LAW AND INTERNATIONAL LAW

Assignment 1

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Critical analysis of the challenges Indigenous communities in Australia experience after colonization, specifically in relation to law, crime and/or corrections.

# *Annotated Bibliography*

Brookman, R.P., Wiener, K.K., 2017. Predicting punitive attitudes to sentencing: Does the public’s perceptions of crime and Indigenous Australians matter? Aust. N. Z. J. Criminol. 50, 56–77.

The article brings about the perceptions of crime attached to the indigenous people. The authors believe that since there is a wide gap between the perception of crime between the indigenous people and ordinary Australians, therefore the methods of predicting the attitudes toward sentencing remains different. The quantitative data included in the study provides an in-depth analysis of the situation which has gradually erupted to this level. The data has been collected through different organizations which work for the betterment of the indigenous and aboriginal communities in Australia. They also mention that in the English-speaking countries and communities, the punitive attitude toward lawbreakers differ. The difference pertains to the reason that since they face different circumstances in daily life; and their attitude remains different toward the community-based settings, therefore the results remain different and somehow surprising. The article has examined the utility of the predictors who record the punitive attacks.

The result compilation of this study is based on an online survey which included some 500 Australians. For the research essay, this study remains useful since it provides the reason why some people follow a specific attitude. The authors believe that since it is the community and the limited resources they have in hand, therefore; the pattern of punitive attack differs. As this study is based on two differential patterns of crime measurement, therefore the results deduced suggest the pattern of punitive attitude in the indigenous communities of Australia. As the research paper aims at identifying the reason why majority people hold a negative view about the indigenous people; therefore, this study also supports some facts opined in the paper. The article concludes with putting forth the negative perceptions attached to the indigenous tribes and finally presenting a narrative which goes with what is planned to argue in the essay.

Cunneen, C., Tauri, J., 2019. Violence and Indigenous communities. DeKeseredy W Rennison C Hall-Sanchez Eds Routledge Int. Handb. Violence Stud. Routledge N. Y. 350–361.

Cunneen and Tauri have explored the patterns of crimes among the indigenous people. They believe that there exist some similarities in the pattern of crimes among the indigenous people of Australia, New Zealand and Canada. There exists various reason as to why such similarities exist. For example, the resource distribution is similar, the pattern of social culture and the attitude of ‘civilized’ people is similar, therefore the attitude of people with the indigenous communities remain similar. As the planned research is limited to why people adopt negative attitudes toward the indigenous people, this research remains supportive to much extent. The author's arguments are based on the qualitative methodology; therefore, it remains supportive throughout the research. It provides insight into the criminal patterns and why there exists a common trend in crimes, so the results remain supportive of the thesis argued in the first place in the essay.

Another important aspect the authors have brought forward is the reason as to why the indigenous people are portrayed. They have blamed not the indigenous communities, rather the system they are surrounded with. For example, they write that indigenous people in Australia are forced to live under conditions which remain derogatory and such attitude of Australians forced the indigenous people to adopt a negative path. Such defiance of authorities is not just limited to Australia, rather New Zealand and Canada adopt a similar strategy too. The strict watchfulness of the authorities forces the indigenous communities to adopt a path, which is conflicting. As the research focuses on how the Australian legal system treats the criminal aspects related to the indigenous communities, therefore this article provides the basis to debate over that. Finally, their arguments remain substantial to support the narrative of the thesis statement of which the article focuses on.

Gray, J., Beresford, Q., 2008. A ‘formidable challenge’: Australia’s quest for equity in

Indigenous education. Aust. J. Educ. 52, 197–223.

There has remained a challenge to each Australian government about the indigenous tribes. Beresford has written extensively how this aspect remains significant for the Australian cultural and social setup. The indigenous tribes cannot be placed at far or at distant areas, similarly, the population of Australia cannot be made ignorant of how the indigenous add value to their society. This bridge has long impacted on the studies completed over the indigenous people. Another interesting aspect of the article is the way it relates to the research. Since the theme of the research relates to why there exists a substantial gap between indigenous people and Australians, therefore it supports the theme in a different manner. For many scholars in Australia, the indigenous communities hold considerable challenge. They call them a challenge since there is a much difference in between what is been projected and what is the real-time problem.

The research designed below is related to the problems the indigenous people face with respect to the corrections and criminal procedures. Their friction with the system arises for the fact that they have not been studied and explored. Their role and the activities they surround themselves with are unexplored, therefore when there becomes a reason for their interaction with the Australians, they are treated badly. The author's exploration of this aspect holds significant importance as it brings forth the primary fault between the indigenous people and ordinary Australians. This article supports the claim that as there is a weak connection between the Australians and the indigenous people, therefore there is a small share in Australian laws which speaks for the rights of these people. The authors opine that unless there is no substantial research over these communities, they cannot be made a part of the Australian culture.

This annotated bibliography presents the idea that indigenous people have been a topic of wide research. Although different, but scholars from time to time have explored different aspects about them. There are many scholars who have explored different aspects of these people. Considering the research topic explored in this assignment, this annotated bibliography includes a broader aspect and conforms to the requirement of the research thesis. The following research will add another aspect to the present literature about the indigenous people of Australia.

Major Essay

Critical analysis of the challenges Indigenous communities in Australia experience after colonization, specifically in relation to law, crime and/or corrections.

# *Introduction*

The representation of the indigenous people among colonial societies in Australia is well- established. Since 1980, there is an increasing trend of indigenous people facing imprisonment which primarily arises from a biased judicial system, which is not workable for the people of indigenous heritage. Just to consider the bad state of affairs, it is worth noting that from the quarter of June 2017, the indigenous people in Australia represents around 28 per cent of the prison population (Taylor and Bell, 2018). It raises question on the provision of assistance about law and corrections to the aboriginal population in Australia. Although the criminal system in Australia is not fragile, rather it includes differential legal barriers which prevent the criminal offences to a much large extent. However, about the indigenous population, the Australian law incorporates gap, this is the reason why majority Australians believe that with reference to law, crime and corrections, the indigenous are not taken proper care of (Biddle and Taylor, 2018).

For the indigenous population in Australia, the challenges remain multiplexed. In addition to forced settlement, removal of the traditional authorities, reduction of the habitable land for indigenous and dislocations are some of the pressing challenges, the indigenous in Australia face. At the top of these challenges, there are legal and judicial barriers which keeps them at distance from gaining access to justice. *Considering the ratio of indigenous prisoners in Australia, it appears right to argue that non- indigenous courts held a biased opinion when it comes to sentencing the indigenous Australians.*

# *Breakdown of the topic*

This essay aims at critically analysing the legal challenges indigenous communities face in Australia and why non- indigenous courts remain too biased when it comes about the indigenous people. A section of paper will also consider the disadvantageous impacts over indigenous people when it comes to law and corrections. Collectively, these arguments will analyse the authenticity of the thesis statement mentioned in the introductory paragraph.

# *Summary*

There is no second opinion in the fact that indigenous people in Australia are not considered a part of the civilized culture. They are not considered a civilized state and thereby they cannot be governed themselves by a sovereign law. This absence of a concrete statute of law suggests the inherent weaknesses the indigenous people could have faced. Notwithstanding with the Australian law, the indigenous communities, therefore, face the repercussions which negatively effects on their identity (Taylor, 2018). Considering from the start, the absence of law, absence of domestic statues and unavailability of facilities in criminal proceedings and corrections force the indigenous communities to lead slipshod lives. Such aspects reflect the prevalence of Imperialist concepts. However, with the abolishment of the racial discrimination through Commonwealth racial discrimination act in 1975, there has been an improvement in the manner, the cases of indigenous people are dealt (Altman and Fogarty, 2010). The racial discrimination act has also acted as a cure to relieve the indigenous people from the impacts of colonialism.

The legal challenges indigenous people in Australia face are numerous. However, the struggle of the indigenous people has relieved their problems too much extent. The legal challenges at present the indigenous people encompass are related to particular ‘racial’ characteristics. In some cases, the cultural attributes of the indigenous communities have also been considered as criminogenic. However, the principles related to sentencing apply equally and irrespective of the race or tribe. The non- indigenous courts remain too biased since there exists a circumstantial gap which impacts over the indigenous tribe negatively (Altman and Hinkson, 2010).

The disadvantageous impact of the law and crime over the indigenous people vary. Since these people are not completely subjected under the Australian law, therefore there remain many chances that corrections and courts mighty show a specific orientation toward them. As the Australian High Court held in the case titled “Walker v. the State of New South Wales” that it stands a prime principle that human is considered as equal under a unified law, and the practices which impact differently over different people for same conduct should be avoided. It shows that although to a narrow extent but the indigenous people have remained subjects of a flawed conceptual framework of law which has impacted their identity negatively (Moreton-Robinson, 2007).

The arguments and the facts cited above suggest that indigenous people in Australia have undoubtedly been a subject of blemishes in Australian law. There remains no doubt in the fact that such people have faced instances which goes against the humanitarian values (Marchetti and Daly, 2004). Therefore, the facts mentioned above authenticates the thesis referred above that non- indigenous courts held a biased opinion when it comes to sentencing the indigenous Australians.

# *Conclusion*

The indigenous communities anywhere in the world have faced swerving repercussions. The absence of a specific framework which matches the requirement of their culture and traditions remains absent. It remains an undeniable fact that those who work for human rights protection and for the sustenance of the human values act interestingly in a biased manner. It remains also noticeable that such negativity replicates over them negatively. Such dual structures in-laws suggest that there exists friction among the legal structure when it comes to differential law-related structures for the residents of the same country. It remains not a valid argument that considering the historical genesis of a race, they must be subjected to a specific set of laws. The case of Australian indigenous communities also suggests that they have been treated no differently. Their case also remains viable when it comes to talking about the ways how people from a certain community are targeted. In conclusion, it appears right to argue that those who believe have served as the framers of Australian constitution have shown a wide negative attitude toward the indigenous people especially when it comes to laws pertaining to crimes and corrections. Many scholars in Australia have explored the ways how the system of corrections and criminal related challenges pertaining to indigenous people can be eliminated.

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