Liberalism and Empire: Histories and Legacies

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This paper seeks to address an historical problem that possesses strong contemporary resonances. It is the question of how liberal societies (in my case, Britain) explain empire to themselves. What do they do with the contradictions and tensions that empire poses to the values of liberal society; how, for example, do they explain the violence that pervades the colonial experience; what are the historical consequences of the engagement between liberalism and empire, and particularly of the relationship of liberalism to the impact of empire upon indigenous peoples?

These questions are the core of a book that I have been working on for some time. But they are hardly new questions. Historians and others have attended to the drama of the connections between liberalism and Empire. But they have done so mainly from the perspective of political theory and their general approach has been to demonstrate how the complicities between empire and liberalism worked. 1 My perspective is somewhat different. In the first place, I see the relationship as a question that was worked out as much by historical encounters as it was shaped by the tensions within liberal political thought. And, in the second place, I am interested in liberalism in action: in its political, social, cultural and even psychological practices. My focus, then, is on what happens on the frontier of empire rather than in its metropolitan drawing rooms. In addition, I want to take seriously the protestations of liberals and “humanitarians” about creating a liberal empire. I do not want to treat such protestations as at best the delusions of unconscious hypocrites. This does not mean that I am concerned to defend the various trysts that liberalism made with empire in the course of its long, tangled relationship. But I do want to capture a more complete understanding of that relationship.

So I am going to proceed as follows. First, I want to tell a couple of stories about two men from early nineteenth century whose careers fairly represent the historical problem of liberalism in empire. Second, I am going argue that the early nineteenth century was the moment when the relationship between liberalism and empire was forged by the duality that marked that particular period. It was a moment when Britain was at the center of both liberal

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politics and an expansionist imperialism that was thoroughly engaged in the business of dispossession of indigenous peoples. This duality was not necessarily at cross purposes. But liberalism’s entanglement with empire did create complexities, tensions and contradictions out of which came legacies that shaped historical narratives about imperial power and culture throughout the nineteenth and twentieth centuries. Furthermore, those legacies continue to echo in the politics in the countries of the old white settler empire. So, the third and fourth sections of the paper will be concerned with the various legacies that remained in the history of empire long after the demise of the imperial system of the early nineteenth century.

First the two men. The first was Edward John Eyre, the man who, as Governor of Jamaica, in 1865 was responsible for the most notorious imperial atrocity of the nineteenth century. He responded to a series of riots as if they were a full scale rebellion and oversaw the judicial murder of several of its “leaders,” the death of five hundred black Jamaicans and the flogging of an even greater number. The resultant outcry saw Eyre vilified and disgraced. But this was the E.J. Eyre that had first made his name as an explorer of the Australian outback in the 1830s, and he is celebrated with other famous explorers on the doors of the Mitchell Library in Sydney. But Eyre was also a leading proponent of a humanitarian policy towards indigenous peoples. (And it is worth noting that when he got married in New Zealand, it was in a joint marriage ceremony with a young Maori couple). He laid out this policy in a two volume study of the impact of white settlement on the aboriginal peoples of Australia. For over 250 pages it provided a detailed, sympathetic account of the ethnography of the aborigines. It highlighted and deplored the aggressions against the aborigines. It argued for their dignity as human beings. It accorded aboriginal culture a respect and recognition. It projected a humanitarian sensibility and provided a sustained argument for a policy that recognized the human rights of these people. It proposed a renewed and “more equitable and liberal system of reforming aboriginal society than we have yet attempted.” Indeed, in the course of his explorations this Victorian hero woke up one morning to discover that his companion had been murdered by two of the three aborigines who were accompanying them as porters. This event was treated by him without racial rancor or moralizing. It is explained as a matter of fact, as a tragedy; as a result of the aborigines’ unease at being so far from their own territory they decided to abscond and were surprised by his companion in the act of stealing goods for the journey. 

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My second man is Sir George Grey. Grey is far less well known than Eyre, although he was a more successful Governor of successively, South Australia, New Zealand, South Africa and then New Zealand again. Grey has proved to be an enigma to historians. On the one hand he embodied the humanitarian sensibility of the early nineteenth century. Like Eyre, he wrote a multi-volume book about his experiences as an explorer of Western Australia which sympathetically portrayed aborigine society as it faced dreadful onslaughts from white settlers. Like Eyre he also had a violent encounter with aborigines which is recounted with a humanitarian empathy, and not contextualized as evidence of aboriginal savagery. These experiences triggered a lifelong interest in ethnography and an appreciation of the complexity of indigenous cultures. Grey sought out and enjoyed the company of indigenous peoples. In his personal behavior he did not fit the profile of a racist. In New Zealand he had several close Maori aides. He published the first vocabulary of South Australian aboriginal dialects. He sponsored compilations of Maori folktales and history that are still regarded as authoritative. He was the first Governor of the Cape to learn Xhosa. He supported long term research into the languages of the San and Khoi peoples of the Cape which later morphed into the modern anthropological studies of those groups. And his policies at least in Australia and New Zealand reflected these sympathies. He abhorred settler violence in Australia and tried to do something about it. He wanted aboriginal evidence to be valid in court. He controlled land sales in New Zealand to protect Maori rights against the settlers. He legislated to ensure the rights of mixed race children. 3

On the other hand, there is a darker story to be told about Grey. He played fast and loose with the law in his treatment of certain Maori chiefs, illegally transporting some of them to Van Diemen’s Land; he may have been guilty of judicial murder in New Zealand, and he certainly railroaded the Xhosa chiefs in the 1850s. It is with some justice that the dominant image of Grey has been of the ruthless, calculating careerist willing to destroy those who got in his way, a master dissembler to the Colonial Office, whose humanitarianism was a facade and mask. Certainly, he can be seen as a skilled agent of imperial dispossession who efficiently degraded Xhosa sovereignty and subordinated the Maori. I have seen him myself this way. 4

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3George Grey, Journals of Two Expeditions of Discovery in North West and Western Australia, Vols 1-II, (London, 1841).
The story of these two men may be taken to reflect the trajectory of imperial policy towards indigenous peoples from the early nineteenth century. What began as humanitarian sympathy and empathy was transformed into the juggernaut of dispossession that describes the history of the Anglo world’s interaction with native peoples over the course of the mid-nineteenth century.

More than that, however, Grey and Eyre may be seen as exemplars of what happens to liberalism when it encounters empire—of liberalism’s inability to live up to its values. Both historians and political scientists have effectively revealed the contradictions and the evasions that marked liberalism’s conduct in empire. They have found the roots of these deceits in the original sin of John Locke’s efforts to reconcile liberalism with hierarchy. On the one hand, he authorized exclusions of women and others from the general principle of the social contract between citizens and rulers; and, on the other hand, he justified imperial conquest of peoples who did not productively cultivate their lands according to the standards of seventeenth century British agricultural improvement. 5

The problem with this general view is its teleology. Thus, the Grey and Eyre of the 1830s are treated as the Grey and Eyre of the 1860s in-waiting: waiting to reveal their authentic selves. Most accounts of the transition from the humanitarian sensibility of the 1830s to the despotic imperial order of the later nineteenth century reflect the smug perch of our twenty-first

as a colonial governor. Most of the other recent work follows largely in Rutherford’s footsteps, such as Edward Bohan, To Be a Hero (Auckland, 1998). For an interesting, though ultimately mistaken take on Grey see Leigh Dale, “Sir George Grey in Ireland,” in David Lambert and Alan Lester, Colonial Lives Across the British Empire (Cambridge, 2006). The most serious scholarly indictment of Grey in New Zealand is Alan McLintock, Crown Colony Government in New Zealand (Wellington, 1958). But the best and most balanced accounts of Grey are to be found in Mark Francis, “Writings on Colonial New Zealand,” in Andrew Sharp and Paul McHugh (eds), Histories, Power and Loss. Uses of the Past--A New Zealand Commentary (Wellington, 2001) and Susannah Grant, “God’s Governor: George Grey and Racial Amalgamation in New Zealand”, Ph.D, University of Otago, Department of History 2006. Roy Forster, Rick Hosking and Amanda Nettelbeck, Fatal Collisions. The South Australian Frontier and the Violence of Memory for his restraining settlers in South Australia (Kent Town, SA, 2001). Grey to Earl Grey, Dispatch 28 December 1848, “Ordinary Outward Despatches to the Secretary of State May-June 1849,” National Archives, New Zealand, Wellington G25 Box 3 which in its attempt to explain his blatantly illegal act is a great example of the reason why historians have indicted Grey for playing fast and loose with the truth.

5For variants of this view see the items cited in fn. 1. It also forms the context for work such as Catherine Hall’s important, Civilising Subjects. Metropole and Colony in the British Imagination 1830-1867 (Cambridge, 2001).
century values. But what happens if we put ourselves behind the evidence rather than looking at it over our shoulder? What happens if we take seriously the sentiments that are expressed in the early encounters with indigenous cultures of Grey and Eyre and those like them? What happens, I think, is that we get a better understanding of the historical dynamic not only of the relationship between empire and liberalism but also of this period of the early nineteenth century. And the character of that historical moment is important. It was a moment that was full of what we might call “contradictions.” Thus it was the moment when humanitarian ideology in policy making was at its peak, and it was the moment when the rapacity of dispossession was set in full motion. It was the moment when empathy and sympathy for indigenous peoples and culture reached its most genuine expression, and it was the moment when colonial violence was at its most arbitrary and horrific. I think these contrasts reflected the openness and instabilities of the period, signalling how at this moment it was possible to contemplate alternative narratives and outcomes for empire than those that emerged from the mid-nineteenth century.

Indeed, the abolition of slavery seemed to mark an obvious opportunity for a fresh start for imperial policy, particularly in terms of policy towards indigenous peoples—as indeed the Report of the Select Committee on Aborigines of 1837 anticipated. For this reason it was a period when policy and public discourse about what kind of empire Britain should have was open and fluid. The shape of colonial relationships was undecided: there was no historical

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6This is particularly the case, of course, where Eyre is concerned who is almost always looked at from the perspective of the Morant Bay affair. The best work on him attempts to explain the very different behavior between the 1830s and 1860s, see Hall, *Civilising Subjects*, pp. 37-65; Julie Evans, *Edward Eyre, Race and Colonial Governance* (Otago, 2005).

7In spite of the fact that this period was formative for the history of the empire, it has not been much studied in that respect. An older generation of scholars like Vincent Harlow treated it as the hinge which moved the “second British Empire” away from the Atlantic and towards Asia. Christopher Bayly’s *Imperial Meridian. The British Empire and the World, 1780-1830* (London, 1989) is one of the few books that has treated this period as a distinct phase in the history of empire. Most of the more recent scholarship on the period has been from the perspectives of the “networks” of empire.

inevitability about representative government, for example. Imperial governance and imperial culture were being shaped and created, and there was uncertainty about how they should be structured. This was particularly the case in the new Australasian colonies—and it is on them that my focus largely rests—which were seen as an opportunity for the British to make a fresh start as colonizers, building upon and learning from the mistakes of the past.

At the center of the discussion of empire, however, was a humanitarian sensibility that anticipated a liberal empire in which racial difference and human rights would be recognized and where the competing priorities of settler and indigenes would be reconciled. This was not the only discourse about empire. But it was the dominant vocabulary, particularly in the world of colonial officials. Both Grey and Eyre were operating within the boundaries of that discourse, and in this respect, they reflected the assumptions of imperial policy more generally. This vision of empire did not see the melding of indigenous cultures with the forces of western modernity as the problematic pairing that it subsequently became. Indeed, amongst its most optimistic proponents reconciliation was not only a moral imperative; it was also a lesson that could be learned from earlier history in which empire had too often meant a fatal exchange. For an ideology that rested upon the evangelical theory of the common origin of humanity the necessity of reconciliation was believed to be confirmed by the experience of history. 9

It is easy to dismiss the humanitarianism of the period—to treat it as a mere cover for settler racial dominance. 10 Yet the reality was that all levels of colonial society were attuned to

9As one writer put it: “history, early and recent . . . shows all men to be capable of improvement; and the same experience also shows that doing justice is the grand means to ensure the amelioration and the mutual safety of the most dissimilar races.” This is from Saxe Bannister, Humane Policy; or Justice to the Aborigines or New Settlements (London, 1830), p. vi. Bannister was perhaps the most prolific of the writers to put forward the humanitarian case; he was also for a while had free entry to the Colonial Office, although how much actual influence he had is not clear. See also by Saxe Bannister, British Colonization and the Coloured Races (London, 1838); The Classical Sources of the History of the British Isles. Records of British Enterprise Beyond the Sea, Volume 1 (London, 1846); Memoir Respecting the Colonization of Natal, in South-Eastern Africa; Presented by The Cape of Good Hope Trade Society to the Secretary of State for the Colonies: And Prepared by S. Bannister, Esq. (London, 1839). Standish Motte, Montagu Hawtrey, Justice to New Zealand, Honor to England (London, 1840); J. Ward, British Colonization of NZ: An Earnest Address to the NZ Colonists with ref. to their intercourse with natives (London 1840)

10Which is certainly what it became in the later nineteenth century and much of the history is written back from this fact. This includes the fullest treatment of humanitarian governance in Alan Lester and Fae Dussert, Colonization and the Origins of Humanitarian Government
the claims of a humanitarian sensibility. Colonial governors to the new colonies were sent off with strict instructions from the Colonial Office that aborigines were to be afforded protection from settlers, and that violence was to be met with the utmost restraint. Of course, the animating force of humanitarianism weakened as one descended the social hierarchy. But it was never entirely absent. Indeed, the power of the humanitarian discourse was a major reason why the extensive atrocities that settlers committed against the Australian aborigines were consigned to a regime of silence within settler communities. This silence was not only because of the fear of legal prosecution, for this seldom happened. It was rather a silence of shame and guilt prompted by what one settler referred to as that “whispering in the bottom of our hearts” as regards the fate of the aborigines.  

Governors like Sir George Grey and Sir George Arthur (of Van Diemen’s Land) were not only bound by instructions from London, they were also committed humanitarians, as were their lesser known colleagues such as James Stirling, George Gipps, La Trobe and Richard Bourke. Their humanitarianism was a heady mix of evangelical theology (of both an Anglican and Calvinist variety), theories about the common origin of mankind (monogenesis) and--an aspect that is often ignored, but I think was very important--the eighteenth century culture of sensibility articulated by Adam Smith, amongst others, that emphasized the importance of empathetic understanding as one condition of a civilized collectivity. It was precisely this quality of empathy that Eyre and Grey demonstrated in their early encounters with aborigines.

But of course evangelical humanitarianism--and its Liberal political counterpart--was a crusading creed, both at home and abroad. It was self-confident that it not only stood on the right side of history, but that it was the end of history. And this provided it with the mandate to

(Cambridge, 2014). Susannah Grant, God’s Governor is a major exception to the habit of treating humanitarianism with barely disguised scepticism.  


justify the muscular use of imperial power, and with the capacity to employ the full gamut of strategies to carry out its programs. If one powerful sentiment that animated the breasts of people like Grey, Eyre and George Arthur was the desire to conciliate aborigines, to treat them with kindness and forbearance, it was quite possible for this sentiment to slip into a more coercive stance if the aborigines proved resistant to their prescriptions. Thus, the seeming contradiction that men of genuine empathy like Arthur, who really did agonize about the fate of the Tasmanian Indians, but could also wield the weapon of salutary terror.  

Salutary terror was not a weapon that such humanitarian governors reached for easily, nor without a great deal of soul searching. When Grey served as Lt. Governor of South Australia, we can see him taking measures to defuse the volatile relations between settlers and aborigines, even at the price of his own popularity. And Sir George Arthur took the fate of the Tasmanian Indians so much to heart that he launched a policy offensive to beef up the protection given to aboriginal peoples by the imperial state.  

These officials were intimately familiar with colonial violence; they were acutely aware that violence was an inevitable part of the imperial encounter. They were horrified by the arbitrary savagery of settler colonial violence, even as they were continually frustrated in their efforts to bring it before the courts of justice. If humanitarian liberalism was a crusading doctrine, it was also sensitive to the hazards of the crusading mentality. Indeed, it was the very purpose of the policies of liberal empire to avoid and remove the violence that had marred Britain’s record of imperial encounter in the past. Such policies demanded therefore an activist state that was not afraid to engage in schemes of social engineering.  

There were three key policies that defined the idea of a liberal empire in the early nineteenth century, each of which was designed to conciliate indigenous peoples with the imperial presence. They were: racial amalgamation; the question of land policy and protection of aboriginal cultures; and the uses of the law;  

The idea of racial amalgamation tends to be treated with deep scepticism. It may easily be seen as yet another clever trick of racial exclusion. Indeed, it later became a part of the ideology of racial dominance in New Zealand. And so it seems counter-intuitive that settler states in the early nineteenth century could foreshadow a social order that rested on racial

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13See Arthur to Glenelg, 25 January 1835, CO 280/55, Van Diemen’s Land Original Correspondence. Despatches.  
14Arthur by this time was recalled, and effectively lobbied the Colonial Office to create the Protectorate system in Australia. He was responsible for selecting the protectors. Sir George Arthur to Sir George Grey, 22 July 1836; Sir George Grey to Arthur, 2 November 1837, Sir George Arthur Papers, Vol. 28. Papers Relating to Aborigines 1825-37, Mitchell Library, A 2188
reconciliation and harmony. The fact that George Grey was its most expert avatar has reinforced this assumption. Yet Grey was not alone when he imagined an imperial social structure whose most prominent feature was racial amalgamation or racial assimilation that would be facilitated and fostered by the colonial state. Racial amalgamation followed from the theory of monogenesis, which rested on the assumption of similar capacities for all of mankind. Thus, it was possible for Grey to contemplate Maori living inter-mingled with Europeans, even intermarried. Indeed, it was the duty of imperial policy to facilitate the movement of history along that path, in part because the alternative was seen as racial extermination. This vision was the integrating center of Grey’s actions during his first Governorship of New Zealand; it illuminates his close working relationship Maori aides, his creation of a mixed race army corps in which Maori and white troops were on the same pay scale, his attempts to create racially mixed villages, and his land policy. Racial amalgamation in the mind of Grey would serve to integrate the Maori socially, but also mentally by engaging them in European style enterprise that would instill in them the capitalist ethic—although there was plenty of evidence that they already possessed the essentials of a private enterprise culture.


16 Racial amalgamation was a constant theme of Grey’s dispatches to the Colonial Office. And it is important to note how it went into the national consciousness of New Zealand, even though it was transformed into an instrument of pakeha domination. Grant, God’s Governor, p. 123 for same army pay scale. Grey refused to accept the idea of racial extermination. On the question of racial amalgamation generally, see Saliha Belmessous, Assimilation and Empire. Uniformity in French and British Colonies, 1541–1954 (Oxford, 2013). For its importance in New Zealand at this time, Damen Salesi, Racial Crossing: Race, Intermarriage, and the Victorian British Empire (Oxford, 2011), McLintock, Crown Government; and Alan Ward, A Show of Justice. Racial Amalgamation in Nineteenth Century New Zealand (Toronto, 1973). Vincent O’Malley, The Meeting Place. Maori and Pakeha Encounters, 1642-1840 (Auckland, 2012) for how the early history of New Zealand especially before 1840 was the story of the creation of such mixed communities. F.E.Maning, History of the War in the North of New Zealand Against the Chief Heke in the Year 1845: Told by an Old Chief of the Ngapuhi Tribe. Faithfully Translated by a “Pakeha Maori” (Auckland,1864) for an example of racial crossing.
Racial amalgamation was controversial at the time, less because of its implications as a strategy of racial inclusion and more because of the dangers the degraded habits of white settlers posed to aborigines. But racial amalgamation was one of the ways that Grey and others imagined that social hierarchy in New Zealand would differ from that of the old country and would anticipate the future. Indeed, for Grey racial amalgamation was a matter of progress since a truly amalgamated society would result in both races moving higher up the scale of civilisation. Ideas of racial assimilation were common to imperial discourses in France and in Britain, as they were likely to be in societies that produced significant métis communities. This was true even in the Eastern Cape where early hopes for the Kat River settlement epitomized similar ideas for mixed race communities as Grey did in New Zealand. It was not obvious at the time that such communities would be consigned to social marginality and racial exclusion.  

The racial order of liberal empire was closely connected with land policy. Land was at the heart of the imperial encounter. Imperial history has not shown much interest in the matter of land policy, which is a large and complex subject. The politics of land varied greatly over the settler colonies and generalization is consequently difficult. The struggle over control of land was a major theme of all settler colonies during this period, and it was never finally resolved, of course. It was the main cause of the violence that pervaded this period and which gave urgency to the effort to settle on a policy that would accommodate the interests of both native peoples and settlers. But it was the critical flash point for relations with indigenes. Maqoma, the most important Xhosa chief in the Eastern Cape, never ceased to resent his expulsion from the “ceded territories” in the 1820s. In Canada land policy was perhaps less troublesome because it was governed by treaties which created reserves for the Indians. Elsewhere reserves were a more controversial strategy and, as the Eastern Cape illustrated, treaties had a mixed record for fostering stable relations. But the ideas behind the short-lived Queen Adelaide Province and

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17 See also Hutt to Glenelg, 3 May1839, *Western Australia, Original Correspondence, Despatches* CO18/22 and Pamela Statham, “James Stirling and the Pinjarra,” *Studies in Western Australian History*, 23 (2003), pp.167–194 for how racial amalgamation was part of the early discourse of colonial policy in Western Australia. The importance Grey attached to racial amalgamation evident in the way he kept predicting to the CO that it was working. It was also part of the Stockenstrom policy in the Eastern Cape, see Robert Ross, *The Borders of Race in Colonial South Africa. The Kat River Settlement, 1832-1856* (Cambridge, 2014), pp. 29-36. Some missionaries argued against it to prevent the infection of aborigines by the degraded elements European society see Salesa, *Racial Crossings*, pp.36-37. And see Edward Shortland, Edward Shortland, *The Southern Districts of New Zealand: A Journal, With Passing Notices of the Customs of the Aborigines* (London,1851) for scepticism about racial amalgamation.
Shepstone’s policy in Natal ten years later were explained by the same kind of discourse and ideology as Grey practiced in New Zealand.  

The common theme of land policy were ongoing attempts by the imperial government to limit and control the tendency of settler culture towards unbridled expansion. The missionary lobby pushed in this direction, too, particularly in South Africa. One of the reasons why Grey insisted on Crown control over all land distribution (what was known as pre-emption) in New Zealand was to mitigate settler-Maori tensions and to allow the social engineering of spatial relations. Similarly, he was willing to defy the Colonial Office in 1846-47 and block the new constitution that they wanted to introduce into New Zealand precisely because it promised to encourage settler land expansion. The Colonial Office was not consistent in this matter, however. More generally, it endorsed attempts to rein in the land creep of settler expansion. In Australia, the imperial government insisted that pastoral leases in Australia were conditional on recognizing Aboriginal land rights. This was not unusual. When the South Australia Company received permission to create the new colony in the mid-1830s, it was hedged around with all sorts of restrictions that were designed to protect Aboriginal land rights. Protecting aboriginal land rights was a major purpose of the establishment of the Protectorate system in Australia.

This period marks a distinct stage in the history of land policy. Thus, the issue of land title lay at the center of New Zealand politics for the first thirty years of its history as a colony. On the one hand there were those who essentially wanted the state to stay out of the matter (most prominently in the early years, the Wakefield lobby). On the other hand, there were powerful voices who demanded state regulation of all land sales. This view respected Maori land title and was intended to regulate land sales to foster amalgamation between the races. But it was also intended to demonstrate the superiority of British land tenure over collective ownership of land by Maori tribes. This phase of the land issue was brought to an end in the very different circumstances of the 1860s, when settler control over local politics accompanied the final defeat of Maori resistance and this was followed by the real dispossession of Maori land.

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20For overview of land issue see Stuart Banner, Possessing the Pacific (Cambridge, Mass, 2007)  Alan Ward, A Show of Justice; Judith Binney, Encircled Lands. Te Urewera,
It is also important to register that, in contrast to later decades, the claim that aborigines had no permanent interest in the soil was known to be false almost from the moment the first fleet landed in Australia. *Terra nullius* did not come into common usage, nor did it become settled legal doctrine until *Cooper v Stuart* in 1889. Virtually everyone in the early nineteenth century who had any dealings with aborigines recognized the complexity of the aboriginal relationship to the land. Eyre wrote eloquently of it, for example. Local colonial officials fretted quite a lot over the disjuncture between this and the fact that the land was treated as if it was there for the taking.\(^{21}\)

Land tenure and the law were closely related, and the law is the third factor that occupied a central place in the effort to create a liberal empire. Legal sovereignty was critical to claims of imperial rule. But, like the land tenure system, the law’s relationship to the creation of a regime that would reconcile imperial and indigenous cultures was uncertain and complicated. The first thing to note is that the full expansion of legal sovereignty and the implementation of English law was protracted. Legal historians have demonstrated how the imposition of English law in these new territories was tangled and untidy. Imperial historians, perhaps, have not sufficiently recognized that the English legal system did not come neatly packed in the cargo holds of the

immigrant ships to be trundled onto the beaches of these new worlds to shock and awe the natives with its pomp and glory. In fact, planting the law in colonial soil was something that took time and effort, and it was not until the later part of the century that the full fruits of the law were harvested. The question of how to configure English law in the context of indigenous society was a major concern in the early years, and grew in intensity as the grip of British administration and settler communities tightened.

Throughout this period in many parts of the settler empire a legal pluralism prevailed with indigenous law operating alongside English law. In Australia English law was not extended over indigenous crime until the 1830s. In New Zealand, Maori continued to exercise a high degree of legal autonomy until after the wars of the 1860s. And in Natal English law did not trump indigenous law until the 1860s. There was, in other words, no pre-determined certainty about the basis of legal sovereignty over indigenous peoples. Indeed, the character of colonial sovereignty is more complex than most historians have assumed. Although the colonial state ultimately had to act as if it possessed sovereignty over aborigines, if often ended up recognizing their autonomy.

The law was important because it sanctioned sovereignty and social order and because it was seen as a key agent of the civilizing mission. But how could the law be applied to people who had neither the understanding of its procedures, nor were able to participate in its blessings, when their lack of religion disqualified them from taking the oath? Colonial officials gnawed on this problem, to little satisfaction. There was a constant back and forth with the Colonial Office on how to get around the obstacles that English legal procedure placed in the way of aboriginal evidence. Some Governors framed legislation that would allow aboriginal evidence to be accepted under certain conditions and without the oath. But when it came to it the Colonial Office was reluctant agree. In the early days of his career as a colonial administrator George Grey pondered ways around this dilemma, until settling on the overtly imperial position that indigenes should be considered to be subjects of the crown and subject to the benefits and penalties of the law. This was a centerpiece of his famous memo of 1840 which the Colonial Office circulated to other Governors for their policy guidance. Grey’s position had the virtue of simplicity. But, as other Governors somewhat testily pointed out, it did not resolve the practicalities of the case. And in fact Grey was always flexible in this matter. By the time he

got to New Zealand, with its very sophisticated and savvy indigenes, he operated a system of divided legal authority between the British and the Maori. 24

So, in these various ways, the early nineteenth century imperial system--at least in the new colonies--was fluid and open, without a coherent and fixed system of imperial order. This stood in sharp contrast to the later nineteenth century when a closed system of imperial rule and culture had emerged. The early nineteenth century system was a system in the making, and it was therefore possible to imagine formations and configurations that today seem either utopian, self-deluding or just plain hypocritical. The Protectorate system that the British tried to implant in Australia and New Zealand was an example of such a policy. It has recently been written about as if it was a futile gesture whose sad end was implicit from its very beginnings. 25

Certainly, its launch was inauspicious. It was under-funded, and understaffed. Some of the early personnel buckled under the stresses of the rude and crude life they and their families were pitched into. Inveterate hostility from the settler community took a severe toll on morale, and colonial officials tended to regard Protectors as meddlesome nuisances. And of course their mandate was more complicated than could possibly be imagined from the comfort and security of metropolitan London. But all of this had to be found out; it was not inherent in the very effort to create a Protectorate system. Arthur, who played a key role in the selection process, tried to pick those with the armor of a strong evangelical faith. And he worked very hard to ensure that George Robinson, the leader of the Friendly Mission to the Tasmanian Indians, and regarded as the empire’s expert on indigenous peoples, was appointed as Chief Protector. Historically speaking, however, the central point about the Protectorate was that it embodied a vision of imperial order that was very different from the one that had settled in place by the later nineteenth century.

But if what I have described as liberal empire was a potential reality, then how do we explain the imperial order that had emerged by the later nineteenth century, an order that was characterized by a clearly defined racial hierarchy, a land politics that had effectively

24Grey’s 1840 memo is reprinted in British Parliamentary Papers, ? cd 311 (1841); Hutt to Glenelg, 3 May 1839, Western Australia, Original Correspondence, Despatches, CO18/22. For important discussions of colonial law during this period see Lisa Ford, Settler Sovereignty. Jurisdiction and Indigenous People in America and Australia 1788–1836. (Cambridge, Mass., 2010); Susanne Davis, “Aborigines, Murder and the Criminal Law in Early Port Philip 1841–1851,” Historical Studies, Australia and New Zealand, 22 (1987), pp. 313–334.

25Most notably by Lester and Dussert in Colonization and the Origins of Humanitarian Governance. But they merely reflect what is the conventional wisdom on the Protectorate system. See also Michael Cannon, Who Killed the Kooris? (Port Melbourne, 1990) for a harsh indictment of the protectorate in Victoria.
dispossessed the native peoples--the Maori lost the majority of their land between 1860 and 1890--and a legal order that rendered imperial sovereignty as hegemonic? What in other words explains the demise of the dreams of liberal empire?

This is a question that is usually answered at the level of high theory--with the Indian Mutiny of 1857 as the key historical event. It is certainly true that from the 1850s the discourse on empire in the metropole had shifted significantly from the later eighteenth century. There is a familiar trajectory which tracks the demise of existential debate about empire from Burke, through Mill to Henry Maine. Each stage in this accelerating imperial turn was marked by diminishing moral doubts about empire and a growing acceptance of empire as a progressive and liberating force. The age of liberal empire was a transitional stage along this pathway, and the contribution of humanitarianism to the changing perspectives was its claim to ensure a just imperial presence. Accompanying this shift was the demise of the optimistic vision of an empire of racial reconciliation and cultural and social co-existence.

But the erosion of the policies of liberal empire was not simply a reflex to metropolitan discourse. It was also a result of two broad forces operating at the frontier of empire: the rise of settler politics and the internal corrosion of the humanitarian discourse. 26

I will not spend much time on the big topic of settler politics. It had always been recognized that an empire of racial cooperation and reconciliation demanded restraints upon settler politics and settler violence. It was one of the many ironies of liberal empire that its realization rested upon the despotic power of colonial government. The moment when the humanitarian wave was at its height, was also the moment when settler politics began to make its presence felt in the colonies and in London. From the beginning settler politics defined itself against both the colonial government and the humanitarian interest groups. 27 Governors like Grey fought a valiant battle against settler politics, most successfully in New Zealand, but ultimately were doomed to failure. The fate of Andreas Stockenstrom in the Eastern Cape was a particularly vivid example of how settler politics could destroy humanitarian-inspired policies, even at the height of their credibility. After being put in charge of policy on the frontier, Stockenstrom was subjected to a concerted and fatal campaign of denigration and hostility orchestrated by the settler politicians of Grahamstown. His credibility was destroyed and thereby the possibility of implementing a “humanitarian” policy of cooperation with the Xhosa.

27 See Lester, Imperial Networks; Lester and Dussert, Colonization and the Emergence of Humanitarian Governance; Price, Making Empire.
Similarly, by the 1860s, the spluttering efforts of the Colonial Office to retain for itself control over aboriginal affairs in places like Western Australia and Queensland were but feint traces of a project that had once seemed so promising. Settler politics with its new sense of nationalist political consciousness lay behind legal decisions in Australia and New Zealand that put an end to the divided sovereignty question. In New Zealand for example in 1883 the Wi Pirata decision declared Waitangi essentially null and void, which put an end to any legal basis for a shared sovereignty, and at about the same time *terra nullius* was declared the basis of Australian sovereignty.  

Settler politics challenged the credibility of the humanitarian discourse. But internal forces were also working to corrode it from within. The tensions within the system of liberal empire flowed from the clash between the evangelical zealotry of humanitarianism and the indigenous cultural and political systems that it encountered. Again and again, this clash revealed the limits of the humanitarian mentality and allowed it to slip over into despotism and coercion which then, of course, created a new cycle of violence. In order to understand this volatility we need to consider the psychological drives that underlay it. Let me illustrate this by considering the psychology of empathy amongst the humanitarians of this period. Again Eyre and Grey are good examples.

There is no reason to doubt the sincerity of Grey and Eyre’s empathy for the indigenous peoples they encountered in their early years. But empathy is always a complicated emotion. Humanitarian empathy in the early nineteenth century combined pity and reformation. It was full of pity for the savage state but it also required that the indigenes internalize that pity. Only then could the reforming prescriptions of the humanitarian kick into gear. Problems emerged when the indigenes declined pity and rejected the reforming program; at that point humanitarians reached the limit of their understanding. They had no other recourse but to assume that their empathy was rejected. There was a phrase I came across in my South African research that was repeated one way or another in many forms and which illustrates this tendency towards closure: “they have *refused* the gospel.”  

It was through such social mechanisms that liberalism was turned into despotism.

There were other internal tensions that qualified the potential of liberal empire. The tendency of conciliatory policies to morph into policies of coercion was another example. The

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28 The doctrine of *terra nullius* in Australia was heard throughout the 1830s but the key case was *Cooper v Stuart* in 1889  See Borch, “Rethinking *Terra Nullius* . . .”

famed “Friendly Mission” of George Robinson to the Tasmanian aborigines in the early 1830s was a case in point. This was a mission inspired by the spirit of humanitarianism which ended in the virtual destruction of the race it was designed to save. But not before subjecting them to a social engineering experiment on Flinders Island that sought to eliminate their aboriginal cultural practices. Similarly, the use of salutary terror (a policy first formulated on the Eastern Cape frontier in 1812) by governors like Grey and Arthur in the hope that it would shock aborigines into rethinking their opposition to policy initiatives.

There was, thus, a fundamental instability within the mentality of the humanitarianism of liberal empire. As it contemplated the interaction between the imperial system and indigenous peoples, it swung between a heady optimism and a deep pessimism. Both reactions derived from utopian expectations about the rate of progress that the imperial presence could bring to indigenous societies. Pessimism was the simpler emotion to evoke. It was triggered when the indigenous response to humanitarian initiatives was less than all welcoming. Optimism was a more dangerous quality since once it was shown to be misplaced, the credibility of the effort was undermined. This was the problem on a large scale with the disappointments that followed the end of slavery in the West Indies when the expected order of an emancipated, hard working, individualist yeomanry failed to emerge out of the slave system. But in the 1830s, the assumption that the time scale of progress could be radically shortened by the social engineering policies of liberal humanitarianism was still a reasonable belief. Both Grey and Eyre were fully committed to its precepts. Grey’s despatches to the Colonial Office from New Zealand are full of the small signs of change amongst the Maori that provided evidence for how his policies were pushing Maori society along the path of historical improvement.

Eyre is particularly interesting in this respect since he spent several years at the edge of empire as Resident Magistrate in the Moorunde district of NSW. He had been sent to there in the wake of a particularly nasty series of conflicts between drovers and aborigines. His job was to implement a liberal policy towards the native peoples. There was nothing particularly elaborate about the policy. It rested upon the familiar foundations of paternalism, conciliation and what Eyre called “kindness”--although it is important to note that there was a police contingent stationed with him to enforce kindness. At the end of his term of office he reported

[^30]: See for example, Grey to Earl Grey, 7 March 1848, New Zealand. *Original Correspondence. Despatches*, CO 209/70. Such reports are typically taken as evidence of Grey’s manipulation of information to the Colonial Office. But in fact they are quite consistent with evidence from across the spectrum of humanitarian officials and missionaries who believed that the power of imperial modernity could short circuit the historical process that Britain herself had experienced to rapidly transform indigenous society.
that his policy had worked. Peace had been brought to the area. The aborigine people now trusted the imperial administration. They were beginning to participate of their own accord in the legal system. Indeed, so successful had this policy of conciliation and kindness been, that there might not be a need to appoint a successor. All this had happened in four years! Wishful thinking about the speed at which results would show from the imperial effort was endemic to the imperial mind. 31

The optimism of early nineteenth century humanitarianism about the rapidity of imperial change was petering out by the 1850s as the vision of a liberal empire began to give way to an imperial system that paraded racial difference and hierarchy, and spoke more the language of command than the language of conciliation. But the demise of this earlier vision of a liberal empire did not mean that it became a mere artefact of the past. This vision and more precisely the legacies that it deposited into the culture of Empire remained active agents in the historical process. In the final section of this paper, I want to ask what historical legacies this earlier period contributed to the imperial system of the nineteenth and twentieth centuries?

The first legacy is perhaps the most familiar, although there remains a lot to be said about it how it worked historically. And that is the way that humanitarianism informed the key narratives of empire in the nineteenth and twentieth centuries. The idea that Britain’s empire was at root a liberal project—an idea that was never uncontested—owed its prominence to the power of the humanitarian mentality in this period. From its discourse, as well as from the ruminations of Edmund Burke, emerged the idea of empire as trusteeship, the taking up of the white man’s burden that was the core justification of empire in the twentieth century, and composed ‘the footings for the idea of Britain as a “liberal” imperial power. For a long time it was a foundational trope for most studies of British imperialism and it can still be found in some quarters of the historical scholarship. So one of the legacies of the liberal empire was to help re-define the justification of empire itself, to put it on a much securer foundation than could have been predicted at the end of the eighteenth century. But of course the humanitarian contribution was wider and more complicated than that. Humanitarian discourse played a dual role. It formed the basis for the idea that Britain’s empire was an empire of liberation, an

31E.J. Eyre, Reports and Letters to Governor Grey from E.J. Eyre at Morrunde (Adelaide, 1985). After his time at Moorunde, Eyre proposed the creation of a tight network of government supervision to install a policy that would reconcile the need to respect aboriginal rights and push forward the mission of imperial modernity.
empire of liberal progress. And it provided a vocabulary of criticism of the methods of empire during the moments when scandal struck.  

In addition to this big narrative about what the empire was, however, were narratives about how the empire evolved and worked which also came out of this period. Take the question of narratives about the encounter with indigenous peoples. In the early nineteenth century these narratives were worked out and formed, and then entered the historical record. Let me just mention by way of example the narrative of the fate of the Tasmanian Indians, a narrative that combined pity that they were destined to be a vanishing race, culpability that was assigned to the lower class of Britons for their bad treatment, moral comfort in the efforts that humanitarians made to defend them, and a resigned regret that the aborigines themselves responded to the conciliatory policies of the government with violence thus forcing the adoption of more coercive measures.

I think the same is true of other narratives. Let us take the case of colonial violence. The most notable feature of the story of violence in empire is that there is no story. Or rather, there are few serious treatments of the matter in imperial historiography. The celebrated companion series to the Oxford History of the British Empire is a case in point. There are now about a dozen books that complement the original five volume series, covering such topics as Environment and Empire, Ireland and Empire, Women and Empire etc. But nothing on violence. Yet as early nineteenth century commentators were painfully aware, violence and empire went together like England and roast beef. Indeed, one of the signal features of settler violence in the early nineteenth century was that it was a subject of much debate in the public sphere. The playwright, William Moncrieff, staged a London play in 1831 about the violence

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32Ironically, however, the discourse of liberal humanitarianism ascends to this dual role only after liberal imperial policy was removed from the palate of viable policy options, from the end of the 1840s. It was from this historical moment that the conventional description of liberalism as thoroughly imbricated and implicated with Empire comes to reflect and express the reality of historical experience. It is only then--from the middle of the nineteenth century--that Liberalism with a capital “L” entered into an unqualified partnership with empire.

33This was a narrative that can be traced to the conclusions of the “Aborigines Committee” established by Lt. Governor Arthur of Van Diemen’s Land in 1830 to provide him with policy guidance at the end of the “Black War” and as the aborigines were being rounded up by George Robinson’s “friendly mission.” James Bonwick, The Last of the Tasmanians; or the Black War of Van Diemen’s Land (London,1870), for the early development of this narrative which has only recently been displaced by people like James Boyce, Van Diemen’s Land (Melbourne, 2008) and Lyndall Ryan, The Aboriginal Tasmanians (2nd. edition. St. Leonards, NSW, 1996). See also, Tom Lawson, The Last Man. A British Genocide in Tasmania (London, 2014).
against the Tasmanian Indians. Colonial officials, and commentators alike frankly regarded it with horror and concern because of the challenge it posed to the possibility of a humanitarian policy for Empire. But if the violence of race relations on the frontier was admitted in the public discourse, in the private discourse of the frontier the practice of silence was already deeply implanted in settler culture. This silence was enough to stymie the imperial State when it did rouse itself to try and fulfill its often declared principles of extending to the Aborigines the protection deserved by all subjects of Her Majesty.

Thus, an overlander party in the spring of 1841 from New South Wales to Adelaide led by Alexander Buchanan was involved in killing several aborigines--after seemingly rejecting their peaceful overtures--including a well known local chief. But significantly enough, when a few days later the party met up with Governor George Gawler and the explorer Sturt (who were engaged on a mission of conciliation) and were asked if they had experienced any trouble with aborigines “we told them they had been pretty quiet except at the Darling they had annoyed us a little. Did not say we had shot any.”

From studies of atrocities in the twentieth century we know well enough this phenomenon of group silence enforced by the power of collective pressure. The conditions of the frontier at this moment in time fostered a sense of informal group solidarity which also served to protect perpetrators and to enforce silence. Memorialists admitted this to their private diaries. Thus, Henry Meyrick, writing of Victoria in the 1840s, noted how blacks were hunted down, men women and children “shot whenever they can be met with. I have protested against it at every station I have been in . . .in the strongest language, but these things are kept very secret as the penalty would certainly be hanging.” But he admitted to a growing moral indifference himself. There was a time he recorded when “my blood would run cold at the mention of these things, but now I am become so familiarized with scenes of horror from having murder made a topic of everyday conversation . . . If I could remedy these things, I would speak loudly though it cost me all I am worth . . . but as I cannot I will keep aloof and know nothing and say nothing.”


35 The play was, *Van Diemen’s Land. An Operatic Drama in Three Parts*; F.J. Meyrick, *Life in the Bush (1840–1847). A Memoir of Henry Howard Meyrick* (London: Nelson, 1939), p. 136. This code of silence has a history, too, of course. After the Myall Creek massacre of June 1838 for which seven white settlers were convicted and hanged, the code of silence became much tighter, see P.G. Gardner, *Through Foreign Eyes. European Perceptions of the Kurnai Tribes*
Silence and various forms of denial serve to shield moral indifference. But they were not the best protections for an Empire whose ideology continued to project itself as carrying progress and development in its train. And for this, it was necessary to develop narratives that allowed the violence to be contained and explained within the discourse structures of liberal society. Such narratives involve the construction of a story that can fit the known facts, but serves to displace responsibility away from the belief system that is being challenged: in this case, of course, the civilizing nature of the imperial process itself. An example of how this worked is provided by the development of a believable narrative to explain the racial violence against the Tasmanian Indians. 36

At the end of the “black war” against the Tasmanian Indians in 1830, Lt. Governor Sir George Arthur set up a Committee to develop both an account of the previous six years or so of violence and to make policy recommendations. The Committee was composed of liberal minded members of Hobart’s elite, chaired by the local leading cleric. The Committee looked back over the previous thirty years and developed a narrative that gave full recognition to the violence of the settler community. It reported of cases of women being thrown onto fires and natives being hunted like game on horse back. But it consigned such violence to the lawless past of the early settlement: “It would indeed appear that there prevailed at this period too general a forgetfulness of those rights of ordinary compassion, to which as human beings, and as original occupants of the soil, these defenceless and ignorant people were justly entitled. They were sacrificed in many instances to momentary caprice or anger.” Indeed, there was to hand an expedient under-class of convicts and sealers who lived in the islands of the Bass Straits who the Committee could blame for the violent history of white-aborigine relations. It conveniently ignored the fact that most of the violence had taken place following the arrival of large numbers of free settlers in the 1820s.37

And even whilst it was exposing the atrocities of the convicts and the settlers, the Committee also provided evidence of the treacherous and untrustworthy nature of the aborigines themselves. Thus, “insulated or unprotected individuals have never been perfectly secure”; they

of Gippsland. (Churchill, Victoria, 1988), p. 31. This code of silence was not peculiar to the antipodes. Arthur had encountered it in Honduras when he tried to bring the white settlers there to brook for their brutality against the slaves, see Lester and Dussart, Colonization and the Origins of Humanitarian Governance, p. 51. 36See Banivanua-Mar, Violence and Colonial Dialogue, p 74 et.al. for an intelligent discussion of this

37In fact, the Bass Straits sealers do not seem to have been an inherently violent community. See Patsy Cameron, Grease and Ochre. The blending of two cultures at the colonial sea frontier (Hobart, 2011).
were always subject to the volatility of aboriginal behavior, which could switch from friendly to hostile without a moment’s notice. Thus the treacherous character of the natives was accepted. So even in the most friendly interactions, there remained in the character of the natives “beyond all doubt. . . a lurking spirit of cruelty and mischievous craft” who have been known to have murdered stock keepers whom they fell in with in out of the way places and who had given them no provocation. And even though the Government had consistently insisted on the need to treat the aborigines with humanity and kindness, such efforts went ill-rewarded by the aborigines who “have lost the sense of superiority of the white man, and the dread of the effect of firearms which they formerly entertained and have of late conducted their plans of aggression with such resolution as they were not heretofore thought to possess and with a caution and artifice which renders it almost impossible to foresee or defeat their purpose.” So in the end the Committee could conclude that violence came not from discrete and clear individual wrongs that were done to them by the particular individuals involved, but “from a wanton and savage spirit inherent in them and impelling them to mischief and cruelty.” Although this was a narrative that contradicted everything that humanitarians knew and were prepared to admit, this was the narrative that was absorbed into British culture. It was the default position whenever the uncomfortable issue of the Tasmanian Indians was raised.

What we see here is a very common feature in the way self-consciously “civilized” societies handle actions by their members that transgress the self-proclaimed values of that society. Blame for the situation is transferred away from the perpetrator to the prey itself. In this case the convenient presence of sealers and convicts served to carry the weight of imperial responsibilities. But ultimately it was the Tasmanians themselves who were to blame. It was the cunningly treacherous nature of the aboriginal character that forced the imperial power--much against its humanitarian will--to implement policies that allowed for precisely the same kind of personal violence that had been identified as the original cause of racial suspicion and hostility in the first place.

Having made this reasoned case, the Committee then slipped easily into the rhetoric of settler fear and panic. It pronounced that the “total ruin of every Establishment is but too certainly to be apprehended unless immediate measures can be devised for suppressing the system of aggression under which so many are suffering.” All other measures of forbearance led by a conciliatory Government have failed and now decisive measures of military repression were regrettably necessary. It may have been true that the native were first led to this path of action by the outrages committed on them which were “a disgrace to our name and nation and
even to human nature.” But now the natives are now visiting a revenge, not on the perpetrators, but on the innocent even women and children.  

The narrative that was developed here was a narrative of displacement. But the psychology of colonial violence was full of such strategies. Another favorite trope was the way aboriginal violence showed no discrimination between innocent and guilty. At the very moment the Aborigines Committee was making its report news arrived of the murder of two settlers who were known for their liberal humanitarian views of the aborigines with a record of treating them well. One of these settlers was the brother of the Chairman of the Aborigines Committee itself. The result was a fevered outcry in the organs of settler opinion. These murders were like petrol thrown onto the fire of settler fear and vulnerability. They were the final element in the narrative that the aborigines were too far gone in savagery to allow any other policy but that of repression and this was now an accepted wisdom throughout the settler society.

A narrative explanation of colonial violence was therefore constructed in the public discourse of the early nineteenth century at the same time that it was silenced in the private discourse. But by the late nineteenth century the ordering of this regime of silence was reversed. Now it was settler culture that was prepared to admit violence and imperial culture that denied it. By 1870s, the settler generation wanted to leave their stories to posterity, and a developing local nationalism demanded foundational narratives. In this context, silence about violence at the local level (and I am speaking now mainly of Australia, but I think it also applies to South Africa) was replaced by narratives that sought to integrate it into a wider narrative about

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38Tasmanian Archive and Heritage Office, Aborigines Committee, Report 19 March 1830 CSO1/1/332/7578 Vol.17, pp. 54-56, 70-74. See Lawson, The Last Man, p.122 for the way this narrative goes into British culture and re-appears whenever Tasmanian Indians are discussed.

39Such narratives were also developed, of course, for specific events. In the case of the Myall Creek Massacre, this happened immediately through the reporting of the trials of the eleven men accused of the massacre in the Sydney Herald, see Rebecca Wood, “Frontier Violence and the bush legend. The Sydney Herald’s response to the Myall creek massacre trials and the creation of colonial identity,” History Australia 6, 3 (2009)

40CO 280/30, Van Diemen’s Land. Original Correspondence. Despatches (September-December 1831), 25 October 1831 Arthur to Goderich for an extremely interesting dispatch in which the Lt. Governor establishes this also as the official narrative of his administration’s aborigine policy. Reynolds, Forgotten War, pp. 9-13. James Erskine Calder, Papers Re the Aborigines of Tasmania, Mitchell Library, A597, “Report on the Deaths of Captain Thomas and Mr. Parker. Boyce, Van Diemen’s Land, p. 289. It was now felt that “there could be no safety for the British while any Aborigine remained on Van Diemen’s Land.”
national identity which pitted the hardy pastoralist settler against the harsh and challenging environment of the bush. Violence was sanitized in this process; it could not be denied, but it could be coded and re-contextualized as the product of the rough and difficult circumstances of the frontier. In the process many false arguments were created that still are being swatted down. One of the most audacious claims that began to be heard in this literature and which still frames much historical discussion was how policies designed to “protect” the aborigines were themselves responsible for the violence and did more harm than good. Even a Governor like George Grey came in for condemnation for his “weak policy” of trying to restrain and contain settler violence! 41

But if this was true at the local level, in imperial culture more generally a silence descended in the late nineteenth century to supplant the more open acknowledgements of fifty years before. Although the story of the Tasmanian Indians was not forgotten—thanks to a few local historians who strangely continued to foster the spirit of early nineteenth century humanitarianism—it was fitted into dominant narratives such as the “vanishing races.” 42 But of course this was a way of avoiding facing the violence that produced the vanishing. And these stories are not to be found in the works of Charles Dilke, James Froude or Anthony Trollope as they traipsed around the Empire from the late 1860s writing its official narratives for a popular audience. Nor of course did the continuing violence of the frontier in Australia get more than an occasional notice in the halls of power in London. So when Aimé Césaire, and other early post-colonial thinkers announced the inherent violence of colonialism in 1950, it was in a way a re-discovery. Only recently has this regime of silence begun to be broken. But this

41 For a very good example of this see Bull, Early Experiences of Life in Australia, p. 69-72, 74-75; and also the essays in Thomas Francis, edited by C.E. Sayers Bride, Letters from Victorian Pioneers. Being a Series of Papers on the Early Occupation of the Colony, the Aborigines Etc. Addressed by Victorian Pioneers to His Excellence Charles Joseph LaTrobe (reprint London, 1969). For a full discussion of this issue see Foster and Nettelbeck, Out of the Silence, Chapters 5, 9; P.D. Gardener, Gippsland Massacres. The Destruction of the Kurnai Tribes 1800-1860. (Warragul, Victoria,1983), pp.95-96; Gardener, Through Foreign Eyes, pp.20-21, 105-107. And for the way violence was normalized in the discourse of the state and politics in the later nineteenth century, see Banivanua-Mar, Violence and Colonial Dialogue, pp. 121-23, 130-32

42 Thus, see James Bonwick, The Last of the Tasmanians; or the Black War of Van Diemen’s Land (London, 1870) which is a quite remarkable account, sympathetic towards the aborigines and clear-eyed about British violence, but which also repeats the official narrative that the violence was largely a product of degenerated Britons. And for the vanishing races, see Patrick Brantlinger, Patrick Brantlinger, Dark Vanishings. Discourse on the Extinction of Primitive Races 1800–1930 (Ithaca and London, 2003)
is so mainly at the level of local histories—particularly Australian—and not yet at the level of imperial historiography.  

But the legacies of the period of liberal empire were not confined to metropolitan and provincial narratives that endorsed or reinforced Empire. And I would like to conclude, however, with a more uplifting example of how the legacies of the early nineteenth century resonate down the arc of time. First let us recognize that the age of liberal empire contained space for indigenous politics. It is true that those spaces were fragile, were frequently under siege, and came under increasing pressure as the century wore on. The story of the Kat River Settlement on the Eastern Cape frontier is a sad reminder of the way such bold experiments designed to demonstrate the truth of a notion of universal humanity were torn apart by the savagery of settler racism.

Yet such spaces did hang on, surviving the assaults of settler racism and the suffocating paternalism of the humanitarians. The law of unintended consequences is a powerful force. Thus, whilst the Protectorate system that operated in Australia was marked by a paternal consciousness that got stronger and more controlling as time went on—ending up in the terrible displacement of aboriginal children in the early and mid-twentieth century—Protectorates were also relatively safe spaces for aborigines. They were places where aborigines took advantage of that security to develop their own political practices and forms. Just as in a different way, the missionary educational and religious effort in the last third of the nineteenth century in the Eastern Cape made a significant contribution to the creation of a “modern” Xhosa political class that led directly to the African National Congress.

This suggests an even more powerful current that links the age of liberal empire to the present. The indigenous peoples’ rights movement of the later twentieth century has revived the issues of race reconciliation, land and the law. Across the old settler colonies of the British

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43There is a huge literature now on colonial violence, especially from the Australian perspective. For a sample see, Roy Forster and Amanda Nettelbeck, Out of the Silence. The History and Memory of South Australia’s Frontier Wars (Kent Town, SA, 2012); Timothy Bottoms, Conspiracy of Silence. Queensland’s Frontier Killing Times (Crows Nest, NSW, 2013) and of course, Henry Reynold’s Forgotten War (Sydney, 2013).


Empire, and in different forms in South Africa and even the United States, the claims of indigenous land rights that were the victim of the Anglo-World’s nineteenth century moment of dispossession have inserted themselves into the politics of Canada, Australia and New Zealand in particular. The land and the law are the two axes around which this indigenous rights movement revolves. Most famously, of course, the Mabo case in Australia (1992) denied the doctrine of terra nullius, and at one fell swoop undercut the founding myth of the country. It is not surprising that a concurrent wave of historical revisionism has followed. In New Zealand the impact has been the most profound. The Waitangi Tribunal originally created in the mid 1970s with a fairly narrow remit to deal with land restoration cases, has progressively widened its scope to now include pre-1840 disputed land and fishery claims.  

The exact nature of these indigenous rights movements has varied from one settler colony to another, reflecting of course their different historical trajectories. But it is notable how the dominant political language of these movements is that of the eighteenth century liberal enlightenment rather than the nineteenth century language of revolution. They have appealed to morality as their main political weapon, reconciliation as their main political strategy, and they have used the resources of the law to argue for their rights. This is not to suggest that more radical politics are absent from these movements. But their main thrust has been to seen reconciliation. They are movements that address the legacies of liberal empire using a modern version of the language and strategies of the early-nineteenth century humanitarians.

The politics of aboriginal rights in contemporary settler societies revolves around the question of how to balance state power with respect for cultural difference. But isn’t this the dilemma that Grey, Eyre and other policy makers of the liberal empire grappled with? Is it totally foolhardy to draw a line between the movement for the rights of indigenous peoples and people such as Grey and Eyre? Is it so absurd to see this as one of their unintended legacies? Certainly, we can say that the failure of a liberal policy of empire, its inability to transcend either


the limitations of its ideological precepts or the political forces arraigned against it, had consequences that persist down to the present day.

So let me end with a short story that captures this legacy of the early nineteenth century.

In 2007 after many years of agitation, diplomatic maneuverings and negotiations, the indigenous peoples rights movement finally succeeded in securing a Declaration of the Rights of Indigenous Peoples from the General Assembly of the United Nations. The key issues in this Declaration were the issues of land rights, and the protection and validation of indigenous cultures. These were the issues that were identified by indigenes and humanitarians alike as being at stake in the period of the early and mid-nineteenth century. And there is this much of a direct line from one to the other. On September 13, 2007 when the vote was taken in the General Assembly of the United Nations, only four countries voted against the Declaration: the United States, Canada, Australia and New Zealand. Article 26 of the Declaration was at the heart of their objections. This was the article that addressed the question of sovereignty and land rights. 48

That is not, of course, the end of the story. But it does I think provide an appropriate moment to close these remarks; for it is a pointed demonstration of the way the legacies of empire refuse to fade into the distant mists of academic history

48This Article proposed that indigenous peoples have rights over land and other environmental resources, such as seas and rivers, which they had traditionally owned or used. It included the full recognition of their laws, land tenure systems, traditions and customs and the means of managing and developing the resources.