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Colonial genocide and state crime

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# Colonial genocide and state crime

Michael Grewcock

## **Abstract**

This paper sets out a framework for developing a criminological analysis of colonial genocide. Taking as its starting point Green and Ward's (2004) definition of state crime as 'state organised deviance involving the violation of human rights', the paper addresses two main conceptual issues: the definition of genocide and state deviance. These are examined in two broad historical contexts: the battle for land and the resulting frontier violence; and the shifting terrain of official state policies that ranged from peaceful co-existence to protection to assimilation, and which included practices such as forced removal. The paper argues that colonial genocide needs to be understood in broader terms than the legal definition of genocide provided in the 1948 Genocide Convention and that state deviance towards the Indigenous population rests in part on the nature of the colonial settler state rather than aberrant departures from putative democratic norms or the rule of law.

## Colonial genocide and state crime

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### Introduction

When Kevin Rudd delivered the long overdue apology to members of the Stolen Generation in February 2008<sup>1</sup>, he pointedly avoided any reference to the term ‘genocide’. For someone as instinctively conservative as Rudd, adopting the controversial terminology applied to the forced removal policy by the *Bringing Them Home* report (HREOC 1997) was never on the agenda. So, when asked by the ABC’s Lateline program why he had avoided using the term Rudd replied: “the term has a specific definition in international law, and I don’t believe it is either appropriate or helpful in describing the events as they occurred – or in taking the country forward” (ABC 2008).

Appropriate or not, Rudd’s approach was subsequently endorsed by the conservative commentator Gerard Henderson (2008), a trenchant critic of the use of the term, who argued that describing forced removal as genocide ‘make(s) the resolution of long-standing problems more difficult than they otherwise might be.’ Henderson did not spell out what form the resolution might take but it seems clear that compensation is not one of them. When Senator Bob Brown moved an amendment to the apology speech motion calling for ‘just compensation to all those who suffered loss’, all but Brown’s fellow Greens senators voted against it.

While the use of the term ‘genocide’ might continue to be entwined with the lingering legal, political and moral issue of compensation, this paper seeks to address some of the broader criminological questions raised by the concept of

<sup>1</sup> The full speech can be accessed at [http://www.pm.gov.au/media/Speech/2008/speech\\_0073.cfm](http://www.pm.gov.au/media/Speech/2008/speech_0073.cfm)

genocide in Australia. Given the prominence of the genocide debate within the 'culture wars' and the scale of discrimination against Australia's indigenous population, criminologists, unlike historians, have written surprisingly little about this topic. Yet much of what criminologists have written about, such as the policing of Indigenous people, has colonialism as its broad social and historical context.

Moreover, colonial genocide has not been the subject of recent criminological literature on genocide and state crime. For example, Green and Ward's only discussion of the theme in their 2004 book on state crime is to dismiss in three sentences the notion that the forced removal of children comes within a criminological definition of genocide. Instead, they label forced removal as 'institutionalised child abuse' (Green and Ward 2004: 165-166), which apart from being an inadequate description of the assimilationist intent and devastating social impact of the policy, leaves out the whole issue of settler and frontier violence against Aboriginal people and how that might relate to the various removal practices.

Nevertheless, Green and Ward's criminological definition of state crime – 'state organisational deviance involving the violation of human rights' (Green and Ward 2004: 2) – does provide a starting point for examining the crucial role of various state institutions in a range of state practices that I suggest constitute colonial genocide.

Some of what I will argue is still in a very rudimentary form and will require testing through much further research and debate. It also forms part of a wider exercise following on from my PhD (Grewcock 2007) that looks at the various systems of exclusion historically implemented by Australian state institutions. While this is still very much a work in progress, the core argument that I am developing is that exclusion was one of the fundamental functions of Australian state institutions and that it operated in relation to both internal and external frontiers.



The criminological implication of this is that the deviance that can be attributed to abusive exclusionary practices rests in part on the nature of the state itself, rather than aberrant departures from putative Australian democratic norms or the rule of law.

What I will be putting forward is that the processes of colonisation were responsible for colonial genocide in Australia and that colonial genocide arises from a continuum of abusive practices, conducted over lengthy periods of time and with varying levels of direct state support. In some situations, the policy rationales for these practices have been quite different and the stated intentions behind some of the policies benign. But as a whole, these practices have resulted in the dispossession, marginalisation, cultural destruction, social fragmentation and widespread killing of Aboriginal people.

An important distinction to make at the outset is that colonial genocide is not directly comparable with the concentrated, systematic, state controlled mass killing that characterised the Holocaust. But while the absence of gas chambers is a significant point of difference, I would argue that colonial genocide *is* systemic and cannot occur without state acquiescence or complicity.

Fundamentally, colonial genocide is a by-product of the overall project of creating a Western colonial settler state and as a consequence raises important questions about the nature of that state; the various measures used by the state to legitimise and legalise the seizure of land; the legitimacy of nationalist narratives that construct a largely peaceful history of progress and development; and contemporary approaches to indigenous people that minimise or deny histories of disruptive and violent state intervention, compounded by long term neglect.

So, how can this be placed within a criminological framework?

### **Conceptual issues**

From a criminological perspective, colonial genocide raises two main conceptual challenges.



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The first is the definition of genocide. As Green and Ward (2004:166) note, there are at least 13 different definitions of genocide but the term is generally attributed to the Polish jurist, Raphael Lemkin (1946), who in the immediate aftermath of the Holocaust, was seeking to describe ‘a crime without a name’.

Lemkin was one of the key architects of the 1948 Genocide Convention which described genocide in Article 2 as ‘any of the following acts committed with intent to destroy, in whole or in part, a national ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.’

The Australian government ratified the Convention in 1949 but without any acknowledgement that it might be relevant to Australia. During the parliamentary debate on the Convention, for example, one Liberal MP commented: ‘No-one in his right mind believes that the Commonwealth of Australia will be called before the bar of public opinion, if there is such a thing, and asked to answer for any of the things which are enumerated in this convention’ (Archie Cameron, Member for Barker, cited in Tatz 1999)

However, the *Bringing Them Home* report’s finding that the intentional removal of children for the purposes of ‘absorption or assimilation’ violated Article 2(e) ‘because it aims to destroy the “cultural unit” which the Convention is concerned to preserve’ (HREOC 1997: part 4) raised the issue of to what extent the Convention also covered ‘cultural genocide’ and by extension, colonial genocide.

While there is some evidence to suggest that Lemkin did contemplate the inclusion of cultural genocide in his framework, the relationship between forced transfer of children and mass killing remains ambiguous and has been central to

the critiques of the Human Rights and Equal Opportunities Commission's use of the term. I suggest that reliance on forced removal as set out in Convention an insufficient basis for a criminological definition of genocide and to that extent, I agree with Green and Ward. However, a more fundamental issue for criminologists is the extent to which intentional destruction or mass killing of a particular group should be central to definitions of genocide.

In *Bringing Them Home*, it was argued that intention could still be implied, even though the relevant state practices were 'not solely motivated by animosity or hatred'. But for those who take the requirement of intent literally (referred to in the literature as 'intentionalists'), the absence of any stated policy to destroy a particular group may be sufficient to remove the impact of frontier violence from the orbit of genocide because it was not the result of a co-ordinated state policy.

This is particularly relevant to the colonial experience in Australia, where, over many years and in different regional contexts, low level conflict between white settlers and the indigenous population was punctuated by outbursts of intense and lethal attacks by settlers and a variety of state agencies. In some isolated instances, most notably following the Myall Creek massacre in 1838, the state intervened to punish some of those responsible by in this case hanging seven stockmen. But this was not the norm. Typically, if there was not direct state involvement, there was acquiescence or varying levels of state complicity.

This raises the second main conceptual issue – state deviance. If we adopt Green and Ward's definition of state crime, this is conceptualised largely in terms of organised human rights abuses. Within this framework any definition of genocide would constitute state crime when measured against the formal human rights standards of the twentieth century.

But how are such norms to be applied to the 18th and 19<sup>th</sup> centuries; especially if formal colonial policy was not to destroy the Aboriginal population? Furthermore, how can they be applied to the assimilation policies of the 20<sup>th</sup> century, which, although they implicitly denied the legitimacy of Aboriginality, were in formal

terms justified as improving the conditions of life of those targeted by policies such as forced removal?

The short answer to these questions is that if human rights are to be understood as universal, then to deny their application to earlier periods renders them hostage to historical and cultural relativism. Moreover, despite the degree of hegemony historians have often attributed to dominant ideas such as colonial racism, there was some direct resistance to its impact. Primarily this came from indigenous people themselves, who in the most basic way fought to maintain their rights to land and community. But there were also critics within the political establishment; divisions between the Colonial Office in London and local authorities here and substantial regional differences in levels of violence and the methods used to enforce white rule. In other words, there were points of opposition to state policy and opposing moral frameworks through which the state could be viewed in 18<sup>th</sup> and 19<sup>th</sup> century terms as deviant and abusive.

### **Historical contexts**

The subjugation of Australia's indigenous people cannot be understood as a fluid transition from one form of society to another. Rather it is characterised by dislocation, violence and the imposition of complex forms of state authority that were central to denying to Aboriginal people the rights to which the settler population were formally entitled. Nevertheless are two broad and overlapping contexts in which conceptual issues such as intention and deviance must be considered.

The first is the battle for land and the processes of colonisation and frontier violence that occurred largely during the late 18<sup>th</sup> and 19<sup>th</sup> centuries; the second is the shifting terrain of official state policies that ranged from peaceful co-existence to protection to assimilation and included practices such as forced removal.



## *Colonisation*

The initial colonisation of Australia was a staggered and convulsive process, which had a devastating impact on the Indigenous population. Between 1788 and 1911, it is estimated that the Indigenous population declined from a pre-colonisation estimate ranging from 300,000 to over one million down to 72,000 by 1921 (Year Book Australia 1994).

Notwithstanding the variation in the pre-settlement estimate, this was a decline of genocidal proportions and was the product of deliberate killing, kidnapping, diseases such as small pox, dispossession and marginalisation. It represented the wholesale disruption, if not elimination, of an estimated 400 tribal groupings.

This process was particularly acute in Tasmania, where a population estimated at between 4,000 and 9,000 in 1803 declined to less than 200 by 1835, all of whom had been captured and deported to Flinders Island in Bass Strait. By 1847, this population had further declined to 46 (Reynolds 2001: 78).

Such a profound population decline was compounded by the prevailing ideology amongst the colonial administration that the Indigenous population would die out. But this raises the question of whether that prevailing belief can be equated with an intention to eliminate the indigenous population. The answer to this is not straightforward. The original instructions from the Colonial Office in London to Governor Phillip were to treat the 'natives' with 'amity and kindness' (Reynolds 1996: 34) and it was widely expected that the Indigenous population would drift away from the newly colonised areas and that contact would be largely peaceful and on the colonists' terms.

But colonisation, which had been far from peaceful in other parts of the world, inevitably posed the question of control of land and unless the Indigenous population offered absolutely no resistance, frontier conflict was inevitable.

Historian Henry Reynolds (1996 and 2001), who argues that what occurred during the colonial period is better understood as a series of genocidal episodes rather than the product of genocidal state policy, documents how notwithstanding

official policy, punitive raids quickly became an established method for intimidating and driving away the indigenous population in the Sydney area.

The leader of one of these expeditions, Marine Captain Watkin Tench, described in his journal how the NSW Governor sought to ‘strike a decisive blow’ against a tribe in the Botany Bay area ‘in order, at once to convince them of our superiority, and to infuse an universal terror, which might operate to prevent further mischief’ (quoted Reynolds 1996: 33).

Once the settlements began extending inland and into Van Dieman’s land, settlers rather than organised state agencies played an increasing role in enforcing control of the land which on the basis of the legal fiction of peaceful settlement had become the property of the Crown. The methods used included killing; kidnapping and rape; isolating populations; denying access to land; and breaking up traditional patterns of land-use.

Collectively, these were systemically violent practices. Reynolds (1996:4) quotes the ethnographers Fison and Howitt who wrote in 1880:

*It may be stated broadly that the advance of settlement has, upon the frontier at least, been marked by a line of blood. The actual conflict of the two races has varied in intensity and duration, as the various native tribes have themselves in mental and physical character...But the tide of settlement has advanced along an ever widening line, breaking the tribes with its first waves and overwhelming their wrecks with its flood.*

Tracing the direct role of the state in creating and maintaining ‘the line of blood’ requires focused historical research, particularly to test and further develop the following propositions.

First, regardless of formal state policy, frontier violence was prolonged and widespread with state intervention to punish perpetrators of violence against Aboriginals rare and deeply unpopular within the political establishment.

Second, distinctions between the state and the settlers are not necessarily clear-cut. Leaving aside issues such as who organised and authorised punitive

expeditions, squatters and large land-holders were economically and politically powerful; often exercised legal authority through the magistracy; and in many cases came from military backgrounds.

Third, the imposition of state authority through the establishment, for example of courts, prisons and a military and policing presence in the more remote areas was important to the legitimisation of the seizures of land underpinning frontier violence. The state institutions were drawn in behind the settlers.

Fourth, the emergence from the mid 19<sup>th</sup> century of 'protectors' with extensive policing powers and the right to control where Aboriginal people lived, who they associated with, who they could have sexual relations with etc provided the infrastructure for the systems of punitive welfarism that were later to institute forced removal.

Such general trends point in the direction of state complicity for what happened to Indigenous people. That this could be defined as deviant even by the prevailing standards of the time is indicated by some of the critical voices that were raised. Many of these were missionaries influenced by early 19<sup>th</sup> century 'Christian philanthropy', which was an important element of the campaigns against slavery and influential within the Colonial Office in London.

With their limited messages of racial equality and divine vengeance for the treatment meted out to the blacks, these people were met with considerable official hostility on their arrival in the colonies and were often ostracised and isolated. But it seems clear that the visible decline in the Indigenous population was an issue about which there was vocal and vehement dissent.

However, two notes of caution are required.

First, the view that 'god created all men as brothers' did not necessarily challenge the notion that Europeans were superior to Aboriginals. It was often little more than code for the view that Aboriginals should be allowed to die out in peace.

Second, those such as the missionary G.A. Robinson, who was a driving force behind the establishment of the Flinders Island settlement for Tasmania's Aboriginals, equated protection with the isolation and removal of Aboriginal people from areas which had been colonised by the whites.

So, while the opposition of Robinson and others to the routine acceptance of frontier violence provides an important insight into the ideological battles of the time, it is also an indicator of how policies formulated in terms explicitly opposed to violence and mistreatment could nevertheless play a part in problematising the existence of Indigenous people and institutionalising their separation and differential treatment from whites.

In this sense, the notion of 'protection' provided an important link between overt frontier violence and the various social policies developed at a state level.

### ***Protection/assimilation/forced removal***

While the protection policies that developed during the latter part of the 19<sup>th</sup> century were still largely based on the notion that the Indigenous population would die out, the assimilation policies that developed during the 20<sup>th</sup> century were partly an acknowledgment that the previous assumptions about inevitable extinction were wrong.

Like protection, the assimilation policy was conceived as a vehicle for maintaining white Australia. It was underpinned by racist beliefs based on notions of European cultural superiority and included 'scientific racist' ideas such as eugenics. The forced removal policies that were institutionalised as part of this shift in official approach were based on the rationale that 'mixed race' children could be assimilated/socialised, while 'full bloods' could be isolated on reserves or in remote settlements.

While forced removal was justified in benign terms as a policy aimed at rescuing Indigenous children from backward primitivism, and in many areas was driven by

state officials previously responsible for ‘protection’, the policy was ultimately reliant upon force and designed to deny the very legitimacy of Aboriginality.

This was an intentional, highly organised policy that deliberately sought to break up families and community ties, destroy cultural practices, and strip away any sense of Indigenous identity.

By implication it sought to remove any prospect of claims to traditional land or wider challenges to the impact of colonialism. It was also to be pursued with unremitting bureaucratic endeavour. According to the Chief Protector of Aborigines in Western Australia, A.O. Neville (1947: 80-81),

*The native must be helped in spite of himself. Even if a measure of discipline is necessary it must be applied, but it can be applied in a way as to appear to be gentle persuasion...[T]he discipline we propose here is only akin to that which we usually impose upon ourselves. Let us try it for a generation or two, and we need not fear the outcome. But when I say try it, I mean that every agency now in force and to be employed for the betterment of the native people must look upon the pursuance of the accepted united policy as paramount. There must be complete and enthusiastic co-operation between those charged with its initiation and conduct without reservation, and no backsliding, changes or let-down behind Authority's back must be permitted. Political influence must keep out. There will be difficulties and failures, but the end in view will justify the means employed – to wipe out forever an existing blot upon Australia's escutcheon, and succeed in the ultimate elevation of a minority of our people to social equality with the majority and, what is equally important, to give them the ability to think for themselves.*

In the light of such comments, the extensive research associated with the HREOC Inquiry and the ongoing testimonies of those who were the victims of these policies, establishing that forced removal was both intentional and deviant is not as problematic as it is for the initial colonial period. The abuses forced removal inflicted upon Indigenous people clearly brings the policy within a criminological definition of state crime. But is it genocide?

### **Towards a criminological framework**

The main purpose of this paper has been to set out some of the key elements of a criminological definition of colonial genocide. Such a definition would not draw

directly on the Genocide Convention, with its immediate origins in the Holocaust, but would use it as a marker of the seriousness of genocide as a category of state organised or sanctioned abuse.

While 20<sup>th</sup> century genocide can be characterised as an extreme and deviant departure from previous forms of rule, generally occurring in periods of conflict over relatively short time spans, colonial genocide has its roots in the nature of the colonial process and can occur over much longer periods of time. Moreover, while the colonial state can play a central role in directing and legitimising genocidal policies, it also owes its existence in part to their success.

Colonial genocide is not unique to Australia but it does have significant local dimensions. The framework I propose is consistent with the 'structuralist' approach to genocide and draws partly on the definition of 'indigenocide' formulated by historians Raymond Evans and Bill Thorpe (2001), although I see no particular reason to invent a new word.

It has six elements: (i) the intentional invasion/colonisation of land; (ii) the subjugation, forced movement and separation of the Indigenous population; (iii) the removal from the Indigenous population of their traditional means of existence; (iv) the killing of the indigenous population to the extent necessary to allow total imposition of the economic and political relations enforced by the settler state; (v) the classification of the Indigenous population as racially and culturally inferior to the settler population; and (vi) the systemic denial of Aboriginality through the destruction of family, kinship and social ties.

While much work needs to be done to refine this framework, I suggest it provides a starting point for a criminological analysis of the lethal, abusive and discriminatory relationships between Australian state institutions and the Indigenous population. It also establishes a foundation for looking at more immediate issues such as the impact of the criminal justice system in Indigenous people and the deeply entrenched institutional prejudices and practices that operate within it.

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