

**Coercive normalization and family policing: the limits of the  
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# **Coercive normalization and family policing: the limits of the 'psy-complex' in Australian penal systems**

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## **Abstract**

Much contemporary social and historical research on problem children and families focuses on the different kinds of power deployed in a complex of legal and non-legal settings. This paper reviews socio-legal studies in Europe, Australia and the UK, and additional archival evidence in Victoria, Australia, in relation to a shift towards positivist and 'welfarist' approaches to the problem of child criminality and family regulation from the turn of the 20<sup>th</sup> century. The aim is to assess the applicability for Australia of trends in European social theory that emphasize non-coercive, non-legal correction of families, a productive rather than repressive form of power which incites families to seek to align their conduct to social norms. The paper argues that 'coercive normalization' - systems of knowing and acting upon children and families arising from the penal system and

images of threat – is a significant presence in the complex of power relations that make up a genealogy of family and child regulation in Australia.

## **Introduction: psy-techniques of power**

Sociological and criminological literature in Europe, the United Kingdom and Australia acknowledges the late 19<sup>th</sup> century as a pivotal moment in the construction of the main institutional forms of child welfare and the emergence of a modern welfarist approach to governing neglected and offending children. These developments are understood to reflect historical movements from a classical to a positivist model of criminology, the latter highlighting an individualist, interventionist and scientific study of criminality and neglect (Garland, 1985; Naffine, 1992; White and Haines, 2001: 36). In addition, Garland's (1985) concept of 'penal-welfare complex', or Rose and Valverde's (1998) notion of 'legal complex', serve to demonstrate the close integration of both legal and non-legal interventions in the ways in which problem children and families come to be conceived and regulated. The Children's Court was an early instance of the growth of 'informal power' as a means to achieve a moderation of behaviour and overall wellbeing, as against formal legal process (Harrington, 1992: 177; van Krieken, 2001:6-7).

Moreover, in many of these accounts power is conceived in terms of psy-interventions, a form of regulation that puts the family in a position where it becomes in its own interests to conduct itself according to social norms in such matters as education and the healthy upbringing of children. In Donzelot's *Policing of Families* (1979:169-234), for example, psy-techniques establish a discrepancy between images and reality, which incite families

to adjust (or 'float') their behaviours towards that ideal image. Regulating the family, in this view, is a kind of 'governing through freedom', a productive rather than repressive power that incites self-adjustment and presupposes a certain agency or 'capacity to act'. That way of conceiving power draws on the observation that liberal political reason presupposes a notion of power as working through the 'free' activities of members of the population to be governed (Foucault, 1979; Hindess, 2000: 70; Rose, 2004: 174). This paper investigates the pertinence of certain Euro-centred conceptions of power in analysing the construction of penal and welfare institutions in Australia, and examines the nature of child and family interventions in this formative period in the late 19<sup>th</sup> and early 20<sup>th</sup> century.

Comparisons with European evidence may help to draw out the specifically Australian mode of 'imaging' that sought to regulate the production of the 'normal family'. Drawing on evidence from the UK that uses Donzelot's understanding of 'the regulation of images', Nikolas Rose looks at examples of historical process that underpinned productive forms of power in relation to family and achieved 'subjective commitment' to good parenting (Rose, 1990). He points to the philanthropic, 'familializing' projects in the late 19<sup>th</sup> and early 20<sup>th</sup> century in which experts sought to 'shape and infuse' personal investments in parenthood and family life. Rose argues that this would be accomplished 'not by coercion or threat', but rather '... through the production of mothers who would want hygienic homes and healthy children' (1990:130). Later, in the 1940s under the tutelage of psychologists such as Donald Winnicott, it is the language and evaluations of expertise that 'bind' parents of the need to be educated about their own parenting and

have confidence in their own capacities. Where the modern family has available to it images of the pathological family in the context of scandals, illicit sexuality or violence on the part of a minority, ‘... the potency and pervasiveness of normality is reactivated ... the self-judgement of each of us against its standards is reactivated’ (1990: 203). Here, Rose draws out a self-governing regime that diminishes the significance of coercive forms of power in the regulation of parents and children.

A further analysis of these events and interventions is offered by David Garland (1985) in which he argues that discourses of penalty concerned with welfarist social and criminological interventions in the UK were indicative of a program of reform rather than a description of actual interventions. More recently, Garland also questions the concept of freedom and choice in the ‘governmentality’ literature when applied to some forms of regulatory power: does the Foucauldian notion of ‘governing through freedom’ understate the presence of constraint and discipline?

Freedom ... generally refers to a capacity to choose one’s actions without external constraint. Freedom (unlike agency) is necessarily a matter of degree – it is the configured range of unconstrained choice in which agency can operate. The truth is that the exercise of governmental power, and particularly neo-liberal techniques of government, rely on, and stimulate, *agency* while simultaneously reconfiguring (rather than removing) the *constraints* upon the freedom of choice of the agent (Garland, 1997: 197 [emphasis in original]).

For Garland, this consideration is important for the genealogical method itself. While it is necessary to develop an understanding of rationalities and technologies of governing, it

is equally important to consider the specific historical events that give the institutions of child and family regulation their present shape. A genealogical understanding of rationalities and technologies is relevant if they continue to function in the present (1997: 202). It follows, then, that analyses of power that focuses on the historical presence of coercion and threat also problematises this kind of power in the present.

Each of the analytical tools deployed in the above accounts – positivism, the de-centering of law, governing through freedom - has been important and influential in recent socio-legal studies of child and family regulation. A reconceptualising of power, founded largely in the late- Foucauldian literature on ‘governmentality’, has prompted questions about the significance of law and normalisation, and in particular the continuing importance of juridical kinds of power in the regulation of families and children (Foucault, 1991; Ewald, 1991; Hunt, 1992). Moreover, this literature draws heavily on European evidence. Its relevance for understanding the specificity of relations of power in the evolving Australian penal-welfare complex remains relatively unexplored (Brown, 2001; Hogg and Carrington, 2001). In this paper I attempt to identify specifically Australian approaches to the restructuring of institutional arrangements affecting child and family regulation during the late 19<sup>th</sup> and early 20<sup>th</sup> century.

In particular, I argue that attempts to enforce familial ties and obligations were carried out through what could be termed *coercive normalisation*. By this I refer to systems of knowing and acting upon children and families that arise from the penal apparatus itself, systems that sought to lever an adherence to norms of family living through images of

threat. I will attempt to show how these systems entailed an extension of the prison as a governing idea beyond the immediate sites of penal institutions; a reinforcement of economic power by its transmutation into moral categories; and a way of knowing the problem child that was a product of both judicial forms of power and the conduct of the human sciences. The next section reviews the emergence of new powers that characterized the Australian institutional landscape, in key areas that allow some points of comparison with developments in Europe, and particularly the United Kingdom, to be acknowledged: the growth of a children's court bureaucracy, the regulation of Aboriginal children, and the enrolment of the human sciences in judicial processes. The final part of the paper discusses evidence about the nature of welfarist interventions in child and family regulation in both the UK and Australia.

The paper poses questions about the application of recent social theory to the functioning of different kinds of power through an examination of the administrative and clinical files of the Children's Court and Children's Court Clinic in Victoria, and related archives in the Public Records Office in this period. There is the question, firstly, of 'how power works' in the legal and extra-legal complexity that surrounds children's courts, reformatories and special homes, probation, foster care ('boarding out'), and the psy-knowledge and expertise that came to surround the activities of the court. This question presupposes that a singular conception of power (for example, 'sovereign', 'disciplinary', 'governmental' power) is not able to adequately capture the scope of power effects of these institutions, especially in relation to the wide range of arbitrary powers lying in the 'capillaries', at the 'extremities' of formal legal institutions

(Foucault, 1990; O'Malley, 1992). The questions call for close and detailed attention to the minutiae of the 'cross-talk' that took place within this field. For although Foucault in *Discipline and Punish* (1977) allows disciplinary power to contain a juridical moment, the Australian experience may well reinforce Garland's view that the governmentality literature perhaps underestimates the place of constraint and coercion in historical analyses of social regulation (Garland, 1997:197). Secondly, there is a question of the sociological dimension of regulatory powers deriving from the penal system and their wider contribution to the production of 'normal' families. The argument here concerns the extent to which coercion underpinned 'incitement to self-govern' and the significance of images of threat in the complexity of powers that make up a specifically Australian genealogy of family and child regulation.

## **Governing through extra-legal powers**

### **Assessing parents and children**

The evolving colonial settlement of Australian territories, which authorities regarded as largely vacant and unpopulated, necessitated actions by central government that were quite novel compared with European contexts of governing. This applied particularly to a population with no historical connection with land or community, and which was 'exploratory' both in relation to the discovery and conquest of new territories, but also in the fabrication of a social domain that would accord with at least the broad contours of liberal rationalities of governing in the European tradition (Hogg and Carrington, 2001).



Perhaps the most effective responsabilisation program was that taking place against the backdrop of the promise of land, where a recently arrived or emancipated labouring class would be 'guided and disciplined by the expectation that they might in time and with hard work and sober habits ascend to the status of landholders' (Hogg and Carrington, 2001: 52).

These powers of incitement to status acquisition through land ownership may be contrasted with the spread of coercive powers into family life following the establishment of the industrial schools and reformatory schools. The schools were established in Victoria as a consequence of the *Neglected and Criminal Children's Act* (1864) and reflected the social views of English philanthropists like Mary Carpenter who believed that the cause of juvenile delinquency lay in society's neglect rather than children's innate criminal tendencies. In the procedures under the *Act* both offenders and non-offenders could be apprehended and brought before a court, which would then exercise discretion based on the age and circumstances of the child; neglected children could be sent to an industrial school for between one and seven years, while a child convicted of an offence might be sentenced to a term of imprisonment followed by a reformatory sentence for the same period. The immediate effect of the 1864 legislation was an eight-fold increase in the numbers of young destitute children in industrial schools, which in turn compromised their training roles (Jaggs, 1986; McCallum, 1993:134). Although the industrial schools idea was later abandoned, in part because it failed to establish the 'family principle' in a 'wholly patriarchal, homely, and affectionate' manner (Victoria, 1872), the effect was to deliver a system of monetary assessment of parents who were

compelled to contribute to their children's support. Where parents had been given maintenance orders, the court Clerks were instructed to maintain a surveillance of those parents:

It is particularly required that, in each case where an order for payment of maintenance of a child sent to an Industrial School is made by the bench, and the person against whom it is made is able to comply with it, the Clerk shall take the necessary steps to enforce the order. When such person leaves the district, the Clerk is requested to have him kept in view by the police, and the order enforced so long as he is able to pay the amount awarded.

(Attached hand-written note 'Extract from the Police Gazette'. Court Records, Circulars to Court of Petty Sessions, n.d. [1864] Victorian Public Records Office).

This kind of monitoring ensured parents' oversight of their children in the disposal of criminal cases -- a child's good behaviour bond required parents to enter a financial commitment, often of significant amounts, to keep the child out of prison. The parents themselves could be sent to prison if the child offended again and the parents were not in a position to forfeit the money. The importance of devolved, arbitrary powers of court administrators is evidenced in the way maintenance orders were processed. Parents had to plead a case, not to a magistrate, but to the central administration of the court regarding their financial capability to support their children. Once compulsory school attendance legislation was enforced after the 1870s, the penalties for truancy placed a further financial threat over the family. With the coming of the children's courts after 1900, extended powers through the linkages between courts and police, and charity workers and

probation officers, in addition to the school, added to the number of families and children under various kinds of supervision. The carving out of each element of this social domain was accompanied by the threat of prison.

Child and family regulation involved increased centralisation and more detailed classification of family that appeared in central welfare offices and on the palimpsest that was the child's record. A new disciplinary gaze was reflected in the standardized record-keeping of such information on parents (McCallum, 1993:138). From the 1890s, the children's depot (a clearing house for the neglected and offending) was used to observe children before they were relocated. The categories of persons in court reports, as required in the 1906 Victorian *Children's Court Act* on the child's 'habits and mode of living', were produced by newly appointed voluntary probation officers under the control of Alfred Clarke who had been brought over from the (adult) Prisoners Aid Society (Victoria, 1906 s.9). He brought to the children's jurisdiction the concern to identify and separate the 'habitual criminal' that preoccupied adult penal administrators and police throughout the second half of the 19<sup>th</sup> century, as well as penal disciplinary techniques such as indeterminate sentencing.

Note that extra-legal powers expanded out of the penal establishment rather than from broader sociological or cultural shifts, or the humanising influence of the child-savers, and carried with them a direct or indirect threat of imprisonment should the family fail to respond to required changes in behaviours. In a devolved system of assessing child criminality, one signal instance of 19<sup>th</sup> century adult penal policy flowing directly to the

children's jurisdiction early in the 20<sup>th</sup> century was indeterminate sentencing. Modelled on the provisions of the UK *Prison Act* (1898) and the *Prevention of Crime Act* (1908), this began as a program for adult prisoners heralded in the Royal Commission into Victoria Police in 1906 as an economical method of keeping trace of the 'habitual criminal'. Locating these offenders was an inefficient use of police resources, dependent on photographic and physical measures of offenders stored in the central police files. The Chief Commissioner of Police laid out a classificatory system whereby it was possible to recognize the habitual criminal in quantifiable terms: 'on his third conviction, you would have fair evidence that he is going to live a life of crime' (Victoria, 1906; para 1253). It offered a program of reform in which the criminal came to know, keep trace, and act on his own habit: 'so a man knowing the system as he would from having it put before him while in gaol, and knowing that he was determining his own fate, would naturally get out of the more serious class, and go down to the other' (Victoria, 1906: para. 1253). The chief of prisons lauded the economy of indeterminate sentencing as it had the effect of 'creating the desire on the part of those who may be affected by its provisions to go beyond it reach' (Victoria, 1906b). Adult prisoners given an indeterminate sentence were held at the Governor's pleasure.

Here was an elaboration of penal administration, an actuarial program and a now familiar 'three strikes' regime growing directly out of the prison, as well as a system of 'governing at a distance' that constructed the solitary penal subject with responsibility for his own reform. Indeterminate sentencing provisions were transferred directly into the children's jurisdiction and laid the ground for the growth of further arbitrary powers, or

what Garland in the UK terms ‘administrative modes of regulation’ (Garland, 1985:190). In Victoria, new powers over the movement of children between jail and reformatory school, or between foster home and reformatory school, were invested in the relevant Minister of State rather than a court, on the advice of charity workers and administrators. A child could be removed towards the end of a jail sentence and transferred to a reformatory school to begin an indeterminate sentence until aged eighteen. In addition, under Section 333 of the Victorian *Crimes Act* (1890), non-offending children who displayed ‘serious misconduct’ or ‘depraved habits’ while in foster care could be transferred to a reformatory school for an indefinite period, at the discretion of the Minister. This move could be made against both neglected and offending children who had been placed ‘in service’ or in foster care. In summary, while the provisions might be understood as a program of incitement to self-govern – to choose to regulate one’s own conduct according to social norms – they were implemented under the coercive and disciplinary constraints of the prison.

### **Arbitrary powers and the criminalising of Aboriginal children**

From the 1860s, when a Royal Commission was appointed to investigate increasing rates of Aboriginal mortality, there were already serious allegations about mismanagement at the mission stations set up to ‘protect’ Aboriginal communities from the devastation of the colonial takeover. The takeover of land and the spread of European settlement continued through the colony of Victoria, morbidity and mortality among Aborigines increased and the costs of maintaining mission stations rose. Over the following decades

governments moved to rationalize the missions to save money and try to stem the rapid decline in the health of Aboriginal communities. A new *Aborigines Protection Act* in 1886 gave the Aborigines Protection Board new powers to define what is ‘an Aborigine’ (Victoria, 1886). The *Act* reversed the definition of ‘Aboriginal’ so that those people who were ‘part-Aboriginal’ became officially defined as ‘white’. It put in place regulations forbidding half-caste children and adults access to the mission stations and their families. The Board attempted to enforce the ‘merging’ with the white population by simply declaring that all part-Aborigines under the age of thirty-four were now prohibited from the mission stations that had been reserved for the use of Aborigines. Children were removed from their parents on the missions when they were old enough to work, and under the authority of the Protection Board were sent out to service following a period of training, or for adoption with non-Aboriginal families. Older people were given three years to find work and alternative accommodation.

Following removal of the children, the Board reported an ongoing problem of young half-castes ‘ready to take advantage’ of anyone receiving rations (Victoria, 1890). Under the *Act*, rations for half-castes were stopped immediately they reached the lawful age, but the Aborigines Board knew that they were drawing on the rations of their families living on the mission and that this was a disincentive to ‘moving them on’.

We found that those who could not make their rations last were those [crossed out and replaced by the word] *families* who had friends and visitors. Half caste people who have no business on the Station. Only three pounds of meat has been given to

these people per week as it was thought best they should to some extent rely on their own rations (Victoria, n.d. [early 1890s]).

The Board's records show that trouble-making is consistently depicted as activities which put at risk the Government's aim of reducing the size and cost of the missions. The Board wanted 'our young half-caste people' to persevere in making a living '... otherwise they would just return to the mission'. There were also instances of Aboriginal men wanting to marry 'girls of mixed blood', who were now forced to run away from the missions because such unions were not allowed for under the *Act* (Victoria, 1890). The thwarting of the law drawn attention to in these reports concerned the constant attempts at challenging the regulation that deemed 'full-bloods' the only legitimate recipients of rations.

The trouble-making involved in willful sharing of resources demonstrates a racialised disparity with white lawbreakers and a complete inversion of the 'family solution' to crime control advocated by the child savers. Compared with the European policies of building support for the norms of family life, so consistent with an incitement to 'govern through the family' (Donzelot, 1979:48-95), Aboriginal getting-together with family and sharing resources was instead criminalized by those administering the *Act*. Resistance to the legislated definition of 'Aborigine' was itself an offence. The offence of sharing rations was formalized in a new *Aborigines Act* in 1890 forbidding any person to '... take whether by purchase or otherwise any goods or chattels issues or distributed to any aborigine [as defined under the *Act*]', with a penalty on conviction not exceeding twenty pounds or in default imprisonment for not less than one month nor more than three

months (Victoria, 1890 s. 13). It was also an offence to ‘harbor any aborigine ... unless such aborigine shall from illness or from the result of accident or other cause be in urgent need of succour’ (Victoria, 1890 s.13). Children required a certificate to enter the mission to visit their family, and being on the mission without the correct papers was also an offence. It was these policies of removal that underpinned a longer term criminalizing of the ‘young half-caste’.

In 1900, half-caste orphans were transferred to the care of the Department of Neglected Children and Reformatory Schools, placed ‘in service’ or in foster homes, and were subject to the same *de facto* indeterminate sentencing outlined in the 1890 *Crimes Act*, again by-passing any court appearance. (The term orphan in department documents may be a euphemism for children separated from their parents under the earlier mission legislation). But from 1900 this provision to transfer children to reformatories was extended to ‘all suitable Aboriginal children whether orphans or otherwise ... in order that they may have the advantages of being dealt with in the same way as other wards of the State’ (Victoria, 1901). Children sent out to foster care or into ‘service’ could be transferred to a reformatory on the basis of reports about their behaviour by their guardians, overseen by the penal administration (McCallum, 2005:341). To summarize: the criminalizing of Aboriginal people who were found to be breaking the provisions of the *Act*, by attempting to draw rations and support from their families on the mission, was accompanied by another provision that allowed those same children who had been separated from their parents and sent into foster care or into ‘service’ to be placed in a



reformatory school for an indefinite period, without any appearance before a court.

These administrative decisions were underpinned by the direct threat of prison.

### **Arbitrary powers, philanthropy and the psy-sciences**

Australian welfare historiography represents the innovation of the children's court as the victory of the 'child savers' and reformist philanthropy against a reluctant government (Jaggs, 1986). Were not the welfarist tendencies surrounding the new court a holding back of repressive police and state intervention, as Donzelot (1979) suggests about child welfare in the European context? In 19<sup>th</sup> century Victoria there were longstanding but informal networks between the police, magistrates, charity workers, jails, families and children, well before the creation of the children's court. As we have seen, there was considerable administrative energy devoted to enforcing a financial connection between parent and child after a legal determination had been made. The agents of this enforcement were charity organisations, the court officers and the police. Importantly, charity workers and later probation officers inserted themselves between the court clerk and the police, who together had the task of keeping the parent in sight and responsible – specifically, in ensuring that the parent fulfilled a financial responsibility. The motivation to remove children from the streets or from 'worthless' families was to save the child from crime:

A single boy or girl over fourteen years of age who has lived a street life gives more trouble and worry and is less hopeful than fifty who are under seven or eight. If the problem of how to deal with the older street boys and girls is ever to

be solved, an effort must be made to strike at the root of the evil in a way that has not yet been done. What is required is a system that will purify the stream at the fountain head, instead of merely attempting to do it half way on its course ... The placing of children out in country homes away from all their evil surroundings, under judicious supervision, is the only system that can provide home life for these little ones, taken as they are by people free of all cost to the Society.

Although not adopted in all cases, still they are treated as members of the family, thus changing their whole course of life, forgetting their old names and taking the names of their foster-parents.

(State Library of Victoria MS 10051 Victorian Children's Aid Society Collection. Box ½ (a) Presbyterian Society for Neglected and Destitute Children. Report of Agent and Ladies' Committee with Statement of Accounts to 30<sup>th</sup> September, 1894)

But the reports going back to the new court from the charity workers sent out to inspect families and homes, rather than acting as a check on the powers of law and government under the rubric of welfarism, were one element of a now more regulated process assessing a capacity to maintain a family. In formal court hearings, charity workers provided the court with information from their 'social investigations' undertaken on the condition of the home, the moral worth of the parent(s) and, in some instances, evidence about a defendant in a magistrates hearing on criminal matters:

May 29 1895 Mary Fohey. This child aged 3 years was taken on May 24<sup>th</sup> & adopted on the 25<sup>th</sup> by Mrs R of Violet Town—the child's case is as follows—her

mother is a weak-minded woman morally unable to take care of herself. She has another child a month old & no means of support—she is little worthy of help—but the welfare of the child induced Mrs Sutherland to take the home which opportunely offered [sic]. (Victorian Neglected Children's Aid Society: Reports and Statement of Accounts for the Years 1895-1911. MS 10051: Box 4/1 Minute book of the Sub-committee 8 April 1895-11 December 1901).

The networks between philanthropy and the police had been established through the more general policing of destitute, disorderly and dissolute adult population. Children were sent to the Society's home rather than being locked up with their parents in the nearby police cells. The home was seen as an annex of police work, and from 1904 the police were paying the rent for the Society's premises (Victorian Children's Aid Society, 1904). By 1910, besides foundlings, neglected children removed from parent(s) or found wandering, and cases where their parent(s) had been locked up, children were brought to the home who had absconded from various other institutions or had been charged with offences such as loitering, begging, gambling on the streets or theft, with a court hearing pending. The Society's home became in effect a short-term remand center, and a relay point between the police and the court. Charity workers began to exchange knowledge of the child from, and between, the police and the court. In the form of questions, instructions, advice and information, a formal and informal dialogue began to take place that established a space for special knowledge of the child, which then found its way into the committal procedure.

So while there was a degree of judicial innovation connected with the passing of the *Children's Court Act* (1906), in the sense of requiring hearings separate from adults, the main change resulting from the *Act* was the provision of oversight over a fledgling probation system, an ever-expanding network of voluntary child supervisors who would more systematically link the activities of courts, police and families. It assigned charity work under the aegis of the court system, strengthening the coercive powers of its agents, and then brought these activities under a new organization of honorary probation officers under the court's control (McCallum, 2004:111). Whereas once the child-savers had sought merely to lend a helping hand, their incorporation within the administration of the new children's court increasingly functioned as a system of knowledge of the child that placed the offending and neglected child on a grid of family capacities and obligations, and permitted the appearance of delinquency to be calculated in terms that, from the period from 1890 to 1940 had been transposed from economic to moral and psychological capacities.

By the time the children's court clinic opening in 1943, psychiatry, psychology and social work expertise had assumed the role earlier performed by charity workers and the lay probation officers, and their reports reveal a continuity in the 'social report' in their mix of physical, moral and occasionally psychological descriptions of family. In the early years of the clinic the psychiatrist mediated between child and court as a primary arbiter in questions of disposal. His final report to the court typically concluded on a recommendation for disposal and was followed by a postscript indicating the decision of the magistrate:

The boy is unlikely to improve in his present environment, and placement in a suitable institution appears advisable. *Case Committed to Children's Welfare Department (CWD) ...*

... his conduct should improve under suitable guidance on probation. *Probation 52 weeks ...*

.... further period of moral re-education in an institution appears advisable....  
*Committed to Castlemaine Reformatory*

... placement in a suitable institution and moral re-education are indicated. He is morally defective and is not amenable to control at home. *Committed to the CWD.*  
(Victoria, 1945-48)

In the Australian context a significant effect of economic power is in evidence in the functioning of extra-legal administrative bodies. For it is in this space, in the networks formalized by the creation of the children's court as an administrative entity, that the nature of responsibility changed from a strictly financial capability to a moral (and eventually psychological) capability. This is how we might understand the notion of psy-expertise becoming enrolled in legal practice. In child welfare records in the late 19<sup>th</sup> century, terms such as 'parental capability' and 'parental capacity' meant a capacity to pay. But by the early 20<sup>th</sup> century these terms had taken on a distinctly moral and psychological hue. As the inspectorate widened its surveillance of families throughout the countryside, the terminology increasingly focused on the moral rather than the material.

Categories of 'moral defective' applied to the child by the psychiatrist in charge of the clinic were matched by social workers' less scientific descriptions of a child's mother:

Mother: Is a rather fat, quiet type. She is to have a baby about April. When interviewed she appeared to be lethargic

Is a well-groomed intelligent looking woman

A healthy-looking woman who seems co-operative. Has possibly tended to 'mother' C rather much, unless he should prove to be a very dull boy.

Has been interviewed in the city office of the CWD...Is reported to be a very rough type of woman

Seems not so much unintelligent or ill intentioned as ineffectual...untidily dressed in rather soiled clothes...does not appear to understand effective discipline of children

Has a certain air of vagueness which is possibly due to a lack of intelligence

Showing evidence of her years of work and looks tired and worried

Does not impress with her personal appearance

(Children's Court Clinic Files, Cases 1/45 to 58/47 (1945 to June 1947)

Human Services Archives)

It is argued here that the social report provided evidence of a kind that attached a level of capacity for family responsibility on the part of family members, particularly the mother, and that these measures were given to support a court decision over the possible removal of children from families, or in the case of offending children, their disposal to a reformatory. They were reports produced in circumstances involving the exercise of

penal powers. Unlike the dominant role ascribed to philanthropy in the case of the UK, of the regulation of images of the pathological against which the modern family could adjust its standards, probation officers and later social workers and psychologists in Victoria sought to play a governmental role in constructing categories of persons who could not be expected to govern themselves or their families, and needed to be trained up in the arts of self-governing through extended re-parenting and education. As Hindess (2001) reminds us, liberal political reason has been as much concerned with authoritarian and paternalistic rule - the 'government of unfreedom' - as with the government of autonomous individuals; that is, that liberalism is predicated on a developmental view of individuals and populations, meaning that many will be seen as not – or not yet – ready for freedom (Hindess, 2001: 95). The historical analysis tends to turn on a very specific governmental role of the human sciences – the identification and allocation of that part of the population to a regime of training and supervision.

Before concluding, it is worth recapitulating on the theme of Garland's study of 'increasingly autonomous penal power' in penal-welfare complex in the UK, and his observation that welfarist criminological programs in the early 20<sup>th</sup> century amounted to 'discourses of penality' rather than actual interventions. The present study has paid attention to actual interventions as conveyed through decisions of a court and its officers – an analysis of the movement of bodies through a system. It is significant therefore that these interventions have been ones which produce 'categories of person' (Hacking, 1986) and authorise the segregation of certain parts of the population deemed to require supervision. There is little evidence that these activities could be described as welfarist

in the sense that they supported the kind of therapeutic intervention in the lives of children and families that is connoted in the present meaning of the term. Indeed, studies in other states in Australia support this conclusion. In New South Wales, van Krieken describes boarding out as the 'breaking up of unacceptable families' and relocation of children 'with respectable working class parents' (van Krieken, 1991:74). The foster parents had to be willing to be visited, inspected, advised and reprimanded as to the proper way to run their homes. It was through these means, according to the Sydney Children's Relief Board in 1912, that families '... have been induced to amend their ways' (1991: 78, 97). Like Garland, van Krieken saw the administrative changes as '... primarily at the level of language and terminology' (van Krieken, 1991: 113). By the 1930s, psychological intervention in the NSW children's court clinic produced categories of children based on psychological testing, using recently imported IQ and vocational measurement from the US and the UK. Indeed, van Krieken concluded that '... despite the lip service being paid to modernity and science, a major feature of the role of science, psychological or social, in child welfare was in fact its minimal impact' (1991: 124). There is abundant evidence that Australian family approaches penalized more than supported the family in their contacts with so-called welfare agencies. Jill Matthews describes the context in South Australia at the turn of the 20<sup>th</sup> century in the following terms:

Any family which failed to interpret correctly the narrow confines of acceptable structure and functioning became eligible for punishment. Its children could be removed into institutional care (including boarding out and fostering in more suitable families). The failed family could become the object of surveillance and



disciplinary measures in its own right, fined for allowing truancy or contributing to the commission of an offence, subject to visitation by probation, truancy, welfare and police officers. Once 'on the books', the so-called sanctity and the right to privacy of any family was abandoned and replaced by direct state or philanthropic intervention (Matthews, 1984: 85-6).

On the other hand, powers of 'inducement' became more widespread as new linkages between law and discipline added to the number of families and children under supervision. In line with Platt's evidence drawn from the United States when the juvenile courts were established, police in the Australian states began to charge children they would previously have merely warned or admonished (Seymour, 1997; Platt, 1977). In the Children's Court files in Victoria in 1906, 'larceny' and 'neglected' were the most common offences brought before the court, but there were as many cases of 'playing football on the street', 'selling papers, matches and flowers on the street', 'riding bicycle on the footpath', 'throwing stones', 'stealing fruit' and 'insulting behaviour' (Victoria, 1906c: 619). In this respect, combined police and court actions continued the role of earlier institutions to 'tidy up the colony' by getting destitute children off the streets (van Krieken, 1991: 60, 98), but they also constituted significant expansion of informal coercive powers.

The fact that powers exercised by penal administration and ministers of state (as distinct from courts) were non-legal powers reinforces Foucault's point about the rise of disciplinary administration as the 'dark side of law', where inquiries into the territory of

the social becomes concerned with power ‘at its extremities’, ‘where it becomes capillary’ and ‘where it is always less legal in character’ (Foucault, 1990: 144; Hunt, 1992: 8). It is the arbitrary powers exercised within the penal-welfare complex where those with the least accountability might well exercise the most power, but also make it difficult to identify any single underlying political rationality in the conduct of penal policy; these powers in turn tend to circumvent any homogenizing of motivations and politics behind various penal programs and disciplines; and it is in these territories that we find the ‘stick’ being wielded to coax people into forming themselves into self-governing citizens (Carrington, 1991: 110; Vaughan, 2000: 363; Brown, 2001: 113; Hogg and Carrington, 2001).

## **Summary and conclusion**

While it may be argued that there was an incitement to ‘govern oneself’ by adjusting one’s commitments and responsibilities in family life to the ‘power of the norm’, the attainment of these subjective states in Victoria, Australia, was also driven by the threat of punishment and underpinned by marked increases in what could be described as arbitrary forms of power. From the late 19<sup>th</sup> century these activities were performed by police, the courts, the reformatory and the ‘good country home’, formally overseen by regulatory agencies such as probation, and later social work and psychological medicine, all authorised by the children’s court. Even with the appearance of the children’s court clinic in most states in the mid-1940s, there is little evidence that these so-called ‘welfarist’ approaches to child neglect and offending in this period took the form of actual interventions by agencies applying programs of ‘incitement to self-government’.

Nor is there, as with Garland's (1985) account in the UK, evidence of a curative intervention in the lives of children and families. On the contrary, tutelary agencies developing from the early 20<sup>th</sup> century allowed wide arbitrary powers and in many instances low levels of accountability, with a constant threat that children would be removed from families by the use of discretionary powers of a Minister of State or senior administrator.

Underpinning the discursive elements of changes towards the new 'science' of crime, in the period under review, were the attempts to produce new categories of person through the assembling of detailed, and indeed infinite knowledge of the 'habits, conduct and mode of living' of populations needing to be governed. The specific effects of legal process centred around the children's court was to mandate the conditions of possibility for the collection of this 'social information' upon which norms came to be constructed, and enforced a system of allocating persons on the basis of their measured capacity for self-governing. Donzelot's (1979) paradoxical - liberator / strangle-hold - descriptions of the enrolment of expertise in judicial arenas affecting the family posited new forms of power that incite self-government. Yet the evidence of the agencies of intervention in Victoria and elsewhere, reviewed in this article, suggests that coercive normalization is a more accurate description of the relations between sovereign, disciplinary and governmental powers in Australia.

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