

*Heather Douglas\**

***CRIME, ABORIGINALITY  
AND THE DECOLONISATION OF JUSTICE***

**By Harry Blagg  
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This book provides an excellent exploration of the complex interactions between the Indigenous people and the state through a critique of the criminal justice system. Blagg argues that the criminal justice response tends to frame the ‘Aboriginal problem’ as essentially a problem of order. According to Blagg, the result of this approach is that the criminal justice system operates to entrench the oppression and control of Aboriginal people.<sup>1</sup> He argues that justice responses have generally failed to reflect the importance of history, including colonial dispossession, assimilation and Indigenous resistance.<sup>2</sup> However, while most commentators accept Blagg’s argument that the justice system is failing, the failure is systematic and that there is an obvious ‘legitimation crisis’ for systems of justice in Australia,<sup>3</sup> it seems more than ever that governments are committed to focusing on entrenching the role of the criminal justice process as a top-down method of control. When the text is considered in the wake of the Northern Territory Intervention (‘the Intervention’), the thrust of this book appears somehow idealistic and old-fashioned. Nevertheless it is compelling and hopeful. Blagg makes suggestions to improve in his opinion the most oppressive aspects of many criminal justice responses. Essentially, he recommends that Aboriginal people should be seen as ‘bearers of knowledge’<sup>4</sup> and that Aboriginal agency needs to be understood as a necessary component of any strategy that aims to improve governance within Aboriginal communities.<sup>5</sup>

In keeping with these propositions, Blagg uses case studies of various programs that have involved the input and direction of Aboriginal people to illustrate the potential of such approaches.<sup>6</sup> The book is divided into chapters focused on topics including youth, policing, family violence and customary law. However the chapters

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<sup>1</sup> Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (1<sup>st</sup> ed, 2008) 12.

<sup>2</sup> Ibid 2.

<sup>3</sup> Ibid 51.

<sup>4</sup> Ibid 3.

<sup>5</sup> Ibid 168.

<sup>6</sup> Ibid 118, 122.

interweave and ideas raised in one chapter frequently intersect with ideas and concepts discussed in other chapters. For example, it is impossible to discuss youth or family violence without discussing policing or customary law and Blagg's treatment of the issues ably captures this interweaving and complexity.

Blagg points out that policing Aboriginal people continues to be frontier policing.<sup>7</sup> He quotes Frantz Fanon to help explain his point:

The colonial world is a world cut in two. The dividing line, the frontiers are shown by barracks and police stations. In the colonies it is the policeman and the soldier who are the official, instituted go-betweens, the spokesmen of the settler and his rule of oppression.<sup>8</sup>

The approach to policing in the Intervention continues to reflect this reality. In the Howard Government's information published about the Intervention, the focus is on raw numbers of police officers rather than the kind of policing needed: 18 temporary police stations, 80 more police from other jurisdictions, 66 more Federal Police.<sup>9</sup> Primarily police are required to carry out their 'normal duties' in preventing and detecting crime, however, police are also expected to be 'engaged' in the community.<sup>10</sup> This latter part of the role appears to be largely focused on encouraging the confidence of children so they will feel comfortable to report child abuse. Thus police under the new Intervention model are primarily operating to control communities: watching for criminal offending on the Northern Frontier. Melanie Schwartz has described the policing-oriented approach of the Intervention as 'intimidating', 'paternalistic', and 'strong-handed'.<sup>11</sup> Elsewhere in his text Blagg notes the tension between helping and policing (that is, criminalisation)<sup>12</sup> and this also seems to be continuing to play out in the Intervention approach.

In relation to the specific problems of policing Aboriginal people, Blagg singles out two groups for different reasons. First, Blagg discusses the disproportionate targeting of Aboriginal youth by police. He shows how Aboriginal youth, partly because they are highly visible members of a marginalised group, are singled out for 'capture and control' policing strategies and are, as a consequence, over-

<sup>7</sup> Ibid 42.

<sup>8</sup> Ibid 41-2 citing Frantz Fanon, *The Wretched of the Earth* (2<sup>nd</sup> ed, 1990) 29.

<sup>9</sup> Australian Government, *Northern Territory Emergency Response Fact Sheet "More Police in Communities"* (2007) Department of Families, Housing, Community Services and Indigenous Affairs <[http://www.facsia.gov.au/nter/docs/factsheets/law\\_order/factsheet\\_more\\_police.htm](http://www.facsia.gov.au/nter/docs/factsheets/law_order/factsheet_more_police.htm)> at 18 September 2007; Major General Dave Chalmers, *Operation Update* <[http://www.facs.gov.au/nter/operation\\_update.htm](http://www.facs.gov.au/nter/operation_update.htm)> at 18 September 2007.

<sup>10</sup> Australian Government, above n 9.

<sup>11</sup> Melanie Schwartz, 'Policing the Territory: A Comment on the Emergency Response to Little Children are Sacred' (2007) 6 *Indigenous Law Bulletin* 9, 9-10.

<sup>12</sup> Blagg, above n 1, 102.

policed.<sup>13</sup> Such over-policing invariably leads to higher levels of criminalisation and detention, starting Aboriginal youth on an indefinite cycle of contact with the criminal justice system. On the other side of the coin, Blagg points to the policing of family violence and the protection of Aboriginal victims from crime. He suggests that Aboriginal people are often under-policed in their own communities where there are no white interests to safeguard,<sup>14</sup> and that even where police are available there is such a high level of distrust of police that victims are reluctant to report crime.<sup>15</sup> Aboriginal women tend to reject engaging with police in family violence matters<sup>16</sup> largely because police approaches favour criminalisation over helping. Studies in other jurisdictions have explored the problems for Aboriginal women who call on police in family violence situations, including the heightened risks of arrest of the victim and of having children removed.<sup>17</sup> Blagg suggests that rigid models of policing do not work,<sup>18</sup> and he calls for a radically new partnership between Aboriginal people and police.<sup>19</sup>

Blagg draws the reader's attention to some of the problems around sentencing and Aboriginal people. He recognises that severe resource limitations in some communities lead to diversionary practices and non-custodial options being few and far between.<sup>20</sup> Further, sentences of imprisonment are seen as a 'badge of honour' in some communities, rather than something to be ashamed of<sup>21</sup> — an attitude that is hardly conducive to deterrence. Commentators recognise that many of the skills learned as a result of serving a period of imprisonment are undesirable. However, Blagg also suggests that periods of imprisonment may refine Aboriginal men's narrative entitlements to use violence,<sup>22</sup> leading inexorably to further use of violence on release, so that the criminalisation–prison cycle continues. He argues that to improve Aboriginal people's engagement with the criminal justice system, an increasing acceptance of Aboriginal customary law is needed<sup>23</sup> along with a focus on respect for culture.<sup>24</sup> Blagg understands Aboriginal customary law in its wider meaning, as representing a 'grammar for living'.<sup>25</sup> He proposes that it is in this wider sense that Aboriginal customary law provides potential for a new form of

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<sup>13</sup> Ibid 59.

<sup>14</sup> Ibid 43.

<sup>15</sup> Ibid 146.

<sup>16</sup> Ibid 112.

<sup>17</sup> Donna Coker, 'Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review' (2001) 4 *Buffalo Criminal Law Review* 801.

<sup>18</sup> Blagg, above n 1, 103.

<sup>19</sup> Ibid 92.

<sup>20</sup> Ibid 67.

<sup>21</sup> Ibid 68.

<sup>22</sup> Ibid 69.

<sup>23</sup> Ibid 86, 166.

<sup>24</sup> Ibid 89.

<sup>25</sup> Ibid 154.

governance.<sup>26</sup> He argues that the refusal of the jurisdiction of customary law has potentially devastating effects.<sup>27</sup> However, despite Blagg's calls, government policy seems to be drifting in a different direction. For example, the Intervention has banned the consideration of customary law in bail and sentencing cases,<sup>28</sup> a step that may lead to unfair outcomes and more people being imprisoned.

One concern about this book was the careless editing. There were numerous spelling mistakes throughout the text. These were mostly an annoying distraction, although occasionally I wondered if there was a subtext I was missing. Examples include Tim Rowse's book *White Flour, White Power*, referred to as, *White Flower, White Power*,<sup>29</sup> Nils Christie is alleged to have argued that lawyers 'steel' conflicts rather than 'steal' them<sup>30</sup> and we are told about 'mango' swamps which I assume should be 'mangrove' swamps.<sup>31</sup>

Importantly, this book reminds the reader of the tendency of white scholars, policy-makers and activists to 'blank themselves out' so they can gaze upon the object — Aboriginal people.<sup>32</sup> It also reminds readers that, despite their claims, institutions such as police services and courts do not use universal criteria to do their work.<sup>33</sup> Blagg suggests, as did the authors of the *Little Children are Sacred Report*,<sup>34</sup> that to reduce and improve the Aboriginal people's interaction with the criminal justice system, complex and often localised strategies need to be employed that are founded on 'respect for and recognition of the Aboriginal domain'<sup>35</sup> — that is, that justice must be decolonised. Blagg's study is a thought-provoking work. Although his prescription for an improved process is supported by many others who work in the field of Aboriginal – Criminal justice relations, the familiar top-down approach of criminal justice responses appears to be maintaining its hold. I am disappointed that this text was not available two years ago when I taught a Master of Laws subject called *Indigenous People and the Criminal Justice System*. It would have been perfect in providing an introduction to the intellectual currents that have influenced and which continue to influence criminal justice responses to Indigenous people and an excellent critical overview of a number of practical programs and legislative reform projects of recent years.

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<sup>26</sup> Ibid 165.

<sup>27</sup> Ibid 148.

<sup>28</sup> Northern Territory National Emergency Response Act 2007 (Cth) ss 90, 91.

<sup>29</sup> Blagg, above n 1, 46.

<sup>30</sup> Ibid 74.

<sup>31</sup> Ibid 95.

<sup>32</sup> Ibid 15.

<sup>33</sup> Ibid 9.

<sup>34</sup> Northern Territory, Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred'* (2007) 12.

<sup>35</sup> Blagg, above n 1, 207.