

**Informal powers and the removal of Aboriginal children: consequences  
for health and social order**

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# **Informal powers and the removal of Aboriginal children: consequences for health and social order**

## **Abstract**

Current high levels of morbidity and mortality, and high rates of incarceration among Australian Aboriginal populations are related historically to the attempted separation of Aboriginal people from family and community. The paper discusses these events through an analysis of legal and extra-legal forms of power in the late 19<sup>th</sup> century in Victoria, and through an analysis of the workings of the informal powers of administrators and mission superintendents, within a broader framework of liberal political reason.

**Keywords:** Australian Aborigines, power, sociology, history, crime, health and illness

## **Article Outline**

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## **1. Introduction: Aboriginal health and justice**

Inquiry over the past two decades into Australian Aboriginal interactions with health, welfare and justice institutions has drawn attention to the ways in which power is exercised in these domains. The problem of Aboriginal health, especially in remote and rural communities, has been framed by reports of the most serious public health issues: high rates of cancer, asthma, diabetes, kidney disease, and nutrition, addiction and infection issues. Recent surveys report that half of the Australian Aboriginal male population and 40 percent of females die before reaching the age of fifty (Australia, 2003). This information is not new, according to the Australian Institute of Health and Welfare, but this time it has been accompanied by calls from both Aboriginal and non-Aboriginal leaders for major adjustments to welfare funding and new regimes of compliance. The perpetuation of high rates of mortality and morbidity appears to have propelled the current conservative Federal Government, which has constitutional powers in relation to Australian Aboriginal communities, to devise novel regulatory schemes such as ‘shared responsibility agreements’ that attempt to incite behavioural change in communities through monetary rewards. Some communities have agreed to comply with requirements such as regular school attendance and daily bathing of their children as a condition for receiving basic services and welfare payments. Many have argued in support of these arrangements on the grounds that Aboriginal health and housing conditions particularly in rural communities are so poor that radical and urgent actions are necessary. According to critics, however, targeting Aboriginal people to accept programs such as ‘mutual obligation’ is discriminatory and paternalistic because the same

conditions on provision of government service provision are not placed on other Australians. The Federal Minister with responsibility for Aboriginal communities is reported to have questioned the continued provision of any health, education or housing infrastructure in small rural Aboriginal communities, because it would consign Aboriginal people to living in a 'cultural museum' (*The Australian*, 9/12/05, p.1).

Similar inquiries have drawn attention to the historical connections between social disadvantage and the criminalizing of Australian indigenous peoples. The recommendations of the *Royal Commission into Aboriginal Deaths in Custody* (Australia, 1991) concern the effects of community breakdown and social exclusion on criminalizing Aboriginal people. High rates of Aboriginal deaths in prisons and police lock-ups stem from the general over-representation of Aboriginal people in contact with the criminal justice system. In Victoria, for example, Koorie people are six times as likely to be arrested as non-Koories and 13 times as likely to be imprisoned. Indigenous women are 15 times more likely to be imprisoned than non-Indigenous women (Victoria, 2004). In 2005, Aborigines make up 21 percent of the prison population nationally (Victorian Aboriginal Legal Service, 2005, p.1). The Victorian State Labor Government's *Justice Statement* reports that Koorie communities experience long-term disadvantage as a result of dispossession, the removal of children from their families, and discriminatory attitudes. The implications for Aboriginal families and children of the findings of the *Bringing Them Home Report* (Australia, 1997) on child removal has also informed the Victorian Government's new Children Youth and Families Bill 2005, which seeks to find new ways of administering 'out of home' care for Aboriginal children (Victoria, 2005a).

The proposed *Act* is designed to promote more ‘culturally appropriate service responses’ and to better maintain ‘Aboriginal children’s connection to their culture, family and community’. It makes provision (under Clause 18) for the Secretary of the relevant government department to authorize the principle officer of an Aboriginal agency to ‘perform functions and exercise powers in relation to a child protection order made in respect of an Aboriginal child’ (Victoria, 2005b).

The aim of this paper is to focus attention on the role of extra-legal or informal powers – those who ‘perform functions and exercise powers’ - in the management of Aboriginal people. It attempts to focus on the level of discretion, or what might better be described as arbitrary powers, exercised by those with responsibility for day-to-day management of Aboriginal communities. There may be significant differences in legislation and policy on Aboriginal governance between levels of government and party political policies. But the workings of power that are local and discrete, sometimes informal or arbitrary, or implicate lower level relations between Aboriginal populations and administrators, bureaucrats, professionals and police, are sometimes the most influential and have the most impact on Aboriginal communities. Aboriginal ill-health and criminality are linked to the historical processes through which people and communities have been subject to separation and dislocation. They are affected by the way in which power works at the mundane level of ‘struggles and conflicts and low politics’ (Garland, 1997:202), rather than through the conventional edifices and continuities that constitute ‘the past’ of political institutions. This approach seeks to ‘de-centre’ law and judicial administration and focus instead on the regulatory ‘action of the norm’ and normalization (Foucault,

1979; Garland, 1985). The literature deriving from Foucault's account of law and norm questions assumptions about the specific power of law, including 'informal' legal powers (van Krieken, 2001), as distinct from the kind of power exercised through interventions aimed at normalising family life and regulating the upbringing of children (Hunt, 1992; Hunt and Wickham, 1994; Rose and Valverde, 1998; McCallum, 2004).

A second aim is to examine the exercise of powers within a framework of a history of liberal political reason (Hindess, 2001) that is able to take particular account of Australian circumstances. At the time of European occupation, the territory that authorities regarded as largely vacant and unpopulated necessitated actions by central government that were quite novel compared with the European situation. For the new arrivals with no historical connection with the land, forms of governing were 'exploratory' both in relation to the discovery and conquest of new territories but also in the fabrication of a 'social' domain that would accord with at least the broad contours of 'liberal rationalities of governing' in the European tradition (Hogg and Carrington, 2001:49-52). The attention here is on how populations become known in order to be governed -- power becomes action 'under a description' (Rose, 1996). This approach questions the assumption that rationalities and techniques of governing have necessary or essential features in time and place, that they evolve in a progressive or linear historical pattern, or that they are merely an outcome of motivations (Hunt and Wickham, 1994, p. 6).

Perhaps the dispossession and later dispersal of the original occupants of Australia to church-run missions, overseen by an Aborigines Protection Board established under Act of Parliament, could hardly warrant description as a ‘liberal rationality of government’. But there are a number of ways in which authoritarian and coercive forms of government can be seen as a characteristic feature of the history of liberal political reason (Hindess, 2001). If Aboriginal governance may at various times resemble a ‘science of police’, it is important to recognize such historical contingencies, to acknowledge the effects of these practices on Indigenous governance, and to observe Aboriginal responses and struggles against these practices. This is because all of these elements carry a historical burden into the present and give shape to present-day techniques of governing (Garland, 1997; Hogg and Carrington, 2001:48; Foucault, 2004). The following two sections deal with historical circumstances underpinning the exercise of power in the fields of health and criminality respectively. Some of what can be said of the anatomy of power relations on Aboriginal reserves and the kind of political reason that underpinned the workings of the Protection Board administration, in relation to our concerns about informal powers and liberal forms of governing, is outlined in the final concluding section.

## **2. Health and welfare – the separation of the ‘half-caste’**

The management of Aboriginal populations is set 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 kind of counting, 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). Another kind of calculation estimated that about thirty cultural-language groups made up of hundreds of clans or land-owning groups comprised perhaps 60,000 people before the European arrival (Broome, 2005:xxi). 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 abundance of rich grasslands for sheep grazing, and because the Whig liberal outlook in Britain at the time sought unprecedented 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. Sandor observed that a major reason for placing on reservations a population of tuberculotic and otherwise unhealthy Aborigines was to minimize the health risk to Europeans, an ambition reflected in the Port Phillip Association's twin aims of protection as '... the civilization of the native tribes, and pastoral pursuits' (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 as well as a network of Aboriginal reserves and missions (Broome, 2005:xxvi).

A central Board for the Protection of Aborigines was established in 1860, based on an earlier Protectorate formed in 1838, 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', and those subsequently classified as 'half-caste' were increasing in number and cost (Victoria, 1886). The *Act* of 1886 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):

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)

A memorandum sent from the head office of the Protection Board in 1896 restated the original principle upon which the missions operated:

It is not intended that the Aborigines should derive their subsistence wholly from the liberality of the Government and, indeed, the sum voted for the supply of stores each year is inadequate to provide for all their wants. Agents were impressed with the necessity for careful discrimination in the distribution of stores and especially encourage able and healthy Blacks, as far as possible, to provide for their own and the wants of their families ... The principle laid down in the statement has never been revoked by the Board and is confirmed in the Regulation under Act ML1X, Section 7, Number 26. "Any Aboriginal (sic), residing on a prescribed Station shall do some reasonable amount of work, and anyone refusing to do so when required shall have his supplies stopped until he resumes work" (Correspondence Office of Board, 19/9/1896, Victoria, 1889-1946).

The Protection Board went on to insist that the health problems in Aboriginal communities stemmed from Aboriginal people themselves providing stores and rations to

the 'able and healthy': '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 memorandum was designed to remind government and the Parliament that the Protection Board had never received funds to make 'full provision' to the Aboriginal population in Victoria, which according to a count in 1890 was '500 Blacks and about 230 half castes' (Victoria, 1896). The total amount per head per annum was 10 pounds, which according to the Board was comparable with 'other Government Institutions such as Industrial Schools', and certainly compared favourably with Queensland and Western Australia which only provided blankets, and with New South Wales which provided 2 pounds 2 shillings. Managers of the missions reported regularly to head office on the condition of the people they were responsible for, usually highlighting the problems of getting Aboriginal people to work and their deteriorating health conditions: '(B)lacks are never fond of working and when they have no head over them and one of themselves assumes the leadership they will not pull together for they will not recognize one of themselves as a proper leader' (Victoria, 1889-1946). John Bulmer, who became manager of the Lake Tyers mission, wrote to his supervisor Hagenauer agreeing that

if they require to (sic) much medical attendance the place is not fit for them but with regard to their many complaints I feel sure had they worked more and eaten less they would not have required as much liver stimulant as they have consumed ... I may state that I have not allowed them to have a visit from a medical man

since I have been here, though some have gone on their own to consult one, I feel sure that many of their ailments would give way to a more energetic mode of life (Correspondence Bulmer to Hagenauer, 6/1/1890, Victoria, 1889-1946).

But when sickness did strike, Stahle at the Lake Condah mission was prepared, by ordering large amounts of sugar ‘... because the fruit season is coming in, when we always make a large amount of jam so as to supply our Aborigines with some in times of sickness’ (Correspondence, Stahle to Hagenauer, December 13, 1889).

Enforcing the child removal policy in the 1890s was a matter for the manager of each mission station making representations to the Office of the Board for Protection of Aborigines in the City Bank Chambers in Melbourne and its head, the Rev. E Hagenauer. Some managers were more pressing than others in ensuring that children who were sickly were able to remain on the missions with their families. Stahle asked that Sarah M remain to help look after her mother, a widow with six children, on the grounds that Sarah was ‘consumptive’ and had lost her father and three sisters to the disease (Correspondence Stahle to Hagenauer October 13, 1890). In the case of Maggie T, although classified as ‘mixed blood ... is a full blood to all intents and purposes’, she should be allowed to remain on the mission station because her whole family would move if the girls was forced into service against their will. Euphania M was subject to catatonic fits and totally unfit for going into service, while Stahle retained Lizzie B and Lizzie G as ‘... Servants in our own house’. The latter ‘has been given into my special charge by her dying father and she is of such a simple nature that it would not do to let her go out into the world’ (ibid). In another case, a boy of 15 was returned to the mission

from the Bayswater Boys Farm near Melbourne, on the discovery that he had failed to learn to read and write and was probably 'simple-minded'. There were also numerous instances where successful agricultural pursuits on the missions were compromised by the policies of child removal leading to a depletion of labour:

Owing to the half caste regulations I regret to say that one of my most valuable station hands has left, for he will rather endeavour to push through life in the best way he can than remain here holding a certificate from the Board for that purpose. Another family has decided to go to Point McLeay, South Australia to escape the Board taking the control of their children out of their own hands after they reach a certain age (ibid).

By 1919 the racialised disparities in the treatment of Aboriginal and European families were evidenced in the passing of the *Maintenance of Children Act* (Victoria, 1919), which regularised the Neglected Children's Department's longstanding but informal arrangements for supporting poor white children financially in their homes. Under this *Act*, homes receiving support were regularly inspected by 'Ladies Committees' and white children could be made state wards if the support was not properly used. But an immediate effect of the *Act* was a reduction in cases of neglect among the European population appearing in the Children's Courts:

The shift in principle to which the *Act* gave formal expression went virtually unnoticed. Having been conceived as a means for preventing crime, the State children's system became in law what it had largely been in practice, a juvenile Poor Law (Jaggs, 1986, pp. 112-114).

Whereas, for child-savers and philanthropists at this time, the feeble body of the white child in deprivation or poor health were signs that justified the care and protection of a squadron of ladies and a 'good country home' (Victorian Children's Aid Society, 1893-4), mental enfeeblement or poor health in the half-caste Aboriginal population was used as a sign for non-intervention and placement at the mission. The practice of transferring younger yet sickly half-caste people to the mission meant that the mission became, in effect, an institution in which to die. The policies of the period thus revealed an ambiguous aspect of the handling of the half-caste: Aboriginality was denied to the fit and ready-for-work half-caste but was reaffirmed in the case of the sick and feeble-minded who were sent back to the mission. The positive building up of the vitality of the sickly white child contrasted starkly with the negative eugenic strategy of returning the sickly half-caste to the mission and restoring his or her Aboriginal identity (McCallum, 1983). The 'flexibility' of this identification of Aboriginality, or subject-formation, was an essential tool in the administrative hardware. Moreover, the mission superintendents understood that the matter of separation would be administered by inducement rather than coercion:

It is, however, to be remembered, that the Aborigines are a free people, and not prisoners, who cannot summarily be deported against their will. Some are so attached to their homes that it is almost impossible to move them, and the only means the Board have of enforcing their will is to stop the supply of rations, which has not always the desired effect. In a case where a man has made himself objectionable on a station by quarrelling, drunkenness or immorality, he can be removed by an Order in Council; but this means of removal would not be

justifiable when people have done no wrong, and whose only fault is attachment to their homes (Victoria 1902-3).

### **3. Criminalising the half-caste**

The Aborigines Board had for some years been transferring half-caste orphan children to the Department of Neglected Children and Reformatory Schools from whence they were sent into service. But in 1900 the regulations of the *Aborigines Act* were modified to allow all half-caste children to be transferred to the care of the Department of Neglected Children and Reformatory Schools, to be sent foster homes or placed 'in service'. All white children under the care of the Department who were reported as exhibiting 'depraved habits' and 'serious misconduct' had been subject to transfer to a reformatory for an indeterminate period, usually until eighteen years of age. This form of *de facto* indeterminate sentencing to a reformatory was at the discretion of the Minister, and bypassed any court appearance. From 1900 this provision would also apply to 'all suitable Aboriginal children whether orphans or otherwise ... in order that they may have the advantages of being dealt with in the same way as other wards of the State' (Victoria, 1901). Children sent out to foster care or into 'service' could be transferred to a reformatory on the basis of reports about their behaviour by their guardians, in a system administered by the Department of Neglected Children. Thus, from a formal administrative point of view, these children were now to be managed within the purview and under the terms of mainstream penal policy and apparatus.

The records of the Protection Board indicate that the first signs of ‘trouble’ with the policy of removing children from the missions were the half-castes ‘hanging around the missions’ when they were supposed to be joining the workforce, and drawing on the rations of their full-blood relatives on the mission stations.

I am sorry to say that there is a general tendency among the young people to be lazy, disobedient, and careless, which, if not stopped in due time, will become very troublesome to the Board and dangerous to the white population as well as for themselves (Victoria, 1889-90, 35<sup>th</sup> Report).

The Board had reported an ongoing problem of the young half-caste men ‘ready to take advantage’ of anyone receiving rations (Victoria, 1890). Under the *Act*, rations for half-castes were stopped immediately they reached the lawful age, but the Aborigines Board knew that they were drawing on the rations of their families living on the mission and that this was a disincentive to moving them on.

We found that those who could not make their rations last were those [crossed out and replaced by the word] *families* who had friends and visitors. Half caste people who have no business on the Station. Only three pounds of meat has been given to these people per week as it was thought best they should to some extent rely on their own rations (Victoria, no date [early 1890s]).

The Board’s records show that trouble-making is consistently depicted as activities which put at risk the Government’s aim of reducing the size of the missions, and that access to rations explained the failure to move half-casts off the mission. It was the policies of removal, however, that underpinning a criminalizing of the ‘young half-caste’. The Board wanted ‘our young half-caste people’ to persevere in making a living ‘...



otherwise they would just return to the mission'. There were also instances of Aboriginal men wanting to marry 'girls of mixed blood', who were forced to run away from the missions because such unions were not allowed under the *Act*. In such cases the men ran away from the mission and were 'forced to immorality and take to their old way of inducing girls to go with them and thus they live together without being married at all' (Victoria, 1890).

In correspondence between the Board and the managers of the missions and their supervisors, the issues of blood and colour presented a continuing concern for administrators. They reported on constant attempts by Aborigines to challenge the regulation that deemed 'full-bloods' the only legitimate recipients of rations. It was also made clear that children from other colonies were being supported by the Board by moving onto the missions and drawing on rations. The 'trouble-making' involved in willful sharing of resources demonstrates a racialised disparity with the European population. Compared with European policies of building support for the norms of family life, Aboriginal getting-together with family and sharing resources was instead criminalized by those that administered the *Act*. Resistance to the official definition of 'Aboriginal' was itself an offence (Victoria, 1890 s. 13). So the racialised disparity of criminalizing Aboriginal people who were found to be breaking the provisions of the *Act*, by attempting to draw rations and support from their families on the mission, was accompanied by another provision that allowed those same children who had been separated from their parents and sent into foster care or into service to be institutionalized for an indefinite period, without any appearance before a court, in a system administered

by the Department of Neglected and Reformatory Schools. Disparities also appeared in the judgment about who should and who should not be entitled to reside on the mission. Again, these administrative decisions were underpinned by changes to legislation in the 1890 *Act* making it an offence to ‘harbor any aborigine ... unless such aborigine shall from illness or from the result of accident or other cause be in urgent need of succour’ (Victoria, 1890 s.13).

In the period under review, scientific views of the superiority and inferiority of races had become prominent in some quarters as a rationale for the ‘clearing away’ of those referred to as the ‘full bloods’. What came to be taken as a given in science shifted, in the 19<sup>th</sup> century, to accommodate a range of different perspectives on the origins of Australian Aborigines and their likely destiny. There is evidence that environmentalism influenced early 19<sup>th</sup> century ethnographers’ views on the condition of Aboriginal people, indicating that their supposed lack of sophistication and civilization was due to the inadequacies of their environment, while towards the end of the century the view that Aborigines were different in their ‘natural’ capacities and were remnants of an about-to-be extinct race became more prominent (Hindess, 2001:103). But throughout the 19<sup>th</sup> century the focus of scientific attention was on the origins and significance of racial differences in Indigenous people insofar as these might affect the future of the white race in the new settlement in Australia. In the lead-up to World War 1, many scientists were convinced that Aborigines were the remnants of an earlier Caucasian invasion who had either eliminated or absorbed the first inhabitants and hence provided the groundwork on which to speculate about the survival of the white race in the antipodes. Anderson (2002)

observes that the doctors who were drawn to Aboriginal studies were more interested in discerning racial types and tracing human genealogies than with recording the ‘pathophysiological mechanism’ that led to Aboriginal demise on contact with the white invader:

The epidemiology of Aboriginal ‘extinction’ was hardly known. Instead, scientists and amateur naturalists had unintentionally produced a displaced, allegorical account of white racial history in Australia ... the anxieties of European Australians about their own racial purity and racial destiny were thus projected onto earlier Australians ... Just as European safety had demanded isolation from Asians, so too did Aboriginal survival appear to depend on the erection of barriers between Indigenous people and the most recent invaders. It was the old logic of quarantine. Some scientists called for what was, in effect a ‘dark-Caucasian’ policy within a white Australia policy; others simply accepted the tragic consequences of promiscuous and unregulated contact, with a fatalism they would never countenance were European existence at stake (Anderson, 2002:193).

Of course, many did not countenance the continued deterioration of the Aboriginal population. Scientific enquiry may have accepted that culture derived from inherited racial capacities rather than historical circumstances, and that race struggle shaped history. But many were alert to the Lamarckian dynamic evidenced in Aboriginal peoples’ rapid adaptation to local needs (Anderson, 2002:189). Others were simply appalled at the effects of white settlement on Aboriginal health. A non-medical visitor to the Lake Tyers settlement in 1918 was able to observe the emaciated condition of the

people and how the sea-air and winter conditions was obviously having serious effects on children suffering from tuberculosis (Public Records Office, Correspondence 16 May 1918). The nationalist preoccupation with identity noted above by Anderson is reflected in feminist accounts of the international scandal at Australia's policies of Aboriginal child removal in the 1920s and 30s, when mission educator and activist Mary Bennett, in her 1933 paper to the Dominion Women's British Commonwealth League in London, denounced the removal of Aboriginal women and girls as 'akin to slavery' and as contravening the League of Nations Covenant and Slavery Convention (Paisley, 1997).

#### **4. Summary and conclusion**

Referring to previous correspondence regarding warm baths for natives, I have now to point out that the Board is anxious in the interests of the people that the children particularly, should have facilities for warm baths, and have to request that you will inform me as soon as possible whether there are any families at your station who do not have a galvanised iron tub at their disposal. If so, their names should be given.

In this connection I am directed to ask that the Matron be good enough to see that the children are bathed at least once in each week and that such be carried out regularly for the benefit as well as the cleanliness of the people as a whole.

*Letter from Secretary, Board for the Protection of Aborigines to be sent to managers, Coranderrrk, Lake Condah, Lake Tyers, (Public Records Office, Correspondence 11 July 1911).*

We will recall that the superintendents of the missions understood their subjects to be 'free' in the sense that administrative techniques would deploy 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. Of course, 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, they and their families were deemed to have committed criminal offences. 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 to wash

the children weekly in the iron bath provided from head office. A remote community will set about ruling itself by voluntarily committing to a hygiene regime, or any other regime, that is aligned with the will of central rulers.

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. 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. 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.

Finally, the use of informal powers to shift Aboriginal children from foster care and into reformatories alerts us to the critical role of courts in overseeing decision-making by those who ‘perform functions and exercise powers’ over Aboriginal people. Assurances contained in the Children Youth and Families Bill 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 troublesome, as popularly elected governments seek to impede judicial oversight and legal representation in managing processes that are intended to protect children's rights.

## **5. Acknowledgements**

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This article contains aspects of the history of many Indigenous men and women who were affected by government policies in Australia. The paper could not have been written without recognising their involvement and existence. In some Aboriginal communities, seeing the names of dead people may cause sadness and distress, particularly to relatives of those people. Aboriginal people are warned that names of dead people may appear in this article. Thanks also to Jennifer Laurence for research assistance for this project, which is funded through the Victoria University Discovery (New) Grants Scheme.

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