

With reference to varying examples, discuss how Indigenous communities have been criminalised within imperial/ colonial contexts

Indigenous communities worldwide have sustained rich and diverse traditions, languages and belief systems for centuries, maintaining their cultural heritage despite the external pressures of the modern world. Colonialism can broadly be defined as the psychological exertion of control over another territory, and Imperialism can be defined as involving the economic and political domination of one country over another; both of which have profoundly shaped the experiences of Indigenous communities.

Historically, the term 'Criminalisation' is defined as the disproportionate targeting of specific social groups, driven by prejudicial assumptions and stereotypes, rather than actual criminal behaviour (Webster, 2007). The historical influence between imperial and colonial systems and the criminalisation of Indigenous communities forms a narrative of power, exploitation and systemic injustice, where legal frameworks were created as tools of oppression to entrench racial hierarchies. Racialisation is a social process where individuals are categorised and grouped based on perceived biological traits. These assigned characteristics then shape social interactions and relationships, creating distinct social groups (Webster, 2007). This process involves the attribution of racial significance to individual and collective identities. These mechanisms dehumanised Indigenous people, reinforcing systemic inequalities that are persistent today. Consequently, these marginalised groups ensured heightened surveillance and had a higher chance of being arrested and imprisoned.

Criminalisation was a deliberate strategy of the empire which targeted indigenous communities and labelled them as deviant, ensured they were exploited and took advantage of the power and control the empires had. This criminalisation of Indigenous communities under imperial and colonial systems has left a legacy, which is deeply embedded in modern systemic racism and racialised justice systems (de Leeuw, et al., 2010). Today, these colonial legacies persist through over-policing, disproportionate incarceration of races, and discriminatory legal practices that target marginalised communities (Cunneen, 2006). Understanding these historical foundations is crucial to addressing the systemic inequalities that continue to oppress Indigenous people.

This paper will discuss how Indigenous Communities across the world including Australia, India, Canada and Latin America were custom to criminalisation within imperial and colonial contexts. It will look at the reasoning for being colonised and how they were criminalised. It will also touch on the racialisation of Indigenous people and how that is still present in post-colonial societies.

Laws

Although there are debates on the scale of criminalisation of Indigenous Communities, the Criminal Tribes Act poses a strong argument for how Indigenous communities were systematically labelled and treated as criminals. The Criminal Tribes Act, first enacted by the British in India in 1871, classified entire communities as “hereditary criminals” subjecting them to surveillance, restrictions on movement and forced resettlement. This legislative measure institutionalised the perception of Indigenous groups predisposed to crime, reinforcing colonial narratives of control and social hierarchy (Safdar, 2020). This is supported by labelling theory because it demonstrates how state-imposed stigmatisation can have long-term consequences on marginalised groups.

Labelling theory suggests that once a group is officially labelled as deviant or criminal, the label is stuck. This ends up influencing social perceptions and individual identities. In the case of the Criminal Tribes Act, Indigenous communities were not only subjected to legal discrimination but also experienced forms of marginalisation that persisted beyond when the Act was abolished in 1952. The consequences of being labelled as a criminal extended beyond individual identity. They affect communities, social cohesion and access to resources. The stigma attached to the label can hinder opportunities for rehabilitation and reintegration, perpetuating cycles of crime and victimisation (Ashley, 2023).

The colonial legacy has led to the dehumanisation of Indigenous peoples framing them as ‘others’ who are fundamentally different and inferior. This is supported by (Spivak, 1985) who referred to the act of the ‘Other’ as morally inferior and subordinate. Racialised ‘Othering’ created a division, categorising individuals as ‘Civilised’ or the ‘Other’, as a bid to justify racism through colonisation, ultimately leading to racial stigmatisation.

While colonisation dates back to 1000 BC, its racialised consequences, specifically for Indigenous communities, persist in modern societies. The criminalisation of Indigenous communities within colonial and imperial contexts is a legacy of the systems of domination through legal, economic and social mechanisms that marginalise their cultural practices and autonomy (Coates, 2004). Neo-colonial systems continue to enforce the social, economic, and political exclusion of Indigenous communities by maintaining their overrepresentation in the justice system through criminalization and excessive policing. These systemic inequalities are deeply rooted in the historical legacy of colonisation (Deckert, 2014).

When we look specifically at criminalisation, it is a topic that has been argued over by many authors. The way that crime is conceptualised has serious implications for how we understand the relationship between the powerful empire and the powerless Indigenous communities. The designation of certain activities as "criminal" is deeply intertwined with dynamics of power, mechanisms of social control, and actions that challenge such control. (Pfohl, 1994) highlights that the concept of criminality is shaped by these relationships, reflecting broader societal efforts to regulate behaviour and suppress resistance. (Christie, 2004) further contends that crime, as an objective phenomenon, does not inherently exist. Rather, it is specific acts that acquire varying meanings within different social contexts. This interpretive nature of criminality allows for the labelling of certain individuals and groups as criminals, even when their actions would not typically be considered criminal in other social settings. Within imperial and colonial contexts, this process extends to the cultural practices and behaviours of Indigenous communities, where the criminalisation is not merely of actions but of identities and ways of life, casting their cultures and traditions as transgressive (Hall, et al., 1978).

The criminalisation of Indigenous communities within imperial and colonial contexts is a multifaceted phenomenon driven by the imposition of foreign legal systems, resource extraction initiatives, and cultural suppression. This dynamic is evident in the disruption of Indigenous hunting, gatherings, languages, ceremonies, dances and other cultural practices. By framing these traditions as incompatible with the coloniser's worldview, colonial powers effectively sought to delegitimise and erase Indigenous identity and history, under the guise of 'civilising' the communities. This is supported by the Aboriginal Australians and the Torres Strait Islander People.

Aboriginal Australians are believed to have arrived on the continent over 65,000 years ago, making them one of the oldest continuous cultures on earth. They hold a deep spiritual connection to their community, expressed through stories, ceremonies and Dreamtime (A spiritual framework of Aboriginal cosmology). The Torres Strait Islander People are Melanesian people who live in the Torres Strait Islands. They are skilled fishers, navigators and canoe builders (Blakemore, 2023).

The British colonisation of Australia in 1788 established a penal colony, declaring the land as terra nullius “nobody’s land”, which would lead to mass devastation across Indigenous Communities. The land was never unoccupied; it had long been home to thriving Indigenous nations with well-established systems and traditions (Chalmers, 2020). The British colonised Australia to relieve overcrowding, and for power. From 1788 to 1868, Australia received more than 162,000 convicts as a consequence of crimes committed in Britain and Ireland. In 1833 alone, around 7,000 were transported (National Museum Australia, 2022). Britian feared other European countries would claim Australia, they wanted their land and to establish a trading port. The British went with a mission of Power, Control and Wealth (King, 2017). However, to do so they targeted Indigenous communities’ thorough inequality and put them at a disadvantage in multiple ways.

Critical Indigenous Criminology fundamentally questions the rightful authority of the state and its overemphasis on imprisonment, punishment, and the overall system of incarceration. Both abolitionist and Indigenous perspectives on policing, prisons, and punishment share a deep scepticism regarding the capacity of the colonial state's punitive measures to bring about lasting positive outcomes for individuals or communities. This disbelief stems from the recognition that the land upon which the state operates was never truly 'no man's land' but rather occupied territory with existing Indigenous populations and governance systems (Cunneen & Juan, 2024).

Colonial powers claimed their legal systems were superior and necessary to impose a sense of civilisation. They argued that Indigenous laws were primitive and incompatible with modern governance, legitimising the replacement of local legal traditions. It has been noted that colonial powers view their legal systems as superior and use them to undermine Indigenous legal traditions. This imposition was brought in as part of a broader project that aimed at assimilating Indigenous peoples into the dominant culture and implementing a state of

civilisation. The doctrine of terra nullius in Australia allowed for the legal justification of land theft from Indigenous peoples by deeming their land unoccupied and unused. Colonial governments criminalised the Indigenous activities in areas designated as “settled” lands in a hope to eliminate traditional practices that didn’t align with European concepts of land ownership.

The imposition of colonial legal systems was a deliberate strategy to assimilate Indigenous peoples. Aboriginal Australians were prohibited from accessing lands reclassified as settler property, rendering their traditional food procurement methods illegal. The criminalisation extended beyond physical practices to encompass cultural expressions. Proponents of these policies often justified them as necessary for progress and the establishment of a unified legal and cultural framework. Colonial powers argued that bringing a centralised legal system would bring stability, modernisation and economic growth to Indigenous communities. They often framed traditional cultural practices as outdated or inefficient, claiming that assimilation into the dominant culture was in the best interest of Indigenous peoples.

However, critics argue that these policies were less about progress and more about control. The criminalisation of traditional practices systematically erased Indigenous autonomy and cultural heritage while facilitating the extraction of resources and labour for colonial benefit. The suppression of Indigenous languages not only disrupted community cohesion but also erased generations of knowledge embedded in oral traditions.

The effects of criminalisation of traditional practices exist today. In many countries, Indigenous languages are endangered or extinct due to generations of suppression. Cultural practices once deemed criminal have become symbols of resistance and resilience, with communities striving to revive and celebrate their traditions. Legal reforms such as the recognition of native title in Australia through the *Mabo vs Queensland (No 2)* decision, represent steps towards addressing historical injustices. Grassroot movements and Indigenous advocacy have been crucial in reclaiming cultural heritage. For example, language revitalisation projects, resurgence of traditional dances and ceremonies, and legal challenges to land dispossession highlight the enduring strengths of the Aboriginals. Systemic barriers still remain, as Indigenous communities continue to navigate the legacies of criminalisation and marginalisation.

This imposition of colonised legal frameworks not only undermined Indigenous governance, but also criminalised cultural practices, including languages, ceremonies, and land stewardship which were integral to the identity of the Indigenous communities (Cunneen & Tauri, 2019). In Canada, the banning of the Potlatch ceremony among First Nations people further illustrates this. The Potlatch was a ceremony internal to economic, political and social institutions for many Indigenous nations. However, it was deemed illegal under the Indian Act in 1885 (Monchalin, 2016). The Canadian government viewed the Potlatch as an obstacle to assimilation, framing it as wasteful, unproductive, and contrary to European economic values. This legal intervention is an example of cultural criminalisation (Razack, 1998), in which Indigenous traditions were seen as criminal acts in an effort to facilitate colonial control. Those who participated in Potlatches were arrested and Indigenous leaders were imprisoned for maintain their cultural heritage. The banning of the Potlatches is a broader strategy of repression, where criminalisation serves as a means for controlling marginalised communities rather than preventing harm (Bracken, 1997).

The Australian legal system carries centuries of discrimination and mistreatment of Indigenous people. Within the colonial period, laws were enacted to control and subjugate Indigenous communities in Queensland. The Native Mounted Police in the 19th Century were a government-funded paramilitary force who were responsible for dispersing Indigenous people. They operated from 1849 until 1904 and were based in camps throughout the state. The force was made up of non-indigenous officers, as well as aboriginal men and boys (Burke, et al., 2020).

Known as the ‘Stolen Generations’, the Aboriginal children were removed based on specific assumptions about race, blood and racial hygiene, exemplifying the criminalisation of Indigenous communities. Justified through pseudoscientific racial theories, they were specifically divided according to the amount of European blood they might possess (van Krieken, 2003). Laws were put into place fundamentally to categorise and separate individuals within these racialised boundaries. The colonisers were concerned as the rise in mixed-blood children was rapidly growing, and these children were often the target of intervention. In which, by removing them from their communities and families, over generations, these children would eventually be biologically absorbed into the non-Indigenous population, claiming they could be ‘saved’ through assimilation’ (Manne, 2001). This process,

fundamentally rooted in racialised state control, framed indigenous families as unfit and positioned Indigenous cultural identity as a condition requiring eradication.

The Australian Human Rights act noted that the forcible removal laws were racially discriminatory in that they established legal regimes for Indigenous children and their families which were distinct and inferior to those for non-Indigenous children and their families. The inquiry also found that there were several other features of these laws that were discriminatory. The so-called 'protection' boards, tasked with overseeing Indigenous welfare, failed in their fiduciary duties, increasing facilitating cultural destruction, social fragmentation and long-term psychological harm. The criminalisation of Indigenous families under this system exemplifies racialised legal categorisation (Van Dijk, 1993), where legal systems were structured in ways that ignored racial motivations behind oppressive policies.

Imagine a country where a minority group has been colonised and oppressed for generations. Because of their skin colour, they are treated unfairly and face poverty, discrimination, and social exclusion. Over time, many people in this group feel disconnected from society and start to believe they have no control over their own lives. Tatum's (1994) model explains crime and justice by looking at social and mental factors. Often when oppressed individuals feel alienated, powerful and doubtful, crime can become their way of coping. Awareness of the damaging impacts of removing aboriginal children from their communities. Some might try to fit in by abandoning their culture (assimilation), while others may turn to crime as a way of rebelling against a system that doesn't care about them. They might also become angry and direct their frustration at people within their own community, as they begin to hate in others what they dislike about themselves. This is an example of what Tatum and Fanon are describing: how colonization and racism can lead to feelings of powerlessness, self-hate, and destructive behaviours within oppressed communities. Policymakers tend to ignore the high rates of Indigenous over-representation in the criminal justice system by framing criminal behaviour through a narrow and restrictive lens (Cunneen & Juan, 2024).

This is further supported by the doctrine of legal cynicism, which emphasises the relationship between Indigenous communities and the legal system. Legal cynicism arises when communities lose faith in the justice system due to its role in perpetrating racial oppression. In many Indigenous communities, historical experiences of forced removal, land dispossession and racialised policing have fostered distrust in legal institutions (Kirk & Matsuda, 2011).

Furthermore, (Peterson & Krivo, 2010) argue that racialised policies shape community structures and crime rates, reinforcing cycles of disadvantage. When indigenous communities are economically isolated, they face barriers to education, employment and social mobility, increasing the likelihood of interactions with the criminal justice system. However, Indigenous communities are more like victims. Precursor crime rises arises from colonial oppression, poverty, displacement and exclusion, which creates conditions for criminalisation. Racial biases in the injustice system make Indigenous peoples more likely to be found guilty, highlighting the harshness, reinforcing systemic marginalisation.

In Latin America, colonial criminalisation of Indigenous peoples was influenced through forced labour systems such as 'encomienda and repartimiento', where Indigenous communities were forced to do labour under brutal conditions. Colonial laws treated Indigenous resistance as a criminal offence, justifying violent repression. The Slave Codes, originally developed for African populations, were extended to Indigenous peoples, demonstrating how racialised legal frameworks were used to control both groups (Whitehead, 2011). However, (Brisson-Burns, 2024) argues that racial criminalisation occurs in two different ways: directly, through explicit laws that target racial groups, and indirectly, by criminalising behaviours that are linked to racial Identity. The vagrancy laws imposed in post-colonial Latin America exemplify indirect criminalisation as Indigenous people were displaced from their ancestral lands, and often arrested for being unemployed or homeless, reinforcing systemic marginalisation.

The over-policing and over-representation of Indigenous peoples remain issues in many post-colonial societies. In Canada, Indigenous communities made up a disproportionate percentage of the prison population. Despite totalling to 5% of the adult population, Indigenous peoples account for 32% of individuals in the prison population (Dakalbab, 2023). This is explained by (Cunneen, 2005) who describes criminalisation as a racialising discourse that constructs Indigenous Identity as inherently linked to criminality. This discourse justifies excessive policing, racial profiling and legal practices that disproportionately punish Indigenous Individuals.

Conclusion

The criminalisation of Indigenous communities within imperial and colonial contexts is not merely a historical phenomenon, but an enduring legacy that continues to shape contemporary legal and social structures. As demonstrated through the examples of Australia, India, Canada

and Latin America, colonial powers systematically labelled Indigenous peoples as criminals to justify their exploitation and cultural erasure. Laws such as the Criminal Tribes Act, the banning of the Potlatch ceremony and racialised land dispossession were not solely legal measures, but ways of control to entrench racial hierarchies and facilitate colonial control.

The persistence of these colonial legacies in modern justice systems, which is evidence by over-policing, disproportionate incarceration and systemic discrimination faced by Indigenous communities, highlights the ongoing impact of imperial and colonial structures. The racialisation of Indigenous Identity as outlined by Cunneen and Van Dijk, has constructed a discourse where Indigenous communities are labelled as criminals, reinforcing the cycle of discrimination. Theories such as legal cynicism and racialised social disorganisation illustrate how historical oppression translates into contemporary inequalities, further isolating Indigenous Communities.

Understanding the history of Indigenous Communities is crucial in understanding the systemic racism embedded in modern legal frameworks. Legal reforms, indigenous-led activism and movements for decolonisation have challenged these structures to reclaim culture, land rights and equality. However, the struggle for justice remains ongoing. The criminalisation of Indigenous communities is not just a reflection of past colonial violence, but an ongoing process that demands critical interrogation. Recognising and addressing these injustices is essential for achieving the restoration of Indigenous sovereignty in post-colonial societies.

(David & Mitchell, 2021)

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