

# **THE SYSTEMATIC REMOVAL OF INDIGENOUS CHILDREN FROM THEIR FAMILIES IN AUSTRALIA AND CANADA: THE HISTORY – SIMILARITIES AND DIFFERENCES**

**By**

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## **INTRODUCTION**

The histories of indigenous peoples<sup>1</sup> in Australia and Canada are separate events. Local events, personalities, and trends have shaped and informed the nature of indigenous experience in these nations. This being the case, however, there are also many areas of experience and effect that are eerily replicated in the two different jurisdictions. Although there are localised influences and differences, the issue of indigenous child removals from their families has a shared history between the two countries. The indigenous child removal policies and practices in both Australia and Canada often arose out of commonly held beliefs and theories surrounding indigenous peoples in general.

This paper investigates the policies and practices of indigenous child removals from their family in Australia and Canada. The paper's scope is limited to government homes and missions in Australia, and residential schools in Canada.

Before specifically examining this issue, the article commences with some brief comments on the general histories of European-indigenous interaction in Australia and

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<sup>1</sup> The names, indigenous and Aboriginal are preferred and used interchangeably in this paper. Although it is acknowledged that other terms are often used, for example, First Nations, Indians, Inuit, and Metis. Some of these terms are referred infrequently here. The term European is preferred to describe the non-Indigenous populations.

Canada. Then the legislation, policy and practice of indigenous child removals are investigated.

## **OVERVIEW OF EUROPEAN - INDIGENOUS RELATIONSHIP**

Perhaps the most obvious common trait in European-indigenous relations across the two nations is also the most general. In the broad sweep of their histories, European-indigenous affairs have been marked by policies and practices aimed at European control over the indigenous population. The manner in which this control has been attempted differs between Australia and Canada but there are also many similarities. Further, the aim to control has not been static across time as different eras have produced different policies and desires.

In Canada indigenous peoples were in a position of power in the period of initial contact, evidenced by the fact that early European traders and others had to learn the indigenous languages to carry out trade. Later, in the 18th and early 19th centuries, the indigenous peoples became important political and military allies of the European powers in North America.<sup>2</sup> After the War of 1812, the indigenous populations of North America lost their relevance as military allies, and became, in the words of Miller, an impediment to European expansion and control to be cleared like pine forests.<sup>3</sup> The early colonial experience in Australia differed markedly from the North American example. Armitage states that in this early period indigenous policy 'was not a priority for either the imperial or local authorities.'<sup>4</sup> As the years passed in Australia and Canada, however, indigenous policy did come to take an important, if not dominant, position in the individual polities.

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<sup>2</sup> Miller, J. *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*, Revised Ed., University of Toronto Press, Toronto, 1994, at 269-70.

<sup>3</sup> *Ibid.*, at 273.

<sup>4</sup> Armitage, A. *Comparing the Policy of Aboriginal Assimilation: Australia, Canada, and New Zealand*, UBC Press, Vancouver, 1995, at 14.

Although there were, and are, fundamental differences in the methods of governance and implementation that affected the two indigenous populations in question, there are remarkable similarities in the methods and practices by which those policies were implemented, and also in the effects and long-term repercussions of those policies and practices.

The most fundamental difference that distinguishes the two nations' indigenous policy making lies in the area of governmental responsibility for indigenous matters. In Canada the federal government was responsible for indigenous affairs, and the Constitution gave the federal government substantial powers regarding its indigenous population.<sup>5</sup> The *Canadian Constitution Act 1867*, Section 91(24), specifically arrogates to the federal government full control over all matters regarding Canadian Aboriginal peoples and lands reserved for them.<sup>6</sup> This section of the Act in effect removes any official independence the Canadian Aboriginal peoples may have enjoyed, and makes them wards of the federal government.<sup>7</sup>

The Australian system is fundamentally different to the Canadian model. At federation, in 1901, the states assumed responsibility for Aboriginal affairs, under the Australian *Constitution*, because, according to Lippmann, the area was not seen by either the states or the federal government as a national responsibility.<sup>8</sup> The Australian *Constitution*, Section 51(xxvi), specifically denied the federal government the power to make laws regarding Australian Aboriginal peoples. It was not until the 1967 Referendum that the

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<sup>5</sup> Chesterman, J., and Galligan, B. *Citizens Without Rights: Aborigines and Australian Citizenship*, Cambridge University Press, 1997, at 60.

<sup>6</sup> Above note 4, at 77.

<sup>7</sup> Barman, J., Herbert, Y., and McCaskill, D. 'The Legacy of the Past: An Overview', in Jean Barman, Y. Herbert, and D. McCaskill, eds, *Indian Education in Canada: Volume 1: The Legacy*, University of British Columbia Press, Vancouver, 1986, at 4.

<sup>8</sup> Lippmann, L. *Generations of Resistance: Aborigines Demand Justice*, 2nd Ed., Longman Cheshire, Melbourne, 1992, at 18.

Australian federal government gained concurrent powers with regard to Aboriginal affairs.

The purpose of the 1967 referendum was to ask the Australian public whether two clauses of the Australian Constitution should be altered. Alteration of section 127 would see Australian Aboriginal peoples included in the national census count and alteration of section 51(xxvi) would allow the federal government to make laws for Australian Aboriginal peoples. The referendum passed with a yes vote of 90.77 percent. The hope then was that the federal government would take over Aboriginal affairs and immediately improve the position of Australian Aboriginal peoples. Prior to the 1967 referendum, the separate states and territories constructed their own systems of governance concerning the Aboriginal population.<sup>9</sup> This multifaceted approach to Aboriginal affairs in Australia may mean that Brock is correct in stating that until 1967 it is impossible to discuss legislation on a national basis,<sup>10</sup> but, as discussed below, it is possible to discuss broadly coherent areas of policy and practice within Australia.

The notion of European control over indigenous peoples in Australia and Canada, is based on concepts and ideologies that span both the physical distance between the two nations and the wide range of time that lies between certain similar events. Most notable was the desire on the part of the European populations to alter the indigenous populations. After European domination became established, the view prevailed that indigenous peoples would be forced to change on European terms. Culleen and Libesman make that point with regard to Australia, but it is equally as applicable to the Canada.<sup>11</sup>

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<sup>9</sup> Id, at 30-31.

<sup>10</sup> Brock, P. 'Aboriginal families and the law in the era of segregation and assimilation, 1890s-1950s', in Diane Kirkby, ed., *Sex, Power and Justice: historical perspectives of law in Australia*, Oxford University Press, Melbourne, 1995, at 136.

<sup>11</sup> Culleen, C., & Libesman, T. *Indigenous People and the Law in Australia*, Butterworths, Sydney, 1995, at 36.

The reasons for this desire for control over the indigenous peoples of Australia and Canada are based in the racial theories and ideologies that were popular in the 18th and 19th centuries. Armitage claims that the very concept of race is European,<sup>12</sup> and it is undeniably true that European classifications and theorising has dominated the area.<sup>13</sup>

The relative military/political unimportance of Australian Aboriginal peoples to the European powers in Australia in the 18th and 19th centuries is reflected in the almost total lack of treaty arrangements between the two. In the history of initial European-indigenous contact there was only one instance of a formal treaty being signed, in what would become Victoria in 1835, which was not instigated by a government official.<sup>14</sup>

Treaties were the basis of Canadian relations with indigenous peoples well into the 19th century. Canada signed over 500 treaties between the years of 1867 and 1975.<sup>15</sup> After that time the Canadian government began negotiations with Canadian Aboriginal peoples for claims agreements where no previous treaty had been signed. Examples of agreements which have been reached include the James Bay and Northern Quebec Agreement (1975), Northeastern Quebec Agreement (1978), Inuvialuit Final Agreement (1984), Gwich'in Agreement (1992), Nunavut Land Claims Agreement (1993), Sahtu Dene and Metis Agreement (1993), and four Yukon First Nation final agreements. Several more agreements are presently being negotiated.<sup>16</sup> The lack of treaty making in Australia as compared to the integral nature of it in Canada points out the relative lack of

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<sup>12</sup> Above note 4, at 221.

<sup>13</sup> Refer to above note 4 at 221; Beresford, Q., & Omaji, P. *Our State of Mind: Racial Planing and the Stolen Generations*, Fremantle Arts Centre Press, Fremantle, 1998, at 32; and Harris, J. *One Blood. 200 Years of Aboriginal Encounter with Christianity: A Story of Hope*, 2<sup>nd</sup> Ed., Albatross, Sydney, 1994, at 25.

<sup>14</sup> McGrath, A. 'A national story', in Anne McGrath, ed., *Contested Ground: Australian Aborigines under the British Crown*, Allen & Unwin, Sydney, 1995, p. 14.

<sup>15</sup> Dickason, O. *Canada's First Nations: A History of Founding Peoples from Earliest Times*, 2<sup>nd</sup> Ed., Oxford University Press, 1997, at 248.

<sup>16</sup> Asch, M., & Zlotkin, N. 'Affirming Aboriginal title: A new basis for comprehensive claims negotiation', in Michael Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference*, UBC, Vancouver, 1997: 208, 270.

perceived military threat and/or importance of Australian Aboriginal peoples in the Australian example.

The above discussion gives an indication of what specific factors may have shaped the relationship between Europeans and indigenous peoples in Australia and Canada. The popular theories of the day and an attitude of superiority greatly influenced European handling of indigenous affairs. This, it is claimed, went on to shape the legislation, policies and practices with regard to the removal of indigenous children from their families.

## **REMOVAL**

### **1. Legislation**

The Canadian *Indian Act*<sup>17</sup> of 1876 was the piece of legislation that finally ended any practical sense of self-government for the Canadian Aboriginal peoples. Under its auspices all financial matters, social services, including education, came under federal control.<sup>18</sup> The Act was, as Dickason points out, something of a 'total' institution that, when taken alongside the treaty process, touched upon almost every aspect of Canadian Aboriginal peoples' life.<sup>19</sup> A new system of governance, imposed by the European federal government, replaced traditional government and the new 'band' system was unilaterally imposed on Canadian Aboriginal peoples. These bands had to have elected leaders, whose election and powers were at the discretion of the Commissioner via his representatives, the Indian agents.<sup>20</sup> The Canadian Royal Commission on Aboriginal

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<sup>17</sup> *Indian Act 1876* (Canada)

<sup>18</sup> Above note 7, at 4-5.

<sup>19</sup> Above note 15, at 260.

<sup>20</sup> Above note 4 at 96.

Peoples reported that this Act completed the transition from tribal nation to legal incompetent.<sup>21</sup>

The 1876 Canadian Act was the end-point in a trail of legislation that had diminished indigenous sovereignty and aimed at 'civilising' the indigenous peoples of Canada. The Canadian parliament, in 1851, passed *An Act for the Better Protection of Lands and Property of Indians in Lower Canada*,<sup>22</sup> which provided a definition of Canadian Aboriginal peoples, and who qualified as such in legal terms. The 1857 *Act to Encourage the Gradual Civilization of the Indian Tribes of the Canadas*<sup>23</sup> made the most important step in the move to control indigenous life in Canada. This Act introduced the concept of 'enfranchisement', whereby certain Canadian Aboriginal peoples could, under particular circumstances, be made citizens of Canada. This required Canadian Aboriginal peoples to surrender their official status as 'Indians' and all that followed from that.<sup>24</sup>

The Australian experience follows that of Canada closely, if not, exactly. The terminology used in each country is perhaps one minor difference that can be examined. Australian legislation proclaimed itself as 'protection' legislation well into the 20th century. The notion of 'protection' arose out of the 1837 House of Commons Select Committee Report on Aborigines. Concern had been raised in Britain over the treatment of indigenous peoples throughout the Empire.<sup>25</sup> The report called for a more managed system of indigenous treatment<sup>26</sup> and, in keeping with the new Poor Laws in Britain, sought the creation of Aboriginal 'Protectors' analogous to the 'overseers' the Poor Laws

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<sup>21</sup> Royal Commission on Aboriginal Peoples (RCAP), *Looking Forward, Looking Back*, Canada Communication Group, Ottawa, 1996, p. 277.

<sup>22</sup> *An Act for the Better Protection of Lands and Property of Indians in Lower Canada 1851* (Canada)

<sup>23</sup> *Act to Encourage the Gradual Civilization of the Indian Tribes of the Canadas 1857* (Canada)

<sup>24</sup> Above note 15, at 225; above note 2, at 110.

<sup>25</sup> Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islanders from Their Families*, Commonwealth of Australia, Canberra, 1997, at. 28.

<sup>26</sup> Above note 4, at 17.

provided for paupers. This system would dominate policy until the mid-20th century.<sup>27</sup> Whereas the report set policies for the treatment of indigenous peoples generally throughout the Empire, no recommendations were made with regard to Canada.<sup>28</sup> Canadian legislation of the same era also claimed protectionist powers, but even then, and certainly later, trumpeted assimilationist intentions well before the term was used in Australia.

The first real 'protection' legislation in Australia was passed in Victoria in 1869. The *Aborigines Protection Act*<sup>29</sup> created locally based guardians, and gave the Governor power to make regulations nominating where Australian Aboriginal peoples may or may not dwell. The Act also controlled Aboriginal employment and allowed the Governor to remove any children he deemed neglected or unprotected to specific institutions or industrial or reformatory schools. In 1886 this Act was amended and the powers involved therein extended, but 'half-caste' and 'aboriginal' persons were delineated for different treatment.<sup>30</sup> The 1880 regulations in Victoria required that any Aboriginal males, under the age of 14, and girls, under 18, should 'take their meals, and sleep in any building set aside for such purposes'.<sup>31</sup> This shift towards further control follows the pattern in Canada, and reflects Armitage's point concerning protection. Broome more overtly claims that protection Acts were aimed on the one hand at the prevention of the destruction of Aboriginal society, while on the other they were increasingly designed to protect 'the Europeans from the taint of the Aborigines'.<sup>32</sup>

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<sup>27</sup> *Ibid.*, at 4-5.

<sup>28</sup> *Ibid.*, at 74.

<sup>29</sup> *Aborigines Protection Act 1969* (Vic)

<sup>30</sup> Above note 25, at 611-2.

<sup>31</sup> Above note 5 at 18.

<sup>32</sup> Broome, R. *Aboriginal Australians: Black Responses to White Dominance 1788-1994*, 2nd Ed., Allen & Unwin, Sydney, 1994, at 161.



In Australia, all states and territories except Tasmania had passed 'protection' legislation by 1911.<sup>33</sup> Tasmania did not pass any such legislation on the basis that it did not acknowledge that there was an Aboriginal population in existence.<sup>34</sup> This protection legislation, in general, aimed at segregation and control of Australian Aboriginal peoples, and survived in some instances into the 1950s.<sup>35</sup> Protection legislation meant, in practice, near total control of the lives of Australian Aboriginal peoples where the right to leave or enter reserves, marry, or gain employment were all controlled.<sup>36</sup> Commenting on this legislative basis in Australia, but equally valid regarding Canada, Evans states that the urge to segregate 'may be viewed as either the ultimate in protective concern or conversely, the ultimate in social sanitation and control.'<sup>37</sup>

After the Victorian example, the most important Australian protection legislation to be passed was in Queensland. The 1897 *Aboriginal Protection and Restriction of the Sale of Opium Act*<sup>38</sup> established a system of governance over Australian Aboriginal peoples that was to have wide-reaching effects in Australia. The Act established the role of the 'Protector', defined 'Aboriginal', and gave the relevant Minister power to remove, detain, or relocate Australian Aboriginal peoples.<sup>39</sup> Broome notes that this Act was both humanitarian and racist, in that it sought to protect Australian Aboriginal peoples from exploitation, but placed them all under official 'protection' whether they needed it or not.<sup>40</sup> The importance of the Queensland Act lies in the fact that it provided a blueprint from which similar Acts in other states were produced. Chesterman and Galligan note

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<sup>33</sup> Above note 11, at 33.

<sup>34</sup> Above note 10, at 137.

<sup>35</sup> Brock, P. *Outback Ghettoes: Aborigines, Institutionalisation and Survival*, Cambridge University Press, Cambridge, 1993, at 12.

<sup>36</sup> Above note 25, at 29.

<sup>37</sup> Evans, R. "'A Permanent Precedent": Dispossession, Social Control and the Fraser Island Reserve and Mission, 1897-1904', *Ngulaig*, 5, 1991, at 7.

<sup>38</sup> *Aboriginal Protection and Restriction of the Sale of Opium Act 1897 (Qld)*

<sup>39</sup> Above note 25, at 618.

<sup>40</sup> Above note 32, at 96.

that the Western Australian Act of 1905<sup>41</sup> was largely based on the Queensland Act, and that Acts in South Australia<sup>42</sup> and the Northern Territory<sup>43</sup> closely followed those of Queensland and Western Australia.<sup>44</sup> Thus, by 1911, all states and territories in Australia, with the exception of Tasmania, had specific Aboriginal legislation which gave the state governments the power to segregate and remove Australian Aboriginal peoples from the rest of society.<sup>45</sup>

Therefore, historical examination of the legislative instruments in Australia and Canada has demonstrated an initial intention, in all three nations, to assume control over the lives of their indigenous peoples. This desire subsequently developed into removal legislation which can be viewed as the ultimate form of control and segregation.

### **3. Policy**

#### **(i) Introduction**

The Australian Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families notes, that because the basis of Aboriginal policies across Australia was 'to absorb the children into white society, Aboriginality was not positively affirmed.'<sup>46</sup> This would seem to be a statement of the case in absolute minimal terms. In Australia and Canada, up until very recent times, indigenous culture has been actively discriminated against by government policy and practice. The notion of 'assimilation' has been the constant aim of the governments of the three countries. This term, 'assimilation', can be problematic, and it has often been discarded in official circles, but the practical

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<sup>41</sup> *Aborigines Act 1905 (WA)*

<sup>42</sup> *Aborigines Act 1911 (SA)*

<sup>43</sup> *Northern Territory Aborigines Act 1910 (SA)*

<sup>44</sup> Above note 5 at 39-40.

<sup>45</sup> Above note 11, at 33.

<sup>46</sup> Above note 25, at 177.

aims in all three countries for nearly all of their histories can best be described as assimilationist. Within this framework, education policy and practice has been one tool used to implement these aims.

The terminology used to describe the policies of different governments has changed across time and, although these terms have often not overlapped, the practices used in support of the basic aims of European society have very closely resembled each other. Brock states that, while the legislation and policies in the several Australian states and territories have been different, 'their impact on Aborigines has been very similar'.<sup>47</sup> The same could be said of Australia and Canada, especially with regard to events in the 20th century.

### **(ii) The period ending 1930s**

Until the 1920s and 1930s, policies and practices in Australia and Canada were founded on the notion that the indigenous peoples of those countries were 'dying out'. Miller states of Canada that the real decline in the Aboriginal population was for a long period an 'unacknowledged factor' in government policy.<sup>48</sup> In 1920, the Canadian Deputy Superintendent-General of Indian Affairs stated, before a Special Committee, that the Department's aim was to 'continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department'.<sup>49</sup> Austin states that in Australia in the 1930s the extinction of the Australian

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<sup>47</sup> Above note 35, at 11.

<sup>48</sup> Above note 2 at 212.

<sup>49</sup> Reaume, D., and Mackem, P. "Education for subordination: Redressing the adverse effects of residential schooling, RCAP Notes, at. 7-8.

Aboriginal peoples was 'still generally taken for granted.'<sup>50</sup> The policies of the different governments in Australia in general reflected a desire that this 'dying out' should take place. The 1921 New South Wales Aborigines Protection Board Annual Report states, that the continuation of the 'policy of dislocating the children from camp life must eventually solve the Aboriginal problem'.<sup>51</sup> This desire was perhaps a reflection of the reality of the times as by the late 1920s Aboriginal numbers had dropped to their lowest since European settlement of the continent.<sup>52</sup>

In 1933, 'Sister Kate's' home for Australian Aboriginal children opened in Perth, Western Australia and was run by Kate Clutterbuck, an Anglican nun, until its closure in 1974. Sister Kate's establishment was government funded, intended to deal only with 'quadroons' (those with less than 25 per cent Aboriginal 'blood'), and she had, in the words of Beresford and Omaji, 'hopes to "breed out the colour" from this group'.<sup>53</sup> Such ideas were soon to take their place on the national stage. The 1937 Commonwealth and State Native Welfare Conference in Canberra was the first time such issues had been discussed nationally. The Conference was dominated by those states and territories with the largest Aboriginal populations: Western Australia, Queensland, and the Northern Territory.<sup>54</sup> The Conference passed a resolution supporting the policy of the complete 'absorption' of the Australian Aboriginal peoples of Australia into the European population. This policy was described by one delegate as the only solution to the

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<sup>50</sup> Austin, D. *I Can Picture the Old Home So Clearly: The Commonwealth and 'Half-caste' youth in the Northern Territory 1911-1939*, Aboriginal Studies Press, Canberra, 1993, at 17- 19.

<sup>51</sup> Kendall, C. 'History, present and future issues affecting Aboriginal adults who were removed as children from their families under the NSW Aborigines Protection Act 1882-1969', in Ken Riddiford, Eric Wilson, and Barry Wright, eds, *Contemporary Issues in Aboriginal and Torres Strait Islander Studies*: at 4. Proceedings of the Fourth National Conference, Cairns College of Technical and Further Education, September 1993, Cairns, 1993, at 243.

<sup>52</sup> Above note 32, at 174. There are problems associated with the notion of falling Aboriginal population, however; the manner in which the different governments maintained the right to define Aboriginality must affect the relevance of these figures. That being said, it seems the numbers were still dropping at this time.

<sup>53</sup> Above note 13, at 43-4.

<sup>54</sup> Above note 25, at 32.

Aboriginal 'problem'.<sup>55</sup> Within this broad policy, the Aboriginal population was broken into two subsets which would be treated differently. Firstly, those of mixed descent would be absorbed, 'regardless of their wishes in the matter' and those deemed 'full bloods' would be left on reserves.<sup>56</sup> Again, Beresford and Omaji state that no one at the Conference was in any doubt that the 'full blood' population would eventually die out.<sup>57</sup> More importantly, Austin states that it was universally accepted at the Conference that the various governments had the right to impose biological as well as economic assimilation upon the Australian Aboriginal peoples.<sup>58</sup> The Australian Inquiry noted that the absorption model, initiated by Western Australian Chief Protector of Aborigines, A. O. Neville, was initially a biological model, and that the later incarnation known as assimilation, was a socio-cultural model, both forms carry the seed of annihilation for Australian Aboriginal peoples.

### **(iii) Period after World War II**

In Canada and Australia, major changes occurred in indigenous policy after World War II. The most notable causes for this are linked, but the knowledge of Nazi Germany's racial policies and their outcomes, which added to the growing strength of Freudian ideas, hastened the demise of eugenic ideologies.<sup>59</sup> Miller states that Canadian policy changed in response to the war which had been fought against institutionalised racism. The obvious reason being that it was impossible, after WWII, not to notice the racist basis of that policy.<sup>60</sup> For similar reasons Australian governments were moved to repeal

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<sup>55</sup> Above note 50, at 196.

<sup>56</sup> Above note 10 at 24.

<sup>57</sup> Above note 13, at 46.

<sup>58</sup> Above note 50, at 196.

<sup>59</sup> *Ibid.*, at. 23.

<sup>60</sup> Above note 2, at 220.

discriminatory laws, especially as Australia took such a prominent role in the newly formed United Nations.<sup>61</sup> However, the changing policies did not dramatically alter the situation of indigenous peoples. In 1948, a Canadian Joint Committee Report called for the end of coercive assimilation, but it did not call for the end of assimilation.<sup>62</sup> Milloy states that the new policy of integrated education proposed by the Report was still assimilationist in its desires.<sup>63</sup> The push towards integration was very strong in Canada. There was a strong history of official attempts to enfranchise indigenous people in Canada in an attempt to remove them from government responsibility. In World War I, many enlisted Canadian Aboriginal peoples gained the right to vote, and in 1920 off-reserve and ex-servicemen gained the same right.<sup>64</sup> In 1944, all Canadian Aboriginal peoples who had served in the armed forces, as well as their spouses, received the right to vote in federal elections. Six years later, this right was made available to all on-reservation peoples, but only on the proviso that they gave up their tax-exempt status.<sup>65</sup> It was not until 1967 that all Canadian Aboriginal peoples were entitled to vote without giving up their status and rights as Aboriginal peoples. It is this 'status', as an indigenous person, that is important here, and which was under threat in Canada upon gaining citizenship or the right to vote.<sup>66</sup>

Similar practices aimed at definitionally denying Australian Aboriginal peoples their Aboriginality existed in many Australian states and territories. In 1902, the *Commonwealth Franchise Act*<sup>67</sup> in effect barred Australian Aboriginal peoples from the

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<sup>61</sup> Markus, A. 'Legislating White Australia, 1900-1970', in Diane Kirkby, ed., *Sex, Power and Justice: historical perspectives of law in Australia*, Oxford University Press, Melbourne, 1995, at 250.

<sup>62</sup> Above note 2 at 221.

<sup>63</sup> Milloy, J. "'Suffer the little children' A History of the residential school system, 1830-1992", RCAP Notes, p. 220. This is drawn from the RCAP CD-ROM. page numbers are my own.

<sup>64</sup> Above note 21, at 299.

<sup>65</sup> *Id.*

<sup>66</sup> Above note 4, at 192.

<sup>67</sup> *Commonwealth Franchise Act 1902* (Cth)

federal vote.<sup>68</sup> The New South Wales Parliament passed an amendment to the *Aborigines Protection Act*,<sup>69</sup> in 1943, whereby the Board could issue, and cancel, exemption certificates. These certificates officially deemed the carrier no longer to be an Aboriginal person under the terms of the Act.<sup>70</sup> In Western Australia the *Native (Citizenship Rights) Act*,<sup>71</sup> of 1944, forced Australian Aboriginal peoples to make a choice between their Aboriginality and becoming a citizen of the state, thus, denying the opportunity for both.<sup>72</sup> To achieve this signal honour of citizenship, an Aboriginal person had to prove to a magistrate that he or she had severed all ties with his/her extended family and friends, was free of disease, would benefit from citizenship, and was of 'industrious habits'.<sup>73</sup> However, the federal parliament passed the *Commonwealth Nationality and Citizenship Act*,<sup>74</sup> in 1948, making all Australian-born persons citizens of Australia. This meant that all Australian Aboriginal peoples were now citizens of the Commonwealth, but it did not ensure they were citizens of the states and territories. Western Australia, for example, had legislation that deprived Australian Aboriginal peoples of the right to vote in state and federal elections.<sup>75</sup> Due to this style of legislative and administrative practice, Australian Aboriginal peoples were made citizens of Australia but, as Chesterman and Galligan point out, they gained no basic citizenship rights.<sup>76</sup>

The practice of issuing, or refusing to issue, certificates of exemption continued in Australia into the 1950s and 1960s. These official definitions of culture meant that Australian Aboriginal peoples needed to carry passports to become part of the broader

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<sup>68</sup> Above note 5 at 7.

<sup>69</sup> *Aborigines Protection Act 1943* (NSW)

<sup>70</sup> Above note 25, at 605.

<sup>71</sup> *Native (Citizenship Rights) Act 1944* (WA)

<sup>72</sup> Beresford, Q., & Omaji, P. Above note 13, at 88.

<sup>73</sup> Above note 25, at 633.

<sup>74</sup> *Commonwealth Nationality and Citizenship Act 1948* (Cth)

<sup>75</sup> Beresford, Q., & Omaji, P. Above note 13, at 163-4.

<sup>76</sup> Above note 5, at 8.

European Australia, the like of which were first issued by Governor Macquarie in 1816.<sup>77</sup> It was 1962 before the Commonwealth government granted all Australian Aboriginal peoples the Commonwealth franchise irrespective of whether or not they had been granted state franchise.<sup>78</sup> Even then, discriminatory legislation in some states continued, with the Commonwealth passing specific legislation in 1975 to override such laws in Queensland.<sup>79</sup> Thus, it has been demonstrated that in Australia and Canada government practices and legislation attempted to remove indigenous peoples from their own cultures and societies in many ways well into the latter half of the 20th century.

#### **(iv) The 1960s and 1970s**

Changes did occur from the 1960s in Australia and Canada which granted limited autonomy to indigenous peoples. In Canada, the 1965 Federal-Provincial Conference on Indian Affairs came to an agreement in principle on the policy of integration, whereby Indian education and other services would be integrated with European Canadian services.<sup>80</sup> The federal government released a White Paper, in 1969, that called for complete integration of all Canadian Aboriginal services into those of the broader community. In making this call, the Canadian Government, in Miller's view, found that all Canadian Aboriginal problems, such as overrepresentation in incarceration, political impotence, economic marginalisation, were not due to generations of government policy, practice and racial prejudice at work within European society, but rather they were due to a lack of integration into the broader Canadian society.<sup>81</sup> Under the proposals forwarded in the White Paper, all Canadian Aboriginal services would be transferred to the provinces, reserves would become the fee simple property of Aboriginal bands, and the

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<sup>77</sup> Above note 14, at 4.

<sup>78</sup> Above note 5, at 8; Above note 11, at 41.

<sup>79</sup> Above note 61, at 250.

<sup>80</sup> Above note 63, at 228.

<sup>81</sup> Above note 2, at 226.



indigenous population of Canada would become no more than another ethnic group with no separate or specific legal importance.<sup>82</sup> The proposals within the White Paper were based on the notion of 'individual [Canadian Aboriginal] equality at the expense of cultural survival.'<sup>83</sup>

Perhaps the most important outcome of the White Paper, at least regarding education, was the growth of Canadian Aboriginal controlled schools it (probably unwittingly) engendered. Shortly after the release of the White Paper, the Department decided to close the Blue Quills school in Alberta with a new regional high school to take its place. Dissatisfied with this decision, the local Canadian Aboriginal peoples requested they have the school turned over to them to administer. Departmental silence on the matter led to an occupation of the school by Canadian Aboriginal peoples that began in July 1970. On 1 September 1970, Blue Quills became the first school in Canada officially administered by Canadian Aboriginal peoples.<sup>84</sup> By 1986 most of Canada's 577 Bands administered part or all of the education activity of the Department.<sup>85</sup> Just as Szasz describes the termination/assimilation nexus as merely a renaming of the same aims, Armitage states that integration may have been the buzzword of the period in Canada, but assimilation was still the objective of the policy.<sup>86</sup>

In Australia, changes were made to governmental policy directions that were in many ways at odds with the experiences in Canada. Some of these are best described as terminological shifts. In 1951, the Commonwealth and State/Territory Conference agreed on a policy of assimilation, replacing the previous policy of absorption. This policy

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<sup>82</sup> Above note 63, at 236.

<sup>83</sup> Above note 7, at 15.

<sup>84</sup> Persson, D. 'The Changing Experience of Indian Residential Schooling: Blue Quills, 1931-1970', in Jeanne Barman *et al.*, eds, *Indian Education in Canada. Volume 1: The Legacy*, UBC Press, Vancouver, 1986, at 164-6.

<sup>85</sup> Above note 7, at 1.

<sup>86</sup> Above note 4, at 192.

required what the Aboriginal Legal Service of Western Australia (Inc) (ALS) Report describes as 'a nationalistic fiction...purporting the existence of a homogenous and unified Australia of shared interests and beliefs'.<sup>87</sup> The 1965 Conference reworded the definition of assimilation so that the aim was that 'all persons of Aboriginal descent will choose to attain a similar manner of living to that of other Australians and live as members of a single community.'<sup>88</sup> This definition of 'assimilation' seems so close to the Canadian version of integration that it makes no difference.

While the ideological bases of Australian policy may have been almost identical to those in Canada, the administrative processes used to implement them became radically unlike in the 1970s. In the years following the Canadian efforts to decentralise indigenous affairs and move the focus away from the federal government, Australia moved for the first time towards federal importance in the matter. The 1967 Referendum granted the Commonwealth government concurrent powers with regard to Aboriginal affairs, and for the first time made grants to the states and territories for Aboriginal welfare programs via the newly formed Office for Aboriginal Affairs. It was at this time that the official policy shifted from assimilation to integration. However, as the Australian Inquiry notes, it is difficult to ascertain exactly what the difference is and what 'integration' was intended to mean.<sup>89</sup>

On its election to office, in 1972, the Whitlam Government created the first Commonwealth Department of Aboriginal Affairs. In this period the government favoured a policy shift towards self-determination for Australian Aboriginal peoples. Gordon Bryant, the first Minister to be appointed with Aboriginal affairs as an exclusive

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<sup>87</sup> Aboriginal Legal Service of Western Australia [ALS]. *Telling Our Story: A Report by the Aboriginal Legal Service of Western Australia (Inc) on the removal of Aboriginal children from their families in Western Australia*, ALS, Perth, 1995, at 17-8.

<sup>88</sup> Above note 25, at 34.

<sup>89</sup> *Ibid.*, at 34-5.

portfolio, described self-determination as 'Aboriginal communities deciding the pace and nature of their future development within the legal, social and economic restraints of Australian society'.<sup>90</sup> After 1975, the Fraser government altered the policy to a lesser right of self-management and self-support. In 1976, the Census altered its request for racial origin to one that required self-definition.<sup>91</sup> Although the incidence of Aboriginal control of schools is not as widespread in Australia, as it is in Canada, there are examples of similar occurrences taking place. The Mt Margaret Mission, which was run by the United Aborigines' Mission, was handed over to its former 'inmates', in 1976.<sup>92</sup>

#### **(v) Recent policies**

The recent past has seen more shifting patterns of governmental policy in Australia and Canada regarding indigenous peoples in many areas. Accompanying this is a growing, if occasional and grudging, acceptance of some level of responsibility for the difficulties and disadvantages which indigenous people suffer. This movement towards the acceptance of governmental responsibility has not been universal or complete, and further policy shifts have seen a reappearance of the types of policies already outlined.

Canada has instigated perhaps the most dramatic formal shift in policy regarding Canadian Aboriginal peoples. Armitage states that the major change in Canadian policy has been the increasing involvement of Canadian Aboriginal peoples in the creation and negotiation of government policy.<sup>93</sup> In 1982, Canada introduced the Charter of Rights and Freedoms as part of the Constitution Act. This charter gave limited recognition to the

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<sup>90</sup> Above note 8, at 57.

<sup>91</sup> *Id.*, at 174.

<sup>92</sup> Stanton, J. 'Mt Margaret Mission and the Aftermath', in Tony Swain and Deborah Bird Rose, eds, *Aboriginal Australians and Christian Missions: Ethnographic and Historical Studies*, Australian Association for the Study of Religions, Adelaide, 1988, at 292.

<sup>93</sup> Above note 4, at 121-2.

existence of aboriginal and treaty rights belonging to the Canadian Aboriginal peoples.<sup>94</sup> With regard to the education of Canadian Aboriginal peoples, specifically the residential school system, there have been calls for an official inquiry into abuse of children within the system since at least November 1990. These calls have yet to be answered positively by the Department.<sup>95</sup>

In Australia, there have also been some major changes to Aboriginal policy. The Aboriginal and Torres Strait Islander Commission (ATSIC) was formed in 1990 when the Commonwealth Department of Aboriginal Affairs was merged with the Aboriginal Development Commission. ATSIC was the initiative of the then Minister for Aboriginal Affairs, Gerry Hand, who, on 10 December 1989, presented a report to the House entitled 'Foundations for the Future'. Its aim was to set up an organisation that would give Australian Aboriginal peoples greater involvement in their own affairs. Following on from the report was a period of consultation involving 6000 representatives of the Aboriginal community as well as Hand. The negotiations resulted in recommendations for the proposed organisation, the passing of the *Aboriginal and Torres Strait Islander Commission Act*<sup>96</sup> 1989 and the establishment of ATSIC. ATSIC is made up of regionally elected members who are the official representatives of the Australian Aboriginal peoples who elect them.<sup>97</sup>

An important ideological shift with regard to the removal of Aboriginal children arose out of the Social Welfare Minister's Conference in 1986. At this meeting the Ministers agreed to adopt the Aboriginal Child Placement Principle (ACCP). The ACCP states that

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<sup>94</sup> *Ibid.*, at 81.

<sup>95</sup> Above note 63, at 8-9.

<sup>96</sup> *Aboriginal and Torres Strait Island Commission Act 1989* (Cth)

<sup>97</sup> Above note 4, at 37.

any Aboriginal child removed from its parents shall be placed, 'in absence of good cause to the contrary', with:

\*A member of the child's extended family;

\*Other members of the child's Aboriginal community who have the correct relationship with the child in accordance with Aboriginal Customary Law; or

\*Other Aboriginal families living in close proximity.

Most state and territory governments have either implemented the ACCP in legislative form, or have introduced it as an official guideline.<sup>98</sup>

#### **(vi) Conclusion**

Historical examination of policy in Australia and Canada demonstrates the development of beliefs that influenced indigenous affairs. The view that indigenous peoples were dying out developed into policies of absorption and assimilation to integration and then to various forms of self-determination or self-management. However, the question remains as to whether the policy changes reflected merely a change in terminology for practice which remained the same.

### **4. Practice**

#### **(i) Introduction**

As already demonstrated, by 1911, Australia and Canada had fundamentally similar legislation concerning indigenous peoples. In each of the two countries removal of indigenous peoples was a vital component of government policy, as it had been for many

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<sup>98</sup> Wilkinson, D. 'Aboriginal Child Placement Principle: Customary Law Recognition and Further Legislative Reform', *Aboriginal Law Bulletin*, 3, 71, December 1994, at 13.

years. Equally important, and closely linked to the practice of removal, was the question of indigenous education. As one would expect, the Canadian example has a longer history than the Australian, but the parallels are significant.

## **(ii) Generally**

One view is that the separation of indigenous children from their families was not seen as a gratuitous attack upon indigenous peoples, but as a way of saving them and the manner in which they were to be saved was through assimilation into European society. This idea has a very long history, especially with regard to the spread of Christianity. Wilmington states that religious conversion of indigenous peoples has been part of all British colonial efforts since the settlement of Virginia began in 1607.<sup>99</sup>

The 1837 House of Commons Report held that the needs of indigenous children would best be served in being prepared for Christianity and British society if they were removed from their families.<sup>100</sup> In the late 19th century and beyond, there was virtual unanimity in such a policy. The Canadian Royal Commission on Aboriginal Peoples states that 'no one involved in Indian Affairs doubted for a moment that separation was justified'.<sup>101</sup> The first Canadian Prime Minister, Sir John MacDonal, stated, in 1887, that the aim of the government's policy was "'to do away with the tribal system and assimilate the [Canadian

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<sup>99</sup> Wilmington, J. "'Writing on the Sand": The First Missions to Aborigines in Eastern Australia', in Tony Swain and Deborah Bird Rose, eds., *Aboriginal Australians and Christian Missions: Ethnographic and Historical Studies*, Australian Association for the Study of Religions, Adelaide, 1988, at 77.

<sup>100</sup> Above note 4, at 205.

<sup>101</sup> Above note 21, at 339.

Aboriginal peoples] in all respects with the inhabitants of the Dominion, as speedily as possible".<sup>102</sup>

Culleen and Libesman state that it was government policy in all Australian states to remove Aboriginal children from their families, 'and thereby attempt...to "dissociate" them from their culture.'<sup>103</sup> This was a response to growing concerns that the indigenous population of 'half-castes' was actually increasing as opposed to 'dying off'. The view was that by removing these Aboriginal children from their families they could gradually be absorbed into the non-Aboriginal population in Australia.<sup>104</sup>

One of the main proponents in the Australian experience was A. O. Neville, the Chief Protector of Aborigines, in Western Australia, from 1915 to 1940. On examining material relevant to the protectionist era it may be suggested that there was in fact a more sinister intention behind the removal of Aboriginal children, other than that of saving them. It was reported in May 1937 that 'Mr Neville holds the view that within one hundred years the pure black will be extinct. But the half-caste problem was increasing every year. Therefore their idea was to keep the pure blacks segregated and absorb the half-castes into the white population... Perhaps it would take one hundred years, perhaps longer, but the race was dying.'<sup>105</sup> Neville argued that forcible removal of Aboriginal children was necessary in order for them to be truly absorbed into European society and that the 'whiter' the child was the more easily this could be achieved. Neville claimed that 'after two or three generations the process of acceptance in the non-indigenous community would be complete, the older generations would have died out and the settlements could be closed.'<sup>106</sup>

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<sup>102</sup> Above note 2, at 189.

<sup>103</sup> Above note 11, at 45.

<sup>104</sup> Above note 25, at 29.

<sup>105</sup> Buti, T. "They took the children away", *Alternative Law Journal*, 20(1), 1995: 35.

<sup>106</sup> Above note 25, at 108.

### **(iii) Education**

If removal from land and systems of land tenure was part of the assimilation process, education was at the very heart of it.<sup>107</sup> In all three countries, education was considered important from very early colonial days, even if it never dominated the reality of indigenous treatment. It was noted, by a Select Committee set up in the early nineteenth century to investigate the handling of Aboriginal affairs in Australia, that 'the education of the young will of course be amongst the foremost of the cares of the missionaries and the Protectors should render every assistance in their power in advancing this all-important part of any general scheme of improvement.'<sup>108</sup>

Jesuit missionaries opened the first Indian day schools on the St Lawrence River in 1611.<sup>109</sup> Franciscans opened the first Indian boarding school, in what would later become Canada, in 1620.<sup>110</sup> Though the absolute dates are much later, the first schools for Australian Aboriginal peoples appear in Australia nearly as quickly as their counterparts do in North America. Governor Macquarie opened the first school for Aboriginal children in 1814.<sup>111</sup> Twenty-six years later, in the 1840s, such schools existed in most major cities in Australia.<sup>112</sup> In both countries, the education was provided by Christian missionaries and ministers.

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<sup>107</sup> Above note 63, at 29.

<sup>108</sup> Above note 25, at 28.

<sup>109</sup> Noriega, J. 'American Indian Education in the United States: Indoctrination for Subordination to Colonialism', in M. Annette Jaimes, ed., *The State of Native America; Genocide, Colonisation, and Resistance*, south End Press, Boston, 1992, at 380.

<sup>110</sup> Miller, J. *Shingwauk's Vision: A History of Native Residential Schools*, University of Toronto Press, Toronto, 1997, at 39.

<sup>111</sup> Above note 25, at 27-8.

<sup>112</sup> Groome, H. 'Education: The Search for Relevance', in Colin Bourke, Eleanor Bourke, and Bill Edwards, eds., *Aboriginal Australia: An Introductory Reader in Aboriginal Studies*, University of Queensland Press, St Lucia, 1994, at. 141.



Milloy states that there is no 'single root from which the Canadian residential school system can be seen to have grown'.<sup>113</sup> While this is the case, and the influences of church bodies in particular cannot be underestimated, the American system as represented by the Carlisle school<sup>114</sup> certainly was important in the establishment of the Canadian system. In 1879, Nicholas Flood Davin reported to the Canadian government about Canadian Aboriginal education, with much emphasis on the US model. Davin visited Carl Schurtz, then US Secretary of the Interior, as well as E. A. Hayt, US Commissioner of Indian Affairs. Both spoke glowingly of industrial schools, upon which the Carlisle school was largely based, and the Davin Report called on the Canadian government to inaugurate a system of such schools.<sup>115</sup> While the style of school created in the US and Canada was very similar, they were administered in very different ways. The Canadian schools were to be run, according to the Davin Report, by missionaries with a demonstrated commitment to the 'civilising' of Canadian Aboriginal peoples.<sup>116</sup> Church involvement in Canadian Aboriginal education was enormously important, and the formal relationship between the churches and the state did not end until 1969.<sup>117</sup> The state and territory governments, in Australia, handled things in slightly different ways, but the reserve system dominated in many places. This system is unlike the Canadian systems, where reserves (Canada) carry rights similar to European-style ownership.

### **(a) Style of education**

The style of education provided for indigenous peoples in all three countries was delivered in similar ways. Also, the manner in which this education was intellectually and

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<sup>113</sup> Above note 63, at 17.

<sup>114</sup> For information on the Carlisle school system refer to Adams, D. *Education for Extinction: American Indians and the Boarding School Experience, 1875-1928*, University Press of Kansas, Kansas, 1995.

<sup>115</sup> Above note 49, at 3; Above note 63, at 13-14.

<sup>116</sup> Above note 7, at 6.

<sup>117</sup> Above note 49, at 12. Cf: In the US, funding for sectarian Indian schools ended in 1900.

morally supported, as well as its development over time, follows comparable lines which become more and more aligned the closer we come to the present. Whatever the reason, the educational practices share striking resemblances. The major difference that exists in some senses can be explained by the different 'frontier' times in each country. In both Canada and Australia the frontier lasted well into the 1930s with massacres of Australian Aboriginal peoples occurring into the 1920s and 1930s.<sup>118</sup> Canadian expansion, especially into the Arctic north, meant that changes occurred to policy well into the 20th century. It was not until 1939 that the Canadian Supreme Court ruled that, for administrative purposes, the Inuit people of the Arctic areas were Canadian Aboriginal peoples and, therefore, a federal responsibility.<sup>119</sup>

Whatever the differences in national development, the methods of education, and the manner in which indigenous peoples were brought into the circle of education, were remarkably similar in Australia and Canada. From the middle to late 19th century, the government bodies in each country responsible for indigenous affairs had the power to remove both individuals and larger groups of indigenous peoples as they saw fit. This policy of forced removal gained the support of, and was utilised by, the architects of the Queensland reserve system in the last years of the 19th century.<sup>120</sup> The Canadian Bagot Commission of 1842 favoured the removal of Canadian Aboriginal children from their parents for the purposes of education and assimilation.<sup>121</sup>

In Australia, the legislation varied from jurisdiction to jurisdiction, but in the main the government body or department responsible for Aboriginal affairs retained the power of legal guardian over all Australian Aboriginal peoples, including the power to remove

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<sup>118</sup> Above note 14, at 19.

<sup>119</sup> Above note 15, at 359.

<sup>120</sup> Above note 37, at 7.

<sup>121</sup> Above note 4, at 77, 103; Above note 2, at 106.

groups or individuals as it desired.<sup>122</sup> The education of Australian Aboriginal peoples often occurred in mission settings, but these differed greatly throughout the country. Some were situated close to towns and other places of European habitation, while others were set in remote areas. In other instances, Australian Aboriginal peoples were removed to institutions closely resembling the residential schools of Canada. Throughout the whole range of these institutions a narrow framework of education and organisational practice seems to have been the norm. This is evident in Australia and Canada where the supporting aims and ideologies are similar.

The desire to educate indigenous peoples had common bases in each of the two countries. Firstly, there was the desire to bring the indigenous peoples within the realm of western society. Thus, much of the education practice, and the very way of life in such institutions, was aimed at inculcating European beliefs in indigenous children. In truth, little changed in indigenous education in such institutions for generations. The residential schools of Canada and the mission and other Aboriginal schools in Australia ran on very similar lines. The day-to-day schedules are strong evidence of this similarity.

At the Forrest River Mission in Western Australia, the daily schedule ran thus:

- \* First chores (0600-0700)
- \* breakfast (European staff and Aboriginals separated)
- \* allotment of work (children given light work)
- \* school for 3-4 hours
- \* lunch break
- \* rest period, length of which depends on season
- \* afternoon relaxation and meditation period

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<sup>122</sup> The relevant legislation is listed with descriptions of powers involved and important regulations etc in Appendices 1-7 of *Bringing them home*, above note 15, at. 600ff.

- \* dinner
- \* classes towards baptism
- \* church service
- \* bed.<sup>123</sup>

In Canada, the Residential School day was remarkably like that at the Forrest River Mission. At one school in the early decades of the 20th century, the normal daily routine ran thus:

- \* 0530 rise
- \* 0600 chapel
- \* 0630-0715 bed-making, milking and pumping
- \* 0715-0730 inspection for health and cleanliness
- \* 0730 breakfast
- \* 0730-0800 chores for small boys
- \* 0800 trade boys to work
- \* 0900-1200 school, with 15 minutes morning recess
- \* 1200-1240 lunch
- \* 1240-1400 recreation
- \* 1400-1600 school and trades for older boys
- \* 1645-1800 chores - pumping, etc
- \* 1800-1810 prepare for supper
- \* 1810-1840 supper
- \* 1840-2000 recreation
- \* 2000 prayers and retire.<sup>124</sup>

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<sup>123</sup> Markus, A. *Governing Savages*, Allen & Unwin, Sydney, 1990, at 70.

<sup>124</sup> Above note 63, at 161-2.

These routines are evidence of the strongly military-styled regimentation that was at work in both Canadian and Australian cases. Further, Armitage states that the internal organisation of all residential schools was similar.<sup>125</sup> The desire to 'tame' the 'wildness' in indigenous children was apparent in practices adopted in all three countries. Typical, and perhaps most fundamental in the move to re-socialise indigenous children, was the practice of renaming children on their arrival at residential schools and Australian Aboriginal mission or other schools. The practice was common because it facilitated easier identification for teachers and superintendents and indigenous names were often held to be too difficult to pronounce, and transliteration of the names into English often produced ridiculous results. In the government operated 'native settlements' of Moore River and Carrolup in Western Australia, the practice of renaming arrivees was usual, as was the arbitrary allocation of birth dates.<sup>126</sup>

The unilateral renaming of inmates of the various school systems was only one part of the re-socialisation process. In many cases the very nature of the schools and missions in physical terms was a challenge to indigenous children. They would have to adjust, to 'new conceptions of space and architecture' where straight lines and square corners replaced the central round figure of much Indian culture. The distinctive and regularised time system, based as it was on clocks, rather than nature, was another imposition of European culture on indigenous children.<sup>127</sup>

### **(b) Value of education**

If the aim was to assimilate indigenous children into European society then one would assume that their education would prepare them for the new way of life. However, this

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<sup>125</sup> Above note 4, at 109.

<sup>126</sup> Beresford, Q., & Omaji, P. Above note 13, at 39.

<sup>127</sup> Above note 63, at 44.

was not necessarily the end result. Groome writes of Australia, but his comments are equally as applicable to Canada, when he states that one long-time lesson to be learned from the history of Aboriginal education is that 'despite all the promises, schooling was not able to deliver to Aboriginals a place in Australian society'.<sup>128</sup> The positions they were often trained for was, at best, as female domestics or male rural labourers. Lippmann claims that the schooling of Australian Aboriginal peoples was intended to train them for membership of an underclass, with their culture stripped from them and 'poverty and powerlessness their lifelong lot.'<sup>129</sup>

The desires of governments in Australia and Canada may not have been that overt, or indeed that focused, but there are many examples where keeping indigenous peoples in their 'place' is apparent. Statements questioning the ability of indigenous peoples to ever fulfil a meaningful place in European society are common. However, the belief that 'they' were getting it 'too good' has a long history as well. The Canadian Department of Indian Affairs Annual Report of 1898 raised the concern that Canadian Aboriginal peoples were costing too much because the government and the country gave them 'superior advantages'.<sup>130</sup> In contrast, in the 1920s, it was commonly held impossible that Canadian Aboriginal peoples would be able to compete with Europeans in the broader economy, 'and undesirable that they should try to do so.'<sup>131</sup> The New South Wales Government introduced a new education curriculum for Aboriginal reserve schools, in 1940, which only prepared students for unskilled labour.<sup>132</sup>

Far from being prepared for a meaningful place in European society, the indigenous peoples of Australia and Canada were more often controlled within 'total' institutions.

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<sup>128</sup> Above note 112, at 142.

<sup>129</sup> Above note 8, at 138.

<sup>130</sup> Above note 7, at 8-9.

<sup>131</sup> Above note 49, at 9.

<sup>132</sup> Above note 32, at 149-50.

This phrase was first coined by Goffman in 1961, regarding mental patients and other inmates, and deals with institutions where the inmates are under total control with no real agency in their lives. He describes such institutions as 'the forcing houses for changing persons'.<sup>133</sup> The residential, boarding, and Aboriginal reserve/mission schools all fall within this rubric.

In Western Australia and Queensland, protection legislation forced all Australian Aboriginal peoples onto government settlements or missions. Children in these institutions were housed in segregated dormitories, away from their parents and families. Such removal from family was government policy in all Australian states and territories.<sup>134</sup> Canadian residential schools used the dormitory system as well. The effect of the dormitory system was the over-regimentation and disciplining of children's lives. The Canadian *Indian Act*<sup>135</sup> of 1925 gave to official agents power over Canadian Aboriginal property, schooling, labour on public works, hunting, rights of assembly, ceremonies, and residence.<sup>136</sup> Such was the level of control in some places that in Australia's Northern Territory, legislation, passed in 1932, required Australian Aboriginal peoples to wear brass tags around their necks.<sup>137</sup> Such 'total' control led to a position where indigenous peoples were only socialised to life within institutions, not in the real world.<sup>138</sup> The Canadian Royal Commission on Aboriginal Peoples calls the residential system 'a circle, an all encompassing environment of re-socialisation with a curriculum

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<sup>133</sup> Goffman, E. *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*, Anchor Books, Garden City, 1961, p. 12, cited in Roland D. Chrisjohn, Sherri L. Young and Michael Maraun, *The Circle Game: Shadows and Substance in the Indian Residential School Experience in Canada*, Theytus Books, Penicton, 1997, p.70.

<sup>134</sup> Above note 25, at 30; Above note 11, at 45.

<sup>135</sup> *Indian Act 1925* (Canada)

<sup>136</sup> Above note 4 at 95.

<sup>137</sup> Above note 14, at 38.

<sup>138</sup> Above note 87, at 42.

that comprised not only academic and practical training but the whole life of the child in the school.<sup>139</sup>

The daily routines, noted above, demonstrate that education was not central to the purpose of residential and mission schools. Only a few hours each day are set aside for school or lessons, a practice which was widespread in each of the three countries. Often termed the 'half-day' system, this entailed, as its name implies, at best a half-day schooling regime. The rest of the day, or much of it, was focused on what might loosely be called 'vocational' training. Theoretically this involved training indigenous children and adolescents in some useful trade or occupation. More often than not, however, the children merely provided for their own survival.

School farms were thought to be advantageous places to train indigenous children, but they also had to provide foodstuffs for the school population. The Roelands mission in south-west Western Australia received government subsidies that only covered one-third of its operating costs. The rest was raised from the mission farm a consequence of which was the children had to work laboriously 'to enable the missionaries to conduct their self-appointed role of re-socialising them'.<sup>140</sup> In the event that children were not working to provide for their own sustenance, they were seldom learning anything of any real value. A 1968 Canadian report on indigenous education until 1950 found that the practical training provided 'contained very little of instructional value but consisted mainly of repetitive, routine chores of little or no educational value.'<sup>141</sup>

The levels of academic education achieved by the indigenous peoples in the three countries illuminates the lack of serious education focus in their schooling. In 1950, only

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<sup>139</sup> Above note 21, at 339.

<sup>140</sup> Beresford, Q., & Omaji, P. Above note 13, at 108-9.

<sup>141</sup> Above note 21, at 334-5.



10 per cent of Canadian Aboriginal school-aged children had passed beyond Grade 6 level education, whereas 30 per cent of European Canadian children had passed that level.<sup>142</sup> Census figures from the 1951 Canadian Census show that 40 per cent of all Canadian Aboriginal peoples over the age of five years reported having received no formal education.<sup>143</sup> Between 1890 and 1950, 60-80 per cent of Canadian Aboriginal students failed to pass Grade 3.<sup>144</sup> The Australian experience is similar. In 1965, 58 per cent of New South Wales adult Australian Aboriginal respondents had only received a primary level education.<sup>145</sup> An Australian Bureau of Statistics survey found that in 1986 31% of Australian Aboriginal males over 55 years old reported that they had received no formal education.<sup>146</sup>

Low levels of indigenous education have been caused, in part, by the low level of training their putative educators enjoyed. For much of the history of indigenous education, their teachers have had little or no official training. This can be attributed, in part, to the strong involvement of churches in indigenous education. Those church-based teachers of indigenous children were, at best, compromised in their attempts to educate their charges. The missionary desire to convert indigenous people to Christianity was often more compelling than any educational objective.<sup>147</sup> As Reaume and Macklem state, often untrained or unqualified, they did not really care what happened to the student, 'as long as they got the right responses at mass.'<sup>148</sup>

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<sup>142</sup> Above note 15, at 311.

<sup>143</sup> Above note 7, at 10.

<sup>144</sup> Above note 63, at 197.

<sup>145</sup> Above note 32, at 150.

<sup>146</sup> Bourke, C. 'Economics: independence or Welfare', in Colin Bourke, Eleanor Bourke and Bill Edwards, eds, *Aboriginal Australia: An Introductory Reader in Aboriginal Studies*, University of Queensland Press, St Lucia, 1994, at. 185-6.

<sup>147</sup> Beresford, Q., & Omaji, P. Above note 13 at 105; Above note 110, at 174.

<sup>148</sup> Above note 49, at 9.

Reserves and missions were very often distant from settled areas and teachers were poorly paid for their services. Therefore, the best teachers, or often even competent ones, were rarely drawn to the task. Miller points out that this problem was well known in the 1890s, but also that little had improved by the 1960s.<sup>149</sup>

### **(c) Conditions endured**

If the level of academic or other education afforded to indigenous children in Australia and Canada, and the quality of teachers provided, left much to be desired, what can be said of the care given to those children? In all three instances the answer is universally distressing. The health and wellbeing of indigenous children in government and mission schools across many years was, and continues to be, much worse than that of non-indigenous children in similar institutions. The most basic levels of health were often not available to indigenous children in mission, boarding, or residential schools.

In 1948, the Canadian Departmental Superintendent summed up the nature of the problem when he stated that if he 'were appointed by the Dominion Government for the express purpose of spreading tuberculosis, there is nothing finer in existence than the average Indian Residential School'.<sup>150</sup> Levels of infection with tuberculosis and other related illnesses was very high in both residential and boarding schools, and had been for many years. Between 1894 and 1908, in a report by Dr P. H. Bryce, it was noted that in one particular residential school 28% of Canadian Aboriginal students died, mainly from

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<sup>149</sup> Beresford, Q., & Omaji, P. Above note 13 at 111; Above note 110, at 174-5.

<sup>150</sup> Above note 63, at 289-90.

tuberculosis.<sup>151</sup> It was estimated, in 1902, that approximately half of all children who underwent residential schooling failed to live long enough to benefit from whatever education they might have received.<sup>152</sup> A newspaper editorial in 1907 best describes both the reality and implications of the health problems in indigenous education. The *Ottawa Citizen* stated that even 'war seldom shows so large a percentage of fatalities as does the education system we have imposed on our Indian wards.'<sup>153</sup> In Australia there were reports of major tuberculosis outbreaks. At the Hermannsburg mission in the Northern Territory, a visitor noted in 1934 that there were 42 cases of tuberculosis.<sup>154</sup>

Tuberculosis was not the only widespread health problem facing indigenous children. In Western Australia, there are examples of trachoma affecting children at mission schools up to the 1970s. Again, at Hermannsburg, in 1929, malnutrition led to outbreaks of beriberi and scurvy which killed 40 people. Following this, an outbreak of pneumonia left few well enough to bury the dead.<sup>155</sup> It was discovered, in 1966, at one regional Western Australian institution that it had been years since a physician had visited to examine the children. A government inquiry, in 1970, found that at another WA mission more than 60 of the 92 children living there had untreated medical conditions.<sup>156</sup>

The hardships endured by indigenous children in government and other institutions severely affected their physical health and the abuses they suffered affected both their physical and mental well-being. Again, the experience of indigenous peoples in all three countries is remarkably similar. That there was abuse is no longer in question. Milloy, commenting on the Canadian experience, states that 'there is no doubt that abuse was a

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<sup>151</sup> Above note 49, at 12; Above note 8, at 310.

<sup>152</sup> Above note 4, at 113.

<sup>153</sup> Above note 63, at 110.

<sup>154</sup> Above note 123, at 86.

<sup>155</sup> *Id.*, at 85-6.

<sup>156</sup> Beresford, Q., & Omaji, P. Above note 13, at 138-9.

constant phenomenon in the system.<sup>157</sup> The stories told to the Canadian Royal Commission and the Australian Inquiry leave no doubt. These stories do, as Reaume and Macklem state, tell tales of brutal punishment and sexual abuse. This abuse may have been common, but Chrisjohn *et al.* make the point that it was not sanctioned by the broader society. They state that even 'when it did not constitute torture, discipline (corporal punishment in particular) exceeded accepted "Canadian standards", as reflected in contemporaneous public school practice'.<sup>158</sup> Miller notes that the lack of supervision by government officers 'made it all too easy for the misfits, the sadists, and the perverts to mistreat and exploit the children'.<sup>159</sup> One former residential school student described, in 1966, memories of recaptured runaways from the school being 'forced to run a gauntlet where they were "struck with anything that was at hand"'.<sup>160</sup>

In the Australian context, there were also examples of brutal punishment and sexual abuse. The Human Rights and Equal Opportunity Commission Inquiry into Aboriginal Deaths in Custody found that 28 per cent of witnesses to the Inquiry volunteered that they had been physically abused.<sup>161</sup> Beresford and Omaji claim that abuse was institutionalised 'in many, if not all, of the missions'.<sup>162</sup> Markus, writing of missions in the Northern Territory, notes that whipping, chaining 'offenders' to trees, use of the stocks, and confinement to a cell for up to two weeks, were all used as methods of punishment on one mission.<sup>163</sup> Witnesses to the Australian Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families reported many instances of brutal

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<sup>157</sup> Above note 63, at 165.

<sup>158</sup> Above note 49, at 11; Chrisjohn, R., Young, S., and Maraun, M. Above note 133, at 75.

<sup>159</sup> Above note 110, at 422.

<sup>160</sup> Above note 21, at 372-3.

<sup>161</sup> Above note 25, at 194.

<sup>162</sup> Above note 13, at 147.

<sup>163</sup> Above note 123, at 77.

beatings, chaining up, harsh confinement in an old morgue, and being made to stand out in the elements for long periods of time, among other types of 'punishment'.<sup>164</sup>

Sexual abuse was also a common experience. A Canadian ministerial adviser on sexual abuse commented, in 1990, that 'closer scrutiny of treatment of children at residential schools would show that all children in some schools were sexually abused.'<sup>165</sup> The Australian Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families uncovered that at least one in six witnesses to the Inquiry reported sexual abuse.<sup>166</sup> When one focuses on institutions, which includes the different types of schools, roughly one in ten witnesses claimed they had been sexually abused.<sup>167</sup>

#### **(iv) Comment**

Examination of the history of practice in Australia and Canada reveals perhaps two differing interpretations on the intentions behind such removal. No doubt there existed the belief that removal was intended as a means of saving indigenous peoples from their demise. However, it is equally valid to note that the intention of A. O. Neville was just as widespread and relevant to the development of removal practices in both nations.

## **CONCLUSION**

This paper examined the history of the forcible removal of indigenous peoples from their families in Australia and Canada. That history is influenced by local events in the two nations and shared theories between the two nations. This manifested itself in differences

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<sup>164</sup> Above note 25,44 at 160-1.

<sup>165</sup> Above note 21, at 378.

<sup>166</sup> Above note 25, at 194.

<sup>167</sup> *Ibid.*, p. 163

and similarities in the policies and practices of indigenous child removals. The similarities were no more greater than in the routine and treatment of the children in the missions and other institutions in Australia and residential schools in Canada. Unfortunately, that treatment, for many included abuse, often severe. This historical event or fact, has lead to ongoing effects<sup>168</sup> and calls for reparations. The responses to date of governments to calls for reparations has differed between Australia and Canada.

<sup>169</sup> It remains to be seen how the continuing calls for reparations develops in both nations.

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<sup>168</sup> For information on the ongoing effects for many of those removed from their families and placed in institutional care, see Above note 25, at 187-92; Above note 49 at 12-3; Above note 87, at 28-58; Royal Commission Into Aboriginal Deaths in Custody [RCIADIC], *National Report: Overview and Recommendations*, Australian Government Publishing Service, Canberra, 1991, at 1-2; Morse, B. 'Aboriginal Peoples and the Law', in Bradford W. Morse, ed., *Aboriginal Peoples and the Law: Metis and Inuit Rights in Canada*, Revised 1st Ed., Carleton Press, Ottawa, 1991, at 6; and Buti, T. *After the Removal*, Aboriginal Legal Service of Western Australia (Inc), Perth, 1996, at 38-67.

<sup>169</sup> Australia, Minister for Aboriginal and Torres Strait Islander Affairs Senator John Herron 'Bringing Them Home – Commonwealth Initiatives' *Media Release* (16 December 1997); The Honourable Jane Stewart, Minister of Indian Affairs and Northern Development, 'Statement of Reconciliation: Learning from the Past, [Internet] URL [http://www.inac.gc.ca/info/speeches/jan\\_7\\_Jan](http://www.inac.gc.ca/info/speeches/jan_7_Jan); *Kruger v Commonwealth*; *Bray v Commonwealth* 146 ALR 126; *Cubillo v Commonwealth of Australia* [1999] FCA 518 (30 April 1999) [ At the time of writing this case is being trial on the substantial issues]; *Williams v The Minister, Aboriginal Land Rights Act 1983 & Anor* [1999] NSWSC 843 (26 August 1999), [http://www.austlii.edu.au/au/cases/nsw/supreme\\_ct/recent-cases.html](http://www.austlii.edu.au/au/cases/nsw/supreme_ct/recent-cases.html) ; *R(GB) v Hollet* 1996 DLR LEXIS 1334; and *B (WR) v Plant* (1998) 161 DLR (4<sup>th</sup>).