Abstract:

Criminalising Aboriginal children in Australia began with perceived ‘trouble-making’ among the traditional owners and occupiers of lands that had been taken by the colonisers. This paper considers events around health, child removal and Aboriginal identity in Victoria in the late 19th century, as the main settler institutions of child welfare and reform were under construction. It surveys systems of space, power and knowledge in the ways these institutions, along with the ‘good country home’, worked to produce Aboriginal children’s identity and notions of their capacity for self-government and survival. The aim is to present evidence for the contingent nature of processes of examination and disposal that saw Aboriginal children criminalised in the name of welfare.

A glimpse of the relations of Indigenous peoples in their accommodation and resistance to the early settlers of New South Wales provides one standpoint on the exercise of power. In the earliest period of settlement, discipline in what was a gaol without walls relied mostly on the dependence of convicts on food supplies. Parties of convicts had to be assigned tasks over large areas isolated from the immediate settlement in conditions in which encounter with the Aborigines, without any armed protection, was inevitable. Butlin (1983) gives an account of conflict with ‘the blacks’ over fish catches and the killing of a convict in the bush early in 1789, which resulted in a hunting party of convicts being mobilised to avenge their comrade’s death. For this, the convicts were punished with 150 lashes each, but in addition two military parties were sent out as a show of force in official retribution and to warn the Aborigines that they could not prevent settlers moving about. Butlin’s analysis of population and disease in southeast Australia - ‘death at a long distance’ - comments that following these events official attitudes to the blacks had altered: ‘Such were our enemies abroad’, said Governor Collins (Butlin, 1983: 22 [emphasis added]). Butlin speculates that at the very least...
‘it can perhaps reasonably be said that the whites had control of a virus known to be extremely potent and failed in their responsibilities. It is possible and quite likely that they deliberately opened Pandora’s Box’ (ibid). Smallpox was virtually unknown in British gaols in the 18th century, because prior infection of inmates had given them immunity. If deliberate unleashing was considered, smallpox was the one disease that could be officially or otherwise unloosed with impunity. Eye witnesses traced the course of the disease from the Hawkesbury River to Botany Bay, and documented the mortality rate of about 50 percent of the population (Butlin, 1983: 24). A later contagion in 1830 was definitely not caused by Europeans, and the weight of evidence suggested that smallpox was spread from Macassan fishermen. Richard Broome, drawing on Butlin’s economic history, concludes that a south-eastern Aboriginal population of 250,000 (perhaps 60,000 in Victoria) in 1788 was halved by 1790 and halved again in 1830. The new diseases, especially smallpox, venereal diseases, influenza and tuberculosis ‘assisted the European conquest’ (Broome, 2005: 9). Disease also wore away at oral traditions and cultural practices. The Protector William Thomas’s population surveys in the early 1840s showed that fewer children were being born and had survived since the whites arrived than in a similar period before their arrival:

Despite making Melbourne their own, walking its streets and doing as they pleased, Kulin tradition became progressively more difficult to practise. Though groups maintained customary movements across their lands, they found that areas were now closed to them. It became harder to find places to hold ritual undisturbed, and Aboriginal judicial proceedings were broken up as outsiders saw lawful punishments as fighting (Broome, 2005: 29-30).

The management of Aborigines in Victoria in the mid- to late 19th century took a new course as the colonial government attempted to set up missions to protect the remaining survivors of the European occupation. In one kind of counting, the British occupation of Victoria reduced the original inhabitants from more than 15,000 in 1834 to under 3,000 in 1851 and by the 1920s it had plunged to about 500 people, the lowest, so-called ‘full blood’ Aboriginal population level of any colony accept Tasmania (Campbell, 1994:xii; Broome, 2005:xxiv). The official statistics are premised on resolution of a range of definitional issues regarding Aboriginal identity, especially the counting of Aboriginal children, since after the passing of Aboriginal Acts during the last half of the 19th century most children of European and Indigenous parentage were not regarded as Aborigines (Read, 2003: 155-163). Another kind of calculation estimated that about thirty cultural-language groups made up of hundreds
of clans or land-owning groups comprised perhaps 60,000 people before the European arrival (Broome, 2005:xxi). Compared with other districts, the Victorian colonial experience was distinctive in that there were few convicts, the occupation was swift due to fewer geographical obstacles and the abundance of rich grasslands for sheep grazing, and because the Whig liberal outlook in Britain at the time sought unprecedented steps to try to protect Aboriginal people from the murderous onslaught experienced in other parts of the country. At the time of settlement of the Port Phillip District the Whigs were in government in Britain and an influential pressure group of humanitarians and evangelicals, the Clapham Sect, had pressured the Liberal Government to assist emancipation of African slaves in the British West Indies. The Sect then looked to indigenous peoples in the British Empire, establishing a select committee to call for better protection and attempt to ameliorate the effects of British colonialism on those peoples (Broome, 2005: xxiii).

One central theme in the account thus far is the notion of Aboriginal ‘troublemaking’. In the literature on the settlement in Port Phillip, troublemaking appears initially as the white interpretation of traditional gatherings and ceremonies, the rituals associated with legal punishments, and what the Superintendent La Trobe referred to as ‘disorder’ and ‘disgrace’, prior to issuing orders in 1840 that ‘no Aboriginal blacks of the District are to visit the township of Melbourne under any pretext whatever’ (Broome, 2005: 31).

Early policies of protection were motivated in part by what was seen to be the inability of the authorities to safeguard Aboriginal people from white violence and secure access to schooling and other services in the face of white resistance. On the other hand, Broome argues that the motive was partly to convince the British government to allow pastoral settlement to go ahead on the south-eastern coast. Sandor observed that a major reason for placing a population of tuberculous and otherwise unhealthy Aborigines on reservations was to minimize the health risk to Europeans, reflected in the Port Phillip Association’s aims for protection as ‘the civilization of the native tribes, and pastoral pursuits’ (Sandor, 1990:3). But whatever the motives, at least three-quarters of the Aboriginal population in the Port Phillip district died during the period of ‘protectionism’ (Andrews, 1963, cited in Sandor, 1990:3). The influence of the so-called ‘humanitarians and evangelicals’ led to the only treaty ever offered to Aborigines in Australia (subsequently withheld in London), but also the establishment of the first protectorate legislation enacted by a colonial government: a unique form of management over Aborigines consisting of a network of Aboriginal reserves and missions. A tightening of the Victorian reserve system in 1869 gave the Board for the
Protection of Aborigines powers over Aboriginal employment, place of residence and the care of children. In the 1877 census, the Aboriginal population had dropped to just 1067 people, 774 described as ‘Aboriginals’, 293 as ‘half castes’, and of the total, 297 were children. Just over half lived on reserves, although with the movement on and off, most Aborigines had some experience of reserve life. Adult males of ‘mixed descent’ were overrepresented off the reserves, and children, women, and those of ‘full descent’ were overrepresented on the reserves. Broome suggests that two-thirds of children were on reserves indicated ‘success’ of the mission proponents to ‘bringing-in’ the children (Broome, 2005:146).

The designation ‘Aboriginal’ and ‘half-caste’ had in fact begun to appear in the mid-19th century in the reports of the Aboriginal Protection Boards which had been established in most colonies to oversee the mission stations. Basic questions around identity – ‘who is an Aborigine’ – made an early appearance in the counting regime commencing at this early period. The Board in Victoria established in 1861 to ‘watch over the interests of the Aborigines of the Colony’ was required to report to government on the control of the moneys voted for Aborigines and to appoint local agents to administer them. The Board was given very little money and no specific legislative powers, an issue it constantly urged the government to rectify right through the decade. The reports of the Protection Board give evidence of what began as ‘the small amount of information available as to the numbers and distribution of the black population’ (Board for the Protection of Aborigines 1861-1871: 1st Report: 4). It set about a census of sorts, distributing a circular to honorary correspondents, wardens, police magistrates and ‘respectable citizens’ for information on the numbers, condition and location of the Aborigines. It called for information of the number of Aborigines in each district, distinguishing adult males, adult females, and children, the name of their tribes, where they frequently congregated, and their ‘moral and social condition’:

Their means of livelihood, whether or not any of them are employed as servants by the settlers and whether or not such servants reside during the whole of the year by their employers, if only part of the year, for how long? Whether or not means have been used to impart religious, moral or secular instruction, and if so, with what success (1st Report Appendix 2: 14)?

Further questions asked for views about whether, with ‘inducements’ whether the natives would follow pastoral or agricultural pursuits, and whether the settlers would recommend ‘a
reserve for the use of the aborigines (sic): if so to what extent and in what part of your locality’ (op.cit.:26)? The table summarising the information sent in reply in some cases listed the numbers of men, women and children, while the responses about names of tribes were deemed fairly useless. Replies regarding instruction reflected the settlers’ opinion that measures were seldom taken, and generally had failed. In some cases the children had received instruction ‘but as they become older their indigence and carelessness prevented anything like improvement’ (op. cit: 18).

Further information was called for on the need for medical assistance and ‘whether or not in your opinion (having regard to their habits) such assistance would be generally beneficial’. The majority of respondents reported that medical assistance was of little avail except in extreme cases where the patient is ‘prostrate’. In many instances the native doctor is called in ‘who, by charms and the use of native herbs, induces the blacks to believe that their diseases may be cured’ (op.cit.:18). According to the report, all opinions received across the colony ‘bear testimony to the awful mortality amongst them’. In numerous returns, the health problems were due to ‘sexual excess’ which rendered the Aborigine ‘weak in constitution and deficient in stamina, and consequently more liable to disease and less able to bear it’(op. cit.: 30). Tables of mortality and birth rates in the Yarra and Western Port districts (those areas closest to Melbourne) from 1839-1859 recorded 210 deaths against 28 births (p. 29). The respondents varied widely on whether people should receive rations – ‘What good can we do by making them beggars? I think none’- while responses on pastoral pursuits was divided: ‘The evidence of the correspondents is conflicting…(S)ome suppose that their indolence and carelessness would prevent their following pursuits requiring attention and labor (sic): others believe that they would readily engage in agriculture if facilities were offered (op. cit.:26). The few specific references to children from these correspondents in the report are similarly varied: a boy working as a cow-heard, a female aged about ten adopted by a respectable townsman, ‘a most intelligent and good girl’. A Mr WS Urquhart reported …’It is a painful but well-known fact, that about townships and gold fields prostitution is their too frequent mode of obtaining a livelihood, as a proof many of the children are half-castes’ (op. cit.:18). C W Hughes argued that the only means for benefiting Aboriginal people ‘is to induce them to part from their children and educate them in Melbourne, This, however, could only be accompanied by mild measures’. George Russell recommended that ‘the young of both sexes should be removed from their tribe, educated and taught industrious pursuits in establishments for the purpose situated in a distant part of the country from where they had
previously been located’ (op. cit.:22). AM McCrea agreed when as Police Magistrate in Gipps Land in 1852 saw a half-caste girl in his court who at 8 or 9 had been taken from her parent - ‘an aboriginal’ (sic) – by an ‘excellent lady’:

this girl was of a good size, well made, and of a very prepossessing appearance. Mrs Davis had herself given her a good plain education, and had made her, as I was informed, a very efficient house servant...As this girl is, I believe, a fair specimen of this race, it is surely most desirable that they should be separated, if possible, from their aboriginal parents and assigned to persons known to and approved by the Board (op.cit.: 22).

But an important inclusion in the list of opinions, alongside the view that ‘permanent reserves should be made for blacks’ and that the Act relating to Aborigines should be amended to ‘give Your Excellence full power to order as to their residence and maintenance’, and ‘to order also, as to the disposal of orphan and deserted children (op.cit: 11).

There is scant reference at all to any children in these pages of correspondence from ‘respectable citizens’ of the colony of Victoria at this time and there is no reference to the matter which the Board said required attention - ‘orphan and deserted children’. There is a general consensus about a program to remove the young for training in habits of industry, sometimes with special reference to the ‘half-caste’, and there a plenty of success stories about bringing up an Aboriginal child in European ways. There was a particular troubling case of an ‘orphan’, before the Board was appointed, where repeated applications to the Government for land by a man named Banfield in Benalla, ‘on behalf of an aboriginal or half-caste girl living in the locality’. The Board investigated, discovering that she was living in a public house, but when attempts were made to have her removed to ‘an asylum’ they found because she was an orphan they had no control over her whatever. A lack of legislative clout to act on children is recognised from the outset. The problem of the Aboriginal child takes another turn in this same report on ‘the orphan and destitute’, when the Board responded to the news that the Government had struck out funding for schools. This measure had been intended for Aborigines to be taught ‘useful occupations, so as to have fitted them for employment as servants:

there are many neglected black and half-caste children throughout the Colony, who are utterly uncared for, and in all probability, if steps be not taken to rescue them, they will become as idle and as depraved as the worst examples of the white population.
The latter element in our population, the half-casts, though numerically small, are increasing, and it is a serious duty to interfere at once to prevent their growing up amongst us with the habits of the savage, as they possess the instincts, powers of mind, and altogether different constitution of the white man (op. cit: 10-11).

In later reports the word ‘neglected’ is used in reference to the Aboriginal population as a whole, such as ‘(t)he neglected condition of the blacks in Victoria (3rd Report:11), and ‘the neglect and cruelties which, in past years, have reduced the number of Aborigines’ (4th Report:14). In these reports, the neglected child features as a condition of being Aboriginal. At the very least the non-Aboriginal ‘neglected child’ is marked out as different from the rest of the non-Aboriginal population. Not so the Aboriginal ‘neglected child’. So, while the vocabulary of ‘neglected child’ might be shared in reference to both populations, there are differences in the way neglect is figured from the very beginning of governmental attention to the problem.

We might explore this differentiation or bifurcation a little further, given that this is the eve of the implementation of the first piece of child welfare legislation in Victoria, the *Neglected and Criminal Children’s Act* (1864). Neglect is being thought out and defined in the city, a number of Acts are being introduced and then fall by the wayside, and a number of inquiries being carried out (Jaggs, 1986). Although the term is contentious and unsettled, neglect is increasingly being thought about in terms of the government’s management of the vagrant and the offender, and principally in the context of the prevention of crime. A problem is framed that will see the ‘innocent’ destitute and orphaned child bracketed off as the subject of philanthropy. Jaggs distils the 1862-3 Municipalities and Charitable Institutions Report, the recommendations of which, she claims, were to be definitive for government policy for the rest of the century. They recommended strongly against the introduction of any provision which might offer financial support to impoverished people as a right, and in favour of discretionary relief through local charity. ‘Neglected’ (ie. vagrant and uncontrolled) and offending children however they exempted this from general principle - since ‘ignorance occasions crime’ and since the peculiar circumstances of the colony ‘made it necessary for policing and education to be administered by the central government’ (Jaggs, 1986: 175). So for the non-Aboriginal population, the problem of neglect is produced out of a problem of parental abandonment. One of the ways of knowing the non-Aboriginal ‘neglected’ child is that it will bear the signs of parental abandonment, inscribed in the 1864 legislation: ‘... found begging...found wandering...not have any home...’. There is also another way in which
parental abandonment figures in the constitution of the non-Aboriginal neglected child – as foreseen in the Charitable Institutions Inquiry, and by a range of critics of the establishment of government institutions for neglected children, the problem of the management of neglect will have to confront and overcome the impediment of an all-too-readiness on the part of parents to abandon their child to government care: ‘parents would be encouraged to abandon their children if they knew the state would provide for them’ (Jaggs, 1986:op.cit).

The governing of parents in white settler society assumed the need to prevent the abandonment of their children, and adopted policy settings that discouraged such action by providing evidence of the negative consequences of parental abandonment. In contrast, in the contemporary figuring of the problem of the neglected Aboriginal and half-caste child, the ‘giving up’ of children is to be actively encouraged; parental refusal to abandon the child is a serious problem and impediment to its management. It is a problem referred to in the correspondences received and presented by the Board from Messrs C E Strutt and R J Glass in its 1st Report:

They have neither the wish nor the application to learn anything requiring much trouble. The half-caste children might possibly be improved, if placed in an early period under European influence exclusively, but if left as at present, to their own inclinations and mode of life without any restriction, the whole race will speedily become extinct. The great difficulty experienced in bringing up and teaching a young aboriginal is occasioned by the interference of the older blacks in taking away their younger relatives from the Europeans who have been endeavouring to educate them. If this interference could be effectively prevented, the efforts of individuals to improve the condition of the young blacks and half-castes might be more successful. It would however be difficult to prevent the older blacks from intimidating those who are under European care, as they would not hesitate to kill those natives who refused to accompany them in their wanderings (1st Report: 23).

While this response did not address the neglected child, the Board later reiterated its desire for information on ‘any neglected Aboriginal children amongst the blacks under their care who should be maintained and educated by the Board’ (4th Report, 1864:10). The Board also reiterated its call for legislation authorising ‘the removal of half-caste girls and orphans against the wishes of those persons who may have assumed charge of them’. And the Board acknowledged that ‘the blacks are reluctant to give up their children. They are, usually, very
kind to their offspring, and they are jealous of any interference with them by the whites’ (op.cit.:10). By the time the Board finally receives legislative power to act, the ‘half-caste girl has emerged as a particularly morally charged subject, existing in more ways than one as a ‘borderland’ figure.

Configuring of spaces in the newly established Children’s Depot in Melbourne ratified moves that criminalised Aboriginal children in much the same way as white children, although with quite specific conditions that accelerated the process. The Aborigines Board transferred ‘half-caste’ orphan children to the Department of Neglected Children and Reformatory Schools from whence they were sent into service. At this time, the term ‘orphan’ in department documents was often a euphemism for children separated from their parents under the earlier mission legislation. All children under the care of the Department who were reported as exhibiting ‘depraved habits’ and ‘serious misconduct’ were subject to transfer to a reformatory for an indeterminate period, usually until eighteen years of age - form of de facto indeterminate sentencing at the discretion of the Minister, and by-passed any court appearance. From 1900 this provision would also apply to ‘all suitable Aboriginal children whether orphans or otherwise’. 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, in a system administered by the Department of Neglected Children. So white families offered assessment/incarcerating spaces for Aboriginal civilizing which, when failing, normally presented the option of state incarceration.

References


