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Biko Agozino
Virginia Tech

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Indigenous European Justice and Other Indigenous Justices

Professor Biko Agozino
Igbo
Virginia Tech

Abstract

All human beings are indigenous because everyone originates somewhere and is therefore indigenous there. However, the imperialist reason of Europe refuses to be confined geographically, making global claims to universalism in its knowledge-power axes even while remaining peculiar, especially from the points of view of the rest of us who wonder where to place the emphasis in Eurocentric criminal justice systems. This papyrus will remind us of the old African saying that no palm is big enough to hide the sky and so even the good qualities of European empires of law would never be enough to meet the needs of the entire world. The papyrus will emphasize what the world could learn by rejecting Eurocentrism and by bending down low to learn what others know, as Bob Marley called for. The papyrus will conclude with emphasis on lessons from Africa-centered philosophies of justice that run the risk of being lost due to the onslaught of white supremacy in jurisprudence.

Key words

Indigenous justice, European justice, Eurocentrism, counter-colonial criminology, criminology, Africa-centered.

Introduction

It is a fitting coincidence that this special issue of the *African Journal of Criminology and Justice Studies* is coming out after the tenth anniversary of the publication of my book, *Counter-Colonial Criminology: A Critique of Imperialist Reason* which was honoured with a panel of five rave reviews in the maiden issue of this journal. It is an honour that one of the editors of the special issue, Juan Marcellus Tauri, took the initiative to extended the theme of the special issue from Indigenous criminologies, which was the theme of the special panel that he organized for some of us, contributors to this issue, at the ASC meeting in Chicago in 2012, by adding Counter Colonial Criminology, my book title that he and many other colleagues continue to support beyond my modest expectations (Deckert and Wood, 2013; Kitossa, 2012; Saleh-Hannah, 2008; Tauri and Webb, 2012; and Oriola, 2006; not to mention the more than a dozen positive book reviews). Without regurgitating the contents of the book, it is sufficient to remind readers that the book defined criminology as a science designed by imperialist Europe for the control of others who were colonised and others who were poor within Europe and settler colonies of North America, Australia and New Zealand where policing, defined as policing the crisis of primarily the poor and mostly minority males, continues in the internal colonies of

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the inner cities, as Stuart Hall et al. (1978), put it. By reminding us that there is such a thing as indigenous European thought and practices of control, this papyrus serves to remind us that Eurocentrism is not only a danger to the rest but also to the poor and marginalized men and women of Europe, challenging all progressive scholars to pitch in to enable us to decolonize criminology for the benefit of all.

In the essay, 'What is criminology? A Control-Freak discipline' (Agozino, 2010), I extended this argument of the need to decolonize criminology by increasing the democratization of the society and the discipline itself rather than insist on intensifying the practices of repression, exclusion and domination which have proven to be unsuccessful as a social (science) control mechanism in Europe itself, how much more as 'made for export criminology' imposed on developing countries by so-called experts (Cohen, 1998). My conclusion in *Counter-Colonial Criminology* was that imperialism is the universal form of crime and that power is more of a cause of crime than poverty given that powerful people get away with bloody murder while the vast majority of the poor remain overwhelmingly law abiding (Agozino, 2003). The rich get richer and the poor get prison not because the poor are necessarily more criminal as Jeffrey Reiman (2010) argued long after Du Bois (1895) demonstrated similar views with reference to *The Philadelphia Negro* - about 50 years before Edwin Sutherland called for the study of white collar crime in his American Sociological Association Presidential Address in the same city of Philadelphia. This papyrus invites indigenous criminologists to turn the critical gaze back at indigenous Europeans to reveal the dangers of imperialist reason to all and the need for a united effort to decolonize the entire world.

Indigeneity and Indignity

The genius of the indigenous lies (and it is always a lie; if not a lie, then a falsehood or an error of fact devoid of mens rea) is that the indigenous is universal rather than a particularistic trait. Everyone is indigenous somewhere, making indigeness universal and not exclusively peculiar as an adjective. Western philosophy tended to see things the other way around, denoting the indigeness of the natives of colonial locations while claiming universalism for western thought and practices. That Orientalist orientation, as Edward Said (1978) pointed out, leads to a presumption that Europe is the index of human development while the rest are measured in terms of the gaps between them and the European index, with programs for filling the identified gaps through projects in modernization, civilization or westernization. This papyrus shifts the unit of analysis from the natives of colonized locations back to Europe from a critical perspective that is centered on postcolonial experiences and with implications for activism towards greater social justice as opposed to epistemic injustice (Tsosie, 2012).

The indigenous tends to be equated with indignity in discourse because of the assumption of a patriarchal-snobish-white supremacist who is deemed to be universal and non-indigenous. Frequently, the indigenous have bought the whopper and taken ownership of the indigenous privileges that include boundary maintenance as a sign of empowerment or the assertion of indigenous rights over scarce resources as exemplified by the recent expulsion of African American descendants by an American Indian Native tribe (Lee-St, 2007).ⁱ The presumption of white supremacy tends to adopt

an evolutionary paradigm with the natives represented as atavistic models of what the European society would have been like in a mythical distant past. The difficulty for the western theorist is that there is hardly any trait that can be found among the natives that is completely absent among Europeans and vice versa even when there is an attempt to pursue the purity of indigeness to the genetic extent – human beings are remarkably identical, genetically, compared to other species of living things. Philosophers like Isidore Auguste Marie Francois Xavier Comte (aka, Auguste Comte) looked for the law of the three stages of societal evolution in the forms of the theological, the metaphysical, and the positive stages that all societies are presumed to pass through with Europeans near the apex positive stage that would be crowned with a positive science of society – sociology – while the natives were presumed to inhabit theological or, at best, metaphysical worlds that lag behind the positive changes brought by positivistic modern science (Comte, 1844). It is interesting to note that this theory of evolution predated that of Darwin and so rather than talk about social Darwinism, maybe we should be talking about biological Comteanism, by the way.

Herbert Spencer disagreed radically with Comte by observing that the three stages of societal evolution are not stages but more like phases that are found in every society, in all aspects of nature, in the stars and in human psychology all of which develop from simple undifferentiated and homogenous forms to complex, specialized and heterogeneous higher forms (Hawkins, 1998). He is often wrongly called a social Darwinist because he added the ‘survival of the fittest’ to his theory after reading Darwin’s theory of natural selection. But it is reported that Darwin (1859) subscribed to the serialized publications of Spencer two years before publishing his own theories of natural selection based on evidence from Aboriginal communities. Spencer hypothesized that whatever is surviving in the societal, natural or psychological evolution must be performing some useful function for the overall survival of the society, organism or the entire cosmos. This is misleading because excessive incarceration of the natives of colonized locations has continued in the post-colonial era despite evidence that it is counter-productive. Furthermore, Spencer speculated that the best way to discover what were the most suitable social institutions for survival was to adopt a laissez faire approach that allowed individuals to, for example, compete with their own resources for services like education. This is in complete contrast, occurring around the same time that Spencer was writing, with the overwhelming demand, for the expenditure of public funds to support learning, by formerly enslaved Africans, not only for themselves but, for all, including poor whites as W.E.B. Du Bois (1935) analysed in *Black Reconstruction in America*.

Europe remained the epitomic exemplar of a complex and highly specialized heterogeneous society while Aboriginal Australians with more than 700 languages or Africans with more than 2,000 distinct languages were lumped into one homogenous group – all Africans look the same, goes the racist saying. David Hume provided racist empiricist support for white supremacy by suggesting that all available evidence proved

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that the 'barbarous tribes of Africa, America and Asia' were 'idolaters' who were inferior to Europeans in moral, ethical and historical achievements (Russel, 2008). Karl Marx directly ridiculed this presumption of white superiority when he commented on the 'Christian' values of the American pioneers who paid ransom for the scalps of American Indian Native children, women and men (Marx, 1867). The Orientalist assumption of white superiority in morality and rationality was directly and indirectly an echo of the 17th century thought by Rene Descartes (1650) who, while admitting that his own mind was 'mediocre' and that the so-called savages also think rationally, they are similar; they differ only in terms of their exposure to training. It has been suggested that Descartes based his theory on irrational 'dreams and visions' and subjective opinions as a traveller, but made a generalized sharp distinction between those who are civilized instantly and those who are savage cannibals being civilized gradually; 'I think therefore I am rational', compared to a lunatic or to the indigenous knowledge systems of the others who apparently do not think rationally enough to be taken seriously in modern mathematics and science (Balcomb, 2001). Hegel equally concluded that Africans had made no significant contribution to history, despite the pyramids that he attributed to an alien civilization.

Since the European tradition in justice presumes that it is the standard against which all other traditions of justice must be measured, there is a reluctance to be open-minded for the possibility that indigenous European justice systems could learn a thing or two from others. Weber (1968) had no doubt that Roman law was superior not only to what he pejoratively called Khadi justice and to the patriarchal rule of the father in the dark ages, but also to what he saw as the inability of the English common law to deliver justice to the poor, compared to the German tradition of his time that was more bureaucratized and rationalized rather than based on precedent and relying on trained professionals rather than on justices of the peace. Churchill would have said to that, no wonder Hitler could not emerge from the English common law tradition but from the supposedly superior Germanized Roman tradition; but colonized natives will tell Churchill that the difference between fascism and imperialism is non-existent except that the latter gave rise to the former. Maine (1861) insisted on the superiority of ancient law compared to 'Hindoo' law. Freud maintained that the strict enforcement of incest taboos among Aboriginal Australians was a sure sign that they were crazy like the neurotic and very much unlike the normal European with little or no moral qualms about genocide and incestuous promiscuity.

Bentham and Beccaria made distinctions, not between the Oriental and the Occidental, but between the dark ages of Europe and the age of the Enlightenment which was not exactly the Enlightened age, as Immanuel Kant (1996) observed in 'What is Enlightenment?' One thing that Bentham and Beccaria agreed upon was that there is no justification for capital punishment, a judicial procedure that indigenous European justice universalized during the centuries of slavery and colonialism before outlawing it in Europe at the end of empire while the former colonised jurisdictions retain the death penalty as a legacy of colonialism.

Durkheim (1897) maintained the evolutionary perspective by envisioning two types of social solidarity – the mechanical and the organic types of solidarity that are reflexive of his two laws of penal evolution. He also theorized that totems among Trobriand islanders represented the elementary form of religious life which he saw as the universal process by which human beings create God in their own images. Ferdinand Tönnies (1887) envisaged a dichotomy between community and society stages of evolution from the rural to the urban. Henry James Sumner Maine (1861) saw distinctions between status and contract forms in ancient and modern law. Max Weber (1968) saw a tendency of societal evolution from irrational administrations of justice to the ideal rational bureaucratic forms of the administration of law. Freud (1918) differentiated between the supposedly primitive native and the neurotic European in contrast to normal Europeans who nevertheless retain traits of both neurosis and primitiveness with specific reference to incest taboos that appear to be neurotically enforced more strictly by the primitive than by normal Europeans who had no qualms about marrying their cousins. Claude Lévi-Strauss (1969) agreed that the incest taboo is universal despite being an exception to his rule that universal traits were not the products of deliberate human legislation of conduct and he concluded that what differentiated the West from the rest is that the West was literate while the rest were oral traditions; although all societies have distinctions between the raw and the cooked, male and female, good and bad, original and imitation, etc. Derrida (1976) faulted him along with Hegel on this Eurocentric view that writing was an exclusively western science or grammatology, given that writing, in general is found in all societies that have the ability to give a name to themselves, according to Derrida (1976) or given that the earliest known forms of writing originated outside Europe just like human life itself.

Challenging White Supremacy

In almost all two-type typologies, the western typology is invented as the heterogeneous supreme form while the others are represented as the homogeneous inferiors or imitations of the logocentric western standard forms or ideal type. The assumption is that the discovery of a positive science of society and the application of its principles to human social organization would produce a social engineering that would result in increased societal systemness and upgraded adaptation to increased division of labour, if not to increased human happiness. Remaining backward was synonymous with remaining indigenous, mechanical (ironic that Durkheim switched his concepts of the mechanical and the organic in contrast to stereotypes) or communal. It is not a dignified place to be but many indigenous intellectuals are tricked into seeking to modernize their society or dream of catching up with the European model of progress while some others embrace the indigenous label with pride and seek to cleanse it of all associations with indignity. Mazi Mbonu Ojike (1948) and other Zikists preached that Nigerians should 'boycott all boycottables' under the colonial situation by, for example, adopting traditional ways of dressing, attending the National Church of Nigeria rather than the Anglican Church, demanding independence from colonial rule and changing their names to boycott European given ones. On the other hand, Chike Obi (1986) lamented, similar

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to Marcus Garvey (1986), that people of African descent have not made as much contributions as 'whites' and 'yellow' people and urged Africans to hurry up the struggles to catch up with the West. Cheikh Anta Diop (1974) insists that Africa is the origin of civilization and so we do not need to play catch up in the first place.

Frantz Fanon (1963) warned that the frenzied haste to catch up with Europe should beware of the methods by which Europe talks so much about the dignity of man but abominates man everywhere she sees him. Fanon observed that one former colony of Europe, America, finally caught up with and then surpassed Europe but that the result was a monstrosity. He called on the colonized to leave the competing European models of the cold war and explore a third option that would include the demand for reparations, not just for foreign aid, from Europe for past wrongs against the colonized and the enslaved. He quit his impossible job as a psychiatrist treating torturers who went home to torture their family members and treating the torture victims as well. He joined the liberation struggle instead.

Karl Marx (1867) earlier pointed out that the enslaved Africans were the model for the wage slaves of Europe because the enslavement and liberation of the enslaved took place historically before the enslavement and liberation of the working class could become a reality, x occurs before y in the alphabet but also in statistical analysis. The genius of Marx was to recognize that despite nationalist pride in the ideology that the English man would never be a slave, the conditions of the working class and their struggles mirrored those of the enslaved Africans. In other words, Marx was insisting that the global working class would benefit from a close study of the conditions and struggles of people of African descent under enslavement as he did in volume one of *Capital*. He also went beyond explaining the condition of slavery to organizing against it with the International Workingmen's Association that threatened to declare a general strike, if Britain entered the American Civil War on the side of the Confederates as it was rumoured that she was considering.

W.E.B. Du Bois (1935) followed Marx in pointing out that the black proletariat (the enslaved) and the white proletariat could have been more powerful if united against the plantocracy that used the ideology of race to divide them and thereby weaken the struggle against exploitation and oppression. C.L.R. James (1938) illustrated this perspective by making a link between the Black Jacobins in Haiti and the French revolutionaries of their time, indirectly suggesting that had they united as a common front against the aristocracy, they would have achieved a lot more than was permitted under the backward ideology of white supremacy even among French revolutionaries. Eric Williams (1944) completed this trilogy of foundational texts in *Africana Studies of slavery and capitalism* by arguing the Marxist thesis that the wealth of Europe was expropriated as absolute surplus values from the labour of enslaved Africans and not the fruits of European hard work or protestant ethic, according to Weber. Walter Rodney (1972) focused on the other side of the dialectics of development and underdevelopment by presenting a balance sheet that demonstrates that Africa was underdeveloped by Europe, contrary to the presumptions of the civilizing process or modernization policies. Smith (2001) outlines the principles of indigenous research

methods but they appear to be the principles of good research, such as being accountable to the research subjects, to be anti-racist, anti-sexist and anti-oppression as bell hooks (1994) consistently demands.

Explanations for the failure of most former colonies to catch up with the West abound in the form of what Jerry Dibia (2013) identified as 'adjectival appellatives' such as prebendalism, traditionalism, kleptocracy, or neoprimalism that supposedly deviate from the western norm of the rational ideal bureaucratic administration that is supposedly a universal best practice. Zygmunt Bauman (1989) cautioned that there is nothing inherent in the Weberian approach that would equip a society to prevent a phenomenon like fascism from emerging again or arm people to successfully resist Nazism once such a system has been institutionalized by the rational bureaucracy. What is missing from such social monstrosities is not the ability to reason but the ability to empathize with the other as a fellow human being. Dibia (2013) would add that what is lacking in the development efforts of the post-colonial countries was not a moral deficit as such but the lack of patriotic governmental activism of the sort found in the heavy investment in research and development, in welfarism and in grants regimes in industrialized countries compared to the self-contradictory gospel of laissez faire in developing countries.

The Ancient Law of Imperialism

It is remarkable how far European intellectuals would go in justifying imperialism as a system of law calculated to facilitate the white man's burden of enlightening the savages. One such example is the comparison of 'Hindoo' law with English law by Henry James Sumner Maine (1861). He was of the view that, at the beginning of time, there was no system of law, but that did not mean that it was a state of nature without any order. Rather authority was exercised by patriarchs and later by priests, followed by kings, then by the aristocrats, and finally by the elected representatives in republics. Part of the justification for imperialism from this perspective was that Hindoo law was still backward and oppressive, with knowledge of the law kept almost exclusively to the priestly castes and aristocrats who practiced forms of Oriental despotism compared to the modern law of England that dispersed knowledge of the law among trained professionals and the general public through the invention of writing and mass communication. According to Mahmoud Mamdani (2012), *Ancient Law* by Maine became the standard text for the training of British colonial officials and it is credited with giving rise to the dual mandate system of indirect rule by the British in Africa, especially by Frederick Lugard in Nigeria. The practice involved an artificial classification of the indigenous people into ranks and types as ways of defining them in order to rule over them better. The strategy was to classify the natives into 'tribes' or nations and to appoint or recognize chiefs over them, then let the chiefs rule the people, provided there was no conflict between their repugnant customs and British legal tradition, while the colonial officials ruled over the chiefs and over the people indirectly.

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In places like Igboland in Nigeria, the fact that the people were traditionally democratic with no chiefs or kings was frowned upon as a sign of backwardness, the colonial anthropologists called us headless, or acephalous, societies. The colonial authorities proceeded to appoint Warrant Chiefs over the radically republican Igbo. Adiele Afigbo documented the resistance to that feudal imposition especially by Igbo and Ibibio women who declared war against colonialism in 1929, resulting in the killing of dozens of women by the colonial forces (Afigbo, 1972; Agozino, 1997; Okoye, 1962). The women had refused to be assessed for taxation by a government that did not represent them and one of the teachers attempting to assess them assaulted a woman who raised the alarm. The women occupied the home of the teacher who had assaulted the woman and made noise all night long to deprive him of sleep as they would collectively punish a man who was abusive towards a woman in traditional Igbo society. In the morning, he confessed that it was the Warrant Chief who had commissioned him, as someone who went to the same church with him, to evaluate the women for taxation. The women forced him to march to the home of the Warrant Chief and repeat the allegation. On getting there, assistants of the chief assaulted the women and the women burnt down his house. The war spread to Aba where women stopped a train by occupying the tracks but when they occupied a road, the British driver, a medical doctor, rammed into them and killed two of them, enraging them to loot and burn down the premises of trading companies, native courts and homes of chiefs. Finally in Opobo, a British officer ordered troops to open fire and dozens of women were killed for refusing to disperse after the riot act was read. A commission of enquiry was set up and collective punishments were dished out to the women and the communities to recover the costs of the multinational companies whose premises were burned by the women (Falola and Paddock, 2011). As a student in America, the future first president of Nigeria, Nnamdi Azikiwe, wrote an opinion in *Crisis*, edited by W.E.B. Du Bois with unspecified inputs from Du Bois, condemning the killing of defenceless women in Nigeria by the British colonial authority (Azikiwe, 1930).

The resistance of Eastern Nigerians to feudalization under colonialism continued during the period of regional self-government before independence. The result was that the Northern and the Western regions had Houses of Natural Rulers in addition to Houses of Assembly while the Eastern Region had only a House of Assembly until after independence when a ceremonial house of chiefs was recognized. Azikiwe could have negotiated for a House of elders or a House of Councillors to be elected to balance the bicameral legislature in other regions by having two houses in the East. But the British did not think of such a policy perhaps because it would contradict their thesis that Africans were uncivilized and that they were there to enlighten the dark continent. During the Nigeria-Biafra war when three million (mostly Igbo) people were killed, Britain and the Soviet Union competed to supply the weapons that ensured that more small arms were used in the thirty months of the conflict than in the five years of the European tribal war also known as WW II (Achebe, 2012; Ekwe-Ekwe, 2006). It was only after the Nigeria-Biafra war that General Olusegun Obasanjo, as military Head of State, decreed that every town must have a traditional ruler. It may be the case that he was advised that part of the reason why the Easterners attempted to secede from Nigeria was because they were radically republican (or exceptionally primitive with

feelings of inferiority compared to their feudal neighbours, according to Margery Perham, 1970: 192) and so the imposition of chiefs upon them might be part of the plan to make them more governable in submission to central authority. No suggestion there that the secession was called for by the wanton pogrom that preceded it and the genocide that followed it, an immense loss of lives for which Nigeria is yet to come to terms with. Since the 1976 Local Government Reform Decree, the struggles for chieftaincy titles (that come with official cars from state governors and with monthly salaries) have become the order of the day even among the Igbo who still say with pride that the Igbo know no king. The imposition of traditional rulers has coincided with the intensification of community violence in the form of kidnappings for ransom and armed robbery, with some traditional rulers allegedly implicated in such organized crimes, not only in Igboland but throughout the feudalized and intensely insecure country.ⁱⁱ

The imposition of feudal authoritarianism on otherwise democratic cultures was a British imposition that the people continue to resist in different ways. What is regarded as traditional or indigenous is often an imposition or invention by Europeans to the extent that Mudimbe (1994) would conclude that the idea of Africa was a European invention. Such a view is mistaken to the extent that Africans and other indigenous people have consistently demonstrated the value of many traditions that some are too quick to dismiss as inferior, contested the stereotypes pinned on them by European thinkers; while some of the inventions and foreign influences from Europe were legacies by Africans that were stolen by Europeans (James, 2008).

Marx captured the brutality with which the Scottish peasants were driven off their land to make room for sheep farmers and to create an industrial reserve army for the factories of England. A similar indigenous sense of justice was active in the genocide against American Indian Natives, the enslavement of Africans, the Herero genocide, and the genocide against the Aborigines. The same mean-spirited sense of justice was operative in the witch-hunts in Europe during which an estimated nine million people, mostly women, were killed in the name of the father and of the son, according to Mary Daly (1978). Similar philosophies of justice made possible the Nazi holocaust during which Europe and the world sacrificed tens of millions of people to echo previous wars of madness among European forces competing over the control of the resources of colonised indigenous people. Such a greedy sense of justice resulted in the Mau Mau war for land and freedom in Kenya over which the survivors recently won the right to sue the British government for the violation of their human rights through mass killings, castration, rape and torture (Riri, 2013). In June 2013, the British Foreign Secretary, William Hague, announced a settlement of 20 million pounds for more than 5,000 survivors, he expressed regrets but failed to apologize for the injustice. The personification of similar struggles by South Africans in the biography of Nelson Mandela is too well known to be recounted here (Mandela, 1994).

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The self-conception of imperialism is that of the civilizing process evident in a legal tradition that is characterized by continuity, reasonableness, ancient origin, and uses peaceable rather than military strategies of adjudication, among other qualities identified by Blackstone (1765). Yet, war and conquest, enslavement and gunboat criminology remain the most noticeable forms of the practice of indigenous European justice systems. The legacies of what Derrida called the force of law, a concept that is almost identical with the word for violence (Gewalt) in German, according to him, determine that a lot of the studies of the history of indigenous European jurisprudence involves wars and treaties and not exclusively the rule of law, a bourgeois concept that served to subvert the divine rights of kings in Europe. Even when violence is not directly experienced, according to Derrida, going before the law is Kafkaesque in the way intended by Kafka's short story 'Before the Law' which Derrida linked with the symbolic killing of the father figure as the earliest taboo known to humanity that led to the prohibition of the killing of totem animals, according to Freud (Derrida, 1990; 1992).

Totem and Taboo

Freud (1918) hypothesized that the psychic lives of savages resembled those of neurotics and his analysis of this resemblance formed the first application of his theory of 'racial psychology'. He sought to find the original meaning of totemism 'through its infantile traces' or through the appearance of such thought among 'our own children', meaning European children. Freud insisted that 'there were many indications that the childhood of the individual showed a marked resemblance to the primitive history or the childhood of races (translator's preface: v-ix). Here, he means every individual, including himself and including every child, not just indigenous children.

The first chapter dwells on the 'Savage's Dread of Incest'. Here Freud asserts that 'primitive man' is known to Europeans like him through the stages of development that 'he' has passed (and it is almost always the primitive man that Freud is concerned with). Material culture, arts, religion and attitude to life can be found in the relics left by primitive man directly and indirectly in legends, fairy tales and myths (no mention of history) but also through the 'remnants of his ways that survive in our own manners and customs'. On this opening page, Freud argued that although there are people who could be said to be so different from 'ourselves' that they could be used as an indicator of what early men used to think, such a study is capable of allowing Europeans to 'judge the so-called savage and semi-savage races, their psychic life assumes a peculiar interest for us, for we can recognize in their psychic life a well preserved early stage of our own development.' Here Freud accepted unproblematically the Eurocentric assumption that Europe was the index of development and that indigenous cultures will have to pass through the stages of European development in order to catch up with Europe. Walter Rodney (1972) and the bulk of dependency theorists have already debunked the basis of this assumption especially given that the stages of slavery, colonialism and genocide through which Europeans passed, appear unviable and undesirable from the perspective of the natives. Pre-empting the End of History theses of the future, Freud did not think that there were cultural values among 'primitive men' or among our children that Europe could learn from. Rather, he deliberately chose to focus on 'those tribes who

have been described by ethnographers as being most backward and wretched: the aboriginals of the youngest continent, namely Australia.'

Just as the colonial officials presumed about the Igbo of Nigeria, Freud assumed that the backwardness of the Aborigines lay squarely in the puzzling democratic fact that 'Kings or chieftains are unknown among them, and all the communal affairs are decided by the elders in an assembly' (p.2). He was surprised to learn that 'these poor naked cannibals (were) moral in their sex life according to our own ideas (meaning European standards), or that they ... imposed a high degree of restriction upon their sexual impulses.' On the contrary, 'we learn that they have considered it their duty to exercise the most searching rigour in guarding against incestuous sexual relations' (p.3) with death as the regular penalty for sexual intercourse with a member of the forbidden clan. Avoidance rules were put in place for a husband to avoid the sister-in-law and avoid the mother-in-law as if he was ashamed of them or to flee into the bush on hearing the voices of his own sisters approaching, by a man who had been initiated into manhood not only in Australia but also in parts of Africa. Rather than giving the so-called primitive races the credit for figuring out that dating in the family led to weakened gene pools, Freud tried to reassure incestuous Europeans who were neurotic about keeping their wealth within the family by marrying their cousins, that the observation of the incest taboos was an infantile disorder similar to neurosis (p.30).

Freud also thought that the Maori were being neurotic by making taboos against the blowing of a fire, by chiefs, on which a pot of meat was cooking because the bad breath of the chief who blows on such fire would pass through the fire into the pot and into the meat to infect the men who eat it and eventually kill them (p.47). Freud could have found a hygienic reason for the prohibition given that blowing on the fire could lead to spittle being spat into the pot to infect the eaters with strains of flu that the settlers may have introduced to a population that was not immune to them. Moreover, instead of identifying the moral impulses that make the Maori to subject their war heroes to periods of cleansing from the spirits of the deceased enemies who needed to be appeased, Freud concluded that the urge to kill was a universal human urge that is ever-present in dreams. According to Freud:

The analysis of dreams of normal individuals has shown that our own temptation to kill others is stronger and more frequent than we had suspected and that it produces psychic effects even when it does not reveal itself to our consciousness. And when we have learnt that the obsessive rules of certain neurotics are nothing but measures of self-reassurance and self-punishment erected against the reinforced impulse to commit murder, we can return with fresh appreciation to our previous hypothesis that every prohibition must conceal a desire (p.118).

From this hypothesis that remains to be proven, Freud jumped to the conclusion that the thinking of the primitive people was 'still highly sexualized' (p.150), indirectly

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suggesting that Freud himself must have been primitive given the centrality of sexualisation in his own thoughts. Fanon (1963) rejected this universalisation of European neurosis by observing that what Freud called the Oedipus complex was virtually unknown among people of African descent who do not go about fantasizing about killing their fathers and marrying their mothers. Freud was being typical as an indigenous European thinker by assuming that everything must be explained from a European tradition that is steeped in massive blood-shed in Europe and around the world wherever the European has conquered and enslaved or colonized others. Europeans committed genocide against indigenous people because killing was a natural human desire, conscious or unconscious, Freud implied, because the European tribal war also known as World War I had just demonstrated the unquenchable bloodlust of indigenous Europeans as a universal trait.

Baz Luhrmann's 2008 film, *Australia* (the multi award-winning movie starring Nicole Kidman and the young Aboriginal, Brandon Walters), illustrates the potency of the indigenous European justice philosophy and its impact on colonized natives. It started with an unusual consumer warning to indigenous people, who may be offended by some of the contents, as if Europeans are not perfectly capable of being offended about the same images. The theme was on the stolen generation of Aboriginal children who were born following the rape or prostitution of indigenous women by the British settlers who also stole the land and forced the surviving natives to work for them as labourers. One man who resisted the role of wage slave was 'King George' who was always on a 'walk-about' while looking out for his mixed race grand-son, Brandon Walters, especially after the boy's protective mother drowned in a water tank trying to hide him from police officers intent on stealing him and giving him away to a church institution to be raised without the influence of the 'primitive' natives. King George was falsely blamed for the killings of the ranchers who were killed by the unscrupulous farmhand who was ambitious to expropriate the farms through marriage to the heir. The only time King George killed someone was when the white father of his grandson aimed a gun at the boy trying to shoot him after losing his wife to a Japanese air-raid. The natives came across as being more moral than the settlers although the unprovoked genocide against them was not represented in the film.

Indigenous Criminology and the Black Studies Revolution

"It is imperative that First Nation commentators and practitioners take Authoritarian Criminology to task for the lazy, disempowering, culturally inappropriate research activities of its practitioners. If you are doing this kind of research, then do us a favour and put aside your pretence at objectivity, because the fact that you choose to silence our voices while empowering yours through the use of non-engaging methods, invalidates this particular claim to authority. Put aside your pretence at value neutrality because what you do is just as value-laden, ideological, and political as my commitment to Indigenous peoples and indigenous issues. ... Try engaging with Indigenous communities in a meaningful way (with our permission and guidance); you might find it liberating to give voice to actual experiences and not just statistics." Juan Marcellus Tauri (2012).

Indigenusness suggests locality to which the colonized was supposedly confined as opposed to universality which was presumed the sole preserve of the colonizer who boasted that the sun never set on their empire. But in spite of all the pretensions, everyone originated somewhere and is therefore indigenous to their places of origin but this is a heresy to positivism which is couched on the mythology of universal reason, a reason that was denied to the colonized, to women and to the poor even within Europe itself, a reason that is puzzlingly unreasonable in almost all its posturing and claims of apriori superiorism. The term, indigenous, has been passed down through the ages as a concept for the designation and disempowerment of the colonized by the colonizer and their descendants. It is a more sanitized term than the atavistic terms of the barbaric, savage, uncivilized, native, Aboriginal, Kaffir, Fella, Indian, Oriental, Nigger, Negro, West Indian, Creole, Maori, or mere local. The endless struggle for the restoration of independence or decolonization encouraged the desire to name oneself and the search for proper names stumbled through a number of options like Third World, Fourth World, First World before settling on indigenous. In order not to allow this new fad to signify unworthiness like its antecedents, I wish to suggest that we apply the term to Europe as well by reminding ourselves that indigenusness being the mark of origin, there are certainly traditions of scholarship that would qualify as indigenous European criminology in contrast with other indigenous criminologies.

The emerging concept of indigenous criminology is fascinating because it promises to create the space for underrepresented voices to be heard in a discipline that emerged and considered their ancestors to be mere objects rather than the authors of discourse on deviance and social control, a discipline that still operates by excluding indigenous voices from privileged sites of authority despite the continuing legacy of control-freak technologies disproportionately targeted at the expense of the marginalized indigenous communities. However, there is nothing genetic about indigenous criminology because all scholars who study this sub-field will come out with enriched knowledge irrespective of their DNA and in spite of the colonialist assumption that indigenous communities harbour warrior genes that justify the genocide against them (Agozino, 2003; Jackson, 2009).

In other words, anyone could participate in the exploration of indigenous issues in criminology, using any suitable research methods and arriving at policy-relevant conclusions that may or may not empower indigenous people (Smith, 2001). Therefore, indigenous criminology is not coterminous with the study of indigenous people by whatever means necessary given that the oppressive study of indigenous people is as old as criminology which emerged at the height of colonialism as a control-freak technology for the control of others. Only those studies in criminology that seek to liberate the indigenous (including indigenous Europeans) from the domination, exploitation and repression of control-freak criminology will qualify as indigenous criminology irrespective of who the criminologist happens to be.

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Indigenous criminology can be regarded as one of the off-shoots from the intellectual revolution pioneered by radical African American students and their community allies in the 1960s that led to the foundation of what is known today as Black Studies, Africana Studies, African American Studies, etc. Prior to that revolution and even since then, university administrators held on to the orthodoxy that the development of new curricula was the preserve of faculty members and students were not expected to be knowledgeable enough to pioneer uncharted fields of scholarship in academia that were supposedly characterized by meritocracy rather than by democracy, as French students were told in 1968 when they demanded for the democratization of the research lab, according to Loytard (1979) in *The Post-Modern Condition*. The motto of the French student radicals was: 'Be realistic, demand the impossible.'

African American students knew that the demand for programs in Black Studies was not an impossible demand and that it was surely realistic to make such demands in a democratic society. Despite opposition from faculty and administrators, the students won the demand and the result is that higher education has been enriched in North America and globally while the French students did not make any lasting impacts on the academy perhaps because they took for granted the Eurocentric foundations of higher education while the Black Studies activists challenged white-supremacy directly and won significant victories for the benefit of all. Some of those who opposed Black Studies were misguided into suspecting that such a field would be only for black students and would be taught only by black faculty. They were mistaken because today such programs are more likely to be found in predominantly white universities rather than in historically black colleges and universities with the result that many of the students and some of the professors are not black. In addition, the success of the advocacy of students for Black Studies has also resulted in successful demand for Women and Gender Studies, Hispanic Studies, Asian American Studies, Jewish Studies, Islamic Studies, Lesbian and Gay Studies, Labor Studies, American Indian Native Studies, Indigenous Studies, and Critical Whiteness Studies. Before there was a discipline called Black Studies, none of these other studies existed and I suggest that they are all riding the coat-tails of the successful revolution in the academy by radical black students. University administrators were eventually won over when their students began reporting that employers are increasingly looking for students with more diversity in the content of their education, forcing administrators who may have been hostile to programs like Black Studies in the past to swallow their white pride and grudgingly provide more resources for the benefit of their students.

Conclusion

Criminology emerged as a scientific discipline in the 1850s about the same time that the Marquis de Sade was developing the libertine philosophy now known as sadism – the enjoyment of the pain inflicted on others. Stephen Pfohl and Avery Gordon suggest that this was no coincidence because the discipline of criminology continues to rely on the sadistic pleasures of enjoying the pains inflicted on others (Pfohl and Gordon, 1986). The Marquis de Sade himself went to prison several times for his chronic indebtedness but never for the pain that he inflicted on the children of the poor and on sex workers

that he did hire for orgies during which he tortured them, causing the father of one of the ladies to go with a gun and try to shoot him.

The violent origin of criminology dates at least 100 years earlier than the legacy of sadism given the account of Foucault (1975) regarding the torture and execution of Damians, the alleged regicide or attempted regicide in 18th Century France. Interestingly, Charles Dickens (1859) appeared more observant than the sociologist Foucault because, in *A Tale of Two Cities*, Dickens was sceptical enough about the guilt of the alleged regicide to suggest that it was probably a miscarriage of justice, whereas Foucault was sure that the public spectacle was nothing but the punishment of the offender. This papyrus suggests that Eurocentric criminology is still tainted by the pleasure principle derived from its colonial legacy as a technology designed for the control of others. For instance, David Garland (2010) theorized the retention of capital punishment by the majority of states and by the federal government in the US when European democracies had all abolished it. Garland saw it as a peculiar institution born of Jeffersonian democracy with emphasis on local control of criminal justice issues but he failed to emphasize that the capital punishment was a colonial imposition on America by Britain rather than simply a matter of the local majority will. He also failed to explain why many states with the same local democracy that he theorized as causal chose to abolish capital punishment. Justice John Paul Stevens (2010), a former Supreme Court Justice, reviewed the book and wondered why Garland chose not to take a position for or against capital punishment whereas Stevens himself now supports the abolition of capital punishment. Greenberg and Agozino (2012) analysed data from Trinidad and Tobago compared to the US and came to the conclusion that capital punishment is not a deterrent and, by implication, should be abolished not only in indigenous places like Trinidad and Tobago but also in the US and worldwide.

Indigeneity connotes places of origin and since all ideas and all cultures necessarily have places of origin, indigeneity is the true universal principle in the history of social thought. Yet, the indigenous is an appellation applied almost exclusively to the Oriental by the western and even by the Oriental elite to mark a terrorized territory that is supposedly exclusive to the colonized in sharp contrast with the supposed universalism of western logocentrism (Smith, 2001; Tauri, 2012; Tsosie, 2012). Far from the prevailing conventions, westernization is far from a universal movement in such subjective valuation of geographies of the philosophies of justice in hierarchical terms that privilege the European over other cultures. This papyrus suggests that there is an indigeness to European criminologies just like the localization of every other cultural tradition in criminology.

Despite the striking similarities among human cultures, Europeans are relatively unique in their obsessive search for what makes them special compared to all others. Whenever they discover something powerful in their culture, such as criminology, they tend to monopolize it and refuse to share it with the rest of humanity but when they find

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something distasteful, such as crime, they tend to generalize it as universal. I concluded in *Counter-Colonial Criminology* that the discipline is still monopolized by scholars from the former colonising countries while its development is stunted in the former colonised countries. This papyrus focusing on indigenous European justice should serve to echo my earlier conclusion that western scholars should study the struggle for decolonization in order to learn a thing or two about the colonialist thinking that continues to cloud the discipline to its disadvantage especially among indigenous European scholars.

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