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COLONIAL DOMINATION

Aborigines in the Northern Territory 1911 - 1934
Background to Attitudes and Policies

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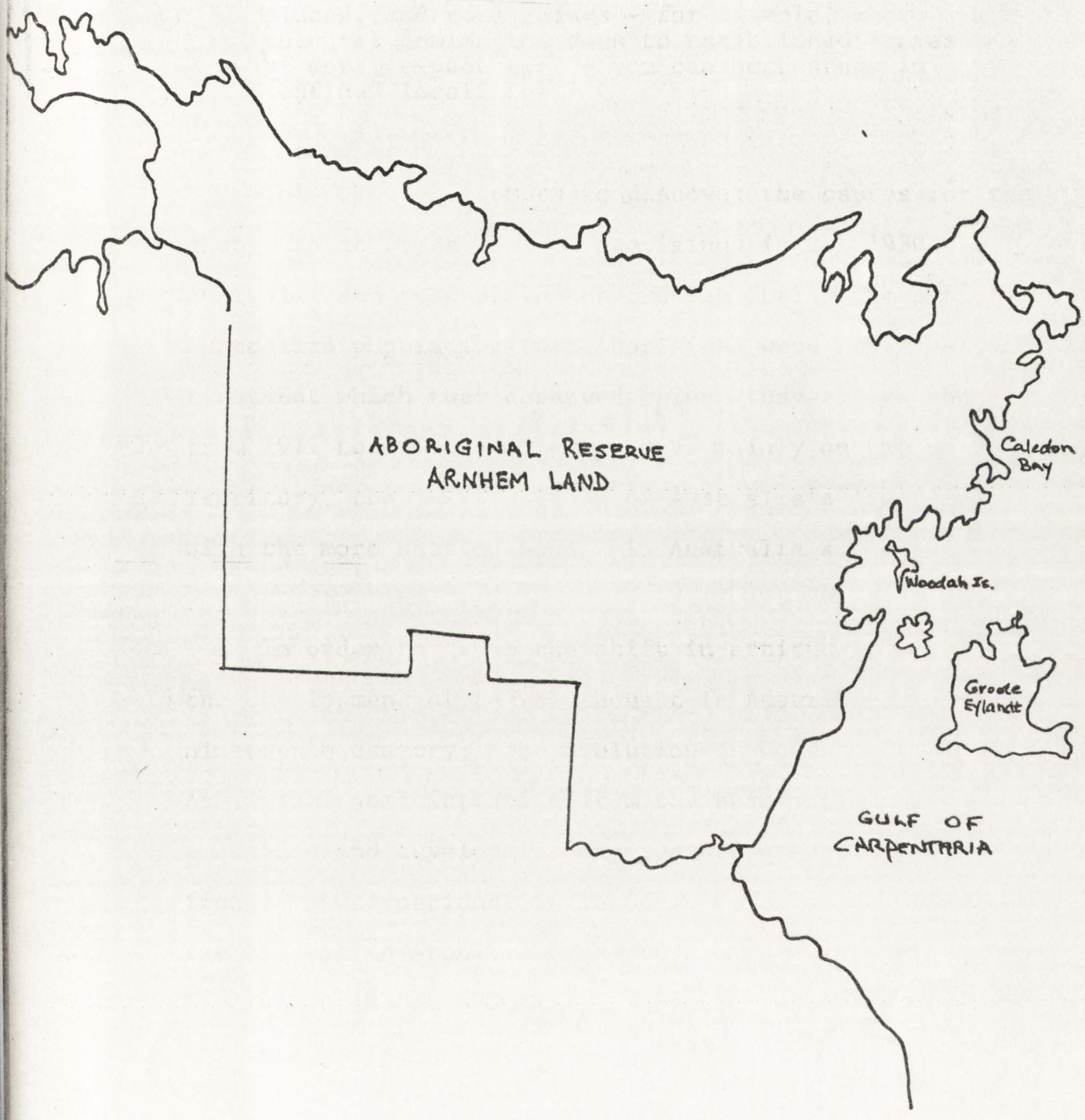
ABORIGINAL RESERVE
ARNHEM LAND
Caledon Bay
Woodah Is.
Groote Eylandt
GULF OF CARPENTARIA

PREFACE

> You can study different things in different places, and some things - for example, what colonial domination does to established frames of moral expectation - you can best study in confined localities.[1]

This thesis attempts to discover the causes for the change in attitude towards aborigines in the 1930s in Australia and to explain the growing feeling amongst the Australian population that aborigines were not receiving the treatment which they deserved. The study covers the period from 1911 to 1934 and concentrates mainly on the Northern Territory, the juxtaposition of Australia's 'last frontier' with the more settled States in Australia assisting the study.

In order to trace the shift in attitudes I have explored the development of racial thought in Australia from the nineteenth century; the evolution of Government policy and Aboriginal administration from the turn of the century; the emergence and development of pressure group activity; and finally, international influence. Primary source material in the Australian Archives provided valuable insights into Government implementation of policies and the activity and influence of Humanitarian Associations.

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1. Clifford Geertz, The Interpretation of Cultures, 1975, p.2

CHAPTER ONE

INTRODUCTION

When the Commonwealth assumed control of the Northern Territory in 1911 its objective was to settle Europeans on the land and a colonisation policy was framed to that end. Towards the end of the 1920s when the rest of Australian society was either in a settled agrarian situation or moving towards an industrial one, Northern Territory society was still in the throes of early colonial conflict. In Australia, in the 1930s, colonial 'pacification' was still acceptable to those living on the 'borders of civilization'.

When Australia was first settled, Rousseau's notion of the 'noble savage' was still popular in Europe. The concept of racial equality also received support in the eighteenth century and early nineteenth century. Rationalist philosophers, stressing the radical equality of man, explained racial and cultural differences by reference to environmental factors.[1] But life on the borders of civilisation was not conducive to the idealisation of tribal society nor the concept of racial equality and settlers soon acquired a different view. As the nineteenth century advanced and frontier conflict became more pronounced, they adopted concepts emanating from Europe and North America. A new intellectual fashion emerged, based on ideas of racial hierachy and social Darwinism.[2] The more brutalised Europeans did not need to rationalise their treatment of aborigines. For them, the law on the frontier was the law of the jungle. Others, however, needed 'elegantly formulated scientific theories' to justify usurpation.[3] Prior to Darwin's 'Origin of the Species',

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1. H. Reynolds, 'Racial Thought in Early Colonial Australia' Australian Journal of Politics and History, Vol.20, No.1, April 1974, p.46.
2. ibid. p.46
3. A. Markus, From the Barrel of a Gun The Oppression of the Aborigines 1860-1900 Melbourne, 1974, p.57

Western colonizers applied the precepts of Lockesian philosophy, attributing property rights to those who improved the soil and they quoted God's command to Adam to go forth and till the soil. Scientific theories 'proved' that aborigines "represented the lowest grade in the human family"[5]. Phrenologists in the 1840s confirmed their inferiority by revealing the "great deficiencies in their "moral and intellectual organs"[6]. Settlers adopted thes views to help soothe remorse or conscience. Those who suffered from neither, believed aborigines were not men but brutes and shot them as they would a dingo.[7]

A further salve for conscience was added by Social Darwinists, who established that aborigines were a dying race. This last sanction also provided an excuse for the inaction of liberals in the cities.[8] Social Darwinism was eagerly adopted because it presented the view that a constant struggle between the various species was a natural and necessary occurrence. This is clearly expressed in The Age in 1888:

> ... It seems a law of nature that where two races whose stage of progression differ greatly are brought into contact, the inferior race is doomed to wither and disappear. ... The process seems to be in accordance with a natural law which, however it may clash with human benevolence, is clearly beneficial to mankind at large by providing for the survival of the fittest ... All that can be expected of us is that we shall make his last days as free of misery as we can.[9]

The confluence of frontier experience and metropolitan racial ideology produced an attitude which hampered the implementation of equality before the law and the absorption of aborigines into

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4. C.D.Rowley, 'From Humbug to Politics', Academy of the Social Sciences in Australia, Annual Lecture 1972, reprinted from Oceania, Vol. XLIII No.3, March 1933, p.8.
5. Reynolds, op.cit. p.49
6. ibid.
7. ibid, p.52
8. Markus, op.cit. p.9
9. Cited in ibid. p.65

Australian society.[10] As it became clear that the aboriginal response was to die out, Colonial Governments adopted 'protection' policies.

Aboriginal Protection Boards were established in Victoria in 1860; South Australia in 1880; New South Wales in 1883; Western Australia in 1886 and in Queensland in 1897. These Boards provided for the care and protection of aborigines by establishing reserves where they could retreat and be cared for. Their spectacular failure to readily assimilate reinforced the concept of European racial superiority already present in Australian society.[11] European suspicion of the Chinese from the 1850s onwards increased the ever present hostility towards all non-Europeans and this racist syndrome was 'nationalised' at the turn of the century with the emergence of the White Australia Policy.[12] Although J.S. Gribble was justified in charging that:

> ...For their own evil purposes many of the earliest settlers reported to the world that the Australian blacks were closely allied to brute creation, that they were altogether too low in the human scale even to be improved ... Acting on this ... they made the blacks the victim of their carnal and cruel passion.[13]

in the cultural context of the time, the violent acts on the borders of civilisation were acts done under the influence of principles and ideas which were embraced by most of Western society.

As the frontier moved further and further away, the need for the idiology in settled areas diminished. But if anything it became more vigorous on the succeeding frontiers. Now

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10. Reynolds, op.cit. p.53
11. F.S.Stephens, Ed., Racism Vol.2, Black Versus White, Sydney, 1972, 'Aborigines and Racism', M.C. Hartwig, p.11
12. ibid. p.19
13. Reynolds, op.cit. p.52

settlers did not only have to justify their treatment of aborigines to themselves, but to others as well; people interesting themselves in the 'aboriginal problem'. Frontiersmen were contemptuous of these 'drawing-room moralists'[14] watching from their safe suburbs and they resented their interference, actual or implied.

An article in The Bulletin in 1883, is an example;

> ...British as well as American civilization marches over the bodies of inferior races. They are shot down if troublesome, utilized where profitable, but in all cases they are compelled to make room for the superior race ... there is no occasion for any holy howling over the business. It is the inevitable consequence of our possession of the country ... the aboriginals must go somehow - lead, or rum or otherwise.[15]

And another in 1892;

> ... do not let the pious inhabitants of New South Wales go round throwing stones ruthlessly at the other provinces, because if they have no blacks left to shoot, it is only because their fathers and grandfathers did all the slaughtering for them.[16]

Americans emerged from their frontier experience a lot earlier than Australians.[17] Thus, in the 1920s they were expressing opinions about Australian aborigines which were too advanced even for Australia's academics. In 1926 Sir Baldwin Spencer (Chief Protector in the Northern Territory in 1913 and Professor of Biology at Melbourne University) refuted a series of articles in the American press suggesting that Australian

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14. Markus, op.cit., p.11
15. Cited in ibid., p.70
16. ibid., p.72
17. The Meriam Report in 1928 on the conditions of the American Indians in the U.S. outlined the depressing results of years of the kind of protection Australia was still advocating. The Bleakley Report in 1929 made recommendation which the U.S. had, a year earlier, decided to abandon as outmoded and disproven.
C.D.Rowley, The Destruction of Aboriginal Society, Sydney, 1974, p.268.

Aborigines could become 'worthy citizens' and that they had the capacity to rise to administrative positions. He said the suggestion was 'absurd'; there was no possibility of the two races blending in any shape or form.[18]

Shortly afterwards, Australian scientists began to reveal that aborigines were not 'low types' after all and that their cranial capacity was similar to that of the Europeans.[19] Even though academics like Spencer and Radcliffe Brown (first Professor of Anthropology at Sydney University) were studying the social organisation and culture of aborigines as early as 1911, they were, in the late 1920s, still lending support to the earlier theories. A.P. Elkin, Professor of Anthropology at Sydney University in 1934, has confessed that he did not at first fully realise the implications of his field observations in 1927-28, and it was several years before he became committed to agitation.[20] The climate was not at that time conducive to an alternative opinion. The fact that a Cabinet Minister could, in 1929, excuse the massacre of 31 aborigines in Central Australi as inevitable and publicly state "quite frankly - these things end the same way - in the domination by the whites"[21] bears this out.

Following an agreement between the South Australian and Commonwealth Governments, the Northern Territory was transferred to the Commonwealth on 1st January, 1911. Under South Australian control, Administration of the Territory had been carried out

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18. Age, 7th January, 1926, p.5
19. P. Biskup, Not Slaves Not Citizens, U.S. 1973, p.22
20. Rowley, The Destruction of Aboriginal Society, op.cit. p.226
21. ibid. p.271. The Minister for Home Affairs, C.L.A. Abbott

by a Government Resident. He was usually a lawyer and performed the combined duties of Administrator and Judge.[22] There were 36 separate Governments in the 45 years of South Australian control, practically a new Minister with a new policy each year; hence there was no continuity of policy.[23] Immediately following the takeover and before the general framework of a colonisation policy was formulated, the Commonwealth Government inaugurated several inquiries to investigate and report on the prevailing conditions in the territory. It was thought that inquiry should precede action before large bodies of immigrants could be invited to settle there.[24] Once the general lines of the policy were drawn the Government proceeded to look for suitable men to carry them out.[25] In 1912 Dr. Gilruth, Professor of Vetinary Pathology at Melbourne University, was appointed Administrator of the Northern Territory. Under the Administration Act, power was given to appoint an administrator to administer the Northern Territory on behalf of the Government. In practice this did not occur. Departments were set up under the Administration but the Northern Territory remained always under the direct control of the Commonwealth Government.[26]

The estimated Aboriginal population at the time of transfer was 16,000. The early Commonwealth inquiries reported that the South Australian Government had done little to 'uplift' the aborigines under its care, but reserves had been set aside, two

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22. Department of External Affairs, Northern Territory of Australia, Report of Operations since the Transfer to the Commonwealth, March, 1913, p.6
23. C.L.A. Abbott, Australia's Frontier Province, Sydney, 1950, p.24
24. Department of External Affairs, op.cit., p.14
25. ibid. p.6
26. Sir George Cunningham Buchanan, Northern Territory Development and Administrations, 1925, p.4. The Commonwealth Government asked Buchanan to report generally upon questions affecting the future development of the Northern Territory while he was there investigating port facilities.

mission stations received subsidies and a Chief Protector and several protectors were stationed in the Territory.[27] The reports all reveal the prevailing concern about the 'half-caste problem'. The Department of External Affairs Report of 1913 stated that:

> ... the aboriginal inhabitants of the place had been practically uncared for. There had been no law to regulate their intercourse with whites until the very eve of transfer, when the parliament of South Australia hastily passed a measure to remedy that deficiency, but no steps had been taken to carry it into operation.[28]

During the nineteenth century sexual relations between aboriginal women and European men had been tolerated to a large extent, but by the turn of the century, miscegenation and intermarriage was frowned upon.[29] It was even worse if Asian men cohabited with aboriginal women, since this, it was thought, produced a 'mongrel race'.[30] All Commonwealth Inquiries reported on the dangers of 'Asiatic settlements' and recommended the prevention of intercourse between Asians and aborigines.[31] The South Australian Act 1910 made cohabitation between non-aborigines and aboriginal women a punishable offence. The Aboriginal Ordinance Act of 1911 incorporated the South Australian Act of 1910, it established an Aboriginal Department under the Chief Protector, and the emphasis was on rigid protection. Census figures reveal that in 1881 the settler population in the Territory was 3,451 (only 670 were Europeans, the remainder being made up chiefly of half-castes and Chinese); in 1891 there were 4,898; and in 1931 only 3,867.[32] Obviously there was not the great influx of immigrants so optimistically prepared for in the early flurry of Commonwealth activity.

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27. External Affairs Report, op.cit. p.9
28. ibid. p.9
29. Biskup, op.cit. p.144
30. ibid. p.145
31. External Affairs Report, op.cit. p.11
32. A.H. Chisholm, Ed. in Chief, Australian Encyclopedia, Vol.VI, Sydney, 1965, p.361

CHAPTER TWO

EVOLUTION OF GOVERNMENT POLICY IN THE NORTHERN TERRITORY

Life in the Northern Territory was not easy. The Buchanan Report of 1925 reported that communications there were as they had been when the Commonwealth assumed control. The population suffered greatly;

> ... the monotony, the long periods of damp heat ... the indifferent food, and the isolation, continue to engender in many of the people a state of temper and nerves which is demonstrated by the perpetual labor troubles, the bitter friction between officials and the private feuds and quarrels.[1]

C.L.A. Abbott wrote that when he visited the Territory as Minister for Home Affairs in 1929, he encountered a 'depressing feeling of hoplessness'. Darwin was a 'moribund' town.[2]

In 1913 the Editor and proprietor of the Northern Territory Times and Gazette, C.J. Kirkland, ran a series of articles attacking Dr. Gilruth, Reports of Inquiries, and Administration policy. He said Dr. Gilruth's appointment had been 'heartily welcomed' in 1911 but now he was probably the most disliked man in the Territory.[3] Old residents, he said, were completely disregarded and he was sure Gilruth would like to have:

> ... swept these pestiferous critics with their years of hard won experience and annoying assumptions of superior knowledge of local conditions into the sea...[4]

Purporting to be speaking for the majority of people in the Territory, he loudly denounced Government policy regarding aborigines. Its general effect, he claimed, had been "to make the natives insolent, restless, dissatisfied, and less willing to work than they were formerly... That this effect has been

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1. Buchanan, op.cit. p.14
2. Abbott, op.cit. p.25
3. C.J. Kirkland, The Administration of the Northern Territory, Darwin, December 1913, p.1
4. ibid. p.3

produced this early", he wrote, "is fairly conclusive proof that there is something rotten about the whole system of aboriginal protection as at present carried out".[5] He maintained that there was nothing to show for two years of Commonwealth administration and an enormous expenditure of public money.[6]

Dr. Gilruth was not the only public figure to upset residents in the Territory. His replacement, Mr. H.E. Carey, together with the Judge and the Government Secretary, were told in 1919 to get out. This they did.[7] A warship was subsequently stationed in Darwin to protect the Administration.[8] Much of this unrest was industrial or political. Under South Australian rule the Territory was represented in Parliament but they lost this after transfer and remained unrepresented until 1922 when a member for the Northern Territory took his place in the House of Representatives.[9] But whatever the reasons, political, economical or social, it is clear that the population in Darwin was not to be trifled with. Buchanan was certainly aware of this when he made his Report. He stated that the existing system in the Territory made for neither efficiency, economy, nor contentment and suggested the Government either hand over administration to a Development Commission or adopt the Crown Colony system of Government.[10] He attached great importance to the appointment of a suitable man to the office of Administrator as it was, he thought, a post which required special qualifications. The incumbent needed an abundance of tact, a practical knowledge of Administration, energy, common sense, and above all, be 'head of the social fabric at Darwin'.[11]

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5. ibid, p.14
6. ibid, p.2
7. Buchanan, op.cit. p.8
8. ibid, p.32
9. Abbott, op.cit, p.30
10. Buchanan, op.cit, p.4
11. ibid. p.5

Abbott writes that the only news to come out of the Northern Territory in that early period was of strikes, demonstrations against Federal Ministers who were rash enough to visit there, rebellion against authority, and the shooting of natives. All of these things, he said, caused the Federal Government to think that the best thing to do was to forget all about the Northern Territory and leave it in its isolation.[12] The economy of the Territory was based primarily on cattle raising, largely conducted on the open range system. Some agriculture was attempted but did not prove successful. Vestey's established a meat works in Darwin in 1917 but, due mainly to industrial trouble, it only operated for three seasons and then closed down. The other major industry was fishing.[13] These industries supported a small business and professional community in Darwin. Industrial unrest is reported to have been a retarding factor in the development in the Northern Territory since it discouraged industrial undertakings and the development of Darwin as a port.[14] Dr. Grenfell Price, Chief Protector in 1912, later wrote that;

> ... in the ten years 1911-1920 the Federal attempts in the coastal lowlands proved a complete fiasco. Extremists in Darwin deported or secured the recall of chief officials, agriculture failed, the railways became a losing proposition, Vestey's closed, capital rightly and rigorously avoided the Territory, and white labour in Darwin justly acquired a shocking name.[15]

Until 1901 when the entry of Asiatics into Australia was placed under rigid restriction, the Chinese were the unskilled labour force in the Territory.[16] Settlers eventually came to rely heavily on aboriginal labour and contemporary reports

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12. Abbott, op.cit. p.2
13. Australian Encyclopedia, Vol.VI, Sydney, 1965, p.358.
14. ibid, p.367
15. Cited in Abbott, op.cit, -.26
16. Buchanan, op.cit. p.7

reveal that they were almost indispensable to colonists.[17]

The Buchanan Report in 1925 observed that:

> ... Strictly to conform to the idea of white Australia, the whole of the aborigines should be segregated in reserves and their entry into the town prohibited, but that is now probably impracticable, and would seriously dislocate the lives of nearly the whole of the white population in the Territory.[18]

The Commonwealth's stated objectives were to preserve the aborigines and to ensure that nomadic tribes had sufficient land for their natural way of life; to protect detribalized aborigines - both employed and unemployed - and to protect aboriginals from 'moral abuses'. Sections of the Northern Territory population objected to the protectionist clauses in the Aboriginal Ordinance. Kirkland, in his articles in 1913, said that protection deprived;

> ... free nomads of their liberty, and settlers of the sorely needed service these natives might give them in assisting to open up and develop the resources of this country.[19]

The Aboriginal Ordinance of 1911 was strongly influenced by the Queensland and Western Australian models.[20] The Act established an Aboriginal Department under the Chief Protector. Provision was made for leases of Crown Lands to missions; for the declaration of reserves; and for the removal and retention within a reserve of aboriginals or half-castes (employed aboriginals and aboriginal women married to non-aborigines were excepted). Protectors had the power to take any aboriginal or a half-caste into custody and the Act enabled areas to be

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17. External Affairs Report, op.cit. p.11
18. Buchanan, op.cit. p.15
19. Kirkland, op.cit. p.16
20. Rowley, The Destruction of Aboriginal Society, op.cit,p.230

declared 'prohibited'. The Chief Protector appointed Protectors to police these measures; both were under the general control of the Administrator. The general policy however, was directed by the Minister for the Interior. For the purposes of administation, the Territory was divided into town and country districts. Protectors were required to patrol their districts, submit periodic returns, and to generally administer the provisions of the Ordinance.[21] Supervision over such vast distances was difficult, particularly as Protectors' duties were on a part time basis. Most were police and their activities as Protectors were extra to their normal duties. Naturally, the more settled districts were the areas which received 'protection'.

Kirkland thought that the creation of reserves in a territory which was about to establish 'white settlers' would prove to be both embarrassing and undesirable. He contended that the best way to save "these idle thousands of brawn and muscle from themselves and from the evils of a contaminating civilisation, would be to provide them with some useful work".[22] He thought the most practical way of dealing with the 'aboriginal problem' was to have 'less idleness and less false sentiment'.[23]

> ... We believe we are only expressing the opinion of nearly every employer of aboriginal labor throughout the Territory more particularly in the towns perhaps - when we say that since inauguration of this system of protection it has been increasingly difficult to secure labour. ... Why bother about complex and costly schemes of aboriginal reserves and segregation? Why not take the children and place them on one or other of the many islands off this coast that should be ideal spots for such a purpose, and where they might be shaped and moulded in any way a paternal government might desire?[24]

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21. Aboriginals - Commonwealth Government's Policy in Respect of the Northern Territory, Canberra, 1933, p.3
22. Kirkland, op.cit. p.16
23. ibid, p.16
24. ibid, p.14, 16

Under the Ordinance, rules were made for the control and employment of aborigines. Those wishing to employ them were obliged to take out a licence and to conform to certain rules. The Protective legislation was not applied extensively however, and relations between aboriginals and Europeans continued much as they had always done.

The Aboriginal Ordinance was amended in 1918. It provided that missions could be declared aboriginal institutions for the care of aboriginal and half-caste children and introduced stricter penalties regarding sexual relations with aboriginal women. The changes reflect the growing concern about the 'half-caste problem'.[25] The estimated Aboriginal population at the end of the 1920s was 19,336 including 730 half-castes. This total was divided into four classes:

1.	Aboriginal in employment in towns and country districts	2,906
2.	In supervised camps	2,298
3.	Others	532
4.	Nomadic tribes (estimated)	13,600
		19,336

[26]

The 1918 Ordinance replaced all previous legislation and extended the category of those being protected. The legal powers of Protectors were extended and defined.

The Ordinance provided that it was the duty of the Chief

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25. Rowley, The Destruction of Aboriginal Society, op.cit.p.236
26. Aboriginals - Commonwealth Government's Policy in Respect of the Northern Territory, Canberra, 1933, p.1

Protector to:

...

(a) apportion, distribute and apply as seems most fit, under the direction of the Administrator, the moneys at his disposal for the purpose of carrying out this Ordinance;

(b) To distribute blankets, clothing, provisions, and other relief or assistance to the aboriginals;

(c) To distribute, as far as practicable, for the supply of food, medical attendance, medicines, and shelter for the sick, aged and infirm aboriginals;

(d) To provide, when possible, for the custody, maintenance and education of the children of aboriginals;

(e) To manage and regulate the use of all reserves for aboriginals; and

(f) To exercise a general supervision and care over all matters affecting the welfare of the aboriginals, and to protect them against immorality, injustice, imposition and fraud. 27

For breaches of the Ordinance, Protectors and police could arrest without a warrant.[28] The Chief Protector could, at any time, undertake the care, custody and control of any aboriginal or half-caste and he was the legal guardian of all aboriginals and half-castes under 18 years of age.[29]

Provision was made for the reservation of land for the sole use and benefit of aborigines. No person, other than an aboriginal; the Administrator; Chief Protector or protectors; or an authorised officer, was allowed on a reserve. Commercial pursuits of any kind were banned. Anyone violating a reserve was guilty of an offence. The Crown Lands Ordinance of 1924 provided that all land under pastoral lease contain a reservation that aborigines and their descendants had "full and free right of ingress, egress and regress into, upon and over the leased land and every part thereof and in and to the springs

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27. ibid. p.3
28. Rowley, The Destruction of Aboriginal Society, op.cit. p.236
29. Aboriginals - Commonwealth Government's Policy in Respect of the Northern Territory, Canberra, 1933, p.1

and natural surface waters thereon, and to make and erect thereon such wurlies and other dwellings as those aboriginal inhabitants have before the commencement of the lease been accustomed to make and erect, and to take and use for food birds and animals ferae naturae in such manner as they would have been entitled to do if the lease had not been made".[30] While these provisions appeared to defer to aboriginal interests they had no practical effect at all. More than half the Territory was under pastoral leasehold, pastoralism by its very nature infringed on the aboriginal way of life and, during drought their situation often became critical and led to clashes between settlers and tribesmen. Chief Protectors, aware of the problems, pressed for the establishment of large reserves[31] where aborigines would not have to compete with cattle to stay alive. By 1925 approximately 30,000 square miles had been reserved in twelve different districts for aborigines still living tribal lives.[32]

Arnhem Land was declared a reserve in 1931; it comprised more than 31,000 square miles or one third of the area of Victoria. The nearest European settlements were the mission stations on Groote Eylandt, 80 miles from Caledon Bay on the East Coast of Arnhem Land, and the Oenpelli Mission Station on the East Alligator River in the Reserve.[33] The Reserve included all the Islands adjacent to the East Coast of Arnhem Land. The Oenpelli Mission Station was once a Government Cattle Station but ticks and other problems caused its abandonment in

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30. Government Policy Statement Regarding Aboriginal Affairs Prior to 1939, Australian Archives, Series A659, File No. 39/1/8939, p.3
31. Buchanan, op.cit., p.15
32. ibid.
33. Argus, January 5th, 1934, p.6

1925 and the Government invited the Church Missionary Society to take it over. Two thousand square miles of country was set apart with two hundred square miles as a mission reserve.[34] In September 1932 the Chief Protector informed the Oenpelli Mission personnel that they would no longer be permitted to enter the Arnhem Land Reserve, but would have to confine their work to the mission reserve.[35] The Church Missionary Society were very distressed by this instruction. The Federal Secretary, in December, 1932, wrote to the Prime Minister submitting that this hampered the work they had gone there to do. He pointed out that the Church Missionary Society had constantly advocated the setting apart of the Arnhem Land Reserve and it was one of their number who had moved the motion to that effect at the Conference held to discuss the Bleakley Report. "We did not anticipate", he wrote, "... that this would mean that missionaries would be prevented from making their contribution to the life of the black people in the Reserve".[36] They continued to lobby heavily but the Minister and the Northern Territory Administration stood firm.

They based their arguments on recommendations made by the Board of Anthropological Research in Adelaide. They opposed Missionary settlements in the Arnhem Land Reserve because they believed that contact with Europeans caused a disorganisation of the native social system. When this happened the tribe ceased to exist as such and the aborigines died out. Since the

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34. A.J. Dyer, Superintendent Oenpelli, to Chief Protector of Aboriginals, Darwin, 19th November, 1932, Australian Archives Series A1, File No. 37/4639.
35. C. Cook, Chief Protector of Aborigines, Darwin, to the Superintendent of Oenpelli, 7th September, 1932, Australian Archives, Series A1, File No. 37/4639.
36. P.W. Stephens to the Prime Minister, 5th December, 1932, No. 31/5693, Australian Archives, Series A1, File No.37/4639.

Missionaries aimed at changing the customs and way of life of the aborigines they became "more inimical to the survival of the native" than the cattle stations. They thought that when tribal organisations had broken down, then, Missionaries were indeed "the native's best friend".[37] The main object of creating an inviolate reserve was to allow the aborigines to remain in their primitive state and to develop in their own way without interference from civilization; it was considered that if missionaries were allowed to carry out their work there, the object would be defeated.[38] The Church Missionary Society persevered until finally the matter was put to Cabinet. A Memo was prepared in June 1933, pointing out the above and recommending that the policy adopted by the Commonwealth should follow those lines. Mission stations already established inside reserves should be permitted to remain but no additional ones should be allowed in. Interestingly this matter was not discussed by Cabinet until September, 1933, a time of great drama in the Northern Territory, the decision being "not to make a declaration of general policy but to deal with any application on its merits".[39]

The 1918 Ordinance empowered the Administration to declare areas 'prohibited' to aborigines. The measure was designed to prevent aborigines from entering localities where they might be "degraded or learn vicious practices".[40] There was an aboriginal

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37. J.A. Carrodus, Department of the Interior Memorandum No. 33/924, 26th May, 1933, Australian Archives, Series A1, File No. 37/4639.
38. ibid.
39. J.A. Perkins, Department of the Interior to Cabinet, 2nd June, 1933, Australian Archives, Series A1, File No. 37/4639. This copy was noted, signed and dated by J.A.Lyons.
40. Aboriginals - Commonwealth Government's Policy in Respect of the Northern Territory, Canberra, 1933, p.9.

Compound in Darwin where homeless of both sexes were given shelter and where many of the employed in Darwin spent the night. Aborigines found outside this Compound without a permit were liable to arrest.[41] Employed aborigines were forbidden to enter towns at night except;

(a) To approved entertainments.

(b) To picture shows subjected to a censorship directed towards preventing their viewing films likely to lower respect for the white races (particularly women) or to adversely affect their morality.[42]

No employer could employ an aborigine without a licence and the Chief Protector had the power to cancel a licence at any time. Persons of Asiatic or negro race had to apply directly to the Chief Protector to employ Aboriginal men and they were not permitted to employ aboriginal women. One of the obvious reasons for this legislation was that it further reduced the likelihood of other than 'European' half-castes being born.[43] As Rowley observed the connection between aboriginal welfare legislation and concern for White Australia is obvious.[44] The Aboriginal Ordinance provided that no marriage of a female aboriginal (or half-caste) could be clebrated without permission.[45] Any person other than an aboriginal or half-caste who was not lawfully married to but;

...(a) habitually consorts with a female aboriginal or half-caste; or
(b) keeps a female aboriginal or half-caste as his mistress; or
(c) has carnal knowledge of a female aboriginal or half-caste, is guilty of an offence; penalty of £100 or three months imprisonment or both.[46]

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41. Buchanan, op.cit. p.14
42. Aboriginals - Commonwealth Government's Policy in Respect of the Northern Territory, Canberra, 1933, p.9
43. Rowley, The Destruction of Aboriginal Society, op.cit. p.238
44. ibid. p.267
45. Aboriginals - Commonwealth Government's Policy in Respect of the Northern Territory, Canberra, 1933, p.9
46. ibid.

It was also an offence to procure a woman for immoral purposes and for an aboriginal woman to solicit prostitution.

These measures were said to be for the protection of aboriginal women but they were obviously designed to prevent half-caste births. The legislation was not enforced and the number increased steadily, they were considered "one of the most serious problems in the Territory".[47] In 1922 the Administrator reported that;

> ... In regard to the halfcaste side of the question, the discreditable fact cannot be ignored that the number of halfcastes in the Territory is increasing and, so far as can be seen, must inevitably for many years yet, continue to increase, I can conceive of no legislation less drastic that such as would be intolerable to any Australian community that would be effective in putting an end to the present prevailing miscegenation, and since this cannot be stopped, it only remains to do the best that is possible for the unfortunate products of it ...[48]

There is an air of war morality in this statement; an Army General bemoaning (yet excusing) the sexual activity of the troops and 'the unfortunate products of it'. Few contemporaries condemned the European male for his part in the production of the so-called half-caste 'menace'. If physical segregation was relaxed on occasions it was treated with benevolence, it would pass. As Abbott observed in 1950;

> ... In the early days, when lonliness and isolation were serious problems, many settlers lived with lubras and some married them. This phase is now over.[49]

The Commonwealth Constitution prevented the Commonwealth Government interfering in any way with aboriginal administration outside its own Territories. Control remained with the individual State Governments; these powers were jealously guarded. Following pressure from the Association for the

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47. Buchanan, op.cit, p.15
48. ibid.
49. Abbott, op.cit. p.142

Protection of Native Races for a National Inquiry into the conditions of aborigines throughout the Nation,[50] the Prime Minister, in 1927, proposed the appointment of an extra-parliamentary Commission to inquire into all aspects of aboriginal affairs in Australia. The States refused to co-operate.[51] The Government did the next best thing and appointed J.W. Bleakley, Chief Protector in Queensland, to investigate and report on aboriginal administration in the Northern Territory. Bleakley made his Report in 1929. A Royal Commission, appointed to report on the Federal Constitution, also concluded its deliberations in 1929. It recommended that aboriginal affairs should remain with the States since they were in a better legal and financial position to deal with them.[52] As Rowley observed, Bleakley put forward a policy which was not too far removed from the folklore of the day.[53] The views he presented were axiomatic in aboriginal affairs in Australia and were only at that time being questioned by scholars.[54]

Like everyone else, Bleakley was concerned about miscegenation. In his Report he stated that;

> ... The cross-breed element provides the most difficult part of the 'Aboriginal problem', as what they inherit of the superior intelligence and tastes of the whites is generally nullified by the retarding instincts of the blacks...[55]

He believed that efforts to check the 'breeding of half-castes' would have little likelihood of success until conditions were developed to encourage white women to go to the Territory. The 'sex question' might, he thought, be solved if some of the 'superior' half-castes married Europeans, but, he wrote;

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50. Rowley, The Destruction of Aboriginal Society, op.cit. p.259
51. Biskup, op.cit. p.88
52. ibid, p.89
53. Rowley, The Destruction of Aboriginal Society, op.cit. p.267
54. ibid.
55. C.D. Rowley, Outcasts in White Australia, Blackburn, 1973, p.14

> ... The best type of white man is reluctant to outcast himself in this way, perferring, if he must, to satisfy his lust with casual lubras until able to return to white society.[56]

He thought that one good white woman in the district would have "more restraining influence than all the Acts and Regulations"[57] and recommended that European women be encouraged to immigrate to the Territory. In the meantime, he suggested that the laws for protection and control of female aboriginals be strictly enforced[58] and the machinery for moral protection be tightened up.[59] Severe laws were recommended to ensure that tribal aborigines remained completely free of outside interference.[60]

He was also concerned about the injustice of trying aborigines in British Courts for crimes committed for tribal reasons and he suggested that special courts be established to hear such cases.[61] When he made his report the Commonwealth was conducting an inquiry into the massacre of Aborigines in Central Australia. The atrocity occurred in 1928 when the interests of tribal aborigines on a leased area collided with the interests of Europeans. It was a period of severe drought and aborigines were competing with cattle for water and they were also killing them for food. In September 1928 a Station owner was out investigating water holes and was allegedly ambushed by twelve aborigines. He managed to beat them off. At the same time a prospector was murdered in the area. A punitive expedition was quickly organised, and, led by Constable Murray, went out and shot 31 aborigines.

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56. Sharman Stone, Aboriginals in White Australia, Adelaide, 1974, p.158
57. ibid. p.157
58. ibid. p.163
59. ibid. p.156
60. ibid, p,163
61. Rowley, The Destruction of Aboriginal Society, op.cit.p.268

A request by the Association for the Protection of Native Races for an independent investigation was refused and the Inquiry was held in camera. The Board was composed of a Magistrate from Cairns and the Inspector of Police in Central Australia (Murray's superior). Settler evidence stated that the aborigines were neither starved nor ill treated. One woman suggested that it would be dangerous if it became known that a policeman could no longer shoot an aboriginal.[62] Protesting to the Prime Minister about the composition of the Board and the lack of legal representation for the 'slain natives', the Association for the Protection of Native Races was told that;

> ... in view of the qualifications of the members of the Board, it was not deemed necessary to appoint Counsel to present a case on behalf of the Aboriginals.[63]

The Board found that Murray and his party were justified. They had given no provocation and had killed in self defence; they stressed the need for more police. According to the Association for the Protection of Native Races, there had been four separate occasions of shooting following a long chase of the tribe.[64] The Bleakley Report emerged in this climate and his comments about 'justice' received a great deal of attention. The existing Aboriginal Ordinance allowed for the implementation of most of Bleakley's recommendations, it was just a matter of enforcing what was already there. The Government added, as a result of the Bleakley Report, a new objective;

> ... to collect half-castes and train them in institutions to enable them eventually to take their places in the ordinary life of the community.[65]

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62. ibid. p.289
63. Report of the Association for the Protection of Native Races, 20th March, 1929, Australian Archives, Series A1, File No. 36/6595, p.1
64. ibid.
65. Aboriginals - Commonwealth Government's Policy in Respect of the Northern Territory, Canberra, 1933, p.2

Dr. Cook, who became Chief Protector of North Australia in 1927 and of the whole of the Northern Territory in 1931, vigorously adhered to this new policy.[66] Otherwise there were few changes. Administrative staff was not increased, during the 1930s there was a Chief Protector, an Assistant and forty-six part-time protectors.[67] Forty-eight men to oversee 523,000 square miles of Territory.[68] However, the evolution of policy and legislation made the situation in the Territory in the early Thirties at least superficially like that of the States where legislation had reached a high tide of control and protection.[69]

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66. Rowley, The Destruction of Aboriginal Society, op.cit. p.28
67. ibid.
68. Abbott, op.cit. p.2
69. Rowley, The Destruction of Aboriginal Society, op.cit. p.281

CHAPTER THREE

GOVERNMENT POLICY IN THE SOUTH

EMERGENCE OF PRESSURE GROUPS

By the beginning of the twentieth century aborigines were approximately a quarter of their original number. Those remaining were isolated in remote areas or in reserves, stations, or fringe camps in rural areas. Pressure groups interested in influencing policy and administration in Aboriginal affairs included the pastoral lobby, organised labour, local Government authorities and Parents and Citizens Associations, and Humanitarian bodies.[1] The first four were organised but the latter's aims were vague and only began to diverge during the early 1930s. Both the pastoralist and trade union lobbies were indifferent to the interests of the aborigines; pastoralists wanted to preserve the status quo, organised labour, to secure preference for European labour.[2] Local Government authorities and Parents and Citizens Associations demanded the segregation of aboriginal communities.[3] Aboriginal affairs was not a political issue; in fact, as Biskup points out, Governments kept it a non-issue rather than run the risk of losing public confidence. Europeans might say "our people first".[4]

Aboriginal Protection Boards in most States concentrated their efforts on limited relief, management of stations and reserves and on employment for aborigines under an apprenticeship system. Protection Acts in all States gave Aboriginal Protection Boards almost unlimited power to control the private lives of aborigines as defined in the Ordinances. Most were amended in the 1930s to give them even greater control. They placed

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1. Biskup, op.cit. p.76
2. ibid.
3. ibid., p.79
4. ibid., p.73

children in the hands of officials, controlled the movement of aborigines, allowed for those defined as 'natives' to be ordered into institutions and confined there, or be ordered out of the towns, and gave control of marriage to officials. As Rowley observed, the Aborigine had "the legal status of a born idiot".[5] The New South Wales Protection Act 1909-36 for instance, gave the Aboriginal Protection Board power to order anyone who apparently had an 'admixture of blood' to live on a reserve and to come under the control of the Board.[6] Queensland legislation was even more 'protective'.

Although Protection was a matter for each individual State, the principles behind the Acts were the same. Policies were designed to eliminate the part aborigines. Governments segregated their full-bloods in an effort to prevent further part aboriginal births and at the same time they formulated policies which arranged the disappearance, through miscegenation, of the part-aborigines; they would be absorbed by the 'white' race and disappear without trace. As Rowley observed, policies were "a kind of social engineering for the disappearance of the black race into the white majority".[7] Despite the recurring official pronouncements to the contrary, aboriginal legislation contained the necessary powers to improve the conditions under which aborigines were forced to live, but powerful forces prevented Aboriginal Departments from ameliorating their conditions.[8] Detribalized aborigines

5. Rowley, Outcasts in White Australia, p.42
6. J. Horner, Vote Ferguson for Aboriginal Freedom, Sydney, 1974, p.4
7. Rowley, Outcasts in White Australia, p.31
8. Biskup, op.cit., p.67

throughout the Nation were a demoralized, segregated, dominated minority.

Aboriginal affairs began to cause sporadic public concern from the middle of the 1920s onwards. Prior to that very few people were interested and even fewer involved themselves in any sort of agitation on behalf of aborigines. The Onmalmeri massacre in 1926 and the Central Australian massacre in 1928 both helped to shake the Australian community out of its apathy and public indignation prevented what might have been a similar incident in the Northern Territory in 1933. Humanitarians, mainly in the cities, lobbied heavily but few people thought beyond protection and segregation. They asked for palliatives, better protection, better conditions of employment, and better health measures.[9] Prior to the 1930s the Humanitarian lobby was mainly concerned with the survival of the race, they did not determine policy, but rather they acted as 'moral policemen' and set limits beyond which the Government and other interest groups could go.[10] But as these bodies gathered momentum, a more positive outlook began to emerge.

A.P. Elkin, anthropologist, clergyman, and President of the Association for the Protection of Native Races in 1933, was an important member of the vanguard of the movement for change in aboriginal administration in the 1930s. Elkin thinks that after World War I the ideas inherent in the League of Nations Mandate principle influenced thought regarding aborigines in Australia,[11] and that a population was growing up in the main centres of each State which had little or no experience of

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9. W.E.H. Stanner, After the Dreaming, Sydney, 1968, p.14
10. Biskup, op.cit., p.80
11. A.P. Elkin, 'Reaction and Interaction. A Food Gathering People and European Settlements in Australia', American Anthropologists, Vol.53, No.1, 1951, p.148

aborigines and no recollection of earlier conflict.[12] Both help to explain the emerging shift in attitudes in the 1920s. Other contributing factors were better communications within and without Australia, and the ideas and concepts emanating from Europe and America. That these influences created a more receptive environment can be traced in anthropological "findings in the late 1920s (anthropologists had been studying Australian aborigines closely from the 1870s onwards)[13] and in the upsurge of activity amongst the various pro-Aboriginal pressure groups.

The term 'Humanitarians' includes Church Groups, Missionary Societies, Aboriginal Associations, and other interested citizens and organisations. Elkin writes critically that they had, prior to the 1930s, spent too much time and energy in protest about injustice and cruelty when they should have been concentrating on the question of policy.[14] But it should be remembered that these people were labouring in an indifferent environment, in fact being listened to at all was an achievement. A combination of scientific and religious thought emerged from the groups. Some were motivated purely from a Christian standpoint, others, like the Australian and New Zealand Association for the Advancement of Science, from a scientific one, but their aims and objects were basically the same, preservation and protection. Few were active at Commonwealth level prior to the Central Australian massacre in 1928, that, and the Bleakley Report, which many groups used as their point of reference, produced a more concentrated lobby on the Federal Government.

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12. ibid., p.181
13. ibid.
14. Elkin, 'Reaction and Interaction..', p.184

The Association for the Protection of Native Races was not the earliest established Association, but it influenced other organisations and it was the major pressure group at Commonwealth level. Founded in 1911 on a non-political, non-sectarian basis, it stood, in the first instance, for:

> ... The maintenance of its fundamental principle, the preservation and development of the native races in Australia, and the South Pacific, and their protection from injury, cruelty, and injustice.[15]

From the outset they advocated the nationalisation of the care of aborigines and the setting apart of reserves where they could be "segregated and enabled to live as far as desirable under their own native conditions".[16] They argued that the method of relying on State and Colonial Governments had undeniably failed and in view of the divergent laws in different States, authority should be transferred to the Federal Government, not under political control but under scientists, missionary societies and people who understood aborigines.[17] They petitioned the Royal Commission into the Commonwealth Constitution in 1928, arguing that States viewed inquiries into Aboriginal affairs as interference into State matters, "Yet the odium resulting from injuries inflicted on this helpless people in any one State rests upon Australia as a nation".[18]

In a letter to the Prime Minister in November, 1929, the Association for the Protection of Native Races gave a brief statement of its policy and purpose. It sought not only to

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15. Association for the Protection of Native Races to the Prime Minister, 1st November, 1929, Australian Archives, Series A1, Item 36/6595.
16. ibid.
17. Association for the Protection of Native Races to the Royal Commission into the Constitution, 1st March, 1928, Australian Archives, Series A1, Item 36/6595, p.9.
18. ibid., p.3

bring cases of alleged wrong, cruelty and injustice before the authorities, but also "to arouse public opinion in condemnation of such injuries, and in demand for the fullest protection of native peoples". It sought, in co-operation with Governments, missionary and other organisations, to ameliorate the pitiful conditions of the aboriginals. They wanted adequate, inviolate, reserves in all States, particularly in the Northern Territory where the largest proportion of tribal aborigines lived.[19] They recommended that all States adopt a provision of the Western Australian Act which provided that in proceedings against aborigines for alleged offences, aborigines should not be allowed to plead guilty, and that any alleged confession should not be admissible as evidence. And they pressed for uniformity of laws regarding employment of aborigines.[20] They were aware that the Northern Territory Ordinance contained the necessary power to prevent injustice to aborigines and they concentrated on enforcement of the legislation. Legislative loopholes were pointed out and they were directly responsible for several amendments.

They kept a close watch on all legal aspects in the Territory and protested loudly whenever they saw apparent injustices, but their demands for inquiries into alleged police brutalities were usually ignored. When they were not, charges laid against constables were usually dismissed. The Aborigines Friends Association observed in a Pamphlet printed in 1933 entitled 'Legislation Governing the Australian Aborigine' that:

> The most cursory perusal of our laws governing aborigines will lead to the conclusion that they are based on right

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19. Association for the Protection of Native Races to the Prime Minister, 2nd November, 1929, Australian Archives, Series A1, Item 36/6595.
20. ibid.

> principles and evidence a desire on the part of legislators to deal fairly with a dispossessed race. While this is freely acknowledged it is a lamentable fact that some of the finest features of our legislation remain inoperative. Efforts are being made in some quarters to add more laws to the Statute Book, whereas what is required at this juncture is to make a really practical application of those which are already in existence for the advancement of the well being of the native population.[21]

Cruelties were dealt with if discovered but as the Association for the Protection of Native Races stated, discovery was extremely difficult with a "blind eye to the telescope".[22]

Chief Protector Cook's response was that allegations made against police were founded, not on fact, but on malicious propaganda.[23] Cook launched a blistering attack on the Association for the Protection of Native Races for its "tendency to belittle Commonwealth Administration and to vaunt the States".[24] It was a prominent feature of propaganda in such organisations, he said, which,"centred far from the scene of action" appeared to accept official statements for knowledge of State Administration and relied on falsehoods and perverted half-truths for information regarding the Territories.[25] Speaking in defence of his officers, he said that the misguided criticism, the malicious misreprentations and charges of incompetence and corruption levelled against them "would break a heart of stone".[26] Briefing the Minister for a deputation from the Association for the Protection of Native Races in February, 1932, the Department of the Interior stated that the Association had requested that in cases where it was alleged that a police officer had

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21. Aborigines Friends Association, Legislation Governing the Australian Aborigine, 1933, Introduction.
22. The Twenty-First Annual Report of the Association for the Protection of Native Races, 21st April, 1932, p.5
23. Cook to Administrator, 18th January, 1932, Australian Archives, Series A1, Item 36/6595.
24. Cook to Morley, Association for the Protection of Native Races, 28th April, 1931, Australian Archives, Series A1, Item 36/6595.
25. ibid.
26. ibid.

assaulted an aboriginal, that officer should be brought before a court on a charge of assault. The Minister was advised that:

> ... To bring before a Court every officer, against whom an allegation is made, would cast a slur on all such officers, even though they were able to prove their innocence. The public naturally considers that, if an officer is charged before a Court of Law with an offence, there are reasonable grounds for suspecting that he is guilty, and even though he is found not guilty, his good name is besmirched. The esprit-de-corps of the service would thus be undermined.[27]

Aboriginal Associations were concerned about the low standard of morality in the Northern Territory. The Secretary of the Aboriginal Fellowship Group, Helen Baillie, was concerned about the brutality of white men there and wrote frequent letters to the Minister voicing her disapproval. In a letter in June, 1933, she pointed out that:

> ... In the laws between blacks and white there is always the tendency to punish the blacks and let the whites go free, because in the locality where those laws are being enforced there is a low standard of ethics and the black is for the most part welcomed simply for cheap labour for the use the white can make out of him and his lubra.[28]

She told the Minister that it was unjust to punish aborigines for breaking laws without first giving them some teaching on the Christian standpoint and the law of the land.[29] She was one of the few contemporaries to point out that the aboriginal sex code differed from that of the European.[30]

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27. Department of Interior Brief, 19th february, 1932, Australian Archives, Series A1, Item 36/6595.
28. Baillie to the Minister for the Interior, 4th June, 1933, Australian Archives, Series A659, Item 40/1/524.
29. ibid. May 15, 1933
30. ibid. Most people thought aborigines were 'sex ridden debauchers' but as the Berndt's have shown from their study of the sexual behaviour of aborigines in Arnhem Land, pre- and extra-marital sex was legally sanctioned in the aboriginal culture. See R.M. & C.H. Berndt, Sexual Behaviour in Western Arnhem Land, U.S., 1968 The European conception that all aboriginal women were by nature promiscuously inclined, excused the sexual abuse of aboriginal women and the complete disregard for their rights, either social, legal or moral, particularly in the Northern Territory.

By the 1930s Humanitarian bodies began to question the efficacy of protection and segregation, they began to realise that the prevailing policy and methods had failed.[31] They realised too, that recommendations put forward by Commissions were mostly ignored. In a letter to the Minister for the Interior in October 1932, the Association for the Protection of Native Races expressed concern about the Bleakley Report.

> ... Our great regret has been that so few of the recommendations of that Report have been adopted and given effect to, and we cannot escape from the fear that with the lapse of time since February 1929 the document may become a dead letter.[32]

This awareness increased agitation for 'nationalisation'. The Aborigines Friends Association believed that constant change of Government was a great obstacle to the 'racial question' particularly as some Ministers regarded the work of the Aboriginal Department as an 'irksome task'[33] and they, like the Association for the Protection of Native Races, wanted an advisory Board established to advise the Commonwealth Government on matters of policy.[34]

Elkin writes that he became aware that effective protection would only operate when all sections of society devoted themselves to the attainment of a worthwhile goal. What was wanted was a 'positive policy', one which was based on the hypothesis and conviction that aborigines could eventually become "worthy citizens of the Commonwealth and not merely hangers-on to stations and townships".[35] This idea, vague in

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31. A.P. Elkin, Citizenship for Aborigines, Sydney, 1944, p.13
32. Morely to Parkhill, October 3rd, 1932, Australian Archives, Series A1, Item 36/6595.
33. Aborigines Friends Association Annual Review, 1935, Australian Archives, Series A659, Item 45/1/1470, p.11.
34. ibid., p.5
35. Elkin, Citizenship for Aborigines, p.12

form in the early thirties, developed into the 'assimilation policy' adopted by John McEwen, Minister for the Interior, in 1939. The idea of a positive policy did not 'come out of the blue',[36] it emerged as a result of many forces. Elkin was largely responsible for its verbal expression and he elaborated it in addresses, articles and conferences and writes that by the end of 1933 it was widely accepted as a goal.[37] A Conference of Humanitarians in 1933 gave it written expression.[38] Five of the seven proposals which emerged from this conference were very similar to the submissions made by the Association for the Protection of Native Races to the Royal Commission into the Constitution in 1928; any differences merely revealing the new awareness of the problems of culture clash. The other two represent the new trend, the first asked that provisions be made to train aborigines to become "capable industrious and self-sufficient people", the latter proposed special legislation for the half-caste population.[39] The years 1933-34 are regarded by most writers as a 'turning point' in aboriginal affairs, in retrospect this 'positive policy' does not appear very radical. What was radical was the putting into words, for the first time in Australia's history, the notion that aborigines had a "future".[40]

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36. Stanner, op.cit. p.15
37. Elkin, 'Reaction and Interaction..', p.184
38. Elkin, Citizenship for Aborigines, p.15
39. ibid.
40. Stanner, op.cit., p.15

CHAPTER FOUR

THE LAW

Except for modifications made by Ordinances, or when they were superseded by Ordinances of the Territory or Acts of the Commonwealth, the law operating in the Northern Territory was that which was inherited from South Australia in 1911.[1] Procedure in the local and supreme courts was based on South Australian Law. Police cases were dealt with by two Justices of the Peace, civil cases by a magistrate. The Supreme Court consisted of one Judge who dealt with all criminal cases which did not involve the death penalty, and with appeals from the local court. In 1921 an Ordinance abolished trial by Jury but it was stipulated that capital offences should be exempted because, as the Honourable A. Blakeley, Minister for Home Affairs, observed in 1930, it was "a recognised principle of British Justice that a man should be tried, particularly in a case where his life is at stake, by his peers".[2] There was no State full court which meant that appeals from the Supreme Court had to go before the High Court of Australia.[3]

In March 1928 the Association for the Protection of Native Races petitioned the Royal Commission into the Constitution on the need for native courts. Bleakley's recommendations for special care in dealing with cases involving aboriginals gave weight to pressure on the Government to institute courts for Native affairs. Humanitarians insisted that native law and custom should be recognised and allowed for, that special courts for adjudicating should be constituted, and that in all serious cases aborigines should be represented.[4]

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1. T. Paterson, Minister for the Interior, to Australian Aboriginal Amelioration Association, Perth, 7th February, 1935, Australian Archives, Series A1, Item 38/12974.
2. Blakeley to Morley, Association for the Protection of Native Races, 6th May, 1930, Australian Archives, Series A1, Item 36/6595.
3. Buchanan, op.cit., p.5
4. Morley to Blakeley, 21st April, 1930, Australian Archives, Series A1, Item 36/6595.

A year later in March, 1929, in a letter to the Association for the Protection of Native Races, the Minister stated that he agreed in the principle of a court to deal with matters between "native and native" but cases involving Europeans and aborigines would:

> ... continue to be dealt with in the white man's courts, the interests of the natives being safeguarded by the Chief Protector and where necessary council being provided for the aboriginal.[5]

Nothing was done at all until 1931, when a direction was given to prepare necessary legislation in this regard. The usual practice in the Northern Territory was for a protector to defend aborigines (when available) in the police courts and for the Chief Protector to brief counsel in cases before the Supreme Court.[6] Since the majority of Protectors were police, this meant that aborigines were often defended by their accusers. Associations, particularly the Association for the Protection of Native Races, attached great importance to their representations on legal matters. They consistently pressed on the Government that the existing system was unjust and that a more adequate means ought to be devised for the defence of aborigines and the protection of their rights.

Arguments for special courts were based on the fact that court cases involving Tribal aborigines were obliged to rely on evidence given by interpreters (usually police interpreters); often they were confronted by unfamiliar dialects and justice, it was feared, was not always done under these conditions.[7]

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5. Blakely to Earp, President, Association for the Protection of Native Races, 20th March, 1929, Australian Archives, Series A1, Item 36/6595.
6. Telegrams, Government Resident Darwin to Department of Home Affairs, 29th April, 1930, Australian Archives, Series A1, Item 36/6595.
7. The Aborigines' Friends Association Annual Review, 1935, p.14.

All associations were concerned that it was difficult to get a conviction against a European under the existing arrangement, but it is doubtful whether special courts would have produced a more satisfactory result, as a member of the Aborigines' Friends Association observed in 1935:

> ... while the name "native courts" would be used, the white man would still adjudicate, for no-one advocates that any of the more intelligent natives should have a seat on the bench..[8]

The question did not ever arise since there was too much opposition to the proposal. The Supreme Court Judge in Darwin (Judge Mallam) believed aborigines should continue to be dealt with in the ordinary courts so he was against the idea; the Attorney General's Department had "doubts about the efficacy of the Court" as provided for in the draft ordinance prepared by the Crown Law Office in Darwin, and the Minister thought it "much too elaborate for the purpose to be served", and the matter was dropped.[9] A Department of Interior Brief, prepared for the new Minister in February, 1932, reveals that the proposal for special courts for cases involving aborigines was not adopted because;

> ... (a) The non-native, in the majority of cases would be a white man. In all legal proceedings, a white man will naturally consider that he is entitled to have his case tried in the ordinary white man's court and will object to having it dealt with by a court constituted primarily for the hearing of native matters.

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8. ibid.
9. Blakeley to Morley, op.cit., 3rd November, 1931
Interestingly the Attorney General's Department is currently considering ways of incorporating tribal law into existing law, in June the Federal Attorney General suggested that the States investigate this area. The Western Australian Government has since organised an inquiry to examine the question of whether tribal law should apply to aborigines appearing in courts in the North of Western Australia.
An article in The Canberra Times, Saturday July 16, 1977, p.2 discusses the subject.

> (b) While appreciating the disadvantages of an aboriginal when appearing in a white man's court, this can be overcome by ensuring that the aboriginal is adequately represented and his interests safeguarded by counsel or other representative...[10]

Those concerned with this issue continued to lobby and in 1934 a new Ordinance was enacted which empowered the Court;

> ... to receive and consider any evidence that may be tendered as to the relevant native law and custom, and its application to the facts of the case, and as to any other circumstances which may be urged in mitigation of the penalty...[11]

This was a long way short of 'Native Courts' but it did mean that the Judge could take cognisance of aboriginal customs and adjust the penalty accordingly. The Ordinance was an obvious concession to pro-aboriginal pressure groups. The 'test case' occurred in May 1934, the presiding Judge was Judge Wells.

Judge Thomas Alexander Wells was appointed Supreme Court Judge of the Northern Territory in August 1933. Prior to World War I he was a member of the New South Wales Supreme Court Reporting Staff. He served in the A.I.F. and, on his return, studied law at Sydney University. He was called to the Bar in 1924.[12] He died in Darwin in 1954. Obituaries describe him as "one of the most colorful personalities in the Northern Territory". Old timers said that he had, as Judge, "tempered justice with mercy".[13] On taking up his appointment in Darwin Judge Wells thanked the people for their welcome and told them that it was not his intention to remain aloof from the citizens. He wanted to get to know them and to become acquainted with their views.[14] Within a year he had established a reputation for being

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10. Department of the Interior Brief, 19th February, 1932, Australian Archives, Series A1, Item 36/6595. The new Minister was Mr. J.A. Perkins.
11. Cited in The Twenty Third Annual Report of the Association for the Protection of Native Races, July 10, 1934, p.5
12. Who's Who, 1935
13. Advertiser, 14th September, 1954
14. Australian Aborigines' Amelioration Association, Perth, to Patterson, 7th February, 1935, Australian Archives, Series A1, Item 38/12974, p.1

an unusually outspoken Judge. Aboriginal Associations watched him closely and his utterances produced vociferous protest from them. To no avail however, as the Crown Law Officer pointed out to the Administrator in 1935:

> ... any statement made by the Judge, in common with statements made by counsel or witnesses during the hearing of the cases, are absolutely privileged, and there does not appear to be any point in criticizing any remarks which may have been made by the Judge...[15]

As has already been observed, it was always difficult to get a conviction on a charge of assault by a constable. Several cases came before Judge Wells. He viewed most of these actions as 'stirring'. In one such case in November, 1933, the Association for the Protection of Native Races arranged for a barrister to observe proceedings on the aborigines' behalf. The charge was brought against Constable Stott who allegedly assaulted an aboriginal named Tommy Dodd near Boroloola. Judge Wells said it was most impertinent and improper for a person or a society to interfere with a criminal trial. The case was not proved against Stott.[16] Six months later Stott was charged with allegedly mistreating an aboriginal woman named 'Dolly' thereby causing her death. Many aborigines testified to this at the trial. A Doctor gave evidence that he examined the body and there was no evidence of maltreatment. She appeared to have been suffering from a disease.[17] The case was dismissed. Fifteen witnesses testified against Stott. The Judge said they

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15. E.T. Acshe, Crown Law Officer Darwin, to the Administrator, 26th January, 1935, Australian Archives, Series A1, Item 38/12974, p.2
16. The Twenty Third Annual Report of the Association for the Protection of Native Races, 10th July, 1934, p.7
17. Argus, 24th April, 1934, p.8

were "liars". The only evidence presented for the defence was a sequence of unsupported denials by the accused.[18] It appears the case came before the court as a result of a report being sent to newspapers in Sydney. Constable Stott said that the whole case had been concocted with the help of 'whites'. Judge Wells is reported to have said that he never criticised missions but it was sheer impertinence for people to sit in suburban drawing-rooms and stir up these matters.[19]

The 'Fitzmaurice River Case' in May 1934 was the first case to be heard under the new Ordinance. It involved the disappearance in 1932 of two prospectors, Adolf Koch and Stephen Arinski, in the vicinity of the Fitzmaurice River. Although the bodies were never found, aborigines in the area were found to be in possession of some of their belongings and eight suspects were taken to Darwin in January 1934 and charged with murder. Fellow tribesmen and women brought in as witnesses testified that the eight aborigines had killed the two men. The Jury found them guilty and Judge Wells sentenced them to death. He declined to use his new powers, declaring that the crime was not one for the exercise of clemency. He said the new Ordinance placed a heavy responsibility on him and he was not passing the death sentence as a 'mere form'. He was sure that Cabinet did not have such a case in mind when they made the promulgation. They could alter it if they wanted to but they would have to bear the full responsibility.[20]

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18. Australian Aboriginal Amelioration Association to the Minister for the Interior, 6th December, 1934, Australian Archives, Series A1, Item 38/12974
19. Argus, 24th April, 1934, p.8
20. Argus, 31st May, 1934, p.10

This was pure bravado on the part of Wells. It was common practice for the Government to commute death sentences in the Territories. Recommending the commutation of five recently passed on aborigines for the murder of Japanese trepangers near Port Keats on the West Coast of the Northern Territory two years earlier, the Attorney General's Department, in April 1933, commented that:

> ... In view of the uncivilized state of the natives, no aboriginal has been executed during recent years. The Acting Secretary, Department of the Interior, recommends that the death sentences be commuted to sentences of imprisonment for life with hard labour.[21]

During the trial of the 'Fitzmaurice River Case' the Defence Counsel asked for an interpreter to translate the evidence for the benefit of the accused aborigines. The Judge said this could be done afterwards, when the prisoners were in a better mood to hear and understand.[22] Commenting on this report in a letter to the Administrator in January 1935, the Crown Law Officer quoted the law in this context:

> ... When a foreigner who is ignorant of the English language is on trial on an indictment for a criminal offence, and ... he is defended by counsel, the evidence must be translated to him unless he or his counsel express a wish to dispense with the translation, and the Judge thinks fit to permit the omission, but the Judge should not permit it unless he is of opinion that the accused substantially understands the nature of the evidence which is going to be given against him...[23]

When sentence of death was passed on the aborigines they showed no signs of understanding.[24]

Before sentence was passed, J.H. Foster for the Defence, hoping for clemency under the new Ordinance, pleaded for a short prison sentence on the grounds that the aborigines were 'uncivilized myalls'. Hanging, he reasoned, would have no

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21. Memo, Attorney General's Department to the Prime Minister's Department, 10th April, 1933, Australian Archives, Series A461, Item M 300/1
22. Crown Law Officer to Administrator, 26th January, 1935, Australian Archives, Series A1, Item 38/12974, p.4
23. ibid.
24. Sydney Morning Herald, 19th July, 1934, p.6-d

effect on the rest of the tribes. It is worth quoting the reported exchange between the two men.

> Judge Wells: ... Do you think savages have no idea of justice and retribution? I think the primitive law of vengeance and an eye for an eye is the only law they understand.
>
> Mr. Foster: Restraint in prison is as fearful a punishment for these nomads as the death penalty. Society gains nothing by punishing them.
>
> Judge Wells: There may be something in your arguments, but I did not make the law I only administer it... The interests of the community have to be considered. If an inference is made that aborigines can murder a white man, or a black man, without fear of the death penalty, it will be a very sorry situation. We do not want the aborigine to think that the white community places a very low value on human life.[25]

Aboriginal Associations responded angrily, both to Wells' remarks and to the severe sentences. In a protest to the Minister for the Interior, The Aboriginal Fellowship Group pointed out that under British law, to prove commission of a crime it was necessary to prove guilty intention. Since tribal aborigines had no knowledge of the laws of the land it was difficult to see how this could be proved.[26]

Protest continued for some time and the case triggered some interesting debate. Two letters published by the Sydney Morning Herald in July, 1934, illustrate that the 1890's arguments between frontiersman and city dweller were still current. The first letter (merely signed J.J.) supports Judge Wells, saying that he could not have given any other sentence.

> ... It is difficult to understand the attitude of certain people living two thousand miles away from the scene, enjoying the full protection of the law in cities and

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25. Melbourne Herald, 30th May, 1934
26. Aborigines Friends' Association, to Perkins, 31st May, 1934, Australian Archives, Series A659, Item 39/1/9949

> towns who sympathise with savage murders of white people ... as for the foolish statement, one so often hears, that we have taken the aborigines' country from them etc., sixty thousand square miles (twice the size of Scotland) in the Northern Territory have been reserved for them ... In any case Australia was sure to be settled by some civilised nation from Europe if Britain had not annexed it. Primitive races in all countries were displaced or conquered by some superior race. It is a question of the survival of the fittest...[27]

In reply Keith Kennedy, President of the Anthropological Society of New South Wales wrote that in his experience, aborigines only caused trouble when they were interfered with.

> ... I remember years ago witnessing a corroboree in the Ingham district of North Queensland which was broken up by a couple of drunken cane cutters. In that case, if the blacks had showed fight we would have been expected to sympathise with the whites and punish the blacks. Anyone who has lived in the unsettled parts of Australia knows that white men often interfere with the blacks - the number of half-castes prove this - yet, when the unfortunate blacks retaliate, the "hardy pioneers" cry to the police for help.[28]

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27. Sydney Morning Herald, 19th July, 1934, p.6-d
28. Sydney Morning Herald, 26th July, 1934, p.4

CHAPTER FIVE

CALEDON BAY

As the Northern Territory's colonizing period was late compared with the rest of Australia, frontier ideology existed side by side with a growing 'enlightened' attitude towards the aboriginal population. That is not to suggest that Australians were shedding their racist attitudes, no similar division of opinion existed regarding the White Australia Policy. The 1933 Lyons Government laid down as one of its fundamental points, "the maintenance, in its inviolability, of the national policy of a White Australia."[1] Viewed against the background of dramatic events in the Northern Territory in 1933-1934, these three streams in Australian conscience emerge clearly. The scene of the drama was Caledon Bay on the East coat of Arnhem Land and involved Aborigines, Japanese, and Europeans. The co-presence of the three cultures produced a situation which reduced traditional forms to social farce,[2] and triggered off what was, for the first time, a concerted uproar about the treatment of aborigines in Australia.

Arnhem Land had long been subjected to outside influence, firstly from the Macassans and then in the twentieth century, from Europeans and Japanese. All frequented the Northern Territory coastline, fishing, pearling and trepanging. This 'alien' contact and its abuse of aboriginal labour and the aboriginal sex code led to tribal disintegration and conflict. In extreme cases it led to murder. Coastal aborigines gained a reputation for being 'hostile savages' and were suitably punished for their offences against 'civilization'.[3] Following

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1. Abbott, op.cit., p.36
2. Geertz, op.cit., p.9
3. R.M. & C.H. Berndt, Arnhem Land Its History and Its People, Melbourne, 1954, p.102

a journey along the coast in 1908, Dr. Strangman, Chief Protector under South Australian rule, reported that he had been met by tribesmen with pitiful cries of 'no more bang'.[4] Official records do not elaborate on these early punitive expeditions but aborigines report several 'hunting' and 'shooting' parties in this period.[5] Strangman reported that in almost every instance where assault by uncivilized natives occurred it was as a result of illtreatment and interference.[6] From its inception in 1911, the Association for the Protection of Native Races pressured the Government to establish water police to patrol the Northern Territory Coast to protect aborigines from "Asiatic crews".[7] This was not done and clashes continued to occur under Commonwealth control and there were several Japanese murdered in the period 1911 to 1930.

On the 17th September 1932, five Japanese trepangers were murdered by aborigines at Caledon Bay on the East Coast of Arnhem Land, the Caledon Bay Aborigines were a small 'horde' belonging to the 'Balumumu' tribe.[8] The incident was reported by a European trepanger named Gray who fished the area. The Administration immediately arranged for an investigating party to go to Caledon Bay but on their arrival they found that the Aborigines had left the district and the party returned to Darwin. The 'wet' season prevented any further action and after about eight months a second arresting party was organised. On May 30th 1933, the Argus reported the

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4. ibid.
5. ibid., p.101
6. ibid., p.103
7. The Association for the Protection of Native Races, to the Prime Minister, 1st November, 1929, Australian Archives, Series A1, Item 36/6595
8. T.T. Webb, 'Tribal Organisation in East Arnhem Land', Oceania, Vol. 3, 1932-33, p.406

preparation of the "largest police patrol into Arnhem Land since 1924".[9] They were to investigate the Caledon Bay incident and the rumours that two prospectors had been killed on Woodah Island off the coast of Caledon Bay. The party was inquiring into this affair when Constable McColl was speared by an aborigine and died.[10] The party retired to Groote Eylandt and awaited reinforcements. The Administrator recommended that a strong police party be sent against the Caledon Bay aborigines and that immediate action be taken to protect the Mission Stations on Groote Eylandt.[11] It was rumoured that the aborigines believed that Missionaries had betrayed a certain of their number to the police and, in consequence, proposed to attack Groote Eylandt as a reprisal.[12]

This was reported in the Southern press as a 'punitive expedition' and the Southern community was 'shocked' into response.[13] On August 15th, 1933, the West Australian remarked that the murder of Constable McColl raised again in a most tragic manner, the delicate relations which frequently existed between whites and blacks on the outskirts of settlement. The Arnhem Land aborigines were generally described as the most untamable and treacherous blacks in Australia, having to their discredit a formidable list of murders. It is worth quoting from this article:

> ... It is natural that whites who live at or near the outposts of civilization should, when clashes occur, set security above justice, and it is reported from Darwin that the murder of Constable McColl has inflamed public

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9. Argus, 30th May, 1933, p.11
10. J.A. Carrodus, Department of Interior Brief, Australian Archives, Series A461, Item M300/1, p.1
11. ibid.
12. Argus
13. The Twenty-Third Annual Report of the Association for the Protection of Native Races, July 10, 1934

> opinion there and has created a feeling that the aborigines must be taught a severe lesson... Punishment for convicted murderers there needs must be, but the Government must accept a grave moral responsibility if it permits white civilians to take the law into their own hands by wholesale administration of a "severe lesson", which is clearly another name for a punitive expedition.[14]

On the 4th September, in an article headed 'Disciplining Blacks', the Argus reported that;

> ... Although no decision has yet been made by the Federal Ministry on the question whether a punitive expedition should be sent against the Aborigines of Caledon Bay, ... to punish them for the recent murder of Constable McColl, as well as other atrocities, it is practically certain that action will be taken to force these tribes to recognise the supremacy of white law. The Cabinet may reach a final decision tomorrow. The Minister for the Interior (Mr. Perkins) is reluctant to send an armed force into Arnhem Land as he realises that in the inevitable conflict with the warlike aborigines many innocent parties would suffer. At the same time Mr. Perkins is giving due weight to official advice which he has received from Darwin suggesting the necessity for teaching these blacks a lesson...[15]

There was a storm of protest, the Commonwealth Government was flooded with telegrams and letters. Response from the South was astonishing; all denounced the Government. Naturally Aboriginal Associations and Church Organisations protested (there were 15 separate groups on this occasion) but many other bodies became involved as well. They included the Labour Women's Organising Committee, The Women's International League for Peace and Freedom, The Postal Workers Union, Victorian Council Against War, Australian Society of Patriots, The Trades Hall Council, The League Against Imperialism, The National Council of Women of New South Wales, The Australian Federation of Women Voters, The Educational Workers' League Sydney, The New South Wales State Council Against War, The Women's Non-Party

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14. West Australian, 15th August, 1933, Australian Archives, Series A461, Item M300/1
15. Argus, 4th September, 1933, p.9

League (Tasmania), The Peace Society, and the North Sydney Branch of the Australian Labour Party. Individuals involved themselves as well (the Government received a letter from the President of the Union Bank in Sydney) and the press devoted a lot of space to letters of protest.[16]

The Trades Hall Council said that such action was incompatible with the professions of civilized communities towards a primitive race.[17] The Australian Natives Association protested that punitive action would result in injustice to the aborigines. They thought the Japanese must have been transgressing native laws and violating Australian laws in entering a prohibited area and they hoped public opinion would call for justice rather than revenge.[18] F. Wood-Jones wrote that it was beyond belief that the memory of the Government was so short that it had forgotten the incidents of 1928; he said that a punitive expedition would end in a massacre of aborigines. To the world at large, Australia's administration of aboriginal affairs had long been regarded as a blot on the white man's record, and enlightened people throughout the world would point the finger of scorn.[19]

The League Against Imperialism wrote that this was the latest of a long series of atrocities perpetrated on the aborigines, "we feel that this state of affairs should no longer be tolerated".[20] The Association for the Protection of Native Races protested to the Prime Minister, deploring the

16. Australian Archives, Series A461, Item M300/1
17. Argus, 8th September, 1933, p.9
18. ibid., 7th September, 1933, p.7
19. ibid., F. Wood-Jones was a Professor at Melbourne University
20. The League Against Imperialism to the Prime Minister, 17th August 1933, Australian Archives, Series A461, Item M300/1

'barbaric methods' for the following reasons. Firstly it was "in direct conflict with the British principle of equal justice to all", secondly it was "inconsistent with the Commonwealth Government's professed care for subject races" and thirdly it was "a resort by the white man to a method of primitive tribal vengeance".[21]

Others pointed out that the aborigines should not be judged by the European social and legal code[22] and that traders broke native moral laws and, therefore should expect retaliation. The Australian Society of Patriots told the Prime Minister;

> ... We recall the hundreds of similar cases which have occurred through the Continent and the time has arrived when they should cease forever. The Australian man has prior rights over all other men irrespective of their country of origin, and it is the duty of Australian Governments to see that his rights are protected.[23]

It is revealing to reflect on events involving aborigines in three consecutive years in the Territory. In October 1931, four Japanese were murdered on the West Coast of the Northern Territory. In September 1932, five Japanese were killed on the East Coast. Nine Japanese in less than a year. No-one appears to have been particularly disturbed ty this, or thought it necessary to teach them a "severe lesson". Then, less than a year later, when it appeared that two Europeans had been murdered and a European law enforcer was killed by aborigines, their attitude changed. Opinion in Darwin favoured drastic action; residents there were reported to have said the punitive expedition was essential as the aborigines were 'getting out of hand".[24] The Minister for the Interior was pressured from all

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21. Morley to Lyons, 5th September 1933, Australian Archives, Series A461, Item M300/1
22. Methodist Mission Society to the Prime Minister, 4th September, 1933, Australian Archives, Series A461, Item M300/1
23. The Australian Society of Patriots, Newcastle, to the Prime Minister, 19th September, 1933, Australian Archives, Series A461, Item M300/1
24. Argus, 7th September, 1933, p.7

sides, the Administrator was saying the missionaries were in danger, Mr. Nelson, the Federal Labour member for the Northern Territory, was appealing for protection of settlers in the Gulf country because he had been informed that the 'Balumumu' had risen,[25] and pro-aboriginal pressure groups were loudly denouncing any form of retaliatory action. The Government finally decided to send a small protective party to Groote Eylandt and to take no immediate action regarding the despatch of a large party to Caledon Bay.[26] The Prime Minister stated that there was never any intention to send a punitive expedition nor was there any truth in the rumours that the murders had caused complications with Japan.[27]

A London newspaper, the Daily Herald, had given prominence to a report which suggested that;

> ... The fear of trouble with Japan may force the Commonwealth to sanction a punitive expedition against the aborigines in the native sanctuary of Aborigines, which will involve much bloodshed. Apparently the Government has not the courage to tell Japan that Australia can only protect Japanese who observe the law.[28]

But there does not appear to be any evidence to support that supposition, rather, the whole episode reflects not only how out of touch Administrators were with public opinion, but how rapidly that opinion itself had changed.

The involvement of the World press was very embarrassing for the Australian Government. The Australian High Commission in London was inundated with protests and inquiries. On 5th September 1933, the Prime Minister cabled the Australian High Commissioner, the Honorable S.M. Bruce, that the Government had

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25. ibid., 8th February, 1934, p.10. The Administrator said he had received no request from settlers for protection, a Northern Territory police sergeant ridiculed the idea. See the Argus, 29th November, 1933, p.10
26. J.A. Carrodus, Department of Interior Brief (undated), Australian Archives, Series A461, Item M 300/1
27. Argus, 6th September, 1933, p.7
28. Cited in the Argus, 5th September, 1933, p.7

made no statement to justify assertions about a punitive expedition, "the phrase has been invented by the press without any authority whatever".[29] The London Daily Herald further suggested that the Government was under the influence of 'North Australian whites', quoting for emphasis the declaration of a Northern policeman, that the "only good aborigine is a dead aborigine", and concluding by suggesting that if shooting the aborigines made them disappear more quickly then only sentimental missionaries would regret it.[30] Refuting such a claim, the Department of the Interior stated that it was an unfair attack on the white residents of the Northern Territory. The Government had been influenced only by those whites in the Territory who were known to have the welfare of aboriginals at heart. It was ridiculous to suggest that the Government was influenced by anyone who held the view that aborigines were a disappearing race, further, irrespective of the political party in power, the Commonwealth Government had always done its utmost to preserve the aboriginal race in the Territory.[31]

Both missionary organisations objected strongly to the armed protection of Groote Eylandt, claiming that such an action was against their principles but the Minister insisted. He was later reported to have argued that if he had sent a punitive expedition there would have been an outcry. If he had done nothing, the Missions would have been endangered. He would be accused of having blood on his hands no matter what he did.

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29. Lyons to Bruce, 5th September, 1933, Australian Archives, Series A461, Item M 300/1
30. Argus, 12th September 1933, p.7. The Daily Herald received their information from a Brisbane correspondent.
31. J.A. Carrodus, Department of Interior Brief (undated), Australian Archives, Series A461, Item M300/1, p.6.

He had been told that the Missions were in danger, the aborigines who had killed McColl has tasted white men's food and their appetites had been whetted for white men's blood.[32] A 'formidable barricade of barbed wire" was set up around the Stations and the protective party awaited the "hostile force".[33] The Church Missionary Society submitted to the Government that the best method of dealing with the situation would be to send an unarmed, peaceful expedition of missionaries to contact the Balumumu tribe. They subsequently put forward a concrete proposal which the Minister for the Interior accepted. The Government accepted no responsibility but merely granted approval for their entry into Arnhem Land, responsibility for the proposal rested with the Church Missionary Society and the members of the expedition who volunteered for the work.[34] The Church Missionary Society believed that if specially chosen individuals, who were acquainted with the tribe and the 'aboriginal mind', contacted the older men of the tribe "with a view to satisfying the cause of justice", the situation would be cleared up with a minimum amount of trouble.[35] The Minister believed that the expedition was 'fraught with danger' and had long, careful, discussions with Church Missionary Society representatives before he finally approved the venture. His offer of a police escort was refused.[36] Opinion in Darwin was pessimistic. No-one gave the party much chance of success; some condemned the attempt as an act of folly; the missionaries would not be safe once they landed in 'hostile Caledon Territory'.[37]

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32. Argus, 2nd November 1933, p.9
33. ibid., 24th November 1933, p.11
34. J.A. Carrodus, Department of Interior Brief (undated), Australian Archives, Series A461, Item M300/1, p.2
35. The General Secretary to the Prime Minister, Telegram, 6th September, 1933, Australian Archives, Series A461, Item M 300/1
36. Argus, 19th September 1933, p.7
37. ibid., 18th October 1933, p.7

The Peace Mission consisted of two Church Missionary Society missionaries, the Reverend H.E. Warren and the Reverend A.J. Dyer, and a wireless operator and several aborigines. Both men knew the area well, Warren having established the Mission on Groote Eylandt, and Dyer being in charge of the Oenpelli Mission. They went to Groote first and then to the Caledon Bay area where they received a 'warm' reception.[38] The Rev. Warren reported that he considered there was no danger whatever of the Balumumu attacking the Mission Stations. In fact the tribe appeared to fear police action and had gone several days journey inland.[39] Some time was spent visiting tribes along the coast and in looking for a suitable site for a Mission Station.[40] The party then concluded its business by investigating the Caledon Bay and Woodah Island murders. A number of aborigines implicated in the killings declared their willingness to go to Darwin and submit themselves to the authorities,[41] and so, having convinced themselves that they had established an "intense desire for peace and friendship" amongst the Balumumu,[42] the expedition returned with its prisoners to Darwin.

The aborigines who had 'confessed their complicity' in the killings and who had surrendered "to end the trouble"[43] were transported to Darwin in Gray's lugger and confined in the gaol. This led to 'extraordinary and pitiful scenes', the prisoners behaved 'like newly caged animals' and they spent

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38. ibid., 8th February, 1934, p.10
39. ibid., 2nd February 1934, p.9
40. ibid.
41. Twenty-Third Annual Conference of the Association for the Protection of Native Races, p.4
42. Argus, 2nd February 1934, p.9
43. ibid., 14th March 1934, p.7

the night 'howling like dingoes'.[44] The next day they were charged in the lower court. They were all naked except for scanty loin cloths.[45] Two Aborigines, Tuckiar and Merara, were charged with the murder of an unknown person on Woodah Island, whilst three others, Natchelma, Mow and Nakaya, were charged with the murder of Tanaki, one of the five Japanese killed at Caledon Bay. Tuckiar was charged with the murder of Constable McColl.

The Church Missionary Society, apparently embarrassed by the reports from Darwin, issued a statement saying that the expedition had been faced with a very delicate situation when aborigines readily confessed their complicity in certain crimes. The situation, they said, "was not of their making or seeking". Taking into account the danger of disciplinary measures which might follow, it was decided permission should be sought from the Minister to bring the natives in. They further stated that they had been assured by the Federal authorities before the expedition had set out that an Ordinance was being framed to give the Judge in the Northern Territory discretionary powers to deal with cases involving aborigines.[46] On May 2nd 1934 the press reported that the Minister had signed an Ordinance which would allow the Judge presiding over the trial of Caledon Bay aborigines to take cognisance of their customs.[47]

Merara and Tuckiar were acquitted on the charge of murdering the "unknown whiteman". In the trial of Mow, Natchelma and Narkya, Kinju, the surviving Japanese, said throug

44. ibid., 12th April, 1934, p.10
45. ibid.
46. ibid., 14th April, 1934, p.9
47. ibid., 2nd May, 1934

an interpreter that the Japanese had unloaded trepang on shore and were washing it in preparation for smoking when they were attacked by the aborigines. The aborigines said that the Japanese had mistreated them, beaten and kicked them, locked four of the women in the smokehouse, and had fired shots at them.[48] During the trial the foreman of the Jury informed the Judge that they had decided on a verdict and did not wish to hear further evidence. Wells replied that it was necessary for the case to continue, since, under the new Ordinance, if a man was convicted he was not necessarily sentenced to death.[49] The Crown Prosecutor emphasised in his closing address that the aborigines had 'acted in concert' and that the attack was unprovoked. The Defence Counsel pleaded that their actions were justified.[50] The Jury's verdict was guilty with a recommendation for mercy on the grounds that they were "stone age savages" and that they believed there was a certain amount of provocation.[51] Judge Wells sentenced them to 20 years imprisonment with hard labour. In passing sentence he is reported to have stated that;

> ... if members of a friendly nation came to the Australian coasts on lawful business and were killed and no punishment was meted out, a friendly nation could reasonably take matters into its own hands and deal with the natives itself.[52]

"It is difficult to know how to deal with the natives", he said. "Probably the kindest and best thing to do is to hang them".[53]

The Association for the Protection of Native Races protested that the Judge had digressed into the sphere of

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48. ibid., 31st May 1934, p.10
49. Sydney Morning Herald, 1st August 1934, p.19d
50. ibid., 2nd August, 1934
51. ibid.
52. ibid.
53. ibid.

International relationships, he had overlooked the fact that the Japanese were in a prohibited area, and that aborigines and their families had as much right to protection against invasion and violence as Europeans.[54] On the same day the Judge sentenced an aboriginal named Butcher to death for the murder of a European named Jennings. In pronouncing sentence, he said that Butcher had been with white people all his life and if a man could, at any time, and for any cause, break through the veneer of civilization, the world would be on the borderline of anarchy.[55]

At the trial of Tuckiar for the murder of Constable McColl, it was revealed that the police party had gone to Woodah Island to investigate the alleged murders of Traynor and Fagan and had taken into custody a number of aboriginal women for questioning. They were left in the charge of Constable McColl; the rest of the party going in search of the men. It appears that Tuckiar heard the women calling and went to their assistance. Constable Hall, a member of the party, gave evidence that the natives may have regarded the handcuffing of the women as an unfriendly act.[56] Tuckiar speared McColl and liberated the women. Other evidence implied that Tuckiar was afraid the women would implicate him in the murders. There were suggestions too, that McColl was 'interfering' with Tuckiar's woman, thus provoking the attack. None of these women were brought in as witnesses, nor were any of the trackers who were involved. The leader of McColl's party was in Central Australia and was not recalled for the trial.[57]

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54. Sydney Morning Herald, 7th August, 1934
55. ibid, 2nd August, 1934, p.2
56. ibid., 28th July, 1934, p.8c
57. ibid., 4th August, 1934, p.15g

Judge Wells was furious. He asked the Crown for an explanation and was told that it had been intended to send police for further witnesses but the Government opposed any action being taken which might result in bloodshed.[58] He said it was improper for the Government to interfere and added that the only inference to be drawn was witnesses were being deliberately withheld to make this, and the previous case, more difficult. He is reported to have stated that if the result was a serious miscarriage of justice the persons responsible through their neglect should bear the full responsibility.[59]

The case for the Crown was based on police evidence and two conflicting 'confessions' by Tuckiar. No evidence was called for the Defence. Parriner, an aboriginal, said that Tuckiar told him that when he saw McColl with the women he had hidden in the bush, and, when McColl came close enough, speared him. Harry, a mission boy, said he had been told that McColl had three of Tuckiar's women in custody and that he took one aside and had sexual relations with her. He revealed himself to McColl, and, using sign language, asked for tobacco. McColl responded by firing at him so he speared him.[60] During the trial, the Judge suggested to the Defence Counsel that he question Tuckiar to ascertain whether Parriner's evidence was correct or not. This was done before Harry had testified. The Defence agreed to do this and retired with an interpreter to confer with Tuckiar. On returning he stated that he was in the worst predicament of his legal career.[61]

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58. ibid., 14th July 1934, p.10
59. ibid., 4th August 1934, p.15g
60. The Commonwealth Law Reports 1934-1935, Vol.52, Melbourne 1935, p.340
61. ibid., p.341

Following the Jury's pronouncement of 'guilty' he revealed to the Court that Tuckiar had told him that Parriner's story was true; the other he said was a lie he had told because he was scared.[62] A great deal of time during the case was devoted to establishing the good character of McColl; this evidence cleared his name. The Judge was glad the Defence had mentioned it. It is interesting, since the Judge had directed the Defence to asking Tuckiar if he was guilty of the murder of McColl, that he later stated that under normal circumstances the proper course following a confession of guilt was for the Defence to withdraw from the case. Had the defendant been a white man, he said, he would have advised him to do so. As he was an aboriginal it was better that he continued to appear for him because if he had retired from the case "... it would have been left open to ignorant, malicious and irresponsible persons to say that this aboriginal had been abandoned and left without any proper defence."[63]

On delivering its verdict, the Jury registered its disapproval at the way the authorities had handled the case. The Judge fully concurred and said he had never before had a case where there was so much interference; he hoped the authorities had learned a lesson.[64] On the day of sentencing he said that the new Ordinance left it to him to impose the correct punishment but the Government had shown by its recent actions that it did not intend to uphold his judgements. He is reported to have said that the Ordinance was just another

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62. ibid., p.343-4
63. ibid., p.344
64. Sydney Morning Herald, 6th August, 1934, p.9c

case of ill-considered legislation hampering both Judge and counsel and that the death penalty had not been abolished but if legislators wanted to abolish it they should not do so by back-door methods.[65] He thoroughly agreed with the Jury's verdict and when the Chief Protector pleaded for mercy on the grounds that Tuckiar had voluntarily come to Darwin, replied that people who brought him there had much to answer for. Tuckiar, he said, killed McColl in a deliberate, callous and cunning way; it would be disastrous if aborigines knew they could murder police and get away with a life sentence. He sentenced him to death.[66]

An appeal was lodged on Tuckiar's behalf to the High Court. It was based on the fact that the Judge had commented on the prisoner's failure to give evidence, on the interview between the prisoner and the Defence Counsel, and on the evidence of confession by Tuckiar.[67] It was argued that evidence was wrongly admitted, was insufficient, not properly analysed, the Judge's comments were too strong, and he did not adequately direct the Jury, and fresh evidence was available which suggested justifiable homicide. The High Court agreed that the Judge's comments were prejudicial, that the Jury had been misdirected and that the whole circumstances of the case had denied a fair trial to the accused.[68] The conviction was quashed and since the public disclosure of an alleged admission of guilt by Tuckiar to his Counsel prevented a retrial, he was ordered to be released. He was placed in the Aboriginal Compound in Darwin to await escort back to his home country

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65. ibid., 7th August, 1934
66. ibid.
67. The Commonwealth Law Reports, 1933-1934, p.335
68. ibid., p.335

but he 'vanished' during a heavy downpour and was never seen again.[69]

A storm of protest broke after each of these trials and large public meetings were held in the capital cities. They called for the release of the aborigines and for the recall of Judge Wells. A meeting held in Sydney in August 1934 resolved to petition the Prime Minister;

> ... That this meeting, consisting of workers and citizens of every shade of political thought urges the Federal Government to adopt a more humane, scientific and civilised policy towards the original inhabitants of Australia...[70]

The meeting was convened by the International Labour Defence with the co-operation of many others. The Chairman, the Reverend W. Heathcote, said that the purpose of the meeting was to direct the attention to the treatment of the aborigines by the Government and individual white Australians; there was a growing feeling that aborigines were not receiving the treatment which they deserved.[71] Among those present was Professor A.P. Elkin, now Professor of Anthropology at Sydney University. He told the gathering that protesting to the Government was not enough, they must aim at a positive policy; sentimentality alone would not do. The successful appeal to the High Court a few months later further demonstrated to the public the injustices being meted out to Aborigines and justified those who had been working for changes in aboriginal administration.[72]

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69. Paterson, Minister for the Interior, to the Australian Association for the Amelioration of Aborigines, 7th February, 1935, Australian Archives, Series A1, Item 38/12974.
70. Sydney Morning Herald, 7th August, 1934
71. ibid.
72. Elkin, Citizenship for Aborigines, p.17

CHAPTER SIX

CONCLUSION

For the States, the frontier problems were almost over at the end of the nineteenth century and the rationale of protection changed from the compassionate act following dispossession to what to do with them now. It was clear by the beginning of the twentieth century that aborigines would not become the docile labour force so optimistically hoped for by colonists and administrators; they rejected the materialist European way of life.[1] In turn, they were rejected. Europeans demanded their segregation and Aboriginal Protection Boards were given almost unlimited power to control their movements. Acts introduced in the first decade of the twentieth century illustrate the connection between aboriginal welfare and concern for 'White Australia'. The White Australia Policy required that there should be as little disturbance as possible to the existing biological balance[2] and laws were introduced to ensure the maintenance of that balance.

In contrast, the Northern Territory, at the turn of the century, was only just beginning its frontier experience. It was still a 'frontier province' in the 1930s. Its colonists were still optimistic about the 'docile labour force' and resented protection acts for this reason. Paradoxically, it was practically impossible for them to establish control of the Territory without aboriginal support. Shortage of European labour and European women meant that physical segregation was not demanded to the same extent in the North, although of course biological balance was still regarded as essential.

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1. Gale & Brookman, op.cit., p.28
2. Rowley, Outcasts in White Australia, p.31

The desire for 'White Australia' and pressure on the Commonwealth Government by Humanitarians for better protection of aborigines, caused Commonwealth policy in the Territory to become, by the 1930s, at least superficially more like that of the States. 'Superficially' because the Territory was large and protectors were few, protection in the Southern sense was difficult to administer. The problems of divided authority between the six States and the Commonwealth concerned Aboriginal Associations and, although their demands for the 'nationalisation' of Aboriginal Administration were fruitless, the various Royal Commissions, Inquiries and Reports in the period are evidence that pressure at Commonwealth level had some effect on the States. The Commonwealth-State Conference held to discuss aborigines in 1937 was the first real step in the direction towards collective responsibility. This move also illustrates that Governments were concerned about Australia's international image. It had never been good regarding its treatment of aborigines and it sank even further following the 1933 fiasco in the Northern Territory. The Association for the Protection of Native Races was delighted with the adverse publicity. They said that both the Australian and World press had

> ... contributed enormously to the belated, but growing public opinion that one of the most serious domestic problems of the nation, and one which it must be judged in the esteem of an enlightened world is its treatment of the remnant of a race whose land it has possessed.[3]

The growing awareness of aboriginal culture at the end of the 1920s led Humanitarians to question the justice of trying aborigines under a legal system which was based on a totally

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3. Association for the Protection of Native Races Twenty-Third Annual Report, 10th July, 1934, Australian Archives, Series A1, Item 36/6595.

different set of rules. Concessions in this regard are a clear indication that, under pressure, the Commonwealth Government was prepared to go beyond mere technicalities, that they were prepared to recognise the aborigines as separate cultural entities and to risk disturbing the status quo. This of course was deeply resented in the Northern Territory and was seen both as interference by Government and meddling by 'drawing-room moralisers' .

The Caledon Bay incident reveals the new confidence felt amongst Humanitarians. For the first time they protested before and not after the event; they were no longer prepared to stand mutely by. Consequently the Government was no longer prepared to, or able to, sanction such behaviour. The changing public attitude is expressed in all of the protest letters sent to the Government over the threatened punitive expedition. Implicit is the suggestion that punitive expeditions were probably necessary once but now "the time has arrived when they should cease forever"[4] and "this state of affairs should no longer be tolerated".[5] It appears that everyone, except those living on the 'borders of civilization' sensed that the era of 'an eye for an eye' was over.[6]

What were the causes for this new sensitivity? Remembering that Humanitarian Associations had, during the 1920s, made almost apologetic submissions to Governments and Administrators, why did they become more vociferous and insistent in the early

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4. Australian Patriotic Society to the Prime Minister, 19th September 1933, Australian Archives, Series 461, Item M300/1
5. League Against Imperialism to the Prime Minister, 17th August, 1933, Australian Archives, Series A461, Item M300/1
6. Stanner, op.cit., p.14

1930s? Firstly, the great global colonial expansion was almost over and the whole world was changing its attitude towards dependent peoples. Australians responded at least as much to that as to events and sentiments within Australia.[7] Better communications assisted in the dissemination of information about aborigines and their culture, Australian academics were influenced by their own studies and by the new concepts emanating from Europe and America. These new theories challenged the pervading frontier and metropolitan racial ideologies current in Australian society. Of course they were not immediately discarded, as Professor Stanner observed; it was very difficult for contemporaries to escape from the style of thinking which "unconsciously ratified that order of life as natural and unalterable".[8]

As their awareness grew, Humanitarians began to realise there was a way beyond segregation and protection, a way which provided a future for aborigines in Australia. During the 1930s insistence on the adoption of a positive policy in relation to aborigines resulted in all Governments (except Victoria whose aboriginal population was very small) examining and overhauling their policies and methods of administration.[9] The new objective envisaged a common citizenship without postulating genetic changes.[10] It would be wrong to regard the response in the early Thirties as the beginning of a revolution in aboriginal affairs in Australia. On the contrary, acceptance of the new outlook was slow.[11] The McEwan policy of 1939, which

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7. ibid. p.16
8. ibid.
9. Elkin, Citizenship for Aborigines, p.11
10. Rowley, Outcasts in White Australia, p.31
11. Stanner, op.cit., p.15

came to be known as the 'New Deal' for aborigines in the Northern Territory, did not become effective for another decade.[12] A national programme for the social, economic and political advancement of aborigines was years away.

The history of colonisation in Australia clearly reveals what colonial domination does to established frames of moral expectation.[13] Humanitarian lobbyists had to break down the extreme racist and ethnocentric attitudes present in Australian society before they could begin to convince Governments that a new outlook was overdue. The credit for the shift in attitudes cannot be attributed wholly to Humanitarians. It emerged as a result of many forces, but they were the prime movers for change; they were the Nation's conscience. As Bishop Kirby pointed out at a meeting in June, 1933, it was the duty of the community to rise in protest regarding the treatment of aborigines.

> This is our problem - yours and mine. Remember that the law can go no further than you and I are prepared to go. [14]

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12. ibid., p.19
13. Geertz, op.cit., p.22
14. Daily Telegraph, June 16, 1933

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