

## *Indigenous People, Crime and Punishment*

by Thalia Anthony

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Review by Rebecca Wallis

School of Criminology and Criminal Justice, Griffith University

In her book, *Indigenous People, Crime and Punishment*, Thalia Anthony employs a postcolonial lens to carefully examine the operation and consequences of judicial recognition of indigeneity during a criminal sentence. Recognition is presented here as a process, owned by the 'white' postcolonial state, which objectifies indigeneity and determines its acceptable forms (p. 3). Thus, it orders relationships into the 'recogniser' and the 'recognised', and delivers unilateral control over the construction of 'recognisable' indigeneity to the state. This, Anthony argues, results in both the non-recognition and misrecognition of Indigenous people and communities that serves to 'uphold the legitimacy of the white community and delegitimize the Indigenous community' (p. 8).

The sentencing process is the object of Anthony's attention because the imposition of punishment represents 'a commanding "crime metaphor" of the repressive relationship between the postcolonial state and the Indigene' (p. 8). She explores how the characterisation of an Indigenous offender at sentence has vacillated between 'an object of sympathy to an object of risk' (p. 2), depending upon the nature of the recognition employed by a judge at sentence. She also demonstrates how these distorted representations of indigeneity are used to guide judicial discretion at sentence, and to justify less or (in recent times) more punitive responses. The effect of this is, in the end, the reinforcement of state hegemony. At the same time she suggests that, if judicial recognition is deconstructed and rebuilt on the basis of mutuality with Indigenous people, there is potential for the sentencing process to be a site for the transformation of this repressive relationship. In this way, although her book is concerned with the minutiae of the sentencing process, it uses this examination to make a deeper argument about the nature of justice for Indigenous people in Australia.

The book is organised into eight chapters. Chapters 1 to 3 provide an overview of Anthony's arguments regarding recognition. In Chapter 1 she introduces her conceptual framework, and in Chapters 2 and 3 provides an historical and statistical context for her analysis. She interrogates and problematises these contexts so that these chapters are critical explorations, rather than bare backdrops to her more substantive analyses. Chapters 4 to 7 provide the substantive explorations of the typologies of recognition with which she is chiefly concerned. In these chapters, she carefully examines the multiple forms of 'recognition' that characterise sentencing narratives. In Chapter 4, Anthony explores the changing nature of judicial recognition of Indigenous customs and law in the Northern Territory and the impact of this at sentence. She traces the way in which Indigenous culture has been recognised and 'accommodated' over time by the Northern Territory judiciary, before examining its most recent interpretation as inherently risky and therefore demanding of a more punitive response. This, she argues, is a 'politics of recognition that seeks to repress difference' (p. 112). In Chapter 5, Anthony extends this theme by exploring how Indigenous forms of punishment are viewed and acted upon at sentence. Again, she traces the shifting nature of recognition over time. This provides a fascinating vignette of how, even where concessions and accommodations are made, the process of recognition inevitably operates to ensure state power and dominance.

In Chapter 6, Anthony explores the characterisation of Indigenous offenders at sentence as dysfunctional people living within dysfunctional communities. She argues that this characterisation results in both non-recognition and misrecognition of indigeneity by courts which, particularly over the past decade, has been used to justify punishments that send strong messages of deterrence. In her final substantive chapter (Chapter 7), Anthony focuses on Indigenous riots in Brewarrina (NSW), Redfern (NSW) and Palm Island (Qld). She uses these case studies to demonstrate how the operation of judicial recognition at sentence serves to negate demonstrations of frustration or resistance by recasting 'Indigenous participants as lacking in self-control and reason' (p. 165).

By the end of her four substantive chapters, Anthony has built a strong case to support her argument that, no matter what form is employed, judicial recognition of indigeneity at sentence ultimately serves to reproduce and reinforce dominant power structures. Nonetheless, the book concludes with suggestions about how this could be transformed. In Chapter 8, Anthony lays out a series of key tenets in a transformative agenda, and explores potential vehicles for change such as Indigenous sentencing courts or circle sentencing options. Although she attempts to keep her final chapter as pragmatic as possible, Anthony acknowledges that the transformative restructuring of the sentencing

process is a 'bold strategy' (p. 203). Indeed, the analysis in her final chapter results in observations that fundamentally challenge the form and operation of the Australian criminal justice system.

Anthony clearly justifies why the site of her analysis is the criminal sentencing hearing, and her analysis of this process is robust, insightful and worthy of attention. Although it represents a key symbolic and instrumental point in the criminal justice system, the criminal sentence is, nonetheless, the end of the line in the process of criminalisation. Examining the problem of recognition at various other points in the criminal justice system (and beyond) would be a natural extension of this work. This would allow for an even closer engagement with the question of its transformation, given the broader dominant structure within which sentencing is nested. Clearly, such an exercise is beyond the scope of a single work but Anthony provides a solid foundation upon which others may build. In conclusion, *Indigenous People, Crime and Punishment* represents an important contribution to the jurisprudence of sentencing, and reminds us of the relationship between punishment and the hegemony of the state. By exploring the nature of recognition, Anthony clearly demonstrates the consequences of allowing a 'recogniser' to have unilateral power to construct, categorise and act upon the 'recognised'. Yet, she also reminds us that this power is never absolute; that agency and resistance are constant and important themes, and that recognition is an ongoing and constantly shifting process. This provides some small hope that recognition may also be deconstructed and rebuilt in a form that engages 'Indigenous peoples as peers in the legal system' (p. 201).

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