

## **‘Too many kill’em. Too many make ’em ill’: The Commission into Rottnest Prison as the context for Section 70**

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### *Introduction*

Rottnest (known to Whadiuk Nyoongar people as Wadjemup) is an island 18 kilometres off the coast of Western Australia.<sup>2</sup> It served as a prison for Aboriginal men and boys between 1839 and 1903, and held a number of Aboriginal prisoners as an annex of Fremantle prison until 1931. Over this time 3676 Aboriginal males were incarcerated on Rottnest.<sup>3</sup> The 1882 outbreak of influenza, which led to ten deaths, prompted only half-hearted government investigations. However, the 1883 influenza and measles outbreaks, which led to at least 53 deaths, occurred during the first few months in office for the new governor, Sir Frederick Napier Broome. Broome took more decisive action than his predecessor had done, and in September formed a commission ‘to inquire into the treatment of the Aboriginal Native Prisoners of the Crown in this Colony: And also certain other matters relative to Aboriginal Natives’.<sup>4</sup> After an extensive enquiry, the 1883 commission recommended measures to improve the health of prisoners on Rottnest, and more broadly the formation of a board which would supervise a network of ‘Native Protectors’ to provide welfare to ‘old, infirm or needy natives’.<sup>5</sup> After a series of political struggles over Aboriginal policy, an Aborigines Protection Board was established three years later, in 1886.

Governor Broome supported the movement for responsible government which gathered strength in the colony in the following three years. However, in light of the Rottnest situation and other matters concerning Aboriginal employment and treatment, he was concerned about the future of Aboriginal welfare under settler-controlled

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<sup>2</sup> Green, *Broken Spears: Aboriginals and Europeans in the southwest of Australia*, Cottesloe, 1984, p. 167.

<sup>3</sup> N. Green and S. Moon, *Far From Home: Aboriginal Prisoners of Rottnest Island, 1838-1931*, Nedlands, 1997, p. 8, 97.

<sup>4</sup> Western Australian Parliamentary Papers (hereafter WAPP) 1884, no. 32, Report of a Commission appointed by His Excellency the Governor to inquire into the treatment of Aboriginal Native Prisoners of the Crown in this Colony: And also certain other matters relative to Aboriginal Natives, Perth, p. 3.

<sup>5</sup> WAPP, 1884, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 5.

government. He suggested in 1887 that the colonial government should not be granted responsibility for Aboriginal policy, and that the new colonial constitution could find a way to ensure 'the protection and good treatment of the northern native population' in the event of responsible government.<sup>6</sup> After further negotiation between Broome, the British government, and the colonial legislative council, the 1889 Western Australian constitution embodied his suggestion, including section 70, which stipulated that the Aborigines Protection Board would be solely responsible for administering an annual budget of £5000, or one per cent of the colony's annual revenue. This article argues that the Rottneest commission of 1883 is a vital context for understanding the development and passing of section 70.

### *Background*

Western Australia is a vast colony comprising more than two and a half million square kilometres of territory. In 1882, the majority of the 30,766 European colonists were settled within 100 kilometres of the coast. However, increasing numbers of people were moving several hundred kilometres northwards, in search of large pastures for livestock rearing.<sup>7</sup> Between 1872 and 1882, the number of sheep increased by 80 per cent to 1,259,797, and cattle by 50 per cent to 65,475.<sup>8</sup> The pastoral industry brought settlers into contact with Aboriginal communities who had little, if any, former contact with Europeans. These Indigenous groups found their everyday behaviours criminalised; hunting became livestock theft and settling disputes through customary law became *inter-se* (Aboriginal on Aboriginal) murder. Not only were more Indigenous people facing conviction under unfamiliar laws, but they were also receiving longer sentences for them; in the 1880s, the majority of prisoners on Rottneest were serving a period of imprisonment of one year or more.<sup>9</sup> Neville Green and Susan Moon estimate that by the 1880s more than half of the original Nyoongar population of almost 10,000 had died from diseases introduced by Europeans.<sup>10</sup> However, since vast swathes of the

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<sup>6</sup> British Parliamentary Papers (hereafter BPP) 1889, vol. LV, no. C.5734 and C.5752, Correspondence respecting the proposed introduction of responsible government into Western Australia, with appendix, p. 384.

<sup>7</sup> Broome to Derby, 28 January 1884, BPP 1884, vol. LIV, no. C.4015, Papers relating to Her Majesty's colonial possessions, reports for 1881, 1882, 1883, p. 44.

<sup>8</sup> Blue Book for 1882, BPP 1884, Her Majesty's colonial possessions, p. 51.

<sup>9</sup> Green and Moon, *Far From Home*, p. 26.

<sup>10</sup> Green and Moon, *Far From Home*, p. 60.

colony were still unmapped in 1882, there is no reliable indication of the total Aboriginal population at the time.<sup>11</sup>

A key principle in the 1840 'Act to constitute Rottnest a legal prison' was that the prisoners would be able to work on the island without chains, because 'the close confinement of a gaol...[had] been found to operate most prejudicially to their health.'<sup>12</sup> In light of this, the government envisioned Rottnest prison more like a reformatory. Short hours of farm work were supposed to teach, rather than punish, the inmates. The prisoners also worked constructing a sea wall, accommodation, salt works and, in 1864, an octagonal single-cell prison. On Sundays, prisoners were allowed to roam the island freely, to hunt and fish. Rottnest was partly successful as a salubrious prison. The mortality rate was generally low, with between one and eleven deaths a year, in stark contrast to the situation of Aboriginal convicts in other Australian colonies who experienced mortality rates fourteen times higher than their European counterparts.<sup>13</sup> Nevertheless, influenza, measles and whooping cough did break out relatively frequently on Rottnest, usually arriving via groups of prisoners from newly colonised areas who had not been previously exposed to European diseases and were weakened by their long journey. When the prison became overcrowded and/or when cold weather arrived, these diseases quickly became endemic.<sup>14</sup> Between 1862 and 1865, overcrowding arising from new arrivals from Murchison and north of York resulted in the death of 84 prisoners.<sup>15</sup>

#### *Overcrowding and disease on Rottnest in 1882*

The influenza outbreak of mid-1882 was part of this long-standing pattern. Prisoners from the newly settled northern districts brought influenza to the island, leading to ten deaths. The *Inquirer*, a Perth-based newspaper that was largely critical of the government, raised concerns about overcrowding on Rottnest in November 1882.<sup>16</sup> It blamed the itinerant stipendiary magistrate of the Gascoyne district, Charles Foss, for

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<sup>11</sup> N. Green, *Broken Spears*, p. 8.

<sup>12</sup> An Act to constitute Rottnest a Legal Prison, 2 July 1840, BPP 1844, vol. XXXIV, no. 627, Aborigines (Australian colonies), p. 375.

<sup>13</sup> K. Harman, 'Aboriginal Deaths in Custody in Colonial Australia, 1805-1860', *Journal of Colonialism and Colonial History*, vol. 13, 2012, n.p.

<sup>14</sup> Green and Moon, *Far From Home*, p. 60.

<sup>15</sup> Green and Moon, *Far From Home*, p. 59.

<sup>16</sup> *Inquirer*, 8 November 1882, p. 5; 'Edmund Stirling', Australian Dictionary of Biography (hereafter ADB), vol. 6, 1976.

sentencing large numbers of Aboriginal people to lengthy terms of imprisonment on Rottnest. It later transpired that Foss had acted beyond his legal authority by sentencing large numbers of Aboriginal people in the Gascoyne to three years' imprisonment, rather than six months.<sup>17</sup> In response, the acting Colonial Secretary, Fred Hare, forwarded The *Inquirer's* article to the Rottnest medical officer, Dr Henry Barnett, along with instructions that he make a 'special visit' to the island.<sup>18</sup> In his subsequent report, Barnett attributed the fatalities to two main factors: first, overcrowding, both on the steamships on route to Rottnest and temporarily in the prison upon their arrival; and second, the prisoners' change in 'diet, surroundings and occupation', especially going from a tropical climate to a cold winter.<sup>19</sup> After describing the sleeping arrangements in detail, Barnett concluded that the outbreaks did not result from long-term overcrowding, and that the prison could house 26 more prisoners in two empty rooms.<sup>20</sup>

Governor Robinson had hoped to 'satisfy the public mind' about the conditions on Rottnest by reading out Barnett's report at a meeting of the Agricultural Society on 7 November 1882.<sup>21</sup> However, the next day, the *Inquirer* used an eyewitness report (most likely a member of prison staff) to challenge the official line.<sup>22</sup> First-hand accounts (by staff, government officials or former prisoners) became the main way for liberal sections of the press to challenge the government view, since the prison was secluded from the public's gaze and could only be visited with permission from the colonial secretary. The *Inquirer's* eyewitness described extreme overcrowding on Rottnest, claiming that 'prisoners at night are packed away in their cells like sardines in a box, having to lie down head to feet alternately to make room.'<sup>23</sup> The main danger, said the *Inquirer*, was that crowded and unventilated cells were ideal for the transmission of disease.<sup>24</sup> The *Inquirer's* correspondent also noted a 'stench of impure air' from the cells in the morning that was 'sufficient to breed a cholera [sic].'<sup>25</sup> This was especially

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<sup>17</sup> Robinson to Fraser, 19 June 1882, The National Archives [UK] (hereafter TNA), CO 18/199, p. 490.

<sup>18</sup> Hare to Barnett, 3 November 1882, TNA, CO 18/198, pp. 373-374

<sup>19</sup> WAPP, 1884, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 15.

<sup>20</sup> Barnett to Howard, 7 November 1882, TNA, CO 18/198, pp. 377-380

<sup>21</sup> *West Australian*, 14 November 1882, p. 1S; Robinson to Kimberley, 11 November 1882, TNA, CO 18/198, p. 372.

<sup>22</sup> *West Australian*, 14 November 1882, p. 1S.

<sup>23</sup> *Inquirer*, 8 November 1882, p. 5.

<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*

important, since contemporary medical understandings posited that disease was caused by miasma, i.e. by breathing in infected air.<sup>26</sup>

The *Daily News* – a paper with a similar agenda to the *Inquirer* – reproached Robinson for instituting an inquiry through someone who was ‘part of the official staff of Rottnest’.<sup>27</sup> Both papers agreed that a Board or Royal Commission of ‘independent men’ should be appointed, preferably able to speak numerous Aboriginal dialects. This was the first of many instances over the course of the investigation into Rottnest that Indigenous testimony acted as an important corollary to official evidence. On 23 November 1882 the *Daily News* presented further testimony, this time from a former Rottnest inmate, which they claimed was reproduced ‘almost *verbatim et literatim*’ (word for word).<sup>28</sup> This eyewitness alleged negligence on the part of Dr Barnett and mistreatment at the hands of the warders. He claimed that Barnett had visited only four times in the previous fifteen months, and that, when he had done so, he had given perfunctory examinations of the prisoners on parade. The conservative papers, such as the *Fremantle Herald* and the *West Australian*, supported the government by challenging the veracity of the eyewitnesses reported by the *Inquirer* and the *Daily News*. Historians have supported the eyewitnesses’ claims. Figures compiled by Neville Green and Susan Moon show that Rottnest was bursting at the seams in 1882, with over 150 prisoners squeezed into a building designed to hold 106.<sup>29</sup> Between three and five prisoners were forced to squeeze into the small cells, with a sleeping width for each man of just sixty centimetres.<sup>30</sup>

Under pressure, Governor Robinson formed a second internal inquiry, this time by visiting justices J.G. Stone and John Slade. On 8 December 1882, Stone and Slade inspected Rottnest prison so thoroughly that ‘you may almost say [we] ransacked every part of it.’<sup>31</sup> They interviewed four prisoners about their health – Abraham, Jemmy, Ebenezer and Bob Thomas (who later testified to the Rottnest commission). Abraham complained that his cell was cold and damp, and Bob Thomas said that an infectious

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<sup>26</sup> S. Halliday, ‘Death and miasma in Victorian London: an obstinate belief’, *British Medical Journal*, vol. 232, 2001, p. 1470.

<sup>27</sup> *Daily News*, 14 November 1882, p. 3.

<sup>28</sup> *Daily News*, 23 November 1882, p. 3.

<sup>29</sup> Green and Moon, *Far From Home*, p. 27.

<sup>30</sup> *ibid.*

<sup>31</sup> *West Australian*, 5 January 1883, p. 3.

skin disease was spreading amongst the prisoners. Slade and Stone recommended stopping wet-washing cells, keeping infected prisoners apart from the general population, and recording deaths in a register. However, unlike the 1883 Rottneest commission the following year, Slade and Stone found the blankets, clothing, sanitary arrangements and prison accommodation satisfactory.

#### *Further outbreaks of disease, 1883*

Unfortunately, it was exactly these factors that caused the epidemics of measles and influenza between June and November 1883. Sir Frederick Broome arrived as the new governor in June 1883 to find Rottneest full with prisoners who were seriously ill as a result of unhealthy conditions to which the press had alerted the colonial government eight months before. With inadequate accommodation to house the sick, prisoners were moved to the boys' reformatory. The son of the reformatory's superintendent, Edward Watson, described hearing 'about thirty or forty natives expectorating and wailing with a quavering, long-drawn cry, like the howl of a dingo.'<sup>32</sup>

By the time Broome arrived, the press was united in their calls for an extensive inquiry – whether to exonerate or place blame on members of the colonial administration. The *Inquirer* drew a particularly visceral picture of medical negligence on 27 June 1883. The paper built on a resurgence of humanitarian interest abroad and a growing evangelical movement at home to shame the colonists into demanding a full enquiry. The *Inquirer's* article was called 'Pictures from Real Life at Rottneest', in reference to the series of lectures by evangelist Matthew Burnett that had begun touring Western Australia in May.<sup>33</sup> It drew from evangelic Quaker narratives, with the reader encouraged to take the perspective of a 'religious witness'.<sup>34</sup> In the article, the narrator's eye roams voyeuristically over the Aboriginal prisoner as he writhes naked on the floor, crying from the pain and vomiting 'incessantly'.<sup>35</sup> Elizabeth Spelman has argued that when suffering becomes public spectacle, the observer becomes the 'true' sufferer by witnessing the other's pain.<sup>36</sup> In a similar vein, the *Inquirer* claimed that the refusal of

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<sup>32</sup> E. Watson, *Rottneest: Its Tragedy and Glory*, Bicton, 1998, p. 88.

<sup>33</sup> *West Australian*, 15 May 1883, p. 3.

<sup>34</sup> P. Edmonds, 'Travelling "Under Concern": Quakers James Backhouse and George Washington Walker Tour the Antipodean Colonies, 1832-41', *Journal of Imperial and Commonwealth History*, vol. 40, 2012, p. 773, 782.

<sup>35</sup> *Inquirer*, 27 June 1883, p. 2.

<sup>36</sup> E. Spelman, *Fruits of Sorrow: Framing our attention to suffering*, Boston, 1997, p. 64, 131, 161.

the government to investigate more fully was as much, if not more, of an injustice towards the settler colonists, than to the prisoners who were dying there. They claimed that:

The interests of the public are as much ignored by the officials as the treatment of the prisoners is unnecessarily severe, and that a thorough, sweeping, and searching inquiry by utterly impartial visitors is absolutely required into the present management of our native prison.<sup>37</sup>

Most newspapers doubted the veracity of the *Inquirer's* account, but feared it would find traction abroad. After all, the last quarter of the nineteenth century saw a resurgence of humanitarian concerns about the colonial project.<sup>38</sup> The Aborigines' Protection Society continued to play an important role in lobbying British parliament in the 1880s; they censured Western Australia in 1884 – and again in 1886 – for the high mortality rates on Rottnest.<sup>39</sup> Therefore, the *Herald* argued, 'the Government [needs] to take the necessary steps...to protect the colony against the odium of such an infamous article.'<sup>40</sup> The 'Real Picture from Rottnest Prison Hospital', however, had already spread to the Australian colonies; a correspondent in the *South Australian Register* insisted that, unless Western Australia's government investigated properly, allegations would:

...be allowed to go forth to the world at large unchallenged ... [such that] the fair fame of the [Western Australian] colony will be forever stamped with the indelible brand of the utmost shame.'<sup>41</sup>

### *The Commission is formed, 1883*

The role of Broome in subsequent events was crucial. At the time, Western Australia had only a limited form of representative government. The British government appointed the governor, who was advised by an executive council

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<sup>37</sup> *The Inquirer*, 27 June 1883, p. 2.

<sup>38</sup> D. Laqua, 'The Tensions of Internationalism: Transnational Anti-Slavery in the 1880s and 1890s', *The International History Review*, vol. 33, 2011, pp. 705-726; H. Osawa, 'Wesleyan Methodists, Humanitarianism and the Zulu Question, 1878-87', *Journal of Imperial and Commonwealth History*, vol. 43, 2015, pp. 418-437; Z. Laidlaw, 'Slavery, Settlers and Indigenous Dispossession: Britain's empire through the lens of Liberia', *Journal of Colonialism and Colonial History*, vol. 13, 2012, n.p.

<sup>39</sup> J. Heartfield, *The Aborigines Protection Society: Humanitarian Imperialism in Australia, New Zealand, Fiji, Canada, South Africa, and the Congo, 1836-1909*, London, 2011, pp. 114-118; *Aborigines' Friend*, [n.d.] December 1884, Issue 2; *The Times*, 16 August 1884, p. 10; *Pall Mall Gazette*, 3 September 1886, p. 2.

<sup>40</sup> *Herald*, 30 June 1883, p. 2.

<sup>41</sup> *South Australian Register*, 16 July 1883, p. 6.

consisting of senior government officials.<sup>42</sup> The legislative council discussed and passed legislation, but it was subject to approval by the governor or the Crown. The legislative council included all but one member of the executive council, as well as four nominees of the Governor, and sixteen elected members representing thirteen districts. To be electable, council members had to have a £100 freehold or £10 annual value on their land, so they were usually businessmen with significant landholdings.<sup>43</sup> Unlike the executive council members, many of whom were imperial officials who had held positions across the British Empire, the nominated legislative councillors were long-standing colonists.<sup>44</sup> In the realm of Aboriginal policy, Western Australian-born members often resented interference from the colonial office, which they felt was driven by humanitarian concerns, rather than pragmatic ones.<sup>45</sup>

Broome came to the colony with a background in native administration. Between 1875 and 1877, he had worked in Natal as colonial secretary, where he helped oversee revisions in the native administration.<sup>46</sup> From 1878 he worked in Mauritius, first as colonial secretary, and then as lieutenant-governor.<sup>47</sup> A month into his governorship of Western Australia, Broome wrote to the British Secretary of State for the colonies, the Earl of Derby, that he was 'not satisfied with the management of the prison' on Rottnest.<sup>48</sup> He had already issued a warning to superintendent W.D. Jackson for his conduct. Upon investigation he wrote that the 'supervision by the Governor and visiting justices [had been] very occasional and unsatisfactory. I could only find records of seven official visits in the last three and a half years.'<sup>49</sup> Derby agreed that further enquiry was necessary to ensure 'a more regular and systematic supervision over it' [Rottnest].<sup>50</sup> After visiting on 31 July 1883, Broome wrote in the visitors' book that 'arrangements for the sick appear anything but satisfactory'.<sup>51</sup> He recognised that those in the north-west were particularly susceptible to catching diseases, and more likely to die from them.

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<sup>42</sup> J. Forrest, *Notes on Western Australia, with statistics for the year 1884*, Perth, 1984, p. 6.

<sup>43</sup> *ibid.*

<sup>44</sup> Z. Laidlaw, *Colonial Connections 1815-45: patronage, the information revolution and colonial government*, Manchester, 2005; A. Lester and D. Lamberts (eds), *Colonial lives across the British Empire: imperial careering in the long nineteenth century*, Cambridge, 2006.

<sup>45</sup> Western Australian Legislative Council Debates, 6 November 1884, p. 235.

<sup>46</sup> A. Curthoys and J. Martens, 'Serious Collisions: Settlers, Indigenous People, and Imperial Policy in Western Australia and Natal', *Journal of Australian Colonial History*, vol. 15, 2013, p. 128.

<sup>47</sup> ADB, vol. 3, 1969.

<sup>48</sup> Broome to Derby, 30 August 1883, TNA CO 881/8, p. 1.

<sup>49</sup> *ibid.*

<sup>50</sup> Derby to Broome, 17 October 1883, TNA CO 881/8, p. 2.

<sup>51</sup> Green and Moon, *Far From Home*, p. 62.



However, he was convinced that mortality rates could be reduced if the superintendent, medical officer and prison staff brought 'more order and method' to the care of the sick.<sup>52</sup> Broome's views on Rottnest explain his later conviction that medical care should be provided to the Aboriginal population in general. To some extent, the sanitary regimes on Rottnest were a testing ground for public health strategies for the wider Indigenous population.<sup>53</sup>

Influenza continued to rage on Rottnest: out of a total of 179 prisoners, between 53 and 80 prisoners died from influenza between June and September 1883.<sup>54</sup> Then, an outbreak of measles in October and November affected 141 out of 147 prisoners, but caused no fatalities.<sup>55</sup> As a prisoner named Brandy said, 'Too many kill'em. Too many make'em ill'.<sup>56</sup> To investigate both the management of Rottnest and public health strategies more broadly, Broome decided to form a commission, which, he assured Lord Derby, would 'be carefully constituted'.<sup>57</sup> As chairman, Broome selected the commissioner of the crown lands, John Forrest, who recognised the need to improve Aboriginal welfare. The selection of both the comptroller of convicts, John Frederick Stone, and the colonial surgeon, Alfred Robert Waylen, underlines the dual focus of the report in terms of prison discipline and Indigenous health. The other legislative councillors on the committee were Maitland Brown, member for Fremantle, and George Shenton, member for Toodyay. It is notable that none of the commission represented northern districts, where attitudes to the native question were particularly conservative.

Broome ordered the commission to investigate the treatment of Rottnest prisoners, the condition of prison buildings and the supervision by staff under the current regime. He further instructed it to suggest changes to improve the health of prisoners, enhance security on the island and increase profits from prison labour.<sup>58</sup> Alternatively, the commission could recommend that Aboriginal prisoners be

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<sup>52</sup> *ibid.*

<sup>53</sup> a 'D. Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India*, Berkeley, 1993, pp. 98-99.

<sup>54</sup> Green and Moon, *Far From Home*, p. 63.

<sup>55</sup> Broome to Fraser, 22 December 1883, State Record Office of Western Australia (hereafter, SROWA), cons. 527 ser. 675, no. 1883/0146.

<sup>56</sup> WAPP, 1884, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 13.

<sup>57</sup> Broome to Derby, 30 August 1883, TNA, CO 881/8, p. 2.

<sup>58</sup> WAPP, 1844, no. 32, Report into the Treatment of Aboriginal Native Prisoners, p. 3.

accommodated in local gaols and worked in chain gangs, and Rottneest be disbanded.<sup>59</sup> As a secondary matter, Broome instructed the commission to consider whether the government should provide medical relief to destitute, elderly and sick Aboriginal people, and whether to grant land for Aboriginal missions.<sup>60</sup> The committee interpreted the latter instructions as part of a debate about the extent to which the government had a 'duty' of care to an Aboriginal race believed to be 'doomed' to extinction.<sup>61</sup> The report's introduction describes the rapid decline in Aboriginal numbers in the home districts within a global context of gradual extinction. Yet, the commission argued, no rapid decline had been seen in the northern districts, making government intervention desirable to retain Aboriginal labour in the profitable pearling and sheep-rearing industries.<sup>62</sup> This is not as contradictory as it might seem; Russel MacGregor has shown that increased belief in doomed race theory in the 1880s (after the 'extinction' of Aboriginal Tasmanians in 1876) led to renewed calls for protection of a vulnerable race.<sup>63</sup> The commission gathered evidence on issues relating to the general Aboriginal population through correspondence with missionaries and resident magistrates but the bulk of their evidence was interviews with staff and prisoners on Rottneest, conducted between 27 and 29 October 1883. The commission interviewed six members of staff: superintendent W.D. Jackson; chief warder Adam Oliver; schoolmaster Samuel Walcott; superintendent of the salt works, Adrien Courderot; pilot Samuel Butcher; and head of the boys' reformatory, John Watson.

#### *Aboriginal testimony to the commission*

The commission also interviewed seven Aboriginal prisoners whose anglicised names were Bob Thomas, Widgie Widgie Johnnie, Charlie, Sambo, Brandy, Harry and Benjamin.<sup>64</sup> They were chosen because they came from a variety of districts – including Beverley, the North District, Lower Gascoyne, Gulleway, Victoria Plains and Eyre's Sand Patch. Their convictions also varied: Brandy and Benjamin had stolen sheep; Harry and Charlie had been sentenced for *inter se* murder; Bob Thomas was convicted for the

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<sup>59</sup> WAPP, 1844, no. 32, Report into the Treatment of Aboriginal Native Prisoners, p. 8.

<sup>60</sup> WAPP, 1844, no. 32, Report into the Treatment of Aboriginal Native Prisoners, p. 3.

<sup>61</sup> In fact, belief the inevitable

<sup>62</sup> WAPP, 1844, no. 32, Report into the Treatment of Aboriginal Native Prisoners, p. 3, p. 8.

<sup>63</sup> R. Macgregor, *Imagined Destinies: Aboriginal Australians and the Doomed Race Theory, 1880-1939*, Carlton South, 1997, pp. 60-62.

<sup>64</sup> WAPP, 1884, no. 32, Report into the Treatment of Aboriginal Native Prisoners, pp. 12-13. On European naming of Indigenous people, see: C. Anderson, 'Writing Indigenous Women's Lives in the Bay of Bengal: cultures of Empire in the Bay of Bengal, 1789-1906', *Journal of Social History*, vol. 45, 2011, p. 481.

attempted murder of a European settler, absconding and theft; Charlie had been convicted of theft for returning a stolen pipe to a policeman. Both Sambo and Bob Thomas were serving their second term on Rottnest.

The prisoners' geographical diversity is reflected in different English language skills seen in their statements.<sup>65</sup> Although the Aboriginal testimony was presented as spoken, the prisoners were actually asked a series of questions. This gives the witness statements a degree of cohesion – with each other and the colonial administration – that is not necessarily representative of reality. Nonetheless, the prisoners speak around, and in spite of the strictures of the form imposed upon them by the commission and the colonial archive.<sup>66</sup> When the commission's report was published all the prisoners' testimony was printed in full, but much of the staff's testimony was redacted. This is particularly significant in the context of the press build-up in which Indigenous testimony was seen as authentic and official testimony potentially suspect. On the other hand, the Aboriginal prisoners were asked fewer questions and gave shorter witness statements, which could have also influenced the editorial strategy.

Aboriginal witnesses testified on the following themes: accommodation; clothing and coverings; grooming; food; and illness. When we compare their testimony with the commission's recommendations, we can see that Indigenous testimony shaped policy only in so far as it confirmed existing paradigms of penalty and Indigeneity. The commission's recommendations reveal tensions between a desire for uniformity – to render the Aboriginal body a standard convict – and a desire to ascribe racial understandings for the spread of disease – to render the Aboriginal body in need of protection.

The commission identified two features with the prison accommodation that were causing disease: overcrowding and poor ventilation. Bob Thomas was the only prisoner to complain about overcrowding. He said it was too 'close' at night and the 'smell bad'.<sup>67</sup> The commission, however, emphasised overcrowding. It claimed that 'a

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<sup>65</sup> J. Damousi, *Colonial Voices: A Cultural History of English in Australia 1840-1940*, Cambridge, 2010, pp. 23-47.

<sup>66</sup> A. Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense*, Princeton, 2010.

<sup>67</sup> WAPP, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 12.

great error was...made in constructing the prison with so many small cells'.<sup>68</sup> Although the prison had been designed as a single celled prison, in line with European paradigms of punishment, prisoners shared cells because that they were unhappy being alone. The commission recommended adding ventilation holes and knocking cells together so that each prisoner had at least 280 cubic feet (8m<sup>3</sup>) of space.

The commission theorised that the cold weakened bodies to disease, especially for prisoners arriving from tropical climates.<sup>69</sup> As a result, it recommended issuing new uniforms, providing thicker blankets and constructing fireplaces. The provision of two sets of uniforms upon arrival would have a number of beneficial effects for general health. First, it would prevent the transmission of measles through clothing as prisoners swapped their (infected) clothes to welcome new arrivals. Secondly, when prisoners got wet they would be able to change, rendering them less prone to influenza. Harry complained that the 'clothes are not sufficient, and no change is provided'.<sup>70</sup> Sambo said, 'I am very cold in winter. I have not [got] enough clothes.'<sup>71</sup> However, a change of clothes had another motive: which was to produce a uniform appearance common to institutional settings; and in line with European notions of dress and decorum.<sup>72</sup> The commission also recommended that two sets of blankets should be provided to prisoners, to ensure prisoners felt warm at night. Widgie Widgie Johnnie complained 'I am cold in winter, my blanket [is] no good, it is old'.<sup>73</sup>

A key recommendation of the commission was the introduction of new sanitary routines to keep prisoners clean. It suggested prisoners have their hair and beards cut short on arrival and periodically thereafter.<sup>74</sup> The commission attributed the dirtiness of the prisoners, to their own 'bush habits', but stressed that this was incompatible to the cramped spaces of a prison.<sup>75</sup> The shaving of hair and beards in a penal context was

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<sup>68</sup> WAPP, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 6.

<sup>69</sup> This was in line with the medical paradigms of the time, see: *Cassell's Household Guide: A Complete Encyclopaedia of Domestic and Social Economy*, vol. 1, London, 1869, p. 187.

<sup>70</sup> WAPP, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 13.

<sup>71</sup> *ibid.*

<sup>72</sup> C. Anderson, 'Fashioning Identities: Convict dress in colonial Southeast Asia', *History Workshop Journal*, vol. 52, 2001, pp. 152-174; B. Attwood, *The Making of the Aborigines*, Sydney, 1989, p. 20.

<sup>73</sup> WAPP, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 12.

<sup>74</sup> WAPP, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 6.

<sup>75</sup> S. Konishi, *Aboriginal Male in the Enlightenment World*, p. 43.

common in Australia and abroad.<sup>76</sup> As well as hygienic benefits, hair removal was ritual humiliation, especially for Aboriginal men whose beards and hair arrangements were important markers of status and identity.<sup>77</sup> Since lice did not survive well in Aboriginal hair, the hygienic benefit of shaving was less important than its 'civilising effect'.<sup>78</sup> Thus, the shaving of Indigenous peoples' hair and beards had less to do with their health, and more to do with bringing them in line with uniform penal practice. It is notable, then, that none of the prisoners complained about feeling dirty, or having long hair and beards.

The commission recognised that poor diet was negatively affecting the prisoners, both physically and mentally. Their usual diet was seasonally varied and involved geographical mobility.<sup>79</sup> In contrast, the prison diet was extremely monotonous. The testifying prisoners did not complain about a lack of food, but a lack of variety. Harry stressed that 'The food is always the same no change and we get tired of it'.<sup>80</sup> In particular, the prisoners wanted to eat vegetables. Bob Thomas reminisced about eating 'a few small potatoes from the Superintendent's garden' on three occasions about eighteen months ago.<sup>81</sup> The commission recommended that the superintendent's garden be turned into a prison garden, so the prisoners could receive a 'liberal...allowance' of vegetables.<sup>82</sup> It also suggested that prisoners cook their own food on a Sunday and receive hooks to catch fish.

When the commission arrived, the prison was in the midst of a measles outbreak, affecting 141 out of 147 of the Aboriginal prisoners.<sup>83</sup> The commission called this 'disadvantageous circumstances' for their investigation.<sup>84</sup> For the prisoners, the severe epidemics were terrifying. Five of the seven prisoners who testified described fear of catching an illness, seemingly in response to the general question 'Do you like Rottneest?' Harry articulated his fear of illness in terms of a fear of contagion: 'I do not like Rottneest.'

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<sup>76</sup> J. Damousi, *Depraved and Disorderly: Female convicts, sexuality and gender in colonial Australia*, Cambridge, 1997, p. 86; S. McConville, *English Local Prisons 1860-1900: Next only to death*, London, 1994, p. 285.

<sup>77</sup> Konishi, *Aboriginal Male in the Enlightenment World*, p. 48-50.

<sup>78</sup> WAPP, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 14.

<sup>79</sup> Green, *Broken Spears*, 1984, p. 3.

<sup>80</sup> WAPP, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 13.

<sup>81</sup> WAPP, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 12.

<sup>82</sup> WAPP, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 7.

<sup>83</sup> Waylen to Fraser, 31 October 1883 and Barnett to Fraser, 2 November 1883, SROWA, cons. 527, ser. 675, 1883/0146.

<sup>84</sup> WAPP, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 6.

I am afraid of catching the complaints of others, and might get ill'.<sup>85</sup> The other two prisoners described having already fallen ill. Charlie talked about his experience of illness: 'I do not like Rottnest. I am sick of it. I have been sick and do not eat much.'<sup>86</sup>

### *Rottnest after the commission*

The commission completed its report in September 1883, though a year would pass before it was tabled in the legislative council in September 1884, and another year before the Council discussed its recommendations, in August 1885. Prior to the legislative council's approval, the report had already had an important impact on the sanitary regimes of the prison. Governor Broome appointed a new superintendent, W.H. Timperley (a former police inspector), and instructed him to 'embody the recommendations of the commission' in 1884.<sup>87</sup> Timperley's main focus was on improving the general health of the prisoners. He wrote to Broome on 11 June 1884 saying: 'The subject which gives me the most anxiety is the bad health of many of the prisoners.'<sup>88</sup> On his first day as superintendent, Timperley issued orders for sick prisoners to receive gruel and broth on Sundays, when they had previously received no supper. He also ordered that sacks should be stuffed with straw as bedding for the sick, instead of having patients lie on the floor. Timperley put water troughs in the prison yard and encouraged prisoners to bathe in the sea.<sup>89</sup> This combination of treatment was found to work well against rashes and other kinds of skin disease.<sup>90</sup> Prisoners had their beards and hair cut short, and were provided with two sets of prison uniforms and caps, which were regularly cleaned. Timperley ordered £138 and 15 shillings worth of duck blankets to replace 'miserable piece[s] of dirty blankets' or sacks the prisoners had been making do with.<sup>91</sup> The prisoners also enjoyed a more varied diet consuming 2,430 kilograms of vegetables in 1884, which resulted in a visible improvement in their health.<sup>92</sup> Timperley also oversaw improvements in the arrangements of the prison building to improve general health. Two prisoners were assigned as cleaners, purifying

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<sup>85</sup> WAPP, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 13.

<sup>86</sup> WAPP, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 12.

<sup>87</sup> WAPP, 1887, no. 5, Report on Rottnest Prison for the Year 1886, p. 3

<sup>88</sup> Timperley to Broome, 11 June 1884, SROWA, cons. 527, ser. 675, 1883/0143.

<sup>89</sup> WAPP, 1885, no. 11, Report on Rottnest Prison for the year 1884, p. 3.

<sup>90</sup> Hope to Fraser, 17 Jan 1891, ser. 527, cons. 675, 1890/0133.

<sup>91</sup> Timperley to Broome, 11 June 1884, SROWA, cons. 527, ser. 675, 1883/0143.

<sup>92</sup> WAPP 1887, no. 5, Report on Rottnest Prison for the Year 1886, p. 3.

the latrines with lime on a daily basis, and dry-scrubbing the cells to stop them becoming damp.<sup>93</sup> The cesspit was also moved further away from the settlement.<sup>94</sup>

However, infectious diseases continued to be a problem owing to cold weather, inadequate accommodation, and the continued arrival of prisoners from the north. In May 1886, when 100 prisoners fell ill from influenza, Timperley was surprised that the disease attacked the 'strongest and most civilised natives....side by side with attenuated miserable old savages'.<sup>95</sup> One of the prisoners who fell ill was Sambo – who had testified to the Rottnest commission. On 6 March 1886, Sambo was moved to the 'hospital' wards in the juvenile reformatory where he was given soup, porridge, preserved milk and brandy (from Timperley's private supply). Although Dr Hope expected Sambo to recover, a little over a month later he passed away. Superintendent William Timperley reported that 'his death caused quite a gloom among his fellow prisoners' because he was a 'general favourite...obliging [and of a] cheerful disposition'.<sup>96</sup> The fate that Sambo had feared when testifying to the commission in 1883 had come true three years later: 'I do not like Rottnest because it is a bad place. I do not like it because I might get bad and die'.<sup>97</sup>

### *Aborigines Protection Board*

The second outcome of the Rottnest commission was the creation of an Aborigines Protection Board tasked with the welfare of the wider Aboriginal population. This, however, took three years. Two years after the completion of the report, on 21 August 1885, John Forrest moved the establishment of a select committee to discuss its recommendations. He nominated almost exclusively members of the original 1883 commission, but the council elected a far more conservative select committee. In its report of 9 September 1885, the select committee approved superintendent Timperley's changes to Rottnest and agreed to a minimum requirement of 280 cubic feet (8 m<sup>3</sup>) of

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<sup>93</sup> WAPP 1887, no. 5, Report on Rottnest Prison for the Year 1886, p. 4.

<sup>94</sup> *ibid.*

<sup>95</sup> WAPP 1887, no. 5, Report on Rottnest Prison for the Year 1886, p. 3.

<sup>96</sup> Timperley to Smith, 29 June 1886, SROWA, ser. 527, cons. 675, 1886/27; Hope to Smith, 6 April 1886, SROWA, ser. 527, cons. 675, 1886/1451.

<sup>97</sup> WAPP, 1884, no. 32, Report into the treatment of Aboriginal Native Prisoners, p. 12.

space per prisoner, to be pursued under the advice of the public works department.<sup>98</sup> However, it disagreed with the commission's recommendation for the formation of a board for the protection of Aboriginal people. The Rottneest commission had insisted that the government should provide medical care and poor relief to Aboriginal people, on the same principles as it did to British paupers. They suggested that it was 'not only desirable but absolutely necessary' to create a board responsible for Aboriginal welfare.<sup>99</sup> All of the Council's select committee except Forrest, however, disagreed, calling the board 'unnecessary'.<sup>100</sup> Instead, the select committee proposed appointing existing government residents, resident magistrates and police magistrates as protectors of natives; they also suggested nominating certain justices of the peace and respectable settlers as 'honorary' protectors. In effect, they proposed a renewed focus on Aboriginal protection within the existing power structure that, with no board to supervise them, was little more than a change in title.

The select committee, however, was not to prevail. After a range of political pressures, coming from Governor Broome, the missionary John Gribble and his supporters, the Aborigines Protection Society in Britain, and the Colonial Office, the legislative council on 2 September 1886 finally passed the Aborigines Protection Act, which established the Aborigines Protection Board in line with recommendation of the 1883 Rottneest's commission.<sup>101</sup> A further motivation may have been the establishment of an Aborigines Protection Board in New South Wales (1883) and the passing of the Aborigines Protection Act in Queensland (1886).<sup>102</sup> On 20 December 1886 Broome wrote to the Secretary of State for the colonies, Sir Henry Holland, informing him that the Aborigines Protection Act had resulted from 'the native commission which I appointed in 1883'.<sup>103</sup> The board consisted of five people appointed by, and answerable to, the governor. The board would be based in Perth, but would function through, and supervise the actions of, a network of protectors and honorary protectors created by

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<sup>98</sup> WAPP, 1885, no. A. 15, Report of the Select Committee of the Legislative Council appointed to consider and report upon questions connected with the Treatment and Condition of Aboriginal Natives of the Colony, p.3.

<sup>99</sup> WAPP, 1884, no. 32, Report into the Treatment of Aboriginal Native Prisoners, p. 5.

<sup>100</sup> WAPP, 1885, no. A15, Report of the Select Committee on the Aboriginal Natives of the Colony, p. 3.

<sup>101</sup> Western Australia, 50 Vict. no. 25, An Act to provide for the better protection and management of the Aboriginal natives of Western Australia, and to amend the Law relating to certain Contracts with such Aboriginal Natives, 1886. See the essays by Jane Lydon and Ann Curthoys in this volume.

<sup>102</sup> A. Doukakis, *The Aboriginal People, Parliament and 'Protection' in New South Wales, 1856-1916*, Sydney, 2006, p. 10.

<sup>103</sup> Broome to Holland, 20 December 1886, TNA, CO 18/207, p. 688.



the 1885 select committee. The board would tender an annual estimate for their expenditure, pending approval by the Governor and the legislative council.<sup>104</sup> The three broad aims of the board were welfare, protection and reserves. First, the board would oversee the distribution of items including blankets, clothing, food rations and medical care to improve welfare generally. These were the tasks that the Rottneest commission had initially envisioned for the board. The Act also instructed the board to protect Aboriginal people from mistreatment by European employers and empowered it to establish land reserves for Aboriginal use. The board, however, had no direct responsibility for Aboriginal prisoners, who continued to be administered directly by the colonial government.

### *Responsible Government and Section 70*

On 12 July 1887, Governor Broome wrote to Secretary of State Holland suggesting that, if Western Australia were to receive responsible government, the colonial office should make 'some special arrangement...to ensure the protection and good treatment of the northern native population'.<sup>105</sup> He suggested the Aborigines Protection Board be allotted £5000 a year to spend on the Aboriginal population. Holland agreed that 'some measure would be necessary for placing the Aboriginal inhabitants of the Colony under the care of a body independent to the parliament of the day.'<sup>106</sup> The legislative council contested the measure, claiming that 'no ground whatever of necessity has been shown for placing the interests of the Aboriginal population in the hands of a body independent of the local ministry.'<sup>107</sup> Most of the legislative council and the general public interpreted the 'special provision' as a reproach for their treatment of the Aboriginal population.<sup>108</sup> In the aftermath of the highly publicised allegations by Reverend J.B. Gribble and David Carley, the colonists were particularly sensitive about their international reputation regarding the mistreatment of Aboriginal people. However, the colonial office insisted on the measure

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<sup>104</sup> Western Australia, 50 Vict. no. 25, Aborigines Protection Act, 1886.

<sup>105</sup> Broome to Holland, 12 July 1887, BPP 1889, vol. LV, no. C.5734 and C.5752, Correspondence respecting responsible government, p. 384.

<sup>106</sup> Holland to Broome, 3 January 1888, BPP 1889, Correspondence respecting responsible government, p. 396.

<sup>107</sup> Steere to Broome, 6 April 1888, BPP 1889, Correspondence respecting responsible government, p. 400.

<sup>108</sup> Broome to Knutsford, 28 May 1888, BPP 1889, Correspondence respecting responsible government, pp. 405-406.

during the negotiations for responsible government, and the legislative council reluctantly agreed. On 5 April 1889, it passed the third reading of two bills, one in favour of responsible government and another accompanying bill outlining the duties of the Aborigines Protection Board.<sup>109</sup> In 1889, section 70 of the Western Australian Constitution Act stipulated that £5000 a year, or one per cent of the colony's gross revenue, whichever was greater, would be awarded to the Aborigines Protection Board to administer the needs of the Aboriginal population and prevent their mistreatment at the hands of colonists.

The Aborigines Protection Board would last for seven years, before being abolished by Premier John Forrest in 1897 when the British government agreed to repeal Section 70 from the colony's constitution. During those seven years, the Board occasionally intervened in matters relating to Aboriginal prisoners. On Queen Victoria's golden jubilee in 1887, Governor Broome released 25 Rottnest prisoners on behalf of the Aborigines Protection Board.<sup>110</sup> From 1887, the Aborigines Protection Board offered to pay the cost of returning discharged Aboriginal prisoners to their own country from their annual budget.<sup>111</sup> In 1888, the Board began reviewing summary cases in which Aboriginal people appeared as defendants, in order to try to protect them from unjust rulings.<sup>112</sup> In 1893, Governor Gerard Smith suggested that Aboriginal prisoners should come under the direct protection of the board, and be funded out of the board's £5000 annual budget; this scheme was not pursued.<sup>113</sup> In 1897, the board gave the prison a 'magic lantern and slides' for the Aboriginal prisoners' enjoyment.<sup>114</sup> When premier John Forrest abolished the board in 1897, the board's chairman, Dr Alfred Waylen, reminded him of their joint recommendation, as part of the 1883 Rottnest commission,

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<sup>109</sup> Broome to Knutsford, 9 April 1889, BPP 1889, Correspondence respecting responsible government, p. 451.

<sup>110</sup> Government Gazette Extraordinary of Western Australia, no. 33, 18 June 1887, TNA CO 18/208, p. 497.

<sup>111</sup> Green and Moon, *Far from Home*, p. 56.

<sup>112</sup> D. Black and G. Bolton, *Biographical Registers of Members of the Parliament of Western Australia*, Vol. 1, Perth, 1990, p. 168. Western Australia Parliamentary Debates, 28 March 1888, p. 344.

<sup>113</sup> *West Australian*, 23 May 1882, p. 3.

<sup>114</sup> Angelo to Forrest, 1 January 1898, Report on Rottnest Prison for Year 1897, Perth, 1898, SROWA, cons. 130, Box. 3, Bundle 4.

that the board was an 'absolutely necessary' provision for the welfare of the Aboriginal population, to no avail.<sup>115</sup>

### *Conclusion*

Rottnest is key to understanding Broome's recommendation for, and the colonial office's insistence on, Section 70 as the price for responsible government. While the roots of section 70 in the Rottnest commission are not immediately apparent, the Rottnest commission fundamentally shaped this special provision. First, the Rottnest affair demonstrated to Broome and the colonial office that supervision over the colonial government was necessary when it came to Aboriginal policy. This was the fundamental reason he recommended section 70. Second, the success of the regime changes under Timperley in reducing mortality rates at Rottnest showed that Aboriginal people responded to healthcare, which justified the government providing welfare for the wider population. Third, and significantly, the Rottnest commission laid the groundwork for the Aborigines Protection Board, which was the administrative body that made Section 70 possible.

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<sup>115</sup> Waylen to Smith, 18 May 1896, WAPP, 1896, no. 18, Further Correspondence on the subject of the position of the Aborigines Protection Board in Western Australia, Perth, p. 12.