ASSIMILATION AND THE RE-INVENTION OF BARBARISM

Chris Cunneen*

I Introduction

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

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

Over the last decade, this position (adoption of Anglo-Australian values = civilisation; Indigenous culture = barbarism) has taken on a new ascendancy. It was demonstrated by the Government's conservative approach to the *Bringing them home* report, which was to react to the report's findings as though they were unwarranted. From the Federal Government's standpoint, the moral and legal justifications for removal of children were seen as legitimate in the context of 'saving' Aboriginal children. Underpinning this response was the notion that we should not judge the past by today's standards, and thus, that we should not criticise the policy of forcible removal of Indigenous children, which was done with the 'best intentions'. A rarely articulated assumption underpinning this approach was that Indigenous children needed to be saved from the barbarities of Indigenous community life.

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

II Bad Dreaming

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

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

The old prejudices are well covered in the opening chapters. Aboriginal society in Australia was uncivilised and barbaric. Aboriginal custom legitimated constant sexual and physical abuse of Aboriginal women by Aboriginal men. Selections from colonial accounts and later anthropologists are used to support the view that Aboriginal men's violence against

women was and is a part of traditional culture. Other examples of the 'primitive', such as mortuary practices, are placed in the text to reinforce the image of the 'other':

> In instances too numerous to mention, Aboriginal people lost their language and their culture, beginning with the Eora people of the Sydney Harbour area during the first settlement. Missionaries deliberately undermined traditional Aboriginal cultural practices. Yet sometimes younger Aborigines were keen to give up a tradition. Take the mortuary practices of the Ngarrindjeri. The corpses were raised on platforms, often in the huts where people lived, and basted over fires until the scarf-skin (the outer layer of the skin, the epidermis) could be removed and kept. Human shit was daubed on the mourners, and the combination of this plus the noxious vapour and drippings from the cooking bodies produced an odour so foul that mourners were known to have died from the stench. Unsurprisingly, this was one of the first rites to be quickly and willingly abandoned by the young people when the missionaries came.[2]

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

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

- Aboriginal people could legally obtain alcohol (and became alcoholics);
- Aboriginal people were granted equal pay (and therefore were unemployable);[3]
- Aboriginal people are cocooned in isolated, unsustainable communities because of HC Coombs' influence over policy, which was supported by those on the political left;[4]
- Aboriginal people are now 'basking in the rights of self-determination';[5]
- ATSIC was a disaster and dominated by violent Indigenous men personified in Clarke, Yanner and Robinson;[6]
- the 'permit system' by which Indigenous communities exercise some control over who enters their lands needs to be abolished;[7] and
- 'Indigenous communities [need] to realise they are part of Australian society as a whole'.[8]

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

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

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

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

- 11 of the 99 deaths involved women, mostly in police custody (a strange fact for Nowra to ignore in a book about violence against women);
- only 33 of the 99 Indigenous deaths involved people in prison (63 were in police custody and 3 were in juvenile detention);
- very few men or women who died in custody were detained for violent or sexual offences (4 for homicide, 8 for sex offences and 9 for assault);
- 12 of the 99 detentions involved no criminal offence at all.[10]

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

III The New *Terra Nullius*

The re-invention of Indigenous barbarism is a new version of an old myth: *terra nullius*. The story of barbarism involves

seeing Indigenous people without settled law understandable to the West. Indigenous people are placed outside a state of law and in a state of barbaric custom. For to be without law is to be *uncivilised*, and to be outside the realm of civil and political society.

While the racialised hierarchies of the 19th century and early 20th century discursively constructed Aboriginal people as beings of lesser human worth, the contemporary failure to understand Aboriginal law continues to re-position Aboriginal people outside civilised society. The choice is clear: to be within the (Anglo-Australian) law Aboriginal people must assimilate to the values and norms of Anglo-Australian society, or they will remain forever lawless.

Of course at times we do recognise Aboriginal custom, and Nowra's book is an example of the way Indigenous custom is recognised and made understandable to the West. The current debate about child sexual assault in Aboriginal communities in the Northern Territory, which began in early 2006 and continues today, is another example of how Indigenous custom becomes understood in both popular and policy discourses. In this context Indigenous child abuse has been directly linked to an *idea* of Aboriginal 'customary' law. What we 'recognise' in Aboriginal customary law is unspeakable barbarity: the sacrificing of babies and children for the sexual gratification of 'traditional' or 'initiated' men.

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

These ideas underpinned the Commonwealth Government's *Crimes Amendment (Bail and Sentencing) Act 2006* (Cth), ostensibly a response to family violence in Indigenous communities. The legislation had the effect of preventing the courts from taking into account 'any form of customary law or cultural practice' in relation to bail applications, or as a relevant matter in sentencing, or as a consideration in discharging an offender without proceeding to conviction. The Human Rights and Equal Opportunity Commission noted that the legislation does not address family violence in Indigenous communities, is not based on evidenced research, does not promote equality before the law, and undermines initiatives involving customary law such as Indigenous courts.[11]

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

IV The Reports of Northern Territory,[12] New South Wales,[13] Western Australia,[14] Victoria,[15] and Queensland[16]

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

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

While much has been made of the 'permit' system by right-wing commentators and the Government, not one of these reports identified the permit system as an issue in child sexual assault. Nor do any of them simply recommend removing more children.

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

> Communities have varying capacity to respond and it is important to identify, support and extend those capacities over time…There is certainly an immediate opportunity to tap into the capacity for communities to assist police and the courts in the administration of justice. Examples include night patrols, safe houses, community justice groups, and mediation services… Programs are already in place in many communities that provide an immediate response to issues of safety – for example night patrols and the Safe Families Program run by Tangentyere Council in Alice Springs - but these have been grossly under funded.[17]

V The Gains of Political Struggle in the Criminal Justice System

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

The changes have involved the introduction of: night patrols; community justice groups; community crime prevention and anti-violence programs; Indigenous courts (Murri courts, Koori courts, Nunga courts, circle sentencing); the continuation of Aboriginal and Torres Strait Islander Legal Services; Indigenous Family Violence Prevention Legal Services; Aboriginal Justice Advisory Committees; and Indigenous Justice Agreements.

While the developments have been uneven across jurisdictions, there needs to be recognition that the processes for establishing a more coherent approach to Indigenous law and order are being put in place. These gains need to be strongly defended and supported, just as the discourse of barbarism surrounding Aboriginal culture, law and practice must be refuted and rejected.

Endnotes

* Professor Chris Cunneen is the NewSouth Global Chair in Criminology at the Faculty of Law, University of New South Wales.

1 Louis Nowra, *Bad Dreaming: Aboriginal Men's Violence against Women and Children* (2007).

2 Ibid 27.

3 Ibid 29.

4 Ibid 31-32.

5 Ibid 84.

6 Ibid 69-70.

7 Ibid 89.

8 Ibid 88.

9 Ibid 31.

10 Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 1, 46-48.

11 Submission to the Senate Legal and Constitutional References Committee on the Crimes Amendments (Bail and Sentencing) Bill, Commonwealth Parliament, Canberra, 29 September 2006 (Human Rights and Equal Opportunity Commission).

12 Rex Wild and Pat Anderson, *Ampe Akelyernemane Meke Mekarle: Little Children are Sacred,* Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (2007).

13 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future, Addressing Child Sexual Assault in Aboriginal Communities in New South Wales* (2006).

14 Sue Gordon, Kay Hallahan and Darrell Henry, *Putting the Picture Together*, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities (2002).

15 Victorian Indigenous Family Violence Taskforce, *Final Report* (2003), Department for Victorian Communities, Melbourne.

16 Aboriginal and Torres Strait Islander Women's Task Force on Violence, *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (2000).

17 Combined Aboriginal Organisations of the Northern Territory, 'A Preliminary Response to the Australian Government's Proposals' (7 July 2007) 11-12.