

# ***Taking Liberty: Indigenous Rights and Settler Self-Government in Colonial Australia, 1830–1890* by Ann Curthoys and Jessie Mitchell**

(Cambridge: Cambridge University Press, 2018), 432 pp

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Ann Curthoys and Jessie Mitchell combine two familiar histories of Australian settler colonialism to explore their interrelations. One of these is the history of how the Australian colonies attained self-government in the period 1830–90. This history has often been told proudly as a narrative of progression from convict and dependent origins to an independent liberal democracy. Alongside the attainment of self-government, the other history the book examines is that of the violent invasion of Indigenous peoples' lands and subsequent attempts to regulate Indigenous people's lives. Foremost among the questions *Taking Liberty* seeks to address is how the treatment of Indigenous people changed as greater autonomy was gained in the colonies. The book also considers how settler and British ideas about Indigenous people influenced the debates about whether the colonies should be self-governing. Questions about how Indigenous people should be governed in the colonies, and what Indigenous people's experiences in the colonies reflected about settler abilities to govern, were prominent in these discourses.

*Taking Liberty* is divided into four parts that traverse the specificities of each colony's transition to self-government across the period 1830–90. The first section of the book considers the period 1830–46, when the colonies were still largely governed by the British and settler expansion forced the British Government, settlers, missionaries and Indigenous peoples to attempt to reconcile their conflicting interests. The narrative extending through this

section of the book highlights increasing violence by both Indigenous people and settlers as the latter moved to procure more land. Within this context, humanitarianism, with a strong evangelical influence, is shown as a determined proponent for Indigenous protection. Here, Curthoys and Mitchell draw attention to the transnational history of the anti-slavery movement, demonstrating the links between abolitionism and growing humanitarian sentiments in the colonies—much of which called for the protection of indigenous peoples in Australia, North America and the Cape Colony. This deft change in focus—from extremely local events to the global trends that influenced them—is characteristic of *Taking Liberty* as a whole.

The late 1840s and early 1850s saw gradually increasing powers of self-government in the Australian colonies and the British withdrawal from imperial protection of Indigenous people. In the 1840s, humanitarian concern for Indigenous people declined as transnational ideas about racial hierarchies became more popular and, within Australia, there was a prevalent perception that attempts to ‘civilise’ Indigenous people had failed. In Part II, *Taking Liberty* provides a detailed account of the debates about the granting of self-government, with commentary on how the issue of Indigenous welfare was included or, more often, excluded from these discussions. An interesting part of this history is the connection Curthoys and Mitchell highlight between growing opposition to the transportation of convicts and continuing debates about Indigenous policy. Settler opposition to the transportation of convicts provided a large part of the impetus for self-government in the eastern colonies. Settlers considered the practice deplorable on a number of grounds, including the beliefs that homosexual sex was widespread among convicts, that convict labour undermined other workers’ wages and that settlers would have to pay for the extra cost of policing the convicts. Indigenous welfare was also at times raised as one of the reasons to stop transportation, as convicts were seen as responsible for frontier violence.

One of the most important contributions the book makes to histories of Indigenous experiences of settler colonialism is to draw Britain back into the sphere of responsibility for injustices experienced by Indigenous people. On the whole, *Taking Liberty* is not explicitly presentist, though it is extremely relevant to present political discourses. However, in their conclusion, Curthoys and Mitchell do draw attention to the lack of recognition in Britain for its participation in the dispossession of, and violence against, Indigenous people in Australia. Here, they draw on

historian Zoë Laidlaw's essay 'Imperial Complicity', in which she argues that: 'Historians of empire who write from an imperial British perspective have also reproduced the nineteenth-century tendency to distance metropolitan Britain, and Britons, from settler colonialism.'<sup>1</sup> Curthoys and Mitchell argue that 'metropolitan Britain shares with British-founded nation states like Australia a moral responsibility to acknowledge and respond to Indigenous claims for restitution, compensation, and sovereignty'.<sup>2</sup> In highlighting Britain's role in this history, Curthoys and Mitchell raise the possibility of Indigenous calls for recompense from Britain.

While *Taking Liberty* shows the various ways that Indigenous people's lives worsened in each Australian colony as these colonies became increasingly autonomous, it does not exonerate British administrators from mistreatment of Indigenous people or praise the British for their good governance of Indigenous people prior to the granting of self-government. The book avoids perpetuating an unhelpful historical binary between British governments who valued Indigenous welfare and violent settlers who valued the acquisition of new land. Rather, Curthoys and Mitchell show the contradictions and variations in British responses to Indigenous people. A striking example of these contradictions was the 1837 *Report from the Select Committee on Aborigines (British Settlements)*, which condemned the treatment of indigenous peoples in Britain's colonies but did not criticise colonialism itself.

The book clearly indicates that British administrators were aware that granting self-government to the Australian colonies was likely to enable greater violence against Indigenous people by the settlers. Curthoys and Mitchell devote a chapter ('Who Will Govern Aboriginal People?') in Part II of the book to describing the transfer of control over Indigenous policy from the British to the colonies. They introduce the chapter by stating their desire to explain why the British relinquished complete control over Indigenous policy in the 1850s, despite 'imperial government rhetoric from the late 1830s on the need for British, and not colonial, legislatures to manage Aboriginal policy'.<sup>3</sup> Their explanation is that

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1 Zoë Laidlaw, 'Imperial Complicity: Indigenous Dispossession in British History and History Writing', in *Emancipation and the Remaking of the British Imperial World*, ed. Catherine Hall, Nicholas Draper and Keith McClelland (Manchester: Manchester University Press, 2014), 142, doi.org/10.7228/manchester/9780719091834.003.0008.

2 Curthoys and Mitchell, *Taking Liberty*, 412.

3 Curthoys and Mitchell, *Taking Liberty*, 208.

the handover was a gradual process that had been occurring 'for some time'.<sup>4</sup> The reasons for this gradual process, however, are not entirely clear. Curthoys and Mitchell imply a loss of interest on the part of the British for Indigenous people, perhaps because of a widespread idea that 'civilising' attempts had failed.

This reorientation of responsibility is perhaps a product of Curthoys and Mitchell's unwillingness to consider Australia in isolation. One instance where *Taking Liberty's* international perspective provides a particularly insightful contrast is in its description of the early 1850s, when the technicalities for the colonies' self-government were being finalised. Voting rights were restricted by gender and property requirements, but not by race. However, Curthoys and Mitchell write that, in Australia, 'the idea that Aboriginal people might actually become involved in political processes remained an opportunity for rhetorical scorn, not for serious consideration'.<sup>5</sup> This disdain at the idea of Indigenous people voting is not surprising given the book's coverage of the dearth of Indigenous liberties in the Australian colonies and the racist dismissals of their ability to participate in British society. However, the book indicates that, at around the same time, the constitution approved in the Cape colony instituted a 'colour-blind franchise' that allowed all the Queen's subjects, regardless of race and class, to vote.<sup>6</sup> Moreover, *Taking Liberty* includes details about calls for the inclusion of Māori in the New Zealand franchise. This indicates that settlers in Australia were not without international precedents that could have helped them imagine a more liberal inclusion of Indigenous people in the democracies they were creating.

Part III of *Taking Liberty* examines separately the colonies of Tasmania, Victoria, New South Wales, Queensland and South Australia in the years following their attainment of self-government. Each colony had become responsible for the management of its Indigenous population and vast differences were evident in the ways each went about this role. At one extreme was Victoria's attempt to control all aspects of Indigenous lives. The Victorian approach was characteristic of 'institutionalisation and surveillance', with the confinement of Indigenous people to reserves and missions.<sup>7</sup> Victoria's administration of Indigenous people was strongly

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4 Curthoys and Mitchell, *Taking Liberty*, 208.

5 Curthoys and Mitchell, *Taking Liberty*, 233.

6 Curthoys and Mitchell, *Taking Liberty*, 219.

7 Curthoys and Mitchell, *Taking Liberty*, 269.

influenced by a continuation of humanitarianism and was a forerunner of the type of policies the other colonies would later adopt. In contrast, New South Wales was largely ambivalent towards the management of Indigenous people. In the late 1850s, debate over Indigenous policy centred on the frontier violence that was occurring in the northern districts of New South Wales. However, in 1859, the role of intervening in frontier violence in this region was transferred to the newly created colony of Queensland. Curthoys and Mitchell argue that New South Wales' minimalist approach to Indigenous policy allowed Indigenous people in that colony more freedom than they had in Victoria. In Tasmania, Curthoys and Mitchell write that the colonists' greatest priority was to forget their penal history and the past conflict with Indigenous people. As such their 'management' of Indigenous people in the colony was, like New South Wales, minimal.

At the other extreme, in terms of humanitarian concern, was Queensland, where the seizure of land was still underway and frontier warfare was rife.<sup>8</sup> Queensland governments in the 1860s did not attempt to govern Indigenous people but did pay for a Native Mounted Police force that was mobilised by settlers in frontier conflicts. Meanwhile, South Australia's Indigenous policy was marked by a contradiction: the colony's pride in their history of progressiveness and liberalness existed alongside an advancing pastoral frontier and its attendant violence. South Australia resembled Victoria in some of its policies for governing Indigenous people, including humanitarian ideals and the establishment of a few missions. The colony was exceptional among its fellow Australian colonies for its early acknowledgement of Aboriginal rights to occupy the land. This recognition is evident in the 1836 Letters Patent that established the colony, as well as Governor Hindmarsh's first proclamation on 28 December 1836.<sup>9</sup> Hindmarsh advised settlers of his intention to:

Take every lawful means for extending the same protection to the Native Population as to the rest of His Majesty's Subjects and of my firm determination to punish with exemplary severity, all acts of violence or injustice which may in any manner be practiced or

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8 Curthoys and Mitchell, *Taking Liberty*, 313.

9 The relevant clause in the Letters Patent reads: 'Provided always, that nothing in these our letters patent contained shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own Persons or in the Persons of their Descendants of any Lands therein now actually occupied or enjoyed by such Natives.' Mandy Paul, 'Letters Patent', 2013, accessed 1 January 2020, [adelaidia.sa.gov.au/subjects/letters-patent](http://adelaidia.sa.gov.au/subjects/letters-patent).

attempted against the Natives who are to be considered as much under the Safeguard of the law as the Colonists themselves, and equally entitled to the privileges of British Subjects.<sup>10</sup>

However, by the time the colony was self-governing, pastoral expansion in the state had resulted in violence against, and illiberal punishments of, Indigenous people that undermined the colony's idealism.

Western Australia's transition to self-government was different in many ways from that of the other colonies. It achieved self-government in 1890, well after the other colonies became self-governing in the 1850s. There are various reasons for this lateness, not least of which were its comparatively small population and its late-blooming convict transportation system. Due to its delayed attainment of self-government, and the attendant differences in the political context of the 1880s, Curthoys and Mitchell consider Western Australia separately from the other colonies in the final section of the book. During the 1880s, when many settlers were calling for it, a number of factors continued to deter the British Government from granting Western Australia responsible government. Accusations that Indigenous people were being used for slave labour in the north of the colony in the pearling industry and on pastoral stations, as well as harsh punishment of Indigenous people—often for stealing stock to feed themselves—were core parts of the debate over whether the colony was responsible enough to govern itself. Western Australia only attained self-government with the proviso that the colony's Aborigines Protection Board remain under the control of the governor, who was in turn responsible to the British rather than the Western Australian Government, demonstrating the continued connection between the Australian colonies and the metropole despite desperate attempts to attain self-government.

Threaded throughout *Taking Liberty* are references to the ongoing significance of the nineteenth-century events it details. In their conclusion, Curthoys and Mitchell dwell more specifically on *Taking Liberty's* present reverberations. I have already outlined the present significance of *Taking Liberty* to British historical memory. In the Australian political scene, the book is useful for understanding Indigenous political desires and the political traditions in Australia that have prevented the realisation of these desires. The most notable development within Indigenous

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10 Margaret Anderson, 'The Proclamation', 2013, accessed 1 January 2020, [adelaidia.sa.gov.au/subjects/the-proclamation](http://adelaidia.sa.gov.au/subjects/the-proclamation).

politics in recent years has been the creation of the Uluru Statement from the Heart. The Uluru Statement was endorsed on 26 May 2017 by Indigenous delegates from across the country at the First Nations National Constitutional Convention. It was a consensus response to a consultation process, initiated by then Prime Minister Malcolm Turnbull and Opposition leader Bill Shorten in 2015, that sought advice on constitutional recognition of Indigenous people.

The Uluru Statement calls for systematic change, not merely symbolic recognition. It recommends three areas of reform. First, a constitutionally enshrined First Nations voice to parliament that would influence and advise parliament on issues significant to Indigenous people. Second, a Makarrata (Treaty) Commission that would help facilitate treaties with First Nations and governments. Third, a process of truth telling about the past. The Uluru Statement asserts that Indigenous sovereignty existed at the time of British arrival and continues to exist. *Taking Liberty* shows how the foundations of Australia's democratic institutions were laid with the intention of excluding Indigenous people and ignoring their sovereignty. Curthoys and Mitchell argue:

As societies produced by a history of settler colonialism wrestle with the task of forging political structures that recognise dual forms of sovereignty, Indigenous and non-Indigenous, it helps to understand how and why we have the political system we do.<sup>11</sup>

The book does not give a point-by-point description of the inner workings of the Australian political system and how these undermine Indigenous autonomy. Rather, it shows how self-government in Australia began with a refusal to acknowledge 'Indigenous prior occupation or indeed Indigenous people's very existence'.<sup>12</sup>

Another important aspect of *Taking Liberty* is the contribution it makes to histories of Indigenous political engagement in the nineteenth century. The book examines a number of forms of Indigenous political engagement. Notable among these were the use of governors as intercessors on behalf of Indigenous interests and the identification of members of the Royal Family as potentially sympathetic to Indigenous causes. In addition, Curthoys and Mitchell highlight literary forms of political engagement by Indigenous people, including the writing of petitions and letters.

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11 Curthoys and Mitchell, *Taking Liberty*, 408.

12 Curthoys and Mitchell, *Taking Liberty*, 408.

These forms of Indigenous political engagement in the eighteenth century have been explored in work by other historians.<sup>13</sup> However, the novelty of their inclusion in *Taking Liberty* is in the entanglement of these political actions with the broader history of the colonies obtaining self-government. By doing so, Curthoys and Mitchell avoid isolating Indigenous political desires from the other political agendas at large in Australia in the eighteenth century. For instance, in writing about Van Diemen's Land's pursuit of 'greater political representation', Curthoys and Mitchell describe 'parallel claims for liberty and independence' made by Indigenous people in the territory.<sup>14</sup> Then, as now, Indigenous people were participating in the major political debates of their times.

On the writing of histories, Curthoys and Mitchell reflect that 'we can no longer write political history in isolation from Indigenous histories' since colonial politics were invariably linked with their contemporaries' attitudes about Indigenous people.<sup>15</sup> Indigenous people were not a fringe issue for the settlers and administrators in nineteenth-century Australia, but an important influence on the development of ideas around 'liberty, security, self-determination, and independence'.<sup>16</sup> Indigenous histories should not, therefore, be overlooked as a specialty interest in political histories. The ideas listed above are still with us, enshrined in Australia's political institutions and part of our political culture. Indigenous people are also still a major influence on, and topic in, Australian politics, in large part because of their continued political engagement. *Taking Liberty* is an important resource, then, for understanding Australia's settler colonial history, as well as our own political moment. It provides an invaluable precedent for settler colonial histories that are more considerate of Indigenous histories and less triumphant in their teleology.

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13 Diane Barwick, *Rebellion at Coranderrk* (Canberra: Aboriginal History Inc., 1998); Jane Lydon, *Eye Contact: Photographing Indigenous Australians* (Durham, NC: Duke University Press, 2005), doi.org/10.1215/9780822387251; Sarah Carter and Maria Nugent, *Mistress of Everything: Queen Victoria in Indigenous Worlds* (Manchester: Manchester University Press, 2016); Maria Nugent, "'The Queen Gave Us the Land": Aboriginal People, Queen Victoria and Historical Remembrance', *History Australia* 9, no. 2 (2012): 182–200, doi.org/10.1080/14490854.2012.11668423; Penny Van Toorn, *Writing Never Arrives Naked: Early Aboriginal Cultures of Writing in Australia* (Canberra: Aboriginal Studies Press, 2006).

14 Curthoys and Mitchell, *Taking Liberty*, 148.

15 Curthoys and Mitchell, *Taking Liberty*, 405.

16 Curthoys and Mitchell, *Taking Liberty*, 405.

This text is taken from *ANU Historical Journal II: Number 2*,  
published 2020 by ANU Press, The Australian National University,  
Canberra, Australia.