

# Indigenous People, Crime and Punishment

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JCU Law Seminar Series  
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I acknowledge the Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of the Australian lands and waters where we live, learn and work. I honour our unique cultural and spiritual relationship to the land, waters and seas of First Australian peoples and our continuing and rich contribution to James Cook University and our community. I also pay respect to ancestors and Elders past and present and acknowledge any Aboriginal and Torres Strait Islander people here today and online.

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## **Acknowledgement of Country**



# Overview

Explore the complex relationship between Indigenous people, crime and punishment. This seminar will investigate the historical and systemic factors contributing to the over-representation of First Nations people in the justice system, the ongoing challenges they face and the meaningful reforms that are making a difference.

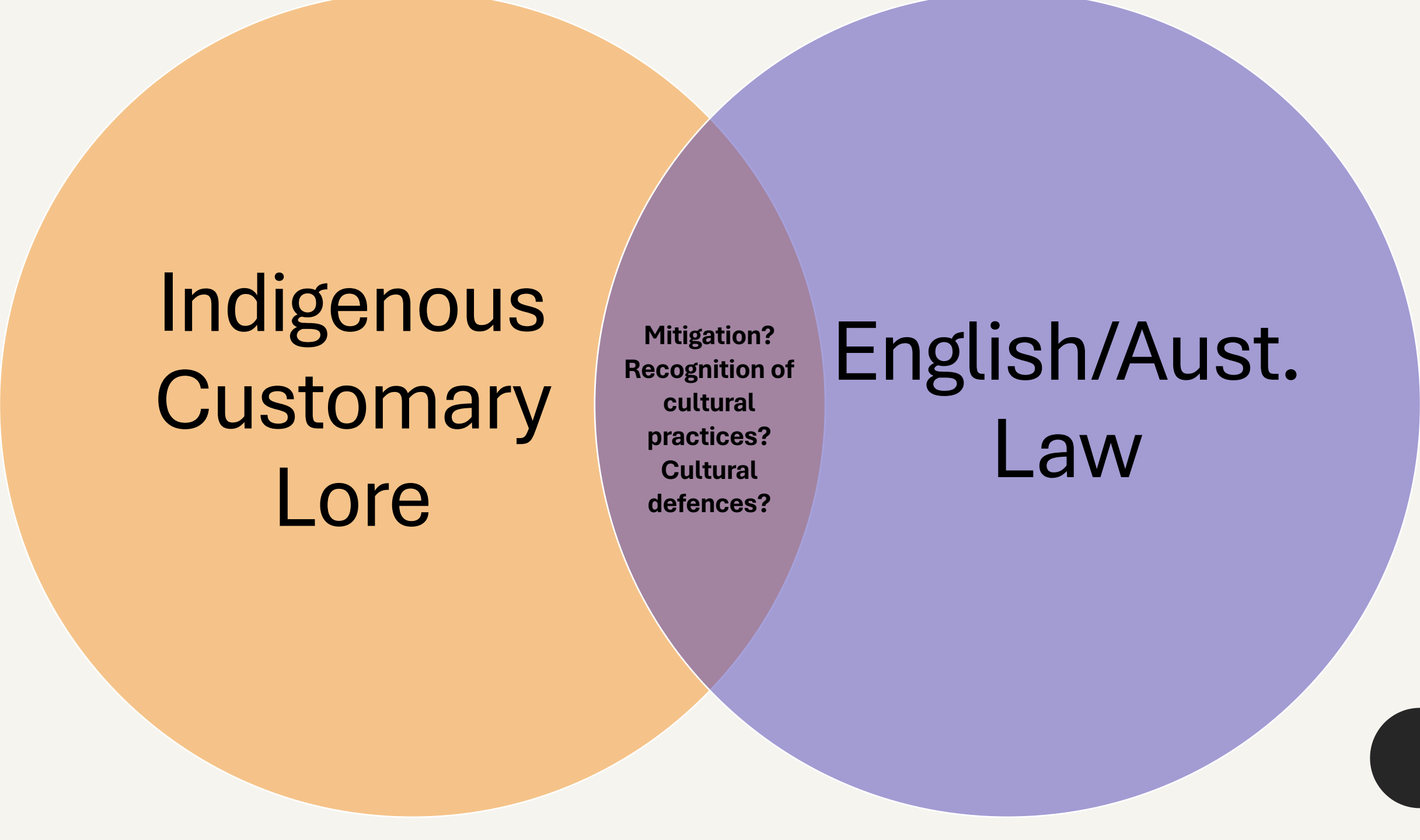
- Background
- Historic and systemic factors and over-representation
- Past meaningful reforms
- Sentencing Indigenous offenders
- Ongoing challenges
- Future reforms
- Summary and resources



# Background

- Pre-colonisation - "LORE" / Post-colonisation - "LAW"
- *Mabo v Queensland No 2* [1992] HCA 23; (1992) 175 CLR 1 (Mason CJ, Brennan, Deane, Dawson, Toohey, Gaudron and McHugh JJ)
- Indigenous rights and interests in land survived British settlement.
- Further legal challenge relied upon the principles adopted in *Mabo*: *Walker v The State of New South Wales* [1994] HCA 64 (Mason CJ)





A Venn diagram with two overlapping circles. The left circle is orange and contains the text 'Indigenous Customary Lore'. The right circle is purple and contains the text 'English/Aust. Law'. The intersection of the two circles is a darker purple color and contains the text 'Mitigation? Recognition of cultural practices? Cultural defences?'. A small black circle is visible in the bottom right corner of the image.

Indigenous  
Customary  
Lore

Mitigation?  
Recognition of  
cultural  
practices?  
Cultural  
defences?

English/Aust.  
Law

# Historic and Systemic Factors

*“There is systemic and structural racism in every aspect of the criminal justice system. This includes the laws, policing, the courts and how the courts do business”*

Magistrate Payne, “Magistrate Payne shows resilience”, Proctor, 28 December 2023

- Legacies of colonisation
- Dispossession
- Systemic racism
- Protection policies and laws
- Intergenerational trauma
- Ongoing social and economic disadvantages

# Over-representation

## Indigenous prisoners are more likely to have:

- Been sentenced to detention as a juvenile;
- Been unemployed in the 6 months prior to imprisonment;
- Been placed in care as a child;
- A parent imprisoned as a child;
- Previously been imprisoned;
- Used illicit substance and/or alcohol at harmful rates leading up to offending.



*“What appears to be the case of Aboriginal over-representation in prison is really nothing more than a case of Aboriginal over-representation in crime. If Aboriginal people end up in prison for committing crime, they have only themselves to blame”.*

# Meaningful Reforms

Supervision  
orders

Diversionary  
options

Restorative  
justice

Therapeutic  
interventions

Community  
Justice  
Groups

Family  
Violence  
Courts

Drug Court

Mental  
health courts

Sentencing  
advisory  
councils



# Sentencing of Indigenous offenders

- *Penalties and Sentences Act 1992* (Qld) section 9 (2)(oa) and (p)
- *R v Fernando* (Unreported, Supreme Court of NSW, 13 March 1992)
- *Bugmy v The Queen* [2013] HCA 37 (2 October 2013)
- Murri Court: 15 locations in QLD at Magistrates and Childrens Courts including Cairns, Mackay, Mount Isa and Townsville.
- Townsville does not have a Childrens Murri Court but we do have a specialised Youth Court where Elders are included to address young offenders who are Indigenous.



An Indigenous elder joins the magistrate at a Murri Court session in Cairns. (ABC News: Emilia Terzon)

# Ongoing Challenges

Systemic racism

Intergenerational  
trauma and social  
disadvantage

Cultural barriers -  
language,  
protocols.

Access to legal  
representation

Social exclusion  
due to racism

Reintegration  
challenges

Lack of  
agency/self-  
determination



# IN MY BLOOD IT RUNS

2020

DOCUMENTARY | 80MINS | COMPLETED

WATCH NOW

Ten-year-old Dujuan is a child-healer, a good hunter and speaks three languages. As he shares his wisdom of history and the complex world around him we see his spark and intelligence. Yet Dujuan is 'failing' in school and facing increasing scrutiny from welfare and the police. As he travels perilously close to incarceration, his family fight to give him a strong Arrernte education alongside his western education lest he becomes another statistic. We walk with him as he grapples with these pressures, shares his truths and somewhere in-between finds space to dream, imagine and hope for his future self.



# Future reforms

- Raising the age.
- Removing public drunkenness offences.
- Removing offences for non-payment of fines.
- Implementing 339 recommendations from the RCIADIC.
- Implementing more community policing initiatives.
- Address social and economic factors towards offending – housing, education, employment, health.



# Summary

***"...The spirit of the law must be one based on a recognition of and learning from diverse experiences, and a proper understanding of our nation's history and the consequences of colonialism on our First Peoples."***

***"...we must strive to meaningfully recognise First Peoples and their rights. Work must continue to provide First Peoples with meaningful roles and decision-making power in matters that uniquely affect them".***

District Court Judge Fantin, Speech given at Opening of the Law Year ceremony Cairns, 15 July 2024

# Resources

- **The *Bugmy* Bar Book:** The *Bugmy* Bar Book takes its name from the HCA case of *Bugmy v The Queen* (2013) 249 CLR 571 (*'Bugmy'*). One of the holdings of the High Court in *Bugmy* was that sentencing courts in Australia must give “full weight” to a person’s background in determining the appropriate orders in a given case.
- Australian Law Reform Commission
- James Cook University Law Journal
- Alternative Law Journal
- Supreme Court Library - Queensland
- Queensland Courts website
- United Nations Association of Australia
- Judicial speeches
- Queensland Law Society
- Proctor



# Thank you

# Questions?

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