

Mark Finnane

Griffith University

The origins of criminology in Australia

Abstract:

Is there a distinctive Australian criminology? Was there a criminology before the discipline? Was the formation of the discipline in Australia shaped by the historical contexts of colonial settlement and its aftermath? And how was the international development of the discipline during the middle decades of the twentieth century reflected in the emergence of Australian institutions of criminology, academic and governmental at that time? This article examines these questions as a contribution to a richer historical understanding of the factors that prefigured the late twentieth century acceleration of the discipline in Australia. In particular it approaches this history through the voices of those who shaped its early concerns and activities. It is suggested that some outstanding features of Australian historical experience from the time of European settlement – above all its penal colony origins and its dispossession of Indigenous peoples – struggled to make an impact on the intellectual shape of the discipline during its formative years. On the other hand the institutional forms and intellectual concerns traced here demonstrate the importance of trans-national contexts in shaping a discipline from its early days.

Keywords:

Criminology, history, disciplines, Australia, universities, research

Introduction

If criminology is a way of thinking about the relations of crime and society then Australian criminology might be expected to have a privileged speaking position. The European settlement of Australia, dating back a little more than two centuries, was initiated as a solution to a penal problem. The settlement became in turn a penal experiment, arguably one of the more successful of modern history (Hirst 1995; Braithwaite 2001) in spite of the temptation to paint its course in the colours of brutality and oppression (Hughes 1988). Securing settlement, however, required possession of the lands occupied by the country's Indigenous peoples, a process that was accomplished pragmatically and violently over a long period of time, at least 150 years.

The second of these facts of Australian historical experience – Indigenous dispossession – failed to shape the contours of Australian criminology, but became an urgent subject of concern as the discipline acquired institutional depth and breadth in the 1980s. Long before this, the convict experience helped tie Australian penal and criminological thought to that of both Britain and North America, both as theoretical object and experimental subject. Jeremy Bentham famously considered the New South Wales experiment as an (inferior) alternative to his Panopticon in the pamphlet that contrasted the two (Bentham 1812; Hirst 1983; Jackson 1989). In his short-lived administration of the Norfolk Island penal settlement, a former naval officer Alexander Maconochie took the opportunity to develop his 'marks' system of prisoner rehabilitation, a reform initiative of lasting consequence as technique and ideal (Barry 1958; Morris 2002).

The Australia colonies (including New Zealand, initially administered from New South Wales, and a possible partner in the federation initiative at the end of the nineteenth

century that might have produced a sovereign state of Australasia) remained the antipodean outpost of the British Isles for the century and half ending in the outbreak of the Second World War. The traffic of people, institutions and ideas was not all one way. Maconochie's contribution was one instance among others; the service of Edmund Henderson and Edmund Du Cane in Western Australia's convict administration was in each case a prelude to later roles directing the English prison system, and in Henderson's case chief commissioner of the London Metropolitan Police (Finnane, 1997). Imperial contexts and European origins were the dominant components in the development of Australian ways of thinking about crime and penalty, the twin preoccupations of the emergent criminology of the post-war era.

Antipodean location in an age of sail and then steam might be thought to have exercised an isolation effect in relation to criminal justice. But ideas flowed easily with the movements of people back and forth between the New and Old Worlds, even if they were modulated in the course of journeying. In some cases the absence of entrenched interests in new colonies enabled (or even necessitated) innovation and adaptation in institutional formation. Thus Australian policing was a combination of both Irish and London policing models (Haldane 1986; Finnane 1994); Australian prisons owed a great deal to English prison design, but also included interesting experiments such as the Tasmanian probation stations (Kerr, 1984; Kerr 1988); the architecture of Australian courts mimicked English examples, but still displayed great variety in conveying the authority of law (Bridges, 1986); Australian law and jurisprudence continued English systems but adapted them to new circumstances and innovated where necessary, gradually casting off English authority (Dixon 1965; Castles 1982; Finn 1987; Kercher 1995). Most Australasian jurisdictions were self-governing from the 1850s but remained vulnerable to promptings from the Colonial Office – one source of ideas among many that shaped the institutions and culture of criminal justice. But just as the

exotic Antipodes continued to attract intellectual luminaries and social reformers who published widely their impressions of prisons and other such institutions (Trollope 1873; Hill and Hill 1875; Davitt 1898), so from the Pacific colonials began a tradition from the 1860s of visiting the British Isles, North American and occasionally Europe, looking for guidance in the quest for answers to the problems of criminal justice.

One result of the two-way traffic was the ready translation of new thinking about crime and punishment from the late nineteenth century into programs of law reform, penalty and treatment. Lombrosian thought made its way into Australian penology and criminology via its English translators, especially Havelock Ellis, who had himself spent a few years of early adulthood teaching in the Australian bush. Ellis enjoyed an Australian readership in part through his continuing cultivation of colonial correspondents, some of whom made their way into successive editions of *The Criminal* (Ellis 1890; Ellis 1901; Ellis 1910). The more extreme manifestations of neo-positivism, and especially biological criminology, struggled to find root in Australian soil, the fabled egalitarianism of the local culture contributing to a good dose of environmental balancing of the hereditarian impulse in intellectual thought (Roe 1984; Garton 1994). The mix of hereditarian and environmental thought was influentially represented in the applied criminology of the New South Wales penal administrator, Frederick William Neitenstein, who directed the prisons system from 1896. Neitenstein developed his penological program through a long period of administration of juvenile reformatories. Neitenstein's practical criminology was represented in two significant documents, the first a manifesto of penology that he attached to his first annual report as comptroller-general of prisons, the second a 100 page report on a world tour of prisons and penal systems in 1904. His programme was criminological, if by that we mean more than simply penological – his prescriptions for addressing Sydney's problems of juvenile

delinquency reached out to non-carceral and preventive solutions, some of them certainly embedded in Victorian era ideas (rational recreation and military training), others looking forward to the possibilities of individualisation on a treatment model. Too much had been left to police and prisons, suggested Neitenstein, 'the best way to empty the gaols and to diminish crime is to see that the children grow up trained to religious, moral and industrial habits'(Finnane 1997: 72Ramsland, 1986; Garton, 1989).

The element of moral and social reform suggested in Neitenstein's criminology was complemented in Melbourne by a radical clergyman Dr Charles Strong, who founded the 'Criminology Society of Victoria' in November 1895. For Strong and his followers in the Society, whose formal object was the 'Study and Promotion of the Best Methods for the Prevention and Treatment of Crime', the tasks were more those of the desirable kinds of institutional reform. Criminology in these decades meant in fact progressive social reform, informed eclectically by a reading of ideas and programs adopted in Britain and the USA. In Victoria's adjacent colony the inaugural meeting of an off-shoot, the Criminological Society of South Australia, was addressed by Strong; from its start the Society was a forum for the promotion of a children's court and alternatives to imprisonment such as probation. In time both societies assumed a new guise as Howard Societies for Penal Reform(Finnane 1997: 148-149). An important resource and driving force in their activism was the flourishing antipodean feminist movement. Key figures in that movement, above all Rose Scott in Sydney, Catherine Helen Spence in South Australia and Vida Goldstein in Victoria were advocates of the new wave of thinking in penology – contributing to debates on law reform around the age of consent and laws affecting prostitution, and to institutional reform in the establishment of separate women's prisons and children's courts(Allen 1990; Allen 1994; Ramsland 1996).

As in New Zealand (Pratt 1992) the Criminology Societies and allied movements acted as conduits for the new penology, in political contexts which were often favourable to social reform. In 1907 Victoria enacted indeterminate sentence legislation, for young offenders and habitual criminals – a system that lasted half a century and affected many thousands of convicted persons, though it was poorly administered and supported (Morris, 1951). In Western Australia, Lombrosian thinking informed a Royal Commission into prisons in 1898, though as an element in a bricolage of ideas that were ill-digested and often contradictory. The commission recommended a 'Board of Medical Jurists' to deal with the sentencing of serious offenders, but also wanted to retain capital punishment and the flogging of some offenders. When the commission reported in its final volume that it wished to draw 'on the best authorities on criminology, such as Professor Ferri, Lombroso, Du Cane, Tallack, Maudsley, Ellis, Mayhew, and others', there was more than a hint of unfulfilled aspiration to be thoroughly modern.(Finnane 1997: 71-2) But such symptoms of a growing interest in psychological and biological accounts of crime informed the development of indeterminate sentencing in some jurisdictions and paved the way for the development of psychological services in the inter-war period. As the twentieth century progressed the persuasiveness of psychological frameworks shaped the disposition of large numbers of offenders showing signs of mental disorder, or pleading insanity defences (Freiberg 1976; Garton 1986; Garton 2006). In approaches to child delinquency psychological sciences influenced debate but sat uneasily alongside an increasingly bureaucratized welfare system and the demands of crime prevention policing to shape the work of the children's courts, probation services and child institutions(Van Krieken 1992; McCallum 2003-2004; Scott and Swain 2002).

Another symptom of the influence of psychological sciences might be seen in the development in Australian jurisprudence of a distinctive approach to the insanity defence,

one that favoured more readily a recognition of the doctrine of 'irresistible impulse' or 'lack of capacity to control one's actions'. While this judicial line of thinking (particularly associated with the outstanding common law jurist and later Chief Justice of the High Court, Owen Dixon) was framed in common law reasoning, its development was shaped by a desire to accommodate a modernist understanding of mind and behaviour (Barry 1936; Morris 1961; Waller 1977). In the words of another leading Australian jurist, HV Evatt, a judge of the High Court from 1930 to 1940, 'it would be unsatisfactory if the common law of England... must be regarded as forever unable to adjust its rules to modern medical knowledge and science' (*Sodeman v The King*: 227). As Evatt noted in his judgment in the *Sodeman* case 'irresistible impulse', an insanity defence that had been advocated by James Fitzjames Stephen and supported by the Atkins Committee in England in 1923, had been enacted in the Queensland Criminal Code. That enactment was itself a somewhat idiosyncratic example of the influence of Continental neo-positivism – drafted and driven by Sir Samuel Griffith, the intellectual judge and former politician who became the first Chief Justice of Australia (Joyce 1984). Griffith, a part-time Italianist who also translated Dante, had taken the Italian criminal code reform of the 1880s as his model. The Queensland Code was in turn taken as a model by two other Australian jurisdictions, New Zealand, Papua New Guinea, many in Africa and eventually Israel (O'Regan 1988: 103-121).

But alongside these innovations, there persisted a retributive thinking in punishment policy, highlighted in Western Australia by the discriminatory application of flogging as a sentencing option in the 1890s, applied to many Aboriginal prisoners, most of them convicted of cattle-stealing offences. A criminology of racial difference, articulated in the press and parliament, justified the application of penalties that were being phased out of the statute book for the dominant settler population. Racial differences were imagined as both moral

(meaning in this case the attributes of psychological and social disposition) and physical – and were taken to justify not only the exceptional corporal punishment exercised in Western Australia but separate prisons there and in Queensland. (Finnane and McGuire 2001) Other social policies, rooted in welfarism and akin to the growing racial separatism of places like South Africa and Rhodesia, applied to Aboriginal families and communities with great long term consequences. Radical programs of child removal devastated many Aboriginal families and communities. The regimes of 'Protection', especially in Queensland and Western Australia, established total institutional control over large fractions of Aboriginal people. For many decades such policies operated to reduce formal Aboriginal contact with the criminal justice system – but were fatal in the longer term to the capacity of Aboriginal peoples in Australia to avoid entrapment in the web of social controls that continue to harm (van Krieken 1999; Haebich 2000; Cunneen 2001). These policies were also the expression of what was in fact a criminological and policing program, responding to signs of abuse, or neglect, or moral offence, or public disorder with large-scale institutionalisation for the remaking of a population in the interests and image of the dominant settler community. It would be many decades however before such a way of evaluating what was going on was articulated.

Disciplinary foundations

In a way curiously prefiguring the geopolitical re-alignments of the Second World War, when Australia turned from defence reliance on Britain to strategic dependency on the United States, the birth of academic criminology in Australia was attended by a charismatic American psychiatrist. Dr Anita Muhl was Indiana-born, California-based, trained in Jungian analysis in Vienna in the 1920s, author of a widely read book on the phenomenon of

automatic writing and an enthusiastic promoter of early diagnosis and treatment of school truants and juvenile delinquents. In 1938 she was invited to take up a visiting lectureship, in Criminology, the first so-named in Australia, at the University of Melbourne. Muhl spent three years in Melbourne, lecturing at the University and in the city, running a truancy clinic and psychological counselling service, promoting criminology as a science of explanation and prevention (Damousi 2005). Large crowds attended her public lectures, which formed the basis of the first criminology book published in Australia, Muhl's *The ABC of Criminology* (Muhl 1941). The text worked compelling case studies drawn from the psychiatrist's clinical and forensic work into the frame of psycho-developmental explanation that characterised Muhl's approach. Its orientation was individualist rather than social, but her awareness of the environmental context in which individual careers worked themselves out favoured a focus on prevention. Other than its publication in Melbourne, there was little distinctively Australian in the content of Muhl's book, but it had a larger significance. The book was the product of the psychological orientation of international criminology in the first half of the twentieth century. And the circumstances of its production, the work of an American professional and researcher brought to Australia by a philanthropic doctor with strong ties to Melbourne's social reform networks, became in turn a stimulus to the development of an academic enterprise organised around a new discipline (Finnane 2006).

The link between Muhl's visit and the foundation of the Melbourne Department of Criminology was George Paton (1902-1985). Later author of an influential and much-republished text in jurisprudence (Paton 1946), reflecting the sociological and realist influence of American scholars and jurists like Roscoe Pound and Felix Frankfurter, Paton was the Melbourne-born, Oxford-educated Professor of Jurisprudence, appointed in 1931 and later Dean of the Law Faculty. His appointment at Melbourne had followed an earlier academic

post at the London School of Economics. It was Paton who invited Muhl to lecture on criminology to his jurisprudence students. Impressed by her impact he initiated discussions with a young radical barrister, John Vincent Barry, regarding the possible development of criminology at the University. While he lacked formal academic training, Barry had through the 1930s achieved a unique status as a commentator and analyst of the criminal law and its history. Both men were members of the Medico-Legal Society of Victoria, a professional body bringing together many of the city's (and the country's) leading legal and medical practitioners. Barry was editor of the proceedings of the society, which began in 1931. It was also Barry who invited Muhl to lecture to the society in 1940, the first woman to do so. In addition to his own contributions to the Medico-Legal Society, Barry's writing was published in the professional legal journals and in the popular press. In the 1930s he wrote or lectured on topics as diverse as abortion law reform, insanity jurisprudence, divorce law, and the history of punishment. Barry's three part series on the early nineteenth century law reformer and opponent of capital punishment, Sir Samuel Romilly, in Melbourne's leading broadsheet *The Age* in 1936 reminds us that the age of the public intellectual had already arrived. Barry's activism, crucial to the later formation of the discipline of criminology in Australia, reflected a personal disposition that sought to change both law and punishment.

The seed planted in 1942 in Paton's letter to Barry took some years to germinate. The two engaged in the meantime in another exercise that linked the development of Australian criminology to the extraordinary enterprise of Leon Radzinowicz at Cambridge. The prodigiously well-read Barry had early contacted the Cambridge Department of Criminal Science offering to become Australian correspondent on criminal law matters. In 1943, as part of their effort to gain traction for an amendment to the law of insanity defence, Radzinowicz and Cecil Turner invited Barry to report on the status of the law in that respect

in Australia. Their interest had been sparked by the peculiarity of differing approaches adopted in the various Australian states. Three states had enacted Criminal Codes that dispensed with the McNaghten rules, with their notoriously ambiguous reference to knowledge of the wrongness of an act, and adopted in their stead provisions recognising the exculpatory defence of 'mental disease'. Barry's resulting article was, in the words of Radzinowicz and Turner, 'a model of construction and expression' from a 'practising barrister with deep theoretical interest in various problems of criminal science' (Barry 1943).

When the Cambridge Department subsequently developed an innovative series on 'English Studies in Penal Science', Paton and Barry were invited to contribute a volume on criminal law in Australia. The book that resulted, *An Introduction to the Criminal Law in Australia* (Barry, Paton et al. 1948) was the sixth in the Cambridge series, the second focussed on a jurisdiction outside England (another volume had dealt with the Indian prison system). While juristic in its focus on criminal law, including chapters on Australian jurisprudence on criminal liability and evidence, the *Introduction* signalled its authors' interest in the domain of criminal law in its broader social and political environment. Thus the book contains commentary on jury trial (Barry had been a vocal critic of attempts to avoid it in the 1930s), Aborigines in the courts, the 'punishment and treatment of offenders' (informed by Barry's survey of all the penal administrators of the Australian states), and the use of immigration powers (especially the notorious dictation test used to exclude those considered undesirable) and industrial dispute suppression as instances of 'special types of criminal legislation'. As these topics suggest, the treatment of criminal law offered went well beyond legalist themes. Historical, sociological and penological insights were in play, in a book that dealt comfortably with High Court judgments while gesturing towards a broader intellectual agenda for the study of law in society. In retrospect it is notable that a third

scholar assisting the project, Geoffrey Sawer, was later an influential legal and constitutional scholar whose work, *Law in Society*, (Sawer 1965) would further advance the sociological study of law.

It can be seen that the conditions underlying the development of criminology at Melbourne tied the city to developments in both the United States and Britain, while a local culture of some intellectual vigour (Watson 1979; Ayres 2003) encouraged a project whose form was still rudimentary. Not only was there the Medico-Legal Society, which Barry in particular served ably and productively. Barry was also a co-founder of the Council for Civil Liberties, the first such body in Australia and one in which he played a leading role as legal advisor and later President, before his appointment to the Victorian Supreme Court in 1947. The Council's work necessarily brought it up against what Barry and others regarded as the regressive and repressive developments of criminal law during the inter-war years of industrial strife and rising political dissent, especially in the shape of a strengthening Communist Party (Watson 1979; Macintyre 1998). The political imagination informing the development of Melbourne criminology thus looked to the refinement of punishment along what were considered modern lines (especially the retreat from corporal punishments and the development of more flexible sentencing regimes), as well as a containment of the unwarranted use of the criminal law in defence of political interests. This was far from a simplistic oppositionism, for when war came Barry was among those who played a role in advising on the appropriate scope of wartime regulations for the control of aliens, dissidents and even putative collaborators (Finnane 2007).

An absence in the text produced by Barry, Paton and Sawer was a solid research base in the application of the criminal law, although Barry was the more observant of the need to

start systematic documentation of a system's patterns. That absence was to be part filled in 1950, with the able and precocious Norval Morris, appointed at the age of 27 to a Senior Lectureship in the Law Faculty. In spite of his studies being interrupted by two years' war service, Morris had by 1950 completed his Melbourne law degrees, as well as his doctorate. He had undertaken his PhD studies (on Paton's advice) at the London School of Economics, where Hermann Mannheim was busy developing a distinctive research enterprise (Hood 2004). Mannheim facilitated Morris' access to the English prison system, where he undertook a study of the experience and treatment of prisoners sentenced to indeterminate sentences under the habitual criminal statutes. The research not only produced a scholar whose career would be devoted to the study of imprisonment, but one who went beyond legal and jurisprudential questions to the sociological and psychological fields that could be used to explore the impact of particular experiences of punishment. From his earliest days at Melbourne Morris insisted on the importance of an investigative research agenda that would get inside institutions and assess what they did to the people in them. For Paton, keen to build partnerships with the institutions of criminal justice, the prisons service and the police department, Morris was the ideal appointment. Those institutions would not always welcome his inquiring approach and his independence of mind.

Although Morris had been appointed to the Law Faculty there is no doubting Paton's intention that this lectureship would be the foundation position in the development of criminology. From late 1950 Paton and Morris worked with Barry (now a Judge of the Victorian Supreme Court) and with Zelman Cowen, then Dean of the Law Faculty, to develop a proposal for the establishment at Melbourne University of a Board of Studies in Criminology. While much of the intellectual stimulus came from lawyers, the undertaking was expressly inter-disciplinary, and the Board was administered within the Arts Faculty.

Joining the judge and the academic lawyers on the Board were a psychiatrist, social worker, psychologist as well as two external members, including Victoria's prison administrator Alex Whatmore. Morris hoped that involvement of senior criminal justice officials would facilitate access for research purposes to the state's prisons but in this he was to be disappointed – Whatmore proved to be a jealous gate-keeper and seemed sceptical of the value of research.

At this early stage the priority of the Criminology Department was teaching. The primary object was to prepare graduates who would be familiar with contemporary perspectives and practices in the administration of penal and social welfare institutions. With only very limited Australian resources available, the intellectual apparatus of the curriculum was dominated by the American and British texts of the day. As Chairman of the Board of Studies in Criminology (a position he occupied for nearly 20 years), Barry was not only a dedicated advocate of the cause of criminology but engaged in both teaching and research. While Morris took charge of the teaching of criminal law, a component of the program, Barry contributed actively to the teaching of criminology. Looking at the program in terms of the perspectives of the day, the ambition was the delivery of critical and inter-disciplinary perspectives. 'Knowledge in this field must be derived', so an early memorandum of the Board subject put it, 'from those disciplines covered by the historian, the sociologist, the psychologist, the jurist, the theologian, the economist and the political scientist'. Criminology was an intrusion 'into the already existing sphere of sociology, history, psychology and jurisprudence. It thus provides an example of the integration of elements from already established bodies of knowledge which reflect back on the problems of the interstitial areas lying between them' (Barry 1903-1969, folder 3).

With this orientation the early teaching at Melbourne was broad in its compass. Students were introduced to the work of contemporary criminologists including the work of Sheldon and Eleanor Glueck on delinquency, the growing body of work coming out of Cambridge over the names of Radzinowicz and his colleagues, Norval Morris' doctoral thesis published as *The Habitual Criminal* in 1951, Jerome Hall's *Theft, Law and Society* (1935) and Thorsten Sellin's *Culture, Conflict and Crime* (1938). The curriculum reached beyond these texts to embrace other works across the social sciences, psychology, sociology and history, including the work of Freud, Ruth Benedict, Malinowski, Rusche and Kirchheimer's *Punishment and Social Structure* (1939), W F Whyte's *Street Corner Society* (1943) and works of the Chicago School on crime, delinquency and urban degradation. The orientation was contemporary, sociological and psychological – but Barry's interest in the history of punishment (on which he had published in Australian legal journals in the 1930s) injected those perspectives as well. In a society whose European foundations were tied to the transformations of criminal law and penal policy from the late eighteenth century the early volumes of Radzinowicz's *History of English Criminal Law* were especially welcomed (Barry 1957); so too was the very impressive study of eighteenth century penal colonisation, by the Australian Catholic cleric and historian Eris O'Brien in his *Foundation of Australia* (published in 1937 and in a second edition in 1950)(Finnane 1998).

The Melbourne undertaking remained an isolate for some years. It was a rarity, not only in Australia, but in the English-speaking world. In such conditions it might have withered, but for the international network in which a number of players participated. Zelman Cowen had undertaken post-graduate studies at Oxford, but a post-war lecturing stint at Chicago in the summer of 1949 left him enamoured of 'the power, drive and enthusiasm of the New World'(Cowen 2006: 162-166), and he subsequently paved the way for others. It

was possibly through Cowen that an invitation went to Albert Morris, Chairman of the Department of Sociology and Anthropology at Boston University, to take up a Fulbright Fellowship in 1952 at the University of Melbourne. Like Muhl before him he coupled his duties at the Department of Criminology with extension lectures to the public. Noting the lack of academic programmes in sociology in Australia, Albert Morris introduced his audiences to a broad range of topics in criminology, including the sources of criminal behaviour, prevention and treatment issues and a critical assessment of the social processes involved in law enforcement. Citing the work of Edwin Sutherland, and illustrating his case with some Australian anecdotes, Morris drew attention to the prevalence of invisible white collar crime as a means of questioning the stereotypes of criminal behaviour, stereotypes that he showed affected policing as well as 'treatment' of criminals. 'Our systems of law enforcement', he observed, 'are directed towards types of crime that have high social visibility often accompanied with violence. So we insist that our police be a certain physical build' (Morris 1953: 14). It was an American observation, but one of particular pertinence to Australian policing practice as well as criminal justice priorities. It was to be many years however before systematic attention would be paid to policing, for the focus of Melbourne Criminology was on penology and to a lesser extent on prosecution and sentencing. Indeed Justice Barry was explicitly opposed to what he called 'police science or criminalistics' as an element of a criminology curriculum, rejecting the 'dubious examples' of those American universities which had included police science in criminology programs (Finnane 1998: 72).

Curiously, but symptomatically in an Australian context, Albert Morris found no reason to mention even in passing the status of Aborigines in his Melbourne lectures on criminology in 1952. Curiously, because on his way to Australia he had visited New Zealand briefly, visiting prisons and becoming aware of the disproportionate numbers of Maori

inmates. Later he wrote a short article published in a New Zealand Maori Affairs Department journal examining crime and delinquency issues in that country (Morris 1955). In Australia, where Aborigines were still subject to very substantial civil disabilities, many living under 'protection regimes', the numbers in prison were less visible, certainly much less so than 20 years later. Only slowly were those involved in the development of criminology coming to realise the significance of the challenges posed by a continuing Aboriginal presence in a very assimilationist culture. It was in the Northern Territory, a jurisdiction where the Aboriginal population dominated, that some of this unsettling story began to have an impact on the way in which criminology reflected on the criminal law and penal practice (Douglas and Finnane, 2012). An influential Australian anthropologist, AP Elkin, developed in the 1930s and 1940s an approach to the uses of Aboriginal witnesses and evidence that was based largely on his experience in campaigns to support Aboriginal defendants in the 1930s (Elkin 1947=). In the 1950s, Justice Martin Kriewaldt, the single judge of the Territory's Supreme Court, crafted a distinctive jurisprudence of Aboriginal difference, developing a racially-oriented doctrine of provocation for example, largely in an attempt to render Aboriginal defendants accountable in a legal system where juries frequently acquitted them in trials for offences against their own people (so-called *inter se* offences). Kriewaldt began his own systematic reflection on the distinctive position of Aboriginal offenders, a kind of criminology of 'the primitive' in Australia (Douglas 2002; Douglas 2004; Douglas 2005). His observations attracted the attention of Morris, Barry and Sawer, all of whom recognised the significance of Kriewaldt's undertaking as attending to an almost totally ignored aspect of Australian criminal justice. (Sawer 1961; Morris and Howard 1964). When Kriewaldt died prematurely Geoffrey Sawer edited the judge's text for publication, the first substantial consideration of issues touching on Aboriginal evidence and status in criminal trials (Kriewaldt 1960).

The visit of Albert Morris helped to establish the trans-Pacific networks that made the United States, more than Britain, an important connection to Australian criminology. This was an unusual development – in many other disciplines (certainly in the humanities) there was a British hegemony for a couple more decades, with most postgraduate students undertaking their studies in English universities. Norval Morris, (in spite of his London doctoral training) and Barry each found elements of condescension in English connections that were absent in their American contacts. At Cambridge Radzinowicz seemed indifferent when approached by Barry for Morris to spend a sabbatical there in 1960. And relations with Mannheim were evidently tense – 'I always seem to be offending him', Morris told Barry after Mannheim had complained about not receiving a copy of a report on capital punishment in Ceylon, the outcome of a commission of inquiry chaired by Morris in 1958. In contrast relations with American academics were open and productive. Intellectually this triangular network (England/USA/Australia) was nevertheless conducive to original research that highlighted the distinctiveness of a particular national system. On the one hand Barry was stimulated to approach the history of penology, in his work on the penal reformer Alexander Maconochie, in a way that would address both British penal policy and practice in the nineteenth century, as well as the American adaptations of Maconochie's penology in the later nineteenth century. For his part, Norval Morris increasingly attended to American developments in writings that ranged widely over penology and criminal law.

Australian-American links in criminology were consolidated in 1955 when both Barry and Morris visited the USA for the first time. Barry was the first to visit, when he accepted a Carnegie Grant to undertake a study tour of North America. He was followed a few months later by Morris, who took a sabbatical year at Harvard where he was to teach criminal law and criminology. In August Barry led the Australian delegation (including Morris and Harold

Vagg, from the NSW Prisons Department) attending the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Geneva. Their experience and contacts there enabled both to continue to take part in the development of international criminology over the following years.

Experience of the USA sharpened perceptions of local as well as other cultures. Like Cowen before him, Norval Morris was captured by the energy and possibilities of a place he frequently called 'the Excited States'. Barry was both impressed and alarmed by what he saw. On his return to Australia he prepared a long report on American criminal justice systems. Its tone captures the time and the debates – he delivered an epitome to the Medico-Legal Society and circulated it widely to his American colleagues. His starting point was an observation of Harold Laski on a paradox, American veneration for law 'equalled by the widespread habit of a violence which disregards the habits of law'. There were many factors in American social organisation and behaviour that bred lawlessness, and Barry had discerned some of them in the very processes of law itself. The American media and a self-interested criminal justice industry combined to produce periodic alarms that excited public indignation and led to ever more attempts to regulate social conduct. The panic that Barry observed in 1955 around the danger of narcotics was itself a symptom of the 'danger ... always present in popularly elected assemblies, where to oppose draconic penalties is to invite the criticism that one is siding with the miscreant'. Barry thought that registration of drug addicts and controlled administration of drugs would be preferable to the policy of prohibition. He was especially critical of policing campaigns against the relatively harmless use of marijuana, which had led to the incarceration of large numbers of Mexicans in California. The FBI, he noted, was sometimes associated with such campaigns. It was a body 'extraordinarily highly regarded in the United States', but in later discussion Barry, the one-

time President of the Australian Council for Civil Liberties, expressed the personal view that it 'represented a grave danger to human liberties' (Barry 1956).

Barry's commentary drew heavily on his reading of current criminological research as well as the American press. Problems of police corruption, of lack of effective prosecution of crime, of high rates of unreported crime, of a conviction-centred prosecution process - all subverted the expectations of justice. Severity of punishment, and the harshness of death row politics, compounded the worrying evidence of false convictions. Barry, a critic of press reporting in Australia, was even more startled by the 'trial by newspaper' that he observed in the United States. The potential of the courts to restrain the media was limited by the realities of an elected judiciary.

Barry had been struck by the capacity for innovation in the United States, sitting alongside torpor and reaction. The Californian penal system was vital and progressive. There was a new commitment to medium-security prisons rather than Bastille-like fortresses. Treatment programs associated with psychological and psychiatric expertise were being introduced and Barry had observed group therapy in a prison. But he cautioned against accepting claims about the effectiveness of innovation and drew attention to research that suggested that criminal conduct faded with maturity. Commenting on juvenile delinquency Barry stressed the importance of multi-factor causes, but had much to say on a favourite topic of the 1950s, the erosion of the family home in a culture focused on production and consumption, and the physical absence of mothers, forced to work by economic need (he did not recognise the possibility of desire to work). He had visited some juvenile institutions, and favoured the open, prison farm-type of institution while condemning the barred environments of some urban facilities. On the duty of care to children he was emphatic: 'children need

protection not only by the State, but also on occasions from the consequences of the State's intrusiveness, indifference and neglect' (Barry 1956).

The lessons of his American observations were translated by Barry into practical tasks back home. While away he had accepted appointment as chairman of an official inquiry into juvenile delinquency. His perspectives on some American detention centres found their way into the report of the committee. Similarly his observations on American parole and probation schemes outlined the case for a parole board that was soon to be established in Victoria. When the Board commenced operations in 1957, Barry was appointed as its first Chairman, a task he undertook, in addition to his judicial role, for the next 12 years until forced by ill-health to retire. His expanding international reputation, aided by the publication in 1958 of his study of Alexander Maconochie as well as by his earlier attendance as leader of the Australian delegation at Geneva, saw further invitations, not all of which he could fulfil. When he was asked by the Government of Ceylon in 1958 to chair a commission of inquiry into capital punishment which had been abolished as a trial measure some years earlier, Barry was forced to decline by pressure of his other duties. He suggested Norval Morris instead, and Morris duly chaired the inquiry which reported in 1959 (Morris 1959). Throughout the 1950s both Barry and Morris were active in the abolitionist cause, writing and agitating the case against capital punishment, in both academic and public forums. In 1959 Morris (by now appointed Foundation Dean of the Law Faculty at the University of Adelaide) was very prominent among those who campaigned against the conviction and death sentence on a count of murder against an Aboriginal man, Rupert Max Stuart (Inglis 1961). The campaign was successful but did little to endear Morris to the local legal and political establishment.

In its first decade the Melbourne criminology endeavour was lively, international, engaged with reform and policy and the creation of new institutions. Its leading lights were as critical of tendencies in the criminal justice system, especially of the way in which justice might be made hostage to political enthusiasms or judicial complacency, as any latter-day critical criminologist. What they lacked, and what made it possible for them to remain connected to the everyday world of the administration of justice, was a theoretical apparatus into which their observations might be shoe-horned. Morris combined a critical legal mind with sociological method and observation; Barry brought together an acute practitioner's awareness of legal constraints with a historical appreciation of law's achievements and prospects for continuing change. Their orientation at this moment seems consistent with the culture of post-war criminology alluded to in Ian Loader's account of the disposition of British criminologists of the same era, those he calls the 'Platonic guardians'. (Loader 2006)

Conditions of the time in the society in which Morris and Barry worked were somewhat less than favourable to developing the potential that lay in their energy. By the time Albert Morris returned to Melbourne in 1960 the Department of Criminology was in some difficulties. Some were internal, created above all by the departure of Norval Morris, who had provided intellectual leadership and energy that was not easily replaced. But there were also structural problems, divisions between teaching staff over issues of curriculum and departmental autonomy that eventually spilled over into a Cold War-inspired media attack on alleged Communist influence at the University (Finnane 1998; Anderson 2005). Albert Morris reported frankly to Barry on these events but was struck by the intellectual weakness of the research culture in Australia: 'It seems to me that both physically and academically criminology at Melbourne is too largely isolated from both law and the behavioral sciences; from law, because criminology is a peripheral and, I suspect, not quite respectable field in the

eyes of the law faculty, the staff of which has no particular interest in nor feeling of responsibility for its development. Criminology is isolated from the behavioral sciences because, except for psychology, they are either rudimentary or non-existent at the university. This is, in part, a reflection of a general lack of sociology and sociological research in Australia' (Morris 1960), Morris, as Chairman of the Department of Sociology and Anthropology at Boston University and a one time President of the American Society of Criminology, was well placed to make such observations about one of Australia's leading universities. Only during the following decade was there a significant development of sociology, generally in the new institutions founded during that era of higher education expansion. But his outsider's comments seem to capture well the weakness of Australian criminology, structural and intellectual, at the beginning of the 1960s.

Institutions of criminology

It has been shown above that by 1960 there was a recognisable criminological enterprise in Australia, but narrowly based and institutionally fragile. Official recognition of the desirability of Australian participation in a growing international movement was hard-won, through the persistence mainly of JV Barry, who led the Australian delegations to the first two United Nations Congresses on Crime Prevention'. Academic development had been promising at Melbourne, but hesitant elsewhere, although by 1959 there was agreement at the University of Sydney to establish an Institute of Criminology. Research was nugatory and virtually limited to the output of the two key players, Barry and Morris. Their disposition however was intellectually critical, motivated by their perception of a criminal justice system marred by injustice, lack of utility and political interests. In steering the country in a new direction they sought new institutions that would help shape change in criminal justice based

on research and the training of professionals. Their endeavours, and those of the first generation trained at the Melbourne Department contributed very substantially to the institutions that nurtured Australian criminology from the 1970s. The growth of criminology from that time, measured not only by the range of institutions involved but by a development and diversification of research agendas, nevertheless required initiative and support outside the site of its original development. Again the story is one not simply of autochthonous growth, but of the formation of a national intellectual complex in an international context. By the 1970s the criminological enterprise in Australia included two academic departments as well as other important academic sub-units in a number of other universities, a national institute, one state-based crime research centre, a professional society and an associated journal. This was a culture of significant size, sufficient to encourage intellectual debate, controversy and political dissent, of a kind not always immediately productive but (at least retrospectively seen) potentially invigorating (Brown 2002).

The proposals for an Australian Institute of Criminology were born out of the role of Barry and Morris in international criminology. The United Nations' section of Social Affairs was one impetus. Dating back to an in-principle commitment at a UN seminar on crime prevention and treatment of offenders in Rangoon in 1954 there was international discussion about the creation of an Institute that would be primarily responsible for training criminal justice personnel, especially in corrections. Barry was energetic in prompting the Australian government to bid for this Institute during 1959-60, but UN politics as well as Australian governmental lethargy saw the initiative pass to Japan in 1961 – the founding Director of the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI) at Fuchu, Japan was to be Norval Morris. Morris had already established himself as playing an important role in the development of criminology in Asia,

not only in his position as Chair of the Ceylon Inquiry into the Abolition of Capital Punishment, but earlier in his participation in the UN regional seminar on human rights (Morris 1958). His interest in human rights was also well established, after a year spent teaching the topic at Harvard in 1955-6, and would motivate much of his subsequent work.

The opportunity to establish the UN training institute in Australia was lost but a sporadic campaign for a national institute had been initiated. To the need for an institute that would be involved in research and training, Barry had early added as part of his program for the development of Australian criminology the need for uniform national crime statistics. Teaching and research needs in the 1950s, but especially Barry's experience as chair of a juvenile delinquency inquiry, had elevated the importance of obtaining good statistical data as the basis of any adequate assessment of crime and punishment. His commitment to the cause of better comparative statistics (indeed adequate crime statistics of any kind) was rewarded to some degree in the early 1960s as police departments and the Australian Bureau of Statistics began to consider the requirements of a uniform system. Progress was slow. In the meantime Barry gave publicity to a revived proposal for what he called an 'Institute of Criminal and Penal Science' in a major speech delivered in January 1965 to the Australian Prison After-Care Council, meeting in Hobart. The speech reflected Barry's deep commitment to the rehabilitative ideal, one founded on a liberal pessimism about the innate selfishness of the untrained, uneducated individual. Present punitive methods, which had been modified only partly over the previous century, should be replaced by an objective of teaching the offender 'the virtues of neighbourly living' and learning self-discipline. Barry drew support in his advocacy from the examples of recent official publications in both Britain (*Penal Practice in a Changing Society*, 1959) and New Zealand (*Crime and the Community, a Survey of Penal Policy in New Zealand*, 1964).

Barry's 1965 proposal was for an Institute of Criminal and Penal Science, founded and maintained by the national government. His thinking about its functions and purposes was much influenced by his three-month visiting appointment at UNAFEI in 1964. Barry's Institute was to be an element of Australian foreign policy, supplementing the work being done at Fuchu. 'The Institute', he indicated, 'would be a means of promoting those aspects of the foreign policy of Australia that are designed to achieve and maintain harmonious and mutually beneficial relationships with countries that are our near neighbours, and with more distant countries that are linked with us by historical development, by similar traditions and outlook, or by treaty rights and obligations'. His experience in Japan, talking with senior corrections and criminal justice officials from more than a dozen Asian countries from Afghanistan to the Philippines, had convinced him that Australia was well regarded in 'South East Asian and Pacific countries as a progressive and politically and economically stable nation with a firmly established democratic constitutional framework and traditions'. The 'comparative efficiency' of Australian criminal justice institutions (not a conclusion he would always make in other contexts) would provide opportunities for intensive field work, and the language of English was the most convenient language of instruction for the countries concerned. The main functions of the Institute would include not only training and instruction but also research into delinquency and crime, with a focus on prevention (Barry 1965).

From this point the proposal gathered momentum. Barry himself was much frustrated by what seemed to be a dilatory culture in Canberra, but later acknowledged that he had underestimated the complexity of developing national proposals in a federation of States, with criminal justice responsibilities largely devolved to the second tier of government. The proposal was enthusiastically supported by the Australian delegation to the Third UN Congress, held in Stockholm. In Canberra it was being steered by officers in the Attorney-

General's Department, which directed resources to the organisation in February 1968 of a month-long seminar held at the Australian National University. The seminar's title ('Seminar on the Control of Deviant Behaviour in Australia') was misleading; the gathering of a large number of criminal justice personnel from around the country covered a much broader brief than implied. But the title is also retrospectively instructive in its inflection of planning in terms that belong so clearly to the control paradigm of the time. Barry among many others, including academics from outside the criminology arena, addressed the seminar, which worked through the priorities that might be addressed by the proposed institute. In bringing together criminal justice professionals across the country (and including New Zealand, which for a time contemplated participation in the new institute) the Canberra seminar was an important founding moment for Australian criminology. As much as it might be characterised with the somewhat condescending term 'administrative criminology' (Carson and O'Malley 1989), such an initiative cannot be undervalued for what it enabled in later development.

By this time Barry was far from a lone warrior in his campaign, and Melbourne no longer the isolated locus of criminological activity. The New South Wales government was sharing the increased interest in penology and crime prevention. In July 1958 that government sponsored a seminar in Sydney on 'The Conflict of Security and Rehabilitation', focussed largely on penology and penal reform, and attended by Barry, Norval Morris and the visiting American sociologist of delinquency, Paul Tappan (Anon 1958). The following year the University of Sydney approved a proposal to establish a specialist unit in criminology within the Faculty of Law (Shatwell 1960; Carson and O'Malley 1989). Its staffing was intended to be cross-disciplinary – with positions in statistics, psychiatry, law joining the first established position, someone with 'special qualifications in philosophy, sociology or anthropology and experience in the field of penology and criminology'. Appointed to fill this

position was Gordon Hawkins, educated in philosophy but at the time of his appointment holding a senior post at the English Prison Staff College in Yorkshire.. Hawkins brought with him not only experience in a system outside the Australian environs but a lively engagement with public debate, and an ability with the pen which made him a highly-valued collaborator in later years(Woods 2004). From an early point he was a regular commentator on criminal justice issues in the Sydney press, writing ahead of material issues of the day to prompt discussion of prison standards, parole policy, police education and the patterns and effects of penal practices. After his appointment at Chicago in 1964, an early initiative of Norval Morris was to encourage Hawkins to become a visitor, beginning an association in writing and agitation that announced itself in their 1970 book *The honest politician's guide to crime control*. (Morris and Hawkins 1970).

In Australia Hawkins and others supported Barry in advocating a national institute. In 1967, Hawkins joined his colleague at the Sydney Institute, Duncan Chappell, in publishing an article on 'The Need for Criminology' in the *Australian Law Journal*(Hawkins and Chappell 1967). There was little coincidence in the title being identical with that of a new book by Leon Radzinowicz that appeared shortly after – Chappell had completed a doctorate at the Cambridge Institute of Criminology(Radzinowicz 1999). The establishment of this second Department also injected new research agendas into Australian criminology. As we have seen Barry had been little disposed to what he derisively called 'police science', though he did publish an important review in 1965 on the subject of 'police interrogations'. Both Hawkins and Chappell were more engaged with the centrality of policing to criminology – Hawkins writing much about the subject in his regular journalism in the Sydney Morning Herald. Chappell soon joined with Paul Wilson, a sociologist, educated in New Zealand and appointed to the University of Queensland, on the first Australian studies of Australian

policing, with a focus on police-public relations, perceptions and experiences (Chappell and Wilson 1969). Three years later followed the first edition of their foundation collection of studies on the Australian criminal justice system (Chappell and Wilson, 1972), an initiative that signalled the broadening of criminological commentary, if not quite yet a deepening of its research base.

By the time of Barry's premature death, in November 1969, the commitment to criminology at both government and academic levels was secure. Earlier that year the Australian government had announced formal agreement between the Commonwealth and the States for the establishment of a national Institute of Criminology. There were by now other signs of professional consolidation. At Melbourne, two of the 1960s appointments, Deirdre Greig and David Biles had initiated in 1967 the formation of the Australian and New Zealand Society of Criminology and its journal, the *Australian and New Zealand Journal of Criminology* (first published in 1968). In addition new possibilities were emerging in other states for significant initiatives that would be the foundation for future research capacity. Most notable at this time was the establishment in New South Wales of the Bureau of Crime Statistics, an agency that would develop a strong record for high quality, independent research, but not without the occasional struggle over the contradictions between its mission and its institutional location.

In spite of the institutional activity, there were only muted signs by the end of the 1960s of the depth of research that would develop over the following thirty years. This was scarcely surprising, in the context of the institutional realities. Postgraduate research training was generally undertaken off-shore, a reality limiting intensive study of local conditions and questions. The potential of local research to make a significant contribution to a major

question was made clear in 1976 when doctoral research undertaken at the new Monash University in 1965-7 was eventually published. Under the title *Fear, Favour or Affection* Elizabeth Eggleston's study of Aborigines and the criminal law in three states explored for the first time in any depth the extent and modes of discrimination (not always negative she found) in Australian criminal justice. (Eggleston 1976) But in founding normative recommendations about justice and equality in a research based understanding of the operations of law in practice this was a significant product of a developing sociology of law, if not quite yet of an Australian criminology.

Conclusion

From one point of view the account given here is a pre-history of Australian criminology, a digging in the fragmented remains of articles, books, private papers and institutional records that we reconstruct as the foundations of a discipline still unsure of its final shape. To proceed from here into an account of trends, patterns, breaks, critiques, disruptions, continuities and paradoxes, not to speak of successes and failures is to trespass on ground that is still being tilled, and in any case has attracted its own literature of reflection and commentary by participants who remain very much active in the field (Braithwaite 1989; Carson and O'Malley 1989; Brown and Hogg 1992; Findlay and Hogg, 1988; Homel 1996; Brown 2002; Carrington and Hogg 2002; Harding 2004; Chappell 2005). What can be said here is that the account given above prompts some conclusions that may also amount to an account of some continuities in Australian criminology.

First we see that there is little justification historically for identifying a distinctive Australian criminological undertaking. The 'pragmatism' of an 'administrative criminology' in a country whose intellectual debts are always necessarily international in their origin and

circulation may be imagined as a national characteristic (Findlay and Hogg, 1988: x-xii; Carson and O'Malley; 1989), but arguably it is one also characteristic of the discipline elsewhere in its historical formation. Institutional and ideological and intellectual developments in Australian criminology have all had their identifiable international contexts – most notably British imperial for the nineteenth century, but in the post-war world of the 1950s (and parallel with geo-political reorientations in Australia) increasingly North American. Ideas and people have moved in both directions, though the relative size of countries like Australia or New Zealand produce their own predictably uneven impacts. Notably, and too little remembered, Australian criminology has also a significant regional context, represented in the 50s and 60s through the energy and imagination of Norval Morris in the first place, but later evident in some aspects of the role of the Australian Institute of Criminology.

Second, one result of this international context might be the lack of adequate early attention to some of the most striking aspects of the Australian social environment. While Darwinian and eugenic thought influenced significantly the discourses shaping racial policy in Australia (McGregor 1996; Anderson 2003), the development of a criminological commentary of any significant kind on Aboriginal offending or Aboriginal experience of criminal justice institutions had to await the ideological break and Indigenous political demands that propelled questions of race into Australian national consciousness of the 1970s.

In the prominence since the 1980s of feminist criminology and of the centrality of gender to many of the issues taken up in crime and justice debates we find only limited precursors in formal criminological thinking during the pre-history we have described. Yet the undoubted impact of first wave feminism in highlighting at an early stage the gendered

dimensions of crime and justice points up the importance of appreciating the contexts of politics, social reform and discourse that constituted the climate at any one point in time that shaped penal policy, policing and criminal law. The influence during the first half of the twentieth century of psychiatry and psychology in Australian jurisprudence and pre-trial procedure and social policy was another characteristic of the climate shaping academic criminology during its early years – Norval Morris retained a life-long concern with such issues, Barry similarly though with less impact, while the first editor of the *ANZ Journal of Criminology* was a psychiatrist. Such observations bring us back to the point where we started – the difficulty of distinguishing local developments from those in the international discourse of criminology. The relation of this emerging criminology to the actual institutions of criminal justice remained another matter – for all the commonality in international debates, jurisdictional differences spoke to the powerful role of local political forces in shaping law, policy and practice (Radzinowicz 1999; Becker and Wetzell 2006).

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