

**Indigenous Child Welfare
or
Institutionalised Colonialism?**

**Rethinking policy in relation to Aboriginal
children in Australia.**

Minor Thesis in partial fulfilment of Master Arts (Social Policy)
Royal Melbourne Institute of Technology
February 1994

Nigel D'Souza

THESIS ABSTRACT

Title: Indigenous child welfare or institutionalised colonialism?

Rethinking policy in relation to Aboriginal children in Australia.

The purpose of this thesis is to explore the social policy landscape within which present policy in relation to Aboriginal child welfare is couched. It argues that the frameworks presently used do not go beyond the framework of multicultural policy in Australia and certainly not as far as other forms of Aboriginal social policy.

It considers arguments in social theory that maybe a more appropriate basis for policy in the future, recognising the influences of feminist and anti-racist theory and taking note of arguments for policy changes to occur in line with the framework of "nations within" emanating from north America.

This thesis argues that the history of the child welfare system and its relations with Aboriginal people and their children cannot be ignored in any policy analysis. It also says that traces of the aims of colonialism in respect of Aboriginal children continue to be played out in the present system of child welfare and juvenile justice. It explores the philosophical basis for the present child welfare system and argues that the changes that have occurred recently have not gone as far as Aboriginal people would like them to. These changes have incorporated some aspects of demands made by Aboriginal people but in doing so have not addressed the continuing over-representation of Aboriginal children in the welfare and justice systems.

It goes onto to consider the views of Aboriginal people themselves, linking present forms of resistance to earlier resistance, arguing that in the perception of their own position Aboriginal people see the present system as continuing the aims of the colonialism- a crucial consideration in any assessment of the impact of the child welfare and juvenile justice systems which are still viewed as alien impositions.

This thesis concludes that significant changes may need to be made if Aboriginal people are to be satisfied and if the present problems are to be adequately addressed.

ACKNOWLEDGMENTS

Very little that I have done over the years has been without assistance and support from others. In this product - a thesis- where I am ostensibly the sole producer of the finished work- and certainly bear and accept all responsibility for its weaknesses and failures- there are others who have given their assistance and support, without which I would not have attained my goal.

To Linda Freedman, my supervisor, in giving of her time and her expertise voluntarily over many hours, I am greatly indebted. I hope that the discussions we had about the issues in my thesis were in some small way useful and interesting to her as they were invaluable to me. I am also grateful to Jacques Boulet for his criticisms of an earlier draft. As hard as this was to take at the time, I believe they contributed to sharpening my presentation of the arguments and hopefully are reflected in the final work.

I am appreciative to the staff of SNAICC, Joanne Riseley and Yolanda Walker, for tolerating me through stressful times when work and academic commitments were particularly burdensome; and to Teresa Hoffman at the Victorian Aboriginal Child Care Agency for her professionalism and speed in producing the transcripts of the interviews. I am also sincerely grateful to the Executive and General Membership of SNAICC for supporting me through this thesis and the three years of my Masters Degree. I hope that this thesis contributes to their aims. I wish especially to thank Brian Butler, the Chairman of SNAICC, for his personal encouragement and support over the last three years.

Finally, regarding three women without whom I could not have accomplished any of this. My mother-in-law, Mrs. Thangam Krishnan, whose support, especially through her exquisite cooking, meant I could focus on my academic work without distraction; to Lata, my wife and companion, who has lived every word of this thesis with me, both before and after Priyanka, our beautiful daughter arrived towards its completion. I dedicate this work to them.

Nigel D'Souza
February 1994

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INTRODUCTION

A number of recent reports about children in care in Australia have revealed the continuing over-representation of Aboriginal children in government and non-government care ¹. The figures for Aboriginal children in contact with the juvenile justice system reveal a similar over-representation. ²

At the same time the statistics on children in care for substantiated cases of abuse or neglect reveal a significantly different breakdown in the reasons that Aboriginal children entering care. The Australian Institute of Health & Welfare figures for "Substantiated cases for Aboriginal and Torres Strait Islander children" according to type of abuse and neglect showed that 2,089 out of 4,032 or 52 % of all notifications were substantiated as compared with 45 % of cases of non-Aboriginal children.³

The Institutes' figures also show that of all substantiated cases of child abuse and neglect for Aboriginal and Torres Strait Islander Children in Australia, 42 % were for neglect, 14 % for sexual abuse, 20% emotional abuse and 24 % physical abuse. The comparable figures for all children was equally divided into four quarters or roughly twenty-five per cent for each category⁴. These particular statistics suggest that most of the Aboriginal children in care were there mainly because of their impoverished conditions.

¹Szwarc B. (1992) Particular Care Reconsidered, National Children's Bureau of Australia. Section 6.5. pp 93-97
Angus, G. & Wilkinson, K., (1993), Child Abuse and Neglect Australia, 1990-1991, Australian Institute of Health and Welfare, Child Welfare Series No. 2, AGPS.

Shaver S. and Paxman, M. (1992), Homelessness, Wardship and Commonwealth-State Relations. University of New South Wales, Social Policy Research Centre, Reports & Proceedings, No. 101, p. 36 Table 3.19 and Section 3.5.
Brewer G., and Swain, P. (1993), Where Rights Are Wronged. National Children's Bureau of Australia for Children's Rights Coalition, p. 45.

Choo, C. (1990) Aboriginal Child Poverty: Child Poverty Policy Review, Brotherhood of St. Laurence.

Commonwealth of Australia, (1991), Royal Commission into Aboriginal Deaths in Custody (RCIADC), National Report, Volume 2. AGPS. pp. 79-83.

²*ibid*, Section 14.3.1- 14.3.6. pp 254-256

³Angus, G. & Wilkinson, K., (1993) *Op. cit.* p. 13

⁴*ibid*, p. 13

The figures also show that the problems of Aboriginal children entering care and institutions in disproportion to their population, continue despite changes to policy, legislation and government funding for Aboriginal and other agencies since the early eighties. It was in 1983 that the Council of Social Welfare Administrators -the permanent forum for all Federal, State and Territory Social Welfare Departments- recognised the over-representation of Aboriginal children in "government and non government welfare services and programs⁵.

Meanwhile, Aboriginal representative organisations working in the field of child and family welfare continue to insist that there are problems with the present system of child welfare and juvenile justice in Australia. They say these problems persist despite changes to the policy framework adopted by State and Territory Welfare Ministers in 1984, which in any case were strenuously opposed by these Aboriginal organisations⁵. These changes had been prompted by many years of political activity by Aboriginal people.

When the Hawke Labor government was elected in 1983, it made a pre-election commitment based on successful lobbying by Aboriginal people to

initiate full and complete consultation with the Aboriginal and Islander communities, with the commitment to implement the principles of those communities regarding the care, custody and control of children and the provision of necessary resources to facilitate the development of community-controlled Child Care agencies/services within the Aboriginal and islander community.⁶

This statement had, significantly, been made after discussions with representatives of the Secretariat of the National Aboriginal & Islander Child Care (SNAICC), an organisation that claimed to represent the views of Aboriginal communities around the country.

⁵Chisholm R. (1985) Black Children: White Welfare. Social Welfare Research Centre Report No. 52. University of New South Wales. Sydney. p. 110-111

⁶Australian Labor Party. (1984) Platform Constitution and Rules. p.4.

Since that time a number of States and the Northern Territory have changed policy and practise guidelines. Some, like Queensland, are currently in the process of making changes to their legislation.

Over this period there have also been changes to juvenile justice legislation. Although this is not the main focus of this thesis it cannot be ignored. The Royal Commission into Aboriginal Deaths in Custody (RCIADC) and others⁷ have pointed out the links between the two systems and indeed, the growing number of Aboriginal children that are being drawn into the juvenile justice system.

Two recommendations in the Final Report of the RCIADC stand out amongst others, as they are relevant for the future development of policy and legislation in this regard. They also indicate the crisis that has been apparent to Aboriginal people for many years, but which has gone unnoticed or disregarded by governments.

Recommendation 62 states:

That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise⁸.

The other recommendation underlines the need for any policy or legislative responses to ensure that Aboriginal families and community groups, including the Aboriginal Child Care Agencies

⁷Chisholm (1985) op. cit. and Cunneen (1993) Enforcing Genocide (Unpublished). SNAICC. Paper. (1992) Minding the Gate. Unpublished.

⁸Commonwealth of Australia. (1991).Op. cit. Overview and Recommendations. p.45.

(ACCAs) are the main sources of advice.⁹ The Royal Commission made one further recommendation which called for legislative recognition of the Aboriginal Child Placement Principle and the role of the Aboriginal Child Care Agencies.¹⁰

Choice of Research Topic

The persisting over-representation of Aboriginal children in the child welfare system despite policy and program changes can be attributed to various factors from the inappropriateness of systems to institutional racism. Changes in policy and practice, however, have always fallen short of the demands of Aboriginal people in international comparative terms as well. This thesis will try to demonstrate that the child welfare system, as it is presently constituted in Australia, is inadequate.

It is specifically motivated by the following factors:

1. The continued over-representation of Aboriginal children in the child welfare and juvenile justice systems, the inadequacy of changes in policy and legislation and the unmitigated protests by Aboriginal people about the performance of the child welfare and juvenile justice systems in Australia.
2. The isolation of this field from developments in other areas of Aboriginal social policy which have displayed a much stronger commitment to the principle of self-determination, including a recognition of the existence of other Indigenous rights, generally accepted by the Commonwealth and most other governments in Australia.
3. The paucity of research that discusses the framework for policy in this field.
4. The conspicuous absence of the Aboriginal viewpoint in discussions about child welfare policy in Australia.

⁹ibid. p.84

¹⁰ibid. p.43

The Central Question

The central research question is what policy changes are required so as to make a difference to the over-representation of Aboriginal children in the child welfare system and reduce the level of state intervention in the lives of Aboriginal children and their families?

This in turn prompts some further questions:

1. What do Aboriginal people want in relation to the welfare needs of their children and families?
2. Do Australian developments in the area of Aboriginal social policy provide any ideas for a future framework in Aboriginal child welfare policy?
3. Are there useful pointers from overseas developments in indigenous child welfare for future changes in Aboriginal child welfare in Australia?
4. Are present approaches to racism in policy adequate in dealing with the racism in the "system"?
5. Is colonialism still a factor in the relationship between Aboriginal people and the child welfare and juvenile justice systems?
6. Does social policy in this field presently take into account the possibility of persisting colonialism?
7. Are there developments in Aboriginal affairs that are instructive and what do Aboriginal people and their representative organisations say about child welfare and the juvenile justice system?
8. What is a suitable and appropriate framework for future policy in the field of child welfare and juvenile justice?

The formulation of this area of investigation has been a long process. It has developed through over ten years of work with and for Aboriginal people in their organisations. In searching for a topic for research in fulfillment of my Masters in Social Policy, I have found my circumstances to be fortuitous. This is especially so given the fraught nature of research in Aboriginal affairs. The problems that other- often non-Aboriginal - researchers have encountered have related to:

- i) inappropriate methodology which is partly the result of divergent epistemology, ontology;
- ii) choice of research topic;
- iii) androcentricity;
- iv) ethical issues- the impact of research and its findings, ownership of information.

Whatever its form, conducting any research or investigating issues about any aspect of Aboriginal affairs has its difficulties. These difficulties are usually experienced by researchers who are either non-Aboriginal or from outside the community being researched. The fact that Aboriginal Health Services formulated "Ethics for Research into Aboriginal Health" in 1987 is a testimony to the fact that there have been problems¹¹ which have been noted previously¹².

When I began work on this thesis, I was keen to avoid some of the pitfalls of past research and to ensure that I did not inadvertently perpetuate the problems of Aboriginal people by producing research that could be used in inappropriate ways. I had therefore to be wary of a number of possible ways in which this could happen, as outlined above. To ensure that this thesis did not repeat the problems of previous research in Aboriginal affairs, the topic chosen was one that was useful to SNAICC. I also presented my thesis proposal to the 1993 SNAICC national conference for approval. A commitment was also made to SNAICC to make all material and the thesis available to them for their use as they see fit.

¹¹ National Aboriginal Health Strategy Working Party (NAHSWP) (1989) A National Aboriginal Health Strategy. Appendix XII

¹² See for instance Hunter, E. (1991) Editorial in Aboriginal & Islander Health Worker Journal, Vol. 15, No. 2, March/April 1991; and NAHSWP (1989) op. cit. Chapter 11, 207-

Structure

In arriving at my conclusions, I will in :

- Chapter One, discuss social theory in order to outline a framework within which I will locate my evidence;
- Chapter Two, contextualise the present child welfare system in relation to past policies and practices dealing with Aboriginal children;
- Chapter Three, consider the philosophical basis of contemporary child welfare and how it treats Aboriginal children;
- Chapter Four, look at the general aspirations of Aboriginal people for self-determination, including the application of this principle in existing policy in Aboriginal education and health and compare this to the area of child welfare. This chapter will also consider Aboriginal demands as expressed by SNAICC through national conference resolutions, supplemented with five interviews with key Aboriginal people which are appended.
- Chapter Five, summarise the discussion and draw some conclusions.

Methodological Note

Data Sources and Collection Methods

Analysis of SNAICC and other Documents

All documents and reports of SNAICC have been available for my use in this thesis. Given the number of resolutions passed at SNAICC National Conferences and Executive meetings, I decided to consider only those passed at National Conferences. This is largely because the full membership of SNAICC is present at these conferences and a minimum number of internal or process resolutions are discussed. The national conference is also the supreme policy-making forum of SNAICC, providing direction to the National Executive and the Secretariat. I have summarised the resolutions of these conferences and sifted out some identifiable themes that have arisen over the years. This summary of resolutions is appended.

Data for this thesis have also been collected from other written sources such as official government reports, policies and documents and literature on this and related subjects.

Interviews

To provide a contemporary edge to these resolutions and to verify their consistency, I conducted interviews with five key Aboriginal people who are presently with Aboriginal & Islander Child Care Agencies (AICCAs) and on the National Executive of SNAICC. All the interviewees have been involved in the establishment of their individual AICCAs and two were founding members of SNAICC. Interviews are important tools for the social researcher working in Aboriginal affairs. It has been particularly so for my thesis, because the individuals concerned have not reflected, in writing, on their experiences in this field. The interview is an important tool for both historical and contemporary Aboriginal research¹³. As Wadsworth states, this technique, "has the advantage of allowing much more detailed and possibly deeper understandings of what is going on"¹⁴. In this case, I will use the interviews as a means of complementing the analysis of SNAICC National Conference resolutions.

The interviews were not based on a questionnaire. This seems a better method yielding more information, as Finch found in her interviews with women¹⁵. A number of topics were used as a

¹³For instance:

Brady used informal interviews and participant observation (p. 5 & 6) as part of her study into petrol sniffing in Aboriginal communities. Brady, Maggie (1992) Heavy metal: the social meaning of petrol sniffing in Australia, Aboriginal Studies Press.

Nathan, P. (1980), A Home Away from Home: A Study of the Aboriginal health Service in Fitzroy. PIT Press

Harrison, J (1991) Looking After Children Grandmothers' Way. Ngaanyatjarra, Pitjantjatjara, Yankunytjatjara Women's Council .

The works that have used the "oral history" method have been largely works that have recorded history from the point of view of Aborigines like

Pepper P. (1980), You are what you make yourself to be Recorded and Edited by Tess De Araugo, Hyland House and,

Jackomos A. and Fowell D. (1991) Living Aboriginal History of Victoria, Cambridge, which also records contemporary views.

¹⁴Wadsworth, Y., (1984). Do It Yourself Social Research. Victorian Council of Social Service. p. 42

¹⁵Finch, J., (1984). 'It's great to have someone to talk to': the ethics and politics of interviewing women. In Bell, C. & Roberts, H. (Eds.) Social Researching: Politics, Problems, Practice. London. RKP. Chapter 4.

guide to give the interviews a focus whilst maintaining flexibility and informality. Wharf used this method in his study of Indian Child Welfare in Canada¹⁶. He conducted his interviews using the following list of topics:

- Chronology of events: What happened and when?
- Key actors
- Existing conditions: Why take over child welfare?
- Difficulties faced
- Outcomes
- The future¹⁷

Even though these topic areas are broad, they provided sufficient consistency and flexibility to allow interviewees to raise issues that had initially not been taken into account¹⁸. All interviewees had known the interviewer (myself) for at least five years; I was thus also able to conduct a fairly open interview without having to first establish a rapport with the interviewees.

The interviews were recorded on tape and transcribed. They were sent to the interviewees for verification and are included in the Appendix of this Thesis and themes have been sifted out and identified for the reader in Chapter Four.

Content Analysis

The documents and transcribed interviews have been loosely subjected to "content analysis". It is a method that has been used by Chomsky and Herman in their work "Manufacturing Consent" when they compared the reporting of two international incidents: the genocide in Cambodia carried out by the Khmer Rouge and the invasion and genocide in East Timor carried out by the Indonesian forces in 1975. It is also a way of using "indirect evidence" such as "historical or other records - agency or programme records, or files (of minutes, agendas, reports, statistical information, letters, memos, circulars, agency publications, timetables, usage rates and patterns, photos, lists or rules, personal records, etc.)"¹⁹

¹⁶Wharf B. (1989), First Nation Control of Child Welfare. University of Victoria . p.7.

¹⁷ibid.

¹⁸Wadsworth. (1984) Op. Cit. p. 31.

¹⁹ibid. p. 41. "Technique h. Written records"

Content analysis is also known as a coding technique when used in categorising research data.²⁰

Participant Observation

Throughout this process my own views have played an important part in shaping the arguments presented. My position as Executive Officer of SNAICC has permitted a unique vantage point from which to observe developments. I have been present at virtually all SNAICC conferences, and discussions with politicians and bureaucrats over the last nine-and-a-half years. Although I have not drawn on any of my own notes of these discussions and meetings, my recollection of these events combined with an analysis of SNAICC Minutes and Documents, has been important. In the same manner as Freedman²¹, Pellatt²² and Wharf, I have also used documents that have not been published and material that is generally unavailable to the public.

Qualitative Research

The thesis is written in the tradition of qualitative research²³. Through the use of the varied methods of data collection identified above, I hope to ensure as comprehensive a source of data and information as possible in an area of research where conventional forms of information gathering do not suffice. Qualitative research is the most appropriate form of research in my particular situation given that through almost a decade I have indeed been cast in the roles of "total researcher, researcher participant and total participant"²⁴. Qualitative research enables the researcher to, "understand events only when they are situated in the wider social and historical

²⁰Moser, Sir C. & Kalton G. (1973), Survey Methods in Social Investigation, Heinemann. p. 414

Chomsky N. & Herman E., (1992) Manufacturing Consent

²¹Freedman, L. (1989) The Pursuit of Aboriginal Control of Child Welfare, Masters Social Work. Thesis, University of Melbourne. Chapter 1. Unpublished.

²²Pellatt, A. S. (1991), An International Review of Child Welfare Policy and Practice in Relation to Aboriginal People. Canadian Research Institute for law and the Family . p. 3.

²³Wadsworth . (1984) Op. Cit. p. 85. "Qualitative- A term often used to describe the nature of the answers (evidence) in terms of their descriptive nature. The who, which, what, when, where and why - in contrast to "quantitative" answers addressing the "how many". See also Bryman, A. cited below.

²⁴Cited in Bryman, A. (1988). Quantity and Quality in Social Research. London. Unwin. p.48.

context"²⁵. Through the use of these means I also hope to provide to the reader a perspective that is of the "subjects"²⁶.

²⁵ibid. p. 65.

²⁶ibid. p. 69

Chapter One

SOCIAL POLICY CRITIQUE

My thesis argues that present policy in relation to Aboriginal children, particularly, in the child welfare and juvenile justice systems, is inappropriate. The continuing problems which beset the two systems in their relationship with Aboriginal people and their children is partly the result of inappropriate policy analysis that does not take into account their experiences with the state nor their claims based on their indigenous status.

This chapter attempts to outline the theoretical basis for an alternative and more appropriate policy. It will do this by emphasising firstly, the importance of history in analysis; secondly, the impact of state and societal institutions on the lives of Aboriginal people is, in a similar way to their effect on women, discriminatory. Thirdly, an approach that incorporates an analysis of institutional racism. The fourth strand of this argument, and perhaps the most crucial one, partly because it appears to have been neglected in policy analysis in Australia, is the status of Aboriginal peoples in Australia as peoples living in a "neo-colonial" relation with the state and society. I attempt to tie this strand into the overall analysis to improve on a purely "anti-racist" approach which views the position of Aboriginal people as merely one non-European culture amongst many in a "multicultural" Australian society. This additional strand draws on some literature from North America that implicitly or explicitly recognises the status of Indian peoples as that of "nations within" US society¹. It also draws on Mervyn Hartwig's argument for the application of the theory of "internal colonialism"² to the analysis of the position of Aborigines in contemporary Australia.

¹Fleras, Augie. & Elliot, Jean Leonard. (1992). The 'Nations Within': Aboriginal-State Relations in Canada, the United States, and New Zealand. Oxford University Press. Ontario Canada

²Hartwig, M. (1978), "Capitalism and Aborigines: The Theory of Internal Colonialism and Its Rivals", in E. L. Wheelwright and K. Buckley (eds) Essays in the Political Economy of Australian Capitalism, vol. 3, ANZ Book Co. Sydney.

This theoretical framework, I believe, then legitimately permits the incorporation of the views of Aboriginal people who argue for "sovereignty" or "self-determination" in the outcome of policy, in this case specifically in relation to child welfare and juvenile justice matters.

The Importance of historical analysis

No discussion about Aboriginal affairs in Australia can afford to ignore the history of relations between the state and society and Aboriginal peoples. This analysis argues for policy in relation to Aboriginal children to be placed within its historical context because of the impact of past policies on present day Aboriginal families and children. It is also mindful of Gilroy's warnings about ahistoricity and the need to develop an anti-racism that responds "by revealing and restoring the historical dimensions of black life"³.

This is not an unusual method of analysis. Chisholm, for instance, in "Black Children: White Welfare" sites his analysis within a chronological account of the treatment of Aboriginal children by the child welfare and Aboriginal welfare systems since colonisation in New South Wales.⁴

O'Connor in a research paper commissioned by the Royal Commission Into Aboriginal Deaths in Custody on "The Impact of Queensland's Family and Child Welfare and Juvenile Justice Legislation, Policy and Practice on Aboriginal and Torres Strait Islander Families and Children"⁵ included a history of the Queensland Government's policies that applied to

³Gilroy, P. (1987), *There Ain't No Black In the Union Jack: The Cultural Politics of Race and Nation*, Hutchinson. London. pp. 26-27.

⁴Chisholm R. (1985) *Black Children: White Welfare*, Social Welfare Research Centre Report No. 52. University of New South Wales.

⁵O'Connor I. (1990) *The Impact of Queensland's Family and Child Welfare and Juvenile Justice Legislation, Policy and Practice on Aboriginal and Torres Strait Islander Families and Children*. Unpublished. Royal Commission into Aboriginal Deaths in Custody. Research Paper.

Aboriginal children and he shows how these policies subjected Aboriginal children to, "processes of dispersals, reprisals and removals"⁶.

Freedman in her Master's thesis "The Pursuit of Aboriginal Control of Child Welfare" on the child welfare system in Victoria and its relationship with Aboriginal people began by providing an historical analysis of Aboriginal and child welfare policies. This, she said, was "a means of facilitating an understanding of the impact of history on contemporary Aboriginal child welfare"⁷.

She also states that the colonial past of Australia had

profoundly affected the attitudes and assumptions of policy-makers and an ahistoric approach is short-sighted. Moreover, policy development is incremental and current approaches by policy-makers have their roots in history. Factors which contribute to the social, political and economic position of Aboriginal people today have much of their basis in historical policies and practices.⁸

Pellatt in "An International Review of Child Welfare Policy and Practice in Relation to Aboriginal People" based it on the "colonial research model" within which she said,

Information on Aboriginal child welfare is presented within a historical, constitutional, legal and political context, the perspective being that present child welfare initiatives can only be understood in relation to the past and present dynamic of the Aboriginal- non-Aboriginal colonial relationship.⁹

⁶ibid. p. 20.

⁷Freedman L. (1989) The Pursuit of Aboriginal Control of Child Welfare. Unpublished. Masters Social Work Thesis Melbourne University.

⁸ibid. pp. 23-24.

⁹Pellatt, A. S. (1991) An International Review of Child Welfare Policy and Practice in Relation to Aboriginal People. Canadian Research Institute for Law and the Family . p. 2

A final word about the importance of an historical analysis will be left to Van Krieken, who studied the nature of the child welfare system since the colonisation of Australia.

An avoidance of history and sociological analysis in the popular debates produces a confused and inaccurate understanding of both the issues at stake and the nature of the solutions currently in place and being argued for. The lack of a historical understanding makes it difficult, if not impossible to comprehend accurately the relationship between child welfare issues and the broader social and economic settings within which they are located.

In any case, there is no such thing as analysis without history, and all social theory has covert historical theses embedded within it. Like ethics or politics, history accompanies you whether you like it or not, and to try to ignore it simply means it gets smuggled on board behind your back.¹⁰

An historical analysis will also permit further contemplation of Van Krieken's question about "what traces of that systematic attempt at social and biological engineering remain in current child welfare practices and institutions"¹¹ because Aboriginal children continue to be separated from their families and communities. This is a process which, in turn, undermines the ability of the Aboriginal peoples to ensure their survival as a distinct culture with special indigenous claims to this land¹².

The Australian State - Patriarchal, Racist or Colonialist?

Is the issue about whether the state is racist or sexist important?

Bryson says it is important to challenge conventional frameworks and discourses which have avoided important questions, "masking many of the effects of inequality, particularly

¹⁰Van Krieken, R. (1991). Children and the State- Social Control and the Formation of Australian Child Welfare. Allen & Unwin. p. 2.

¹¹ibid. p. 144

¹²Butler, B. (1993) Aboriginal Children: Back To Origins. Family Matters. August 1993 Issue No. 35

those linked to class, gender and race"¹³. These conventional discourses have often been written in a way that privileges males of dominant groups.

To understand how this position of privilege occurs and therefore how the subordination of others, in this case Aboriginal children, continues, is to take the first step towards changing it.

There is considerable evidence that the Australian state is dominated by men and largely pursues the interests of white men. Yeatman (1990), Franzway (1989), Connell (1987) and Baldock (1988), have all documented various aspects of the Australian state highlighting this fact. Some of this evidence is summarised below.

Franzway demonstrates how the personnel of the coercive apparatus of the state (military, police, prisons, courts) tends to be dominated by men in comparison to the welfare structures (health services, education, community services) which have greater proportions of women employed in them ¹⁴.

Yeatman in "Bureaucrats, Technocrats & Femocrats", separates the bureaucracy into "hard" and "soft" areas. The hard, which she says are dominated by men, include departments like Treasury, Finance, Defence, Foreign Affairs, Trade & Industry. The soft departments include the Aboriginal & Torres Strait Islander Commission (ATSIC), Health, Housing and Community Services, Social Security, etc. The hard areas are dominated by men with greater numbers of women being employed in the soft areas, including in senior positions within these departments. In the Senior Executive Service (SES), the elite levels of the

¹³Bryson, L. (1992) Welfare and the State: Who Benefits? Macmillan p. 226

¹⁴Franzway, Court & Connell. (1989). Staking a Claim: Feminism, Bureaucracy and the State Allen & Unwin p. 42

Commonwealth bureaucracy, women constituted only 7 % of those in these positions overall.¹⁵

In the "hard" areas of the state apparatus, or the coercive structures of the state, male dominance in personnel numbers is even starker, making up 93% of the military, 94% of the police and 95% of the Federal Court Judges ¹⁶.

Franzway and Yeatman also show that the higher up in the formal apparatus of the state or the bureaucracy, the less women one finds, with women concentrated mainly in the lower occupations especially in clerical support. Franzway adds that not only is the structure of the state gendered but what it does is equally so.

In her Foreword to Graycar and Morgan's analysis of the gender bias of Australian laws, "The Hidden Gender of Law", Justice Elizabeth Evatt, President of the Australian Law Reform Commission, points out,

This analysis brings to light a society permeated by gender bias, a society in which women's role, women's work, and women's contribution are not given their full value, and which has failed to protect women from male violence and oppression. The message is that the legal system incorporates this bias and helps to perpetuate it.¹⁷

The hold of economic rationalism in the government and bureaucracy in the 80's and the early 90's in Australia ¹⁸ has also meant an erosion in the position of women's access to services provided by the state. The Hawke Labor Government's method of defending the welfare state was to introduce management techniques from the private sector. As Yeatman

¹⁵A. Yeatman. (1990) Bureaucrats, Technocrats & Femocrats, Allen & Unwin p. 84.

¹⁶Franzway, Court & Connell. (1989) op. cit. p. 9

¹⁷Graycar & Morgan (Eds.) (1990.) The Hidden Gender of Law, The Federation Press. Foreword.

¹⁸M. Pusey.(1991) Economic Rationalism in Canberra, Cambridge University Press pp 106-110

and Franzway have pointed out, this form of "rationalised state services" hits women the hardest¹⁹.

The discussion so far has outlined aspects of the nature of the Australian state, the gender bias in its processes and male domination within its structures. It has however, also followed a mainstream, 'white' feminist perspective on the role and function of the state. Whilst I believe this analysis and critique has helped to reveal the nature of the state, it is generalised and does not incorporate the position of Aboriginal people especially Aboriginal women. This is mainly because the experience of racism has meant that state oppression has been and is still directed at all Aboriginal people. While this does not negate non-Aboriginal feminist viewpoints, it certainly does require some adjustment to arrive at a "black feminist" view of the state.

It is clear from what some Aboriginal women themselves have said, that they do not wish to view their problems as separate from those of Aboriginal men²⁰.

The criticism by some Aboriginal women of white feminist approaches has generally related to the latter's inability to understand black womens' experiences, especially those of racism; to the tendency towards separatism in feminism and the inappropriateness of this for Aboriginal women; and to the racism within feminism itself.

Aboriginal women have been at the centre of Aboriginal Peoples responses and struggles against racism and oppression. They continue to be active as workers and members of management committees of Aboriginal organisations in the areas of community based health, housing, child care/welfare, culture. This is similar to the involvement of non-

¹⁹Franzway, Court & Connell. op. cit. (1989). p. 5 & Yeatman (1989) op. cit. p. 97

²⁰M. Sawyer (1990). *Sisters in Suits*, Allen & Unwin, pp.126-127

J. Huggins. (1989) Paper presented to the First International Indigenous Women's Conference, Adelaide, 7-12 July 1989. Edited version also published in *Hecate* xiii No. 1, 1987

Aboriginal women at this level of politics, identified by Franzway -using Shaver's term- in the 'non-government' state ²¹.

The composition of the first ATSIC Regional Councils revealed that 209 out of the 701 elected councillors were women. This figure -over 27%- compares favourably with the level of representation of women in state and federal parliaments, which is only 9%²². Though this may not be a very good basis for comparison- after all, there are only a handful of Aboriginal people in any of these structures- it nevertheless is consistent with the kind of involvement that Aboriginal women have at the community level. It may also reflect comparatively positive attitudes amongst Aboriginal women towards political activity.

Despite these positive signs, there is considerable evidence to show that Aboriginal women do experience "double disadvantage" and that the state has played and continues to play a part in the maintenance of this position.

The state in Australia has been a critical part of the process of dispossession of Aboriginal People. An indication of this is the number of laws that have regulated the lives of Aboriginal People since Europeans landed here in 1788. ²³ A significant aspect of these laws was the role they played in the regulation and control of the sexuality of Aboriginal People. Although there were clearly double standards, with sexual relations forbidden between black men and women and whites, the power of white men over all Aboriginal people meant that Aboriginal women were often sexually exploited by them²⁴.

²¹Franzway (1989) op. cit. p:44

²²S. Watson (Ed.)(1990.).Playing the State- Australian Feminist Interventions, Allen & Unwin p. 8

²³J. McCorquodale (1987). Aborigines and the Law: A Digest, Aboriginal Studies Press pp. 1-105

²⁴Commonwealth of Australia. (1991) National Reports, Volume 1 & 2. Royal Commission into Aboriginal Deaths in Custody, AGPS., Section 10.10.5

Daylight & Johnstone (1986) Women's Business. Report of the Aboriginal Women's Task Force, Australian Government Publishing Service, p. 66

Heather Goodall, in her assessment of the "apprenticeship schemes" which removed Aboriginal children from their families, says however, that these policies were as much concerned about gender consequences as other factors.

There was no simple determinant of policy and practice relating to Aboriginal children. It was instead an interaction between prevailing anxieties about race and gender, labour market needs and pre-existing administrative precedents (interpreted conservatively) which shaped the effects on Aboriginal communities of the removal policies²⁵.

In the same article Goodall shows how the Aboriginal Protection Board in the first half of this century attempted to reduce the Aboriginal birth rate by removing girls, who were about to reach or had already attained the age of puberty. This policy fit quite conveniently with the needs of Europeans for domestic labour, situations in which Aboriginal girls were often sexually exploited by their masters.

Although this degree of state intervention in gender relations has abated, it continues in other aspects of Aboriginal people's lives. Aboriginal children, as indicated above, are still removed at disproportionately high levels ²⁶ from their families, prompting continued criticism from Aboriginal People that the state is attempting to break up their communities.

The state and the ideology of the nuclear, patriarchal family which it helps to maintain and enforce has also had a powerful impact on Aboriginal women and their families ²⁷. Up until recently there had been no recognition of the extended family and the role it plays as the caregiver. Many of these families are headed by women only. They are 'matrifocal' families, as Langton has called them, suited to the social conditions of Aboriginal families who have been deprived of male adult members due to, "itinerant labour patterns,

²⁵H. Goodall. Saving the Children in Aboriginal Law Bulletin. Vol. 2 ALB No. 44, June 1990

²⁶Commonwealth of Australia. op. cit. 1991: 11.7.11

²⁷ibid 11.8.6

unemployment, imprisonment, regulations pertaining to social security benefits for supporting mothers and so on"²⁸.

Aboriginal people are over-represented in prisons ²⁹. There are more Aboriginal men in prisons than women, but as a proportion of all females in prison, Aboriginal women make up 16.3 % in contrast to Aboriginal men who are 14.1% of the male prison population ³⁰. While Aboriginal women comprised 50% of all women in police custody in August 1988, Aboriginal men were only 29% of all men in police custody on that day ³¹.

Labour market figures reveal the generally poor levels of Aboriginal employment and participation rates and the segregation evident in the occupational distribution of employment³².

The attempted destruction of Aboriginal society has meant that for many, indeed all Aboriginal People, the operation of traditional law, uninfluenced by European society and colonialism is no longer possible. Aboriginal law is practised in varying degrees around the country, but everywhere it has been influenced by European society and the state.

²⁸Bottomley, De Lepervanche & Martin (Eds.) (1991)Intersections: Gender/Class/Culture/Ethnicity, Allen & Unwin, p. 149

²⁹Commonwealth of Australia. op. cit. Vol. 1 (1991), Payne (1991) op. cit.

³⁰Payne (1991) op. cit.

³¹Australia. (1991)13.4.54)

³²The overall labour force participation rate for Aboriginal people was 51% in 1986 (the last census). This can be broken down into 66% for Aboriginal men and 36% for Aboriginal women compared to 75% and 48% for all Australians respectively. The unemployment rate was 35% compared to 7.5% for all Australians. The unemployment rate for Aborigines is estimated to be five times that for non-aboriginal people. 34.1% of Aboriginal women were unemployed compared to 36% of Aboriginal men and 8.1% of non-Aboriginal women.

I. Castles. Census 86- Australia's Aboriginal & Torres Strait Islander People, Australian Bureau of Statistics, Catalogue No. 2503.0, (1991) and,
Cass, B. (1988). Social Security Review, Issues Paper No. 4, Income Security for the Unemployed in Australia, Australian Government Publishing Service.(p.244)

The remnants of polygamous marriages and child brides in some parts of Australia is proof of the continued existence of forms of Aboriginal patriarchy³³. How influential this is and whether it and other forms of Aboriginal patriarchy over-ride the patriarchal nature of European-Australian society is arguable.

Traditional law has undoubtedly been distorted too. Sharon Payne reports that:

Groups of Aboriginal women in the Northern Territory are now saying that they are being subjected to three types of law: 'white man's law, traditional law and bullshit law', the latter being used to describe a distortion of traditional law used as a justification for assault and rape of women, or for spending all the family income on alcohol and sharing it with his cousins, justifying the action as an expression of cultural identity and as fulfilling family obligations ³⁴

Apart from what may be called "traditional forms of patriarchy" there are the more common or "universal forms". Violence, which generally plays a bigger part in the lives of Aboriginal People, is directed mainly at women. Maryanne Sam, in her Handbook about family violence in Aboriginal and Torres Strait Islander communities, "Through Black Eyes", Judy Atkinson in her article about Aboriginal women and violence and the recently released report into Aboriginal deaths in Custody have clearly shown this to be the case.

In spite of this, Aboriginal women have tended not to resort to the courts or police or non-Aboriginal services for redress ³⁵although this situation may be changing according to some³⁶.

³³The North Australian Development Unit, formerly a part of the Department of Social Security, based in Darwin, identified this as a continuing practice.

³⁴Payne (1991) op. cit.

³⁵M. Sam. (1991) Through Black Eyes, Secretariat of the National Aboriginal & Islander Child Care.

³⁶Commonwealth of Australia. (1991) op. cit. section 13.2.32

Aside from the violence of the state apparatus³⁷ in the form of the police and the prison system against Aboriginal men, women and children, the level of violence against Aboriginal women and children perpetrated by Aboriginal men is an unwitting extension of this.

These facts serve to underline the structural disadvantage of Aboriginal people in Australian society. The Royal Commission into Aboriginal Deaths in Custody underlined this in its' authoritative assessment of the underlying issues leading to the high rates of imprisonment and consequently Aboriginal deaths in custody³⁸. The nature of this disadvantage is however of a different nature and magnitude to other groups in Australian society.

Institutional Racism

A feature of the Australian state is its institutionalised racism. This can be described as the historically determined and developed barriers that exist in the nature of the institutional branches of the state- the judiciary and legal systems, the bureaucracy, the coercive arms of the state like the police, secret services , the executive branches of the governments and the economically disadvantaged position of Aborigines- to the participation of Aborigines in Australian society and the sharing of the wealth generated by the economy. Institutional racism also acts against the rights and ability of Aboriginal reproduction. Indeed one could go further and state that institutional racism facilitates and maintains the domination and exploitation of Aborigines in Australia.

³⁷Two recently released reports in particular confirm this violence. They are "Violence: Directions for Australia" by the National Committee on Violence, (1990) and "Racist Violence" by Irene Moss, Human Rights & Equal Opportunity Commission, (1991).

³⁸See Commonwealth of Australia (1991) op. cit. Volume Two.

In "Race and Racism in Australia", McConnochie, Hollinsworth and Pettman³⁹, define institutional racism as "rather more complex " (in comparison to individual racism); they also refer to the way in which, "racist beliefs or values have been built into the social institutions in such a way as to discriminate against, control and oppress various minority groups".

Commissioner Elliot Johnston's of the Royal Commission into Aboriginal Deaths in Custody has described the relations between Aborigines and non-Aborigines, in the 20th century, marked by dispossession and forced relocations, as 'colonialistic':

These relations were entrenched not only by acts of dispossession but also by a wide variety of ideas, beliefs and economic, legal, political and social structures which institutionalised and perpetuated them".⁴⁰

Instances of insitutional racism

A convenient starting point in this brief discussion of institutional racism is the Australian legal and criminal justice system.

The racism within the judicial system is apparent from the disproportionately high number of Aborigines in custody. The National Report of the Royal Commission into Aboriginal Deaths in Custody (RCIADC), examining police cell custody figures in August 1988, states that Aborigines were over-represented by twenty-nine times.⁴¹

Some of the reasons for this over-representation lie in the fact that the system of justice in Australia is alien to Aboriginal People. The philosophical foundations and the logic of the

³⁹McConnochie, Hollinsworth & Pettman. Race and Racism in Australia

⁴⁰Commonwealth of Australia (1991) Royal Commission into Aboriginal Deaths in Custody, (RCIADC) National Report. Vol. 2, Commissioner Elliot Johnston. AGPS.

⁴¹Commonwealth of Australia. RCIADC,(1991) op. cit. Volume 1, pg 6

two systems of law are quite different. The value system that underpins the European/British system of law is also alien to Aboriginal People in areas where Aboriginal Customary Law is not strong or has apparently disappeared.

In areas where traditional law is strongest, this clash of two systems of law is most clearly seen. The committing of an injury to another whether physical or otherwise, for instance, may require a form of retributive justice under customary law, which will have to be carried out whether or not the offender has been punished under the system of Australian law.

The Australian Law Reform Commission, in its substantial work on "The Recognition of Aboriginal Customary Law" did note some changes that have occurred in Australian Law in its recognition of Aboriginal Customary law,

but the fact remains that recognition of Aboriginal Customary laws by the general law has continued to be erratic, uncoordinated and incomplete. One major reason is that recognition has occurred by way of exceptions from a general, and continuing, rule of non-recognition.⁴²

Writing in 1987, John McCorquodale, in a study of judicial racism found that,

the overall impression gained from the mass of criminal and civil cases now available, and of recent origin, is that Aboriginality is a judicial perception working to the disadvantage of Aboriginals in both areas of law.⁴³

Judith Kearins identified difficulties with the system of testimony in courts, because of

⁴²Australian Law Reform Commission. (1986) Report No. 31, The Recognition of Aboriginal Customary Laws. Volume 1. AGPS. pg 64

⁴³McCorquodale. J. (1987) "Judicial Racism in Australia?", in Hazlehurst, Kaylene M., "Ivory Scales: Black Australia & the Law". NSWU Press pg.51

the formality, unfamiliarity and dislike of the question and answer convention and other verbal confrontation; unfamiliarity with the non-verbal communications familiar to westerners as indicating both deference and openness (but familiarity instead with Aboriginal non-verbal conventions at variance with these); English usage may differ in important ways from standard English.⁴⁴

A long-term study of young Aborigines and the juvenile justice system in South Australia showed that, inspite of changes to legislation that allowed the police and the judiciary greater discretion with the necessity for charging, custodial sentencing and trials in Children's Courts, Aboriginal young people remained over-represented in every stage of the juvenile justice process, from the caution system to panels through to the courts and custodial sentences. The study in fact found that this over-representation occurred "at every point in the South Australian system where discretionary decisions are made."⁴⁵

While Gale et al in the study referred to above, hinted at the racist operation of the juvenile justice system in South Australia, Carrington in her analysis of Aboriginal girls in the juvenile justice and child welfare systems in New South Wales said that their massive over-representation in these systems was in part due to the impact of institutionalised racism. She further added that

it is deeply embedded in the fundamental discourses of juvenile justice administration in the organisation of its resources and field staff, in conceptualisations of delinquency and crime, in knowledges produced by social work and psychological discourses of what characterises a competent as opposed to a 'malfunctioning' family, as well as what constitutes inappropriate adolescent or girl-like behaviour. All such practices, whether they have racist intentions or not are predicated on institutionalised forms of racism because they diagnose pathology as an individual deficit in the image of the 'other', representing normality in the image

⁴⁴Kearins, Judith. (1991) "Factors Affecting Aboriginal Testimony", Legal Services Bulletin, Vol. 16, No.1, February 1991.

⁴⁵Wundersitz, Bailey-Harris and Gale,(1990) "Aboriginal Youth and Juvenile Justice in South Australia" in Aboriginal Law Bulletin, Vol. 2, No. 44, June 1990

of the imperial mode- the socially and culturally dominant. Thus the social and cultural content of behaviour defined by the juvenile justice agencies as constituting legitimate grounds for judicial and extra-judicial forms of normalising intervention contributes in a significant way to the over-commission of offences attributed to Aboriginal girls. Otherness, in this case Aboriginality, is effectively criminalised in such a context⁴⁶.

It can therefore be argued that the state apparatus has a racist bias. In addition this bias is mirrored in the racial segregation of the labour market and in the general socio-economic disadvantage of Aboriginal People. The patriarchal nature of the state is also entwined in this racial domination/segregation; it is a moot point, however, whether the patriarchal aspect of the state is the prominent one. Certainly in the eyes of Aboriginal women, the significant feature about the state is its racism and its colonial nature⁴⁷. This is consistent with the Aboriginal women's prominent involvement in the Aboriginal Peoples' struggle for survival and advancement, in their families and homes, in the community and in the bureaucracy as opposed to being involved in claiming purely feminist demands ⁴⁸.

This question is of great importance to my argument, because the evidence of the kind of racism and domination experienced by Aborigines in Australia suggests something more than just racism against a minority group is at work here, something which is in fact an institutionalised continuation of the 'colonialistic' relations Commissioner Elliot Johnston referred to above.

Anti-racism and Black Feminism

⁴⁶Carrington, K. (1990) Aboriginal Girls and Juvenile Justice: What Justice? White Justice. *Journal for Social Studies* Volume 3, April, 1990. Special Issues Series. Centre for Social Justice Studies. Charles Sturt University. Bathurst.

⁴⁷Watson (1990) op. cit. Chp. 4.

⁴⁸Daylight & Johnstone (1986) op. cit. p. 79.

In this section I will explore very briefly some ideas taken from works on "anti-racism". For the purposes of this thesis this discussion of "anti-racism" is limited to a few authors in Britain and Australia. This discussion is relevant to my attempt to develop a theoretical framework which incorporates the experience of the particular racism or 'colonialistic relations' experienced by Aboriginal people.

Anti-racism as a critique is helpful for this analysis because it sees racism as more than the outcome of individual prejudices against people of colour and that the significant thing about racism is the structural nature of it that produces discriminatory outcomes.⁴⁹

It also provides a framework that allows us to incorporate the changing conditions of the world in the late twentieth century, where the discussion about society and therefore social policy is not just based on events and practices within national boundaries but recognises the inter-relatedness of developments.⁵⁰

It is important to distinguish anti-racism as a critique from anti-racism as policy and management practice, which has come in for some criticism⁵¹ in recent times.

Fiona Williams⁵² has provided us with the tools to analyse social policy and the welfare state from a perspective that identifies the sexism and racism in their operations. She bases this framework on critiques of the welfare state offered by feminists, black feminists and by critiques offered by blacks in Britain, writing from a viewpoint that attempts to take into account the neo-colonial relations between their countries of origin and their adopted country- Britain.

⁴⁹Donald, James. and Rattansi, Ali. (1992). 'Race', Culture & Difference. Open University. Introduction. p.3

⁵⁰Bryson op. cit. p. 230., Williams op. cit. p. 112 , Donald & Rattansi (1992) op. cit.

⁵¹See all the articles in Donald, James. and Rattansi, Ali. (1992). 'Race', Culture & Difference. Open University.

⁵²Williams, F., Social Policy. A Critical Introduction, Polity Press, Cambridge, 1989.

Her framework also seeks to incorporate the experience of migrants in Britain by analysing the role of blacks in the welfare state as workers and beneficiaries in order to explain why they are the subjects of state harassment and intervention. Her framework is also historical. It recognises the colonial links between the countries of origin of the migrants and their new country.

Gilroy⁵³ delves deeper into the relations between the British State and blacks looking at policies of anti-racism, racism itself and the position of blacks in the diaspora and how the various sites of the diaspora interact with one another. He analyses the form of racism in Britain and shows how blacks in responding to it do so in a way that is cultural and not necessarily directly against specific instances of racism. Together with an incisive critique of "anti-racist" policies, Gilroy calls for a restoration of the role of blacks into history. This is a strong critique and a response to the inadequacy of "anti-racist" policies, which have become alienated from the original political reason for their inception and are now largely transformed into management practices at the local government level.

Bryson's critique of the welfare state⁵⁴ incorporates aspects of the anti-racist critique, mainly using the framework suggested by Williams⁵⁵ although she touches all too briefly on the issue, leaving it aside to concentrate on the central subject of her work. In referring to Williams' work, Bryson, however, does state:

To encompass a 'patriarchal and racially structured capitalism', she adds 'family' as a critical site for gender relations, and 'nation' as the key organising principle of race. Nations are constructed in the likeness of dominant groups. In colonised societies, such as the USA and Australia, settlers (invaders) overwhelmed and discounted the cultures of the indigenous peoples as well as usurping all or a major part of their territory. In these societies, indigenous peoples were left with little

⁵³Gilroy, Paul, (1987), There Ain't No Black In the Union Jack: The Cultural Politics of Race and Nation, Hutchinson, London.

⁵⁴Bryson, L. (1992) Welfare and the State: Who Benefits? Macmillan p. 25

⁵⁵Williams, F. (1989).op. cit.

option but to be redefined by the colonisers. The effect can be similar for some groups of immigrants and 'guest workers'. They may similarly face an exclusionary culture and social structure developed to serve the interests of dominant groups.⁵⁶

Bryson, I believe, makes an important allusion to the contemporary colonial relationship between Aborigines, the state and non-Aborigines although she does not explore the idea further.

According to Mason, "Class, gender and race inequalities are interwoven in the history of child protection policies generally and the treatment of Aboriginal children specifically". She also points out that in the rejection of demands put forward by Aborigines, "imperialist" policies are continued through the "actions towards Aboriginal children and communities"⁵⁷.

Feminism and anti-racism are particularly useful tools in any analysis of the impact of state policy and action on Aboriginal children. Feminism criticised the welfare state for gender bias and discrimination, anti-racism for the racism and racist outcomes. Black feminist frameworks go further by incorporating aspects of race, class and gender within a single framework in an holistic way.

Black Feminist critiques are particularly helpful, addressing the multiple disadvantage that black women face. Black feminists have also highlighted the fact that the state treats different women differently- experiencing the state in different ways. Black women's - and men's for that matter- experience in relation to the state with regard to their families has

⁵⁶ibid. p. 25

⁵⁷Mason, Jan. (Ed.) (1993). Child Welfare Policy- Critical Australian Perspectives. Hale & Irenmonger. Perspectives in Social Welfare series. p. 33.

been quite different. The state in Australia, as Van Krieken pointed out, has indeed been involved in acts of social control and engineering.⁵⁸

Williams asserts that Black feminism has made a major methodological contribution through its attempt to,

grapple much more exhaustively with the notion of difference between women, not just in its subjective sense of culture or experience or struggle, but in its objective sense of how such difference is structured through the interweaving of patriarchy, imperialism and capitalism, and how it is variously reinforced by the state and other institutionalised structures and by ideologies. Further, it makes a connection between the specificity of Black women's experience and the generality of the systems of race, class and gender of which we are all a party. This is through the notion that racism, sexism and class exploitation combine not in incremental fashion, but in such a way as to *reconstitute* the subjective experience and the objective structuring of divisions of labour, elements of family life, sexuality and so on.⁵⁹

Mama, in similar fashion, places "the collective realities of black women at the centre of her analysis". She says,

that by focusing on a monolithic state structure and analysing relations between the state and black people in a gender blind way, much of the complexity of the processes of racial repression, containment and control by the increasingly interlinked and corporate arms of the state have been obscured.⁶⁰

She therefore argues for an integrated approach based on the "collective reality of black women", because

⁵⁸Van Krieken, R. (1991). Children and the State- Social Control and the Formation of Australian Child Welfare. Allen & Unwin. P. 144

⁵⁹Williams, F. (1989). op. cit. p. 80

⁶⁰Mama, Amina. (1992) Black Women and the British State. in Britain P., Rattansi A., and Skellington R. (1992). "Racism and Antiracism" Chapter 5. Sage/ Open University Publications. p. 98

Class, race and gender dynamics manifest concretely in the experience of black women and cannot be usefully disentangled or separated out since they constitute a whole reality and act simultaneously in a given moment.⁶¹

This discussion shows that the perspective of the state from the point of view of Aboriginal women is quite different to that of non-Aboriginal women, or men for that matter. Van Krieken has shown that, whereas from the point of view of Aboriginal people the child welfare system did act as a means of social control and engineering, its role in relation to non-Aboriginal families and children is not as clear cut. Indeed his work shows how non-Aboriginal people turned to the state child welfare system for support with children they regarded as unmanageable.

The subject of the family for Aboriginal women is also different. The family is not necessarily seen simply as a site of oppression for Aboriginal women but as a support and strength in their struggle. The issue of reproductive control is also different with the issue of abortion not being as prominent for Aboriginal women as it is for non-Aboriginal women. As mentioned earlier, the priority that Aboriginal women have given to the struggle against the colonial/racist state as opposed to patriarchy within their families and communities also highlights a difference in their view.

The removal of Aboriginal children from their families and the continuing over-representation of Aboriginal children in institutional and other forms of care begs for an analysis that is not just feminist and anti-racist but that is anti-colonialist as well.

Internal Colonialism and Nations Within

⁶¹ibid. p. 98

Having considered the importance of an historical analysis, the discriminatory impact of the state on women and Aborigines, I will turn to the problem of incorporating into my framework, the 'colonialistic relations' or neo-colonial position of Aborigines in Australia.

Internal Colonialism

Among the theories that attempt to define a framework for the contemporary situation of Aborigines is that referred to as "The Theory of Internal Colonialism" as applied by Mervyn Hartwig.⁶² It can be summarised as follows:

Firstly, that because of the dramatically different mode of production of Aborigines and consequently the form of their socialisation the aim of the exploitation of Aboriginal labour could only proceed once they had been resocialised and incorporated into the new system of exchange relations through the destruction of their "primitive communal mode of production"⁶³.

Secondly, the ideological justification for the expropriation of Aboriginal land was carried out less in terms of the inferiority of race than in terms of the inferiority of notions of property and work ethics and land use. Thus the notion of "Terra Nullius" which persisted until the decision of the High Court of Australia about Native Title in June 1992.

Thirdly, the ideological basis that provided the justification for the exploitation and expropriation of Aborigines changed with the failure of the colonial governments to

⁶²Hartwig, M. (1978); op. cit.

⁶³ibid. p. 132.

resocialise them. They translated questions of inferiority of race and fitted in neatly with the notions of liberalism and social darwinism of the times.

Fourthly, that because of the different manner and the extent to which dispossession occurred in different parts of the continent, the result has been uneven levels of retention of traditional modes of social organisation.

Fifthly, that in the areas where Aboriginal labour was brought into the "market" , because of the unequal nature of the relationship between labour and employers , the latter were able to "acquire labour at a cost below its value".

Sixthly, that "the political expression of these kinds of production relations took on a colonial form-ideology and political policies necessarily revolved around the segregation, preservation and control ('protection') of Aboriginal 'tribal', 'racial', groups"⁶⁴.

These factors constituted a colonial relation for Hartwig, as they displayed similarities to the standard external colonial relations between countries. They satisfied his two conditions that internal colonialism occur between nations with distinct geographical areas or within a nation and between distinct ethnic or racial groups and, secondly, that the relationship involves, "in a general way, political domination, cultural oppression, and economic exploitation".⁶⁵

Hartwig also makes a further crucial point about the basis of present policy in Aboriginal affairs. He identifies its unstated assimilationist ends, precisely because it does not recognise internal colonialist relations. He states,

⁶⁴Hartwig, pg. 136.

⁶⁵Hartwig, pg. 121

The assimilationist model *reflects* the objective long-term tendency of the relationship between capitalist and primitive communal modes of production, the dissolution of the non-capitalist mode and the subsuming of its agents into capitalist production relations; precisely for this reason it is unable to account for Aboriginal resistance to the tendency, or, except in descriptive and idealist terms, to account for white policies and practices that run counter to it.⁶⁶

Hartwig himself acknowledged that his analysis did not go far enough. His analysis does not take into account the responses by Aboriginal people to their position of subordination and whether this takes on forms which are anti-colonial, as Jennett does in her consideration of "Aborigines as a national minority" ⁶⁷. Nor does his analysis take into account the role of international monopoly capital-as Jennett does-and the influence this may have on what is called an "internal colonial" relationship.

Hartwig's attempt to apply this theory is useful in that it forces us to recontextualise the Aboriginal-state relationship. It attempts to explain and incorporate the "anti-colonial" demands of the Aboriginal movement for land and other indigenous rights in Australia opening up the possibility of a bridge between what often appears to be the extreme demands for "sovereignty" made by many Aboriginal groups and individuals and national policy makers. This is a gulf that appears to have already been bridged in north America as is evident from the work of some observers there.

Nations Within

This term refers to the position of Indian Tribes in the United States of America or Canada, who have under the treaty system, a limited form of sovereignty or "nationhood".

⁶⁶ibid. p. 138.

⁶⁷Jennett, C. (1983) Aborigines, Land Rights and Mining in Essays in the Political Economy of Australian Capitalism, E.L. Wheelwright & K. Buckley (eds), vol. 5, ANZ Book Co. 1983. pg. 130.

According to Fleras and Elliot, a change is occurring in the state's relationships with Aboriginal peoples. A paradigm, according to them

can be defined as a system of relatively coherent ideas and assumptions that define a 'problem' in a particular way, along with a corresponding set of 'solutions'.⁶⁸

The change in this paradigm is attributable in large part to the burgeoning demands for sovereignty and self-determination by Aboriginal peoples.

In trying to determine whether such a paradigm shift was occurring the authors ask how relevant traditional discourses on the subject of "race" and "nation" are for dealing with the subjugated status of Aboriginal peoples' as "nations within".

Those struggling to have their sovereignty reinstated go beyond the vocabulary of race, class or ethnicity to adopt the vocabulary of nationhood, for, just as racial minorities have rejected efforts at assimilation to reassert racial pride in their own distinctiveness, so too Aboriginal groups have moved beyond the narrow view of themselves as a minority. In its place have evolved a commitment to dialogue on a nation-to-state basis with larger society. The expectations of self-government and sovereignty are of a different magnitude than cries for 'equal opportunity' and 'fair play'.⁶⁹

Fleras and Elliot state that, in the countries studied, there was a turmoil in Aboriginal affairs. This turmoil was attributed to the conflict between the demands of Aboriginal groups and the state, a conflict which revealed the shifting paradigm.

In contrast to the old paradigm, with its emphasis on legalism and control, the new paradigm redefines Aboriginal -government relations around the poles of justice, fair and equitable treatment, adaptation, and workable intergroup dynamics⁷⁰.

⁶⁸Fleras & Elliot (1992), op. cit. p. 229.

⁶⁹ibid. p. XI

⁷⁰ibid. p. 232

Aboriginal sectors, Fleras and Elliot state, want a decolonisation of their relationship with the state, with access to the tools required for charting a new course based on freedom, and self-determination for political, economic and cultural matters.

Private and political interests, on the other hand, want to maintain a benign colonial relationship that ensures control over the Aboriginal agenda and access to their resources⁷¹.

While Fleras and Elliot take the view that state responses in the form of legislation and policy development in relation to Indian rights is a contested site, Gross' account of contemporary US Federal Indian policy is couched within a framework that investigates the operations of the US democratic process and its effectiveness for minority and or oppressed groups.⁷² Gross' investigation is based on interviews with sixty-six Indian and non-Indian policy makers. It separates the various levels of decision-making in the political process- from the level of the President to lobbyists including Indian groups, and analyses each for their contribution to the process of Indian policy.

Gross' account is a validation of the US Constitutional and electoral process which she believes has worked- despite its earlier historical failures- since the seventies⁷³ a view that other observers have not agreed with.⁷⁴ In any case, Gross underlines the importance of the acceptance by politicians and other policy makers of the right of Indian Tribes to self-determination.

This idea thus moves beyond the notion of Aboriginal people as simply another minority in Australian society, only having special cultural interests to be taken into account in service

⁷¹ibid. Introduction.

⁷²Gross, E. R. (1989) Federal Policy Towards American Indians. Greenwood Press New York. Chapter 1

⁷³ibid. Chapter 1.

⁷⁴See especially Champagne and Morris, C. Patrick in Lyden and Legters (1992). Native Americans and Public Policy.

delivery and policy-making. It insists that their case is more suitably dealt with through the framework of "nations within" as outlined by Fleras and Elliot.

Summary

In conclusion, the argument I want to propose is that the relations between the state and Aborigines in Australia also displays elements of a colonial nature. I believe that it is this crucial element -the colonial relationship- that is left out of most analyses and therefore policy responses. Taking it into account would give policy responses an entirely different complexion.

Based on this argument, policy requires some form of "decolonisation" of the relationship between the state, Australian society and Aborigines. I therefore site my argument into the category - albeit in the field of the social sciences- that Langton had in mind when she referred to an "anti-colonialist" critique that attempts to undermine the colonial hegemony. Langton's work, however, was in relation to representation of Aboriginality in the media.

She says,

Freedom in the world of film and the arts can only thrive if there is also a strong critique, and in relation to Aboriginal matters, if the critique is anti-colonialist. Can we ever decolonise Australian institutions? Can we decolonise our minds? Probably not. But we can try to find ways to undermine the colonial hegemony.⁷⁵

⁷⁵Langton, Marcia. (1993) "Well I heard it on the radio and I saw it on the television...". Australian Film Commission" Introduction.

The use of this framework does not mean, therefore, that I present some sort of checklist of conditions that show that we have, if not a colonial, a neo-colonial relationship, in the context of a "colonial state" in an advanced capitalist country, with a predominantly European population in the late twentieth century. For the purpose of this thesis, I intend to show that because present policy in Aboriginal child welfare does not recognise that elements of the colonial relationship are at play, it continues to persist. This justifies the need for the extension of the "decolonisation process" into the child welfare arena.

I would argue moreover, that colonialism is characterised by relations of domination and coercion (violent and non-violent), dependence, exploitation and underdevelopment. It is also based on notions of racial inferiority perpetuated by the colonial state. Above all, a colonial relationship also displays resistance by the colonised to the domination they experience. This resistance is also based on the negation of the values and methods of the colonised and on the cultural expression of the colonised.⁷⁶ It is also based on expressions of 'nationhood'.

Aboriginal people have always resisted the encroachment of the colonisers. The policies that sought to "assimilate" their children and thereby sever the crucial link between generations of Aboriginal people that could ensure their continuity, were also resisted. They continue to resist the control that child welfare authorities have over the lives of their children and families today.

Where does this analysis lead to? It argues that in relation to the arena of child welfare and Aboriginal children, we need a different paradigm. Instead of Aboriginal children and their families being treated as "deficient" and "dysfunctional", or neglected and abused, we need

⁷⁶This list of what constitutes the colonial relationship is drawn from a range of writers including Rodney, Walter. (1974) How Europe Underdeveloped Africa. Howard University Press.
Fanon, Frantz. (1967) The Wretched of the Earth. Penguin ; and, (1967) Toward the African Revolution. Grove and,
Hartwig (1978) Op. cit.

to see these children and families as colonised peoples who have as a consequence and expression of that state of oppression, social problems and neglected or abused children. Viewing the situation in this way means that policy responses have to be different. Aboriginal demands will then be treated with seriousness rather than being dismissed or placed within existing frameworks that merely state, for instance, that

Appropriate recognition must be given to Aboriginal tradition and Torres Strait Island custom⁷⁷.

It means that Aboriginal people rather than being "objects of history" become makers of that history. Advances will be made insofar as Aboriginal people will be participating in trying to determine their own destiny. It is also a crucial part of the "decolonisation process", part of which is, as Rodney states,

the element of conscious activity that signifies the ability to make history, by grappling with the heritage of objective material conditions and social relations.⁷⁸

This thesis will outline some of the changes required in allowing such a transformation, based on what some Aboriginal people have been calling for over the years.

⁷⁷Queensland Government. Department of Family Services and Aboriginal & Islander Affairs. (1993). Child Protection Legislation. Issues Paper.

⁷⁸Rodney, op. cit. p. 280.

Chapter Two

HISTORICAL ANTECEDENTS OF ABORIGINAL "CHILD WELFARE"

In the previous Chapter, I argued for an approach to policy that takes into account the history of the experiences of Aboriginal people and for the need to incorporate "an anti-racist and anti-colonialist perspective" into policy development. From the point of view of Aboriginal people the child welfare system today is the successor to the Aborigines Protection Boards and the Aborigines Welfare Boards, continuing their colonialist policies¹ through the removal of their children. I have also argued that institutional racism, in relation to Aboriginal people is more accurately a form of neo-colonialism.

This Chapter will address the relevant historical experiences of Aboriginal children at the hands of the state over the past two hundred years to show how this indeed, has been part of the colonial project.

In the Foreword to Chisholm's important work "Black Children: White Welfare", Jamrozik says that his work was valuable because "it clearly and forcefully demonstrates the importance of historical perspective in the current issues and problems encountered in the provision of welfare services to the Aboriginal community".²

Although Chisholm does provide a useful historical background in his first chapter, it is weakened by the author's tendency to present the experiences of Aboriginal people at the hands of colonial institutions, like the Protection Board, within the inappropriate framework of child

¹This view is put in a couple of papers, one by Gilbert in Mason, Jan. (Ed.) (1993) Child Welfare Policy- Critical Australian Perspectives. Hale & Iremonger. Perspectives in Social Welfare Series and by SNAICC (1993) Paper to ACOSS National Congress. Melbourne.

²Chisholm, R. (1985). Black Children : White Welfare? Social Welfare Reserach Centre (SWRC) Report No. 52. University of New South Wales. Foreword.

welfare. In doing this he diminishes the significance of the practices of the colonial state and gives them a reductionistic interpretation placing them somehow outside the overall aims of the colonial state and therefore assimilates the question of Aboriginal children and their rights- narrowly called "Aboriginal child welfare"- into a contemporary "pluralist" and "welfarist" framework.

My argument is that this framework is not only inadequate and inaccurate but does not help with the formulation of future policy that meets the needs and desires of Aboriginal people.

As stated earlier, the importance of history to any exercise dealing with policy affecting Aboriginal people cannot be over-emphasised. By extracting the treatment of Aboriginal children from the overall colonial enterprise, the practices of the past which have left a contemporary legacy will not be understood. This legacy is graphically underlined by the anecdotal evidence provided by Aboriginal people interviewed for this thesis, who say that particular families who had children taken away and their families disrupted, continue to be the subject of state interference today some three or four generations later.

Solutions based on the existing framework in child welfare are inadequate because they have filtered the identity of Aboriginal people and their children into one that is "multicultural", as exemplified by Carter³ and Chisholm, as opposed to "Indigenous".

The framework outlined in this study incorporates the colonial history of the Australian state and goes further by saying that colonial or neo-colonial relations of domination are still at play. This notion is based on the ideas that Hartwig applied to the history of Aboriginal-white relations. It suggests that a better framework for analysing contemporary relations between Aboriginal and non-Aboriginal People should incorporate ideas from the theory of "internal colonialism" and the concept of "nations within" as indicated before. These theories suggests that the conventional

³Carter, J. (1983) Protection to Prevention: Child Welfare Policies. SWRC No. 29. University of NSW. p. 56

colonial relationship persists with Aboriginal peoples within the boundaries of a nation-state. These "conventional" colonial relations are characterised by "in a general way, political domination, cultural oppression, and economic exploitation"⁴.

In the field of child welfare, therefore, whilst there have been changes in the relationship between the state and Aboriginal people and their children, these have occurred within limits. They have not addressed the colonial legacy; instead they have stopped short at the multicultural stage.

For the purposes of my discussion, the various phases of policy of the state in relation to Aboriginal people that Freedman has used, "Early days, Protectionism, Assimilation & Self-determination"⁵ are adequate as a broad distinction between the various periods. The limitation with such distinctions, however, is that they do not elucidate the opposition by Aborigines to contemporary policy.

Nor does such a categorisation of various periods, with its ostensible impression of progress in state-Aboriginal relations, explain the continuing relations of disadvantage, domination and exploitation that exist today and that are the subject of continuing Aboriginal protest.

Land Rights and Aboriginal Children

In order to understand the link between the colonial aim of dispossessing Aboriginal people of their land and how it relates to Aboriginal children, we also need to understand the importance of land to Aboriginal children.

⁴ibid p.121

⁵Freedman, L. (1989) The Pursuit of Aboriginal Control of Child Welfare, MSW Thesis, University of Melbourne. p. 26.

Over the years I have worked with the Secretariat of the National Aboriginal and Islander Child Care (SNAICC), the organisation has often made statements in support of demands of land rights. Indeed, one of its aims calls for 'National Land Rights Legislation as determined by the Aboriginal Nation'⁶. Most of the interviewees who contributed to this thesis (see Appendix I) also underlined the importance of land to the identity of Aboriginal children. The issue of land rights is integrally related to the tribal identity of Aboriginal people. The question of identity in turn has been of central importance to the development of Aboriginal children especially in a society that is dominated by images and discourses that are non-Aboriginal⁷. Land, and the right of Aboriginal tribes to their ancestral land, has played a very important part in the relations between black and white in this country since invasion and colonisation in 1788.

Land has always been at the core of the relations between coloniser and colonised. Talking about the early period of colonisation, Reynolds points out that

Perhaps the single most important element in a complex situation was the revolutionary concept of private property which the settlers brought with them from Britain along with the will and weapons to impose it in Australia⁸.

In Australia, it was the central principle of the project of "reformation" undertaken at the outset by the early colonial rulers. Davidson states that,

The objective of the tiny ruling group, starting with Phillip, was to reform those in their power. Since legally under 1787 Geo III, c. 2 they only had total power over their labour, this meant forcing them to cultivate the soil. So 'cultivating the soil' and 'reforming humanity' were two faces of the same coin until well into the second half of the nineteenth century.⁹

⁶SNAICC. (Undated) Aims.

⁷See Butler, B. (1993) Aboriginal Children: Back to Origins. and , Bourke, E. (1993) The First Australians: Kinship, family and Identity in Family Matters August 1993. Issue No. 35. Australian Institute of Family Studies.

⁸Reynolds, Henry. (1987) Frontier. Allen & Unwin. p. 190

⁹Davidson, Alastair. (1991). The Invisible State. Cambridge University Press. p. 30.

After the land had been forcibly taken from them, Reynolds says

much remained to be done to prepare the blacks for the subordination and deference required of powerless and propertyless outcasts in a class society. The passion to keep the blacks in their place was not due solely to the need to confirm the revolutionary expropriation of property but also to impose the social relations of the new order".¹⁰

The work of imposing the new order was taken up by both the Government and the Churches, who, as Rowley indicates,

..were aiming at the same kind of settled, God-fearing Aboriginal communities; and they made the same assumptions about the means of producing and controlling social change. These assumptions were to remain much the same when State governments later on established their organisations for protection; and the emphasis remained on tuition, with the sober virtues of the middle-class whites as the model.¹¹

Early Child Welfare in Australia

It is in this context that the first forms of "Aboriginal child welfare" were developed. The means used were not substantially different to those used in the case of illegitimate and "delinquent" children of the time. The aims of the institutions that were set up were essentially to assimilate children into the morality of the rulers of that time. Davidson points to the "swarms of illegitimate- and legitimate- children, who had to be educated if the entire reforming project was to be of any success"¹².

¹⁰Reynolds (1991). p. 191.

¹¹Rowley C. D. (1974) The Destruction of Aboriginal Society. Pelican. p. 100.

¹²Davidson Op. cit. p. 98

As Windschuttle states, the principles of the early colonial child welfare institutions were derived from those in Britain and Europe of the late eighteenth and early nineteenth centuries, where the bourgeoisie established "its own social and political hegemony"¹³.

Governor Macquarie saw the establishment of these institutions as contributing to the "moral and religious habits" of the children and he looked forward to "the formation of a moral and respectable society"¹⁴ through this exercise. The institutions would also aim to "remove children from the moral influence of their parents and to train them to become 'honest and industrious' members of society"¹⁵.

The Native Institution was established as part of the response to what was perceived as a potential threat to the stability of society posed by waves of juvenile crime. It was, however, also seen as an " 'experiment towards the civilisation of the natives' by providing education for their children". According to Davidson, of all his experiments, this was also Governor Macquarie's greatest failure.¹⁶

Apart from this conscious policy by the colonial authorities to "assimilate" Aboriginal children into the social relations of the time, other practices were initiated which highlighted the confusion between, on the one hand, the theoretical protection provided by British law for Aboriginal people, and on the other the reality which saw a trade in Aboriginal children begin in the early nineteenth century and continue until 1920 despite numerous complaints by colonists¹⁷.

¹³Windschuttle, Elizabeth. (1982) Women and the Origins of Colonial Philanthropy in Kennedy, Richard. Australian Welfare History- Critical Essays. Macmillan. Sydney. p. 10.

¹⁴Davidson. Op. Cit. p. 99.

¹⁵Windschuttle (1982). op. cit. p. 17.

¹⁶Davidson. Op. Cit. p. 80.

¹⁷Reynolds (1987). op. cit. p. 74. Earlier in the same book (p. 4) Reynolds makes the point about Aborigines being protected by British law.

Also Rowley C. D. (1974) op. cit. p. 21.

In the "early days" of the "protection" and the "assimilation" period, there was a clear belief that to be able to do anything with Aboriginal people, the government would have to have control over their children. There was a further assumption that if Aboriginal people were not able to become successful members of the dominant European community, they would be failures and continue to be subject to "tuition and exhortation"¹⁸.

Aborigines in various ways undermined these attempts at social engineering as best they could. Government policies over the years were not implemented without various forms of resistance¹⁹, something that continues to this day.

Historians like Reynolds in *The Other Side of the Frontier*, have shown that there was indeed widespread resistance to colonisation, which was "much more positive, creative and complex than generations of white Australians have been taught to believe"²⁰.

Considerably earlier than Reynolds, Rowley recognised the importance of Aboriginal resistance and although he lacked the means to delve into this side of the history he recorded²¹ he referred to the "little attention" paid to the subject by Australian historians.

Early Aboriginal "Child Welfare"

Special provisions were made for Aboriginal children as early as 1844 in South Australia, where they had the Aboriginal Orphans Ordinance 12 of 1844, which provided for the indenture of Aboriginal children, punishment for 'misbehaviour' and the protector to be the legal guardian of "every half caste and other unprotected Aboriginal child"²².

¹⁸Rowley. Op. cit. p. 102.

¹⁹ibid. p. 96.

²⁰Reynolds, H. (1982) *The Other Side Of The Frontier*. Penguin. p. 198

²¹Rowley. Op. cit. p. 5.

²²McCorquodale, John, (1987) *Aborigines and the Law: A Digest*. p. 65.

In Western Australia, special provision was made in the form of "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"²³. Just as interesting as the extended title of the Act is a section of the preamble which McCorquodale cites and which reads as follows:

Whereas laudable efforts have been made to introduce Christianity and civilisation amongst the Aboriginal race of this Colony by instructing their youths of both sexes in schools, and admitting them as domestic servants into families of the colonists...

Until the passing of the Protection Acts from 1860 onwards to 1911 in every State (with the exception of Tasmania) when these laws regulated every detail of Aboriginal lives, there is evidence to suggest that Aboriginal children were forceably admitted to special institutions, like the Native Institution in New South Wales and the Merri Creek Institution for Aborigines in Victoria, which was established in 1846²⁴.

There are indications too of "adoptions" of Aboriginal children as early as 1851 in Victoria. In one particular case, not only was consent given by the 'government', but an allowance was provided for the upkeep of the two boys concerned until they were old enough to be apprenticed²⁵. Whether these "adoptions" were in fact adoptions as they are contemporaneously understood is doubtful. The arrangement referred to here is more akin to the system of "boarding-out" which developed as a general policy later on in 1872 in South Australia and in 1874 in Victoria²⁶.

Jaggs does, however, refer to the existence of foster-care schemes prior to 1864 and to forms of quasi-adoption from the earliest times in the Colony of Victoria.²⁷ Up to the point when

²³ibid. p. 90.

²⁴Pepper P. and De Araugo T. (1985). The Kurnai of Gippsland. Hyland House. Melbourne. p. 77.

²⁵ibid. (1985). p. 82.

²⁶Davidson Op. Cit. p. 209.

²⁷Jaggs D. (1986) Neglected and Criminal: Foundations of Child Welfare in Victoria. Phillip Institute of Technology. p. 19 & p. 119.

protection acts were developed, it appears from some evidence that Aboriginal children were subject to various forms of treatment, from violence and murder in the midst of conditions of conflict and warfare that existed, through to forms of "child welfare" that were common practice at the time, even though these may not have had legislative backing.

Not surprisingly, experiences and practices present in the mother country "Britain" were prevalent in the early days of colonisation.

Protection

The first period of protection- Davidson calls it the "process of segregation and neglect", when Aborigines were "kept out of sight and out of mind from the bulk of the population and the official class, like the sick, the insane and the criminals"- ended in 1842²⁸.

The second period, according to Davidson, followed with the setting up of the "Aboriginal Protection Board" in 1883. Rowley, however, situates the beginning of the policy of protection in the second half of the century.

Nevertheless, as in the case of "An Act to provide for the Protection and Management of the Aboriginal Natives of Victoria" (1869), such acts provided the Governor of the Board for the Protection of the Aborigines with the power to make regulations for the "care, custody and education of the children of Aborigines".²⁹

Section 13 (V.)- *Custody of Children*, of this Act further stated that

²⁸Davidson. Op. Cit. p. 85.

²⁹Pepper. Op. cit. p. 270. Appendix 2.

The Governor may order the removal of any Aboriginal child neglected by its parents, or left unprotected, to any of the places of residence specified in Regulation 1., or to an industrial or reformatory school.³⁰

Regulation 1. gave persons responsible for the running of stations for Aborigines the power to make children attend schools and "reside, and take their meals, and sleep, in any building set apart for such purposes"³¹.

This Act and subsequent amended acts included the power to "transfer any half-caste child, being an orphan, to the care of the Department of Neglected Children, or any other institution". Pepper cites the case of two boys who were put into the care of the Department of Neglected Children in the late nineteenth century for a short time.³²

Although Chisholm regards the period between 1883- 1940 in New South Wales, as one in which the Aborigines Protection Board created "inmates and apprentices"³³, the reality, as Goodall has shown, was far more complex, with a Board that did not in fact have the pervasive powers they would have hoped for (although they did eventually get these) to remove children, but also because there was resistance to these policies.

The State Children's Relief Department and its successor, the Child Welfare Department, was also involved in removing children. Indeed, Goodall states that the police and State Children's Relief officers as well as (Aborigines Protection) Board's inspectors and managers were involved in the removal of children³⁴. She estimates that for every three children removed by the Aborigines Protection Board, two were removed into the Child Welfare system until 1936.³⁵

³⁰ibid p. 274

³¹ibid.. p. 275.

³²ibid. p. 211-212.

³³Chisholm (1985) p. 14.

³⁴Goodall, H. (1982) A History of Aboriginal Communities of New South Wales 1909-1939. PhD Thesis. University of Sydney. Unpublished. p. 90.

³⁵ibid. p. 135.

The dormitories the APB had set up were part of a system that involved apprenticeships, the former playing a "punitive role" in the disciplining of the children in the apprenticeship scheme.³⁶ Many who absconded from apprenticeship placements were transferred to Brewarrina Station, welfare homes from delinquent children in Sydney, Parramatta Industrial School for girls, occasionally Long Bay Jail or a psychiatric institution³⁷.

Complementary Policies - Dispossession and Removal

Goodall's analysis couches the policy of removing children in the context of a policy of "dispersal and disappearance of existing Aboriginal communities, in both a cultural and genetic sense"³⁸.

This was to be carried out through forcing off the reserves the "undeserving" sections of the Aboriginal population; secondly, through intervening in the birth-rate of the "non-full-blood" population; thirdly, through enforcing the disassociation between "full-bloods" and those of mixed descent.

The last two aims of this policy of dispersal and dispossession were carried out through the removal of children using the State Children's Relief Department's apprenticeship scheme³⁹.

Goodall demonstrates the gendered nature of social engineering inherent in the policy, revealing the numbers of girls that were apprenticed in the life of the scheme, particularly pre-pubescent girls. The threat was all too real for all Aboriginal children:

³⁶ibid. p. 138.

³⁷ibid. p. 149.

³⁸ibid. p. 71.

³⁹ibid. p. 72

Aboriginal people remember all children as being vulnerable to removal, not simply those who were suffering real neglect or who were in any sense orphans.⁴⁰

Instructions were issued to the officer concerned that removal was to be achieved through the use of the Protection Act or the Neglected Children's Act⁴¹.

The value of Goodall's thesis consists, above all, in the way she has related the colonisation of land to the policies of the Aborigines Protection Board and therefore to the removal of children. The threat of the removal of children made many families pack up and leave reserves. In the process large scale revocation of reserves occurred due to depopulation: "revocations were in fact stimulated by intensified white demand for land" ⁴².

O'Connor equally indicates that in Queensland "children - as part of [Aboriginal and Torres Strait Islander] communities - were subject to the same processes and dispersals, reprisals and removals".⁴³ Although there was separate legislation for children in Queensland as early as 1865 in the form of the *Industrial and Reformatory Schools Act*, this was superseded by the 1897 *Aboriginals Protection and Restriction of the Sale of Opium Act*.⁴⁴ According to O'Connor, these laws gave the state "even broader powers to intervene" and "the separate laws provided the basis to impose a regime of daily life"⁴⁵.

⁴⁰ibid. p. 137.

⁴¹ibid. p. 136.

⁴²ibid. p. 410

⁴³O'Connor I. (1990) The Impact of Queensland's Family and Child Welfare and Juvenile Justice Legislation, Policy and Practice on Aboriginal and Torres Strait Islander Families and Children. Research Paper for Queensland Commissioner for the Commonwealth Royal Commission into Aboriginal Deaths in Custody. p. 20

⁴⁴ibid. p.20

⁴⁵O'Connor I. (1993) Aboriginal Child Welfare Law, Policies and Practices in Queensland: 1865-1989. Australian Social Work. September, 1993, Vol. 46, No. 3. p.12.

The transformation of the Colonies

Finally, it should not be forgotten that during this period of "protection" the colonial era formally ended through their federation as states into the nation-state of Australia after Westminster passed the Constitution Act on 9th July 1900. Federation did not, however, end the colonial relationship between Aboriginal and non-Aboriginal "nations".

Throughout this time it should be pointed out, as Chisholm does in his study, that all Aboriginal people-adults and children- were once regarded as wards of the state⁴⁶.

Assimilation

After the period of protection/segregation/dispersal and dispossession followed the period of "assimilation".

This period saw its origins as a national "policy" established at the 1937 Conference of Commonwealth and State Aboriginal Authorities, although it would appear that this conference merely gave the practices that had developed in a number of States the national seal of approval.

The 1937 Conference passed the following resolution:

That this Conference believes that the destiny of the natives of Aboriginal origin, lies in their ultimate absorption by the people of the Commonwealth and it therefore recommends that all efforts to be diverted to this end.

That ...efforts of all state authorities should be directed towards the education of children of mixed aboriginal blood at white standards, and their subsequent employment under the same

⁴⁶Chisholm. (1985) op. cit.

conditions as whites with a view to their taking their place in the white community on an equal footing with the whites⁴⁷.

It is difficult to estimate the numbers of children that were taken away throughout Australia in this and earlier periods. The task is made doubly difficult because of the various means used; as has been shown above, the children could have been taken away either under the terms of the "protection" acts or under state child welfare legislation.

Freedman has pointed out that part of the assimilation policy was the forced and wholesale removal of thousands of Aboriginal children from their families. Such policies, she said, "like those of protectionism, have had a massive impact on the situation of Aboriginal people today and have had a profound influence on the child welfare field" ⁴⁸.

By the time the period of "self-determination" began in the seventies, the Aboriginal Welfare Boards had been abolished, thus ending the extraordinary level of statutory regulation over the lives of Aboriginal people. In 1967, the Commonwealth Constitution was amended, giving the Federal government the power to make "special laws"⁴⁹ for Aboriginal people.

In the next Chapter, I will take a closer look at the philosophical underpinnings of the child welfare system in Australia today and discuss further whether it carries the colonial legacy of the past into a changed context today.

⁴⁷Cited in Choo, C. (January 1989) Black Must Go White. Dissertation .M Philosophy (Australian Studies). University of Western Australia. p. 6.

⁴⁸Freedman, L. Op. cit. p. 44.

⁴⁹Commonwealth Constitutional Commission. The Constitution of the Commonwealth of Australia. p.14.

Chapter Three

COLONIAL OR CHILD WELFARE ?

In the last Chapter, I argued that policies directed at Aboriginal people as part of the colonial project of dispossession included special measures for their children. In this Chapter I will take a closer look at contemporary child welfare policies and their impact on Aboriginal children. The purpose of this discussion is to highlight the fact that alien ideas have been applied to Aboriginal children since 1788 to control and dispossess 'first nation' or Aboriginal people. This certainly has been their effect as they have consistently facilitated the removal of Aboriginal children from their people. Lately this has occurred through the use of the juvenile justice system as well.

Early forms of child welfare were based on notions and practices then current in Britain and Europe. According to Picton and Boss, child welfare policy has evolved from the penal system, the British Poor laws and private philanthropy.¹ Jaggs appears to agree with this proposition in her comments about the amendments to the Neglected and Criminal Children's Act, in that "the infant on her way to the foster-parent's hearth was to travel the same procedural road as the rogue on his way to the reformatory"; the act, according to her, functioned like a "juvenile Poor Law".

Early forms of child welfare as Graycar points out, even fulfilled the function of a supplier of cheap labour for the landed gentry in Australia². In general, as Jamrozik and others have indicated, the prevailing attitude of child welfare services prior to the sixties was that it was for low-status families or those who did not have the "right" attitudes towards child-rearing. These services had the "mark of the 'State versus the family' ": Children were removed to be "re-socialised" into society.³

¹Boss, P. & Picton, C. (1981). *Child Welfare in Australia: An Introduction*. Harcourt Brace Jovanovich. Chapter 3.

²Graycar & Jamrozik (1989) *How Australians Live*. Macmillan. p. 202.

³Jamrozik, A., Drury, S., & Sweeney, T. (1986) *Innovation & Change in the Child & Family Welfare System*, Social Welfare Research Centre, Reports & Proceedings No. 57. University of New South Wales. p. 4.

The influences of early child welfare ideology are still present in the language of extant legislation, such as the Queensland Children's Services Act 1965, presently under review⁴.

Certainly in the post-Protection and Welfare Board period, the mainstream system of "child welfare" did take over from the structures and systems designed to deal exclusively with Aboriginal people and their children. There is no doubt however, that the impact of the same system was different for Aboriginal children, given the numbers that were removed since that time.⁵

Child abuse in the western world was "discovered" in the sixties. It was dealt with as a medical phenomenon and treated as a disease. Later, in the mid sixties, responsibility for dealing with child abuse transferred to statutory child welfare authorities.⁶ It was in the seventies that changes began to take place, reflecting broader social and political changes in society. Before this time child welfare was regarded as something that was provided for a minority⁷ of families. In the seventies, however, a greater awareness about the nature of the family developed and the fact that it had undergone many changes in recent history.

Carter points out:

In the seventies the distinction between the minority and majority of families began to blur. Of many social changes, those affecting the permanency of the family unit have been the most important . The change in the structure and shape of the family affected all social classes. There was a higher divorce rate. More women entered the labour force.⁸

⁴Queensland. (1993) Department of Family Services and Aboriginal and Islander Affairs. Child Protection Legislation: Issues Paper. p. 4.

⁵Read, P. (1982) *The Stolen Generations*. New South Wales Ministry of Aboriginal Affairs. Chisholm (1985) *Black Children: White Welfare*. Social Policy Research Centre Report No. 52. University of New South Wales.

⁶Carter, Burston, Floyd & Stewart. (1988) Mandatory Reporting and Child Abuse. Policy in Practice Series No. 2. Brotherhood of St. Laurence p. 7.

⁷Carter, J. (1983) Protection to Prevention: Child Welfare Policies SWRC No. 29. University of NSW. p. 1.

⁸ibid. p. 1

As a result, the potential and actual number of users and producers of child welfare services increased⁹.

The system was still based on intervention¹⁰ and prevailing ideology still regarded the child as an entity in itself, thus justifying the reactive nature of the child welfare system and the tendency to remove children from the family-which was seen as the source of their problems¹¹-and to put them into substitute care.

The right of the state to intervene is based on the doctrine of "parens patriae", where the state is regarded as the carer of last resort.

In the seventies the differentiated nature of society became so obvious it could not be denied anymore. Equally, Aboriginal people began to make significant advances in reasserting their rights. The ideology of intervention coupled, with the nature of the child welfare system that sought to re-socialise children who did not fit the mould, meant that Aboriginal children and their families would not escape the attention of the authorities. In the sixties the assimilation policy continued through measures such as the forced location and housing policies which moved Aboriginal families into predominantly white neighbourhoods¹². Children were still being removed from their families and placed with white foster-families and adoptive parents.

Until dramatic changes in official attitudes towards Aborigines took place in the early seventies, the period between the end of the "Welfare Boards" and policies of self-determination was one in

⁹ibid. p. 2.

¹⁰ibid. p. 2.

¹¹Boss, P. & Picton, C. Op. cit. p. 24-25

¹²Commonwealth of Australia. (1991) Royal Commission into Aboriginal Deaths in Custody. National Report. Volume 2. Australian Government Publishing Service. pp. 437-438. 18.4.6-18.4.11

which assimilation continued under the ruse of formal equality under the law and the supposed "equal" application of this law.¹³

In 1951, following the convening of an Australian Council for Native Welfare, Paul Hasluck stated that the foundations of the assimilation policy were built on the principles of equality of opportunity and that there should be no division into classes. He stated that the blessings of civilisation were worth having and that assimilation was a policy of opportunity, avoiding the existence of a separate racial group. He suggested that in the course of time it was expected that all persons of Aboriginal or mixed-blood in Australia would live like white Australians.¹⁴

Despite the changes in the early seventies, a Seminar organised by the Victorian Aboriginal Child Care Agency in 1979 still was to be told by an officer of the Department of Community Welfare Services that

The biggest mistake welfare authorities have made and we are still making in our Aboriginal policy and practice is to view Aborigines as no different to anyone else. Time and again I have had social workers and policy makers say to me 'We don't want to make a special case of Aborigines, we don't want to discriminate by singling Aboriginal children out for special services, we must treat all groups the same'.¹⁵

One should not, however, make too much of the fact that the methods and attitudes of workers had not changed at that time because it focusses too much on the individual workers. I have shown in Chapter One how institutional factors operate to create racist outcomes. This does not deny the possibility that there are racist individuals working within these structures.

¹³Palamara, A., (1979), Issues in Aboriginal Child Welfare- Public Policy and Practice, in Victorian Aboriginal Child Care Agency "If Everyone Cared- The First Aboriginal Child Survival Seminar- International Seminar on Aboriginal Family Life and the Welfare of Aboriginal Children" Unpublished.

¹⁴Freedman (1989). Op. cit. pp. 39-40.

¹⁵Palamara, A., (1979). op. cit.

Period of Reform

In the early eighties, with the election of a number of Labor Governments at the State and Federal levels, the process of reform occurred with a greater urgency. Wilenski says of this period that:

Economic, social, political and managerial factors came together in the early 1980s to revive the dying embers of the reform initiatives of the 1970s. Failures in administration in areas as diverse as taxation, health benefits and the dairy industry aroused political interest and created dissatisfaction with the present system; reductions in public expenditures focussed attention on management improvement so that programs could be maintained at less cost; women, Aborigines and ethnic groups placed continuing pressure on the government for equitable access; moderate reformist governments were elected who brought a new style to the management of government and who wanted to ensure that the administration was responsive to their policies; a wave of popular books on business management excited wider public interest in management in general. Those concerned with administrative reform found ready to hand the proposals and ideas that had been generated in the '70s and were able to build a strategy of reform on the basis of the experience of that decade.¹⁶

Terry Carney, who chaired the Victorian Child Welfare Legislative Review Committee, put the review in the international context of the previous two decades, during which time countries of the "liberal" welfare state type, as Esping-Andersen categorises them¹⁷, had "reviewed the content and structure of their child welfare laws", which had been originally put in place at the turn of the century¹⁸.

Carter, similarly, characterised the mid-eighties as the time following major social changes, when demands were placed on the welfare system to accommodate those changes:

¹⁶Wilenski. Public Power. p.200-201

¹⁷Esping-Andersen, G., (1990) The Three Worlds of Welfare Capitalism, Polity Press

¹⁸Carney, T.,(1985) Reforming Child Welfare: Diverting By-Ways On The Road To Utopia?, ANZ Journal of Criminology (December 1985) 18, page 237.

One consequence of this was that the unspoken bargain, which existed between the quiet welfare workers of the past and the wider community , was disrupted. This bargain , in essence, was that welfare workers kept 'misfits' out of the way, for example, behind the four walls of the comfortable institution, or on an Aboriginal reserve.

Carter's argument is that people who had been marginalised due to their difference, who were regarded as "misfits" challenged their unofficial status and demanded rights as 'citizens'. These citizens, with their new sense of freedom, began discussing and questioning the role of the state and its role in the field of welfare. Indeed,

By the mid-80's welfare services everywhere had become highly controversial and most politicians were forced to consider welfare issues as political matters¹⁹.

The child welfare system nevertheless continued to be a system of social control from the point of view of many in society and especially so in the case of Aboriginal people.²⁰

Jamrozik maintains that the new methods were essentially the same as the old ones, as they aimed at "the control of behaviour and the preservation of social order within the existing class structure". The contradictory concerns for the wellbeing of the child and the need to protect society from many of these children continued to impede change. Furthermore, the historical inheritance of state welfare authorities is difficult to shed in the eyes of the public and in the eyes of their personnel.²¹

A 1986 study conducted by the University of New South Wales Social Welfare Research Centre, about changes to the child welfare system between 1966-1982 through the analysis of annual reports of three States (NSW, Tas. and SA). identified some specific changes that had occurred

¹⁹Carter, J. (1984), The Wellbeing of the People Review of Community Services WA.

²⁰Jamrozik (1985) & Van Krieken

²¹Jamrozik, Adam (1983) Changing Concepts and Practices in Child Welfare in Jarrah J. (Ed.) "Child Welfare: Current Issues and Future Directions". Social Welfare Research Centre Reports and Proceedings No. 34. SWRC University of New South Wales. p. 74.

over this period. They included changes to legislation; in administration- through decentralisation, regionalisation, and specialisation; in the names adopted by the Departments; in their practices and modus operandi, particularly through diversification and greater reliance on non-government organisations; through increased professionalisation in policy, administration and service delivery; and in the change in goals from child welfare to family and community welfare.²²

Apart from these changes on the State level, they also pointed out that the Commonwealth had become more involved in children's services. One aspect of the system that had not changed, however, was that it still reflected a dual nature in the sense that it purported to be concerned about the welfare of the children while also aiming to protect society from them.²³

These changes were accompanied by other characteristics and trends:

- a) a growing acknowledgment of the external causes of people's problems as opposed to their individual "inadequacies", although this appears to be less so in child welfare and juvenile justice;
- b) perceptions of clients had become less moralistic;
- c) moves towards prevention and family support and greater reliance on non-government organisations;
- d) the shift towards the community is pronounced in **methods of intervention** rather than in **objectives of intervention..**

As indicated above these changes reflected the political and social changes that took place in the sixties and seventies. Some observers suggest that the changes were also a response to the forced removal of Aboriginal children from their families in earlier periods:

²²Jamrozik, A., Drury, S., & Sweeney, T. (1986) Innovation & Change in the Child & Family Welfare System. Social Welfare Research Centre, Reports & Proceedings No. 57. University of New South Wales. p. 5

²³Jamrozik. (1983). Op. cit.. p. 74

.. perhaps Australian policymakers and practitioners have learned from their most highly visible and expensive child welfare failure, conducted at the expense of the Aborigines. General acceptance that the mass removals of Aboriginal children from their families over two centuries has been an abject failure from any point of view, may have made Australian child welfare experts more cautious about substituting the "society as parent" ideology over and above primacy of kinship²⁴.

The child welfare system in Australia today is a fragmented one and it has often drawn criticism for its' lack of uniformity in relation to children's rights that it entails²⁵. It is also still a system that is geographically and administratively demarcated along former colonial boundaries which have always ignored Aboriginal tribal land borders. Whilst most other areas of Aboriginal life have been the subject of greater Commonwealth involvement since 1967, Aboriginal child welfare has been an area that has been left in the hands of the States and Territory Governments. It has meant that the level of government in Australia that was responsible for the wholesale removal of Aboriginal children is still responsible for intervention in Aboriginal families lives in matters concerning their children. It is not surprising therefore, that the area of child welfare continues to be a highly charged area of contention between Aboriginal peoples on the one hand and the State and Commonwealth Governments on the other.

There have nevertheless been some significant changes which are documented below.

Child Welfare Developments Aimed at Aboriginal Children

In 1976, three years after the establishment of the Victorian Aboriginal Legal Service (VALS), an analysis of their client population revealed a disturbing process that had a tremendous impact on

²⁴Carter, J. (1983) Op. cit. Chapter 4.

²⁵United Nations Economic and Social Council. (1993) Muntarhorn, Vitit. Report of the Visit to Australia by Special Rapporteur on the Sale of Children. E/CN. 4/ 1993/67/ Add. 1. 9 February 1993; and, Brewer, G. & Swain, P. (1993). Where Rights Are Wronged: A Critique of Australia's Compliance with the UN Convention of the Rights of the Child. National Children's Bureau of Australia with the Children's Rights Coalition.

the child welfare system. Also in 1976, the First Australian Conference on Adoption heard that 90 % of their adult clients had been in placements, "whether fostered, institutionalised or adopted"²⁶.

Soon after this Conference, the Victorian Aboriginal Child Care Agency (VACCA) was established, originally as a committee working out of the VALS and it was funded by the Federal Government in 1977. In a submission to the Carney Review in 1984, the Agency stated

VACCA was established by Aboriginal people from the experience of the VALS and after increasing requests from Social Workers from all over the State to help in finding alternatives and supports from within our own community for Aboriginal children who were the victims of break-down in non-Aboriginal adoption and foster-care²⁷.

By 1978, the Social Welfare Department, as it was then known, sent a circular to Directors of Regional Services. This circular which recognised VACCA as "official Aboriginal Community Consultants on Aboriginal Child Welfare matters"²⁸, outlined the functions and aims of the VACCA, listing the names of the staff of the Agency and instructing Departmental Directors to provide VACCA staff "full access and co-operation by all Departmental facilities and Regional Offices".

The Commonwealth Department of Aboriginal Affairs had issued a circular about the placement of Aboriginal children which was converted into State DCWS Policy²⁹.

In 1979 VACCA, with the assistance and support of the Commonwealth Office of Child Care, organised an "International Seminar on Aboriginal Family Life and the Welfare of Aboriginal

²⁶Sommerlad, E. (1976) "Homes for Blacks: Aboriginal Community and Adoption" in Picton, C. (ed), Proceedings of First Australian Conference on Adoption, University of New South Wales.

²⁷VACCA.(1984) Submission to Carney Review, "Aboriginal Child Welfare"

²⁸Victoria. Social Welfare Department Circular No. 205, "Aboriginal Child Care Agency", Melbourne.

²⁹Victoria, (1983) Adoption Legislation Review Committee-Report, Victorian Government Printing Office, p.62

Children- The First Aboriginal Child Survival Seminar". Amongst the 240 people who attended were representatives from all four of the funded Aboriginal Child Care Agencies from Brisbane, Sydney, Adelaide and Melbourne. In addition, international guests from the Association of American Indian Affairs, the Yakima Indian Nation and a Professor of Social Work from the University of Washington attended.

One of the keynote speakers at the Seminar was the Victorian Minister for Community Welfare Services, the Hon. Brian Dixon. At the 10th Annual Conference of Social Welfare Ministers, held just before the Seminar he had stated:

All of us, as Welfare Ministers, are from time to time criticised in the media in terms of the resources that we can make available for personal welfare services; but if ever a group required even greater positive discrimination, it is the Aborigines. I think that this National Conference (International Seminar on Aboriginal Family Life and the Welfare of Aboriginal Children), which is on the 23rd to 26th April in Melbourne, is going to present some pretty terrifying statistics. I just hope that we are ready for what is going to occur and that we have some understanding of the sort of extra resources that we need.³⁰

This Conference, probably for the first time in Australia, heard first hand about provisions in the North American Indian Child Welfare Act (1978), which became the model for the development of the "Aboriginal placement principle"³¹. Mollie Dyer, the then Program Director of VACCA, had been to the United States in 1976 and returned inspired by the achievements of the Native Americans. She then invited Maxine Robbins of the Yakima Indian Nation to the 1979 Seminar.³²

³⁰Quoted in VACCA (1979) op. cit. "The First Aboriginal Child Survival Seminar (If everyone cared)

³¹This basically states that when it is necessary to place an Aboriginal child away from it's natural/biological parents, than preference for placement should be given to the extended family, then to the Aboriginal community or to placement by an Aboriginal agency.

³²VACCA (1979) Op. cit. 1979

The second and third Australian Adoption Conferences in 1978 and 1982, continued to support recommendations that kept the pressure on the Welfare Departments to alter their attitudes and their methods in relation to Aboriginal children.³³

Earlier in August 1978, the Victorian Attorney-General and Minister for Social Welfare had appointed a Committee to review the field of adoption. This Committee was to report back to the Ministers in 1979 but did not produce a final report until March 1983, presenting it instead to the Labor Minister for Community Welfare Services, Pauline Toner, and the Attorney-General, John Cain.

In October 1983, a Working Party of the Standing Committee of Social Welfare Administrators presented their report on Aboriginal adoption and fostering to the Spring Conference of Social Welfare Ministers³⁴. This was later in 1984, presented to the Council of Social Welfare Ministers, and endorsed at that meeting.

The report recommended that the Aboriginal Child Placement Principle (ACPP) be implemented in legislation in all States and Territories and that additional resources should be provided by the Commonwealth for the implementation to take place.

The ACPP states that in the

placement of an Aboriginal child, a preference be given in the absence of good cause to the contrary, to a placement with:

- **a member of the child's extended family**
- **other members of the child's extended family**
- **other families living in close proximity.**³⁵

³³Victoria. (1983) op. cit. p.61

³⁴Working Party of Social Welfare Administrators (1983). Aboriginal Fostering and Adoption: review of State and Territory Principles, Policies and Practices.

³⁵ibid. p. 6.

Victoria and the Northern Territory were the first State and Territory Governments to begin the process of legislative recognition of the ACPP. The former in the Adoption Act which was proclaimed many years after the bill was first formulated and the latter in the NT Community Welfare Act 1983.

Multiculturalism and the welfare of Aboriginal children

Since that time legislation has been enacted to include the Aboriginal Child Placement Principle. However, the protocols and guidelines that have been developed all operate within a framework that can be described as "multicultural". In other words, they argue for services that are culturally appropriate through the use of existing kinship systems and community based services run by people of the same cultures. Chisholm has pointed out that the changes resulting from the Social Welfare Administrators' report of 1983 could be "accounted for by reference to policies of multiculturalism and equal opportunity and go only some of the way towards promoting Aboriginal self-determination"³⁶.

This multicultural approach is evident in a couple of the major reviews of child welfare legislation and practices in States such as Victoria and Western Australia.

The Carney Review in Victoria stated amongst its values and assumptions the principle of protection of cultural differences:

This principle requires all agencies and decision-makers to carefully examine children's needs and family needs in the light of cultural uniqueness, cultural background and values. Respect for cultural diversity requires that legislative and service provisions will be administered in a culturally appropriate and sensitive manner.

³⁶Chisholm (1985) Op. cit. , p. 108-109 & 119.

This commitment requires that the child's need for a clear cultural identity, and continuity of cultural heritage, must be recognised whenever child welfare provisions are implemented. In addition, every effort must be made to preserve such continuity if a child is to be removed from the family, home or environment.³⁷

Two other recent developments in child welfare in the States of New South Wales and Queensland continue to place the issue of Aboriginal child welfare within the framework of "culturally appropriate services". For instance, the Queensland Child Protection Legislation Issues Paper talks about the

critical importance of children's cultural identity. Aboriginal and Torres Strait Islander children are therefore placed with careproviders of the same cultural background³⁸.

In New South Wales, the response of the Alternative Accommodation and Care Committee to the recommendations of the Usher Report into Substitute care services was to call for consultations and a review of Aboriginal substitute care services as "Aboriginal Children and Families need culturally appropriate services"³⁹

Similarly, in Western Australia, the Legislative Review Report of the Department of Community Services, placed the provisions of appropriate services and suitable legal provisions for people and children in the context of multiculturalism. Although it suggested special provisions for Aboriginal child placement, this could have been justified under the broader measures proposed for people of "minority groups"⁴⁰. The cultural provisions were placed within the context of other provisions that were emphasised by both the Carney and Simpson Reviews. Amongst others,

³⁷Victoria (1984) Carney, T. (Chairman). Child Welfare and Legislation Review Committee Report- Equity and Social Justice for Children, Families and Communities. pp. 12-13

³⁸Queensland. (1993) Op. cit. p. 4.

³⁹New South Wales. (1993) Department of Community Services. The Alternative Accommodation and Care Committee. Improving Substitute Care in NSW- A Three Year Plan. p. 6.

⁴⁰Western Australia. (1991) Simpson, T. (Chairman) Laws For People- The Report of the Legislative Review.

these were the importance of strengthening the family, social justice and equity, prevention and intervention as a last resort.

Chisholm stated that the "multicultural" approach is consistent with policies of equal opportunity for women and other minority or disadvantaged groups in society. As such it would go some way towards meeting the needs of Aboriginal people, but it does not go far enough because it does not address the special claims that Aboriginal people have as Indigenous Peoples⁴¹.

There is a further problem with the approach of the child welfare system. It is a system that largely deals with poor and disadvantaged families and is residual in nature⁴², being a system that targets services and assistance at those who qualify according to some category of need. There are many Aboriginal families who fall within this category and are therefore the subject of intervention by welfare services or are dependent on them. While this approach may work as far as addressing the "disadvantaged" position of Aboriginal people, questions must remain about how they address the "indigenous" nature of this disadvantage. It was this aspect of the "welfare-based approach" that I believe the First Aboriginal and Torres Strait Islander Commissioner for Social Justice addressed when he made the following comments:

Policies and programs which rest primarily on a perception of need and powerlessness subtly reinforce the powerlessness of the recipients who are seen as being *given* justice rather than as receiving their rights. The recognition of entitlement is in itself an act of empowerment.

The welfare-based model operates in an essentially comparative way. The less fortunate are compared with the more fortunate. Measures are taken to achieve a comparatively fairer outcome. This promotes the view that there are no absolute entitlements, merely comparative entitlements. The calls on finite government resources always exceed the capacity to respond completely to each call. The recognition that certain demands rest on

⁴¹Chisholm (1985). p. 101-102.

⁴²Australian Institute of Health and Welfare. (1993) Australia's welfare 1993: services and assistance. AGPS. p. 12

human rights assists determining priorities and establishing minimum standards which are imperative and not merely desirable.

There is particular significance for indigenous Australians in social justice being understood to be a question of entitlements and rights. This understanding is critical to setting a proper basis for the exercise of self-determination.

The welfare based model relies largely on government initiatives and government discretion to identify priorities, formulate policy and deliver programs. It is essentially a model based on a benignly intentioned but destructive paternalism which underpinned past assimilation policies. It is fundamentally antagonistic to the exercise of self-determination by Aboriginal and Torres Strait Islander people.⁴³

He added that the,

strongly held perception that the delivery of basic citizenship entitlements fails to respond to the special *historical* experience of Australia's indigenous peoples is now subsumed within a growing perception that the delivery of basic citizenship entitlements fails to respond to the special *identity* of Australia's indigenous peoples.

The historical origins and the present existence of disadvantage motivate for special measures to redress past injustices. But the fundamental rationale for current policies of social justice should not rest on the past absence of rights or on plain citizenship entitlements. It should rest on the special identity and entitlements of indigenous Australians by virtue of our status as indigenous peoples.⁴⁴

The problems of over-representation of Aboriginal children in the child welfare system do not appear to have abated significantly since the Report of the Standing Committee of Social Welfare Administrators in 1983. Aboriginal people still demand change and highlight the problems their children face despite changes to the philosophical underpinnings of the child welfare system.⁴⁵

⁴³Commonwealth of Australia. (1993) First Report: Aboriginal and Torres Strait Islander Social Justice Commission. AGPS. Canberra. p. 7.

⁴⁴ibid. p. 9

⁴⁵Jamrozik, Adam (1983) Op. cit. p. 68.

The problem with the present approach towards Aboriginal child welfare

In 1985, Chisholm said that there were three reasons why Aboriginal people continued to be dissatisfied with the system of child welfare. These were, firstly, the continued over-representation of their children in the system due to underlying factors that had not been addressed like the dispossession of their land and socio-economic disadvantage; secondly, the fact that most of their children were now being taken away from them through the criminal justice system (This is discussed in more detail in the next section on juvenile justice); thirdly, that the changes in the eighties fell short of Aboriginal aspirations.⁴⁶ Chisholm concluded that if the gap between Aboriginal aspirations and the contemporary reality were to be narrowed, then there would have to be national legislation incorporating measures advocated by Aboriginal people and others, like the Social Welfare Administrators. "Considerable financial and other support" would also be needed for Aboriginal people if they were to take responsibility for this system of Aboriginal child and family welfare⁴⁷.

Chisholm emphasised the need for these measures to be taken in the context of justice for Aboriginal people and not social support for an underprivileged group in society.⁴⁸

A few years after Chisholm had carried out his report of Aboriginal child welfare in New South Wales, Freedman confirmed his findings in her study of Victoria's response to Aboriginal demands for control of child welfare.

Freedman asserted that policy had been unable to address the devastating impact of colonialism. She found that there was an absence of overall Victorian Government policy in Aboriginal child

Brewer, G. & Swain, P. (1993). Where Rights Are Wronged: A Critique of Australia's Compliance with the UN Convention of the Rights of the Child. National Children's Bureau of Australia with the Children's Rights Coalition. p. 8.

Also Simpson (1991) op. cit. p. 8.

⁴⁶Chisholm R. (1985) op cit. p. 112-113

⁴⁷ibid. p. 120.

⁴⁸ibid. p. 120.

welfare and community services and that Government rhetoric about "self-determination" had not been matched by "consistent action and practice" because it had refused to relinquish "control by political and bureaucratic machinery".⁴⁹ She also added that non-Aboriginal people did not have the understanding nor possessed the ability to find adequate solutions to these problems. This in spite of the clearly outlined demands by Aboriginal people calling for community control, resource provision, retention and acknowledgment of culture, identity and tradition and consultation⁵⁰.

Freedman concluded that, despite the failure of policy, it continued to be imposed on Aboriginal people. She said that "positive solutions can only be introduced by Aboriginal people themselves" and for any changes to be effective governments would need to relinquish "much of their power and authority and this is unlikely to occur in the short-term"⁵¹.

In Queensland, O'Connor, in a research paper prepared for the Royal Commission into Aboriginal Deaths in Custody in 1990, concurred, stating that

The impact of Queensland's juvenile justice and child welfare policies on Aboriginal and Torres Strait Islander children has been and continues to be devastating. The empirical evidence available since the Department commenced collecting identifying data indicates the situation for Aboriginal and Torres Strait islander children is deteriorating. Despite the apparent policy commitment, Aboriginal and Torres Strait Islander children are still substantially over represented in the children taken into State care, and are still placed with white care givers.⁵²

⁴⁹Freedman L. (1989) op. cit. p. 419-421

⁵⁰ibid. p. 418

⁵¹ibid. p. 435

⁵²O' Connor I. (1990) The Impact of Queensland's Family and Child Welfare and Juvenile Justice Legislation, Policy and Practice on Aboriginal and Torres Strait Islander Families and Children. RCIADC Research Paper. (pp. 60-61)

In order to resolve the problems and conditions which give rise to this level of intervention, "requires the addressing of broader problems of poverty, discrimination and ongoing colonisation", O'Connor concluded.⁵³

The situation has not changed in Australia in the early nineties. State and Territory Governments and the Federal Government, by ignoring these "special claims" of Aboriginal People in the field of child welfare continue to operate in the "old paradigm" and have not gone beyond the "vocabulary of race, class or ethnicity"⁵⁴.

Juvenile Justice - The contemporary system of removal

While the fragmented child welfare system in Australia alters slowly in response to greater public scrutiny and criticism brought about by highly publicised child deaths resulting from abuse⁵⁵, there has been a parallel trend in the level of intervention into children's lives through the juvenile justice system.

Chris Cunneen has argued that the historical role of the police in Australia in relation to Aboriginal people and their children through intervention in family life has ebbed in the context of child welfare removals but has correspondingly increased through criminal justice intervention in contemporary Australian society. This police intervention he says earlier facilitated the dispossession and relocation of Aboriginal people.

There is thus historical continuity in the violence used by the state against Aboriginal people. Cunneen basically argues that the relationship between the police and Aboriginal young people is

⁵³ibid.

⁵⁴Fleras, Augie. & Elliot, Jean Leonard. (1992). The 'Nations Within': Aboriginal-State Relations in Canada, the United States, and New Zealand. Oxford University Press p. 229.

⁵⁵More recently the death of Daniel Valerio in Victoria in 1990 resulted in the Report into Protective Services for Children in Victoria by Mr. Justice Fogarty of the Family Court (1993).

structured by the fact that Aboriginal young people are **Indigenous** people and the police are part of a state apparatus that is **colonial**.

Cunneen calls the historical periods of Aboriginal-state relations "modes of intervention". This categorisation appears to be more useful because the various periods- open warfare and resistance, the protection period and the contemporary "criminalisation" period have often overlapped. He suggests that the common element in all of the phases is the "attempted implementation of genocide".⁵⁶

In other words, welfare intervention to control Aboriginal children has been replaced by juvenile justice intervention as the "frontline" of the colonial relationship. Indeed, there are disproportionate numbers of Aboriginal children being processed in the various children's panels and courts throughout Australia today.⁵⁷

Cunneen says,

...it is important to understand that the processes of removal and institutionalisation have not stopped during the later part of this century simply because legislation has been altered and particular practices have been defined as unacceptable. Aboriginal youth are still institutionalised at a truly extraordinary rate as a result of the processes of criminalisation. It is important to recognise the continuities with earlier policies which legitimated the removal of Aboriginal children from their families. Indeed, the process of criminalisation has replaced the previously overt genocidal doctrine of 'breeding out' Aboriginality. Aboriginal youth are no longer apparently institutionalised because they are Aboriginal, but rather because they are criminal. It is also important to consider the change in the gendered processes of intervention. Goodall has argued that the postwar period saw a change from a focus on Aboriginal girls to a focus on boys. Such a gendered shift has been

⁵⁶Cunneen, Chris. Enforcing Genocide? Aboriginal Young People and the Police. Institute of Criminology, Sydney University Law School. Unpublished. p. 3

⁵⁷Brewer (1993) Op. cit. pp. 45-47 & p. 52

further pronounced with law and order campaigns which have by and large focussed on Aboriginal males ⁵⁸

The Royal Commission into Aboriginal Deaths in Custody noted the disproportionate numbers of Aboriginal children entering care and institutions and furthermore underlined the exacerbation of this disproportion at the more serious end of the criminal justice system. It added that, "there has, historically, been a significant interrelationship between the welfare and justice systems and the institutionalising of children", that there is an "intermeshing of the juvenile justice and welfare systems" and

In short, over-representation of Aboriginal juveniles in the justice system cannot be considered without acknowledging the over-representation of Aboriginal children and juveniles in 'care'.⁵⁹

While Cunneen's use of the term and concept of "criminalisation" is not new- it was originally used in Britain by blacks in the early eighties with reference to the police harassment of young blacks through the use of vagrancy and other criminal laws to control the activities of an increasingly rebellious minority in the face of racism- his application of the idea within the context of a "neo-colonial" relationship is.

.. 'crime' is differently defined (in both official and lay ideologies) at different periods; and this reflects, not only changing attitudes amongst different sectors of the populations to crime, as well as real historical changes in the social organisation of criminal activity, but also the shifting application of the category itself, by the governing classes to different groups and activities, in the course of- and sometimes for the purpose of preparing the ground for- the exercise of legal restraint and political control. As well as the changing structures of crime, and popular attitudes to crime, we must also take account of the role of *criminalisation*- the attachment of the criminal label, to the activities of groups which the

⁵⁸Cunneen (1993) op cit. pp. 15-16.

⁵⁹Commonwealth of Australia. (1991) Royal Commission into Aboriginal Deaths in Custody. National Report. Volume 2. Chapter 14. Section 14.3.1-14.3.3.

authorities deem it necessary to control- plays in legitimising the exercise of judicial control.⁶⁰

Criminalisation in the British context occurred in the late seventies in relation to black minority groups migrating from the former colonies. It was a form of internal control of these populations, experiencing the worst effects of the recession and racism in British society.

Summary

In Australia we encounter a state that has been incarcerating and controlling the Indigenous populations ever since it was established here in 1788. The history of the child welfare system in Australia in its treatment of Aboriginal people and their children must be seen in this light.

Cunneen's argument about the historical colonial relationship between the state and Aboriginal children mediated in contemporary Australia through the criminal justice system is equally relevant in the field of child welfare.

There are no objective checklists to tell us whether a "colonial relationship" exists today. Even though the Australian state is beginning to come to terms with the legal dismissal of the doctrine of "terra nullius", that denied the existence of "native title" up until June 1992, one would have to say that, the generally poor socio-economic position of Aborigines in this country and the fact that their demands for land rights and a satisfactory resolution of their Indigenous status has not been reached, suggest a continuation of that colonial relationship. For a predominantly non-Aboriginal population living in comparative affluence despite Australia's economic problems, colonialism is never regarded as something that maybe part of our present. Indeed it would be fair to say that the worldview of non-Aboriginal people given our different histories and experiences, is a gulf away from the Aboriginal worldview. While the Colonies may have

⁶⁰Hall, Critcher, Jefferson, Clarke & Roberts (1978) Policing the Crisis- Mugging, The State, And Law And Order. Macmillan. p. 189

formally ceased to exist with the passing of the Constitution Act in 1900, the relations of domination, exploitation and dispossession did not. As has been shown above, the practices and the aims continued after this time despite policies of multiculturalism.

Although this may not be a popular view, it gained "official" currency in the words of Commissioner Elliot Johnston when he sought a description of institutional racism and its development in Australia:

For the first three decades after federation, the conflict over land, and the actual dispossession of the Aboriginal People by frontier settlers, was still proceeding. Forced relocations and dispossession continued during the decades which followed. So it is deceptive indeed to assume that 'colonial Australia' ended with the coming of the 20th century, or that successful British settlement meant the end of 'colonialistic' relations between Aboriginal People and non-Aboriginal people. These relations were entrenched not only by acts of dispossession but also by a wide variety of ideas, beliefs, and economic, legal, political and social structures which institutionalised and perpetuated them.⁶¹

When exactly this colonial relationship will end is not an issue within the scope of this thesis. Any resolution however, must surely include the satisfaction of, amongst others, the demands related to the Indigenous status of Aboriginal peoples and the changing of the paradigm from the old, "with its emphasis on legalism and control" to one based on "justice, fair and equitable treatment, adaptation, and workable intergroup dynamics"⁶². This would be achieved "through decolonisation of their (Aboriginal) relations with the state and restoration of their once subjugated status to one consistent with the self-determining ethos of a nation within a state".⁶³

⁶¹Commonwealth of Australia. Op. cit. (1991) Vol. 2, Commissioner Elliot Johnston, AGPS Canberra.

⁶²Fleras & Elliot. (1992). The Nations Within: Aboriginal State Relations in Canada, the United States and New Zealand. Oxford University Press. p. 232

⁶³ibid. p. 220.

In the field of child welfare, as has been shown above, and as Chisholm has said in "Black Children: White Welfare", the principles of self-determination have not been applied and neither has the legacy of colonialism been explored.

Having looked at the system of child or colonial welfare in Australia, it is necessary to look at what Aboriginal people and their organisations have been saying over the years to complete a critical part of the whole picture. Hartwig and Fleras and Elliot have both underlined the importance of the Aboriginal opposition and resistance to colonialism in the creation of this picture. In any colonial relation, the aspirations of the colonised to a dispossessed "nationhood" is an important indicator of this relationship. Resistance to the policies of the coloniser by the colonised, including a continuity in this resistance, is an important indicator of a colonial relationship. In the next Chapter I will show that not only has there been continued resistance by Aboriginal people, but that they have continued to insist on their right to control their own affairs, that is on their right to self-determination.

Chapter Four

SELF-DETERMINATION

This Chapter begins with a brief outline of Aboriginal resistance to the policies applied to their children. It then goes on to show that "self-determination" has been an important principle which Aboriginal people have held on to. It cites examples of Aboriginal social policy that incorporate this principle and concludes with a discussion about child welfare, highlighting in particular, the views of Aboriginal People and one of their representative organisations, the Secretariat of the National Aboriginal and Islander Child Care (SNAICC) in a field that is conspicuous by its lack of recognition of this principle of self-determination.

This discussion is important because, whilst it is being increasingly recognised in other areas of Aboriginal life that policies must recognise the right of Aboriginal people to self-determination, the child welfare field pays lip service to it at best.

Throughout the earlier sections, I have given little consideration to the views of Aboriginal people and not much has been said about the part that they played in the creation of history as it is understood today. Histories that record the role of Aboriginal people in the construction of Australian society, through resistance and cooperation, are becoming more numerous and they show that Aboriginal people, in much the same manner as women, were the invisible participants in the creation of the present¹.

This section will begin with an all too brief summary of the resistance of Aboriginal people to state intervention in their family life, which took the form of- amongst a myriad of other ways- the removal of their children. It is meant to provide the reader with a view of the tradition of resistance that is linked to the contemporary forms of resistance in the field of child welfare

¹ This form of a reinterpreted history from the point of view of women is the subject of a new book by Grimshaw, Lake, McGrath and Quartly (1994) *Creating a nation*. Mcphee Gribble.

today. It is also meant to show to the reader the "anti-colonial" roots and nature of the demands of Aboriginal people.

Aboriginal resistance and Aboriginal children

There are no studies solely devoted to opposition by Aborigines to the removal of their children. It is a history that demands to be written, one that would provide a fascinating and tragic account of a struggle that has been at the core of the battle for survival of Aboriginal people. It is a subject that would highlight the role of Aboriginal women -and men- in the protection of the only guarantee for their survival when they had little or no material possessions and negligible civil rights. Resistance moreover, did not occur in confrontational ways alone; more often than not it was through evasive means, given the absolute lack of power of Aboriginal people.

Works mentioned in the previous Chapter give some idea of the forms of early resistance to colonial intervention. Children who were taken and put in the early Native Institutions to be christianised and "civilised" were more often than not retrieved by their families². Aboriginal people also appear to have used some of these institutions as temporary places of care for their children³, some when they were involved in seasonal work.

At various times, depending on their circumstances, families hid their children, escaped into the bush and even physically fought- albeit unsuccessfully most of the time- when their children were threatened⁴.

²Davidson, Alastair. (1991). The Invisible State. Cambridge University Press. p. 80.

Rowley C. D. (1974) The Destruction of Aboriginal Society. Pelican. Chapter 6. Christian Subjects of the Crown: Civilisation by Tuition pp.86-.

Pepper P. and De Araugo T. (1985). The Kurnai of Gippsland. Hyland House. p. 80

³Rowley. Op. cit. p. 90.

⁴The film "Lousy Little Sixpence" based on the life of Margaret Tucker in cluding her autobiography. (1977) If Everyone Cared. Grosvenor Books. Archie Roach's song, "Took the Children Away" tells about his father "shaping up to fight the welfare man and the policeman".

The issue of Aboriginal children's rights was prominent in the demands of the first Aboriginal political organisations in the nineteen-twenties, in a period of which Markus says, "Aboriginal political activity was undergoing a transformation"⁵ and that saw their activity take on a national focus, through capital city based organisations with interstate links.

One of these organisations, the New South Wales based Australian Aboriginal Progressive Association, in 1927 sent the Premier a petition which called on the Government to, "...restore to us that share of our country of which we should never have been deprived"⁶. It is no coincidence as Goodall has revealed, that

The second major element in the petition was the request that the removal of Aboriginal children from their families cease immediately.⁷

The petition further posited that

The family life of the Aboriginal people shall be held sacred and free from invasion and that the children shall be left in the control of their parents.⁸

In 1938, Bill Ferguson and J. T. Patten signed a declaration calling for the abolition of the Aboriginal Protection Board and the "repeal of all existing legislation dealing with Aborigines". Amongst other reasons for this call, they mentioned the Boards' powers to apprentice children and to "assume full control and custody of the child of any Aborigine"⁹.

⁵Markus, A. (1990) Governing Savages. Allen & Unwin. p. 174

⁶Goodall, H. (1982) A History of Aboriginal Communities of New South Wales 1909-1939. PhD Thesis. University of Sydney. Unpublished.p. 241

⁷ibid. p. 242.

⁸ibid. p. 242.

⁹Parbury, Nigel. (1986). Survival: A History of Aboriginal Life in New South Wales. Ministry of Aboriginal Affairs. New South Wales. pp. 108-112

There are other accounts of opposition to the practices of the authorities when they removed children from families. Aboriginal accounts of these incidents, in the manner of the colonised and oppressed, has often been through artistic expression as much as it has been through non-fiction and documentaries.¹⁰

It is difficult, given the paucity of documented accounts of resistance, to give a chronological account. In much the same manner, however, as Reynolds has shown in relation to Aboriginal Land rights claims in "The Law of the Land", it would be possible to document, demands made by Aboriginal people that show that they have always regarded their claims as special, no less so in relation to their children.

The "modern" phase of Aboriginal resistance in the area of the rights of their children can be linked to the general rise on a national scale of the Aboriginal movement for rights in the sixties and seventies and even earlier.

Self-Determination

The principle of self-determination for Aboriginal people, identified initially with the Whitlam Government of 1972-1975, has been many things to many people¹¹. While it is widely accepted as a general principle in Aboriginal social policy development, it has not permeated the field of child welfare as yet.

The Commonwealth Government's policy of self-determination, according to Dodson,

¹⁰Some notable instances are the songs of Archie Roach, Sally Morgan's "My Place", Jimmy Chi's Musical "Bran Nue Dae". At least two theatre groups have tackled the subject of the removal of children, Ilbjerri in Melbourne and Eora in Sydney. One should note that when one refers to opposition this does not necessarily mean confrontational resistance.

¹¹For a thorough discussion about "self-determination" see the Chapter 20 in Commonwealth of Australia. Royal Commission into Aboriginal Deaths in Custody (RCIADC), National Report, Volume Two. AGPS.

is based on the distinct identity of Aboriginal and Torres Strait Islander peoples. But not as distinct peoples for the purposes of international law: rather as a reflection of our unique position within Australia. It acknowledges the distinct historical and cultural position of indigenous peoples. It is reinforced by the distinctive position of disadvantage which afflicts Aboriginal and Torres Strait Islander peoples demonstrated by virtually every social indicator available.¹²

He did, however, express a reservation about this policy as it is not identical with the inherent right of peoples to self-determination as set out in international law in article one of the International Covenant on Civil and Political Rights (ICCPR). He regards the Commonwealth policy of self-determination as a "limited privilege extended by the Government"¹³:

Accordingly, self-determination, considered as a component of the Commonwealth social justice policy, is not a matter of right: when finally reduced, it is a welfare measure directed at Aboriginal and Torres Strait Islander peoples. It may accord a far greater degree of respect and dignity to our peoples than past welfare measures. But it nonetheless rests on a policy decision taken by the Commonwealth Government about us. It does not recognise our collective right, as distinct peoples. Under the ICCPR the right to self-determination is founded on inherent human dignity. It is not founded on dignity accorded as a matter of government policy.¹⁴

With this in mind, it seems nevertheless important to explore some instances of self-determination in existing social policy.

¹²Commonwealth of Australia. (1993) First Report: Aboriginal and Torres Strait Islander Social Justice Commission. AGPS. p. 42.

¹³ibid. p. 42.

¹⁴ibid. p.43

Self-determination in Aboriginal Social Policy

Recent developments in Aboriginal social policy have underlined the theme of self-determination in the process and final outcome of policy. This has been especially true in the area of Aboriginal health and education.

Aboriginal Health

The National Aboriginal Health Policy was the outcome of many years of lobbying and activism on the part of the now defunct National Aboriginal and Islander Health Organisation (NAIHO). When in 1987 the Commonwealth and State Health Ministers set up a Working Party to develop a National Aboriginal Health Strategy, almost all the Aboriginal representatives of the Working Party had been involved with NAIHO.

NAIHO was the national umbrella organisation of Aboriginal community-controlled health services. "Community control", one among other concepts, has been used in various contexts to describe the notion of sovereignty and self-determination. The Victorian Aboriginal Health Service stated that,

Sovereignty is self -determination for Aboriginal peoples. By definition, this includes the final say in the management of our economic, social, cultural, and political resources. Sovereignty will allow us to tie resources to community needs in one move, independent of political or bureaucratic interference or threat thereof. Community initiative, community participation, and community control are the tools for implementing sovereignty.¹⁵

The National Aboriginal Health Strategy saw community control as a "clear statement" of the fact that,

Aboriginal People must determine and control the pace, shape and manner of change and decision-making at local, regional, state and national levels.

¹⁵Victorian Aboriginal Health Services Co-op Ltd. (1990) "Land Rights, Sovereignty and Health", in The Aboriginal & Islander Health Worker, Vol 14 No. 1 March 1990.

Community participation and control of the means by which Aboriginal people have in countering the systems imposed on them by non-Aboriginal people. Such imposed systems must be modified to accommodate Aboriginal aspirations if an appropriate and effective national health strategy for Aboriginal people is to be developed.¹⁶

Aboriginal Education

Similar sentiments were behind the development of the National Aboriginal Education Policy (NAEP). In 1988 the NAEP Task Force Report saw the need for national policy to address the disadvantage of Aboriginal people in education, which was reflected in the poor participation rates at every level of education. Whilst Aboriginal society had for 40,000 years

provided for its members a unique social and educational system of learning. In contrast, during the last 200 years of colonisation, successive governments and their education systems, with a quite clearly established sense of purpose and goodwill, have failed to provide the environment and the resources to allow Aboriginal Australians to attain a level of education of their choice, whilst maintaining their unique cultures and traditions.¹⁷

The Task Force was clear about the framework within which the recommendations of their report were to be developed. It was insistent upon it being a national policy and added:

The Task Force believes that a new approach to Aboriginal education can only succeed if the Aboriginal community is fully involved in determining the policies and programs that are intended to provide appropriate education for their community. This means that government will need to establish a framework which enables Aboriginal people to effectively exercise their right to self-determination in education¹⁸.

¹⁶National Aboriginal Health Strategy Working Party. (1989). *A National Aboriginal Health Strategy*. (p. xiv)

¹⁷Aboriginal Education Policy Task Force. (1988). *Report*. Department of Education Employment and Training. AGPS. p. 1

¹⁸*ibid.* p. 2

Part of the process of "self-determination" was the inclusion of Aboriginal and Torres Strait Island Education Consultative Groups in the implementation of the policy . It was also the "only formal political link" between Aboriginal people and State and Territory Governments and Education departments.¹⁹

There are various other expressions of self-determination in social policy relating to Aboriginal people. The Final Report of the Royal Commission Into Aboriginal Deaths in Custody clearly emphasised the need for the principle of self-determination to be applied in relation to policy development by ensuring that Aboriginal People were involved in these developments.²⁰ Commissioner Elliot Johnston in the National Report also underlined the status of the representative organisations of Aboriginal People. He said:

..in my opinion self-determination cannot be a reality if governments fail to recognise that Aboriginal people have clearly voiced their preference for using Aboriginal organisations; not only as their negotiators, but as the agents for delivering services. The Aboriginal organisations, when given adequate funding and when placed in a position in which they are respected negotiators and service deliverers, have performed much more effectively than the majority of mainstream agencies have performed in relation to Aboriginal people. They are trusted, they know and respect Aboriginal society and culture and they enhance self-respect within the Aboriginal community as they fulfil their roles.²¹

It is significant that in the two cases of policy cited above, in the areas of Aboriginal health and education, existing national Aboriginal community organisations played a major role in providing the impetus for those developments.

¹⁹ibid. pp. 17-18, 29.

²⁰For two "official" and therefore authoritative reports see Royal Commission into Aboriginal Deaths in Custody (RCIADC), National Report, Volumes 1-5, Canberra, AGPS 1991 particularly Volume 4, Chapter 27; and, Australia. Parliament House of Representatives Standing Committee on Aboriginal Affairs, Our Future Our Selves: Aboriginal and Torres Strait Islander Community Control, Management and Resources, Canberra, AGPS, 1990.

²¹Commonwealth of Australia.(1991) RCIADC. Op. cit. Vol. 4. 27.4.19

Self-determination and Aboriginal child welfare

Since the formation of Aboriginal community organisations in the seventies, State and Territory Governments have been the focus of Aboriginal demands for self-determination in child welfare.

Expressions of self-determination have been consistently heard in the areas of child and family welfare.

Aboriginal participants at the First Australian Conference on Adoption in 1976, related their demands to the principle of self-determination:

Self-determination is the guiding principle underlying current policies for Aboriginal People. Aborigines have demonstrated that the services that are most responsive to the needs of Aboriginal people are those which are organised and controlled by blacks. The Aboriginal Legal Service and the Aboriginal Health Services extend a service to Aboriginal people in need, reaching thousands more than similar services operated by whites. Aborigines would therefore like to see the establishment of Aboriginal adoption and fostering agencies to be responsible for the placement of all Aboriginal children.²²

In 1979, the First Aboriginal Child Survival Seminar heard from the first Victorian Aboriginal social worker of the Victorian Aboriginal Child Care Agency that, following the history of policy failures such as institutionalisation and then forced assimilation, a different form of institutionalisation appeared, this time institutionalisation of "various forms of welfare".²³ He added that this history and the dependence on welfare necessitated the establishment of Aboriginal services "to cater for our own individual needs and to determine our own destiny". This in turn led to "self-determination". Atkinson spoke in terms of "self-determination" as being an end in itself. This could be related to the fact that Aboriginal people had formerly been

²²Sommerlad, E. (1976) Home for Blacks- Aboriginal Community and Adoption in Picton C. Proceedings of First Australian Conference on Adoption. 15th -20th February, 1976. University of New South Wales. p. 163

²³Victorian Aboriginal Child Care Agency (1979) If Everyone Cared - The First Aboriginal Child Survival Seminar. Unpublished. Speech by Graham Atkinson.

stripped of their right to do and decide things for themselves. This had had a "disastrous effect on the self-esteem, dignity and sense of worth of Aboriginal people"²⁴.

Chisholm and Freedman have shown that the principle of "self-determination" has been a fundamental part of the recent phase of Aboriginal political demands in Australia.

The Practical Expression of Aboriginal Aspirations for Self-determination in Child Welfare

In the field of child and family welfare, the Secretariat of the National Aboriginal & Islander Child Care (SNAICC) was set up in the early eighties. It is a little unclear when exactly the body came into being, but the date of its formal establishment appears to have been at a national conference held in Canberra in November 1982.

Seventeen delegates, representing Aboriginal Child Care Agencies then in existence, came together and passed a resolution adopting the name of the "previous Secretariat of National Aboriginal and Islander Child Care", including its aims and objectives.

In the same document, the undated resolutions of an earlier conference recommended,

the immediate establishment of the Secretariat of the National Aboriginal and Islander Child Care (SNAICC), the formation of which will ensure the survival of the present generation and the well being of future generations of Aboriginal and Island children.²⁵

The original "Aims and Objectives" of SNAICC, amongst other things, called for an end to the "abusive" practice of the removal of Aboriginal children from their families. It sought an end to discrimination. The "Aims" are essentially a manifesto for the times they were developed in and

²⁴ibid.

²⁵SNAICC (1982) Document. Minutes of Conference- November 4th - 5th 1982. (pp.28-30)

thus reflect a strong opposition to the specific methods that were used against Aboriginal families and children at the time. There is ample reference, for example, to fostering and adoption and for the need for this system to be the "sole prerogative" of Aboriginal communities.

There is, however, another strong theme running through the "Aims". In later undated amendments, there is a stronger emphasis for the need for change in the system that would give greater control to Aboriginal communities augmenting earlier objectives of establishing "culturally relevant national legislation relating to Aboriginal and Islander Child Development". The document also underlined the emotional and spiritual needs of Aboriginal children .

At present, the "Aims" contain even stronger indications of the aspirations of Aboriginal people to "nationhood" linked to the demands for National Land Rights Legislation.²⁶

SNAICC's present membership numbers thirty full members nationally in all the States and the Northern Territory. SNAICC member organisations in turn have networks that take in most Aboriginal communities in at least the four states of Queensland, New South Wales, Victoria and South Australia. SNAICC is widely regarded as the legitimate national expression of the views of Aboriginal people nationally, in matters relating to the rights and wellbeing of their children.²⁷

SNAICC has continually asserted the right of Aboriginal People to self-determination. In one of its most recent presentations, made by the Chairman of SNAICC to the National Congress of the Australian Council of Social Services, Brian Butler stated:

²⁶SNAICC (1993) "our children are our future- their future our responsibility". Statement of Purposes 11(c).

²⁷A number of recent publications, papers and articles implicitly recognise this. See for instance: Family Matters. August 1993. Issue No. 35. Indigenous Australians: Kinship, Family and Identity
Chisholm R. (1985) Black Children: White Welfare? SWRC Reports No. 52. University of New South Wales
Freedman L. (1989) The Pursuit of Aboriginal Control of Child Welfare. Melb. Univ. Masters of Social Work Thesis. Unpublished.
Gilbert S. (1993) The Effects of Colonisation on Aboriginal Families: Issues and Strategies for Child Welfare Policies in Mason J.(Ed.) Child Welfare Policy: Critical Australian Perspectives. Hale & Irenmonger. Perspectives in Social Welfare Series.

We are part of a process, a movement, that is of global dimensions, not just Australia-wide, that is experiencing the resurgence of Indigenous Peoples all around the world in their lands. In many countries around the world, Indigenous Peoples are at the centre of debates around development, human rights and the environment.

It was reflected earlier this year at the World Conference on Human Rights, in Vienna, in the demands of the Indigenous Non-Government organisation delegates who called on the Member countries to recognise Indigenous Peoples as "nations with inherent collective rights of self-determination, development, self-government and autonomy"²⁸. The fact that the General Assembly of the Conference did not grant this recognition in their Final Declaration, is neither here nor there. The importance of this statement is in the declaring of it by Indigenous Peoples.²⁹

I have outlined the numerous references to "self-determination" that have been made by Aboriginal People in the context of child and family welfare but it is quite clear that in their demands for "national legislation relating to Aboriginal and Islander child development"³⁰ Aboriginal people are seeking to implement their right to self-determination in child welfare.

In the following section I turn my attention to the expressions, on these matters, of the only representative organisation of Aboriginal people operating in the field of child welfare, the Secretariat of the National Aboriginal and Islander Child Care (SNAICC). This is later backed up by themes identified by key Aboriginal people in interviews conducted as part of the background research for this thesis.

²⁸Nowak, Manfred. (1993). Report of the General Rapporteur. World Conference of Human Rights NGO Forum. Vienna. 10-12 June 1993. Unpublished.

²⁹SNAICC. (1993) Address to ACOSS National Congress. Brian Butler, 21st October 1993, Melbourne. (Unpublished)

³⁰SNAICC (1993) "our children are our future- their future our responsibility". Statement of Purposes (1)

Aboriginal Views About the Child Welfare System

One of the aims of this thesis was to present the views of Aboriginal people about the child welfare system. I have summarised (see Appendix II) the major issues that have concerned SNAICC over the last twelve years as they are expressed through their national conference resolutions. The national conferences and annual general meetings of SNAICC are the supreme decision-making forums for this national umbrella of Aboriginal child welfare organisations. After discussion of particular issues members then vote on resolutions which become policy direction for the SNAICC National Executive and the Secretariat. The National Executive comprises of fourteen members, two from each State and Territory. The resolutions combined with the themes identified through the five interviews (see Appendix I) later in this Chapter will be the major sources of Aboriginal views about the child welfare system and their desires for the future.

S. N. A. I. C. C. National Conference Resolutions (1981- 1993)

The following themes arise from the analysis of the SNAICC national conference resolutions:

First, there is a clarity and consistency in the demands of SNAICC throughout its existence;

Second, the demands are increasingly linked to aspirations for sovereignty, self-determination, community-control and land rights;

Third, there are repeated demands for National Aboriginal Child Welfare Legislation and for funding to be channelled through SNAICC to the AICCA's, as well as requests for increased funding increased funding;

Fourth, there is continuing concern about the operations of the child welfare and juvenile justice systems in relation to Aboriginal children, reflected through resolutions calling for consultation and condemnation of actions of States. This is linked to an insistence that the Commonwealth remain, indeed strengthen its role in relation to Aboriginal child and family welfare.

Fifth, calls for changes are made to the highest levels of political authority underlining what Fleras and Elliot point about Aboriginal groups no longer viewing themselves as a minority but increasingly being part of a dialogue on a nation-to-state basis with society³¹.

Sixth, there are many specific calls for Aboriginal control of facilities and processes.

Seventh, AICCAs and SNAICC continue to be concerned about matters other than those purely related to child welfare.

The call for National Aboriginal Child Welfare Legislation and persistent condemnation of State Governments shows a desire for a system of indigenous child welfare that is separate from the present State and Territory based system. It is also evident that SNAICC views a system of indigenous child welfare in the context of recognition of other indigenous rights. Demands are also unequivocal about control over resources and funding being with Aboriginal people.

Interviews With Key Aboriginal People- Some Themes

The purpose of the interviews, as stated before, is twofold: first, to give the resolutions discussed in the previous section a contemporary edge by verifying their relevance through the views of some key actors; and second, to inject into the discussion about the child welfare system, the views of Aboriginal people who have considerable experience and influence in this field. Very little has been said by Aboriginal people themselves about the last decade or so that has seen considerable activity on their part in this field. A number of the significant figures in the early development of Aboriginal involvement in the child welfare system are still involved in their own agencies.

In order to create a balanced view of the developments in the child welfare system it would be important, indeed essential, to record their views. Given my position within SNAICC I was well-

³¹Fleras, Augie. & Elliot, Jean Leonard. (1992). The 'Nations Within': Aboriginal-State Relations in Canada, the United States, and New Zealand. Oxford University Press.

placed to do this. Five interviews were conducted with Aboriginal people from four States and one from the Northern Territory. All of them have had many years of involvement with their particular child care agencies and are presently members of the National Executive of SNAICC. I decided not to use a questionnaire but to adhere to some general themes which were, firstly, to find out what the original ideas behind the establishment of their services was; secondly, what their assessment of the present is; and lastly, how they viewed future developments unfolding.

The following themes were highlighted in their interviews.(The complete interviews are appended to this report).

- There are varying degrees of dissatisfaction amongst the interviewees with the present state of affairs despite changes to the system of child welfare . This dissatisfaction is especially consistent in relation to the employment of Aboriginal workers in government, who are seen to be ineffective at best and hostile towards Aboriginal agencies at worst. Brian Butler for instance said:

I'm not satisfied that we are still having to argue the toss with Aboriginal people within Government Departments that they shouldn't support the mainstream principles. I'm not satisfied that they oppose the existence of non-government Aboriginal organisations as readily as they do. Therefore, they number quite a significant number of people in the community - Aboriginal people working in government agencies. The trend seems to be that they are teaching the young ones that to make it you need to be a government worker.

I don't believe that it [the employment of Aboriginal workers in government] has changed the attitudes or reduced the degree of institutional racism. I don't think it has reduced it to such a degree where one would say that it's significant. I still believe that although there has been an attempt to have Aboriginal people working within the government system, one would have thought that with the number that were there, there would have been greater change to practice and procedures and policies, and more significant changes and Aboriginal flavour reflected in legislation. It has not happened.

- Respondents all display an acute sense of history and relate the present to past practices, especially to the removal of Aboriginal children; Isobel Coe for example said:

Everything is as a result of what we have been through. The kids that we are dealing with today are the third and fourth generation of kids who have been institutionalised. You

have to get to the stage where you can break the cycle. There has to be a healing process. That cannot go on without the land because of Aboriginal spirituality and the connection with the land. That is why the question of sovereignty is so important to us. We have never relinquished our sovereignty to the land. We never will.

- Interviewees all call for greater control to be given to Aboriginal people in matters affecting their children, varying from demands for "community-control" and "autonomy" to asserting Aboriginal "sovereignty" in this field. Brian Butler in particular expressed this as follows:

nothing has happened in the minds of Aboriginal and Islander people to change course in striving for autonomy and in that autonomy we don't see that there is any need for the mainstream service to be controlling and managing Aboriginal children's programs. Ultimately, we would see that family services and children's services should be the responsibility of the Aboriginal and Islander community.

- Respondents all underline the importance of identity for Aboriginal children and stress the importance of culture. Jenny Pryor put the issue in the following terms, relating it to land:

One people, one land. This is where we come from. It is our land, ownership, sovereignty, land rights.

To me, identity means who I am, who I identify as, where I come from and your ties with the land - your reason for being. That is the way I see it. When talking about being proud of your own identity it is not being ashamed of where you come from. Once you feel right within yourself and knowing who you are and where you come from and all the ties of your ancestors and the land and "this is our land so we should not feel inferior", then our children grow up with a clear mind and there is no confusion, no shame, no guilt of who we are because we are the rightful people of this country. Our identity is our dreaming of where we come from and where we are today and where we are going to go in the future. We will always be here because of our dreaming and because of our ties with the land.

- There are concerns about practices within the system of child welfare which are seen to remain unchanged and are not value-free. Jenny Pryor said:

Because their practising guidelines are not culturally appropriate for the best interests of an Aboriginal child, they are more detrimental. Like a kid that's been in a white foster home for fifteen years. Because that child is happy, they still don't see that that child has

been deprived of their cultural identity, in the sense of associating with the black community, having their links back with the natural family. All those issues. The fact that they have not looked at the case conference procedure, the fact that their reviews are 3 months apart, the guidelines for those reviews - all of those things they have not even assessed how they could be culturally appropriate; they will therefore be discriminatory.

- The interviewees also expressed concern about policy and legislation and the inappropriate nature of these. The Aboriginal Child Placement Principle was seen to be largely ineffective because of, amongst other reasons, a lack of supporting resources. Isobel Coe sees this failure occurring:

Because they don't consult with Aboriginal people. With regards to the child placement principle, we were fighting for something more than just the child placement principle but they have taken apart what we started with the extended family. We were the ones who started that and tried to do things in a culturally appropriate way. They have taken that and tried to put it into legislation without looking at everything that is involved in it. You can't do that in Aboriginal affairs and you can't do that with child care because you have to look at the whole thing. It is their attitude, where they make legislation for and on our behalf without the consulting processes.

- There is general acknowledgment that all the agencies the interviewees work for or with suffer from a lack of resources and inadequate funding for overloaded services;
- The nature of the problems they are dealing with have changed over the years with "intergenerational dysfunctional processes" evident in many families and greater fragmentation occurring within family networks; and finally,
- Institutionalisation and juvenile justice issues were raised as issues of concern.

It is apparent from the themes identified that the issues that concerned Aboriginal people in relation to the nature of the child welfare system when Freedman and Chisholm carried out their work in the eighties are still present. They particularly pertain to dissatisfaction with policy, especially the ACPP, with practise issues and with the inadequate level of funding for Aboriginal services. There are still calls for much greater control and power, expressed through demands for

"sovereignty" and "community-control". The question of the identity of Aboriginal children is still prominent and there is continuing concern about family breakdown and institutionalisation.

The resolutions summarised earlier combined with the interviews above suggest a continuing dissatisfaction with the present state of affairs. They also suggest that policy that takes into account the history, identity and special needs of Aboriginal children is required and is not met by present policy and legislation. There is continuing concern at the breakdown of Aboriginal families and the separation of children from their families through institutionalisation. The calls for national legislation suggest a desire for a separate system of indigenous child welfare with much greater control given to Aboriginal people.

In the concluding Chapter, I will bring together the arguments, analysis and information put forward above to propose some changes to policy in relation to Aboriginal children.

Chapter Five

CONCLUSION

In trying to answer my main research question

what policy changes are required to make a difference to the over-representation of Aboriginal children in the child welfare system and reduce the level of state intervention in the lives of Aboriginal children and their families?

I argued that existing child welfare policy does not adequately address the continuing over-representation of Aboriginal children in the system and that it is based on inappropriate concepts that have not accurately theorised the position of Aboriginal families and children in Australia.

In Chapter One, I have presented a critique of present social policy in relation to Aborigines within the broader context of Aboriginal-state relations. This argument was informed by feminist and anti-racist critiques of the state in order to highlight the unintended and intended impact of the state on the lives of Aboriginal people that continue to subvert the intent of policy.

The evidence I have presented showed that a form of institutional racism is at play in Australia. This form of institutional racism has also been referred to as "colonialistic relations" by a Commissioner of the Royal Commission into Aboriginal Deaths in Custody, when speaking of the legacy of colonialism in Australia. I have argued that this institutional "neo-colonialism" is as much one of the features of the Australian state as is its patriarchal nature, identified by feminists. These relations are not one-sided however; it has been pointed out that Aboriginal people themselves played a part in the creation of the whole picture and that it is important to recognise this in theory. Aboriginal people have not been

passive participants in this process. Indeed, they have continually opposed the domination of the state in all facets of their lives including the states' interference in their family life.

The racism within the systems thus functions within a social, historical and political context that is unique to the Australian state and its relations with Aboriginal people. Aboriginal people with their special claims, which have ranged from demands for the right of self-determination to sovereignty and nationhood, occupy a unique place in Australian society. They are not migrants and nor do they belong to the dominant population group in Australian society. Their experience of history has been different. They have strong associations with areas of land according to tribal identity which continues even though they may not occupy that land today. This argument thus states that the history of state relationships with Aboriginal children can also be understood as a feature of the overall colonial project of dispossession and dispersal and I have examined the roots of the present system of Aboriginal child welfare in Australia to show how this occurred.

In contemporary times, the child welfare system continues to remove Aboriginal children from their families at disproportionate rates to their share of the population. The figures also show a different pattern for the reasons for removal of Aboriginal children when compared with non-Aboriginal children. In Chapter Four I have argued that, even though this system of child welfare (established as a single authority for Aboriginal child welfare with the abolition of the Aboriginal Welfare and Protection Boards) has undergone some fundamental philosophical changes, Aboriginal children are still dealt with in the inadequate policy context of the "multicultural" approach to child welfare. In addition, the system of child welfare remains framed within a residual welfare-based model which does not recognise the key difference of the indigenous identity of Aboriginal children. Whilst the juvenile justice system perpetuates in a more direct way, the coercive relationship of the state with Aboriginal children and youth mirroring colonial relationships.

One aspect of the "neo-colonialism" inherent in the states' treatment of Aboriginal children is the separation of child welfare jurisdictions according to State and Territory boundaries defined at the time of federation when the colonial period formally ended. These boundaries do not in any way match Aboriginal tribal land and identity. This and the jurisdiction of State and Territory Governments in child welfare matters means that, while on the one hand, a significant Aboriginal organisation like SNAICC presses for a national system of Aboriginal child welfare as a resolution to the problems that exist, it is rejected as a matter of course by State and Territory Governments¹

Establishing a case for a "neo-colonial critique" of child welfare and juvenile justice policy is important because it has so far resisted the changes that are occurring in other areas of aboriginal social policy, like health and education, and in the discussion about the existence native title in Australia. Child welfare in Australia is still welfare for children from "disadvantaged" backgrounds. This welfare-based approach to the problems of Aboriginal children is inadequate. It treats the problems of Aboriginal children as problems of the poor and disadvantaged, without reference to the history of the child and its family and people.

In Chapter Four I have tried to show, with the limited amount of information available to me, how Aboriginal people have resisted the policies of the state in relation to their children. The Chapter also discussed the demand for "self-determination", a key aspect of Aboriginal resistance, and how this principle has not been incorporated within child welfare policy, a point that Chisholm already made in 1985.

In recent times the mantle of this resistance in child welfare has passed onto the Secretariat of the National Aboriginal and Islander Child Care (SNAICC), the national representative body of all Aboriginal and Islander Child Care Agencies (AICCAs). It is important to

¹Working Party of Social Welfare Administrators (October 1983) Report. Aboriginal Fostering and Adoption: review of State and Territory Principles, Policies and Practices.

recognise this history and chronicle of resistance as it is to acknowledge the oppression and domination that gave rise to it. In the resolutions of SNAICC, the demands for national Aboriginal child welfare legislation, including other demands for greater control of child welfare and condemnation of existing practices, the resistance to state intervention in Aboriginal family life continues.

In this Chapter I also summarised five interviews with key Aboriginal people in this field with a view to corroborating the analysis of the SNAICC resolutions. Apart from the problems the interviewees see in this field, which included staffing policy of government departments, inappropriate procedures and practise, and lack of funding and resources, they all called for a much greater degree of control to be given to Aboriginal people in child welfare, ranging from demands for sovereignty to autonomy and national Aboriginal child welfare legislation.

Establishing a neo-colonial critique of the child welfare system is an argument for Aboriginal control of Aboriginal child welfare . The views of Aboriginal organisations and people are therefore very important for suitable policy developments for the future.

My analysis has thus revealed the following problems with the present system of child welfare:

- it is racist in its discriminatory outcomes in relation to Aboriginal children,thus expressing "neo-colonial" practice because it contributes to the further destruction of Aboriginal families;
- it is fragmented and based on alien boundaries from the point of view of Aboriginal peoples;
- it permits insignificant levels of Aboriginal control and generally does not recognise the indigenous status and identity of Aboriginal peoples;

- it is based on inappropriate concepts;

To address these problems it is imperative that Aboriginal peoples working in this field be brought into negotiations as equal partners in the search for appropriate solutions.

Aboriginal child welfare policy in Australia needs to move out of the old paradigm of legalism and control and into the new paradigm which,

redefines aboriginal -government relations around the poles of justice, fair and equitable treatment, adaptation, and workable intergroup dynamics².

Aboriginal people have been calling for a national system of indigenous child welfare based on national Aboriginal child welfare legislation. It implies the setting up of a system that will be controlled by Aboriginal people themselves. Even with such changes, the systems of child welfare and of juvenile justice would benefit from anti-racist measures to counter the inertia of the past. Specific measures are, however, beyond the scope of this thesis and are better left to Aboriginal people to define at some point in the future when governments in Australia accept what appears to be ineluctable march of indigenous peoples towards their own system of child and family welfare.

Whatever happens in the future these arguments call for Aboriginal child welfare policy to be based on a sound analysis of the present and the developments leading up to it. In different words the Prime Minister of Australia, Paul Keating, expressed this sentiment when, after arriving at a compromise over the terms of the Governments' Native Title legislation with Aboriginal negotiators, he proclaimed that from then on Australia's "national social policy with Aboriginal and Islander people would be based on a truth rather than a lie".³

²Fleras, Augie. & Elliot, Jean Leonard. (1992). The 'Nations Within': Aboriginal-State Relations in Canada, the United States, and New Zealand. Oxford University Press. p. 232.

³The Hon P. J. Keating, Prime Minister of Australia. The Australian. 19th October 1993. The Prime Minister quoted after reaching agreement with Aboriginal negotiators about native title legislation package.