

## **Aboriginal child removal in Australia - past and present**

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### **Abstract**

Current high levels of morbidity and mortality, and high rates of incarceration among Australian Aboriginal populations are related historically to the separation of Aboriginal people from family and community over 200 years. The paper discusses these events through an analysis of legal and extra-legal forms of power in Victoria, concluding with analysis of current legislation and its effects on urban Aboriginal communities.

Child protection in Australia is reportedly in a state of crisis. Newspapers report almost daily another incident or set of circumstances of child abuse, including child killings, the death of a child through starving, as well as other forms of neglect, emotional abuse, physical abuse, sexual abuse. The number of child protection notifications has increased nationally by more than 50 percent during the past five years. The rate of Aboriginal and Torres Strait Islander children in out-of-home care (or foster care) was over seven times the rate of non-Indigenous children (Australian Institute of Health and Welfare, 2007 pp.xi). New South Wales, Queensland, Australian Capital Territory and the Northern Territory all record significant increases in out-of-home care, a doubling over 10 years to 2006, and in the case of the Northern Territory a four-fold increase. Despite the publication of major reports on the history of the removal of Indigenous children from their families and communities in all Australian states and territories over the past decade, especially the *Bringing Them Home Report* (1997), the current rate of Indigenous children in care is 7 times higher than the rate for non-Indigenous children.

Similar crises appear to be occurring throughout the Western world, and policy and practice in child protection services in Australia have drawn significantly on overseas experience to handle the new demands on services and the increased attention by governments to become more risk-averse to the political cost of child abuse in their jurisdictions. Courts and protective services are struggling to manage the load, and in a number of states there are moves to reform child protection services; in the case of my home-state, Victoria, new legislation has been introduced that promises to increase the 'family services' rather than forensic orientation to child protection.

My purpose in this paper is to compare past and present European modes of governing Australian Indigenous populations by examining just one era of legislative and administrative change, in this case in colonial Victoria in the 1890s, and how it compares and contrasts with the broad contours of recent Commonwealth Government policies centred around the so-called 'invasion' of Aboriginal communities in the Northern Territory. It is important to recognise the use of military and war-like terms here, to describe policies that emerged out of professed liberal-democratic governmental traditions in Australia, where less government and less intrusion on citizens' lives is supposed to be the hallmark of how populations are governed, and indeed where neo-liberal ideas about self-governing individuals have been the predominant ones for the past few decades. It is only recently that historians have begun to examine the conquests of the early European invaders and their management of legal and constitutional matters affecting the original occupants of the land, in terms of notions of race-war and the various tactics and strategies which accompanied it (see, for example, Muldoon, 2008).

Let me refer, firstly, to the management of Aboriginal populations in the context of Victoria in the mid- to late 19<sup>th</sup> century, as the colonial government attempted to establish missions to protect the remaining survivors of the European occupation. In one count at least, the British occupation of Victoria reduced the original inhabitants from more than 15,000 in 1834 to under 3,000 in 1851, and by the 1920s it had plunged to about 500 people, the lowest, so-called 'full blood' Indigenous population level of any colony except Tasmania (Campbell, 1994:xii; Broome, 2005:xxiv). According to Broome (2005:

xxi) about thirty cultural-language groups made up of hundreds of clans or land-owning groups comprised perhaps 60,000 people before the Europeans arrived. Compared with other districts, the Victorian colonial experience was distinctive because there were few convicts, the occupation was swift due to fewer geographical obstacles and the rich grasslands for sheep grazing, and because the Whig liberal outlook in Britain for the first time took steps to try to protect Aboriginal people from the murderous onslaught experienced in other parts of the country. The policies of protection after the mid-19<sup>th</sup> century were motivated in part by what was seen to be the inability of the authorities to safeguard Aboriginal people from white violence and secure access to schooling and other services in the face of white resistance. On the other hand, Broome argues that the motive was partly to convince the British government to allow pastoral settlement to go ahead on the south-eastern coast. Danny Sandor observed that a major reason for placing on reservations a population suffering from tuberculosis and other diseases was to minimize the health risk to Europeans (Sandor, 1990:3). But whatever the motives, at least three-quarters of the Aboriginal population in the Port Phillip district died during the period of 'protectionism' (Andrews, 1963, cited in Sandor, 1990:3). The influence of the so-called 'humanitarians and evangelicals' led to the only treaty ever extended to Aborigines in Australia, but also to the establishment of the first protectorate legislation enacted by a colonial government: a unique form of management over Aborigines within a network of reserves and missions (Broome, 2005:xxvi).

A Board for the Protection of Aborigines was established in 1860 to act as guardian and protector of Indigenous people in the colony. In the 1860s a Royal Commission was appointed to investigate increasing rates of Aboriginal mortality as well as allegations of mismanagement at the mission stations. A new *Aborigines Protection Act* (1886) gave the Board new powers to define what is 'an Aborigine' (Victoria, 1886). The *Act* reversed the definition of 'Aboriginal' so that those people who were 'part-Aboriginal' became officially defined as 'white'. It put in place regulations forbidding half-caste people access to the mission stations and their families. The Board attempted to enforce the merging of the Aborigines with the white population by simply declaring that all part-Aborigines under the age of thirty-four were now prohibited from the mission stations

that had been reserved for the use of Aborigines. Children were removed from their parents on the missions when they were old enough to work, and under the authority of the Protection Board were sent out to service following a period of training, or for adoption with non-Aboriginal families. Older people were given three years to find work and accommodation (McCallum, 2005). Initial attempts at 'merging' the half-caste Aboriginal population were made by trying to amalgamate or close the mission stations that under earlier legislation had housed the 'full-blood' Aboriginal population. This was done on the understanding that these Aborigines would eventually die out. Every year the numbers of 'mixed blood' on the stations would reduce, and as the Superintendent at Lake Condah mission expressed it '... as the blacks will ere long die out ... the whole question would be solved' (Pepper, 1980: 32). The Board reported:

As the blacks are dying out, and the Board removes the half-caste boys and girls by handing them over to the Industrial Schools Department, finality is greatly facilitated, and will, doubtless, be attained within a few years (Victoria, 1890).

The Protection Board insisted that the health problems in Aboriginal communities stemmed from Aboriginal people themselves providing stores and rations to the 'able and healthy'. The Board stated: 'they will best discharge their duty if the funds under their control are expended for the benefit of sick and infirm blacks, rather than for the support of those, who might do something towards providing themselves with food and clothing' (Victoria, 1896).

The superintendents of the missions understood their subjects to be 'free' in the sense that administrative techniques would deploy tactics like inducement, rather than coercion. So once legislation had laid down the parameters of Aboriginal participation in the community (and indeed whether persons were to be considered, and may consider themselves 'Aboriginal'), a person was free to compete in the labour force and take part in aspects of the settler society. Those persons defined as Aboriginal (that is, the 'full-bloods') had an entitlement to rations but only on the basis of work performed on the mission station - an arrangement reminiscent of the English poorhouse and later extended to the non-indigenous population with the introduction of the dole. The 'half-caste', now removed from the mission and from their family and community, was

‘obliged’ to be free to choose to work for wages and to merge with the white population. In circumstances where Aboriginal people refused official definitions of Aboriginality and continued to draw sustenance from family and community on the missions, they and their families were deemed to have committed criminal offences. A final point to be made about the missions is that the Board ensured that productive economic activity such as hops and other agricultural pursuits were closed down so as to ‘induce’ the remaining inhabitants to move to other locations.

In more modern times, a similar kind of freedom is identified in the critique of the modern liberal notion of ‘mutual obligation’ and the ‘shared responsibility agreement’: for example, parents in regional and remote Aboriginal communities would be entitled to welfare payments, or rewarded with resources such as fuel bowsers, by choosing to regularly bathe their children and send them to school. No longer would instructions be communicated to the matron in the mission, to wash the children weekly in the iron bath provided from head office (McCallum, 2007). A remote community will set about ruling itself by voluntarily committing to a hygiene regime, or a health regime or school regime, or any other regime, that is aligned with the will of central authorities. Sustaining the fiction that community can exist in the absence of the kind of social and economic infrastructure required in any other community, was made easier by constant repetition of the notion that remote Aboriginal people were exercising their freedoms. That is, that as in the 1890s, Aboriginal people themselves are responsible for their circumstances.

It would appear, then, that the government of Aboriginal populations under ‘advanced liberalism’ (Rose, 1996) presupposes that Aboriginal persons will in effect *allocate themselves* into categories - those who are able to govern themselves, and those who are not - on the basis of their decision whether or not to accept responsibility for face-washing and other forms of discipline like school attendance. Earlier modes of liberal rule that required persons to be detained in closed encampments might be considered in modern liberal political reason as a superfluous and uneconomical use of power (although they were regularly used by the Howard government to intern asylum seekers).

Aborigines would be free to choose whether to be responsible in carrying out programs of reform, or to choose an irresponsible alternative. 'Responsibilisation by default' of Aboriginal Australia is now a task of the criminal justice system, which regularly and systematically detains Aboriginal people in jails throughout the country for offences that can be traced in large part to the attempted destruction over time of family, community, culture, language, and memory.

In the early 20<sup>th</sup> century, informal powers were used to shift Aboriginal children from foster care and into reformatories, by-passing any court hearing, and was one of the single most important causes of the criminalizing of young Aborigines (McCallum, 2006). This should alert us to the critical role of courts in overseeing decision-making by those who exercise administrative powers over Aboriginal people. Assurances contained in the present *Children Youth and Families Act* (2005) in Victorian that decisions about the removal of Aboriginal children will be made by a representative of an authorised Aboriginal organisation are insufficient if the place of a court is usurped in providing oversight and accountability in the exercise of powers in sites of extra-legal decision-making over children. Indeed, similar legislation in other Australian states and in the UK is troubling, as popularly elected governments seek to impede judicial oversight and legal representation in managing processes that are intended to protect children's rights. In Australia, the Howard government's 'Pacific Solution' to asylum seekers successfully sidelined law and legal process in perhaps the most dramatic way, but these tendencies have been emulated and extended in several centre-Left state governments in their approaches to legislation and regulation affecting child protection services.

It was the notion of crisis however that provided the Howard government with the political context for the Northern Territory invasion. Newspapers responded to the annual reports of the Australian Institute of Health and Welfare on the ever-worsening rates of child abuse throughout Australia, and *The Australian* newspaper in particular presented regular and shocking accounts of the condition of remote Aboriginal health and welfare (Egan, 2007; Porter, 2007; Walker, 2008; Wynhausen, 2008). Most commentators also point to the timing of the Commonwealth Government's invasion, days after the release of yet another damning

report on social conditions in remote communities, the *Little Children are Sacred* report (Northern Territory Government, 2007), and the history of wedge politics employed by Howard in the build up to elections. Not that the information about child abuse was new to this or previous governments; as Professor Mick Dodson pointed out in 2003, ATSIC had campaigned for a decade for funding to implement child abuse prevention strategies but its requests were met with funding cuts (Mayers 2007).

Importantly, the agency which released the statistics on child abuse unwittingly collaborated with newspaper reports on the posing of the problem of child abuse. In their classification by recording authorities, the phenomenon of child abuse is rendered into categories of individual actions: 'physical abuse', 'sexual abuse', 'neglect', 'emotional abuse'. The foregoing are perpetrations. They involve illegal acts committed against children for which any reasonable person could have nothing but abhorrence. This is reinforced in the rendition of child abuse provided in newspaper reports. The cross-referencing of counting agencies and the media **underpins** notions of crisis that simply **reproduces** much older notions of the diabolical and evil. So a recent *Australian* newspaper report on the Mullighan inquiry into child abuse in remote Aboriginal communities in South Australia gave over five columns to STD's, sexual assault, rape, non-indigenous men sexually offending against young Aboriginal boys, pornography, bribes for underage sex, etc (Walker, 2008). Removed from this problematic are phenomena that cannot be thought of as resulting from the responsible actions of individuals, such as poverty and social disintegration. Once again, Aboriginal people themselves are blamed for the conditions in which they live.

**Comment [C1]:** Or 'underpins'  
- Yes

**Comment [C2]:** Or 'reproduces'. In both these cases, the question about tense is about whether this sentence serves as diagnosis of an ongoing situation. The insertion of 'For example' in the subsequent sentence then becomes appropriate: otherwise not. - Agreed, changed

**Comment [C3]:** Is this – Wynhausen – the right reference?? Content doesn't tally with the list of things you mention here. Can you check reference please? -- Its not – I will need to go into the office and get the file and get back to you on this today

It took a military man, Lieutenant General John Sanderson, AC to argue that Australia's presence in the north of the continent is increasingly expeditionary in nature, and could perhaps be diagnosed as a 'failed state' (Sanderson, 2008). A recent book, *Beyond Humbug* (Dillon, 2007) makes the compelling case that conditions in remote Australia make it a failed state, under the four criteria developed by the Brookings Institute in 2006 for this purpose. These criteria consist of World Bank data that measure poverty, security issues relating to violence and homicide, the capacity of governments to provide basic needs for human development (particularly health and education), and the

legitimacy of government in the lives of people. If it is war, none of us should be under any illusion that it has been won. There may be a crisis in child abuse, but there is certainly a crisis in the governance of children in remote Australia.

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