The Northern Territory Emergency Response: Liberal Forms Of Governing Indigenous People

David McCallum
School Of Social Sciences And Psychology
Victoria University Melbourne, Australia

Abstract
This article considers three different historical events from the point of view of their connections to aspects of the history of liberal political reason: the actions of the British in New South Wales in the late 18th century in its claim to sovereignty over Indigenous lands; the establishment of Aboriginal missions and subsequent removal of Aboriginal children in the 19th century; and the Northern Territory Emergency Response and suspension of the Australian Commonwealth Racial Discrimination Act (1975) at the beginning of the 21st century. The aim is to review the basis for examining accounts of Indigenous governance deploying ‘authoritarian liberalism’ and ‘race war’ as central concepts, and call into question the Northern Territory campaign as an ‘exceptional’ event.

Liberal forms of governing Indigenous people
In June 2007 the Australian Government announced the Northern Territory Emergency Response, within days of a public report raising issues of sexual abuse of children in Aboriginal communities in the Territory (Wild and Anderson, 2007). The intervention was announced in the lead-up to a Federal election and comprised widespread restriction of alcohol, compulsory medical checks of Indigenous children, the quarantining of income support for basics like food, enforced school attendance, and the abolition of the permit system on Aboriginal lands. It was accompanied by the arrival of doctors, police and army personnel. It was at odds with the recommendations of the Little Children are Sacred report itself, and included the suspension of the Commonwealth Racial Discrimination Act (1975) to enforce, among other things, income
quarantining for Indigenous people. Benefits may also be withdrawn in the event of unsatisfactory school attendance. Suspension of the RDA was an attempt to force Aboriginal people to live in areas that the Government determined. Suspension of the RDA was an attempt to force Aboriginal to live in areas that the Government determines, through the removal of social security benefits where a child is considered to be in need of protection, or where the parents reside in specific areas, or where a child has an unsatisfactory attendance at school. Suspension of the Act was accompanied by the acquisition of Aboriginal Lands by means of compulsory leases, the abandonment of the Community Development Employment Program, and preventing a court from taking into account Aboriginal customary law or practices in sentencing offenders. As a submission to the UN Committee on the Elimination of Racial Discrimination stated:

The legislation was based upon a nuclear family assumption, which has little or no relevance to many Aboriginal communities. It also ignored the fact that through years of neglect of basic services to Aboriginal communities, many children would be living in situations where the provision of education services is inadequate and unattractive (Nicholson, Harris and Gartland, 2010).

Historian Henry Reynolds described the intervention as an act of power that showed the world that the Australian government can interfere with the smallest details of domestic life in a blatantly discriminatory way, ‘regardless of the country’s international obligations and professed belief in racial equality’ (Reynolds 2010:7). Australia is a long-standing signatory to the UN Covenant on Human Rights and the Convention on the Rights of the Child (United Nations, 1989). Australia has also now endorsed the United Nations Declaration on the Rights of Indigenous Peoples (United Nations, 2007) which among others acknowledges rights to fundamental freedoms, self-determination, and freedom from any kind of discrimination. Historical investigation of the ‘liberal promise’ of Indigenous rights will often acknowledge attempts to extend ‘formal equality’ to Aboriginal peoples while at the same time recognising the limits of this promise and the failure of rights discourse to achieve civil and economic rights. These affirmations of liberalism and equality are commonly contrasted with government actions, most recently, Australia’s policies on asylum seekers, its conduct of certain investigations under the Commonwealth Anti-Terrorism Act (2005), and the NT intervention.

However, it is one thing to commit to the liberal principle of equal worth of all individuals, and quite another to equate the liberalism in academic political theory with liberalism as a ‘powerful
historical phenomenon’ (Hindess, 2004). While theoretical versions of liberalism may make claims about equal worth, these claims do not necessarily reflect ‘actually existing liberalism’, such as the versions of liberal rule under British imperialism and other versions of ‘authoritarian liberalism’ (Hindess, 2001; 2008). Also, claims concerning freedom under liberalism are often qualified by the claim that such freedom is not possessed at birth but is acquired through discipline and moral progress, and that liberal government might sometimes aim to assist in the moral development of members of subject populations (Hindess, 2008: 348).

An historical argument also needs to consider the Euro-centric ‘developmental view of humanity’, and acknowledgement by nineteenth century liberal theorists such as JS Mill or Alex de Toqueville that non-Western peoples were ‘not yet ready for self-government’ (Hindess, 2009:2). The developmental story among educated Europeans comprised the view that humanity was divided into societies and that these could be ranked along a development spectrum, with Western Europe at the top. Among these ‘more advanced’ societies, some people – the educated and prosperous minority – have advanced further that the rest (Hindess, 2009:4). If this meaning of liberalism applies to the present Australian government’s relations with Indigenous Australians, the intervention displays not so much a contradiction of liberal political reason, or a cynical disregard for individual worth, or a mistaken exercise of the rule of law, but rather another historical instance of ‘authoritarian liberalism’ in relation to the governance of a people announced as ‘not yet ready for self-government’ (Hindess, 2001).

Authoritarian forms of government may be a characteristic feature of the history of liberal political reason. Here, liberalism is understood as a distinct form of political reason that is concerned with the practical implications of the belief that members of the population are endowed with, or capable of acquiring, a capacity for autonomous, self-directing activity. Liberalism understands the social milieu as involving both government regulation and also the self-regulating processes of free interaction between individuals capable of agency (Foucault, 2008; Hindess, 2001).

But how has liberal political reason dealt with those in whom the capacity for self-government is thought to be insufficiently developed? Hindess points to John Locke’s discussion of the native inhabitants of North America, suggesting that some people are so far from acquiring the capacity for self-government that ‘they should simply be cleared out of the way’ (Hindess, 2001:101). For a second group, the capacities for self-government may be developed but only through the
compulsory imposition of extended periods of discipline, a view most influential in the history of authoritarian versions of the welfare state and in the history of colonial administration. A third group might be seen as lacking the capacities required for autonomous action for ‘external reasons’, such as ill-health, poverty or lack of education, and that government should build up these capacities in a supportive environment. In Western societies before the middle of the 20th century, the vast majority of people were thought to belong to the second category:

the category of those who would benefit from being subjected to authoritarian rule: the subject peoples of Western imperial rule and, throughout the nineteenth and early twentieth centuries, substantial groups in Western societies themselves. In spite of liberalism’s undoubted commitment to liberty, only a minority were actually governed as free individuals. Another minority – whose size is, for obvious reasons, difficult to estimate - consisted of those who were more or less successfully cleared out of the way (Hindess, 2001:101).

**Discourses of sovereignty, discourses of war**

In her account of attempts to impose sovereignty on the territory in the earliest period of occupation by the British, Ford (2010) shows how colonial authorities used diplomacy as the basis of state-indigenous relations. But when negotiation and conciliation failed ‘…the colony made war’. Military campaigns sent out to kill or capture Aborigines contained no declaration of martial law, as this would have assumed an assertion of sovereign authority over subjects or citizens. In 1805 Judge Advocate Atkins suggested that Aborigines could not be legally tried because they were ‘totally ignorant’ of the ‘meaning and tendency’ of British legal proceedings. Aboriginal depredations should be met with decentralised violence ‘through the formation and deployment of local militia’, while settlers were excused in law from charges of murder for shooting Aborigines who stole their corn

…if imperial protection of Aborigines in New South Wales did not equate to jurisdiction over them, retaliation might be a legitimate response to Aboriginal violence under European principles of natural law … the government of New South Wales did not equate settler sovereignty with territorial jurisdiction.

Indigenous people marked the juridical boundaries of the colony (Ford, 2010: 45).

Macquarie asked outlaw Aborigines to surrender so they could be ‘forgiven and pardoned’, an offer that Ford (2010: 52) described as a ‘jumble of diplomacy and jurisdiction’ but also a
recognition that Aborigines ‘had yet to submit themselves to His Majesty’s protection (and) had some corporate or individual choice in the matter’.

Settler administrators and judges eventually came to understand Indigenous jurisdiction as a threat to settler sovereignty. Macquarie’s 1816 Proclamation stated that armed individuals or groups of Aborigines appearing near towns would be considered ‘enemies’ of the colony and treated accordingly. On these terms, Aborigines could not bring arms near farms or congregate in family groups without risking summary execution. Indigenous violence near farms was an act of war. According to Ford, Macquarie’s argument invoked a particular liberal (but, by 1816, anomalous) iteration of the ancient laws of conquest, whereby local law subsisted until displaced by the King, although British conquest would automatically invalidate any local customary laws that were ‘barbarous’ or against natural law (Ford, 2010:74-75).

By the end of the 18th century, Enlightenment philosophy had created a new ideological universe in which Aborigines were a people ‘so savage that they were unable to claim property or to constitute political society’ (Ford, 2010:74-75). Throughout the 19th century, narratives of peril and ‘fear of one’s life’ continued to have salience as a justifiable homicide defence in settler killings of Aborigines in the more distant Australian peripheries, when the colony could not or would not exercise jurisdiction over indigenous people.

**Strategy, tactic, manoeuvre**

Much later, in Victoria during the mid- to late 19th century, the colonial government established missions to ‘protect’ the remaining survivors of the British occupation, which had reduced the original inhabitants (in one kind of counting) from more than 15,000 in 1834 to below 3,000 in 1851, and by the 1920s to about 500 people (Campbell, 1994:xii; Broome, 2005:xxiv). There were an estimated thirty cultural-language groups made up of hundreds of clans or land-owning groups comprised perhaps 60,000 people before the European arrival (Broome, 2005:xxi). In this view, compared with other districts, the Victorian colonial experience was different from earlier settlements because the current Whig-liberal outlook in Britain sought unprecedented steps to try to protect Aboriginal people from the murderous onslaught experienced in other parts of the country.

The policies of protection after the mid-19th century were motivated in part by what was seen to be the inability of the authorities to safeguard Aboriginal people from white violence and secure
access to schooling and other services in the face of white resistance. The influence of the so-called ‘humanitarians and evangelicals’ led to the only treaty ever offered to Aborigines in Australia, later reneged upon by the Colonial Office, and the first protectorate legislation enacted by a colonial government, a unique administration and network of Aboriginal reserves and missions (Broome, 2005:xxvi).

In what followed, the cultural and identity dimensions of the attack intensified. The *Aborigines Protection Act* 1886 and its regulations reversed the definition of ‘Aboriginal’ so that people called versions of ‘part-Aboriginal’ were no longer Aboriginal people under the terms of the Act. Regulations forbade half-caste people access to the mission stations and to their families, which had the immediate effect of separating family groups, reducing the productiveness of the missions, and denying Aboriginal identity. The purpose was to ‘merge’ Aborigines with the white population. With the expected ‘dying out’ of the ‘Blacks’, this tactic would remove the Aboriginal population – it would permit them to be ‘simply be cleared out of the way’ (Hindess, 2001:101).

Children were removed from their parents on the missions when they were old enough to work, and under the authority of the Protection Board were sent out to service following a period of training, or for adoption with non-Aboriginal families. From 1900, Aboriginal children removed from their families and the communities in the mission stations were passed over to the Department of Neglected Children and Reformatory Schools to be placed in an institution or sent out to ‘service’. At the same time as new Commonwealth legislation denied citizenship to Aborigines, the local State administration made Aboriginal children subject to provisions akin to a system of indeterminate sentencing. Older people were given three years to find work and accommodation and afterwards were excluded from the missions and their families (McCallum, 2005: 333-350). These were the circumstances that ensured Aboriginal resistance to settlement ‘…had no other language in which to speak than that of criminality (Muldoon, 2008: 69).

Throughout this period, systems of security underpinned by law (in the case of the Northern Territory, the ‘legal’ segregation of persons defined as Aborigines beginning with the Northern Territories Aborigines Act 1910) established a juridical combination of law and regulation that gave protection officers direct powers over basic life circumstances, in particular, control over miscegenation (Howard-Wagner, 2010: 221).
In periods after this, government sought to construct rationalities of rule that developed from ideas of assimilation, and then self-government, in contexts of continuing dissent. For example, the period between 1967 and the amendment of the constitution allowing Indigenous people to be counted as citizens and new policies advocating self-determination, and 1996, coinciding with the election of a conservative coalition government, is regarded as a discursive break in the history of Indigenous affairs. Language changed, new entities and categories were brought into being, often in advance of broader policy, such as ‘communities’ and ‘mutual obligation’. In these times, as Howard-Wagner notes, ‘…self-determination and autonomy in this form was a federal-government construct’, and the language also shifted to ‘failure’ of self-government rather than simply an incapacity for self-governing (Howard-Wagner, 2010: 223).

Authoritarian liberalism / ‘race’ war

In the 21st century, the Northern Territory intervention was described as a ‘mission’ to ‘stabilize’, ‘normalize’ and ‘exit’. It was operationalised under military command and used the language of strategy and tactics to describe its activities. A recent discussion of the exceptionality of Northern Territory Emergency Response drew attention to the sexuality and ‘pleasure’ elements of the intervention – the ways in which violence, pleasure, and sovereign power intersect to discursively produce a punitive response and an ‘intensively moralising’ public discourse about Indigenous Australians (Tedmanson and Wadiwel, 2010). The authors speak of a pleasure derived from the freedom to define the pleasure of ‘others’ – a pleasure, that is, accrued from the freedom to do violence to ‘others’.

It is not necessary to accept the notion of ‘exceptionality’, however, to accept these arguments about the pleasures of the victor. The law becomes an expression of a perpetual form of victory that guarantees a continuing free hand for the victors. Existing legislation mandates that 50 percent of income support and family assistance payments to Indigenous people living in remote of the NT will be managed by the government. The funds can only be used for items considered essential by the government, such as food, clothes, rent, electricity, medicine and basic household goods. Tedmanson and Wadiwel argue that the NT intervention has created ‘racialized zones of exception’ controlling the purchase and use of items – for example, tobacco, alcohol, pornography – that would not be tolerated or even arguable if proposed for any other Australian communities. On the contrary, the policy has been widening to include non-Indigenous welfare recipients, described as a cynical move to impose a further disciplinary
In relation to earlier discussion about freedoms under liberal political reason then, an exercise of the free hand of the victor is by no means connected to equality. On the contrary, it conveys the opposite sense. Citing Foucault:

Freedom is the ability to deprive others of their freedom – essentially the freedom of egoism, of greed – a taste for battle, conquest and plunder…the freedom of these warriors is not the freedom of tolerance and equality for all; it is the freedom that can be exercised only through domination (Foucault [1976] 2003, 157, 148, cited in Tedmanson and Wadiwel, 2010: 13)

Conclusion

The NT intervention is a massively punitive response, to a report which in fact highlighted the need for a series of social policy responses that had been sought by Aboriginal communities for decades, to economic and community disintegration wrought by the appropriation of land and the imposition of an invaders’ law and culture. The criminalising of Indigenous Australians is linked to assemblages of power located in the partisan victories around sovereignty and interpretations of Aboriginal resistance to rule (Muldoon, 2008); the administrative knowledges around concepts of family abuse that interpret economic and social dislocation as intentioned perpetrations of child abuse and deviance (McCallum, 2008); and the freedom of the victor to perpetually subjugate through the normalising power of legal mechanisms that seek to control of sex, sexuality and reproduction (Tedmanson and Wadiwel, 2010). The NT intervention displays a further element observed by Muldoon (2008) – more general criminalising of the population by means of its exclusion from the social sphere: the blue bill-boards announcing the restrictions, the intense power through the shaming of the people:

…so as far as we’re concerned, its too much exertion brought to bear on naughty children. We are not naughty children. We are very deep thinking people and we utilize our law of the land to assist us to where we want to get. The biggest thing that we have an argument with the government is, we’re not white people. We have our own language. We have our own ceremonies. We have our own land. What we want from government is real help and real funding rather than putting law on top of our Law (Concerned Australians, 2010: 21)
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