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A large, vertical, stylized Aboriginal artwork is positioned on the left side of the cover. It features a complex pattern of black, white, and red, with a prominent curved shape that resembles a traditional Aboriginal headdress or a specific cultural symbol. The artwork is set against a red background that transitions into a lighter, peach-colored background below.

RESEARCH
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Genocide in Australia

Colin Tatz

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No one in his right senses believes that the Commonwealth of Australia will be called before the bar of public opinion, if there is such a thing, and asked to answer for any of the things which are enumerated in this convention. - Archie Cameron, Liberal Member for Barker, in the parliamentary debate on Australia's ratification of the Convention on the Prevention and Punishment of the Crime of Genocide, June 1949. [0]

... the horrible crime of genocide is unthinkable in Australia ... That we detest all forms of genocide ... arises from the fact that we are a moral people. - Leslie Haylen, Labor Member for Parkes, in the same parliamentary session.

Images of Genocide

Hephzibah Menuhin was a better musician than a sociologist. But a line in one of her books remains with me: that the test of a nation's civility and civilisation is the manner in which it treats its most underprivileged minority. An emotional rather than an empirical measure, perhaps, but it isn't difficult to take her meaning. Who are the most underprivileged? And how does Australia rank?

In South Africa, I studied "native policy". On arrival here in 1961, I studied "Aboriginal policy". People who know of my dual interest still ask me, "Is it true to say that apartheid was a malevolent instrument of racial oppression,

whereas racism in Australia was a form of ignorant innocence, or innocent ignorance, an inability to understand or respect indigenous culture and values, albeit with some nasty consequences?" Comparisons aside, how does one categorise Australia's race relations?

Much of that inter-racial history I call "genocide". In the current climate of heat in Aboriginal affairs, which I will describe, very few people use the word. Almost all historians of the Aboriginal experience - black and white - avoid it. They write about pacifying, killing, cleansing, excluding, exterminating, starving, poisoning, shooting, beheading, sterilising, exiling, removing - but avoid genocide. Are they ignorant of genocide theory and practice? Or simply reluctant to taint "the land of the fair go", the "lucky country", with so heinous and disgracing a label?

Australians understand only the stereotypical or traditional scenes of historical or present-day slaughter. For them, genocide connotes either the bulldozed corpses at Belsen or the serried rows of Cambodian skulls, the panga-wielding Hutu in pursuit of Tutsi victims or the ethnic cleansing in the former Yugoslavia. As Australians see it, patently we cannot be connected to, or with, the stereotypes of Swastika-wearing SS psychopaths, or crazed black tribal Africans. Apart from Australia's physical killing era, there are doubtless differences between what these perpetrators did and what we did in assimilating people and removing their children. But, as we will see, we *are* connected - by virtue of what Raimond Gaita calls "the inexpugnable moral dimension" inherent in genocide, whatever its forms or actions [1].

There are two ways of approaching the issue. One is to use the yardstick of the only extant international legal definition of genocide, namely Article II (a) to (e) of the United Nations

Convention on the Prevention and Punishment of the Crime of Genocide of 1948:

In the present Convention, genocide means *any* of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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1. Killing members of the group;
2. Causing serious bodily or mental harm to members of the group;
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
4. Imposing measures intended to prevent births within the group;
5. Forcibly transferring children of the group to another group.

Even so, the physical killing in (a) is seen by most Australians as wholesale killing within a short or definable time-frame and in a localised geography, such as death camps. Clearly there has been no Australian Auschwitz. Clearly, if there was no Auschwitz here, then no genocide occurred here. Since 1997, as we will see, (e) has become the sharp focus. There are flaws - perhaps grievous ones - in the Convention. Nowhere is there mention of the role of the state as a perpetrator, yet it is the signatory state that is required to report (itself?) to the United Nations. To obtain Soviet support for the Convention, political groups were omitted, thus ensuring no possible reference to the Soviet genocide of the land-owning peasants, the *kulaks*, or to Stalin's elimination of those whom he defined as "enemies of the people". Physical killing usually occurs in a compact time period - though not always so, as we will see with the Tasmanian and Queensland Aboriginal experiences. Sterilisation and removal of children imply a much more enduring time frame, over generations perhaps. We know what constitutes serious bodily harm, but how do we calculate mental harm? The Convention equalised in seriousness, and in time, the act of physical killing with the act of forcibly removing children, an idea not easy to grasp. There could well have been a scale, akin to the gradations of unlawful killing in the American criminal justice system, of genocide 1, genocide 2, genocide 3. Certainly there are gradations of genocide - differing motives, different orders and levels of intent, scale, method, outcome. Certainly the quantum leap from images of Auschwitz to sad and ragged children clustered in old sepia photographs is beyond most Australians. Critics can rail at the presence of II (e), but it *is* there, in a law treaty ratified by Australia in 1949, albeit with some remarkable protests [2]. Overlooked by almost everyone, including genocide

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scholars, are clauses (b), (c) and (d). Overlooked by everyone is Article III of the Convention: not only is genocide a crime but so too is "conspiracy to commit genocide", the "attempt to commit genocide" and "complicity in genocide".

In the vocabulary of genocide there are three parties: the perpetrators, the victims, and the bystanders - those without whom the perpetrators cannot effect their purposes. Within the latter category, there are those who are simply indifferent, those who are hostilely indifferent, those who are, in some degree, complicit, and those who are, for want of a clearer or better term, companions to events. One can be a companion to something even in the act of opposing it. Thus, in South Africa, I was complicit in much of apartheid while teaching and writing about the evil of the system. It seems never to occur to those who deny involvement, or legal or moral guilt, or who distance

themselves from past events, that they were, and are, indeed companions, and therefore in some degree complicit.

The other measuring-rod is to be found in the much broader conceptualisation suggested by the Berlin Director of the Centre for the Treatment of Torture Victims, Christian Pross: that nineteenth-century race theory led to genocide by *providing the ideological tools for a biological solution to a social (or political) problem* [3]. His less forensic concept facilitates a better appreciation of justifications, ideologies, race theories, motives and moral defences. However much I prefer this approach, we should not stray from the international law wording and seek either proof or disproof in the definitions of historians and social scientists. Professor Robert Manne says he wrestles with Hannah Arendt's articulation following the trial of Adolf Eichmann in Jerusalem - that genocide is the desire (by Nazis) that certain distinct people (Jews) "disappear from the earth" [4]. Certainly Arendt was trying to find words for that which was (relatively) new in our moral (and physical) experience - a monstrous attack upon human status and human diversity. Perhaps if she had looked at that much overlooked half-brother to the Holocaust, the killing of 1.5 million Armenians by the Turks in 1915-16, she might have been less surprised and disconcerted

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by Nazi behaviour. Manne believes, with Raimond Gaita, that genocide can be committed by non-murderous means, such as the biological assimilation of Aborigines. He is less certain about socio-cultural assimilation.

There are many more, and better, definitions of genocide than Arendt's [5]. Social science definitions assist us in analysis of causes and in conceptualising events. But if we venture into this realm of improved definitions, we will have no universally accepted yardstick - certainly no justiciable basis for trials of genocidal practice or for civil suits of restitution by victims. Some theorists will seek to narrow the definition and others will expand the genocidal universe to the point of meaninglessness. Chalk and Jonassohn take the narrow view that "genocide is a form of one-sided mass killing" by the state or some other authority. Charny's much broader view sees genocide, in the generic sense, as the "mass killing of substantial numbers of human beings, when not in the course of military action ...under conditions of the essential defencelessness and helplessness of the victims. [6]" He emphasises the victimness of essentially "defenceless and helpless" people, but he insists on mass killing of substantial numbers - which applies well to Australia's nineteenth century private settlers' killing of Aborigines but not to the "sophisticated" state removal of children. However, many cannot share his vision that the *accident* at the Chernobyl nuclear reactor was "genocide resulting from ecological destruction and abuse". The broadest view comes from the reputable scholar Henry Huttenbach: he defines genocide as "any act that puts the very existence of a group in jeopardy". Courts would find it impossible to pinpoint "any act", the meaning of "existence" and what constitutes "jeopardy". Impunity in genocide is now an enormous issue, and the wider the concept the less likely any court will be able to arrive at conviction and punishment. It is quite significant that the 1998 Rome conference establishing the new International Criminal Court had no hesitation in incorporating into Article 6 of the Court's statute the verbatim definition given by the United Nations in 1948.

Misconstruing the nature of genocide, and failure to pay due attention to the partly precise, partly elusive language of Article II, can lead to some startling cases.

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There is an ongoing application before the ACT Supreme Court by four Aborigines for the arrest of

the Prime Minister and Deputy Prime Minister on the grounds that by securing the Wik ten-point plan legislation in 1998 they committed specified and unspecified acts of genocide, and that all members of federal parliament have committed genocide by, *inter alia*, failing to enact an Australian offence of genocide [7]. The case could well be misguided and doomed, depending on the evidence adduced. We need a firm basis for both discussion and action and the only solid (and universal) definition, however flawed, is the one defined in international law. Even so, we have to look to the philosophy inherent in the legal wording of Article II, namely, that genocide is *the systematic attempt to destroy, by various means, a defined group's essential foundations*. In this tighter legal sense, Australia is guilty of at least three, possibly four, acts of genocide: first, the essentially private genocide, the physical killing committed by settlers and rogue police officers in the nineteenth century, while the state, in the form of the colonial authorities, stood silently by (for the most part); second, the twentieth-century official state policy and practice of forcibly transferring children from one group to another with the express intention that *they cease being Aboriginal*; third, the twentieth century attempts to achieve the biological disappearance of those deemed "half-caste" Aborigines; fourth, a *prima facie* case that Australia's actions to protect Aborigines in fact caused them serious bodily *or* mental harm. (Future scholars may care to analyse the extent of Australia's actions in creating the conditions of life that were calculated to destroy a specific group, and in sterilising Aboriginal women without consent.)

Aborigines - and First Contact

Aborigines probably landed on Cape York, in northern Australia, between - and this is hotly contested at present - 24,000 and 60,000 years ago, forming about 500 tribes with different languages and customs, and numbering between 250,000 and 750,000 at the time of the British arrival, or invasion, in 1788 [8].

Hunters and food-gatherers in an inhospitable land of low rainfall, they had no animals that could be domesticated. Semi-nomadic, they roamed within set areas, in domains they called (and still call) their "country". Their way of life precluded a rich material culture, yet it wasn't "primitive" in the disparaging sense in which so many observers noted, and still note, their "lack of alphabet" and alleged "lack of arts, science and invention". Their stone-tool technology predates European and Asian usage by thousands of years. Aboriginal social organisation was highly complicated, their religion deep and complex, their art and myths rich and varied. Of note was their strong and foolproof system of incest prohibition, their system of kinship, reciprocity, and child-rearing. United by religious and totemic ties, Aborigines held their land in trust, collectively and in perpetuity. Within the various social units, kinship implied certain behaviour and reciprocal responsibilities. Patterns of social interaction were tightly prescribed, co-operation within each group was high, and group sanctions, by way of punishment for breach of rules, were harsh.

There was no formal political organisation, but there was a strong sense of adjudication of disputes. They had a reign of social law. It was their lack of outwardly visible political organisation - the absence of what western society sees as the prerequisites of governance, namely, a system resembling a state, or organs akin to a legislature, a judiciary, an executive - that placed Aborigines at a huge disadvantage in confrontation with white settlement. That handicap was nowhere greater than in the centuries-long doctrine that, in 1788, Australia was *terra nullius*, a land empty but for fauna and flora. That legal (and political) fallacy was finally put to rest in 1992 in the monumental decision of the High Court in *Mabo v the State of Queensland* (Number 2). John Locke's

seventeenth-century doctrine that property in land originally came from tilling the soil - "mixing labour and land" - took a long time to die. As recently as 1993, members of the Samuel Griffiths Society in Melbourne argued that the Murray Island people (Eddie Mabo's country) should have land title, but not the Aborigines, because the former were Melanesians who are "millennia ahead of the Palaeolithics (Stone Age people) in terms of social organisation" and because, unlike the "palaeos", they farmed [9].

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Botany Bay was the site of Britain's new convict colony. On 28 January 1788, the First Fleet took possession of Australia in the name of King George III. From the outset, relations between black and white were well intentioned at the official level but rent with strife in practice. Whether "empty" or inhabited, whether there was an extant stateless or state-ful society, official instructions to Governor Arthur Phillip were "to endeavour by every means in his power to open an intercourse with the natives and to conciliate their goodwill, requiring all persons under his Government to live in amity and kindness with them". The Letters Patent establishing the colony of South Australia in 1836 similarly contained a proviso that "nothing should affect the rights of the natives in regard to their enjoyment or occupation of the land".

The Letters Patent and instructions to governors in the eighteenth and nineteenth centuries were really benign utterances of far-away governments. The hard clashes of interest on the spot were of a different order. Land was seized by the white settlers as their only means of support. Aborigines retaliated by taking stock and provisions - for which they developed a taste. Reprisals followed, with the advantage always heavily on the white side. As the settlers spread out from the centres of administration, government control lessened, newly introduced diseases spread among the Aborigines, the birth rate dropped, the Aboriginal population declined markedly, and law and order became impossible to maintain.

Decimation: Physical and Social

The Aboriginal experience includes both genocide in the Convention's sense of the crime and a litany of deprivation. Deprivation is not necessarily genocide as such, and we need to look at both phenomena.

Some 120 years ago, the English novelist Anthony Trollope visited Australia. "There has been some rough work", he wrote:

We have taken away their land, have destroyed their food, made them subject to our laws, which are antagonistic to their habits and traditions, have

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endeavoured to make them subject to our tastes, which they hate, have massacred them when they defended themselves and their possessions after their own fashion, and have taught them by hard warfare to acknowledge us to be their master [10].

By 1911, 123 years after settlement, the "rough work" had reduced the Aboriginal population to

31,000. Much of this discussion paper examines and explains that catastrophic reduction. The 1996 census shows a tenfold increase, to 352,970 people, 1.97 per cent of the total population, identifying as Aboriginal or Islander, of whom 314,120 are Aborigines, 28,744 are Torres Strait Islanders and possibly 10,106 are "both", that is, Aboriginal and/or Torres Strait or South Sea Islanders. The Torres Strait people have a different history and a different culture from Aborigines. Administered by Queensland, they were not allowed on the mainland until 1947. Generally they have been treated as Aborigines, but as of 1990 they were given an official voice as a distinct people. Between 10,000 and 12,000 in number, the South Sea Islanders have long struggled for a separate identity, one that only began to be accorded them officially in 1994. They are descendants of men who were "blackbirded", that is, tricked or kidnapped to be brought into Australia to work as "indentured labourers" in the sugar-cane fields between 1863 and 1904. The imperial *Pacific Islanders Protection Act 1872* ("The Kidnapping Act") made such behaviour a crime, but didn't stop the practice: the last kidnapping was reported in 1894. About 68 per cent of black Australians now live in major and smaller urban centres; 32 per cent remain in rural and remote areas.

The upsurge in numbers is due to several factors: we no longer kill Aborigines with gun and poison; we have eliminated smallpox and similar plagues that decimated the tribes; we have radically reduced the forced removal of children and the practice of forced assimilation; health and medical services have alleviated some, but by no means all, the factors causing high infant mortality and short life expectation; we have very much better census questions (Aborigines were only counted in the census as of 1971, and only counted "properly" from 1986); and Aborigines and Islanders, in a greater climate of

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human rights, have been a little more willing to self-identity than hitherto [11]. My current research in New South Wales (on Aboriginal youth suicide) has shown that many people did not acknowledge their strongly felt Aboriginality in the 1996 census, citing fears of what would be done with the figures, or sheer antipathy to all "white systems", as reasons. My view is that the population is probably closer to 450,000, perhaps 2.5 per cent of the total population [12].

Yet Aborigines end the twentieth century at the very top, or bottom, of every social indicator available: top of the medical statistics for diseases they didn't exhibit even thirty years ago - coronary disease, cancer, diabetes [13], respiratory infections; bottom of the life expectancy table, at 50-55 years or less for males and around 55 years for females; with much greater rates of unemployment, much lower home ownership and considerably lower annual per capita income [14]; an arrest and imprisonment rate grossly out of proportion to their numbers; the highest rate of institutionalisation; with crimes now prevalent which were rare as recently as the 1960s, namely, homicide, rape, child molestation, burglary, physical assaults, drug-peddling and drug-taking; and, sadly, youth suicide, no longer a criminal act, at a rate among the highest on this planet.

There is now a high degree of personal violence within groups; widespread child neglect, including an insufficient supply of food and general care; a marked increase in deaths from non-natural causes; much destruction of property, both white-supplied and self-acquired; increasing attacks on white staff and visiting professionals who work with groups; and a vast quantity of

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alcohol and drug abuse, commonly offered as the sole "explanation" of the above [15].

A major underpinning, almost an article of faith, of Australian race relations history has been a

Social Darwinist notion that the unfittest don't survive: thus Aborigines, or especially those known by the term "full-blood", were destined to disappear in the face of white civilisation. Succumbing to disease was all too evident. Perishing at the premeditated hands of settlers was less so, but part of a mindset that beheld extinction as inevitable. We need to open our eyes to just how much premeditation has been at work in the 210 years since the British arrived. We also need to set the present predicament of Aborigines and Islanders into context, and to recognise just how much of the past underlies, even suffuses, the present-day life and responses of Aborigines to today's circumstances.

Disease as Genocide

The "disease-as-genocide" argument needs brief assessment, first, because it must be challenged and second, because of the strong tendency among many historians to inculpate smallpox, and exculpate settlers, as the major factor in mass Aboriginal deaths. To date, no one has refuted the hypothesis of the late Professor Noel Butlin, an eminent economic historian, of introduced disease as an intentional weapon of extermination. He concluded - albeit in a book he described as "explicitly speculative and hypothetical" - that the single most effective killer of Aborigines was smallpox [16]. More to the point, while the origins of "the main killer" are obscure, "it is possible and, in 1789, likely that infection of the Aborigines was a deliberate exterminating act". Butlin was much influenced by his reading about the fate of Native Americans; he, in turn, has influenced others on this issue.

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Stannard, in an account of horrendous, wilful death in the Americas, has a section entitled "Pestilence and Genocide" [17]. The key is *and*, not pestilence *as* genocide. I believe there is a time-gap problem between western medical science's ignorance about contagion in those times of colonisation and the assertion that barely literate colonists understood (or even intuited) germ theory well enough to knowingly use pestilence as a weapon of mass destruction. We began to understand that these diseases were spread by communicable bacteria and viruses only a hundred years ago [18]. Why, then, the specific assertion about one disease as part of the genocidal armoury?

The first major smallpox epidemic among Aborigines was in April 1789, fifteen months after first settlement. The second was in 1829-31, its origin never determined, according to Frank Fenner in his monumental work on the disease [19]. The third major epidemic occurred between 1865 and 1869, generated almost certainly by the visits of Malayan trepang fishermen. Goldsmid has posited three possibilities about 1789: first, that it was deliberate decimation, as in America where, as an American scholar asserts, smallpox-infected blankets were introduced to "extirpate this execrable race"; second, Aborigines stole bottles of "variolous matter" brought by the surgeons of the First Fleet and subsequently became infected; third, accidental Aboriginal infection from a local "variolate" colonist [20]. There is no evidence whatsoever of premeditation, a view supported by Watkin Tench, a captain in the First Fleet, who suggested at the time that this was "a supposition so wild as to be unworthy of consideration".

Stephen Kunitz has looked carefully at the impact of European settlement on the health of Aborigines [21]. He cites the massacres by that hideous creature of colonial administration, the Native (or Black) Police [22], as the major cause of

Aboriginal death, followed by the "hunting propensities" of the settlers and the poisoning of flour issued as rations. It wasn't, he contends, exotic disease that produced a 25 per cent decline in the Queensland population, but rather "the savagery of the settlers and their calculated slaughter of the indigenous population". "Not all natives dropped dead whenever they got downwind of a European", he concludes. Pueblo Indians, perhaps, but not Aborigines. I remain unconvinced of both Butlin's thesis and the assertion that *any* of the colonial decimation in North America and Africa was achieved by *deliberately* introduced disease.

"(a) Killing members of the group"

Professor Kenneth Minogue contends that the present-day concern about apology is a "most dramatic expression" of "an emerging moral sentiment" that the treatment of Aborigines constitutes a case of genocide [23]. He views this kind of moralisation - especially by Professors Raimond Gaita and Robert Manne - as both extreme and offensive, as "exploiting ... a prefabricated emotional charge" [24]. He sees the Aboriginal experience as reprehensible, abhorrent perhaps. He concedes, albeit grudgingly, that "Aborigines were raped, killed, dispossessed and so on", but sees no genocidal impulses or qualities in any of that. He doesn't see any racism in any of that. He questions the use of the word *racism* as "the most lethal charge in the current rhetorical armoury". Rightly, he contends that racism has many forms and gradations. But, wrongly, he is guilty of either cynicism or superficiality when he defines the range of racism as being from "a sentiment rather than a belief, involving rejection of, or contempt for, or simply unease in the presence of, people recognised as different", through to racism being (merely?) "a theory, such as Hitler's, about the respective biological characteristics of distinct races". If only Hitler had been merely an intellectual theorist. And if only Aborigines had created "simply unease" among the whites who came into contact with them.

Racism has to be defined in this specific context: that *beliefs* (rather than "sentiments"), however ill-founded, about "biologically determined" physical and social characteristics, real or imagined, *justify* the taking of action about, or against, a defined group because they are that group. We need to spend less

time on white Australian "sentiments", "unease" or "contempt", and much more on the beliefs that justified legal, extra-legal, administrative and institutional *action* about Aborigines because they were Aborigines. We need to see how much of that action was positive, how much negative. In short, just how much or how little is Australian racism but innocent ignorance, accidental, mere "rejection", discomfort with difference, "contempt", "a prefabricated emotional charge", something "unthinkable" on the part of "a moral people"?

It is true that diseases introduced by convicts and settlers - smallpox, typhoid, tuberculosis, diphtheria, whooping cough, influenza, pneumonia, measles and venereal disease - seriously depleted Aboriginal numbers. But it is to the genocidal impulses and actions of the settlers that we must turn for evidence of Australia's treatment of the Aboriginal peoples. Some contend that any death and destruction which might have occurred was simply another instance of an unfortunate by-product of colonialism, of indigenes dying (regrettably) for "economic reasons" as a result of "progress" towards a cattle, timber, gold or silver industry. In other words, so runs this specious argument, if Australia is guilty of anything, it is of the lesser offence (but not crime) of "ethnocide"

or "cultural genocide", that is, the deprivations of opportunity to use a language, practise a religion, create art in customary ways, maintain basic social institutions, preserve memories and traditions, and co-operate in achieving social goals [25].

We know something about Article II (a), "killing members of the group", because they, the Aborigines, were members of a definable group. We know something about the physical killings, particularly in the latter half of the last and the early part of this century. The first white settlers came to Tasmania in 1803, and by 1806 the serious killing began [26]. In retaliation for the spearing of livestock, Aboriginal children were abducted for use in forced labour, women were raped and tortured and given poisoned flour, and the men were shot. They were systematically disposed of in ones, twos and threes, or in dozens, rather than in one systematic massacre.

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They were at risk from predatory sealers and settlers. In 1824, settlers were authorised to shoot Aborigines. In 1828, the Governor declared martial law. Soldiers and settlers arrested, or shot, any blacks found in settled districts. Vigilante groups avenged Aboriginal retaliation by wholesale slaughter of men, women and children. Between 1829 and 1834, an appointed conciliator, George Robinson, collected the surviving remnants: 123 people, who were then settled on Flinders Island. By 1835, between 3000 and 4000 Aborigines were dead. This wasn't simply a murderous outbreak of racial hatred. They were killed, with intent, not solely because of their spearing of cattle or their "nuisance" value, but rather *because they were Aborigines*. The Genocide Convention is very specific on this point: the victim group must be at risk because they are that group.

White settlers killed some 10,000 blacks in Queensland between 1824 and 1908 [27]. Considered "wild animals", "vermin", "scarcely human", "hideous to humanity", "loathsome", and a "nuisance", they were fair game for white "sportsmen". In 1883, the British High Commissioner, Arthur Hamilton Gordon, wrote privately to his friend William Gladstone Prime Minister of England:

The habit of regarding the natives as vermin, to be cleared off the face of the earth, has given the average Queenslander a tone of brutality and cruelty in dealing with "blacks" which it is very difficult to anyone who does not *know* it, as I do, to realise. I have heard men of culture and refinement, of the greatest humanity and kindness to their fellow whites, and who when you meet them here at home you would pronounce to be incapable of such deeds, talk, not only of the *wholesale* butchery (for the iniquity of that may sometimes be disguised from themselves) but of the *individual* murder of natives, exactly as they would talk of a day's sport, or having to kill some troublesome animal.

In 1896, Archibald Meston was appointed as Royal Commissioner to investigate the slaughter. In the same year, he produced his *Report on the Aborigines of North Queensland* [28]. The treatment of the Cape York people, he wrote, was "a shame to our common humanity"; their "manifest joy at assurances of safety and protection is pathetic beyond expression. God knows they were in need of

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it". Aboriginal people met him "like hunted wild beasts, having lived for years in a state of absolute terror". He was convinced their only salvation lay in strict and absolute isolation from all whites, from predators who, in no particular order, wanted to kill them, take their women, sell them grog or opium. The *Aboriginals Protection and Restriction of the Sale of Opium Act 1897* followed. Apart from some changes to its wording, this remained in force until 1985. In 1939, the statute was amended slightly and renamed as the *Aboriginals Preservation and Protection Act*. In our age of

environmentalism we are used to the notion of "protected species" in the context of, for example, exotic eagles or rare marsupials. "Protected Aborigines" meant just that: a genus which had to be saved from the murderous impulses and practices of settler Australians.

The history of Aborigines in Western Australia was little different [29]. There were hundreds of massacres between settlement and the 1920s, with the last of them, the Forrest River killings, as late as 1926. This was the only episode to result in a Royal Commission - yet another such judicial inquiry resulting in the acquittal, and then promotion, of the two police officers involved in the shooting, and then burning, of perhaps 100 people. One massacre or mass murder is not genocide, but given the pattern and propensity of such actions, one must conclude that Raphael Lemkin was correct when, in 1944, he coined the word genocide to mean co-ordinated or systematic actions aimed at destroying a racial, ethnic or religious group's essential foundations. He didn't say the killing had to be wholesale, or in a compacted time frame, or in specified killing fields. Nor did the Genocide Convention which followed his work.

The history of Aborigines in South Australia was rather different. The early whalers and sealers at the start of the nineteenth century were brutal: they killed and kidnapped. But from 1836, when permanent settlement began, the colonists forged a more independent line, on all matters, than their colonial brothers and sisters elsewhere. Although dispossessed of land, and their culture and customs abrogated in various ways, there was less shooting and poisoning than in other colonies. (Aborigines argue that this was because there were fewer to shoot, following the smallpox epidemic that came with settlement.)

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There was a massive population loss in central Australia - particularly in the region of what is now Alice Springs - between 1860 and 1895. Kimber speculates that 20 per cent may have died from influenza, typhoid and other introduced diseases. But some 1750, or 40 per cent, of the Aboriginal population, were (mostly) shot in what was euphemistically called "dispersal" [30]. A Native Police lieutenant, giving evidence in 1861, was asked what was meant by "dispersing". "Firing at them", was his reply, but "I gave strict orders not to shoot any gins [Aboriginal women]". Another euphemism was that troopers were out shooting "kangaroos". An early observer, E. M. Curr, writing in *The Australian Race* in 1886, concluded: "The White race seems destined, not to absorb, but to exterminate the Blacks of Australia".

"(b) Causing serious bodily or mental harm to members of the group"

Courts hold trials, that is, efforts to examine and determine causes or issues. In this section I do not bring the charge that Australia, in the name of protecting people against physical killing, instituted policies and practices that led to *intentional* "serious bodily or mental harm" to Aborigines (Article II(b)). But there is certainly room for exploration of an argument that protection, however well intentioned, resulted in disaster of a most harmful kind.

Protection legislation began in an elementary way in the 1840s: by 1843, five of the colonies had appointed Protectors. Protection, in earnest and in great legislative detail, began in Victoria in 1869 and 1886, in Western Australia in 1886, in New South Wales in 1909, in South Australia in 1911, in the Northern Territory in 1910 and 1911, in Tasmania in 1912 [31]. Most of these laws were predicated on the philosophy of "soothing the dying pillow" of a race near

extinction. Given that there was a widespread assumption that Aborigines were dying out, settlers fulfilled the prophecy by acting to ensure that such was indeed the outcome.

There were to be two protective fences against genocide in most of Australia: the legal one, which was soon found to be insufficient, followed by the geographic one of gross isolation, the additional barrier against white predators. Law would keep whites *out* and Aborigines *in* protective custodianship. Geographic location would see to it that no one could get in, or out. Government-run settlements and Christian-run missions were established in inaccessible places to protect the people from their predators; to encourage, sometime to coerce, Aborigines away from the "centres of evil"; to allow for the Christianising and civilising process in private and away from temptations; to enable better ministrations - in the quiet of a hospice, so to speak - to a doomed, remnant people. Catherine deMayo has explained why "mission" Aborigines came to be where many still are [32]. A Lutheran pastor visiting Bloomfield River in Cape York in 1898, said, "All the mission can really achieve for them is a kind of Christian burial service". Another concluded that "the Christian Church and the Government can but play the part of physicians and nurses in a hospital for incurables". These "children of darkness" needed places like Yarrabah, near Cairns, described as "splendidly secluded". Some Christian views of Aborigines were no better than those of the squatters and "sportsmen". In the 1870s, a clergyman in Queensland wrote:

If our instincts are true we must loathe the aborigines as they are now, less estimable than the mongrels that prowl like them in the offal of a station. By the ashes of their fire ... they are crouched with their knees up to their chin and with a half idiotic and wholly cunning leer on their faces, their hair matted in filth ...

The missionaries did not simply supply a nursing service for "incurables", or a burial service: they became active agents of various governmental policies, such as protection-segregation, assimilation, so-called integration and some of the latter-day notions like self-determination and self-management. More than agents, they were delegated an astonishing array of unchallengeable powers. Uniquely - in terms of modern missionary activity in colonised societies - mission boards became the *sole* civil authority in their domains. They ran

schools, infirmaries, farms and gardens, provided water, sewerage and similar public utility services, established dormitories, built jails, prosecuted "wrongdoers", jailed them, counselled them, controlled their incomes, forbade their customs and acted as sole legal guardians of every adult and every child. Almost incidentally, they also tried to Christianise the inmates according to their varying dogmas and doctrines, with little success. The eighteenth-century English radical philosopher, Jeremy Bentham, has bequeathed us a succinct phrasing for such "penitentiary-homes" - ones in which the objectives are "*safe custody, confinement, solitude, forced labour and instructions*" [33].

Mission societies and government departments of Native or Aboriginal Affairs set about the business of protecting the people. But in what spirit? As a student of "native administration" in South Africa, Australia, Canada and New Zealand, I find one facet of Australian practice noteworthy for its absence. Baron Lugard of Abinger, the doyen of British colonial policy-makers from 1888 to 1945, always held that successful administration was contingent on officials having a sense of love for the administered people - and if not that, then at least a liking, and if not that, at least a respect for them. By and large, Australian officials, lay and clerical, protected in a spirit of *dislike*, in what Minogue would rightly call (in this particular context) a configuration of contempt.

Reminiscent of the manner in which Jews have been held in contempt by church, state and science, we have clerical disdain not only in the 1880s but also a century later. In the early 1980s, the Roman Catholic Bishop of the North-West (of Western Australia) was pressed to remove Fr Seraphim Sanz as superintendent of Kalumburu Mission. He also dispensed with the philosophies of the general Catholic mission policy-maker, Fr Eugene Perez, the man who (in a chapter of his book entitled "East Kimberley Primitives") described Aborigines as corresponding to the Palaeolithic Age, "primitives dwarfed to the bare essentials of human existence", people with "inborn cunning", "lacking interest and ambition", with "undeniable immaturity", forever seeking "the unattainable EL DORADO, coming to them on a silver tray", people "with no sense of balance or proportion", people who "want 'today' what cannot be given till tomorrow", people to whom physical goods are "like the toy given to a child, which will soon be reduced to bits, and thrown into the rubbish dump. [34]" And so on.

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Contempt also came in "scientific" guise. In 1913, we had the views of Professor W. Baldwin Spencer, the man who was to become a significant and powerful figure in Aboriginal affairs, as author, theorist and administrator:

The aboriginal is, indeed, a very curious mixture: mentally, about the level of a child who has little control over his feelings and is liable to give way to violent fits of temper ... He has no sense of responsibility and, except in rare cases, no initiative [35].

The revered Professor of Biology was dismayed: Aborigines didn't even realise that they could make clothes out of kangaroo skins, and they didn't cultivate crops or domesticate animals. "Their customs are revolting to us" and they were "far lower than the Papuan, the New Zealander or the usual African native". While Chief Protector of Aborigines in 1911-12, he declared that "no half-caste children should be allowed in any native camp", after which he established the Kahlin Compound in Darwin. Assuredly, neither Perez nor Spencer was an Alfred Rosenberg or a Richard-Walther Darré - two of several key race theorists in the Nazi firmament - but in their own way, in our especial Australian way, they were accomplished enough in "scientific" race theory and, more importantly, in its practice.

The special laws show that the "protections" which parliaments had in mind were as much from outside intruders as from the Aborigines themselves. In Queensland, protection in theory quickly became discrimination in practice. Stopping the predators from coming in resulted in Aborigines being incarcerated for life, even for generations, on the remotest of places, like Yarrabah, Palm Island, Mornington Island, Doomadgee, Bamaga, Edward River, Weipa, Bloomfield River and Woorabinda. Protection of Aboriginal morality came to mean control of their movements, labour, marriages, private lives, reading matter, leisure and sports activities, even cultural and religious rituals. Protection of their income came to mean police constables - as official Protectors of Aborigines - controlling their wages, their withdrawals from compulsory savings bank accounts, rights to enter contracts of labour and of purchase and sale.

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In the Northern Territory, from 1911 to 1957 and again from 1957 to 1964, when all "full-blood" Aborigines were declared "wards", protection included the need for permits to leave reserves and the Territory, prohibition on alcohol, prohibition on inter-racial sex, prohibition on inter-racial marriage unless with official permission, inability to vote or to receive social service benefits,

employment at specified, statutory Aboriginal rates of pay (well below the famous basic wage, which Australia invented in 1907), exclusion from industrial awards, and so on [36].

In Queensland, protection included banishment from one part of the state to another, for periods ranging from twelve months to life ("During the Director's Pleasure" was the official phrase) for offences such as "disorderly conduct", "uncontrollable", "menace to young girls", and "on discharge from [urban] prison". It also involved imprisonment on the settlement or mission, for a maximum of three weeks per offence, for offences only Aborigines could commit: "being cheeky", "refusing to work", "calling the hygiene officer a 'big-eyed bastard'", "leaving a horse and dray in the yard whereby a person might have been injured", "committing adultery", "playing cards", "arranging to receive a male person during the night", "being untidy at the recreation hall", "refusing to provide a sample of faeces required by the hygiene officer and further, wilfully destroying the bottle provided for the purpose, the property of the department" [37]. Often charges were not laid concurrently: an "offender" would get three weeks for one offence, then on discharge be "charged" with a separate offence, albeit one arising from the same initial circumstance. The legal maximum of three weeks became a continuum of six, nine, twelve weeks. In Western Australia there was "protective" punishment for anyone who didn't "conduct themselves in a respectable manner at all times", used "obscene language", drank alcohol, didn't keep dwellings "clean and tidy", "cut down trees", wasted water, didn't keep their dogs under control and who didn't "empty and clean" troughs and coppers in the laundry.

The era of protection-segregation didn't end with the formal adoption of assimilation policies by the national conferences of officials in 1937, and again

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in 1951 and 1961. Despite proclamations of equality in those two latter decades, the old policies and practices persisted. This was because the lay and clerical bureaucrats who remained as guardians couldn't or wouldn't accept the "elevation" of "their" wards to the status (of power, goodness, correctness, civility) they enjoyed. The settlements and missions continued as before, with draconian powers vested in officials - or "inspectors" as Bentham would have called the [38]m - who maintained a regimen of work, instruction, discipline, good order and hygiene. These bogey men, especially in Western Australia and Queensland, were real enough. "The welfare", to use the Aboriginal idiom, remains indelible in the contemporary Aboriginal psyche.

It was only after the Labor Party won federal office at the end of 1972 that these institutions began to be dismantled: the "inmates" stayed and became citizens (in legal theory), but the "inspectors" of the draconian rules "for the good order and discipline of the settlements" - the guards and the gatekeepers - disappeared, at least in the flesh. Their spectres remained for long. What has also endured is the myth, and the euphemism, that all of this treatment - over nearly three-quarters of a century, at least - was simply and mundanely nothing more than "the era of handouts".

In an ironic sense it was the removal of the draconian structures that created, in my view, the present climate of violence and disorder in population centres. All commentators, analysts and scholars attribute the present breakdowns, including the propensity for suicide, to colonialism, racism, oppression, landlessness, population relocations, and destruction of cultures and environments. The Royal Commission into Aboriginal Deaths in Custody has an excellent summary of all of this, which explains the underlying causes of the disproportionate numbers of Aborigines in custody [39]. All true, in the broad sense and sweep. But there is a pinpointable set of actions which has been largely responsible for the present. These "asylums" or "total institutions" [40], the settlements and missions, became "communities", regardless of whether or not there was a *communitas*. In the

protection-segregation and wardship eras, settlements and missions were designed as *institutions*, with the residents termed *inmates*. There were locks and keys of a legal, administrative and physical kind. With the changes that came shortly before and after 1972, these nineteenth- and early twentieth-century institutions were euphemistically re-named "communities", and superintendents and managers were transformed by administrative pen into "community development officers". No one ever tried to understand or define the characteristics of community, no one trained the officers in "development", and no one ever consulted the black populations about their notions of a civil order, an organised society, a polity. Born out of sheer political expedience, and a laziness about doing any homework about these groupings and their common or uncommon character, bureaucrats eventually gave these prison-like total institutions "freedom", a budget and autonomy of a limited kind. Nobody gave thought as to how one de-institutionalised institutions of such penitentiary flavour; no one gave lessons in autonomy; and, importantly, nobody remembered, or wanted to remember, that the inmates-turned-citizens were often people moved or exiled to these places, people who had to be disciplined or punished, or people rounded up by desert patrols and simply placed there for the great "social engineering" experiment of assimilation in the deserts and monsoon lands. Most places were *not* peopled by a *communitas*, by groups in a voluntary association, with a common tribal or linguistic membership and fellowship, a common historical, or political, or cultural heritage, communalistic in their membership, integrated, and socially coherent.

Infrastructure in the institutions was artificial. It was the omnipresence of the "inspector" (usually the Director), the authoritarian laws and regulations under special legislation, and the associated powers, together with mission evangelism, which gave these institutions "viability" - of a kind. The struts and pillars propping up the institutions began to be removed only in the 1970s and, in Queensland, even later. Thus there is, in effect, a vacuum in many of these places, an absence of an overarching or binding philosophy (however bad, or misguided), a lack of system, without any goals beyond mere survival. The rallying call for land rights, especially since 1969, and the protracted legal hearings, have filled only a very small part of that vacuum. Lacking structure, many "communities" lack order, and have become disordered societies. The much respected Aboriginal values of affection, reverence for family and kin, reciprocity, care of the young and aged, veneration for law, lore and religion, are floundering or have been displaced for now. In the section "Decimation:

Physical and Social" above, I listed the now commonplace examples of "disorder". What began as protection against genocide has ended, for the present, in a legacy of acute distress. However, I must stress that there is no suggestion whatever in these observations that we return to the nightmare that was the wardship and welfare era.

Forced Assimilation

An important contradiction occurred during the era of protection-segregation: while Aborigines in some domains had to be protected and given shelter from genocidal depredations, in others they had to be "dispersed" into mainstream society. Thus while physical killing was a feature of Tasmania, Queensland, Western Australia and the Northern Territory, a different facet of genocide was under way in Victoria and New South Wales. As early as 1858 in Victoria, there was a call for treating "half-castes" differently from "full-bloods". The (first) Protection Board said, in relation to "half-

castes", that it had a duty to "interfere at once to prevent their growing up amongst us with the habits of the savage, as they possess the instincts, powers of mind and altogether different constitution of the white man". By 1886, forced assimilation was in full swing: the *Aborigines Protection Act 1886* (Vic.) declared that only "full bloods" and "half-castes" over the age of 34 were entitled to aid. In other words, all non-"full-bloods" under 34 were forcibly expelled from missions and reserves, irrespective of marital or sibling status, of need, of ability to cope in the mainstream, or whether they had anywhere to go in the outside world. The penalty for returning was a £20 fine - the equivalent of about \$20,000 in today's currency. Here the statute and the practice overrode normally enforceable civil contracts, such as marriage.

Forced assimilation also meant the forcible removal of children from parents and family and "relocation" to white foster parents, white adoptive parents, or to special "half-caste" or "assimilation" homes. In 1905, W. E. Roth, the Chief Protector of Aborigines in Queensland, ruled that the "social status of half-caste children" had to be raised: "*in the future*, all such infants taken from the camps should be brought up as white children". In his view, "if left to themselves", the "half-caste girls became prostitutes and the boys cattle thieves" [41]. In 1909, C. F. Gale, the Chief Protector in Western Australia, wrote:

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I would not hesitate for one moment to separate any half-caste from its Aboriginal mother, no matter how frantic her momentary grief might be at the time. They soon forget their offspring [42].

O. A. Neville, Chief Protector in the West from 1915 to 1940, was of identical mind. He could do nothing for Aborigines, who were dying out, but he could absorb the "half-castes":

The native must be helped in spite of himself! Even if a measure of discipline is necessary it must be applied, but it can be applied in such a way as to appear to be gentle persuasion ... the end in view will justify the means employed [43].

Neville had a "three-point" plan: first, the "full-bloods" would die out; second, take "half-castes" away from their mothers; third, control marriages among "half-castes" and so encourage intermarriage with the white community. The "young half-blood maiden is a pleasant, placid, complacent person as a rule, while the quadroon [one-quarter Aboriginal] is often strikingly attractive, with her oftentimes auburn hair, rosy freckled colouring, and good figure ..." These were the sort of people who should be elevated "to our own plane". In this way, it would be possible to "*eventually forget that there were ever any Aborigines in Australia*" [44]. Here, in unmistakable language and intent, was ideology justifying why biology should solve this "social problem". And so Neville established Sister Kate's Orphanage in 1933, on the guiding principle that the good Sister took in those whose "lightness of colour" could lead them to assimilation and intermarriage.

Neville's legacy - his mishmash of nineteenth-century race theory, twentieth-century eugenics, his own brand of assimilationism, and illogic - is to be found in the quite astonishing *Natives (Citizenship Rights) Act 1944* (WA). A "native" could apply to a magistrate for "citizenship" - something never really lost to Aborigines, since they were always regarded as "subjects" of the monarch, especially in their susceptibility to the criminal law. To become "white", in effect, the applicant had to show a magistrate that he or she had "dissolved tribal

and native associations", had served in the Commonwealth armed forces and had received an honourable discharge, or was "otherwise a fit and proper person to obtain a Certificate of Citizenship". But much more than that, the magistrate was required to be satisfied of many things before an applicant was no longer "deemed to be a native or Aborigine": first, that for two years before the application, the applicant had "adopted the manner and habits of civilised life"; second, that full citizenship rights were conducive to his or her welfare; third, the applicant could "speak and understand the English language"; fourth, the applicant was "not suffering from active leprosy, syphilis, granuloma, or yaws" [45]; fifth, the applicant was of "industrious habits" and "of good behaviour and reputation"; and finally, the applicant was "reasonably capable of managing his own affairs". There was, of course a catch - one unequalled, I believe, in "native administration" anywhere in the world: that if the Native Affairs Commissioner, "*or any other person*", made complaint, a magistrate could revoke the certificate and the person became a native or Aborigine once more. The grounds of complaint? The citizen wasn't "adopting the manner and habits of civilised life"; or he or she had two convictions under the *Native Administration Act 1905-41 (WA)* for the normally non-criminal offences discussed above, like cutting down trees, being untidy, or leaving the laundry in a mess, or was an habitual drunkard; or had, in the non-Aboriginal phase of their (Aboriginal) lives, "contracted leprosy, syphilis, granuloma or yaws"! This statute was not repealed until 1971.

In 1928, J. W. Bleakley, then Queensland Protector of Aborigines, was asked by the federal government to report on Aboriginal policy - including the future of "half-castes" - in the Northern Territory [46]. Those of 50 per cent or more Aboriginal "blood", "no matter how carefully brought up and educated", will "drift back" to the black, he declared. But those with less than 50 per cent "Aboriginal blood" should be segregated so that they could "avoid the dangers of the blood call". Thus there should be "complete separation of half-castes

from the Aborigines with a view to their absorption by the white race"; further, there should be complete segregation of blacks and whites "in colonies of their own" and "to marry amongst themselves". Thereafter "half-castes" were sent to specified institutions around the country, to be "salvaged" because their "white blood" was their springboard to civilisation and Christendom. It is indeed strange that many of these assimilation homes were located in places of great isolation, for example Croker Island, Garden Point (now Pularumpi) on Melville Island, the Bungalow in Alice Springs, Cootamundra Girls' Home and Kinchela Boys' Home in rural New South Wales. The St Francis Home in Adelaide, Sister Kate's Orphanage in Perth and Kahlin Compound and the Retta Dixon Home in Darwin were among the few institutions located in white urban domains.

In the biological footsteps of Professor Baldwin Spencer, Dr Cecil Cook, Chief Protector of Aborigines in the Northern Territory, believed that "the preponderance of coloured races, the preponderance of coloured alien blood and the scarcity of white females to mate with the white male population" would create "a position of incalculable future menace to the purity of race in tropical Australia". What was worse was that a large population of blacks "may drive out the whites" [47]. I met Dr Cook in the early 1960s: having just migrated from South Africa, there was a terrible presentiment, when talking with this man, that I hadn't left behind that not so beloved country.

The Neville-Bleakley-Cook philosophies became official policy in the Territory in the early 1930s. The Administrator's Report of 1933 had this to say:

In the Territory the mating of an Aborigine with any person other than an Aborigine is

prohibited. The mating of coloured aliens with any female of part Aboriginal blood is also forbidden. Every endeavour is being made to breed out the colour by elevating female half-castes to the white standard with a view to their absorption by mating into the white population [48].

State and Commonwealth administrations met in Canberra in 1937 to discuss possible federal control over Aborigines and to adopt, if possible, some national and overarching policies. Neville's ideas were very persuasive. In the end, each regional authority held on to its domain, but the unanimous conclusion was that

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"the destiny of the natives of Aboriginal origin, but not of full blood, lies in their ultimate absorption by the people of the Commonwealth, and it therefore recommends that all efforts be directed to this end". Efforts were very much directed to such biological solutions. This wasn't killing but it was assuredly practice directed at child removal, "breeding them white", and "dismantling" everyone who was regarded as less than "full-blood". All of this was very much more than a "sentiment" of "unease", "contempt", or "rejection" about a people who were different. Did all or any of this cause "serious bodily and mental harm to members of the group" - as in Article II (b) of the Genocide Convention? Did any of this constitute an *attempt* to physically destroy Aborigines, in whole or in part - as in Article II (c)? Is there any substantial difference between the Convention's term "destroy" and Neville *et alii*'s "disappear"? Much has been written in defence of these men who formulated policies in the "social and scientific contexts of their time". No matter what spin is put on the mindset of these men, the intent was as repugnant then as it would be now: to await the "natural" death of the "full-blood" peoples and to socially engineer the disappearance, forever, of all those "natives of Aboriginal origin". They were, indeed, progenitors of group disappearance. They were, beyond doubt, complicit. They did conspire and they did attempt to commit genocide, that is, ensure the elimination, in whole or in part, of a racial group (of "half-castes"). None of them were Eichmanns, but all of them were imbued, in Minogue's phrasing, with "a theory, such as Hitler's, about the respective biological characteristics of distinct races". Here, indeed, was intentional elimination of a race - not merely, or hardly, "a sentiment" involving "contempt".

"(e) Forcibly transferring children of the group to another group"

In 1983, historian Peter Read published a short monograph on the "stolen generations" in New South Wales [49]. The annual reports of the Aborigines Protection [later Welfare] Board were always explicit: "this policy of dissociating the children from [native] camp life must eventually solve the Aboriginal problem". By placing children in "first-class private homes", the superior standard of life would "pave the way for the absorption of these people into the general population". Further, "to allow these children to remain on the reserve to grow up in comparative idleness in the midst of more or less vicious

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surroundings would be, to say the least, an injustice to the children themselves, and a positive menace to the State". The committal notices prescribed by law required a column to be completed under the heading "Reason for Board taking control of the child". The great majority of responses

were penned in one standard phrase: "For being Aboriginal"!

Read's estimate of the number of children removed in New South Wales between 1883 and 1969 is 5,625, allowing (as he notes) that there is a distinct "lack of records". My assessment is a much higher figure. I have not examined such Board or child welfare records as remain, but base my higher figure on an extrapolation of the numbers of forced removals and institutionalisation among the 1,200 Aboriginal sports people recorded in my recent book on the history of the Aboriginal experience as seen through the metaphor of sport [50]. (One example: of the 129 men and women in the Aboriginal and Islander Sports Hall of Fame, twelve were removed, another six, possibly seven were adopted by white families, while another 22 grew up in institutions.) Read's figure of perhaps 100,000 across Australia over a century rings a clearer bell. The National Inquiry into the "separation" of Aboriginal and Torres Strait Islander children from their families, published in 1997, summarises the situation: "we can conclude with confidence that between one in three and one in ten indigenous children were forcibly removed from their families and communities in the period from approximately 1910 until 1970" [51].

In July 1995, journalist Stuart Rintoul met Colin Macleod, a former patrol officer with the Department of Territories, the agency responsible for Aboriginal welfare in the Northern Territory from 1945 until the mid-1960s. Macleod, now a Melbourne magistrate, believes that the policy was indeed dictated by the notion that "half-castes" were "salvageable", whereas "full-bloods" were not. While he disagrees (now) with the removal of children for purely assimilationist or "experimentalist" reasons, he maintains that some removals were "for their own good" and "not done heartlessly". Girls, he says, were at risk from sexual chatteldom, either from the pastoralists who employed them or from the old men to whom they were promised by tribal custom. In his book, Macleod talks about young girls "becoming mothers way before they were old enough to be good

mothers, in conditions of unspeakable squalor and cruelty, often inflicted by the child's father ... [52]" Agreeing that he was one of the "benevolent dictators", he is strongly supported today by a Catholic Brother who insists that "our belief was that we were doing something wonderful for these children by providing them with a home".

In sharp contrast are the memories of the "salvaged" ones: there was little that was wonderful in the experience; there was much to remember about physical brutality and sexual abuse; and for the majority the homes were scarcely homes, especially in the light of the then healthy Aboriginal practices of kinship, family reciprocity and child-rearing in extended families. There is considerably more recorded and substantiated evidence of abuse in the "safe homes" than Macleod claims was occurring in Aboriginal environments. In 37 years of involvement in Aboriginal affairs, I have met perhaps half a dozen men who liked Sister Kate's or Kinchela Boys' Home. I have yet to meet an Aboriginal woman who liked Cootamundra Girls' Home or Colebrook. No one failed to mention the incessant sexual abuse, or the destruction of family life. The late Professor Bill Stanner believed, following a one-day visit, that places like Sister Kate's gave children "a prospect of a better life". In the end, the views of the inmates remain a better testimony.

In 1993-94, the Australian Archives presented an exhibition in Sydney, Adelaide, Canberra and the Northern Territory entitled *Between Two Worlds*, a study of the federal government's removal of Aboriginal "half-caste" children in the Territory from 1918 to the 1960s [53]. It was a brilliant depiction of one facet of genocide, without using the word. Throughout this entire history, there were exceptionally few men and women who heard whispers in their hearts that anything was awry or amiss [54]. But among many exhibits were letters from the late E.C. (Ted) Evans, then Chief

Welfare Officer (and Macleod's boss), to the Administrator, urging that removals cease: because, he wrote, they were intrinsically evil and because the world would never understand either the

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motives or the practices. This exhibition was to be yet another impetus to the movement initiated by Aborigines - the Link-Up project - to discover and recover this peculiar form of Argentine's "disappeared ones", Australia's *desaparecidos*.

By 1994, Aborigines at the *Going Home* conference in Darwin felt sufficiently confident to begin planning civil lawsuits against governments and missions for the forced removal of children, the break-up of family life and the physical placement of people outside the ambit of areas now available (or claimable) under land rights legislation. Only one civil case has been prosecuted by an Aboriginal woman in Sydney: she was ill-prepared and lost her claim against New South Wales. So too did six Aboriginal plaintiffs from the Northern Territory in what is known as the *Kruger* case [55]. They argued that the Aboriginals Ordinance was, in effect, an unconstitutional law, one which gave powers to commit genocide, specifically by removing children so that their religious practices could not be sustained. In what I believe was a poorly constructed case - in part because the legal team tended to ignore Article II (b) and (e) of the Genocide Convention, concentrated on the constitutionality of the offending ordinance (rather than the powers exercised under that ordinance), and depicted genocide as deprivation of religious rights - the High Court (in 1997) found the ordinance valid because it was enacted "in the interests of Aborigines generally".

Is it possible to have a law, asks genocide scholar Barbara Harff, "that can, through a perverted collective morality, become a murderous weapon" [56]? Yes, indeed. That sentence is a reasonable verdict on nearly all pre-1970 special legislation for Aborigines, statutes which began, or purported to begin, as protection, but which became their value opposites in practice. Most scholars and lawyers look to parliamentary debates and the legal language of statutes as evidence of "policy". What has been so signally missing in Australia is analyses of the administrations which sought to realise policies. My research has always tried to examine, and to explain, the gaps, often the gulfs, between policy aspirations and their translations into practice. The results are of interest: the administrative machinery has stopped most policies of equality from coming to fruition but has ensured that most policies of inequality emerge as true

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inequality, often beyond the letter of the law.

Stolen or Separated?

In 1990 the Secretariat of the National Aboriginal and Islander Child Care (SNAICC) organisation demanded an inquiry into child removal. In August 1991 an Aboriginal media release mentioned this "blank spot" in Australian history:

The damage and trauma these policies caused are felt every day by Aboriginal people. They internalise their grief, guilt and confusion, inflicting further pain on themselves and others around them... We want an enquiry to determine how many of our children were taken away and how this occurred... We also want to consider whether these policies fall within the definition of genocide in Article II(e) of the United Nations

Convention ...

In May 1995, the federal Labor government responded to Aboriginal and media pressure by establishing the "National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families". The terms of reference were reasonable and admirable. The Inquiry had to trace past laws, policies and practices and their consequences, investigate ways of assisting in location of family, and "examine the principles relevant to determining the justification for compensation for persons or communities affected by such separations".

There were, however, some troubling aspects. First, the constant use of "separation" in the terms of reference - a nicer word, implying some degree of mutuality in the severing of these parent - child relationships, as well as keeping open a door to a reuniting. Neither mutuality nor uniting was ever intended, or involved, in practices which began in Victoria in the 1880s and ended in New South Wales in the 1980s (not the early 1970s, as the National Inquiry states). The "removal" bureaucrats envisaged absolute finality. Second, there was always the possibility that "principles to determine justification for compensation" could, if they eventuated, become prescriptive and therefore the *only* legal mechanisms for compensation. Third, the reality of the "stolen generations" really didn't need further proof, since the history and the consequences were well enough known, especially to the victims. Nevertheless, the final report has proved to be a monumental document and a pivotal point in contemporary race relations.

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The National Inquiry reported in April 1997. Of the 118 official investigations - judicial inquiries, parliamentary committee reports and royal commissions - into aspects of Aboriginal affairs this century, this is by far the starkest and strongest indictment, concluding that Australia has knowingly committed genocide through the forcible transfer of children, as a matter of official policy, not just yesteryear but as recently as the 1970s. A finding of genocide was presented: the essence of the crime, it was stated, was acting with the intention of destroying the group, not the extent to which that intention was achieved. The forcible removals were intended to "absorb", "merge", "assimilate" the children "so that Aborigines as a distinct group would disappear". That such actions by perpetrators were in their eyes "in the best interests of the children is irrelevant to a finding that their actions were genocidal". Here the inquiry posited, without stating it plainly, an important theme about intent, which is the key phrase in the legal definition of genocide. We always assume that the wording of Article II - "with intent to destroy, in whole or in part" - means intent with *male fides*, bad faith, with evil intent. Nowhere does it implicitly or explicitly rule out intent with *bona fides*, good faith, "for their own good" or "in their best interests". Starkman's is but one of several opinions that the reasons for the crime, or the ultimate purpose of the deeds, are irrelevant: "the crime of genocide is committed whenever the intentional destruction of a protected group takes place" [57]. Matthew Storey points out that "genocide does not require malice; it can be (misguidedly) committed 'in the interests' of a protected population" [58]. Gaita contends that "the concept of good intention cannot be relativised indefinitely to an agent's perception of it as good". If we could, he writes, then we must say that Nazi murderers had good, but radically benighted intentions, because most of them believed they had a sacred duty to the world to rid the planet of the race that polluted it [59]. (Which, incidentally, is what the senior Liberal MP Joe Gullett was arguing in 1949, in footnote 3.) Further, there is, in my view, an illogical catchcry of the defenders of removal that *anything* and *everything* done by way of solution to a "problem" must, by definition, be worthy or brave or well meant, rather than unworthy. Not so. Nor do they examine the extent of the

"problem" that justified removals, or the disproportion of the "solution" to the "problem".

Throughout 1996, the National Inquiry pressed the new federal conservative government to make a formal submission, as state governments had done. The government balked, stalled and eventually presented an anonymous, last-minute submission [60]. Doubtless written hurriedly by bureaucrats from one or two federal agencies, the thrust of the submission was a "shotgun scatter" of exonerations, mitigations and plain refusals to become involved. It declared that "the Government can see no equitable or practical way of paying special compensation to these persons, if compensation were considered to be warranted". Further, restitution will "produce new injustices and inequities", "create serious difficulties", and cause "adverse social and economic effects". It will be "very difficult to identify persons", it's all "problematic", and, rather ominously for existing programs, it will "divert resources in mounting or defending cases".

The present federal government, in short, will not compensate for child removal, though it was most generous in restitution for the buy-back of now illegal guns. The government also takes the view that in judging these practices, "it is appropriate to have regard to the standards and values prevailing at the time of their enactment and implementation, rather than to the standards and values prevailing today". The document ends with this remarkable rationalisation: "there is no existing objective methodology for attaching a monetary value to the loss suffered by victims". Yet Germany has (twice) given us a reparations model, and at the end of 1998 found the will to compensate the surviving slave labourers of over half a century ago. The Swiss are about to give us another model. There is no insuperable problem identifying the majority of those removed, or who had children removed. Restitution will cause "intolerable inequities". To whom? What could be more intolerable than the removals themselves?

The conservative government under John Howard was elected to its first term in March 1996. When *Bringing Them Home* (the title of the National Inquiry report) was released, media attention focused very heavily on the need for acknowledgment and apology. When pressed about apology, the Minister for Aboriginal Affairs (Senator John Herron) and the Prime Minister immediately

locked themselves into the exact wording of the bureaucracy's submission to the Inquiry: restitution was not possible, there was no methodology for it, it would create "new injustices", formal apology could open the way for lawsuits, all this happened yesteryear, and, in a new version of "for their own good", removal was akin to white Anglo children being sent to boarding school. Furthermore, some very successful Aborigines had come through these assimilation homes. Finally, in the words of the Minister for Aboriginal Affairs, "I don't believe we ever attempted genocide ... This practice could not be described as genocide as it did not involve an intentional elimination of a race. [61]" Not one of these responses incorporated, let alone appreciated, the overwhelming sense of grief, pain, confusion, and loss felt by the removed people who testified.

Australia's Denialism

"We make sense of ourselves as a people through history", writes essayist Barry Lopez [62]. Indeed, but to do so requires that first we admit the outside history, that is, the record and aggregate of past events, the narrative in time, the chronicle of what has befallen Aborigines over two centuries, with

more bad rather than good faith. Instead, several leaders in important fields prefer myth, rhetoric, propaganda, embellishment, and denial in order to blunt, or blur, our sense of ourselves.

Denialism takes several forms. First, the most common at present, the denial of any genocidal basis in Australian history, whether physical killing or child removal. Second, the counter view that it is whites who have been the victims. Third, the hypothesis that concentration on "unmitigated gloom" (Minogue's phrase) overwhelms the reality that there has been more good than bad in Australian race relations.

There is no serious or reputable dispute about generations having been stolen. Solid research went into the genocide sections of *Bringing Them Home*. Professor Robert Manne has spent two years on the matter, and intends spending the next three analysing every aspect of the practices across the continent. One student has produced a significant paper on the whole question of genocide and

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child removal [63]. The defenders, on the other hand, are remarkable for their thin arguments and, at times, silly explanations. A small coterie of journalists, some in concert with one renegade anthropologist, all lacking any academic or practical credentials in the field of Aboriginal affairs, contrive to claim, *inter alia*, that the charge of genocide is either pedantry or mischief; that Australia didn't commit genocide by forced removal because, if we had, we would have prosecuted the crime (when committed by federal and state bureaucrats?); that many or even most removals were with parental consent; that only a "small number" (12,500) were removed, citing an Australian Bureau of Statistics 1994 survey to support the mini-removal thesis; that removal was akin to white kids at boarding school; that many benefited from removal; and that Aboriginal leaders were assimilationists.

I refer now to the views of two anthropologists on the issue of stolen children and genocide: those of Dr Ron Brunton and of Professor Kenneth Maddock, who, indeed, has credentials in Aboriginal matters. I do so to illustrate the quality of thinking, and writing, in defence of removals. Dr Brunton's attack on the National Inquiry is couched as a protection of "science": he is concerned at the "role of suggestion in creating false memories of events that never really happened". He castigates the failure to distinguish "truly voluntary" and "coerced" removals. He reprimands the report for not listening to Lemkin, who "cautioned against using the prohibition on genocide against policies which sought to assimilate minority groups into the broader society". He cites my long involvement in Aboriginal matters, asserting that my "silence" on genocide over the years makes it look suspicious that I - "the doyen of genocide studies" - suddenly use the word now, in the context of the National Inquiry. Had I spoken out earlier, he contends, this "certainly would have brought a very rapid end to the supposedly genocidal practices" [64]. Despite quoting the Genocide Convention definition in full, he still rails against the "elasticity" of the crime, at the stretching of the mind that is asked to equate misguided child welfare with the striped *muselm"nner* [65] hanging off the wire at Auschwitz. His argument is that if the latter is genocide, the former simply cannot be. But international law, and its newly created Criminal Court, encompasses both.

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Professor Maddock has recently reviewed Colin Macleod's patrol officer memoir [66]. He suggests that key anthropologists like Bill Stanner and Phyllis Kaberry thought well of such places as Sister Kate's and Yarrabah (respectively), places where "half-caste girls" especially could find haven from sexual predation and depravity. He points to the "significance in their silence" of anthropologists Marie Reay and the late Diane Barwick, neither of whom ever mentioned genocide. He quotes the

Australian Law Reform Commission report on customary law as saying that "genocide is restricted to forms of physical destruction". (For a legal research body, this is indeed a curious and most improper distortion (and restriction) of the clearly-phrased international definition [67].) He talks of his fleeting "glimpse of the restrictive regime" under the Welfare Branch, but ...

It would have seemed absurd, however, to impute evil to the regime, and I cannot recall anyone doing so, let alone suggesting that genocide was being or had been until recently practised under the guise of child welfare. My acquaintances included academics who travelled widely in the Territory to do research, some of whom, like the outspoken political scientist Tatz, the pre-historian Carmel White and the anthropologist John Bern, were of Jewish background and interested in Israel. That even they, to the best of my recollection, caught not a whiff of genocide throws into relief the hyperbolic excesses to which some latter-day commentators have succumbed.

"It is tempting, if unkind, to suspect" that my writings about communities in crisis may well be "sensation-mongering", writes Maddock. In his "admittedly random travels between 1978 and 1998", Maddock says he didn't see what I see. If I am correct, and if I am to be believed [68], he argues, then the situations I describe are the very kind of degradations Macleod would have deemed good grounds for child removal. Earlier, Maddock had written to me asking why I didn't mention "genocide" at the time of my research into Aboriginal

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administration in north Australia in the early 1960s. Until the 1970s, Aboriginal administration, as opposed to Aboriginal anthropology, was a secret and restricted field of action. Among other things, special permits, security clearances from ASIO or state Police Special Branches, ministerial permissions, and clear chest x-rays were required for access to the field [69]. Then, my access to the field and to file material was strictly on the basis that I study the administration of "wards" - "full-blood" people. The "half-castes" had been "emancipated" some five years earlier and their materials were closed to me. There were a handful of removals of "full-blood" children, which I wrote about in the late 1970s [70]. Like so many in the 1960s, I wasn't fully conscious of an international law that ("elastically") defines physical killing, action resulting in physical and mental harm, sterilisation, and child removal as co-equal acts of genocide. Further, neither by nature nor nurture do Jews - even Zionistically inclined Jews - have especial research sensitivities or intuitions. Finally, there is either a wilful or an unconscious time-warp at play here: Macleod was removing children in the 1950s, at a time when little or none of the post-1972 violences and breakdowns which I describe were occurring.

There is an array of conservative critics who refute genocide and/or the gloom and mourning pervading Aboriginal colonial history. Few are reputable academics like historian Geoffrey Blainey, political scientist Ken Minogue and anthropologist Ken Maddock. Ron Brunton is an expert on *kava*, the alcoholic beverage made from roots in the South Pacific. There are senior politicians, like John Howard, John Herron and former premiers Wayne Goss and Ray Groom. Goss as Premier insisted on the removal of such "offending" words as "invasion" and "resistance" from Queensland school texts. Ex-Tasmanian Premier Ray Groom contended that there have been no killings in the island state - making him, in effect, Australia's foremost genocide denialist in the 1990s [71]. There is a journalistic group vehement about the *Bringing Them Home*

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material: Michael Duffy, Frank Devine, Christopher Pearson, Padraic McGuinness. There is also a netherworld of radio talkback "philosophers", Alan Jones, John Laws, Stan Zemanek, Howard Sattler. What many of these men have in common - apart from a seeming antipathy to Aborigines generally and to the whole Aboriginal "thing" - is that they do neither fieldwork nor homework. They are passionate in defence of national pride and achievement, in denigration of our alleged "racist, bigoted past". Like so many genocide denialists, they assert but don't demonstrate, they disapprove but don't ever disprove. Nothing they adduce can fashion out of the Aboriginal experience as many pluses as minuses, let alone more pluses. In a century of statutes and rule by endless regulations, it is simply not possible to construe more than 25 per cent of the laws as granting rights rather than subtracting them. That percentage is generous [72].

There is a very small but vocal group who behave in the manner of genocide denialists generally: either asserting that genocide never occurred here, couldn't have occurred here, could never occur here, or more commonly, nibbling at the edges, sniping at weaker points, in the hope (or belief) that if they can demonstrate one error of fact or figure the central and essential "contention" of genocide will fall apart. Perhaps a more fruitful activity would be for these writers and talkers to use their talents to urge upon the United Nations and the International Criminal Court a revised definition of genocide (which is truly necessary, for reasons suggested earlier), rather than waste effort denying the facts which are, however regrettably, consonant with the present definition of the crime. And the deeper one probes, the more consonant our history may be with that definition [73].

There is a mining and financial group, spearheaded by Henry Bosch and Hugh Morgan, who engage in the somewhat astonishing tactic of casting Aborigines

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as the villains of the piece. These men have created a climate of serious attacks on these "past inequalities", one which began in the late 1970s with the advent of the Land Rights Act, passed by the federal government, for Aborigines in the Northern Territory, and which increased markedly following the Mabo verdict of the High Court. Henry Bosch, a former head of the National Companies and Securities Commission, stated publicly that Aborigines were "a backward Stone Age people" who had "been getting away with murder for 200 years". Contemporary Australians "cannot feel guilt about the past treatment of Aborigines", he claimed [74]. Hugh Morgan, the chairman of Western Mining Corporation and a senior adviser to the present government, expressed this "philosophy": "we are now dealing with a psychotic condition in which people feel guilty or are persuaded they ought to feel guilty for *crimes they did not commit, could not have committed or were not committed at all*" (my emphasis) [75]. He denigrates Aboriginal history as myth; he also propagates the fallacious argument that Aborigines should not have land rights because some clans were once cannibals [76]! This general atmosphere, pushed vigorously by Morgan and mining consortia, led, in part, to some grand mythology and even grander scare-mongering: that land rights after Mabo could lead to a civil war, one which could only result in Aboriginal annihilation [77]; 80 per cent of Western

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Australia was at risk from native title claims [78]; farms, backyards, swimming pools and urban mansions were, and are, at risk from Aboriginal predators. This atmosphere was corrosive to the Mabo and Wik decisions of the High Court, and a fuel to those who (later) supported the populist racism of the One Nation party in the Queensland and federal elections in 1998. There was no basis for any of these claims, in fact or in law (and, one suspects, they knew it).

In December 1992, Paul Keating became the first Prime Minister to publicly admit the past:

... the starting point might be to recognise that the problem starts with us non-Aboriginal Australians. It begins, I think, with that act of recognition. Recognition that it was we who did the dispossessing. We took the traditional lands and smashed the traditional way of life. We brought the diseases. The alcohol. We committed the murders. We took the children from their mothers. We practised discrimination and exclusion .. [79].

By contrast, from his election in 1996 the present Prime Minister began a systematic campaign against what historian Professor Geoffrey Blainey disparagingly calls the "black armband" interpretation of Australian history [80]. This he defines as looking at the treatment of the Aborigines in a way which allows "the minuses to virtually wipe out the pluses". This swing, he says, "has run wild", and even the High Court is "that black armband tribunal". Howard sympathises with those "Australians who are insulted when they are told we have a racist, bigoted past" [81]. Priority should be given to health, literacy, and other practical programs [82]. He asks, in generalised terms (since he has no jurisdiction over state school systems) that syllabuses be rewritten to accommodate his view that Australian history is one of "pride and achievement". Of note was Australia Day 1997: the Prime Minister declaimed that Australia should not be "perpetually apologising for sins of the past". This, says Blainey, is John Howard admirably "trying to restore sanity". The Governor-General, Sir William Deane, in effect, admonished Howard in an

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official speech, saying that the "past is never fully gone"; "it is absorbed into the present and future" and it shapes "what we are and what we do" - and that, unless Australia achieves reconciliation by 2001, "we'll enter the second century of our nation as a diminished people" [83]. Senator John Herron, on his reappointment as Minister for Aboriginal Affairs in late 1998, complained about the "old" Aboriginal leadership being "preoccupied with yesterday's battles": "I don't want to get locked into debating the past", he said, as he called for a "new force" of tertiary-educated leaders [84]. (The Minister seems unaware that the modern generation of Aboriginal graduates is more knowledgeable and more steeped in their history than many of the "old" guard.) Justice Marcus Einfeld has made the pertinent comment that he would "rather [wear] a black armband than a white blindfold to shut out the truth" [85].

We live in an essentially a-historical age, perhaps even an anti-historical one. Some people simply don't remember, or don't want to; others manipulate amnesia. Czech novelist Milan Kundera's perception is that "the bloody years have turned into mere words, have become lighter than feathers, frightening no one". No one can really dispute the facts of the Australian case. But there is outrage at the surfacing of the bloody years, the years of "rough work", the removal years - which is, at bottom, an irritation with reminders, a determination to obliterate the past and present by an emotion called optimism, one that seeks to overwhelm with the catchcry "let's-look-to-the-future".

Racism, as Minogue says, appears in many forms. Here, it is not always as malevolent violence. In conservative politics in this country, it poses as democratic (and optimistic) liberalism and humanism. It also comes in the guise of what can be called irreconcilable relativism. In August 1997, Tim Fischer, leader of the National Party and Deputy Prime Minister, and Foreign Minister Alexander Downer, signed a significant government White Paper. It specified an "unqualified commitment to racial equality and to eliminating racial discrimination" - "a non-negotiable tenet of our own national cohesion"; further, "racial discrimination is not only morally repugnant, it repudiates Australia's best interests" [86]. Within that framework, however, both Fischer and

Downer fought tooth and nail against the Mabo judgment, the *Native Title Act*, the Wik judgment, the stolen generations issue, and the Hindmarsh Bridge affair. Fischer declared that land rights could lead to "a breaking up of Australia" and that Aboriginal culture had not yet produced "a wheeled cart". During the Wik debate, he promised his constituency there would be "buckets of extinguishment" of native rights on pastoral leases. He excoriated Territory land councils as "bloodsucking bureaucracies", in spite of their record of eighteen major mining agreements post-Mab [87]o. He then praised his National Party for "defeating" the racism of Pauline Hanson's One Nation party at the October 1998 federal election.

Apology and Acknowledgment

As this century ends, Aborigines in general rate the stolen generations as the most serious issue in their lives. Acknowledgment and apology are the key to any kind of reconciliation process. Apology is acknowledgment. The Australian public has responded to this National Inquiry in a quite unprecedented way: hundreds of thousands sign "sorry books", thousands stand in queues to listen to removed people telling their stories, many more thousands plant small wooden hands, signifying their hands up to guilt or sorrow, on lawns and beaches across the country. The Australian Labor Party has pledged apology on return to office [88]. State governments, churches, mission societies, city and shire councils proclaim both sorrow and apology. Minogue disparages this "festival of National Sorry Day, with its apparatus of sorry books, tearfulness and a minute's silence". Even if one concedes that this is "trendy breast-beating", it is significant because people have actually done something in *acknowledgment*. And acknowledgment, however shallow or trendy, is the antidote to denialism. Acknowledgment is also an expression of regret, remorse, sorrow, a sense of shame - and not necessarily personal guilt. Jeremy Weber suggests that while regret doesn't have to involve personal guilt, it does imply a deep sense of responsibility - "the civic responsibility that comes from membership in a

society that cares about its present moral character" [89]. Gaita says "we didn't know because we didn't care enough". True, and now there is a time and a place for regret that we neither knew nor cared.

The outstanding exception to this flow and to this incipient social movement of regret is the present federal government. The Deputy Prime Minister, Tim Fischer, believes his generation "shouldn't accept the guilt of the previous one" [90]. The Prime Minister offered a personal gesture but claims that to apologise formally is to open the way to huge claims of compensation. He also contends that he cannot apologise on behalf of Australia because the nation comprises many migrant groups who were or are innocent of any of these actions. Yet most ethnic groups have, on their own initiative, made official apology - on behalf of their nation.

The conservative government talks about these events as being removed from our time and values. Not discussed by anyone in this context is the reality that in 1949 Australia ratified an international treaty that defined forcible removal of children as a crime in international law, yet continued a vigorous practice of removal after that date. Repeal of the "removal" laws began only in 1964, and continued, one state at a time, through till 1984. The last blatant removal of a child was in Perth in 1970, when the authorities defied a judge's order to restore a child to its natural parent. Others, not so blatant, went way beyond 1970. The "assimilation factories" ceased very recently: the Retta

Dixon Home in Darwin in 1980, Sister Kate's Home in Perth in 1987, St Francis Home and Colebrook in South Australia in 1957 and 1978 respectively, Bomaderry in New South Wales in 1988. How do we date "yesteryear"? Many of the stolen are of the age of the Prime Minister and the Minister for Aboriginal Affairs - and the ages of their children. Barbara Cummings is alive and well, or as well as being raised in the Retta Dixon home has allowed. Her *Take This Child* is the recognised history of removal, and recent removal, in the Territory [91].

The problem of removal is not confined to past generations: it goes on affecting many people alive today. Removal may affect future generations, especially if the ideas of Western Australia's Police Commissioner, Bob Falconer, come to

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fruition. Deploring what he calls "Fagin-like behaviour" - Aboriginal families sending children "barely able to see over the counter" to rob fast-food outlets - he suggests that such children ("too young to be charged") be removed from their families and placed with suitable carers [92]. His "call" has been backed by the Premier, Richard Court. Falconer's suggestion is born out of realism, he claims, not racism; further, "this will not create another stolen generation". He may well have a genuine concern for children likely to become "hardened criminals by the time they are 14 or 15", but one has to ask whether such a suggestion could emanate from any Commissioner about white children. The mindset of Western Australians has a long history.

In this decade there has been an interesting development in the Western world: a growth of genocide denialism, but at the same time a willingness by some governments to make sense of themselves as a people, to face their national history, to acknowledge it, to express regret, and to offer some form of reparation or restitution. East Germany said "sorry" to the Jews minutes before reunification, and Poland followed suit. "One cannot dwell constantly on memories and resentments", intoned FranÁois Mitterrand in 1994. Even so, the (late) President found the flowers to half-atone for the deportation of so much of French Jewry. In New Zealand, the 1840 Treaty of Waitangi has been ruled a legally enforceable instrument, resulting in a special Waitangi Tribunal which listens to Maori claims and makes substantial compensations - such as the Ngai Tahu (South Island) settlement of 1997. The Crown has apologised for its failure "to act towards Ngai Tahu reasonably and with the utmost good faith"; it has restored Maori authority over lakes, mountains and other properties; and provided, at least, \$170 million in compensation [93]. South Africa has faced the horrific past, at least the past from 1960, through its Truth and Reconciliation Commission, and there is ongoing discussion about the size and nature of reparation. A possibly noble but very flawed exercise, the TRC at least exhibited the recent past and limited the lie that began in April 1994 - that only a handful of white South Africans was complicit and *every* other white citizen was either opposed to the system or was a closet freedom fighter. There are at least 27 other nation states with justice and reconciliation mechanisms in operation. Canada's Royal Commission on Aboriginal Peoples concluded in 1996 that "there must be an acknowledgment that great wrongs have been done

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to Aboriginal people", the 506,000 Amerindian and Inuktitut who now form 1.7 per cent of the population; that the premises of the philosophy "all Canadians are equal are very wrong"; that the "equality approach", which ignores inequalities, "is the modern equivalent of the mindset that led to the *Indian Act*, the residential schools, the forced relocations - and the other nineteenth-century instruments of assimilation" [94]. Above all, both Canada and the United States have accorded "first

nation" status to Indians, recognising them as people who had prior occupation, sovereignty and governance, and have engaged them in true conversation about renegotiating understandings, treaties, compacts. We shrink and retreat from any and all such notions. We have an (embattled) official Aboriginal Reconciliation Council, but a national government intent on deflecting, playing down or distorting the past, rigid in its adherence to a philosophy of One Australia in which all are equal, irrespective of both historical and present-day inequalities. If the former colonial dominions were to be viewed as competing to address the past as a way of confronting the present and future, Australia - the land of Olympism - would be running a clear last.

In the ABC's "Four Corners" program on the eve of the 1998 election, John Howard conceded that his greatest mistake in his first term of office was the tone of his speech, and his refusal to announce a formal Commonwealth apology for the removal of children to the National Reconciliation Conference in Melbourne in May 1997 [95]. "Our history is not without blemish", he conceded - after two and a half years of asserting something very different [96]. Political analyst Gerard Henderson has suggested that there are "signs of a softer Howard [97]", and the Prime Minister himself has declared his "re-invention" for the new millennium [98]. The Prime Minister has, however, refused to consider a treaty: *that* implies two nations, he argues, a notion he "will never accept". He *contemplates* a pact - "a document which would attempt to, sort of, set some of these things out". On the other hand, the Reverend Tim Costello has criticised Howard's desire for a written understanding from Aborigines that their "first and foremost allegiance is to Australia and nothing else": this, he says, sounds

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like "Deutschland Uber Alles" - "it reveals a homogenising instinct" [99]. It may be possible for a "softer", re-invented Howard to construct an observable strategy for "reconciliation", one that enables better relations with Aboriginal leaders and communities. To this end, he has made a significant appointment - of Phillip Ruddock, Minister for Immigration, to be responsible for the separate portfolio of reconciliation [100]. Ruddock has a sensitive and an abiding interest in Aboriginal issues. But his appointment and the new strategy cannot work in the absence of a formal, national apology. An editorial view is that reconciliation implies a meeting of hearts and minds, "not a patronising attempt to dictate the terms of a relationship", a relationship that must begin with apology. [101] Robert Manne describes the Prime Minister's belief that he can deny the recent past, refuse to apologise, and keep his reputation intact as "symptomatic of a kind of blindness which, in parts of Australia, has not yet been overcome" [102]. With blindness there is also deafness: the senior conservative leaders have no real conversation or dialogue with Aborigines, and if there is "consultation", any opposition to the ruling mindset is simply not heard [103]. It seems unlikely that Mr Howard can ever locate within himself a sense of real understanding and true appreciation of the recency of so much Aboriginal mistreatment, or "find" a genuine respect or even liking for indigenous Australians, or come to see the truth of the venerable Aristotelian doctrine that treating unequals equally is as unfair as treating equals unequally.

Archie Cameron and Leslie Haylen were wrong 50 years ago: Australia's behaviour is before the bar of public opinion, it is on the international conference agenda, and genocide here is now "thinkable". Minogue is quite

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wrong when he argues that Aborigines, or apologetic breast-beaters, or scholars like Professor Raimond Gaita have "coined" genocide simply in order to escalate a national issue into an

international one. The World Association of Genocide Scholars, meeting in Montreal in 1997, discussed the Australian case and passed strong resolutions addressed to the Prime Minister [104]. The matter isn't, as the Prime Minister would have it, a relatively minor, purely domestic issue. It will haunt. In the *Kruger* case, Justice Mary Gaudron stated that "if acts were committed with the intention of destroying the plaintiffs' racial group, they may be the subject of action for damages whether or not the Ordinance was valid" [105]. Indeed, a multitude of civil suits is under way [106]. In essence, these cases rest on six causes of action: wrongful imprisonment due to unlawful conduct, unlawful or *ultra vires* conduct, breach of duty of guardian, breach of statutory duty, breach of fiduciary duty, and breach of duty of care. The purpose of these cases won't be so much a matter of massive damages as an acknowledgment that "things" were done, that they were an evil, worthy of an apology, even a token one, and a token of atonement [107]. The Christian Brothers have done all of that for their history of sexual abuse in religious schools. The Commonwealth's defence in these cases will rest on the "legitimacy" of the beliefs of the time, on the argument, used by Joe Gullett about the German generals on trial, that they "carried out their duties as best they could", acting "according to their lights" and "in accordance with the ethics of their profession". The \$63 million finally allocated to Aborigines by the federal government is said to be not compensation, not restitution for what were, most dubiously, "legitimate" beliefs at the time, but funding for counselling services, for efforts to reunite families and for the compilation of histories and genealogies of people affected by these practices.

There has been an emotional, even an hysterical, response, to the word genocide. This century has seen several particularly well-documented episodes of the removal of children. The Turks killed close to 1.5 million of their Armenian citizens between 1915 and 1923. One "choice" for Armenian parents

was to save their Christian children by "giving" them to Turkish Muslim families. Turkey ferociously denies these events and rejects all talk of restitution. Of importance in our context is the origin of Article II (e) in the Convention. Certainly Lemkin, Donnedieu de Vabres and the other drafters of the Convention didn't seek to include "the forcible removal of children from one group to another group" on the basis of the Jewish experience. Jewish children had no such Armenian choice. Clearly they had the latter's case in mind. They may have had a thought for the 200,000 Polish children who were taken by Nazis to Germany to be raised as physically desirable Aryans. Again, they may have been well aware of the Swiss practice of removing Romani (Gypsy) children over the decades. Both Raphael Lemkin and the United Nations (especially the Greek delegate, Vallindis) ensured that removal of children, and hence their disappearance through assimilation, was a (physical) genocidal act. Jacqueline Jago has evaluated Aboriginal child removals in Canada and Australia [108]. Canada's *Indian Act* saw to it that Indian children were forced off reservations into schools where the stated aims were "religious instruction and cultural assimilation". That Australia sits alongside some strange bedfellows is perhaps reason enough to wriggle out of a verdict of genocide.

Sir Ronald Wilson, the former High Court judge who chaired the National Inquiry, was accused, among many other things, of "intemperate slander" [109]. His detractors, the Inquiry's critics, the "senior" denialists of Australian history, do not see, nor do they wish to see, the causal chains that begin with the incursions of settlers, the destruction of environments, the "rough work", the genocidal impulses of the squatters, the segregation-protection era of reserves, settlements and missions, the legislation which always proclaimed itself to be for "the physical, mental and social welfare" of the people, the dismissal of Aboriginal values and their evaluation as less than human, the creation of chronic dependency, and the (continuing) practice of institutionalisation, something

which even Neville, a pioneer of forced assimilation, for once correctly saw all too clearly - "that coloured races all over the world detest". It is that very premeditated institutionalisation - whether on Christian missions, cattle stations, government settlements and reserves, assimilation homes, dormitories, juvenile

facilities and prisons - that helps explain the degradation, disease and premature dying over these past two hundred years.

Footnotes

[0] *Hansard*, House of Representatives, vol 203, 30 June 1949, p. 1871.

[1] See Raimond Gaita's three essays on the subject of Holocaust, genocide and the removal of Aboriginal children in *Quadrant*: "Genocide and Pedantry", July-August 1997, pp. 41-5; "Genocide: The Holocaust and the Aborigines", November 1997, pp. 17-22; and "Reply to Kenneth Minogue", November 1998, pp. 39-43.

[2] It is instructive to read the *Hansard* record of debate on this ratification (vol. 203, pp. 1864-61). In some nineteen pages, the fate of Jews occupied four or five lines. Aborigines were not mentioned. The bulk of discussion was devoted to possible or probable cold war "genocides" in communist-controlled or communist-occupied Europe. Mr Blain, the Member for the Northern Territory, objected to the ratification bill: it was a slur on Australia because "it deals with a crime of which no Anglo-Saxon could be guilty". The Liberal Member for Henty, H. B. (Joe) Gullett, was eloquent in defence of events in Germany: "It is a wretched spectacle to see many German generals, now old men, who, during the war, rendered good service to their country according to their lights, being subjected to every possible kind of degradation simply because in accordance with the ethics of their profession and acting under instructions from their government they carried out their duties as best they could."

[3] G-tz Aly, Peter Chroust and Christian Pross, *Cleansing the Fatherland: Nazi Medicine and Racial Hygiene*, Johns Hopkins University Press, Baltimore, 1994, p. 1.

[4] See his essay "The Stolen Generations" in his volume of *Quadrant* essays, *The Way We Live Now: The Controversies of the Nineties*, Text Publishing, Melbourne, pp. 15-45.

[5] Among others, those offered by the Dutch jurist, Pieter Drost, the American social scientists, Irving Louis Horowitz, Helen Fein, and Henry Huttenbach, the Israeli, Israel Charny, the Canadians, Frank Chalk and Kurt Jonassohn, and the Australian, Jennifer Balint.

[6] Israel Charny, "Toward a Generic Definition of Genocide", in George Andreopoulos, ed. *Genocide: Conceptual and Historical Dimensions*, Philadelphia, University of Pennsylvania Press. 1994, pp. 75-94.

[7] *Nulyarimma and Others v Phillip R Thomson*, an application for a writ of mandamus, ACT Supreme Court, 1998, before Justice Ken Crispin. The Registrar of the Magistrates' Court refused to issue the initial summons as he believed it did not disclose any offence known to Australian Capital Territory law as genocide. Hence the writ against the Registrar to compel him to issue summons against the named persons.

[8] The best single source of information on Aboriginal society is the two-volume *Encyclopaedia of Aboriginal Australia*, ed. David Horton, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 1994.

[9] See *Australian*, 27 October 1993. For a full account of the views of Peter Connolly QC, S. E. K. Hulme QC and Sir Walter Campbell, former Supreme Court judge and Governor of Queensland, see *The High Court of Australia in Mabo*, Association of Mining and Exploration Companies, Melbourne, 1993, especially at pp. 23-61.

[10] *Trollope's Australia*, ed. E. H. Dow, Nelson, 1966, pp. 134-42.

[11] There was a 33 per cent increase in population, that is, 80,000 people, from the 1991 to the 1996 census. Clearly this was not a human increase but rather a greater willingness by a greater number to answer the "indigenous" question.

[12] This is based partly on the "growth" cited in footnote 12, and on an estimate arising from interviews during my youth suicide research that as many as one in five adults in New South Wales didn't answer the census question. In other words, I believe at least 80,000 (about 22 per cent) are "missing" from the 1996 census. Twenty-two per cent undeclared is not abnormal: for instance, Professor Bill Rubinstein contends that Jewish under-enumeration in Australia may well be as high as 25 per cent. The same would be true of other ethnic minorities—for reasons not entirely dissimilar to the Aboriginal responses to census questions.

[13] The endocrinologist I consult tells me that this disease was undoubtedly present earlier on, but that diagnostic tools were primitive, or were not used in Aboriginal communities, until as recently as 20 years ago.

[14] In the *Encyclopaedia*, cited above, the appendix material includes statistical evidence of most of these social indicators. The 1996 census, for example, shows an unemployment rate of 22.7 per cent as opposed to the national 8.1 per cent; a weekly income of \$502 per week (for an average household of 3.7 people) as opposed to \$736 for households of 2.7 people, and an adult take-home pay packet 25 per cent lower than non-Aborigines.

[15] The current crises in Aboriginal life are examined in my "Aboriginal Violence: A Return to Pessimism", *Australian Journal of Social Issues*, vol. 25, no. 4, November 1990, pp. 245-60; in my book *Obstacle Race: Aborigines in Sport*, University of NSW Press, Sydney, 1995 and 1996, especially chapter 13; see also my chapter "Aboriginal Rights and Wrongs", in *The Rights of Subordinated Peoples*, eds. U. Baxi and O. Mendelsohn, Oxford University Press, 1994, pp. 159-77; and the article "Race Relations in the 21st Century", *The Sydney Institute Quarterly*, vol. 2, no. 3, 1998, pp. 3-11. My 1999 report on Aboriginal youth suicide for the Criminology Research Council, "Aboriginal Suicide Is Different", deals at length with the factors involved in the present crises in many communities.

[16] Noel Butlin, *Our Original Aggression: Aboriginal Populations of Southeastern Australia 1788-1850*, George Allen & Unwin, Sydney, 1983, at p. 175 especially.

[17] David Stannard, *American Holocaust: Columbus and the Conquest of the New World*, Oxford University Press, New York, 1992, p. 109.

[18] The German bacteriologist Robert Koch postulated his germ theory in 1882.

[19] Frank Fenner et al., *Smallpox and its Eradication*, World Health Organization, Geneva, 1988, pp. 240-41.

[20] John Goldsmid, *The Deadly Legacy*, University of NSW Press, Sydney, 1988, pp. 29-31.

[21] Stephen Kunitz, *Disease and Social Diversity: the European Impact on the Health of Non-Europeans*, Oxford University Press, 1994, at pp. 83-5 and p. 178.

- [22] First formed in Victoria in 1837, in New South Wales in 1848, in South Australia in 1852, in Queensland in 1859, and the Northern Territory in 1884, these white-officered black troops were infamous for their butchery. The trial of the notorious commander William Willshire, tried and acquitted of murder, caused the disbanding of these "legions". See Kimber's chapter, cited in footnote 31.
- [23] "Aborigines and Australian Apologetics", *Quadrant*, September 1998, pp. 11-20. Professor Minogue is a member of the Department of Government, London School of Economics.
- [24] See footnote 2 for Gaita's reply to Minogue's contentions.
- [25] Leo Kuper, *Genocide: Its Political Use in the Twentieth Century*, Penguin, London, 1981, p.31. The United Nations considered that cultural extinction would be better handled under other conventions on human rights. But it did include "ethnicity" as a category of victim groups in the Genocide Convention and the clause about removal of children was much motivated by considerations of "cultural genocide".
- [26] See Lyndall Ryan, *The Aboriginal Tasmanians*, Queensland University Press, Brisbane, 1981.
- [27] See Raymond Evans, Kay Saunders and Kathryn Cronin, *Exclusion, Exploitation and Extermination: Race Relations in Colonial Queensland*, Australia & New Zealand Book Company, Sydney, 1975, pp. 75-8.
- [28] In *Queensland Votes and Proceedings*, vol. 4, no. 85, 1896.
- [29] See, *inter alia*, Anna Haebich, *For Their Own Good: Aborigines and Government in the Southwest of Western Australia, 1900-1940*, University of Western Australia Press, 1988. For material on the Pinjarra massacres of the 1830s, see J. Grose, *WA Historical Society: Journal and Proceedings 1927*, vol. 1 (91), pp. 30-5; C. Fletcher, *Studies in WA History, European-Aboriginal Relations in Western Australian History*, 1984, no. 8, pp. 1-16; and Neville Green, *Broken Spears: Aborigines and Europeans in the Southwest of Australia*, Focus Education Services, Perth, 1984.
- [30] Richard Kimber, "Genocide or Not? The Situation in Central Australia, 1860-1895", in *Genocide Perspectives I*, Centre for Comparative Genocide Studies, Macquarie University, Sydney, 1997, pp. 33-65.
- [31] For a rigorous documentation of all legislation affecting Aborigines, see John McCorquodale, *Aborigines and the Law: A Digest*, Aboriginal Studies Press, Canberra, 1987. The full list of protection legislation is too long to present here. The key statutes are: NSW-*Aborigines Protection Act 1909*; Victoria-*Aborigines Protection Act 1869*, *Aborigines Protection Act 1886*; Queensland-*Aboriginals Protection and Restriction of the Sale of Opium Act 1897*, *Aboriginals Preservation and Protection Act 1939*; Tasmania-*Cape Barren Island Reserve Act 1912*; Western Australia-*An act to prevent the enticing away the Girls of the Aboriginal Race from School or from any Service in which they are employed 1844*, *Aborigines Protection Act 1886*, *Aborigines Act 1905*; South Australia-*Aborigines Act 1911*, *Northern Territory Aboriginals Act 1910* [South Australia administered the Territory at that time]; Northern Territory [administered by the federal government]-*Aboriginals Ordinance 1911*.
- [32] Catherine deMayo, "Splendidly Secluded: the Location of Aboriginal Mission Sites in Australia", Master of Arts thesis, Politics Discipline, Macquarie University, 1990. The quotations in this paragraph are from her thesis.
- [33] *Jeremy Bentham: The Panopticon Writings*, ed. Miran Bozovic, Verso, London, 1995, Letter I, 1787, p. 34.
- [34] Eugene Perez, *North of the 26th*, ed. Helen Weller, Artlook Books, Perth, 1979, at pp. 346-8.
- [35] *Preliminary Report on the Aboriginals of the Northern Territory*, Commonwealth of Australia,

Parliamentary Papers, vol. III, 1913-as part of the Report of the Administrator for the year 1912.

[36] Colin Tatz, "Aboriginal Administration in the Northern Territory of Australia", doctoral thesis, Australian National University, Canberra, 1964.

[37] See my article "Queensland's Aborigines: Natural Justice and the Rule of Law", *Australian Quarterly*, vol. xxxv, no. 3, September 1963, pp. 17; also Garth Nettheim, *Outlawed: Queensland's Aborigines and Islanders and the Rule of Law*, Australia & New Zealand Book Company, Sydney, 1973, and his *Victims of the Law: Black Queenslanders Today*, Allen & Unwin, Sydney, 1981.

[38] *Jeremy Bentham*, op. cit., pp. 8 and 29.

[39] *National Report*, vol. 2, by Elliot Johnston QC, chapter 10, "The Legacy of History", at pp. 3-47.

[40] The Canadian sociologist Erving Goffman coined these terms for North American mental institutions (*Asylums*, Penguin, London, 1968). He called them "places of residence and work where a large number of like-situated individuals cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life". Prisons, he wrote, serve as a clear example, providing we "appreciate that what is prison-like about prisons is found in institutions whose members have broken no laws".

[41] Dr W. E. Roth, *Annual Report for the Chief Protector of Aborigines for 1905 (Queensland)*, p. 13.

[42] C. F. Gale, "Report of the Chief Protector", WA Parliament, *Votes and Proceedings*, vol. 2, 1909, p. 9. The *Bringing Them Home* document attributes this quotation to one of Gale's staff, James Isdell, a travelling Protector.

[43] Haebich, op. cit., p. 156.

[44] Quentin Beresford and Paul Omaji, *Our State of Mind: Racial Planning and the Stolen Generations*, Fremantle Arts Centre Press, 1998, chapter 1, at pp. 29-60.

[45] Granuloma is not a disease but an aggregation of cells usually associated with chronic inflammation. Certain infections, such as tuberculosis, brucellosis, leprosy and syphilis give rise to infective granulomas in many different organs of the body. Granuloma *inguinale* is a sexually transmitted disease, while granuloma *annulare* is a harmless skin disease. The Citizenship Act didn't specify and didn't differentiate. Yaws (or framboesia), found throughout tropical and sub-tropical zones, is caused by a spirochaete very similar to that which causes syphilis. But yaws, while infectious, is *not a sexually transmitted disease*.

[46] J. W. Bleakley, *The Aborigines and Half-Castes of Central and North Australia*, Commonwealth Parliamentary Papers, vol. II, no. 74, 1929, p. 17 and p. 28.

[47] *Our State of Mind*, op. cit., pp. 47-8.

[48] *Northern Territory Administrator's Report, 1933*, p. 7.

[49] Peter Read, *The Stolen Generations: the Removal of Aboriginal Children in New South Wales 1883 to 1969*, NSW Ministry of Aboriginal Affairs, Occasional Paper Number 1, 1983.

[50] *Obstacle Race: Aborigines in Sport*, University of NSW Press, Sydney, 1995 and 1996.

[51] *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, Human Rights and Equal Opportunity Commission, April 1997.

[52] Colin Macleod, *Patrol in the Dreamtime*, Random House, Sydney, 1997, p. 166.

- [53] Now available in book form, as *Between Two Worlds: The Commonwealth government and the removal of Aboriginal children of part descent in the Northern Territory*, Rowena MacDonald, Australian Archives, IAD Press, Alice Springs, 1997.
- [54] Henry Reynolds has written elegantly about the people who couldn't satisfy their consciences, who worried about the Aboriginal-white relationship, who said so publicly and who attempted some kind of action to try to change the way things were. His book is *The Whispering in Our Hearts*, Allen & Unwin, 1998.
- [55] *Kruger, Bray v Commonwealth*, 1997, 146 Australia Law Reports 126 or 1997, 71 ALJR 991.
- [56] In *Genocide and Human Rights: International Legal and Political Issues*, vol. 20, book 3, Monograph Series in World Affairs, Denver, Graduate School of International Studies, 1984, p. 67.
- [57] P. Starkman, "Genocide and International Law: Is There a Cause of Action?", Association of Students' International Law Society *International Law Journal*, vol. 8, no. 1, 1984, p. 1.
- [58] Matthew Storey, "*Kruger v The Commonwealth: Does Genocide Require Malice?*", *University of New South Wales Law Journal Forum*, "Stolen Children: From Removal to Reconciliation", December 1997, pp. 11-14.
- [59] See footnote 2, "Genocide: the Holocaust and the Aborigines", p. 21.
- [60] Listed as "Anonymous: Commonwealth Government", October 1996.
- [61] Senator John Herron, Minister for Aboriginal Affairs, to ABC Radio, 27 May 1997, in *Australian*, 27 May 1997.
- [62] In "Theft", a chapter in his *About This Life: Journeys on the Threshold of Memory*, The Harvill Press, London, 1998, p. 270.
- [63] Stuart Bradfield, "With the Best of Intentions: The Removal of Aboriginal Children and the Question of Genocide", BA Honours (First Class), Politics Discipline, Macquarie University, 1997.
- [64] See his "Genocide, the 'Stolen Generations', and the 'Unconceived Generations'", *Quadrant*, May 1998, pp. 19-24.
- [65] The walking corpses in the camps, those who had lost the will to live.
- [66] Kenneth Maddock, "The 'Stolen Generations': A Report from Experience", *Agenda*, vol. 5, no. 3, 1998, pp. 347-53.
- [67] Maddock has quoted the Commission correctly (*The Law Reform Commission: The Recognition of Aboriginal Customary Laws*, Report no. 31, vol. 1, footnote 4 at p. 127). It states that "genocide is the deliberate physical destruction of a 'national, ethnical, racial or religious group, as such' and then cites the Convention as the source of this statement. *Nowhere* does the Convention use this phrasing, or the concept of "deliberate physical destruction", or state that physicality is the *sole* criterion of genocide; nor does it in any way preclude, as the Commission claims, "even deliberate acts aimed at the assimilation of a minority group".
- [68] Maddock letter to the editor of *Quadrant*, September 1998, p 5.
- [69] For example, I was the first academic allowed to do research on the subject of Queensland settlements and missions since Professor Donald Thomson's (published and publicised) visits there in 1937. That was in 1961-62. Thereafter the field was closed again to this kind of policy research for at least another ten years.
- [70] "Aborigines and the Civil Law", evidence to House of Representatives Standing Committee on Aboriginal Affairs (Reference: Aboriginal Access to Legal Aid), Official Hansard Transcript of Evidence, Darwin, 21 June 1979, pp. 580-622; and Canberra, 4 March 1980, pp. 3946-61. See also

"Aborigines: Access to Civil Law", *Legal Service Bulletin*, vol. 5, no. 1, October 1979, pp. 198-201;
"Aborigines and the Civil Law", *Legal Service Bulletin*, vol. 5, no. 1, February 1980, pp. 9-15.

[71] *Australian*, 25 October 1994.

[72] See John McCorquodale's *Aborigines and the Law: A Digest*, Aboriginal Studies Press, Canberra, 1987. He has assembled all the laws relating to Aborigines: Imperial, Federal and State from the earliest times to 1987. One shouldn't look only to the main legislative controls over Aborigines, as listed in footnote 32.

[73] From time to time allegations surface that state medical services engage in unilateral temporary or permanent sterilisation of women: in Western Australia, the use of Depo-Provera, producing three-to-six month infertility, and in Queensland, the "non-explained" tubal ligations. See Roger Moody, ed. *The Indigenous Voice, Visions and Realities*, vol. 1, Zed Books, London, 1988, at pp. 324-6. Depo-Provera, by injection, has alarming side effects, dire warnings about contra-indications and the need for stringent physical examination before administration. The whole matter of unilateral sterilisation needs careful research.

[74] *Sydney Morning Herald*, 9 August 1993.

[75] *Weekend Australian*, 3-4 April 1992.

[76] In 1996 Pauline Hanson declared that Aborigines should apologise for eating Chinese in North Queensland. Peter Walsh, former ALP federal cabinet minister, defended her assertion, claiming that no less an authority than the later Professor Manning Clark had written that some of the Chinese who rushed to the Palmer River goldfield in 1875 "fell victim to cannibalism" (*Financial Review*, 9 July 1996). Ken Maddock's feature article for the *Sydney Morning Herald* (23/4/97) suggests that a "no cannibalism" line is the high moral ground line, the politically correct line. He points to the "several pages on the subject" in the standard work of the late Catherine and Ronald Berndt; he refers to Daisy Bates and then to the present review of the sources by Dr Gillian Cowlshaw, who believes the Berndts seriously "minimised the problem". Much of Maddock's article is devoted to the practice of infanticide. In my view, the evidence-and I've read most of it-is fragmentary and inconclusive. The fact is that we don't have a single eyewitness account of Aboriginal cannibalism. Everyone heard it from someone else. And what they heard, as Maddock rightly says, is that in some, not all, mourning and mortuary rituals, portions of a deceased relative's body were seen to be carried about. In *some* clans, when a prominent person died in the prime of life, there was consumption of parts of the body as a way of perpetuating the existence of the dead one. Daisy Bates was, and remains, notoriously unreliable and sensationalist-on practically every subject from Aboriginal cannibalism to Aboriginal cricket.

[77] The WA Pastoralists and Graziers Association, Fitzroy Crossing, 18 April 1993.

[78] The WA Chamber of Mines and Energy, 1993.

[79] *International Year of the World's Indigenous People: Speeches [by Paul Keating, Lois O'Donoghue and Sol Bellear] to mark the national and international launch*, ATSIC, Canberra, 1993.

[80] "Black Future", Geoffrey Blainey, *The Bulletin*, 8 April 1997.

[81] *Sydney Morning Herald*, editorial, 18 November 1996.

[82] *Australian*, 9 November 1996.

[83] *Sydney Morning Herald*, 27 January 1997.

[84] *Australian*, 20 October 1998.

[85] *Sydney Morning Herald*, 5 October 1998.

[86] *In the National Interest-Australia's Foreign and Trade Policy*, White Paper, Commonwealth Parliament, August 1997.

[87] Phillip Kauffman, *Wik, Mining and Aborigines*, Allen & Unwin, 1998. (Perhaps the saddest and the most telling agreement was reached in October 1998: the Jawoyn Association in the Katherine area surrendered a likely land claim, an area wanted by the Northern Territory government for a horticultural lease-in exchange for an alcohol rehabilitation centre and a two-bed dialysis unit.)

[88] Daryl Melham, Shadow Minister for Aboriginal Affairs, ICAM program, SBS television, 4 October 1998.

[89] Jeremy Weber, "The Jurisprudence of Regret: the Search for Standards of Justice in *Mabo*", *Sydney Law Review*, no. 17, 1995, at p. 10.

[90] *Sydney Morning Herald*, 14 January 1993.

[91] Aboriginal Studies Press, Canberra, 1990.

[92] See *Canberra Times* and *Australian*, 24 August 1998.

[93] *The Press*, Christchurch, 24 September 1997. Two years earlier the Tainui Federation of Tribes of the North Island won compensation of \$170 million and restoration of 15,400 hectares.

[94] *Royal Commission on Aboriginal Peoples, People to People, Nation to Nation*, Highlights from the Report of the Royal Commission on Aboriginal Peoples, Minister of Supply and Services, 1996, p. 9.

[95] "Four Corners", screened 28 September and Channel 9 *Sunday*, with Laurie Oakes, 27 September; see also the editorial, *Sydney Morning Herald*, 30 September 1998.

[96] Televised speech, 27 September 1998.

[97] *Sydney Morning Herald*, 13 October 1998.

[98] *Sydney Morning Herald*, 15 October 1998.

[99] *Sydney Morning Herald*, 7 October 1998.

[100] See "The Reconciliation Issue", special edition of the *Melbourne Journal of Politics*, vol. 25, 1998, comprising eleven essays on the concept. I share the view of some critics who see "reconciliation" as an impossible achievement where there is such wealth and power disparity between the parties. Further, the reconciliation efforts to date have not addressed a single one of the myriad social, economic, health and legal problems besetting Aboriginal communities, as described in the section "Decimation: Physical and Social" of this paper.

[101] *Sydney Morning Herald*, 16 October 1998.

[102] *Sydney Morning Herald*, 19 October 1998.

[103] Raimond Gaita's paper, "Responding to Ancestors", given at the "Aborigines, the Arts and Reconciliation" conference at the Victorian College of the Arts, 23-24 October 1998, made a pertinent reference to philosopher Martin Buber's *Ich und Du (I and Thou)*. Between humans, it is possible to enter a relationship, a true dialogue, with the fullness of one's being. Generally, Buber wrote, we enter relationships not with the fullness of our being but only with some fraction of it. The white-Aboriginal relationship seems to me to be based on the minutest of fractions, even on (as I recall arithmetic lessons) improper rather than proper fractions.

[104] I am a member, but wasn't present at that conference.

[105] *Kruger and Bray*, 1997, 71 ALJR 991, at p. 1037.

[106] In early 1999 the cases of *Peter Gunner v Commonwealth* and *Lorna Cubillo v Commonwealth* began in Darwin. These were the lead cases handled by the Melbourne firm of Holding Redlich. At least 550 claims for common law damages have been filed in the Darwin Registry of the High Court.

[107] op. cit., *University of New South Wales Law Journal Forum*, Michael Schaefer, "The Stolen Generations: In the Aftermath of *Kruger, Bray v The Commonwealth*", pp. 22-4.

[108] Jacqueline Jago, "Aboriginal Child Removals and Genocide: Law and the State in Australia and Canada", *Genocide Perspectives II*, Centre for Comparative Genocide Studies, Macquarie University, Sydney, 1999 (in press).

[109] *West Australian*, 17 June 1997.