

Enshrined in Law: Legislative Justifications for the Removal of Indigenous and Non-Indigenous Children in Colonial and Post-Colonial Australia

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While the completion of two different inquiries, along with separate apologies and reparation packages, might suggest that the policies justifying the removal of Indigenous and non-Indigenous children in Australia were distinct, the situation is far more complex. Both child and ‘native’ welfare were colonial and later state responsibilities, creating the potential for policies and practices to be informed by different forces and to vary by jurisdiction. However, by analysing the debates around legislation from the nineteenth and early twentieth centuries, this paper establishes commonalities as well as differences in both the arguments used to justify Indigenous and non-Indigenous child removal and the practices that evolved in the implementation of such legislation. By interrogating such arguments through the lens of whiteness and race, the paper identifies the role which child removal was imagined to play in the process of building the settler colonial nation.

In Australia the term ‘child removal’ is used almost exclusively in relation to Indigenous peoples, the corollary being perhaps that the removal of non-Indigenous children has been assumed to be both necessary and just. Historiographically, the treatment of the two processes has been kept largely distinct. Typically, Indigenous child removal is studied by scholars specialising in Aboriginal history. They view it as one aspect of racial discrimination and debate whether the practice is evidence of genocide.¹ Removals amongst the settler

¹ Although there are many books and articles which now deal with the subject, the canonical text is Anna Haebich, *Broken Circles* (Fremantle: Fremantle Arts Centre Press, 2000). For

population are dealt with by child welfare historians, for whom Indigenous children form a very minor strand in a wider field of study.² Much of the existing work in the latter area tends to focus on the rights of the child rather than the rights of the parents.³ Trapped within a discourse in which the locus of fault was firmly placed upon the parents, historians note their relative powerlessness but tend to accept their guilt or erasure rather than explore the legal process by which the State claimed a right to guardianship of their children.

debates around Indigenous child removal and genocide see: Shirleene Robinson and Jessica Paten, 'The question of genocide and Indigenous child removal: the colonial Australian context', *Journal of Genocide Research* 10, no.4 (2008): 501–18; A. Dirk Moses, ed., *Genocide and Settler Society: Frontier Violence and Stolen Indigenous Children in Australian History* (New York: Berghahn Books, 2004). For international comparisons see Margaret Jacobs, *White Mother to a Dark Race: Settler Colonialism, Maternalism and the Removal of Indigenous Children in the American West and Australia, 1880–1940* (Lincoln: University of Nebraska Press, 2009). For a detailed examination of the legal basis for removal see: Antonio Buti, *Separated: Australian Aboriginal Childhood Separations and Guardianship Law* (Sydney: Sydney Institute of Criminology, 2004).

² There is as yet no canonical history of child welfare in Australia but Nell Musgrove, *The Scars Remain: A Long History of Forgotten Australians and Children's Institutions* (Melbourne: Australian Scholarly Publishing, 2013), provides a good introduction.

³ Gail Reekie and Paul Wilson, 'Criminal Children: Childhood and the Law Since 1865', *Queensland Review* 3, no. 2 (1996).

This is not to argue that existing histories of child welfare neglect the parents, but few question the judgment of the courts that they were unfit or unable to care for their children.⁴ Recognising that only a small proportion of the children who came before the courts were orphaned or abandoned, historians look for evidence of agency, arguing that the systems arose, or were adapted, at least in part in response to parents' demands, or defending them from contemporary charges that they were seeking to 'foist' children upon the State.⁵ Labelling her index entry 'parents, absent but important', Margaret Barbalet, for example, documents parents' persistence in trying to keep in contact with their children despite the barriers placed in their way.⁶ Yet these accounts ignore the factor that is central to the debate around Indigenous child removal: by what right did the State intervene in family life in such a drastic way?

⁴ See for example Brian Dickey, 'The Evolution of Care for Destitute Children in New South Wales, 1875–1901', *Journal of Australian Studies* 3, no. 4 (1979): 53–4.

⁵ Margaret Barbalet, *Far From a Low Gutter Girl: The Forgotten World of State Wards: South Australia 1887–1940* (Melbourne: Oxford University Press, 1983), xiii; Naomi Parry, "'Such a Longing': Black and White Children in Welfare in New South Wales and Tasmania, 1880–1940' (PhD thesis, University of New South Wales, 2007), 46; Michael Horsburgh, 'The Apprenticing of Dependent Children in New South Wales between 1850 and 1885', *Journal of Australian Studies* 4, no. 7 (1980); Gladys Scrivener, 'Parental Imposition or Police Coercion? The Role of Parents and Police in Committals to the Industrial Schools in New South Wales, 1867–1905', *Journal of the Royal Australian Historical Society* 86, no. 1 (2000).

⁶ Barbalet, 283. Musgrove, ch. 3 has a similar focus.

Catherine Hall has demonstrated the ways in which race provided a vocabulary through which the British understood themselves and their world. Whiteness was a key constituent of the Anglo-Saxon claim to civilisation, hence the less than civilised came to be described in racial terms borrowed from the colonial world.⁷ This language was transported to the Australian colonies, providing a readily understood vocabulary for othering both settler parents and Indigenous children who posed a threat to the (white) nation building process.⁸ This paper follows from earlier work, in which I set out to place Indigenous adoption within the wider history of adoption in Australia.⁹ It seeks to bring Indigenous and non-Indigenous child removal within the one narrative lens in order to identify both their commonalities and differences. This is in no way an attempt to detract from the particularity of the Indigenous experience or the damage that child removal has wrought on those communities. Rather, it is important both discursively and politically because of the ways in which this legacy has been debated within the Australian community. Those commentators who seek to deny the existence of the Stolen Generations argue that Indigenous children were removed using the same justifications that were applied to non-Indigenous children, and that the higher rates of removal are testament to the dysfunction within Aboriginal communities.¹⁰ At the same time,

⁷ Catherine Hall, *White, Male and Middle-class: Explorations in Feminism and History* (Cambridge: Polity, 1992), 212.

⁸ Shurlee Swain and Margot Hillel, *Child, Nation, Race and Empire: Child Rescue Discourse, England, Canada and Australia, 1850–1915* (Manchester: Manchester University Press, 2010), ch 5.

⁹ Shurlee Swain, “‘Homes are Sought for these Children’: Locating Adoption within the Australian Stolen Generations Narrative’, *American Indian Quarterly* 37, no. 1-2 (2013).

¹⁰ R. Brunton, ‘Betraying the Victims: The “Stolen Generation” Report’, *Institute of Public Affairs Backgrounder* 10, no 1 (1998): 9–10.

care leaver groups in the non-Indigenous community have used the findings of the inquiry into Indigenous child removal as a basis for demanding a similar investigation of their own experiences in out of home care.¹¹ The series of inquiries which followed the initial investigation into the Stolen Generations examined the experiences of former child migrants, institutionalised children and victims of forced adoptions. Central to the testimonies given before all of these inquiries was the question ‘why did this happen to me?’¹²

Indigenous and non-Indigenous child removal compared

One of the first scholars to attempt a comparative analysis of Indigenous and non-Indigenous child welfare policy was sociologist Robert van Krieken, who recognised in Indigenous child removal policies a model already long practised for dealing with other groups in need of social ‘discipline’. The European claim to civilisation, he argued, had always been threatened

¹¹ Parry, 3–4.

¹² The relevant inquiry reports are: Human Rights and Equal Opportunity Commission (HREOC), *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (Sydney: HREOC, 1997); Senate Community Affairs References Committee (SCARC), *Lost Innocents and Forgotten Australians Revisited: Report on the Progress with the Implementation of the Recommendations of the Lost Innocents and Forgotten Australians reports* (Canberra: Senate Printing Unit, 2009); SCARC, *Forgotten Australians: A Report on Australians who Experienced Institutional or Out-of-home Care as Children* (Canberra: Senate Printing Unit, 2004); SCARC, *Commonwealth Contribution to Former Forced Adoption Policies and Practices* (Canberra: Senate Printing Unit, Parliament House, 2012).

by evidence of deficiencies in the treatment of children.¹³ The ‘technologies’ developed to counteract this threat were a central element of the modern state’s conception of the intersection of family life and liberal citizenship and stood ready to be applied in the encounter between the colonising state and Indigenous peoples.¹⁴ ‘Aboriginal cultural identity was seen as an insurmountable obstacle to the capacity to take a “normal” part in European-Australian social life’, so individual children were to be ‘rescued’ and ‘transformed’.¹⁵ Anna Haebich suggests a similar one-way transmission of ideas. ‘Orphaned and abandoned children were gathered into institutions and then apprenticed out to employers to shield them from “corrupting influences” and to transform them into “good workers and wives who knew their station in life” ... Indigenous children were similarly treated’.¹⁶

Making this comparison the core question of her thesis, Naomi Parry identifies the differences as emerging after the point of removal, with Indigenous children confined in the poorest conditions and without access to changes in welfare thinking, which, over time, brought some improvement to conditions in the mainstream institutions.¹⁷ However, as the *Bringing them Home* report makes clear, differences in the mode of entry into the child

¹³ Robert van Krieken, ‘The “Stolen Generations” and Cultural Genocide: The Forcible Removal of Australian Indigenous Children from their Families and its Implications for the Sociology of Childhood’, *Childhood Studies* 6, no. 3 (1999): 297.

¹⁴ *Ibid.*, 302.

¹⁵ *Ibid.*, 298.

¹⁶ Haebich, 78. Margaret Jacobs offers a similar explanation as does Anne O’Brien in relation to settler colonial philanthropy more generally. Jacobs, 62; Anne O’Brien, *Philanthropy and settler colonialism* (London: Palgrave Macmillan, 2015), 4.

¹⁷ Parry, 328.

welfare systems contributed to this isolation. While, across the nation, Indigenous children were taken into care under the provisions of child welfare legislation, which was largely insensitive to cultural norms, in states with more substantial Aboriginal populations Protectors later developed Indigenous-specific legislation, which gave them far greater power.¹⁸ As the *Forgotten Australians* report reflects, child removal generally is testament to the ‘powerlessness of women, children and young people and poor families’, but, for Indigenous families, race added a complicating and even further disempowering factor.¹⁹ This article does not look at child welfare systems, but rather at the legislation under which they operated, and the debates out of which such legislation emerged, in order to establish the grounds on which the State was able to make and break families.²⁰ In so doing, it extends the comparison between Indigenous and non-Indigenous policies back before the introduction of race-specific legislation, and argues for a more complex and mutually dependent relationship between the two, even if the outcomes for children and their families became increasingly disparate over time.

Establishing the legal basis

Legal scholars have identified two sources for the State’s right to remove children from their families. The first, *parens patriae*, dates back to 1324, when the English Crown claimed this

¹⁸ HREOC, *Bringing them Home*, ch. 2

¹⁹ SCARC, *Forgotten Australians*, 19.

²⁰ Child welfare was a responsibility of individual colonies from the development of representative and later responsible government in the mid-nineteenth century, and remained a state responsibility following Federation in 1901.

right over ‘fools and idiots’.²¹ It was used primarily to preserve the property of infants without competent guardians, with their property managed in order to provide for their care.²² The justification for this intervention was that the Crown should ‘not permit to be done with the child [that] which a wise, affectionate and careful parent would not do’.²³ However, this protection did not extend to the children of the poor, who remained the property and responsibility of their fathers. The separation of poor children from their parents dates back to the 1562 Statute of Artificiers, which provided for children of pauper parents to be separated from their parents and apprenticed to others.²⁴ This practice was carried over into the Poor Law with the essence being not that the Crown would provide for poor children, but that they would be compelled to work in order to provide for themselves.²⁵ Nineteenth-century child rescuers, however, dissatisfied with this passive form of removal, advocated legislative changes that would extend *parens patriae* to justify a more active intervention into family life, breaking the bond between father and child in the interests of the nation, and the latter half of the nineteenth century saw a series of laws designed to extend the power of the state in

²¹ Lawrence B. Custer, ‘The Origins of the Doctrine of Parens Patriae’, *Emory Law Journal* 27 (1978): 195.

²² *Ibid.*, 207.

²³ Robert van Krieken, ‘The “Best Interests of the Child” and Parental Separation: On the “Civilizing of Parents”’, *The Modern Law Review* 68, no. 1 (2005): 27.

²⁴ Douglas R. Rendleman, ‘Parens Patriae: From Chancery to the Juvenile Court’, *South Carolina Law Review* 23 (1971): 210.

²⁵ *Ibid.*, 211.

such circumstances.²⁶ It was within this context that the Australian colonies framed their own legislation, drawing on their heritage of the English common law.

Early colonial legislation: parental rights (cautiously) respected

In the earliest colonies, established as British penal settlements, the Imperial Government took responsibility for the children of the poor, establishing institutions for their accommodation and apprenticing them out as early as possible. The initial justification for this practice was that the children were the offspring of convicts, but these institutions increasingly accommodated other children as well. Less than twenty years after the foundation of the colony, New South Wales chaplain, Samuel Marsden, identified such children as a government responsibility:

Remote, helpless, distressed, and young, these are truly the children of the State, and though at present very low in the ranks of society, their future numerous progeny, if care is not taken of the parent stock, may by their preponderancy over balance and root out the vile depravities bequeath'd by their vicious progenitors.²⁷

Marsden's argument encodes the understanding that governed most interventions into children's lives, focused not on the child in the present but on the future citizen they would become.²⁸ Initially that concept was not clearly racialised but it would become increasingly

²⁶ Ibid., 223, 26; Swain and Hillel, 30; Buti, 16–17.

²⁷ John Ramsland, *Children of the Backlanes: Destitute and Neglected Children in Colonial New South Wales* (Sydney: University of New South Wales Press, 1986), 9.

²⁸ For comparative examples in relation to maternal and child health see: Barbara Baird, 'Maternity, Whiteness and National Identity: The Case of Abortion', *Australian Feminist Studies* 21, no.50 (July 2006); Lisa Featherstone, "'The Value of the Victorian Infant':

so as the century progressed. Colonial legislatures rejected the introduction of Poor Laws and developed their own legislation to deal with Indigenous and non-Indigenous children, whom they understood as being in need of protection. The earliest legislation, nevertheless, encoded Poor Law principles and practices, empowering the authorities to apprentice groups of young people, whom they judged not to be adequately provided for by their parents.

Although it is common in the Stolen Generation literature to date the beginnings of the policy from the end of the nineteenth century, in fact the first child removal legislation introduced in the Australian colonies related to Indigenous children, setting a model for much that was to follow.²⁹ In 1844, the South Australian Legislative Council passed legislation focused on the ‘orphans and other destitute children of the Aborigines’. The Ordinance made the Protector of Aborigines the legal guardian

of every half-caste and other unprotected Aboriginal child, whose parents are dead or unknown, or either of whose parents may signify before a Magistrate his or her willingness in this behalf, until such child shall attain the age of twenty-one years ... [with the] same powers as any guardian of infants lawfully appointed according to the order and course observed in England.

Its primary purpose, however, was to enable him to place such children in apprenticeships, in order to make them ‘productive’.³⁰ The first child welfare legislation in Western Australia,

Whiteness and the Emergence of Paediatrics in Late Colonial Australia’ in *Historicising Whiteness: Transnational Perspectives on the Construction of an Identity*, eds Leigh Boucher, Jane Carey and Katherine Ellinghaus (Melbourne: RMIT Publishing, 2007).

²⁹ See for example: Buti, 59.

³⁰ *An Ordinance for the Protection, Maintenance and Upbringing of Orphans and other Destitute Children and Aborigines Act 1844 (SA)*,

which was passed in the same year, again applied exclusively to Indigenous children. Its clauses make clear that the practice of apprenticing Aboriginal children was already well established, for its goal was to introduce penalties for anyone seeking to entice young women away from such placements.³¹

Early legislation in other colonies was similarly preoccupied with enabling apprenticing out, although in these cases the targets were those non-Indigenous children understood as being deserted or abandoned by their fathers. These acts use the wording of the SA Aboriginal Ordinance, although the age at which children could be apprenticed tended to be higher. As with the Aboriginal Ordinance, the consent of a surviving parent had to be obtained before a child could be apprenticed, although, as the legislation also set out the conditions under which deserted wives could be assisted, it would have been difficult for such mothers to refuse without losing their eligibility for support.³² Rather than establishing a

www.findandconnect.gov.au/ref/sa/objects/pdfs/An%20Ordinance%20for%20the%20Protection,%20Maintenance%20and%20Upbringing%20of%20Orphans.pdf.

³¹ *An Act to Prevent the Enticing Away the Girls of the Aboriginal Race from School, or from any Service in which they are Employed 1844 (WA),*

[www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:15757P/\\$FILE/Aborgnlgirlsprotection1844_00-00-00.pdf?OpenElement](http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:15757P/$FILE/Aborgnlgirlsprotection1844_00-00-00.pdf?OpenElement)

³² *Deserted Wives and Children's Act 1840 (NSW),*

http://ozcase.library.qut.edu.au/qhlc/documents/qr_marr_deserted_1840_4_Vic_No5.pdf;

Destitute Persons Relief Ordinance 1849 (WA),

www.findandconnect.gov.au/ref/wa/objects/pdfs/DestitutePerssReliefOrdinc1845_00-00-00.pdf; *Queen's Asylum Act 1861 (Tas),*

www.austlii.edu.au/au/legis/tas/num_act/tqaa25vn5269/.

right to relief, the aim of this legislation was to reduce the call on government finances by ensuring that other family members assisted destitute relations.

There was little public debate surrounding this early legislation. The SA Ordinance came in response to calls from the South Australian Aborigines Missionary Society, which, while it publicly expressed its advocacy of the ‘entire separation of the children from the parents’, admitted that this would be subject to controversy. Instead it argued for ‘orphans’ and children above ten years of age to voluntarily place themselves under the charge of the missionaries’, with parental consent required for the removal of younger children. By ‘bringing them more regularly under the influence of instruction, and thereby enabling them to appreciate not only the benefits of civilisation, but the higher advantages of Christianity’, the missionaries hoped that the ‘improved habits of the children ... would induce a spirit of emulation amongst the parents’ and induce them also to embrace change.³³ Similarly, the discussion in relation to the 1861 Tasmanian legislation emphasised the need for ‘especially the female [Indigenous and non-Indigenous] children’ resident in the Queen’s Orphan Asylum to be protected from ‘the evil designs of those who would remove them ... and introduce them at an early age to the haunts of vice’. The implication was that they needed to be protected from their parents.³⁴

Industrial and reformatory schools legislation: parental rights constrained

From the 1860s the Australian colonies developed legislation that specifically set out the grounds on which the parent-child bond could be broken by the State. These grounds were

³³ ‘Suggestions for the Improvement of the Aborigines of South Australia’, *South Australian Register*, 26 November 1842, 3.

³⁴ ‘Editorial’, *Mercury* (Hobart) 27 August 1861, 2.

first articulated in the Tasmanian *Deserted Wives and Children Maintenance Act 1863*, which authorised the removal of children without parental consent where they were found to be ‘without means of support’ or living with a parent ‘of vicious or abandoned character, or an habitual drunkard’.³⁵ Over the next ten years all of the colonies passed legislation that enabled them to establish industrial and reformatory schools, and set out the grounds on which children could be admitted to them.³⁶ Based on the English 1861 *Industrial and Reformatory Schools Act*, which had been inspired by the work of child welfare campaigner, Mary Carpenter, they established neglect as the key rationale for removal, and itemised the grounds on which neglect could be proven.³⁷ Gradually expanded over time, and with the

³⁵ Available at www.austlii.edu.au/au/legis/tas/num_act/tdwacma27vn14423/

³⁶ *Neglected and Criminal Children’s Act 1864 (Vic)*, www.findandconnect.gov.au/ref/vic/objects/pdfs/1864%20Neglected%20and%20Criminal%20Children%20Act.pdf; *Industrial and Reformatory Schools Act 1865 (Qld)*, http://aiatsis.gov.au/archive_digitised_collections/files/archive/removeprotect/54688.pdf; *An Act for the Relief of Destitute Children 1866 (NSW)*; *Destitute Persons Relief Act 1866 (SA)*, www.findandconnect.gov.au/ref/sa/objects/pdfs/Destitute%20Persons%20Relief%20Act%201866.pdf; *Industrial Schools Act 1867 (Tas)*, www.austlii.edu.au/au/legis/tas/num_act/tisa186731vn37310/; *Industrial Schools Act 1874 (WA)*, [www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:15134P/\\$FILE/IndusS chlsAct1874_00-00-00.pdf?OpenElement](http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:15134P/$FILE/IndusS chlsAct1874_00-00-00.pdf?OpenElement).

³⁷ Carpenter first outlined her arguments for the necessity of removal in *Juvenile Delinquents and their Condition and Treatment* (London: W & F.G. Cash, 1853).

language adapted slightly to meet changing conditions, these grounds have remained a constant in child welfare/protection legislation through to the current day.³⁸

In the debate surrounding the passage of this legislation there was little concern about the transgression of parental rights that the acts encoded. The target of the legislation was clearly seen as the ‘neglected youth of the colony’, who needed to be taught ‘habits of industry’ if they were not to be a threat to society in the future. If parents had ‘shamelessly cast off the claims of duty and affection’ to educate their children, they had lost their parental rights, making it imperative that the State should intervene.³⁹ The only dissenting voice came from a Catholic newspaper, whose constituency would have been over-represented amongst families targeted by the new legislation. While recognising the ‘duty of the State to provide for the support and instruction of those children whose natural protectors are either unable or unwilling to do so ... [as a] principle ... recognised in all civilised countries’, it nevertheless urged that ‘the power of separating children from their parents ... be exercised only in very extreme circumstances’.

Reputed bad character is hardly sufficient ... to justify the State in disregarding those ties of natural affection which are peculiar to no class, and have little to do with degrees of respectability. It may be quite true that in nine cases out of ten separation even from his parents would be of infinite advantage to

³⁸ Children could be classed as neglected if they were found begging, wandering, or had no fixed place of abode or visible means of subsistence, resided in a brothel or with a known or reputed thief, prostitute, drunkard or vagrant, had committed an offence punishable by imprisonment, or were found by their parents to be uncontrollable.

³⁹ ‘Reformatory and Industrial Schools’, *The Star* (Ballarat), 29 April 1864, 2; ‘Editorial’, *Empire* (Sydney), 25 August 1864, 4; ‘Editorial’, *Sydney Morning Herald*, 4 December 1865, 4.

the child, but is the State to interfere in every case where the same thing might be said? Or would it not rather be another instance that, with all our boasted equality, there is one law for the poor and another for the rich?⁴⁰

Legislators were quick to calm any such fears. During the Victorian parliamentary debate Attorney-General, George Higinbotham, assured the House that there was no intention of actively intervening in family life. To be taken before the court,

the child should either be found wandering about the streets without visible means of support, or have committed a criminal offence, or have been given into charge by its parents, on the ground that they were unable to support it.⁴¹

His fellow members were more concerned about the last of those clauses, fearful that the legislation would encourage parents to desert their children, creating a public child care system by default.⁴² In order to prevent any such occurrence, these acts included the clause from the English legislation that made it explicit that parents would be compelled to contribute towards the financial costs of supporting their children in state care.⁴³

In the south-eastern colonies, where Indigenous peoples had been rapidly dispossessed and population numbers were in steep decline, the industrial schools legislation

⁴⁰ 'The Industrial and Reformatory Schools Acts', *Freeman's Journal* (Sydney), 11 August 1866, 504.

⁴¹ 'Parliament', *Argus* (Melbourne), 4 May 1864, 6.

⁴² Christina Twomey, *Deserted and Destitute: Motherhood, Wife Desertion and Colonial Welfare* (Melbourne: Australian Scholarly Publishing, 2002), 115. Donella Jaggs, *Neglected and Criminal: Foundations of Child Welfare Legislation in Victoria* (Melbourne: Phillip Institute of Technology, 1986). 2

⁴³ Jaggs, 14.

made no mention of race, although the definitions of neglect that they encoded would have rendered surviving Aboriginal communities particularly vulnerable. In Queensland and Western Australia, where the frontier was still open, definitions of neglect were amended to include Aboriginality as a cause for removal. In Queensland this clause was not in the original legislation but was added during the parliamentary debate.⁴⁴ The immediate target of the clause was children of white fathers, who, if they returned to live with their mothers, were described as having ‘entirely relinquished ... the civilised habits they acquired before’. The Colonial Secretary expressed his confidence that ‘if properly looked after when young, and educated, they would make quite as good citizens as the children of white parents’, but he was less convinced about the prospects for children of full descent, although he wanted the police to have the power to remove them where necessary.⁴⁵ Concerned about the consequences of racial mixing, the Queensland government established industrial schools for settler children, but approached missionary organisations to establish special facilities for Indigenous children.⁴⁶ The Western Australian legislation was more cautious, protecting Aboriginal children ‘living under the care or guardianship of either father or mother’ from

⁴⁴ ‘The Queensland Parliament’, *Queensland Times*, 15 July 1865, 4.

⁴⁵ ‘Parliament’, *Brisbane Courier*, 24 June 1865, 5

⁴⁶ ‘Parliament’, *Brisbane Courier*, 2 May 1866, 3. For commentary on the context of this legislation see: Shirleene Robinson, *Something Like Slavery? Queensland’s Aboriginal Child Workers, 1842–1945* (Melbourne: Australian Scholarly Publishing, 2008), 51

removal without consent, but granting the Protector of Aborigines extensive power over all other Indigenous children.⁴⁷

Commentary in the 1860s focused not on the impact on parental rights, but rather on the cost to state treasuries. ‘The Act was never intended to provide for poor children, but only for deserted children’, the Victorian chief secretary was forced to explain, after his system was quickly overwhelmed by demand.⁴⁸ Critics read this influx of children as evidence that ‘parental neglect’ was ‘one of the crying vices of the colony’, made worse by the State’s willingness ‘to take the care of children off the parents’ hands’, and bring them up in a ‘state of superior comfort’ leading to ‘a relaxed sense of parental duty’.⁴⁹ Calling for parents to be forced to pay maintenance for their children, a later South Australian commentator argued that ‘a clumsy adaptation of early legislation’ had led the State ‘to undertake the responsibilities that naturally and properly belong to the parent’.⁵⁰

Child rescue: extending the powers of the State

By the late 1880s, however, there were other voices calling for the State to extend its intervention, with the debate shifting from the need to deter improvident parents from

⁴⁷ For discussion of the background and impact of this legislation see: Penelope Hetherington, *Settlers, Servants & Slaves: Aboriginal and European Children in Nineteenth-century Western Australia* (Perth: University of Western Australia Press, 2002), 73.

⁴⁸ ‘Neglected Children’, *The Telegraph, St Kilda, Prahran and South Yarra Guardian*, 9 June 1866, 3.

⁴⁹ ‘How We Manage our Charities’, *Bendigo Advertiser*, 7 November 1865, 2. See also ‘Editorial’, *Age* (Melbourne), 11 October 1865, 4–5.

⁵⁰ ‘Uncontrollable Children’, *South Australian Register*, 27 January 1886, 4.

dispensing with their children to an argument for the duty of the State to extend the notion of *parens patriae* and take responsibility for children whose parents had failed.⁵¹ Local disciples of the British child rescue movement drew on the work of Dr Barnardo and the National Society for the Prevention of Cruelty to Children (NSPCC) to argue that legislation had to be extended to actively protect children, rather than wait for their ‘need’ to become manifest. Beginning in Victoria in 1887, colonial parliaments passed legislation that added clauses to the definitions of neglect, guaranteeing children a basic level of care, protecting them from cruel treatment and requiring active rescue from situations in which they were at risk of physical or moral harm or exploitation.⁵² In common with other legislation in regard

⁵¹ Musgrove, 39.

⁵² The Victorian legislation was an early leader, with the ones that follow often inspired more by the NSPCC drafted *Children’s Charter* 1889 or the Barnardo-inspired UK *Custody of Children Act* 1891. Child rescue inspired Australian legislation includes: *Neglected Children’s Act 1887 (Vic)*,

www.findandconnect.gov.au/ref/vic/objects/pdfs/1887%20Neglected%20Children’s%20Act.pdf; *Custody of Children Act 1891 (Tas)*,

www.austlii.edu.au/au/legis/tas/num_act/tcoca189155vn5293/. *Guardianship and Custody of Infants Act 1891 (Qld)*,

http://aiatsis.gov.au/archive_digitised_collections/files/archive/removeprotect/54690.pdf. *Children’s Protection Act 1892 (NSW)*,

http://www5.austlii.edu.au/au/legis/nsw/num_act/cpa1892n22256.pdf

; *State Children’s Act 1895 (SA)*,

http://aiatsis.gov.au/archive_digitised_collections/remove/sa/legislation.html; *Prevention of Cruelty to and Better Protection of Children Act 1895 (Tas)*, -

http://aiatsis.gov.au/archive_digitised_collections/files/archive/removeprotect/54275.pdf;

to children at this time, a key motivation was the rising concern about the implications of the fall in the white birth rate for the future of the nation.⁵³ The imagined future citizen becomes explicitly white, with the result that the provisions for Indigenous children are increasingly differentiated from, and inferior to those developed for the non-Indigenous.⁵⁴ Although the coupling of whiteness and nationhood was a feature of many settler colonies, it had, as Warwick Anderson has argued, a particularly valency in Australia.⁵⁵

The new discourse had far less sympathy for parents than the old. ‘If the parent was not a fit and proper person’, one Queensland parliamentarian insisted, the State had to have to power to intervene.⁵⁶ Proponents of these increased powers acknowledged that they infringed parental rights, but justified this through reference to their experiences under the existing legislation, admitting that ‘while there were cases where children were committed through the misfortune of their parents, the large majority of the wards of the State were such because

Children’s Protection Act 1896 (Qld),

http://aiatsis.gov.au/archive_digitised_collections/_files/archive/removeprotect/54691.pdf;

State Children Act 1907 (WA),

[www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:13958P/\\$FILE/StateChildnAct1907_00-00-00.pdf?OpenElement](http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:13958P/$FILE/StateChildnAct1907_00-00-00.pdf?OpenElement).

⁵³ Featherstone, 446.

⁵⁴ Jacobs, 63–4.

⁵⁵ Warwick Anderson, *The cultivation of whiteness: science, health and racial destiny in Australia* (Melbourne: Melbourne University Press, 2005), 253.

⁵⁶ ‘Parliament’, *Brisbane Courier*, 30 July 1891, 7; ‘Parliament’, *Advertiser* (Adelaide), 1 November 1895, 3.

of their parents' neglect'.⁵⁷ Intervention in such cases was put forward as a national imperative, a Tasmanian editor arguing: 'We spend large sums on trying to Christianise the children of alien races ... consequently it is idle to talk of expense when those of our own race, at our own thresholds, require like attention'.⁵⁸ Others argued that it was important that the State rather than private child rescuers be given this power.⁵⁹

However, as this child rescue inspired legislation passed through colonial parliaments there were dissonant voices. There were parents, 'who have the utmost interest' in their children but whose reputations were being impugned, a South Australian commentator observed.⁶⁰ The 'sweeping character of the definition of casual employment', Victorian MP Mr Donald Melville argued, would penalise the 'poor honest parent allowing her children to earn a few shillings per week in selling newspapers'.⁶¹ His colleague, Richard Taylor Vale, objected that it was wrong 'to inflict injustice by taking away the guardianship of a child from its parents ... and having them handed over to strangers'.⁶² There were also those who argued that the legislation infringed the rights of children. Several South Australian

⁵⁷ 'The State Children's Bill', *South Australian Register*, 11 December 1894, 6.

⁵⁸ 'Editorial', *Launceston Examiner*, 17 October 1895, 4.

⁵⁹ 'Parliament', *Brisbane Courier*, 7 September 1895, 6. The Victorian legislation was alone in allowing private individuals to exercise such powers.

⁶⁰ 'Apprenticing Criminal Children', *South Australian Weekly Chronicle*, 8 December 1883, 5.

⁶¹ 'Parliament. Legislative Council', *Argus*, 5 October 1887, 4.

⁶² 'Parliament of Victoria. Legislative Assembly', *Bendigo Advertiser*, 26 August 1887, 3.

Similar views were put in SA. See for example: 'The State Children's Council Bill', *South Australian Register*, 1 November 1895, 7.

parliamentarians were concerned that the proposal brought the State into every household, and argued that adolescents, at least, should have the opportunity to contest the views of the ‘philanthropic faddists’ of the child rescue movement. ‘The whole principle of the Bill seemed to be based on the assumption that the parents in all cases were bad. Poverty, however, was no crime’.⁶³

⁶³ ‘Parliament’, *Advertiser* (Adelaide), 1 November 1895, 3.

Recognising (some) children's rights

By the beginning of the twentieth century the principles embodied in this legislation had become a new orthodoxy. In a federated Australia there was a new assertion of children's rights. In 'heathen Rome', a Victorian newspaper insisted, 'a father had a right to do what he pleased with his children, because they are his', but Australia was 'a Christian land' in which 'a child has rights, as surely as an adult'.⁶⁴ The State was prepared to leave the child to the parent, 'provided he carries out his part in a sort of joint trusteeship [but] if the parent fails then the other trustee, the State, takes over the whole executive power ... [for] the child is infinitely the most important, the most valuable, asset of the State; and valuable assets must be looked after, even if neglectful parents' toes are trodden on in the process'.⁶⁵ 'It was essentially the duty of the State not only to look after the material wants of these children, but also to, as far as possible, give them opportunities equal to those enjoyed by the children of more favoured citizens'.⁶⁶ The children who were, after all, the nation's future, were, by definition, white.

Central to these assertions was the right of children to be protected, not only from their parents but the consequences of their own actions. 'Parental right was a sacred thing, deeply rooted', argued Charles Mackellar, who presided over the New South Wales (NSW) State Children's Relief Board, adding, 'but it ought to be limited by the right of the State to demand that the child should not, through the culpable neglect of parent or guardian, become a menace to the wellbeing of the community'.⁶⁷ In such instances, he believed, 'it is a

⁶⁴ 'The Rights of Children', *Spectator* (Melbourne), 16 December 1904, 2014

⁶⁵ 'Neglected Children', *Barrier Miner* (Broken Hill), 23 October 1902, 2.

⁶⁶ 'State Children Bill', *West Australian*, 4 December 1907, 9.

⁶⁷ 'Parental Responsibility', *Sydney Morning Herald*, 27 June 1905, 5.

kindness to the children, as it is a benefit to the State, to remove children from the influence of their homes'.⁶⁸ Legislators in Queensland welcomed 'the tendency to place the collective wisdom of the State in a position of superior power to that occupied by a parent', with one member observing that 'where foster mothers were carefully selected, they had more care or regard for children than any natural mothers'.⁶⁹

This new orthodoxy was made more acceptable by the introduction in most jurisdictions of boarding out payments to poor mothers to assist them to provide for their children. In 1896, NSW became the first colony to make legislative provision for children to be boarded out to their own mothers rather than being removed and placed with foster families, although this practice had been permitted under regulation in Victoria since the 1880s. In the early years of the twentieth century it became the most common outcome for children taken into 'care' in all the states that had adopted it as an option, blunting criticism that the child removal legislation was infringing the rights of poor white parents.⁷⁰ However, such provisions did not extend to Indigenous mothers, who, under race-specific legislation

⁶⁸ 'The Child, the Law, and the State', *Sydney Morning Herald*, 7 September 1907, 7.

⁶⁹ 'State Children's Bill', *Cairns Post*, 18 August 1911, 3.

⁷⁰ *State Children's Relief Act 1896 (NSW)*,

www.austlii.edu.au/au/legis/nsw/num_act/scrao1896n10241.pdf; *State Children Act 1911*

(*Qld*), www.aiatsis.gov.au/archive_digitised_collections/remove/qld/legislation.html;

Children's Maintenance Act 1919 (Vic),

www.findandconnect.gov.au/ref/vic/objects/pdfs/1919%20Children's%20Maintenance%20Act.pdf; *Maintenance Act 1926 (SA)*,

www.aiatsis.gov.au/archive_digitised_collections/remove/sa/legislation.html

passed from the last years of the nineteenth century, were to be faced with an unprecedented level of child removal.

Race-specific legislation

Race-specific legislation was developed alongside, and in relation to, the general child welfare laws, but its reach was far broader, employing what Margaret Jacobs has described as a ‘colonial phrasebook’ to justify the need for ‘rescue’.⁷¹ While such legislation has been identified as part of a larger program to contain and control Aboriginal peoples, its introduction from the end of the nineteenth century needs also to be understood as necessitated by the exclusion of non-white children from the target group for the newer nation-building focused child welfare policies.⁷² The earliest protection legislation merely authorised the government to make provision for ‘the care, custody and education of the children of the Aborigines’.⁷³ Later legislation in all colonies but Tasmania set out to articulate the way in which such ‘care’ would be delivered. The Victorian *Aborigines Protection Act 1886* was introduced to parliament alongside the *Neglected Children’s Act*,

⁷¹ Jacobs, 42.

⁷² Hence Helen Macdonald convincingly argues for the legislation governing Indigenous child removal and child migration to be understood as attempts to combat racial degeneration but ignores the role that legislation governing in-country removal of white children played in this campaign. Helen McDonald, ‘Perish the thought: Populating white Australia and the role of child removal policies’, *Journal of Australian Studies* 31, no. 91 (2007).

⁷³ *Aborigines Protection Act 1869 (Vic)*,

www.findandconnect.gov.au/ref/vic/objects/pdfs/1869%20Aboriginal%20Protection%20Act.pdf.

which was passed in the following year.⁷⁴ Its focus was on children of mixed descent, whom it sought to have transferred to State care, ‘subject to the provisions of any law now or hereafter to be in force for the transfer of orphan children to the ... [Neglected Children’s] Department’, bringing Indigenous children firmly within the scope of the interventionist child rescue discourse that marked this key legislative shift.⁷⁵ The initial NSW legislation followed a similar approach.⁷⁶

The more sparsely populated colonies, where child welfare systems were not so fully developed, took a more restrictive approach, drawing on older models that aimed to make children into workers, rather than seeking to protect them as children. Protectors were made the guardians of all Aboriginal children, including children of mixed descent, and were authorised to build on the established apprenticing out practices, in order to separate children from their communities and provide labour for white settlers.⁷⁷ In 1915, NSW joined this

⁷⁴ ‘Parliament of Victoria’, *Bendigo Advertiser*, 24 June 1886, 3.

⁷⁵ *Aborigines Protection Act 1886 (Vic)*,
www.austlii.edu.au/au/legis/vic/hist_act/tapa1886265/

⁷⁶ *Aborigines Protection Act 1909 (NSW)*,
www.austlii.edu.au/au/legis/nsw/num_act/apa1909n25262.pdf. The process by which this legislation was refined in NSW is discussed in Peter Read, ‘Reflecting on the stolen generations’, *Indigenous Law Bulletin* Vol. 8, 13 (July/August 2014), 3–6

⁷⁷ *Aborigines Protection Act 1886 (WA)*,
http://aiatsis.gov.au/archive_digitised_collections/_files/archive/removeprotect/52769.pdf ;
Aboriginals Protection and Restriction on the Sale of Opium Act 1897 (Qld),
[http://www.aiatsis.gov.au/archive_digitised_collections/_files/archive/removeprotect/54692.p](http://www.aiatsis.gov.au/archive_digitised_collections/_files/archive/removeprotect/54692.pdf)
df; *Aborigines Act 1897 (WA)*,

trend, removing Indigenous children from the purview of its existing child welfare legislation and placing them under much stricter control, although stopping short of removing guardianship rights from all parents.⁷⁸ While 1920s and 1930s legislation in most jurisdictions sought to moderate the language of removal, the emphasis on training remained strong, ensuring that Indigenous children continued to be apprenticed in domestic or pastoral employment at a younger age and more frequently than non-Indigenous wards, whose educational prospects were beginning to widen.⁷⁹

This extension of power did not pass without protest. Humanitarians like Mary Montgomery Bennett, some missionaries and Indigenous people themselves argued forcefully

www.findandconnect.gov.au/ref/wa/objects/pdfs/Aborigines%20Act%201897.pdf;

Aboriginals Ordinance 1911 (NT),

[www.findandconnect.gov.au/ref/nt/objects/pdfs/1911%20\(Cth\)%20Aboriginals%20Ordinance.pdf](http://www.findandconnect.gov.au/ref/nt/objects/pdfs/1911%20(Cth)%20Aboriginals%20Ordinance.pdf); *Aborigines Act 1911 (SA)*,

www.findandconnect.gov.au/ref/sa/objects/pdfs/Aborigines%20Act%201911.pdf

⁷⁸ *Aborigines Protection Amending Act 1915 (NSW)*,

www.austlii.edu.au/au/legis/nsw/num_act/apaa1915n2321.pdf

⁷⁹ *Aborigines (Training of Children) Act 1923 (SA)*,

[www.findandconnect.gov.au/ref/sa/objects/pdfs/Aborigines%20\(Training%20of%20Children\)%20Act%201923.pdf](http://www.findandconnect.gov.au/ref/sa/objects/pdfs/Aborigines%20(Training%20of%20Children)%20Act%201923.pdf); *Native Administration Act 1936 (WA)*,

www.findandconnect.gov.au/ref/wa/objects/pdfs/Native%20Administration%20Act%201936%20part%201.pdf; *Aboriginals Preservation and Protection Act 1939 (Qld)*,

www.aiatsis.gov.au/archive_digitised_collections/remove/qld/legislation.html

against such state intervention.⁸⁰ The humanitarians appealed to a shared maternity, and in some cases paternity, in opposing such legislation, asking their audience to imagine how they would feel if their children were removed in this way.⁸¹ ‘Why should native mothers be singled out for such unjust treatment?’ asked the Rev J.H. Sexton, speaking on behalf of the Aborigines Friends Association.

Why not go into our back streets where white children are neglected and try some rescue work there? If such were to be attempted what would be the result? The community would rise against it, and public opinion and sentiment would never support the use of force to deprive the natives of their children.⁸²

But the Aboriginal people from the Point McLeay mission invoked instead their Christian beliefs and their status as British subjects to plead for the legislation to be revoked.

We believed that the Creator crowned us with children: they were given us in the Parliament of Heaven. Why, then, should the white people take away our most cherished possessions? ... Do the white people have their children taken away from them? What would they say if they did?⁸³

Proponents of removal dismissed such appeals as mere sentiment, invoking assumptions around race to justify their rejection. Legislators cited personal experience to

⁸⁰ The story of many of these campaigners can be found in Anna Cole, Fiona Paisley and Victoria Haskins, eds, *Uncommon Ground: White Women in Aboriginal History* (Canberra: Aboriginal Studies Press, 2005) and Jacobs, 372–83. For Mary Bennett see Alison Holland, *Just Relations: The Story of Mary Bennett’s Crusade for Aboriginal Rights* (Perth: UWA Publishing, 2015).

⁸¹ Several such instances are cited in the *Bringing them Home* report, ch.3. See also van Krieken, ‘The “Stolen Generations” and Cultural Genocide’, 298.

⁸² ‘Half-castes at Alice Springs’, *Register* (Adelaide), 1 November 1924, 3.

⁸³ “‘Stealing our Children’”, *News* (Adelaide), 16 February 1924, 1.

prove that Aboriginal mothers did not have the same maternal feelings as Europeans.⁸⁴ Even where the existence of maternal feeling was admitted, such feelings were given a lower importance than the need to ‘rescue’ children with ‘white blood’ from the degradation of the ‘native camps’.⁸⁵ In South Australia, the Hon J.J. Duncan invoked the *State Children’s Act* to argue that children of mixed descent were entitled to protection from ‘pure-bred blacks or cross-bred natives, and ... vicious whites’.⁸⁶ In Western Australia, Sir Edward Wittenoom repeated these arguments but attempted to mitigate fears that removal would be widespread by adding ‘if the Protector thought it prudent to leave such a child with its mother he could do so. The clause was more permissible and not as compulsory as he had first thought’.⁸⁷ The South Australian treasurer assured the House that there was ‘no obligation’ on the Chief Protector to remove children he considered well cared for, nevertheless, expressing his hope that

aboriginal or half-caste parents would have their children with them throughout infancy and early youth ... [but] would soon become accustomed to regard it as a natural thing that their children, somewhere about their fifteenth year, should be transferred to the State Children's Department for further training.⁸⁸

If this eventuality did not come to pass, legislators were prepared to call on ‘the assistance of the police in its enforcement’.⁸⁹

⁸⁴ ‘The Half-caste Problem’, *Advertiser* (Adelaide), 14 October 1910, 8.

⁸⁵ ‘House of Assembly’, *Register* (Adelaide), 14 October 1910, 10; ‘The Aborigines’, *West Australian*, 11 November 1910, 9.

⁸⁶ ‘The Parliament’, *Register* (Adelaide), 6 October 1911, 10.

⁸⁷ ‘Parliament’, *West Australian*, 24 November 1910, 4.

⁸⁸ ‘Care of Aborigines’, *Register* (Adelaide), 21 September 1923, 10.

⁸⁹ ‘Care of Aboriginal Children’, *Register* (Adelaide), 6 June 1924, 8.

Such justifications for the expansion of child removal in Indigenous communities brought together two disparate lines of argument. Early removal was justified by a belief that ‘native children mature so much quickly [sic] than civilised youth, and at that age, being more impressionable the habits of thrift and honesty are more easily inculcated, and that consequently they would be more likely to be trained to become useful servants to the whites’.⁹⁰ At the same time, both philanthropists and government infantilised Aboriginal parents seeing them as ‘children of nature ... almost incapable of caring for, or protecting themselves’ and therefore unable to make informed decisions about the future of their children.⁹¹ But as such ‘concern’, typically extended only to children of mixed descent, the progressive strengthening of the child removal powers is better understood within the context of growing national concern about the quality of the nation, a quality that was always understood in racialised terms.

Absolute erasure: the rise of adoption

Concerns about ‘quality’ underwrote a further extension of the state’s right to remove in the first half the twentieth century. Adoption constituted the most radical form of child removal because it allowed for the complete erasure of the child’s original identity. Although it did not reach its full impact until after the Second World War, the legislative structure allowing the State to completely sever the bonds between parent and child was set in place in most states by the end of the 1920s. The legislation required the consent of the parents (or mother

⁹⁰ ‘The Aborigines Protection Bill’, *Western Mail* (Perth), 4 September 1886, 23; ‘Legislative Council’, *Daily News* (Perth), 20 August 1886, 3.

⁹¹ O’Brien, 82. ‘Editorial’, *Argus* (Melbourne), 20 August 1869, 5; ‘Our Conquered Fellow Countrymen’, *Western Champion* (Barcaldine), 3 November 1896, 5; H.K. Wickham, ‘The Vanishing Race’, *Sunday Times* (Sydney), 8 May 1910, 13.

in the case of an ex-nuptial child), but also established that consent could be dispensed with when a parent was absent or had lost through their behaviour the right to reclaim guardianship of their child. The earliest legislation was designed to facilitate the adoption of children who were already in state care, but laws based on United States, New Zealand and eventually United Kingdom models introduced a closed, permanent form of adoption, with ex-nuptial children as its presumed target.⁹² The distinguishing feature of this legislation was

⁹² *Destitute Persons Act Amendment Act 1886 (SA)*,

<http://dspace.flinders.edu.au/xmlui/bitstream/handle/2328/3468/03871886.pdf?sequence=1>;

State Children's Relief Act 1896 (NSW),

http://www.austlii.edu.au/au/legis/nsw/num_act/scrao1896n10241.pdf. *Adoption of Children*

Act 1896 (WA),

[www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:14584P/\\$FILE/AdptnofChildnAct1896_00-00-00.pdf?OpenElement](http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:14584P/$FILE/AdptnofChildnAct1896_00-00-00.pdf?OpenElement);

Adoption of Children Act 1920 (Tas),

www.austlii.edu.au/au/legis/tas/num_act/taoca192011gvn5293/;

Child Welfare Act 1923 (NSW), www.legislation.nsw.gov.au/sessionalview/sessional/act/1923-21.pdf;

Adoption of Children Act 1925 (SA),

www.findandconnect.gov.au/ref/sa/objects/pdfs/Adoption%20of%20Children%20Act%201925.pdf.

Adoption of Children Act 1928 (Vic),

www.findandconnect.gov.au/ref/vic/objects/pdfs/1928%20Adoption%20of%20Children%20Act.pdf;

Adoption of Children Ordinance 1935 (NT), [http://nla.gov.au/nla.news-](http://nla.gov.au/nla.news-article49426795)

[article49426795](http://nla.gov.au/nla.news-article49426795);

Adoption of Children Act 1935 (Qld), http://ozcase.library.qut.edu.au/qhlc/documents/qr_chil_adoption_1935_26_GeoV_No7.pdf;

Adoption of Children Ordinance 1938 (ACT),

[www.findandconnect.gov.au/ref/act/objects/pdfs/1938%20\(Cth\)%20Adoption%20of%20Children%20Ordinance.pdf](http://www.findandconnect.gov.au/ref/act/objects/pdfs/1938%20(Cth)%20Adoption%20of%20Children%20Ordinance.pdf).

that once the adoption was complete the original identity of the child was expunged and it was reconstituted as the child of its adoptive parents.

Parliamentarians were not unaware of the gravity of this step, but their sympathy lay far more with the adoptive parents, who invested heavily in their children and wanted the security that they could not be taken away.⁹³ In order to justify the transgression of parental rights the now well-established arguments about those rights having to be earned were again invoked.⁹⁴ Counteracting fears that the laws would be used against poor parents, the South Australian Attorney General, W.J. Denny, reassured the House that ‘state welfare relief would still be available’. For the first time, he added, the law gave parents the ability to waive parental rights, a reference to the single mothers who, it was assumed, would be glad to be able to be free of the stigma associated with their state.⁹⁵ Adoption legislation, a South Australian clergyman asserted, was designed to secure ‘to the illegitimate, unwanted or neglected child its just rights’.⁹⁶ Those rights, however, were assumed rather than defined.

Conclusion: the centrality of race

In the 1930s parliaments in two states introduced legislation which used the mechanisms designed to facilitate the removal of Indigenous children to segregate another marginal

⁹³ ‘Adoption of Children Bill’, *Advocate* (Burnie), 1 October 1920, 3.

⁹⁴ ‘Adoption of Children’, *Examiner* (Launceston), 2 September 1920, 4.

⁹⁵ ‘Adoption of Children’, *Register* (Adelaide), 19 August 1925, 9.

⁹⁶ ‘Children who Belong to Nobody’, *Border Watch* (Mount Gambier), 22 May 1928, 6.

group—children with disabilities—from the wider population.⁹⁷ In language echoing that used in relation to Aboriginal parents, the responsible minister in Queensland acknowledged that ‘it would be bad tactics to attempt to force children from their parents’, but expressed the hope that they would come to realise ‘that it was important to obtain early treatment for a mentally deficient child’.⁹⁸ This rationalisation is indicative of the centrality of racial wellbeing to the child welfare project. By examining the legislation through which the State legitimated its rights to break the bond between parent and child through a racial lens, the paper has destabilised both the progress narrative of child welfare history, and its tendency to compartmentalise the policies applied to Indigenous and non-Indigenous children.

Robert van Krieken has pointed to the ‘powerful tension ... between “the best interests of the child” and “the best interests of society”’, suggesting that ‘if we simply assume that the two work in harmony, the former will almost always be defined in terms of the latter’.⁹⁹ National/racial interest structured the developing child welfare policy from the earliest days of Australian colonisation. Because settler children could lay full claim to a shared heritage of whiteness, even the most outcast was considered to be salvageable, but only if they were separated from the damaging influence of their families. That Indigenous child removal, despite the Protectors’ extensive powers, focused on children of mixed descent points to the centrality of a more diluted whiteness to that process as well, rendering some

⁹⁷ *Backward Persons Act 1938 (Qld)*,

www.austlii.edu.au/au/legis/qld/hist_act/bpao19382gvn30274/; *Child Welfare Act 1939 (NSW)*, www.legislation.nsw.gov.au/sessionalview/sessional/act/1939-17.pdf.

⁹⁸ ‘Backward Persons Bill’, *Queensland Times* (Ipswich), 17 November 1938, 13.

⁹⁹ van Krieken, ‘The “Stolen Generations” and Cultural Genocide’, 308.

children as salvageable if their indigeneity could be disguised.¹⁰⁰ Simultaneously engaged in a process of Indigenous dispossession and active nation building, Australian policy makers found this imperative to preserve whiteness particularly potent. Settler parents perceived to be failing in their duty had their common law rights removed, while Indigenous parents were infantilised, discrediting any claim they had to both their children and their land.¹⁰¹

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¹⁰⁰ Swain and Hillel, 83.

¹⁰¹ Ibid., 94.