compared to 61.8 percent) and consequently more likely to receive other penalties. For example, 8.1 percent of female Aborigines received detention compared to 1.4 percent of non-Aboriginal females, and 47.2 percent of female Aborigines received noncustodial orders compared to 23 percent of non-Aborigines. Thus Aborigines convicted by the children's court are about 4.1 times more likely to be imprisoned than are non-Aborigines.

Aborigines were more frequently convicted of offenses against the person and driving or traffic offenses and non-Aborigines of drug and

fraud offenses, which suggests that differences in the severity of offenses may account for the greater use of custody for Aborigines. Controlling for offense (a crude measure of severity) did not change the finding that Aborigines were more likely to receive a custodial sentence. For example, in respect to convictions for offenses against the person, 52.8 percent of Aborigines received a custodial sentence compared to 36.2 percent of non-Aborigines, 36.2 percent of Aborigines received a community supervision order compared to 39.4 percent of non-Aborigines, 3.5 percent of Aborigines were fined compared to 5.5 percent of non-Aborigines, and 7.3 percent of Aborigines were dismissed compared to 16.8 percent of non-Aborigines. However, the absence of data about prior convictions makes it impossible to conclude that differences in disposition arise from bias by the courts.

*B. Western Australia Courts of Petty Sessions—1992*

Detailed information about the activities of summary courts or courts of petty sessions is not readily available in WA. Summary courts are also referred to as police courts, lower courts, or magistrate's courts. They are usually presided over by a stipendiary (paid) magistrate, but in country areas they are often constituted by two lay magistrates (or justices of the peace) sitting together or occasionally a single lay magistrate with restricted powers to imprison. These lay tribunals are more likely to deal with Aboriginal offenders. The majority of cases (61.9 percent) were heard in metropolitan Perth by legally trained magistrates. Country courts of petty sessions dealt with three-quarters of Aboriginal defendants (75.3 percent). The data do not provide details on the makeup of these courts, that is, whether constituted by a stipendiary magistrate, two justices of the peace, or a justice of the peace sitting alone.

During 1992, 81,880 police charges involving 32,175 distinct persons were heard by lower courts—an average of about 2.5 charges per person. Of persons dealt with, 19 percent were females and 17.3 percent were Aborigines, but 22.6 percent of all charges involved Aborigines. Information about the pleas of defendants was not available. However, most charges (96.1 percent) resulted in convictions, 2.3 percent led to an acquittal, and 1.6 percent were withdrawn.

The most frequent offenses were fraud and theft (29.6 percent), followed by driving and motor vehicle offenses (25.1 percent—mostly driving under the influence [DUI] and driver's license breaches), good order offenses (23.3 percent), drug offenses (13.5 percent—mostly

TABLE 12

Penalty by Race—Distinct Persons, Lower Courts, 1992
(in Percent)

| Penalty | All | Aborigines | Non-Aborigines |
|---|---|---|---|
| Dismissed | 2.8 | 2.7 | 2.8 |
| Fine | 71.4 | 64.8 | 73.0 |
| Noncustodial | 10.3 | 11.7 | 9.8 |
| Custodial | 4.9 | 16.1 | 2.6 |
| Other* | 10.6 | 4.7 | 11.9 |

SOURCE.—Broadhurst, Ferrante, and Loh (1993).
NOTE.—Percents sum to 100.0.
* Other penalties include loss or suspension of motor driver's license and restitution.

possession or use), offenses against the person (5 percent—mostly common assault), property damage offenses (2.4 percent), and other sundry offenses (1.1 percent). Aborigines were more likely to be charged with good order offenses and assault, whereas non-Aborigines were more often charged with drug, fraud, and DUI offenses.

Penalties for distinct persons convicted in lower courts are summarized in table 12. Fines (71.4 percent) and noncustodial orders (probation, community service orders, and work orders—10.3 percent) were the most common outcomes imposed overall and on each of the groups represented. Only 4.9 percent of distinct persons were sent to prison, although 9.3 percent of charges resulted in imprisonment. Dismissals (where a person is convicted but no penalty is given or recorded) accounted for 2.8 percent of outcomes. Table 12 also shows that dispositions varied considerably depending on the race of the individual. Of Aborigines convicted some 16.1 percent were placed in custody, as compared to 2.6 percent of convicted non-Aborigines. Thus, once convicted, Aborigines were six times (6.2:1) more likely to be incarcerated than non-Aborigines.

Although some differences were found when examining penalty outcomes by offense, especially for public order offenses, the general pattern shown in table 12 did not vary greatly due to offense. As with juvenile conviction it should be emphasized that these data, while showing that Aborigines are more likely to be imprisoned (especially by lower courts), still cannot help us to determine if invidious bias produces more punitive responses for Aborigines. In the absence of data on prior record and inadequate control of offense seriousness, an effective test of bias is not possible.

*C. Judicial Bias—Disposition and Penalty Quantum*

The RCIADC (1991*b*) found that Aborigines are more likely to be incarcerated than non-Aborigines but was unable to establish (for lack of data) if this was due to the proportion of Aborigines arrested or to the role of the courts (or both). However, they assumed an overuse of imprisonment by the courts and attributed this to the absence of community-based correctional services in remote areas, an inability or unwillingness by Aborigines to pay fines, and the attitudes and practices of the police and justices, especially lay justices in rural areas (see also Martin and Newby 1984).

The implication that justices and Eurocentric court processes discriminate against Aborigines in sentencing thus relied on obvious disadvantages of language and culture and on an overwhelming overrepresentation of Aborigines in prison. Such assumptions are not evidence of discrimination since there is also evidence (although inconsistent) that for more serious offenses substantial discounting of sentence length occurs because of Aborigines' nomadic or "tribal" life (Australian Law Reform Commission 1986; Broadhurst 1987; Royal Commission into Aboriginal Deaths in Custody 1991*b*), including the attitude among some WA higher court judges that "informally at least . . . the tariff for Aboriginal offenders is approximately half that in relation to non-Aboriginal offenders" (Heenan 1991, p. 44).

For example, based on the 1984 national census of prisoners, Walker (1987) found Aborigines on average spent nearly half as much time in prison (42.6 months vs. 86.4 months) as non-Aborigines. This large difference persisted after accounting for prior imprisonment and offense seriousness, although the interaction between offense seriousness and prior imprisonment was only partially examined. While Aboriginal prisoners were on average younger and their offenses appeared less serious than non-Aborigines, Walker did not consider these sufficient to account for the difference but rather it was "more likely that in fact the courts are bending over backwards to keep Aborigines out of prison for lengthy periods" (Walker 1987, p. 113).

Since Walker compared averages at census but did not analyze sentence distributions using conventional analysis of variance or by tabulating medians and quartiles or control for all interactions between the factors considered (or all factors relevant), his method was limited and oversimplified. In most jurisdictions (except WA and the NT) the number of Aboriginal cases was so small as to have virtually no impact on overall average sentence lengths (see Walker 1987, pp. 113–14).

Nevertheless, because the differences in sentence averages were very large between the races, Walker was confident the descriptive data reflected race differences, at least as they applied to terms of imprisonment.

Walker's analysis proved highly controversial but did render simplistic assertions about judicial bias highly suspect and prompted Broadhurst (1993) to conduct an analysis of sentence length by race using a large sample of WA prisoners sentenced between 1975 and 1987. Broadhurst's analysis attempted to control for age, employment at arrest, offense type, marital status, year of sentence, number of terms of imprisonment, and the number of prior (same) offenses. Generally, the sentence length distributions were not normal and highly skewed (despite log transformations), and although several offenses (drunkenness, assault, rape, robbery, and motor vehicle theft) were examined, only assault was found sufficiently normal to employ conventional analysis of variance (ANOVA) methods.[17] The ANOVA for assault showed race alone was not a significant factor in accounting for the variance found in sentence length. While interactions between race and employment, marital status, and prior offense accounted for a small but significant amount of variance, year of sentence and particularly employment were highly significant and accounted for most of the variance.

Because the data were not amenable to analysis by conventional ANOVA and regression techniques, the effects of various factors on sentence-length distributions for several offenses were examined by descriptive methods based on means and quartiles. Broadly, the effect of race on sentence variation was small (for Aborigines sometimes longer or shorter than for non-Aborigines) and complicated by potential interactions and dependent on the nature of the offense. In short, general claims of leniency or harshness in sentence length due to Aboriginality could not be sustained, and "conclusions about the court's leniency towards Aborigines are not always supported by the evidence" (Broadhurst 1993, p. 422). Broadhurst argued that concentrating on sentencing policy would not make a substantial impact on differential risks of imprisonment since the differences in sentence length were relatively minor compared to the risks of arrest. The analysis of sentencing disparity and race is described in the next section and reveals the

[17] The ANOVA procedure was undertaken using the forward stepwise regression method using the statistical package GLIM (General Linear Modeling). The first factor and interaction was entered into the equation in an order determined by the highest *F*-ratio score.

TABLE 13

Higher Court Dispositions by Aboriginality, 1990 (in Percent)

| | *N* | Noncustodial | Prison |
|---|---|---|---|
| Aborigine | 298 | 40.3 | 59.7 |
| Non-Aborigine | 1,177 | 54.8 | 45.2 |
| Unknown | 125 | 58.4 | 41.6 |

SOURCE.—Broadhurst (1993).
NOTE.—$\chi^2 = 22.1$, df = 2; $p < 0.001$.

complexity and marginality of the effects of discrimination in higher courts.

1. *Higher Court Penalties.* Drawing on convicted persons data for 1990 from WA higher courts (district and supreme courts) provides some indication of the extent to which bias occurs at disposition.[18] That is, given arrest and conviction, to what extent is disparity evident in the choice between a noncustodial and prison disposition?

Under a fifth (18.6 percent) of the 1,600 individuals convicted by higher courts in 1990 were Aborigines, 73.6 percent were non-Aborigines, and a small number were unknown (7.8 percent). This small sample (all of whom were represented by legal counsel) could be described in terms of race, sex, offense, plea, and age but not prior record. Offenses are selected on the basis of the most serious offense of conviction (determined by the quantum and the intrusiveness of the sanction)[19] for each individual whose case was finalized during 1990. Because the numbers of cases was small, discrete analysis of offenses by chi-square was limited to those offenses where sufficient cases were present.[20]

Table 13 shows that Aborigines were more likely to be incarcerated than non-Aborigines for all convictions (irrespective of the offense). Nearly 60 percent of Aboriginal dispositions resulted in imprisonment compared to 45 percent of non-Aboriginals. For this and subsequent

[18] These courts deal with indictable matters and represent only a small (less than 5 percent), albeit more serious, proportion of the criminal matters dealt with by the courts.

[19] The selection of offense is based on the following hierarchy: imprisonment, community service orders, probation orders, fines, and good behavior bonds.

[20] The same analysis was conducted on all charges resulting in conviction, since the number of charges was much larger. However, this did not always improve the cell size and resulted in similar outcomes as found for distinct persons.

TABLE 14

Selected Serious Offenses by Race and Disposition, 1990 (in Percent)

| | *N* | Noncustodial | Prison |
|---|---|---|---|
| Robbery: | | | |
| Aborigines | 14 | 21.4 | 78.6 |
| Non-Aborigines | 55 | 20.0 | 80.0 |
| Unknown | 5 | 20.0 | 80.0 |
| Assault: | | | |
| Aborigines | 58 | 46.6 | 53.4 |
| Non-Aborigines | 87 | 51.7 | 48.3 |
| Unknown | 9 | 11.1 | 88.9 |
| Break and enter dwelling: | | | |
| Aborigines | 99 | 53.5 | 46.5 |
| Non-Aborigines | 301 | 60.8 | 39.2 |
| Unknown | 21 | 61.9 | 38.1 |
| Sexual assault:* | | | |
| Aborigines | 40 | 12.5 | 87.5 |
| Non-Aborigines | 80 | 35.0 | 65.0 |
| Unknown | 8 | 50.0 | 50.0 |

SOURCE.—Broadhurst (1993).

* $\chi^2 = 8.4$, df = 2; $p < 0.05$.

analysis, fines, good-behavior bonds, probation, and community service orders are combined into noncustodial sentences.

Analyzing other cross-tabulations such as gender, plea, and age showed that for all convictions gender was highly significant (the small number of females rendered analysis by offense unreliable); age was not significant but close to significance (at the 5 percent level), with very young offenders more likely to receive a noncustodial penalty. Plea (guilty or not) did not significantly affect the disposition of cases. Offense, not surprisingly, was highly significant, with offenses against the person being more likely to receive a custodial sentence than property offenses.

Table 14 shows disposition by race and offense group (robbery, assault, break and enter dwelling, and sexual assault). Only sexual assault showed Aborigines were significantly more likely to receive a custodial sentence. Age was also significant in sexual assault, with very young offenders less likely to be jailed. For assault and break and enter, sex was highly significant, with females more likely to receive a noncustodial sentence, and age approached significance in assault (younger offenders less likely to receive a custodial sentence). For robbery, none

TABLE 15

Sentence Length (in Days) by Offense, Sex, and Race, 1990

| | *N* | First Quartile | Median | Third Quartile |
|---|---|---|---|---|
| Males: | | | | |
| Aborigines: | 331 | 180 | 365 | 730 |
| Against person | 152 | 360 | 730 | 1,460 |
| Property | 123 | 180 | 360 | 540 |
| Good order | 56 | 30 | 90 | 180 |
| Non-Aborigines: | 1,896 | 360 | 540 | 848 |
| Against person | 534 | 365 | 730 | 1,460 |
| Property | 1,070 | 360 | 480 | 730 |
| Good order | 162 | 240 | 365 | 540 |
| Drugs | 98 | 360 | 540 | 1,095 |
| Other offenses | 32 | 180 | 180 | 180 |
| Females: | | | | |
| Aborigines: | 28 | 270 | 365 | 519 |
| Against person | 3 | 90 | 180 | 4,380 |
| Property | 17 | 225 | 365 | 540 |
| Good order | 8 | 270 | 348 | 429 |
| Non-Aborigines: | 340 | 360 | 420 | 674 |
| Against person | 14 | 365 | 730 | 1,460 |
| Property | 240 | 420 | 540 | 674 |
| Good order | 66 | 360 | 360 | 360 |
| Drugs | 20 | 365 | 635 | 730 |

SOURCE.—Broadhurst (1993).

of the available factors (race, sex, age, or plea) were found significant by chi-square analysis.

2. *Higher Court—Length of Imprisonment.* In order to assess the impression of some judges that the "tariff" is adjusted downward for Aborigines, sentence length can be compared by race. For this exercise all sentences (rather than the major offense of each individual) were converted into days, and the group means, medians, and standard deviations were calculated. The descriptive analysis suggests that a one-third discount does appear to operate for property offenses but overall the difference is slight.

Table 15 summarizes average sentence lengths for broadly grouped offense categories and shows that non-Aborigines receive sentences about 11 percent longer but that non-Aboriginal females receive much longer sentences than Aborigines (about 50 percent longer). Most differences can be explained in terms of differences in the relative severity of offenses. For example, there is a large difference in the average for

females sentenced for offenses against the person because in this sample a few homicide offenses by non-Aboriginal females drastically increased the overall average sentence length for that group. As there is only a small number of female Aborigines in the sample it would be unwise to draw any strong conclusions about differences arising from sex-race in this sample.

The statistical interpretation of apparent differences in table 15 is also complicated by the highly skewed distribution of sentence lengths and the consequent difficulties in making valid comparisons between groups. The standard deviations of the sentences for the different groups are large, sometimes approaching the mean.

Overall, the race of the individual appears to have an effect on the decision to dispose of a case by imprisonment, but of the four offense groups with sufficient cases for analysis, only one, sexual assault, was found to be significant in terms of differences in race (and in a later analysis for 1993 data by Harding et al. 1995, it was not found significant). Without the ability to control for prior conviction, these data cannot provide convincing evidence that there is a differential effect of race on the decision to incarcerate. Differences are just as likely to be the result of the greater frequency of arrest rather than judicial preference to incarcerate Aborigines. It is clear, however, that once convicted Aborigines have a greater likelihood (especially in lower courts) of being incarcerated, but this does not necessarily translate into longer terms of imprisonment.

Thus it was found that Aborigines were four times more at risk in the children's court (table 11), six times more at risk in the high-volume lower courts (table 12), and about one-third more at risk in the low-volume higher courts (table 13). Once imprisoned, Aborigines are not generally likely to receive longer sentences, and for offenses against property, shorter sentences are observed. Somewhat imprecisely, the overall differential risk of a custodial disposition is therefore about 5:1.

## V. Aborigines and Imprisonment

Imprisonment and community-based correctional programs in Australia are managed by states, with federal prisoners serving sentences in the jurisdiction in which they were charged. Distinctions between "jails" and prisons are not commonly made, although significant numbers of prisoners serve short sentences in police "lockups" in remote areas. Imprisonment includes the confinement of juvenile offenders in

detention centers and adults serving sentences in state prisons or police lockups, including persons remanded in custody. Those persons detained by police as intoxicated persons, arrested on charges, or held on warrants pending trial are excluded.

Reception history sheets, police property sheets, warrant summaries, and exit forms are the principal sources of data on prisoners in WA. These data are used to describe annual prison receptions (admissions) of individuals and census (on December 31) through the reform period 1990–93 associated with the RCIADIC.

*A. Imprisonment in Western Australia*

For summary offenses in WA, imprisonment is infrequently used compared to other penalties and represents about 5 percent of all dispositions. The use of very short sentences of imprisonment by summary courts has been the focus of efforts to limit the use of imprisonment, but there is little evidence that lower courts have done so (Dixon 1981; Broadhurst 1987; Harding 1992).

Prisoners convicted of indictable offenses in higher courts represent an insignificant proportion of all prisoners but the bulk of the long-term imprisoned. The use of imprisonment by higher courts significantly declined during 1983–89 from 59.5 percent to 45.3 percent of persons convicted, assuming a constancy in the relative seriousness of the offenses dealt with. Further analysis by offense attributed most of this decline to reductions in the use of imprisonment for offenses such as break and enter (58 percent to 35 percent) and fraud (41 percent to 26 percent), but not for offenses against the person or drug offenses (Australian Bureau of Statistics 1987, 1988*a*, 1988*b*, 1989, 1990, 1992*a*). The most recent data show a reversal of this trend, with the proportion of persons imprisoned increasing from 47 percent of dispositions in 1990 to 55.7 percent in 1993 (Ferrante, Loh, and Broadhurst 1994).[21]

1. *Aborigines and Imprisonment.* The race of prisoners admitted to prison and in census-date populations is summarized in table 16 for 1990–93. In 1993, 41.5 percent of the admitted population were Aborigines.

[21] Trend analysis is complicated by the discontinuation of the ABS Higher Court statistical series in 1989–91 and from 1993 onward. In addition, significant changes in jurisdiction between courts occurred in 1989 when some offenses were transferred to summary jurisdictions and more defendants became eligible to elect to be tried in lower courts.

TABLE 16

Prison Population by Race, 1990–93

| Year | All Persons | Aborigines | Non-Aborigines |
|---|---|---|---|
| Admissions: | | | |
| 1990 | 6,717 | 3,139 | 3,578 |
| | | (46.7) | (53.3) |
| 1991 | 6,212 | 2,685 | 3,527 |
| | | (43.2) | (56.8) |
| 1992 | 5,622 | 2,358 | 3,264 |
| | | (41.9) | (58.1) |
| 1993 | 6,042 | 2,505 | 3,537 |
| | | (41.5) | (58.5) |
| Distinct persons: | | | |
| 1990 | 5,122 | 2,184 | 2,938 |
| | | (42.6) | (57.4) |
| 1991 | 4,814 | 1,884 | 2,930 |
| | | (39.1) | (60.9) |
| 1992 | 4,409 | 1,725 | 2,684 |
| | | (39.1) | (60.9) |
| 1993 | 4,818 | 1,859 | 2,959 |
| | | (38.6) | (61.4) |
| Census-date population (December 31): | | | |
| 1990 | 1,620 | 548 | 1,072 |
| | | (33.8) | (66.2) |
| 1991 | 1.809 | 581 | 1,228 |
| | | (32.1) | (67.9) |
| 1992 | 1,852 | 613 | 1,239 |
| | | (33.1) | (66.9) |
| 1993 | 2,078 | 654 | 1,424 |
| | | (31.5) | (68.5) |

SOURCE.—Ferrante, Loh, and Broadhurst (1994).
NOTE.—Numbers in parentheses are percentages.

Trends by race for admissions and census counts show declines since 1990; however, 1993 data show a sharp reversal of this trend. Despite increases in 1993, the number of Aborigines admitted to prison has fallen 20 percent since 1990 compared to a slight decrease of 1.1 percent for non-Aborigines. Similarly, a 14.9 percent decline is observed for Aboriginal persons compared to a slight increase of 0.7 percent for non-Aborigines. In contrast, the number of persons incarcerated on census dates has increased by 28.3 percent since 1990; however, the increase was less for Aborigines than for non-Aborigines (19.3 percent compared to 32.8 percent).

These trends show that the general decrease in the frequency of im-

TABLE 17

Distinct Sentenced Prisoners by Sentence Type, Sex, and Race, 1993 (in Percent)

| Group | Fine Default | Prison Only | Prison plus Parole |
|---|---|---|---|
| Female: | | | |
| Aborigine | 76.3 | 17.3 | 6.4 |
| Non-Aborigine | 50.8 | 14.1 | 35.1 |
| Male: | | | |
| Aborigine | 45.1 | 32.0 | 22.9 |
| Non-Aborigine | 45.7 | 14.5 | 39.8 |
| All | 48.2 | 20.6 | 31.2 |
| *N* | 1,788 | 765 | 1,157 |

SOURCE.—Ferrante, Loh, and Broadhurst (1994).
NOTE.—$N$ = 3,710. Percents sum to 100.0.

prisonment has not reduced the numbers on census dates. The most likely reasons are the diversion of minor offenders from prison (especially alternatives for fine defaulters and public drunkenness) and longer stays (the proportion of sentenced prisoners with a maximum prison term of one year or more) have increased from 15.4 percent in 1990 to 28.6 percent in 1993.

2. *Offenses, Sentence Type, and Aboriginality.* Table 17 examines differences in the type of sentence of imprisonment received by Aborigines and non-Aborigines. Aborigines are less likely to receive sentences of imprisonment followed by parole supervision in the community because they generally serve relatively short sentences (or sentences in lieu of fines) and because their high rates of recidivism make them less likely to be eligible for early release under parole supervision. Aborigines are also more likely to be released into the community without supervision after completion of a fixed term of imprisonment (less remission) because of shorter sentences (a sentence of greater than one year is usually necessary for parole) and the frequency of minor offenses such as "public order" offenses and property damage.

Table 18 shows the proportion of Aborigines received in prison for the broad offense categories compared to the proportion charged by police at arrest. In all cases the proportion received exceeds that of the proportion charged, suggesting that offense mix or seriousness may have less bearing on the increase in Aboriginal overrepresentation the further one proceeds into the system.

TABLE 18

Prison Admissions and Police Charges Involving Aborigines, by Major Offense Group, 1993 (in Percent)

| Offense | Aborigines, Admissions | Aborigines, Police Charges |
|---|---|---|
| Against the person | 45.2 | 40.3 |
| Break and enter/theft | 40.0 | 29.8 |
| Property damage | 57.9 | 39.2 |
| Good order | 52.6 | 45.3 |
| Drugs | 9.6 | 5.4 |
| Driving | 44.3 | 21.1 |
| Other offenses | 51.9 | 38.3 |
| Total | 41.5 | 28.6 |

SOURCE.—Ferrante, Loh, and Broadhurst (1994).

3. *Prevalence of Imprisonment and Racial Disparity.* An approximate prevalence rate of imprisonment based on the number of individuals admitted can be calculated for the races. Overall, the prevalence of persons imprisoned in WA has declined marginally from 317 per 100,000 of population in 1990 to 289 per 100,000 in 1993. For Aborigines the rate of incarceration was 5,055 per 100,000 in 1990 but had fallen to 4,147 per 100,000 in 1993 compared to 187 per 100,000 in 1990 and 177 per 100,000 of the non-Aboriginal population.[22]

After applying these rates to measure relative overrepresentation, in 1990, Aborigines were 27 times more likely to be incarcerated than non-Aborigines and in 1993, 23.4 times. The disparity for imprisonment has decreased, indicating a reduction in the extent that disparity is amplified from arrest to imprisonment. In 1990, Aborigines were 7.7 times more likely to be arrested and 27 times more likely to be imprisoned than non-Aborigines. Three years later Aborigines were 9.2 times more likely to be arrested but less (23.4:1) likely than previously to be imprisoned. Thus substantial reductions in the relative use of im-

[22] The population denominators used to calculate per capita rates of arrest in table 5 are applied here (see also table 3.2 in Harding et al. 1995). Exclusion of sentenced prisoners serving time in police lockups is unlikely to affect Aboriginal rates substantially because of the high congruence between those serving time in lockups and prisons. However, for non-Aborigines evidence of high interchangeability of lockup and imprisonment is less clear. Admissions and exit data from lockups are insufficiently precise to permit a reliable estimate of the prevalence of incarceration in both lockups and prisons.

prisonment have occurred which suggests some effective diversion, perhaps in the wake of the RCIADIC's general efforts to reduce imprisonment.

*B. National Imprisonment Rates and Trends*

National trends in rates of imprisonment are published by the Australian Institute of Criminology based on census of prisoners (annually as of June 30 and at the first day of each month) and therefore differ from the above prevalence rate based on individuals admitted during the year. Western Australia has always had a significantly higher rate of incarceration than Australia as a whole. For example, at national census March 1994, WA's total rate was 126.4 per 100,000, while Australia's was 86 per 100,000.

Since the mid-1970s, Australia's census-estimated imprisonment rate per 100,000 total population has increased by about 35 percent from 63 per 100,000 to 86 per 100,000 currently. Western Australia's rate has fluctuated, and the longer-term trend is complex.[23] In the mid-to-late 1980s the rate abated (at around 98 per 100,000 in 1989) before sharply rising in the latest reporting period (to 126 per 100,000 in 1994).

General explanations for the increases and fluctuations in WA include rapid increases in Aboriginal involvement since the 1960s following frontier expansion, declines in non-Aboriginal recidivism, and changes in the law criminalizing and decriminalizing some offenses. In addition, new sentencing options and practices in the 1980s and 1990s, especially efforts to minimize short periods of imprisonment, had very substantial impacts on the prison population. To illustrate, the advent in 1990 and rapid expansion of work and development orders designed to divert fine defaulters from prison and the provision of "sobering-up shelters" (i.e., the decriminalization of public drunkenness) provide some explanation for the recent decline in prisoners received but not in daily averages or census. Since these diversions affected prisoners serving very short sentences (mostly less than thirty days and mostly Aborigines) they substantially affected the "flow" (admissions) but had less effect on the census-date counts.

The underuse of community-based sanctions for Aboriginal offenders was highlighted by the RCIADIC as a significant cause of the high

[23] Western Australia prison data between 1969 and 1978 excluded sundry lockups and did not record race of the prisoner. It is likely estimates of the rate of incarceration are underreported during this period in the national series.

rate of Aboriginal imprisonment. However, this does not account for the higher rates of imprisonment in WA since Harding et al. (1995) found that the per capita *community-based* sanctions rate for WA was consistent with the national rate in 1991 (351 per 100,000 for WA compared to the national rate of 332 per 100,000). In 1993, the WA community-based sanction rate for Aborigines was 7,289 per 100,000 and 615 per 100,000 for non-Aborigines. Thus Aborigines were twelve times more likely to receive a community-based sanction than non-Aborigines. By comparing Aboriginal and non-Aboriginal community-based sanction and imprisonment rates (the community-based/custody ratio), it was shown that non-Aborigines were 3.4 times more likely to receive a community-based sanction than prison, whereas Aborigines were only 1.8 times more likely to receive these sanctions in lieu of prison. Harding et al. (1995) also found that there was a significant shift toward the greater use of community-based sanction since the late 1980s but argued the greater use of community-based sanctions probably both produced some net widening and contributed to a reduction of imprisonment.

These systemwide changes are reflected in a radically altered prison population, as an examination of annual prison census populations over the ten-year period 1982–91 in WA illustrates (see Walker 1992). For example, the proportion of violent offenders imprisoned at census increased from 26.8 percent in 1982 to 45.5 percent in 1991, while the proportion of property offenders fell from 36.3 percent to 29.2 percent and driving offenses from 13.3 percent in 1982 to 6.4 percent in 1991. Moreover, the number sentenced to less than a year in prison has also fallen from 30.2 percent in 1982 to 24.5 percent in 1991, and those sentenced to more than five years has increased from 26.9 percent to 36.2 percent. These results suggest that the character of prison "stock" has changed significantly as other options to imprisonment have become available to the courts.

These longer-term changes reflect two trends. First, the preeminence of imprisonment as the primary response to crime no longer has the unconditional support of elites in the criminal justice system. Second, there has been a trend to "bifurcate" penalty severity scales so as to increase penalties for the more serious but rarer offenses and decrease penalties for the more common but less serious offenses (Rutherford 1986). This is reflected in a greater use of alternatives and amendments to the WA criminal code which require that imprison-

TABLE 19

Rate per 100,000 Total Population of Imprisonment by Jurisdiction, on Census Date, March 1, 1994

| | Total *N* at Census* | Total Rate† | Aboriginal Rate | Non-Aboriginal Rate | Disparity Ratio |
|---|---|---|---|---|---|
| New South Wales | 6,430 | 101.3 | 963.5 | 90.2 | 10.7 |
| Victoria | 2,425 | 54.2 | 641.2 | 51.7 | 12.4 |
| Queensland | 2,322 | 73.2 | 613.7 | 59.5 | 10.3 |
| Western Australia | 2,136 | 126.2 | 1,453.9 | 88.0 | 16.5 |
| South Australia | 1,277 | 87.1 | 1,204.9 | 72.9 | 16.5 |
| Tasmania | 248 | 52.4 | 237.3 | 48.4 | 4.9 |
| Northern Territory | 490 | 289.9 | 760.2 | 113.8 | 6.7 |
| Australia | 15,328 | 86.3 | 880.7 | 72.4 | 12.2 |

SOURCE.—Australian Bureau of Statistics (1995*a*, 1995*c*); Dagger (1995).

* Census on March 1, 1994.

† Rates per 100,000 total population.

ment be used only "as a last resort" and recognized in sentencing policy as the principle of parsimony.[24]

*C. Interstate Comparisons*

Differences between Australian jurisdictions in Aboriginal imprisonment are estimated from census data collected by the Australian Institute of Criminology on the first day of each month for both adults and juveniles.[25] The latest national data based on the census for March 1, 1994, are compared by race in table 19 for all jurisdictions. Western Australia ranks second to the NT in rates of imprisonment, but WA far exceeds the NT and all other states in Aboriginal rates of imprisonment. However, in terms of overrepresentation WA and SA share the same high disparities, while Tasmania and the NT are the lowest.

[24] Section 19A of the Criminal Code of Western Australia was amended (Acts Amendment no. 70, 1988) to insert this principle.

[25] This series is now published by the ABS. Cross-state comparisons and estimates of overrepresentation vary considerably depending on the reliability of the population denominator and whether the source of imprisonment data is June census, "daily average muster," census on the first day of the month, or other measures such as persons and receptions—see Biles and McDonald (1992, pp. 417–52) and Chan and Zdenkowski (1986) for more details.

TABLE 20

International Comparison of Rates of Imprisonment by Race, 1990

| Country | United States, 1990* | United Kingdom, 1990* | Australia, 1990† | Western Australia, 1990† |
|---|---|---|---|---|
| All | 474.3 | 89.3 | 83.9 | 106.6 |
| "Black" or Aboriginal | 1,860.0 | 547.0 | 754.6‡ | 1,342.2 |
| "Nonblack" or non-Aboriginal | 284.4 | 80.9 | 72.7 | 72.3 |
| "White"§ | 289.0 | 77.0 | N.A. | N.A. |
| "Other"‖ | 241.0 | 164.0 | N.A. | N.A. |
| Black/nonblack ratio | 6.5 | 6.8 | 10.4 | 18.6 |

SOURCE.—All rates are per 100,000 persons. Australian and Western Australia estimated populations for June 1990 are from Australian Bureau of Statistics (1991); Aboriginal intercensus populations are from Benham and Howe (1994), table 11.

NOTE.—N.A. = not available.

* Tonry (1994), p. 103, table 1.

† Walker (1991).

‡ Of the national prison census, 3.1 percent were of unknown race and have been allocated on a pro rata basis. No missing race records were found for Western Australia.

§ "White" refers to Europeans in the U.S. and U.K. context, but in Australia the category non-Aboriginal includes this group and the category defined "other" for U.S. and U.K. data. Consequently, rates have been recalculated to permit more direct comparison between "black" and "nonblack" and Aboriginal and non-Aboriginal.

‖ "Other" refers to Hispanic and other groups in the United States and in the United Kingdom, predominantly immigrants from the Indian subcontinent. No such category is defined or available from Australian sources.

### *D. International Comparisons*

Tonry (1994) calculated per capita incarceration rates for different "race" groups based on 1990 prison census data for England and Wales and for the United States, and these are compared with Australian and WA June 1990 prison census data in table 20. Overall, Australia's imprisonment rate per 100,000 persons is slightly lower than that of the United Kingdom but less than one-fifth of that of the United States. Western Australia's per capita rate of imprisonment for non-Aborigines is the same as for Australia, but its Aboriginal rate of imprisonment is nearly double that of Australia's Aboriginal rate. This higher rate of Aboriginal imprisonment accounts for much of WA's elevated rate of incarceration.

Australian rates of Aboriginal imprisonment are two-fifths the rate of "black" Americans, and U.K. rates of "black" incarceration are under a third those of "black" Americans. Moreover, "nonblack" rates of imprisonment in the United States are nearly four times those of Australian non-Aborigines and three and one-half times those of U.K. "nonblacks." Compared to the United States, Australia and the United Kingdom have much lower rates of incarceration for both "race"

groups, but ironically the U.S. high rate of "nonblack" incarceration generates lower differential risks between "blacks" and "nonblacks."

Disparity ratios calculated in table 20 show that although differential risks of imprisonment for "blacks" in the United States and United Kingdom are about the same at 6.5 to 6.8:1, Aborigines are about 50 percent more at risk in Australia at 10.4:1 and almost three times more at risk in WA than blacks in either the United States or United Kingdom. Cross-national differences in disparity ratios highlight contrasts between groups and show that risks, including differential risks of incarceration, vary across cultures. Such relative differences invite detailed analysis of legal, social, and cultural variations rather than simply to establish that Australian or WA criminal justice systems are necessarily 50 percent or three times "worse" than other countries in their treatment of minority groups.

## VI. Policy and Race Bias

The many causes of the "disproportionate criminalization" experienced by Aborigines are "related factors that describe a self-perpetuating spiral of criminalization and victimization of Aboriginal people. Numerous studies indicate that the relatively greater incidence of serious crime within the Aboriginal community is linked to the marginal status and alienated character of the Aboriginal people within Australian society" (Amnesty International 1993, pp. 15–16). The government's general remedy is a "commitment to social justice and a recognition of the importance of equal participation of Aboriginal people in the social, economic and cultural life of Western Australia" (Western Australia Department of Aboriginal Affairs 1994) and specifically to support policies of Aboriginal development by raising the socioeconomic status of indigenous people. The "underlying issues" of unemployment, poverty, ill-health, dispossession, and disenfranchisement are seen as the causes of the overinvolvement of Aborigines in prison. These same factors generate racism in Australia. The bias, therefore, in the criminal justice system is the product of indirect discrimination reflecting the outcome of treating unequals equally (RCIADIC 1991*a*).

Equality, it has been argued, will be achieved in the longer term by the economic benefits of granting native land title and, in the political realm, by a process of conciliation and self-determination (RCIADIC 1991*a*, 1991*b*; Amnesty International 1993; Bartlett 1993). However, the colonial legacy of racism cannot be "corrected" by overt positive discrimination or like measures within the justice system because these

are resisted on doctrinaire legal grounds or by other means. Instead, consultative and educative processes, the "all-purpose solvent of cultural contradiction" (Rowse 1992, p. 102), are used to guide reforms and enlist Aboriginal communities in the struggle for more equitable or appropriate applications of that ultimate cultural artifact—punishment. But the emphasis on "political correctness" and training is unlikely to change the underlying causes of Aboriginal criminalization, and tactical reforms of criminal justice practices are futile if they rely on co-option. An overconcentration on the race-crime problem is unproductive and narrows the scope for reform by distorting and deflecting attention away from problems of real disparities in health, income, and status (La Prairie 1990).

The key general cause of the disproportionate criminalization of Aborigines is universally perceived (at least at governmental level) to be socioeconomic deprivation and consequential exclusion. Thus the "approved" cause of Aboriginal overrepresentation is low socioeconomic status coupled with some recognition of the historical and cultural origins of Aboriginal marginalization. In the analysis that follows, differences between Australian states in the socioeconomic status and cultural independence of Aborigines are compared with differences in the scale of punishment. In this way the explanatory power of orthodox strain or deprivation theories of crime causation are tested against rival conflict theories that draw on the persistent and substantial differences between the dominant "white" and Aboriginal cultures. The cross-jurisdictional comparison provides support for both culture-conflict and socioeconomic theories. Conflict theory is persuasive because the process of colonization continues in a society that retains, especially in some regions, elements of a literal and metaphorical frontier.

*A. The Scale of Punishment*

Table 21 shows that Australia's rate of imprisonment between 1987 and 1994 increased from 75 to 86 per 100,000 population, largely because of dramatic increases in NSW arising from the adoption of "truth in sentencing" legislation which restored "just desert" penalties by abolishing good-time (remissions) and early release. In the NT, Tasmania, and Queensland, there have been decreases in the rate due to substantial increases in the use of noncustodial and "community" order sentences. The comparisons also conceal differences in various jurisdictions' administrative practices reflected in the large variations in the average amount of time prisoners spend in custody, the compo-

TABLE 21

Imprisonment Rates for Australian States, per 100,000, in 1987 and 1994

| | 1994 | | 1987 | |
|---|---|---|---|---|
| | All | Non-Aboriginal | All | Non-Aboriginal |
| New South Wales | 101 | 90 | 77 | 71 |
| Victoria | 54 | 52 | 46 | 45 |
| Queensland | 73 | 60 | 89 | 77 |
| Western Australia | 126 | 88 | 110 | 78 |
| South Australia | 87 | 73 | 63 | 53 |
| Tasmania | 52 | 48 | 62 | 54 |
| Northern Territory | 290 | 114 | 311 | 115 |
| Australia | 86 | 72 | 75 | 64 |

SOURCE.—Table 19; Biles and McDonald (1992).

sition of the remand population, differences in the treatment of fine defaulters, minor offenders, remission, and approaches to diversion from prison (Walker 1992).

These differences were analyzed by a government inquiry into the high rate of imprisonment in WA (Dixon 1981). This inquiry was unable to explain all the variance between the states, even after controlling for the proportion of young males (the NT has an especially high proportion of young males) or Aborigines in the population, the quantity and severity of crime, and unemployment. Controlling for the size of the Aboriginal population, which was highly correlated with the imprisonment rate, did nevertheless account for a substantial amount of the variation (see also Biles and McDonald 1992, p. 97 and table 26). Dixon concluded that differences in administrative traditions and the punitiveness of community attitudes may account for the unexplained variance in imprisonment between the jurisdictions.

Later Babb (1992) compared Victoria and NSW, low and high imprisonment states, respectively. He found the demographic characteristics of NSW and Victoria roughly similar in terms of urbanization, unemployment, age group (fifteen years to thirty-four years), and single-parent families. He also controlled for conviction rates, police strength, length of stay, and the proportion of prisoners on remand and concluded that the frequency of cases brought to courts or the greater demand for punishment in NSW compared to Victoria ac-

counted for the differences. Babb oddly neglected to control for the differences in the proportion of Aborigines found in either jurisdiction, so it is open to suggest that the larger Aboriginal population in NSW contributed to the greater frequency of cases.

Harding (1992) also concluded that the high rate of imprisonment in WA compared to other states could mostly be attributed to the higher frequency of cases resulting in imprisonment. The most incarcerated group were Aborigines sentenced by lay magistrates in rural and remote WA. Harding argued that administrative traditions, particularly in WA lower courts, led to less use of noncustodial sanctions than in other states. Although subsequent research (Harding et al. 1995) found WA use of noncustodial sanctions by 1990 above the national average, Aborigines were still less likely to be given these orders relative to imprisonment. This led Harding to urge curtailment of the power of lay magistrates to imprison, proactive review by superior courts of summary court sentencing practice, and application of a radical quota scheme, restricting the number of prison beds (akin to the queuing practices found in the Netherlands), in order to reduce the rate of imprisonment. All but the last were endorsed in 1995 by the state legislature's amendments to sentencing laws.

### *B. Toward a General Theory of Aboriginal Imprisonment*

While variations in Aboriginal imprisonment and administrative factors contribute to differences between jurisdictions, other intangible factors such as community attitudes may be relevant. For example, Broadhurst and Indermaur (1982) found public opinion to be more punitive in WA than in comparable jurisdictions.

1. *The Frontier and Aboriginal Crime.* The high level of punitiveness indicated by imprisonment rates and punitive attitudes in WA may both be associated with a "frontier" culture (Keen 1988; Tyler 1993). That is, a settler society perceives itself as vulnerable and threatened by outsiders of whom the indigenous Aborigines—the "exotic other"—represent a traditional and recurring example. A literal frontier is also implied because vast areas remain "wilderness" and settlers or immigrants and the surviving indigenous people contest the social, economic, and moral domains, especially at the geographic and cross-cultural margins. In such a society the "frontier" metaphor justifies a more punitive response to crime and deviance since social order and

solidarity is conditional and constantly redefined to meet evolving circumstances.

Drawing in part from Erikson's (1966) thesis that once a settler society subdues the wilderness, its sense of social solidarity weakens and "deviance" is internalized and redefined to recreate social order, it follows that severe repression of crime or deviance is a normal consequence of establishing cultural solidarity. In Erikson's thesis, social control in Puritan New England was reaffirmed through the "discovery" of witchcraft which acted to supplant the declining influence of the frontier on settler solidarity and morality. In this way cultural boundaries are exemplified by definitions of deviance, and in Australia's "frontier" states Aboriginal culture provides an inexhaustible source of deviant possibilities. In contrast to the dominant materialist, time-governed, politically cohesive, and largely Protestant Anglo-Australian culture, the Aboriginal cultural domain is characterized by the preservation of unique cultural practices, intense reciprocal relations, supreme individual sovereignty, and "the relatively unfettered consumption of time" (Rowse 1922, pp. 22–35).

In postcolonial Australia, subjugation of the "wilderness" is incomplete, and the literal and metaphorical frontier is defined along the axis of natural resource exploitation. The continuing process of colonization increases social interaction between the races, changes the nature of economic relations and governance (from assimilation to self-determination), and provokes contests over land use and definitions of deviance. Coupled with the revival of Aboriginal land rights and the renaissance of Aboriginal culture, even marginal threats such as those posed by the "moral" disorder of Aboriginal social life (as perceived by the dominant non-Aborigines) intensify conflict. Frontier states such as WA and the NT with large Aboriginal populations who retain or claim substantial areas of "undeveloped" land maintain strong elements of cultural authority and resist the drive for development and "progress" may be especially conducive to a punitive approach.

Table 22 attempts to show the relationship between punitiveness and a "frontier" culture. Frontier is defined in this context by a generally low level of urbanization and population density, a large and independent Aboriginal population, and a sizable proportion of land in Aboriginal hands. The NT and WA best illustrate "frontier" jurisdictions, while Victoria and Tasmania are the least. South Australia, Queensland, and NSW fall between. On the six general measures

TABLE 22

Aboriginal Population, Land Occupation, Language Retention, Imprisonment Rate, and Proportion of Aboriginal Prisoners by State (Ranked High to Low)

| | Aboriginal Population (Percent) | Rank | Land Area (Percent) | Rank | Language Retention (Percent) | Rank | 1987 Prison Rate (per 100,000) All | Rank | Aborigine | Rank | Aborigines in Prison at Census (Percent) | Rank | Overall Rank |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Northern Territory | 22.4 | 1 | 36.1 | 1 | 68.0 | 1 | 311 | 1 | 962 | 3 | 71.5 | 1 | 1 |
| Western Australia | 2.7 | 2 | 12.1 | 3 | 23.6 | 2 | 110 | 2 | 1,331 | 1 | 30.9 | 2 | 2 |
| Queensland | 2.4 | 3 | 2.0 | 4 | 8.6 | 4 | 89 | 3 | 578 | 5 | 15.1 | 4 | 4 |
| Tasmania | 1.5 | 4 | .0 | 6 | .2 | 7 | 62 | 6 | 104 | 7 | 2.8 | 6 | 7 |
| New South Wales | 1.1 | 5 | .1 | 5 | 1.1 | 6 | 78 | 4 | 613 | 4 | 8.2 | 5 | 5 |
| South Australia | 1.1 | 5 | 18.8 | 2 | 21.2 | 3 | 63 | 5 | 1,029 | 2 | 16.8 | 3 | 3 |
| Victoria | .3 | 6 | .0 | 6 | 2.2 | 5 | 47 | 7 | 412 | 6 | 2.7 | 7 | 6 |
| Australia | 1.5 | | 13.1 | | 18.4 | | 75 | | 776 | | 14.8 | | |

SOURCE.—Broadhurst (1993).

NOTE.—The overall rank assuming equal weight summarizes the rankings over all six measures. The 1987 prison data are used for comparability with population, land area, and language estimates derived from the 1986 census.

provided in table 22, those jurisdictions with the highest frontier profile have the highest rates of imprisonment.[26]

Tasmania, Victoria, and NSW have average or below-average Aboriginal populations, negligible proportions retaining traditional languages, little or no land under Aboriginal "control" or claim, and relatively low Aboriginal participation in imprisonment. Western Australia and the NT have well-above-average Aboriginal populations, language retention, and large areas under Aboriginal control—both have high rates of imprisonment and very high Aboriginal participation in imprisonment. South Australia has a below-average Aboriginal population, but higher language retention and significant areas under Aboriginal control, whereas Queensland has an above-average Aboriginal population but below-average language retention and only a small area of land under Aboriginal control. Both have levels of Aboriginal participation in imprisonment that fall in between the extremes.

The situation in Tasmania is especially instructive since it has an average size Aboriginal population but the lowest level of overrepresentation in the prison population. Cove (1992, p. 156) has suggested that one important explanation for the lower participation rate of Aborigines is the high degree of "cultural homogeneity, both among Tasmanian Aborigines and between them and the wider Tasmanian population." A clear indicator of homogeneity "is the predominance of Tasmanian Aborigines who are English only speakers—98.3 percent as compared to the national average of 76.8 percent."

2. *Socioeconomic and Conflict Theories.* The "frontier" proposition requires more than the general relationships described in table 22 for convincing demonstration. The RCIADIC, for example, while recognizing cultural conflicts, gave primary emphasis to the overwhelming deprivation of Aborigines. Thus the "underlying issues" of poverty and subculture produce the exceedingly high overrepresentation of Aborigines in prison. These notions of causation are generally similar to orthodox strain or conflict explanations of crime, and their cogency can be examined by using data from the 1994 NATSI survey.

The NATSI survey data enabled broad indexes of Aboriginal socio-

[26] Calculation of Spearman's rank-order correlation coefficients for the rankings in table 22 also lends support to the discussion that follows. In this method, tied rankings are allocated half scores; following this procedure changes the overall rankings marginally, by reversing the ranking of Tasmania and Victoria—Victoria has the lowest overall rank. Of the fifteen possible correlations between the rankings, we would expect a small number to be significant even if there were no relationships between the variables. However, more than ten correlations were significant at the 5 percent level.

economic and cultural status to be created and compared with various measures of punitiveness including the prevalence of arrest among Aborigines for each Australian jurisdiction. Jurisdictions with high Aboriginal socioeconomic deficits are also those with strong Aboriginal cultures and consequently the highest levels of punitiveness as measured by imprisonment and arrest rates.

Thus the NATSI survey enables us to examine by jurisdiction the relationship of crime with Aboriginal cultural integrity or "strength" and socioeconomic or "stress" factors. The "cultural strength" index was based on data collected on the proportion of Aborigines who identified with a geographical area or "homeland," related to a clan or skin group, spoke an Aboriginal language, saw elders as important, voted in Aboriginal and Torres Strait Islander Council elections, and participated in various cultural activities and ceremonies. Similarly, a socioeconomic "stress" index was created by such factors as the proportion of single-parent families, the amount of unemployment (especially long-term employment), the extent of unsatisfactory housing and service access, the proportion on low incomes (less than $A 12,000), the extent that alcohol is considered the main health problem, and postschool qualifications rates. In addition, for each jurisdiction a crime or punitiveness index was created and operationalized as the proportion of the Aboriginal population arrested in the last five years (1994 NATSI survey), Aboriginal and overall police custody rates (1992 National Custody Survey, table 7), and Aboriginal and overall imprisonment rates (1994 National Prison Census, table 19). A combined measure comprised the punitiveness index because the "prevalence of arrest" measure was less reliable than others, and overall rates (including Aborigines and non-Aborigines) are more accurate indicators of the relative punitiveness of jurisdictions.

For this exercise the proportion of each jurisdiction's population who reported assault victimization were given either a positive or negative valence depending on the index. Thus the proportion of the Aboriginal population not victimized was treated as a "cultural strength," while the proportion victimized was treated as a "stress" indicator. The values in each index are scored and treated as additive, permitting the simple ranking of the jurisdictions according to their cultural "strength," socioeconomic "stress," and punitiveness. Based on the average score for Australia, four jurisdictions (NT, WA, SA, and to a lesser extent NSW) are classed as having both high "cultural strength" and "stress"; two (Victoria and Tasmania) have low "cultural strength"

and "stress," and one (Queensland) has high "cultural strength" and low "stress." No jurisdiction is found with a high "stress" and low "cultural strength" pattern, although NSW borders on this classification (see table 23).

Theoretically, "cultural strength" indicates a degree of resistance and potential conflict with the dominant society, while socioeconomic "stress" is an indicator of relative deprivation. Thus a high "cultural strength" ranking presumably associated with culture conflict should be related to a higher punitive rank, and similarly a high "stress" ranking would simulate deprivation or strain and should also be associated with a high punitive ranking. Consequently, those jurisdictions with high "cultural strength" *and* socioeconomic "stress" ranks would also be those most likely to have a high punitiveness rank. A series of rank-order correlation tests conducted on the three indices generally showed this to be the case and is consistent with those found in the above "frontier" analysis.[27] That is, the "frontier" states NT and WA have the highest "strength" and "stress" scores and the highest police or prison custody rates and high overall punitiveness ranks, while Tasmania and Victoria with low "strength" and low "stress" ranks were found with the lowest custody rates and punitiveness ranks. Although slight variations were observed depending on the combination of punitive indicators employed, these did not sufficiently alter the general relative order of jurisdictions (for detailed results and discussion, see Broadhurst 1996).

These analyses support the proposition that cultural strength and socioeconomic stress are associated with higher punitiveness. Most striking was the high correlation between "cultural strength" and "stress" such that either index could be regarded as interchangeable and arguably support a conflict-stress model of Aboriginal criminalization. An exception appears to be the case of the NT which has the highest "cultural strength" and socioeconomic "stress" rank, but Aboriginal arrest and imprisonment modestly, or only poorly, correlated with these factors. Nevertheless, the NT has the highest rank when *overall* police and prison custody rates are correlated and a moderately

[27] Spearman rank-order correlation tests were conducted on the "strength" and "stress" indices and on the arrest, police custody, prison census indices, and the combined "punitive index." In all, fifteen tests were conducted of which all but four were significant at the 95 percent (*) or 99 percent (**) confidence level. Strength and stress were highly correlated ($r_s = 0.96$**), and both were significantly correlated with all indices except NATSI arrest.

TABLE 23

Rankings by Jurisdiction on Indexes of "Cultural Strength," "Socioeconomic Stress," "Punitiveness," and Various Crime Measures

| | Cultural Strength Index | | Socioeconomic Stress Index | | Police Arrest, NATSI Survey | | Policy Custody* | | Prison Census* | | Punitive Index Rank† |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Average | Rank | Average | Rank | Population (Percent) | Rank | Rate | Rank | Rate | Rank | |
| Northern Territory | 589 | 1 | 321 | 1 | 19.6 | 5 | 1,001 | 1 | 290 | 1 | 3 |
| Western Australia | 468 | 2 | 316 | 2 | 25.4 | 2 | 310 | 2 | 126 | 2 | 1 |
| South Australia | 450 | 3 | 295 | 3 | 28.5 | 1 | 226 | 3 | 87 | 4 | 2 |
| Queensland | 436 | 4 | 264 | 5 | 14.9 | 6 | 205 | 4 | 73 | 5 | 5 |
| New South Wales | 379 | 5 | 290 | 4 | 22.5 | 4 | 96 | 5 | 101 | 3 | 4 |
| Victoria | 364 | 6 | 253 | 6 | 22.6 | 3 | 80 | 7 | 54 | 6 | 6 |
| Tasmania | 263 | 7 | 211 | 7 | 12.6 | 7 | 86 | 6 | 52 | 7 | 7 |
| Australia | 367 | | 284 | | 20.4 | | 152 | | 86 | | |

SOURCE.—Broadhurst (1996).

* Policy Custody Survey-August 1992 and National Prison Census-March 1994; all rates per 100,000 population.

† Combined index comprises overall and Aborigional rates for the 1992 Policy Custody Survey and 1994 National Prison Census, plus percent of Aboriginal population reporting arrest in 1994 National Aboriginal and Torres Strait Islander (NATSI) survey.

high (3) punitiveness index rank. The lower correlation with Aboriginal arrest and custody and "culture"/"stress" indexes in the NT raises the possibility that, given its exceptionally large Aboriginal population and high land and language retention, high cultural strength provides immunity to excessive criminalization. This hypothesis is strengthened by the fact that culturally strong states like the NT, Queensland, and to a lesser extent WA have lower assault victimization rates. Tasmania complies entirely with expectations by having both the lowest "strength" and "stress" rank and the lowest crime rank on all measures. Moreover, WA and SA which have a very high "cultural strength" and "stress" index also have the highest arrest rankings and very high overall punitiveness rank.

*C. Conclusion*

Diverse rates of imprisonment between jurisdictions can usually be "attributed to fundamental differences in the character of a society over long time periods or significant differences in society or government" (Zimring and Hawkins 1991, p. 222). Punishment could be a sensitive indicator of cultural differences, and in turn sensibilities about the infliction of pain a better indicator of the scale of imprisonment than the actual amount of crime. Moreover, differential rates of imprisonment for minority and disenfranchised groups might also reflect the extent to which contested cultural boundaries are defined by deviance and remain unresolved by legalistic solutions. Finding convincing data to explain why some states have scales of imprisonment widely different from others is difficult (once account is taken of variation in the amount of and responses to recorded crime), but differences arising from the "frontier" character of some Australian states suggests the usefulness of culture-conflict explanations.

However, swift changes in imprisonment rates over short periods of time, as have recently occurred in the United States and in some Australian states, suggest penal "reforms" are not mere captives to more or less stable sociocultural factors. That the scale of imprisonment appears to be somewhat insensitive to the amount of crime also suggests that questions of the effectiveness of imprisonment are less important to the scale of imprisonment than the demand for punishment. Arguably, the scale of punishment responds more to "market forces" than to strictly rational purposes, and thus the effectiveness of punishment will be less relevant than issues about "for whom" and "for what" imprisonment is used (Wilkins 1991).

It has been popular to dramatize and criticize the high level of Aboriginal overrepresentation because "when imprisonment does not deter but is shouldered by the Aboriginal as an inevitable yoke to be carried as a consequence of his residence in white society, we would be moronic to go on using it punitively and ineffectively" (Clifford 1982, p. 11). This criticism assumes that imprisonment should work to reduce or affect crime. However, reductionist goals may be incidental to the symbolic role of punishment (Garland 1990). Given the economy of imprisonment as a means of regulating the disorder represented by Aboriginal deviance, its deployment may be useful in managing the stress of race conflict and cross-cultural inequalities. Efforts to reduce Aboriginal involvement in imprisonment by mechanistic means may therefore be limited since these do not address the demand for punishment.

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