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Bengt Sandin • Jonathan Josefsson
Karl Hanson • Sarada Balagopalan
Editors

The Politics of Children's Rights and Representation

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Political Representation of Aboriginal and Torres Strait Islander Youth in Australia

Sana Nakata and Daniel Bray

INTRODUCTION

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.—*Uluru Statement from the Heart, 2017*

On the continent now known as ‘Australia’, Aboriginal and Torres Strait Islander¹ children represent the descendants of the world’s longest, continuing civilisation. These children have inherited a deep past and a highly uncertain yet hopeful future. The words that open this chapter were read

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out loud for the first time on 26 May 2017 as part of the *Uluru Statement from the Heart* (National Constitutional Convention, 2017). This statement was crafted at the National Constitutional Convention involving 1200 Aboriginal and Torres Strait Islander delegates who gathered to discuss recognition of Indigenous peoples in the Australian Constitution. It agreed on recommendations for a constitutionally enshrined Voice to Parliament, and a Makarrata² Commission to facilitate treaty-making and processes for truth-telling. Despite the high level of consensus in the six-month long deliberative process that preceded the Convention, conservative Liberal-National governments responded by dismissing any prospect of constitutional reform (*Response to Referendum Council's report on Constitutional Recognition*, 2017). The election of a Labor government in May 2022, five years after the Uluru Statement, has seen the federal government commit for the first time to a constitutional referendum, and establishment of a Makarrata Commission. As of publication, the language of the referendum question and a referendum date yet to be announced.

This long and uncertain path toward a constitutionally protected mechanism for Indigenous representation to the Commonwealth of Australia, is a product of historical and mainstream narratives that depict the lives of Indigenous people as deficient (Walter, 2010; Walter, 2016) and a history of population management policies that prioritise government interventions in childhood, including removing Indigenous children from their families (see Davis, 2019; Dunstan et al., 2019). Indeed, Aboriginal and Torres Strait Islander people have often been characterised as a primitive, uncivilised peoples who belong to the past and not the future. It is within this deficit discourse that Aboriginal and Torres Strait Islander children have become represented within the Australian policy-making landscape as a problem to be solved rather than a source of democratic potential and renewal (Nakata, 2018). As will become evident in this chapter, the focus on deficits tends to ignore the representations that Indigenous peoples, globally and within Australia, have always made in resisting and responding to the violence of colonization. Indigenous people have never been passive and agentless subjects of colonial power. Their histories are fuelled by resistance, political strategy, and sustained kinship systems that bond them to one another despite generations of intervention into family life. Aboriginal peoples and Torres Strait Islanders have always been the makers of the future in Australia, even (and especially) during the period of violent oppression that has been experienced since colonization. This future-making necessarily occurs within a complex apparatus of power in

which Aboriginal and Torres Strait Islander people, and especially children, have limited capacity to affect political decision-making. And yet, Aboriginal and Torres Strait Islander people continue to work in careful, strategic, and diverse ways to give effect to the futures they imagine for themselves.

The Australian government's suppression of Indigenous self-representation is the political context in which this chapter examines the political claims made by Aboriginal and Torres Strait Islander young people. Our central argument is that the transformative potential of these representations is deliberately foreclosed through the infantilization of all Indigenous people as children of the colonial state who can never grow up. This infantilization serves to undermine claims that Indigenous children can be a source of democratic renewal and strengthens representations of them as a risk to the *demos*. In order to make this argument, we first outline our theorisation of children as constitutive of the political realm, despite formal modes of exclusion, which represent both risk and renewal to the *demos* (Bray & Nakata, 2020). Second, we contextualise this work by considering the modern and colonial context of childhood and the function of a child/human binary (Rollo, 2018) that enables the infantilization of Indigenous peoples. Third, we turn to contemporary examples in Australian politics that exemplify representations of Aboriginal and Torres Strait Islander children as a source of risk and renewal to democratic life. We demonstrate the salience of risk by considering both the treatment of Dylan Voller at the Don Dale Youth Detention Centre in the Northern Territory in 2016 and the more recent case of a youth curfew policy proposed in the late weeks of the Queensland 2020 state election.

We argue that these contemporary debates represent a historical continuity from first contact in which representations of Aboriginal and Torres Strait Islander children are used and contested in the ongoing process of 'settling' colonial Australia. While our empirical analysis is specific to the continent of Australia, we sustain a theorisation of childhood that adds to critical scholarship on racialized and colonised children globally (Alanamu et al., 2018; Alexander, 2016; Balagopalan, 2014; Hinton, 2021; Meiners, 2016). As this theorisation of childhood reveals, efforts to exclude Indigenous peoples and their children from democratic politics out of fear of the risks they pose to the polity restricts their transformative potential in renewing democracy over successive generations. And yet, as we will

argue, representations made by Aboriginal and Torres Strait Islander young people about their futures have important transformative potential in shaping Australian politics.

THEORISING CHILDHOOD AS RISK AND RENEWAL TO THE *DEMOS*

Our approach to the politics of childhood is centred on the role of children as new individuals that must remake democratic life. We undertake this approach as political theorists trained in the Western tradition, taking the view that democracy is conceived as an unfinished project in which freedom and plurality must be continually regenerated in response to new social conditions. As John Dewey (2008, p. 299) puts it: 'Every generation has to accomplish democracy over again for itself...its very nature, its essence cannot be handed from one person to another, but has to be worked out in terms of the needs, problems and conditions of social life'. The political socialisation and education of children is therefore at the heart of the collective task of regenerating democracy. While temporarily excluded from formal politics, we argue that children nevertheless constitute democracy through their appearance as future adult citizens that are indispensable to imagining and realising democratic futures. Because they are constituents of an unknown future polity, children are represented in a wide range of political debates where competing idealisations of democratic society are at stake.

From this perspective, the politics of childhood is grounded in the ontological presence of children as *new citizens with indeterminate potential* (Bray & Nakata, 2020). The children that are born into the world are new and unique individuals and, as such, have the potential to initiate new action that interrupts and alters existing political cultures, norms and institutions. From the moment of birth, children literally embody new possibilities for politics. As perennial newcomers, they 'produce an unending stream of automatic and singular interruptions to the world that create new possibilities for action', against which existing institutions and laws intended to bound politics 'can never reliably withstand the onslaught with which each new generation must insert itself' (Arendt, 1958, p. 9, 191). For Hannah Arendt (1958, p. 247), this human individuality is necessary for sustaining democratic freedom and plurality because it brings forth diverse individuals capable of new beginnings no matter the extent of political socialisation or oppression. Yet, this same radical potential of

children poses inherent challenges to the established democratic order, which must maintain a relatively stable set of norms and institutions through which politics can be conducted. Hannah Arendt struggled with and never fully resolved this tension in her work. We have previously argued that this tension produces a special challenge for democracy to strike a balance between an *openness* to the new required to harness each child's potential for originality and initiative in response to changing social conditions, and a *closure* in political norms and institutions that can sustain collective values and protect the existing democratic order against the constant influx of new individuals (Bray & Nakata, 2020, p. 25).

Based on this theorisation, a central facet of democratic politics involves the unending task of conditioning and representing children during their period of temporary exclusion from the formal political realm. As part of this upbringing, the newness of children is disciplined and steered toward a future adult-subject that must be educated to intelligibly operate within a desired (democratic) political order. This simultaneous presence and absence of children (as temporary outsiders that constitute a democratic future) means that the political representation of childhood and children is a central dynamic of democratic politics (Bray & Nakata, 2020). We can see the constitutive effects of representations of children and the ways in which they are used and contested for political purposes in a range of debates and decision-making institutions where the normative fabric of society is at stake. Below, we demonstrate this with respect to representations about Aboriginal and Torres Strait Islander children. However, such constitutive effects of representation have also been established in numerous other contexts, including child migration (Josefsson, 2017), environmental politics (Hayward, 2012) and international rights and governance (Holzscheiter et al., 2019). Our undertaking here is to strengthen our understanding of the politics of childhood by taking seriously the experience of Indigenous children in political life. Across a range of normative contests, competing representations of children and childhood struggle for influence in order to achieve present political objectives that shape the future. And that this takes place in distinct and specific ways for Indigenous children.

Children are at the heart of this representative politics because their indeterminate political potential means they present both risk and renewal to the *demos*. In this sense, they can be represented as holding either fear or hope for democracy to come. Their newness brings forth different forms of subjectivity and action that can challenge and reshape old

political frontiers in both threatening and progressive ways. In terms of *risk*, children can be characterised as potential adversaries that prefigure new bases of conflict and radical opposition to the interests, institutions and imagined futures of older generations (Bray & Nakata, 2020, pp. 33–34). We argue in the examples below that this figure of the child as a source of risk to the *demos* is especially evident in representations of Aboriginal and Torres Strait Islander young people. The diverse, unpredictable and ultimately threatening possibilities that arise from the existence of children representing different races, classes, ethnicities, gender identities etc. are posed as risks to the existing normative scope of political futures (Hinton, 2021; Stewart, 2019).

Yet, as indicated above, children are also a social group essential to *renewing* democracy across successive generations in order to meet the different conditions, needs and interests of the changing polity. As new individuals born into an old world, the interests and experiences of children are unique and as such they embody new possibilities for improving democracy and its capacity to address social problems. In this sense, democratic societies must avoid foreclosing capacities for critical inquiry, innovation and political action that are required to regenerate freedom and plurality in a new social context. Preserving the radical potential of children is vital to both guarding against social homogenisation and authoritarian politics that is ultimately fatal to democratic life, and also to overcoming the problems of democracy and transforming it for new social conditions. From this perspective, children can be represented as figures of renewal and hope or as figures of risk and threat, and this representative terrain impacts on policy debates across a range of sites (Hallberg & Sandin, 2021; Lee-Koo, 2011; Pruitt, 2021).

CHILDHOOD IN COLONIAL CONTEXTS: THE INFANTILIZATION OF INDIGENOUS PEOPLES

The above theorisation presents a broad and ahistorical outline of the transformative potential of children's representation grounded in Western political thought. However, by contextualizing our conceptualization of the 'child' that figures in this theorization, we can further illuminate what is at stake for Indigenous children in these forms of representative politics. As Zhao argues, childhood 'is often a reflection of the constructors rather than a reflection of children themselves' (Zhao, 2011, p. 241). Zhao

wants to understand the relationship between the construction of the modern subject and the child, arguing that ‘modern constructions of childhood have constructed children in the category of the other. Children are consigned with other groups of “deficiency” for whom different treatment is warranted’ (Zhao, 2011, p. 254). He makes an exception for modern constructions of childhood that emphasize active growth, but is still cautious due to concern that ‘even in this construct, the child’s agency and voice are systematically undermined by the hidden agenda of social control’ (Zhao, 2011, p. 254).

In a similar vein, more recent work helps further our understanding of the relationship between modernity and childhood in a manner that is specifically useful for racialized and Indigenous contexts. In Toby Rollo’s theorisation of childhood, race and Indigeneity are not subcategories of an already-determined category of ‘child’ but rather an outcome of a preceding child/human binary that aligns the child with the Other. He writes that ‘the idea of a *telos* of progress from animal child to human adult is both a historical and conceptual antecedent of the idea of European civilisation, prefiguring its stories about maturation and progress from cultural ignorance to enlightenment’ (Rollo, 2016, p. 61). Furthermore, Erica Meiners, writing in the context of child criminalization in the United States, provides historical examples demonstrating how ‘[d]emocracy required both consent and adulthood, and, therefore, also nonconsent and nonadulthood. Racialized from inception, childhood concurrently shaped forms of association and life beyond the figure of the adult and the child’ (Meiners, 2016, p. 34). Whether race is theorised as a precedent or antecedent to the category of child, this work highlights the interrelationship between boundaries of race and boundaries of age, and it becomes possible to see more clearly how modernity and coloniality comes to position Indigenous peoples (and other racialized groups) as *infantilized* subjects (Nakata, 2018; see also Vallgård, 2015).

It is well established that Indigenous peoples have long been dehumanised. Historically, this dehumanisation was achieved through theories of evolution grounded in Social Darwinism and eugenics which figured the Indigenous person as ‘primitive’ and closer to animals on a scale of evolutionary development to white Europeans. In the Torres Strait Islands, for example, it was reported that:

‘The islanders [sic] have not yet reached the state where they are competent to think and provide for themselves; they are really overgrown children, and

can be best managed, for their own welfare, as a prudent parent would discipline his family.’ (1915 Queensland State Government Protector’s Report quoted in Nakata, 2007, p. 129)

Even at the point that Indigenous peoples are able to be seen as *human*, the subjugation of Indigenous peoples’ and the paternalistic frameworks that have governed and regulated life and movement has long been predicated upon this infantilized status: lacking the maturity, autonomy and the rational capacities sufficient to be extended any rights (Nakata, 2015, p. 21). Given these assumptions, the argument for a more respected and protected civil and political status is built upon the demonstration of our ‘rational’ capacities, which in practice underpins paternalistic and assimilationist policies that align the ‘fully developed’ and the ‘rational’ with the European.

Thus, the relationship of the Indigenous person to state is that of the *child* of the state. More than a paternalistic relationship, however, which retains some possibility for ‘growing up’, the Indigenous adult is infantilized: constructed as a child that can never grow up. It is in this context that we can understand the infantilization of Indigenous peoples as a logic that arises in the very formation of modernity itself. This is not simply a conceptual claim; an examination of Enlightenment liberal philosophers such as John Locke, Jean-Jacques Rousseau and others reveals that they emphasize the necessity of rational adult citizens to the project of modernity and democracy (see Nakata, 2015). In *On Liberty*, John Stuart Mill is careful to place conditions on the recognition of an individual’s freedoms:

‘It is, perhaps hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children, or of young persons below the age which the law may fix as that of manhood or womanhood’. (Mill, 2011, p. 22)

Excluded alongside children in this very same passage are ‘barbarians’ and ‘consideration [of] those backward states of society in which the race itself may be considered as in its nonage’ (Mill, 2011, p. 23). That is, the ‘primitive’ races of Indigenous peoples around the globe are excluded from Mill’s theorisation of sovereignty and individual freedom because those very races are childlike (nonage).

With this in mind, it is possible revisit the policy contexts—historical and contemporary—that shape Aboriginal and Torres Strait Islander

peoples' lives on this continent and see how the logic of infantilization informs the transformative potential of Aboriginal and Torres Strait Islander young peoples' representation in public and political debates. Representation has both a discursive role in making, receiving and accepting/rejecting representative claims (Saward, 2010), as well as an institutional role in structuring political power and distributing the right to represent and make decisions about one's own interests. While social norms and recognition of civil, cultural and political rights have transformed markedly in the twentieth century, we argue that the infantilized Indigenous subject remains present in some contemporary colonial contexts. Most significantly, we argue that this colonial figure of the Indigenous child, as one who never grows up, operates to strengthen representations of Aboriginal and Torres Strait Islander children as a source of risk to the *demos*. As we demonstrate below, this severely limits the transformative potential of representations of Aboriginal and Torres Strait Islander children by undermining their claims to be a source of democratic renewal.

REPRESENTING ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN AS SOURCES OF RISK

This section considers how Aboriginal and Torres Strait Islander children are represented as *risks* to the *demos* in the context of two public controversies: the overincarceration of Indigenous children and young people; and election campaign proposals for youth curfews in the Queensland towns of Cairns and Townsville. Across both these cases, representations of children as a source of risk are focused on sites of criminalisation, and are consistent with literature on criminality and childhood in both contexts of moral panics and race (Bernstein, 2011; James & Jenks, 1996; Meiners, 2016; Nakata, 2015). The cases below demonstrate the representation of young Aboriginal and Torres Strait Islander people as sources of risk, but also involve representations of their parents as inadequately equipped to usher their children in adulthood.

In Australia, the most recent national level data (June 2020) shows that 48% of all young people in youth detention on any given night are Aboriginal and/or Torres Strait Islander young people despite representing just 6% of the national population aged between 10–17 (Australian Institute of Health and Welfare, 2021, p. 3) On any given night, the children detained in the Northern Territory are most likely to be all Aboriginal.

This overrepresentation is attributed to the same factors of Indigenous overincarceration generally; that is, greater police contact rather than higher crime rates. For young people, this contact can arise as a result of school disengagement, poverty and homelessness, or residing in out-of-home care. These factors all reflect sites of systemic inequity and injustice in which historical conditions continue to shape contemporary experiences.

It is in this context that the significance of the 2016 reporting by the public, national broadcaster Australian Broadcasting Corporation (ABC) of the mistreatment of a number of teenagers at the Don Dale Youth Detention Centre in Darwin is to be understood. There were no especially notable events leading up to the exposure of alleged human rights breaches that might have acted as a catalyst for either the events within Don Dale, or the impact of the Four Corners reporting itself. In an episode titled, 'Australia's Shame' (2016), the national broadcaster ABC's Four Corners program broadcast footage taken between 2010 and 2015 that included the stripping, hooding and use of teargas on teenage detainees, all of whom were Aboriginal. Graphic video footage was broadcast as evidence of the brutalization of these young people, and the morning after the program aired the then Prime Minister, Malcolm Turnbull, announced a Royal Commission into the Detention and Protection of Children in the Northern Territory. This announcement was made despite the fact that numerous other reviews and reports into the detention system in the Northern Territory had already taken place, including the 2012 Northern Territory's Children's Commissioner Howard Bath's report into the sustained maltreatment of Dylan Voller which had remained secret for two years. These reports included the previous identification of 21 significant incidents at Don Dale Youth Detention Centre, which included one report of detainee assault on staff and five reports of staff assaults on detainees.

Kate Fitz-Gibbon undertook a media analysis of coverage following the Don Dale controversy, analysing 281 news articles between 2012 and 2016 (Fitz-Gibbon, 2018, p. 104). It demonstrates that the Four Corners episode was a transformative moment that created a national conversation around Indigenous youth detention. It found that of 281 news articles over four years about the Don Dale Detention Centre, 223 news articles appeared in 2016 following the Four Corners episode. Fitz-Gibbon's media analysis was focused upon the impact of reporting, including in shaping responses from advocates such as the Children's Commissioner, and highlights that much media commentary expressed outrage and calls for reform. Indeed, her analysis demonstrates the important role the media

plays in making allegations of human rights abuses public. However, Fitz-Gibbon gives less attention to the ways in which the mainstream media traditionally reports (or more precisely, *fails* to report) on matters of concern to Aboriginal and Torres Strait Islander communities. This point has been emphasized by Indigenous scholars in recent decades, who demonstrate both the ways in which the media fails to report on Indigenous issues, or that when it does so it often risks further damage by perpetuating harmful racial stereotypes especially in the context of criminal justice (Porter, 2015; McQuire, 2019). The Don Dale Royal Commission's Final Report specifically implicated the role of media in the context around Indigenous youth crime, stating that it 'received evidence throughout the relevant period, [that] media reporting "heightened the public's concern for personal and community safety"' (White & Gooda, 2017, p. 119). And that in the Northern Territory that the media 'regularly published articles in the nature of "youth crime waves" and "gangs out of control"', including the "names and photographs of children on many occasions" (White & Gooda, 2017, p. 119). This is to say that as well as being able to expose sites of Indigenous injustice, the media are often as likely to be implicated in manufacturing representations of young Aboriginal people and Torres Strait Islanders that contribute to heightened surveillance, over-policing and violence.

Below we highlight examples of representative claims made following the publication of allegations of human rights breaches at Don Dale Detention Centre to demonstrate how a discourse of Aboriginal children as a source of risk emerged from key actors to defend those allegations. While much of the public response was one of shock and outrage, it remains that the representations of key actors below were presented to the Australian public to minimise that shock and outrage, and indeed to justify the actions of corrections officers against young Aboriginal detainees. While not part of Kate Fitz-Gibbon's analysis, it was also the case that much formal news reporting of the Don Dale controversy that was republished and promoted on social media outlets, such as Facebook, produced racist and defamatory comments from members of the broader public which would later become subject to litigation (Byrne, 2021).

The day following the 2016 Four Corners episode, the then (Country Liberal Party) Chief Minister of the Northern Territory Mr Giles said:

'There are kids who are trying to deliberately cause cranial issues by bashing their head against the wall. Prison officers need the ability to be able to de-

escalate issues when children are not in ... a calm environment within themselves and at all times those kids' wellbeing is being put at the best possible place.'

He continued that the Northern Territory community:

'was sick of youth crime ... they have had a gutful. They've had a gutful of cars getting smashed up, houses getting broken into, people being assaulted. There's no doubt. And the majority of the community is saying let's lock these kids up' (Dunlevie, 2016).

The Four Corners broadcast included video footage of six young people being tear-gassed, and showed a seventeen-year-old Dylan Voller handcuffed and hooded in a mechanical restraint chair, being thrown across the cell, stripped naked, and kept in solitary confinement. Despite clear evidence of breaches of human rights, including children's rights, which would later be confirmed in the findings of the Royal Commission, it is revealing that the Chief Minister of the Northern Territory chose to emphasize Aboriginal youth crime.

Furthermore, in the lead national broadsheet, *The Australian*, commentator Janet Albrechtson (Albrechtson, 2016) further transformed the representation of Aboriginal children's experiences of state-sanctioned violence into the failures of Indigenous Australian parents, writing:

'But where were, where *are* the parents of these broken boys? Where are the fathers and mothers? This is the gaping hole in this horribly sad story. That we haven't heard from the mothers and fathers of the boys in Don Dale tells its own story. It's a story of generational dysfunction that a royal commission into Don Dale won't fix... The reality is that not every parent is up to the job. We have become so hopeless, so scared of making judgments about other parents, we would rather turn our eyes away from children whose life chances are dashed by dysfunction than ask parents to do the best they can by their child. We seem more at ease making judgments about the owners of mistreated greyhounds than parents who mistreat their kids.'

Against a historical conceptualisation of Indigenous peoples as infantilized subjects, what we see in this shift is not a fear to make judgment of parents, as Albrechtson accuses, but rather a sustained judgment against Aboriginal and Torres Strait Islander adults as incompetent, uncaring and ultimately unfit parents. If Indigenous adults are childlike, best governed

by paternalistic structures and policies, then their capacity to parent their own children is too easily called into question. As a result, their children are removed into institutions where they are kept out of view from society and from their own families (see also Hinton, 2021). In doing so, children are also disappeared from the public discourse and discussion becomes about the personal responsibilities of adult carers and not about the context, conditions and decisions that lead so many young Aboriginal and Islander girls and boys into youth detention. And the capacity of the young people who experience the effects of Indigenous social policy on a daily basis find themselves even more distanced from the public, their capacity to self-represent their interests ever more restrained by representations of them by adult Australians.

Dylan Voller was incarcerated in Don Dale Detention Centre for serious offences. In a handwritten letter in July 2016, he wrote: ‘I would just like to thank the whole Australian community for the support you have showed for us a [sic] boys as well as our families. I would also like to apologise to the community for my wrongs and I can’t wait to get out and make up for them’ (Graham, 2016). Dylan Voller also sought a personal apology from the Northern Territory Chief Minister for the treatment of himself and other boys. The Chief Minister declined to do so (Wild, 2016). He was released from the Don Dale Detention Centre in February 2017, having served three years and eight months from the age of fifteen. As we write, not only do the NT Royal Commission’s recommendations remain unimplemented, the current Labor government has recently announced legal amendments to create new offences and legislation to make it more difficult for magistrates to divert young offenders away from prison (Breen, 2021). Instead, in 2021, the Northern Territory reached a financial settlement for all youth detainees mistreated between 2006 and 2017, understood to be up to 1200 individuals (Gooley, 2021). Also in 2021, the majority bench of the High Court of Australia held that media companies could be held liable for defamatory posts made by commentators on Facebook pages that they controlled: the claimant in that case was Dylan Voller.

In a representative terrain that reported the breaches of human rights that young Aboriginal detainees were subjected to, representative claims emphasizing Aboriginal youth crime and the purported inability of Aboriginal people to properly parent their own children were used to defend and justify the law-and-order policies of the Northern Territory that today remain broadly unchanged. Despite the outcry from many,

representative claims of Aboriginal children as source of risk in this policy context prevailed.

The power of these claims was also evident in the proposed youth curfew policy in Cairns and Townsville during the 2020 Queensland state election. On 31 October 2020, the election in the state of Queensland took place. Late in the election campaign, the leader of the state Opposition Deb Frecklington announced a youth curfew policy for two northern Australian towns, Cairns and Townsville, should the LNP form government. This had previously been proposed for implementation in Townsville at the 2017 state election, but the Opposition did not win government. It was proposed that the policy would be enforced by issuing \$250 AUD fines to parents of any unaccompanied children who were found outside at night 'without a reasonable excuse'. The policy additionally sought to impose mandatory detention for third convictions (three-strikes policy), and establish 'community payback farms' in which young people were to be sent to labour as a form of punishment for their crimes (Zillman, 2020).

For context, these towns are both marginal electorates, and contain large, young communities of Indigenous people. Cairns is a state electorate that was held by the Australian Labor Party by a margin 3.4% at the 2017 election; this increased by 2.2% as a result of the 2020 election. The Townsville electorate was held by the Australian Labor Party by a margin of 0.4% at the 2017 election among the tightest in the state; this increased by 2.7% as a result of the 2020 election. Nonetheless, both seats remain classified as marginal being held by a margin of less than 6%. The 2020 election results can be interpreted in part as the electorate's refusal to be swayed by the youth curfew policy. However, the use of a youth curfew policy as a key platform heavily promoted by the Opposition in the final stages of campaign also points to the ways in which a youth curfew policy was employed in pursuit of political victory, related as it is to perceptions of youth crime as a 'wicked problem' and its capacity to induce 'moral panics'. Tackling youth crime is seen to be an effective platform upon which to move voters, and in marginal seats each and every vote matters.

The youth curfew policy in these two electorates can also be contextualised by its demographic particularities. The nearest statistical age band we can produce from the most recent census data for Indigenous/non-Indigenous comparison is 0–19 years (though the policy related to age 16 years and younger). However, even across this slightly more expansive age band we are able to demonstrate the relative 'youth' of the Indigenous Australian population compared with the non-Indigenous population in

Cairns and Townsville. In Cairns and Townsville, approximately 10% of the population identified as Aboriginal and, or Torres Strait Islander in the 2016 national census. Nationally, Aboriginal and, or Torres Strait Islander people represent 2.8% of the population. This is to say, Cairns and Townsville are towns that have a visibly higher population of Aboriginal and Torres Strait Islander people. In these towns, all policies affect a greater proportion of Aboriginal and Torres Strait Islander people than in other parts of the Queensland state and Australia. Policies, such as the youth curfew, that are proposed to be specifically implemented in these towns alone have a direct and greater impact on Aboriginal and Torres Strait Islander people. This is further underscored by the relatively young age profile of Aboriginal and Torres Strait Islander people: 42% and 43% of the Aboriginal and Torres Strait Islander population is aged under nineteen years compared to 21% and 18% of the non-Indigenous population in Cairns and Townsville, respectively. A policy intended to apply only to the towns of Cairns and Townsville is one that in practice disproportionately and deliberately affects Aboriginal and Torres Strait Islander young people. The youth curfew policy proposed by the Opposition party as part of its electoral campaign was, for these reasons, a racialized and racist policy.

The state parliament in Queensland is comprised of a single chamber composed of 93 members representing a little over 3.3 million registered voters.³ Historically, Queensland has been known for being a particularly racist and anti-democratic state within the Australian federation, particularly during the period of the controversial Bjelke-Petersen government (1968–1987) in which a range of democratic rights were placed at risk, including the right to association and assembly. In the 1990s, the rise of the right-wing politician Pauline Hanson (current Federal Senator) would result in the formation of the One Nation Party on anti-immigration and anti-multiculturalism platforms, with huge success in Queensland at the time. Both Senator Hanson, the One Nation Party and other small anti-multiculturalist parties have come to shape the contemporary political landscape, with much of their approach to multiculturalism and Indigenous affairs slowly becoming reflected in major party rhetoric across the nation.

It is in this context that we interpret the 2020 youth curfew policy proposal in the towns of Cairns and Townsville. The policy itself was formally difference-blind, in that it was proposed to apply to all youth aged up to 16 years. However, as we have shown it is also a policy proposal that disproportionately targets and affects Aboriginal and Torres Strait Islander youth. At the time, Opposition Leader Ms Frecklington was reported as

saying that ‘she made no apologies for being “tough on crime”’ arguing that ‘An 11-year-old—what is he doing on the streets at that time at night? He’s got to be back at home, safely tucked into bed’ (McKenna, 2020). She continued that:

It is a terrible indictment when every time I come to Townsville, I have to meet with another community member who has had their house broken into, their car flogged ... it’s just got to stop. (McKenna, 2020)

While Townsville is known for higher rates of crime than elsewhere (and a higher unemployment rate), the policy was challenged at the time for a number of reasons, including that it risked breaching international law and that at the time crime was in decline and the age trend was such that offenders were increasingly aged 25 and older (Dennien & Lynch, 2020). Nonetheless, the public stage in the final weeks of the Queensland state election was clearly set to frame young people, and Aboriginal and Torres Strait Islander young people especially, as the source of criminal behaviour and an ongoing risk to social order.

Beyond the demographic implications of a youth policy in towns with high Aboriginal and Torres Strait Islander populations is a broader national context concerning the policing and incarceration practices relating to Indigenous peoples. This context brings into sharper relief the racialized impacts of the proposed youth curfew. Representing young people and, implicitly Indigenous young people, as a source of risk to social order and future governance sits at odds with the starker reality that Aboriginal and Torres Strait Islander people, including youth, are more likely than non-Indigenous Australians to be subjected to violent policing and death within the criminal justice system as has been evidenced in the Northern Territory example above.

Australia is already a country that disproportionately criminalizes and incarcerates Aboriginal and Torres Strait Islander people. So much so that in 1987, the Commonwealth of Australia initiated a Royal Commission into Aboriginal Deaths in Custody (‘RCIADC’), which delivered its final report four years later composed of 339 recommendations that largely remain unimplemented (Johnston, 1991). Since the report, hundreds of Aboriginal and Torres Strait Islander people have died in custody and the number rises every month. It is now broadly acknowledged that the key contributor to these deaths is the overincarceration of Aboriginal and Torres Strait Islander people (see Cunneen & Porter, 2017). A youth

curfew policy in towns with very high populations of young Aboriginal and Torres Strait Islander people is the making of the very conditions that contribute to this overincarceration and deaths in custody. While the thirty-year old RCADIC remains broadly unimplemented, we remain in electoral campaign cycles that continue to produce the conditions that sustain over-policing, overincarceration and ultimately, disproportionately high rates of deaths in custody for Aboriginal and Torres Strait Islander people.

In broader public discourse, sustained efforts by Aboriginal and Torres Strait Islander people to draw attention to the harms and violence experienced at the hands of police demonstrate alternative representations of victims rather than perpetrators of crime. As Darumbal and South Sea Islander journalist, Amy McQuire, wrote during the 2020 Black Lives Matters protests, ‘There cannot be 432 victims and no perpetrators’ in Australia’s *The Saturday Paper*, referring to the then number of documented Aboriginal Deaths in Custody since the 1991 RCIADC (as of April 2021 that number was 474). She observed at this time that in contrast to the global outpouring of support for African Americans dying at the hands of police, ‘We have never seen this in Australia, where Aboriginal people continue to die on the floor of watchhouse, in the back of paddy wagons and in handcuffs locked to hospital beds. When Aboriginal people die in custody, there is a national silence’ (McQuire, 2020). It is a silence that sits in stark contrast to the politicisation of youth crime that disproportionately targets Aboriginal and Torres Strait Islander young people. That these competing representations exist is testament to labour of Indigenous peoples to continue to testify to their experiences of violence, and it is within this context that *The Guardian Australia*’s recent series on ‘Childhood in Custody’ can be located as a rare example of mainstream media attention to the experiences of young Aboriginal and Torres Strait Islander people (The Guardian Australia, 2021).

Having set out the fuller context of the proposed youth policy, in electoral and demographic terms, we argue that Aboriginal and Torres Strait Islander youth crime is used to represent Aboriginal and Torres Strait Islander young people as source of *risk* to the demos. In this case, the risk is represented in terms of violent crime, but the subtext is a judgement about dysfunctional parents and communities that require state intervention because they can never grow into adequate parental figures, let alone ideal Australian citizens. This representation persists notwithstanding the high rates of violence and targeted policing against Aboriginal and Torres

Strait Islander people that result in their status as the most incarcerated people on the planet, with disproportionately high rates of our people dying in custody. We argue that representing risk to the voting public in these terms, operates to further position Aboriginal and Torres Strait Islander people as a legitimate site of racialized policing and surveillance in order to produce a sense of security for the broader Australian public.

These illustrative cases are not intended to be an exhaustive account of representations of Aboriginal and Torres Strait Islander young people as a source of risk. Rather, they are recent examples that are consistent with decades and centuries of the colonial governance of Indigenous lives. While there are real harms and challenges surrounding the lives of young people which are deserving of informed and thoughtful response from governments, this example highlights the ways in which discourses about youth crime coincide with race and Indigeneity in ways intended to secure political power and to 'settle' the colonial state by continuing to represent Aboriginal and Torres Strait Islander young people as an existential threat. By doing so, opportunities are missed to better understand the social, cultural, economic and political experiences that shape those young peoples' lives and the positive and negative impacts it has upon them.

CONCLUSION: RENEWAL AND THE TRANSFORMATIVE POTENTIAL OF INDIGENOUS CHILDREN'S REPRESENTATION

What we have presented here is the argument that the representation of Aboriginal and Torres Strait Islander young people as sources of risk to the *demos* encompasses more than just how those young people appear in the media or are spoken about by politicians. In colonial contexts, the interplay between law, economy, politics and policy is predicated upon conceptualisations of Indigenous people as infantile, deficient, still-not-fully-human subjects. This is not just a matter of individual psychologies of bias but reflects a conceptualisation that was integral to the very foundation of liberal, democratic, colonial nation-states. This conceptualisation cannot be relegated to the historical record. The subjugated status of infantilized races, including those of Indigenous peoples, is embedded in the systems and institutions of colonial states. Intergenerational inequity and political powerlessness continue to shape the lives of young Indigenous peoples and limit the conditions of justice that liberal democratic colonies such as Australia can imagine. The transformative potential of representation,

then, is shown here to not just be about making visible the positive (alongside the negative) representatives of young Aboriginal and Torres Strait Islander people, but also a claim to representation that might work to legitimize and redistribute political power to them.

On viewing the ways in which Aboriginal and Torres Strait Islander young people are represented in Australian public discourse, it is easy to become disheartened at its bleakness: crime, incarceration, deaths in custody, and beyond the context of this chapter, the disproportionate removal of young people from their families into out-of-home care. These are important, urgent sites of Indigenous social policy that reflect just how preoccupied the colonial state remains with Indigenous young peoples' lives. However, to view these representations as comprehensive and immutable is misplaced. Aboriginal and Torres Strait Islander young people have always been a source of radical potential across the continent of Australia, and each generation has resisted and navigated their conditions of their colonisation, in ways that work to cleave open other possible futures for the Australian nation. The *Uluru Statement from the Heart* expressed such possible futures, and two years later a youth delegation at the national Garma Festival pleaded for 'the freedom to write a new story' (Garma Youth Forum, 2019). These normative orientations are not without their own politics and risks, specifically, projecting onto Aboriginal and Torres Strait Islander young people the ideals and hopes of an old generation. But we remind our readers here that alongside the representations of risk presented in this chapter, the possibility for democratic renewal persists in Aboriginal and Torres Strait Islander young people. Indeed, the transformative potential of their representations in renewing Australian democracy lies in their ability to contest the figure of the risky, infantile Indigenous subject. And that for Indigenous and all racialized people world over, this is a tension that weaves the very fabric of democratic states.

NOTES

1. Aboriginal peoples and Torres Strait Islanders are distinct ethnic groups who were both colonized by the British as part of the creation of 'Australia'. They are sometimes described together as "Indigenous Australians" but it is increasingly preferred to use the term Aboriginal and Torres Strait Islander peoples to respect those members of the community who do not consider themselves Australian. Within Australia, we also increasingly use language

names to describe ourselves and the communities or nations to which we belong of which there are hundreds across the continent. Within this chapter we use ‘Aboriginal and Torres Strait Islander’ and ‘Indigenous Australian’ interchangeably, and sometimes refer only to Aboriginal people where the subject is specific to that community. We also use the term ‘Indigenous’ when locating our regional experience in the broader context of global Indigenous peoples’ political claims. The first author of this chapter, Sana Nakata, is a Torres Strait Islander woman.

2. *Makarrata* is a Yolgnu word and concept with a multilayered meaning. Here, it can be interpreted to mean the ‘coming together after struggle’.
3. Voting in Australia is compulsory for all citizens from 18 years onwards.

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