

**From Denial to Emergency:  
Governing Indigenous Communities in Australia**

Dr Deidre Howard-Wagner

Department of Sociology and Social Policy

University of Sydney

In June 2007, within two weeks of the release of *Ampe Akelyernemane Meke Mekarle* 'Little Children Are Sacred,'<sup>1</sup> the report of an inquiry into child sexual abuse in Indigenous communities of Australia's Northern Territory,<sup>2</sup> the federal government declared a state of emergency in the region. The report had been commissioned by the Australian Northern Territory government to examine the extent, nature, and contributing factors of sexual abuse of Aboriginal children in the territory. It acknowledged there was "nothing new or extraordinary about the allegation of sexual abuse of Aboriginal children of the Northern Territory." It confirmed that all categories of child abuse, including neglect, existed in Indigenous communities of the Northern Territory, that child abuse and neglect was "serious, widespread and often unreported" and "symptomatic of the breakdown of Aboriginal culture and society." The report stated: "What is required is a determined, coordinated effort to break the cycle and provide the necessary strengths, power and appropriate support to local communities, so they can lead themselves out of the malaise; in a word, empowerment."<sup>3</sup> In announcing shortly after his government's intention to intervene in the affairs of the Northern Territory and in what had been essentially self-governing Indigenous communities since the 1970s, the then prime minister, John Howard, proclaimed that children in remote communities of the territory

were “living out a Hobbesian nightmare of violence, abuse and neglect.”<sup>4</sup> Using its constitutional and political powers to intervene in the affairs of the territory, combined with its *parens patriae* power, the state asserted its “duty of care.”<sup>5</sup> This so-called Hobbesian nightmare had provided a strategic moment in which decisive intervention could be made, justifying the suspension of the existing statutory laws and political regimes. The state’s emergency response to violence, abuse, and neglect was “radical, comprehensive and highly interventionist” and involved seizing control of seventy-three Indigenous communities, including town camps, in the Northern Territory, sending in troops, and instigating a major rebuilding of social order in these Indigenous communities. Indigenous communities and the Northern Territory government were denied the right to engage in designing initiatives and strategies to overcome violence, abuse, and neglect.

This strategic moment of intervention relied heavily on rhetorical tactics and linguistic devices to construct a state of emergency in the minds of the Australian populace.<sup>6</sup> Tales of Indigenous-community dysfunction and failure worked to define the crisis and shape its future in particular ways. The “national emergency” was constructed as appearing in “an environment where there is no natural social order of production and distribution,” one in which “the combination of free money (in relatively large sums), free time and ready access to drugs and alcohol has created appalling conditions for community members, particularly children.”<sup>7</sup> Government discourses attributed violence to situational factors such as welfare dependency and alcohol abuse, rather than to historical and underlying factors. Intervention in the affairs of Indigenous communities of the Northern Territory was premised on the inability of communities to realize their full

economic and democratic potential.<sup>8</sup> Indigenous “failure” validated the setting aside of the normal state of affairs. A zone of exception was established.

The discursive construction of Indigenous communities of the Northern Territory as failed social enclaves in which violence and child sexual abuse was rife allowed for new disciplining, prohibitive, and corrective practices. Federal government strategies were aimed at getting “tough on violence and child sexual abuse” through extra police to reestablish law and order, harsh penalties for the purchase, supply, or consumption of alcohol and pornography, the surveillance of people’s movements through the use of photographic identification, used to stem the flow of alcohol, drugs, and pornography, as well as the management of welfare payments to limit the amount of cash available for alcohol, drugs, gambling, and pornography.<sup>9</sup> A blueprint for the rebuilding of social order in seventy-three Indigenous communities of the Northern Territory was announced, one in which viable economies and an entrepreneurial culture were to be the new norm. Social order was to be facilitated through the incorporation of these communities into mainstream society through participation in “Australia’s prosperous economy.”<sup>10</sup> The failed apparatuses of welfarism were to be dismantled, along with the vestiges of self-determination and autonomy with the initiation of new mechanisms of intervention and regulation. The state’s declaration of a “national emergency” in Indigenous communities of the Northern Territory allowed for the creation of a new social order within these communities, particularly the introduction of new legal provisions that initiated new types of normalization practices.<sup>11</sup> This essay explores how the declaration of a state of emergency and subsequent changes to the governance of Indigenous communities in the Northern Territory implemented a qualitatively different form of state governmentality.<sup>12</sup>

New laws instituted new modes of governance that reflected associated changes in the governmentality of Indigenous affairs.<sup>13</sup> This is a particular historical juncture in state governmentality with regard to Indigenous affairs,<sup>14</sup> which was decontextualized from the historical backdrop of violent practices that had operated through different modes of social ordering. It ignored the history of the placelessness of Indigenous peoples within the state, the indelible state of anomie endemic to that placelessness, and the consequent effects.<sup>15</sup> But first, I will give consideration to historical junctures in the governance of the Indigenous population of the Northern Territory and to family violence in Indigenous communities in the context of this history.

### **Race, State Intervention, and Spatial Governance**

On settlement, the British transported both convicts and the English common law to Australia, arriving on January 26, 1788. Unlike in New Zealand, Canada, and the United States, no treaty was entered into. Australia was deemed to be uninhabited and to be settled, rather than conquered.<sup>16</sup> Settlement occurred under the legal aegis of the doctrine of *terra nullius* (land belonging to no one), removing any legal recognition of preexisting Indigenous institutions. Practices of dispossession emanated from this principle, resulting in not only the physical removal of Indigenous peoples from their land, but the exclusion, control, and destruction of Indigenous peoples.<sup>17</sup> The Indigenous peoples were given no rights, and these events occurred in a context where Indigenous people had little protection except, ambivalently, the common law. The colonial form of sovereignty and the mode of rapid land appropriation did much to shape conflictual colonial relations between the preexisting Indigenous peoples and the colonizing settlers in Australia. Murders,

massacres, dispossession, dispersal, and marginalization of the Indigenous population were the major consequences of colonial conquest.

In the late nineteenth and twentieth centuries, blatant murderous acts were replaced with policies of protection that were intended to assist the dying out of Aborigines. Legislation brought into force to protect Aborigines in the 1840s was “predicated on the philosophy of ‘soothing the dying pillow’ of a race near extinction”—philosophies premised on Social Darwinism or “scientific” race theory.<sup>18</sup> Protection amounted to separation and incarceration, with Indigenous people removed from their land and placed on government-managed reserves or in church-run missions. Ronald M. Berndt argues: “In effect, the ‘white’ arrogated to himself the right to decide that the ‘black’ should be given no new opportunity to change, either in his own environment or in ‘white society.’”<sup>19</sup> Further, as Colin Tatz comments, “the intent was . . . to await the ‘natural’ death of the ‘full-blood’ peoples and to socially engineer the disappearance, forever, of all those ‘natives of Aboriginal origin.’”<sup>20</sup> Law and policy were oriented toward their “protection’ by the state, but excluded them from citizenship and the social rights of the modern state. The science of “race” difference continued to influence the public administration of and policy concerning Aborigines until the late 1940s.<sup>21</sup>

When the modern Australian nation-state was formed in 1901, the Australian Constitution had no place for its Indigenous peoples as citizens. The “race power” under section 51 (xxvi) of the constitution gave the federal parliament “the power to make laws with respect to the people of any race, other than the Aboriginal race in any state, for whom it is deemed necessary to make special laws.” Section 127 of the constitution stated that “in reckoning the numbers of people of the Commonwealth or of a state or

other part of the Commonwealth, Aboriginal natives shall not be counted.” Indigenous people were relegated to a zone of exception in which they became noncitizens denied basic citizen rights, including the right to protection within the new state. Their exclusion “from the census meant their *homo sacer* status as non-persons was empirically assured.”<sup>22</sup> The colonial status of Aborigines remained constant after federation, because the law continued to deny Aborigines social and civil rights in the new nation. The Aborigine was left to the custodianship of the former colonial governments. Aborigines were “wards” of the states and subject to the laws of those states. The attention of the newly formed nation was redirected to debating miscegenation. It was not the existence of Aborigines, but the consequences of miscegenation that seemed to be the central issue for administrators. Academics, such as the leading pathologist, Professor J. B. Cleland, and various state and territory chief protectors of Aborigines, such as Walter Baldwin Spencer, John William Bleakley, and A. O. Neville, saw miscegenation as a solution to the race “problem.” For administrators in more remote areas of Australia with large Indigenous populations, however, miscegenation was seen as a threat to the “ideal of White Australia.” Cecil Cook, the administrator of the Northern Territory, was more ambivalent about miscegenation, as a natural solution to racial difference, if not opposed to it. In fearing it “to be a matter of only a few decades before the half-castes equal or exceed in number the white population,” Cook argued that steps should be taken to “limit the multiplication of the hybrid coloured population.”<sup>23</sup>

In 1910, the newly formed nation-state took over control of the Northern Territory, which had been previously annexed to South Australia, providing for the provisional government of this federal territory and establishing an administrator for the affairs of the

Northern Territory.<sup>24</sup> The nation-state achieved legal segregation of “Aborigines” by passing the Northern Territories Aborigines Act that same year, administering their lives through Aboriginal protections boards, reserves, and guardianship. Protectors had the power to remove Aboriginal children from their families and/or communities and the power to place Aborigines on reserves and arrest those who left or refused to go. In effect, what occurred here was what Michel Foucault describes as the emergence of a juridical combination of laws and regulations that brought about a binary division in society.<sup>25</sup> In this case, it was a system that ensured miscegenation did not take place. The regulation of Aborigines of the Northern Territory involved literally removing them from their traditional land. Different tribes were placed together and institutionalized in centralized reserves that were in effect penitentiaries, a segregation that achieved the spatial division and separation of Aborigines and whites. A disciplinary system dealt with the problem of exclusion that functioned to modify the biological destiny of the Aborigines, limiting multiplication of a hybrid population. Discipline was also exercised on the bodies of the Aborigine. As Richard Broome writes: “The inmates . . . were subject to orders, discipline, a loss of privacy and removal if they tried to resist.”<sup>26</sup> The traditional ways of life “were attacked with regimented effort,” and the identities of individuals “were threatened by giving them European names.” Disciplinary regimes eroded the powers and authority of traditional elders and leaders. Traditional ceremonies, traditional marriage, and Indigenous languages were banned.<sup>27</sup> This regulated and controlled environment produced a dependent population whose affairs and every decision were managed.<sup>28</sup>

After World War II, biologists, geneticists, and social scientists recognized that the notion of how “races” are constituted has no biological basis—mainly as a result of a

reaction to the atrocities committed against Jews, Romanies, and other minorities in Nazi Germany in the lead-up to and during World War II. This recognition led to a new era of reflection on the way that the colonized peoples of the world had been treated. The United Nations had condemned colonialism and all practices of segregation and discrimination associated with colonialism in the Declaration on the Granting of Independence to Colonial Countries and Peoples on December 14, 1960, General Assembly Resolution 1514, XV. The treatment of “racial” groups within Western nation-states received greater attention, particularly the treatment of racial groups oppressed as a result of Western colonization. Increasingly, in the postcolonial world, pressure was placed on Australia to implement a nondiscriminatory policy in Indigenous affairs. The response to this international criticism was defensive. Although the federal parliament formally deliberated these issues in terms of citizenship rights and, hence, inclusion and equality, Aborigines generally remained excluded from citizenship and the social rights of the modern nation-state.

The Australian state, as “the custodian of the national reputation in the world at large,” believed it had a responsibility to “move to a new era in which the social advancement rather than the crude protection of the native should be the objective.”<sup>29</sup> This transition in dominant rationalities about Indigenous difference resulted from the adaptation of assimilation in line with Western liberal thought. However, the policy of assimilation continued the belief that Aboriginal culture was incompatible with the “white way of life.” Race took on a new cultural signification. What was different was the expectation that Aborigines would assimilate into the wider society and culture, which was unquestionably regarded as superior. For the minister for territories, Paul

Hasluck, assimilation did not mean the “suppression of Aboriginal culture but rather that, for generation over generation, cultural adjustments would take place. The native people [would] grow into the society in which, by force of history they are bound to live.”<sup>30</sup> The Aborigine was now constructed as a ‘human personality’ to be assimilated into mainstream society.

Welfare rationalities and technologies instituted new mechanisms of social ordering based on the idea that the Aboriginal problem was a “social problem,” rather than a “racial problem.” A new instrument of Aboriginal governance was introduced in 1953 in the form of the Northern Territory Welfare Ordinance, later amended by the Social Welfare Ordinance 1964.<sup>31</sup> Referring to the management of “wards” of the state, rather than the management of Aborigines, these laws were an attempt by the state to abolish race as a blatantly negative legal category. The “Aboriginal problem” as a “social problem,” as Hasluck defined it, could be remedied through “welfare” programs. The concept of welfare did not have “welfare state connotations of ‘cradle to the grave’ provisions of services by the State.” The minister of territories was opposed to “passive welfare” and argued that “the payment of social benefits to natives [had], in fact, led to a decline in their living standards and [had] halted the advancement of their welfare in as much as they [had] accepted social benefit payments as a means of livelihood and [had] been content to live at the standard which such an income provides and give up wage-earning.” The Welfare Ordinance was not about welfare payments per se, but detailed the mechanisms for improving the well-being of Indigenous peoples, which was to be achieved through the expansion of assimilation, education, employment opportunities, housing, and health services. The process of continuing domination was now facilitated by

“the development of relations of dependency between Indigenous minorities and welfare departments.”<sup>32</sup> Indigenous people declared these policies and programs to be paternalistic and a form of systemic racism.<sup>33</sup>

The most dramatic shift occurred in the positioning of Indigenous people in Australian society following the 1967 referendum that resulted in amendment of Section 51—the “race power” clause—of the constitution. Australians eligible to vote in federal elections gave constitutional power to the federal government, concurrent with the states and territories, with the federal government’s power having precedent in the event of inconsistency, allowing it to make “special” laws relating to Aboriginal people. Previously, the federal government’s responsibility was limited to the Northern Territory and the Australian Capital Territory. Section 127 of the constitution was also repealed as a result of the 1967 referendum, which now allowed Indigenous people to be counted as citizens in the Australian census, beginning in 1971.

In the 1970s, the politics of welfarism and self-determination combined to form new models of governance. According to Colin Tatz, the reserves were “euphemistically re-named as ‘communities,’” and “bureaucrats eventually gave these prison-like institutions ‘freedom’, a budget and autonomy of a limited kind.”<sup>34</sup> There was no training in autonomy: “Nobody remembered, or wanted to remember, that the inmates-turned-citizens were often people who had been moved or exiled to these places, people who had had to be disciplined or punished, or people who had been rounded up by desert patrols and simply placed there for the ‘social engineering’ experiment of assimilation in the deserts and monsoon lands.” Self-determination and autonomy in this form was a federal-government construct. Thus, the belated postcolonial move to recognize retroactively

Indigenous peoples' rights was based on government largesse and willingness.

Indigenous people, their historical exclusion from the broader community, and then their incorporation into the broader community, the expression of their culture, and the struggle for their rights, were and continued to be spatially managed by governments and bureaucrats.

What was striking in this contemporary period were the Indigenous claims for integrity, rights, autonomy, self-governance and self-determination, which became an irrepressible element of the postcolonial landscape in Australia beginning in the 1950s. In the late 1960s, the agenda for assimilation and inclusion had been confronted by a different set of demands that emanated from the Indigenous community itself, which sought to address questions of prior occupancy, compensation for their dispossession as a colonized people, as well as recognition of Indigenous rights consistent with international customary and treaty law. Indigenous spokespeople and scholars pushed for change, continually critiquing laws and policies and engaging in public struggles for rights, self-determination, and Indigenous governance. The Gurindji strike and land claim that began in 1967, known as the Wave Hill Walk-Off, in the Northern Territory, was as much an industrial dispute for improved wages and conditions for the Gurindji stockmen and workers as it was a struggle for Aboriginal justice. However, it developed into a major national industrial and political dispute that had far-reaching ramifications in terms of Indigenous peoples rights in Australia, resulting in the passing of the Aboriginal Land Rights (Northern Territory) Act 1976 and, subsequently, Aboriginal people of the Northern Territory regaining almost half of the land mass over the period of twenty years that followed.

## **Violence and Child Sexual Abuse in Indigenous Communities**

However, placelessness as a consequence of being excluded into zones of exception had had its consequent social and psychological effects.<sup>35</sup> The history of Indigenous “communities” in the context of the history of reserves and the removal of Indigenous peoples from their lands, as well as in the context of the laws, policies, and practices affecting Indigenous peoples, is important for understanding violence and sexual abuse in contemporary Indigenous society. For the past thirty years, scholarship by Indigenous people, has linked violence and abuse in Indigenous communities to the “artificial” nature of contemporary communities,<sup>36</sup> suggesting that Indigenous “communities” were a construct of both historical and more recent government intervention. Reference has also been made to the “traumatized community,” that is, to problems within Indigenous communities brought on by the traumas of the past, such as the history of colonization, dispossession, violence, segregation, and intervention.<sup>37</sup> Also, the term “dysfunctional community” has been used to describe the social breakdown within Indigenous communities associated with historical, structural, and situational factors.<sup>38</sup>

Violent colonization, the often-violent enforcement or imposition of discriminatory laws and social policies, and individual experiences of violation and violence as children had resulted in transgenerational trauma. Violence, abuse, and neglect in Indigenous communities is thus identified as a community-based social problem deeply rooted in a social context of colonization, loss of land and traditional culture, racism, marginalization and dispossession, entrenched poverty, and alcohol and drug abuse.<sup>39</sup> Indigenous scholars have emphasized the importance of allowing

Indigenous peoples and communities to be “the architects of their own solutions.”<sup>40</sup> Over the last thirty years, the system, as it presently stood, was perceived as inhibiting autonomy and self-determination. Indigenous communities called for real autonomy and basic funding for specialized services, such as programs to combat family violence. Boni Robertson, for example, argued that the “time is overdue for politicians and service providers to hear and acknowledge the voices of Indigenous people.”<sup>41</sup> The constructive features of Indigenous community approaches to address family violence, such as night patrols (“voluntary community policing”) that started in Julalikari in the Northern Territory in the 1980s and that had been implemented in over fifty Indigenous communities of the Northern Territory since, were increasingly turned to as an alternative to law-and-order and Western models of policing.<sup>42</sup> National and international research supported the proposition that, if appropriately funded, community-based strategies for addressing family violence had been most successful.

What can also be determined from this literature on family violence in Indigenous communities is that establishing a precise historical moment in which the situation in Indigenous communities became a national emergency is difficult. Nonetheless, it was more than ten years prior to the federal government’s declaration of a state of emergency. Quantitative facts and figures and qualitative accounts detailing the extent and affects of family violence in Indigenous communities had been presented to Australian federal, state, and territory governments since the 1980s. Family violence had been reported as endemic to and an epidemic within Indigenous communities as early as 1990.<sup>43</sup> Reports, major studies, and national summits continued to be produced throughout the first ten years of the Howard government’s federal leadership. Even so, “rationalization,

trivialization and denial” had served to delay the application of strategies recommended for overcoming family violence in Indigenous communities.<sup>44</sup> In 2001, the *Herald Sun*, an Australian newspaper, featured a story detailing accounts of rape of an eight-month-old baby and a three-year-old toddler in remote communities in the Northern Territory.<sup>45</sup> The report indicated that academic research had found the problem was particularly dire in some remote Northern Territory, Queensland, and Western Australian Indigenous communities, where “a typical cluster of violence types in such a dysfunctional community would be male-on-male and female-on-female fighting, child abuse, alcohol violence, male suicide, pack rape, infant rape, rape of grandmothers, self-mutilation, spouse assault and homicide” and that “such communities need to be viewed as in a state of dire emergency.” The article detailed how a report of the findings of research undertaken by Dr. Paul Memmott, who had conducted surveys of the research literature and interviews with 100 Indigenous organizations around Australia, had been presented to the Howard government in August 1999—eighteen months earlier.<sup>46</sup> The National Campaign against Violence and Crime within the federal Attorney General’s Department had commissioned the report.

A few months later, the Secretariat of National Aboriginal and Islander Child Care released a study written and researched by Julian Pocock detailing the neglect and abuse of Indigenous children in the Northern Territory.<sup>47</sup> The study established that the child protection system in the Northern Territory “was seriously failing” and that “the Northern Territory has the highest levels of hidden or ignored child abuse and neglect in Australia.” The report, entitled *State of Denial*, drew on and reiterated the findings of previous studies, making thirteen recommendations for addressing child neglect in

Indigenous communities of the Northern Territory, which included child removal and national reforms to child welfare policy to prevent child abuse and neglect in the Northern Territory. The report claimed that a “state of denial” had existed for nearly twenty-five years. It was not the truth claims that were being denied.<sup>48</sup> The government officials, bureaucrats, media, and academics working in this field knew that alcohol and substance overuse were rife in Indigenous communities. Violence and child sexual abuse were considered endemic, too. That same year, the report of a six-month inquiry into family violence had revealed a “shocking level of child sexual abuse and violence in Indigenous communities in Western Australia.”<sup>49</sup> The inquiry, chaired by Western Australian Children’s Court magistrate Sue Gordon, had found that the situation was also endemic and an epidemic within Indigenous communities of Western Australia. The Western Australian premier described the situation as a “national disaster,” calling on the prime minister to take action.

The following year, Professor Mick Dodson, director of the Australian National University's National Centre for Indigenous Studies and former Aboriginal and Torres Strait Islander social justice commissioner, presented a speech entitled “Violence Dysfunction Aboriginality” at the National Press Club in Canberra. In the speech, Dodson declared that “extreme situations require extreme responses. . . . Violence must be tackled as a priority, not part of some other secondary program, but as a central feature in Aboriginal social and economic policy across all of government—all of community priorities.”<sup>50</sup> Later that year, the prime minister, John Howard, convened a national summit on Aboriginal family violence, including child abuse, which brought together twenty Indigenous spokespeople, mostly Indigenous women, who provided graphic

details of violence, abuse, and neglect in Indigenous communities. Afterward, in a press interview, Howard stated: “I don't think there's any doubt . . . it is the most important issue facing the [Indigenous] community. . . . Violence is a hugely important issue because it is destroying communities.” The situation was declared a “national crisis.”<sup>51</sup>

On May 15, 2006, *Lateline*, the leading current affairs television program of the Australian Broadcasting Corporation (ABC), featured a story about sexual abuse and violence toward Aboriginal women and children in Indigenous communities of the Northern Territory. In a lengthy interview, the crown prosecutor for Central Australia, Dr. Nanette Rogers, voiced concerns about the difficulties associated with prosecuting child sexual abuse in Indigenous communities because of cultural issues. Rogers gave graphic details of cases of child sexual abuse purportedly resulting from Indigenous cultural practices, revealing explicit details of one man's repetitive child sexual abuse, which she linked, in part, to the problem of cultural practice of “promising wives,” that is, girls promised in marriage at birth to older men according to traditional custom. Rogers also revealed that “the volume of violence” in Indigenous communities of Central Australia “was so huge” and conditions were “so depraved and dysfunctional as to defy belief.”

Violence and sexual abuse were thus discursively constructed as a feature of Aboriginal culture in government and media narratives about violence and sexual abuse in Indigenous communities. In an interview on ABC's *Lateline* on May 16, 2006, the minister for families, community services and Indigenous affairs, Mal Brough, implied that child sexual abuse in Indigenous communities was related to the cultural and social values of patriarchal Indigenous societies in which women and children have an inferior

social status.<sup>52</sup> The media in general claimed that Indigenous male culture and the web of kinship had contributed to a “conspiracy of silence” around violence and child sexual abuse in Indigenous communities. Anecdotal reports of the child “promised wife” being sexually assaulted by old men with the consent of the family dominated the media, causing a “ripple of outrage across the country.”<sup>53</sup> In that same interview, Brough declared that “paedophile rings were working behind a veil of customary law” in the Northern Territory and that “everybody who lives in those communities knows who runs the pedophile rings, they know who brings in the [sniffable] petrol, they know who sells the ganja. . . . They need to be taken out of the community and dealt with, not by tribal law, but by the judicial system that operates throughout Australia.” Brough alleged that the police force had turned a blind eye to such practices and that the Northern Territory government had been negligent.<sup>54</sup> He announced that if the Northern Territory government did not do something about the situation, then the federal government would step in.

Soon after, an intergovernmental summit involving federal, state, and territory ministers was convened on the topic of violence and child abuse in Indigenous communities. As Kyllie Cripps notes, within a month, the federal government had committed “\$130 million over four years to address social problems in remote communities” that was targeted at police stations and police housing in remote communities (\$40 million), drug and alcohol rehabilitation services (\$50 million), twenty-six Australian federal intelligence-gathering and “strike teams” (\$15 million), and, setting up advisory networks of senior women (\$4 million).<sup>55</sup> Suggesting again that somehow customary law and Indigenous culture had provided an excuse for family

violence in Indigenous communities and had allowed offenders to get away with family violence using customary law as a mitigating factor, the Howard government's commitment of funding to states and territories "was conditional on all references to customary law and Indigenous culture being removed from the Crimes Acts in each State and Territory."<sup>56</sup> The federal government had amended the *Commonwealth Crimes Act 1914* by passing the Crimes Amendment (Bails and Sentencing) Act 2006 with the intent of ensuring that "Indigenous [customary] law and cultural belonging" were not used "as a basis for defence or to mitigate the sentence imposed."<sup>57</sup>

In his speech of 2003, Dodson had pointed out that while violence and sexual abuse were endemic to Indigenous communities, they were not and never were part of Aboriginal tradition.<sup>58</sup> Other Indigenous spokespeople and scholars had long referred to the claim that they were cultural custom as what Indigenous peoples refer to "bullshit law", arguing that it was distortion or falsification of Aboriginal customary law, stigmatizing the claim as "a misuse of culture."<sup>59</sup> They argued that a "state of denial" indeed had existed, but with family violence being normalized within government and media discourses,<sup>60</sup> so it was not true that "no-one was listening." Indigenous women had long critiqued the judiciary's biased assumptions that violence is part of Indigenous culture and its inability to make a distinction between actual customary law and "bullshit" law.<sup>61</sup> Hannah McGlade has asserted that, rather than a "veil of secrecy" existing, the systemic problems in the criminal justice system contributed to fears about reporting violence and sexual abuse.<sup>62</sup> With the fracturing of Indigenous law and the breakdown of tradition, Indigenous women had had to turn to Australian law for protection. Yet many argued that the Australian legal system had failed Indigenous

women time and again, leaving them with no faith in it, and that this was a contributing factor in their failure to report violence.<sup>63</sup> Many argued, too, that a major part of the problem was that government had failed either to support or to adequately fund Indigenous initiatives.

Twelve months later, the report of that inquiry, written by Rex Wild, Queen's Counsel, and Pat Anderson, entitled *Ampe Akelyernemane Meke Mekarle, 'Little Children Are Sacred,'* was presented to the Northern Territory government, detailing cases of child sexual abuse in at least forty-three Indigenous communities in the Northern Territory. The report gave accounts of serious sexual contact offenses, yet it noted that the exact rate of child sexual abuse remained unclear because no detailed child-maltreatment or abuse-prevalence studies had been conducted. It noted that available information was only an aggregate collection of administrative data based on the reported figures of child protection services and the findings of sexual health and primary care practitioners.<sup>64</sup> The report expanded its focus to include all forms of child abuse (physical, emotional, psychological, and sexual) and neglect,<sup>65</sup> and it also placed child abuse and neglect under the rubric of family violence within Indigenous communities. It argued that explanations for child abuse and neglect are, by and large, also the basis of explanations for family violence. The findings and recommendations considered child abuse and neglect as symptomatic of historical, structural, and situational factors that had resulted in social dysfunction in Indigenous communities. The report recommended that successful Indigenous models, including national and international models, be considered for addressing serious trauma, dysfunction, and law-and-order problems in Indigenous communities. These had been adopted to address family violence, including child abuse

and neglect, in Indigenous communities elsewhere, such as the Hollow Water program in Canada. In 1984, Hollow Water, an Indigenous reserve in the central-western plains of Canada, had reached a point of crisis—75 percent of the community were victims of sexual abuse, 35 percent were the perpetrators of sexual abuse, and violence was the norm. Indigenous strategies and dispute resolution processes had successfully restored law and order and community well-being in Hollow Water.<sup>66</sup> Such a model was considered attractive by many of the Aboriginal communities consulted by the inquiry.

While it is difficult to isolate the exact historical moment that family violence, including child abuse and neglect, became a national crisis, the moment was long before June 2007. Also, a disjunction had occurred between Indigenous representations of family violence, child abuse and neglect, and federal government and media representations, which tended to attribute blame for them to Indigenous culture or to an inherent failure of Indigenous society itself.

### **The “NT Intervention”**

It was only within about two weeks of the release of *Ampe Akelyernemane Meke Mekarle*, ‘*Little Children Are Sacred*,’ that the federal government announced that it would be taking control of seventy-three Indigenous communities in the Northern Territory (NT). The declaration of a state of emergency in these Indigenous communities involved the suspension of statutory laws and legal norms in the form of the suspension of the recognized rights of Indigenous peoples who live there. A multiplicity of discursive practices and rhetorical strategies were deployed to rationalize the severity of the federal government’s intervention. War metaphors, such as the “deploying of troops

into the Northern Territory to fight against this community problem” and “troops seizing control of Aboriginal communities” operated as powerful symbolism, performing their role in the fictitious production of the state of emergency by the executive and providing a level of authentication to the extreme measures adopted, including the suspension of the existing regime. Troops and police were sent in to “stabilise the situation” and “to make communities safe,” and within the first few weeks, the army and police had conducted “almost 500 health checks of Aboriginal children under 16.”<sup>67</sup> The rhetorical framing of the situation in Indigenous communities of the Northern Territory as a crisis in the context of other crises and disasters, such as the political crisis in East Timor and the crisis in New Orleans following Hurricane Katrina, functioned in the same way. In drawing this parallel between Hurricane Katrina and the crisis in the Northern Territory, the failure of the American federal system of government to cope adequately with the human misery and lawlessness occasioned by Hurricane Katrina allowed the Australian federal government to configure its own intervention in what was constructed as a crisis of human misery and lawlessness in Indigenous communities of the Northern Territory.

It was in this climate that the exception quickly became the norm with the rapid passing of five interrelated pieces of “emergency response” legislation, which repealed the existing regime and legislated into effect a new model of governance. Intervention of the most extreme kind occurred: Troops and the police were sent in, the sale and consumption of alcohol was banned, and filters were put into computers to control access to pornography. The intervention extended beyond establishing new law-and-order regimes operating to regulate and intervene in the day-to-day affairs of Indigenous peoples and communities of the Northern Territory. The new laws changed the very land

tenure arrangements that had been put in place to ingest and disalienate the placeless.<sup>68</sup>

*The Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007 (Cth)* suspended the existing model of self-governance and Aboriginal communal land ownership, giving the federal government “special jurisdiction” over the land belonging to those same communities. This was a significant shift in the governance of Indigenous communities of the Northern Territory.

The new laws made changes to Aboriginal property rights in the Northern Territory by scrapping the permit system put in place to allow Aboriginal peoples the right to determine who enters their community or township, such as government officials, media, researchers and tourists, acquiring Indigenous townships through five-year leases, and setting up a framework of individual private-property ownership by building houses and introducing market-based rents and normal tenancy agreements.<sup>69</sup> Commodification of the land was therefore central to the amendments to land-tenure arrangements. That is, a restructuring of land use and tenure was aimed at facilitating entrepreneurial initiatives through a move away from a community-based approach to land management and ownership to a model of individual housing/leasehold tenure.<sup>70</sup> It is a modernization logic that, as Paul Havemann argues, “requires the conversion of place into commodified and controlled space to effect order building and growth.”<sup>71</sup> While neoliberal rationalities view land as an economic commodity to be parcelled, packaged, and sold, projecting Indigenous people into the market economy, Indigenous peoples do not regard land as an economic commodity.

Thus, the “NT Intervention”—or “the Intervention,” as it has come to be called by

Indigenous people in the Northern Territory—and the accompanying array of laws set out new models of governance of which the long-term objective is to encourage self-governance and localized, community “responsibilisation”<sup>72</sup> by empowering entrepreneurial subjects to govern themselves economically, through participation in the broader market economy. In this context, “community responsibilisation” refers to the legitimization of the localization of responsibility for service provision.<sup>73</sup> However, while the end game is a multiplicity of self-governing communities in accordance with neoliberal principles of economic and entrepreneurial governance, the initial intervention, which aims to institute and provide the foundations for this new economic and social order, is highly interventionist, once again attempting to restructure the cultural, communal, and place-based origin of these communities. The end game is inconsistent with Indigenous models of self-governance and self-determination.

These new laws were not simply aimed at projecting Indigenous people into the market economy. They also sought to shape and regulate the Indigenous population upon which they acted.<sup>74</sup> The Aboriginal people affected by these laws slipped further into a biopolitical zone of exception when the state took over determining their day-to-day existence by quarantining welfare payments and stipulating what they could and could not spend their money on.<sup>75</sup> For example, the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* contained provisions aimed at dealing with “the scourge of passive welfare” and aimed “to reinforce responsible behaviour” through a new Income Management Regime.<sup>76</sup> The then prime minister argued that the new laws were “designed to stem the flow of cash going towards alcohol abuse and to ensure that the funds meant to be used for children’s welfare are actually used for that

purpose.”<sup>77</sup> He noted that “we’re going to enforce school attendance by linking income support and family assistance payments to school attendance for all people living on Aboriginal land. We’ll be ensuring that meals are provided for children at school with parents paying for the meals.”<sup>78</sup> It is a rationality in which Indigenous people are “judged to be incompetent as autonomous individuals” and are therefore deemed incapable and unfit to exercise the freedom of the capable subject.<sup>79</sup> Such rationalities provide for the rationalization of authoritarian rule. Indigenous people are subjected to various techniques of improvement aimed at fostering capable, self-regulating subjects.<sup>80</sup>

Thus, community dysfunction provided a pretext for the regulation of social life in that it provided a means for programming and transforming social fields and a technique for managing the Indigenous population.<sup>81</sup> It provided a pretext for suspending existing governance, the failure of which gave the federal government the coercive license to govern, and allowed for the introduction of new legal provisions that initiated new types of normalization practices, as well as the creation of a new social and economic order within these communities—a zone of governance in which Indigenous society was constructed to exist for the purpose of intervention.<sup>82</sup>

## **Conclusion**

I have explored here historical junctures in the constitution of different forms of state governmentality involving the Indigenous population of Australia’s Northern Territory. I have demonstrated how historical state projects have regulated the Indigenous population through, for example, isolation and segregation in state reserves or church missions and the consequent effects. State tactics and strategies have had dire consequences for the Indigenous population of the Northern Territory, and for Australia more generally, in

terms of the loss of land and traditional culture, including kinship systems, customary law, and traditional roles. Colonization, racism, marginalization, and dispossession also paved the way for community-based social problems, such as social dysfunction, entrenched poverty, alcohol and drug abuse, and family violence, including child abuse and neglect.

While the invocation of a state of emergency in Indigenous communities involved implementing a qualitatively different state governmentality, once again, it rested upon the operative biopolitical categorization of Indigenous people in a state of exception. The lack of social order within Indigenous communities of the Northern Territory was decontextualized from the historical background of violent practices of state governmentality and attributed to situational factors, such as alcohol abuse and “passive welfare.” Community dysfunction provided a pretext for the moral regulation of social life in that it provided a means for programming and transforming social fields and a technique for shaping and managing the Indigenous population of the Northern Territory. The sudden and urgent shift from a state of denial to the declaring of a state of emergency and the passing of laws to manage Indigenous community dysfunction involved intervention of the most extreme kind, denying Indigenous people the right to engage in meaningful community strategies.

The blueprint for the rebuilding of social order in seventy-three Indigenous communities of the Northern Territory was one in which viable economies, individual home ownership, and entrepreneurship were to be the new norm. Social order was to be facilitated by the incorporation of these communities into mainstream society through participation in “Australia’s prosperous economy.” Yet the NT Intervention does not

incorporate the Indigenous population of the Northern Territory into Australian society. Rather, state governmentality once again isolates Indigenous people of the Northern Territory from the Australian population through their subjection to models of governance that again render them the exception. The consequent effects of this new form of state governmentality is the loss of Indigenous communal land-management frameworks, the loss of not only Indigenous peoples' rights to self-determination, but also their equal citizenship rights through their subjection to extreme measures of surveillance and the monitoring and policing of their movements, as well as through highly interventionist and regulatory government strategies managing their daily lives.

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1. Rex Wild and Patricia Anderson, *Ampe Akelyernemane Meke Mekarle, 'Little Children are Sacred,'* Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007, June 2007. available on-line

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at [http://www.inquirysaac.nt.gov.au/pdf/bipacsa\\_final\\_report.pdf](http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf) (last accessed July 5, 2009).

2. The terms “Indigenous” and “Aboriginal” peoples tend to be used interchangeably in Australia and, therefore, throughout the paper. Australia’s Indigenous population is 2.4 percent of the Australian population and is composed of Aboriginal and Torres Strait Islander peoples and communities located around Australia, including the Torres Strait Islands off the coast of the northeastern tip of Australia. Almost 14 percent of Australia’s Indigenous population lives in the Northern Territory. The terms “Aborigine” and “Indigenous” are a white constructs. It has been estimated that over two hundred and fifty language groups existed at the time of settlement in 1788. Indigenous people refer to their land as “country” and refer to themselves as “peoples of that country,” such as “Larrakia land” and “Larrakia people,” and tend to refer to themselves as “Indigenous” only in a broader societal and political context. The various peoples of the Northern Territory include, for example, the Gurindji, Kija, Jaru, Jawoyn, Larrakia, Miriwoong, Warlpiri, Warray, and Yolgnu peoples.

3. Wild and Anderson, *Ampe Akelyernemane Meke Mekarle, ‘Little Children are Sacred,’* pp. 5, 12, 13.

4. John Howard, quoted in “PM Likens Crisis to Hurricane Katrina,” *ABC News*, Australian Broadcasting Corporation, June 26, 2007, p. 1, available on-line at <http://www.abc.net.au/news/stories/2007/06/26/1961802.htm> (last accessed July 5, 2009).

5. In 1910, the Northern Territory became a federal territory of the commonwealth, giving the federal government control of the Northern Territory. Self-government was conferred in 1978, yet the federal government retained its political and

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constitutional powers to intervene in the affairs of the Northern Territory, including the power to override the laws of the Northern Territory.

6. Colin Hay, “Narrating Crisis: The Discursive Construction of the Winter of Discontent” *Sociology* 30, no. 2 (1996): p. 254.

7. Nigel Scullion, “Second Reading Speech, Northern Territory National Emergency Response Bill 2007,” *Senate Hansard*, Federal Parliament of Australia, p. 25.

8. John Howard, “To Stabilise and Protect,” Address to the Sydney Institute, June 25, 2007; John Howard Joint Press Conference with the Hon. Mal Brough, Minister for Families, Community Services and Indigenous Affairs, Canberra, June 21 2007, p. 1, available on-line at

<http://pandora.nla.gov.au/pan/10052/20080118->

[1528/pm.gov.au/media/Interview/2007/Interview24380.html](http://1528/pm.gov.au/media/Interview/2007/Interview24380.html) (last accessed July 5, 2009); Scullion, “Second Reading Speech,” p. 11.

9. Scullion, “Second Reading Speech,” , pp. 15–16.

10. Howard,, Joint Press Conference with the Hon. Mal Brough, p. 11.

11. Giorgio Agamben, *State of Exception*, trans. Kevin Attel (Chicago: The University of Chicago Press, 2005).

12. Dennis Rodgers, “The State as a Gang—Conceptualizing the Governmentality of Violence in Contemporary Nicaragua,” *Critique of Anthropology* 26, no. 3 (2006): p. 325.

13. The five new Acts were the Northern Territory National Emergency Response Act 2007 (Cth), the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other

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Measures) Act 2007 (Cth), the Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 (Cth), the Appropriation (Northern Territory National Emergency Response Act (No.1) 2007–2008 (Cth), and the Appropriation (Northern Territory National Emergency Response Act (No. 2) 2007–2008 (Cth).

14. State governmentality here differs from a Weberian-inspired thinking in which states are solely defined in terms of their outcomes. See Rodgers, “The State as a Gang,” p. 324. The state is given no universal or general essence. Rather, state governmentality is viewed in terms of the tactics of governmentality, the governing of populations and citizenry, and as an instrument and effect of political strategies. See Butler 2004: 96; Jessop 2007: 36-37; Lemke 2007: 2.

15. Paul Havemann, “Denial, Modernity and Exclusion: Indigenous Placelessness in Australia,” *Macquarie Law Journal* 5, (2005): p. 78, available on-line at <http://www.austlii.edu.au/au/journals/MqLJ/2005/4.html> (last accessed July 23, 2009).

16. Indigenous discourses have historically represented Australia as conquered; not only did boundaries exist demarcating tribal ownership, but also Indigenous peoples had their own political culture and system of law. Hence, to date, the deeming of Australia as “settled” under English law, rather than “conquered,” remains a contentious issue.

17. Ghassan Hage, *White Nation: Fantasies of White Supremacy in a Multicultural Society* (Sydney: Pluto Press, 1998), p. 336.

18. Colin Tatz, *Genocide in Australia*, Australian Institute of Aboriginal and Torres Strait Islander Studies Research Discussion Paper no. 8 (Canberra : Aboriginal Studies Press, 1999), pp. 17–18.

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19. Ronald M. Berndt, *A Question of Choice: An Australian Aboriginal Dilemma*, (Nedlands: University of Western Australia Press, 1971), p. 20.
20. Tatz, *Genocide in Australia*, p. 28.
21. Deirdre Howard-Wagner, “Colonialism and the Science of Race Difference,” in Bruce Curtis, Steve Matthewman, and Tracey McIntosh (eds.), *TASA and SAANZ Joint Conference Refereed Conference Proceedings—Public Sociologies: Lessons and Trans-Tasman Comparisons*<sup>7</sup> (Auckland, New Zealand: Department of Sociology, University of Auckland, 2007).
22. Havemann, “Denial, Modernity and Exclusion,” p. 67.
23. Henry Reynolds, *An Indelible Stain: The Question of Genocide in Australia’s History* (Ringwood, Victoria: Viking, 2001), p. 149.
24. The Australian Northern Territory was not settled until the 1860s. Land dispossession there was much slower, However, as Richard Broome notes, “it was likely that a greater proportion of the Aboriginal depopulation on the northern frontier was due to violent death than in the south.” Richard Broome, *Aboriginal Australians: Black Responses to White Dominance, 1788–2001*, 3rd ed. (Crows Nest, Australia: Allen and Unwin, 2002), p. 99. Missions were not established until the late 1800s.
25. Michel Foucault, *Security, Territory, Population: Lectures at the College De France, 1977–1978*, ed. Michel Senellart, trans. Graham Burchell (New York: Palgrave Macmillan, 2007), pp. 9 and 31.
26. Broome, *Aboriginal Australians*, p. 103.
27. National Crime Prevention Indigenous Report, *Violence in Indigenous Communities* (Canberra: Australian Government Publishing Service , 2001), p. 12.

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28. Broome, *Aboriginal Australians*, p. 103.
29. Paul Hasluck, Debates, *Senate and the House of Representatives Hansards* 208 (June 8, 1950), pp. 3976–77. Paul Hasluck, who became the federal minister for territories in 1951, which included responsibility for Aboriginal policy in the Northern Territory, was a main advocate of assimilation.
30. Paul Hasluck, Debates, *Senate and House of Representatives Hansards*.214 (October 18, 1951), pp.875–76.
31. Russell McGregor, “Avoiding ‘Aborigines’: Paul Hasluck and the Northern Territory Welfare Ordinance, 1953,” *Australian Journal of Politics and History* 51, no. 4 (2005): pp. 513–29.
32. Barry Morris, “The Politics of Identity: From Aborigines to the First Australian,” in Jeremy Beckett (ed.), *Past and Present: The Construction of Aboriginality* (Canberra: Aboriginal Studies Press, 1988), p. 65.
33. Morris, “The Politics of Identity,” p. 64; Commonwealth of Australia *Aboriginal and Torres Strait Islander Social Justice Commissioner Second Report* (Canberra: Human Rights and Equal Opportunity Commission, Australian Government Printing Service, 1994), pp. 27–28;
34. Tatz, *Genocide in Australia*, p. 30.
35. Havemann, “Denial, Modernity and Exclusion,” p. 78.
36. Barbara Miller, “Community Development Approach to Crime Prevention in Aboriginal Communities,” in Sandra McKillop (ed.), *Aboriginal Justice Issues: Proceedings of a Conference Held 23–25 June 1992* (Canberra: Australian Institute of Criminology, 1992).

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37. Noel Pearson, *Our Right to Take Responsibility* (Cairns: Noel Pearson and Associates, 2000).

38. Mick Dodson, "Violence Dysfunction Aboriginality," speech presented at National Press Club, June 11, 2003, available on-line at <http://law.anu.edu.au/anuiia/dodson.pdf> (last accessed July 7, 2009).

39. Paul R. Wilson, *Black Death: White Hands* (Sydney: George Allen and Unwin, 1981); Ernest Hunter, "Changing Aboriginal Mortality Patterns in the Kimberley Region of Western Australia, 1957–86: The Impact of Deaths from External Causes," *Aboriginal Health Information Bulletin* 11(1989); Ernest Hunter, "Images of Violence in Aboriginal Australia," *Aboriginal Law Review* 2, no. 46 (1990): p. 12; Ernest E. Hunter, "Demographic Factors Contributing to Patterns of Violence in Aboriginal Communities," *Australasian Psychiatry* 1, no. 4 (1993): pp.152–53; Judy Atkinson, "Violence against Aboriginal Women: Reconstitution of Community Law—The Way Forward," *Aboriginal Law Bulletin* 2, no. 46 (1990): p. 6; Judy Atkinson, "Violence in Aboriginal Australia: Colonisation and Its Impacts on Gender," *Refractory Girl*, no. 36, pp. 21–24; Judy Atkinson, "Violence in Aboriginal Australia: Colonisation and its Impact on Gender," *The Aboriginal and Islander Health Journal* (June/September 1990); Judy Atkinson, "Stinkin Thinkin—Alcohol, Violence and Government Responses," *Aboriginal Law Bulletin* 2, no. 51 (1991): pp. 4–6; Judy Atkinson, "Aboriginal People, Domestic Violence and the Law," in Dimity Lawrence (ed.), *Future Directions: Proceedings of Queensland Domestic Violence Conference* (Rockhampton: Rural Social and Economic Research Centre, Central Queensland University); Audrey Bolger, *Aboriginal Women and Violence: A Report for the Criminal Research Council and the Northern Territory*

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*Commissioner for Police* (Casuarina: Northern Territory University, 1990); Harry Blagg, *Crisis Intervention in Aboriginal Family Violence: Summary Report* (Canberra: Partnerships against Domestic Violence, Office of the Status of Women, 2000), ; Monique Keel, *Family Violence and Asexual Assault in Indigenous Communities*, Australian Centre for the Study of Sexual Assault Briefing no.4, (Canberra: Australian Institute of Family Studies, 2004).

40. Indigenous scholars, in particular, direct attention away from references to the dominant paradigm of Western conceptualizations of, say, domestic violence, preferring instead to use the concept of family violence to include extended families and intergenerational issues, thus allowing for different forms of violence, such as child abuse and neglect, to be situated within this framework of family violence <<(Stanley, Tomison and Pocock 2003: 1).>>

41. Boni Robertson, *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report*, Queensland Department of Aboriginal and Torres Strait Islander Policy and Development, p. 111, available on-line at <http://www.women.qld.gov.au/resources/indigenous/documents/atsi-violence-report.pdf> (last accessed July 7, 2009)

42. Alexis Wright, *Grog War* (Stanley: Magabala Books, 1997); Janet Stanley, Katie Kovacs, Adam Tomison, and Kyllie Cripps, *Child Abuse and Family Violence in Aboriginal Communities—Exploring Child Sexual Abuse in Western Australia*, Australian Institute of Family Studies, May 2002, available on-line at <http://www.aifs.gov.au/nch/pubs/reports/wabrief.pdf> (last accessed July 7, 2009).

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43. National Committee on Violence, *Violence: Directions for Australia* (Canberra: Australian Institute of Criminology, 1990).
44. Havemann, "Denial, Modernity and Exclusion," p. 70.
45. Debra Jopson, "Black Australia: A Picture of Despair, Rage and Violence," *Sydney Morning Herald*, February 16, 2001, p. 2.
46. *Ibid.*, p. 2.
47. Julian Pocock, *State of Denial: The Neglect and Abuse of Indigenous Children in the Northern Territory*, Report for the Secretariat of National Aboriginal and Islander Child Care, SNAICC Incorporated, available on-line at <http://www.snaicc.asn.au/uploads/rsfil/00110.pdf> (last accessed July 7, 2009).
48. Stanley Cohen, *States of Denial: Knowing about Atrocities and Suffering* (Cambridge: Polity Press, 2001).
49. Alison Wright, "Call for a National Response to Child Sexual Abuse Report," *The 7.30 Report*, Australian Broadcasting Corporation television program transcript, August 15, 2002, p. 1, available on-line at <http://www.abc.net.au/7.30/content/2002/s650033.htm> (last accessed July 7, 2009).
50. Dodson, "Violence Dysfunction Aboriginality," pp. 6–7.
51. John Howard, "Summit on the Domestic Violence in Indigenous Communities", *PM ABC Radio*, July 23, 2003, p. 1, available on-line at <http://www.abc.net.au/pm/content/2003/s908693.htm> (last accessed July 7, 2009); Noel Pearson, "Forget Excuses, We Need a Plan to Reduce Indigenous Violence," *The Australian*, July 24, 2003, p. 13.

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52. Mal Brough, Mutitjulu Sexual Abuse Story, *Lateline*, Australian Broadcasting Commission, May 16, 2006.

53. Miranda Devine, "A Culture of Violence that Must Change," *Sydney Morning Herald*, May 18, 2006, p. 1, available on-line at <http://www.smh.com.au/news/opinion/a-culture-of-violence-that-must-change/2006/05/17/1147545387118.html?page=fullpage#contentSwap2> (last accessed July 7, 2009) .

54. Tony Jones, "Paedophile Rings Operating in Remote Communities: Brough," *Lateline*, May 16, 2006, available on-line at <http://www.abc.net.au/lateline/content/2006/s1640148.htm> (last accessed July 7, 2009).

55. Kyllie Cripps "Indigenous Family Violence: Towards Committed Long-Term Action," *Australian Indigenous Law Review* 11, no. 2 (2007): p. 6.

56. *Ibid.*

57. Deirdre Howard-Wagner, "Legislating Away Indigenous Rights," Luke McNamara (ed) *The Protection of Law, Law Text Culture* 12, December 2008: 45-68.

58. Dodson, "Violence Dysfunction Aboriginality," pp. 2-3.

59. Bolger, *Aboriginal Women and Violence*; Hannah McGlade, "Our Own Backyards," *Indigenous Law Bulletin* 5, no. 23 (2003): p. 6.

60. Pocock, *State of Denial* .

61. Bolger, *Aboriginal Women and Violence*; Atkinson, "Violence against Aboriginal Women: Reconstitution of Community Law," pp. 4-9.

62. McGlade, "Our Own Backyards," p. 6

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63. Atkinson, “Violence Against Aboriginal Women: Reconstitution of Community Law, pp. 4–9; Judy Atkinson, “To Do Nothing Is Tantamount to Genocide,” *Indigenous Law Bulletin* 6, no. 20 (2006): pp. 20–22; Janet Stanley, Adam M. Tomison and Julian Pocock, *Child Abuse and Neglect in Indigenous Australian Communities*, Australian Institute of Family Studies, Child Abuse Prevention Issues no. 19 (Spring, 2003), <<available on-line at <http://www.aifs.gov.au/nch/pubs/issues/issues19/issues19.html>>>

64. Wild and Anderson, *Ampe Akelyernemane Meke Mekarle, ‘Little Children are Sacred,’* p. 235.

65. The Australian Institute of Health and Welfare child-protection figures for 2006–7 indicate that the rate of child abuse and neglect for Indigenous children in the Northern Territory was 16.8 per 1000. Of these cases, 30.1 percent were cases of physical abuse, 30.1 percent were cases of emotional abuse, 29.9 percent were cases of neglect, and, 9.9 percent were cases of sexual abuse. These figures are based on child-protection matters documented by child-protection services within Northern Territory government departments. See Australian Institute of Health and Welfare, *Child Protection Australia, 2006-07*, available on-line at <http://www.aihw.gov.au/publications/index.cfm/title/10566> (last accessed July 8, 2009).

66. Australian Broadcasting Corporation Radio, *The Law Report*, “Canadian Indigenous Community Tackles Sexual Abuse,” July, 3, 2007, available on-line at <http://www.abc.net.au/rn/lawreport/stories/2007/1967700.htm> (last accessed July 8, 2009).

67. Scullion, “Second Reading Speech,” p. 15.

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68. Havemann, "Denial, Modernity and Exclusion," p. 78.
69. The land that this applied to was land "scheduled under the Commonwealth Aboriginal Land Rights (Northern Territory) Act 1976 (Cth); community living areas, which are located on a form of freehold title issued by the Northern Territory Government to Aboriginal corporations; and town camps, in the vicinity of major urban areas, held by Aboriginal associations on special leases from the Northern Territory Government."
70. Scullion, "Second Reading Speech," pp. 10–18.
71. Havemann, "Denial, Modernity and Exclusion," p. 68.
72. "Responsibilisation" is a term coined by Michel Foucault and is used by Nikolas Rose to denote the effort "to reconstruct self-reliance in those who are excluded." See Nikolas Rose, "Government and Control," in David Garland and Richard Sparks (eds.), *Criminology and Social Theory* (Oxford: Oxford University Press, 2000), p. 201.
73. Martin Mowbray, "Localising Responsibility: The Application of the Harvard Project on American Indian Economic Development to Australia," *Australian Journal of Social Issues* 41, no. 1 (Autumn 2006): p. 88.
74. Deirdre Howard-Wagner, "Restoring Social Order through Tackling 'Passive Welfare': The Statutory Intent of the *Northern Territory National Emergency Response Act 2007 (Cth)* and *Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 (Cth)*," *Current Issues in Criminal Justice*. 19, no. 2 (2007): pp.1–9.
75. Wendell Kisner, "Agamben, Hegel and the State of Exception," *Cosmos and History: The Journal of Natural and Social Philosophy* 3, nos. 2–3 (2007): p. 223.
76. Scullion, "Second Reading Speech," p. 11.

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77. Howard, "To Stabilise and Protect," p. 1.
78. Howard, quoted in "PM Likens Crisis to Hurricane Katrina."
79. Barry Hindess, "The Liberal Government of Unfreedom," *Alternatives: Global, Local, Political* 26, no. 1 (2001): pp. 93–112; Rebecca Lawrence, "Governing Warlpiri Subjects: Indigenous Employment and Training Programs in the Central Australian Mining Industry," *Geographical Research* 43, no. 1 (2005): p. 44.
80. Mitchell Dean, "Liberal Government and Authoritarianism," *Economy and Society* 3, no. 1 (2002): pp. 37–61; Lawrence, "Governing Warlpiri Subjects," p. 44.
81. Peter Miller and Nikolas Rose, "Governing Economic Life," *Economy and Society* 19, no. 1 (1990): p. 24; Toby Miller *Technologies of Truth: Cultural Citizenship and the Popular Media* (Minneapolis: University of Minnesota Press, 1998), p. 71.
82. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford, CA: Stanford University Press, 1998), pp. 15–16.