Crime, justice and social capital in the Torres Strait region

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Introduction

Crime rates vary considerably between different Indigenous communities and different locations (McCausland & Vivian 2010). However, there are few in-depth studies focusing on the elements of these communities that might produce these discrepancies (Tyler 1998). Such knowledge may tell us, for example, if crime rates are linked to the strength of bonds between community members or to differences in socio-historical and socio-political contexts. Nevertheless, much of the existing literature and policy treats Indigenous Australians as a homogeneous group, failing to recognise the diverse histories, cultures, languages and practices of Australia’s varied Indigenous populations, including Torres Strait Islanders.

The Torres Strait stretches 150 km wide, from the northernmost tip of Queensland, Australia, to the coast of the Melanesian island of New Guinea. There are over 100 islands in the region, which are spread over 48,000 square kilometres. In 2016, Aboriginal and/or Torres Strait Islander persons made up 92 percent of the total population of the Torres Strait region (TSR; Queensland Government Statistician’s Office (QGSO) 2016a).
These people were dispersed across the 38 inhabited islands, which are grouped into five geographic and cultural clusters. Notably, some ‘inner’ islands exist close to the Australian mainland and serve as governmental and administrative hubs, while the more remote ‘outer’ islands can be difficult or impossible to access at certain times of year and have limited telecommunication coverage. The outer islands of Saibai and Boigu, for example, are visible from Papua New Guinea’s mainland and hold close cultural ties with that region, including language. The population of each community ranges from 85 to 2,938 (Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) 2019; Shnukal 2015). The TSR is classified by the Australian Bureau of Statistics (2016) as ‘very remote Australia’. This compares with the rest of Queensland, where only 1.3 percent of the population lives in very remote conditions. In terms of proximity to Queensland’s capital city, Brisbane, the TSR is further away than all of Queensland’s remote Aboriginal communities (QGSO 2016b: 35).

This paper contributes conceptually, theoretically and empirically to two broad areas:

- de-homogenising Australian Indigenous peoples’ diverse experiences with the criminal justice system; and
- understanding the impacts of island ecologies on crime and justice, especially as they relate to remote and isolated settings.

Context

The TSR’s history of colonisation is distinct from that of other regions, especially the Australian mainland (Lawrence & Lawrence 2004; Singe 1979). The geography of the region likely contributed to this distinct history. There has been a tradition of self-policing in the Torres Strait, including prior to European settlement. During the colonial period, elements of self-policing or community policing were retained in the TSR and there are also indications that government administrators intervened less in the lives of Torres Strait Islanders than in the lives of Aboriginal Australians (Shnukal 2015; Singe 1979). Island councils formed local administrative structures, primarily staffed by local community leaders, which continued to uphold traditional custom and lore, including through local policing (Frankland 1994; Singe 1979). Notwithstanding the ultimate overriding authority of colonial figures, the councils represented a form of local authority that did not exist for Aboriginal populations until far later in the 20th century.

Demographically, the population is relatively young, resembling other Indigenous communities on the mainland and presenting as a potentially criminogenic factor (ABS 2016; DATSIP 2019). However, the region’s geographic isolation has fostered a relatively high level of cultural homogeneity; culture is strong throughout the TSR. A significant area of customary practice on the islands is that of adoption, especially by members of extended family (Cooperative Research Centre for Aboriginal Health et al. 2006: 8; QGSO 2016b: 15–17). Traditional measures of social capital, such as levels of education and training, inward and outward migration to the region and volunteering indicate relatively homogeneous and integrated communities (ABS 2016; DATSIP 2019).

This noted, economic indicators such as wealth and employment show relatively high levels of disadvantage, as well as economic inequality among Indigenous and non-Indigenous households (QGSO 2016a: 11, 22–30; QGSO 2016b: 19, 39.) In this way, economic capital presents as weaker than social capital in the TSR.
Our research indicated that Torres Strait Islanders had a strong sense of themselves as composed of distinct peoples and cultures different from those of the mainland. Individual islands were considered to possess highly homogeneous cultures and close-knit communities. ‘Culture’ was considered to be very strong, especially on the outer islands, where populations were small and bounded into small land areas by the sea. The inner islands were more culturally diverse than the other islands and had a higher count of internal and external migration, particularly from the mainland. Everywhere in the region, locals are known to one another intergenerationally through clan and kinship systems.

The islands were contrasted to other Indigenous islands and also mainland areas, which contained multiple clans or family groupings, some of whom had a history of conflict and hostility. While culture remains strong in the TSR, older lore has also been integrated into modern traditions, the most notable and influential of which was Christianity. The adherence to religion and its embeddedness in island life was also seen as a major factor distinguishing island communities from mainland communities. In general, the unique ecology of the islands had influenced the development of tight structures of formal and informal regulation. In particular, the ‘shame culture’ of the islands drew sharp distinctions between normative private and public behaviours.

Even though culture and history were described by many participants as strong, these were being eroded through processes of continued colonisation and globalisation. Young people were frequently said to be more interested in social media than island culture. Many travel to the mainland for secondary education, or to take up work, and this weakened cultural continuity and socialisation. Cultures of ‘the south’ were considered to detach young people from religious and familial networks.

**Method**

The research adopted a mixed-methods approach, drawing on comparative crime-report data derived from the Queensland Police Service for the period 2001–2018 (ie all publicly available data), and triangulating these with qualitative data garnered through fieldwork and interviews conducted in the Torres Strait Islands. The project addresses the following research questions:

- What is the extent of crime occurring in the Torres Strait Islands?
- How do local people and criminal justice professionals construct ‘the crime problem’ in the Torres Strait Islands?
- How is justice practised in the Torres Strait Islands? In particular, are there community and customary justice practices and/or impediments to justice that are specific to this context?
A detailed methodology for the quantitative component of this research has been reported elsewhere (see Staines & Scott 2019). For the qualitative component of the research, fieldwork was conducted over 14 days, including day trips to two of the outer islands. A total of 27 in-depth, semi-structured interviews were undertaken. In selecting participants, our primary concern was sample bias rather than generalisability, in that we selected participants who could provide the best data. This allowed us to purposively sample participants who were regarded as representative of the wider population and/or who were ‘information rich’ and engaged with the subject matter of the project. Many of the participants held roles relevant to the research, including local government councillor, counsellor, cleric, state or federal government worker, judiciary, lawyer, police officer, probation and parole worker and social worker. Participants included 10 women and 17 men. Sixteen participants were Indigenous and 11 were non-Indigenous. All participants were aged 18 years or over, with the average age of participants being late 30s. Interview data were coded and thematically analysed (Spradley 1979).

**Findings**

**Crime**

Participants universally considered domestic and family violence to be the most serious criminal justice issue in the region.

[Domestic and family violence] is 80–90 per cent of our work and assaults and wilful damage associated with [domestic and family violence]. I am talking about every day. Every, single, day. (Indigenous Female 6)

In general, the causes of domestic and family violence were hard to define. Many interviewees linked the incidence of domestic and family violence (and other offences against the person) to the introduction of alcohol to the islands. Domestic and family violence was also viewed by some as a result of families having been displaced and trauma relating to unemployment, both of which were thought to lead to alcohol abuse and then rage, anger and frustration. Patriarchal norms also encouraged domestic and family violence.

In Torres Strait Islander culture the man is the head of the family and always has been. If the man is here, he says ‘she’s got her place and I’ve got my place’. They are not equal. So, a lot of the problems stem from that. (Indigenous Female 6)

The average rate of reported offences against the person in the TSR was lower overall between 2001 and 2018 than in Queensland’s Aboriginal communities, though higher than for the whole of Queensland (see Figure 1). The average rate of reported breach of domestic violence order offences in the TSR was lower than in Queensland’s Aboriginal communities but higher than in Queensland (see Figure 2). Rates of reported breach of domestic violence order offences trended upwards for all three comparison areas over the period, which is likely linked to improved awareness and changes to Queensland legislation regarding how domestic violence is treated and recorded (see Staines & Scott 2019).
Figure 1: Rate of reported offences against the person (per 1,000 population) in TSR*, Queensland Aboriginal communities*, and Queensland, January 2001 to July 2018

- TS Islands
- Aboriginal communities
- Old State

a: Includes Badu Island, Waiben/Thursday Island and Ngurupai/Horn Island. This captures reported offences occurring across the Torres Strait

b: Includes 13 of Queensland’s discrete, remote Aboriginal communities

Note: TSR=Torres Strait region

Figure 2: Rate of reported breach of DVO offences (per 1,000 population) in TSR*, Queensland Aboriginal communities*, and Queensland, January 2001 to July 2018

- TS Islands
- Aboriginal communities
- Old State

a: Includes Badu Island, Waiben/Thursday Island and Ngurupai/Horn Island. This captures reported offences occurring across the Torres Strait

b: Includes 13 of Queensland’s discrete, remote Aboriginal communities

Note: DVO=domestic violence order, TSR=Torres Strait region
Some areas were considered to have cultural attitudes that hindered domestic and family violence prevention and education. In the past people were considered very reluctant to give statements, so domestic and family violence was ‘written-off’ and infrequently reported, whereas now people are more willing to give statements and press charges. The so-called ‘shame culture’, which could encourage public order, could also be linked to a lack of reporting of domestic and family violence. It might even be considered a progenitor of violence to the extent that perceived infractions against island norms are thought to be best dealt with through informal and private forms of social control.

Torres Strait Islanders are much more amenable to correction without going the whole hog of a custodial sentence. Don’t get me wrong, because there are a lot of Islanders who have gone to jail. But if you talk about the outer islands, young fellows that come to live out there are under the purview of the Elders and a bit of summary justice is often handed out. Back in the older days with domestic violence, if a young man took to his partner, her uncle and the father would invite him down to the beach and have a discussion with him and the discussion often left bruises, but of course you can’t do that anymore… (Non-Indigenous Male 6)

Community policing responses to domestic and family violence were considered to be inconsistent throughout the region and cultural roles, kinship or other communal affiliations could take precedence when responding to incidents. This issue was particularly acute in the outer islands. The isolation of the islands and the inevitably slow police attendance also meant that there were incentives to resolve incidents informally without reporting to sworn police, and that incidents had often been ‘resolved’ by the time police responded.

The average rate of reported offences against property in the TSR was lower than in Queensland’s Aboriginal communities, and also slightly lower than in Queensland (see Figure 3). Generally low property crime rates were considered to be caused by a mix of factors, including potential under-reporting. For instance, it was argued that in a ‘sharing culture’ lots of property crime goes unreported to protect social networks. Papua New Guinea nationals were also thought to be responsible for some instances of property crime in the outer islands. Organised crime, including some smuggling of weapons, has been identified as a concern in the region. For example, Papua New Guinea nationals stealing fuel from Saibai was reported as a problem.
The more culturally mixed communities of Bamaga and Waiben/Thursday Island, where there was also greater immigration and emigration, were considered more prone to property crime than other areas. Young people were often blamed for property crime, including theft and vandalism. Crime in these locations was also considered to be a result of there being a lack of things to do ("boredom") and a lack of parental or adult supervision. Small groups of repeat offenders were considered responsible for most youth offending.

**Community justice groups**

The Court Innovations Program was set up by the Queensland Government in 1993 in response to the Royal Commission into Aboriginal Deaths in Custody (1987–1991). This program funds community justice groups, which operate across Queensland’s remote Indigenous communities, and whose overarching objective is to reduce the number of Indigenous people in contact with the criminal justice system. Community justice groups are comprised of Elders who, despite being mostly voluntary, unpaid and under-resourced, form a very important part of the court process. They provide cultural information and reports at sentencing and during bail applications and also contribute to unique forms of local justice, such as cultural mediation (described later).
While community justice groups are not unique to the TSR, the composition and specific functions of Torres Strait community justice groups were thought to be relatively distinctive and ‘invaluable’. Relations between island leaders, community justice groups and the police were considered to be highly positive and community justice groups play a key role in encouraging police to appreciate the local culture, enabling police to work more closely with Torres Strait Islanders than they did in the past. In addition to engaging with the police, court and magistrates, these groups also implement crime prevention initiatives and programs. Inadequate resourcing, a failure to recognise the importance of these positions through remuneration, and poor succession planning remain key issues of concern.

**Island courts**

The institution of the court circuit on the islands was regarded by participants as essential to ensuring access to justice in the region. From 1904 to 2001 everyone in the Torres Strait had to go to Waiben/Thursday Island for court and to be charged. This practice was highly problematic, because islanders often lacked the resources needed to travel. In the early 1980s there was agitation for the recommencement of visits by magistrates to the outer islands, as had occurred prior to 1904. In September 2001, a magistrates court was convened on Badu Island. Since 2008, Magistrates Courts have been widely convened, with the large islands visited four times per year and the smaller islands three times per year.

The court circuit has been widely cited as a success and was considered by several participants to be ‘educational’ and a deterrent to offending. Elders sitting in court also ‘make a big difference’ to justice outcomes and community participation in the process in the region. This invokes a ‘shame factor’, which is significant in enforcing informal community social controls. The Torres Strait magistrate involves members of the community justice group in the court process, asking their opinions and listening to Elders’ cultural submissions. The magistrate also invites Elders to sit on the bench with him. Elders are referred to in matters with regard to a person’s history and island protocols, culture and customs.

**Cultural mediation**

A strong and unique aspect of the island court process is cultural mediation. Cultural mediation is not set up in statute, instead being treated as more of an adjournment process. Community justice groups facilitate the mediation, which involves offenders coming to the community justice group and receiving instruction in cultural protocols. With the agreement of the prosecution, a charge can be withdrawn if mediation has been successful and involved parties are satisfied that the matter has been dealt with by the community. The practice was thought to be most effective when a victim confronts a perpetrator and the perpetrator is made to be accountable.
Community members have to agree to the process for cultural mediation to happen and many matters were considered unsuited to it, such as unlawful wounding, and matters involving people with extensive histories of assaults or apprehended violence orders. Instead, cultural mediation was typically used for ‘minor’ wrongdoing, and considered particularly ideal for matters such as intra-familial disputes, as it was thought that formal processes only provided a short-term fix that did not resolve grudges. Given the tight-knit nature of many communities in the TSR, such disputes were common and had significant social impacts.

The tight social networks and integration of people on the islands were central to making cultural mediation a success; some interviewees reported that court statistics show rates of crime have dropped while it has been practised. However, data related to ‘successful outcomes’ from mediation are not specifically recorded by either the Aboriginal and Torres Strait Islander Legal Service database or the Queensland Magistrates Court. Instead, all that is shown on the databases is that a charge has appeared before the court and that it has been subsequently withdrawn. Thus, there may be room for better documenting the effects of this unique Torres Strait justice practice.

There are important differences between cultural mediation and justice conferencing. More formal justice procedures, such as youth conferencing, were perceived as lacking community input. Whereas cultural mediation was perceived as a continuation of previous pre-colonial practices, justice conferencing was seen as being imposed from outside. For instance:

Old lore involved members of the community bringing people together, same as a mediation process... (Indigenous Male 4)

Generally, it was considered vital that a person’s background and family history was accounted for as part of justice procedures and that it could provide a more holistic approach to justice than more formal practices.

Torres Strait Island Police Support Officers

Torres Strait Island Police Support Officers are situated on more than a dozen islands in the TSR and are a form of community police. They were originally located on only two islands, Waiben/Thursday Island and Njurupai/Horn Island, and funded by local government. However, since 2013 they have been employed by the Queensland Police Service. These changes brought some advantages for Torres Strait Island Police Support Officers, including better resources, increased pay rates, overtime pay and being paid for doing call-outs. Several participants commented that this had been a positive step, making the support officers more accountable and resolving what was previously viewed as an issue of poor monitoring, communication and cooperation with sworn police.
Torres Strait Island Police Support Officers can take statements, and present and serve documents (including domestic violence orders and affidavits). However, they do not carry firearms or handcuffs; rather, their weapon was considered to be their ‘mouth’. Some locals have also advocated to provide Torres Strait Island Police Support Officers with powers of arrest and detention. An important role of the support officers is building trust and rapport between police and communities. They were frequently referred to as the ‘eyes and ears’ of the community and the ‘frontline’ of policing, especially on the outer islands, where it could take sworn police up to eight hours by boat to respond to calls, or where bad weather could delay access for three or four days. Other services also relied on Torres Strait Island Police Support Officers to locate clients, report on probation and parole, and run community service projects.

In addition to cultural barriers in understanding justice, those in the TSR also experience language barriers. Torres Strait Island Police Support Officers and community justice group representatives play an important role in ensuring that defendants and victims clearly understand court processes and orders, as English can be a second or third language. They also perform a crime prevention function in communities and visit schools to teach youth about cultural traditions.

This noted, being embedded in communities could also prevent Torres Strait Island Police Support Officers from dealing with both serious and minor matters, particularly those involving close kin or families. The level of supervision, oversight and accountability of Torres Strait Island Police Support Officers, and perceived conflicts of interest, have been noted as issues for possible review.

**Discussion and conclusions**

Crime-report data indicate that between January 2001 and July 2018 the TSR experienced lower rates of reported crime than Queensland’s Aboriginal communities and, on average, lower rates of reported property crime than Queensland. Breach of domestic violence order offences were also lower in the TSR than in the comparison Aboriginal communities. It was nevertheless made apparent by all participants that domestic and family violence is the most significant crime issue experienced in the region. This study found that under-reporting is a significant challenge for domestic and family violence and other offence types, such as property crime, aligning with suggestions made elsewhere (Memmott 2010). While some level of under-reporting likely occurs because of the distinct, remote and isolated geography of the region, where access by sworn police is difficult and only occurs periodically, a strong theme in the interviews was that familial and kinship bonds also shielded some assailants from criminal justice intervention.

Previous Australian research has suggested that crime can be prevented and controlled in rural and regional areas through strong economic conditions and strong social networks (Carcach 2000). Certainly, the TSR is an economically disadvantaged region, so it is the latter factors relating to social capital that are a primary focus in explaining the relatively low rates of crime in the region.
The social disorganisation model of crime control suggests that communities with low crime rates have integrated, dense social networks and high levels of civic participation (Bursik & Grasmick 1993; Sampson, Raudenbush & Earls 1997). A number of participants in this study highlighted the central role played by shame in establishing and enforcing social norms. Crime control is also facilitated through the interdependency of the TSR’s familial and kinship networks, surveillance and adherence to cultural tradition in encouraging compliance with local norms. For instance, high rates of intermarriage across the islands has led to Torres Strait Islanders’ self-conception as ‘ku bui’: one big family. Data suggest that the geography of the TSR reinforced cultural homogeneity and made the islands relatively resistant to colonial incursions. This extends to the present day, as the TSR enjoys a far greater level of autonomy and self-governance than many other Indigenous communities.

Just as social capital and dense social networks have been theorised in criminology as protecting against crime, they can also contribute to crime when the norms adopted by networks are criminogenic. For example, patriarchal norms were evident in local cultures and such norms are associated with interpersonal violence, particularly domestic and family violence. Alternatively, the kind of tight social integration and trust involved in dense social networks may also make them opaque. While opaque networks may not produce crime per se, they may enable conditions where crime can remain hidden and be left unaddressed.

Innovative justice practices, some of which are local initiatives peculiar to the region, were also cited by participants as helping to keep crime rates low. These practices draw their success from the region’s tight-knit social networks. It was evident that while various services and agencies could improve their cooperation and coordination, the level of cooperation was nevertheless relatively strong in the region. Local bodies such as community justice groups and Torres Strait Island Police Support Officers were considered to be the ‘eyes and ears’ of external bodies such as the courts and police. The geography of the islands has necessitated these groups working closely together to address justice and crime problems.

The role of Elders in these processes is crucial, but their significant commitment was often not formally acknowledged or adequately compensated. In contrast, the role of Torres Strait Island Police Support Officers has been increasingly recognised and their adoption into the Queensland Police Service was considered to have strengthened this service, although several participants indicated that Torres Strait Island Police Support Officers lacked adequate powers and training. The involvement of community justice group members on police appointment panels was seen as a positive step that progressed these relations beyond the symbolic and everyday to a more formal direction of genuine cooperation and partnership.
Generally, there is a perception of Indigenous communities as being violent places with high rates of victimisation. Invariably, the crime problem outside metropolitan centres is represented as an Indigenous problem (Scott & Hogg 2015). As reinforced by this study, crime rates vary considerably between different Indigenous communities and between different locations (Lawrence 2007). An overriding theme of this research is the notion that relatively high levels of self-determination in the TSR have led to communities with strong social capital which have managed, to some degree, to shirk the ‘possessive logics’ of colonisation (Moreton-Robinson 2015). In this context, any ‘successes’ in terms of crime and justice practices in the region can be understood as examples of the continuation or revival of pre-colonial practices, even if they have been woven among colonial structures (cultural mediation being an apt example). While the importance of self-determination to an array of life outcomes, including crime and justice related outcomes, is of course not a new finding, it is nevertheless still highly relevant when considered against ongoing political trends that discount and undermine it (see, for example, Synot 2019). Finally, the findings of this study also illuminate the challenges and opportunities involved in policing and administering justice in island settings, which is timely, given the interest in southern, Indigenous and neo-colonial criminologies.

References

URLs correct as at October 2020


Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) 2019. Regional profile: Torres Strait Islands (LGA). Brisbane: DATSIP


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