ASSIMILATION, GENDER AND LAND IN THE NORTHERN TERRITORY AFTER *KRUGER*

Postcards from the "Factual Substratum"

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I. INTRODUCTION

The policy of removals that was challenged in *Kruger v The Commonwealth*[1] was a gender focused exercise. Certainly, as others have argued, the aim of the policy was to eliminate those Aboriginal people of mixed descent. While this aim may not have been unique to the Territory, the fact of the later arrival of Europeans in the Northern Territory compared with other places on the continent (the Coniston massacre occurred in 1921), and the direct Commonwealth management of the process in the Northern Territory since 1911, makes for some unique features.

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* The author grew up in Retta Dixon Home in Darwin. Ms Cummings' published text, *Take this Child*, Aboriginal Studies Press, (1990), is the recognised history of the Stolen Generations in the Northern Territory. The author was also instrumental in organising the *Kruger* action and the subsequent Federal Court actions.

1 *Kruger & Ors v The Commonwealth of Australia* (unreported, HC, 31 July 1997). Herein referred to as *Kruger*.

However, the biological control that was used to attempt this elimination ensured the policy was particularly focused on women. The bluntness of the approach is displayed in a quote from the 1933 Administrator's Report:

> Every endeavour is being made to breed out the colour by elevating female half-casts to the white standard with a view to their absorption by mating into the white population.[2]

This article aims to examine the basis of this gender focus and give an example of an area where the implementation of this policy has ongoing implications - land rights.

II. ORIGINS AND RATIONALE OF THE GENDER FOCUS

The 'removal' policy of the Commonwealth had two distinct periods, each with different theoretical bases. The earlier period can be broadly described as 'protectionist'. During this period, the predominant view was that by isolating Aboriginal people and Aboriginal people of mixed descent, their relative proportion of the northern population would decrease, as the white population increased. These views are represented in the 1911 report by Professor Baldwin Spencer (who, whilst holding a Chair in Biology, was an anthropologist by approach). Spencer was appointed to assist the Commonwealth with Aboriginal policy in its newly acquired Northern Territory. His report is included in the 1912 Northern Territory Administrator's Report:

> Spencer supported the removal of part Aboriginal people to reserves believing that adoption by whites, especially that of girls was 'fraught with danger owing to the temperament of the half-caste and to the fact that no white man, if white women are available, will marry a half-caste aboriginal'. (Administrator's Report 1912, 47). This statement carried with it the implication that as long as there were very few white women in the Territory, miscegenation was a problem unless part Aboriginal females were removed to places where they could be 'supervised and controlled'.[3]

However, part Aboriginal females were to play a role in the encouragement of white women to the Territory by the government. Whilst part Aboriginal males were snapped up by the growing pastoral industry, females were 'trained' in the institutions for domestic work; to work as maids, nannies and other domestics to make the life of the white families newly recruited to the Commonwealth's tropical outpost more comfortable.[4]

The second period, that of assimilation, is characterised by the 1928 report of JW Bleakley.[5] Bleakley was the Chief Protector of Aboriginals in Queensland. Like Spencer before him, Bleakley was the appointed expert intended to formulate a new theoretical approach to Aboriginal Affairs management. His legacy was to remain with Aboriginal people until late this century:

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2 Northern Territory Administrator's Report 1933, p 7.

3 B Cummings, *Take This Child*, Aboriginal Studies Press, (1990), p 10.

4 Northern Territory Administrator's Report 1912, pp 46-7.

5 *Report of the Aboriginals and Half Castes of Central Australia and North Australia*, Commonwealth Parliamentary Paper 21, 1928.

> For Bleakley it was essential that the [various classifications of part Aboriginal people] be kept separate from 'full blood' Aboriginal people and also from each other. He believed that the predominantly European 'half-caste' should be permitted to take his or her place in European society, that with proper training they could fill a role as domestic servants and that with proper management they could become 'fairer' with each successive generation.[6]

The implementation of this view can be seen in the Northern Territory Administrator's Report mentioned earlier:

> In the Territory the mating of an Aboriginal with any person other than an Aboriginal is prohibited. The mating of coloured aliens with any female of part Aboriginal blood is also forbidden. Every endeavour is being made to breed out the colour by elevating female half-castes to the white standard with a view to their absorption by mating into the white population.[7]

Amendments to the Ordinance[8] gave local police constables status as 'Protectors' (under the Chief Protector, who in time became the Director of Native Welfare). These appointments led to a vocal concern from many southern women's groups as to the moral probity of the constabulary. This concern was manifested by a call for the appointment of women protectors. The matter was discussed at a number of (joint Commonwealth/State) Aboriginal Welfare Conferences from 1929 until 1937.

Carrodus, Secretary of the Department of the Interior noted the concern at the practice of local constables acting as protectors as they became both prosecutors and defence. He noted the concern of women's organisations and admitted that in many cases, especially in large communities, the service of women protectors would be beneficial. However, he claimed that "in the bush country, it would be practically impossible to appoint women protectors [as] such appointments would involve the appointment of protectors for the women protectors".[9]

> Thus, the protection of Aboriginal women from seduction and disease was considered secondary to the protection and security of the white women who would have been employed to deal with the situation.[10]

In both assimilationist and protectionist periods, two practices are apparent, although with a different policy motive in each period. The first is the attempt to control 'the half-caste problem' through control of part Aboriginal women's reproduction. The second is the impetus to have part Aboriginal women fulfil a function as domestics,[11] whereas, part Aboriginal males are taken up by pastoral industry employment.

A gender focus was the result of both periods. In 1928, Bleakley reported that out of the 76 Aboriginal people removed from various parts of the Northern Territory and housed at Kahlin compound (in Darwin), 56 were female and 20 were male.[12] Children were removed from their Aboriginal mothers, usually (but

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6 B Cummings, note 3 *supra*, p 13.
7 Note 2 *supra*, p 14.
8 *Aboriginals Ordinance* 1918 (NT).
9 Quoted in B Cummings, note 3 *supra*, p 31.
10 B Cummings, *ibid*, p 32.
11 JW Bleakley, note 5 *supra*, p 15.
12 *Ibid*, p 29.

not always) their white fathers had already moved on. Primarily, it was girls that were removed.

III. IMPLICATIONS - LAND RIGHTS

An example of the ongoing effects of the removals policy is to be found in the operation of the *Aboriginal Land Rights (NT) Act* 1976 (Cth) - the *Land Rights Act*. The Act creates the possibility of access to land rights if a claimant group is found by a Land Rights Commissioner to be 'traditional Aboriginal owners'. To be classified as a traditional owner, an individual must be deemed a member of the 'appropriate' descent group. Authority suggests that, generally, the appropriate descent group is a patrilineal one.[13] A claimant must also hold 'necessary' spiritual affiliation in common with other members of the group. The court in *NLC v Olney*[14] rejects the suggestion that the necessary spiritual affiliation must be held by the group as a whole, rather, it suggests that the relevant group is comprised of those individuals who hold the necessary affiliation: "... if there is no commonality of spiritual affiliation at a particular point in time there will be at that time no traditional Aboriginal owners".[15]

While in *form* the definition of 'traditional Aboriginal owner' is a matter of statutory interpretation, in *effect* the basis of the 'traditional Aboriginal owner' is the extent to which an individual and their family has been directly affected by the removal policies. The tests which the Act creates are more difficult for someone removed from family and country to fulfil. In effect, the *Land Rights Act* is itself a continuation of the old assimilationist policies. The criteria that were used to assess susceptibility to removal are not used in the Act. However, these criteria 'live on' through the *Land Rights Act*'s denial of land rights to Aboriginal people that may have had a white male forbear and whose family were forcibly removed from their original community.

In this way, the regime of the *Land Rights Act* serves to privilege (at least with respect to land rights) a section of the Territory Aboriginal community. As one writer commenting on the issues of 'tradition' recently noted:

> ... it was not (necessarily) the entire population of communities that was removed under the assimilationist policies. Rather, selected Aboriginal people were removed. These selected removals, while affecting all people within a community in some way, will have had differing particular effects depending upon whether a person was themselves removed or stayed as part of the remanent community. The evolutionary effect upon tradition will vary with the particular experience of each individual.
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> Accordingly, the possibility of co-existing, but differing, Aboriginal cultures, each with connexion to the same land, arises as a result of the attempt at genocide. The responses of white legislatures to these co-existing cultures has been to privilege one with the adjective 'traditional' and to endow it with the increased possibility of legislated land rights. This identification of the remanent community's culture as

13 *NLC v Olney* (1992) 105 ALR at 551-4, paticularly at 551.
14 *Ibid* at 554-5.
15 *Ibid* at 555.

> 'traditional' can apparently operate irrespective of any other objective (or subjective) change the culture may undergo.[16]

With respect to the current discussion, the point is of course, that the basis for the selective removals referred to above was a gender focused one. It was primarily part Aboriginal women that were removed from communities. It is the urban Aboriginal culture that was established by these women that is denied land rights under the Act.

The gender focus perpetuated by the Act is in turn continued in the structures created by the Act. I have noted elsewhere:

> ... the Land Councils [established under the *Land Rights Act*] themselves have very few women on them. There is no separate women's council. Rather than being a result of the operation of genuine 'traditional culture' this is a product of the flawed anthropological models that underlay the development of the Act.[17]

In the absence of an independent women's council, the importance of women's direct relationship to land remains diminished. This occurs, in part, through the lack of an independent structural voice. More importantly, the absence of such a voice affects the contemporary structure of anthropological models. These models continue to suffer from the historical shortcomings of an anthropology based on an assessment of a culture based on male observation and interaction and discussion with men. Not surprisingly, the result of this process is a diminished status being given to women.

The diminished importance given to women's direct relationship to land in turn denies the significance of a relationship to land that stems from the mother. The result is that a gender biased perception of association with land is intensified by gender biased structures being deified as the sole legitimate spokes*men* on land issues.

Thus, the gender bias apparent in the Land Councils' membership and structure is a product not just of white anthropological models of 'tradition' but also of the history of control suffered by Aboriginal women under the protection/assimilation policies. The legacy of the gender focused operation of assimilation is a contemporary disempowerment of Aboriginal women, particularly urban Aboriginal women.

IV. CONCLUSION

The aspects of the Stolen Generation issues I have attempted to raise in this paper are not the 'easy' side of the Stolen Generations coin. They are not concerned with demonstrating the Commonwealth was a genocidal big brother, with showing the cultural insensitivity of the churches, or with all the other aspects that often catch the popular imagination. Rather, the story I have told is of the life that we of the Stolen Generation live today. But the issues considered

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16 M Storey, "The Stolen Generations: More Than Just a Compo Case" (1996) 3(86) *Aboriginal Law Bulletin* at 5.

17 B Cummings, "Writs and Rights in the Stolen Generation Case" (1996) 3(86) *Aboriginal Law Bulletin* at 10.

in this article; gender oppression, racial discrimination, and male control of sources of power (land), are not unique to the Stolen Generations. They occur throughout many societies.

These are the issues that we have to tackle alone; we do not get assistance in these struggles from white liberals and academics afraid to upset the Land Councils. An example is to be seen in the drafting of the Human Rights Commission's *Bringing Them Home* Report.

The original version of the Human Rights Commission's *Bringing Them Home* Report contained the following recommendation:

> **Proposed recommendation 11**: That traditional owners and claimant groups not be impeded by any law or any interpretation of any law in defining their membership to include people forcibly removed from their families and thereby including such people among those entitled to the fruits of a successful statutory or native title land claim.

The proposed recommendation was barely a quantum shift in land rights theory but it did recommend a change to the existing structures. The final version of the recommendation that was included in the published Report is as follows:

> Traditional owners should be assisted to decide whether, and to what extent, they can include people who were removed as children. In particular, they need reliable information about the history of forcible removal, its effects and the involvement of particular individuals.
>
> ***Assistance to return to country***
>
> **Recommendation 11**: That the Council of Australian Governments ensure that appropriate Indigenous organisations are adequately funded to employ family reunion workers to travel with clients to their country, to provide Indigenous community education in the history and effects of forcible removal and to develop community genealogies to establish membership of people affected by forcible removal.[18]

The final version of the recommendation would appear to ensure additional funding to "appropriate Indigenous organisations" (presumably the Land Councils). It does not advocate any change to existing land rights regimes. There was no consultation with the Human Rights Commission's Indigenous Advisory Group regarding the change.

I should note that the text of the final report did contain the following paragraph:

> Traditional owners and claimant groups should, of course, remain free to define their membership to include people forcibly removed from their families, thereby including these people among those entitled to the benefits of a successful statutory or native title land claim.[19]

However, even this paragraph of text was preceded with a significant qualification:

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18 Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, p 297.

19 *Ibid*, p 296.

> ... native title is communal in nature and traditional Law recognises the authority of traditional owners to define the content and scope of that title. In other words, the traditional owners or claimants are entitled to determine whether or not to include a person removed in childhood.[20]

Clearly the privileging of a male culture that is deemed 'traditional' over the needs of a Stolen Generations community that is matrilineal in structure is an occupation that the Human Rights Commission can engage in just as ably as white legislatures.

Its a long road home ...

20 *Ibid.*