

**From Slaughter to Abduction:
Coming to Terms with the Past in Australia**

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From the time that colonists first set foot in Australia, British officials and Australian governments refused to acknowledge the status of the indigenous people. Australia was declared '*terra nullius*', giving Europeans that right to settle and exploit the land as they pleased. No treaties were made with indigenous communities; no recognition was given to their claims of ownership; no allowances were made for the survival of their

communities. Aborigines were pushed aside, and if they resisted they were punished. Some found employment as stockmen or servants; some sought refuge on missions or settled on the outskirts of country towns. Many perished. Only a few communities managed to continue their traditional way of life in territory remote from white settlements.¹

It was not until mid 20th Century that Aborigines were recognised as Australian citizens and up to recently the doctrine of *terra nullius* continued to prevail. However, in the last 15 years, political and legal developments have forced non-Aboriginal Australians to face some of the injustices of the past. The first was a judgment by the Australian High Court in 1992 which declared that British sovereignty and European settlement had not necessarily extinguished indigenous rights to property. This decision was followed by a High Court judgment which ruled that Aboriginal communities could legitimately claim land now leased by farmers and graziers (which includes most of outback Australia).² *Terra nullius* was officially dead.

The Labor Government consolidated the rulings of the courts with a Native Title Act which provided a framework for protecting native titles and a process for claiming them. It also provided compensation to those communities which were not able to make claims. This legislation, along with the establishment of a Council for Aboriginal Reconciliation, was supposed to bring about a radical change in the relations between Aborigine and non-Aboriginal communities. The starting point said the then Prime Minister Paul Keating in a 1992 speech, is an act of recognition – ‘Recognition that it was we who did the dispossessing. We took the traditional lands and smashed the traditional way of life’.³

Awareness of these injustices and their present day consequences was also highlighted by two Commissions of Inquiry. The first into Aboriginal Deaths in Custody (1991) found that Aborigines were more likely than members of the non-Aboriginal population to end up in prison where they were often subjected to insensitive or even

¹ See Henry Reynolds, *The Law of the Land* (Melbourne: Penguin, 1987).

² The 1992 Judgment was the result of a case brought by Eddie Mabo, a Torres Strait Islander, who laid claim to the land of his ancestors. The second judgment resulted from a case brought by the Wik people of Cape York Peninsula.

³ From a speech given in Redfern (a suburb of inner Sydney with a large population of Aborigines) on 10 December, 1992.

brutal treatment. The later Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (1997) revealed a chapter in Australian history that most non-Aborigines were not aware of – the practice, only recently ended, of removing half-caste Aboriginal children from their families and communities and raising them in orphanages or white foster homes.

These developments of the late 80s and early 90s were a high water mark in the attempt of Australians to come to terms with the past. What has happened since bears a resemblance to the course of some Australian rivers which, after a promising start, trickle away into the sands of the inland deserts. The Liberal Government which came to power in 1996, sponsored legislation to reduce the ability of Aborigines to claim land or to prevent mining and agricultural activities on the land that they possessed. This Government has largely ignored or sidelined the reconciliation process. The Report of the Inquiry on the removal of children, coming at a time when a reaction against Aboriginal claims had already begun, came under severe criticism and almost none of its proposals were implemented. Public attention in recent times has shifted to dysfunctions within Aboriginal communities and political groups, and some commentators play down the importance of historical injustices and suggest that Aborigines, or their culture, are largely responsible for their problems.⁴

The political backlash against Aborigines and their supporters is the result of many political and economic factors. But it has been aggravated by some conceptual difficulties in the arguments for restitution and recompense that opponents of land rights and reconciliation were able to exploit. One of these is an issue about collective responsibility. Keating was prepared to accept responsibility on behalf of the Australian nation for the injustices of the past. But Howard insists that present Australians should not be held responsible for deeds done by past generations and for this reason has persistently refused to offer an official apology for historical injustices. His refusal highlights a difficulty about people taking responsibility for deeds or policies that they had no part in committing. This problem is aggravated by the fact that many non-

⁴ For example, in a recent book, *Fabrication of Aboriginal History* (Sydney: Macleay Press, 2003), Keith Windschuttle argues that there were no significant injustices done to Aborigines.

Aboriginal Australians are recent immigrants or the children of recent immigrants whose ancestors were not implicated in any wrongs to Aborigines.

The second problem is determining what reconciliation should mean and what it entails. Some Aborigines think that the notion is too weak to encompass their demands. They want a treaty that truly reflects the equal standing of Aboriginal communities and Aboriginal law; they want restitution of land unjustly taken.⁵ However, some people think that reconciliation simply means more resources for housing, health care and education in Aboriginal communities – services that Aborigines could also demand on grounds of equity. Others think that apology or some other kind of demonstration of remorse is all that is required. The question is not just what goals are politically feasible, but what ethical criteria should be used to judge their adequacy.

Reconciliation poses other difficulties. For economic and legal reasons restitution or compensation for unjustly appropriated land has been the focus of debates about reconciliation. But many other kinds of wrongs were done to Aborigines and their communities. In some cases it is not difficult to understand the nature of the injustice. Killing of innocent people or destruction of their means of life is obviously wrong. But some acts or policies have proved more difficult to assess. One of the basic issues in the debate about ‘stolen children’ is what kind of wrong, if any, was done. This is a crucial issue because the very possibility of reconciliation rests on reaching a common understanding about the wrongs from the past, or at least being able to appreciate the other’s point of view.

This paper will concentrate primarily on ‘reconciliation’ – its adequacy, meaning and requirements. However, the possibility of reconciliation as acknowledgment and recompense for past wrongs depends on an idea of collective responsibility which encompasses responsibility for historical injustices. I will use the debate about apology to explain why citizens have a responsibility for making recompense for historical injustices committed by past officials of their nation. This explanation suggests a particular approach to dealing with these past injustices and a view about what reconciliation should accomplish, and I will relate this approach to the debate about Aboriginal land

⁵ This has been the position of the national body that represents Aborigines in Federal politics, ASTIC, or Aboriginal and Torres Strait Islander Commission.

claims. Finally, I will consider some of the problems that arise when people are asked to comprehend injustices that do not fit common conceptions of harm. The debate about removal of children involves a conceptual difficulty of this kind.

1. Apology and Collective Responsibility

Most of the people who did injustices to Aborigines are dead, and the Prime Minister contends that it is wrong to hold the living responsible for these wrongs. There are several ways of countering this response. One is to insist that every member of a nation, whether culpable or not, has a responsibility for reparation for wrongs done by its officials, past or present. This is the view of responsibility that Keating took when he insisted that ‘we’ committed the injustices. However, this idea is obviously controversial. Most theories of justice (at least in the tradition with which I am familiar) agree that citizens acquire responsibilities by participating in collective enterprises, including the activities of their elected governments. However, these ideas of mutual obligation and collective responsibility cannot easily be extended to include responsibility for deeds that done before most present citizens were born, came to maturity, or arrived in the country.⁶

The other response is to stress the importance of history and the feelings that many people have about the events in their nation’s past. Howard professes to feel pride in the historical accomplishments of the Australian people, and it would be only logical for him to feel shame about the injustices they have done. The problem is that these feelings are personal and far from universal. Not everyone has them, and it is not clear what we should say to those who don’t. And it is also not obvious what people who have these feeling ought to do – if anything.

The approach to responsibility that I defended in my book, *Taking Responsibility for the Past*⁷ is an attempt to explain why people in an inter-generational society have responsibilities for making recompense for injustices of the past and why a morally sensitive person ought to respond appropriately to his or her nation’s or community’s past. Nations and many other communities are intergenerational associations which form

⁶ Joel Feinberg, for example (‘Collective Responsibility’, *Journal of Philosophy* 65 (1968)) lists ‘opportunity for control’ as one of the necessary conditions for liability for an action or practice of a group (687).

relationships with other intergenerational communities. These communities are often other nations but they can also be peoples within a country who have a history, organisation and tradition of their own. The commitments, treaties and other agreements, that nations make with each other are aspects of this ongoing relationship which impose obligations on future citizens. By making these commitments which bind their successors as well as themselves, present citizens have to accept the responsibility of keeping the commitments of their predecessors and making recompense for the wrongs that they did.

By not making treaties with Aboriginal communities and refusing to recognise their territory and law, British and Australian officials failed to show the respect that was due to people they interacted with. This was a wrong in itself – independent of, though closely related to, other wrongs they committed. Though the meaning of ‘reconciliation’ is a matter of debate, it has one clear objective: to recognise the existence of, and to show respect for, Aborigines and their communities. Presumably this respect and recognition is supposed to be ongoing – a watershed in the affairs of Aborigines and non-Aborigines that is assumed to commit present and future members of each community to maintain harmonious and just relationships. A treaty would formalise this relationship and give the commitment a legally enforceable content. But even without a formal treaty, reconciliation – if it has any meaning at all – is a commitment between communities with moral implications for present and future generations. Presently existing Australians are committing their successors to maintaining relations of respect, and in the process present citizens are also obliged to acknowledge and make recompense for the historical injustices that stand in the way of this commitment.

Given this understanding of what reconciliation is supposed to accomplish, apology for the wrongs of the past seems an obvious requirement. Unjust acts, Bernard Boxill insists, do not merely violate rights. They are acts of disrespect, and he thinks that reparation has to include ‘an acknowledgment on the part of the transgressor that what he is doing is required of him because of his prior error’.⁸ Citizens engaged in reconciliation with Aboriginal communities are not themselves the transgressors, but by the reasoning above they have a responsibility for acknowledging and making recompense for the past

⁷ Thompson (Polity 2002).

⁸ Bernard Boxill, ‘Morality of Reparation, *Social Theory and Practice*, 2 (1972), 118.

wrongs of their nation. This responsibility does not depend on their ancestry or on their having feelings of shame. It is a responsibility that people acquire simply by being citizens of a trans-generational society which has committed past injustices.

It is sometimes argued that apology or other acts of contrition are meaningless or inappropriate when they are delivered by representatives of states who may be motivated purely by political considerations and who represent citizens who do not necessarily feel apologetic. According to this objection, acts like apology, and related attitudes or actions like forgiveness, belong to context of personal relations where individuals with appropriate motivations and feelings communicate with each other. The problem it seems to me is largely semantic. Since nations and other organised communities also have relations with each other and are morally required in normal cases to treat each other with respect, there has to be an official way of acknowledging and demonstrating regret for a failure of respect and for other wrongs. The fact that not everyone in a nation is likely to be regretful, including in some cases leaders themselves, does not render an apology meaningless – any more than the failure of citizens to reach consensus on policy issues renders the decisions of their legislature invalid.

2. Land Claims and the Requirements of Reconciliation

Citizens of a nation or members of an organised community have a responsibility for making recompense for past injustices, and this recompense ought to include, as Boxill claims, acknowledgment of the wrongs done. However, acknowledgment is not likely to suffice. Boxill also insists that wrongdoers ought to return what was unjustly taken and compensate their victims for other injuries. There are, however, two discourses about what is owed for injustices. The first is legalistic and backward looking. Its objective is restitution - the restoration of possessions that were unjustly taken, or if restoration is impossible, the payment of an equivalent in compensation. The objective is to return victims, so far as possible, to the condition they were in before the wrong was done.⁹ The second discourse is ‘theological’ and forward looking. It is concerned with apology, forgiveness, contrition, atonement, and reconciliation, and though restoration

may play a role in a process of reconciliation, it is not a necessary component.¹⁰ The objective has been attained when the victim is prepared to forgive the wrong or, in those cases where forgiveness is not possible, is at least prepared to resume peaceful, cooperative relations.

By emphasising the importance of re-establishing and maintaining ongoing relations of respect the view advocated in the last section seems to favour the second, the reconciliatory approach. Reconciliation was also clearly the aim of Council for Aboriginal Reconciliation. However, the question remains whether reconciliation – a process that does not entail restoration of lost possessions – is a just way of coming to terms with the wrongs that were done to Aborigines. The High Court decisions offer the prospect of return of land at least for some communities, and there are philosophical views about rights of property which seem to support a restorative approach.

The courts have not served Aboriginal communities all that well in their fight for restitution. After a ten year battle the Yorta Yorta people who claim land around the Murray River in Victoria and New South Wales recently had their case rejected by the High Court. It failed in part because they could not produce written evidence that they had retained a connection to the land from the time of dispossession to the present as required by the Wik and Mabo judgments and the Native Title Act. Evidence that came from their oral tradition was not allowed. A law that refuses to allow as evidence the only kind of testimony that Aborigines are likely to be able to present is obviously contrary to their interests. But the judgments of the Court and legislation on native title can themselves be criticised as unfair to these interests – by not taking into account Aboriginal conceptions of ownership and by ruling out from the start claims to freehold land or land alienated by acts of government. Legal claims to restitution have to be made in Australian courts, according to Australian laws and the conception of property and legal procedure embedded in this law. Aborigines with their different ideas about law and land are at an obvious disadvantage.

⁹ For example, see Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 150-3.

¹⁰ See for example, Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998) and D. W. Schriver, *An Ethics for Enemies: Forgiveness in Politics* (New York, Oxford: Oxford University Press, 1995).

Aboriginal communities which have been able to negotiate a settlement with corporations, local councils and other representative bodies have often fared better. These negotiated settlements not only encourage communities to appreciate each other's point of view; they are often able to reach a compromise concerning land use which takes into account the interests of each party. These local agreements have also ranged over other areas of concern to Aborigines – for example, access to employment and education. This process of agreement making which at its best encourages understanding, respect, recognition of how present problems are created by past wrongs, is reconciliation at a local level – a way of coming to terms with the past that enables communities to establish and maintain cooperative and mutually respectful relationships.

These developments suggest that in Australia at the present time a reconciliatory approach to land claims is pragmatically superior to a legalistic approach which insists on rights of title and restitution. But there are ethical and philosophical, as well as pragmatic reasons, for favouring a reconciliatory approach. The problem with demands for restitution is not merely that Australian courts employ a Western conception of law and property rights. There is no culturally neutral, ethically defensible conception of land rights that can be used to ground claims of native title.

This conclusion arises out of a long debate about the origin and nature of rights of property. Some philosophers in the Anglo-Saxon tradition have tried to justify a historic title to property that is independent of law and custom. Most notably, John Locke contends that appropriation of previously unowned land by groups or individuals is justified by labour: by people cultivating a piece of land or engaging in other acts of production and improvement ('mixing labour with a thing', as he puts it).¹¹ Having through their labour acquired property, Locke and his followers assume that these individuals or groups gain all of the rights of property. They can use it for their purposes, exclude others, sell or give it away, and claim it back if they have been unjustly dispossessed. These rights, according to the theory, exist even in the state of nature and

¹¹ Locke (*Two Treatises of Government* (London: Dent, 1978) begins with the assumption that a person has 'property in his own person' and thus that his labour belongs to him. 'Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property', 130.

must be recognised and protected by any political society. If such a theory were defensible then it would require restitution or compensation for all the land unjustly taken from Aborigines - the holders of original title to the whole of Australia.¹²

However, the problems encountered by Locke's theory are good reasons for rejecting the idea of original rights to property. First of all, Locke's theory cannot claim to be culturally neutral. In practice, it has actually been used to deny property rights to indigenous people and provided one of the justifications for declaring Australia to be a *terra nullius*. Aboriginal ownership was not recognised because Aborigines did not cultivate the land in a way that Europeans recognised.¹³ In any case, an account of ownership that makes labour the sole condition for possession cannot easily encompass Aboriginal views about the relationship between their land, their ancestors and their religious beliefs.

A better understanding of the way in which Aborigines cultivated their land and invested it with meaning might overcome some of the problems associated with the use of Locke's theory. But there are more serious reasons to doubt that it can be culturally neutral. Even if we agree that labour can give individuals or groups the right to use resources for their own purposes it does not follow that they have the right to use these resources in any way they please, to exclude everyone else from using them, or the right to transfer them to whomever they choose. Locke simply incorporates into his conception of original title ideas about property rights that are particular to Western bourgeois society. In any case, the question remains whether all these rights, natural or not, persist once a person or group has been separated from their property and others have taken it over. Historical title, even if it exists, might not be the sort of thing that can persist once people have been separated from their acquisitions for a long period of time.¹⁴ But even if we can get around the practical and philosophical difficulties that face a theory like

¹² This assumes that the communities that were occupying the land when the colonists arrived were either the original owners or had obtained the land by peaceful means. Given the prevalence of war and invasion in human affairs, this assumption may seem doubtful.

¹³ Windschuttle, *op. cit.*, revives this idea in order to argue that it was not unjust to displace Aborigines from their land.

¹⁴ See Jeremy Waldron, 'Superseding Historical Injustice', *Ethics* 103 (1992).

Locke's, moral problems remain. 'We were here first', says Waldron, has always been an unpleasant way of denying present aspirations or resisting current claims of need.¹⁵

These problems suggest that no theory that founds a right to restitution on an original title is likely to succeed. Given that this is so, a settlement of the land question in Australia and elsewhere has to depend, morally speaking, on reaching an accommodation between communities which have limited but conflicting rights and interests. Aborigines according to their law and traditions are the owners of the lands of their ancestors. Present occupants – pastoralists, farmers, miners – have rights according to the criteria and laws of their society. A history of injustices to Aboriginal communities and their struggle to maintain their traditions and connection to their land give them a moral claim that non-Aboriginal Australians ought to recognise. On the other hand, non-Aborigines, through their labour and investment and their presence in a land they have come to depend on, have also acquired a legitimate claim. These conflicts of interests and rights can only be settled in a satisfactory way through mutual respect, appreciation of each other's claims, negotiation and compromise – that is, through a process of reconciliation.

However, an appeal to the desirability of reconciliation is not by itself an adequate approach to historical injustice. The mere fact that an agreed settlement has been reached does not mean that justice has been done. Aboriginal communities are often in a position of weakness in relation to corporations and interests groups that oppose their claims, and some of the negotiated settlements reflect this imbalance. The process which is supposed to govern land settlements favours entrenched interests and activities. Morally speaking, what is needed is a conception of a just reconciliation that can be used to measure the adequacy and shortcomings of existing agreements. The following is a first approximation to this conception.

A reconciliation is morally satisfactory when the harm done by injustice to relations of respect and trust that ought to exist between individuals or communities has been repaired or compensated for by the perpetrators (or their successors) in a way such that each party can, from its point of view, regard the settlement as just basis for future co-existence and cooperation. In their assessment of the justice of the agreement the parties

¹⁵ Waldron, p. 28.

must take into account the interests and points of view of the others with whom they will be co-existing. Just reconciliation, according to this view, is the result of a process of understanding and accommodation in which no party is forced into a settlement by an imbalance in relations of power and no party can refuse an agreement out of an intransigent desire to get its own way. How such a reconciliation is to be achieved in Australia or anywhere else is a much more difficult question to answer.

Coming to terms with the past is not just a matter of reaching equitable agreements about land rights. During the course of European settlement, Aborigines were murdered and forcibly removed from their territory. They were put on mission stations where they were forced to abandon their cultural practices and were treated as dependents. Their children were taken away. Making recompense for these wrongs is beyond the scope of a theory of restitution. There is no way of removing these injustices or negating the harm done. In a process of reconciliation participants have to find a way of acknowledging wrongs and dealing with their effects in a way that makes just relationships possible. But this means that the perpetrators or their successors have to be able to understand and acknowledge the nature of the wrongs. The difficulties that can arise are illustrated by the debate on the removal of Aboriginal children.

3. 'Stolen Children' and Injustices to Family Lines

The policy of taking half caste children away from their families was pursued by most Australian state governments over many decades. For many years legislation allowed children to be removed without consent of their parents. They were simply abducted from Aboriginal camps or homes and transported to a distant location, and attempts of family members to visit or communicate with them were systematically thwarted. Though removal of children depended in later years on the agreement of the parents, consent was often obtained by coercion, and parents were given misleading information about where their children were being taken and how long they would be away. Many of the removed children never saw their family again, some not for twenty or more years and had by this time lost the ability or inclination to participate in the life of their kin or community. The policy of removal was visited on Aboriginal families

generation after generation, and many of those who were taken away as children had their own children removed.

The motivations for the policy of removal were various and changed over time. In the early decades of the century policy makers were motivated by the threat they thought half caste Aborigines posed to the white race, in some places to its position of dominance. Some were inspired by the dream of a truly white Anglo-Saxon Australia in which the Aborigines no longer existed as a race or a culture. Pure blood Aborigines would die out, they assumed, and Aboriginality could gradually be bred out of the population. Others were more influenced by economic considerations – in particular, a desire to decrease the number of people who had to be supported by the state on Aboriginal reserves. In its later stages the policy was more likely to be justified by considerations of welfare – by the assumption that half caste children would be better off if they were separated from their family and integrated into white society.

The policy of removing children from their families for the purposes of assimilation was not unique to Australian governments. Other nations have used similar strategies for assimilating minority cultures or dealing with social problems. The Canadian government pursued for many years a policy of forcing Native Canadian children to attend residential schools where they were supposed to unlearn their cultural ways and adopt the values of mainstream society. The Swiss attempted to assimilate their Romany population by the same method. (Both governments have apologised for these policies.)

Most people agree that the child removal policy was wrong. But there has been considerable disagreement about why it was wrong and how wrong it was. Most discussions of the policy of removing Aboriginal children have concentrated on the harm done to the children themselves. The testimony of those who were removed – their stories of loss, abuse, and maltreatment – are featured in the *Report of the National Inquiry*. Most of those who gave evidence to the Inquiry felt that they had been damaged – either by the mistreatment they received, the discrimination they faced, or by being deprived of their family and community.

Nevertheless, the bad effects of the policy on the children do not adequately account for its injustice. Not all the removed children did suffer these harms. Some

outcomes fulfilled the hopes of the more humanitarian policy makers. Some children were taken away from their mothers at birth before they had a chance to form a bond with their Aboriginal family. Some were put into loving foster homes where they received opportunities that they would not have had if they had not been removed. Some Aboriginal mothers or families were incapable of giving their children a proper upbringing. Some Aboriginal communities may have treated half caste children badly. Those who criticised the Report had no difficulty finding people who regarded themselves as beneficiaries of the policy and did not believe that they had been harmed.

The possibility, however remote, that removed children might not have suffered from mistreatment or discrimination forces us to make a distinction between the injustice of the policy of removing children and other injustices - such as being mistreated or neglected by officials, or being discriminated against by members of white society. It is at least logically possible for the first to occur without the second and possible for people to condemn the second while defending the first. To determine what was wrong with the policy of removing children it is not enough to specify the harms that were done to children by abusive or uncaring officials and foster parents or even to the parents from whom these children were taken. These individualist understandings of the injustice seem inadequate. The wrong seems to transcend injuries done to individuals.

The *Report of the Inquiry* accounts for the transcendent nature of the injustice by identifying it as 'genocide' as defined by the UN Convention on the Prevention of the Crime of Genocide.

The Inquiry's process of consultation and research has revealed that the predominate aim of indigenous child removals was the absorption or assimilation of the children into the wider non-indigenous community, so that their unique cultural values and ethnic identities would disappear...Removal of children with this objective in mind is genocidal because it aims to destroy the cultural unity which the Convention is concerned to preserve.¹⁶

The label 'genocide' proved to be extremely controversial, and even sympathetic commentators doubted its accuracy. One of the purposes of defining a crime of genocide is to determine when it would be legitimate for members of the UN to intervene in the

affairs of another nation and to try perpetrators by an international tribunal, and most commentators agree that the Australian practice of child removal would not have been a just cause for intervention or an international criminal case. Nor does the description seem to fit when compared to injustices that are truly genocidal. With the Holocaust in mind, Raimond Gaita argues that the policy of cultural absorption through child removal can't be regarded as genocide - though he adds that child removal is not substantially different from a policy of systematic sterilisation, and the latter, he says, would indeed count as genocide.¹⁷

Unsympathetic critics of the Report were less ambivalent and vociferously denied the accusation on several grounds. Some did so because the children involved were not all that numerous. In their view, the wrong done did not have the magnitude of genocide. In fact, official records are often confused or missing and the Inquiry could only estimate that between one in ten and one in three Aboriginal children were removed in the period from 1910 to 1970.¹⁸ (The inadequacy of the records has stymied attempts by some victims of the policy to get compensation through the courts.) Some critics denied the accusation because the intentions of many participants were good. They wanted to save Aboriginal children from poverty and backwardness and give them the advantages and opportunities of mainstream culture. Their perceptions were certainly racist and their means misguided, but their motivations were not comparable to the murderous intent behind genocidal acts in Rwanda and the former Yugoslavia. More radical critics have wondered whether a policy of cultural assimilation is always such a bad thing – providing it doesn't involve abuse and ill treatment.

Most people have understood the debate as being about the nature of genocide and whether the child removal policy fits the definition. But I believe that there is a deeper conceptual difficulty which affects not merely the way in which genocide is understood, but also related injustices. In the courts, and in most philosophical discussions, harm is always harm to agents – whether to individuals or to an organised group like a nation or a corporation. So if agents have not been harmed or the harm is not all that great then it is difficult to understand what wrong was done, and if the agents are

¹⁶ Human Rights and Equal Opportunities Commission, ,272-3.

¹⁷ Raymond Gaita, 'Genocide: The Holocaust and the Aborigines', *Quadrant* (1997), 18.

no longer in existence then it is difficult to understand why deeds of the past should now be regarded as relevant to a process of reconciliation.

The difficulty is illustrated by the failure of Will Kymlicka's liberal defence of culture to account for wrongs like child removal. Kymlicka argues that cultural is of value because it enables individuals to live meaningful lives.¹⁹ It situates individuals in a cultural narrative and provides them with significant options, and thus enables them to be agents capable of choosing a rational life plan. Destruction of culture is thus a serious harm to individuals. But one of the stated purposes of the removal policy was to give Aboriginal children secure membership in mainstream culture. The fact that it generally failed to do so is the result of the society's racism rather than anything attributable to the policy itself. If it had worked as some officials supposed that it would work, then it would have given Aboriginal children meaningful options in the mainstream culture while still allowing those remaining in Aboriginal communities to retain their cultural options. No one would have been deprived of a cultural reference point. Kymlicka's account of the value of culture does not explain why transfer of children is seriously unjust.

The problem of identifying the harm involved in child removal, it seems to me, results from an individualist understanding of harm and wrongdoing. According to this view, an action or policy wrongs an individual if and only if he/she is harmed by it and she is harmed only if she receives an injury, physical or psychological, to her person or is threatened by such an injury. According to this idea, removed Aboriginal children did not suffer harm unless they were abused, exploited or discriminated against, and in those cases the harm comes from the way the policy of removal was implemented and not the policy itself.

This individualist view of harm has sometimes been challenged. For example, Alastair MacIntyre widens the conception of benefits and harms by widening the conception of the self. A self, he claims, has a history that stretches back before his or her birth.

I am someone's son or daughter, someone else's cousin or uncle...I belong to this clan, that tribe, this nation. Hence what is good for me has to be the good for one

¹⁸ Human Rights and Equal Opportunities Commission, 1997, p.37.

¹⁹ Will Kymlicka, *Liberalism, Community, and Culture* (Oxford: Clarendon Press, 1989), 165ff.

who inhabits these roles. As such I inherit from the past of my family, my city, my tribe, my nation, a variety of debts, inheritances, rightful expectations and obligations. These constitute the given of my life, my moral starting point.²⁰

This view seems to suggest that people can be harmed by injuries done to other members of their family or community, or to community or family relationships, even when they have no knowledge of these injuries. The problem is that it relies on a notion of self which not everyone shares. I will defend a conclusion similar to MacIntyre's from a different starting point.

The view I want to defend begins from the observation that most individuals, however they conceive of themselves, are likely to have concerns that transcend their own lifetime. They want their deeds to be appreciated by their successors, their projects to be continued, they want the things they regard as good to survive, they want their children to prosper and to receive their inheritance, cultural or familial. They may regard it as their duty to pass on certain goods to their children or successors. Rawls motivates a principle of intergenerational justice by assuming that those who make a social contract will regard themselves as representatives of their family lines and will be predisposed to think that they have obligations to their descendants.²¹ The very possibility of a trans-generational community presupposes that members regard themselves as having some duties in respect to their successors. But intergenerational relationships and related obligations are also central to family life. By understanding the role that they play we will be in a better position not only to comprehend the harm done by a policy of child removal but also the crime of genocide.

Intergenerational relations within families and communities play an important role in the lives of individuals in three main ways. First of all, as MacIntyre points out, they locate individuals in a narrative, a continuing history that they use to construct a story of their own lives, give significance to their deeds, and to which they make contributions of their own. Secondly, they provide a trans-generational continuum for the realisation of the lifetime transcending objectives of individuals. Those who are most likely to appreciate an individual's projects and endeavours are members of his or her family or

²⁰ Alastair MacIntyre, *After Virtue: A Study in Moral Theory* (London: Duckworth, 1981), 220.

²¹ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1972), 128.

community. And by being part of such an inter-generational continuum – by playing a role in it - people are able to regard their projects, endeavours, and goals as having a significance and value that goes beyond the span of their own lives. The third reason for the importance of inter-generational relations, particularly in families, is the central role they play in a moral life. As Rawls recognises, people are inclined to think that they are responsible for passing on things of value to their descendants – whether these are particular possessions, a heritage, or an idea of the good.

Among the things that we assume that we have a right to pass on to our descendants is our cultural heritage. For a culture is not only something that most people value. It provides the framework by means of which descendants can understand and appreciate the value of other things passed on to them by their predecessors. It enables them to regard the history of their family and community as a belonging to them. It makes meaningful relations between generations possible. This means that a culture is not merely the ideas, practices and institutions that a particular group of people share at a particular time. Culture provides a framework for maintaining relationships through time and the succession of generations. It enables individuals to pass on to their descendants and successors the things they value.

By understanding the importance to individuals of trans-generational relationships we are also in the position to comprehend a harm that can be described as an ‘injury to family lines’. A harm is done to family lines, and thus to those who are members of family lines, by disrupting or destroying family relations, wiping out families, keeping them in perpetual slavery or submission, or by attempting to prevent individuals from maintaining family relations, carrying out family obligations, or receiving their inheritance as members of a family. To commit such harms to family lines perpetrators need not have as their main objective the persecution of families. Their attacks may be aimed at a religious, ethnic, political, or racial group. Persecution counts as an injustice against family lines when it achieves its objective by disrupting, undermining, wiping out, or subjugating families. When families are harmed then individuals are also harmed as members of family lines – for example, by being denied those things that their parents were entitled to give them or thought that they had a duty to provide. An individual can

suffer such an injury even if he or she is unaware of the wrong, or is not now in a position to enjoy her inheritance or has no desire to do so.

The policy of removing Aboriginal children was a systematic and gross attack on intergenerational relationships, particularly family lines – and thus on the ability of members of families and communities to pass on to their descendants a familial and cultural inheritance. It did this by attempting to sever completely and forever the connection between members of a family or community and their descendants. In the early days of the policy this attack was a deliberate attempt to destroy familial and cultural traditions through destroying the ability of Aboriginal families to maintain their relationships. In the latter days, when it was pursued primarily as a welfare measure, it was a policy that had that harm as its inseparable effect.

The attack on intergenerational relations harmed parents, kin, members of cultural communities, and the children themselves. The harm done to parents and other immediate family members is the most obvious and probably the most severe. This is not merely because their feelings for their lost children were likely to have been the strongest. They were also harmed as family members, as mothers and fathers who regarded themselves as having inter-generational responsibilities, whose projects and hopes for the future were bound up with their relation to the children, who had a valued inheritance that they were entitled to give them. Their ability to maintain relations central to their moral lives was undermined. They would have suffered this harm even if they never had a chance to develop a close personal bond with their children. The injustice also harmed the members of communities who regarded these children as their heirs. They were not able to pass on to these descendants their traditions, history, or relation to their land.

The injustice also harmed the children themselves. These descendants were entitled to a particular cultural and familial inheritance which they were prevented from receiving. This was an injustice even if no other injustices were done to them. In some cases their loss is obvious. Because they were severed from their Aboriginal community the abducted children are not generally able to benefit from Aboriginal land claims. But apart from this damage to their interests they can reasonably complain that they were unjustly prevented from receiving their cultural inheritance. Even if they are no longer in a position to enjoy this heritage, even if they have no desire to become part of Aboriginal

culture, the fact remains that they did not receive their entitlements. Descendants are free to reject what their forbears give them, but they ought to have this choice.

We are now in a better position to understand how the policy of removing children is related to, but different from, other injustices. My analysis explains why the injustice of removing children cannot be adequately explained by detailing the various harms caused to individuals considered simply as individuals (rather than as members of families or communities). It also enables us to see what the injustice has in common with those deeds that we have no hesitation in regarding as genocidal (like the killings in Rwanda). ‘Genocide’ in its central meaning is also an attack on family lines and inter-generational relationships - one that typically uses murder and other forms of physical violence as its means. The fact that genocide involves injustice against family lines is one of the factors that makes it so awful – worse, for example, than attacks, however murderous, on those who hold a particular political view. But unjust attacks can be made on inter-generational relationships by those who do not use physical violence, or intend to wipe out a whole community or steal a whole generation of children. (I have avoided using the provocative term ‘stolen generations’ not because I think it is inaccurate, but because my analysis does not require it.) So those who object to calling the child removal policy ‘genocidal’ because it lacks some of the features that they associate with genocide should nevertheless recognise that an injustice that has some features in common with genocide was done to Aboriginal people.

A process of reconciliation must include actions and forms of compensation appropriate to the nature of the injustice. Those people whose lives were blighted by the child removal policy have demanded (but not received) an apology for the harms they have suffered. According to my analysis, this apology should involve not merely regret for physical or psychological harm (which some critics argue was not all that serious when compared to the poverty and other deprivations that the children would have been exposed to if they had stayed with their parents). They have also suffered deprivation as members of family lines, and any satisfactory reconciliation requires non-Aboriginal Australians to comprehend the nature of this wrong and make appropriate compensation.

Some of the recommendations made by the National Inquiry can be understood as attempting to do this. For example, it recommends that assistance be given for those who

want to trace their Aboriginal families or re-establish a connection with them. It recommends that those who have lost their inheritance as members of an Aboriginal community – who have been denied access to land or land claims receive monetary compensation. It recommends programs to deal with the effects of despair and demoralisation caused to parents and communities by the policy. The nature of the injustice also requires some form of recompense to parents and communities who were denied the opportunity to pass on their cultural inheritance to their children. What this requires should depend on the needs of these communities. Some Aboriginal organisations think that appropriate compensation would include promotion of Aboriginal languages and culture. Most important, as the Inquiry emphasises, steps should be taken to ensure that a policy of child removal will never again be implemented. This requires public campaigns against racism, but above all improvements in the standard of living of Aborigines.²²

Conclusion

Unlike the Maori of New Zealand, Aborigines have never been in a position of political strength and this makes it easier for politicians to ignore or denigrate their interests and claims. Nevertheless, public response to the activities of the Council for Aboriginal Reconciliation was generally positive. Many individuals and groups, including churches, city councils, and state governments were prepared to offer an apology for past injustices – thus refusing to follow the example of the Prime Minister. Moral pressure and moral appeals will continue to play an important role in an effort to make Australians come to terms with the past. The justifications and analyses I have offered in this paper are a contribution to this campaign.

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²² Aboriginal children are still being taken away from their parents and given to white families because their parents are unable to support them and others in their community do not satisfy criteria for being adoptive parents.