

DANGEROUS CUSTODY

Black Deaths and the Bicentenary

Mike Kennedy

No issue strikes closer to the heart of the Bicentenary's guilty conscience than black deaths in custody. And it's an issue as old as white invasion itself.



Thea Astley's 1974 novel *A Kindness Cup* contains a pivotal scene which brings together a number of issues relevant to the current debate about the Bicentenary and the Royal Commission into Aboriginal Deaths in Custody. Astley's novel is set at the turn of the century in a small North Queensland town, Taws, which is celebrating its progress in "Back to Taws" week. Twenty years earlier, some of the men who have now become Taws' leading citizens had taken part in a massacre of local Aboriginals and the local schoolteacher at the time returns to the town for the celebrations, determined to expose the massacre.

In the midst of its orgy of reminiscence and self-congratulation, the town does not want to be reminded of that part of its past, particularly the suicide of an Aboriginal woman who, having been "captured", leapt off a cliff clutching her baby after seeing the men in her tribe shot down in cold blood.

The crucial scene occurs towards the end of the week and involves a conversation between Buckmaster, knighted for services to the sugar industry and father of the Native Police officer who supervised the massacre, and Dorahy, the avenging schoolteacher:

"Why don't you go back?" he (Buckmaster) asks, genuinely curious. "That or fall in with the spirit of it, eh? Why I've just left the happiest crowd I've seen in years out at the showground. Massive picnic. Ring events. Side shows. The lot. They love it and they're loving each other." He presents himself reasonably, his large wine-stained face seeking sense for the moment.

"You know why."

"But that's over a long time ago. God, you make it all repetitious. Can't you see that?" ... "Look," he says, turning a curiously worn countenance on Dorahy "let's talk this out, man to man. There are things I regret. Naturally. Every man has those. But I — all of us — have been trying to live those moments down. No one's proud of them. They just happened in a natural course of events. It's part of history."

"History has two faces."

"What do you mean?"

"I mean your view may not necessarily be the right view. There's another side to it. I want the other side to be seen."

"After all this time you still believe that?"

"Yes."

Buckmaster gulps at his tea. "Then there's nothing I can say that will bring you to your senses."

"I'm very much in them."

Buckmaster says gently. "You're not, you know."

Dorahy does not fall in with the spirit of it, of course, and the novel ends with him being beaten senseless outside the local hall on the week's last night, while the crowd inside sings Auld Lang Syne. The lynch mob mentality, the violence underlying the veneer of civilisation, the intolerance of an alternative point of view have triumphed yet again. And even for those with a social conscience, Dorahy's protest and violent silencing will fade eventually and become just a footnote to the week.

Whether the real life Mr. Justice Muirhead has more success in bringing home to the mass of white Australians the cost to blacks of white "progress" than the fictional Dorahy did, will surely be one of the major tests of whether the Royal Commission into Black Deaths in Custody has been worthwhile.

The events which gave rise to the Royal Commission are well enough documented in recent media reports not to require detailed elaboration here.

The pressure for an inquiry on a national level into black deaths in custody has been building steadily in recent years; the Committee to Defend Black Rights, for example, has been pressing for a Royal Commission for at least four years to my knowledge. Announcing the Royal Commission in August, the federal government quoted figures of 44 Aboriginal deaths in police and prison custody since 1980, with 14 deaths since December 1986 — eight of those in Queensland.

These figures were immediately attacked by Aboriginal groups as understating the level of deaths in custody.¹ Questions were also raised about the structure of the

commission, the number of Aboriginal research staff who would be appointed, the availability of legal representation for the families of the dead prisoners, and the very reasons why the government had finally agreed to establish the commission.

While the death of Lloyd Boney in a Brewarrina police cell on August 6 and the community reaction to that death undoubtedly played a part in persuading the government to act, there were also wider political considerations, apart from possible Bicentenary embarrassment. It had been widely reported, prior to Hawke's announcement, that the UK-based Anti-Slavery Society intended to take a case on behalf of Aboriginals to the Commonwealth Heads of Government Meeting in Canada in October, and that a United Nations working party on indigenous people had had the question of Aboriginal deaths in custody drawn to its attention. To a lesser extent, the attacks by the French media on Australia's treatment of Aboriginals as their response to Australian condemnation of the assaults on Kanak protesters during the recent referendum in New Caledonia must have added to the government's international discomfort.

It is relevant to ask why governments have not acted before now on the wealth of material already available on the public record in relation to this question. The range of reports of inquiries and select committees as well as individual court cases and academic research has made the area well-trodden ground, even if little of that material has made the transition across and into white popular history or culture.

One point that most Australians would generally concede is that Aboriginals are represented in the prison population in numbers wildly disproportionate to their numbers in the general population. Any attempt to collect accurate national imprisonment data for analysis has so far been impossible, since Queensland and the Northern Territory do not publish information concerning Aboriginals in their state prison systems.

Successive Queensland Prisons Ministers have defended this policy on the basis that the keeping of such statistics is essentially racist. The last Liberal Prisons Minister went so far as to say that Queensland did not keep statistical records of the race of a prisoner because "if a government starts a policy like that, it will end up with statistics based on religion and political beliefs".

Criminologist David Biles has even suggested that the most important factor in explaining the different imprisonment rates in Australian states is the proportion of Aboriginals living in each jurisdiction.²

A Western Australian inquiry on imprisonment rates reported that the percentages of total annual penal recipients who were Aboriginal were 54.4 percent in WA (1979/80) and 30 percent in SA (1979/80). These figures need to be read in conjunction with the percentages of the prison population who were Aboriginals on census day — 31.8 percent in WA (30.6.80), 5.9 percent in NSW (1.3.81) and 14.3 percent in SA (30.11.80). The report estimated the percentages of Aboriginals in the total populations of these states as WA three percent, NSW 0.8 percent, and SA 0.9 percent.³ These figures probably understate the numbers of Aboriginals who spend time in custody. People held on street or alcohol offences in watchhouses or police lockups would not be included in these statistics.⁴

The deaths which will be covered by the terms of reference of the Royal Commission have, of course, occurred in jails, watchhouses and police lockups, and cover a wide range of circumstances from cases where the intervention of prison officers, or black or white police, appear to have played a direct part in death, to cases where the deaths appear to have occurred in isolation in police or prison custody. One point that struck me immediately when I began research for a separate article on Astley's novel and the Bicentenary debate was the remarkable similarities between many of the cases documented in 19th century reports and the cases which will form the

terms of reference for the Royal Commission. Astley acknowledges a debt in relation to source material to the report of the Select Committee on the Native Police Force, Queensland, 1861.

The *Queensland Legislative Assembly Votes and Proceedings*, which contain the Queensland Select Committee report, contain a number of reports of black deaths in custody about this time.

To take just one example, a subpoenaed white civilian witness gave evidence about the arrest, by a party of draymen, of an Aboriginal called Gulliver for whom a warrant on a charge of murder had been issued. He had been made drunk to stop his escape, was bound hand and foot, and handed over to the Native Police who were hunting him in the area. The police had taken Gulliver out of the witness' dray and tied him, still drunk, to a tree, after which the witness had continued on to the nearest station.

Not long afterwards, the police party arrived at the station without Gulliver and, when asked where he was, a white officer "said it was one of those things which ought not to be talked about". The police story that emerged locally later was that Gulliver had been killed while trying to escape, but the witness' evidence was that, given the time factor, Gulliver's state of drunkenness and the security of his bindings, this was impossible. The final report makes no mention of this or other similar cases referred to in the course of evidence before it.

Without wishing to canvass any of the specific cases which will become the subject of evidence before the Muirhead commission, it must be stated that Gulliver's case bears a striking resemblance to at least one of the better known deaths in more recent times.

It is impossible to quantify these deaths in custody or even to put an accurate figure on the murders of Aboriginals more generally in the last half of last century. The killings were usually done on the excuse of "depredations" but in reality were an attempt quickly to clear the land for grazing purposes. The Native Police were constantly involved in such

"dispersals" in North Queensland up to 1896 and, in practice, there was little to constrain white settlers from using force against and or killing Aboriginals without police involvement. One tentative estimates that at least 4,000 Aboriginals died as a result of frontier resistance in North Queensland between 1861 and 1896 — although the estimate is qualified by a disclaimer that it is probably so conservative as to be misleading.⁵

Subscribers to the view of history espoused by Astley's *Buckmaster* would doubtless claim that these murders are now part of an ancient (in white Australia's time scale) past which the nation is now proceeding to live down. Yet the pattern has continued into this century. For example, in November 1928, *The Sydney Morning Herald* carried a report that Alice Springs police had killed eight Aboriginals alleged to have been involved in the murder of a white dogger. By the following day the death toll had grown to seventeen. The constable in charge of the party stated that he had shot to kill because he did not know what he would do with wounded so far from "civilisation". A subsequent Board of Inquiry found 31 Aboriginals had been shot, but found the police had acted in justifiable self-defence and no further action was taken.⁶

Many Aboriginals' more recent contact with the criminal justice system would lead them still to see a posse mentality operating in some police behaviour. For example, last century a police/squatter posse would be formed in response to a report of "depredations", either the reported killing of stock or the reported attempted or actual spearing of a white were sufficient reason. The Aboriginals would be "dispersed" (officialese for "killed") on the basis that it was impossible to identify the individuals responsible and arrest them, so summary punishment had to apply to the entire group. Compare the dynamics of that situation with those applying at a recent end of year dance for an Aboriginal football club in suburban Brisbane.

The police story is that a mobile



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patrol car with two police attended at the hall for a noise complaint. They claim that when they arrived, bottles or cans were thrown at them from the darkness (they could not identify the individuals) so they retreated to the police car and called for help. Within a matter of minutes, dozens of police cars had arrived from all over Brisbane and police proceeded to clear the hall.

Evidence given at the subsequent trial of the Aboriginals charged as a consequence of the incident revealed that police had used batons and police dogs indiscriminately on old people and women and children, had used racial insults in dealing with the clearing of the hall, and had been out of control in the darkened grounds surrounding the hall. The police, like their predecessors a century earlier, claimed to be acting in self-defence and to have used only "reasonable force". Local independent white eyewitnesses denied that there was undue noise and were not aware of

the alleged barrage of missiles which police claimed triggered the attack.

It seems clear, in retrospect, that an overreaction on the part of the first police on the scene led to the general call for help. What is more relevant in terms of Aboriginal/police relations is the numerical strength of police who answered the call, the speed with which they assembled, and the vigour with which they set about their task of dispersing the dancers. There was, of course, no loss of life on this occasion, although that may have been fortuitous given the indiscriminate batoning of old people and children in the shadows of the grounds.

The use of police violence as a routine part of police interaction with Queensland Aboriginals also emerged in police evidence to the Lucas inquiry into criminal law enforcement in Queensland in 1977. The report contains the following transcript of a taped conversation between a police inspector, a

uniformed police sergeant, and a civilian. The inspector was aware the conversation was being tape recorded, the others were not.

Sgt. The old blacks are still playing up?

Insp. The blacks.

Sgt. Hey?

Insp. Yeah, um, yeah.

Sgt. Want a bloody good waddy over their nut.

Insp. Orh they have done the wrong thing by those people you know.

Sgt. What?

Insp. They've done the wrong thing by those people.

Sgt. What, by the blacks?

Insp. Yeah.

Civ. Ha, ha, ha.

Sgt. Didn't kill enough of the buggers. [...]

Sgt. Oh, the good old days are gone with the blacks. You can't give them a bloody razzle dazzle like you used to be able to.

Insp. No. 7

I am not aware of any similar published evidence or reports on prison officers' attitudes towards Aboriginals. However, from my own

observations while in Boggo Road jail and in the course of my involvement with the Prisoners Action Group in Brisbane, I received a great deal of anecdotal material which suggested that many prison officers could have slotted into that conversation without any difficulty at all.

Anecdotal evidence again suggests that prisoners, both black and white, feel less threatened in jail than they do in police custody for a number of reasons — the sense of isolation is less in jail, a support group of sorts is generally available among other prisoners, and your family and friends outside know where you are. While these factors might lessen the impact on a jailed individual of racial insults or random violence, when prison officers' attacks lead to the death of a prisoner, as is claimed in some of the Western Australian cases, prisoner solidarity will be used by the prison system to suggest a conspiracy to malign either the officers or the reference, to examine some of the iver transfers can occur at official whim, it is not unknown for any witnesses to be transferred to far-flung jails where they are "overlooked" in preparing the departmental and police reports.

Those cases where there is a known involvement of police or prison officers in the circumstances of the death form only part of the picture of deaths in custody. In many ways the other cases, where there is no alleged direct physical involvement of officials, will present the Royal Commissioner with a greater challenge.

Again, it is possible, without canvassing specific cases which will be part of the commission's terms of reference to examine some of the issues involved by looking at the Queensland case of Alwyn Peter.

Alwyn Peter was a young Mapoon Aboriginal charged with having murdered his girlfriend, Deirdre Gilbert, at Weipa South in 1981. That Alwyn had killed Deirdre was not in dispute. What the defence set out to show was how and why this killing had occurred. The trial became as much one of whites'



treatment of blacks as it did of Alwyn Peter.

The basis of the defence case was set out in the opening remarks of Alwyn Peter's defence barrister, Des Sturgess (now Queensland Director of Public Prosecution):

Our case is shortly this: in Queensland, there have been created communities in which the incidence of homicide and very serious assaults is amongst the highest that has been reached and published anywhere in the world. It is, for example, thought to be at least equivalent to that which is found in the poorest and most violent ghettos of New York. Now, Deirdre Gilbert, the deceased girl, and Alwyn Peter, the prisoner, were members of one such community, and they were shaped by it and each has been destroyed by it. Now I should tell your Honour that to be a member of such a community one does not have to be mad or bad, but one has only to be an Aborigine ... The sad fact will emerge from all this that this young man in the dock your Honour, has no hope and is without hope.

What emerged was a picture of appalling social conditions on reserves, of high unemployment, low household income, overcrowded living conditions and poor health

care. It was a lifestyle further strained by jealousy and alcoholism. The earlier forced removal by the Queensland government of the Mapoon Aboriginals to Weipa South had contributed to the destruction of traditional Aboriginal society and the consequent eradication of traditional ways of relating to each other.

The defence submitted that the result was community disintegration, purposelessness and feelings of personal worthlessness with the inevitable result that people became violent towards others and themselves.

Evidence was led of the internalisation of anger and violence by Weipa South aboriginals, especially when drunk. A social worker, Anne McKinnon, had, without much probing, compiled a list from perpetrators of, or witnesses to, recent widely known cases of self-destructive acts in the community. She lists twenty-four cases ranging from shooting oneself in the hand or foot, to cutting oneself with sharp objects, to causing lacerations by smashing glass louvres, to pouring petrol on oneself.

The reserve manager's opinion that these were acts of people "looking for sympathy" is not borne out by the fact that most of these acts were carried out at the height of anger and frustration, the shootings and cuttings were spontaneous rather than premeditated and, most often, medical treatment was not sought for the resultant injuries.

A psychiatrist, Harry Eastwell, gave evidence that there was very little to give the Aboriginals a source of self-esteem or positive feelings about themselves. With specific reference to Alwyn Peter, Eastwell's opinion was that this frustration, stress and self-contempt generated an aggressive drive that often turned a person in on himself or herself.

Significantly, the defence team was unable to uncover instances of suicide in traditional Aboriginal communities; in cases where suicides were found, it was where the traditional ways had been broken down.

A more recent Queensland report on black deaths in custody also points to many of the abovementioned factors. The report, compiled by the deputy Chair of the Aboriginal Community Council and an officer of the Department of Community Services, points to poor training and equipping of community police, overcrowding in sub-standard housing, unemployment, poor health care, alcohol and drug abuse, and the erosion of traditional culture as contributing to the problem.

The report also addresses the Minister's widely reported view that the Queensland deaths were part of a "copy cat" syndrome in the following terms: "it is probably not a 'copy cat' syndrome as to why they were imprisoned but the 'copy cat' idea could well come into calculations after the depression starts to settle in."⁹ This conclusion is supported by James Cook University's Dr. Joe Reser who has been conducting cross-cultural research on Aboriginal deaths in custody and similar deaths among American and Canadian Indians. Reser's view is that here, as in America, the suicide "cluster" phenomenon is

complicated by the way it seems to feed on the attention it attracts. However, he believes that the publicity can precipitate more deaths "not because of a simplistic 'copy cat syndrome' but because suicide becomes a disturbing preoccupation and a more salient 'option' for disaffected, depressed and demoralised young people".¹⁰

This will pose another intriguing problem for the Royal Commission. Like McKinnon's list of self-wounders referred to earlier, the list of cases before the commission will involve people who were mostly young and, as far as I am aware, male. (McKinnon's list does contain one woman — she was Alwyn Peter's sister.) On this point, Paul Wilson has recently suggested that at least some of the deaths in Queensland were a protest, at a very personal, psychological level, against their environment and their treatment at the hands of the authorities.¹¹

To what extent the proceedings of the Royal Commission cut across next year's Bicentenary sanitising of Australian history remains to be seen, but there are some readily apparent ironies even before any evidence is taken. The commission's report will be an account of fifty-three people whose stories have never been told, but only the most optimistic would predict that it will have a circulation anywhere near the official "people's history". In Queensland, the position will be even worse, because the report will be competing for a place in popular consciousness, not only with the official Bicentenary hoop-la, but also with the Expo 88 circus.

And given the failure of government at all levels over 150 years to act on the reports I have considered here, ought we hold out any hope that the Muirhead report will be acted upon, that the destructive cycle will be broken? Am I being overly cynical in suspecting that, ultimately, reality will mirror Astley's novel ending, and Aboriginals will still be literally and figuratively being kicked to death in the dark while those in the light shed a tear for Auld Lang Syne and relegate Muirhead's report to

another footnote for the Tricentenary?

NOTES

1. As this article was being typed, *The Sydney Morning Herald*, 2 October 1987, carried a report that a Sydney meeting convened by the NSW Deaths in Custody Watch Committee had been told by Senator Duncan Kerr on behalf of Minister Gerry Hand that the government now conceded that there had been at least 53 deaths since 1980.

2. Quoted in Neil Rees, "Police Interrogation of Aboriginals" in John Basten et al (eds.) *The Criminal Injustice System*, Sydney, A.L.W.G. and L.S.B., 1982, pp. 39-40.

3. Statistical tables 1.7, 1.9, 1.10, 1.12, 1.13 in *Report of the Committee of Inquiry into the Rate of Imprisonment (WA)*, 1981.

4. Again, as this article was being typed, a report appeared in *The Sydney Morning Herald*, 3 October 1987, of a study by WA criminologists into Aboriginal imprisonment rates. The WA census day figure is now 33 percent although the state's Aboriginal population has remained static at three percent. The report quotes the claim of one of the study's authors, Rod Broadhurst, that Australia's black imprisonment rate is higher than South Africa's and represents the greatest level of incarceration of an indigenous people in any country.

5. N. Loos, *Invasion and Resistance, Aboriginal-European Relations in the North Queensland Frontier 1861-1897*, Canberra, ANU Press, 1982, p. 190.

6. Reported in C.D. Rowley, *The Destruction of Aboriginal Society*, Ringwood, Pelican, 1972, pp. 288-289.

7. *Lucas Committee Report of Inquiry into Criminal Law Enforcement in Queensland*, Brisbane, State Government Printer, 1977, pp. 78-79.

8. Paul Wilson, *Black Deaths White Hands*, Sydney, Allen & Unwin, 1982, pp. 2-3, 20-22, 25, 29-33.

9. The Powder-Law report on the incidence of rising suicides by Aboriginals in Queensland communities whilst in custody" presented to the Queensland Minister for Northern Development and Community Services, 29 July, 1987, p. 3.

10. *Time*, 24 August, 1987, pp. 20-21.

11. Reported in *The Sydney Morning Herald*, 28 September, 1987.

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