# The Best Fruit That Could Be Gathered Hence: Guardianship of Indigenous Peoples

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# Introduction

The encounter between indigenous peoples and what might broadly be called colonizing powers has always been marked not only by a sense within the encroaching society of hierarchy, of superiority and inferiority, but also—and as a consequence—by a sense that the members of the supposedly superior society bear some kind of responsibility for the well-being and "development" of indigenous groups. Indigenous ways of life were seen not simply as inferior, but specifically as primitive, representing a way of being that should by all rights be relegated to the human past. It was therefore the responsibility of those existing at a higher level of development to "help" indigenous peoples to move forward, toward a more advanced level of social organization.

This responsibility could have multiple components, including economic, cultural, and religious instruction; it had several formulations, and it manifested itself in a diverse array of policies from place to place and era to era. For indigenous peoples in the United States, Brazil, and Australia, this "white man's burden"[1] appeared in the form of more or less formalized legal and political measures that classified indigenous peoples as wards of the state—children, in some sense, who needed to be both instructed and *protected* as they made their way down the often rocky road to civilization.

In what follows I will offer a comparison between what I will call *policies of guardianship* in these three countries. The idea of guardianship took perhaps its most straightforward form in Australia, where the policy of Aboriginal child separation removed indigenous children from the custody of their parents and made them wards of the state; at some points, even adult Aborigines were made the legal wards of the Chief Protector, an officer of the state. In Brazil, the idea of state guardianship also appeared in literal form, with Indians being classified first as orphans, over whom the government had legal custody and the rights of a parent, and later as "relatively incapable" citizens, able to exercise some of the responsibilities of citizenship but also, at least in some

[1] This term of course was developed and deployed in a specific context, but in a general sense it applies to these cases equally well.

cases, less accountable for their actions. In the United States the notion of Indians as wards of the state appeared in the form of what came to be called the Trust Doctrine,[2] a common law principle in United States Indian law which holds that the U.S. government has special, protective or guardian-like obligations toward— and, in some versions, corresponding powers over— Native Americans.

I will attempt to analyze these policies by way of Michel Foucault's work on "government," suggesting that the response of colonial societies to the indigenous groups they encountered and sought to subsume can usefully be understood in terms of the development of the modern state more generally. In other words, policies of guardianship fit within a repertoire of policies and governmental actions[3] that were being used in a variety of social and political contexts as the relationship between rulers and ruled shifted in the course of the modern period (and beginning particularly in the seventeenth century). The policies of guardianship that I will discuss work to draw a distinction between Indians and non-Indians by which the former are "ungovernable," and so must alter their culture and way of life in order to be incorporated into the larger, European society.

I begin with a brief overview of Foucault's concept of governmentality, and then describe some of the ways in which this concept relates to Indian law and policy in the three cases. I then briefly describe the historical development of policies of guardianship in each case, and try to show how they contributed to the image of indigenous peoples as ungovernable. I conclude by suggesting some of the ways in which I believe this analysis contributes to the understanding of Indian policy generally, as well as to our understanding of the practices of modern states.

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[2] Or Trust Responsibility

[3] What might, in Foucault's language, be called "technologies."

# Governmentality

Foucault describes a historical shift in the conception of political rule from an emphasis on the control of territory to a concern with the overall well-being of the 'population', understood as people in the context of their relations with each other and with their total environment (Foucault 2003:245). Foucault calls this a change from the model of 'sovereignty' to the model of 'government'. Where sovereignty was concerned with maintaining the rule of the sovereign, government is primarily concerned with the directing of the processes by which, e.g., wealth is produced, subsistence guaranteed, children produced, etc. (Foucault 2007:100).

As Foucault notes, this actually means that government pursues a number of different ends, complementary to its larger purpose; '[for] example, the government will have to ensure that the greatest possible amount of wealth is produced, that the people are provided with sufficient means of subsistence, and that the population can increase' (Foucault 2007:99). With this new purpose, the most significant power of the ruler is no longer the sovereign's power to take life, to kill, but the 'biopolitical' power of government to create life (at the aggregate level) by improving the condition of the population (Foucault 2003:243-245).

The governmental shift was spurred in large part by the efforts of absolute monarchs to maintain control in times of substantial upheaval (Foucault 2003:249-251). From a demographic boom beginning in the seventeenth century through the industrial revolution – with the accompanying growth and increased wealth of the middle class – in the eighteenth, new conditions represented significant challenges to absolutism, and rulers responded by extending state power downwards, to the individual level, in the form of the disciplines (Foucault 1977), and upward, to the level of the population, through regulation and government (Foucault 2003:249-250).

The shift is therefore as much about changing methods – or practices of rule – as it is about different goals. The processes that it is the task of government to direct and optimize exist only at the level of the population, and so the policies of government are

targeted to achieve population-level effects. The state does not, for example, construct a sewer system so that no individual will get sick; it makes sewers so that the overall incidence of disease in the population will be reduced. This is true even though the individual is the one upon whom power is directly exercised; the individual is the point of articulation at which government can take hold, so to speak, of population.

So, this dramatic shift in the conceptualization of political government was never, Foucault tells us, a purely theoretical exercise; it was a change in the way things were actually done. One could see its influence in real terms in both the 'development of the administrative apparatus of the territorial monarchies', by which they came to exercise power in a much more continuous way over more of their territory, and in

> a set of analyses and forms of knowledge that began to develop at the end of the sixteenth century and increased in scope in the seventeenth century; essentially knowledge of the state in its different elements, dimensions, and the factors of its strength, which was called, precisely, 'statistics', meaning the science of the state (Foucault 2007:100-101; See Scott 1998 for more on this topic).

The development of the idea of 'population' was therefore tied to the development of statistics, which made it possible to "see" the aggregate level of the population (Foucault 2007:104). It was through such methods and techniques of measurement, assessment and evaluation that the population began to emerge as a real and meaningful unit.

Population, then, becomes the 'final end of government', the object upon which governmental interventions are designed to act in order 'to improve the condition of the population, to increase its wealth, its longevity, and its health' (Foucault 2007:105). To govern – that is, to rule in a way that takes the total well-being of those ruled as its end – is to rule through population. The central political problem of this new era is "No longer the safety (*sûreté*) of the prince and his territory, but the security (*sécurité*) of the population and, consequently, of those who govern it" (Foucault 2007:67).

This problem, the security of the population, is solved through knowledge of its characteristics, its patterns and processes. This knowledge is produced through the set of techniques that Foucault broadly terms 'statistics'. What is important about these

techniques is that they take the population as their object – they presuppose its existence in the world as a natural, discoverable entity. In so doing, they actually produce the population; they enact it as a reality that can be known, studied, and acted upon.

The importance of the shift from sovereignty to government, then, is that it introduced into history a model of political power that depends on definition, on marking off and 'knowing' the object of the exercise of power. Foucault describes this in terms of systems of 'veridiction', by which he means systems apparently governed by their own, natural rules, which determine the right way to deal with those systems. The example of the market makes this idea clear; market forces of supply and demand, understood as natural or inevitable, provide a system of veridiction that determines what is the right thing for the government to do (Foucault 2008:32). The concern is therefore no longer with 'justice' in the classical sense of a distribution of wealth that gives each individual what they deserve, but with conceding to the natural laws of the market. Western history, Foucault argues, is marked by a transition from systems of jurisdiction to systems of veridiction (Foucault 2008:33).[4]

The natural laws and processes of the population, discovered through statistics, are also such a system, which by its inherent characteristics and patterns marks the proper limits of governmental power. In order for it to serve this function, these characteristics and patterns must be in some fundamental way *knowable*— amenable to the techniques of measurement and observation that characterize governmental rule.

The conception of indigenous peoples and their ways of life that developed in Brazil, the United States, Australia, and other colonial societies was one by which, in contrast, indigenous ways of life were inherently *un*knowable— irrational, disordered, and literally unintelligible to civilized minds. From family structures that stretched far beyond the "nuclear" family to naming practices by which a single individual could have multiple names at different periods of their life to belief systems that did not clearly distinguish "religious" beliefs from empirical observation, native cultures baffled

[4] That is, systems in which it is not *power*, but *truth*, which speaks.

European observers, often leading them to conclude that these societies in fact had no "culture" at all, but rather lived according to instinct and habit. That might, depending on the disposition of the observer, make them more "natural" and so, on some level, admirable, but in general it also made their societies impenetrable by government. Policies intended to "civilize" or "assimilate" Native Americans, therefore, can be understood as attempts to render them "legible," to use James C. Scott's language (Scott 2002).

Policies of guardianship should be understood in this context. They were always justified by the claim that indigenous societies, in their present form, would eventually prove unsustainable in the face of advancing (white) civilization, precisely because those societies were not amenable to "rational," government. Native peoples, therefore, needed to be shepherded toward a way of life, a social and cultural structure, which was governable and therefore compatible with "civilized" life. For the state to act as the guardian of Indigenous peoples was one element in this larger policy project. Policies of guardianship took different forms at different times and in different places, reflecting local conditions and the interaction of different social, economic, and philosophical expectations on the part of European settlers, but the overarching impulse was essentially the same: Indians, like children, needed to be protected at the same time as they were prepared to enter the wider world of which they were, unknowingly, a part.

## Policies of Guardianship I: A Matter of Trust

Unlike the more explicit—if still often ambiguous—legislative measures that classified Indians as wards of the state in Australia and Brazil, the guardian/ward relationship in the United States must be traced by the long and complex chain of jurisprudence through which the notion of the trust responsibility developed. Though, as I have already pointed out, the notion of the trust responsibility is now explicitly recognized by

government agencies dealing with the administration of Indian law, the implications of this principle remain a matter for debate, and court cases that bear upon the question of what, precisely, this principle means for both Indian tribes and the various agencies and governments with whom they interact are ongoing. This section will identify the most significant steps in the development of the trust doctrine, but it is important to keep in mind the fact that, as with any principle of common law, it is something of a moving target.

The development of the trust doctrine can be divided into three rough periods: 1) obligation to protect; 2) plenary power; and 3) fiduciary responsibility. The first period might be said to begin in the colonial era, with the earliest treaties between Indian tribes and the Crown, which treated the Indian tribes as sovereign nations and sought to eliminate conflicts between Indians and white settlers, which became more common as the white population increased (Canby 2009:13; Deloria and Lytle 1983:3). Perhaps the most dramatic example of this was the Proclamation of 1763, which established Appalachian mountains as the boundary of legal white settlement, and in the process made "Indian country" into a formal legal designation (Deloria and Lytle 1983:59). After the Revolution, in the Indian Trade and Intercourse Acts, as well as the promises of protection which were a common feature of treaties between the tribes and the federal government, evinced the same general aim (Canby 2009:14).

The origins of the doctrine of trust responsibility, however, are usually traced most directly to the language of John Marshall in the so-called "Cherokee Cases" of the early 1830s, particularly *Cherokee Nation v. Georgia* (1831).[5] In his finding that the Cherokee did not constitute a "foreign nation," and so could bring a suit to the Supreme Court under its original jurisdiction, Marshall suggested that

> They may, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile

[5] In this case, the Cherokee tribe sued the state of Georgia under the Supreme Court's original jurisdiction, seeking an injunction to prevent the state from enforcing laws that extended state jurisdiction to people living on Cherokee lands (Cherokee Nation 2). The Court in Cherokee Nation found that it could not hear the case under its original jurisdiction, because the Cherokee were not a "foreign nation" according to the meaning of the Constitution.

> they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian (*Cherokee Nation* 17).

This passage is among the most momentous in the history of Indian law, in no small part because of the frequency with which it is cited as defining the character of the relationship between Indian tribes and the federal government. Marshall went on to say that Indian tribes "look to our government for protection; rely upon its kindness and its power; appeal to it for relief of their wants; and address the president as their great father" (*Cherokee Nation* 17).

Marshall thus emphasized the *dependence* of Indian tribes on the federal government as the basis for the guardian/ward relationship— because Indians do, in fact, rely on the federal government for protection of life and property as well as for the recognition of their right to occupy particular lands, the U.S. government in principle has a responsibility to protect their interests.

The development of the trust doctrine continued in the case of *Worcester v. Gerogia*.[6] Marshall's decision in this case is notable for many reasons, among them the attempt to reconcile tribal sovereignty with the protective authority of the U.S. government. According to Marshall, Indian tribes had always been dealt with by the federal government as independent states that were, in some sense, sovereign. Marshall argued that the protective role of the federal government with regard to the tribes did not, in itself, extinguish either that sovereignty or Indian claims to territory (*Worcester* 559-560). Though he recognized that such a role was accepted to exist, Marshall argued that "the strong hand of government was interposed to restrain the disorderly and licentious from intrusions into their country, from encroachments on their lands, and from those acts of violence which were often attended by reciprocal murder" (*Worcester* 552). The protective role of the U.S. government was meant to regulate the actions of

[6] This case involved a group of missionaries who were arrested and convicted for residing on Cherokee land without a permit or having sworn an oath of loyalty recently required by Georgia in an attempt to extend state jurisdiction over Indian lands; the group appealed their conviction, arguing that the law under which they had been charged was invalid. The case reached the Supreme Court, where the conviction was overturned and the so-called "extension" laws struck down.

*whites*, not Indians— and, Marshall argued, the Indians perceived it this way when they signed treaties containing protective clauses. Put succinctly, "Protection does not imply the destruction of the protected" (*Worcester* 552). Protection was paired not with the extinguishment of Indian land claims but with federal recognition of them; a "treaty was in essence a land transaction whereby the tribe ceded some lands in return for federal protection and sovereign recognition of Indian occupancy of the retained lands" (Chambers 1975:1219).

The most significant point here for the purposes of this paper is that, in its earliest formulations, the notion of the federal trust responsibility was seen primarily as an obligation of the government to defend Indian lives and property from incursions by whites. It was therefore, at least implicitly, a responsibility to protect the integrity of tribes and their lands, and could not therefore entail the power to undermine tribal sovereignty in the name of the "best interests" of Indians as a whole.

This perspective would change dramatically in the later 19th and early 20th centuries, when the trust responsibility was radically reinterpreted to give the federal government, and Congress in particular, unprecedented power over Native Americans. In the decades between the Cherokee Cases and this period, questions of federal Indian jurisdiction were almost absent from the courts, but the question of Indian sovereignty was effectively decided by the "facts on the ground," as the Removal Act, ongoing conflicts ending in treaties further reducing Indian land claims, and finally the General Allotment Act (or Dawes Act) of 1887 reduced the question of Indian sovereignty to, at best, a philosophical issue.

In jurisprudential terms the signal event for this reinterpretation of the trust responsibility was the Supreme Court's decision in *United States v. Kagama*, in 1886. This case challenged the Major Crimes Act, passed in the previous year, by which Congress had claimed jurisdiction over certain crimes committed by Indians, against Indians, on Indian land. Prior to the passage of this law, all crimes fitting this description were left to the jurisdiction of the tribes themselves. In affirming the Act,

and thus the right of the federal government to exercise jurisdiction over Indian lands, Justice Miller wrote that

> These Indian tribes are the wards of the nation. They are communities dependent on the United States,-dependent largely for their daily food; dependent for their political rights...From their very weakness and helplessness, so largely due to the course of dealing of the federal government with them, and the treaties in which it has been promised, *there arises the duty of protection, and with it the power* (*Kagama* 383-384, emphasis added).

The Court's argument in Kagama, then, was that since the federal government had the obligation to protect Native Americans, it must also have the powers necessary to fulfill that obligation. The principle underlying this argument later became known as the Plenary Power doctrine— the idea that the federal government had plenary powers over Indian lands and Indian individuals. This power could be found partly in the commerce clause of the Constitution, but the primary basis for it was the trust responsibility, which in turn resulted now not from explicit agreements made by the United States in the various treaties it had signed with the Indian tribes, but precisely in their weakness. This way of thinking about the trust responsibility transforms it from an obligation of the federal government to protect Indians by controlling whites to a source of greater federal power.

It is unsurprising, therefore, that this new interpretation of the trust responsibility developed during the period in which the federal government began to exercise ever-greater control over the everyday lives of individual Indians, and tribal sovereignty was, correspondingly, progressively undermined, a process signaled most clearly by the federal government's abandonment of treaty-making with Indians in 1871 and the passage of the Dawes Act in 1887— as well as, in perhaps a different way, the massacre of the Hunkpapa Lakota at Wounded Knee in 1890.

This period marked a significant new phase in U.S. Indian policy, with a shift in emphasis toward the rapid assimilation of all Indians. In the colonial and early republican periods, the goal of policy, as I have already suggested, was to keep whites and Indians separated and avoid violence as much as possible while still allowing trade

to take place. This later evolved, as the white population expanded, into the Indian Removal Act of 1830 and the reservation period of the mid-19th century (Canby 2009:15-21; Deloria and Lytle 1983:7-9) However, this move toward a more explicitly assimilationist policy was not as much of a change as it might initially seem; from almost the beginning of America's independent history, at least, it had been assumed that the barriers between white and Indian would need to be maintained only temporarily, while Indians "caught up" in civilizational terms.

In a sense, then, the new direction in the late 1800s was the resumption of the attempt to actively promote Indian civilization that had been mostly dropped in the 1820s and 30s, when the Removal Act and related policies focused on maximizing the distance between Indians and white society. "In the 1880s a radical reversal of thinking occurred: if you can no longer push Indians westward to avoid contact with civilization, and it is inhumane to conduct wars of extermination against them, the only alternative is to assimilate them" (Deloria and Lytle 1983:8). The new interpretation of the trust responsibility reflected this perspective, as it explicitly granted the federal government the power to make unprecedented interventions in the lives of Native Americans.

As the twentieth century progressed, the prevailing interpretation of the trust responsibility began to shift once again— and, once again, in a way that reflected a broader change in federal Indian policy. The key moment in this period was the passage of the Indian Reorganization Act in 1934. Among the most important provisions of this bill— which became after some alterations the Indian Reorganization Act (IRA)— were, first, the end of the policy of allotment and provisions for Indian tribes to regain some of the lands they had lost under that policy, and second, a means for Indian tribes to draft constitutions and create new tribal governments.

More generally, the IRA is remarkable in the history of Indian law because it "was based on the assumption, quite contrary to that of the Allotment Act, that the tribes not only would be in existence for an indefinite period, but that they should be. The Act consequently sought to protect the land base of the tribes, and to permit the tribes to set up legal structures for self-government" (Canby 2009:25). In other words, the IRA

represented the first time that federal Indian policy did not take the eventual disappearance of Native Americans as distinct cultural and political entities for granted. This law was therefore the initial moment in the most dramatic shift in Indian law in American history, and set the direction that policy has, for the most part, taken ever since.

The interpretation of the trust responsibility gradually evolved to reflect this new direction. As it had in the early period, the trust responsibility came to entail a federal obligation to protect Indian interests. However, by this time the threat to those interests was no longer military but cultural and, increasingly, economic. Thus in the latter half of the 20th century the trust responsibility began to be interpreted in terms of a fiduciary responsibility, resting primarily on the fact that the government had powers of disposition over Indian lands and resources, and so (according to court decisions) had a responsibility akin to that of a fiduciary trustee to see that those resources were used effectively. This includes not protecting them from waste or despoilment them, but also actively investing them effectively and responsibly, when applicable. Case law in this area continues to develop, but milestones include *Lane v. Pueblo of Santa Rosa*, from 1919; *Cramer v. United States*, 1923; *United States v. Creek Nation*, 1935; *Seminole Nation v. United States*, 1942; *Menominee Tribe v. United States*, 1944; *Manchester Band of Pomo Indians v. United States*, 1973; and *Cobell v. Salazar*, which was decided in 2009 after many years and multiple iterations.

In each of stage of its evolution, the idea of the trust responsibility reflected the changing legal and political status of the Indian tribes. Put another way, the changes in the interpretation of the trust relationship provide an index for the changes in the way the relationship between Native Americans and non-Indians was understood, as well as the relationship between Native Americans and the state.

In each of its stages, however, the trust doctrine assumes a distinction between Indians and non-Indians. This difference was understood, first, in terms of legal status. Initially, Indians were not citizens of the United States and, in general, could not be as long as they continued to live as Indians— that is, as members of tribal political and economic

structures. Until the First World War, citizenship was available to Native Americans only on an individual basis, and only if they proved themselves sufficiently "civilized," a process that involved, first and foremost, a settled, agricultural lifestyle organized around nuclear families and private property. This can be seen, on the one hand, as a way of denying the basic equality of Native Americans; on the other hand, it was also an assertion of a fundamental incompatibility between "American" and "Indian" identity. While the image of the Indian would come, in a number of ways, to stand for "America" as a place and a society distinct in history and character from Europe, this image was always firmly located in the American past. In the present, the Indian was an ungovernable subject, to whom different rules applied; this ungovernability imposed upon the federal government certain obligations, as well as, at least in some cases, significant powers.

## Policies of Guardianship II: Protection, Assimilation, and Aboriginal Child Separation

As in the United States, Australian native policy reflected an idea of Aborigines as primitive, backward, and fundamentally ungovernable. Policy in both cases was thus directed toward breaking up "tribal" society and integrating native peoples into a larger, modern, European "civilization." In the Australian case, I take the policy of separating Aboriginal children from their parents as a case study to show how this more general policy goal was pursued and how it enacted a particular conception of settler identity.

The Aboriginal child separations have become well known in recent years, beginning with the publication of Peter Read's "The Stolen Generations" in 1981 (Read 2007). More recently, films like Rabbit Proof Fence have further publicized these events, and organizations like Read's own Stolen Generations Link-Up have been founded to reunite families separated during these years. My purpose in describing these policies, and the historical and political context in which they emerged, is to demonstrate their link to the

more general problem of governability, reflected also in policies of guardianship formulated in the United States and Brazil.

It is not surprising to suggest that European settlers' ideas about Native Australians were rooted in a number of misconceptions. From the earliest landfall, Europeans dramatically underestimated their number, extrapolating from explorations on the desert Western coast to draw conclusions about the East (Clendinnen 2003:26; Reynolds 1996:ix; Griffiths 1995:21). They assumed from the lack of construction or settlements that the natives were entirely nomadic, and thus not attached to any particular piece of land (Reynolds 1990:80; Reynolds 1996:24). They missed or ignored the ways in which Native Australians had dramatically altered the continent's natural environment (Reynolds 1990:9; Reynolds 1996:ix; Clarke 2002:15; and see Fitzpatrick 1982:5 for a recent instance of such claims). Perhaps most importantly, as in the United States— and for essentially similar reasons— white settlers in Australia believed that Native Australians were perceptibly vanishing, and that while this process might be made less painful, nothing could be done to prevent it (McGregor 1997; Reynolds 1996:xi).

The reasoning behind this idea, which McGregor (1997) calls the "doomed race theory," changed over time, in line with contemporary social and scientific ideas. At the beginning of European settlement in Australia, ideas about primitive peoples were guided by Enlightenment theories of progress as well as by the apparently contradictory notion of the Great Chain of Being, a hierarchical scheme that related all living things on earth. On the one had, it was claimed that Aborigines occupied a place in the great chain of being just above that of the highest of the apes, providing a link between those animals and other groups of human beings (McGregor 1997:5). At the same time, however, Enlightenment thinking emphasized the importance of environment, of nurture over nature, and with it the possibility that even the most primitive people would naturally advance through the stages of development to civilization (McGregor 1997:2-3). Many observers of Native Australians were able to reconcile these two sets of ideas, or at least to ignore the contradictions, seeing Aborigines both as radically primitive and as fundamentally changeable.

The notion of the perfectability of all humans was challenged by the development of racial theory beginning in the eighteenth century and culminated in Darwin's evolutionary theory in the second half of the nineteenth. Pseudo-scientific practices like phrenology argued for biological differences in the mental and social capacities of human groups (McGregor 1997:8). As such ideas collided with earlier, progressive frameworks, debate began over whether Aborigines could be "civilized," and, if so, how best to do it. Some advocated the integration of Aborigines into white society, sending them to school to learn a trade and giving them jobs in white towns and on pastoral stations and, to some extent, encouraging intermarriage, while others called for a policy of segregation, with the goal of protecting the natives from white vices until they had a chance to develop on their own (McGregor 1997:12). Later policy would in fact pursue both courses, distinguishing between "pure" and "mixed-blood" Aborigines, segregating the former and integrating the latter. Aboriginal child separation were part of this dual project.

This split approach, distinguishing Aborigines according to blood quanta, demonstrates that "disappearance" did not always mean the same thing for every adherent of the doomed race theory. For many, it was not that Aborigines would all be somehow destroyed and vanish without a trace; instead, they would interbreed with whites until there were no people of "pure" Aboriginal background, and none who still maintained or observed Aboriginal culture. They would disappear not in a simple physical sense, but as a racially and ethnically distinct people. This belief is reflected in the serious concern for so-called "half-caste" or mixed blood children toward the end of the nineteenth century. The policy of Aboriginal child separation developed primarily around this concern. "Aboriginal" was defined narrowly, restricted to those who were at least "half-caste" or had one full-blood Aboriginal parent; lighter-skinned "quadroons" and "octoroons" were excluded from this definition. The latter were thought more able to assimilate into white society, and so were removed from their Aboriginal parents and the "camps" in which they lived and placed in institutions or, in some cases, fostered or put into service for white families so that they could learn white ways and become "civilized" (Buti 1994:63).

The imperative of governability here is clear. Aboriginal peoples, living in their traditional way, were radically incompatible with the institutions and assumptions of the modern state. As in the United States and Brazil, policies of guardianship in Australia were designed to alter Aboriginal cultures and practices to remove this incompatibility and, in the process, erase the distinction between Aboriginal and non-Aboriginal Australians.

### *Protection and Assimilation*

Very early in the history of European settlement in Australia, officials were aware of the impact that this settlement was having on Native Australians. In 1822, governor Lachlan Macquarie he declared that the latter were "entitled to the peculiar protection of the British Government, on account of their having been driven from the sea coast by our settling thereon, and subsequently occupying their best hunting grounds in the interior" (in Griffiths 1995:23). In 1837, a Select Committee on Aborigines in the British Settlements issued a report in the British Parliament, which found that Native Australians were victims of settler aggression and that their situation was not improved by existing policies. In response to this report, Parliament formulated a new policy, to be known as the "Protectorate System" or simply "protection," which would "remain the official government policy for Aborigines in Australia for the next hundred years" (Griffiths 1995:25; see also Stone 1974:45; Bringing Them Home 1997:23). Protection involved everything from the distribution of blankets to Aborigines (actually begun in 1830) to policies of segregation and the creation of Aboriginal reserves beginning in 1842 (Doukakis 2008:3). It also involved the separation of Aboriginal children from their families.

The report of the select committee, as Buti (2004:50) notes, had much in common with an 1834 report produced by a Royal Commission examining the Poor Laws back in England. The two reports shared

> the following policies, goal and principles...Britain should: assure an orderly managed world both at home and abroad; bring the marginalized, whether they

> be the poor or the Aborigines, into the established institutions and wage economy; apply the British legal machinery to all, but with temporary separate laws for those 'outside' the mainstream until they achieved full citizenship; appoint protectors for Aborigines and overseers for paupers; grant special attention to educating and 'saving' the children; accept that the elderly were probably beyond salvation and not receptive to change; [and] acknowledge a central role that Christianity could play in civilising and producing good citizens... (Buti 2004:51; my emphasis).

Both reports, then, were focused on integrating some group or groups into the larger society— with making them governable, on the same terms as people of European descent. Children were a central concern in producing this outcome. While older people might be "beyond salvation," children were still malleable. It is in this context of this thinking that policies of Aboriginal child separation were formulated.

The individual Australian colonies began to pass protective legislation in line with the Royal Commission's findings in 1869, when the colony of Victoria passed the Aborigines Protection Act. This act empowered to governor to designate particular areas as available or unavailable for Aboriginal residence; it also allowed him to remove children designated as neglected from their families (Buti 2004:52). This question of "neglect" would appear repeatedly in questions of Aboriginal child separation; while in the case of white parents, neglect or endangerment of a child was always a necessary condition for ending parental custody, in the case of Aboriginal children policymakers often regarded this criterion as too constraining.

In 1886, the Victoria act was amended to extend the governor's powers over Aboriginal people. The new Act also made a distinction between fill-blood and "half-caste" natives, creating a different policy for the two groups for the first time (Buti 2004:52). Queensland passed protective legislation in 1897; this "became the blueprint for legislation in many other jurisdictions in Australia" (Buti 2004:59). After the creation of the Australian federation in 1901, the other states began to pass similar laws. In general, Victoria and New South Wales followed one model, which gave power over Aborigines to an appointed board, while the other states and the Northern Territory followed Queensland in establishing an office of Chief Protector (Jacobs 2009:32). By 1911, every

state except Tasmania[7] had protective legislation of some kind in place (Bringing Them Home 1997:23).

The powers created by protectionist laws were sweeping. Though different states gave officials different powers at different time, there were significant areas of consistency. According to Buti, the empowered protectors were authorized to:

> ...prescribe the place of residence for Aborigines and to restrict the movement of Aborigines, particularly women; to establish, manage and abolish Aboriginal reservations and set aside land for Aboriginal settlement; to regulate removal of Aborigines to and from regulated districts, camps or reservations and restrict access to reserves or camps; to proscribe miscegenation or interracial cohabitation; to regulate care, control and custody of Aboriginal children and adults; to prescribe and regulate education of Aborigines; and to restrict Aboriginal rights of marriage (Buti 2004:61).

Protection, then, meant that government officials could direct and shape the everyday lives of Aboriginal peoples in a remarkably encompassing way.[8]

Unsurprisingly, protectionist laws gave state authorities significant power over Aboriginal children. Those following the Queensland model made the Chief Protector the legal guardian of *all* Aboriginal children; he also had the power to designate which individuals were Aborigines, and in so doing give himself great authority over them and their children (Buti 2004:61; Bringing them Home 1997:23). In other cases authorities could remove children only in cases of "neglect," but had significant leeway in

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[7] Tasmania claimed that there were no (full-blood) Aborigines left in that state, and so protective legislation was unnecessary.

[8] The preceding discussion should serve to point out an important difference between Australia and the United States: that in the Australian case, native policy was largely in the hands of the individual colonies/ states rather than the Commonwealth government. In 1910 the Northern Territory Transfer Act gave the central government control over the Northern Territory (previously administered by South Australia), and so control over Aboriginal affairs there. Apart from the exception of the Territory, however, the Australian Constitution had explicitly prevented the commonwealth government from making any laws with regard to native Australians until a constitutional referendum in 1967. This is in sharp contrast to the United States, where Indian affairs were made the province of the Federal government beginning with the Articles of Confederation. This difference means, on the one hand, that discussing "Aboriginal policy" in Australia as a discrete idea is something of a necessary artifice; policies varied from state to state and over time, and so what I am describing is really a set of trends or tendencies that were reflected to different extents and in different ways from case to case.

determining that a child was in fact neglected; often, living a traditional lifestyle was, in itself, sufficient grounds for a finding of neglect.

Again, the particular focus of these policies was children of mixed descent, whose increasing number was seen as something of a crisis. While the fate of the full-blood Aborigine was clear, it was not as obvious what to do about the half-caste population (Buti 2004:62-3). "In social Darwinist terms they were not regarded as near extinction. The fact that they had some European 'blood' meant that there was place for them in non-Indigenous society, albeit a very lowly one" (Bringing Them Home 1997:24). Moreover, if these people could be integrated into the wage economy, it would dramatically reduce the number of people reliant on government provisions and so reduce expenditure on Aboriginal affairs. Given the prevailing assumption that such expenditure would eventually be reduced to nothing, this was an important consideration; the idea that Aboriginal numbers would grow and so require increased funding had not initially been considered, but the growing half-caste population seemed to make this a real possibility, if these people were indeed to be counted as Aborigines. Again, then, the problem was to make these people governable, through programs of education and training and, more importantly, by alienating them from a culture— and a family— that would inevitably prevent such measures from being effective.

In the years immediately preceding WWII, a shift occurred in the language used to describe aboriginal, from "protection" to "assimilation." This new approach, advocated most famously by Paul Hasluck, who held many cabinet posts in his long government service, meant less a change of direction than an intensification of earlier policies, with much the same purpose in mind. Assimilation can be said to have arisen from a meeting of the Chief Protectors of Aborigines from each of the Australian states in 1937, at which, despite a lack of consensus over how to achieve their objectives, the attendees each agreed, as Hasluck put it, that "the destiny of the natives of Aboriginal origin but not of the full blood, lies in their ultimate absorption by the people of the Commonwealth" (in Griffiths 1995:62).

Where the language of "merging" and "absorption" placed the process within a biological framework, the language of "assimilation" reflected an understanding of it as primarily cultural. Policymakers compared the half-caste population to "poor whites," slum dwellers, and other distinct groups who were "socially and culturally deprived" (Bringing Them Home 1997:27). (These are, it is worth noting, precisely the same groups that Foucault identifies as troubling to "governmental" rule). With the right educational and economic opportunities, they would readily blend into the larger population; the problem was not biology, but the lack of such opportunities.

Then, too, "merging" had been "essentially a passive process of pushing indigenous people into the non-Indigenous community and denying them assistance, [while] assimilation was a highly intensive process necessitating constant surveillance of people's lives, judged according to non-indigenous standards" (Bringing Them Home 1997:27). Earlier policy had distinguished between full-blood and half-caste individuals by subjecting the former to intensive control and scrutiny while denying the latter any form of government support as an Aborigine; the new, assimilationist paradigm still focused on this distinction, but exercised far more direct control over half-castes in order, ostensibly, to facilitate their assimilation. Most remained convinced that the full-bloods would gradually die out, and continued to push for the "inviolability" of native reserves to keep them apart from both the white and half-caste populations (Griffiths 1995:63).

The appearance of the goal of assimilation in Aboriginal policy thus meant little practical difference in terms of the removal of children of mixed parentage. Beginning with New South Wales in 1940, the states each moved toward applying general child welfare laws to Aboriginal children, removing them from their parents (as had earlier been the practice) in cases of neglect or where the child's "welfare" was otherwise implicated. However, different standards were applied to white and Aboriginal families, with designations like "neglected," "destitute," and "uncontrollable" used more often and more readily in the case of native children (Bringing Them Home 1997:28).

Assimilation, and indeed Aboriginal policy in general, fell by the wayside with the onset of World War Two, when "with the nation's mind of other things, Aboriginal affairs were neglected and their living conditions continued to deteriorate" (Griffiths 1995:68). It was revived by Hasluck, albeit slowly, in the decade following the war's end under the name of "social advancement" for Aborigines (Griffiths 1995:74). Hasluck believed that "since most Aborigines were now living in contact with the rest of Australia, the policy of protection was no longer tenable" (Griffiths 1995:72). Since they could no longer be kept separate, the goal should be to bring them in to the larger society; the policy now included not only those of mixed background but full-blood Aborigines as well. This objective was made clear at a Native Welfare Conference organized by Hasluck in 1950, which released a statement defining civilization as meaning that "in the course of time it is expected that all persons of Aboriginal blood or mixed blood in Australia, will live like white Australians do" (in Griffiths 1995:74). Aborigines and white Australians, in this view, should constitute a single society; a distinct Aboriginal society, however understood, undermines this goal, in particular because such a society was fundamentally ungovernable, according to the demands of a modern state.

## Policies of Guardianship III: Minors, Orphans and the "Relatively Incapable"

In Brazil, Indians were defined as wards of the state relatively early. In part, this reflects broader differences in the ways that Portuguese and (mostly) English colonizers dealt with native peoples in Brazil and the U.S. In Brazil, like Australia but unlike the United States, Indians were never regarded as sovereign nations, a view reflected in the fact that Portuguese and, later, Brazilian authorities virtually never made treaties with

Indian groups.[9] This may reflect the relatively early colonization of Brazil, beginning in the 16th century, when Portugal's claim to the territory was supported by the Treaty of Tordesillas of 1494 and so, in principle, was not threatened by international competition (Barroso 1995:646).

At the same time, Portuguese colonization of Brazil much more clearly involved the religious imperative to convert native peoples to Christianity. One of the earliest documents of the colonization of is a letter dated May 1, 1500, written to the King of Portugal by Pero Vaz de Caminha, an official who sailed with the voyage of Pedro Alvares Cabral (Dias 1992:12). In his letter, Vaz de Caminha described the new land and its people, including their dress and customs; he summed up his impression of the country as "so well-favoured that if it were rightly cultivated it would yield everything…" (Vaz de Caminha 28). Despite the natural wealth, however, Vaz de Caminha suggested to the King that

> the best fruit that could be gathered hence would be, it seems to me, the salvation of these people. That should be the chief seed for Your Majesty to scatter here. It would be enough reason, even if this was only a rest-house on the voyage to Calicut. How much more so will it be if there is a will to accomplish and perform in this land what Your Majesty greatly desires, which is the spreading of our holy religion (Vaz de Caminha 28-9).

Though in practice conversion was frequently subordinated to economic or political concerns, it nevertheless shaped Indian policy in Brazil, in particular in the level of control over Indians that was given to various missionary groups (Hemming 1987:2). This control was quite extensive. Initially, the enslavement of the Indians was legal in Brazil, but in 1609 the King declared the freedom of all Indians. (Barroso 1995:651). However, the same decree also classified them as legal minors, under the protection of the Jesuits—the first instance of legal guardianship of Brazilian Indians (Williams 1983:142).

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[9] There are two exceptions to this rule: a treaty signed with the Jandui in 1691, and one with the Guaicuru in 1791. In the former case, the Jandui had allied with the Dutch colonizers who competed with the Portuguese for areas in the northeast, and the treaty was agreed as a way of separating the Indians from the expelled Dutch. The latter treaty, with the Guicuru, simply reflected the military power of that group and the threat they represented.

The Jesuits were later empowered to build villages for the Indians, or *aldeias*, and to embark on expeditions to locate Indians living in the forests of the interior and bring them to live in these villages; this process became known as "descending" Indians. In the *aldeias*, the Indians were clothed, given religious instruction and (sometimes) additional education, and—perhaps most importantly—made to work, primarily on village farms. The Jesuits had nearly total authority over the Indians living in the *aldeias* (Gomes 2000:63). As Hemming describes it, their "missionary regime… consisted of a strict discipline of religious observance and agricultural labor" (Hemming 1987:3).

In 1755, the Jesuits, whose wealth and influence had become a source of tension with both the Crown and other colonists, were stripped of their status.[10] Indians were again declared to be free. Two years later, however, in 1757, the Portuguese Governor of Brazil issued a decree establishing what would become known as the Directorate, a system by which white "directors" were placed in charge of the Indian *aldeias* built by the Jesuits (Hemming 1987:11). This legislation effectively maintained the Jesuit system, simply transferring control of it to secular authorities. Indians remained legal minors, now subject to government rather than missionary authority.

The directorate system lasted for about 40 years, until 1798, when it was abolished by the Prince Regent Dom João in a decree that, in a pattern that was becoming familiar, reaffirmed Indians' freedom at the same time as it reinforced their status as wards of the state, this time classifying them as legal "orphans"—i.e., as individuals who had no legal guardian other than the state (Gomes 2000:69). This status was maintained by default after Brazil became independent from Portugal in 1822, when the new constitution failed to mention Indians at all (Gomes 2000:70; Hemming 1987:173). In 1831, the newly-crowned emperor of Brazil, Dom Pedro II issued a law reaffirming the status of Indians as orphans and requiring justices of the peace to act as their legal guardians (Gomes 2000:71).

[10] In 1759, the Jesuits were expelled from Brazil altogether (Hemming 1987:17; Gomes 2000:52).

In 1889 the Emperor abdicated and Brazil was declared a republic. A new constitution was promulgated in 1891, which again did not mention Indians, leaving the status quo in place. Later, power over Indian affairs was devolved onto the states, but most of them did not make significant changes to the imperial policies (Gomes 2000:76). However, this period also saw increased European colonization of the Brazilian interior, including many immigrants from European countries other than Portugal; these immigrants increasingly came into conflict with Indians (Gomes 2000:76). As the increasing violence of the frontier garnered growing public attention—including internationally—the federal government was increasingly under pressure to "do something" about the situation.

This pressure finally led, in 1910, to the creation of the Indian Protection Service (SPI), "the first governmental authority created specifically to deal with the Indian question" (Barroso 1995:651). The SPI was headed by Candido Rondon, a military officer who had become famous leading the expedition to lay telegraph lines through the Amazon. Rondon's approach to Indians was famously sympathetic, as evidenced by his motto "die if you must, but never kill," which became a kind of policy statement for the SPI in its early years. The approach of the SPI in this period was based on an idea of protected development; it was believed that, given time and sufficient protection from the wrong kind of interactions with white society (violence, access to alcohol, etc.), Indians would develop toward civilization on their own, at a natural pace (Williams 1983:143).[11]

In the Brazilian Civil Code of 1916, the status of Indians was changed from "orphans" to "relatively incapable"—a status equivalent to that of minors older than sixteen years of age (as well as married women) (Allen 1989:151). They were legally under the "tutelage" of the SPI, which therefore had significant authority over them. Further, this status would end, resulting in the "emancipation" of an individual Indian, if and when he or

[11] The parallel with Protection in Australia and the Removal Act in the U.S. is striking.

she became fully "integrated" into (white) Brazilian society (Barroso 1995:652). This legislation remained in effect until the democratic constitution of 1988.[12]

The final piece of legislation that made up the more general policy of guardianship in Brazil was the Statute of the Indian, from 1973. Among other things, the statute gave FUNAI—the successor agency to the SPI, created in 1967[13]—"exclusive control of Indian societies and the relations between them and the 'national' society" (Williams 1983:149). Under the Civil Code of 1916 and the Statute of 1973, the "relative incapability" of (unassimilated) Indians gave FUNAI the authority to represent them as a legal guardian; any "act practiced or contract entered into by a non-integrated Indian without the assistance of FUNAI [was] held void and of no effect" if the agency believed it to be counter to his or her interest, or that he or she did not genuinely understand the implications of the action (Barroso 1995:653). This status continued until and unless an individual Indian was declared "emancipated," at his or her own request, by meeting specific criteria established by the 1973 Statute.[14]

Often, as in both the United States and Australia, guardianship policies in Brazil were justified in terms of the Indians' need for protection. And—also as in both of my other cases—it was true that interactions between Indians and white settlers were often extremely violent. The remote frontier was effectively out of the control of the central government on the coast; the relocation of Indians to centralized villages, administered by missionaries or government officials, could theoretically help to limit these conflicts

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[12] And, actually, for some time after, because although it contradicted the provisions of the Constitution with regard to Indians, without amendment to the Civil Code there was no governing legislation determining their status in practical terms. A new Civil Code was enacted in 2002.

[13] The SPI had come under increasing criticism throughout the 1950s and 1960s. In 1967 a massive governmental report—the so-called *Figuereido Report*, named for the official who oversaw its development—found the agency startlingly inefficient and profoundly corrupt (Allen 1989:152). Among other problems were massacres that the agency failed either to prevent or punish, the sale of Indian lands for which SPI officials received kickbacks from large landowners, and the fact that the vast majority of SPI personnel were working in Brasilia, rather than out among the Indians the agency was supposed to be assisting (Williams 1983:144; Gomes 2000:83). The government was essentially forced to dissolve the SPI and form FUNAI as a response to the public outcry following the publication of some of the report's findings.

[14] This were: "1)attaining 21 years of age; 2) having knowledge of the Portuguese language; 3) the ability to work; and 4) a reasonable understanding of the uses and customs of the national society" (Barroso 1995:653).

(Hemming 1987:141). Indians were also regularly taken advantage of by whites who wanted their lands, and policies of guardianship made transfers of land subject to governmental approval. Indeed, when the administration of Ernesto Geisel sought in the late 1970s to accelerate the process of the "emancipation" of Indians, arguing that there were many who were fully integrated into Brazilian society but whose legal status did not reflect this fact, the move was widely decried as an attempt to gain access to Indian lands (Williams 1983:150; Gomes 2000:85).

However, the ultimate goal of the policy of guardianship was, at least until well into the 20th century, the assimilation of the Indians into white society. In theory, Indians were "orphans" only so long as they continued to live "like Indians"; an Indian who assimilated more or less completely to white society would acquire legal adulthood (but also, and by definition, cease to *be* Indian, legally speaking). The Marquis de Pombal, in promulgating the reforms that removed the Jesuits from power and led to the directorate system, explicitly described the incorporation of the Indians as a primary goal; the reforms not only removed legal restrictions on trade between whites and Indians, but actively encouraged miscegenation as a means of uniting the two societies (Hemming 1987:7). The directorate legislation was intended, in part, to end the isolation of the Indians from white society, and to promote greater interaction between the two groups by opening the *aldeias* to trade and allowing select whites ("of good character") to live in them (Hemming 1987:14). The Viceroy of Brazil at the time made the intentions of the policy completely clear in a letter from 1784, saying that the "policy is intended to extinguish the [Indian] race, forming a new creation of different men" (in Hemming 1987:154). The Law of the Lands, in 1850, made it necessary to register the ownership of lands, showing a legal deed to demonstrate proof of purchase; this measure, had it been carried out effectively throughout Brazil, would have denied Indians ownership of their traditional lands, the basis of their independent social and political organization.

The thinking here follows the logic of what Gomes calls the "acculturation paradigm," which assumes that in an encounter between two cultures, the smaller, "weaker" or less advanced one will inevitably be transformed until it is effectively absorbed by the

"stronger" or more advanced culture (Gomes 2000:20). The German naturalists Spix and Martius, who wrote an account of their journey through the Amazon in the mid-19th century, gave clear expression to this view, saying that

> the Indians cannot endure the higher culture that Europe wishes to implant among them. A progressing civilisation, which is the vital element of flourishing mankind, irritates them like a destructive poison. They therefore seem to us destined to disappear, like many other species in the history of nature (in Hemming 1987:243).

Spix and Martius may have meant "disappear" in a more literal, biological sense, rather than a cultural one; often, the choice for Indians was seen as being between those two options. In other words, they could not continue to live *as Indians*; they therefore had either to assimilate or to die. From that perspective, measures taken to promote assimilation could be seen as the kinder path. With this transformation of Indian society as the goal, the facilitation of greater interaction between Indians and whites was intended as a way of speeding the process along.

Even when the government of Brazil adopted apparently gentler policies in the 20th century, as during the period of Candido Rondon's leadership of the SPI, the goal of assimilation remained. The assumption was always that Indians would inevitably cease to exist *as Indians*; the debate was about the most humane way to effect this transition. An SPI document from 1940 made this perfectly explicit: "We do not want the Indian to remain Indian. Our task has as its destiny their incorporation into Brazilian nationality, as intimate and complete as possible" (quoted in Garfield 2001:39).

An important part of the process of assimilation was almost always labor. Indian labor was an object of contention through much of Brazil's history, at least until the importation of large numbers of slaves from Africa in the latter part of the 18th century. In part, of course, labor was emphasized because the products of that labor were economically beneficial; the Jesuits had become wealthy in Brazil while other settlers struggled at least in part because of their access to Indian laborers (Hemming 1987:3).

But it was also because labor—and agricultural labor in particular—was seen as a way of "civilizing" Indians (Hemming 1987:40). As Garfield notes,

> Brazilian officials depicted indigenes as slackers and incompetents who required discipline to learn the meaning of 'work,' the importance of 'rational' resource management, and the evils of 'nomadism.' The noble savage, elites charged, was social underdeveloped and economically unproductive; for their betterment, Indians required state oversight to manage their land and resources and to regiment their labor (Garfield 2001:19).

In establishing the directorate system, the governor argued that the new directors would "have a directive only to teach [the Indians], not so much how to govern themselves in a civilised way, but rather how to trade and cultivate their lands. From such fruitful and beneficial labours, [the Indians] themselves will derive profits…Those profits will make these hitherto wretched people into Christians, rich and civilized" (in Hemming 1987:11-12). Christianity, civilization, and productive labor were inextricably linked together. As late as 1969, the director of FUNAI declared that "We do not want a marginalized Indian, what we want is a producing Indian, one integrated into the process of national development" (quoted in Williams 1983:145).

The assimilation of Indians was also seen as necessary for national security, a way of securing remote areas, far from the major cities on the coast, against invasion from the Spanish colonies (and later rival independent states) on Brazil's borders. From the beginning of the colonial period, Portugal's ability to exercise effective control of an area many times its size was questionable; its inability to populate such a large area with its own citizens was clear. Making Indians, in effect, into Portuguese was seen as a partial solution to this problem. As Hemming notes, "Whereas the British and French in North America wanted land free of its Indian inhabitants, the Portuguese had hoped to enlist the Indians to swell [Brazil's] population" (Hemming 1987:134). In the Seven Years War (1756-1763), both Spain and Portugal used Indians along their shared borders against one another; the full assimilation of those Indians by Portuguese society would secure their loyalty in any future conflicts (Hemming 1987:6).

The same concerns remained throughout the 20th century. In 1934 the SPI became a part of the Ministry of War; "the aim was to integrate the Indians living in frontier areas into Brazilian society, to preserve the international boundaries, before both the border areas and their population be lost to another country" (Allen 1989:151). In the following decade, the so-called "Estado Novo" under Getulio Vargas placed great emphasis on the incorporation of Indians as a means of minimizing territorial insecurity; a government official during this period described the presence of un-integrated Indian communities in the Brazilian hinterland as "racial cysts" which undermined the security and economic well-being of Brazil (Garfield 2001:30, 33). FUNAI, established in 1967, was linked to the National Security Council, reflecting the fact that the assimilation of Indians was still seen at least partly as a security issue (Carvalho 2000:465). Even in the last decade, conspiracy theorists in Brazil have linked the indigenous rights and environmental movements with foreign efforts (led by the United States) to "internationalize" the Amazon, removing it from Brazilian control (Guzman 2010:35-36).

The goals of maximizing Indian labor and production and improving national security through their incorporation both reflect the imperatives of governmentality, and both were (seen as) impossible so long as the Indians lived in their traditional way, as relatively autonomous, self-contained units organized internally in ways that were entirely illegible to Brazilian policymakers. The policy of guardianship that began in the seventeenth century was part of a broader effort to transform Indian groups into legible, governable subjects—as part of a population whose aggregate patterns and characteristics could be measured, assessed, and adjusted through practices of government.

## Governing the Ungovernable

In the United States, Asutralia, and Brazil, policy toward indigenous peoples developed toward the goal of incorporating them into European societal forms in such a way that they could be measured, assessed, and "known" in the same terms as the rest of the

population—in other words, making them into governable subjects. As "tribal" peoples, living apart from or outside state and federal laws and governing structures, native peoples challenged the power and legitimacy of European settler governments in both practical and symbolic terms. On the one hand, as the work of James C. Scott (1998) has shown, the order adhered to by non-state societies is often not amenable to the order that the state seeks to impose. On the other hand, the continued presence of native peoples, living in distinct societies, represented a continued challenge to the legitimacy of European settlers' claims to territory in the Americas.

Policies of guardianship were a way of dealing with both of these challenges. Such polices, on the one hand, re-inscribed the separateness of white and Indian societies, translating cultural and social differences into legal structures. At the same time, such policies marked that difference as both problematic and temporary. Like childhood, the status of Indians was characterized by limitation, and the corresponding unusual powers of their governmental guardians; also like childhood, it was a status that would, inevitably, end.

The difference between Indians and whites enacted by policies of guardianship was also defined by the possibility (or otherwise) of governing, in Foucault's sense, native peoples. The supposed incapacity or limitation that made them analogous to children was not (usually) a matter of inherent intellectual or psychological characteristics, but rather a *social* or cultural deficiency; Indian *societies* were incapable of existing in the modern world.[15] It was therefore these societies that had to be transformed in order to make it possible to integrate Indians into white "civilization." This transformation would make Indians into governable subjects by altering illegible social practices to make them amenable to governmental interventions like mass education, the regulation family structures, monitoring of health, and, perhaps most importantly, the imposition of labor.

[15] This is a broad generalization, and as such ignores many nuances and exceptions. In general, though, it is fair to say that much of the discourse about Indians saw their "problem" in these terms, rather than as something inherent or biological—in contrast to descriptions of people of African descent. Thomas Jefferson, for instance, explicitly argued that African Americans were fundamentally incapable of developing in a way that Native Americans were not.

While a good deal of the encounter between Europeans and Indigenous peoples can indeed be explained in terms of xenophobia and the greed for land and other economic resources, the specific forms that policies took reflect the imperatives of the modern state and its penetration into new aspects of the lives of its subjects that Foucault describes in his work on government. My goal here has been to use policies of guardianship to begin to place those policies in that context.

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