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**Shifting definitions:
the 1886 *Aborigines Protection Act*,
'race' and 'half-castes'**

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Introduction

This thesis focuses on the Victorian *Aborigines Protection Act 1886*, looking forward and back from 1886 to analyse its importance in the discursive fields of 'race' and miscegenation in Australia.

The 1886 Act was intended to merge a segment of the Koori¹ population with the general population. While representing a radical policy shift in the national context, it was consistent with the Board for the Protection of the Aborigines' (BPA's) objective of attaining 'finality'. The 1886 Act was the first in Australia to attempt a 'merging' policy and is thus seen as a precursor to national assimilation policies of the 1930s.² Its early introduction was made possible by spatial, temporal and demographic disparities in colonial formation as frontiers spread across the mainland from the south east and south west regions.

The BPA acted in the crudest way to affect a decrease in the numbers of people for whom it had assumed responsibility, simultaneously devastating the communities that had built up on reserves and missions. The Act worked to create a distinction between Kooris based on an arbitrary designation as 'full-blood' or 'half-caste', and provided for the framing of a distinct set of regulations for each category. The Act divided strong communities and pauperised those Kooris cut off from government assistance. Instead of 'merging', the Act created a new socio-economic underclass of fringe-dwellers, constructing 'half-caste' as a distinct racial category. This justified the continuing inequality of Kooris and created a new target for interventionist policy.

¹ 'Koori' is a self-identification term used by many Indigenous people from south east Australia (Victoria, New South Wales and Tasmania).

² John Chesterman and Brian Galligan, *Citizens without Rights: Aborigines and Australian Citizenship* (Cambridge; Melbourne: Cambridge University Press, 1997), 20. Katherine Ellinghaus, "Regulating Koori Marriages: The 1886 Victorian *Aborigines Protection Act*," *Fresh Cuts - special issue of the Journal of Australian Studies* 67 (2001): 22. Patrick Wolfe, "Nation and Miscegenation: Discursive Continuity in the Post-Mabo Era," *Social Analysis (Adelaide)*, no. 36 (1994): 101.

This thesis is underpinned by the conviction that race is a social construction and that the social relationships on which race discourse is based are inseparable from the fundamental structures of the Australian settler-colony. The 1886 Act and the issues bound up in it are interpreted using elements of critical thought on race and the law, along with theorist Patrick Wolfe's logics of settler-colonialism. The inquiry focuses on the role of the 1886 Act in constructing 'race', and its relationship to the 'crisis' of miscegenation, or inter-racial breeding, in Australia. This theoretical analysis of the 1886 Act is grounded in documents relating to its lead-up and implementation, drawn largely from the reports and correspondence files of the BPA. This primary material includes correspondence between members of the BPA, the managers of missions and government reserves, and Kooris both on and off the missions and reserves. The analysis also draws on disparate primary sources such as newspaper clippings, photographs and film footage shot at Lake Tyers Aboriginal mission.

Interpretation of letters written by Kooris has been approached through the consultation of a number of other histories. I use secondary sources such as oral histories, local histories and publications by Koori organisations for historical Koori perspectives on the 1886 Act. Peter Read's work relating to dispersal policies in Wiradjuri country (New South Wales) is a useful model for considering the kinds of effects control of movement could have on an Aboriginal community.³ Penny van Toorn's discussion of forms of control and resistance provides a framework for interpreting the seeming acquiescence of people on missions and reserves, and the periodic outbreaks of overt resistance - often in the form of letters and petitions. Van Toorn also discusses the roles of Kooris ejected from reserves or forcibly moved between stations as messengers dispersing information on shared experiences of oppression.⁴ She acknowledges that in her interpretation of the silences and the shadows of the written record, she may be ventriloquising Aboriginal voices from a

³ Peter Read, "'Breaking up These Camps Entirely': The Dispersal Policy in Wiradjuri Country, 1909/ 1929," *Aboriginal History* v.8, no. 1/2 (1984); Peter Read, "A Double Headed Coin: Protection and Assimilation in Yass 1900-1960," in *All That Dirt, Aborigines 1938: An Australia 1938 Monograph*, ed. Bill Gammage, Andrew Markus, and History Project Incorporated. (Canberra: History Project Incorporated Australian National University, 1982); Peter Read, "'a Rape of the Soul So Profound': Some Reflections on the Dispersal Policy in New South Wales," *Aboriginal History* v.7, no. 1/2 (1983).

⁴ Penny van Toorn, "Hegemony or Hidden Transcripts?: Aboriginal Writings from Lake Condah, 1876-1907," *The UTS Review* 7, no. 1 (2001): 51-52.

non-Indigenous position of power and privilege'.⁵ I share these concerns, but like van Toorn, I persist. Avoiding interpretation and pursuit of Koori voices for fear of ventriloquising eventuates in a one-sided story.

This thesis begins with an exploration of the origins and development of race discourse in Victoria, then zooms in on the effects of the 1886 Act. Here it applies tenets of critical race theory to examine the role of law in the construction of race, showing this to be a fruitful mode of analysis. The thesis further analyses the figure of the 'half-caste', its structural significance as a borderline category, and the efforts made by scientists and 'Aboriginal Authorities'⁶ to rationalise the reality of this burgeoning group.

Seeking to identify discursive continuities in dominant settler ideology, the thesis demonstrates how Authorities manipulated space and racial definitions to (re)make the category 'Indigenous' as historically transient. Koori subversion of these experiments in control and elimination sustains an ongoing contest between settler and Indigenous interests in Australia.

⁵ *Ibid.*, 56-57.

⁶ This term refers generally to the Protectorates, Boards and Departments who assumed responsibility for Aboriginal affairs and is drawn from the title of the 1937 "Aboriginal Welfare: Initial Conference of Commonwealth and State Aboriginal Authorities", (Canberra: Commonwealth of Australia, 1937).

Chapter 1: 'Invisible cargo'

In 1937 R. T. Latham, a prominent legal scholar, evoked an image of the legal system which the first English settlers brought to Australia by stating: 'their invisible and inescapable cargo of English law fell from their shoulders and attached itself to the soil on which they stood'.⁷ Latham referred to the English legal rules regarding acquisition of territory at the time: 'if an uninhabited country be discovered and planted by English subjects, all the English laws then in being... are immediately in force'.⁸ The doctrine of *terra nullius* was invoked,⁹ the English settlers having decided that there were few Indigenous inhabitants, and that those existing were not in possession of the land, as they did not cultivate it. English law thenceforth 'attached itself to the soil'. The notion that possession of land related directly to proper use of it - namely cultivating, fencing and 'improving' it - is extremely powerful in English law, and has been used to justify the violent dispossession of Indigenous peoples.¹⁰ Native American scholar Robert A. Williams Jr. identifies John Locke's seventeenth century treatise on property as a canonical text in the 'rich corpus of texts and legal arguments for dispossessing the Indian'.¹¹ As Wolfe points out, the doctrine of *terra nullius*,

⁷ R. T. Latham originally quoted by Henry Reynolds, *Law of the Land* (1987). Reynolds quoted by Penelope Mathew, Rosemary Hunter, and Hilary Charlesworth, "Law and History in Black and White," in *Thinking About Law: Perspectives on the History, Philosophy and Sociology of Law*, ed. Richard Johnstone, Richard Ingleby, and Rosemary Hunter (St. Leonards, NSW: Allen & Unwin, 1995), 14.

⁸ Sir William Blackstone's *Commentaries on the laws of England: Book 1* (first published 1765), quoted by *Ibid.*, 13. 'The European powers had by the nineteenth century already established systems of rule and forms of social relations which governed interaction with the indigenous peoples being colonised. These relations were gendered, hierarchical and supported by rules, some explicit and others masked or hidden.' Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (New York: Zed Books, 1999) 26.

⁹ This was confirmed by the Privy Council in the *Cooper v Stuart* case, 1889. Mathew, Hunter, and Charlesworth, "Law and History in Black and White", 14.

¹⁰ This principle has 'deep historical anchorage' and is much more than some 'ad hoc rationalization that sprang up spontaneously in the Australian context'. Patrick Wolfe, "Land, Labor, and Difference: Elementary Structures of Race," *The American Historical Review* 106, no. 3 (2001): 869-70.

¹¹ Specifically, Locke's 'Property' chapter in his *Second Treatise of Government*. Robert A. Williams Jr., "Documents of Barbarism: The Contemporary Legacy of European Racism and Colonialism in the Narrative

in its more formal aspect as an item of international law... emerges not so much as an enduring ethnocentric prejudice as a quintessentially modern ideology that unites the domestic and colonial aspects of European bourgeois discourse.¹²

WAS NOT TERRIBLE'S

Adherence to an ideology of 'race', white supremacy and white measures of civilisation established and upheld the conviction that the 'Australian Aborigines' were a doomed race.¹³ This chapter takes the notion of 'invisible cargo' and analyses the implications not only of the legal cargo that the settlers brought, but of the other attitudes, assumptions and cultural baggage that 'fell from their shoulders'.

'They forget that we are human'¹⁴

DARWINISM

The primary object of English colonisation of Australia was the acquisition of land and the replacement of the Indigenous people on it. Wolfe thus characterises the relationship between settlers and Indigenous people in Australia as one of fundamental binarism, which necessitates elimination of the Indigenous category by the settlers. Wolfe explores how this logic of elimination is played out as a structural and discursive continuity to the present.¹⁵ Indigenous and settler Australians have been constructed as 'diametrically opposed' not only in the sense of having incompatible interests in the land, but in attitudes about proper land use and cultural outlook and values.¹⁶

The centrality of land in structuring the relationship between settler and Indigenous people in Australia was evident in the early encounters in Botany Bay and Port

Traditions of Federal Indian Law," in *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado (Philadelphia: Temple University Press, 1995), 103-04.

¹² Wolfe, "Land, Labor, and Difference": 869.

¹³ For an exploration of the prominence of this attitude between 1880-1939 see Russell McGregor, *Imagined Destinies: Aboriginal Australians and the Doomed Race Theory, 1880-1939* (Carlton, Vic.: Melbourne University Press, 1997).

¹⁴ Maggie Johnson of Lake Tyers, writing to the Premier of Victoria (October, 1921), on the Board's broken promise, in Elizabeth Nelson, Patricia Grimshaw, and Sandra Smith, (eds). *Letters from Aboriginal Women of Victoria, 1867-1926*, Unpublished manuscript, Melbourne.

¹⁵ Wolfe, "Nation and Miscegenation".

¹⁶ *The Age*, "White Myths Damage Our Souls," Gary Foley, 23 July 1993.

Jackson in 1788.¹⁷ The necessity of eliminating Indigenous people meant interpersonal relationships were fraught in ways not evident in other early encounters, such as the French anthropological visit to Van Diemen's Land in 1802.¹⁸ Interest in land meant that settlers needed to justify the dispossession of Indigenous people by dehumanising them and being blind to their technologies, religion, law and system of governance.

Historian Bain Attwood cites many examples of attempts of Gunai/Kurnai¹⁹ in 1850s-90s Gippsland to incorporate settlers into their social order by establishing relationships of kin and reciprocal obligation.²⁰ Whether for pragmatic or genuine reasons, these Kooris appear to have acted according to notions of common humanity and a willingness to identify with settlers as humans having similar feelings and behaviours. However, any analysis of the attitudes of missionaries, humanitarians, pastoralists and Aboriginal Authorities in nineteenth century Victoria reveals that overwhelmingly, these settler groups did not regard or treat Kooris as fully human.²¹ Philosopher Raimond Gaita argues these attitudes continue to the present, particularly in the Stolen Generation debate.²² Gaita interprets the justifications made by settler Australians for inhuman treatment of Indigenous people as assertions denying the latter's emotional 'depth'. Particularly regarding Aboriginal relationships to land and children, says Gaita, the thinking goes that Aboriginal people do not have the same *depth* of feeling. Aboriginal attachment to land and sense of grief and suffering is not as profound as 'ours;' Aboriginal parents will, for example, quickly forget any momentary panic upon theft of children.²³ In reality, distraught Koori mothers, fathers, aunts, uncles and grandparents in Victoria lobbied the BPA, Members of Parliament, the Governor and local white sympathisers for return of, or even contact and visiting

¹⁷ Richard Broome, *Aboriginal Australians: Black Responses to White Dominance, 1788-1994*, 2nd ed., *Australian Experience*; No. 4. (St Leonards, NSW: Allen & Unwin, 1994) 22-23.

¹⁸ *Ibid.*

¹⁹ This term used in place of Kurnai as it is used by Kooris from Gippsland to refer to themselves today.

²⁰ Bain Attwood, *The Making of the Aborigines* (Sydney: Allen & Unwin, 1989) 104-10.

²¹ This is attitude towards Indigenous people is common in other colonial settings. Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, 25.

²² Raimond Gaita, "Reconciliation and Collective Responsibility", (Public Lecture, 25 July, Australian Catholic University, Melbourne: 2001); Gaita makes a similar point in his chapter 'Racism: the denial of a common humanity' Raimond Gaita, *A Common Humanity: Thinking About Love & Truth & Justice* (Melbourne: Text, 1999), 59, 63.

rights to, their relatives. Authorities operated from the belief that they knew what was best for Aboriginal people and that they could either convince them of their wisdom, or force compliance 'for their own good'.²⁴

Time and again, Kooris appealed to the humanity of their oppressors. Their mode of expression reveals their incredulity at the inhuman actions of the BPA. In asserting their own humanity, Kooris threw doubt on that of their 'protectors'.²⁵

In 1918 Mrs Bessie Rawlings wrote to the Secretary of the BPA, Mr Parker, because she was not receiving the military pay for her son who was serving Australia in the war. (The BPA tried to stop Aboriginal families from receiving this military allotment on behalf of their sons.)

[Y]ou know sir that what little rations I get from the Board is not the worth of my dear only son's life of which he as gone to give up for king & freedom. so dear Mr Parker please do see that I get my pay for you know sir that every mother's heart is with her son... god bless our boys at the front...²⁶

Mrs Rawlings drew on an area of common experience with the phrase 'our boys', emphasising her family's fulfilment of the responsibilities of citizenship, and asserting that her feelings for her son were no less deep than those of any mother.

Mrs Elizabeth Jennings wrote at least fifteen letters and petitions to protest the removal of her daughter Elsie to the Salvation Army Home in Brunswick in 1914. Seeking access to Elsie she addressed the BPA, individual members of the BPA including the Chief Secretary and the Secretary, a Member of the Legislative Assembly (MLA), the matron of the Home and the Governor of Victoria. In a letter to Mr Ditchburn, the Secretary of the BPA, in November 1914, Mrs Jennings wrote:

²³ Gaita, "Reconciliation and Collective Responsibility"; Gaita, *A Common Humanity*, 59, 63.

²⁴ This phrase drawn from Anna Haebich, *For Their Own Good: Aborigines and Government in the Southwest of Western Australia, 1900-1940*, Staples South West Region Publication Series (Nedlands, WA: University of Western Australia Press for the Charles and Joy Staples West Region Publication Fund Committee, 1988).

²⁵ For a discussion of asserting humanity as part of anti-colonial discourse see Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, 25-28.

²⁶ [sic] Rather than interrupt quotes from primary sources which may contain irregular spelling, grammar or punctuation I quote all documents as they appear and use [sic] in the footnote. Bessie Rawlings, Purnim, to Mr Parker, Secretary, BPA, 27 June 1918, Letters from Aboriginal Women of Victoria, 1867-1926, Melbourne.

'How would you like to be in the same place as I am you would feel it You never let me know... how long you going to keep her in the Home... ²⁷ In December 1915, over one year and many letters later, Mrs Elizabeth Jennings wrote to Mr Cameron, MLA: 'Dear Sir I am real disappointed about my daughter Elsie the only girl I got not home to have xmas with me I would really like her to be home as same as a white mother would feel if they was in my place..'²⁸

Mrs Lena Austin's daughter Winnie was also the subject of many letters to the BPA. Winnie was removed from her family to Lake Condah reserve in 1916. Hearing Winnie might be allowed to come home for Christmas, Mrs Austin wrote,

you don't know how I am longing to see my dear little Winnie again... I have reared that child up from a babyhood... If you only knew what a mothers love is for her children you would feel it very much...²⁹

Mrs Austin had previously been informed that the Chief Secretary of the BPA did not deem 'the environment of Framlingham' to be 'conducive to the best moral interests of Winnie' and could not grant her request to have her returned³⁰ In December 1918 the BPA further decided to send Winnie Austin to the Salvation Army Home in East Kew.³¹

Mrs Rose Foster, writing in 1918 from Lake Condah, asked the BPA's permission to see her two daughters: 'it hurts my feelings very much to know that are so far away from me a mother feels for her children'.³² Aware that the BPA did not take their devastation seriously, Rawlings, Jennings, Austin, Foster and other Kooris tried to demonstrate the depth of their feelings. Similar calls were made in West Australia where in 1903 a father pleaded with the Aborigines Department for the return of his son, saying 'if you have any feeling atole pleas send the boy back as quick as you

²⁷ [sic]. Elizabeth Jennings, Lake Tyers, to Mr Ditchburn, Secretary, BPA, 17 November 1914, Letters from Aboriginal Women of Victoria, 1867-1926, Melbourne.

²⁸ [sic]. Elizabeth Jennings, Lake Tyers, to Mr Cameron, MLA, December 1915, Letters from Aboriginal Women.

²⁹ [sic]. Lena Austin, Purnim, to Mrs Gailbraith, Lake Condah, December 1917, Letters from Aboriginal Women.

³⁰ Nelson, Grimshaw, and Smith, Letters from Aboriginal Women.

³¹ Secretary, BPA to Lena Austin, Framlingham, 17 December 1918, Letters from Aboriginal Women.

³² [sic]. Rose Foster, Lake Condah, to Secretary, BPA, 20 June 1918, Letters from Aboriginal Women.

can...'³³ Aboriginal people tried to invoke the sympathies of the Authorities as fellow parents, citizens, and human beings.

Enlightenment, inequality and 'race'³⁴

Firmly fixed ideas about the existence of races, and the hierarchy of those races was part of the imperialist world view and part of the invisible cargo imported by English settlers.³⁵ Race discourse, and the construction of race as a seemingly natural category stemmed from eighteenth-century Enlightenment thought and was integral to the projects of slavery and colonialism.³⁶ Theorist Kenan Malik argues for the embeddedness of race and Enlightenment thought.³⁷ He claims race discourse emerged to reconcile the conflict between 'the ideology of equality', the possibility of which was an Enlightenment ideal, and 'the reality of the persistence of inequality'.³⁸ The possibility of human equality was constrained by the social consequences of capitalism, and the perception of racial difference developed as a rationale for class-based inequality. Says Malik, '[t]he common-sense view of racial inequality is that the denial of equal rights to different racial groups arises from the very existence of races'.³⁹ Rather, inequality gives rise to 'race'.⁴⁰

³³ [sic]. Quoted by Haebich, *For Their Own Good: Aborigines and Government in the Southwest of Western Australia, 1900-1940*, 67.

³⁴ A lengthy or even a cursory survey of the different social groups which have been and continue to be referred to as 'races' demonstrates the artificial and unnatural character of the very term. Whereas 'race' appears to apply to many different types of human groups, it can quickly be recognised that it actually denotes a power relationship. For example, 'race' had been applied haphazardly to various groupings of people, ranging from the entire 'human race', to the 'white race', to geographic definitions such as the 'European race' the 'Negro race' and cultural sub-divisions of geographic races, like 'the lowland Scot' or the 'North-country Englishman'. Johanna H. Smith, "Degeneration and Eugenics: Late-Victorian Discourses of the Ending of the Race," *Australasian Victorian Studies Journal* 4 (1998): 55; Nancy Stepan, *The Idea of Race in Science: Great Britain, 1800-1960* (London: Macmillan in association with St. Antony's College, 1982): 128. British eugenicists referred to a wide range of social, religious, and other groups as 'races'; examples included 'Africans', 'Orientals', 'Anglo-Saxons', 'English', 'Jews' and 'Nordics'. *Ibid.*, 130. In the Australian context, 'white' remains a racial category although its meaning and boundaries are hopelessly unclear.

³⁵ Jeremy Beckett, "Aboriginality in a Nation-State: The Australian Case," in *Ethnicity and Nation-Building in the Pacific*, ed. Michael C. Howard (Tokyo, Japan: United Nations University, 1989), 128-9.

³⁶ Collette Guillaumin, *Racism, Sexism, Power and Ideology* (London & New York: Routledge, 1995) 135-39; Kenan Malik, *The Meaning of Race: Race, History and Culture in Western Society* (Houndsmills, Basingstoke: Macmillan, 1996).

³⁷ *Ibid.*, 6.

³⁸ *Ibid.*

³⁹ *Ibid.*, 39.

⁴⁰ *Ibid.* Inequality also gives rise to 'gender', see Guillaumin, *Racism, Sexism, Power and Ideology*.

In Collette Guillaumin's analysis, '[o]nly certain specific relations (of dependence, exploitation) lead to the postulation of the existence of 'natural heterogeneous entities'.⁴¹ In other words, race is asserted only when inequality exists between, or creates, different social groups. Physical marks shared by the social groups are then chosen and made 'signs' of the naturalness of the inequality. Ultimate justification of the unequal relational and historical characteristics of groups (or social taxa such as slaves, the nobility, the bourgeoisie) is found in the natural sciences.⁴² Natural difference is not asserted without subjugation.

Racial categorisations are designed to perpetuate inequality and reproduce relations of power.⁴³ They are wielded arbitrarily and invoked for specific circumstances according to variant interests.⁴⁴ For example, Wolfe argues that the American slave system was transformed into a racial system upon abolition, thus maintaining the exploitation of African American labour.⁴⁵ Primarily comparing discourses of race and miscegenation under different colonial economic formations, Wolfe has identified different underlying imperatives. In Australia, as in other settler-colonies, land rather than labour was the object, so in agreement with the elimination imperative, racial definitions and assimilation policies were used to restrict and reduce numbers in the Indigenous category. Likewise, 'varying miscegenation policies', co-existing in the United States which had both a slave and an Indigenous population, 'make immediate sense, since assimilation reduces an indigenous population with rival claims to the land, while an exclusive strategy enlarges an enslaved labour force'.⁴⁶ Indigenous people in Australia and the United States were targeted with strategies from a similar

⁴¹ *Ibid.*, 135-36.

⁴² *Ibid.*, 134. Wolfe argues that the 'fusion of bourgeois political ideology with classificatory natural science, of power with knowledge, gave race its singular epistemic purchase on Enlightenment and post-Enlightenment thought'. Wolfe, "Land, Labor, and Difference": 876.

⁴³ Barry Morris, *Domesticating Resistance: The Dhan-Gadi Aborigines and the Australian State, Explorations in Anthropology*. (Oxford: Berg, 1989), 3. Wolfe, "Land, Labor, and Difference": 904. 'A colonial order arises when the state that has annexed a territory formally and systematically discriminates between the conquering invaders and the subject indigenes in such a way as to entrench the differences between them and to foster their economic, political, and cultural inequality'. Beckett, "Aboriginality in a Nation-State", 120.

⁴⁴ Introduction and Chapter 3 in Rosalind Kidd, *The Way We Civilise: Aboriginal Affairs - the Untold Story* (St Lucia, Qld: University of Queensland Press, 1997). Attwood characterises two main attitudes, held by two groups of settlers with different interests: the pastoralists and the humanitarians. Attwood, *The Making of the Aborigines*, 81-82.

⁴⁵ Wolfe, "Land, Labor, and Difference": 880-81.

⁴⁶ *Ibid.*, 867.

'inventory of settler-colonial policy options', all informed by the logic of elimination.⁴⁷

* A 1997 study identified sixty-seven definitions of Aboriginal identity in the body of Australian legislation.⁴⁸ This is a measure of the obsession of Authorities with the legal classification of Aboriginality. The place of the 'half-caste' in legal and administrative realms has been a particular site of contest (see Chapter 3). Some saw 'half-castes' as the embodiment of 'the worst of both races', while missionaries saw them as the site of potential for education and assimilation.⁴⁹ Given it was the self-appointed task of missionaries to educate and Christianise Kooris, this attitude is not surprising. Authorities encouraged perceptions of differences between Kooris on the basis of descent, a strategy characterised as an assault on Koori identities.⁵⁰

Wolfe states that in Australia 'Aboriginal people became racialised - in the full genetic sense involved in blood quantum legislation - during the years surrounding national independence, in 1901'.⁵¹ Indeed a rash of legislation spread across the mainland: radical Aborigines Acts were passed in Victoria (1886), Queensland (1897), West Australia (1905), New South Wales (1909), South Australia (1910) and the Northern Territory (1911).⁵²

The 1886 policy was part of a longer-term plan, sometimes referred to as attainment of 'finality',⁵³ whereby Aboriginal people of 'mixed descent' were gradually to be incorporated into the white community and 'full-blood' Aboriginal people allowed to die out in isolation. In 1887 the BPA described their new policy as 'the beginning of

⁴⁷ Eliminary strategies included 'homicide, removal, confinement to reservations, child abduction, and... cultural assimilation'. *Ibid.*, 870, 85.

⁴⁸ John McCorquodale, "Aboriginal Identity: Legislative, Judicial and Administrative Definitions," *Australian Aboriginal Studies* 2 (1997): 24.

⁴⁹ Attwood, *The Making of the Aborigines*, 91. 'That class formed by people belonging in fact to one and the other group is declared to belong to neither the one nor the other, but to itself'. Guillaumin, *Racism, Sexism, Power and Ideology*, 135.

⁵⁰ Attwood, *The Making of the Aborigines*, 89, 101. Tony Birch, "Come and See the Giant Koala," *Meanjin* 58, no. 3 (1999): 71-72. Also note the resistance of William Cooper, quoted in McGregor, *Imagined Destinies*, 249.

⁵¹ Wolfe, "Land, Labor, and Difference": 872. This statement is made with reference to Bain Attwood's *The Making of the Aborigines* (1989) 81-103. Jeremy Beckett and Australian Institute of Aboriginal Studies, *Past and Present: The Construction of Aboriginality* (Canberra: Aboriginal Studies Press for the Australian Institute of Aboriginal Studies, 1988) 197.

⁵² Broome, *Aboriginal Australians*, 97-98.

the end, which in the course of a few years will leave only a few pure blacks under the care of Government'.⁵⁴ The logic of elimination can be identified in direct attempts to kill Indigenous people as well as in indirect efforts such as attempted merging.⁵⁵ The logic appeared in the words of A. O. Neville, Commissioner of Native Affairs in West Australia, when speaking in 1937. Neville hoped that assimilation would allow settlers to 'eventually forget that there were any Aborigines in Australia'.⁵⁶ In 1989 historian Jeremy Beckett noted that settlers have been unable to forget.⁵⁷

Analysis of spatial aspects of colonisation

From across the frontier to existence on reserves and missions to assimilation, the relationship of Aboriginal people to European society has 'shifted from one of exteriority to one of interiority'.⁵⁸ In the United States racial ideology replaced direct violence as a mode of domination of 'post-treaty Indians contained within the settler-colonial nation-state'.⁵⁹ Likewise racial distinctions became a 'key feature of policy' in the strategies for bringing Aboriginal people under control after the demise of the frontier. That is, after internalisation comes (re-)racialisation; 'we find race intensifying when social space becomes, or threatens to become, shared'.⁶⁰

In 1859, a Select Committee of the Victorian Legislative Council recommended the establishment of reserves and the appointment of a Central Board to watch over the interests of the aborigines (CBA).⁶¹ In its report, the Select Committee observed

⁵³ Board for the Protection of the Aborigines in the Colony of Victoria, Resolutions, Minutes, 2 July 1884, B3 14, Roll 1, National Archives of Australia, Melbourne. Term also attributed to the BPA in another instance by Birch, "Come and See the Giant Koala": 72.

⁵⁴ "Twenty-Third Report of the Board for the Protection of the Aborigines in the Colony of Victoria. Presented to Both Houses of Parliament", (Melbourne: Board for the Protection of the Aborigines, 1887), 4.

⁵⁵ Gary Foley has characterised the 'concentration camp' period from 1930s to the 1960s as the second, and 'most destructive', phase which followed initial 'mass murder'. Gary Foley, "Australia and the Holocaust: A Koori Perspective," *Gary Foley's Koori History Site*, (1997): 5. Wolfe suggests 'abduction was actually a purer form of the logic of elimination than massacre'. Wolfe, "Nation and Miscegenation": 117.

⁵⁶ "Aboriginal Welfare: Initial Conference of Commonwealth and State Aboriginal Authorities", (Canberra: Commonwealth of Australia, 1937), 11.

⁵⁷ Beckett, "Aboriginality in a Nation-State", 134.

⁵⁸ Wolfe, "Land, Labor, and Difference": 871.

⁵⁹ *Ibid.*, 886.

⁶⁰ *Ibid.*, 887.

⁶¹ Thomas McCombie, "Report of the Select Committee of the Legislative Council on the Aborigines; Together with the Proceedings of Committee, Minutes of Evidence, and Appendices," in *Votes and proceedings of the*

'Victoria is now entirely occupied by a superior race, and there is scarcely a spot, excepting the remote mountain ranges, or dense scrubs, on which the Aborigine can rest his weary feet'.⁶² The CBA set about incarcerating Victoria's 'black denizens' on reserves and missions, the only measure considered capable of stemming the imminent extinction of the inferior, 'weak and ignorant' race.⁶³ Once Kooris were largely brought under control by physical violence and coercion, racial ideology became institutionalised through the law as a way of maintaining dominance. The significance of shared space and completed invasion in this shift to a racial regime of control is evident in the lead up to the implementation of the 1897 Queensland Act.⁶⁴ Parliamentary debates demonstrate the 1897 Act was not aimed at remote Aboriginal people, but specifically at those in south-eastern regions of Queensland who were visible and troublesome because of their clashes with the legal system.⁶⁵ As Beckett notes, initially survivors of invasion who were found as paupers on the 'fringes of colonial society' were targeted for state control.⁶⁶ Powers were later extended to incorporate all Aboriginal people.⁶⁷

In Wolfe's words, 'the salient ideological effect of the frontier was that it rendered spatial coexistence anomalous'.⁶⁸ Survival of Aboriginal people after the 'frontier' had passed was seen as anomalous and had to be addressed. The spatial aspects of BPA policy thus take on significance, and will be linked to the figure of the 'half-caste' below.

The establishment of reserves, seen as a fulfilment of Christian duty towards a doomed dispossessed 'race', was a strategy that also sought to keep Aboriginal people

Legislative Council during the session 1858-9: with copies of the various documents ordered by the Council to be printed, ed. Legislative Council of Victoria (Melbourne: Government Printer, 1859).

⁶² *Ibid.*, iv.

⁶³ *Ibid.*

⁶⁴ The 1897 Aboriginals Protection and Restriction of the Sale of Opium Act, in force until 1939.

⁶⁵ Kidd, *The Way We Civilise: Aboriginal Affairs - the Untold Story*, 45.

⁶⁶ Beckett, "Aboriginality in a Nation-State", 124.

⁶⁷ *Ibid.* Between 1869 and 1877 the proportion of Kooris living on reserves increased from less than one-third to one half. As General Inspector, John Green tried to coax Kooris living independently on to the reserve system. Increased powers allowed the Board to prescribe Kooris' place of residence. M. F. Christie, *Aborigines in Colonial Victoria, 1835-86* (Sydney: Sydney University Press, 1979) 178-79.

⁶⁸ Wolfe, "Nation and Miscegenation": 102.

(construed as 'remnants') off coveted land and restore spatial exclusivity.⁶⁹ These 'Aboriginal' spaces were tolerated as a temporary measure,⁷⁰ on the way to 'finality', 'since [Aborigines] were believed to be a dying race'.⁷¹ After an initial round-up, the BPA expected to oversee a reduction in Indigenous numbers by letting nature take its course for the doomed 'full-bloods', and facilitating assimilation of the 'mixed-bloods' by removing children.⁷² Indeed, Reverend John Heinrich Stähle (Anglican missionary at Lake Condah) reported to the Board in 1900, 'as the blacks are dying out, and the Board removes half-caste boys and girls... finality is greatly facilitated, and will, doubtless, be attained within a few years'.⁷³

The more sympathetic and optimistic of the colonists sought to devote large tracts of land for the permanent use of Aboriginal people, whose survival could only be assured by complete separation from 'the debased amongst our own people'.⁷⁴ In the view of the 1858 Select Committee, a remote locale 'such as Gipps Land' would have been appropriate for sequestering the survivors.⁷⁵ The committee had hoped that 'it might have been practicable to have settled the whole of the remnants of the tribes in one locality', but the idea was 'reluctantly abandoned' based on evidence that Kooris would resist removal from traditional territory.⁷⁶ Consequently the Select Committee recommended formation of 'reserves for the various tribes on their own hunting grounds'.⁷⁷ Furthermore it was necessary for these reserves to be situated in 'retired

⁶⁹ "[P]rotective segregation," was the institutional expression of a whole social and ideological structure that perpetuated the distinction between "native" and "settler" after the act of dispossession had been consummated. Beckett, "Aboriginality in a Nation-State", 124. Indeed, from the 1860s, under the missionary policy in Victoria, contact between Aborigines and Europeans 'diminished in frequency and closeness'. Attwood, *The Making of the Aborigines*, 114.

⁷⁰ Morris, *Domesticating Resistance: The Dhan-Gadi Aborigines and the Australian State*, 98.

⁷¹ Wolfe, "Land, Labor, and Difference": 372.

⁷² See McCombie, "Report of the Select Committee of the Legislative Council on the Aborigines".

⁷³ Thirty-sixth report (1900), quoted in Patricia Grimshaw and Elizabeth Nelson, "Empire, 'the Civilising Mission' and Indigenous Christian Women in Colonial Victoria," *Australian Feminist Studies*, (Forthcoming August 2001): 8.

⁷⁴ McCombie, "Report of the Select Committee of the Legislative Council on the Aborigines", "Second Report of the Central Board Appointed to Watch over the Interests of the Aborigines in the Colony of Victoria. Presented to Both Houses of Parliament", (Melbourne: Central Board Appointed to Watch over the Interests of the Aborigines, 1862), 15.

⁷⁵ McCombie, "Report of the Select Committee of the Legislative Council on the Aborigines", 3.

⁷⁶ *Ibid.*, v.

⁷⁷ *Ibid.*

localities, [with] no licensed taverns... in their vicinity'.⁷⁸ It was thought beneficial to 'keep them from any communication with the whites or the civilised race'.⁷⁹ In fact, since the establishment of the Protectorate in 1837, one of the main pursuits of the protectors was 'to keep the blacks out of Melbourne'.⁸⁰

The 1886 Act, which reduced numbers on reserves, was followed by a BPA push to close reserves with smaller populations and 'concentrate' populations on fewer and fewer reserves. However, the BPA campaign for spatial constriction had begun earlier and resurged in the 1920s and the 1950s.⁸¹ In 1879 the Vice-Chairman of the BPA informed the Chief Secretary that the Board had been seriously considering 'the advisability of concentrating the natives on fewer stations than at present'.⁸² The necessity for concentration was due to the 'painful fact that the aborigines throughout Victoria are rapidly decreasing in numbers', and the BPA anticipated that 'ultimately the last of the Victorian natives will be gathered to... Ebenezer and Lake Tyers'.⁸³ It considered the latter reserve

the most valuable under its control; it is isolated, situated in poor country, never likely to be thickly populated, and there are good hunting and fishing grounds in its immediate vicinity; and I may here explain that the more remote an aboriginal station is from a European population the better adapted it is for the natives...⁸⁴

Agitation by the BPA for closure of reserves, revoking reserve land and concentrating residents to Lake Tyers was constant between 1889 and 1901.⁸⁵ Ebenezer was closed in 1904, followed by Ramahyuck (April 1908), and Lake Condah (1919). The year

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ Evidence of William Thomas, assistant protector (1837-1849), then guardian of Aborigines from 1850. *Ibid.*, 1.

⁸¹ Birch, "Come and See the Giant Koala": 72.

⁸² Henry Jennings, The Vice-Chairman of the Aboriginal Board to the Honourable the Chief Secretary, 12 June 1879, Aborigines: Report and correspondence relative to the mortality amongst the residents of the aboriginal stations of Victoria, Melbourne. Also appears as Appendix XII to "Fifteenth Report of the Board for the Protection of the Aborigines in the Colony of Victoria. Presented to Both Houses of Parliament". (Melbourne: Board for the Protection of the Aborigines, 1879), 13.

⁸³ Jennings, The Vice-Chairman of the Aboriginal Board to the Honourable the Chief Secretary, 12 June 1879.

⁸⁴ *Ibid.*

⁸⁵ "Reports of the Board for the Protection of the Aborigines in the Colony of Victoria. Presented to Both Houses of Parliament", (Melbourne: Board for the Protection of the Aborigines, 1889-1901).

1917 saw a renewed push to move all Kooris who were living on reserves and along the Murray to Lake Tyers, once again nominated 'on account of the fine climactic conditions, its isolation, and the few hotels in the locality'.⁸⁶

The shrinking amount of land available to Kooris⁸⁷ was a spatial correlate of the progression to 'finality', or elimination, pursued by the BPA. The embarrassing persistence of Kooris after the demise of the frontier had to be remedied by spatial confinement, which reinforced the settler/indigene division.⁸⁸ Just as survival of Kooris was seen as a transient phenomenon, reserves were introduced as a temporary measure. However, the rise of official panic over the proliferation of 'half-castes' resulted in formulation of new policies to bring about 'finality'. The figure of the 'half-caste', viewed as an historical transient, 'on the way to white', thus became the site of intervention (see Chapter 3). The 1886 Act was to play a major role in government strategy to remove 'half-castes' from Indigenous identity. While this was couched in racial terms, its ideological work was to recast the category 'Indigenous' as doomed and continually shrinking. Racial discourse was employed both to justify mortality of authentic 'full-bloods' and to render 'half-castes' inauthentic Aboriginal people.

Conclusion

English attitudes regarding proper land use added to the race discourse brought to Australia as another form of 'invisible cargo'. Construction of Aboriginal people as an inferior 'race' worked to justify their elimination at the foot of the settler. Settler denial of the full humanity of Aboriginal people was an attitude discerned and mirrored back to colonial officials by Kooris in letters written to the BPA.

⁸⁶ Chesterman and Galligan, *Citizens without Rights: Aborigines and Australian Citizenship*: "Forty-Ninth Report of the Board for the Protection of the Aborigines in the Colony of Victoria. Presented to Both Houses of Parliament", (Melbourne: Board for the Protection of the Aborigines, 1921), 3.

⁸⁷ In an intimate attack on space and claims to country, Kooris' homes were usually demolished when reserves were closed. Birch, "Come and See the Giant Koala": 72. See *Jackson's Track* for a description of the establishment, vitality and, in 1962, the demolition of an independent Koori community in Victoria. Daryl Tonkin and Carolyn Landon, *Jackson's Track: Memoir of a Dreamtime Place* (Melbourne: Viking, 1999).

⁸⁸ Wolfe, "Land, Labor, and Difference": 874.

The increasing spatial confinement of Kooris illustrates the underlying logic of elimination which is also apparent in the actions of the settler community and Aboriginal Authorities.

Whereas this chapter is focused on the way 'Aboriginal' people were racialised, the chapter that follows demonstrates that 'half-castes' were constructed as a distinct 'race' as a consequence of the 1886 Act.

Chapter 2: The role of law in the construction of 'race'

Introduction

After a twenty-five year period of 'protective segregation',⁸⁹ the 1886 Act forcibly shifted members of the Koori communities now established on reserves and missions off to find accommodation and employment in the mainstream. While partly aimed at reducing the effects on Aboriginal people of 'institutionalisation', a feature of the reserve system, the policy-makers also had political and economic motivations.⁹⁰

This chapter employs critical race theorist Ian Haney-López's framework for systematic evaluation of how the law constructs 'race', to consider the effect of the 1886 Act on race discourse. The approach dispenses with the notion that 'black' and 'white', 'half-caste' and 'full-blood' are natural categories or pre-legal givens. Some physical, social and material effects of the 1886 Act on the Koori population of Victoria are identified to demonstrate that the Act entrenched the very conditions of inequality it ascribed as natural to the Aboriginal 'race'. Kooris resisted the Act in many ways (this is addressed at the end of this chapter and in Chapter 3).

Details of the Act

The important aspects of the 1886 Act were the provisions which drew a distinction within Koori communities on the basis of descent; because of this it became known as

⁸⁹ Beckett, "Aboriginality in a Nation-State", 124.

⁹⁰ Attwood, *The Making of the Aborigines*, 85-89.

Christie, *Aborigines in Colonial Victoria, 1835-86*, 194-95.

the 'Half Caste Act'.⁹¹ The Act (attached as Appendix) laid out a five-part definition of persons to be considered 'aboriginals' and excluded all others from this category.⁹² Persons 'deemed to be aboriginals' under the *Aborigines Protection Act 1886* were:

- (1.) Every aboriginal native of Victoria.
- (2.) Every half-caste who habitually associating and living with an aboriginal within the meaning of this section has prior to the date of the coming into operation of this Act completed the thirty-fourth year of his or her age.
- (3.) Every female half-caste who has prior to the date aforesaid been married to an aboriginal within the meaning of this section and is at the date aforesaid living with such aboriginal.
- (4.) Every infant unable to earn his or her own living the child of an aboriginal within the meaning of this section living with such aboriginal.
- (5.) Any half-caste other than is hereinbefore specified who for the time being holds a licence in writing from the Board under regulations to be made in that behalf to reside upon any place prescribed as a place where any aboriginal or tribe of aboriginals may reside.⁹³

All falling outside this definition were deemed 'half-castes', taken to mean 'all persons whatever of mixed Aboriginal blood'.⁹⁴ 'Half-castes' were to leave reserves within three years, but the BPA was to continue its 'care and oversight' of 'half-castes' for seven years after the commencement of the Act.⁹⁵ The Act empowered the BPA to control in regard to 'half-castes', their place of residence, provision of supplies, apprenticeships, and institutionalisation of children.

⁹¹ Attwood, *The Making of the Aborigines*, 81. Linda Wilkinson, "Fractured Families. Squatting and Poverty: The Impact of the 1886 "Half-Caste" Act on the Framlingham Aboriginal Community." in *Law and History in Australia. Vol II*, ed. Ian Duncanson and Diane Kirkby (1986).

⁹² [sic]. *The Aborigines Protection Act, 1886*, 50 Victoriae, no 912.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ John McCorquodale and Australian Institute of Aboriginal Studies, *Aborigines and the Law: A Digest* (Canberra: Aboriginal Studies Press, 1987) 82.

Racial ideas in the making and implementation of the 1886 Act

The draftsman for the 1886 Act, Edward Guinness, recognised the somewhat 'arbitrary' nature of the definitions he was encoding, but saw them as a pragmatic way of dividing up the Koori population for differential treatment. The actual category into which people fell did not matter so much as the provisions for thereby segregating the community as the BPA wished. In a memo on the draft 'Aboriginal Bill', Guinness explained:

The method by which the Bill attempts to carry out the proposals of the Board, is in classifying persons of aboriginal blood under two heads. For this purpose the distinctive names of "aboriginal" and "half-caste" have been adopted. The Bill treats persons affected by it as falling under either one or the other of these heads. It may be explained at the outset that the definition is to a certain extent arbitrary, but the provisions of the Bill are distinct in their operation as respects the individuals who come under either head.⁹⁶

Whereas the actual categories were arbitrary, the important thing was dividing Kooris into categories, which could then be doggedly policed. Attwood argues that once the Act was in place, it served to 'crystallise' the 'half-caste/full blood distinction', hardening 'racial assumptions and categories which had previously been only vague and inconsistent'.⁹⁷

The designers of the Act made the definition of 'half-caste' wide enough to include all those considered by the community as such, 'so that no doubt as to the applicability of the Bill to persons who, in practice, had been treated as half-castes might arise'.⁹⁸

Hence clause 3 of the Act was designed to include 'any person who had aboriginal blood in his veins' in the meaning of the term 'half-caste'.⁹⁹ By lending the prestige of

⁹⁶ Edward Guinness, 30 September, Memo: Aboriginal Bill, Memo, VPRS 10265/P/Unit 266; Chief Parliamentary Couns' Office: Registered Drafts and Amendments of Parliamentary Bills, 1874-; Victorian Public Record Office, Melbourne, Victoria.

⁹⁷ Attwood, *The Making of the Aborigines*, 100.

⁹⁸ Guinness, VPRS 10265/P/Unit 266; Chief Parliamentary Couns' Office: Registered Drafts and Amendments of Parliamentary Bills.

⁹⁹ *Ibid.*

law to the 'folk' or common-sense understanding of 'half-caste' the Act worked to legitimise the category.¹⁰⁰

The definition began to show its failings when common-sense contradicted the legal definition. The inadequacy of the all-encompassing definition in the Act was revealed by a case referred to the BPA by John Bulmer in 1889. Bulmer asked, 'will you kindly inform William Rawlings if he is a half-caste within the meaning of the Act'.¹⁰¹

Reputedly the son of an African American person and an Aboriginal Australian person, Rawlings' racial categorisation challenged the assumptions of the Board and caused ongoing confusion.¹⁰² It was unclear whether Rawlings' apparent 'blackness' should override alleged racial hybridity in the determination of 'half-caste' status. The common-sense test and the legislative definition did not provide the desired answers. The problems perceived by the BPA relating to Rawlings reveal their assumption that the term 'half-caste' did not refer to the child of parents of different 'races', nor to the definition as written in the 1886 Act, that is 'half-castes as [well as] all other persons whatever of mixed aboriginal blood'.¹⁰³ It actually referred to a more specific hybrid.

Guiness' memo reveals that 'half-caste' referred to 'persons of *mixed aboriginal and European blood*' rather than any inter-racial mix whatever.¹⁰⁴ Rawlings' apparent lack of 'European blood' confounded his classification.¹⁰⁵ Evidently the category 'half-caste' was only intended to refer to the borderline *social* figure which confused the settler/indigene boundary in a society 'premised on distinguishing between colonizer and colonized'.¹⁰⁶ To the BPA, blackness was the mark of Aboriginality, and the BPA's substitution of the terms 'full black', 'black', 'pure aboriginal' and 'full-blood'

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¹⁰⁰ Ian Haney-López, *White by Law: The Legal Construction of Race, Critical America*. (New York: New York University Press, 1996); see effect of equivalent legalisation in NSW in Morris, *Domesticating Resistance: The Dhan-Gadi Aborigines and the Australian State*, 97-98.

¹⁰¹ John Bulmer to Rev Hagenauer, Acting General Inspector, BPA, 30 January 1889, VPRS 1694/P/Unit 1; Board for the Protection of Aborigines: Correspondence files, 1889-1931; Victorian Public Record Office, Melbourne, Victoria.

¹⁰² Wilkinson, "Fractured Families, Squatting and Poverty: The Impact of the 1886 "Half-Caste" Act on the Framlingham Aboriginal Community", 15-16.

¹⁰³ *The Aborigines Protection Act*, 1886, 50 Victoriae, no 912.

¹⁰⁴ Guinness, VPRS 10265/P/Unit 266; Chief Parliamentary Counsel's Office: Registered Drafts and Amendments of parliamentary Bills; emphasis added.

¹⁰⁵ See other such examples in Tom Clarke and Brian Galligan, "Protecting the Citizen Body: The Commonwealth's Role in Shaping and Defending an 'Australian' Population. [1901 to 1962]," *Australian Journal of Political Science* 30, no. 3 (1995).

¹⁰⁶ [sic]. Wolfe, "Land, Labor, and Difference": 904.

is a linguistic expression of this.¹⁰⁷ The 1886 Act attempted to enforce the notion that the term 'aboriginal' was to signify only those *deemed* 'pure' as authentic Aboriginal people. A comment by the Chief Secretary betrayed his arbitrary and colour-based understanding of the strategy: 'as far as he could see it was the intention of the board to keep Coranderrk as far as possible for the full blacks and for those who were *nearly* black'.¹⁰⁸ However, as Wolfe argues,

It is important not to be misled by the biological cast of assimilationist rhetoric. For all the talk of "half-castes," "full-bloods" and the like, Aboriginality was an ideological rather than a biological threat... the essential difference between Whites and Aborigines was the relation of invasion, a fact which the various discourses on race and colour sought to disguise.¹⁰⁹

An early draft of the 1886 Act used the terms 'aboriginal' and 'aboriginal half caste'.¹¹⁰ Given the object of the Act was to exclude 'half-castes' from the category 'aboriginal', it is not surprising such linguistic references to Aboriginality of 'half-castes' were edited out.

Rationale behind the Act

Historian Michael Christie has argued that the new 'half-caste' policy was designed to silence the more vociferous political demands of Aboriginal people in the wake of several years of 'trouble' at Coranderrk reserve.¹¹¹ The 'younger, literate "half-castes" made excellent use of their writing ability by sending letters and petitions' as part of a multi-faceted campaign by the larger Coranderrk community over the management of

¹⁰⁷ The first two terms were used by Rev Hagenauer who, with the Secretary of the BPA, prepared the 1884 resolution presented to the Chief Secretary for the framing of the 1886 Act. Board for the Protection of the Aborigines in the Colony of Victoria, Resolutions. In the Act itself, the terms 'ab'orig'inal', 'aboriginal native' and 'half-caste' were used. *The Aborigines Protection Act, 1886*, 50 Victoriae, no 912.

¹⁰⁸ *The Age*, 28 May 1884, Deputations: The Coranderrk Station, Newspaper clippin_g. VPRS 10265/P/Unit 266: Chief Parliamentary Counsel's Office: Registered Drafts and Amendments of Parliamentary Bills, 1874-; Victorian Public Record Office, Melbourne, Victoria. Emphasis added.

¹⁰⁹ Wolfe, "Nation and Miscegenation": 114.

¹¹⁰ Guinness, 12 April 1886, a similar clause was included in the 1869 Act. Copy attached to Seventh Report, 1867, appendix x.

¹¹¹ Christie, *Aborigines in Colonial Victoria, 1835-86*, 182-95.

the reserve.¹¹² The association of 'half-castes' with political dissent, while clearly related to higher rates of literacy amongst a generation educated on reserves and missions, was easy to racialise by attributing to a hereditary 'white' element.

The stated aims of the BPA included the encouragement of self-reliance amongst 'able-bodied men who were well able to earn their living'.¹¹³ However, events in the years prior to the passing of the Act call into question the aims of the 'merging' policy and the amount of thought put into its design.

Bessy and Donald Cameron were living on Ebenezer mission station in the Wimmera in 1883 when they determined to leave the mission and reserve system. A Nyungar woman from Albany, West Australia, Bessy Cameron (née Flowers) had received a middle-class white Anglican education.¹¹⁴ Donald Cameron was a prime exemplar of the BPA's category of 'able-bodied men who were well able to earn their living' in the mainstream. The Moravian missionary Reverend Friedrich August Hagenauer regarded Donald as a 'half-caste man of very superior character and fair education, pleasant manners and considerable talents'.¹¹⁵ However, steady employment was difficult to secure, and the family suffered hardship and illness attempting to live on their own earnings outside the reserve system. Bessy wrote to the BPA seeking permission to live on Lake Tyers mission,

I have tried living on our earnings & it wont do. Donald has not been earning regular wages, & it takes all he earns to pay for our food... I hope you will allow us to stay on this station, it comes hard on the children and myself wandering about without a home...¹¹⁶

Donald Cameron's experiences in 1883-4 should have been a forewarning to the BPA of the effects of expelling such men and their families under their proposed Act. However, the BPA apparently disregarded this sign, instead pursuing unabated its

¹¹² *Ibid.*, 188.

¹¹³ Twenty-third report of the BPA (1887) 3, quoted in *Ibid.*, 197. Similar wording in *Board for the Protection of the Aborigines in the Colony of Victoria, Resolutions*, 1884.

¹¹⁴ Attwood, *The Making of the Aborigines*, 32-59.

¹¹⁵ *Ibid.*, 49.

¹¹⁶ [sic] Bessy Cameron, Lake Tyers, to Captain Page, Secretary, BPA, 15 May 1884, *Letters from Aboriginal Women*.

policy, resolved in 1882, 'to raise the "half-castes" to independence and to merge them into the general population'.¹¹⁷ According to the BPA theory, able-bodied 'half-castes' should be able to make their own way. In practice, disadvantage, homelessness, white hostility and the economic recession of the 1890s made finding employment extremely difficult.¹¹⁸ Many years after the 'merging' policy was first attempted, Kooris still mentioned experiences of discrimination in employment: 'We depend mostly on rabbiting. This is a very poor neighbourhood for work, and the black boy has not the same chance as the white'.¹¹⁹ This situation continues and is reflected in employment statistics today. By pursuing the policy behind the 1886 Act, the BPA knowingly inflicted the conditions experienced by the Camerons on other families. This would have the direct benefit to the BPA of dispersing 'the troublesome "half-castes"'¹²⁰ and defusing recent outbreaks of overt resistance. It also had the discursive or symbolic benefit of reducing numbers in the Indigenous category. In the parliamentary debate for the 1886 Act, one of only two speakers (both in favour), Hon J. Lorimer, stated that the BPA 'were anxious that the measure should be passed'.¹²¹ Lorimer's other comment in support of the Bill was that

[h]alf-castes were multiplying very largely at the aboriginal stations. According to the existing law half-castes were regarded as aborigines, but adult half-castes were quite capable of earning their own livelihood.¹²²

Proliferation and survival upset the elimination imperative, and 'half-castes' could not be allowed to enlarge the category known as Aboriginal. The only option was to incorporate them into the settler category by defining them non-Aboriginal and separating them from the shrinking space designated 'Aboriginal'.

¹¹⁷ Christie, *Aborigines in Colonial Victoria, 1835-86*, 193.

¹¹⁸ Victorian Aborigines Advancement League, *Victims of Victors? The Story of the Victorian Aborigines Advancement League* (South Yarra: Hyland House, 1985) 26. See also Patricia Grimshaw, "Colourising Motherhood: Evangelical Social Reformers and Koorie Women in Victoria, 1880s to the Early 1900s," *Women's History Review* 8, no. 2 (1999): 14-15.

¹¹⁹ Harriet King, Milltown, to Mrs Bon, Member, BPA, circa 1920 in Nelson, Grimshaw, and Smith, *Enterers from Aboriginal Women*.

¹²⁰ Christie, *Aborigines in Colonial Victoria, 1835-86*, 196.

¹²¹ *Victorian Parliamentary Debates*, December 15 1886, 2882.

¹²² *Ibid.*

Law constructing 'race'

Much existing 'race-and-law' literature in the United States treats 'black' and 'white' as natural categories, as pre-legal givens.¹²³ However, critical race theory, a genre stemming from recent US civil rights and legal scholarship, is based on the conviction that race is socially constructed, and that law has a significant role in this. Ian Haney-López has developed an analytical framework which assesses the ways in which law constructs race physically, socially and materially. His framework is employed here to make explicit the role of the 1886 Act in constructing and entrenching 'race'. Whereas Broome and Attwood, *inter alia*, have acknowledged that special legislation relating to Aboriginal people has arisen from and contributed to race discourse and public opinion, neither has evaluated systematically how law constructs and maintains races. Not only did the 1886 Act harden racial categories and entrench the 'full-blood'/'half-caste' distinction in the minds of the BPA and other Aboriginal Authorities around Australia, its effects on 'race' were physical, social and material.

Laws create differences in physical appearance by directly shaping reproductive choices.¹²⁴ In Australia the state apparatus, including Aboriginal Authorities, missionaries and reserve managers, has manipulated the reproductive choices of Aboriginal people using either laws and regulations, or administrative discretion.¹²⁵ Australia's *Immigration Restriction Act* (1901) constrained reproductive choices by largely screening out non-white and non-British prospective migrants.¹²⁶ The 1886 Act did not make marriages between particular categories illegal or officially contingent on BPA permission. Nevertheless, the BPA was 'able to control the marriages of Koori people' (according to an assimilationist ideology) during the period of its operation using inducements and punishment.¹²⁷ By 1910 it was the 'custom' of mission and reserve managers to write to the BPA to seek consent for proposed marriages. Historian Katherine Ellinghaus has found that the BPA had 'no objection to marriages of people of the same status under the [1886] Act, but when potential

¹²³ Also comments that little has been written on the legal construction of race in the United States Haney-López, *White by Law: The Legal Construction of Race*, 11-12.

¹²⁴ *Ibid.*, 14-15.

¹²⁵ Ellinghaus, "Regulating Koori Marriages: The 1886 Victorian *Aborigines Protection Act*".

¹²⁶ Clarke and Galligan, "Protecting the Citizen Body": 453-54.

spouses were of mixed and full descent a refusal was always the response'.¹²⁸ Ellinghaus suggests the BPA's decisions to support or reject particular marriages followed the 'simple financial strategy' of allowing only those marriages which would not increase the financial 'burden' on the state. However, as Chesterman and Galligan argue, Victoria had a small Aboriginal population (in both numerical and percentage terms) relative to the rest of mainland Australia.¹²⁹ Its financial outlay for the 'protection' of the Koori population was small.¹³⁰ The BPA's declarations of the economic benefits of new policies disguised other logics at play. The BPA considered the marriage of 'half-caste girls to pure blacks' would not result in the merging of the 'half-caste' population 'into the general community' and should therefore be 'discouraged as much as possible'.¹³¹ Koori women were regarded 'conduits to whiteness'¹³² and their marriage to 'blacker' men was not looked upon favourably. One hope for a Koori woman in the eyes of the BPA was to marry a white man, an option within reach of 'girls' who were 'almost white, and [had] been well brought up'.¹³³

In an 1884 resolution, the BPA outlined its new intentions regarding marriage:

[a]ll "half-caste" women married to full-bloods before 1 January 1885 would receive the same "benefits" as their husbands, but if any full-blood married a "half-caste" after that date they would both be treated as "half-castes".¹³⁴

Evidently, they intended to use banishment as a way of discouraging marriage which opposed their racial plan for the merging of 'half-castes' spatially and through colour dilution. Some Kooris successfully and defiantly evaded this type of threat to their

127 Ellinghaus, "Regulating Koori Marriages: The 1886 Victorian *Aborigines Protection Act*":23.

128 *Ibid.*, 25.

129 Chesterman and Galligan, *Citizens without Rights: Aborigines and Australian Citizenship*, 12-13.

130 Figures for 1913-1939 show Vic. spent more per capita on Aboriginal people than the other states and the Commonwealth (for NT). However, its smaller numbers meant Victoria's total annual outlay was far less. Andrew Markus, *Governing Savages* (Sydney: Allen & Unwin, 1990) 9-11.

131 Twenty-fourth report of the BPA, (1888) 3, quoted in Ellinghaus, "Regulating Koori Marriages: The 1886 Victorian *Aborigines Protection Act*": 26.

132 Wolfe, "Land, Labor, and Difference": 878.

133 "Twenty-Fourth Report of the Board for the Protection of the Aborigines in the Colony of Victoria. Presented to Both Houses of Parliament", (Melbourne: Board for the Protection of the Aborigines, 1888), 3.

autonomy, as Rev Stähle reported to the BPA in 1890, 'One 'full black man', had run away from Lake Condah mission with his lover 'on account of the difficulty created by the Act in regard to blacks who marry girls of mixed blood'.¹³⁵ Stähle observed that

if blacks cannot marry coloured girls and remain with their wives on the station, they are forced to immorality and... they live together without being married at all. Such results are deeply to be deplored.¹³⁶

Laws ascribe racial meanings to physical features and ancestry.¹³⁷ The 1886 Act, by legally distinguishing between Kooris in racial rhetoric, legitimised the divergent meanings ascribed to 'Aboriginal' people and 'half-castes'. These meanings included conflation of 'doomed race' with 'Aboriginal', of fidelity of 'traditional' culture with blackness.¹³⁸ Reserves were the repository of the curious, anachronistic 'Aborigines', visited by scientists, tourists and film crews.¹³⁹ These 'zoological' visits played another role, that of boundary-making.¹⁴⁰ The journey to the remote mission, the voyeuristic inspection, the highly mediated encounter: all helped to confirm the spatial anomaly of Aboriginal presence behind the frontier (see Chapter 1). Yet the 'specimens' were not entirely authentic. There was no cohesive image of Aboriginal people as either 'traditional' or 'civilised'. The 'doomed race' community had many

¹³⁴ Board for the Protection of the Aborigines in the Colony of Victoria, Resolutions, 1884.

¹³⁵ Rev. J. H. Stähle to Rev F. A. Hagenauer, Gen. Insp + Sec BPA, 13 October 1890, VPRS 1694/P/Unit 1; Board for the Protection of Aborigines: Correspondence files, 1889-1931; Victorian Public Record Office, Melbourne, Victoria.

¹³⁶ *Ibid.*

¹³⁷ Haney-López, *White by Law: The Legal Construction of Race*, 16.

¹³⁸ Morris, *Domesticating Resistance: The Dhan-Gadi Aborigines and the Australian State*, 100-01.

¹³⁹ Andrew Markus, "After the Outward Appearance: Scientists, Administrators and Politicians," in *All That Dirt, Aborigines 1938: An Australia 1938 Monograph*, ed. Bill Gammage, Andrew Markus, and History Project Incorporated. (Canberra: History Project Incorporated Australian National University, 1982), 87. Donald Thomson, 'Race type' photographs from Lake Tyers, Frederick Wood Jones Papers, University of Melbourne Archives, Melbourne. Derniers Indigenes Australiens: Etat De Victoria [the Last Indigenous Australians: State of Victoria], Actuality footage, Screen Sound Australia, National Screen and Sound Archives, Melbourne; A Guided Tour of Lakes Entrance, Actuality footage, Screen Sound Australia, National Screen and Sound Archives, Melbourne. Kooris were also represented in postcards and illustrated newspapers. Louise Partos, "The Construction of Representation: The Victorian Aboriginal Photograph Collection Housed in the Museum of Victoria (MA, Monash, 1994).

¹⁴⁰ *Ibid.*, 1. *The Making of the Aborigines*, 114-18. 'The nature of the contact which Aborigines had with these interlopers generally reinforced their sense of separateness'. *Ibid.*, 115.

children; the elder, carving a shield, stuck a pipe in his mouth and smirked,¹⁴¹ the inhabitants 'credited as being of pure aboriginal stock' were suspected of imposture.¹⁴²

Clarke, Galligan and Chesterman have shown how 'aboriginal natives' were excluded from rights of citizenship, this category being the key boundary marker of eligibility (see Chapter 3 for the figure of the 'half-caste' in this schema). In Haney-López's analysis, a non-White group designated 'unfit for naturalisation' was implicitly associated with 'a certain degeneracy of intellect, morals, self-restraint, and political values'.¹⁴³ In Australia, through exclusion from enfranchisement, negative social meanings were likewise ascribed to 'aboriginal natives', and their opposite, positive meanings to all non-'aboriginal natives'.

For their part, 'half-castes' were viewed with pity and disgust, as having 'no race' and being alienated from Aboriginal culture. Via the 1886 Act, 'half-castes' were also figured as inauthentic and undeserving of state 'protection'. Being completely constructed, the social meanings ascribed to a 'race' can change quickly.¹⁴⁴ For example, in 1881, the BPA reported that 'half-castes' should not be removed from stations because, 'although sharp and cunning in small matters, they are as a rule unreliable, untruthful and sadly lacking in energy'.¹⁴⁵ By 1884 it resolved the opposite, characterising 'half-castes' as able-bodied and capable.

The physical features selectively taken as racial are ascribed and come to connote such social meanings. Law plays a part in this, and legal decisions often explicitly define 'physical and ancestral traits code as Black or White, and so on'.¹⁴⁶ The very requirement for legal definitions and determinations of Aboriginal identity demonstrates the social rather than the natural basis of 'race'.¹⁴⁷ In Australia this was performed when judges, justices of the peace, census-takers and bureaucrats

¹⁴¹ *Derniers Indigenes Australiens: Etat De Victoria [the Last Indigenous Australians: State of Victoria]*, Actuality footage, Screen Sound Australia, National Screen and Sound Archives, Melbourne.

¹⁴² F. Wood Jones, "The Aborigines of Victoria," in *Handbook of Victoria*, ed. Australia and New Zealand Association for the Advancement of Science (Melbourne: ANZAAS, 1935), 138.

¹⁴³ Haney-López, *White by Law: The Legal Construction of Race*, 16.

¹⁴⁴ Ian Haney-López, "The Social Construction of Race," in *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado (Philadelphia: Temple University Press, 1995), 196.

¹⁴⁵ The eleventh report of the BPA (1881) 4, quoted in Christie, *Aborigines in Colonial Victoria, 1835-86*, 194.

¹⁴⁶ Haney-López, *White by Law: The Legal Construction of Race*, 16.

¹⁴⁷ Haney-López has argued in relation to legal definitions of Black identity in the USA. *Ibid.*, 118-19.

distinguished between 'full-bloods', 'three-quarter-castes' and so on using 'rule of thumb judgements based on skin colouration'.¹⁴⁸

Laws create material and societal conditions that confirm and entrench ideas about race.¹⁴⁹ The 1886 Act created and maintained material differences between three racial categories: white, 'half-caste' and 'full-blood'. This was enacted spatially and according to other reigning logics of Aboriginal 'management' so that 'full-bloods' were confined on reserves to die out, whites' space was maintained and enlarged (as land from Aboriginal reserves was revoked and 'reclaimed') and 'half-castes' occupied a fringe existence, borderline in physical and social ways. Materially, 'half-castes' were supposed to make their own way, and here questions of intention could be posed. For example: to what extent were the formulators of the Act aware of their role in creating racial differences in a material way? Did they set out to pauperise the troublemakers?

The 1886 Act clearly had socio-economic and material consequences. It both maintained the fundamental hierarchical relationship in Australian society between Indigenous and settler categories, and created a new socio-economic category where it ostensibly intended to dissolve one - that of the 'half-caste'. By perpetuating social inequality the Act maintained the conditions which enable race discourse. Those outcast under the Act, termed 'half-castes', were created as an unequal social grouping and then increasingly targeted as a site of settler fear and controlling intervention. Their survival and proliferation was matched by a rising discomfort among Aboriginal Authorities and the proliferation of theories, racial categories and rationalisations for their control (see Chapter 3).

¹⁴⁸ C.D. Rowley, *Outcasts in White Australia*, 2 ed. (Ringwood: Penguin Books, 1972) 8. See also a clause which did not persist in the final draft of the 1886 Act which provided for racial determinations by judges: 'the judge adjudicating may in the absence of other sufficient evidence decide on his own view and judgement whether any person with reference to whom any proceedings shall have been taken under this Act is or is not an aboriginal or is or is not an aboriginal half caste'. Edward Guinness, *Aborigines Protection Act Amendment (Draft)*, 12 April 1886, Memo, VPRS 10265/P/Unit 266; Chief Parliamentary Counsel's Office: *Registered Drafts and Amendments of Parliamentary Bills, 1874-*; Victorian Public Record Office, Melbourne, Victoria. A similar clause was included in the 1869 Act. Copy attached to "Seventh Report of the Central Board Appointed to Watch over the Interest of the Aborigines in the Colony of Victoria. Presented to Both Houses of Parliament", (Melbourne: Central Board Appointed to Watch over the Interests of the Aborigines, 1867), x.

¹⁴⁹ Hancy-López, *White by Law: The Legal Construction of Race*, 17.

Aboriginal resistance to the 1886 Act

There were around two hundred 'half-castes' on missions and reserves in Victoria in 1886.¹⁵⁰ In the same year the BPA reckoned the Koori population at 556 (on stations) and around 250 (living 'outside').¹⁵¹ By 1890 the Board had expelled 186 Kooris and placed over thirty children in 'service with approved families', apprenticeships, or orphanages under the Act.¹⁵²

Needless to say, the 1886 Act caused 'great hardships' and remains 'one of the Aborigines' bitterest memories'.¹⁵³ It became an 'important element of Aborigines' historical consciousness... later generations compared the era of missions to life "under the Act" and remembered [the era of missions] as a golden age'.¹⁵⁴ Given the dreadful conditions suffered by Aboriginal people in the era of missions,¹⁵⁵ this comparison is poignant.

Kooris employed various methods to avoid, circumvent and protest against the 1886 Act. In 1890, Stähle wrote to the BPA to report 'another family' had 'moved to South Australia to avoid loss of children because of the half-caste policy'.¹⁵⁶ Stähle also requested exemption certificates from the BPA for seven residents he considered unsuitable for expulsion from Lake Condah under the Act. Two widowed men were unsuitable because both had young children and were 'well behaved and very useful' about the reserve. One girl was of 'simple nature' and another was 'subject to cataleptic fits' and thus 'unfit for going out into service'.¹⁵⁷ The last young woman,

¹⁵⁰ Christie, *Aborigines in Colonial Victoria, 1835-86*, 201-02.

¹⁵¹ "Twenty-Second Report of the Board for the Protection of the Aborigines in the Colony of Victoria. Presented to Both Houses of Parliament", (Melbourne: Board for the Protection of the Aborigines, 1886), 3.

¹⁵² "Twenty-Sixth Report of the Board for the Protection of the Aborigines in the Colony of Victoria. Presented to Both Houses of Parliament", (Melbourne: Board for the Protection of the Aborigines, 1890), 3.

¹⁵³ Christie, *Aborigines in Colonial Victoria, 1835-86*, 201-02. For other writings on the effects of the 1886 Act, see Diane Barwick, "Equity for Aborigines?: The Framlingham Case," in *A Just Society?: Essays on Equity in Australia*, ed. Patrick N. Troy (Sydney: George Allen & Unwin, 1981); Jan Critchett, "A History of Framlingham and Lake Condah Aboriginal Stations, 1860-1918" (M.A., University of Melbourne, 1981); Wilkinson, "Fractured Families, Squatting and Poverty: The Impact of the 1886 "Half-Caste" Act on the Framlingham Aboriginal Community"

¹⁵⁴ Attwood, *The Making of the Aborigines*, 102.

¹⁵⁵ Grimshaw and Nelson, "Empire, 'the Civilising Mission' and Indigenous Christian Women in Colonial Victoria"

¹⁵⁶ Rev. J. H. Stähle to Rev F. A. Hagenauer, Gen. Insp + Sec BPA, 13 October 1890, VPRS 1694/P/Unit 1; Board for the Protection of Aborigines: Correspondence files, 1889-1931; Victorian Public Record Office, Melbourne, Victoria.

¹⁵⁷ *Ibid.*

though 'classed among the mixed blood' was a 'full black to all intents and purposes'.¹⁵⁸ In addition, she was 'most well behaved, but if she has to leave the station the whole family have decided to do so rather than that the girl should be taken from them and sent out into service against their will'.¹⁵⁹

The Act was administered rather inconsistently, so it had a varied impact on Koori communities.¹⁶⁰ In some cases, managers had great trouble inducing 'half-castes' to leave the reserves. The BPA and managers also encountered problems with 'Aboriginal' residents sharing rations with, or harbouring, 'half-castes'.¹⁶¹ The BPA had trouble with managers giving supplies to 'half-castes'.¹⁶² If managers did manage to get 'half-caste' families to move off the reserves, these families did not simply merge seamlessly in to the general population. As Peter Read found in Wiradjuri country in south-central New South Wales, the popularly-held definition of Aboriginality 'was the one that counted'.¹⁶³ Indeed in 1890, parents of white children withdrew their children from school in protest against the enrolment of Koori children: an education official reported that the white parents 'absolutely [refused] to allow their children to attend the same school with the Blacks'.¹⁶⁴ On the reverse of the letter was penned a copy of Hagenauer's unmoved reply: 'the Board regrets to hear that prejudice exists against the children of half castes and blacks... law directs that the half castes shall be merged with the white population'.¹⁶⁵

Similar to the wrangling between the Protection Board and the local councils in New South Wales described by Read, the Town Clerk of Sale tried to get 'part-Aborigines'

¹⁵⁸ The words 'blood is a full black to all intents and purposes' were underlined in the original, with red ink, and the woman's name was circled in the same colour. *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ Attwood, *The Making of the Aborigines*, 101.

¹⁶¹ Australian Archives and the Public Record Office of Victoria, *My Heart Is Breaking: A Joint Guide to Records About Aboriginal People in the Public Record Office of Victoria and the Australian Archives, Victorian Regional Office* (Canberra: Australian Government Publishing Service, 1993) 107.

¹⁶² 'There were always stories and reports that Bulmer was supplying... rations to the 'half-castes'... outside the mission' (Lake Tyers) in the 1890s. Phillip Pepper and Tess De Araugo, *The Kurnai of Gippsland, What Did Happen to the Aborigines of Victoria, V. I.* (Melbourne: Hyland House, 1985) 210.

¹⁶³ Read, "Breaking up These Camps Entirely": 54. See also Victorian Aborigines Advancement League, *Victims of Victors? The Story of the Victorian Aborigines Advancement League*, 26.

¹⁶⁴ John Glasgow, Wangoon, South Riding Shire of Warrnambool to the Aboriginal Board, Melbourne, November 17 1890, 13 October, Letter, VPRS 1694/P/Unit 1; Board for the Protection of Aborigines: Correspondence files, 1889-1931; Victorian Public Record Office, Melbourne, Victoria.

¹⁶⁵ *Ibid.*

living in the local district returned to a reserve in the aftermath of the 1886 Act.¹⁶⁶ The white population knew, just as the Koori population knew, who was 'Aboriginal'. The result of the clash of legislative and popular definitions of Aboriginality had a similar effect in Victoria as it did in New South Wales - that of uprooting Aboriginal communities and inflicting homelessness upon an already dispossessed people. 'Half-castes', who by community- and self-identification and 'association and culture were commonly regarded Aborigines', suffered further discrimination and alienation in the general community, most finding themselves homeless with only casual or seasonal work.¹⁶⁷

In a letter dated October 7th 1893, five men ('the undersigned half-castes') expelled from Lake Condah 'in accordance with the Act' petitioned the Chairman of the BPA, Charles Officer.¹⁶⁸ Alfred McDonald, Harry Connolly, James Lovett, Alex Taylor and John King pointed out that most of them were born at the station, had grown up there, and 'took our share in the work'. They had 'hitherto vainly tried to find a home' for themselves and their families, and 'most respectfully' asked the BPA 'to grant us land from the Aboriginal Reserve on Lake Condah so as to enable us to have a settled home'.¹⁶⁹ Speaking as Kooris, they asserted their identity, and pointed out their attachment to the station as their home. Its contents were an indictment of the 1886 policy, albeit couched in polite terms.

In 1894 Rev Hagenauer wrote to Emily Brindle regarding her request for rations and to move onto one of the stations for the winter.¹⁷⁰ As she was categorised a 'half-caste' under the 1886 Act Hagenauer informed her 'I am very sorry to state that I have no power at all to assist you as the law is entirely against... your application'.¹⁷¹ He went on to offer assistance in the form of advocacy, but warned assistance would be unlikely and unfair:

¹⁶⁶ Pepper and De Araugo, *The Kurnai of Gippsland*, 225.

¹⁶⁷ Read, "Breaking up These Camps Entirely": 49.

¹⁶⁸ Aboriginal History Programme, *Memories Last Forever* (Abbotsford, Victoria: Aboriginal History Programme, 1988) 17.

¹⁶⁹ *Ibid.*

¹⁷⁰ Friedrich Hagenauer, Secretary, BPA, to Emily Brindle, a/C Bulmer Esqr, Lake Tyers, 28 November, 1894, Letters from Aboriginal Women.

¹⁷¹ *Ibid.*

I will do all I can for you in the matter and when I have an answer from the Board will let you know the result. You know that in your case so many exceptions have been made that the other many half castes like the Thorps, the Georges and especially the Taylors would cry out against it.¹⁷²

Hagenauer then suggested Mrs Brindle and her husband move to New South Wales, 'because they have no law like ours', and the couple could get Government help.

If the BPA could not make 'half-castes' disappear by merging with the general population, apparently they would make Victoria so inhospitable that these Kooris would leave the state. Unfortunately for Kooris trying to evade this form of discrimination in Victoria, New South Wales passed an almost identical version of Victoria's 1886 Act in 1909.¹⁷³

Forms of control and resistance

Koori resistance took on many forms, at times overt, but often hidden under the mission and reserve system. Penny van Toorn argues that Koori claims on the BPA were often clothed in 'ritualisms of subordination' as a risk-management strategy.¹⁷⁴

By making polite, non-threatening and modest requests they sometimes achieved 'incremental improvements' to living conditions, without raising white fears of imminent rebellion. By repressing overt expressions of anger, severe punishment such as exile, removal of children, deprivation and beating could sometimes be avoided.

Van Toorn builds up a complex picture of mutual Koori and management pretence in the 'performance of hegemonic order' on reserves and missions, disrupted by sudden outbreaks of overt resistance. She claims 'powerful and powerless alike are thus bound up in a conspiracy of silence about physical oppression and resistance. Both act out a public performance of control and subordination'.¹⁷⁵ Both had motivations for maintaining this pretence - Kooris wanted to stay on their traditional country, and reserve managers and missionaries, reliant on government and church funding, had to

¹⁷² *Ibid.*

¹⁷³ Broome, *Aboriginal Australians*, 82.

¹⁷⁴ James Scott in van Toorn, "Hegemony or Hidden Transcripts?": 45.

¹⁷⁵ *Ibid.*

pretend the reserve residents were happy.¹⁷⁶ Perhaps representing a set of the more theatrical performances of consent to the hegemonic order, missions and their residents were literally put on show for white visitors and tourists at Ramahyuck and Lake Tyers¹⁷⁷ (as mentioned above).

Periodic outbreaks of overt protest, hostility and anger disrupted the pretence of contentment, revealing a 'hidden transcript' - the build up of tension, the discussions of Kooris amongst themselves about insufferable incidents.¹⁷⁸ Managers used control of movement to keep expressions of dissent from spreading; this repressed the transmission of 'hidden transcripts' between reserves. They also attempted to control the flow of information beyond reserves and missions. Kooris subverted this by writing over the heads of their managers, and the sometimes mutual pretence of order tumbled down. Thus letters, occasional familial visits, movement of Kooris who remained outside the reserve system and, ironically, exile of 'troublemakers' to different stations acted as conduits for transmission of stories of shared experiences and for the maintenance of social connections between spatially 'atomised' groups.¹⁷⁹

Van Toorn argues that an unqualified version of Gramsci's 'hegemony' may not be appropriate for understanding modes of control in an Australian colonialist setting, because at times coercion outweighed persuasion in the structure of dominance.¹⁸⁰

There were 'two contrasting orders of persuasion and dominance' in Australia. Where free settlers were numerically and economically dominant, hegemony outweighed coercion in a semblance of the British bourgeois state. However, Kooris lived 'under direct rule and physical coercion' on the various institutions which the state established. Here, according to van Toorn, 'coercion clearly outweighed ideological controls'.¹⁸¹ However, these institutions combined 'ideological apparatuses of

¹⁷⁶ *Ibid.*, 46.

¹⁷⁷ Attwood, *The Making of the Aborigines*, 114-18. Markus, "After the Outward Appearance: Scientists, Administrators and Politicians", 87.

¹⁷⁸ van Toorn, "Hegemony or Hidden Transcripts?": 49.

¹⁷⁹ *Ibid.*, 50-52. Morris and Read argue that Kooris maintained cultural identity under repressive regimes, particularly in the form of collective identity and movement patterns. Morris, *Domesticating Resistance: The Dhan-Gadi Aborigines and the Australian State*, 4. Read, "Breaking up These Camps Entirely": 47.

¹⁸⁰ van Toorn, "Hegemony or Hidden Transcripts?": 45-46.

¹⁸¹ *Ibid.*, 46.

control', such as schools and churches, with 'physically coercive apparatuses' like children's dormitories.¹⁸²

These varying modes of control and resistance are illustrated in the correspondence of the BPA following the implementation of the 1886 Act. In May 1891, Rev Hagenauer, who had become Secretary of the BPA, learned that Mrs Bessie Rawlings intended to remove her daughter from a work placement. His reply warned that 'rations and all other support as well as living on a reserve must stop' if she contravened 'the law of the country'.¹⁸³ He advised her to 'consider what you do'.

My dear Mrs Rawlin[g]s... You seem to ignore the fact that your daughter is and must be under the Regulations of the Law and that if you try to get the girl away she will have to go before the court... White people can have their children... Half Castes, by earning their money and living without Government aid are considered white people and no one does interfere then, but if you wish to have Government support, you cannot do so... The Board cannot break the law of the country.¹⁸⁴

Rev. Hagenauer's letter invokes law and the threat of material deprivation to deter Mrs Rawlings from her plan to 'fetch home her daughter'. In a didactic and patronising tone, he represents himself simply as the upholder of the law, against his personal sympathies. In reality, Hagenauer masterminded the policy behind the 1886 Act, engineered its acceptance by the BPA and was largely responsible for overseeing its implementation.¹⁸⁵ He was appointed Secretary of the BPA with the commendation, '[t]here is no other man in the colony... who can so efficiently deal with the half caste question'.¹⁸⁶

¹⁸² [sic.] *Ibid.*

¹⁸³ Friedrich Hagenauer, Secretary, BPA, to Mrs B. Rawlings, Framlingham, 9 May 1891, Letters from Aboriginal Women.

¹⁸⁴ *Ibid.*

¹⁸⁵ Attwood, *The Making of the Aborigines*, 90-98; Pepper and De Araugo, *The Kurnai of Gippsland*, 207. In recognition of this contribution, the BPA gave him a wagonette upon retirement. *Ibid.*, 228.

¹⁸⁶ Alex Morrison, Vice Chairman, BPA, to Chief Secretary, BPA, 14 February 1890, VPRS 1694/P/Unit 1; Board for the Protection of Aborigines: Correspondence files, 1889-1931; Victorian Public Record Office, Melbourne, Victoria.

Managers often corresponded regarding the behaviour of the reserve and mission residents. For instance, in a 1911 letter to the BPA, Captain Howe, manager at Lake Tyers (1908-1916), sought to have Mrs Emily Stephen expelled:

I have the honour to report that the conduct of Emily Stephen is detrimental to the good order & discipline of the station: she practically defies me but in a manner that I can only make a general complaint... I would therefore recommend that she be removed from this station.¹⁸⁷

Mrs Stephen's form of insubordination and passive resistance evidently was pitched at such a level as to prevent her expulsion on specific grounds. Indeed, the BPA explained to Captain Howe it could not justify expelling her for a general complaint.¹⁸⁸

After twenty-four years, the Aborigines Act 1910 superseded the 1886 Act, bringing 'half-castes' back under the control and 'protection' of the BPA.¹⁸⁹ This turnaround was acknowledged by a sentence in the BPA report for that year, with the justification that 'petitions for assistance [were] being constantly received from half-castes'.¹⁹⁰

Conclusion

In the years after the 1886 Act, rather than bringing about the merging of part of the Koori community with the general population, policy makers oversaw the entrenchment of the distinct 'half-caste' category which was officially not Aboriginal and in practice, not white. While racial marriage and immigration restrictions were more often tacit than enshrined in legislation and were always resisted and challenged by some, there is ample evidence that the physical substance of Australian bodies has been marked by racial lines of exclusion. Kooris resisted the divisiveness of the Act and maintained a common identity.

¹⁸⁷ Captain Howe, Manager, Lake Tyers, to Secretary, BPA, 3 April 1911, Letters from Aboriginal Women.

¹⁸⁸ See also Grimshaw and Nelson, "Empire, 'the Civilising Mission' and Indigenous Christian Women in Colonial Victoria": 1-3.

¹⁸⁹ Australian Archives and the Public Record Office of Victoria, *My Heart Is Breaking: A Joint Guide to Records About Aboriginal People in the Public Record Office of Victoria and the Australian Archives, Victorian Regional Offices*, 107-08.

¹⁹⁰ "Forty-Sixth Report of the Board for the Protection of the Aborigines in the Colony of Victoria. Presented to Both Houses of Parliament", (Melbourne: Board for the Protection of the Aborigines, 1910), 4.

Chapter 3: The figure of the 'half-caste'

Introduction

The BPA honed in on the 'half-caste' as a specific site of intervention. The category came to have special status in the minds of Aboriginal Authorities nationally. This borderline status was represented as being situated between two 'races', and racial mixing between races considered evolutionarily distant was condemned from a scientific point of view.¹⁹¹ However this racial rhetoric masked the special position of the 'half-caste': neither settler nor indigene. This chapter focuses on the significance of the 'half-caste' in the discourse of management of Aboriginal people in Australia. Maintenance of the settler/indigene division was a major concern of laws regulating the lives of Aboriginal people. However, demarcation of this structural binary was attempted through a racial regime in which 'Aboriginality was disguised as Blackness'.¹⁹² While the 'half-caste' was an affront to the settler/indigene boundary, the danger was characterised as arising from a racial mix. Strategies for management of the 'Aboriginal problem' were united by attempts to mask difference as racial (Black/White) rather than structural (coloniser/colonised). This worked to construct social inequalities as natural rather than imposed. Imposed inequality was made racial by assignment of marks which were then to be erased (either through natural die off, or via biological assimilation) as a way of erasing forever evidence of colonial violence and finalising the contradiction of Indigenous survival in a settler-colony.

¹⁹¹ Russell McGregor, "Representations of the "Half-Caste" in the Australian Scientific Literature of the 1930s. - Revised Version of Paper Presented to the Conference of the Australian Historical Association (1989: Townsville, Qld)," *Journal of Australian Studies* 36 (1993): 54-55. Stepan, *The Idea of Race in Science: Great Britain, 1800-1960*, 130. George W. Stocking, *Race, Culture, and Evolution: Essays in the History of Anthropology: With a New Preface*, Phoenix ed. (Chicago: University of Chicago Press, 1982) 49.

¹⁹² Wolfe, "Nation and Miscegenation": 117.

There was often tension between the racial and the structural target of repression (see William Rawlings case, Chapter 2).

Crisis of miscegenation

The existence of 'half-castes' was not simply an affront to the idea of racial distinctiveness. They represented a contradiction to the fundamental binary nature of the settler colony. Understood in this way, 'hybridity was repulsive because in threatening the Aboriginal category it thereby threatened the settler one as well'.¹⁹³ If they remained members of Aboriginal communities, the prospect of elimination would be endangered. In Wolfe's analysis, miscegenation was 'the single most important practical contradiction to have obstructed the logic of elimination'.¹⁹⁴ The only answer to the problem of miscegenation that could be reconciled with the logic of elimination was absorption of its products into settler society.¹⁹⁵ The shift to advocacy of inter-racial breeding through biological absorption required a rationalisation by scientists so that fear of degeneration and contamination of the white racial stock could be allayed.¹⁹⁶

Assimilation policies were invoked as invasion progressed and colonialist dominance was established, signalling 'the demise of the frontier'. Wolfe argues assimilation policy was inaugurated nationally by the Victorian 1886 Act.¹⁹⁷ Such a phasal understanding of Australian history begs more local and temporal specificity. Nevertheless, expressed crudely, it is still useful. The phenomenon of 'frontier' expresses the idea that the underlying or foundational binary of Australian society is between settler and indigene, between invaders and natives.

'Universally, racial categories have been transgressed by sexuality', making miscegenation discourse a fruitful focus for analysis of racial domination regimes. It is

¹⁹³ *Ibid.*, 111.

¹⁹⁴ *Ibid.*, 94.

¹⁹⁵ *Ibid.*, 101.

¹⁹⁶ McGregor, "Representations of the 'Half-Caste'": 55. For Australian anxieties about race degeneration and 'mongrelisation', see Smith, "Degeneration and Eugenics: Late-Victorian Discourses of the Ending of the Race". For scientific concerns, see Warwick Anderson, "'They Sink and Show No Trace' - or Do They?," in *Cultivation of Whiteness* (Forthcoming).

¹⁹⁷ Wolfe, "Nation and Miscegenation": 101.

the point at which racial classifications 'most conspicuously come undone'.¹⁹⁸ In the United States, race discourse was invoked as a mode of ideological domination when the abolition of slavery, in which domination was primarily in the form of coercion, provoked a crisis of order.¹⁹⁹ Intensifying a race regime with different aims, Victoria's 1886 Act addressed 'official panic' about increasing numbers of 'half-castes'. Overt political resistance, criticism of the mission system and unmanageable residents were symptoms of a system in crisis. Social divisions could be maintained by invoking a racial regime of control in the place of direct forms of elimination. The borderline 'half-castes' had to be made part of the settler category rather than a growing part of the Aboriginal population. This would restore the Aboriginal category to an ever-dwindling one.

The 'half-caste' as a transitional figure: unidirectional breeding

Just as the Aboriginal 'race' was believed to be doomed to extinction (by the laws of nature and progress) so 'historical transience'²⁰⁰ was attributed to the 'half-caste' and then to 'Aboriginality'²⁰¹ as Authorities tried vainly to control and construct out of existence surviving and proliferating Aboriginal communities; hence historian C. D. Rowley's insight that '[t]he part-Aboriginal has been regarded by governments as a phenomenon of transition rather than as an end in himself'.²⁰² The laws, assumptions and racial schema of Authorities did not account for the reality that 'half-castes' might inter-marry, and were just as annoyed by the idea that they might marry 'back', that is marry 'full-bloods'.²⁰³ They assumed that Aboriginal reproduction would follow a unidirectional path to whiteness. Thus, Authorities in West Australia faced a legal and administrative conundrum: 'a court had ruled that offspring of two *half-caste* parents was not a *half-caste* within the meaning of the Act; this had led to "defiance of

¹⁹⁸ Wolfe, "Land, Labor, and Difference": 867.

¹⁹⁹ *Ibid.*, 880-83.

²⁰⁰ Beckett, "Aboriginality in a Nation-State", 124. Beckett says settlers designated Aboriginal people 'historical transients', in order to disqualify them from citizenship.

²⁰¹ Aboriginal culture, 'timeless and unchanging', was doomed to die out, even if 'Aborigines' proved not to. Beckett and Australian Institute of Aboriginal Studies, *Past and Present: The Construction of Aboriginality*, 201.

²⁰² Rowley, *Outcasts in White Australia*, 3.

²⁰³ Ellinghaus, "Regulating Koori Marriages: The 1886 Victorian *Aborigines Protection Act*": 25.

departmental control”²⁰⁴. The assumption of unidirectionality is incorporated in A. O. Neville’s famous image ‘Three generations’, which did not countenance a three-quarter category.²⁰⁵ The cut-off point of Neville’s ‘genetic arithmetic’ makes explicit the aim of elimination: he did not provide for a 1/16th category: the category succeeding ‘octoroon’ was a state of ‘full-blown whiteness’.²⁰⁶

The ‘half-caste’ was seen as a historically transient category, not an ‘end in itself’. However, this assumption was challenged by the growing population categorised in this way, and was set back by the effects of the 1886 Act which solidified rather than dissolved it (see Chapter 2).

Meanings ascribed

The meanings ascribed to the ‘half-caste’ were contradictory and depended on the interests of the ascriber. Administratively, the ‘half-caste’ was at times counted amongst the white population and at other times firmly excluded from whiteness. Indeed, legal definitions of the ‘half-caste’ category were generally ambiguous and determinations were left largely to administrative discretion.²⁰⁷ As citizenship rights were denied to ‘aboriginal natives’, the borderline status of the ‘half-caste’ between ‘aboriginal native’ and non-‘aboriginal native’ meant discretion had serious implications.²⁰⁸

From the earliest days of colonial Victoria, the character of the ‘half-caste’ was contested, often constructed in contradictory ways according to vested interests.²⁰⁹ This statement from the first report of the Central Board appointed to watch over the

²⁰⁴ 1929 editorial comment in the major daily newspaper the *West Australian* on the ‘half-caste’ problem, quoted in Rowley, *Outcasts in White Australia*, 7.

²⁰⁵ The three-quarter caste represented “going back to the black,” the wrong direction entirely, and was not to be tolerated. Wolfe, “Nation and Miscegenation”: 116; A. O. Neville, *Australia’s Coloured Minority: Its Place in Our Community* (Sydney: Currawong Publishing, 1947) 73.

²⁰⁶ Wolfe, “Land, Labor, and Difference”: 873.

²⁰⁷ Tom Clarke and Brian Galligan, “‘Aboriginal Native’ and the Institutional Construction of the Australian Citizen 1901-48. [Paper Originally Prepared for Australian Historical Association. Conference (7th 1994: Perth)].” *Australian Historical Studies* 26, no. 105 (1995). Clarke and Galligan, “Protecting the Citizen Body”. For official ambiguity of term ‘aboriginal native’, see McCorquodale, “Aboriginal Identity”: 25.

²⁰⁸ Clarke and Galligan, “‘Aboriginal Native’”: 539; Clarke and Galligan, “Protecting the Citizen Body”: 460.

²⁰⁹ See Minutes of Evidence in McCombie, “Report of the Select Committee of the Legislative Council on the Aborigines”.

interests of the Aborigines illustrates an early concern with the existence of 'half-castes' and an attitude of biological determinism.

The latter element in our population, the half-castes, though numerically small, are increasing, and it is a serious duty to interfere at once to prevent their growing up amongst us with the habits of the savage, as they possess the instincts, powers of mind, and altogether different constitution of the white man.²¹⁰

The 'white' element embodied by the 'half-caste' was viewed by some as affording the cunning and criminal tendencies of the debased amongst the English and, by others, as enabling prospects of success in white education.²¹¹ Some settlers were convinced that 'half-castes' embodied the worst features of both parent 'races', while several missionaries and colonial officials came to agree that 'half-castes' had more of a chance of attaining 'civilisation'.²¹² Koori children were from early years seized upon as the site of civilising and missionary training. As two settlers suggested, 'half-caste children might possibly be improved, if placed at an early period under European influence only'.²¹³ The 'white' characters, both external and internal, inherited by 'half-castes' would elevate their capacities for assimilation to 'white' ways. However, natural (racial) and cultural (environmental) influences were always seen to be important in the conversion and assimilation of Aboriginal people. This was reflected in the widespread acceptability amongst administrators of suggestions that Koori children had a greater chance of 'salvage' if removed from their families and culture.²¹⁴ Thus, while biological assimilation was embraced at the 1937

²¹⁰ "First Report of the Central Board Appointed to Watch over the Interest of the Aborigines in the Colony of Victoria. Presented to Both Houses of Parliament", (Melbourne: Central Board Appointed to Watch over the Interests of the Aborigines, 1861), 11.

²¹¹ Christie, *Aborigines in Colonial Victoria, 1835-86*, 201. Attwood, *The Making of the Aborigines*, 89.

²¹² See for example: McCombie, "Report of the Select Committee of the Legislative Council on the Aborigines".

²¹³ Evidence proffered by Messrs. C. E. Strutt and R. J. Glass, "First Report of the Central Board Appointed to Watch over the Interest of the Aborigines in the Colony of Victoria. Presented to Both Houses of Parliament", (Melbourne: Central Board Appointed to Watch over the Interests of the Aborigines, 1861), 22.

²¹⁴ This strategy was articulated in both the 1858 Select Committee inquiry in Victoria and the national 1937 Conference, and is described in detail by Michael Christie. McCombie, "Report of the Select Committee of the Legislative Council on the Aborigines". "Aboriginal Welfare: Initial Conference of Commonwealth and State Aboriginal Authorities", (Canberra: Commonwealth of Australia, 1937). Christie, *Aborigines in Colonial Victoria, 1835-86*.

conference of Aboriginal Authorities, it was attended by an imperative of social assimilation, for conversion of 'half-castes' to physical and cultural whiteness.

In their analysis of the creation of limits to citizenship in Australia from 1901, Clarke and Galligan have found that for administrative purposes, including eligibility to vote or be counted in the census, 'half-castes' were deemed to be 'de facto whites' until the late 1920s.²¹⁵ This de facto categorisation was in the interests of administrative simplicity. However, it was also a reflection of the 'classic eugenic theory' that people of 'half blood' actually had no 'race'.²¹⁶ The term 'half-caste' technically meant any person borne of parents of different 'races', for example one Aboriginal and one Chinese, Afghan or Pacific Islander parent. However, the designation 'half-caste' for policy purposes actually depended on the particular race of the parents. For various 'pragmatic and personal' reasons a person had to have one 'white' parent or contain some 'European blood' to be included in the 'half-caste' category (as explored in Chapter 2). This inclusion depended on the discretion of the relevant government official.²¹⁷ By contrast, 'preponderating blood' was a less ambiguous boundary marker of whiteness or Aboriginality. Whereas the eligibility of the borderline 'half-castes' for various privileges of citizenship was debated in a half-empty/ half-full rhetoric, a person in whom Aboriginal 'blood' was determined to preponderate was a clear cut case. All such people would be excluded, for example, from voting.²¹⁸ Conversely people with a preponderance of 'white' blood qualified as de facto whites when convenient. 'Quadroons' were 'reasonably... considered as white labour', whereas in this case, 'half-castes' were not white.²¹⁹

Clarke and Galligan have demonstrated that 'half-castes' were at times excluded from both the 'aboriginal native' and 'white' categories. Indeed, the 1886 Act had served to categorise 'half-castes' as non-Aboriginal, but it did not follow in the bureaucratic imagination that they were 'white'. De facto whiteness was a useful category only until rising numbers of 'half-castes', a phenomenon recognised from the late

²¹⁵ Clarke and Galligan, "Protecting the Citizen Body": 461.

²¹⁶ *Ibid.*, 460-61.

²¹⁷ *Ibid.*, 463.

²¹⁸ The picture is more complex, as explored in Patricia Grimshaw and Katherine Ellinghaus, "White Women, Aboriginal Women and the Vote in Western Australia," *Studies in Western Australian History*, 19 (1999).

nineteenth century in Victoria and nationally in the late 1920s, was matched by a rising concern of Aboriginal Authorities about the 'threat' this posed to 'white' Australia. After this, 'half-castes' were represented as a 'problem' to be eliminated using the assimilation policies developed during the 1930s and adopted nationally at the 1937 conference.

Transcendence of the category

Kooris subverted the category of 'half-caste' by using the rhetoric while identifying as Aboriginal. This can be seen in the claims made by so-called 'half-castes' on the BPA.

In the years following the 1886 Act Kooris used racial terms such as 'full-blood' and 'half-caste' as part of their adoption of letter-writing conventions in correspondence with the BPA. This facilitated speedy consideration of their requests: the BPA Secretary declared he could not give or deny consent for the marriage of one young Koori woman 'as I do not know the young gentleman... neither whether he is white or black or half caste'.²²⁰ The following self-descriptions illustrate that Aboriginal people sometimes placed themselves in the BPA's categories: 'I am a Half Caste belonging to Lake Condah'²²¹; 'both my husband and myself are half cast Aboriginals'.²²² By using the phrase 'half cast Aboriginals' the writer subverted the official idea that 'half-castes' were not Aboriginal.

The frameworks available to Aboriginal people seeking justice have often been located within the English legal system adopted by Australia, and thus have had to 'present those claims in terms wholly dictated by the imported legal system'.²²³ Protests in the white realm have thus used the conventions and language of that realm. Letters of complaint, request, demand, anger and gratitude rarely broke with letter-

²¹⁹ Clarke and Galligan, "Protecting the Citizen Body": 460.

²²⁰ Hagenauer to Agnes H, 24 March 1893, quoted in Ellinghaus, "Regulating Koori Marriages: The 1886 Victorian *Aborigines Protection Act*": 26.

²²¹ Georgina Clark, Lake Condah, to Secretary, BPA, 6 February 1918, Letters from Aboriginal Women.

²²² Lucy Pepper, Hospital Creek, to Mr Murray, Chief Secretary, BPA, 15 February 1915, Letters from Aboriginal Women.

²²³ Mathew, Hunter, and Charlesworth, "Law and History in Black and White", 10.

writing conventions, being framed with such phrases as 'I remain your humble servant', 'thanking you for past favours', and 'hoping for a favourable reply'.²²⁴

In 1918 Georgina Clark wrote to the BPA requesting a cottage from Lake Condah. She was living with her husband four miles from Lake Condah. 'I am a Half Caste belonging to Lake Condah in my young days. My father's mother worked there for years'.²²⁵ Despite her claim on the Board, the BPA refused her request - apparently she had annoyed the manager of Lake Condah by visiting the station too often.²²⁶

Mrs Kate Mullett's two daughters were removed to an institution in Melbourne and she tried for years to have them returned. In her letter she described her concern about having her 'pure aboriginal' children out in the world. This may be a concern based on knowledge of the racist treatment they would receive. However, it may also be an appeal to the attitudes of the BPA regarding the unsuitability of 'full-bloods' to life amongst the general community.

Dear Sir... help me to get my two girls out of the Homes... They are black girls & I am against them to go out into the world as their is a pure aboriginal... I... don't know whether they are dead or alive... I... come... with a broken heart not seeing my own flesh and blood which God has given to me as a comfort.²²⁷

Despite repeated requests to see her 'neglected' children, the BPA did not grant Mrs Mullett's request. Mrs Carter was more fortunate. She managed to get a BPA decision to discontinue her rations and clothing reversed, arguing that she was entitled to her upkeep by the BPA 'under the Act', and that the BPA previously had given its word to this effect. She asserted: 'in fact sir I was given to understand that... I being a old age (Halfcaste) came under the Act of Aborigines, I was to be kept by the Board all

²²⁴ To give one example from an angry and frustrated letter, Mrs Jennings railed 'I am going down to see my daughter... We not slaves or prisoners . . . dont be surprise to see me there So that is all I got to say to you' [sic.] Elizabeth Jennings, Lake Tyers, to Mr Ditchburn, Secretary, BPA, 17 November 1914, Letters from Aboriginal Women of Victoria, 1867-1926, Melbourne.

²²⁵ Georgina Clark, Lake Condah, to Secretary, BPA, 6 February 1918, Letters from Aboriginal Women.

²²⁶ Nelson, Grimshaw, and Smith, Letters from Aboriginal Women.

²²⁷ Kate Mullett, Coranderrk to Mr Murray, Chief Secretary, BPA, 1 July 1912, Letters from Aboriginal Women.

my life...'²²⁸ Mrs Carter successfully reminded the BPA of its obligations to her, both legally (under the Act) and morally (as men of their word). In other requests, Kooris complained of inconsistent application of BPA rules as a way of gaining assent. One complaint was worded, 'some of the young half caste people got blankets & we havent got ours yet'.²²⁹ In another example, writing on behalf of Mrs Connolly, a 'half caste widow', Alick Bannam used such an argument, combined with other convincing phrases. He asked the BPA to grant Mrs Connolly a house for removal from Lake Condah Mission, which was being broken up. He argued, 'I believe some of the other half castes have had houses granted to them and Mrs Connolly's is... a very deserving case'.²³⁰ The request was granted.

Kooris both employed and transcended the racial categories in use by the BPA according to their own motivations or stratagem. However, fundamentally they spoke from a position of Aboriginality and humanity. Knowing their entitlements under various Acts and regulations, they at times protested misapplication of the rules, and at others sought to invoke Indigenous and human rights in spite of the white laws.

Rationalising the reality: scientific, legal and government attempts to solve the crisis

Throughout the nineteenth century, dominant ideology held that inter-racial breeding constituted contamination, a danger to the 'white race'.²³¹ In this scientific incarnation, abhorrence of the intermixture of 'races' perceived to be extremely divergent was rationalised by theories of 'hybrid degeneration'.²³² However, in popular discourse, 'most whites resented the presence of a growing half-caste population, which they saw as an indictment of white morality and a threat to their racial purity'.²³³ In the Australian context, additional logics contributed to the reassessment of hybrid hatred.

²²⁸ Agnes Carter, Allandale, to Mr Campbell, MLA, Member, BPA, 1 May 1919, Letters from Aboriginal Women.

²²⁹ [sic.] Ada Austin, Purnim, to Mrs Bon, Member, BPA, August 1921, Letters from Aboriginal Women.

²³⁰ Alick Bannam, Milltown, to Mr Campbell, MLA, Member, BPA, 28 April 1919, Letters from Aboriginal Women.

²³¹ Beckett and Australian Institute of Aboriginal Studies, *Past and Present: The Construction of Aboriginality*, 197.

²³² McGregor, "Representations of the "Half-Caste"": 55.

²³³ Christie, *Aborigines in Colonial Victoria, 1835-86*, 200.

Colonists ultimately needed to eliminate Aboriginal people. Thus an increase in the Aboriginal population was not acceptable; increase could only be countenanced in the settler category.

A scientific back flip was required to reconcile the advocacy of miscegenation by Aboriginal Authorities with fears of contamination and degeneration. Wolfe comments that 'Aborigines' physical substance cannot really have been seen as deficient, otherwise the last thing white authorities would have set out to do would have been to incorporate it into the white gene pool'.²³⁴ In fact, scientists devoted much effort to proving that 'Aboriginal genes' would not throw back or degrade the white race.²³⁵

Scientific interest remained firmly fixed on the 'doomed' 'full-blood' until the 1930s. However, interest in 'half-castes' had been developing nationally throughout the 1920s.²³⁶ 'Half-castes' had long been thought of as a 'problem' in the moral sense of being evidence of sexual relations between 'black and white'.²³⁷ However, it had become clear by the 1930s that prohibitions on miscegenation, which aimed to curtail one source of 'half-castes', could not halt the proliferation of the 'half-castes' through intermarriage with each other.²³⁸ There were two main versions of assimilation proposed by anthropologists and taken up by Aboriginal Authorities to address the 'half-caste problem': social assimilation and biological assimilation. The two camps shared their biological definition of the problem as well as faith in the reality of race and racial difference; both the social assimilationists and the biological assimilationists employed the terms 'mixed-blood', 'full-blood', 'half-caste'.²³⁹

Medical scientists played an important role in the assimilation debate; that of rationalising the process by which the 'half-castes' could safely be incorporated into the general population. In the 1920s and 1930s medical scientists carefully studied the 'cultivation of whiteness' amongst 'half-caste' populations, which had been

²³⁴ Wolfe, "Land, Labor, and Difference": 874.

²³⁵ Anderson, "They Sink and Show No Trace" - or Do They?".

²³⁶ McGregor, "Representations of the "Half-Caste"": 52-55.

²³⁷ *Ibid.*, 53.

²³⁸ *Ibid.*

²³⁹ *Ibid.*, 54.

represented as a menace threatening to overrun white Australia, particularly in the north and west.²⁴⁰ However by the late 1920s scientists and Aboriginal Authorities had embraced the idea that Indigenous Australians were of Caucasian origin.²⁴¹ This reclassification conveniently solved the problems associated with inter-breeding²⁴² of disparate races and paved the way for physical absorption of Aboriginal people. Some even posited the benefits of Aboriginal genes to the white stock due to their adaptation to the Australian environment, particularly the tropics.²⁴³

Norman B. Tindale was a member of a group of 'the most ardent academic advocates of biological assimilation', the Board for Anthropological Research based at the University of Adelaide.²⁴⁴ In his 1938 study of race crossing between Aboriginal people and European people in Australia Tindale found no evidence of 'degeneration' amongst 'hybrids'. He was convinced that Aboriginal 'blood' could be absorbed by the general community 'without detriment to the white race'²⁴⁵ Thus Tindale praised the Victorian 1886 policy and condemned the segregationist, or 'herding' policies in Queensland and Western Australia.²⁴⁶

By 1937 the Chief Protector of Aborigines in the Northern Territory, Dr Cecil Cook told the Initial Conference of State and Commonwealth Aboriginal Authorities that he was pursuing a multi-faceted policy to 'convert the half-caste into a white citizen'.²⁴⁷ This conference went on to resolve to direct all efforts to achieving the destiny they

240 Anderson, "'They Sink and Show No Trace'- or Do They?"

241 *Ibid.*, 325.

McGregor, "Representations of the 'Half-Caste'": 55. See also F. Wood Jones, *Australia's Vanishing Race* (Sydney: Angus & Robertson, 1934).

242 McGregor, "Representations of the 'Half-Caste'": 55.

243 Anderson, "'They Sink and Show No Trace'- or Do They?" 326.

244 McGregor, "Representations of the 'Half-Caste'": 54.

245 See Anderson, "'They Sink and Show No Trace'- or Do They?" 338-52.

246 Quoted in *Ibid.*, 346.

247 "Aboriginal Welfare: Initial Conference of Commonwealth and State Aboriginal Authorities", (Canberra Commonwealth of Australia, 1937), 14. See also Tony Austin, "Cecil Cook, Scientific Thought and 'Half-Castes' in the Northern Territory 1927-1939," *Aboriginal History* v.14, no. 1-2 (1990). Sharman N. Stone, *Aborigines in White Australia: A Documentary History of the Attitudes Affecting Official Policy and the Australian Aborigine, 1697-1973* (South Yarra, Vic.: Heinemann Educational, 1974) 141.

imagined for the 'natives of aboriginal origin, but not of the full blood:' that of 'their ultimate absorption by the people of the Commonwealth'.²⁴⁸

Conclusion

Miscegenation discourse provides an entrée into the hidden imperatives disguised by 'race'. By unravelling the economic motives behind miscegenation policies, the series of experiments in Aboriginal management by the BPA takes on a more sinister edge.

The shifting meanings ascribed to the category 'half-caste' illustrate the fabricated nature of race. However, despite its fallibility as a concept, and as a natural or biological phenomenon, race has had persistent power as an ideology of domination in Australia. Its major work was to provide a seemingly natural regime of inequality which masked the underpinning structural binary of colonisation.

²⁴⁸ "Aboriginal Welfare: Initial Conference of Commonwealth and State Aboriginal Authorities", (Canberra: Commonwealth of Australia, 1937).

Conclusion

The *Aborigines Protection Act* 1886 attempted to eliminate a large proportion of Victorian Kooris from the category 'Indigenous'. However, its effect was to harden the distinction between 'half-caste' and the general white population by remaking the very conditions of inequality which enable race discourse. An interpretive framework drawn from critical race theory enabled an evaluation of the role of the 1886 Act in constructing racial differentiation.

The BPA invoked racial ideology to explain enduring inequality between indigenes and settlers, thus masking the fundamental binary of the colonial order. This made the inequality seem natural and excused colonisers from direct responsibility.²⁴⁹ Rising numbers of 'half-castes' provoked official panic among Aboriginal Authorities. These visible products of miscegenation, when counted as Aboriginal, represented a crisis in the logic that the Indigenous category must decrease. Control over the situation had to be reasserted via a re-racialisation strategy.

'Half-castes' were shifted off reserves and into 'official limbo, somewhere between the authenticated Aborigines remaining on the reserves and the White population'.²⁵⁰ This liminal group, 'officially not Black and descriptively not White' came to be 'spatially symbolised in the image of the "fringe-camp"'.²⁵¹ Rather than being merged, the 'half-caste' was maintained as non-white category.

²⁴⁹ van Toorn, "Hegemony or Hidden Transcripts?": 57.

²⁵⁰ Wolfe, "Nation and Miscegenation": 107.

²⁵¹ *Ibid.* 107.

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Appendix: The Aborigines Protection Act 1886

VICTORIA.



ANNO QUINQUAGESIMO

VICTORIÆ REGINÆ.

No. DCCCCXII.

An Act to amend an Act intituled "*An Act to provide for the Protection and Management of the Aboriginal Natives of Victoria.*"

[16th December 1886.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may for all purposes be cited as "*The Aborigines Protection Act 1886,*" and shall be read and construed with the Act No. CCCXLIX. hereinafter referred to as the "Principal Act" and shall come into operation on the first day of January One thousand eight hundred and eighty-seven.

Short title and construction.

2. Section eight of the Principal Act is hereby repealed.

Repeal of sec. 8 of No. 349. Meaning of half-caste.

3. The term "half-caste" whenever it occurs in this Act shall include as well half-castes as all other persons whatever of mixed aboriginal blood.

But when used elsewhere than in this and the next succeeding section the term shall unless the context requires a different meaning be read and construed as excluding such half-castes as under the provisions of this Act are to be deemed to be aboriginals.

4. The

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10th December 1886.

Who to be deemed
aboriginals.

4. The following persons shall be deemed to be aboriginals within the meaning of the Principal Act:—

- (1.) Every aboriginal native of Victoria.
- (2.) Every half-caste who habitually associating and living with an aboriginal within the meaning of this section has prior to the date of the coming into operation of this Act completed the thirty-fourth year of his or her age.
- (3.) Every female half-caste who has prior to the date aforesaid been married to an aboriginal within the meaning of this section and is at the date aforesaid living with such aboriginal.
- (4.) Every infant unable to earn his or her own living the child of an aboriginal within the meaning of this section living with such aboriginal.
- (5.) Any half-caste other than is hereinbefore specified who for the time being holds a licence in writing from the Board under regulations to be made in that behalf to reside upon any place prescribed as a place where any aboriginal or any tribe of aboriginals may reside.

Board empowered
to carry Act into
execution with
respect to half-
castes.

5. The Board in addition to the powers conferred upon it by the Principal Act with respect to aboriginals shall have full power and authority to act in the execution of this Act and the regulations hereunder in those particulars made applicable by this Act or such regulations to half-castes; and for that purpose any money granted for the benefit of aboriginals shall be equally available for the purpose of carrying this Act and the provisions hereof relating to half-castes into effect.

Provision to allow
half-castes hereto-
fore maintained at
public expense
certain benefits for
a limited period.

6. Every half-caste who prior to the date of the coming into operation of this Act has been maintained or partly maintained from moneys granted by Parliament for the benefit of aboriginals shall subject to any regulations to be made in that behalf, on satisfying the Board of his or her necessitous circumstances, be entitled to claim to such extent and for such time as the Board may from time to time direct not exceeding the periods hereinafter limited for the receipt of the same respectively all or any of the benefits following (that is to say):—

- (1.) To be supplied with rations or their equivalent in money as the Board may determine. Provided that this benefit and the right to claim the same shall cease and be determined after three years from the date of the coming into operation of this Act.
- (2.) To be supplied with clothing. Provided that this benefit and the right to claim the same shall cease and be determined after five years from the date of the coming into operation of this Act.

(3.) To

- (3.) To be supplied with blankets. Provided that this benefit and the right to claim the same shall cease and be determined after seven years from the date of the coming into operation of this Act.

7. The Board may if it thinks fit from time to time license any half-caste to reside and be maintained upon any place or any of the places now or hereafter to be prescribed by the Governor as the place or places where any aboriginal or any tribe of aboriginals shall reside, and such licence may at any time withdraw, and when withdrawn may renew; and so long as any such licence remains in force the provisions of this Act relating to half-castes shall cease to apply to the half-caste holding the same.

Half-castes licensed in certain cases to reside with aboriginals.

8. The Governor may from time to time make regulations and orders in respect of half-castes for any of the purposes hereinafter mentioned, and at any time may rescind or alter such regulations (that is to say):—

Regulations.

- For prescribing the conditions on which the Board may license any half-castes to reside and be maintained upon the place or places aforesaid where any aboriginal or tribe of aboriginals now or hereafter reside, and for limiting the period of such residence, and for regulating the removal or dismissal of any of such persons from any such place or places.
- For the supply to half-castes entitled to the same of rations clothing blankets or other necessaries or any medical or other relief or assistance.
- For prescribing the conditions on which half-castes may obtain and receive assistance to enable them under and by virtue of the provisions of any law now or hereafter to be in force relating to the alienation or occupation of Crown lands to select acquire hold enjoy and be possessed of any such Crown lands for any estate or interest therein and the nature and amount of such assistance.
- For prescribing the conditions on which half-caste infants may be licensed or apprenticed to any person or persons.
- For the transfer of any half-caste child being an orphan to the care of the Department for neglected children or any institutions within the said colony for orphan children subject to the provisions of any law now or hereafter to be in force for the transfer of orphan children to the said Department or such institutions as aforesaid.
- To enable the Board to exercise care and oversight in the management or condition of half-castes during a period of seven years from the date of the coming into operation of this Act.

For

For the furnishing of periodical reports on the condition and progress of half-castes during the said period.

And every such regulation or order shall be published in the *Government Gazette*, and any publication purporting to be a copy of the *Government Gazette* and containing any such regulation or order signed by the Minister shall be received in all courts as evidence thereof.

Breach of
regulations.

Recovery of
penalties.

9. If any person violate the provisions of any regulation made under or in pursuance of this Act, every such person shall on conviction forfeit and pay any sum not exceeding Twenty pounds, and such penalty may be enforced before any justice.

MELBOURNE:

By Authority: JOHN FERNES, Government Printer.