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UNSTABLE CATEGORIES: CHILDREN IN WELFARE AND JUSTICE

Synopsis

This article provides historical evidence of attempts in late 19th century Victoria to establish two sets of institutions for children designated as ‘neglected’ and ‘criminal’, seeking to mark out lines of separation between the neglected, orphans and children in need of protection on the one hand, and children who have been convicted of an offence on the other. The evidence shows that the actual workings of these institutions and the systems of knowledge underpinning them are much less clearly differentiated than their formal designation suggests. It shows also that administrative knowledge and know-how, rather than formal legal process, lay at the centre of decision-making affecting these children, and that expertise shifted over time its engagement with an emerging human science of children. The article suggests that despite claims that child welfare is progressively improving their life-chances, vulnerable children in this period were criminalised by practices of a welfare system that was set up to protect them.

Introduction

In the second half of the nineteenth century, the new colony of Victoria created institutions for saving vulnerable children from the perils of vice, crime and family breakdown for two supposedly distinct categories of children.¹ By the end of the century it was not possible to easily distinguish discrete institutional formations reflecting these two categories. This period, and the first three decades of the new century, was marked by several intersecting phenomena in the administration of welfare and law which made attempts to map neglected and offending children onto two separate institutional sites almost impossible. Three such developments are pointed to here as especially relevant: first, a reduction in the significance of an offence as the main variable in decision-making on the disposal of a child, and a corresponding increased focus on the ‘morality’ of the child; second, decreasing impact of court decisions and a concomitant increased significance of administrative officers’ decisions about disposal; and third, the growing influence of an incipient positivist science on procedures involving neglected and offending children. These events take place amid attempts to bring order to the governing of vulnerable children but, as argued here, they were

¹ *Victorian Neglected and Criminal Children’s Act 1864*

accompanied by an increasing criminalizing of children.² A secondary aim is to consider the significance of these historical phenomena as conditions of possibility for present-day shaping of institutional responses to governing vulnerable children.³

The measure of children

Significant research over half a century has drawn attention to the criminalising aspects of ‘saving children’ influenced in part by a constructionist paradigm of childhood.⁴ Critique has been offered from a number of sources of the assertion that providing access to specialist children’s legal and welfare apparatus has ameliorated harm to children and improved their overall wellbeing by access to children’s rights through specialist legal regimes.⁵ The spaces for intervening in child and family has also been framed in the context of ‘legal informalism’, a contraction or decentring of law and legal process in family matters, and greater levels of family regulation.⁶ A vast literature on criminalising children encompasses such modern devices as anti-social behaviour orders to the ‘gargantuan’ criminalising of young Australian Aborigines.⁷ Carrington characterized the modern Australian welfare administration of the 1980s as a ‘complex web of governmental technologies’ ostensibly to save children from ‘bad families’.⁸ She observed that while reforms have tried to separate welfare and criminal cases, a nexus still existed between the two because the daily management of the ‘abused’ and ‘abusive’ child relies on similar forms of knowledge and power.⁹ These knowledges change over time; in the case of welfare organisations in New South Wales in the 1980s, quite specific ‘deficit discourses’ were utilised in the identification of ‘pre-delinquency’ under the logic of providing preventative intervention.¹⁰ Parton identified ‘grey areas outside the gaze of a court’ where assessments made in the UK in the 1970s designed to identify high risk children and families and to calculate a child’s level of ‘risk and dangerousness’.¹¹ Thorpe’s research on Aboriginal families in Western Australia reported on the spread of specific norms of child upbringing by welfare workers, which tried to ‘abstract children from

² The term ‘criminalising’ refers to processes whereby an individual becomes institutionally recognised as being criminal. White and Habibis note that criminalising is contingent upon how discretion is used throughout the criminal justice system. White and Haines (2005), p 9.

³ Bacchi (2009)

⁴ Ariès (1965); Platt (1969, 2008-9); Carrington (1993); Scraton (2008-9).

⁵ Rorty (1991); van Krieken (1991); Meuwese et al. (2007); Gadda (2008); Hanson (2014); cf. Jaggs (1986); Scott and Swain (2002).

⁶ Donzelot (1979); Hunt (1992); van Krieken (2000); McCallum (2009).

⁷ Ashford & Morgan (2004); Carrington (2011); Weatherburn & Holmes (2010).

⁸ Carrington (1993), p 111.

⁹ Carrington (1993) p 3.

¹⁰ Carrington (1993), p 127.

¹¹ Parton (1991), p 203.

the practical realities of their day to day existence'.¹² Historical accounts of child welfare, on the other hand, tend to reaffirm the significance of techniques of child measurement underpinning the direction of child welfare policy over time. Wells, for example, argues that in the latter part of the nineteenth century new demands for rights to 'health, welfare and life' produced resistance and struggles over the child's special capabilities and vulnerabilities, these demands superseding older conceptions of political rights.¹³ Drawing on Michel Foucault's College de France Lectures published as *Abnormal* (1974-1975) and *The Birth of Biopolitics* (1978-1979),¹⁴ close attention was brought to measurement of the child, particularly medical assessments. The child became the first target of and range of exploratory techniques in part because of the child's availability – in hospitals, maternal clinics and schools and also in children's welfare departments – to be measured on a number of different scales. As Armstrong notes, all the measuring produced a new view of the body and health - the medical gaze on illness and abnormality moved out of its corporal confines of body and nature, and came to describe a new field – the multi-dimensionality of identity.¹⁵

This article examines specific sites of governmental oversight of child populations and the administration of children's movement between sites formally designated as 'neglected' and those designated 'reformatory'. The research asks questions about how decisions about children were made in these administrative/legal sites; in what institutional and historical contexts did key child welfare and criminal distinctions emerge in this period; what were the effects of the decision-making apparatus on the disposal of children; and what kinds of shifts occurred in the kind of expertise deployed in these decisions over time. A range of governmental records are surveyed about administrative measures for assessment and placement, including court records, institutional annual reports, scientific journals and parliamentary decisions, to investigate how children brought into care found their way into penal institutions. The article summarises a shifting 'cross-talk' of expertise between law, medicine and psychology that came to bear on this administration. Archival materials and expert opinion on vulnerable children have been reviewed, detailing the effects of various kinds of 'know-how' on decisions about children, made for the most part by authorities in charge of the institutions themselves. These materials capture the mundane administrative workings of institutions and the kind of expertise deployed in them to assess, categorize and

¹² Thorpe (1994), p 200.

¹³ Wells (2011), p 15.

¹⁴ Foucault (2003); Foucault (2008).

¹⁵ Armstrong (2002), pp 99-108.

place children. A better understanding of the functioning of these systems and of the shifting kinds of expertise over time will broaden the scope of social policy options available to deal with the problem of vulnerable children.

What follows is a small, largely chronological study of the Royal Park Children's Depot in Melbourne that will give the reader an understanding of the effects of administrative know-how and the management of bodies in spaces. It summarizes developments in the early 20th century where children, initially appearing in institutional settings as either 'perfectly innocent' or 'reformatory', over a period of three decades then became objects of criminal inquiry. It provides an opportunity to test out the tools of inquiry and how the 'cross-talk' of administrative and scientific understandings came to bear on the disposal of children in the name of welfare.

Space, knowledge, power: the Children's Depot

The courts were the distribution point for children charged under the 1864 *Neglected and Criminal Children's Act* and magistrates had to be constantly reminded about the correct means of committal and disposal. Immediately following its introduction they were reminded by the Minister through the Crown Law Offices not to send neglected children to reformatory schools and vice versa:

I am directed by the Minister of Justice to call your attention to the *Neglected and Criminal Children Act* 1864. You are requested to observe the difference between Industrial Schools, which are for the reception of *neglected* children, and Reformatory Schools, which are for the confinement of *convicted* children. It is reported, that heretofore this distinction has been overlooked, and that it not unfrequently [sic] happens, that girls and boys, who are proper objects for Reformatories, are sent to the Industrial schools, where they are generally unmanageable and abscond.¹⁶

In 1878, in the context of the closure of the State's other Industrial Schools, Royal Park Industrial School's population grows. There is a separate 'Receiving House' where police are to deposit children. Although it is described as an entry point for the Royal Park Industrial School, *The Argus* newspaper describes two separate institutions co-existing: a 'Receiving House' situated in the old powder magazine previously used as a gaol for 'male lunatics', and following that, a place to quarantine smallpox cases; and an Industrial School - 'the great

¹⁶ Circulars to Court of Petty Sessions, Public Records Office Victoria [PROV] 1579, 12 October 1865.

Royal-park School' - inhabiting a purpose-built barrack-style building. The 'Receiving House' was used as a transit point for new committals before their destination is decided - children 'on remand' whose status as 'Neglected' is pending a court decision, and girls returned from service, including girls returned for unsatisfactory conduct (but not, it is pointed out, for 'vice' or 'theft'). It also held infants either committed as 'neglected' or on remand pending a court decision, and an accumulation of older girls and even adults who, for reasons including eye disease and epilepsy, cannot be placed out to service, including among them 'a negress'.¹⁷

The Receiving House in the old powder magazine was soon replaced by the Depot, started to be built inside the grounds of a new Industrial School in Royal Park. The huge barracks-style Industrial School building would be closed almost as soon as it had opened; started in 1875 it was purpose-built to accommodate 500 children right down to its canny plans for thwarting banister-sliding. But the design principles were considered redundant in the light of new 'boarding-out' principles, where the contours of the 'cottage' rather than 'gaol-like' had become the ideal. As becomes clear, trying to emulate the cottage became a major concern for the designers of the new institutions. A Visiting Committee sounded the death knell on the idea of the Industrial School, borrowed from the English model, calling it a 'gigantic evil which has grown in our midst'.¹⁸ The committee recommended abolishing the role of inspector, giving more powers to the superintendents of individual institutions, less regimentation and more 'play', and establishing 'an efficiently managed depot to facilitate the management of boarding out'.¹⁹ New regulations were gazetted distinguishing the management, supervision and conduct of the Industrial School from the Reformatory School ('play' was required in the former). There are 300 inmates in the dormitories of the Industrial School in 1879, even though the momentum is gaining towards a policy of boarding out. News reports try hard to present the building as not goal-like. The (very large) 'family' of 'little fellows' is to be managed 'wisely' and 'humanely'. Invalids are under the care of a 'cheery' 'mother' substitute in a 'cottage'-like hospital, and the dormitories, decorated with pictures and flowers, are under the 'immediate supervision of married couples', except at night.²⁰ But the specific contours of the 'family' home-come-cottage for boarding-out are also

¹⁷ *The Argus*, 15 March 1864, p 5; 16 March 1869, p 5

¹⁸ Remarks of Visiting Committee, Industrial & Reformatory Schools Reports of the Visiting Committee to the Industrial and Reformatory Schools of Victoria with the Correspondence Relating Thereto.[VPP 1880-81 vol 3]. [Hitherto RVC, I & RS], 1880-81, p 16

¹⁹ RVC, I & RS, 1879-80.

²⁰ *Argus*, 14 October 1879, p 7

mapped out in precise detail, defining the numbers and span of age and sex within each home, sleeping arrangements, a preference for a rural setting away from city temptations – a new arrangement of space, although not necessarily less arranged or less regulated.

The granting of new powers to the executive of the Depot and the creation of a new position of superintendent was done with an eye to its new powers over the inmates – it effectively allowed a superintendent to overrule court mandates and transfer children to and from Reformatory and Industrial School. The separation of the roles of executive head, inspector and superintendent set in place some of the conditions for devolution of authority to judge and dispose of children to the superintendent. Up to this point, the legal power to judge and dispose of children was vested in the courts. Coterminous with the formation of the Special Visiting Committee is an 1878 amendment to the *Neglected and Criminal Children's Act*—it is not coincidental as both are outcomes of the one set of concerns. The *Amendment Act* provided the executive with the power to send children committed to a reformatory to an industrial school, or to send children committed to an industrial school to a reformatory.²¹ Young boys, having been found guilty of minor offences punishable by imprisonment, and committed to a reformatory by the courts, could be reclassified as 'Industrial School' children, and hence, as candidates for 'boarding out', and then sent by the executive to a foster-home. Similarly, Industrial School children sent to foster or service homes and there having committed an offence or having absconded, could have their offence judged serious enough for them to be sent to a reformatory (absconding was serious enough), but by the *executive* not by the *courts*. A strong pattern of discrimination based on 'moral' grounds emerged in provisions made specifically for girls who, though having committed no offence punishable by imprisonment, and deemed 'Neglected' by the courts could, 'on account of the abandoned character of their past conduct or surroundings' be re-routed to the reformatory.

Why this 1878 Amendment? A retrospective explanation, under the stern heading 'Morals', is given by the Special Visiting Committee in their 1880 Report to Chief Secretary (the Committee is now, temporarily, in charge of the Department):

In the later session of 1878 an Act was passed which, amongst other things, allowed children to be transferred from the reformatory to the industrial schools, and vice versa. The object of this change, which had been indicated in two official reports

²¹ Victoria. *An Act to Further Amend the Law Relating to Neglected and Criminal Children* [No 626] 28 Nov 1878

(Professor Pearson’s Report on Education, p. 156; Report of Jika Committee, p. 6), though Mr. Neal has claimed the credit of it, was to allow of magistrates’ sentences being revised, so that young thieves might not be kept among the orphans of the industrial school, or children guilty of no worse offence than mounting a horse without leave kept in the reformatory.²²

The aspiration of the Amendment was a clearer bifurcation of the population administered under the *Neglected and Criminal Children’s Act*—to protect the ‘orphan’ from the ‘thief’, the not-so-bad from the reformatory case proper, and to counter the mandates of a judiciary too focussed on the letter of the law and on the offence, and unpractised or unwilling to apply the necessary kind of judgement (of morality) necessary in dealing with children. This *administrative* separation of categories of children, as distinct from categories merging from a *judicial* decision, was encapsulated in the duties according to the new position of superintendent in the Industrial Schools adopted in 1880:

[Regulation No.] 35. It shall be the duty of every officer in charge of an Industrial School to carry out a scheme for the classification of the inmates of the school under his charge, with regard, so far as circumstances will permit, to the physical and moral characteristics of such inmates, and take steps to ascertain the views of his Committee respecting such classification.²³

The relevant powers in the regulations in 1873, compared to 1880, on the transfer of children between Industrial and Reformatory schools underline the point.

<p><i>Regulations, as to the Conduct, Management and Supervision of Industrial and Reform Schools’, approved mid-1873, and presented to Parliament (VPP volume?)</i> 1873</p>	<p><i>Industrial School Regulations. Victoria Government Gazette Fri July 30 1880 pp 1944-1954.</i> 1880</p>
<p>16. Children presented for admission with mandates must not be refused admission to the school to which such mandates are directed; provided that children under sentence to a</p>	<p>16. Children presented for admission with mandates must not be refused admission to the school to which such mandates are directed, subject, however, to any special direction in any Act relating to Neglected and Criminal Children</p>

²² RVC, I & RS Sept 1880, *Argus* 23 Sept 1880, p 7.

²³ Industrial Schools Regulations, *Victoria Government Gazette*, July 30 1880, pp 1944-1954.

Reformatory shall not be received into an Industrial School, or <i>vice versa</i> ; nor children of one sex into a school directed to be set apart from children of the opposite sex, unless by written direction of the Inspector.	being complied with in such mandate; provided that children under sentence to a Reformatory shall not be received into an Industrial School, nor children of one sex into a school directed to be set apart from children of the opposite sex, unless by written direction of the Inspector.
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The intention remained that Industrial and Reformatory children be accommodated separately, but moral grounds now sit over and above grounds of an offence committed in determining who are ‘Reformatory’ and who are ‘Industrial School’ candidates. The judgement of the executive now sits over and above that of the judiciary - the ‘special direction’ clause added to the 1880 Regulations allows for transfer between Industrial and Reformatory Schools ‘by written direction of the Inspector’. The Act confers such power of transfer on the executive. By the early 1880s the Department is receiving children as ‘Industrial School’ children and reclassifying them as cases for the reformatory, and vice versa.

There had been considerable debate about sending young boys to reformatories but the category ‘Reformatory’ also had an inherent instability. One could be sent out to service as a ‘Neglected’ child and, having failed at that, be returned and re-categorised ‘Reformatory’. Nor are the categories of ‘offending’ child and ‘Reformatory’ child coterminous. Those charged with an offence, punishable by imprisonment but too young for a reformatory, could be sent to an industrial school. Those charged with a minor offence could be boarded out. Those not charged with an offence could, after suitable inquiry, be understood as better belonging in a reformatory. There was no compromise on both categories of children being accommodated separately. This is the eve of two Acts separating the ‘perfectly innocent’ from the taint associated with those who had ‘committed a crime’. A Visiting Committee for the Ballarat Reformatory congratulates the government of the day in 1886 for recognising the necessity for committing the ‘purely unfortunate’ and ‘perfectly innocent’ on the one hand, and ‘those who have been convicted of a crime’ in the other via separate Acts, protecting the former from the taint of criminality.

We are very strongly impressed with the desirability of dealing with the criminal and the purely unfortunate children in separate Acts of Parliament. The fact of perfectly innocent, or even neglected, children being committed to the care of the State in the

same Act as those who have been convicted of crime leaves a stigma which is never wiped out, and appears to us unjust, and quite opposed to the spirit of modern legislation in this direction, and to the evident desire of the Government to foster every effort having for its object the intellectual and moral improvement of our rising generation.²⁴

Under the administration of the Department of Neglected Children and Reformatory Schools, populations enter the depot at the turn of the century as, ostensibly, either Neglected or Reformatory. But in the very separation of the Acts, it becomes abundantly clear that the two by no means map within the legislation onto 'Neglected' and 'Juvenile Offenders'. Nor, with the new nominal separation of the administration into a Department for Reformatory Schools and a Department for Neglected Children, do 'Juvenile Offenders' and 'Neglected Children' find themselves neatly assigned to one or other branch. Rather, the law allows for a series of caveats and crossings over, some certainly at the discretion of the courts but others at the discretion of superintendents of institutions.

Some of the early 'crossings-over' were the result of judicial determinations. Children who committed a crime punishable by imprisonment could be committed to a reformatory. But children who had committed no offence could also be committed to a reformatory if in the opinion of the judges they had been leading an 'immoral or depraved life'. Even if they had committed an offence punishable by imprisonment they could be sent to the Department for Neglected Children at the discretion of the judges. As we have seen, aside from judicial discretion provision existed at the discretion of the officer in charge of the Depot, with the approval of the Minister, for the reassignment of children from Reformatory to Neglected and vice versa. Judgements as to 'immoral and depraved' applied especially to girls. Special care was to be taken regarding their separation even in the reformatory. Though they had not committed an offence punishable by imprisonment, they were to be all but excluded from the possibility of transfer to the Neglected Children's Department, and then only after very careful consideration. Even in the reformatory, special care was to be taken to segregate them from others. So offenders could find their way into the administrative space of the 'Neglected', non-offenders could find their way into the administrative space of the Reformatory. New regulations specific to the management of the Depot were gazetted in 1890 which set out the powers and authority of the matron or superintendent in charge - that

²⁴ Victoria. Department of Industrial and Reformatory Schools [DI&RS], Report for 1886, p 18.

officer had enormous discretion handling the child on remand, pending committal as 'Neglected'. She could isolate the child, or send the child to a Reformatory, and she could segregate the 'immoral and depraved'. The Depot also had a space for the isolation of the 'refractory' girls but this is not simply a space for the segregation of the 'Reformatory' girl *per se*. It doubled as a space for the segregation of 'contagion' and misconduct.

The problem of the hapless sickly infant, a long-time traditional arrival at the doorstep of the antecedents of Royal Park Depot, was part of 'the routine with which the depot must deal'²⁵. It was the problem that had heightened awareness of the need for separate spaces in the 19th century Receiving House for the 'criminal' and the 'purely unfortunate', the 'young thieves' and the 'orphan', and the source of the aspiration of the 1878 Amendment for a straightforward means of locating bodies in space.²⁶ The departmental report for 1890 informs us that the 'Girls' and Infants' Receiving Depot' has left the old powder magazine and come to occupy new premises on the corner of Park and Oak Street.²⁷ The Secretary of the Department George Guillaume confirms that the matron/superintendent now has the material resources - the space - to 'classify' and to segregate and isolate the 'refractory' – interesting given that the Regulations specifically exclude the superintendent of the Depot from the role of 'classification'. But there is formal classification and also the informal, pragmatic kind operating at the Depot:

The Matron, Miss Wilson, has now the much needed facilities for due classification, as well as for the isolation of refractory children, or those taken with contagious disorders. Advantage was taken of the now close proximity of the two Depots to utilize the large experience of Miss Wilson by investing her with the responsible charge and superintendence of the boys also.²⁸

In 1892 and early 1893 'Reformatory Schools' are gazetted at both the Boys' and the Girls' Depots and the Matron is in charge of the whole establishment located at Royal Park. With the gazetting of these Reformatory spaces, and with her official appointment as officer in

²⁵ Annual Report, Department of Industrial and Reformatory Schools, 1884:24.

²⁶ RVC, I & RS September 1880, Argus, 23 September 1880, p. 7; Victoria. *An Act to Further Amend the Law Relating to Neglected and Criminal Children* [No 626] 28 Nov 1878.

²⁷ DNC & RSc Report for 1890, Receiving Depots, p 11.

²⁸ DNC & RSc Report for 1890, Receiving Depots, p 11.

charge, her authority extends to the authority of other reformatory school superintendents, namely, to 'classify' as she 'thinks fit' with regard to 'conduct, age, moral and physical characteristics'.²⁹

The Depot has a space for the segregation and isolation of 'refractory' boys and girls, and given the new set of regulations the matron or superintendent has the power to manage this space and the coming and going of its inmates. That is, it is not simply a space for the segregation of the 'Reformatory' girl per se. It also doubles as a space for the segregation of 'contagion' *and* misconduct. In the case of the morally depraved, conduct is contagious. Nor is it a space for children formally categorized as 'reformatory', since the depot is still formally an Industrial School and not a Reformatory. However, there is now a material arrangement for the segregation of some Industrial School inmates who are legally yet informally categorized as more akin to Reformatory inmates, more 'criminal' than the rest.

Medicine and criminalising

In the new century the pace of change in the Depot picks up. The sickly infant has morphed by the end of the first decade as an 'urgent' problem of physical contagion for which special room must be made. Under the eye of a newly installed medical officer as superintendent, himself equipped with the latest tools of the pathology laboratory, that space for the contagious infant must expand to accommodate both physical and moral contagion. This is because the 'routine' problem of dealing with the sickly infant became reinscribed as the urgent problem of dealing with the 'syphilised' child and the 'mental defective' child, which would have major significance for the how the spaces for bodies were to be organised. These quite contingent events were to lead to an increased criminalization of the 'remand' inmates occupying the Depot.

The *reformatory child* had already undergone an alteration in its formation and accommodation. Again, like the sickly infant, the problem of accommodating the reformatory child who arrives at the depot in 1900 is not considered a particular urgent problem. There are problems accommodating this group along with all the others. Outdated and run-down buildings are the main issue for both reformatory and non-reformatory children. And there are no more than one or two transitory 'Reformatory' cases as such with which the Depot

²⁹ DNC& RS Report for 1890, Receiving Depots, p 11.

must deal at any given time. Spaces for the Boys and Girls 'Reformatories' at Royal Park reveal themselves as basically distinguished by the presence of locks and bars, or not. For boys, the Reformatory is a dormitory with bars on the window, compared to a non-reformatory dormitory without bars. For girls, it is a separate 'lock-up' that accommodates only one or two at a time. By the middle of the second decade of the twentieth century, however, there is increasing focus on the inadequacy (in terms of the amount and the nature) of reformatory accommodation at the depot. There are not enough beds, and not enough means of properly segregating the reformatory inmates from the rest. By 1917 accommodation is overflowing to the extent that 'at times beds have to be made up in the room used for meals'. Curiously though, the number of reformatory cases *per se* received by the Depot (as recorded in the statistical returns of annual reports) has not increased. Numbers of reformatory cases at the end of the year are two boys in 1913 and two boys in 1917, one girl in 1913 and no girls in 1917. So, a decade and a half into the twentieth century, the depot is still accommodating one or two, and a handful at most, of 'Reformatory' cases, and yet adequate accommodation and segregation within a defined 'Reformatory' space has become a matter of urgency. It becomes clear by the middle of the second decade that there is a mismatch between 'Reformatory' cases (those committed to a reformatory by the courts and either awaiting placement at the Depot, in one of the private reformatories, or returned to the depot from a reformatory for one reason or another) and those deemed by the Depot as proper inmates for accommodation in its 'Reformatory'. It also becomes clear that this mismatch has been operating for some time: those deemed proper inmates for the Depot's 'Reformatory' is much more inclusive than those deemed 'Reformatory' by the courts.

The catalyst for a new urgency around the accommodation and segregation of a group of inmates in the Depot's 'Reformatory' was an influx of 'remand' cases, from 1908 onwards, from the newly inaugurated children's courts. Commonsense might characterise the establishment of a dedicated children's court as an unequivocal step in the direction of welfarism - perhaps the final step that completes the picture of a separate 'justice' system for children. The child has already largely been removed from the prison. The 'too prison-like' large State-run reformatories have closed their doors, and the new reformatories are refashioned as home-like 'cottages' to accommodate the child *as* child. So, finally, that child will now have a special court with a special ear to the circumstances of the child *as* child, and one which increasingly seeks to know, and in that knowledge, to better dispose of that child. In the interim, the child 'on remand' is sent to the depot, within which it is locked in a

‘Reformatory’ space, which, ironically, is the antithesis of all the principles which saw the dismantling of the old prison-like accommodation in the name of the child. Basically, that ‘Reformatory’ space in the Depot is a prison. It is a prison in 1900, and becomes more prison-like, more punitive in the first three decades of the twentieth century.

During the first decade the old guard that had seen the depot into the C20 (Secretary Millar and Matron Wilson) had left. There was a new ‘urgency’ attached to the need for resources for sick infants. The note of urgency corresponds to Victorian Government Statistician McLean’s harnessing of the problem of infant mortality to the population question, hitherto, according to McLean, ‘almost entirely overlooked’

Large as is the area of the Australian continent, it is impossible that its people will ever become truly great under the conditions affecting the increase of population which now obtain. Immigration has practically ceased to be an important factor, the maintenance and increase of population depending upon the birth-rate alone—a rate seriously diminished, and still diminishing. No people has ever become great under such conditions, or having attained greatness, has remained great for any lengthened period. The problem of the fall in the birth-rate is therefore a national one of overwhelming importance to the Australian people, perhaps more than any other people, and on its satisfactory solution will depend whether this country is ever to take a place amongst the great nations of the world.³⁰

Infant mortality is constituted at that time as a new kind of problem, and from this period there is a marked change of tone with reference to the numbers of infants dying at the depot:

The improvement under the able management of the Acting Matron Miss M. Johnson has been very marked...We find that the over-crowding of inmates is at times excessive, and exceeds the accommodation. For the health of the children, this should be avoided as much as possible. The necessity of providing isolated accommodation for infectious cases in connexion with the nursery is urgent.³¹

One effect of the passing of the *Infant Life Protection Act* (1907), which came into operation January 1 1908, was an influx of infants received at the Depot, making the already recognised problem of accommodating infants, and particularly sickly and infectious infants, even more

³⁰ W. McLean (Government Statist of Victoria), ‘The Declining Birth-Rate in Australia’ *Inter-Colonial Medical Journal of Australia* 9 (3) March 20 1904, 109-126, p 110 (quoting a NSW government statistician).

³¹ DNC & RS Report for 1905 Report of Visiting Committee Royal Park, p 10

urgent.³² A further contingency was the increased presence and authority of the medical officer at the Depot here, the medical officer having direct input into the management of bodies in space: this group here, that group there. The arrangement of bodies in space amongst the neglected population begins to be imposed along medical/scientific lines, the medical officer calling the tune to such arrangements with new authority. In 1910 (above) the then medical officer, Clarence Godfrey, noted that Royal Park was no longer simply a depot, but becoming a hospital.³³ The management of space dealt with a different kind of population requiring new rules and personnel:

With the present buildings and structures it is impossible to do justice even to the healthy babies, much less to the great number of sick and congenitally enfeebled...and I consider that to maintain efficiency in nursing, there should always be on duty, two or more trained nurses in the day time, and one at night. A great strengthening of the nursery staff all round would be advisable.³⁴

Testing became the byword for internal organisation of the Depot but also a means for combating public anxiety around a possible epidemic of syphilis:

It has been recognised that a definite proportion of the infants are doomed before admission, either by reason of certain inherited diseases, defects, or malformations; or from their assimilative powers being destroyed by previous ill feeding or starvation. They do not thrive in foster homes and institutional treatment does not appear to mend matters... It should be pointed out that only a small proportion of children, the subject of congenital syphilis, are capable of infecting others; nevertheless, as a precautionary measure, every proved or suspected case of this disease is, on admission isolated, and segregated with other similar cases, in a large tent; and directions are given as regards quarantine and personal hygiene, that should make hetero-infection impossible.³⁵

Sanderson-Yule was the next doctor installed at the Depot, an active campaigner and lobbyist for the care and control of the feeble-minded. He was a central figure of a movement inaugurated at the 1911 Medical Congress at Sydney and was appointed Honorary Secretary of a Committee (comprising himself, Ernest Jones, Beattie-Smith and Harvey Sutton) to push for the cause. In that role, Yule alluded to, and aligned himself with the growing

³² Victoria. Infant Life Protection Act (No 2102) 18th Nov. 1907.

³³ DNC & RS Report for 1910, p 18, Reports of Schools/Royal Park Depot.

³⁴ DNC & RS Report for 1911, p 18, Report of Medical Officer (Clarence Godfrey).

³⁵ DNC & RS Report for 1911, pp 17-18, Report of Medical Officer (Clarence Godfrey).

respectability of eugenics. When the results of the national census of the feeble-minded was reported, revealing that medical practitioners and private schools had shown exceedingly poor engagement with the survey, Yule said the results showed 'deplorable apathy' but that the figures 'must vastly understate the actual number of defectives...(a) very conservative estimate must at least demand multiplication by ten'.³⁶ But poor returns of the survey from the medical profession also underscored the fact that by no means did they think as one on the problem of feeble-mindedness.

In the meantime, segregation and isolation tents in the Depot were being replaced by permanent physical structures to allow those infected and suspect cases of syphilis to be 'railed off securely'.³⁷ While the Wassermann test had by 1913 produced the possibility of syphilis identification and segregation, it was also clear that not just the sickly syphilitic infant was segregated, but also older, school-age children who were not necessarily symptomatic. Yule like his predecessor seemed to want to provide a dampener to an over-anxiety about infection. By this stage the Wassermann test, applied only to infants entering under Infant Life Protection legislation, was being applied to any child of any age showing any suspicious symptoms. Not surprisingly, Yule soon called attention to the appearance of the 'feeble-minded' at the Depot:

Several cases of mentally defective children appear from time to time in the depot. In many cases, such have to be sent to an asylum, from the want of a special institution for the care of the feeble-minded. It is, indeed, eminently desirable that such a home may be soon provided for this class of child.³⁸

The following year the new (acting) Medical Officer Gerald Sheahan failed to make any mention of mental defectives at the Depot in his annual report. Rather, he underscored and echoed the theme of proper feeding, of restoring the neglected but otherwise healthy infant to vigor, and for this he was castigated in the pages of the *Medical Journal of Australia*:

The report of the Department for Neglected Children and Reformatory Schools in Victoria, covering the period 1916, is a short document containing a large amount of information compressed, as far as possible, into tables...As the Secretary and Inspector did not assume office until April 1, 1917, he refrains from making general remarks having reference to the period before he was in charge of the Department...

³⁶ J. Sandison Yule, 'The census of the feeble-minded in Victoria, 1912' *Australasian Medical Congress. Transactions*, 1914, 722-27, p 722.

³⁷ DNC & RS Report for 1913, p 7.

³⁸ DNC & RS Report for 1913 Royal Park/ Report of Medical Officer (Sandison Yule), p 18.

From the information contained in the Secretary's report it would seem as if the whole problem were regarded from the point of view of the neglect to which these children are subjected. The department has control of 10,780 children, of a class peculiarly fertile in mental deficiencies. Not a single word is published concerning the mental condition of the 7,357 children who had reached their sixth year. The facts that the more able of these children are pressed into high schools and technical colleges, and that as many as possible are placed in service from the training homes, indicate that those responsible are not seized with the necessity of discriminating between normal-minded children and mental defectives. It is relatively easy to prevent children in homes or institutions from committing ethical offences. Training may keep these children safe as long as the skilled supervision lasts. But when they are allowed to go out into the world and to fill positions as free men and women, the danger to themselves and to their neighbours manifests itself. We would urge that these children, committed under the Neglected Children's Act or the Crimes Act, should be carefully watched by an expert psychiatrist, and that all those found to have a mental development behind the average age, be guarded by the State for the rest of their lives. In this way, crimes will be avoided, girls will be saved from a life of shame, venereal infections will be checked to some extent, and the propagation of the mental defect would be prevented.³⁹

Subsequent annual reports reaffirmed the existence of the problem which Yule had 'discovered' during his time as medical officer. The department secretary Molloy noted in his 1917, written after the MJA article, the problem of Defective Children

There is, unfortunately, a number of mentally deficient or otherwise defective children in foster homes and institutions. The question of how to deal with some of them on attaining manhood and womanhood is a matter of grave consideration. It is gratifying to know that public interest has been aroused on this important matter, and that definite action is likely to be taken to treat such cases.⁴⁰

In the same year medical officer at the Depot Sheahan recanted:

There came under my notice a number of children below the average in mental efficiency, who will not be able to compete with their fellow men later on in the stress

³⁹ *Medical Journal of Australia*, 'Neglected Children in Victoria', MJA, May 4, 1918, 380-381 (No individual author given), p 381.

⁴⁰ DNC & RS Report for 1917, p 6 (Molloy).

of life. These mental defectives have not sufficient will control, and may develop abnormal instincts. They should be under the guidance of a skilled psychiatrist, who would observe their criminal or moral tendencies, and if necessary they should be kept under the control of the State for the rest of their lives, and thus prevent the propagation of their species.⁴¹

It is worth noting the achievements of these statements: the fudging of a distinction between the Department's Neglected and Reformatory populations, the shared (criminal) characteristics bestowed upon them, the making of a whole population suspected of mental defect (the status of their mentality, defective-or-not, just added a further dimension to their being), and the gesturing to a new form of psy-medical expertise at the Depot now required to assess that status. By 1922, a further achievement – a calculation of the percentage of the Depot population that are defective, mentally, morally or physically...

Neglected Children's Depot, Royal Park:-- The functions of the Depot are varied and numerous. It serves as a depot and clearing house for all children committed to the care of the State. The ages of these range from one day to 17 years, and the number in residence seldom falls below 300. On arrival at the Depot approximately 60 per cent. are definitely defective, mentally, morally, or physically, and over 20 per cent. are congenital syphilitics.⁴²

There are, from the middle of the second decade of the twentieth century, increasing indications in the Annual reports that all is not well within this locked space. References to trouble tend to be oblique - the dismissal of an attendant on the grounds of unsatisfactory conduct, the fact that it does not measure up to the discipline achieved at the girls depot, the need for separating older and younger 'reformatory' inmates, especially at night). Increasing references to trouble are coincidental with increasing references to *trouble-makers* amongst its inmates, whose protagonists come to be understood as 'remand' cases. A separate Remand Centre 'wholly remote from the other inmates' is called for and eventually opened in 1927, but no sooner is it opened than it becomes clear that it accommodates inmates other than those on remand: it has come to provide the means of 'separation of boys on remand *and* delinquent boys of various ages *and* mental *and* moral characteristics.'

⁴¹DNC & RS Report for 1917 Royal Park Depot/Report of the Medical Officer (Sheahan), p 4.

⁴² DNC & RSch Report for 1922 (Lewis Thomas), p 3.

At the beginning of the third decade of the 20th century a hardening of the association of congenital syphilis with mental defect has occurred, and a newly authorized medical officer is equipped with specifically psycho-medical tools which offer a 'Practical Method', akin to the practicality of the Wassermann test to swab for syphilis, of identifying mental defectives beyond the syphilitic. RJA Berry, professor of Anatomy at Melbourne University, was invited by the medical officer AP Derham to join the Depot's testing of inmates and arrives in 1923 with an additional set of laboratory tests with which to subject, know and manage the Depots's inmates:

Miss Barling, of Professor Berry's staff, has carried out a series of mental tests on the more defective inmates. She has been assisted in this by Mr. Keddie and Miss Clark, school teachers, and her work has been checked and diagnoses made by Professor Berry who visits the depot at intervals in an honorary capacity... (o)f the mental defectives tested by the Wassermann test about one half were found to be congenital syphilitics, and many more were probably syphilitic.⁴³

The small space that opened up for the segregation of the contagious infant has expanded - first through an urgent call for a proper 'isolation ward' to segregate the danger of physical contagion, among whom a particular urgency is given to the segregation of the syphilitic, followed by the attachment of the threat of moral contagion to this group in particular. As syphilis was once, mental defect remained deceptive, elusive and everywhere 'in our midst'. Bacteriology had made it possible to know syphilis as here, but not there, and to 'rail off' and practice upon an identified syphilitic population. Conditions were ripe for the embrace of new 'laboratory' tools which would do for mental defect what the Wassermann test did for syphilis—provide a practical means of giving certainty and visibility to its presence. If 'control' of mental defectiveness was going to be achieved, mental defect too was going to have to go into the laboratory, and come out of it in practicable form.⁴⁴ Then, a decade on, an urgent call for the life-long segregation of a proportionally much larger cohort of mentally- and-morally defective inmates whose 'species' harboured abnormal instincts and latent 'criminal tendencies' who represented a social threat. By this stage, in as much as the whole population at the Depot become subject to tests for physical, mental and moral defects—that is, inasmuch as the whole population are treated as 'suspect' on their entry, there are now no 'purely unfortunate' nor 'perfectly innocent' amongst them. By the end of the third decade,

⁴³ DNC & RSc Report for 1923 Neglected Children's depot, Royal Park (Thomas, quoting from Derham's Report), p 6.

⁴⁴ Latour *The Pasteurization of France*, pp 43-49.

under the new superintendency of psychiatry, the Depot becomes a laboratory for identifying the social misfit, the delinquent and the latent criminal.⁴⁵

Conclusion

On one side of the depot, that small space that once accommodated the ‘sickly infant’ the epitome of the ‘purely unfortunate and perfectly innocent’, has opened up and expanded to accommodate a newly morphed class whose contours have firmed up to the extent that they constitute a ‘species’ known as ‘below the average in mental deficiency’, with the potential to develop abnormal instincts’, and whose ‘criminal and moral tendencies afford the need for their more complete segregation. On the other side of the depot, that small space set aside to accommodate the (few) transient ‘Reformatory’ cases that passed through the Depot has opened up to accommodate an expanded class of ‘delinquents’, marked out by their problematic ‘mental and moral characteristics’, the nature of which call for their complete and remote segregation. Two cohorts of children, ostensibly distinguished, thirty years earlier in a bifurcated system geared to administering ‘neglected’ children on the one hand, and ‘reformatory’ children on the other, had come by 1930 to share the same profile of mental and moral misfit, a profile that an emergent psy-science has already forecast will harden in later life into that of the criminal.

In the two decades prior to the turn of the 20th century those categories reveal themselves as inherently unstable. Two decades into the century within the confines of the Depot they come to resemble each other, such that by 1920 it no longer makes sense to refer to the neglected child as dissociated from the criminal. An association has been newly forged, and ‘criminality’ has enfolded the whole of the population to the extent that even those who do not bear the signs of actual criminality must be scrutinised for the possibility of their bearing its potential. The collapse of the sense of the distinction is coincidental with yet another administrative name change in 1923: The Children’s Welfare Department.

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