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'Lemon and Milk': Liberal Political Tensions in Child Governance

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Abstract

Child protection is reported to be in a state of crisis. Regular media commentary on escalating rates of child abuse, continual reports of deaths of clients in child protection services, and the use of the army and police in Northern Territory Indigenous communities, all seem to point to an upsurge in the harming of children in Australia. This article reviews some Australian and international research that has been important in shaping the problem of regulating children and families, and considers this work against recent policy directions. The article suggests that the crisis may refer to tensions produced by failed attempts to govern through risk management techniques, to the strains within liberal political reason over problems of intervention in the private sphere of the family, and to the constitution of parents and children as equal legal subjects while simultaneously as subjects of pastoral power.

Introduction

The management of child protection services has been under review throughout Australia following huge increases in reported notifications and substantiations of child abuse over the past decade. Victoria, through the *Children, Youth and Families Act 2005*, sought to rebalance the provision of general child welfare services and emergency child protection services. 'Child First' assessment teams would carry out cross-agency investigation of notifications of child abuse and direct 'complex and chronic' cases to family support services, rather than child protection, thereby substantially reducing the number and rate of substantiations of abuse (Commonwealth of Australia 2009:44–64). The 'Keep Them Safe' action plan in New South Wales proposed 'alternative service pathways' similar to the Victorian model (NSW 2008). An 'Integrated Family Support Project' in the ACT similarly aimed to divert families away from the statutory system. At a national level, the 'Framework for Protecting Children' (Commonwealth of Australia 2009) proposed an integrated and coordinated response to child protection across all levels of government, and opting for a public health model to deliver better outcomes. The policy reviews have occurred largely in response to an explosion in child abuse cases recorded by child protection agencies. Since 2005, the number of children on care and protection orders has increased by 57 per cent

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from 5 per 1000 to 7 per 1000 children (Australian Institute of Health and Welfare 2011). In 2008-9, over 200,000 Australian children were subject to one or more child protection notifications. However, largely as a result of changes in reporting methods, the number of children subject to a notification decreased by 10 per cent from 207,462 to 187,314. The rate of Indigenous children on care and protection orders was more than 8 times that of non-Indigenous children. The annual cost of child abuse is estimated at almost \$11 billion (Australian Institute of Health and Welfare 2010; Access Economics 2008).

The effects of differences in policies and practices can be seen by comparing the statistics of children in the welfare and justice systems in Victoria and New South Wales. Victoria is recording one of the lowest rates of child abuse in Australia. While it has one of the highest rates of children placed in residential care in the welfare sector, the rate of detention in juvenile justice facilities is the lowest of all Australian states. In 2008, Victoria recorded a rate of 26 per 100,000 of the male population aged 10 to 17, and 2 per 100,000 of the female population in juvenile detention, compared with 91 per 100,000 male and 7 per 100,000 female in New South Wales (Richards and Lyneham, 2010). In 2009, while NSW had nearly four times the rate of juveniles in detention of Victoria, the latter has four times the rate of juveniles in residential care (9 per cent of all children in out-of-home care) compared with NSW (2.2 per cent) (AIHW 2010:42). There are hazards in positing any kind of inverse relationship between the populations in residential care and juvenile detention. But for present purposes, any differences in the distribution of bodies in particular sites that may be demonstrated by this simple inter-state comparison may relate to differences in policies and administrative practices. So, for example, workers in residential services in one state may be caring for a population that in another state might well be housed in juvenile detention. Overall, the numbers of persons in either system are relatively small. In 2008, NSW had 368 persons aged 10 to 17 in juvenile detention, down from 611 in 1981, while Victoria had 78 persons, down from 334 (Richards and Lyneham 2010:15). Welfare 'resi-kids' in NSW numbered 342 in 2009, compared with 478 in Victoria, even though NSW had three times the number in care overall (15,211), compared to Victoria (5283). On 30 June 2008, 54 per cent of juveniles in detention across Australia identified as Indigenous; the detention rate per 100,000 of Indigenous juveniles was 397, more than 28 times as high as that of non-Indigenous juveniles (AIC 2010).

These matters are important for the criminal justice system and policy makers for a number of reasons. Differences in published statistics on the performance of criminal justice and welfare systems, such as those in two relatively comparable jurisdictions, will be partly a reflection of differences in the policies and practices, as the Australian Institute of Health and Welfare acknowledges (AIHW 2010). However, policy changes are themselves partly shaped by statistical representations of the problem they seek to address; a case of 'governing by numbers'. Further, research evidence shows that children in the welfare system constitute a population particularly vulnerable to criminalising processes (Platt 1977; Carrington 1994; Scraton 2008; McCallum 2008). This has been occurring during a period when children and families have emerged as major sites of regulation and disciplinary oversight; managing problem families become sites where law and discipline complement each other in the 'ubiquitous presence of regulation' (Hunt 1992).

Over this period, the definition of child harm has also changed. In the 1960s, a certain kind of family violence emerged from its hiding place with the discovery of the 'battered baby syndrome', subsequently splintering into a range of practices announcing themselves as sexual deviations in the post Second World War period, and becoming categorised

administratively using the broad term of ‘child abuse’ (Parton 1985; Hacking 1991; McCallum 2009). In historical terms, securitisation of the family by the welfare sector, using risk management techniques, attempted to engineer interventions in the ‘private’ institution of the family, although these interventions have been under constant criticism in the media and from child welfare advocates. Children rather than offenders are removed from families, official rates of child abuse have escalated due to an explosion of ‘false positives’ in risk assessments, children have become exposed to violence by those charged with protecting them, and children have continued to die under state care. Indigenous Australian children are particularly susceptible to criminalisation through inter-locking welfare and penal practices. These circumstances still persist. Analyses of power relations in these sites throw up a range of different modalities of power which under conventional analytics of power may be difficult to tease out—pastoral power, actuarial power, disciplinary power—making the problems amenable to a broader governmental analysis (Dean 2007).

In the next section I summarise some of the relevant research on the historical and social functioning of child and family regulation, including particular discursive (including statistical) productions of child abuse, the consequences of preventative welfare intervention on criminalising children, and the shifting forms of expertise involved in interventions in the family. Finally, I consider Victorian policy approaches against this research literature, as a way of demonstrating certain problems and even failures in governmental interventions in the family. I argue that the problem of governing child abuse confronts certain tensions in liberal political reason. These may result, first, from public interventions in the so-called private institution of the family, and second, from the constitution of children as legal subjects on the one hand, and on the other as subjects of pastoral supervision—or as Michel Foucault might suggest, like having lemon and milk in one’s tea (Foucault 1978:438).

Regulating Children: a Brief Overview of Research Directions

Interventions in child and family welfare are contingent on the way in which problems in this field are represented (McCallum 1993). Perhaps the modern problem of harm to children began with early 19th century child labour reforms and late 19th century weakening of *laissez-faire* philosophy that previously limited the state’s role in intervening in family life (Parton 1985; Crofts 2002:12). In Victoria, a more long-standing doctrine of *parens patriae* shaped the thinking behind the *Neglected and Criminal Children’s Act 1864*, which placed child welfare in a criminal justice framework and permitted the police to intercept children on the streets, take them before courts, and commit them to institutions where they would be trained in the habits of industry (Jaggs 1986). Well into the 20th century, children were charged with the offence of being ‘in need of care and protection’ and were brought before the same court as offenders. Despite attempts to separate these cases and judicial spaces through architectural alterations and policy reform, systemic connections remain. The term ‘child abuse’ is more recent, deriving from doctors’ discovery in the 1960s of children with untreated broken bones, in a similar context as the Colorado paediatricians under Kempe who invented ‘battered baby syndrome’ (Kempe et al 1962; Hacking 1991; McCallum 2009). Medical social workers in clinically-based child sexual abuse and child protection units also informed the ‘ideology of child protection’. (Thorpe 1994:200; Carter and Brazier 1969).

During the last century, the policing of children on the streets was complemented by regulatory systems focussed on welfare interventions in families. Besides medicine, a diverse range of powers and knowledges made it possible to render the family calculable and amenable to intervention (Parton 1991). Knowing an object, such as the child or the family, requires the invention of notational procedures, methods of gathering and presenting information, and using statistics in ways that make families amenable to intervention. As distinct from ideas about broad shifts in the meaning of childhood described in the social construction of childhood literature (e.g. Scott and Swain 2002), this is a history of how the child comes to be known: how diverse and mundane forms of calculation and assessment, including assessments of risk, surveys, trainings, architectural forms and so forth, make up a reality in terms which render it amenable to intervention. Ian Hacking's 'The Making and Molding of Child Abuse' overturned any notion of an ahistorical 'problem child' (Hacking 1983; Hacking 1991; McCallum 2008). Like earlier forms of policing, welfare interventions were closely linked to the criminal justice system, but in different ways. According to Carrington (1993), offending and neglected children shared common forms of expertise in deciding on custody questions, so that rates of committing children to institutional care were often higher for welfare cases than for children charged with criminal offences. The role of expertise was seen to be critical in subsequent decisions by courts, especially in the use of 'protective custody'. A complex web of modern governmental technologies, primarily designed to save children from 'bad families', produces what Carrington describes as a highly selective 'delinquency manufacturing process' (Carrington 1993:1):

The governmentalisation of these young people is taken over by a network of State agencies allegedly concerned with their welfare. They then become subsumed into the discourses about 'problem youth' and are managed through a variety of disciplinary techniques which generally do not distinguish the abused child from the 'delinquent' (Carrington 1993:111).

The functioning of these agencies tends to criminalise girls, especially Aboriginal girls and girls from public housing estates, at alarming rates compared with other young persons. They do so for typically adolescent minor misdemeanours such as truanting, parental defiance, shop-lifting, sexual promiscuity, fare evasion, and so-called offensive behaviour. A genealogy of so-called welfarist approaches to juvenile justice rests not so much with the separation of adults' and children's jurisdictions in the early 20th century but rather with the proliferation of generalised and less visible forms of punishment carried out by a host of 'pathologists and functionaries' that came to surround the legal apparatus (Carrington 1993:114). The Children's Court itself operates more as an assembly site for an array of assessments about maladjusted children and their families, rather than as a judicial site for testing evidence. Even in the small number of contested cases, judgments about what to do with the child can slide between strictly legal considerations and the manner, character and family of the child. As a consequence, judicial power is dispersed, elevating the role of welfare and psychological experts in decisions about the disposition of cases. Court proceedings shift from considering the nature of the offence to the nature of the child. Disposition thus becomes dependent on forms of knowledge—'deficit discourses'—where it becomes unnecessary to separate welfare cases from criminal matters. In the case of Aboriginal children, these practices are consistent with McGillivray's description of the effects of a 19th century Canadian imperialism infused with emergent sciences of cultural anthropology, criminology, phrenology and social Darwinism, with particular views of determinacy and deviance, which in turn 'justified imperialist projects of structural and cultural colonization and provided a mythology of inevitable cultural desuetude' (McGillivray 1997:5).

Parton's study of the *Children Act 1989* in the United Kingdom showed the new policy tried to draw a clear division between voluntary children's services on the one hand, and on the other a protection system in cases where '...the child concerned is suffering, or is likely to suffer significant harm' (Parton 1991:198). A bifurcation of this kind also appeared in the criminal justice and mental health systems (McCallum 2001). It rested on the belief that it was possible to distinguish the very risky and dangerous from the rest of the population, and that expertise was available to make these classifications. Indeed, the notion of dangerousness became the yardstick for allocating scarce government resources (Parton 1991:203). So, during a period when demand for all social services had increased due to deteriorating economic circumstances, increased stress on children, and a political agenda of neo-liberalism, child protection became the main priority of social work practice. Both Parton and Carrington observed that in the 'grey areas' outside of the gaze of the court, where work is done on sifting out those with high risk, it was disciplinary mechanisms that become central and defined the day-to-day practice of child protection. Parton issued a warning to policy makers that it was naïve to assume that policy and practice can be so neatly demarcated between a care system and a child protection service (Parton 1991:207).

Parton's concerns about issues of demarcation in child interventions are reinforced in Thorpe's (1994) study of the child welfare system in Western Australian. The bulk of welfare work consisted of enquiries into the behaviours of large numbers of parents, with only a very small proportion of this 'policing and investigation' resulting in children being assessed as 'at risk'. The vocabulary of child protection around the concept of 'child abuse' led researchers to 'spectacularly miss the point' about the actual contexts in which allegations arise—the point being the massive overrepresentation of poor and disadvantaged people, especially single female parent families and Aboriginal people (Thorpe 1994:196). Disadvantaged families were a predominant feature of 'further harm/neglect' cases, and 60 per cent of those cases were single parent families and about a half of these were Aboriginal families (p. 185). Almost all these cases involved impoverished families and the misuse of alcohol, both of which were long-term historical themes in child welfare work. Because of the epistemological frame created by the expression 'child abuse', parents were pathologised and individuals blamed, but the overall lot of children coming under the net of child protection did not improve. Statistics on child protection failed to reveal the true nature of child protection work, which involved observation, categorisation and techniques of intervention whose aim was to standardise child-rearing practices. The signifier of 'abuse' changes child welfare agencies from a service provider role to a policing and normalising role:

It can be construed as a switch from a view of the child in a context where caregivers are encouraged and supported by the state to look after and protect children, to one where the state 'intervenes' to 'protect'. It sees parents not as nurturing and supporting agents whose difficulties and structural disadvantages require compensation, but as potential threats from which children require protection (Thorpe 1994:199).

Finally, the exploration of the governance issues surrounding child protection are taken further in Ashenden's (2004) study of the role of expertise as a 'neutral vehicle' in managing tensions between family and state in intervening, in this case, over child sexual abuse. It is here that specifically liberal forms of governing become important in the analysis, assuming a distinction between the public powers of the state and the privacy of family relations. Where to draw the boundary between public and private involves designations of harm drawn from medicine and psychology (Ashenden 2004:204). The justification for intervention '...must be grounded in an effective relationship between legal

determinations of right (effects of jurisdiction) and scientific determinations of health and normality (effects of veridiction)' (p. 205). However, mixing together a polity comprised of judicial equals, along with a notion of society overseen by pastoral supervision, produces problems; again, asking for 'lemon and milk' in one's tea (Ashenden 2004:207; Foucault 1978:435–8). The closer the linking of law to regulatory supervision, the greater the power of normalisation. On policy making under liberal forms of governing, Ashenden argues that political technologies advance by taking what is essentially a political problem, removing it from the realm of political discourse, and recasting it in the neutral language of science—'once this is accomplished the problems have become technical ones for specialists to debate':

Perhaps it is symptomatic of liberalism that it attempts to turn tragedies into problems; a crisis of expertise guarantees a demand for more expertise in a process through which liberalism cuts itself off from the past and has always to look forward. This urge to the future is borne out nowhere more clearly than in relation to children. Yet in this technical understanding of problems the capacity for ethical debate is foreclosed by a prior determination that there should be a solution...This determination to hunt for solutions produces an endless repetition of problems in which the constituent tensions of liberalism are further worked over. Perhaps at least this way of governing crises enables us to resist the notion that the problem is anything to do with more deep-seated cultural and political mores? (Ashenden 2004:209)

Protecting Children: Policy Dimensions in Victoria

One of the drivers of reform in Victoria is the recognition that child protection should be regarded as an emergency service and not be confused with long-term social welfare programs. This followed the realisation that under the old policy, one in five of all children born in Victoria in 2003 would be notified for suspected child abuse or neglect during their childhood or adolescence (Victoria 2003). The distinction appeared in the Victorian *Children, Youth and Families Act 2005* and reproduced the same observations made two decades earlier in the lead-up to the *Children Act 1989* (UK). Against a historical background in the UK of escalating rates of child removals, a breakdown in protective services including deaths of children in state care, and a crisis in forensic medical supports, the *Children Act (1989)* sought to erect a clear division between a voluntary child care system and a high-risk child service. It is worth recalling Parton's description of a neat demarcation of a general child care program and a protection system as 'naïve' (Parton 1991:208). Parton identified relatively hidden areas of child protection services, outside the direct gaze of courts and the application of legal principles, where disciplinary mechanisms of monitoring and surveillance of families became central, and where resources were concentrated on sifting out high-risk cases (Parton 1991:207). It was precisely in these grey areas that Carrington (1993:1) observed a set of practices she described as a 'delinquency manufacturing process'. The revised Victorian policies, in other words, appear to be quite at odds with two decades of research evidence rejecting the kinds of structural changes advocated.

The policy discussion preceding the Victorian *Children, Youth and Families Act 2005* laid down the governmental rationality for changes to the regulatory child protection system (VDHS 2003:vii). Australia, the UK and North America had earlier adopted a 'regulatory' child protection orientation, as distinct from a family service orientation long practised in countries like Sweden, Germany, Belgium and the Netherlands. A family services approach provided easier access to a wider range of services and assistance than regulatory systems,

and placed more emphasis on working voluntarily with parents over longer periods, compared with the 'more coercive approach'. A regulatory approach worked well when responding to episodes of significant harm but was less effective in dealing with more chronic cases of ongoing neglect. Policy reform would require a spectrum of responses to families' needs, while retaining the capacity to apply 'tough sanctions'. Family services need to work in partnership with other agencies, and they work best when people see the system as procedurally fair and treat people with respect. Moreover,

child protection regulation should build on, or interact more with, parents' own 'private regulation', or self-regulation. Government regulation should respond to how effectively private regulation is working *and can be encouraged to work better* (VDHS 2003:viii, emphasis in original).

In contrast, the new approach would involve 'community partnerships' and encouraging vulnerable families to access support by providing more responsive and flexible services. These strategies would be supported by an expanded 'community infrastructure', including Community Child and Family Support Centres in local areas, locally-coordinated 'community based' services including child protection, family support, health, police and schools, and the development of 'intermediate level responses that allow for dialogue and deliberation with families outside of formal legal processes' (VDHS 2003:xiv). It is not clear how the word 'community' is to be understood here. It is also unclear how a family services approach coexisting with a system that can deliver 'tough sanctions' (VDHS 2003:viii) might avoid the undermining of the resilience-building and self-governing potentialities of families upon which the family-services approach relies.

A case can be made that managing the 'crisis in child abuse' was accomplished by administrative fiat. The problem of governing children and families was constructed in terms that made it amenable for an administrative intervention. By channelling reported incidents to a family support service rather than a child protection service, a number of states in Australia saw significant reductions in cases previously reported as 'child abuse'. This outcome was subsequently reported in a Federal Government policy evaluation as a 'promising' development (Commonwealth of Australia 2009:6). This leads to consideration of two further aspects of recent Australian policy innovation in the attempt to map policy shifts against the body of research reviewed in the first part of this paper. The first relates to interpretations of the child welfare environment as represented in statistics and policy analysis; the second, to the shifting forms of expertise brought to bear in mediating the normalising effects of child and family intervention, as described by Ashenden (2004). We can point to some of the problems attached to statistical treatment of child protection by a brief examination on the Commonwealth Government's Framework document (Commonwealth of Australia 2009).

Federal intervention in a previously State Government sphere of operation was announced as a new 'shared agenda' of responsibility at all levels of government that would focus on early intervention and a coordinated set of programs, policies and payments. The Framework document reiterates the crisis:

[t]he reported levels of child neglect and abuse in Australia have increased at an alarming rate. Child abuse and neglect has become an issue of national concern. Meanwhile, statutory child protection systems are struggling under the load (Commonwealth of Australia 2009:5–6).

The estimated total recurrent expenditure on child protection and out-of-home care services was \$2 billion in 2007–08, an increase of 13.5 per cent on the previous financial

year. Some of the increases over time may be the result of changing social values and better knowledge about the safety and wellbeing of children. Child protection services were originally established in response to serious physical abuse. The Commonwealth Framework document then states: 'Now, in response to changing community expectations, they address physical abuse, sexual abuse, emotional abuse, neglect and domestic violence. These changes have been a major driver of increased demand on child protection services' (Commonwealth of Australia 2009:7). Confirming the widespread agreed doctrine of 'early intervention', the Commonwealth recognises that '...the best way to protect children is to prevent child abuse and neglect from occurring in the first place. To do this, we need to build capacity and strength in our families and communities, across the nation' (Commonwealth of Australia:6). In 2007-08, there were 55,120 reports of child abuse and neglect substantiated by child protection services. The Framework states:

For the first time since national data collection there was a reduction in child abuse substantiations from the previous year (2006-07). This is a promising indication that substantial increases in family support may be effective at preventing child abuse and neglect. Data in future years will tell us if this trend continues (Commonwealth of Australia 2009:6).

However, an analysis of recent changes to the administration of child protection services in a number of states would explain most of the recent changes in the rates of reported child abuse. Reporting events as requiring family services rather than child protection services may well prove to be a more appropriate policy response and would be expected to reduce the rate of substantiations of child abuse. However, there is no evidence presented that indicates there have been 'substantial increases in family support', nor is there evidence that such increases have led to reductions in child and family needs.

Conclusion

The stimulus for policy review of child protection services was the escalating reported rates of suspected cases of child abuse, in part due to mandatory reporting laws, and the much lower rates of substantiated cases once a preliminary investigation had been conducted. It was changes to the administration of the reporting of child abuse that led to a reduction in the rates. It was not that family services, having been shown to be a better response to the needs of children, led to a reduced rate of reporting, but rather that an administration came to know a large proportion of cases as belonging to a category that would no longer be referred to protective services. A recent AIHW report on child protection (2009) points out that most jurisdictions in Australia have introduced options for responding to the 'less serious' reports through the provision of family support services, rather than through a child protection investigation. So the subsequent decline in numbers relates more to changing management practices than any reduction in child and family needs. The sanguine tone of the Commonwealth Framework's (2009) reportage of statistical reductions in child abuse substantiations may be misplaced, in the sense that child and family issues are increasing overall, but the new policy requires that a proportion of these now be directed to family services rather than being defined as 'child abuse'. While notifications Australia-wide have increased three-fold in the decade since 1999, and increased six-fold in NSW, the published statistics do indeed show reductions on the number of substantiations of abuse in each State and Territory for the first time since AIHW records were kept (AIHW 2009:23-5). Perhaps this is an example of 'dynamic nominalism' (Hacking 1986:228), in that certain categories of events or persons were named in particular ways in order to be properly managed.

Research over two decades has revealed problems in relation to the discourse of child abuse, in particular with regard to institutional violence perpetrated on children under state care and their vulnerability to criminalisation. The term 'child abuse' may refer to a range of events and contexts, but, as the research reviewed above indicates, it most often refers to issues of poverty, health and mental health, and social dislocation experienced especially in Indigenous communities.

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