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Racial Profiling, Surveillance and Over-Policing: The Over-Incarceration of Young First Nations Males in Australia

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Abstract: Historically, countries such as Australia, Canada and New Zealand have witnessed an increased over-representation of minority groups who are exposed to the criminal justice system. For many years in Australia, young First Nations males have been over-represented in the juvenile justice system in all states and territories. Many of these young males have disengaged from their schooling early, some through deliberate exclusion from the education system and others by choice. However, the choices for many young First Nations males may not be as clear cut as first might seem. This paper shows that over-representation in the juvenile justice system may be as a direct result of racial profiling, surveillance and over-policing of First Nations peoples within Australia. The literature addresses the ways in which young First Nations males experience these phenomena from an early age, and the long-term effects and consequences that can arise from these occurrences. An analysis of the current research both internationally and within Australia is thus conducted.

Keywords: over-policing; First Nations males; surveillance; over-incarceration; exclusion; racial profiling



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1. Racial Profiling—An International Perspective

Millar and Owusu-Bempah (2011) highlighted that racial profiling in Canada had become a significant factor in the high incarceration rates of young Indigenous males and minority groups. According to Millar and Owusu-Bempah (2011), “there are documented individual cases of racial profiling where police have targeted individuals for increased supervision because of their race” (p. 654). In their research, Millar and Owusu-Bempah (2011), as well as Wortley and Owusu-Bempah (2011), stated that there was a strong reluctance by police or governments in Canada to commit to any substantial reporting or recording of data which relates to ‘race’ as being a determinant in the high arrest rates and incarceration of minority groups, particularly the First Nation peoples of Canada. Owusu-Bempah et al. (2014) also pointed out that the rate of imprisonment of Canada’s Aboriginal population had risen “by almost 40%, while the non-Aboriginal prison population [had] risen by just over 2%” (p. 5). Jackson (2015) insisted that nefariously young people in Canada still have to contend with over-policing, racism and discrimination. Just as in Canada, there continues to be more direct contact between police and young First Nation children in Australia. Young First Nations males are constantly stopped, questioned and searched by police.

Wortley (1999) argued that race may play a part in the consistently high arrest rates of minority groups and suggested that factors such as “minority groups being “more likely to be arrested, convicted, and punished for their behaviour” (p. 261). Wortley and Owusu-Bempah (2011) posited that minority groups tended to congregate more frequently in public spaces and in areas that statistically have higher crime rates and traffic violation involvement, making them susceptible to over-surveillance and police profiling. Although these issues warrant further investigation, the incarceration statistics

remain significantly higher for Aboriginal peoples of Canada where racial profiling and over-policing remain a serious problem within many communities. In a comprehensive report written for the Ipperwash Inquiry in Canada, Rudin (2006) found that between 1999 and the early 2000s Canada had one of the highest incarceration rates for Aboriginal youth, globally. Although Rudin (2006, 2007) determined that there has been a substantial decrease in incarceration rates overall of Canadian youths, the statistics show that Aboriginal youth continue to be incarcerated at a substantially higher rate than their non-Aboriginal counterparts (Rudin 2006).

As in Australia, Canada's Aboriginal population is represented demographically by a much younger population, with Canada's Aboriginal children from 0–14 years, accounting for 28% of the total Aboriginal population. Statistics show that Aboriginal youth in Canada are over-represented in both custodial and community supervision and account for more than half of the young people who are incarcerated in Canada.

There are similarities for New Zealand's Māori youth. In 2007, a detailed report was conducted by the Police, Strategy and Research Group Department of Corrections (PSRGDC), regarding the over-representation of Māori peoples who are incarcerated. This report highlighted that, historically, Māori peoples have had higher conviction and incarceration rates than non-Māori (Pakeha) people. Likewise, Māori youth are disproportionately represented within the juvenile justice system, and they too experience lower socio-economic status in many cases. Moana Jackson argues that the "impacts of historical and cultural factors in Māori offending" should be taken into consideration" (Jackson 1988, p. 8). It was also highlighted in research conducted by Fergusson et al. (1993) that young Māori peoples up to the age of 14 had contact with police nearly three times more than their non-Māori counterparts. In 1989, New Zealand's youth justice system was 'overhauled' with an attempt to lower incarceration rates for youth aged between 10 and 17 years of age (Quince 2007). Despite these changes, New Zealand's Ministry of Justice identified that, in 2004, 54% of the 6269 young people prosecuted were Māori (New Zealand Ministry of Justice 2006).

Although Quince (2007) determined that Māori peoples are significantly over-represented within the justice system, she too argued that there are other factors that must be considered other than culture and ethnicity, suggesting that one of these factors was that "colonisation has directly shaped the socioeconomic position" (p. 4) of Māori peoples, which then contributes to the likelihood of higher incarceration rates. Although offending rates have fallen across the board for all young people in New Zealand, more recent statistics indicate the rates of Māori youth appearing in court increased by 23% from 2014–2017, whereas the rate for non-Māori young people reduced by 12% over the same time period (Ministry of Justice 2018). According to a New Zealand police document published in 2019, police statistics for over-incarceration of young Māori peoples, although decreased, continued to be alarming. The letter documented that, in 2019, 34 Māori children between the ages of 0–12 were taken into police custody compared to that of only five European children (Sissons 2019). For 15-year-old Māori children, the figures showed that they had the greatest arrest rate compared to all other ethnicities (537 Māori, 172 European, 49 Pacific peoples and 1 Asian) (Sissons 2019).

2. Racial Profiling: An Australian Perspective

Considering the past and continuing inequitable government policies and practices that exist through invasion and colonisation of Australia, New Zealand and Canada, the criminalisation of Indigenous peoples may be perceived as another form of surreptitious racism and oppression. The criminalisation of First Nations peoples in Australia has been embedded in the social fabrication of the Australian identity (Green 2019). Policing in Australia has been used to disperse First Nations peoples from their lands, enforce segregation on missions and reserves, remove First Nations children from their families, control expression of language and culture and, by direct or indirect discrimination, prevent economic and social advancement within Australian society (Behrendt et al. 2009). First Nations

peoples in Australia have historically had and continue to have an inherently complex and problematic relationship with police and policing since invasion and colonisation (Cunneen et al. 2015; Cunneen and Tauri 2016).

Research conducted by Sibblis (2014) explored the concept of the 'black body' in schools and stated that "the black body is reduced to a discursive construct, which lacks understanding but can be thoroughly understood and therefore is always 'spoken for'; always subject to and enslaved by the interpretation of the white man" (p. 71). Within this paradigm, we can see that First Nations boys are more likely to be identified in this group, and then targeted and profiled in schools and the community, being perceived as a threat to society (Sibblis 2014). First Nations children who are racially profiled reflect the embodiment of those adults who are currently incarcerated within Australia's prison systems (Commission for Children and Young People and Child Guardian 2013). The black body described here does not only relate to one's appearance, but to something much deeper and perplexing. Ideological whiteness is constructed as superior and "through devices of exclusion" decisions are made not about "who or what is white, but rather who or what is not white" (Moreton-Robinson 2004, p. 79).

Just as in Canada and New Zealand, negative relationships between police and minority groups are also a significant contributing factor to the higher incarceration rates of First Nations young people in Australia (Tauri 2009). Interestingly, Hutchinson and Smandych (2005) emphasized that, in the case of Canada and Australia, both have province/state-based approaches to incarceration, therefore giving more autonomy to each province or state with regards to the implementation of laws and the sentencing of offenders. They contend that a more positive approach from a legal perspective might be to tackle high incarceration rates at a national level with consistent laws and policies in place.

3. Australian Policy and Incarceration of First Nation Young Males

In Queensland alone, the average cost to keep one child in detention per annum is more than half a million dollars. According to Bushnell (2017), the expenditure on prisons in Australia from 2010 to 2015 had increased by 25.3%, which is the fastest growing in all common law countries. However, in the 2012–2013 period, research correspondingly shows that there are substantial financial benefits associated with justice reinvestment strategies (Queensland Productivity Commission 2018).

The 2015 Amnesty International report, "Keeping Indigenous Kids in the Community and out of Detention in Australia", stated that although the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) had extensively detailed the problems surrounding high custody and incarceration rates of Indigenous peoples, very little had been done over a 24-year period. The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) expressed deep concerns that the 2008 Closing the Gap (CTG) reforms, which aimed to reduce the disadvantages experienced by First Nations peoples of Australia, also omitted to include, as a target, the high levels of incarceration rates for First Nations adults and children. NATSILS also highlighted that without addressing the issue of high incarceration rates it would be extremely difficult to improve or meet the overall CTG targets as outlined by the federal government. From 2016–2017, incarceration rates of young First Nations peoples in Australia increased. Although only accounting for 5% of all young people nationally, young First Nations peoples made up 54% of all young people under juvenile justice supervision on an average day (Australian Institute of Health and Welfare 2018). From 2016–2017, Queensland and New South Wales' First Nations youth represented the highest numbers of children under supervision for all states and territories.

In 2018, in Australia, 5694 young people (both Indigenous and non-Indigenous) came under youth justice supervision, with Queensland having the second highest representation of children incarcerated in juvenile detention. Of all young people 10–17 years of age detained in juvenile detention centres in Queensland, 72% were First Nations children.

Data also indicated that “in community-based supervision¹, Queensland (28%) and New South Wales (25%) had the largest numbers of young people under supervision on an average day” (Australian Institute of Health and Welfare 2018, p. 5). Moreover, “In all states and territories, a substantial proportion of those in detention on an average day were unsentenced, ranging from 47% in Victoria to 86% in Queensland” (Australian Institute of Health and Welfare 2018, p. 15). Queensland and Victoria had the highest rates of young people who spent time in a juvenile correctional facility, although they had not been sentenced. Overall, in four states, New South Wales, Queensland, Western Australia and in South Australia, First Nations children were overrepresented in this area compared to their non-Indigenous counterparts.

In 2018, a report on youth justice in Queensland found that, in 2016–2017, “there were 38,338 occasions of police actions against children aged 10–16 years” in Queensland (Atkinson 2018, p. 2). Young First Nations males and females in Queensland made up around 9% of all 10 to 17-year-olds, but 65% of the youth detention population. Young males were four times more likely than their female counterparts to be under community-based supervision, and “about 8–9 times as likely as females to be in detention” (Australian Institute of Health and Welfare 2018, p. 30). Data showed that, on an average day in 2016–2017, more than half (58%) of young people aged 10–17 in detention were First Nations children. Similarly, almost half (48%) of young people were supervised in the community. Between 2014 and 2018, the incidences of incarceration of young First Nations peoples rose significantly in Queensland compared to that of their non-Indigenous peers (Australian Institute of Health and Welfare 2018). Although data varies across states and territories, the commonality is that young First Nations peoples continue to be ‘over-represented at all stages of the criminal justice system throughout Australia’ (Higgins and Davis 2014, p. 2).

4. Systemic Bias

Weatherburn et al. (2003) argued that the overrepresentation of First Nations peoples occurs because of “Aboriginal overrepresentation in crime” (p. 65). However, a plethora of research conducted after the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) asserted that ‘systemic bias contributed significantly to the incarceration of First Nations peoples (Behrendt et al. 2009). Cunneen (2005) also countered that the response of Weatherburn et al. was, at the least, a simplistic interpretation of an extremely complex phenomenon. Further, Cunneen (2005) argued that there has been ample research identifying systemic bias as a cause for the over-incarceration rates of First Nations peoples (see, Allard 2010; Fergusson et al. 2004). However, Weatherburn et al. (2003) argued that systemic bias was not the cause of the over-incarceration of First Nations peoples, but that issues such as “poor schooling outcomes, unemployment and substance abuse” (p. 66) represented the underlying causes that contributed to incarceration, insisting that these issues need to be addressed to prevent high incarceration rates of First Nations peoples.

It may be determined that, to some extent, both Cunneen (2005) and Weatherburn et al. (2003) present valid arguments. Unfortunately, however, Weatherburn et al. (2003) neglects to thoroughly examine the RCIADIC findings that identified indigeneity as having a substantial bearing on the higher incarceration rates of First Nations peoples. In their research, Weatherburn et al. (2003) also attempted to disconnect past and present government policies of economic and social disadvantage, thus negating the high probability that this resulted in the over-incarceration rates of First Nations peoples (Newell 2013).

Factors such as systemic bias within the legal system, substance abuse, high unemployment rates and low levels of education, as mentioned by Cunneen (2005) and Weatherburn et al. (2003), whether causal or symptomatic, nevertheless has a substantial bearing upon those First Nations peoples currently incarcerated within the criminal justice system. Higgins and Davis (2014) suggested that “despite the multiple policy and practice reforms that

¹ Community-based supervision allows children to serve their sentences within the community with differing bail conditions set by the courts for each individual.

were initiated after the Royal Commission, the significant over-representation of Indigenous young people in the juvenile criminal justice system remains" (p. 3). Notwithstanding the 339 RCIADIC recommendations to reduce the high incarceration rates of young First Nations peoples in Australia, the disturbing reality is that over-policing, police profiling and incarceration is a daily experience for many young First Nations peoples, particularly young males. Federal, state and territory government policies that impose social and economic disadvantage must be addressed to achieve any significant change for the next generation of young First Nations peoples. First Nations peoples and organisations that facilitate First Nations led programs have better prospects than non-Indigenous government led programs at achieving long-term success (Hunt 2013; O'Brien and Trudgett 2018). Goldson (2006) stated that to institutionalise children with multifaceted needs and who present with complex vulnerabilities is a fundamentally violent act in of itself.

5. Surveillance of Young First Nation Males in Australia

It is important to understand at what age and where surveillance of young First Nations children first begins. Although there is minimal research relating to the early surveillance of First Nations children within Australian society, there have been studies conducted around the direct and indirect racism that young First Nations children experience and how this may impact upon their mental and physical health, as well as their long-term emotional well-being (Shepherd et al. 2017). The longitudinal study by Shepherd et al. (2017) examined the health and welfare of 1239 young First Nations children between the ages of five and ten years. This research investigated the effects of racism and how this adversely affected the mental and physical health of young First Nation peoples. Shepherd et al. (2017) found that "two-fifths (40%) of primary carers, 45% of families and 14% of Indigenous children aged 5–10 years were reported to have experienced racial discrimination at some point in time" (p. 5).

Peart et al. (2018) conducted a study of Queensland police photographing First Nations children in a small town in Western Queensland. Their research found that First Nations children were being indiscriminately photographed and profiled by police without their permission while simply walking around town. The acting police commissioner at the time stated that these photographs were being used by Queensland police to eliminate children as suspects in other police investigations (Peart et al. 2018). Even though these photographs were being uploaded and stored on a Queensland police database, the police minister at the time indicated that police were acting within the law. It was believed that over 500 children had been stopped and photographed, although only 20 children were involved in any offence. Although not deemed illegal, this highlights the toxic relationship police have with First Nations children (Peart et al. 2018). In this instance, it was evident that the rights of First Nations children were not considered and that the children photographed and questioned without cause resulted in a direct invasion of their right to privacy under the 2007 UN Convention on the Rights of the Child (UN Commission on Human Rights 1990).

In the field of education in Australia, Ainge (2002), Harrison (2011) and Sarra (2003) have all tackled the controversial negative stereotyping of First Nations children within the education system and the use of deficit discourses about home and family life to explain consistently poor educational outcomes. While poverty, intergenerational trauma and over-crowding have a bearing on the welfare of some First Nations children, these factors should be considered parallel to how the education system knowingly or unknowingly marginalizes and excludes First Nations children. Welch and Payne (2010) contend that "racial status is another variable consistently related to student punitiveness, with minority students receiving harsher treatment more often than white students" (p. 28). The high rates of exclusion from school of First Nations boys in all age groups from the commencement of their schooling highlights that there may also be bias in the way disciplinary measures are used in schools with profiling of First Nations children in classrooms. In their research, Graham (2018) and O'Brien and Trudgett (2018) questioned the impact of changes to state government policy around suspension and exclusion of students from Queensland state

schools and highlighted that there has been a considerable increase in the number of students who are now receiving school disciplinary absences (SDAs), such as suspension or exclusion from school. [Graham \(2018\)](#) argued that this is particularly notable in the preparatory year and in year seven, both of which are important transition phases for children attending school. It has also been established that many children who receive SDAs, also experience greater socioeconomic disadvantages, have a disability or identify as First Nations children ([Graham 2018](#)). In other SDA data, the statistics are even more concerning, indicating that although First Nations students made up approximately 10% of all state school students in Queensland (2017), they constituted approximately 18% of students with SDAs ([Department of Education & Training 2018](#)).

'Othering' and stereotyping First Nations children is perpetuated through these intentional or unintentional discourses that occur daily within schools and classrooms. Surveillance of First Nations children may be embedded in various educational institutions and cannot always be readily identified, although research has shown that many First Nations children believe that they are constantly singled out by teachers and that they have experienced some form of racism or discrimination during their schooling lives ([Bodkin-Andrews and Carlson 2016](#); [De Plevitz 2007](#)). This can come from administrative staff, principals, teachers and other children, thus resulting in a profound and overwhelming effect on a child's well-being and self-esteem ([Bodkin-Andrews et al. 2013](#)).

[Blagg et al. \(2005\)](#) conducted a study on the over-incarceration of First Nations peoples in Victoria, Australia, wherein most of their research participants maintained "that discrimination on the basis of Aboriginality was institutionalised within the system" (p. 164). Unlike individual racism, institutional racism exists through the formation of institutional policies, practices and political structures that can severely disadvantage minority and marginalised groups. Discrimination can be seen in the introduction of such things as the Basics Card, which requires income support recipients to purchase only goods at recognised stores and gives recipients only twenty per cent of the social security income in cash. This card is predominantly rolled out and trialled in areas with high populations of First Nations peoples. Another institutionally discriminatory policy is the School Enrolment and Attendance through Welfare Reform Measure, which was formulated and framed by the federal government, who legitimized this policy reform as necessary to combat non-attendance and disengagement of First Nations children from schooling in the Northern Territory. This policy fines First Nations parents for their children's non-attendance at school and may affect their access to income support. Both of these policies single out First Nations peoples and financially penalize and create further social disadvantages and economic hardships. Value systems embedded in our social structures can negatively impact First Nations children and, in many cases, mainstream Australia may not even be aware of their existence.

6. Policing Powers

Police have considerable powers and discretion as to who receives a caution, who is diverted away from the courts and whether a young person is detained in custody with or without sentencing. According to the [Commission for Children and Young People and Child Guardian \(2013\)](#), First Nations young people are much more likely to be "issued a warrant or arrested" as a result of offences committed compared to that of their non-Indigenous counterparts (i.e., 49.6% compared to 24.6%). Non-Indigenous young people are also "more likely to receive a caution from police than First Nations young people (39.1% and 20.3%, respectively)" ([Commission for Children and Young People and Child Guardian 2013](#), p. 133). [Behrendt et al. \(2009\)](#) stated that in "Aboriginal communities in Australia search powers of juveniles are used more frequently" (p. 99). While [Allard \(2010\)](#) suggested that there is substantial 'over-policing' within First Nations communities in Australia, which in turn leads to higher charge and arrest rates, particularly of young First Nations males. From 2015–2016, 182 complaints were received by the Department of Justice and Attorney General from children and young people aged 12–18 years, which represents

approximately 15 complaints per month. According to the [Australian Institute of Health and Welfare \(2018\)](#), “young people are more likely than adults to be proceeded against for allegedly committing an offence” (p. 34). Police have discretionary powers to caution or charge those taken into custody and, in most cases, First Nations youth are less likely to be diverted away from the court systems ([Cunneen et al. 2005](#); [Wundersitz and Hunter 2005](#)). [Behrendt et al. \(2009\)](#) suggest that “to a large extent, police determine which young people will enter the juvenile justice system, as well as the terms on which they enter” (p. 96).

In the 2009 “Crime and Misconduct Commission (CMC) report: Monitoring the Queensland Police Service—Interactions between police and young people”, research shows that First Nations youth and minority groups are more likely to be met with physical aggression and ‘intimidation’ from police ([Crime and Misconduct Commission 2009](#)). In many cases, young people “are afraid to report incidents of intimidation for fear of police retaliation or because they feel threatened by police warnings against making a complaint” ([Crime and Misconduct Commission 2009](#), p. 9). According to [Allard \(2010\)](#), two-thirds of First Nations males and one-quarter of First Nations females in the general population had contact with the juvenile justice system, while the proportion of non-Indigenous young people who had contact was much lower (p. 4). [Richards et al. \(2011\)](#) stressed that “social crime prevention addresses factors that influence individuals’ likelihood of committing a crime” (p. 1). At the same time, First Nations youth, particularly males, are more likely to have contact with police and the juvenile justice system at an early age, which leads to police using ‘arrest and detention’ rather than using cautions or diversionary processes. Early intervention strategies based within communities to support First Nations youth, and in places such as schools, can have a significant impact on the reduction of incarceration and recidivism rates of young First Nations peoples.

Historically, the negative results of police contact can be seen to be particularly deleterious to young First Nations males, most of whom have experienced more than one incidence of contact with police since reaching 10 years of age. According to the [Australian Institute of Health and Welfare \(2018\)](#), “young people are more likely than adults to be proceeded against for allegedly committing an offence” (p. 34). To build positive relationships, there must be a change of culture adopted by those involved in policing and the criminal justice system. For early juvenile offenders, this may be a worthwhile solution.

7. Intervention Strategies: Moving Forward

The [Australian Institute of Criminology \(2003\)](#) states that “examples of prevention include school-based programs (for example, truancy initiatives), as well as community-based programs (e.g., local resident action groups) which promote shared community ownership and guardianship” (p. 1). Australia has limited research analysing the benefits of early intervention strategies based within local First Nations communities and places such as schools. Therefore, it is not known to what extent these early support measures have on the incarceration or recidivism rates of young First Nations peoples ([Cubillo 2013](#)). Despite such a paucity of research, the latest Queensland juvenile justice report acknowledged that many of the youth who came in contact with juvenile justice have also had interactions with the child protection system ([Atkinson 2018](#)).

Establishing a First Nations Advisory Group for each state and territory to address surveillance and over-policing of First Nations children may provide support mechanisms to meet the needs and requirements of families from a community-based approach. Training police and educators must be an ongoing process to understand the socioeconomic and cultural complexities that exist for many First Nations families. Schools should consider alternative prevention and intervention options and strategies to suspension and or exclusion of First Nations boys in order to avoid interruption to their education programs and to circumvent possible contact with police and the juvenile justice system. Rather than adopting an individualistic silo approach to governance, government departments should endeavour to share their knowledge and information in collaboration with First Nations led organisations to support First Nations children and families in a culturally

safe and appropriate way. Cubillo (2013) insists that in Australia First Nations peoples must have input into “legislation and policy development, as well as educate others about what we want with respect to minimizing our over-representation in the criminal justice system” (p. 23). Without First Nations peoples input into future action plans established by and within government departments, there is little hope of substantive and positive long-term changes occurring to prevent the over-representation of First Nations children in the juvenile justice system.

Since its inception in 2008, the national Closing the Gap report in Australia had no targets dealing with the over-incarceration rates of First Nations people. In 2020, and in alignment with the national Closing the Gap report, the National Agreement on Closing the Gap introduced several new targets, one of which was to reduce the incarceration rates of young First Nations peoples in Australia by at least 30% by 2031 (Australian Government 2020). It is not yet known how the national agreement will be actioned, or how the data for each of the new targets will be collected to reduce the incarceration of First Nations youth in Australia. Clearly, there must be an inquiry into how this will occur, and if this relates directly to police interactions, and profiling and surveillance of First Nations children at a national level.

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