



Australian Aborigines' Craving for Liberation from the Whites' So called Legitimate Protection Boards

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Our quest now must not be about struggle, but about rearrangement; making sure that Indigenous people in this continent have a place of our own. Our rightful place is on our land, in our camp where you have a right to make a fire and lay your child. The onus is now on us to be firm and united and deliver this future.

(Galarrwuy Yunupingu, xviii)

The colonizers made different laws for natives in order to subjugate them. By these laws, the freedom of the Indigenous people was totally curtailed. So many inhumane restrictions were imposed on them. They were not allowed to enter the city after the sunset rather kept in 'Reserved Stations'; they were not allowed to speak their native language or follow their traditions and customs. Their religious practices were totally banned. The notion of superior and inferior race, according to their colour was introduced to divide them among themselves. The so-called 'Protection Boards' were introduced to 'protect' their rights but basically, the purpose was altogether different. Therefore, the Aboriginal writers resented all those laws which were against the freedom of the natives.

The paper aims to highlight the laws of the English authorities to suppress the natural survival of the Aborigines in Australia and the native's urge to revolt against this suppression. In Aboriginal Australia there were no formal courts of law with specially designated persons, vested with authority and power to deal with cases, to judge and to punish. Instead most problems were handled informally within the group by a council of elders. Infra-group difficulties would be settled when the opportunities arose such when groups came together for ceremonies or when particular food supplies, such as Yabbies, Bunya pine nuts, Bogong moths, were in abundance.

Traditional law can be compared to the Ten Commandments. It covered homicide, sacrilege, sorcery, incest, abduction of women, adultery, physical assault, theft, insult, including swearing, and the usurpation of ritual privileges and duties – a reasonable comparison. However, Aboriginal traditional laws also included offences of omission, towards other people, such as failure to share food, to avoid particular relations, perform rituals or ceremonies or to educate nominated group members. Europeans could establish their colonies with the help of the natives who always have been cooperative to outsiders since they had such laws to establish cordial relations with the others. But on the other hand, the European laws do not permit to deal with the others congenially. Collin Bourke et al rightly observed the difference between the natives and the settlers stating that “most problems were, however, caused by colonists breaking Aboriginal Law, especially land seizure and the treatment of Aboriginal women by Europeans.” (*Aboriginal Australia* 58)

Many of the Aboriginal groups tried to incorporate the newcomers into their system of law by extending kinship rules and networks and sharing resources. However, many of the intruders failed to conform to the traditional laws. In particular they were ignorant about the principle of reciprocity. Sharing was expected but the European settlers appeared greedy and selfish as they rarely shared their resources even when they were granted favours by Aboriginal people. As it is known that the Australian Natives before 1788 have been living the life of the nomad, they did not have any written laws but the occupants came with the written laws and refused to accept the traditional or customary laws. In fact, they believed in the report submitted to the British Crown given by Captain James Cook in 1770, which they treated as the law. According to this law, land was declared ‘terra-nullius’ which they are following till today.

Australia was declared to be a land that was not occupied by a people with settled laws. In legal effect, it was terra-nullius. This was upheld in the case of *Cooper versus Stuart* (1889) 14 Appeal Case 286. The legal order of the Aboriginal peoples was not seen as sufficiently organized to be recognized. This view was not supported by Justice Blackburn in *Milirrpum versus Nabalco* (1971), however, his judgment followed the precedent set in the previous cases which stated that “they all affirm on the principle, fundamental to English law of real property, that the Crown is the source of all title to land.” (*Aboriginal Australia* 59)

This is ironical that English law prevailed over the traditional law of the Indigenous people. These judgments also negated the existence of any civilization in Australia. This denial of the court expresses the intensions of the colonial character of the legal system which boasts of being fair and just but in reality, it is not. The English law violated even the natural law. Without consulting the natives, they regarded the natives as “British subjects and, in theory, were entitled to the protection of the British system...” (*Aboriginal Australia* 60). Resistance, massacres and genocide were also ignored in the application of the doctrine of ‘terra-nullius’ which justified the acquisition of land.

The colonizers would have acknowledged the sovereignty of the Aborigines over the land and also the laws, but they never did it. The Aborigines were ignorant about the European laws and so were the Europeans. This certainly created the conflict between the two. A magistrate Edward John Eyre rightly reported that because of this ignorance, the relationship between two communities became estrange and tensed. He observed that:

In declaring the natives British subjects and making them response to British laws, Indigenous people were placed in an anomalous position of being made amenable to laws of which they are quite ignorant, and which, at the same time did not afford them the slightest redness from any injuries they may receive at the hands of Europeans. This arose from their being unable legally to give evidence in a court of Justice, and from it’s rarely happening that any aggressions upon them take place in the presence of other Europeans who might appear as witness for them... It is impossible to explain to the natives the reason of their being unable to give evidence; only see that their own people are always punished for offences, that the Europeans almost always escape. (*Aboriginal Australia* 61)

Thus it is evident that Aborigines and Europeans had in fact master and slave relationship where slave had no permanent dwelling place and were shifted as the master shifted. The Aborigines had no right to live on a place of their choice. They were always removed from one place to the other so that they could not claim a permanent residential place. The special areas were notified for them where they could live a life like the cattle or sheep. These places were called ‘Reserves’. The legal system of Australia was used to deny Aboriginal people their fundamental human rights and it continued to do so. Aborigines were forced to live on ‘reserves’, ‘settlements’ and ‘missions’. Those Aborigines who demanded their rights were oppressed. As late as 1962, the Council for Aboriginal Rights found that the Director of Native Title Affairs in Queensland may cause any Aborigine “to be removed from any district to a reserve and kept

there. He may also cause any Aboriginal on a reserve to be removed to another reserve and kept there.” (*Aboriginal Australia* 61)

In Western Australia, the Commissioner of Native Welfare had control over all Aboriginal children and the property of Aboriginal people and could restrict the movements of Aboriginal people and censor the mail of those institutions. Regulation 28 of the Native Welfare Act included the undefined offence of ‘insubordination’. Particular offences were created to control Aborigines.

The 1957-58 Annual Report of the Northern Territory disclosed that 8000 or about 48 per cent of the Aboriginal population were residents in institutions. They were controlled, submissive and isolated. The legal rights were compromised. Aboriginal people were forcibly removed from their lands and their families were separated.

The Melbourne Herald on March 19, 1958 carried a report from Douglas Lockwood:

Aboriginal prisoners are chained by the ankle to a verandah post at Halls Greek police station while awaiting trial and serving their sentences... It is done here because the 80 years old building has only one cell. A few months ago 12 prisoners were on the chain at the same time. When one wanted to move, the other 11 had to move with him. (*Aboriginal Australia* 62)

The socio-economic problems faced by many Aboriginal and Torres Strait Islander people were linked to the limited access to land and failure to protect sacred sites. The Commissioner recommended:

That is all jurisdictions legislation should be introduced, where this has not already occurred, to provide a comprehensive means to address land needs of Aboriginal people. Such legislation should encompass a process for restoring unalienated Crown land to those Aboriginal people who claim such land on the basis of cultural, historical and/or traditional associations. (*Aboriginal Australia* 63)

But unfortunately such laws have never been legislated according to which the Aborigines could claim their sacred land. Later on partial efforts were made with the Wik 1996 decision. But according to this native title it is almost impossible for the Aborigines to prove that such and such land is sacred since the Crown does not believe what Aborigines say, despite of the fact that scientifically and historically it may be proved that such and such land is really sacred for the Aborigines. Harry, Gilbert’s mate, discloses the hypocrisy of the Europeans on the issue of questioned rights when Gilbert asks Harry, “Why isn’t your housing organization trying to get

these old burial grounds if people want to come back and live here? Why haven't you applied to build houses out here?" (*Living Black: Black Talks to Kevin Gilbert* 200).

He replies:

“Well, the Council could told Cecil that it's a traveling stock reserve. That it's not black land Heh, what land ever is? They said if you can prove that there's a burial ground here, well then you can claim it. But you have to prove where the graves are.” (*Living Black: Black Talks to Kevin Gilbert* 200)

Although the British Common Law failed to recognize Aboriginal rights to land, many Aboriginal and Torres Strait Islander people have maintained their claim to and connection with their land. Over the time, it has also become clear to more and more non-Indigenous Australians that many Aboriginal and Torres Strait Islander peoples refer to sophisticated sets of traditional rules. ALRC Report 31 acknowledged that “...there are many indications that Aboriginal customary laws and traditions continue as a real controlling force in the lives of many Aborigines.” (*Aboriginal Australia* 65)

The ‘Stolen Generation’ is a term used to describe those children of Australian Aboriginal and Torres Strait Islander descendants, who were removed from their families by the Australian and State government agencies and Church-Missions, under the acts of their respective parliaments. The removals occurred in the period between approximately 1869 and 1969, although in some places, children were taken in the 1970's also.

The occupants in their home had the tradition of removing the children for different purposes. In the beginning, the children were sent to the residential educational institutions so that they could be educated in a proper way but this step was not considered appropriate. Some of them commented on the apparent heartlessness of the English in sending their children away. But in the nineteenth century, the practice was introduced of removing children forcibly. From the 1830's onwards there were increasing anxieties about child crime, and it was thought such children would be better off away from the bad influence of their parents. It was assumed that the control of the state would be more benevolent than the control of criminal, low class or self-interested individuals like parents. As historian Clandia Nelson puts it: “Children in mines, in factories, in theatres, on farms, even in their own homes gradually came under the eye of what its opponents dubbed ‘grand motherly government’.” (*Whitening Race* 173)

So, it was possible to explain the policy of forcibly removing children by saying that, over a period of 100 years or more, the British Government increasingly intervened in the lives of children, particularly the lives of poor children, both at home and abroad. It is certainly possible to emphasize the progressive aspects of such policies, as in, for example, the foundation of a body like the society for the Prevention of Cruelty to Children, but there is a certain internal discrepancy within the claims made for the rescue of mixed race children. “If the creation of an underclass of permanent servants and labourers may be called benevolent, it might be ceded that policies of child removal were well intentioned.” (*Whitening Race* 173)

However, in the light of what was believed about ‘passing’, it would be hard to argue that the Government expected the “Stolen Generation” to ever be anything other than of ‘non-white’ character. ‘Passing’ was widely believed to be fundamentally impossible. Despite this belief, governments persisted in putting Aboriginal children of pale colour in a situation in which they had to learn to ‘be white.’ The lives of those who were taken were bound to be emotionally painful, even in the eyes of the ‘child-stealers’, since no amount of assimilated culture would hide the inner ‘flaws’ of character that would have to be dealt with sooner or later. This alone problematises the interpretation of government policy as essentially well-meaning.

The extent of the removal of children, and the reason behind their removal are contested. The Australian authorities wanted to spread their white culture among the Indigenous people, therefore, they targeted the children as they have tender heart and mind who can easily be moulded in any direction. Their aim was to wipe off the Aboriginal civilization with the ‘assimilationist’ policy. They justified the removal of the children from their families by declaring the Aboriginal parents unfit to bring up their children as they did not have any permanent home and had no skills to educate their children in the ‘colonizer’s terms’. But the Aborigines always rejected this point of view as they believed that they were civilized enough to bring up their children as they had been doing so for centuries. The Aborigines had their own culture and ways of life which may be different from the whites. Thus, they protested the removal of their children. In their view, it was a heinous crime and inhumane to take away a child from a mother who is considered to be a life giver and cradle of love. This policy denied the joy of mother-hood which is a heavenly experience.

In order to separate the Aborigines from their roots, various steps were taken such as they were displaced from their respective native places and were put in ‘Reserves’, sent to different places to work, taken away from their parents, separated as half-castes and so on. The Aboriginal activists always protested these removals. For instance, Jack Davis in one of his poem “Move In” calls the place hell, where all the Aborigines are put together and compelled to live the life of the prisoners. The poem describes the pain of being separated from their natural habitant:

Aye! You can't live here, shift on shift on
 you can't live here, shift on
 You can't stop here, move on move on
 you can't stop here , move on.
 You can't build here, move on move on
 You can't build here, move on
 This cell in yours, move in move in
 this hell is yours, move in move in
 Without a doubt, move in move in
 this cell is yours, to die in. (*Black Life: Poems 27*)

This predicament of the dispossessed reoccurs in the works of many Aboriginal writers. The pain of being taken away is expressed mainly by the women writers as they are considered to be more sensitive and have learnt reading and writing. Certainly, males also suffered being separated from their parents but did not express as they were strong-hearted who could suppress their pain and also remained illiterate. For instance Pam Errinaron Williams questions the whites in one of her poems “Torn Apart”:

Is this what you have done to us
 Took us away
 From the warmth of mother's arms
 Screaming with pain
 Cried for years
 Seeing my mother
 Cling to the last feel. (*Voices From the Heart 5*)

When the stolen children reached the age of 15 or 16, they were sent into white farms and households Girls had to work as domestic servants while boys worked with cattle or crops. These children were exploited as they had to work from as early as 6 am to 10 pm, seven days a week and as many as 20% were abused – physically and sexually.

It has been the policy of the English people to divide and rule. The Aborigines were also divided into several parts. In Victoria the Aborigines Protection Act 1886 narrowed the

definition of ‘Aborigine’ to “full-bloods, half-castes over 34, female half-castes married to Aborigines, the infants of Aborigines and half-castes who were licensed by the Board of Protection for Aborigines to reside on a station.” (*Aboriginal Australia* 41)

The authorities and missionaries targeted mainly children of mixed descent, also known as the ‘half-caste’ Aboriginal children. They thought that these Aboriginal children could be assimilated more easily into the white society and out of these many children during this time were never even told that they were Aborigines and this truth was discovered by them much later in their lives. Aboriginal author Sally Morgan was one among them and she has written about her experiences in her novel: “How deprived we would have been if we had been willing to let things stay as they were. We would have survived, but not as a whole people. We would never have known ‘our place’.” (*My Place* 7)

The Protection Acts through reference to blood quantum were used to sanction divisions between Aboriginal people and to legitimate the idea that some Aboriginal people were more Aboriginal than others. They justified discrimination against Aborigines and division among them. John Murray, in the Victorian Parliamentary Debates in 1911, summed up an attitude to “half-caste” identity:

A good many people make a mistake about the character of the ‘half-caste’. He is really more of a black fellow than the full blooded Aboriginal. The infusion of blood does not make him more capable than the full blood Aboriginal to compete with the white man in the battle of life. (*Aboriginal Australia* 41)

In South Australia, the South Australian Aborigines Act 1911 emphasized control and expanded segregation. The South Australian Aborigines Amendment Act 1939 broadened the definition of Aboriginal to include all people of Aboriginal descent. However, it introduced the exemption certificate, referred to by Aboriginal people as the ‘dog tag’. The law made possible “exemptions from Act, for any person, who, in the opinion of the Board, by reason of his character, standard of intelligence, and development should be exempted.” (*Aboriginal Australia* 41) Exemption was also used as punishment to expel Aboriginal people from ‘institutions’ and ‘reserves’ in South Australia.

The Queensland Aborigines Protection and Restriction of the Sale of Opium Act 1897 had the following notation to the clause defining half-castes:

Note: Offspring of a white woman and an Aboriginal father not half-caste. (*Aboriginal Australia* 42)

The subsequent 1939 Queensland Act in its definition indicated that “any Aboriginal may be removed to and detained in a reserve... This even included a child on a reserve with a mother who is an Aboriginal.” (*Aboriginal Australia* 42) Protection meant that many Aboriginal people were sent to designated areas away from their own country and away from their families further eroding their sense of identity.

The forced removal of a person from one location to another is one of the most radical steps that can be taken in a civil society. With the implementation of the 1897 Aboriginal Protection and Restriction of the Sale of Opium Act, public servants were given the authority to forcibly remove people. Removal was of only those who could be defined as ‘Aboriginal’, ‘half-caste’ or ‘quadroon’ person under the various parts of legislation designed to control and manipulate Indigenous lives.

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