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 kinds of power deployed in both legal and non-legal settings over problem children. This paper reviews some exemplary historical studies in Europe, Australia and the UK, and additional archival evidence in relation to the shift towards positivist and so-called ‘welfarist’ approaches to the problem of child criminality and family regulation from the turn of the 20th century. The aim is to assess the applicability of recent trends in social theory in understanding the regulation of families and children in Australia. Much European social theory emphasises non-coercive, non-legal correction of families where power takes the form of inciting 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 – more accurately describes the power relations in the policing of families in Australia.

Introduction
Sociological and criminological literature in Europe, North America and Australia acknowledges the late 19th century as a pivotal moment in the construction of the main institutional structures of child welfare and the emergence of a modern welfarist approach to governing neglected and offending children. These developments are linked to 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). 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. In Donzelot’s Policing of Families (1979), psy-intervention works by putting the family in a position where it becomes in its own interests to conduct itself
according to social norms, especially in matters concerning the education and the healthy upbringing of children. Psy-techniques establish a discrepancy between images and reality, which then incites families to adjust (or ‘float’) their behaviors towards that ideal image. Regulating the family, in this view, is a kind of ‘governing through freedom’, a productive kind of power that incites self-adjustment and presupposes a certain agency or ‘capacity to act’. This conception of power has been influential in much of the subsequent governmentality literature, drawing on the observation that liberal political reason assumes that power works through the ‘free’ activities of members of the population to be governed (Foucault 1979; Ewald 1991; Hindess 2000: 70; Rose 2004: 174).

The aim of this paper is to examine historical evidence in Australia on the emergence of the forms of regulation affecting children and families from the beginning of the 20th century. The paper attempts to set out the possibilities, but also the limits, of notions of ‘governing through freedom’ and ‘psy-techniques’ of governing, in how we understand the historical conditions for the emergence of the ‘normal’ family at the beginning of the 20th century. The paper raises some questions about the application of recent European social theory to the functioning of the penal system as it affected families and children in Australia. There is the question, firstly, of how power is at work in the legal and extra-legal complexity that surrounds children’s courts, reformatories and specialist homes, probation, foster care (‘boarding out’), and their attendant professional groups. A singular conception of power (such as ‘sovereign’, ‘juridical’ or ‘disciplinary’) inadequately captures the full scope of power effects of these institutions, especially in relation to the wide range of discretionary powers lying in the ‘capillaries’, at the ‘extremities’ of formal legal institutions (Foucault 1990; O’Malley 1992).

In the colony of Victoria the demand to enforce familial ties and obligations was responded to by governing practices described here by the term coercive normalisation. This term refers 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 through images of threat. As I shall attempt to show, these systems entailed an extension
of the prison as a governing idea, a reinforcement of economic power, and a way of knowing the problem child as the subject of judicial administration that was a product of both juridical forms of power and the functioning of the human sciences.

**Power, law, normalisation**

An evolving colonial settlement of territory, that authorities regarded as largely vacant and unpopulated, necessitated actions by central government that were quite novel compared with the European situation. 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: 48; Carter 1987). Perhaps the most effective and generalized responsibilisation 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).

There is no doubt that by the mid-19th century these powers were greatly extended into family life with the establishment of the industrial schools and reformatory schools. When the schools were established in Victoria in 1864, there was an immediate eight-fold increase in children placed in care (Tyler 1981). The carving out of the social domain was accompanied by threat and compulsion. Parents of children who had been removed to either industrial or reformatory schools were compelled to contribute monetarily to their support. In circumstances where parents had been given maintenance orders, probation officers were instructed to maintain a surveillance of those parents, so that ‘… where such person leaves your district, you are requested to have him kept in view by the Police’ (Victoria 1906: Royal Commission). Later, this kind of surveillance ensured parents’ oversight of their children in the disposal of criminal cases; so a child’s good behaviour bond required parents to enter a monetary bond, 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. In these kinds of cases parents had to plead a case to the central administration of the court. Once the compulsory school attendance legislation was passed in the 1870s, the penalties for truancy placed a further economic and disciplinary burden on family life. With the coming of the children’s courts around the turn of the 20th century, extended powers of ‘inducement’ through the new linkages between law and discipline again added to the number of families and children under supervision.

Comparisons with European evidence may help to draw out the specifically Australian mode of ‘imaging’. In the European context, Rose (1990) advances a sociological argument drawing on Donzelot’s notion of ‘the regulation of images’, as a way of understanding the historical processes underpinning notions of ‘subjective commitment’, ‘governing at a distance’ and the ‘conduct of conduct’, in the context of family regulation and the kinds of power implicated in these shifts (Rose 1990). The various philanthropic, moralizing, ‘familialising’ projects in the late 19th and early 20th century in the UK in which experts attempted to ‘shape and infuse’ personal investments in motherhood, fatherhood, family life and parental conduct. For Rose, 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). The evidence in Australia, however, suggests a different emphasis. Child and family regulation involved increased centralisation and more detailed classification that appeared in central 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 (Hacking 1986; McCallum 1993). From the 1890s, the children’s depot (a kind of clearing house for the neglected and offending) was used to observe children before an attempt was made to relocate them, and although a detailed accounting in terms of categories of person was able to be constructed by all the specialists who interviewed the child and its family, the consequences of this productive ‘making up’ rarely extended to individual treatment through the psy-sciences. Like Garland, van Krieken saw these 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 England. 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; McCallum 2001: 80-88)

The evidence from Victoria also shows there was considerable administrative energy devoted to enforcing the connection between parent and child after a legal determination had been made. The agents of this enforcement were philanthropists, the court officers and the police. Importantly, the philanthropist (and later probation officer) inserted her/himself in the space between the court clerk and the police, who together had the task of keeping the parent in sight and responsible – specifically, to ensure that the parent fulfilled a financial responsibility. Indeed, in the Australian context the power of financial penalty is in evidence in the programs of extra-legal administrative bodies, reinforcing the material threat. For it is in this space, in the networks formalised by the creation of a new 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. In child welfare records in the late 19th century, the language of ‘parental capability’ and ‘parental capacity’ meant a capacity to pay. But by the early 20th century these terms had taken on a distinctly moral and psychological hue. As the inspectorate widened its surveillance of homes and families spreading through the countryside, the terminology increasingly shifted from the material to the familial.

Unlike the dominant role ascribed to philanthropy in the case of the UK, of the regulation of images against which the modern family might adjust its standards (Rose 1990), new professionalised probation officers in Victoria sought to play a governmental role in constructing categories of persons who could not be expected to govern themselves or their children, or needed to be trained up in the arts of self-governing through extended re-parenting and education.
Provisions for children grew directly out of the adult penal system itself, rather than from broader sociological factors or from the political effects of the tempered humanism of the ‘child-savers’. The evidence in Victoria shows that the establishment of the children’s courts mandated previously informal links in the adult system, between the police, magistrates, philanthropy, jails, families and children. The reports going back to the court from the expert witnesses sent out to inspect the ‘family background’, rather than acting as a check on the powers of law and government under the rubric of welfarism, was in fact part of government in the sense that the social investigations undertaken by these proto-social workers produced the categories and types of persons through which government would be conducted. The expertise of psychiatry, psychology and social work sought to ‘make up’ the categories of persons in their court reports, as required in the 1906 Victorian Children’s Court Act (1906), on the child’s ‘habits and mode of living’ (Victoria 1906; McCallum 2004). Power 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 on the advice of experts, rather than a court. So, for example, a child could be removed towards the end of a jail sentence and transferred to a reformatory school to begin an indeterminate sentence until the child was aged eighteen. Under Section 333 of the Victorian Crimes Act (1890), 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 children who had been placed ‘in service’ or in foster care, whether or not they had committed an offence. In the case of Aboriginal children, those defined as ‘half-caste’ who had been separated from their parents under the Aborigines Act (1890) were transferred in 1900 from the jurisdiction of the Aborigines Board to that of the Department of Neglected Children and Reformatory Schools. These were similarly subject to removal from foster homes or ‘in service’ and placed in reformatory schools, again at the discretion of the administration (McCallum 2005).

**Summary and conclusion**

The fact that powers exercised by penal administration and ministers of state (as distinct from courts) were formally 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 become 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). This
characterization also assists in displacing notions of paradox and uncertainty in some
historical analyses of family and children’s intervention, in that ‘welfarist’ approaches to
child penalty are able to be reassessed in terms of various combinations of sovereign,
disciplinary and governmental powers (O’Malley 1992). This paper tries to show how the
spread of these powers weakens formal distinctions between judicial (the courts) and
extra-legal (psy-sciences expertise), or between historical models such as ‘justice’ or
‘welfare’. Moreover, it is the discretionary powers exercised within the justice system
that make it difficult to identify a single underlying political rationality in the conduct of
penal policy; discretionary powers tend to circumvent any homogenizing of motivations
and politics behind various penal programs and disciplines, and question the applicability
of broadly-based theoretical and conceptual terrains (Carrington 1991: 110; Brown 2001:
113; Hogg and Carrington 2001). 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 matters such as crime control their present shape. As Garland
(1997: 202) argues, a genealogical understanding of rationalities and technologies is
relevant if they continue to function in the present - an understanding of their functioning
in the present needs also to be concerned with ‘struggles and conflicts and low politics’
(Garland 1997: 202).

Underpinning the discursive elements of changes towards the new ‘science’ of crime, in
the period under review in this paper, 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 (Victoria 1906: s9).
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 paradoxical - liberator / strangle-
hold - descriptions of the enrolment of expertise in judicial arenas affecting the family

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posited new forms of power that incite self-government. Yet the evidence of the agencies of intervention in Victoria and elsewhere in Australia suggests that coercive normalization – the image of threat – is a more accurate description of the relations between sovereign, disciplinary and governmental power in the establishment of family norms.

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