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Assimilation and the Re-invention of  
Barbarism

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# Assimilation and the Re-invention of Barbarism

Chris Cunneen

## **Abstract**

There are many points of critique to current federal policies in relation to Indigenous people in Australia. I want to draw out one point: the renewed ascendancy of a discourse of barbarism and primitivism about Indigenous people. This is primarily the idea that Indigenous people are uncivilised, primitive and barbaric, and that Indigenous culture is not only worthless, it is also a significant hindrance to social, cultural, legal and economic development. There has been a developing ascendancy of this position (assimilation to Anglo-Australia values = civilisation; Indigenous culture = barbarism) over the last decade.

It is necessary to recognise that there have been gains in the assertion of rights of Indigenous people in the area of justice. While the developments have been uneven across jurisdictions, there needs to be recognition that the processes for establishing a more coherent approach to Indigenous law and order are being put in place. These gains need to be defended and supported.

## **Assimilation and the Re-invention of Barbarism**

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There are many points of critique to current federal policies in relation to Indigenous people in Australia. I want to draw out one point: the renewed ascendancy of a discourse of barbarism and primitivism about Indigenous people. This is primarily the idea that Indigenous people are uncivilised, primitive and barbaric, and that Indigenous culture is not only worthless, it is also a significant hindrance to social, cultural, legal and economic development.

There is a discourse of Indigenous barbarism and primitivism which underpins the current assimilationist policies of government. Indeed the idea that Indigenous people are uncivilised, primitive and barbaric legitimates the current march of assimilation. Within this policy framework the only way forward is for Indigenous people to assimilate to Anglo-Australian values and standards. Importantly this is no longer a 'choice' to be made by Indigenous people, instead assimilation can be achieved through the force of law.

There has been a developing ascendancy of this position (assimilation to Anglo-Australia values = civilisation; Indigenous culture = barbarism) over the last decade. It was demonstrated in the government and conservative approaches generally to the Stolen Generations report when the report's findings were seen as unwarranted. From the federal government's standpoint, the moral and legal justifications for removal of children were seen as legitimate in the context of 'saving' Aboriginal children. This was the idea that we cannot judge the past by today's standards, and the removal of Indigenous children was done with the 'best intentions'. A rarely articulated assumption underpinning this approach was that Indigenous children needed to be saved from the barbarities of Indigenous community life.

'Saving Indigenous women and children' has become the mantra for forcing through massive changes in federal policy towards Indigenous people, and has gained momentum over the last two years specifically around the issues of family violence, child abuse and customary law. The sacred phrase oft repeated attempts to place policy beyond analysis and criticism. To disagree with government policy is to be 'for' child abuse.

### **Bad Dreaming**

I want to explore the resurgence in ideas of Indigenous barbarism by using a recently released book by Louis Nowra<sup>1</sup>, which is ostensibly about Indigenous male violence against Indigenous women and children. The book fits well with the themes identified above. Violence against Indigenous women and children becomes the trope through which we come to know and understand Indigenous barbarism.

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<sup>1</sup> Nowra, L. (2007) *Bad Dreaming: Aboriginal Men's Violence against Women and Children*, Pluto Press, North Melbourne.

The fundamental message of book is clear: family violence is the direct effect of Aboriginal barbarism which is embedded in Aboriginal custom and law. The book's message is the need to modernise and assimilate. It is a deeply reactionary piece of writing, drawing on a range of old and new prejudices about Indigenous people in Australia.

**The old prejudices** are well covered in the opening chapters. Aboriginal society in Australia was uncivilised and barbaric. Aboriginal custom legitimated constant sexual and physical abuse of Aboriginal women by Aboriginal men. Selections from colonial accounts and later anthropologists are used to support the view that Aboriginal men's violence against women was and is a part of traditional culture. Other examples of the 'Primitive', such as mortuary practices, are placed in the text to reinforce the image of the Other.

In instances too numerous to mention, Aboriginal people lost their language and their culture, beginning with the Eora people of the Sydney Harbour area during the first settlement. Missionaries deliberately undermined traditional Aboriginal cultural practices. Yet sometimes younger Aborigines were keen to give up a tradition. Take the mortuary practices of the Ngarrindjeri. The corpses were raised on platforms, often in the huts where people lived, and basted over fires until the scarf-skin (the outer layer of the skin, the epidermis) could be removed and kept. Human shit was daubed on the mourners, and the combination of this plus the noxious vapour and drippings from the cooking bodies produced an odour so foul that mourners were known to have died from the stench. Unsurprisingly, this was one of the first rites to be quickly and willingly abandoned by the young people when the missionaries came (Nowra, *Bad Dreaming*, p.27)

It is difficult to know the purpose of these examples in a book about violence against women, other than to paint a particular picture of Indigenous society as barbaric. Through repetition of examples of barbarism (drawn from non-Indigenous writings) we are left with no doubt that Indigenous society is irredeemably flawed.

**The 'new' prejudices** are primarily concerned with the period from the late 1950s onwards and the move towards greater legal equality.

- Aboriginal people could legally obtain alcohol (and became alcoholics);
- Aboriginal people were granted equal pay (and therefore were unemployable) (p.29);
- Aboriginal people are cocooned in isolated, unsustainable communities because of H.C. Coombs' influence over policy and supported by those on the political left (pp31-32);
- Aboriginal people were now 'basking in the rights of self-determination' (p.84);
- ATSIC was a disaster and dominated by violent Indigenous men personified in Clarke, Yanner and Robinson (pp.69-70);
- the 'permit system' where Indigenous communities exercise some control over who enters their lands needs to be abolished (p.89), and
- 'Indigenous communities [need] to realise they are part of Australian society as a whole' (p.88).

The implication is that the previous system of strict economic, social and legal control through protection legislation was beneficial. Entrenched racial discrimination 'protected' Indigenous people. Nowra's vision for the future is equally clear: assimilation.

In the desire to paint Indigenous men as unrelentingly violent, there are significant factual errors. Nowra notes the following:

In 1991, the Royal Commission into Aboriginal Deaths in Custody investigated 99 deaths of men in prison or police custody. But most commentators overlooked the reasons why these men were in prison. More than 50 percent had been jailed for violence, mostly against women. Of these, 9 percent had committed murder, 12 percent were incarcerated for serious assault and just over 30 percent were in prison for sexual assault (p.31).

The purpose of this is to reinforce the serious criminality, sexual predatory nature and extreme violence of Indigenous men. However, in fact:

- 11 of the 99 deaths involved women, mostly in police custody (a strange fact to ignore by Nowra in a book about violence against women)
- Only 33 of the 99 Indigenous deaths involved people in prison (63 were in police custody and 3 were in juvenile detention)
- Very few men or women who died in custody were detained for violent or sexual offences (4 for homicide, 8 for sex offences and 9 for assault)
- 12 of the 99 detentions involved no criminal offence at all.<sup>2</sup>

Most Aboriginal people were in custody because of minor public order offences.

### **The New Terra Nullius**

The re-invention of Indigenous barbarism is a new version of an old myth: *terra nullius*. The story of barbarism involves seeing Indigenous people without settled law understandable to the West. Indigenous people are placed outside a state of law and in a state of barbaric custom. For to be without law is to be *uncivilised*, and one is placed outside the realm of civil and political society.

While the racialized hierarchies of the nineteenth century and early twentieth century discursively constructed Aboriginal people as beings of lesser human worth, the contemporary failure to understand Aboriginal law continues to re-position Aboriginal people outside civilised society. The choice is clear: to be within the (Anglo-Australian) law Aboriginal people must assimilate to the values and norms of Anglo-Australian society, or they will remain forever lawless.

Of course at times we do recognise Aboriginal custom, and Nowra's book is an example of the way Indigenous custom is recognised and made understandable to the West. The current debate about child sexual assault in Aboriginal communities in the Northern Territory which began in early 2006 and continues today is another example

<sup>2</sup> Royal Commission into Aboriginal Deaths in Custody, *National Report*, Vol 1 pp 46-48

of how Indigenous custom becomes understood in both popular and policy discourses. In this context Indigenous child abuse has been directly linked to an *idea* of Aboriginal 'customary' law. What we 'recognise' in Aboriginal customary law is unspeakable barbarity: the sacrificing of babies and children for the sexual gratification of 'traditional' or 'initiated' men.

The unspoken question is: how could a civilised society provide legal recognition to these practices? The idea of Aboriginal customary law remains rooted in discourses of Aboriginal savagery, and legal recognition is unthinkable. Again the choice is clear: these people must assimilate, or remain outside the realm of civil society. The placing of Indigenous people outside of civil society also shows why it is easy to contemplate the need 'to send in the army' to fix the situation.

These ideas underpinned the Commonwealth Government's *Crimes Amendments (Bail and Sentencing) Act* in 2006 ostensibly as a response to family violence in Indigenous communities. The legislation had the effect of preventing the courts from taking into account 'any form of customary law or cultural practice' in relation to bail applications, or as a relevant matter in sentencing, or as a consideration in discharging an offender without proceeding to conviction. The HREOC noted that the legislation does not address family violence in Indigenous communities, is not based on evidenced research, does not promote equality before the law, and undermines initiatives involving customary law such as Indigenous courts.<sup>3</sup>

The same ideas underpinned the government's response to Stolen Generations: Aboriginal children were removed for their own good, and conversely the argument popularised by people like Miranda Devine and accepted by the government, is that the current problem is that we are not removing enough Aboriginal children. The Northern Territory 'emergency response' facilitates the easy removal of Indigenous children, the introduction of racially discriminatory legislation and the use of army and police to ensure the rule of Anglo-Australian law over the assumed barbarism of Indigenous society.

### **The Reports of Northern Territory<sup>4</sup>, New South Wales<sup>5</sup>, Western Australia<sup>6</sup>, Victoria<sup>7</sup> and Queensland<sup>8</sup>**

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<sup>3</sup> HREOC (2006) *Submission of the Human Rights and Equal Opportunity Commission to the Senate Legal and Constitutional References Committee on the Crimes Amendments (Bail and Sentencing) Bill 2006*, Human Rights and Equal Opportunity Commission, Sydney.

<sup>4</sup> Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (2007) *Little Children are Sacred*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Darwin.

<sup>5</sup> Aboriginal Child Sexual Assault Taskforce (2006) *Breaking the Silence: Creating the Future, Addressing Child Sexual Assault in Aboriginal Communities in New South Wales*, Attorney-General's Department, Sydney.

<sup>6</sup> Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities (2002) *Putting the Picture Together*, State Law Publisher, Perth.

<sup>7</sup> Victorian Indigenous Family Violence Taskforce (2003) *Final Report*, Department for Victorian Communities, Melbourne.

<sup>8</sup> Aboriginal and Torres Strait Islander Women's Task Force on Violence (2000) *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report*, DATSIPD, Brisbane.

Over the last few years there have been several reports mostly written by Indigenous taskforces on Aboriginal child sexual assault and family violence. What do these reports stress?

- The importance of Indigenous self-determination and developing negotiated responses to violence and abuse with Indigenous communities
- Strengthening Indigenous culture is the answer not the problem to improving the situation in relation to violence
- Developing and extending Aboriginal law is part of the solution to the problem, and not a cause of the problem
- The need to see the current problems of abuse and violence as directly connected to the trauma caused by successive colonial policies
- The need to trust Aboriginal families and communities to look after their own children.
- The need to re-engage Indigenous men.

While much has been made of the ‘permit’ system by rightwing commentators and the government, not one of these reports identified the permit system as an issue in child sexual assault. Nor from my recollection do any of them simply recommend removing more children.

The fundamental ideas in these reports are currently reflected in the proposals put forward by the Combined Aboriginal Organisations (CAO) of the Northern Territory:

Communities have varying capacity to respond and it is important to identify, support and extend those capacities over time... There is certainly an immediate opportunity to tap into the capacity for communities to assist police and the courts in the administration of justice. Examples include night patrols, safe houses, community justice groups, and mediation services... Programs are already in place in many communities that provide an immediate response to issues of safety – for example night patrols and the Safe Families Program run by Tangentyere Council in Alice Springs - but these have been grossly under funded.<sup>9</sup>

### **The Gains of Political Struggle in the Criminal Justice System**

The quote from the CAO of the Northern Territory raise an important point. It is necessary to recognise that there have been gains in the assertion of rights of Indigenous people in the area of justice. These gains involve both changes to practice and principle.

They include

<sup>9</sup> CAO, A Preliminary Response to the Australian Government’s Proposals, pp11-12.

- Night patrols
- Community justice groups
- Community crime prevention and anti-violence programs
- Indigenous courts (Murri courts, Koori courts, Nunga courts, circle sentencing)
- The continuation of ATSILS
- Indigenous Family Violence Prevention Legal Services
- AJACs
- Indigenous Justice Agreements

While the developments have been uneven across jurisdictions, there needs to be recognition that the processes for establishing a more coherent approach to Indigenous law and order are being put in place. These gains need to be defended and supported.

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