Governing Crime in the Northern Territory Intervention

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> Whilst sexual assault and child abuse within [Northern Territory] Aboriginal communities receives the most attention from the media and from government programs, it is the lower level-type offending that is both the most pervasive and the most responsible for criminalisation of Aboriginal people (Pilkington, 2009: 186). … Anecdotally, traffic offences make up the majority of matters before most bush courts (2009: 13).

Introduction

Crime and its impact on victims precipitated the increase of Federal Police in remote Northern Territory Indigenous communities and the implementation of federal laws to govern these communities. This article draws on Jonathan Simon's 'governing through crime' concept. Simon (2007: 4) analysed the government's use of 'law and order' in the United States to implement invasive strategies across a range of social institutions. He stated that the 'technologies, discourses and metaphors of crime' created new opportunities for intrusive governance (2007: 5). Crime itself is governed through greater policing and penalties for minor crimes (2007: 35). The line between *governing through crime* and *governing crime* can become blurred when new crimes come from traditionally regulatory fields (2007: 5).

This article addresses how the 'technologies, discourses and metaphors of crime' that legitimated interventions in the NT (the Intervention) from mid-2006 had an impact on the policing of minor driving offences. Data from local court[1] lists in prescribed communities and the Northern Territory Police, Fire and Emergency Services Annual Police Reports (2004-2009) reveal that there has been an increase in Indigenous criminalisation since the Intervention. The increase is not in the violent offences anticipated by the architects of the Intervention but in minor driving or traffic offences (hereafter referred to as driving offences), particularly driving unlicensed, uninsured and in an unregistered vehicle. These findings on policing under the Intervention resonate with Jonathan Simon's model of 'governing through crime' and Stanley Cohen's work on 'net-widening'.

Governing through Crime – Rationale for Intervention

Jonathan Simon's (2007) significant contribution to criminology, *Governing through Crime*, makes clear that the legitimacy of state intervention is tied to crime and attention to the crime victim rather than to questions of need, benefit or accountability. Simon argues that the politicised victim is pitted against the racialised offender to 'help channel racial animus' (2000: 1132). Politicised crime discourses allow schools, families, workplaces and residential communities to be governed by coercive intervention.

In Australia, the federal Government capitalised on public concern for Indigenous child victims of crime in the lead-up to the Intervention. In introducing the Northern Territory National Emergency Response Bill 2007 (Cth), the Minister for Indigenous Affairs, Mal Brough, stated that it was directed at protecting Indigenous children from abuse (2007: 10). The Indigenous child and woman were projected as 'ideal victims' (see Christie, 1986) and Indigenous men as dangerous offenders (Maddison, 2009: 186). Simon (2007: 186) asserts that children have 'emerged as an important political subject of domestic violence', which has an impact on 'internalizing crime risk to families' (2007: 194). Indeed, the Intervention measures[2] included controls over families, especially through income management for social welfare recipients. The 'emergency situation' in relation to child abuse justified these measures being applied universally to 73 prescribed Indigenous communities (Brough, 2007: 10).

The Intervention legislation was characterised by a series of coercive measures, including bans on pornography; restrictions on alcohol; removal of cultural and customary law considerations in bail and sentencing; five-year leases over townships on land rights land; watering down the Aboriginal land permit system; the abolition of the Community Development Employment Projects (CDEP); the appointment of government business managers for Indigenous communities; and income managing at least 50 per cent of all Indigenous people's social welfare income. Many of the statutory provisions had little to do with immediately addressing the crime objective. As Simon has stated in relation to the United States, governing through crime allows intervention across all social institutions and not merely those directly linked to crime (2007: 4). Nonetheless the Commonwealth attempted to establish such links: for example, permits to access Aboriginal land communities were removed in the name of opening the communities to 'public scrutiny' and thereby promoting socially responsible behaviour (Brough, 2007: 12).

The backdrop to the Intervention was a 'moral panic' created by the media over child sex abuse in Indigenous communities (McCallum, 2007). On 15 May 2006, *Lateline* reported that child sexual abuse in Mutitjulu was outside the reach of the law. Alice Springs Crown

Prosecutor Nanette Rogers pointed to a number of child sexual assault cases and commented on the difficulties associated with prosecuting sexual offenders in Indigenous communities because of cultural issues (Jones, 2006a). The following night, Minister Brough stated that it was 'wonderful' that Indigenous child sexual abuse had been 'highlighted to the rest of the Australian public so people can have their sensitivities shocked to the core and as a nation' (Jones, 2006b). Controversially, he went on to claim that Indigenous males were operating 'paedophile rings' in Indigenous communities and that they should be 'dealt with, not by tribal law, but by the judicial system that operates throughout Australia' (Jones, 2006b).[3]

The Commonwealth responded with the deployment of Federal Police to NT Indigenous communities in mid-2006. A year before the legislated Intervention, the federal Government committed $130 million towards law and order strategies in Indigenous communities, including $40 million for police stations and police housing and $15 million for Australian federal intelligence-gathering and Federal Police 'strike teams' (Cripps, 2007: 6). There were also amendments to the Commonwealth legislation governing bail and sentencing to disallow cultural and customary law considerations. The government viewed courts as giving an unfair advantage to Indigenous people by attributing an 'unnecessary emphasis' on 'cultural background' (House of Representatives, 2006: 3). The reforms sought to ensure that customary law or cultural practice could not excuse or justify a criminal offence. Then Prime Minister Howard argued that the sentencing courts had a 'misguided notion of Aboriginal law or customary law, rather than Anglo-Australian law' (Yaxley, 2006). The second reading speech for the Crimes Amendment (Bail and Sentencing) Bill 2006 emphasised the need to promote equality before the law by removing cultural considerations from sentencing (MacDonald, 2006: 12; Brough, 2006: 6).

However, the government's most potent justification for a higher level of intervention into Indigenous communities was presented in the *Little Children Are Sacred* report (Wild and Anderson, 2007). Although the report did not investigate the incidence of child abuse in Indigenous communities,[4] its recommendations to reduce child abuse were used to support the Commonwealth's claim of a crime epidemic in Indigenous communities that had reached crisis levels (Howard-Wagner, 2010). Prime Minister John Howard described the Indigenous victims as 'children living out a Hobbesian nightmare of violence, abuse and neglect' (Howard, 2007: 1). Minister Brough (2007: 14) described Alice Springs town camps as 'murder capitals'. The government declared a *state of national emergency* and mobilised the army to re-establish law and order in Indigenous communities.

The emergency situation required broad-sweeping legislative measures, well beyond those directed at the specific crime problem, to address Indigenous dysfunction. Within two weeks of the release of the *Little Children Are Sacred* report, the federal Government announced that it would be taking control of 73 Indigenous communities in the NT. The Northern Territory Emergency Response (NTER) Taskforce was set up to provide oversight for the measures (Brough, 2007: 11). The NTER Taskforce (2008: [2.3.1]) was made responsible for 'child protection, health, housing, employment, welfare reform, land issues and community stores'. Major-General Dave Chalmers, a member of the Taskforce, was put in charge of the NTER operational command headquartered in Alice Springs. To insulate the Intervention legislation from legal challenges, Part II of the *Racial Discrimination Act 1975* (Cth), which protects the rights of racial minorities, was suspended.

To date the scholarship on the Intervention has focused on its discriminatory foundation (Hunyor, 2009; Vivian and Schokman, 2009); its management of social welfare (Anthony, 2009; Billings, 2010); alcohol controls (Douglas, 2007); community store licensing (Brimblecombe et al, 2010); employment reforms (Altman, 2007); and, accountability mechanisms (Billings, 2010). There have also been critical analyses of the crime discourses in the lead-up to the Intervention (Howard-Wagner, 2008; 2010) and the health outcomes over the past three years of the Intervention (O'Mara, 2010). While there has been substantial work on how the federal Government has governed *through* crime, this has not been matched by research and critical critiques on how the federal law enforcers have *governed crime*. There needs to be an analysis of what behaviour has been criminalised as well as what has not been criminalised. This research is essential in order to assess whether the basis for the Intervention was justified.

This article, while not attempting to fully answer these questions about crime since the Intervention, provides some consideration of where the answers may be found. It is a preliminary study of the increasing rates of particular crimes in the NT, primarily focusing on driving offences, and a comparison of this increase with the incidence of sexual offending. The reason for analysing sexual offending is its primacy in the political discourse leading up to the Intervention. Driving offending was selected as a comparator following time spent in Lajamanu local court in 2008, where the sentencing of countless numbers of minor driving offenders was witnessed, well above any other offence category. Locals noted the exceptional increase in driving offenders since the Intervention police arrived. It appeared that the basis for governing through crime was not being translated in governing crime. The following section will

unpack how the federal Government's governing crime agenda was rolled out in the Intervention.

Policing the Intervention and Consequent Net-widening

When the NTER was announced in mid-2007, police presence was at the forefront of its implementation; this has been a centrepiece of interventions into Indigenous lives since colonisation (see Hogg, 2001). The objective of the Intervention was 'to provide for more police and police stations, and to give police additional powers' (Select Committee on Regional and Remote Indigenous Communities, 2009: 98). A major arm of the law and order governance was Taskforce Themis. This body was set up in 2007 to lead the building of 18 new police stations in Indigenous communities.[5] It sought to supplement the 39 police stations that previously covered NT communities with vastly varying levels of population coverage (Allen Consulting, 2010: v; NTER Review Board, 2008: 36). Forty-five Australian Federal Police and interstate police and 18 Northern Territory police were deployed from June 2007 (Select Committee on Regional and Remote Indigenous Communities, 2009: 98). There was also an expansion of Northern Territory night patrol services, and their control was controversially handed over to shire councils (NTER Review Board, 2008: 4.164).

Introducing the Northern Territory Emergency Response Bill (2007), Minister Brough stated: 'We have begun to provide extra Federal Police to make communities safe. The states have committed to provide police and the Australian government has agreed to cover all their costs' (2007: 11). In this vein, Simon has observed an international trend for federal governments to usurp the function of crime control through 'providing federal revenue support to state and local programs provided they adopt particular federal initiatives' (2007: 30). Additionally, the Australian Crime Commission (ACC)[6] received $5.5 million to investigate child sexual abuse, as well as violence, drug trafficking and alcohol-related crime in Indigenous communities (FaHCSIA, 2009). The powers of the ACC were broadened to oversee the National Indigenous Intelligence Taskforce (NIIT). The NIIT was charged with gathering evidence and sharing data with law enforcement agencies and government departments on violent crime, particularly family violence, in NT Indigenous communities (NTER Review Board, 2008: 26-7).

There was also a suite of new offences created under the *Northern Territory National Emergency Response Act 2007* (Cth). The main offences related to alcohol. Brough (2007: 12) noted that *The Little Children are Sacred* report described alcohol as 'the gravest and fastest-growing threat to the safety of Aboriginal children'. The legislation

therefore criminalised the possession, transportation, sale and consumption of alcohol in prescribed areas, and modified Territory legislation relating to alcohol restrictions and police powers regarding the apprehension of intoxicated people.[7] These offences overlapped with pre-existing legislation that restricted alcohol licensing and ongoing community initiatives such as dry areas and alcohol management plans (NTER Review Board, 2008; Select Committee on Regional and Remote Indigenous Communities, 2009).

The federal Government's 'law and order' strategy correlated with increased Indigenous incarceration rates. The NT prison rate increased faster than did any other State or Territory in the same period, with a 23 per cent increase between 2006 and 2009 (Australian Bureau of Statistics (ABS), 2009: 33). This is 16 per cent above the increase in the average Australian imprisonment rate over the same period. At 30 June 2009, the NT had the highest imprisonment rate in Australia, at 658 prisoners per 100,000 adult population (ABS, 2009: 33). Figure 1 depicts the NT growth rate compared to the national rate.

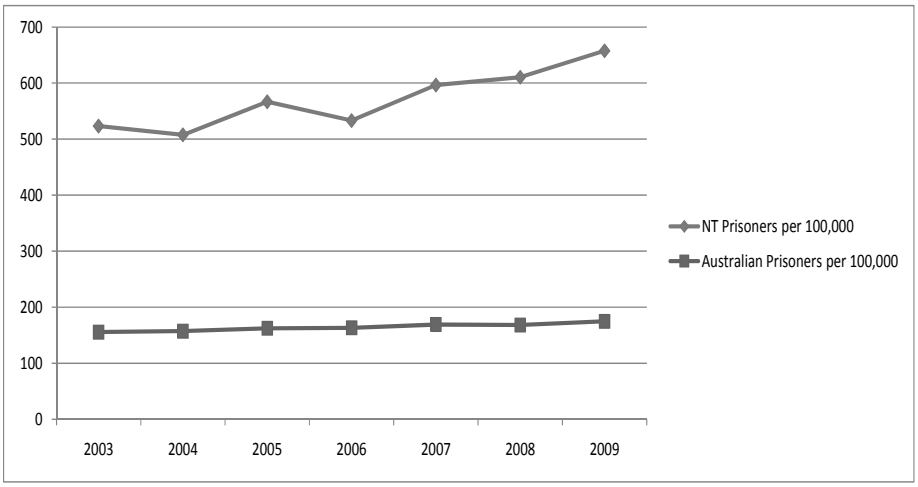

Figure 1: Comparison of Northern Territory rate of imprisonment with Australian average, 2003-2009. Source: Australian Bureau of Statistics (2009).

The Indigenous prison population in the NT constituted 82 per cent of the total prison population. This was the highest Indigenous prison population of any Australian jurisdiction and was 57 per cent above the Australian average (ABS, 2009: 31). While incarceration rates have thus been high and increasing for Indigenous people in the NT, this has not constituted an increase in the proportion of Indigenous relative to non-Indigenous people being incarcerated. In fact between 2006 and 2009,

there was a very slight decrease from 82.4 per cent to 81.8 per cent (ABS, 2009: 35). This indicates that, although the Intervention has increased imprisonment across the NT, it has affected Indigenous and non-Indigenous people equally. This was true despite the introduction of special measures to increase policing in Indigenous communities in particular.

Where policing, prosecuting and punishing have captured Indigenous people, it has not been in the domain of sexual violence or child abuse. Despite extensive investigative efforts in relation to child abuse (see Bromfield and Horsfall, 2010), substantial convictions have not followed (FaHCSIA, 2010: 57; and Arney et al in their contribution to this issue). Policing of Indigenous child abuse has mainly uncovered emotional abuse and neglect (Bromfield and Horsfall, 2010: 4; FaHCSIA, 2010: 57). Where policing has been successful in achieving convictions, it has been in relation to minor offences, notably driving offences. Bob Gosford (2008) observed at Yuendumu court that 'charging-up' (where multiple charges are laid against the one offender for the one criminal act) is used in relation to driving offenders, most commonly the trifecta of 'drive unlicensed', 'drive unregistered' and 'drive uninsured'.

There has been no evidence that increased policing has had any impact on arrests and prosecutions for sexual offences. The statistics on reported sexual offences have been steady since 2003, with a slight decline in prosecutions (see Table 1). The report published by the North Australian Aboriginal Justice Agency and the Central Australian Aboriginal Legal Aid Service, *Aboriginal Communities and the Police's Taskforce Themis* (2009) (Themis Report) noted that only some Indigenous people believed that there was any incidence of child sexual abuse in their communities (Pilkington, 2009: 88, 129). The lack of more prosecution of sexual offences has prompted criticisms that the extended policing powers under the Intervention are futile. The CEO of the Northern Land Council, Kim Hill, commented on the role of the ACC in investigating Indigenous sexual offences: 'I cannot see any factual evidence base supporting the work that the ACC has done. Where are the arrests? Where are the outcomes?' (SBS, 2009). The Head of the Police Federation of Australia, Vince Kelly, said that the ACC 'simply hasn't delivered and hasn't brought about any increase in prosecutions' on child abuse (Murdoch, 2009). Chris Cunneen has noted that the NIIT has not released any results indicating that anyone has been arrested for child abuse (Liston, 2010). The NTER Review (2008: 116) found that the number of people arrested or summonsed for sexual abuse offences against Indigenous children in prescribed communities decreased from 39 in 2006-2007 to 26 in 2007-2008.

	Pre-Federal Policing			Post-Federal Policing		
Offence	**2003/2004**	**2004/2005**	**2005/2006**	**2006/2007**	**2007/2008**	**2008/2009**
Aggravated sexual assault	304	246	253	277	326	279
Non-aggravated sexual assault	99	85	75	98	64	79
Non-assaultive sexual offences against a child	15	11	16	9	12	2
Non-assaultive sexual offences, nec	0	6	2	1	2	n/a
TOTAL Sexual offences	418	348	346	385	404	360

Table 1: Sexual offences investigated in the Northern Territory 2003-2009. Source: NTPFES Annual Reports 2004-2009.

Other crimes targeted by the Intervention policing have not seen an increase in prosecutions either. For example, the criminalisation of pornography in prescribed communities under Part 3 of the *Northern Territory National Emergency Response Act 2007* (Cth) resulted in one pornography matter going to court in the first year (NTER Review Board, 2008: 4.139). Similarly, the increase in the number of adults arrested for physical assaults against children in prescribed communities has been insignificant – from eight in 2006-2007 to nine in 2007-2008. Also, the government figures on child abuse have merely indicated a sharp increase of 'child welfare' incidents between 2007 and 2009 (FaHCSIA, 2010: 57). According to the police Annual Reports, the number of investigations of domestic violence matters increased slightly from 971 in 2006-2007 to 986 in 2007-2008. The Senate Select Committee on Regional and Remote Indigenous Communities (2009: 4.139) concluded that it was 'too early to tell whether the additional police presence was preventing crime in the prescribed areas' (also see NTER Review Board, 2008: 26).

The offence type that police have captured effectively is in relation to motor vehicles. The increase in driving offences, discussed further below, can be likened to a criminal net being thrown more widely. This metaphor of net-widening has traditionally been used where late-modern crime policies have escalated bureaucratic intervention to divert people from prison, and in the process more people are caught in the criminal justice system. Although the objective behind the Intervention has not

been 'diversion', its interventionist approach has had the same net-widening effect. Net-widening involves an increase in 'the *amount* of intervention' and an increase in 'the total *number* who get into the system in the first place' (Cohen, 1979: 347, also see McMahon, 1990: 124). Stan Cohen (1985: 44) explains net-widening in the following terms:

> (1) there is an increase in the total number of deviants getting into the system in the first place and many of these are new deviants who would not have been processed previously (wider nets)
> (2) there is an increase in the overall intensity of intervention, with old and new deviants being subject to levels of intervention (including traditional institutionalization) which they might not have previously received (denser nets)
> (3) new agencies and services are supplementing rather than replacing the original set of control mechanisms (different nets).

The notion of wider, denser and different criminal nets resonates with the Intervention. More policing in Indigenous communities has had the effect of increasing surveillance over all Indigenous lives. It has captured Indigenous people not previously caught up in the criminal justice system and added to the criminal records of those with a criminal history. The largest single crime category in prescribed communities is driving and the police can easily detect such offences because of their public visibility. Policing minor regulatory driving offences captures a number of crimes in the one act – particularly driving unlicensed, uninsured and unregistered. Convictions for driving are rarely contested in court. Many drivers were not previously criminalised because police showed some flexibility in relation to driving on Aboriginal land (Pilkington, 2009: 62). Through policing street crimes the police create the impression that they are 'doing something' to justify their presence (Blagg and Wilkie, 1997). The increase in prosecutions for driving offending shows that the Intervention police are doing something; the increase in prosecutions cannot equally be shown in relation to child abuse despite extensive investigations The next section presents the actual data that reveal the overall increase of driving offence processing and its high incidence in prescribed Indigenous communities. This preliminary data suggests an escalation in minor driving offences. Thus, rather than the Intervention uncovering child abuse and sexual crimes, the new crimes that have been detected have arisen from traditional but now more intensive street policing.

Methodology of Study and Offences Prosecuted Since the Northern Territory Intervention

This study draws on two primary sources of information about offending in the Northern Territory. The first source of data is local court lists in

prescribed communities in the 10-week period between 23 March and 1 June 2010 that list all criminal offences mentioned, tried or sentenced. The methodology has involved counting the number of driving offences as a proportion of the overall offences. There are a number of limitations with the methodology of observing court lists over a 10-week period to reach conclusions about the proportion of driving offences in prescribed communities. First, many local courts sit only once every three months: thus the study did not cover all 19 prescribed communities with courts.[8] Nonetheless, offences in a sizeable sample of 12 such communities (63 per cent) were recorded. Secondly, courts often hear charges from more than one community; this makes it difficult to assess whether the offender is Indigenous or from a prescribed community. Equally, offenders from prescribed communities may have their offences heard in other communities or major centres such as Katherine, Darwin or Alice Springs. Finally, this aspect of the methodology does not account for all offences. A small minority of indictable offences (such as unlawful homicide and sexual offences) are heard in the Supreme Court. Nevertheless, 95 per cent of criminal charges are heard in the local courts (NT Department of Justice, 2009).

The second source of data is the Northern Territory Police, Fire and Emergency Services (NTPFES) Annual Reports between 2004 and 2009. They report on the incidence of driving and other offences across the Territory. This data will be used to assess the rate of *increase* of driving offences across the NT as police numbers increased in 2006 and subsequently during the Intervention. We are able to compare statistics from the three years before the strike teams were sent into the NT in mid-2006 and the three years following. In turn, these statistics can be compared with the rate of sexual offences over the same period, given that these latter offences were the purported reason for the increased policing. The statistics in the NTPFES Annual Reports are based on the Police Realtime Online Management of Information Systems (PROMIS). PROMIS covers any incident that necessitates investigation, resource allocation or any form of action by the NTPFES.

The 2005 NTPFES Annual Report notes that the clearance rate for driving offences is 95 per cent (2005: 143). Virtually all offenders who commit driving offences plead guilty and the court appearance is merely for the purposes of sentencing. Therefore, almost all of the recorded driving offences will result in a conviction. Consequently, policing driving offences translates into high levels of prosecutions without much investigation. There is also an ease in capturing repeat driving offenders in small communities once police know who is unlicensed/ unregistered/ uninsured, although the short-term nature of this study was not able to gauge the extent of repeat offending in Indigenous communities. By

contrast, the clearance rate for sexual offences is likely to be much lower and investigations are expected to be more drawn out and complicated. The limitation of this methodological component of the study is that it does not identify where the offences are occurring, from which communities they arise, and whether they are committed by Indigenous or non-Indigenous people. However, complemented by the information drawn from prescribed community court lists, certain inferences can be drawn about the contribution of prescribed Indigenous communities to the overall rates of driving offending in the NT.

The driving offences indentified in the NTFPES Annual Reports are divided into a range of discrete offences and general categories, including three licence offences, registration offences, roadworthiness offences, parking offences, and regulatory driving offences (such as not wearing a seatbelt). This study does not include the tens of thousands of speeding offences noted in NTPFES Annual Reports (2004-2009). Given that there are a substantial number of speeding offences that are not captured by street police, and only a negligible amount of such offences are on community court lists, conclusions cannot be drawn about the impact of increased policing on prosecuting speeding offences in prescribed communities.

The NTFPES statistics exclude more serious crimes of negligent and dangerous driving or driving where harm is caused. Serious driving offences under the *Criminal Code Act* (NT) are excluded: for example, s 174F, which provides for the indictable offence of 'driving motor vehicle causing death or serious harm' (maximum 10 year imprisonment); s 174FA, which provides for 'hit and run' (maximum 10 year imprisonment); and s 218, for unlawful use of vehicle causing serious harm (maximum seven years imprisonment). This study is concerned only with minor driving offences that are heard in the local courts and are victimless crimes. They can be considered *generally* as 'safety' offences, which are aimed at regulation and the prevention of harm.

The safety concerns relating to driving regulatory offences arise from the high incidence of road fatalities where the Indigenous driver did not have a licence or was not driving a roadworthy vehicle. In the NT Indigenous people have higher levels of road fatalities than non-Indigenous people (Northern Territory Road Safety Taskforce, 2006: 16). Seventy per cent of NT Indigenous vehicle occupants or motorcyclists killed between 1996 and 1999 were either unlicensed or in a vehicle driven by an unlicensed person (Letch and Carroll, 2008: 290). Between 1997 and 2000 the Australian road fatality rate for Indigenous people was estimated to be about three times that of non-Indigenous people (Letch and Carroll, 2008: 290). A health study published in 2008 found that Indigenous Australians are two to three times more likely to have a

transport-related fatal injury than non-Indigenous Australians and Indigenous road fatalities account for 25 per cent of all Indigenous injury deaths (Clapham et al, 2008: S19).

The NTPFES Annual Reports divide driving offences into a large number of discrete offences. For the purpose of this analysis, driving offences are categorised based on classifications of the ABS (2008: Div 14):

- **Driver Licence Offences**: pertaining to the ownership or use of a driver's licence and comprises driving while licence disqualified[9] or suspended (including driving with an expired licence); *driving without a licence*; and 'driving offences, nec' (all other driving licence offences, such as driving contrary to the conditions of a licence enabling restricted driving, not displaying 'L' or 'P' plates and failing to produce licence on demand).
- **Vehicle Registration and Roadworthiness Offences:** registration offences (driving an *unregistered vehicle*; driving an *uninsured vehicle*; number plates obscured / missing / not attached and failure to transfer vehicle ownership) and roadworthiness offences (faulty or no lights, defective vehicle, driving an unroadworthy vehicle and vehicle produces pollution, including excessive noise or smoke).
- **Regulatory Driving Offences**: driver exceeding the prescribed content of alcohol limit (excluding 'driving under the influence of alcohol or drugs and driving impaired and they do or potentially cause injury); parking offences, and 'regulatory driving offences, nec' (including failure to wear seat belts, failure to give appropriate signal, failure to stop or render assistance after an accident, failure to keep left of double lines, disobey traffic control signal such as stopping or giving way, failure to stop motor vehicle on request, refusal of breath test, failure to secure a child in a vehicle and driving while using handheld phone) (excluding dangerous or negligent driving). The category includes exceeding the speed limit, but it is excluded in this study because offences are not heard by the court and often not processed through police officers. Also, failure of driver to state name and address on request and provision of false name is now classified (as of 2008) in another but are used in this study as part of this category where it is brought in conjunction with a series of other driving offences.

In the NT, these offences are prescribed under the *Traffic Act* (NT) and under the *Motor Vehicle Act* (NT) and attract harsh penalties. For example, driving disqualified and driving unregistered attract a penalty of 12 months imprisonment (*Traffic Act* ss 31, 33). The Traffic Act applies to driving on a public street or place (see, for example, *Traffic Act*

(NT), ss 32-37, on licence, registration and insurance requirements). One of the issues raised in the Themis Report is that there is a 'grey area surrounding whether all, some or no Aboriginal land is classed as public for the purposes of motor vehicle offences' (Pilkington, 2009: 63). Nonetheless, the police and courts have assumed this provision includes Aboriginal land generally. There are also 'regulatory' offences under the *Motor Vehicle Act* (NT), s 117A, which attract up to six months imprisonment (s 117), such as not bearing a registered number plate (ss 111, 112), not producing a driver's licence upon request of an officer (s 113) and driving a defective vehicle (s 128A).

Driving Offending – Incidence

The NTPFES Annual Reports (2004-2009) reveal a steady increase in driving offending since the federal Government rolled out its strike force to tackle crime in Indigenous communities in mid-2006 (involving the establishment of new police stations and the deployment of Federal Police into Indigenous communities, which was consolidated with Taskforce Themis in mid-2007). Immediately before the strike force was rolled out, driving offences were steady and even reducing in some instances. Table 2 reveals a dramatic increase in the processing of driving offences since 2006-2007 (also see Figure 2). Since mid-2006, there has been a 250 per cent increase in police investigations of driving offending across the NT. There was a dramatic spike in mid-2006 to mid-2007 and ongoing increases in 2008 and 2009. By contrast, sexual offences have slightly declined across the Territory (see Table 1, Figure 2).

	Pre-Federal Policing			Post-Federal Policing		
Offence	**2003/2004**	**2004/2005**	**2005/2006**	**2006/2007**	**2007/2008**	**2008/2009**
Licence offences	3074	2993	3074	3926	4589	5616
Vehicle registration and roadworthiness offences	3026	2835	2888	5862	6282	6774
Regulatory driving offences, nec (excluding speeding)	4208	3855	4287	9055	10227	12889
TOTAL Driving offences	10308	9683	10249	18843	21098	25279

Table 2: Incidence of yearly driving offences across the Northern Territory 2003-2009. Source: NTPFES Annual Reports 2004-2009.

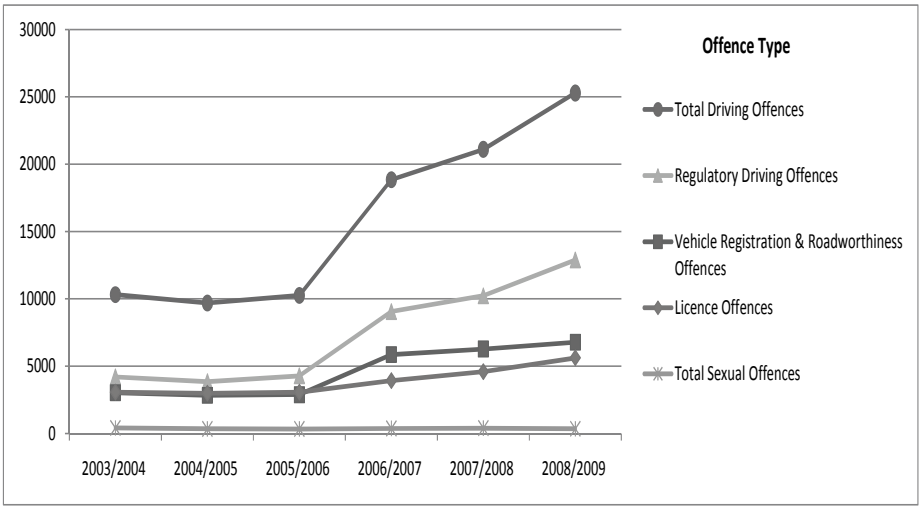

Figure 2: Rate of driving and sexual offences 2003-2009.
Source: NTPFES Annual Reports 2004-2009.

Given that the NTPFES Annual Reports (2004-2009) do not indicate the extent to which policing of offences is occurring in prescribed communities or by Indigenous peoples, local court lists provide some insights as to the level of prosecutions of unlawful driving in prescribed communities. Observations of court lists between 23 March and 1 June 2010 indicate a very high incidence of driving offences in prescribed Indigenous communities. Almost half of all offences were driving offences. They were the single most commonly convicted offence. Following is a breakdown of adult offences heard in courts in prescribed Indigenous communities. Driving offences are distributed fairly evenly between licence, registration/roadworthy and regulatory offences. It could be inferred from the figures in Table 3 (*see over*) that the increased policing in prescribed communities contributed to the overall increase in prosecuting driving offences.

The statistics in Table 2 and Table 3 reveal that the steep increase in driving offences NT-wide is matched by a high incidence of these offences in prescribed Indigenous communities. Driving offences are the largest category of offences and constitute almost 50 per cent of offending in prescribed communities. However, there was not consistency across all communities. In Maningrida, where there were a significant number of offences, the main offences related to alcohol or drugs. The Northern Territory Police (2010) has recognised alcohol abuse as a particular problem in that area.

Community	Licence Offence	Registration Offence (eg unregistered, uninsured, defective vehicle)	Regulatory Driving Offence (eg fail to wear seat belt / stop, drive with low or mid-range blood alcohol level)	Dangerous Driving Offences	Other Offences	Total Offences	Percentage of Driving Offences
Ali Curung	11	14	8	0	17	50	66%
Alyangula (Groote Eylandt)	**25**	**35**	**17**	**1**	**84**	**162**	**48%**
Hermannsburg	16	15	11	4	16	62	74%
Kalkaringi (Dagaragu)	**38**	**38**	**37**	**2**	**70**	**185**	**62%**
Kintore	5	3	9	1	28	47	40%
Maningrida	**11**	**8**	**13**	**4**	**120**	**156**	**23%**
Mutitjulu	18	22	19	1	43	103	62%
Nguiu	**1**	**2**	**3**	**0**	**24**	**30**	**20%**
Ngukurr	16	7	14	0	44	80	46%
Papunya	**10**	**9**	**10**	**1**	**34**	**64**	**47%**
Wadeye	11	20	13	2	85	131	35%
Yuendumu	**28**	**16**	**15**	**1**	**42**	**102**	**59%**
TOTAL	**190**	**189**	**169**	**17**	**607**	**1172**	**48%**

Table 3: Proportion of driving offences in Northern Territory prescribed community courts, 23 March – 1 June 2010. Source: Daily Local Court Lists, Northern Territory Justice Department.

Two-thirds of prosecutions for unlawful driving in Indigenous communities relate to licence and registration offences. These three offences are commonly charged together for the one offender (see Gosford, 2008). Table 4 demonstrates the ratio between the numbers of people appearing before each court for driving offences against those appearing for other offences. It indicates how the police lay multiple prosecutions in the one criminal 'transaction'. The multiple charges mean that the penalties will be significant. It continues to reveal the high proportion of driving offending among court appearances.

Court	Appearance for Driving Offence	Appearance for Other Offence
Ali Curung	11	8
Alyangula	26	38
Hermannsburg	17	5
Kalkaringi	45	42
Kintore	5	13
Maningrida	15	48
Mutitjulu	21	24
Nguiu	3	12
Ngukurr	16	22
Papunya	13	18
Wadeye	14	51
Yuendumu	27	30

Table 4: Ratio of driving offenders to non-driving offenders, 23 March – 1 June 2010. Source: Daily Local Court Lists, Northern Territory Justice Department.

The extent to which Indigenous communities have borne the burden of the 250 per cent increase in processing driving offending across the NT cannot be determined in this preliminary study. For that to occur, and for the study to be methodologically sound and statistically significant, comparisons would need to be drawn with offending in Indigenous com munities before the Intervention. However, at the moment court lists before the Intervention are not publicly available. The only court lists available are those published daily on the NT Department of Justice

website.[10] Nonetheless, it can be inferred that, due to the high incidence of driving offences in Indigenous communities, Indigenous communities have absorbed some of the increased processing of driving offences, as recorded in NTPFES Annual Reports. Anecdotal evidence also confirms this.

Those working in prescribed communities have noted that there has been more prosecuting of driving offenders. Visits to Yuendumu court by criminologist Harry Blagg (2008) between 2007 and 2008 found a fourfold increase in the court lists – the overwhelming majority of cases involved minor driving offences. Indeed, Magistrate Birch, who presides over a number of local courts in prescribed communities, observed that there has been a growth in unlawful driving prosecutions since more police have been placed in Indigenous communities in mid-2006:

> I think the number of people being charged with a variety of offences has increased because now there are more police officers as a result of the [I]ntervention and a broad section of communities that didn't have police before, and hence, people who might have been driving unlicensed or driving disqualified wouldn't have been detected in the past and they are being now (Gosford, 2008).

Inferences can be drawn from the statistics that the proclaimed state of emergency and consequent federal policing in Indigenous communities have widened the criminal net in prescribed communities. The police have identified the publicly visible problem of minor driving offences in Indigenous communities, especially in relation to driving unlicensed, unregistered and uninsured. They have sought to prosecute driving offenders to be seen to be 'doing something' in Indigenous communities. It was noted in the Themis Report that 'many respondents mentioned how police would drive around as their main activity, booking people for unregistered cars and issuing fines' (Pilkington, 2009: 81). The findings in relation to the criminalisation of Indigenous drivers resonate with 'net-widening' where there is both a *quantitative* expansion in the offenders criminalised (more people are being subject to penal processing) and a *qualitative* transformation (more ominous surveillance) (McMahon, 1990: 124). This does not indicate that there is necessarily more offending but merely that the police are prosecuting more driving offenders. As the police are concerned with 'doing something', the strategies for deterring Indigenous driving offending are ill-conceived – this is discussed in the following section.

Utility of Governing 'Driving' Crime

Historically, the police used their discretion in policing driving on Aboriginal land. There is a tradition in remote 'outback' communities of viewing driving on dirt 'back' roads as less rigorously governed by formal

law – sometimes with the tacit approval of authorities. Recently, there has been an increased tendency for authorities to bring 'liminal' Aboriginal spaces within the framework of the general law and criminalise behaviour (Blagg, 2005; and, more generally, Crowe in this issue). The head of Taskforce Themis made his zero tolerance approach clear:

> There's a number of significant ongoing legal issues associated with those types of [driving] offences. Especially if there's been an accident involving somebody who's driving an unregistered, uninsured motor vehicle, who has been allowed to continue to drive that vehicle because the police officer is using his discretion. Now, what I'm saying to you is that if you're caught driving an unregistered, uninsured motor vehicle. The police officer must stop you driving an unregistered, uninsured motor vehicle. He doesn't have any choice about that (cited in Pilkington, 2009: 63).

At the same time, it is widely considered that policing and prosecuting unlawful driving have little effect on recidivism. Not only are there many repeat offenders before the courts but also Indigenous road fatalities have been increasing since 2006 (Northern Territory Transport Group, 2010). Criminalisation does not provide an effective means of deterrence when the issue is a lack of affordable licensing and registration services. Magistrate Birch maintains that 'there just aren't the facilities for people to undertake driving programs, to do the drink-driving course, to even have the wherewithal to apply for a drivers license' (Gosford, 2008). He also stated that Indigenous people may be unaware that driving unlicensed attracts serious criminal penalties and 'even if they are aware of it [many Indigenous people] may not properly understand it' (Gosford, 2008). This is aggravated by the fact that unauthorised car dealers in Indigenous communities sell vehicles that are not roadworthy (Watson et al, 1997: 38).

The Themis Report found that enforcing lawful driving in Indigenous communities is quite 'sticky' because law enforcement does not overcome significant socio-economic, geographic and cultural factors that preclude the use of alternative transport (Pilkington, 2009: 36). There is an absence of alternative means of transport in remote communities and transport is necessary for cultural activities, participating in ceremonies, attending funerals, looking after country, hunting, collecting bush tucker, finding bush medicine, and for attending school, medical centres and court (2009: 13, 41, 80). Chris Cunneen (2001: 44-45) in his seminal work on policing Indigenous people, noted that it reflects a complex social reality in Indigenous communities:

> [I]f we consider the comparatively large number of motor vehicle registration and licence offences for which Aboriginal people are imprisoned, we might consider the complex interaction of environmental considerations, the effects of unemployment and poverty, and the extent of discriminatory policing practices. Environmental considerations are important, because Aboriginal people often live in rural and remote areas poorly

> serviced by public transport and are therefore dependent on a motor vehicle in a way that the 'average' non-Aboriginal person is not. Unemployment and low income affect the ability to pay for registration and to own vehicles more likely to be classified roadworthy, and negatively impact on the ability to pay for any traffic fines. Failure to pay traffic fines results in licence cancellation. Discriminatory police practices may increase the likelihood of detection of unlicensed drivers through selective procedures of stopping Aboriginal drivers.

Indigenous people have taken issue with the 'crackdown' of driving unlicensed/unregistered/uninsured in communities since the Intervention (Pilkington, 2009: 80). The Themis Report noted that many Indigenous people believed they should be able to drive unregistered or unlicensed in two places: within communities and on bush tracks on Aboriginal land (Pilkington, 2009: 41). They believed that laws and policing of driving unregistered vehicles should apply to Aboriginal land in the same way it is applied to cattle stations for non-Indigenous people (ie, with exemption from the law) (2009: 62).[11] Indigenous people have also observed the discriminatory over-policing of Indigenous people for driving over the blood alcohol range compared to non-Indigenous people, who were generally not breath-tested for alcohol (2009: 65). In one Themis community the police spent 'a lot of time on the main road checking cars as they come back from the nearest pub' and are reported to have taken the keys of a car, abandoning it and the driver hundreds of kilometres from the driver's community (2009: 101). These police practices and Indigenous perceptions are more likely to result in Indigenous community members resisting, rather than promoting, compliance with traffic laws.

There needs to be more research into the increased policing of driving offences given that both Commonwealth and Territory governments have justified increased and more intensive policing of remote communities on the basis of concerns about endemic child sexual abuse and neglect. This preliminary study indicates that child abuse and sexual crimes are not in the main being uncovered by police. Rather, there has been a significant increase in prosecuting of driving offending, without any results in improved safety. Improvements in driver safety require research into the causes of unlawful driving in communities. This involves ascertaining Indigenous perspectives on driving (see Pilkington, 2009: 19). However, governing crime under the Intervention appears to be based on legitimating policing through 'prosecuting something' rather than addressing safety.

Conclusion

Jonathan Simon (2000: 1111) has noted that 'crime and punishment have come to play a central role in the ongoing reconstruction of liberal

government and its rationalities'. This reconstruction in the governance under the Intervention has had a broad impact on Indigenous communities. The portrayal of Indigenous people as 'sexual deviants and sociopaths' (Dodson, 2007: 22) was used to legitimate governing through crime. The police were charged with the responsibility of stabilising and normalising Indigenous communities (Altman and Hinkson, 2007). However, governing crime has led to net-widening to capture minor acts of unlawful driving.

In *Governing through Crime* (2007) Simon illustrates how governments create idealised and demonised legal subjects. Fleury-Steiner et al (2009: 6) apply Simon's work to racialised narratives where the victim is used to create 'morally just' approaches to governing cultural groups. Racialised representations of cultural groups as dangerous provide a catalyst for governing certain communities more intensely. In the Northern Territory, the intensity of policing has criminalised an increasing number of Indigenous people and non-Indigenous people. Rather than these Indigenous crimes reflecting the racialised narrative of sexual offences, they embody the products of ordinary street policing.

Notes

* The author would like to thank Heather Douglas, James Pilkington, and the anonymous reviewer for their thoughtful feedback on earlier drafts. The author also appreciates the statistical and graph assistance of David Lewis and Mark O'Donnell.

1 These courts are colloquially referred to as 'circuit courts' or 'bush courts'.

2 The Northern Territory Intervention was legislated under the following acts: *Northern Territory National Emergency Response Act 2007* (Cth); *Families, Community Services and Indigenous Affairs and Other Legislation Amendment Act (Northern Territory National Emergency Measures) Act 2007* (Cth); *Social Security and Other Legislation Amendment Act 2007* (Cth); *Appropriation (Northern Territory National Emergency Response) Act (No 1)* (Cth); and *Appropriation (Northern Territory National Emergency Response) Act (No 2)* (Cth).

3 This claim about paedophile rings turned out to be false. The key witness and interviewee was a senior official in Mal Brough's department: see Graham (2008).

4 The report actually noted that the exact rate of child sexual abuse remained unclear because no detailed child maltreatment or abuse prevalence studies had been conducted (Wild and Anderson, 2007: 235). The report also acknowledged that there was 'nothing new or extraordinary about the allegation of sexual abuse of Aboriginal children of the Northern Territory' (Wild and Anderson, 2007: 5).

5 These communities were Mutitjulu, Imanpa, Santa Teresa, Haasts Bluff, Nyirripi, Arlparra (Utopia), Willowra, Galiwinku, Ramingining, Gapuwiyak, Yarralin, Peppimenarti, Minyerri, Bulman/Weemol, Minjilang, Warruwi, Numbulwar and Alpurrurulam.

6 The ACC is Australia's national criminal intelligence agency that deals with serious and organised crime.

7 Part 2 of the *Northern Territory National Emergency Respones Act 2007* (Cth) modified provisions of the *Liquor Act* (NT), *Liquor Regulations* (NT) and the *Police Administration Act* (NT) and imposed new requirements on the Northern Territory Licensing Commission.
8 The 19 courts in prescribed communities are: Ali-Curung, Alyangula (Groote Eylandt), Barunga, Daly River, Galiwinku, Hermannsburg, Kalkaringi (Daguragu), Kintore, Lajamanu, Maningrida, Milikapiti, Mutitjulu, Nguiu, Ngukurr, Numbulwar, Papunya, Pirlangimpi (Garden Point/Pulurumpi), Wadeye and Yuendumu. Court lists from 12 of these courts were examined: Ali Curung, Alayangula, Hermannsburg, Kalkaringi, Kintore, Maningrida, Mutitjulu, Nguiu, Ngukurr, Papunya, Wadeye and Yuendumu.
9 This is more serious than other licence offences because it is regarded as a contempt of court and attracts higher penalties.
10 Northern Territory Department of Justice (2010) 'Magistrates Court List' <www.nt.gov.au/justice/courtsupp/mclist.shtml>.
11 The NT Traffic Act gives special dispensation to pastoralists, whose vehicles do not have to be inspected to obtain registration (under s 137B of the Motor Vehicles Act), and also gives special dispensation to the motor sports community (Pilkington, 2009: 656).

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