PACIFIC STUDIES

Vol. 28, Nos. 1/2 March/June 2005

NEVILLE PROOF FENCE

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The separation of Aboriginal children from their families formed a central plank of Aboriginal affairs policy in Australia for at least the first six decades of the twentieth century. In no state was the separation policy more pervasive than in Western Australia. And no one individual stands out more in the planning and implementation of the removal or separation policy than Auber Octavius Neville, chief protector of Aborigines in Western Australia from 1915 until 1940. This article focuses on Aboriginal affairs in Western Australia during the Neville era and also on the influence his views and ideas attained on the national stage, where he played a leading role during the 1937 Conference of Commonwealth and State Aboriginal Authorities.

ON 11 MAY 1995, the Australian Commonwealth government announced that the Human Rights and Equal Opportunity Commission (HREOC) would conduct a National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (the National Inquiry). The National Inquiry was officially launched in Adelaide on 10 August 1995. On 26 May 1997, after eighteen months of public and private hearings (and submissions), the National Inquiry report, *Bringing Them Home,* was presented in the Commonwealth Parliament of Australia.[1] This report, which has generated significant public, media and academic debate and criticism,[2] documents widespread and systematic racial discrimination and gross ill-treatment of Australian Aborigines resulting from the perception of lawmakers and administrators that there was a need to resolve "the Aboriginal problem."[3]

The National Inquiry report states that from at least the mid or late nineteenth century, there was a policy of forcible separation adversely affecting Aborigines in all states and territories across Australia. It argues that in many cases, forcible separation resulted in deprivation of liberty, violation of parental rights, abuses of legislative and administrative powers, breaches

of guardianship obligations, and breaches of human rights. The report also presents the argument that these separation policies and practices amounted to genocide.

The National Inquiry refers to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which Australia ratified in 1949 and which came into force in 1951. The convention defines genocide as

> any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.

In presenting its case for labeling the separation policies as genocidal, the National Inquiry cites the views of Auber Octavius Neville. The National Inquiry writes that "AO Neville, Western Australia's Chief Protector (1915–1940), believed he could 'do nothing' for 'full bloods,' who were thought to be dying out. However, he could absorb the 'half -castes' into the dominant European society."[4]

This article examines Neville's period as Chief Protector of Aborigines in Western Australia, particularly the views he held and actions he took to separate Aboriginal children from their families. Neville received much attention in the critically acclaimed film *Rabbit-Proof Fence* (where he was portrayed by noted British actor Kenneth Branagh). This is understandable, as his fingerprints loomed large in the administration of Aboriginal affairs in Western Australia for nearly three decades in the early twentieth century. It should be added that Neville also assumed a prominent role on the national stage, as his views and ideas took a leading role in the 1937 Conference of Commonwealth and State Aboriginal Affairs authorities. Before examining the Neville era, I provide an outline of the early twentieth century prior to Neville's appointment as Chief Protector of Aborigines in Western Australia.

1900–1915

The Push for Greater Interference

During the 1890s the part-Aborigine, or so-called half-caste population, of the Colony of Western Australian, particularly in the southwest, was attract-

ing the attention of government officials. In 1891 there were 571 half-castes in Western Australia; ten years later, 951—of whom 691 were in the south-west region, forming over 45 percent of the total southwestern Aboriginal population.[5]

The first Chief Protector of Aborigines in Western Australia was Henry Prinsep, appointed in 1898. Prinsep was convinced that half-castes needed to be separated from the so-called full-bloods and the "full bloods" had to be segregated from the rest of society. In particular, he believed Aboriginal children of "mixed descent" living in "native camps" learned only "laziness" and, left to their own devices, would grow up to be "vagrants and outcasts," "not only a disgrace, but a menace to our society." Prinsep believed that it was the government's duty to place the children in missions to be trained as "useful workers . . . and humble labourers."[6]

During this period most of the Aboriginal children in missions had been placed there by either parents or, if orphans, the Aborigines Department. However, even though Prinsep lacked any legislative authority to force the removal of Aboriginal children to missions, the department still coerced some children into missions against their parents' wishes.[7] This, however, was difficult to achieve as parents usually were unwilling to surrender their children. Prinsep complained in his 1902 annual report that "the natural affections of the mothers . . . stood in [the] way" of inducing parents to send their children to the "native" missions.[8]

During the later part of the ninetieth century, humanitarians in both the settled population of Western Australia and from within the ranks of British society criticized the colonial government's treatment of Aborigines. Of particular concern were the alleged abuses and maltreatment of Aborigines working in the pastoral industry.

Unsurprisingly, pressure was mounted for an investigation into the administration of the Aboriginal population. In April 1904 Walter James, then premier of Western Australia, approached Dr. Walter Roth, the Oxford-educated assistant protector of Aborigines in Queensland, to elicit his interest in serving as Royal Commissioner into Aboriginal Administration in Western Australia. He agreed, and on 31 August Roth was formally appointed as head of the Royal Commission on the Condition of the Natives. Roth completed his report on 24 December 1904, and it was tabled in parliament in January 1905. Roth agreed with Prinsep that it was necessary to remove the half-caste children from the general Aboriginal population. In fact, he seems to suggest that most Aboriginal children should be separated from adult "members": "There is a large number of absolutely worthless blacks and half-castes about who grow up to lives of prostitution and idleness; they are a perfect nuisance; if they were taken away young from their surroundings of temptation much

good might be done with them." To this effect, Roth recommended that legislation be introduced allowing the Aboriginal population to be segregated from the general population and making the chief protector the legal guardian of all Aboriginal children.[9]

The recommendations of the Roth commission report were to receive legislative force through the Aborigines Act 1905 (W.A.). The Western Australian 1905 act closely resembled the Aborigines Protection and Restriction of the Sale of Opium Act 1897 (Qld.), reflecting Roth's involvement with the Aboriginal affairs department in Queensland. The 1905 act acted as a blueprint for much of the Aboriginal-specific legislation that was to follow in Australia's other jurisdictions.

The 1905 Act

The 1905 legislation reflected desire by the government and ruling classes to segregate and control Aboriginal peoples.[10] The Aborigines Act 1905 (W.A.) created a ministerial post and department charged with promoting Aboriginal welfare through education, health care, and other provisions (sec. 4). For the purposes of the act, an Aborigine was deemed to be "an aboriginal inhabitant of Australia," a "half-caste," or the child of a "half-caste" who was co-habiting or otherwise habitually living or associating with Aborigines (secs. 3[a–c]); or "a half-caste child whose age apparently does not exceed sixteen years" (sec. 3[d]). The definition of "half-caste" included "any person born of an aboriginal parent on either side, and the child of any such person." These combined section 3 definitions were to apply prospectively and retroactively.

Contrary to the section 3 definition of Aborigine, the act provided a supplementary definition of "half-caste" in section 2. This "half-caste" definition included any person with an Aboriginal mother and non-Aboriginal father except for "quadroons," itself a term that was not defined. Where the term "half-caste" appeared in the act, apart from section 3, this definition of half-caste served to exclude certain Aboriginal children from the scope of the chief protector's guardianship obligations. It was not clear when the narrow (sec. 2) or broad (sec. 3) definition of half-caste was to apply under any given statutory provision, because the narrow definition stated that it would apply "unless the context [of the provision] otherwise requires." The narrower definition appears to have been intended to generally exclude from guardianship Aboriginal children whose immediate matrilineal descent was non-Aboriginal.

The Chief Protector of Aborigines headed the Aborigines Department and became the legal guardian of all Aboriginal and half-caste children less than sixteen years old (sec. 8). An amendment extended the chief protector's

guardianship powers to enable removal of an illegitimate half-caste child to the exclusion of the mother's rights (Aborigines Act Amendment Act 1911 [W.A.], sec. 3).

Certain of the department's custodial duties under the 1905 act targeted children only (for example, sec. 6 [3]), while other provisions were intended to protect the welfare of all Aborigines regardless of age. These duties included the apportionment of monies, distribution of clothing, maintenance and education of children, health and general supervision and care of Aboriginal welfare.[11]

The 1905 act also empowered the Governor to set aside Crown lands for Aboriginal reservations (sec. 10). It imposed restrictions on Aborigines' right of movement, (sec. 12) and restricted access by non-Aborigines to reserves (secs. 14, 15) or camps (sec. 36). Miscegenation was proscribed (sec. 43). Female Aborigines were prohibited from being within two miles of a river or inlet used by pearlers or other sea boats (secs. 40, 41). A prohibition was introduced to prevent the removal, without the protector's permission, of children under the age of sixteen or all female "aboriginals" or "half-castes" from a "district" (sec. 9). The act imposed restrictions on the employment of Aborigines and their rights to contract (secs. 16–32, 35). Restrictions were also imposed on the right of Aborigines to own property (sec. 33), to marry (sec. 42), and to consume alcohol (sec. 45; see also sec. 10).

The 1905 Act in Action

Australian historian Anna Haebich argues that the 1905 act "laid the basis for the development of repressive and coercive state control over the state's Aboriginal population" and "set up the necessary bureaucratic and legal mechanisms to control all Aboriginal contacts with the wider community, to enforce the assimilation of Aboriginal children and to determine the most personal aspects of Aboriginal lives."[12] The Aborigines Department was granted the status of a full government department but without the necessary injection of resources to properly and adequately carry out its duties. It relied on local protectors who were not paid an honorarium as recommended by the Roth Royal Commission. Police were also used as protectors, which created confusion and conflict between the police duties to protect and duties to control and prosecute.

Although the 1905 act granted the chief protector new powers to separate Aboriginal children from their families, between 1906 and 1910 the numbers of children in missions fell from 133 to 97 in the south.[13] Attention focused on the northwest of the state, where increasing numbers of children were being removed to missions (the actual numbers are not available)[14] and new

missions and other homes for Aboriginal children were being established. At the time of the act's enactment, there were five missions and homes for Aboriginal children. Between 1905 and 1914 ten additional institutions were established: seven in the northwest, one in the Perth city area, and two in the southwest.

To facilitate family separation even further, police, protectors, and justices of the peace were given the power to remove children without the authorization of the chief protector as previously required. This new regulation related to half-caste children under eight years of age.[15] Removal was furthered facilitated in 1911 when the chief protector's guardianship was extended "to the exclusion of the rights of the mother of an illegitimate half-caste child."[16] The 1911 amendment provided for the governing authorities of missions and other "Aboriginal institutions" to have the same powers as those given to governing authorities "in respect of State children by the State Children Act, 1907" (Aborigines Act Amendment Act 1911 [W.A.], secs. 3, 11).

In 1907 Charles Gale succeeded Prinsep as chief protector. Until 1910 he held the dual roles of chief inspector of fisheries and chief protector of Aborigines. Gale, like Prinsep, had no previous experience in Aboriginal affairs, but as a pastoralist he had had contact with Aborigines. Gale also favored segregating the Aboriginal population and separating children from their families. Gale's tenure as chief protector, however, became strained after the appointment in 1914 of Rufus Underwood as the minister responsible for Aboriginal affairs. While Underwood did not oppose removing Aboriginal children from their families, he did object to spending money for the missions to care for the young Aborigines. Underwood dismissed Gale as chief protector in early 1915, replacing him with the then-secretary of the Immigration Department, Auber Octavius Neville.

Control of Aborigines after 1915: The Neville Era

Neville, Reserves, Settlements, and Missions

The appointment of the long-serving public servant, the English-born Neville, to the position of chief protector of Aborigines, heralded a new era in Aboriginal affairs. Like his predecessors in the position, Neville had no previous experience in Aboriginal affairs; furthermore, unlike those before him, he also had no experience or even contact with Aborigines. He moved quickly to implement a new organizational structure within the Aborigines Department that included changes to issuing permits for Aboriginal labor hire, collecting statistical data, record keeping such as recording births and deaths, marriages and relief. Although Neville did not waste time in stamp-

ing his mark in his new position, he felt isolated and alone. His predecessor, still smarting from his dismissal, was not there to provide a guiding hand.[17]

Neville traveled extensively around the state and was determined to apply the provisions of the 1905 act to all Aborigines. However, between 1920 and 1926, while still serving as the chief protector of Aborigines in Western Australia, he was responsible only for the administration of the northwest (that portion of the state north of the twenty-fifth parallel). Chief Inspector of Fisheries F. Aldrick was appointed the deputy chief protector, and assigned responsibility for Aborigines south of the twenty-fifth parallel. During the period 1920–1926, Aboriginal affairs came under the control of the North-West and Fisheries Departments. In 1926 the North-West Department as well as the deputy chief protector position were abolished. Aboriginal affairs now came under the responsibility of the Aborigines Department, and Neville once again took charge of the administration of Aboriginal affairs throughout the state.

Neville's tenure as chief protector was marked by a zeal to enforce the 1905 act. Neville interfered in all aspects of Aboriginal life, including the personal lives of individuals. For Aborigines, Neville was the symbol of all-encompassing authoritarian control. In 1928, for example, prominent Aboriginal spokesman William Harris said that Aborigines were "afraid of him" and that Neville was one of the "worst enemies of Aborigines."[18] Only a year earlier Neville had advised the Colonial Secretary's Department to declare the City of Perth a prohibited area for Aborigines under section 39 of the Aborigines Act 1905 (WA). This meant they were not allowed to enter the city unless for the purpose of lawful employment. Perth remained a prohibited area until the restriction was revoked by the Native Amendment Act 1947 (WA).

Neville's views centered on a belief that full-bloods should be left alone but the half-caste child, if removed from Aboriginal surroundings, would make "as good a citizen as anybody else"; and Neville wanted to "raise them to that stage."[19] His views were succinctly reported in a newspaper article published in 1937:

> 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.
>
> Sixty years ago, he said, there were over 60,000 full-blooded natives in Western Australia. Today there are only 20,000. In time there would be none. Perhaps it would take 100 years, perhaps longer, but the race was dying. The pure-blooded aboriginal was not a quick breeder. On the other hand the half-caste was. In Western

> Australia there were half-caste families of 20 and upwards. That showed the magnitude of the problem.
>
> In order to secure this complete segregation of the children of pure blacks, and preventing them ever getting a taste of camp life, the children were left with their mothers until they were but two years old. After that they were taken from their mother and reared in accordance with white ideas.[20]

Neville was to exert a profound influence on the formulation and administration of Aboriginal affairs policy for more than two decades. He enjoyed national prominence in the 1930s, when his absorptionist views gained increasing influence. Neville's guiding belief was that half-castes must be absorbed into the wider community. In the 1940s he wrote, "The native must be helped in spite of himself!"[21] He believed "the sore spot must be cut out for the good of the community as well as of the patient, and probably against the will of the patient."[22]

The so-called half-caste problem dominated his thinking during his protector tenure. In 1935, reflecting on the changes he had made to his department since he took charge, he wrote:

> Since 1915 the character of our work has gradually changed, the half-caste question, then in its infancy, has now assumed formidable proportions and the activities of the Department have had to be considerably extended to meet ever increasing needs. A new generation, differing from its forebears and demanding greater consideration at our hands has attained manhood. The children of this generation are growing up mainly lacking those essential provisions for their welfare which we have failed to provide to their parents.

Neville adopted the antimission stance of Rufus Underwood, the first minister he served under, and came to believe that the "native reserve system" or "native settlement scheme" was the solution to the "Aboriginal problem."[23] In 1916 he wrote of

> filling a long-felt want in the direction of providing a home to which the various waifs and strays who come under the care of the Department from time to time can be sent and receive proper care, education and training. Naturally the establishment of Government settlements of this kind will to some extent affect the work of the Missions, as some of the children hitherto sent to the Missions and subsidised at a per capita rate, will in future be sent to our own

> settlements, where they can be more economically dealt with, and where they will always find a home.[24]

This native-settlement system or scheme sought to segregate Aborigines by "guaranteeing" them Aborigines-only farming settlements by the government. In contradiction to the segregationist purposes, however, the children were isolated from their parents on the reserves, to be educated into the European way of life as farmhands and domestic servants. In 1944, reflecting on his time in Aboriginal affairs, Neville wrote again of the need to separate children from their parents:

> Every coloured child then, must be placed at a residential school at a settlement, and I use the word settlement advisedly, because institutions selected for this purpose must necessarily become what we now describe as Government Native Settlements. The child must be free from all parental control and oversight—it must enter at the earliest possible age—it must be considered to all intents and purposes an orphan. Many, of course, are orphans, and there should be no difficulty in these cases. There will be few exceptions other than amongst those of parents who are already assimilated into the community. The children of full-bloods are not of course referred to as coloureds.[25]

Neville believed that the lighter the skin color of a child, the less contact they should have with Aborigines and their environs. His own words best sum up his position, a position that was to drive separation policies and practices over two decades:

> Quadroons or nearer whites not already properly cared for under white conditions of course must go as soon as possible to institutions for white children and learn to forget their antecedents, and their parents and coloured relatives should be strictly excluded from any contact whatever with them. There is a special home for such youngsters in Western Australia, and this might well be emulated elsewhere.
>
> Many working half-caste girls having infants fathered by white men came to me to discuss the disposal of their children. When I explained to them that separation was inevitable for their children's sake, most of them saw the matter as I did, and on giving them up made and kept a promise not to molest them in any way. I found that these children in their new surroundings had no difficulty in

> comporting themselves as white children, and any picture of their mothers which they might have retained at first rapidly faded from their minds. They attended the State schools and many of them were well above the average in their work. In later life there was a possibility of a meeting between the children and their mothers, but though this was unlikely, by that time both would realise the position sufficiently well to avoid any adverse consequences from it. Some of these near white children were adopted by childless white couples, and that too is all to the good. Quite a few mothers went to service in the country having their children with them, and this plan worked well enough in the early years, difficulties arising as the children grew older, eventually leading to separation.[26]

In practice, once a child was separated, contact between parent and child was often refused, regardless of degree of Aboriginality.[27] Further, the Aborigines Department came into increasing conflict with the missions that were also attempting to "uplift" the children. Neville's plans to disband the missions in favor of native settlements and other government-run institutions and homes were thwarted, particularly in the north of the state, by insufficient resources. The department simply did not have the means to take over the role or "services" being provided by the missions. Thus, Neville and the department had no choice other than to allow the missions to take in Aboriginal children. From 1915 to 1940, the period of Neville's tenure, fifteen new Aboriginal-specific children's institutions were established; of those, six were government established and run,[28] the others controlled by religious organizations.[29]

The Moseley Royal Commission

In 1934, in response to allegations of maltreatment of Aborigines and lobbying from humanitarians, the government established the Moseley Royal Commission into Aboriginal Affairs.[30] Moseley made twenty-six recommendations on a wide variety of issues.

Moseley displayed sensitivity to the pain caused by separating children from parents that was lacking in others in officialdom who had championed the policy.[31] Nevertheless he believed removal from their families was often necessary, to allow the children to be educated and "civilized," especially so in cases of quadroons. Moseley recommended that the definition of half-caste be amended to include persons of Aboriginal origin in remote areas and that greater control be given over half-caste minors by designating the minister as legal guardian of every half-caste child under age sixteen, extendable by

magistrate order to age twenty-one.[32] These measures would facilitate placement in institutions for education and learning. Moseley also recommended the prohibition against miscegenation be made stricter.[33]

The 1936 Amendment Act

Adopting many of the Moseley report recommendations, the Western Australian government initiated and passed the Aborigines Act Amendment Act 1936 (WA), the first major revision of the Aborigines Act 1905 (WA). Much to Neville's earlier disappointment, the Aborigines Bill 1929—aimed at greater control over Aboriginal marriages and over sexual contacts between Aborigines and non-Aborigines—had failed to pass the Legislative Assembly of the Western Australian Parliament (though it was passed by the Legislative Council). The 1936 act was to be read in conjunction with the 1905 act, and its provisions remained largely intact until 1954.[34]

During the second reading of the 1936 act, the Western Australian premier gave a speech expressing the desire to benefit the state's Aborigines by implementing the Moseley report recommendations.[35] For instance, he expressed great concern over the moral risks posed to young Aboriginal girls and thus the need to increase the powers of the chief protector to cover a larger number of Aboriginal children.[36] Despite the benevolent assertions of the premier and others, some parliamentarians questioned the so-called benefits of the act for Aboriginal people. The member for Kimberly, for example, a Mr. Coverley, said that "[a]t first reading, it appeared to me to be harsh treatment that any person should have power to take charge of children irrespective of the opinions or wishes of the parents; because, after all, the aborigines have just as much affection for their offspring as have the people of any race." Nonetheless, Coverley deferred to the royal commissioner's recommendation and was willing to accept that "this proposed power will be necessary so that the Chief Protector can take charge of children and place them in an institution where they will be educated and taught to be useful."[37]

Many parliamentarians referenced a threatening menace posed to white society by the Aborigines, particularly the half-castes. The Honorable J. Nicholson declared that parliament must put a "check on or stamp out the tremendous menace confronting the State"; the Honorable W. J. Mann described the increase in the half-caste population as a menace.[38] The Honorable G. B. Woods referred to the "ever-increasing menace" that had to be curtailed:

> The girls, constituting the greatest problem of the lot, could be put into schools also. I would not be above taking them away from

> their mothers at the earliest possible stage. We have to face this problem, but so fast are these people breeding that during the last 12 months there has been an increase in the previous population of 4,000 half-castes. So members can work out for themselves what the position is likely to be in a few more years. There will then be so many half-castes and coloured people in the State that we shall not know what to do. But we owe it to the future generations of white people that something should be done to stop this ever-increasing menace. There are many ways of doing it.[39]

Woods added that it was necessary to separate the half-castes from the full bloods because "the long term distance view is to breed these people right out, but so long as the half-castes can mate with the full blacks, the process is being reversed, and in five years' time we shall have a great many more half-castes and quarter castes then we have to-day."[40]

In the parliamentary debate about the 1936 act, this question of reducing the "menace" posed by the increasing half-caste population received much attention. The concern was based partly on a view that the Aboriginal race was inferior to the European race and thus should not be allowed to increase its population. In effect, this reflects a eugenics view, evidenced by the thinking of the Honorable L. Graig:

> We might help to overcome the difficulty by getting the half-castes and the quadroons away from the full bloods. The natives are of the same blood as we are, and the colour can be bred out of them for the reason that they are not like Asiatics or the Negroes. The danger to-day lies in the native camps in the South-West where the half-castes go back and live with the full-blooded natives, and in that way get back once more to the darker blood. If we can separate the half-castes from the pure blacks we shall go a long way from the half and quarter-castes so that the blending shall be towards the white. The colour must not be allowed to drift back to the black. If we can only segregate the half-castes from the full-bloods we shall go a long way towards breeding the dark blood out of these people....We should be prepared to spend considerable sums of money in taking away the female children, giving them a good education, and training them to do useful work. If they do go out to service, and then get into trouble, that trouble will be associated with white people which, in itself, will assist to breed out the colour. The main essential is to breed out the dark colour.[41]

Some parliamentarians even suggested, expressly or by implication, forced sterilization. For example, the Honorable E. H. H. Hall, speaking of an Aboriginal woman who had given birth to five children—allegedly all by different white fathers—said, "I wish the Royal Commissioner had embodied a suggestion in his report that action should be taken against such a woman that would prevent her from ever bringing children into this world again."[42] The Honorable L. B. Bolton agreed: "it would not be too much to suggest that we take steps to sterilise these unfortunate young women." Though saying he was motivated by concerns for these women, Bolton declared himself "staggered to learn of the alarming rate at which the number of half-castes is increasing."[43]

With passage of the 1936 act the parliament expanded the range of persons falling within the powers of the Aborigines Department (now referred to as the Department of Native Affairs; sec. 3[1][a]). Deleting the 1905 definition of "half-caste" (sec. 2[d]) had the effect of including some patrilineally Aboriginal children. This expansion provoked criticism from the Honorable N. Keenan: "The parent Act does not touch quadroons at all. The proposal now is to rope in another generation. The net is being extended unduly."[44] Further, the 1905 term "Aborigine" was replaced with the term "native" in the 1936 act (sec. 2[e]). A "native" was defined as "any person of the full blood descended from the original inhabitants of Australia," regardless of age, and certain quadroons. A "quadroon" was defined as an Aboriginal descendant with "one-fourth of the original full blood" (sec. 2[f]). Accordingly, the definition of persons falling within the scope of the legislative regime was broadened to include all quadroons who were under the age of twenty-one and who were associating with or substantially living in the manner of full bloods (sec. 2[e][b][i]).

Potentially the legislative net could be cast further to include yet more Aborigines. The act provided that quadroons falling outside the "inclusive" component of the definition could, under certain circumstances, be classed as a "native" by order of a magistrate or the minister (secs. 2[e][b][i] and [ii]; sec. 2[e][b][iii]). This would ensure that the chief protector of Aborigines (retitled Commissioner of Native Affairs; sec. 3[1][a]) retained power over the growing number of quadroons seemingly beyond his powers. Further extending the extent of the chief protector's powers, the guardianship age was raised to twenty-one from sixteen (sec. 7).

The 1936 act did not adopt the Moseley report recommendation to give legal guardianship to the responsible minister. In language similar to the 1911 Amendment Act, the 1936 act made the commissioner of native affairs the "legal guardian of every native child notwithstanding that the child has a parent or other relative living" (sec. 7). This expanded definition authorized the commissioner to forcibly remove virtually any child of Aboriginal descent. The 1936 act maintained many of the preexisting guardianship duties

and imposed additional obligations as well. It provided for expanded medical examination powers, by penalty of law (sec. 12), and powers for the administration of Aboriginal estates (sec. 21). The act also strengthened powers that restricted the rights of Aborigines on matters including marriage, interracial cohabitation, entry into employment contracts, and alcohol consumption (secs. 25–28).

1937 Commonwealth and State Native Welfare Conference

Attendees of the 1936 Premiers Conference in Adelaide decided that the chief protectors and boards controlling Aborigines in the states and the Northern Territory should meet together to discuss Aboriginal affairs policy. Such a conference was held at Parliament House, Canberra, between 21 and 23 April 1937. The conference was dominated by those jurisdictions with the largest Aboriginal populations: Western Australia, Queensland, and the Northern Territory. And it provided Neville with the perfect national stage to espouse his views and policies on biological absorption and eugenics.

The conference passed a resolution supporting a policy of the complete "absorption" of the Aboriginal peoples of Australia into the European-descended population: "DESTINY OF THE RACE. — That this Conference believes that the destiny of the natives of aboriginal origin, but not of the full-blood, lies in their ultimate absorption by the people of the Commonwealth, and it therefore recommends that all efforts be directed to that end."[45] This "dying pillow" or "dying race" concept was very influential in Western Australia in the 1920s and 1930s and is based on the idea that a discrete "race" can somehow "die out." This idea has many points of genesis, but perhaps the most important is that of eugenics. Based on the idea of a relationship between racial strength and human heredity, eugenics was seen as practical Darwinism by its founder, Francis Galton, cousin to Charles Darwin.[46] Galton first defined the idea of eugenics in 1884,[47] but the movement was at its strongest in the first four decades of the twentieth century.[48] The point where eugenics departs from other racial theories is that eugenicists believe that "weaker" races should be bred out of existence.[49]

One conference delegate described this policy as the only solution to the Aboriginal "problem."[50] Within this broad policy the Aboriginal population was broken into two subsets, which would be treated differently. Those of mixed descent would be absorbed, "regardless of their wishes in the matter," and those deemed full bloods would be left on reserves.[51] The unanimous consensus reached was that the full blood population would eventually die out.[52] One commentator states that it was universally accepted at the con-

ference that the various governments had the right to impose biological as well as economic assimilation upon the Aboriginal peoples.[53] The report of the National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from Their Families noted that the absorption model, initiated by Neville, was initially biological, and that the later incarnation known as assimilation was a socio-cultural model, both forms carrying the seed of annihilation for Aboriginal peoples.[54]

The attitudes driving the policy of merging the Aboriginal people into the dominant non-Aboriginal population were placed on the national stage by the 1937 conference in Canberra. Neville articulated those attitudes in his remarks to the conference. His remarks are worth noting here in some length, as they bring together the prevailing attitudes of the first three to four decades of the twentieth century:

> The opinion held by Western Australian authorities is that the problem of the native race, including half-castes, should be dealt with on a long-range plan. We should ask ourselves what will be the position, say, 50 years hence; it is not so much the position to-day that has to be considered. Western Australia has gone further in the development of such a long-range policy than has any other State, by accepting the view that, ultimately the natives must be absorbed into the white population of Australia. That is the principal objective of legislation which was passed by the Parliament of Western Australia in the last session. I followed closely the debates which accompanied the passage of that measure, and although some divergence was, at time, displayed, most members expressed the view that sooner or later the native and white population of Australia must [be] merged. The Western Australian law to which I have referred is based on the presumption that the Aborigines of Australia sprang from the same stock as we did ourselves: that is to say, they are not Negroid, but give evidence of Caucasian origin.
>
> If the coloured people of this country are to be absorbed into the general community they must be thoroughly fit and educated at least to the extent of the three R's. If they can read, write and count, and know what wages they should get, and how to enter into an agreement with an employer, that is all that should be necessary. Once that is accomplished there is no reason in the world why these coloured people should not be absorbed into the community. To achieve this end, however, we must have charge of the children at the age of six years; it is useless to wait until they are twelve or thirteen years of age. In Western Australia we have power under

> the Act to take any child from its mother at any stage of its life, no matter whether the mother be legally married or not.
>
> ...[I]n order to prevent the return of those half castes who are nearly white to the black, the state Parliament has enacted legislation including the giving of control over the marriages of half-castes. Under this law no half-caste need to be allowed to marry a full-blooded Aboriginal if it is possible to avoid it....
>
> ...I see no objection to the ultimate absorption into our own race of the whole of the existing Aboriginal race....
>
> ...Every administration has trouble with half-caste girls. I know of 200–300 girls, however, in Western Australia who have gone into domestic service and the majority are doing very well. Our policy is to send them out into the white community, and if the girl comes back pregnant our rule is to keep her for two years. The child is then taken away from the mother and sometimes never sees her again. Thus these children grow up as whites, knowing nothing of their own environment. At the expiration of the period of two years the mother goes back into service. So that it really does not matter if she has half a dozen children.[55]

In the general discussion that followed the initial state and territory presentations, Neville commenced by reinforcing his "dying pillow" concept: "There are a great many full-blooded aborigines in Western Australia living their own natural lives. They are not, for the most part, getting enough food, and they are, in fact, being decimated by their own tribal practices. In my opinion, no matter what we do, they will die out." Neville added that because the full-bloods were dying out, they were not a problem for administrators and the community. The future problem rested with the ever-increasing "coloured" or half-castes.[56]

The coercive nature of the Aborigines Act Amendment Act 1936 (WA) is reflected in the following excerpt from Neville's conference speech.

> Reference has been made to institutionalism as applied to the aborigines. It is well known that coloured races all over the world detest institutionalism. They have a tremendous affection for their children. In Western Australia, we have only a few institutions for the reception of half-caste illegitimate children, but there are hundreds living in camps close to the country towns under revolting conditions. It is infinitely better to take a child from its mother, and put it in an institution, where it will be looked after than to allow it to be brought up subject to the influence of such camps. We allow

> the mothers to go to the institution also, though they are separated from the children. The mothers are camped some distance away, while the children live in dormitories. The parents may go out to work, and return to see that their children are well and properly looked after. We generally find that after a few months, they are quite content to leave their children there.[57]

Here Neville is speaking only of the native settlements where the parents lived on the reserves and the children had been removed to an institution on the settlement or nearby. Neville fails to mention that legitimate children were also removed and omits the missions and homes, such as Sister Kate's home, where there was little contact, if any, between parents and their separated children.

The above excerpt highlights a number of considerations concerning the Western Australian government's policies in existence at the time. It is clear that a policy existed to transfer children away from their families and cultures to institutions where they would be subjected to the "European way." Neville justifies this policy using benevolent motives. His comment, however, raises questions of consent to the separations or removals. Arguably, what Neville considered contentment on the mothers' part to having their children removed could also be described as despair and loss of hope of ever having their children returned.[58]

In response to the question of what happened to the children after they were taken from their parents, Neville said:

> We recognize that we cannot do much with the older people, except look after them and see that they are fed. As regards the younger people, from twenty years upwards, we can find employment for them if possible, but it is of the children that we must take notice. You cannot change a native after he has reached the age of puberty, but before that it is possible to mould him. When the quarter-caste home, in which there are now nearly 100 children, was started we had some trouble with the mothers. Although the children were illegitimate, the mothers were greatly attached to them, and did not wish to be parted from them. I adopted the practice of allowing the mothers to go to the institution with the children until they satisfied themselves that they were properly looked after. The mothers were then usually content to leave them there, and some eventually forgot all about them.
>
> ...When they enter the institution, the children are removed from the parents, who are allowed to see them occasionally in order

> to satisfy themselves that they are being properly looked after. At first the mothers tried to entice the children back to the camps, but that difficulty is now being overcome.[59]

Again, Neville was restricting his comments to the native settlements and illegitimate children. Legitimate children were also removed. He also, yet again, confuses the loss of hope of Aboriginal mothers with consent to the separation policies. However, there is little doubt that the legislative regime in Western Australia and government policy allowed force to be used in separating or removing children. Note, for example, the following query from a member of the New South Wales Protection Board recorded in the conference proceedings: "Mr Harkness.—Can your department take them by force up to any age? Mr Neville.—Yes, up to the age of 21."[60]

The proceedings of the 1937 conference provide a rich source of historical evidence of the views and attitudes that governed Aboriginal affairs policy during Neville's tenure as chief protector of Aborigines/commissioner of native affairs in Western Australia. These attitudes, centered on the "dying pillow" or "dying race" concept and eugenic theories, drove a legislative, administrative, and practical scheme of biological absorption that separated Aboriginal children from their parents. Approaching the 1940s this policy was still in force, as ably demonstrated in a 1939 statement from the district protector of Midland: "Would not the separation of the young from close contact with grown members of the settlement tend to minimise the influence of their elders and so help to eradicate what may, if too frequently observed, prove to weaken their characters and usefulness."[61] This biological absorption model would continue to dominate Aboriginal affairs in Western Australia into the early 1940s, after Neville had departed from his position.

The End of Neville

In 1940 Neville resigned his position as commissioner of native affairs. His replacement, Frank Bray, did not differ markedly in style, approach, or policy from Neville—though during his 1940–1948 tenure the drive toward "whitening" the half-caste population lost intensity. There are a number of explanations for this, including the draining of resources to assist the war effort and a shift in public and government opinion away from policies that appeared to have some commonality with Nazi Germany's eugenic policies.[62] Nevertheless Neville's influence and legacy remained intact during Bray's tenure; the Aboriginal children, more so the half-castes, had to be removed from the negative Aboriginal influences to be raised in the "white ways."

Indeed, in his 1940 annual report Bray praised the superintendent of the Carrolup settlement for removing "indolent natives and their children," thus "cleansing the towns and districts of the worst types of natives."[63]

Conclusion

The film *Rabbit-Proof Fence* tells the story of the journey of three young part-Aboriginal girls back to their mothers from a government institution (only two successfully made it home). In the harsh trek the girls follow the long barrier fences erected in an endeavor to prevent rabbits from migrating from the east to the west of the Australian continent. A. O. Neville built his own separation fence, a fence erected from an idea and put in place by policy and legislation. Neville's barrier fence was an attempt to keep away the "bad influences" of Aboriginal parents from their children. In some cases he succeeded in preventing contact between child and parent; in other cases he did not. And in many cases the long-term effects of these separations have been devastating; yet in some, not so. But the legacy of Neville and the historical separation of Aboriginal children from their families remains a contentious topic in contemporary Australian political and community debate.

NOTES

1. Human Rights and Equal Opportunity Commission, *Bringing them home* (AGPS Canberra 1997).

2. For example, refer to R Brunton, "Betraying the Victims: The 'Stolen Generations' Report" (1998) 10 IPA Backgrounder 1; H Wooten, "Ron Bruton & Bringing then Home" (1998) 4 *Indigenous L Bulletin* 4; P Howson, "Rescued from the Rabbit Burrow" (1999) June *Quadrant* 10; R Marsh, "'Lost', 'Stolen' or 'Rescued'?" (1999) *Quadrant* 15; B Lane, "Rights body a 'bad influence' on policy" *The Australian* (11 September 2000) 26; S Powell, "Sloppy study makes falsehoods fact" *The Australian* (11 September 2000) 26; R Manne, "In Denial: The Stolen Generations and the Right" (2001) 1 *Australian Quarterly* Essay 3; P Carlyon, "Stolen Children: On the Words that Matter" *The Bulletin* (12 June 2001) 26.

3. Above n 1, 277–78.

4. Ibid, 274.

5. P Biskup, *Not Slaves Not Citizens* (University of Queensland Press St Lucia 1973) 42, 29.

6. A Haebich, *For Their Own Good* (University of Western Australia Press Nedlands 1988) 57.

7. Ibid, 67.

8. Chief Protector of Aborigines, H Prinsep, *Annual Report of the Aborigines Department 1902* (Government Printer Perth 1902) 67.

9. Commissioner WE Roth, *Royal Commission on the Conditions of the Natives Report* (Government Printer Perth 1905) 25. Ibid, (1905) 26, 28.

10. P Brock, *Outback Ghettoes: Aborigines, Institutionalisation and Survival*, (CUP Cambridge 1993) (1993) 12.

11. Aborigines Act 1905 (WA), section 6.

12. Above n 6, 83.

13. Chief Protector of Aborigines, H Prinsep, *Annual Report of the Aborigines Department 1906* (Government Printer Perth 1906) 4; Chief Protector of Aborigines, C Gale, *Annual Report of the Aborigines Department 1910* (Government Printer Perth 1910) 6.

14. At one northwest mission, Beagle Bay, the number of children increased from 60 in 1907 to 94 in 1909 – Chief Protector of Aborigines C Gale, *Annual Report of Aborigines Department 1907* (Government Printer Perth 1907) 7–10; C Choo, *The Role of the Catholic Missionaries at Beagle Bay in the Removal of Aboriginal Children from their Families in the Kimberley Region: Submission to the Human Rights and Equal Opportunity Commission's Enquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (C Choo Perth 1996) 13.

15. Western Australian Government, *Government Gazette* (19 February 1909) 588.

16. Above n 11, section 3.

17. P Jacobs, *Mister Neville* (Fremantle Art Centre Press Fremantle 1990) 55.

18. AD 38/1927.

19. Above n 6, 156.

20. *The Telegraph* (Brisbane Wednesday Evening 5 May 1937).

21. A. O. Neville, *Australian's Coloured Minority: Its Place in the Community* (Currawong Publishers Sydney 1947) 80. Neville wrote the manuscript in 1944 but it was not published until 1947. Although note there is some dispute as to whether this book was written in 1943 rather than 1944. Refer to above n 6, 70; A Charlton, 'Conceptualising Aboriginality: reading A O Neville's Australia's Coloured Minority' (2001) 2 *Australian Aboriginal Studies* 47, 47.

22. GC Bolton, "Black and White after 1897" in CT Stannage (ed), *A New History of Western Australia* (University of Western Australia Press Nedlands 1982) 138.

23. Chief Protector of Aborigines, O A Neville, *Annual Report of the Chief Protector of Aborigines for the year ended 30 June 1935* (Government Printer Perth 1935) 7.

24. Chief Protector of Aborigines, O A Neville, *Annual Report of the Chief Protector of Aborigines for the year ended 30 June 1916* (Government Printer Perth 1916) 5.

25. Neville, above n 21, 177–178.

26. Ibid, 179–180.

27. Aboriginal Legal Service of Western Australia, *Telling Our Story* (Aboriginal Legal Service of Western Australia Perth 1995) 2–3, 138; Aboriginal Legal Service of Western Australia, (Aboriginal Legal Service of Western Australia Perth 1996) 35–37.

28. The Carrolup Native Settlement had two incarnations: 1915–1922; 1938–1852.

29. A Haebich , *Broken Circles* (Fremantle Art Centre Press Fremantle 2000) 229–230.

30. Commissioner Moseley, *Report of the Royal Commissioner Appointed to Investigate, Report, and Advise Upon Matters in Relation to the Condition and Treatment of Aborigines* (Government Printer Perth 1935).

31. Ibid, 21–22.

32. Ibid, 72.

33. Ibid, 74–75.

34. Aborigines Act Amendment Act 1936 (WA), sec. 1; Native Welfare Act 1954 (WA), section 1(2).

35. Hansard vol 1 series 97 2RSP Assembly (20 October 1936) col 1206–1207.

36. Ibid, col 1207.

37. Ibid, cols 2376–2377.

38. Ibid, (30 September 1936) cols 878–879.

39. Ibid, cols 830–831.

40. Ibid, col 831.

41. Ibid, col 823.

42. Ibid, (13 October 1936) col 1067.

43. Ibid, col 1067.

44. Hansard vol 1 series 98 2RSP (8 December 1936) col 2399.

45. Commonwealth of Australia, *Aboriginal Welfare-Initial Conference of Commonwealth and State Aboriginal Authorities* (AGPS Canberra 1937) 3.

46. D Austin, *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) 17–19; Q Beresford and P Omaji, *Our State of Mind* (Fremantle Arts Centre Press Fremantle 1998) 33.

47. M Sanger, "Dangers of Cradle Competition," in CJ Bajema (ed), *Eugenics Then and Now* (Dowden Hutchinson and Ross, Stroudsbourg Pennsylvania 1976) 113.

48. D Austin, above n 46, 18.

49. Above n 10, 133.

50. D Austin, above n 46, 196.

51. L Lippmann, *Generations of Resistance: Aborigines Demand Justice* (2nd ed Longman Cheshire Melbourne 1992) 24.

52. Q Beresford and P Omaji, above n 46, 46.

53. D Austin, above n 46,196.

54. Above n 1.

55. Above n 45, 10–11, 15.

56. Ibid, 16.

57. Ibid, 17.

58. D *Markovich*, Genocide, a crime of which no Anglo-Saxon nation could be guilty: Though perhaps there lies a prima facie case?: Stolen Generations v Commonwealth *(Honours Thesis School of Law Murdoch University 2000) 77–78.*

59. Above n 45, 17.

60. Ibid, 17.

61. W S Myles "Midland District Report" in Commissioner of Native Affairs OA Neville *Annual Report of the Commissioner of Native Affairs for the year ended 30 June 1939* (Government Printer Perth 1939) 55.

62. Above n 29, 279.

63. Commissioner of Native Affairs F Bray, *Commissioner for Native Affairs Annual Report for the year ended 30 June 1940* (Government Printer Perth 1940) 8.