

LAW, SPACE AND JUSTICE: A GEOGRAPHY OF ABORIGINAL ARRESTS IN VICTORIA

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Despite the recommendations of the Royal Commission into Aboriginal Deaths in Custody, an analysis of arrest rates in Victoria shows far higher arrest levels for Aborigines than for other Victorians. Of particular concern are the high arrest rates of Aborigines for certain types of street offences which the Royal Commission had recommended be removed from the statutes, including public drunkenness. The Royal Commission found that this was the most common offence leading to detention among those Aborigines who died in custody.

INTRODUCTION

The late 1980s and mid 1990s have brought Aboriginal affairs to the forefront of political and social debate in Australia. One of the major political events which helped generate this debate was the 1991 Royal Commission Into Aboriginal Deaths In Custody (and the recommendations it made).¹

However, the implementation of the recommendations of the Royal Commission has proven to be a task that State governments have been reluctant to tackle. The Royal Commission compiled 339 recommendations aimed at bringing about a reduction in Aboriginal² contact with the criminal justice system, yet Aboriginal people continue to be over-represented in Victoria's criminal justice system.

This conclusion is based on Victorian Police arrest statistics for 1993-94 (the latest available), together with population estimates from the 1991 census, which allow us to compare the arrest rates of Victoria's Aboriginal and non-Aboriginal populations in defined Police districts.

Data sources and methods

Police districts and populations

The Victoria Police split the state of Victoria up into seventeen distinct geographical areas, known as Police Districts. Police District boundaries are based on Local Government Areas, with the exception of Police Districts A and B for which Census Collection Districts are utilised. Police Districts A to K are referred to as metropolitan districts, and L to Q as country districts. Maps of these Police Districts are contained in Figures 1 and 2. Both Aboriginal and non-Aboriginal populations of police districts were calculated by the Victorian Police Statistical Services Division using population statistics from the 1991 census.³

Definition of offenders

According to the Victoria Police statisticians, for 1993-94, the term 'offenders':

.... refers to persons [of all ages] who have allegedly committed a criminal offence and have been processed for that offence by either arrest, summons, caution or warrant of apprehension between 1 July 1993 and 30 June 1994 regardless of when the offence occurred.⁴

Offenders also include those who are *not* actually charged with any offence for legal reasons. Moreover, if a person is arrested three times in a year, they will be counted three times. However, if a person is arrested once for three different charges, they are only counted once. The most serious offence for which an offender is processed is the only one counted.

The Police Law Enforcement Assistance Program (LEAP) computer system allows analysis of arrests in terms of Police Districts. Figures for individual police stations were not made

available by the police. For convenience, this paper refers to an offender (as defined above) as an 'arrest', despite the fact that a person may not have actually been arrested. Penalty notices and traffic offences are not included on the LEAP system, nor are arrests for drunkenness. However, as explained below, the Police do record arrests of Aborigines for drunkenness on a separate database.

Police definition of Aboriginality

According to the Victorian Police, the racial appearance of any offender or victim is '.... based on the subjective assessment of the attending police'.⁵ Statistics pertaining to Aborigines are based on this subjective identification by individual officers.

Calculation of rates of arrest per 1,000 in the population

Arrest rates refer to the recorded number of arrests of both Aborigines and non-Aborigines in each Police District per 1,000 population of Aborigines and non-Aborigines residing within each district as of the 1991 Census. All statistics relate to the Police District of the station of the officer making the arrest and not the offender's place of residence.

Calculation of the over-representation ratio for arrests

A ratio of over-representation was calculated by dividing the arrest rate per 1,000 for Aborigines in each individual Police District by the rate of arrest for non-Aborigines in the same district. The higher the ratio, the higher the level of over-representation. A ratio of one would indicate no over-representation, and a ratio of less than one would indicate under-representation.

Offence categories

The Victoria Police offence categories have been condensed into the following three classes for the purposes of this paper. The crime categories included in each offence class are listed under each class:

1. Crime Against the Person:

Homicide, Rape, Sex (non rape), Robbery, Assault (indictable), Assault (summary), Abduction

2. Crime Against Property:

Arson, Criminal Damage, Burglary (aggravated), Burglary (residential), Burglary (other), Deception, Handling stolen goods, Theft from motor vehicle, Theft (shopsteal), Theft of motor vehicle, Theft of bicycle, Theft (other)

3. Other crime:

Drug (cultivation, manufacturing, trafficking), Drug (possession, use), Other indictable offences, Other summary offences.

Unfortunately, many of the street offences for which the Royal Commission recommended relaxation of laws are grouped in the 'Other summary offences' category, making statistical analysis of most individual street offences impossible at this stage.

Drunkenness

'Drunkenness' in this paper refers to any offence reported by police in which the major offence contained the word 'drunk' (that is any of the three offences relating to drunkenness - 'drunk and disorderly', 'drunk in a public place' and 'habitual drunk'). As mentioned above, arrests for drunkenness are not included in official Police statistics because this offence is not recorded on the main modules within the LEAP system. However, statistics on drunkenness were provided by the Statistical Services Division of the Victorian Police Corporate Policy, Planning and Review Department, which used a stand-alone module attached to LEAP to collect limited details of arrests not entered onto the LEAP system.

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|------------------------|---------------------|-------|-------|------|------|-------|------|------|-------|------|------|------|-------|------|-------|-------|------|-------|-------|
| Crime against property | Aboriginal rate | 532.7 | 186.8 | 59.3 | 17.1 | 86.2 | 24.1 | 59.4 | 141.0 | 57.2 | 46.3 | 66.2 | 201.8 | 36.2 | 145.3 | 56.7 | 18.5 | 111.5 | 93.6 |
| | non-Aboriginal rate | 68.9 | 36.0 | 17.2 | 22.1 | 18.3 | 14.1 | 12.5 | 15.6 | 17.0 | 21.3 | 15.2 | 12.0 | 16.0 | 10.7 | 14.4 | 11.3 | 22.3 | 18.3 |
| | Over-representation | 7.7 | 5.2 | 3.4 | 0.8 | 4.7 | 1.7 | 4.8 | 9.0 | 3.4 | 2.2 | 4.4 | 16.8 | 2.3 | 13.6 | 3.9 | 1.6 | 5.0 | 5.1 |
| Other crime | Aboriginal rate | 224.3 | 76.9 | 8.8 | 6.6 | 13.3 | 12.6 | 5.1 | 39.3 | 20.3 | 14.5 | 15.6 | 84.8 | 24.1 | 118.1 | 47.4 | 18.5 | 91.4 | 48 |
| | non-Aboriginal rate | 27.0 | 20.2 | 4.7 | 8.3 | 7.1 | 5.0 | 3.2 | 7.1 | 8.0 | 10.2 | 7.9 | 9.9 | 10.1 | 11.4 | 9.9 | 9.9 | 13.8 | 8.5 |
| | Over-representation | 8.3 | 3.8 | 1.9 | 0.8 | 1.9 | 2.5 | 1.6 | 5.5 | 2.5 | 1.4 | 2.0 | 8.6 | 2.4 | 10.4 | 4.8 | 1.9 | 0.8 | 5.6 |
| Total | Aboriginal rate | 883.2 | 373.6 | 72.5 | 36.8 | 104.7 | 46.2 | 76.4 | 207.2 | 93.0 | 84.0 | 87.0 | 364.0 | 80.4 | 354.4 | 142.5 | 38.4 | 261.2 | 177.6 |
| | non-Aboriginal rate | 108.8 | 62.4 | 24.5 | 35.6 | 29.7 | 21.8 | 18.1 | 25.9 | 29.0 | 36.1 | 26.6 | 25.1 | 32.0 | 26.9 | 28.7 | 24.7 | 41.7 | 30.9 |
| | Over-representation | 8.1 | 6.0 | 3.0 | 1.0 | 3.5 | 2.1 | 4.2 | 8.0 | 3.2 | 2.3 | 3.3 | 14.5 | 2.5 | 13.2 | 5.0 | 1.6 | 6.3 | 5.7 |
| | | | | | | | | | | | | | | | | | | | |

Like the figures for custody levels, the arrest rates (as defined above) show dramatic disparities between the Aboriginal and non-Aboriginal populations. As Figure 4 and Table 1 illustrate, the arrest rate for all offences for Aborigines was around 178 per 1,000 population for the whole state, whilst the rate for the non-Aboriginal population was only 31 per 1,000. Aboriginal people were therefore 5.7 times more likely than non-Aboriginal people to have been arrested for an offence in Victoria in 1993-94.

Figure 4 and Table 1 also provide a geographical profile of arrest rates for Aboriginal and non-Aboriginal populations. The most striking feature of Figure 4 is the huge arrest rate for A district Aborigines - 883 arrests for every 1,000 Aborigines living in that district. The figures for A district should be discounted, mainly because this area includes much of the central business district of Melbourne where few Aboriginal people actually reside (although it is a significant meeting place for many Aboriginal and non-Aboriginal people). Because of this, even a small number of arrests greatly distorts the calculated rate. Of much greater concern are the extremely high rates of arrest in B (Prahran), L (Western), N (Mallee) and Q (Gippsland) districts (although all other districts, with the exception of D [Nepean] and P [Hume] have rates of Aboriginal arrests significantly higher than the rate for the total non-Aboriginal population).

The line on Figure 4 also shows that the over-representation ratio in both L and N districts are especially high (Aborigines were in excess of 13 times more likely to have been arrested in these districts during 1993-94 than non-Aborigines). Only in D district is the rate of arrest for Aborigines equal to that of the non-Aboriginal population.

Rates of arrest for different offence classes

Table 1 details rates of arrest for crimes in each of the three classes of offences for Aborigines and non-Aborigines in each Police District, as well as the ratio of over-representation of Aboriginal people. Aboriginal people were almost nine times more likely than non-Aborigines to be arrested for 'crimes against the person'. Three districts had over-representation ratios significantly higher than the ratio for the total state (B, L and N) for this class of offence. L district has the highest ratio of over-representation (Aborigines were over 24 times more likely to be arrested in L district for this class of offence than non-Aborigines). N district's ratio is also extremely high (with a rate of over 90 arrests per 1,000 population, and an over-representation ratio of nearly 20). In only one district (P district)

were Aboriginal people under-represented.

The over-representation ratio for arrests of Aborigines for 'crimes against property' for the entire state was just over five. Three districts (H, L and N) had over-representation ratios significantly higher than the ratio for the whole state, with L district having the highest level of over-representation (with a rate of over 200 Aboriginal arrests per 1,000 population and an over-representation ratio of almost 17). N district's ratio of over-representation is again extremely high (over 13, with a rate of over 145 per 1,000 population for Aborigines). Only in D district were Aborigines under-represented in this class of crime.

In the class of 'other crime', Aborigines were over-represented by a ratio of nearly six for the whole state. The two districts which stood out in terms of over-representation were L and N. N district had an over-representation ratio of over ten. Only in D district were Aborigines under-represented in this category of crime.

The category of 'crime against property' has the highest rate of arrest of Aborigines per 1,000 population for each Police District. However, Aborigines were most over-represented in the 'crime against person' class. In only one Police District (P) was over-representation highest for 'other crime'. In almost all Police Districts, 'other crime' had the lowest level of over-representation of the three offence classes.

Within the 'other crime' class are arrests for 'other summary offences'. As mentioned above, most street offences fall into the 'other summary offences' category, although for some reason, arrests for public drunkenness are not counted by the LEAP system. These statistics are counted separately from the LEAP system, and are the subject of the next section. Figure 5 shows that Aborigines were over-represented at a ratio of over seven for 'other summary offences', with L and N districts having ratios of over-representation significantly higher than the ratio for the whole state. Only in D and J districts were Aborigines under-represented in this category. A, B, L, N and Q districts all have extremely high levels of arrest of Aborigines for this category of offences.

THE SIGNIFICANCE OF ARRESTS FOR PUBLIC DRUNKENNESS

One of the major failings of the current Victorian government in relation to diverting Aboriginal people from custody has been its refusal to decriminalise public drunkenness. Recommendations 79 to 85 of the Royal Commission urged the relaxation of laws pertaining to this offence, describing the relevant sections of the statutes as archaic and ludicrous, as well as a waste of police resources.¹³ Of the 99 Aboriginal people who had died in custody and whose deaths were investigated by the Royal Commission, 27 were in police cells merely for the offence of public drunkenness.¹⁴ Despite the recommendations, public drunkenness remains an offence in Victoria under section 13 of the Summary Offences Act (1966).

In its 1994 Implementation Report, the Victorian Government claims it supports the decriminalisation of public drunkenness, but argues that it cannot repeal the law without ensuring that a sufficient number of sobering-up centres are operating in this state.¹⁵ Currently, there are sobering-up centres operating in Bairnsdale (Q district), Mildura (N), Morwell (Q), Shepparton (O), Swan Hill (N) and Warrnambool (L). All of these centres are funded by Aboriginal Affairs Victoria. There was one sobering-up centre in Melbourne, but it was closed down due to funding difficulties. The sobering-up centres in the regional areas appear to be working quite well, and their presence ensures that a large proportion of Aboriginal people who are apprehended for public drunkenness in those regions are being diverted from Police cells, although these people are usually still charged with the offence of public drunkenness.

The way in which courts deal with 'drunks' varies throughout the state. In the Melbourne Magistrates' Court, 'drunks' are usually convicted and discharged. In some regional Courts, offenders are fined \$50 (default of which often leads to time spent in Police cells and a criminal history for non-payment), and in other Courts offenders are merely discharged without conviction. Thus, convictions exclusively for this offence do not form part of a

person's criminal history. Despite the apparent leniency of the Courts, a significant proportion of Aborigines apprehended for public drunkenness find themselves entering a cycle of arrest which the Royal Commission found can lead to incarceration.

In the metropolitan area, the situation is frightening. With the absence of a sobering-up centre in the area, those Aborigines apprehended for public drunkenness are usually being detained in police cells for four hours - a situation which is totally in conflict with the recommendations of the Royal Commission, and one for which the Victorian Government deserves severe criticism. It is surprising that there has not been a greater number of Aboriginal deaths in Police cells in the metropolitan area since the metropolitan sobering-up centre was closed.

| Table 2: Number of Aborigines arrested for drunkenness by police districts, 1993-94 | | | | | | | | | | | | | | | | | | |
|---|----|-----|---|---|---|---|---|----|----|---|----|----|----|-----|-----|---|----|-----|
| Police districts | | | | | | | | | | | | | | | | | | |
| | A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | All |
| Number of arrests | 76 | 111 | 5 | 8 | 8 | 3 | 1 | 18 | 10 | 7 | 16 | 20 | 15 | 342 | 126 | 8 | 78 | 852 |

Table 2 shows the number of arrests in each Police District of Aborigines for the sole offence of public drunkenness during the 1993-94 financial year. These figures were obtained from the Victorian Police Statistical Services Division. The most significant numbers of arrests for this offence occurred in N district (342 arrests). In the metropolitan area, there was a total of 263 arrests for this offence. Figure 6 indicates the rate of Aboriginal arrests in each Police District for drunkenness. A, B and N districts have extremely high arrest rates for this particular offence (that is high rates per 1,000 Aborigines living in those districts). N district, however, is of particular concern. In simple terms, for every 1,000 Aboriginal people living in N district, there were 232 arrests of Aborigines for public drunkenness. In fact, N district contributed around forty per cent of all Aboriginal arrests for drunkenness in 1993-94. These figures are startling. By comparison, the annual arrest rate for the entire Victorian population for public drunkenness in the 1980s was around five per 1,000 population.¹⁶ Thus, if we assume this rate has remained fairly constant, the rate of arrest of Aborigines living in N district for public drunkenness was something like over forty times the rate for the whole state.

N district's disturbingly high rate of arrest for public drunkenness is seen by many within the Aboriginal community as being the result of selective policing. In recent years, towns in N district have attempted to woo the tourist dollar as a response to the recession and the decline of the rural sector in and around these towns. Local governments in this area have been, from all accounts, quite active in encouraging local Police to 'crack down' on Aboriginal people drinking in public, which would appear to be contrary to the thrust of recommendation 88 of the Royal Commission. These local governments are apparently concerned about the visibility of Aboriginal drinking within their boundaries. Many of these local governments have enacted local laws prohibiting drinking in public, violation of which results in a fine. Whilst imprisonment for violation of a local-government law is not possible, non-payment of fines often leads to a period of incarceration. At the present time, it is not possible to provide any figures pertaining to violations of these local laws.¹⁷

As the Royal Commission recommended, any move towards decriminalising public drunkenness should include a system designed to monitor the effects of local laws covering public drinking.¹⁸ Another recommendation urged the public overview of Police arrest behaviour in order to ensure that people are not being arrested and charged with other minor offences in the absence of an offence pertaining to public drunkenness.¹⁹ Evidence from states where public drunkenness has been decriminalised has revealed that governments and

Police have failed to follow these recommendations with any real degree of commitment. However, evidence from Western Australia shows that after that state decriminalised the offence in 1990, the number of Aboriginal people being placed in police lock-ups decreased dramatically.²⁰

On one major point, the Victorian government is technically correct and in agreement with the Royal Commission²¹ - public drunkenness cannot be decriminalised without an adequate number of sobering-up centres. Without a budgetary commitment to the establishment and continued operation of new centres (particularly in metropolitan Melbourne), decriminalisation of this offence is not a viable option. However, though the government claims it supports the idea of decriminalisation, it is unwilling to dedicate the resources necessary for new sobering-up centres.

DISCUSSION AND CONCLUSIONS

The geographical characteristics of Aboriginal arrests in Victoria in 1993-94 show gross over-representation in almost all Police districts, with particularly high levels of over-representation evident in L and N districts. The statistics presented in this paper are unlikely to surprise members of the Aboriginal community, least of all those with expertise in the field of Aboriginal contact with the criminal justice system. These statistics do, however, paint an alarming picture of the regional dynamics of this contact. The fact that public drunkenness remains a criminal offence is a serious obstacle to reducing Aboriginal contact with the criminal justice system. The Victorian government's refusal to decriminalise this offence deserves harsh criticism.

The Victoria Police LEAP database recorded 2,961 arrests of Aboriginal people in 1993-94. This figure excludes arrests for drunkenness. The separate database kept by Police itemises 852 arrests of Aboriginal people for this offence during the same year. Adding these two totals reveals that 22 per cent of Aboriginal arrests were for public drunkenness. Figure 7 illustrates that in N district, almost forty per cent of Aboriginal arrests were for this offence. The figure for B district was over fifty-two percent. Unfortunately, the lack of any data on non-Aboriginal arrests for public drunkenness makes it impossible to compare non-Aboriginal and Aboriginal arrests for this offence.

Of course, arrest statistics for 1994-95 (not available at the time of publication) will make it possible to conduct some kind of longitudinal comparison of Aboriginal over-representation, although such a comparison is hindered by the fact that statistics regarding Aboriginality were not collected by Police in any systematic way prior to 1993-94. Whilst the relatively poor economic status of the Aboriginal community has been well documented,²² an examination of the socio-economic position of the Aboriginal and non-Aboriginal populations of individual Police districts may reveal evidence of a regional skew in the socio-economic position of the Aboriginal population, and may go some way to explaining the differences in arrest rates between districts. Unemployment, low incomes and low economic status were all important factors which the Royal Commission found contributed to high levels of incarceration. At the same time, allegations of over policing or selective policing in certain areas is a subject necessitating further research. Scope also exists for future research relating to arrest rates for other types of offences mentioned extensively in the Royal Commission as being problematic for the Aboriginal community (for example, the offences of indecent language and offensive behaviour).

References

¹ Royal Commission Into Aboriginal Deaths In Custody (RCIADIC), *Final Report*, Australian Government Publishing Services (AGPS) Canberra, 1991

² The terms 'Aboriginal' and 'Aborigines' are used here to describe peoples of Aboriginal and/or Torres Strait Islander descent.

³ See *Demographic Profile of Victoria Police Districts*, Victoria Police Statistical Services

⁴ See *Victoria Police Crime Statistics 1993-94*, Victoria Police, Melbourne, 1995, p. 7. In 1994-95 these statistics will be generated on the basis of the date the offender's details were entered onto the LEAP database rather than the date of processing of the offender.

⁵ *ibid.*, p. 8

⁶ This conclusion has been heavily criticised in R. G. Broadhurst and R. A. Maller, 'White Man's Magic Makes Black Deaths in Custody Disappear', in *Australian Journal of Social Issues*, vol. 25, no. 4, 1990, pp. 279-89.

⁷ Statistics for Figure 3 were taken from House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Justice Under Scrutiny: Report of the Inquiry into the Implementation by Governments of the Recommendations of the Royal Commission Into Aboriginal Deaths In Custody*, AGPS, Canberra, 1994, p. 79. Figures for the Australian Capital Territory have not been included.

⁸ See *Aboriginal and Torres Strait Islander Social Justice Commissioner, Third Report*, Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Sydney, 1995; G. Luke and C. Cunneen, *Aboriginal Over-Representation and Discretionary Decisions in the NSW Juvenile Justice System*, Juvenile Justice Advisory Council of NSW, Sydney, 1995; C. Cunneen, 'Enforcing genocide? Aboriginal young people and the police', R. White & C. Alder (eds) *The Police and Young People in Australia*, Cambridge University Press, Cambridge, 1994, pp. 128-158.

⁹ V. Dalton and D. McDonald, 'Australian Deaths in Custody & Custody-related Police Operations, 1994', *Deaths in Custody Australia No. 9*, Australian Institute of Criminology, Canberra, 1995

¹⁰ J. Foreshow, 'Black outrage as death in custody numbers increase', in *The Weekend Australian*, December 16-17 1995, p.10, and M. Grattan, 'Call for summit on black deaths in prison', in *The Age*, January 1 1996, p. 3

¹¹ Aboriginal Affairs Victoria, *Royal Commission into Aboriginal Deaths in Custody: Victorian Government 1994 Implementation Report*, Department of Health and Community Services, Melbourne, 1996, p. 31

¹² D. Dagger, *Persons in Juvenile Corrective Institutions*, No. 66, Australian Institute of Criminology, Canberra, 1995

¹³ Recommendation 79 of RCIADIC urged 'That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness'.

¹⁴ RCIADIC vol 1, p. 46. Another eight individuals died in custody after being detained in Police cells due to their intoxication in states where public drunkenness had actually been decriminalised.

¹⁵ See Aboriginal Affairs Victoria, *Royal Commission Into Aboriginal Deaths in Custody: Victorian Government 1994 Implementation Report*, Department of Health and Community Services, 1996, p. 100.

¹⁶ See Law Reform Commission of Victoria, *Public Drunkenness: Report No. 25*, Law Reform Commission, Melbourne, 1989. The Commission found that between 1982 and 1986/87 the rate of arrest for public drunkenness in Victoria fluctuated between 4.5 and 5.3 per 1000 population for the entire community.

¹⁷ It appears that the local government by-laws departments do not split up their statistics on the basis of Aboriginality.

¹⁸ See RCIADIC, recommendation 82.

¹⁹ See RCIADIC, recommendation 85.

²⁰ R.W. Harding, R. Broadhurst, A. Ferrante and N. Loh, *Aboriginal Contact with the Criminal Justice System and the Impact of the Royal Commission Into Aboriginal Deaths In Custody*, Hawkins, Sydney, 1995, pp. 97-98

²¹ See RCIADIC, recommendation 80.

²² See, for example, J. Taylor, 'The Relative Economic Status of Indigenous People in Victoria, 1986-1991', *Centre for Aboriginal Economic Policy Research Discussion Paper No. 57/1994*, Canberra, 1994.

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