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The Children's Court: Implications of a New Jurisdiction

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Williamstown Police Court c. 1890s with children in foreground
Andrew Rider (1821 – 1903), State Library Victoria, H86.98/640.

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ABSTRACT

This thesis examines the establishment of Children's Courts in the state of Victoria through the *Children's Court Act* 1906 (Vic) and the campaign for legislative change in the city of Melbourne. It asks as its central question why the foundation of a separate Court was, and continues to be, understood as a primary response to children's social and economic disadvantage. The thesis employs social history methodologies to show, through close jurisprudential examination of archives, how the Children's Court was theorised by middle class reformers as a solution to their anxieties about the public behaviour of poor urban children in early twentieth-century Melbourne. It reveals how those anxieties were projected on to concerns over Court environment and procedures, as well as how key decisions about which children should be included within (and excluded from) the new jurisdiction reflected reformers' social and moral understandings about criminal responsibility, poverty and welfare, race and gender. The thesis also documents the experiences of children who were the subject of historical Court intervention. Their life stories demonstrate the close interrelationship between structural disadvantage and a Court appearance.

This research project has both historical and contemporary significance. The modern Victorian Children's Court is a site of much contention, with ongoing debates about its remit and effectiveness. This thesis offers the first comprehensive history of early Children's Courts in Victoria, but it also contributes vital historical context to current policy discussions. Overall, my thesis makes visible why the Children's Court is a continuously-reanimated site for a set of legal and social questions about public responsibility for children in Victoria. It offers a methodology through which the state's continued reliance on the Court system as a solution to children's multifaceted social problems can be both understood and critiqued. The thesis invites discussion about how states invested in Children's Courts, then and now, and challenges public ideas about what is required for their effective operation. My conclusion is that early twentieth-century reformers' emphasis on the Court system set a problematic precedent. The *Children's Court Act* consolidated some valuable changes around the legal treatment of children, and for this reason I argue that the Children's Court is an institution worth defending. However the new jurisdiction also masked structural inequalities,

entrenching further the criminalisation of poverty and embedding racial and gender differences. These patterns, and their implications, continue today.

DECLARATION

I hereby declare that the thesis comprises only my original work towards the degree of Doctor of Philosophy; that due acknowledgement has been made in the text to all other material used; and that the text and argument of this thesis inclusive of footnotes is 99,432 words in length, exclusive of tables, bibliographies and appendices.

Jennifer M. Anderson

31 March 2021

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INTRODUCTION

Introduction and Research Questions

The modern Victorian Children's Court is a site of much controversy. Over the last decade alone, this small jurisdiction[1] has been the subject of a stream of reports on the related issues of youth crime and child welfare, both heard in this Court.[2] These reports have come in the wake of extensive media attention about a perceived growth in juvenile offending[3] and child neglect.[4] As a result, the Court has been the subject of repeated legislative amendments and refinements to its jurisdiction,[5] including calls that it be disbanded altogether.[6] This thesis provides critical historical context to these debates by

[1] In the 2018 – 2019 financial year, 9339 criminal matters and 18,722 child protection applications (5,866 of these primary, or more urgent, matters) were issued in the Children's Court of Victoria (state-wide). This compares to 151,765 criminal matters in the Magistrates' Court of Victoria and 81,024 family violence intervention order applications, its next busiest area. The Children's Court finalised 31,650 cases across all areas the same year, the Magistrates' Court finalised 177,518 criminal cases alone. Children's Court of Victoria, *Annual Report 2018 – 2019* (Melbourne: 2019), 34, 42; Magistrates' Court of Victoria, *Annual Report 2018 – 2019* (Melbourne: 2019), 7.

[2] Key reports include Victorian Ombudsman, *Investigation into the Department of Human Services Child Protection Program* [2009] VicOmbPRp 9 (1 November 2009)*;* Victorian Ombudsman, *Own Motion Investigation into Child Protection – Out of Home Care* [2010] VicOmbPRp 4 (26 May 2010); Victorian Law Reform Commission (VLRC), *Protection Applications in the Children's Court* (Report No 19 of 2010); State Government Victoria, *Report of the Protecting Victoria's Vulnerable Children Inquiry* ('Cummins Report') (Melbourne: Department of Premier and Cabinet, February 2012); Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (Melbourne: Sentencing Advisory Council, April 2012); Penny Armytage and James Ogloff, *Youth Justice Review and Strategy: Meeting Needs and Reducing Offending* ('Armytage report') (Melbourne: Victorian Government, October 2017); Sentencing Advisory Council, *Crossover Kids: Vulnerable Children in the Youth Justice System – Report 1* (Melbourne: Sentencing Advisory Council, 27 June 2019); Sentencing Advisory Council, *Crossover Kids: Vulnerable Children in the Youth Justice System – Report* 2 (Melbourne: Sentencing Advisory Council, 4 April 2020); Sentencing Advisory Council, *Crossover Kids: Vulnerable Children in the Youth Justice System – Report* 3 (Melbourne: Sentencing Advisory Council, 2 June 2020). Independent reviews include Commission for Children and Young People (Victoria), *'As a Good Parent Would' : Inquiry into the Adequacy of Residential Care Services to Victorian Children and Young People Who Have Been Subject to Sexual Abuse and Exploitation Whilst Residing in Residential Care* (Melbourne: Commission for Children and Young People, August 2015); Commission for Children and Young People (Victoria), *Always Were, Always Will be Koori Children: Systemic Inquiry into Services Provided to Aboriginal Children and Young People in Out of Home Care in Victoria* (Melbourne: Commission for Children and Young People, October 2016); Commission for Children and Young People (Victoria), *Safe and Wanted: Inquiry into the Implementation of Amendments to the Children, Youth and Families (Permanent Care and other Amendments) Act 2014* (Melbourne: Commission for Children and Young People, December 2017).

[3] Julie Edwards, 'A Just System? How Punitive Youth Justice Systems Increase the Risk of Crime,' *Children Australia* 42(4) (December 2017): 233; for a statistical analysis that rebuts arguments about increasing youth crime see Melanie Millsteed and Paul Sutherland, 'How Has Youth Crime in Victoria Changed over the Last Ten Years?' *In Fact No 3* (Crime Statistics Agency Victoria, July 2016), 1 – 3.

[4] *Cummins Report*, xxviii, xxx.

[5] *Families (Permanent Care & other Matters) Amendment Act* 2014 (Vic); *Children and Justice Legislation Amendment (Youth Justice Reform) Act* 2017 (Vic).

[6] See discussion in *Protection Applications in the Children's Court*, 212; *Cummins Report,* 381 – 382.

examining the origins of this jurisdiction in the *Children's Court Act* 1906 (Vic) and the campaign for legislative change in the city of Melbourne. It asks as its central question why the foundation of a separate Court was, and continues to be, understood as a primary response to children's social and economic disadvantage. Through close jurisprudential examination of archives, the thesis shows how the Court was theorised by middle class reformers[7] as a solution to their own anxieties about the public behaviour of poor urban children in early twentieth-century Melbourne. It also reveals how those anxieties were projected on to concerns over Court environment and procedures, in ways which continue to resonate.

I answer my central question - why a Court? - by focusing on three core areas. The first is about the reformers who campaigned for Children's Courts, their backgrounds and ambitions, and how they influenced the government decision to legislate for a new Court system. The second is about the subjects of reform, or the children who appeared before the Melbourne Courts, and how their life experiences complicated the use of the Court system to respond to social disadvantage. Finally, I examine the structural limitations of the *Children's Court Act* itself and evaluate whether these limitations were exacerbated by the Act's implementation process. To examine these areas, I join together detailed archival research, with an emphasis on documenting the implementation and experience of Court processes, together with close legal analysis. This thesis offers the first comprehensive history of the early Children's Courts in Victoria and explores the complex and sometimes contested origins of this jurisdiction. It reveals the choices made about which children should be included within, and excluded from, the new jurisdiction, and it demonstrates how these decisions reflected contemporary theories and anxieties about criminal responsibility, poverty and welfare, race and gender. The thesis also documents the experiences of those children who were the subject of Court intervention. It argues that their life circumstances reveal an overriding association between a Court appearance and entrenched structural disadvantage.

Overall, my thesis makes visible why the Children's Court is a continuously reanimated site for a set of legal and social questions about public responsibility for children in

[7] I discuss the meaning of this term further below.

Victoria. In undertaking this task, the thesis offers a methodology through which the state's continued reliance on the Court system as a solution to children's multifaceted social problems can be both understood and critiqued. The thesis invites debate about how states more generally invest in Children's Courts, then and now, and challenges public ideas about what is required for their effective operation. My conclusion is that early twentieth-century reformers' emphasis on the Court system set a problematic precedent. The *Children's Court Act* consolidated some valuable changes around the legal treatment of children, and for this reason I argue that the Children's Court is an institution worth defending. However the new jurisdiction also masked structural inequalities, entrenching further the criminalisation of poverty and embedding racial and gender differences. These patterns, and their implications, continue today.

The first part of this introduction summarises key themes in modern debates about the role of the Children's Court and also notes the general lack of historical context for present concerns. The second part turns to the academic fields to which this thesis contributes. My work draws on areas which have traditionally operated discretely, but which, I argue, cast new light on research questions when considered in combination. The third discusses the social historical methodologies which guided my overall research project, introduces the archival sources I accessed and outlines the theoretical questions these sources invited. I conclude by outlining the structure of this thesis and the contribution of each Chapter as well as reiterating the key themes of the thesis as a whole.

The Children's Court in Contemporary Debates – Solution or Problem?

One of the most striking themes in modern debates and reports about the Victorian Children's Court is how social concerns about youth offending and child welfare have invariably been linked to Children's Court operations and procedures. Of the many commentaries about the Court over the last decade, most have identified complex societal factors which led to children's involvement with the Court, particularly in child protection, or welfare, cases.[8] Alongside this, a significant number of reports have noted the inadequate state resourcing of support services, both prior to and following Court

[8] For example, *Cummins Report*, 29 – 52.

involvement.[9] Nevertheless, recommendations for change have focused consistently on Court processes, practices and sentencing.[10] Another key issue has been whether an allegedly 'legalistic' and 'adversarial' Children's Court is capable of responding effectively and in a timely fashion to children's needs.[11] For child protection cases a major concern has been about the use of 'criminal' procedures in these welfare hearings, leading to debates about whether the Court should be replaced with an administrative panel of 'experts.'[12] A third major focus has been on the physical environment of the central Melbourne Children's Court in particular, with reports criticising overcrowding, shabbiness and poor facilities, especially for children.[13] The overriding emphasis on Court environment and procedures has persisted despite the relatively few numbers of children in either jurisdiction.[14] Children's Court cases have involved a small minority of those who have come to the attention of either police or child protection authorities[15] and youth crime rates in Victoria have in fact fallen over the last decade.[16]

These reports and the anxieties they embody have had tangible legal impact. Recent legislative changes have curtailed significantly the jurisdiction and judicial autonomy of the Victorian Children's Court. Changes to the Court child protection system have removed the power of the Children's Court to make tailored orders for children who have been out of their parents' care after a fixed period of time.[17] For young offenders, in echoes of the 'law and order' approach in the United States,[18] the Victorian Children's Court now has a presumption against dealing with more serious offenders, whose cases are instead moved to the (adult) higher Courts.[19] At the same time, the Victorian government, amongst others, has to date refused to enact a widely-recommended raise

[9] *Investigation into the Department of Human Services,* 17; *Cummins Report,* 120 – 122.
[10] *Cummins Report*, xxvii.
[11] *Investigation into the Department of Human Services,* 56 – 58; *Protection Applications in the Children's Court*, 87 – 88, 90.
[12] *Protection Applications in the Children's Court*, 212; *Cummins Report,* 381 – 82.
[13] *Investigation into the Department of Human Services,* 56 – 57; *Protection Applications in the Children's Court,* 84.
[14] Children's Court of Victoria, *Annual Report 2018 – 2019*, 34, 42.
[15] *Investigation into the Department of Human Services*, 48.
[16] Millsteed and Sutherland, 'How Has Youth Crime in Victoria Changed over the Last Ten Years?', 1.
[17] *Families (Permanent Care & other Matters) Amendment Act* 2014 (Vic); see critical commentary in Commission for Children and Young People, *Safe and Wanted*, 29 – 42.
[18] Barry Feld, *The Evolution of the Juvenile Court: Race, Politics and the Criminalisation of Juvenile Justice* (New York: New York University Press, 2017), 6; David Tanenhaus, *Juvenile Justice in the Making* (New York: Oxford University Press, 2004), xxiii.
[19] *Children and Justice Legislation Amendment (Youth Justice Reform) Act* 2017 (Vic), s 5.

to the age of criminal responsibility, which currently sits at 10.[20] Overall, there has been an uneasy conflict throughout these debates. On the one hand, critics have positioned the Children's Court as a major impediment to children's best interests, and have sought to remove its discretion and even its jurisdiction. Yet at the same time, they have continued to prioritise Court processes and legislative change as the ultimate solution to crime and child welfare. This paradox, and this projection, has been neither acknowledged nor challenged in this literature.

Despite the volume of reports interrogating the Court's entrenched problems, their authors have not generally considered how those problems have a history, and that historical vantage points may well offer valuable contributions to the modern policy agenda. The most comprehensive historical background is in the Victorian Law Reform Commission's *Protection Applications in the Children's Court* (2010). This report, which largely drew for its references on a 1976 review of children's institutions, noted briefly the penal origins of Victorian welfare laws[21] and the contradictions between the criminal and welfare jurisdictions embodied in the *Children's Court Act*.[22] Other reports have devoted even less space to historical discussion (or at least paused to note the repetitions from past reviews in present reporting cycles). The 839-page *Protecting Victoria's Vulnerable Children Enquiry* (2012) has a page and a half on child welfare developments prior to the 1980s.[23] A recent large-scale review of Victoria's youth justice system, *Youth Justice Review and Strategy*, ('Armytage report') has a few lines on the historical doctrine of doli incapax[24] and mentions the 'care and protection order' regime from 1928.[25] The omission is significant. In the absence of informed discussion about the Court's historical context, and it meaning over time as a canvas on to which anxieties are projected, and

[20] For a summary of the arguments in support of raising the age of criminal responsibility, see Law Council of Australia, 'Council of Attorneys-General – Age of Criminal Responsibility Working Group Review,' (2 March 2020) at https://www.lawcouncil.asn.au/publicassets/c74ddce5-375c-ea11-9404-005056be13b5/3772%20-%20CAG%20Review%20of%20age%20of%20criminal%20responsibility.pdf; Nick Ralston and Michaela Whitbourn, 'Age of Criminal Responsibility to Remain at 10 until at Least 2021,' *Sydney Morning Herald*, 27 July 2020, at https://www.smh.com.au/national/age-of-criminal-responsibility-to-remain-at-10-until-at-least-2021-20200727-p55fy6.html.
[21] *Protection Applications in the Children's Court*, 43.
[22] Ibid, 44.
[23] *Cummins Report*, 57 – 58.
[24] Doli incapax is the legal doctrine that children under a certain age are incapable of forming criminal intent. See historical discussion in Susan Magarey, 'The Invention of Juvenile Delinquency in Early Nineteenth-Century England,' *Labour History* 34 (1978): 18. This doctrine will be discussed further in Chapter One.
[25] *Armytage Report, 32.*

realistic and informed systemic change is displaced, the Children's Court model seems anomalous and its procedures inexplicable. This thesis argues that a very imperfect - or non-existent - understanding of the reasons behind the establishment of a separate jurisdiction, including the strengths as well as the shortcomings of this vision, contributes to a limited technical focus on legislative amendments rather than a more holistic approach to children's needs. This in turn perpetuates a cycle of perceived failure when legislative changes fail to achieve their implied purpose: that the Children's Court facilitate long-term solutions to pre-existing social problems.

Fields of Scholarship

The history of Australian Children's Courts has also attracted little academic attention.[26] To date there has been no comprehensive nationwide study of the establishment of this jurisdiction, and accounts of individual Courts have mostly been subsumed into more general discussions of criminal or child welfare developments.[27] To respond to this gap in the academic literature, and in turn also to the paucity of historical understanding in contemporary public reporting on the Court, I brought together four areas of historical research. These four areas have often operated discretely, but in this thesis, I demonstrate how in combination they illuminate the complex and contested origins of what became the separate jurisdiction, and its impact on the children who came before the Courts. These fields cover the legislative development of the Victorian Children's Court; the historical experiences of children who appeared before Australian Courts; and the very different situation of Aboriginal children in Victoria, who were not included within the remit of the new Court system. I also contrast Australian scholarship on the foundation of Children's Courts with United States literature on this subject. I argue that the United States scholarship offers valuable theoretical approaches as well as insights into jurisdictional differences. This section canvasses the arguments of major contributors to these fields and identifies key themes in the existing literature to which this thesis contributes and extends, most particularly penal responses to poverty, the

[26] As have the (scholarly) history of Courts in Australia more generally, on this see Ann Genovese, Trish Luker and Kim Rubinstein, 'Introduction' to *The Court as Archive* (Canberra: ANU Press, 2019), 16.
[27] The only two comparative legislative overviews are John Seymour, *Dealing with Young Offenders* (Sydney: Law Book Co, 1988), 68 – 110; and Robyn Blewer, 'Commonsense Tribunals for Erring Little Folks:' Children's Court Legislation in Australia, 1895 – 1907,' *Limina* 22(2) (2017): 69 – 84. Both are discussed further below.

gendered operation of law and legal processes and patterns of racial differentiation and exclusion for Aboriginal people.

(a) Histories of the Victorian Children's Court: A 'Progressive' Institution?

Existing studies of the Victorian Children's Court have often been written by workers in the field rather than academics. These have largely concentrated on legislative provisions, with some limited discussion of the impetus for change. Overwhelmingly, they have positioned the Victorian Court as a positive or 'progressive' development, designed to separate out adults and children in law. The first account of the Victorian Children's Court was Diane Alley's short 'History and Development of the Children's Court of Victoria' (1980). Alley, an honorary Children's Court Magistrate, argued that the Victorian Children's Court was inspired by the new 'equitable' Juvenile Courts in America (discussed further below) and promoted by charitable organisations, particularly women's associations, as well as progressive parliamentarians. She situated the new Act in the context of other Victorian legislative interventions for offending and neglected children.[28] Alley's brief discussion was followed by Donella Jaggs' more extensive *Neglected and Criminal: The Foundations of Child Welfare Legislation in Victoria* (1986). Jaggs, a former public servant in the Children's Welfare Department, traced the development of juvenile legislation, including Children's Courts, to concerns about public order and youth offending from the 1850s, as well as the growth of child rescue charities in the late nineteenth century.[29] Jaggs also argued that the Children's Court was primarily protective, with the aim of shielding children from contamination in the ordinary Court system and allowing for appropriate sentencing, although this was only partially achieved.[30] Jaggs did note that while the Victorian Court was inspired to some extent by American developments, ultimately it remained a distinctively local product, and its legislative framework was primarily criminal.[31]

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[28] Diane Alley, 'The History and Development of the Children's Court in Victoria,' *Australian Crime Prevention Council Forum* 11 3(3) (1980): 11 – 12.
[29] Donella Jaggs, *Neglected and Criminal: The Foundations of Child Welfare Legislation in Victoria* (Melbourne: Phillip Institute of Technology, 1986), i – iii, 90 – 91.
[30] Ibid, 101.
[31] Ibid.

Some academics have also discussed the Victorian Children's Court in comparative studies. Again, this literature has had a strongly doctrinal and institutional focus. The Children's Court has again been depicted as a protective and positive endeavour, if not fully realised in practice. Legal scholar John Seymour's *Dealing with Young Offenders* (1988) discussed the establishment of Children's Courts across Australia, situating them in the history of English and Australian legislation concerning children, crime and social welfare from the mid nineteenth century.[32] Like Jaggs, Seymour noted the general influence of American Courts, but ascribed their local development to concerns about children's treatment in an adult Court system.[33] He highlighted the importance of separate trials, modified procedures, special magistrates and a probation system as key attributes of Australian Children's Courts.[34] A more recent comparative outline, historian Robyn Blewer's 'Children's Court Legislation in Australia' (2017) emphasised that Children's Courts emerged across the English-speaking world at about the same time, and with broadly similar rationales.[35] She once more located the drive to establish a separate jurisdiction in the protective aspirations of child rescue organisations from the late nineteenth century, including the importance of shielding children from contamination, investing in rehabilitation rather than punishment and avoiding legal formalities. These endeavours were based on an understanding that children were different from adults and required legally distinctive treatment.[36] In Australia, each state took a slightly different approach, with ongoing implications for the operation of the new Courts. The definition of 'child' varied across jurisdictions, as did the types of matters heard by the Courts, procedures, and outcomes. Overall, though, the legislation focused on physical separation and distinctive treatment, particularly avoiding incarceration in adult institutions.[37]

(b) Juvenile Courts in the United States: Against The 'Progressive Thesis.'

In summary, then, the relatively few Australian studies of Children's Courts have positioned these institutions largely as progressive developments, promoted by reformers and radical parliamentarians as protective measures to separate children from

[32] Seymour, *Dealing with Young Offenders*, 3.
[33] Ibid, 69 – 71.
[34] Ibid, 69 – 76.
[35] Blewer, 'Commonsense Tribunals,' 70.
[36] Ibid, 73 – 74.
[37] Ibid, 78 – 83.

adults in law. These accounts have focused largely on legislation and the debates surrounding the introduction of individual Acts, noting in particular the influence of American models. By contrast to Australia, there is a significant literature on Juvenile Courts in the United States, with most scholars assuming it was the birthplace of the separate jurisdiction, following the establishment of the Chicago Juvenile Court in 1899.[38] However for many years the strongest trend in research has been away from the 'progressive thesis.'[39] The 'anti-progressive' approach was inaugurated by English-born criminologist Anthony Platt's *The Child-Savers: The Invention of Delinquency* (1969). Platt's central argument was that 'delinquency' was not an innate characteristic, but a construct created by those with the power to delineate norms of acceptable behaviour. He located modern American understandings of deviance in the writings of late nineteenth-century middle-class 'child savers', who enlisted state assistance to create new categories of criminal and dependent youth.[40] These reformers were reacting against rapid urbanisation, high levels of immigration and new theories about criminal heredity.[41] Platt's overall contention was that rather than rescuing the vulnerable, reformers, and the Courts they instituted, in fact engaged in social control over threatening youth, specifically working-class and immigrant communities.[42] Platt's scholarship was strongly influenced by new approaches in criminology, including Marxist, deviance and labelling theories, all of which queried the intentions behind regulatory regimes and exposed how particular communities, particularly the urban poor, were subject to differential treatment in law.[43]

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[38] I explore and critique this assumption in Jennifer Anderson, 'Juvenile Courts – An Australian Innovation?' *Adelaide Law Review* 35(2) (2014): 331 – 333. The first Children's Court was established in Adelaide, South Australia, in 1890. I discuss the impact of the Adelaide Court in Melbourne in Chapters Four and Five.

[39] For the origins of the 'progressive' thesis see Herbert H Lou, *Juvenile Courts in the United States* (Chapel Hill: University of North Carolina Press, 1927), 3 – 4 and in the English context (Magistrate) William Clarke Hall, *Children's Courts* (London: Allen & Unwin, 1926), 16 – 19. For some key 'anti-progressive' scholars (discussed further below) see Anthony M. Platt, *The Child Savers: The Invention of Delinquency* (Chicago and London: University of Chicago Press, 1969), 3 – 10; Mary E. Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885 – 1920* (Chapel Hill and London: University of North Carolina Press, 1995), 2, 5 – 6, 158 – 159; Ruth M. Alexander, *The 'Girl Problem'* : *Female Sexual Delinquency in New York, 1900 – 1930* (Ithaca and London: Cornell University Press, 1995), 3 – 4.

[40] Platt, *The Child Savers*, 3 – 10.

[41] Ibid, 18 – 45.

[42] Ibid, 36 – 40, 135.

[43] Ibid, 7 – 9. Other important works which continued Platt's theories included Steven L. Schlossman, *Love and the American Delinquent: The Theory and Practice of 'Progressive' Juvenile Justice*, 1825 – 1920 (Chicago and London: University of Chicago Press, 1977); and Robert M. Mennel, *Thorns and Thistles: Juvenile Delinquents in the United States* (Hannover: University Press of New England, 1973).

In subsequent years, aspects of Platt's analysis have in turn been challenged. Scholars emphasised that middle-class reformers' 'control' was neither total nor necessarily contrary to working-class views,[44] and that Platt did not fully account for other dynamics, particularly those of gender[45] and race.[46] Nevertheless, Platt's two major contentions, that delinquency was a legal construct and that Juvenile Courts were aimed at the urban and immigrant poor, have remained hugely influential.[47] Platt's other major area of influence lay in his approach to writing the history of Juvenile Courts. Platt and his successors also examined the backgrounds of campaigners for legal change and their theories about juvenile delinquency, as well as the impact of the Courts on their subject populations. This highlighted the historical and contingent understandings of crime and appropriate interventions.[48] Writing the histories of reformers has been a particular focus of feminist scholars of the American Juvenile Courts, who have emphasised the role of middle-class women in this area. English historian Elizabeth Clapp's *Mothers of All Children* (1998), for example, argued that the ideology of the American Juvenile Courts was explicitly gendered. Clapp noted that the Court's most vocal supporters were prosperous women who were already engaged in social welfare initiatives, in suffrage associations and in the Protestant Churches.[49] The Chicago Court was founded and subsequently staffed by what she called 'professional maternalists,' or women trained in the social sciences with a belief in the importance of (middle-class) female influence in public life.[50] Clapp suggested that their model of 'familial' supervision guided the development of most Courts across the United States.[51] Conversely, the Denver Juvenile Court, set up by Judge Ben Lindsey between 1901 and 1903, which promoted 'masculine' values of independence, leadership and work, was much publicised, but less influential in practice.[52] This thesis draws strongly on United States literature, with particular

[44] Odem, *Delinquent Daughters*, 2, 5 – 6, 158 – 159.
[45] Alexander, *The 'Girl Problem'* : *Female Sexual Delinquency in New York,* 3 – 4; Odem, *Delinquent Daughters,* 4 – 6, Elizabeth J. Clapp, *Mothers of All Children: Women Reformers and The Rise of Juvenile Courts in Progressive-Era America* (Pennsylvania: Pennsylvania State University Press, 1998), 2.
[46] Barry C. Feld, *Bad Kids: Race and the Transformation of the Juvenile Court* (New York and Oxford: Oxford University Press, 1999), 7 – 10; Barry C. Feld, *The Evolution of the Juvenile Court: Race, Politics and the Criminalising of Juvenile Justice* (New York: New York University Press, 2017), 1 – 3, 8 – 9.
[47] David Tanenhaus, *Juvenile Justice in the Making* (Oxford: Oxford University Press, 2000), 5; Feld, *The Evolution of the Juvenile Court*, 1 – 2.
[48] Platt, *The Child Savers,* 75 – 100; Victoria Getis, *The Juvenile Court and the Progressives* (Urbana and Chicago: University of Illinois Press, 2000), 12 – 27.
[49] Clapp, *Mothers of all Children*, 5 – 7.
[50] Ibid, 4 – 5, 43 – 44.
[51] Ibid, 102.
[52] Ibid, 132.

reference to its challenge to the 'progressive' narrative and its emphasis on the reformers who developed and implemented the Courts. It is also the first piece of Australian scholarship to contribute to this particular body of work from the local context.

(c) Histories of Children in the Australian Courts

The third field of scholarship on which this thesis draws, and to which it contributes, is histories of children and their interactions with the Australian Court system. As with Children's Courts, to date there have been no comprehensive historical studies of children who appeared before the Australian Courts. Historians Mark Finnane and Yorick Smaal, key scholars in this area, have suggested that this may stem from the complexities of accessing Australian Court records concerning children, as well as the challenges associated with negotiating different state-based legislative regimes.[53] This section outlines three distinct areas of academic investigation within this broader field: feminist scholarship concerning girls and sexual crimes; the more limited Australian research about children as criminal offenders and studies of historical child welfare regimes. As well as noting the distinctive features of each area, I also emphasis the close interrelationship between these regimes in practice, particularly the overriding association between structural disadvantage and a Court appearance.

(i) Girls and Sexual Crimes

A well-established body of Australian feminist scholarship has analysed girls' experiences as victims in sexual offence cases in the late nineteenth and early twentieth centuries. This literature has focused on how class, gender and racial discourses around morality, credibility and respectability influenced decisions to prosecute, as well as girls' problematic treatment by the Court system. Historian Judith Allen's seminal book *Sex and Secrets* (1990), a strong influence on feminist social history more generally (to be discussed further below in that context), led this field. Allen argued that prosecutions in carnal knowledge cases in the state of New South Wales were directed by prior

[53] Mark Finnane and Yorick Smaal, 'Some Questions of History: Prosecuting and Punishing Child Sexual Assault,' in *The Sexual Abuse of Children: Recognition and Redress*, ed. Yorick Smaal, Andy Kaladelfos and Mark Finnane (Clayton: Monash University Publishing, 2016), 1.

assumptions about age and sexuality, and that few girls received the benefit of 'protective' age of consent legislation.[54] A few years later, historian Jill Bavin-Mizzi analysed carnal knowledge cases across three Australian states over the period 1890 – 1920. Bavin-Mizzi also contended that legal outcomes were overwhelmingly influenced by police, judges and juries' theories about working-class adolescent girls' sexuality.[55] Similar themes are drawn out for a later period in historians Lisa Featherstone and Andy Kaladelfos' recent *Sex Crimes in the Fifties* (2016). They argued that postwar fears about the sexualisation of adolescent culture meant that 'the evidence at a criminal trial could quickly become an examination of the [teenage] complainants' body.'[56] In another recent article focusing on children's experiences of giving evidence in sex cases, historian Robyn Blewer has also emphasised the conflict between protective and legal or evidentiary concerns.[57] This thesis contributes an additional vantage point to this strong Australian tradition, analysing both how girls were treated as victims of sexual crimes and in (often simultaneous) welfare proceedings. It also adds a new angle by exploring how female reformers attempted – and failed – to extend the protective remit of the Children's Court to include these victims of adult crimes.

(ii) Juvenile Offenders

No similar body of work has discussed the historical experiences of juvenile offenders in Australia. Instead, existing scholarship divides between accounts of legislative change and discrete studies of limited cohorts of children. Seymour's *Dealing with Young Offenders* (1988), discussed above, remains the only attempt at a comprehensive survey of historical legislative developments for juvenile offenders across Australia. Seymour argued that the 'juvenile delinquent' was a nineteenth-century legislative creation, consolidated in the Australian colonies from the 1860s.[58] He emphasised that while young offenders and children who were the subject of welfare concerns ('neglected

[54] Judith Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880* (Melbourne: Oxford University Press, 1990), 77 – 80, 123 – 126.
[55] Jill Bavin-Mizzi, *Ravished: Sexual Violence in Victorian Australia* (Sydney: University of New South Wales Press, 1995), 10 – 13.
[56] Lisa Featherstone and Amanda (Andy) Kaladelfos, *Sex Crimes in the Fifties* (Melbourne: Melbourne University Press, 2016), 55 – 57, 63 – 67.
[57] Robyn Blewer, 'Making Kiddies at Home in Court: Supporting Child Witnesses in Twentieth Century Australian Courtrooms,' *Law and History* 62(4) (2017): 64.
[58] Seymour, *Dealing with Young Offenders*, 35 – 44.

children') were formally distinguished in law, in practice categories were blurred.[59] The historical chapter of Chris Cunneen, Rob White and Kelly Richards' *Juvenile Justice* (5th edition, 2015) also noted the many intersections between criminal and 'welfare' responses. They emphasised even more strongly the class-based nature of the juvenile jurisdiction.[60] The relationship between poverty (and in some cases race, specifically Aboriginality), welfare concerns and offending was also the subject of criminologist Kerry Carrington's *Offending Girls* (1993), to date the only Australian book-length study using Children's Court records. Carrington analysed New South Wales records for a cohort of adolescent girls from the late 1970s and early 1980s, using class and gendered analyses to argue that her sources revealed 'a highly selective delinquency manufacturing process.'[61] Carrington documented the crossover from welfare concerns to actual offending,[62] and how responses towards girls were particularly punitive. Relatively more girls were institutionalised, despite boys offending in considerably higher numbers.[63] For boys, Yorick Smaal's recent work on young perpetrators and victims in late nineteenth and early twentieth century sodomy cases has likewise emphasised the importance of (sometimes conflicting) discourses about class, masculinity and public order in directing prosecutions and determining outcomes.[64] This thesis again extends this existing literature by providing an in-depth account of the offending cohort between 1890 and 1910, including an analysis of available statistics and representative case studies. Like the scholars discussed above, it emphasises the slippage between offending and poverty, and, as in Carrington's later study, a strongly gendered approach to prosecution and sentencing.

(iii) Poverty and Welfare Interventions

[59] Ibid, 45 – 51.
[60] Chris Cunneen, Rob White and Kelly Richards, *Juvenile Justice: Youth and Crime in Australia* (5th ed.) (Melbourne: Oxford University Press, 2015), 2 – 4, 6 – 8.
[61] Kerry Carrington, *Offending Girls: Sex, Youth and Justice* (Sydney: Allen and Unwin, 1993), 1.
[62] Ibid, 85 – 86, 129 – 135.
[63] Ibid, 129 – 138.
[64] Yorick Smaal, 'Boys and homosex: Danger and Possibility in Queensland, 1890-1914', in *Children, Childhood and Youth in the British World*, ed. Shirleene Robinson and Simon Sleight (Basingstoke and New York: Palgrave Macmillan, 2016), 221-36; Yorick Smaal, 'An Imbecility of Body as Well as Mind: Common Law and the Sexual (In)capacity of Boys,' *Criminal Law Journal* 36 (2012): 249 – 251.

A central argument of this thesis, then, is the close relationship between poverty and legal intervention, or how poverty both led to and framed children's interactions with the Court system. Seymour, Cunneen and Carrington's research highlighted the slippage between criminality and neglect, but a small field of academic literature has also discussed how poor children entered the Court system in a welfare capacity. This literature is part of a larger body of research into poverty and survival strategies in the Australian colonies, most of which had minimal state social support systems.[65] Historian Shurlee Swain, a leader in this field, has argued that in late nineteenth-century Melbourne '[p]overty was a trap from which few of the working class could permanently escape.'[66] The city had a permanent core of unskilled labourers whose families were extremely vulnerable to the vicissitudes of unemployment, illness and accidents.[67] In a recent study of colonial New South Wales, historian Tanya Evans has also highlighted 'how entrenched intergenerational poverty and structural disadvantage was for many families.'[68] In response, a considerable number of families turned to the Court system for assistance. Historian Christina Twomey has argued that Victoria's first legislative intervention concerning children, the 1864 *Neglected and Criminal Children's Act,* came about due both to public concerns about urban poverty and crime in Melbourne in the wake of the gold rush, and destitute mothers' attendance at Magistrates' Courts seeking assistance for their families. Twomey explored how the Courts provided the final safety net in a colony without a poor law and where charitable assistance was highly discretionary.[69] Historians Marian Quartly and Judith Smart have also discussed how impoverished mothers turned to the Victorian Court system from the late nineteenth century to support their children.[70] They pointed out that like most forms of colonial assistance, payment tended to be reserved for 'deserving' candidates and their children still became state

[65] Shurlee Swain, 'Destitute and Dependent: Case Studies in Poverty in Melbourne,' *Historical Studies* 19 (1980): 98 – 99; Tanya Evans, *Fractured Families: Life on the Margins in Colonial New South Wales* (Sydney: University of New South Wales Press, 2015), 5, 83 – 84.
[66] Swain, 'The Poor People of Melbourne,' in *The Outcasts of Melbourne: Essays in Social History*, ed. Graeme Davison, David Dunstan and Chris McConville (Sydney: Allen and Unwin, 1985), 99.
[67] Ibid, 99 – 101.
[68] Evans, *Fractured Families,* 19.
[69] Christina Twomey, 'Gender, Welfare and the Colonial State: Victoria's 1864 *Neglected and Criminal Children's Act*,' *Labour History* 73 (1997): 171 – 172, 174, 175 – 178.
[70] Marian Quartly and Judith Smart, *Respectable Radicals: A History of the National Council of Women of Australia, 1896 – 2006* (Melbourne: Monash University Publishing, 2015), 59.

wards. [71] This thesis extends this literature through a detailed account of this largely extra-legal approach to the relief of poverty. It demonstrates the enormous growth in poor families seeking Court assistance over this twenty-year period and the unresolved tension between penal and welfare approaches, a conflict the new Children's Court inherited and perpetuated.

(d) Aboriginal children and Settler Colonialism

Not all children were the subject of the campaign for Children's Courts. As I shall demonstrate in Chapters Four and Five, Aboriginal children in Victoria were never part of reformers' debates about juvenile delinquency and neglect.[72] As a result, the *Children's Court Act* did not include within its remit the Victorian legislation governing Aboriginal children during this period, the *Aborigines Protection Act* (1886), consolidated unchanged in 1890. This Act is discussed further below and in Chapters One – Three. The exclusion of Aboriginal children has gone virtually unnoticed in the Australian literature about Children's Courts to date. None of the scholarship I outlined above considers the racial foundations of the new Court system, a noticeable absence given other historians' discussions of the profoundly racist dynamics of other 'progressive' interventions in early twentieth-century Australia.[73] A comprehensive account of Aboriginal children's encounters with state institutions in Victoria is beyond the scope of this thesis. The devastating effects of white settlement on Victoria's Aboriginal communities, including child removal policies, have been documented in detail in many other studies.[74] In my

[71] Ibid. I also make this argument in Jennifer Anderson, 'Deserving Widows and Deserted Wives: The *Neglected Children's Act* and State Support of Motherhood in Victoria, 1890 – 1910,' *Australia and New Zealand Law and History E-Journal* 4 (2012): 96 – 125.

[72] From the early colonial period, Aboriginal children were subject to a range of 'reformist' efforts, especially around notions of civilisation and protection. For analysis of the general concept of 'protection' across the British Empire, and its application in the Port Phillip District, see Alan Lester and Fae Dussant, 'Trajectories of Protection: Protectorate of Aborigines in Early Nineteenth-Century Australia and Aotearoa New Zealand,' *New Zealand Geographer* 64(3) (2008): 205 – 220; Amanda Nettleback, *Indigenous Rights and Colonial Subjecthood* (Cambridge: Cambridge University Press, 2019), 1 – 12, 195 – 199.

[73] For example, women's suffrage and maternity allowances. See Patricia Grimshaw et al, *Creating A Nation* (Harmondsworth and London: Penguin, 1994), 180.

[74] Giordano Nanni and Andrea James, *Coranderrk: We Will Show the Country* (Canberra: Aboriginal Studies Press, 2013), 6 - 7, 11, 182 – 186; Richard Broome, *Aboriginal Victorians: A History Since 1800* (Sydney: Allen and Unwin, 2005), 185 – 199; Penelope Edmonds, *Urbanising Frontiers: Indigenous Peoples and Settlers in Nineteenth Century Pacific Rim Cities* (Vancouver: University of British Columbia Press, 2010), 5 – 9, 79 – 85, 87 – 89; Bain Attwood, *The Making of the Aborigines* (Sydney: Allen and Unwin, 1989), 83 – 93, 98 – 100, 105 – 134; M. F. Christie, *Aborigines in Colonial Victoria, 1835 – 1886* (Sydney: Sydney University Press, 1979), 2 – 3, 36 – 47, 157 – 170, 180, 202 – 205; Henry Reynolds, *Forgotten War* (Sydney: University

research, given that Aboriginal children were set apart from Children's Court considerations, I have focused on identifying racialised patterns of differentiation in settler-colonial legal treatment of Aboriginal children at key periods of change. These distinctions entrenched Aboriginal children's existing legal disadvantage, in particular by comparison to the various regimes for 'neglected' children. I argue that this long history of separate treatment was the primary reason for their absence from reformist debates about offending and neglect, and for the belatedness of their eventual inclusion within the jurisdiction of new Court system.[75]

Settler-colonial theory helps explain both the origins and persistence of this divergence in the treatment of Aboriginal and non-Aboriginal children in law, by drawing attention to the structural nature of the economic interests and discursive practices that drove settler-colonial governance. As Australian historian and anthropologist Patrick Wolfe and others have argued, the Australian colonies were 'settler societies' that have been continually reconstituted through dispossession and displacement of Indigenous communities and the ongoing denial of their sovereignty .[76] Wolfe identified three stages of settler colonial development, observing that settler regimes initially focused on territorial acquisition through dispossession. In the next phase, pressure was placed on

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of New South Wales Press, 2013), 133 – 138, 156; Gary Presland, *First People: The Eastern Kulin of Melbourne, Port Phillip and Central Victoria* (Melbourne: Museum Victoria, 2010), 83 – 91, 109 – 114. For archival collections of contemporary Aboriginal writings on dispossession, see National Archives of Australia and Public Record Office Victoria, *Footprints: The Journey of Lucy and Percy Pepper* (Canberra: National Archives of Australia, 2008); Australian Archives and Public Record Office of Victoria, '*My Heart is Breaking:' A Joint Guide to Records About Aboriginal People in the Public Record Office of Victoria and the Australian Archives* (Canberra: Australian Government Publishing Service, 1993).

[75] Aboriginal children were brought within the remit of the *Children's Welfare Act* 1954 (Vic), which replaced relevant sections of the *Aborigines Act* 1928 (Vic), the last iteration of the 1886 legislation. Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Sydney, 1997), 54- 55.

[76] On settler colonialism and its Australian manifestations see Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (London and New York: Cassell, 1999), 1 -3, Patrick Wolfe, 'Nation and Miscegenation: Discursive Continuity in the Post-Mabo Era,' *Social Analysis* 36 (1994): 93, 101 – 102; Patrick Wolfe, 'Logics of Elimination: Colonial Policies on Indigenous Peoples in Australia and the United States,' University of Nebraska Human Rights and Human Diversity Initiative Monograph Series, Volume 2 No 2 (2000): 2 – 4; Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (New York: Palgrave, 2010), 1 – 15; Julie Evans et al, *Equal Subjects Unequal Rights: Indigenous People in British Settler Colonies, 1830 – 1910* (Manchester and New York: Manchester University Press, 2003), 2- 4; Tracey Banivanua Mar and Penelope Edmonds, 'Introduction: Making Space in Settler Colonies,' in *Making Settler Colonial Space,* ed. Tracey Banivanua Mar and Penelope Edmonds (London: Palgrave Macmillan, 2010), 4 – 6; Jennifer Balint, Julie Evans and Nesam McMillan, 'Rethinking Transitional Justice, Redressing Indigenous Harm: A New Conceptual Approach,' *International Journal of Transitional Justice* 8 (2014): 202 – 206; Jennifer Balint et al, *Keeping Hold of Justice: Encounters Between Law and Colonialism* (Ann Arbor: University of Michigan Press, 2020), 25 – 26, 40 – 41.

surviving Aboriginal communities to move on to fixed locations or reserves, with an assumption that they would ultimately 'die out'. Later, faced with the continued existence of these populations, attention shifted to assimilation, in particular of individuals designated as 'half caste' (using the racialising language of the time) who notionally straddled the boundaries of Aboriginal and settler society.[77] Of significance for this thesis, settler dominance was invariably enforced through layers of law and regulation as well as through physical violence and coercion.[78]

Aspects of Wolfe's narrative have subsequently been critiqued by Indigenous and non-Indigenous scholars for being overly deterministic and rigid, to the extent that it risks ignoring or minimising individual and collective agency, and therefore discounting prospects for meaningful change. Historians Ann Curthoys and Jessie Mitchell, for example, have challenged what they call the 'excessively prescriptive' elements of Wolfe's approach. They have suggested that his emphasis on the appropriation of land, for instance, can mask the actual scope and complexity of interactions between settlers and Aboriginal people, including the appropriation of Aboriginal labour. Moreover, a simple reading of Wolfe's claim that settler governments operated according to a 'logic of elimination' can erroneously imply the total destruction of Aboriginal culture.[79] Other scholars, too, have drawn attention to the importance of balancing the effects of official discourse on what constituted 'Aboriginal identity' with recognition of Aboriginal resistance on many levels to imposed narratives and structures, and acknowledgment of the fact that Aboriginal sovereignties have continued, whatever the pretensions of state discourse and practice.[80] Accordingly, while appreciating the key insights of Wolfe's core argument that settler-colonialism relies on a continuing process of denying Aboriginal sovereignty, such scholars also present a forceful critique.[81] For the purposes of my research, settler-colonial theory serves to focus attention on the structural injustices that

[77] Wolfe, 'Nation and Miscegenation,' 99 – 101. For further debate about Wolfe's framework from the perspective of indigenous scholars see Shino Konishi, 'First Nations Scholars, Settler Colonial Studies, and Indigenous History', *Australian Historical Studies* 50(3) (2019): 285 – 304, also discussed further below.
[78] Julie Evans et al, *Equal Subjects Unequal Rights*, 3 – 4.
[79] Ann Curthoys and Jesse Mitchell, *Taking Liberty: Victorian Indigenous Rights and Settler Self-Government in Colonial Australia, 1830 – 1890* (Cambridge University Press, 2018), 14 – 16. For Wolfe's response to these criticisms, see Patrick Wolfe, 'Introduction,' to *The Settler Complex: Recuperating Binarism in Colonial Studies*, ed. Patrick Wolfe (Los Angeles: UCLA, 2016), 1 – 24.
[80] Konishi, 'First Nations Scholars,' 293 – 295; Curthoys and Mitchell, *Taking Liberty,* 13.
[81] Curthoys and Mitchell, *Taking Liberty*, 13 – 14; Konishi, 'First Nations Scholars,' 289.

inhere within settler societies and underpin the differential experiences of Indigenous and non-Indigenous peoples in the past and present. More specifically, it helps explain the on-going racialisation of welfare and criminal justice policy and practice and the persistence of widespread social problems associated with childhood poverty, despite decades of reform, as well as shedding light on prospects for effective interventions. I return to these points on a number of occasions throughout this thesis.

Wolfe's schema played out in particular ways and at different times in the Australian colonies. In the case of Victoria, a very rapid and intensive pattern of colonisation led to profound disruption and displacement within a few decades of its establishment as the Port Phillip District in 1836. By the time the new colony separated from New South Wales in 1851, local Aboriginal communities had already been decimated by disease, violence and forcible exclusion from their lands.[82] From 1860, Aboriginal peoples were subject to a distinctive administrative regime under the direction of the 'Central Board to Watch over the Interests of Aborigines,' the first such body in the Australian colonies.[83] The Board, whose considerable administrative powers were confirmed by legislation in 1869 - also a national first[84] - focused initially on concentrating all remaining Aboriginal communities on reserves. As I shall discuss in Chapter One, in this the Board had considerable success under an ostensibly protective mandate.[85] By the 1880s, faced with populations whose survival proved more persistent than authorities had anticipated, the Board's focus shifted to another group, the more numerous 'half castes.' For these the Board ultimately advocated integration, or at least removal from the reserves and state support.[86] In 1886, a complex settler legal distinction between 'full bloods' and 'half castes' was consolidated in legislation.[87] 'Half castes' began to be ejected from reserve

[82] Nanni and James, *Coranderrk*, 6, 11; Broome, *Aboriginal Victorians*, 6 – 7, 9, 29 – 31, 54, 69 – 71, 73 – 83, 90 – 93.
[83] Jesse Mitchell and Ann Curthoys, 'How Different Was Victoria? Aboriginal Protection in a Comparative Context,' in *Settler Colonial Governance in Nineteenth-Century Victoria,* ed. Leigh Boucher and Lynette Russell (Canberra: ANU Press, 2015), 186.
[84] Leigh Boucher, 'The 1869 *Aborigines Protection Act:* Vernacular Ethnography and the governance of Aboriginal subjects,' in *Settler Colonial Governance,* 64 – 68.
[85] Lester and Dussant, 'Trajectories of Protection,' 205, 217; Nettleback, *Indigenous Rights,* 1 – 12.
[86] Russell McGregor, *Imagined Destinies: Aboriginal Australians and the Doomed Race Theory*, 1880 – 1939 (Melbourne: Melbourne University Press, 1997), 48 – 59.
[87] Clare Land, 'Law and the Construction of 'Race': Critical Race Theory and the Aborigines Protection Act, 1886, Victoria, Australia,' in *Rethinking Colonial Histories: New and Alternative Approaches*, ed. Penelope Edmonds and Samuel Furphy (Melbourne: RMIT Publishing, 2006), 140 – 145; Kat Ellinghaus, 'Regulating

communities, and 'half caste' children removed to training institutions.[88] From the 1890s an increasing emphasis on 'white Australia' and nation building, ultimately culminating in federation in 1901, further entrenched Aboriginal people's different political, as well as social and economic, status.[89] In this context, the omission of Aboriginal children from the Children's Court jurisdiction was not surprising, but it had serious implications which continue. The creation of a regime founded on the premise of (white) nation building left Children's Courts uniquely ill-equipped to deal with the complex needs of Aboriginal children when they later entered the mainstream criminal and welfare jurisdictions, while the legacy of disenfranchisement and dispossession has resulted in their considerable overrepresentation in these systems, relative to their percentage of the population.[90]

Thesis Methodology: Social Histories of Crime and Law

My literature review has highlighted how three strands of Australian scholarship - the legislative development of Children's Courts, the experiences of children before the Courts, and the treatment of Aboriginal children by settler-colonial legal systems - have traditionally developed independently. These works are, however, all linked by their focus on the children and their families who were the subject of historical Court engagement, or, in the case of Aboriginal children, who were excluded from these regimes. My thesis draws out these relationships to make explicit within one project and for the first time the connections between middle-class reformers, state legislative developments, the largely poor urban children who entered the Court system, the

Koori Marriages: The 1886 Victorian *Aborigines Protection Act*,' *Journal of Australian Studies* 25 (67) (2001): 22 – 29.

[88] Broome, *Aboriginal Victorians*, 185 – 188.

[89] Evans et al, *Equal Subjects Unequal Rights,* 143 – 153; John Chesterman and Brian Galligan, *Citizens Without Rights: Aborigines and Australian Citizenship* (Cambridge and New York: Cambridge University Press, 1997), 8, 11 – 15.

[90] For some of the many analyses of this issue see Chris Cunneen and Terry Liebemann, 'Postcolonial Trauma: The Contemporary Removal of Indigenous Children and Young People from their Families in Australia,' *Australian Journal of Social Issues* 35 (2) (2000): 103, 105; Melanie Schwarz, 'Redressing Indigenous Overrepresentation in the Criminal Justice System with Justice Reinvestment,' *Precedent* 118 (2013): 39; Chris Cunneen, 'Racism, Discrimination and the Overrepresentation of Indigenous People in the Criminal Justice System,' *Current Issues in Criminal Justice* 17 (3) (2005): 336, 340. For recent statistics on the overrepresentation of Aboriginal children in the Victorian child protection and youth justice systems (including in custodial settings) see Sentencing Advisory Council, *Crossover Kids – Report 1*, 23 – 24, 26.

differential treatment of boys and girls by the Courts, and Victoria's Aboriginal children, whose exclusion reinforced the racial as well as class and gendered attributes of the new jurisdiction. In the next section of this thesis I turn to methodology and my use of social history approaches to guide my research and jurisdictional arguments. I drew on two key tenets of social history: the experiences of 'ordinary people' before the Courts, or their interactions with institutions created and largely staffed by those more privileged, and the use of a variety of archival sources to illuminate the experiences of children and their families beyond official records. I argue that social history methodologies, in particular those of social history of crime and the criminal law, offer a comprehensive research approach which is particularly suited to this subject. This approach extends the topic beyond accounts of legislative developments to consideration of law as implemented, experienced and practiced from a variety of different perspectives. It also provides a framework to analyse how the Children's Court itself was conceptualised at this historical point in time, and how contemporaries' anxieties about children were projected on to the physical space of the Court.

(a) Social History

Social history is a tradition in historical scholarship which has many ancestors, but gained ascendancy in the 1960s and 1970s. Its primary purpose, as described by key practitioners, was to document the lives of ordinary people rather than political or social elites.[91] In the process historians sought to challenge linear narratives of the past and to illuminate present issues.[92] The seminal work in this field remains English historian E P Thompson's *The Making of the English Working Class* (1966). Thompson's study promoted the agency of working people in creating their own histories and the notion of class as experience and relationship. In his famous phrase, he sought to 'rescue [people] from the enormous condescension of history … [t]heir aspirations were valid in terms of

[91] E.P. Thompson, *The Making of the English Working Class* (New York: Vintage Books, 1966), 12; Eric Hobsbawm, 'From Social History to the History of Society,' in *Historical Studies Today*, ed. Felix Gilbert and Stephen R. Graubard (New York: Norton, 1972), 1 - 26; Christopher Hill, *The World Turned Upside Down: Radical Ideas during the English Revolution* (Harmondsworth: Penguin, 1991, originally published 1972), 13, 15 – 18; Raphael Samuel, 'What is Social History?' *History Today* 35(3) (1985): 1 – 8.

[92] Jim Sharpe, 'History from Below,' in *New Perspectives on Historical Writing*, ed. Peter Burke (Cambridge: Polity Press, 2001), 26 – 29; Geoff Eley and Keith Nield, *The Future of Class in History: What's Left of the Social?* (Ann Arbor: University of Michigan Press, 2007), 19 – 21.

their own experience.'[93] This interest in 'ordinary people' directed methodology. This approach generated an enormous interest in archival research. Social historians sought out a variety of lesser known sources, including local Court records and parish registers, which revealed new details about everyday life.[94] In an early exposition on method in 1972, English social historian Eric Hobsbawm argued for detailed archival research as the foundation of any social history project, stressing its importance in tracing family relationships, class groups, cultures and social movements.[95] This emphasis informed and helped organise my own research, as I shall explain in more detail in my section on sources and archives.

(b) Social Histories of Crime and Law

Social histories of crime and the criminal law were an early sub-genre of the 'new' social history. Scholars challenged largely administrative and doctrinal legal histories to explore the social context underpinning the criminal law, historical constructions of criminality and people's experiences of the justice system.[96] Once more the focus was on 'ordinary people,' and in particular how the criminal law targeted the poor and working classes. Two scholars who set important principles underpinning this genre were English historians Douglas Hay and, once again, E P Thompson. Hay's 'Property, Authority and the Criminal Law' (1975), published in the collection *Albion's Fatal Tree*, studied the use of capital offences for crimes against property and the 'theatre of justice' in eighteenth century England. Hay argued that over the course of the eighteenth century the criminal law assumed particular authority as a means of protecting property interests. The law gained legitimacy and consensus through appeals to equality, justice and mercy, but was ultimately used to maintain a particular and hierarchical social order.[97] E P Thompson's *Whigs and Hunters: The Origin of the Black Act* (also 1975), analysed the period

[93] Thompson, *Making of the English Working Class*, 12 – 13.
[94] Jim Sharpe, 'History from Below,' 30 – 31. An earlier methodological summary is in J A Sharpe, *Crime in Seventeenth Century England* (Cambridge: Cambridge University Press, 1980), 3 – 5.
[95] E J Hobsbawm, 'From Social History to the History of Society,' in *Historical Studies Today*, ed. Felix Gilbert and Stephen R Graubard (New York: W Norton, 1972), 10 – 16.
[96] Vic Gattrell, Bruce Lenman and Geoffrey Parker, 'Introduction,' to *Crime and the Law: The Social History of Crime in Western Europe Since 1500,* ed. Vic Gattrell, Bruce Lenman and Geoffrey Parker (London: Europa, 1980), 1; Martin J. Wiener, *Constructing the Criminal: Culture, Law and Policy in England, 1830 – 1914* (Cambridge: Cambridge University Press, 1990), 4 – 6.
[97] Douglas Hay, 'Property, Authority and the Criminal Law,' in *Albion's Fatal Tree: Crime and Society in Eighteenth Century England*, ed. Douglas Hay et al (London: Allen Lane, 1975), 17 – 63.

immediately preceding that of *The Making of the English Working Class* to contextualise the origins of the 'capital code.' Like Hay, Thompson viewed the criminal law as a social phenomenon, embedded in the conflicts of its times.[98] Through a variety of often fragmentary archival sources, Thompson traced both how the law was created and evoked by a ruling elite against perceived threats, particularly the poor,[99] and how legal principles were evoked by protestors to challenge arbitrary power. Overall, Thompson argued that the 'rule of law' was a site of contest and had a powerful rhetorical value which could constrain as well as mask power.[100]

These authors were a critical influence on my thesis through their explicit connection between jurisdictional and juridical analysis and archival research. For the same reason, I was also strongly influenced by Australian social historians of crime and law, as well as some criminologists, who all adapted the approaches of Hay and Thompson to the Australian context. These scholars engaged in close archival research with an emphasis on the social and contextual operation of law. Early writings like criminologist Peter Grabosky's *Sydney in Ferment* (1977) and historian Michael Sturma's *Vice in a Vicious Society* (1983), both of which focused on urban Sydney, situated understandings of crime and 'deviance' in particular historical contexts and emphasised how the criminal law was used to target the 'disorderly.'[101] The following decade these works were joined by historian David Philip's study of class, gendered and racial discourses in the criminal trial process in Melbourne,[102] historian Suzanne Davies' analysis of the impact of vagrancy laws in inner Melbourne,[103] and historian Mark Finnane's studies of the politics behind Australian policing[104] and punishment, again in urban areas.[105] Philips and Davies'

[98] E P Thompson, *Whigs and Hunters: The Origins of the Black Act* (London: Allen Lane, 1975), 246 – 254.
[99] Ibid, 264 - 265
[100] Ibid, 258 – 269.
[101] Peter Grabosky, *Sydney in Ferment: Crime, Dissent and Official Reaction*, 1788 - 1973 (Canberra: Australian National University Press, 1977), 1; Michael Sturma, *Vice in a Vicious Society: Crime and Convicts in Mid-Nineteenth Century New South Wales* (St Lucia: University of Queensland Press, 1983), 5, 8.
[102] David Philips, 'Anatomy of a Rape Case, 1888: Sex, Race, Violence and Criminal Law in Australia,' in *A Nation of Rogues? Crime, Law and Punishment in Colonial Australia*, ed. David Philips and Suzanne Davies (Melbourne: Melbourne University Press, 1994), 97 – 122.
[103] Suzanne Davies, 'Ragged, Dirty … Infamous and Obscene' : The Vagrant in Late Nineteenth Century Melbourne,' in *A Nation of Rogues*, 141 – 165.
[104] Mark Finnane, *Police and Government: Histories of Policing in Australia* (Melbourne: Oxford University Press, 1994).
[105] Mark Finnane, 'After the Convicts: Towards a History of Imprisonment in Australia,' *Australian and New Zealand Journal of Criminology* 24(2) (1991): 105 – 117. An early overview of these works can be found in

introduction to one compilation, *A Nation of Rogues* (1994), set out some key premises underpinning a distinctively Australian approach to this field. Philips and Davies argued for the importance of theoretically informed archival research, including recognition of class relationships, racial dynamics and gender inequalities[106] and an emphasis on 'the day to day workings of the criminal justice system'[107] but also the conflict between a British legal inheritance and its application to different colonial conditions.[108] These methodologies have undergone another regeneration more recently in a new generation of Australian histories of crime and society, to which this thesis contributes. Specific subjects explored include attitudes to capital punishment,[109] the experiences of female offenders within the justice system,[110] patterns of prosecution[111] and the discursive constructions of 'criminality' and 'victims.'[112]

(c) The Centrality of Class

A focus on structural disadvantage has remained central to social histories of crime and law, even as the primacy of class as a theoretical framework has come under increasing challenge in other subsets of social history.[113] Whilst not excluding other factors (most noticeably race), social historians of law and crime have agreed that the subjects of legal

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David Philips, 'A Nation of Rogues,' *Australian and New Zealand Journal of Criminology* 24(2) (1991): 161 – 166.

[106] David Philips and Suzanne Davies, 'Introduction,' to *A Nation of Rogues,* 2.

[107] Ibid, 1.

[108] Ibid, 7 – 10.

[109] Andy Kaladelfos, 'The Politics of Punishment: Rape and the Death Penalty in Colonial Australia, 1841 – 1901,' *History Australia* 9(1) (2012): 155 - 175; Alanna Piper and Mark Finnane, 'Access to Legal Representation by Criminal Defendants in Victoria, 1861 – 1961,' *University of New South Wales Law Journal* 40(2) (2017): 638 – 663.

[110] Victoria Nagy and Alanna Piper, 'Versatile Offending: Criminal Careers of Female Prisoners in Australia, 1860-1920,' *Journal of Interdisciplinary History* 48(2) (2017): 187-210; Victoria Nagy and Alanna Piper, 'Imprisonment of Female Urban and Rural Offenders in Victoria, 1860-1920,' *International Journal for Crime, Justice and Social Democracy*. 8(1) (2019): 100 - 115; Victoria Nagy and Alanna Piper, 'Risk Factors and Pathways to Imprisonment among Incarcerated Women in Victoria, 1860–1920,' *Journal of Australian Studies* 42(3) (2018): 268-284.

[111] Mark Finnane and Andy Kaladelfos, 'Race and Justice in an Australian Court: Prosecuting Homicide in Western Australia, 1830 – 1954,' *Australian Historical Studies* 47(3) (2016): 443 – 461.

[112] Andy Kaladelfos, 'Murder in Gun Alley: Girls, Grime and Gumshoe History,' *Journal of Australian Studies*, 34(4) (2010): 471 – 484; Smaal, 'Imbecility of Body,' 249 – 251.

[113] Gattrell, Lenman and Parker, 'Introduction,' to *Crime and the Law*, 1; Wiener, *Constructing the* Criminal, 4 – 6; V A C Gattrell, 'Crime, Authority and the Policeman State,' in *The Cambridge Social History of Britain, 1750 – 1950 Volume Three*, ed. F.L.M. Thompson (Cambridge: Cambridge University Press, 1990), 245; Clive Emsley, *Crime and Society in England, 1750 – 1900* (London and New York: Routledge, 2013, 4th edition), 2 – 6, 8, 12; Drew Gray, *Policing and Punishment in England, 1660 – 1914* (London and New York: Bloomsbury, 2016), 5.

intervention, across countries and time, came overwhelmingly from poorer communities, while those who administered the law were invariably of a higher social status. '[T]he history of crime,' English historian, Vic Gattrell, emphasised in 1990, 'is largely the history of how better-off people disciplined their inferiors.'[114] A number of recent Australian studies have reinforced this analysis.[115] Historians Victoria Nagy and Alanna Piper's recent longitudinal study of the background of female prisoners in Victorian gaols between 1860 and 1920, for example, highlights the role played by social and economic disadvantage, including gendered disadvantage, in historical patterns of prosecution and in women's incarceration rates. Nagy and Piper note that women were most often charged with minor public order offending and that conviction rates accelerated at times of economic hardship and during periods of more intense policing within disadvantaged communities.[116] As well as informing patterns of policing, entrenched disadvantage was the key determinant for women's risk of offending, recidivism and ultimate incarceration. Nagy and Piper argue that disadvantage was multifaceted, including not only poverty, poor education and unstable employment, but past institutionalisation, intergenerational patterns of marginalisation, violence and social exclusion.[117] I shall argue in Chapters Three and Six that offending and 'neglected' children presented with very similar trajectories.

(d) Class and gender – Intersections

Gendered analyses, including the intersections between gender and class, have also been very prominent within Australian social histories of crime, and were a strong influence on my work. Feminist historians presented the first major challenge to social historical research by challenging masculinist understandings of 'class.'[118] In Australia, four key historical texts from the mid-1970s signalled the beginning of this approach, all highlighting the importance of women's specific experiences and the limits of traditional

[114] Gattrell, 'Crime, Authority and the Policeman State,' 245; in Australia see Philips and Davies, 'Introduction,' to *A Nation of Rogues*, 2, 11; Davies, 'The Vagrant in Late Nineteenth Century Melbourne,' 241.
[115] See for example Kaladelfos, 'Murder in Gun Alley,' 471 – 484; Nagy and Piper, 'Risk Factors and Pathways to Imprisonment,' 268 – 284; Featherstone and Kaladelfos, *Sex Crimes in the Fifties,* 4 - 17.
[116] Nagy and Piper, 'Risk Factors and Pathways to Imprisonment,' 272, 274 – 275.
[117] Ibid, 275 – 276, 278 – 281.
[118] Catherine Hall, *White, Male and Middle-Class: Explorations in Feminism and History* (Cambridge: Polity Press, 1992), 9 – 10.

concepts of 'class' as a work and political identity.[119] In the area of crime and law, historian Judith Allen's *Sex and Secrets* (1990), discussed above, consolidated a distinctively gendered approach which incorporated class and disadvantage. As outlined above, Allen examined prosecutions against and involving women and girls in nineteenth and early twentieth century Sydney. She argued that official crime statistics and patterns of policing focused heavily on areas of concern to male law makers and commentators. Crimes in which women were victims and perpetrators were policed selectively and reinforced dominant discourses and gendered power hierarchies.[120] The relationship between law, gender and power was also at the forefront of legal historian Diane Kirkby's influential collection of essays, *Sex, Power and Justice* (1995). Kirkby defined law as a 'system of ordering daily life which constitutes categories of gender, race and class,'[121] and urged scholars to analyse law in its specific local historical environment.[122] Kirkby's recommendation has proved influential. Gendered assumptions behind prosecutions and the Court process have been emphasised anew in recent scholarship, including Kaladelfos and Featherstone's *Sex Crimes*. This work argued that prosecutions should always be read in the context of historically contingent concerns about the meaning of femininity, masculinity, childhood and adulthood, as well as fears about social change.[123] My thesis also emphasises the gendered dynamics underpinning Court appearances and legislative change, in particular the different treatment of boys and girls before the Courts, and the distinctive proposals by male and female reformers for jurisdictional change.

Sources and Archives

Overall, I argue that social history methodologies, in particular social histories of crime and the criminal law, provide a valuable approach to studies of Court systems. These methods shift the focus of scholarship from the development of legislation and procedure to the social context of institutions and how Courts were understood, implemented and

[119] The texts were Anne Summers, *Damned Whores and God's Police*; Miriam Dixson, *The Real Matilda*; Edna Ryan and Anne Conlon, *Gentle Invaders*; and Beverley Kingston, *My Wife, My Daughter, and Poor Mary Ann*. See Ann Curthoys, 'Gender Studies in Australia: A History', *Australian Feminist Studies*, 15(3) (2000): 26 – 27.
[120] Allen, *Sex and Secrets*, 7 – 10.
[121] Diane Kirkby, 'Introduction,' to *Sex, Power and Justice,* xv.
[122] Ibid, xiii, xv.
[123] Featherstone and Kaladelfos, *Sex Crimes in the Fifties*, 4 – 8, 13 – 17.

experienced. This is even more significant for the study of early Children's Courts. This approach enabled me to document this jurisdiction as an historical site for the projection of reformers' concerns about the behaviour of particular groups of children, as well as documenting its operations and impact. Like the scholars of law and crime discussed above, I also emphasise the importance of comprehensive archival research. This section discusses the particular focus of my research, the city of Melbourne between 1890 and 1910, and the archival sources I accessed. I organised these sources to illuminate the three focal points of the thesis: the background and ambitions of those reformers who campaigned for change, the circumstances of the children who were the subject (or not) of this legislative intervention, and the development and implementation of the *Children's Court Act* itself. Reading these archives allows us to see both the differences in historical understandings of law and childhood, as well as key patterns which I have already identified and which continue to be relevant, including the debate around 'criminal' or 'welfare' approaches for (especially younger) offenders, gendered approaches to sentencing and treatment by the Courts, and the relevance of poverty, class and race in initiating a Court appearance and in outcomes.

I concentrated on Melbourne for two main reasons. Firstly, Children's Courts were largely an urban initiative, in Australia as elsewhere.[124] While there was considerable support for a separate jurisdiction in regional areas, principal campaigners were based in Melbourne and, as I shall document at multiple points, reformers' efforts were directed specifically towards urban 'street children.' The exception to this urban focus was Aboriginal children, who, as I discuss in the next two Chapters, were largely confined to rural areas during this period. The second was because, as I have outlined above, each of the Australian colonies/states had different legislative regimes for children. This was reinforced after Federation, as the federal constitution left child welfare and criminal law in the hands of the states.[125] As a result, each state's legislation reflected somewhat distinctive social and economic structures and political imperatives, although there were key similarities across jurisdictions as well.[126] A comparative study would be valuable,

[124] Getis, *The Juvenile Court and the Progressives*, 9 – 11, 19 – 20.
[125] Helen Irving, *To Constitute a Nation: A Cultural History of Australia's Constitution* (Cambridge: Cambridge University Press, 1999), 93 – 95, 169, 183, 214.
[126] Partly because after federation in 1901 welfare and crime remained state concerns. Blewer, 'Commonsense tribunals,' 71.

but is beyond the scope of this thesis. I do however argue that this research is relevant for studies of other Australian Children's Courts, and indeed across the English-speaking world. As I shall demonstrate in Chapters Four and Five, the Children's Court movement was international in nature. While Melbourne reformers were products of their specific socio-economic and political climate, they were also very connected to the outside world. I shall emphasise in Chapter Five that the *Children's Court Act* was ultimately a hybrid model which drew on multiple influences, some of them quite inconsistent.

The remainder of this section details the major sources I used. In situating these sources, I shall also introduce key definitions and flag the progression of central questions and arguments as they unfold through the Chapters. These sources were Melbourne campaigners' publications, Court registry and criminal trial brief records, newspaper reports and historical government reports, including *Hansard* records, and statistical information. Most of these records have been accessed previously by historians, but none of them has been used extensively in studies of Children's Courts. This thesis, was, however, the first academic study to draw on the Children's Court registry records, which at the time of access had not been digitised and so were available only in the original.[127] As I shall argue further below, using these records in combination was particularly important. In isolation, all of these sources had noticeable limitations, in particular the Court registry publications, as much supporting detail has not survived. By drawing on multiple sources, including statistical records, I was able to build a far more extensive picture of the motivations behind and day to day implementation of the new jurisdiction, as well as its everyday impact 'on the ground' for children and their families.

(a) Melbourne Reformers and Charitable Publications

I use the term 'reformers' in this thesis to describe a group of middle-class men and women with a particular interest in children's affairs, most of whom operated outside government agencies.[128] Many of them were unpaid members of the many private

[127] Griffith University's Prosecution Project is now undertaking digitisation of Australian Court archives, however to date this has not included Children's Court records, see https://prosecutionproject.griffith.edu.au/dataverse for digitisation to date.
[128] This is also the accepted definition in the United States literature. See Platt, *The Child Savers*, 75 – 98; Getis, *The Juvenile Court and the Progressives,* 15 – 18; Clapp, *Mothers of All Children,* 4 – 10, 19 – 45.

children's charities established in Melbourne in the 1880s and 1890s although some held paid (or nominally paid) roles. Another key group were Ministers, or for women, members of the congregations, of Melbourne's dissenting Churches, all of which also operated their own charitable programs. Many of these men and women were also associated with associations which advocated for social change during this period, including the Woman's Christian Temperance Union of Victoria, the National Association of Women of Victoria, the Charity Organisation Society and the Criminology Society, all of which are discussed in more detail in Chapters Two and Four. This group occupied a small, privileged world in a relatively small city, and membership was remarkably consistent over these two decades. There was one noticeable change. Gendered dynamics shifted considerably between 1890 and the decade after 1900. Men dominated the public face of the early Children's Court movement, but in the early twentieth century the influence of middle-class women's associations grew significantly. This came in the wake of organised campaigns for women's suffrage, ultimately leading to Victorian women obtaining the vote in 1908.[129] By 1904, women's organisations became leaders in what rapidly became a political campaign for legislative change. For the historian, this group left excellent records. The State Library of Victoria (SLV) holds most of the published and unpublished records, reports and publications of Victorian charitable organisations as well as the private collections of some individuals. Many reformers were also keen contributors to Melbourne's daily newspapers. These sources allowed me to piece together a detailed picture of the backgrounds of those who campaigned for change, the arguments they made, and their political machinations.

(b) Children's Experiences: Court Reports, Government Publications and Newspaper Reports

If Melbourne reformers left exceptionally good records, piecing together the histories of children who were the subject of their efforts is more complex. As Shurlee Swain and English historian of childhood Harry Hendrick have argued, children pose considerable interpretive difficulties for social historians. They were often obscured from direct observation in the historical record and their perspectives were invariably mediated by

[129] The Commonwealth vote for (white) women came in 1902, see Grimshaw et al, *Creating A Nation*, 182, 185 – 186.

adults.[130] Yet while children did not generate official records, their interactions with the Court system were also one of the relatively rare historical occasions where their circumstances, treatment and even their voices were recorded in some detail.[131] At a statistical level there is useful information about children's appearances in the Melbourne Courts in the Law/Crime volumes of Victoria's annual *Statistical Registers*, now accessible online. These registers included statewide information about arrest rates, charges and Court outcomes as well as information about defendants' occupations and educational attainment. After 1908 the registers included a separate section on Children's Courts. This data has some significant limitations. For example, until 1908 the arrest statistics distinguished between males and females, but did not generally delineate according to age, with the exception of education levels. Until 1908 the registers also included the 'charge' of neglect within the general criminal statistics. After 1908, the Children's Court returns solved the age problem, but in turn did not delineate further by gender. For information about 'neglected children,' the annual reports of the Victorian Department for Neglected Children and Reformatory Schools, also now available online, were my best resource. These documented how many children were committed to state care, including neglected children and young offenders who entered the reformatory system. They also documented where children were placed and included some (albeit fairly generic) information about their parents.

One of the key variables in these different sources was exactly what was meant by a 'child.' During the period 1890 - 1910 this depended on the type of legal case and reflected contemporaries' theories around class, gender and moral status. For neglect proceedings, as I shall discuss in Chapter One, 1887 legislation, consolidated unchanged in 1890, defined a 'child' as a boy or girl 'apparently under' the age of 17.[132] Children could, however, remain state wards until the age of 21. Girls in particular usually had their wardships extended, a gendered implication, amongst others, which I shall consider in

[130] Shurlee Swain, 'Locating the Child within the History of Childhood,' in *Critical Childhood Studies and the Practice of Interdisciplinarity: Disciplining the Child*, ed. Joanne Faulkner and Magdalena Zolkos (London: Lexington Books, 2016),' 3, 8; Harry Hendrick, 'The Child as Social Actor in Historical Sources: Problems of Identification and Interpretation,' in *Research with Children: Perspectives and Practices*, ed. Pia Christensen and Alison James (Oxford and New York: Routledge, 2008), 45 – 47.
[131] Blewer, 'Making Kiddies Comfortable,' 67 – 68.
[132] *Neglected Children's Act* 1887 (Vic), s 18.

Chapter Three. The definition was the same for young offenders,[133] although under common law the age of criminal responsibility was seven. Unlike the present, the age of criminal responsibility was not debated as such during this period, but reformers expressed much anxiety around the 'criminal' treatment of very young children. As I shall demonstrate in Chapter Three, criminal proceedings against children under 10 declined noticeably from the mid-1890s, and sentencing patterns differed for those few who were charged. The gendered operation of law was again evident in age of consent legislation. In 1890, the age of consent was 12, rising to 16 after considerable debate in late 1891.[134] I shall also discuss in Chapter Three how gendered assumptions about class and morality fuelled some appalling treatment of young female complainants at trial. The statistical registers divided up age categories differently again, as under 10, 10 – 14 and 15 – 19 years old. In newspaper and other reports it was not always possible to determine children's ages with certainty prior to 1907. As age did not determine jurisdiction until the *Children's Court Act*, cases involving children and adults were reported together, and minors were referred to in a variety of ways. For clarity, I adopt in this thesis the definition of 'child' as a boy or girl under 17, and I refer throughout to 'children.' Where age is not clear, or I include older adolescents, I flag this in the individual case.

Other important sources for children's experiences in the Courts were the Magistrates', Supreme and Children's Court records, held by the Public Record Office of Victoria (PROV). These records were publicly accessible for my period under the 99-year open access rule,[135] although as I noted above, have not been not digitised. Before 1907, the Victorian Magistrates' Courts, colloquially known as the 'Police Courts,' heard the vast majority of matters involving children, including cases of neglect. The Police Courts kept registers, but they were of limited use for this research. There was no obligation to record defendants' ages, so with the exception of neglect cases it is impossible to identify from the registers alone whether a particular matter involved an adult or a child. After the introduction of the *Children's Court Act* in 1907, each local Court kept separate registers which documented the charges, ages and outcomes for children. More detailed information, such as case files, has unfortunately not survived.[136] Indictable, or more

[133] *Juvenile Offenders Act* 1887 (Vic), s 19.
[134] *Crimes Act* 1891 (Vic), s 5(1).
[135] See guides.slv.vic.gov.au/courtcases/courtandpolice; www.prov.vic.gov.au/closed-records.
[136] See https://researchdata.ands.org.au/children039s-court-registers/153815.

serious cases, including carnal knowledge and indecent assault charges against children under 16, were heard in the Supreme Court, although the Police Court conducted committal proceedings before the case was sent to trial. These records, also held by PROV, include the Victorian Office of Public Prosecution's *Criminal Trial Briefs*, prepared for all Supreme Court cases. The Criminal Trial Briefs were by far the most detailed of the surviving Court records. They included the witness depositions from committal proceedings conducted in the Police Courts, as well as the supporting documentation which has been lost for the lower Courts. The Trial Briefs offered excellent information about the circumstances of young girls who appeared as complainants in sexual offence matters.

My third major archival source about children in the Courts were historical newspaper reports, again often available online through the National Library of Australia's website (Trove) or stored on microfilm at the SLV. Newspaper reports were my most consistent source of information about individual children's circumstances. Victoria's three major state-wide newspapers, *The Age*, the *Argus* and the *Herald*, all published regular columns covering Court news. Before 1907, there were no restrictions on publishing distinguishing details, and most articles identified children and their families by name and location. These reports did not, of course, cover all cases, and it is impossible to tell how representative a particular matter might have been.[137] Nevertheless, there was enough coverage of more mundane cases to allow me to draw some evidence-based conclusions about the life circumstances prompting a Court appearance. After 1907, the state-wide reporting of children's cases diminished significantly. As I shall discuss in Chapter Six, to support the introduction of Children's Courts, newspaper editors reached an agreement with the government that they would not report identifying details in these matters, and journalists' interest waned. To some extent, local newspapers stepped into the breach. As I shall examine in Chapter Seven, for the period 1907 – 1909 I found some particularly detailed information about children in the Courts in the *Collingwood Observer,* which reported on the Fitzroy and Collingwood Police Courts in inner Melbourne. While the *Observer* did not use names, in most cases the case reports were so comprehensive that it was possible to match Children's Court registry records with the

[137] On the value of press coverage of the Courts see Blewer, 'Making Kiddies Comfortable,' 68.

newspaper articles. Where possible, I provided additional information about the subsequent histories of the children and families whose cases I selected. This information is set out in Appendix E.[138] Mostly I sourced this information through Trove name searches. For children who were born, died or later married in Victoria, the online Births, Deaths and Marriages records also provided useful information, albeit with limitations due to disclosure restrictions.[139]

These sources, which I combined for the first time, ultimately revealed a great deal about the circumstances of 'offending' and 'neglected' children in the Courts. They demonstrated clearly one of my central arguments, that poverty overwhelmingly predicted children's chances of a Court appearance and that criminal and neglect provisions masked this reality of social disadvantage. The backgrounds of the children whose life stories I pieced together were, like those of Piper and Nagy's imprisoned women discussed above,[140] dominated by economic stress, family breakdown, violence and insecure housing, and they stood in stark contrast to the middle-class reformers who purported to speak on their behalf. The individual circumstances of Aboriginal children, on the other hand, were much more obscure, an example of the methodological challenges and ethical necessity, outlined in the innovative research of historian Tracey Banivanua Mar, of identifying the traces (and absences) of Indigenous voices and experiences in colonial archives.[141] Newspaper reports during this period very occasionally noted the appearance of Aboriginal children before the Melbourne Courts (described either as 'aboriginal natives' or 'half castes'), but they were exceptional. This was largely, as I discussed above, because most Aboriginal children were dealt with by the Aborigines Protection Board under a virtually autonomous administrative regime. My major sources for information about the children who came within this regime were the reports of the Board itself and the Neglected Children's Department, all written by white men, and with specific political agendas in each case. Occasionally, however, it was

[138] Finding this information was not always possible if the child had a common name, or where there are no additional records. Where I was certain of the record, I have included further details in Appendix E.
[139] See https://www.bdm.vic.gov.au/research-and-family-history/search-your-family-history.
[140] Nagy and Piper, 'Risk Factors and Pathways to Imprisonment among Incarcerated Women in Victoria,' 268-284.
[141] Tracey Banivanua Mar, 'Imperial literacy and indigenous rights: Tracing Transoceanic Circuits of a Modern Discourse,' *Aboriginal History* 37 (2013): 3 – 4; Tracey Banivanua Mar, *Decolonisation and the Pacific: Indigenous Globalisation and the Ends of Empire*. (Cambridge: Cambridge University Press, 2016), 9 – 10.

possible to ascertain something distinctive about family circumstances, often, tragically, at the point of separation. These few stories are discussed in the same Chapters.

(c) The *Children's Court Act*: Hansard and Probation Records

The third focus of my thesis was the legislative development of the *Children's Court Act* and the early implementation of Children's Courts across Melbourne. Here too excellent sources have survived, allowing me to document, again for the first time, how this new regime was established across Melbourne, as well as identify the major challenges facing the new jurisdiction. The Victorian Parliament's Hansard records and newspaper reports provide detailed information about the passage of this legislation and key parliamentary supporters. After the Act passed in late 1906, Melbourne reformers turned their attention to implementing the new scheme. They recorded their achievements and frustrations in organisational records, in newspaper reports and in published papers. Victoria's major daily newspapers also included updates about the new Courts, although the novelty and therefore coverage diminished over time. From within the government administration, resources produced by the new Office of the Chief Probation Officer were particularly valuable. In 1907, the Victorian executive appointed Alfred Clark, a man with significant experience within voluntary associations, to the role of Chief Probation Officer. Clark's role was to monitor the introduction of the new Children's Court probation scheme across the state. From his office in central Melbourne, Clark and a small support staff produced an annual report, a guide to the Children's Court Act and several collections of conference papers. In January 1911 Clark's office also began publishing a quarterly journal. In 1909 the Crown Law Department printed a manual on the Act. Collectively, these set out the principles and theories underlying the new system, as well as functioning as practical guides for those in the field. They are of considerable value in piecing together both how the Court was intended to function, and its actual limitations.

Thesis Structure and Chapter Outline

I conclude this Introduction with a guide to my thesis structure and outline. The thesis is organised in three parts, following my three axes of investigation and their interrelated

archives: the circumstances of Melbourne reformers, the experiences of children before the Courts, and the development and implementation of the new Children's Court regime.

The first part of my thesis, 'Reformers and Children,' identifies the major players in what became the Children's Court movement, and the discursive and legislative background underpinning reformers' concerns about 'juvenile delinquency.' It also explores how children came before the Melbourne Courts. Chapter One, 'Delinquency and the Law, 1816 - 1890' argues that moral theories about poverty, child welfare and criminality were conflated into an influential construct of juvenile delinquency in mid nineteenth-century England. This led to the development of distinctive legislative regimes, largely targeting the urban poor. The Chapter then examines how these ideas and legislation were translated in colonial Victoria. While there was a continued conflation between 'neglect' and 'criminality,' Victoria instituted a very different administrative regime, with a strong reliance on charitable associations. This Chapter also outlines the differential legal status of Aboriginal children, in particular the association between the status of Aboriginality and that of 'neglect,' and how their removal from family was determined not by judicial decision, but by the virtually unaccountable Aborigines' Protection Board. Chapter Two, 'Responding to Delinquency in Melbourne, 1890 - 1906' charts how reformers approached the 'problem' of 'juvenile delinquency' between 1890 and 1906. It argues that while dominant discourses shifted from social order to a new emphasis on nation building, middle-class reformers continued to target poor urban children for intervention. I also emphasise how Aboriginal children were treated increasingly differently, with the trend towards removal and institutionalisation accelerating just as non-Aboriginal children were more likely to be supported at home. Chapter Three, 'Children in the Police Courts, 1890 – 1906,' looks at reported cases involving offending and neglected children before the Melbourne Police Courts, as well as girls who were the victims of sexual crimes. It argues that these children's lives were often defined by poverty and fractured family circumstances, challenging reformers' assumptions about the moral basis for crime and neglect.

The second part of the thesis, 'The Children's Court Movement,' examines the development of what became an organised campaign for legislative change in Melbourne, and how reformers' ideas ultimately translated into legislation. Chapter Four, 'The

Campaign for a Court,' documents how a loose collection of concerned individuals combined to create a coordinated political campaign between 1890 and 1904, as well as the relationship between those campaigners and key interstate and international influences. Chapter Five, 'Creating the Children's Court,' examines the successful conclusion of this campaign and offers explanations for why reformers concentrated so heavily on the Court as a solution to social problems, before turning to the progression of the legislation through the Victorian Parliament. It argues that reformers were influenced strongly by the trend towards legal and Court intervention across Australia and overseas. The potential scope of the *Children's Court Act* itself, however, was significantly compromised by a conservative political environment, as well as reformers' own attitudes. This Chapter explains how and why child victims and Aboriginal children were excluded from the jurisdiction of the new Court and how the retention of criminal definitions and processes within the new system effectively confirmed the criminalisation of poverty.

The third part of the thesis, 'Children's Courts – Solution or Problem?' traces the establishment of Children's Courts across Melbourne in their first four years, as well as their impact upon the offending and neglected children who came before the new jurisdiction. Chapter Six, 'Children's Courts in Operation, 1907 - 1910,' argues that the implementation of the new Act was severely challenged due to a lack of government support and funding and a strong reliance on overstretched and inadequately trained charitable organisations. While individual Courts endeavoured to put the new legislation into practice, overall, its introduction was haphazard, and change was accordingly limited. Chapter Seven, 'Fitzroy Children's Court,' is a close study of Children's Court proceedings in the inner-city suburb of Fitzroy which demonstrates further the operations of the new jurisdiction in action. This Chapter documents how the Fitzroy Court inaugurated some changes, despite acute under-resourcing. In other respects, however, the new Court's impact was small. While Fitzroy Magistrates were often sympathetic to the complex needs of their impoverished community, the Act had no remit to remedy disadvantage, and the prospects of the children and families who appeared before the Court before and after 1907 remained largely unchanged. Overall, this Chapter emphasises both the limitations of any Court system alone in effecting meaningful social

change as well as the need for appropriate state investment to ensure that the Court is able to provide support where it can.

Conclusion

I began this Chapter by emphasising how modern anxieties about child welfare and youth crime have been projected on to the physical environment and processes of the Children's Court. I noted the intellectual conflict in contemporary reports between the Court as problem and Court as solution, and argued that the overriding emphasis on legislation and procedure has detracted attention away from the real needs of children and their families. This thesis provides a critical historical perspective to these debates by examining the founding premises of this jurisdiction, as well as how it was implemented and experienced. It demonstrates that Melbourne reformers' anxieties about the public behaviour of poor urban children in the early twentieth century were, like the present, projected on to concerns over Court environment and procedures. While the new Court system consolidated some valuable changes around the legal treatment of children, the *Children's Court Act* also confirmed the criminalisation of poverty and embedded gender and racial differentiations. These problems were exacerbated by a poorly-managed and underfunded implementation process. My thesis argues that an imperfect understanding of the social context, and historical justifications for the establishment of this jurisdiction, has contributed to a continual focus on legislative change. This in turn perpetuates a cycle of perceived failure when the Children's Court fails to provide long-term solutions to social problems. Overall, my thesis provides the first comprehensive history of early Children's Courts in Victoria, revealing key choices about inclusion and exclusion and how these reflected contemporary concerns about criminal responsibility, poverty and welfare, race and gender. The project opens up the Children's Court to constructive critique and demonstrates the need for a more holistic approach to children's needs, then and now.

PART ONE

REFORMERS AND CHILDREN

CHAPTER ONE
DELINQUENCY AND THE LAW IN ENGLAND AND VICTORIA, 1816 – 1890

In their campaign for a Children's Court, Melbourne reformers drew on a significant legislative and literary history about children, crime and social welfare. This Chapter identifies key themes in debates about juvenile delinquency in early nineteenth-century England and how these translated into settler-colonial Victoria from the 1850s. It will employ a close analysis of English and Australian reformers' writings, and the legislative interventions which followed, to demonstrate the close association between poverty, social marginalisation and criminalisation. It emphasises throughout the key paradox which is a central theme of this thesis: the use of penal mechanisms to respond to children's economic and social disadvantage. The first section of the chapter explores how middle-class English commentators linked theories about offending, destitution and social welfare to those of class and moral responsibility, in response to concerns about industrialisation, the urban poor and social order. By the middle of the nineteenth century, a distinctive concept of the 'juvenile delinquent' had consolidated, incorporating elements of poverty, neglect and criminality. From the 1850s this construct formed the basis of a series of legislative interventions which focused on removal and institutionalisation. The second part turns to how settler-colonial Victoria adapted these precedents to fit local circumstances. While Victoria's first legislation interventions for 'criminal and neglected' children closely replicated English models, from the 1870s legislative and administrative practices varied significantly. Private charitable organisations gained increasing authority to manage 'state' children, reflecting the colony's distinctive charitable and governance structures. This set the scene for private dominance in criminal and welfare administration, another major theme of this thesis. The chapter concludes with a discussion of the very different administrative regime for Aboriginal children in Victoria, albeit one which intersected in key ways with provision for neglected children. These discourses, legislative frameworks and administrative models formed crucial foundations for the Children's Court regime.

The English Inheritance

(a) The Concept of 'Delinquency' and Early Legal Change: England, 1816 – 1840s

While debates about errant youth have a history as old as literature itself,[1] the first English use of the key phrase 'juvenile delinquency' came in 1816. In May 1816, the London 'Committee for Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis' issued a report on its key findings. The committee, which consisted largely of Quaker philanthropists, maintained that 'Juvenile Delinquency' existed 'in the metropolis to a very alarming extent.'[2] The report introduced themes which were to have an enduring impact. 'Juvenile Delinquents' included children who had both offended against the criminal law and those who were at risk of offending. Delinquency was described primarily as a class and urban issue, with gendered aspects. The report focused on poor, uneducated and unemployed boys who 'associate[d] with professed thieves of a mature age' as well as 'girls who subsist by prostitution.'[3] The committee argued that this arose due to a toxic combination of the conditions of urban life and poor parenting, including 'the improper conduct of parents, the want of education, the want of suitable employment, the violation of the Sabbath and … gambling in the public streets.'[4] The criminal justice system exacerbated the problem in its failure to distinguish children from adults and associated contamination from older offenders. The writers emphasised that children were routinely gaoled with 'hardened criminals.'[5] Ultimately, the report urged immediate parliamentary intervention to address the legal situation.

[1] Pamela Cox and Heather Shore, 'Reinventing the Juvenile Delinquent in Britain and Europe, 1650 – 1950,' in *Becoming Delinquent: British and European Youth, 1650 – 1950*, ed. Pamela Cox and Heather Shore (Aldershot: Ashgate, 2002), 6; Paul Griffiths, 'Juvenile Delinquency in Time,' in *Becoming Delinquent*, 23 – 26.
[2] *Report of the Committee for Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis* (London: J. F. Dove, 1816), 5, 10.
[3] Ibid, 10, 13, 16.
[4] Ibid, 10.
[5] Ibid, 24 – 26.

The concept of juvenile delinquency as an urban class problem was reinforced over the next three decades, as industrialisation continued apace, early industrial England suffered several severe economic recessions and popular political agitation gathered momentum. For middle-class commentators, criminal children came to symbolise social upheaval, and legislative intervention continued to be their preferred solution.[6] Under English common law there was only one firm distinction between juveniles and adults. Children under seven were presumed to lack felonious intent (*doli incapax*), while children between seven and 14 were presumed to be *doli incapax*, but could be proved capable.[7] Once capable, they were tried and (theoretically) sentenced like adults, although by the nineteenth century children rarely suffered the ultimate fate of capital punishment.[8] English reformers argued that formally distinguishing children from adults was the first step, taking into account their greater prospects for education and rehabilitation.[9]

The first attempt at legislative change came in February 1840, when Sir Eardley Wilmot, MP for Warwickshire North, introduced a new *Juvenile Offenders Bill*. Wilmot's suggestions included increasing the number of offences which were able to be heard summarily, or without a jury (thus attracting a lower penalty) and the establishment of an intermediate tribunal for children under 12.[10] In 1847 a *Juvenile Offenders Act* passed. It allowed children between seven and 14 to be tried summarily for 'simple larceny,' the most common juvenile offence, although it did not establish an 'intermediate tribunal.' It also avoided remanding children in adult gaols pending trial.[11] The Act became a double-edged sword, as a number of scholars have identified. While penalties were lower, due to this, more minor offenders were brought before the Courts, and Magistrates were more likely to

[6] Heather Shore, *Artful Dodgers: Youth and Crime in Early Nineteenth-Century London* (London: Boydell Press, 1999), 1, 5 – 6.
[7] Historian Susan Magarey has argued that this doctrine was little used from the 1820s, with most children assumed to be competent. Susan Magarey, 'The Invention of Juvenile Delinquency in Early Nineteenth-Century England,' *Labour History* 34 (1978): 18.
[8] Ibid.
[9] Ibid, 20 – 21.
[10] For a summary of the proposal see John Mirehouse, *Crime and Its Causes: With Observations on Sir Eardley Wilmott's Bill Authorising the Summary Conviction of Juvenile Offenders in Certain Cases of Larceny and Misdemeanour* (London: W.J. Cleaver, 1840), 3 – 5.
[11] *An Act for the more Speedy Trial and Punishment of Juvenile Offenders* 1847 (10 & 11 Vict. Cap. 72).

convict these children.[12] Nevertheless, in 1850 the Act was amended to increase the availability of summary jurisdiction for children up to the age of 16.[13]

(b) Mary Carpenter: Criminality, Neglect and Poverty

By the middle of the nineteenth century, 'juvenile delinquency' had become a familiar concept and modifications of the criminal law the preferred response. Over the following two decades, debates about responding to delinquency gained further momentum. An influential group of middle-class English evangelical reformers argued strongly for - and were ultimately successful in achieving - an enhanced role for the state to deal with offending and 'neglected' children. The writings of one reformer, Mary Carpenter (1807 - 1877) were particularly influential in this respect, both in her theories about the causes of 'delinquency' and her radical reframing of the state's responsibilities towards children. Carpenter was the daughter of a Unitarian minister and worked as a teacher until her early forties. From the 1830s she worked as a 'slum visitor' (or charitable representative) and for the ragged schools and prison reform movements. In the 1850s she turned her attention to juvenile crime and destitution. In 1851, she published a lengthy treatise on the subject, *Reformatory Schools for the Children of the Perishing and Dangerous Classes*, followed two years later with *Juvenile Delinquents: Their Condition and Treatment*. Both publications were very widely read and rapidly became classics in the area, at home and abroad.[14]

In *Reformatory Schools,* Mary Carpenter identified two groups of problem children, although with considerable overlap. The first were the so-called 'dangerous classes' : children who had already committed criminal offences, whether detected or not, or 'those who have already received the prison brand, or … are notoriously living by plunder,' as she put it.[15] The second group Carpenter singled out were the 'perishing classes,' or '[children] who have not yet fallen into

[12] Leon Radzinowicz and Roger Hood, *A History of English Criminal Law and its Administration from 1750: Volume Five - The Emergence of Penal Policy* (London: Stevens and Sons, 1986), 619.
[13] Ibid, 621.
[14] Ibid, 165.
[15] Mary Carpenter, *Reformatory Schools for the Children of the Perishing and Dangerous Classes and for Juvenile Offenders* (London: C. Gilpin, 1851), 2.

actual crime, but who are almost certain from their ignorance, destitution and … circumstances … to do so.'[16] These, Carpenter maintained, were the children who were 'thrown on the streets early,' and who 'without education or training' would eventually turn to crime for their livelihood.[17] Both groups emerged from the same social circumstances. Carpenter argued that they came from a subset of the 'labouring classes' who on the surface 'appear the scum of the population … squalid, filthy, vicious or pining and wretched with none to help.'[18] Most of these children were concentrated in large towns, which, Carpenter believed, were 'more favourable to that precocious development of crime.' London was the worst offender.[19]

Carpenter's delineation of 'delinquent' and 'pre-delinquent' children, but with fluid boundaries between the two, proved highly influential. I shall argue below that they formed the basis for most legislative interventions, including in settler-colonial Victoria. Carpenter's theories about the causes of offending and neglect also proved very persuasive. Like her predecessors, Carpenter propounded an environmental, and specifically moral, explanation for juvenile offending and neglect. Carpenter argued that densely populated urban areas, populated by the 'industrial classes,' were inherently conducive to crime.[20] Another cause was lack of education, and more specifically 'the utter deficiency of any moral or religious training.'[21] A third was the quality of parenting. Carpenter argued, in what would become a particularly persistent theme, that poor parents were far more likely to be inadequate parents. 'In the more favoured portion of society,' Carpenter maintained in *Juvenile Delinquents*, 'parental love shelters like a guardian angel tender childhood.'[22] By contrast, amongst the 'poor pariah children,' parental supervision was lacking, brutality was the norm and 'the streets their nursery.'[23] Carpenter expressed particular concerns about 'delinquent girls.' Reflecting

[16] Ibid, 2.
[17] Ibid, 65.
[18] Ibid, 3.
[19] Ibid, 20 – 21.
[20] Ibid, 20.
[21] Ibid, 23.
[22] Mary Carpenter, *Juvenile Delinquents: Their Condition and Treatment* (London: W & F.G. Cash, 1853), 5.
[23] Ibid, 6.

dominant Victorian assumptions about the inherent purity of women and girls, Carpenter believed that 'under favourable circumstances girls … are less prone to evil than boys.' If girls did offend, however, the outcome was particularly serious. '[I]n the degraded classes,' Carpenter wrote, '[Girls] sink even lower than [boys], so that their natures appear completely perverted.'[24] The theory that offending girls, while numerically less prevalent, were by nature worse than offending boys, likewise proved very enduring.[25]

As a reformer, Carpenter's vision for both sexes was primarily educational. However to ensure this, she advocated significant legislative intervention. *Reformatory Schools* proposed a comprehensive training scheme for both criminal and destitute children, based (at least in theory) on reclamation rather than punishment. For young offenders, Carpenter suggested reformatories, in which children would be incarcerated away from adult prisoners. In the reformatory schools they would receive industrial training to inculcate key Victorian disciplines of work, 'order' and 'personal cleanliness.'[26] For the 'vagabond young,' or the offspring of parents of 'worthless or vicious habits,'[27] Carpenter recommended another institution, which bore a close resemblance to the Reformatory, but without the requirement of a prior conviction. This was the industrial training school, in which children who came before the Courts as 'vagrants' could be separated from their parents, contained, clothed, fed and trained. Separation from the home environment was central to this vision. Carpenter maintained that industrial schools were more economical for the state than allowing negligent parents free reign, and if removing children were not penalty enough, parents could be fined for neglect.[28] Both 'schools' required legislative intervention, and, as a corollary, a reframing of the traditional liberal view of the state which had prioritised the privacy of the family unit. Carpenter noted that traditionally the state had allowed parents virtually absolute rights over their children. She herself agreed that the 'principle of parental

[24] Ibid, 83.
[25] Pamela Cox and Heather Shore, 'Introduction,' to *Becoming Delinquent*, 4.
[26] Carpenter, *Reformatory Schools*, 78 – 81.
[27] Ibid, 210 – 237.
[28] Ibid, 211 – 212.

responsibility' was an 'inalienable law of nature.' Nevertheless, she maintained that when parents were unable or unwilling to assist their children to live socially productive lives, then the state had a positive duty to intercede.[29] Legislation was also necessary to cement the legal difference between child and adult and to establish the new principles of training over punishment for the young.[30]

(c) Industrial and Reformatory Schools Legislation : The 1850s and 1860s

From the 1850s, Carpenter's vision was implemented through a series of legislative changes. In 1851, Carpenter and fellow reformer Matthew Davenport-Hill, Recorder of Birmingham, convened a conference on juvenile offenders in Birmingham. With like-minded penal reformers, they persuaded the government to appoint a Select Committee on Criminal and Destitute Juveniles.[31] In 1854, on the Committee's recommendation, the British parliament passed the *Juvenile Offenders Act*. This Act allowed juveniles under 16 who had been convicted of an offence to be detained in a reformatory school, although this was preceded by 14 days' imprisonment. Parents could be ordered to pay maintenance to support their offspring, and children who misbehaved or absconded from the schools committed an offence.[32] The institutions were intended to be privately run and funded, but in 1857 the Act was altered to appoint a government inspector of the schools. In 1866 these Acts were further amended and consolidated into the *Reformatory Schools Act*. The Act now applied to children between 10 and 16 convicted of an offence punishable by imprisonment. They could be detained in a school for between two and five years. Children under 10 could only be sent to a reformatory if they had committed a prior offence punishable by imprisonment or if they had come before a higher Court.[33] The requirement for a preceding term of imprisonment remained, although it was reduced from 14 to 10 days. Supporters

[29] Ibid, 56.
[30] Ibid, 86 – 105.
[31] Margaret May, 'Innocence and Experience: The Evolution of the Concept of Juvenile Delinquency in the Mid-Nineteenth Century,' *Victorian Studies* 17(1) (1973): 23 – 26; Radzinowicz and Hood, *Emergence of Penal Policy*, 172 – 177.
[32] Radzinowicz and Hood, *Emergence of Penal Policy*, 177.
[33] *Reformatory Schools Act* 1866 (29 & 30 Vict. Cap. 117), s 14.

of this provision insisted that prison 'tamed' delinquents and sent an appropriate message about criminal conduct. Opponents argued that gaol undermined the principles of education and reformation, but it was not removed until 1899.[34]

'Neglected' children were dealt with in a separate regime, but one which, as English historian of juvenile crime Heather Shore has emphasised, bore very close resemblance to the reformatory system.[35] In 1857, parliament passed the *Industrial Schools Act*. This Act allowed Justices to commit children aged between seven and 14 who had been charged with vagrancy to an industrial training school 'for such Period as they may think necessary,' until the child reached the age of 15. Again, these schools were private institutions, although increasingly they also relied on state aid.[36] Vagrancy was the catch all charge of 'being without lawful visible means of support.' The offence, which had medieval origins, was consolidated in England in the *Vagrancy Act* (1824), which targeted in particular sleeping on the streets and begging. Historians have argued that this particularly flexible charge was used increasingly throughout the nineteenth century to criminalise the urban poor, especially 'loafers' and 'prostitutes.'[37] The *Industrial Schools Act* did not challenge these assumptions. The overt object of this new Act was also the maintenance of social order amongst the urban poor, and criminal process again the method by which this was to be achieved.[38]

Like 'vagrancy,' the definition of 'child' was fairly fluid. English historian Marianne Moore has emphasised that there was no 'universal legal age boundary between childhood and adulthood' during this period.[39] The tendency over the course of the nineteenth century was to consolidate the definition of child in criminal legislation as children under 16, and in some circumstances under 18, but there

[34] Heather Shore, 'Reforming the Juvenile in Nineteenth and Early Twentieth Century England,' *Prison Service Journal* 197 (2011): 6.
[35] Ibid, 5.
[36] *Industrial Schools Act* 1857 (20 & 21 Vict, Cap. 48), s 5 – 6.
[37] Paul Obocock, 'Vagrancy and Homelessness in Global and Historical Perspective,' in *Cast Out: Vagrancy and Homelessness in Historical and Global Perspective,* ed. A.L. Beier and Paul Obocock. (Athens: Ohio University Press, 2008), 22.
[38] Shore, 'Reforming the Juvenile,' 7 – 8.
[39] Marianne Moore, 'Social Control or Protection of the Child? : The Debates on the *Industrial Schools Acts* 1857 – 1894,' *Journal of Family History* 33(4) (2008): 363.

were significant gradations. The 1857 Act rapidly proved difficult to enforce due to a lack of clarity around the term 'vagrancy' and in 1861 the British parliament passed an amendment Act, itemising children found 'begging' or 'wandering,' children 'without a home or any visible means of subsistence' and children 'frequenting the company of reputed thieves.' It also distinguished children under and over 12. Younger children who had committed an offence could now be admitted to industrial schools instead of the reformatory. As I shall discuss in Part Two, the age of 12 also became an important cut off point in Victorian legislation. The overall age limit for the British *Industrial Schools Act* remained 14.[40] More comprehensive change came in 1866 when the categories for apprehension were expanded and the age of intervention raised to 16.[41] Shore has argued that the 1866 Act blurred further the lines between 'criminal' and 'destitute' children. Grounds for intervention were highly discretionary, and children could be channelled into either the reformatory or industrial schools systems, depending on the discretion of local Magistrates.[42] In 1871 and 1880 further legislative amendments targeted the girls of 'criminal mothers' and children found living in brothels.[43] In 1894, another change extended the age of detention or state supervision to 18.[44]

(d) Charitable Associations and Child Rescue, 1860s – 1880s

The expanding categories of intervention in the *Industrial Schools Acts* reflected increasing acceptance of greater state regulation over poor children. By 1889 Florence Davenport Hill, eminent middle-class reformer of the next generation, could state without controversy that 'the state *must* interfere when private duties are neglected which ought to be performed without prompting.'[45] Yet while

[40] Ibid, 368.
[41] *Industrial Schools Act* 1866 (29 & 30 Vict. Cap. 118), ss 16 and 18.
[42] Shore, 'Reforming the Juvenile,' 8.
[43] Moore, 'Social Control,' 369 – 374.
[44] Ibid, 379.
[45] Florence Davenport Hill, *Children of the State* (2nd edition), ed. Fanny Fowke (London and New York: Macmillan, 1889), 2. (Italics in original). For discussion on the growth of state intervention in England see Hugh Cunningham, *The Children of the Poor: Representations of Childhood Since the Seventeenth Century* (Oxford: Basil Blackwell, 1991), 5, 133 – 141; Harry Hendrick, *Child Welfare: England 1872 – 1989* (London and New York: Routledge 1994), 41 – 42.

legislation expanded state intervention, on the ground private organisations were exercising increasing influence, another trend which would not only translate across but accelerate in settler-colonial Victoria. As historians Shurlee Swain and Margot Hillel have pointed out, the number of individuals and associations involved in children's welfare expanded considerably from the 1860s. Many of these 'child rescue workers' were middle-class evangelicals. They shared an idealised conception of childhood as pure, innocent and malleable and blamed urban contamination and poor parenting for the 'waifs and strays' on the city streets.[46] Middle-class women played a very influential role in child rescue agencies, although men retained the leadership of large national organisations. Historians like Barbara Caine have argued that women argued for an increased role in public life on the basis of their innate expertise with family and child life.[47] One of these new reformers was Florence Davenport-Hill (1829 – 1919). Hill was the daughter of Matthew Davenport-Hill, whom we met above as a leading figure behind the first *Industrial Schools* Act. As a young adult she became involved in poor law administration, where she met Mary Carpenter.[48] Hill's particular contribution was to argue for fostering, or 'boarding out,' rather than institutionalisation. In her very influential *Children of the State* (1868), Hill argued that foster placements, where children would be exposed to ordinary family life, were 'naturally best adapted for the development of the child's powers, physical, intellectual and moral.'[49]

(e) Girls' Rescue and the Age of Consent, 1870s and 1880s

Middle-class women like Hill also played a critical role in a new phase of intervention in children's lives, which focused specifically on the protection of girls from sexual exploitation.[50] Beginning in the 1870s, feminist and so-called

[46] Shurlee Swain and Margot Hillel. *Child, Nation, Race and Empire: Child Rescue Discourse, England, Canada and Australia, 1850 – 1915* (Manchester and New York: Manchester University Press, 2010), 1 – 13.
[47] Barbara Caine, *Victorian Feminists* (Oxford and Melbourne: Oxford University Press, 1992), 42 – 46, 52.
[48] Michael Horsburgh, 'Her Father's Daughter: Florence Davenport-Hill, 1829 – 1919,' *International Social Work* 26 (1983): 1 – 13.
[49] Davenport Hill, *Children of the State*, 209.
[50] Caine, *Victorian Feminists*, 42 – 46, 52.

'social purity' activists led a campaign to raise the age of consent (which then stood at 12) and outlaw child prostitution in England and abroad.[51] In the late 1870s campaigners also turned their attention to juvenile sexual exploitation and the 'white slave trade,' or the alleged sexual trafficking of young girls.[52] Two women were particularly influential in this area. Josephine Butler (1828 – 1905) spearheaded action for a higher age of consent. Ellice Hopkins (1836 – 1904) argued for legal change to prevent exposing girls to prostitution. Hopkins was behind the 1880 Industrial Schools Amendment Act, discussed above, which allowed the removal of girls living with prostitutes.[53] The campaign to raise the age of consent was initially less successful. The age was raised to 13 in 1875, but further change was blocked by opponents who argued that a higher age would allow girls to blackmail young men.[54] An amendment Act, raising the age to 16, passed only in 1885, after W.T. Stead, editor of the *Pall Mall Gazette*, published an 'exposé' of the extent of juvenile prostitution in London. The huge outcry which resulted forced the government's hand.[55] The new Act also outlawed the procuration of girls under 21 and penalised brothel-keepers who allowed underage prostitutes on their premises.[56] I shall document in Chapter Two how a similar campaign played out in settler-colonial Victoria in the 1890s.

(f) The Prevention of Cruelty and the Children's Charter, 1889

The campaigns of the 1870s and 1880s were important in extending the concept of 'childhood,' and therefore state protection, to girls who were the victims of sexual crimes. The final and significant expansion of state intervention in this period came in the late 1880s, when the British parliament passed the so-called *Children's Charter*, a piece of legislation which specifically targeted children's

[51] Judith Walkowitz, *Prostitution and Victorian Society: Women, Class and the State* (Cambridge: Cambridge University Press, 1980), 90 – 91; Lucy Bland, *Banishing the Beast: English Feminism and Sexual Morality, 1885 – 1914* (Harmondsworth: Penguin, 1995), 98 - 99.
[52] Edward J. Bristow, *Vice and Vigilance: Purity Movements in Britain since 1700* (Dublin: Gill & Macmillan, 1977), 86 – 89.
[53] Moore, 'Social Control,' 372.
[54] Bristow, *Vice and Vigilance,* 91.
[55] Judith Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (London: Virago, 1992), 81 – 134.
[56] *Criminal Law Amendment Act* 1885 (48 & 49 Vict. Cap. 69), ss 2 – 7, 13.

mistreatment in the home and in employment. The legislation followed a decade of severe economic contraction compounded by a housing crisis, especially in London, and an acceleration of working-class industrial action. This combination of circumstances led to what modern historians have labelled the middle-class 'rediscovery of poverty.'[57] Out of this sense of crisis emerged a distinctive 'slum literature,' in which poor children once again symbolised urban disorder. This type of literature was also hugely influential in settler-colonial Victoria and I shall discuss some examples there below. It called for both state and private action to remedy social distress.[58] The 1889 legislation, formally the *Prevention of Cruelty to Children Act,* responded to this sense of crisis by creating two distinct offences with gendered age differentials. The first was neglecting, ill-treating, abandoning or exposing a girl under 16 or boy under 14, or causing the child to be ill-treated.[59] The second offence prevented adults from 'procuring or causing' boys under 14 or girls under 16 to beg alms, sell on the streets at night or participate in entertainments on licensed premises after dark. Children under 10 could not trade on the streets at all, or attend any venue for the purposes of selling or entertainment.[60] The Act was widely applauded as a new direction in children's lives, although rates of prosecution were low.[61] In fact, it continued and indeed strengthened the trend of using criminal legislation to regulate the poor.

Settler-Colonial Melbourne: Adaptation and Change

(a) 'Neglected and Criminal' : The 1850s and 1860s

These concepts of 'delinquency' and English legislative changes from the 1850s were a strong influence on early settler-colonial Victorian reformers and lawmakers. Local commentators drew on English depictions of problematic

[57] Gareth Stedman-Jones, *Outcast London: A Study in the Relationship between Classes in Victorian Society* (Harmondsworth: Penguin, 1984), 291 – 296.
[58] Alan Mayne, *The Imagined Slum: Newspaper Representation in Three Cities, 1870 – 1914* (Leicester: Leicester University Press, 1993), 3 – 4, 133 – 136.
[59] *An Act for the Prevention of Cruelty to, and better Protection of, Children* 1889 (52 & 53 Vict. Cap. 44), s 1.
[60] Ibid, s 3.
[61] George Behlmer, *Friends of the Family: The English Home and its Guardians 1850 – 1940* (Stanford: Stanford University Press, 1998), 110 – 111.

children and their parents and the perils of the urban slums, while Victoria's first legislative intervention followed closely English examples. The colony of Victoria separated from New South Wales in 1851. The government first legislated for children's welfare the following decade, in response to a growing sense of social crisis in the city of Melbourne. The colony, which before 1850 had only a small European population, grew rapidly in the 1850s and early 1860s in the wake of the gold rush. The population of its capital, Melbourne, more than quadrupled, and in not much more than a decade the city became an important commercial centre.[62] The massive increase, combined with inadequate infrastructure, brought in its wake predictable problems of overcrowding, destitution and disease. The situation was compounded by the rapid exodus of large numbers of men of working age for the goldfields, many leaving behind their dependant wives and children. Australian historian Christina Twomey has noted that contemporary commentators focused particularly on the 'street children,' some of whom were indeed homeless, who inhabited Melbourne's less desirable areas. A new generation of Australian writers faithfully replicated theories that bad environment and inadequate parental control, or family breakdown, would lead inevitably to a generation of criminals.[63] In fact, urban poverty was exacerbated considerably by the particular local approach to state relief. As I shall discuss further below, settler-colonial Victoria had no poor law or any form of direct government assistance, with the later exception of some conditional provision for Aboriginal people.[64] People in need relied on charitable organisations, which during this decade found it increasingly difficult to keep up with demand.[65]

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[62] Graeme Davison, *The Rise and Fall of Marvellous Melbourne* (Melbourne: Melbourne University Press, 2nd ed. 2004), 6.

[63] Christina Twomey, 'Gender, Welfare and the Colonial State: Victoria's 1864 *Neglected and Criminal Children's Act*,' *Labour History* 73 (1997): 176; see also Donella Jaggs, *Neglected and Criminal: Foundations of Child Welfare Legislation in Victoria* (Melbourne: Phillip Institute of Technology, 1986), 1 – 5. A similar situation occurred in Sydney, which also suffered from a gold rush exodus, see John Ramsland, *Children of the Back Lanes: Destitute and Neglected Children in Colonial New South Wales* (Sydney: University of New South Wales Press, 1986), 111 – 156, and Tanya Evans, *Fractured Families: Life on the Margins in Colonial New South Wales* (Sydney: University of New South Wales Press, 2015), 149 – 50.

[64] *Aborigines Act* 1869 (Vic), ss 2 and 5.

[65] Twomey, 'Gender, Welfare and the Colonial State,' 171, 177; Shurlee Swain, 'The Victorian Charitable Network in the 1890s,' (PhD Thesis, Department of History, University of Melbourne, 1977): 8 – 9, 45.

The Victorian government responded in 1864 with the *Neglected and Criminal Children Act*, which like its English predecessors embodied a social order response to the problem of urban poverty. This legislation allowed the state to establish industrial schools for 'neglected children' and reformatory schools for 'criminal children,' a local adoption of Carpenter's system of removal and institutionalisation.[66] Definitions of 'neglect' and 'criminal' also drew on the *Industrial Schools* and *Juvenile Offenders* Acts, although there were some key differences. A 'child' was defined as 'a boy or girl apparently under the age of 15 years' but categories for intervention were more extensive and anticipated later English amendments. 'Neglect' included begging or being in a public place for the purpose of begging; 'wandering about' or without 'any home or settled place of abode or any visible means of subsistence,' as well as children living in brothels or associating with criminals. 'Uncontrollable' children could also be committed by their parents.[67] The inclusion of both neglected and offending children in the same Act again reflected the very fluid boundaries between criminality and welfare, expressed here even more overtly.[68] Children could be sent to reformatories if they were convicted of an offence, where they could be detained for between one and seven years.[69] Neglected children went to the industrial schools for the same period of time, but offenders could also go to an industrial school if 'his age and the circumstances of his case' [*sic*] made this appropriate.[70] Parents were liable to support children financially, although this was only mandatory if the parent had 'sufficient ability to do so.'[71]

(b) Deinstitutionalisation and Devolution in the 1870s

Like England, then, the Victorian government turned to legislation in an attempt to solve the social problems of urban growth and poverty. As I shall demonstrate in Chapters Three and Six, these first definitions of 'neglected' and 'criminal'

[66] Twomey, 'Gender, Welfare and the Colonial State,' 177 – 178; Ramsland, *Children of the Back Lanes*, 156.
[67] *Neglected and Criminal Children Act* 1864 (Vic), s 13(1), (2), (3) and (5).
[68] Shore, 'Reforming the Juvenile,' 8.
[69] *Neglected and Criminal Children Act* 1864 (Vic), s 16.
[70] Ibid, s 13(4).
[71] Ibid, s 24.

children were to prove extremely enduring. By the 1870s, however, the system of institutionalisation had come under attack. Thereafter, Victorian methods of managing 'neglected' and offending children following a Court appearance varied noticeably from English precedents. This unique Victorian model will be an underlying theme through the rest of this chapter. The challenge to institutionalisation was spearheaded by middle-class female charitable workers, who argued that institutionalisation was not working effectively, or more precisely that it was both expensive and detrimental to children's health. In 1871 the Victorian government appointed an Industrial Schools Commission, which produced an interim report recommending foster care or the 'family principle' for neglected state wards.[72] The report writers were influenced strongly by the theories of Florence Davenport-Hill, whose writing I discussed above, as well as the example of the neighbouring colony of South Australia, which had established a boarding-out scheme in the mid-1860s.[73] The South Australian scheme was set up by Hill's cousin Caroline Emily Clark (1825 – 1911) and her close friend, the prominent feminist activist Catherine Helen Spence (1825 – 1910). Spence, like Hill, emphasised that 'institutional life [was no] substitute for family life,'[74] and that boarding out was a cheaper option, both in terms of current outgoings and because it would prevent future expenditure on adult criminals.[75]

The economic, more than the social, benefits of 'boarding out' ultimately persuaded the Victorian government to act. The way in which the government decided to implement the scheme was, however, quite distinctive, and reflected Victoria's approach to charitable provision more generally. As Shurlee Swain has argued, Victorian governments preferred a decentralised approach to social welfare, with the organisation and distribution of charitable relief left as much as possible in the hands of private agencies.[76] By contrast to South Australia, which had a centralised Destitute Board to administer its boarding out-scheme and other

[72] Jaggs, *Neglected and Criminal*, 33 – 38.
[73] Enabled by the *Destitute Persons Relief Act* 1866 (SA), s 46, and confirmed in the *Destitute Persons Relief and Industrial and Reformatory Schools Act* 1872 (SA), s 59.
[74] Catherine Helen Spence, *State Children in Australia: A History of Boarding Out and its Developments* (Adelaide: Vardon & Sons, 1907), 35.
[75] Ibid, 52.
[76] Swain, 'Victorian Charitable Network,' 8 – 9, 45.

forms of state relief,[77] Victorian governments continually refused to enact any form of state poor law. They claimed, in the face of considerable evidence to the contrary, that the colony lacked the acute destitution found in England and that poor laws sapped initiative.[78] In place of formal state provision (again, with the exception of some Aboriginal communities), a large number of charitable organisations emerged, some institutional and some providing relief in the community. Their independence from government was more theoretical than actual. Most agencies, large and small, relied heavily on state funding. Government provision, via an annual charities vote, usually superseded private subscriptions.[79] The organisations with primary responsibility for distributing relief were the Ladies' Benevolent Societies ('LBS'), which were established across Melbourne and in some country areas from the 1850s and 1860s. The LBS were groups of middle-class women, usually local residents, who assessed, visited and monitored families receiving assistance.[80] Charities also had a prominent role in Melbourne's political and social scene. They had considerably lobbying influence, and as in dealing with neglected children they clearly saw an opportunity to enhance their role.[81]

The Victorian government replicated this model in its next set of legislation for neglected children. The *Neglected and Criminal Children's (Amendment) Act* 1874 (Vic) set out the basis of a distinctive system which lasted well into the twentieth century. Instead of being placed in institutions, state wards were detained temporarily in a 'receiving depot' in Royal Park, the site of an existing industrial school. They were then dispatched to foster homes, or, if older, to work.[82] Foster parents were paid by the state, although at a fairly low rate. Industrial institutions were retained,[83] but as I shall discuss further in Chapters Two and Three, by the

[77] *Destitute Persons Relief Act* 1866 (SA), s 16.
[78] Richard Kennedy, *Charity Warfare: The Charity Organisation Society in Colonial Melbourne* (Melbourne: Hyland House, 1985), 12 – 15.
[79] Historian Richard Kennedy estimates the government contribution as two-thirds of all charitable income, ibid, 34.
[80] Swain, 'Victorian Charitable Network,' 47.
[81] Jaggs, *Child Welfare*, 42 – 43, 52 – 53, 56.
[82] *Neglected and Criminal Children's Amendment Act* 1874 (Vic), ss 7 and 13.
[83] Richard Kennedy has emphasised that significant numbers of children remained in institutions through the 1870s and 1880s, see Kennedy, *Charity Warfare,* 22.

1890s their management had, except for Royal Park itself, been transferred to private agencies. The 1874 Act also extended the upper age of intervention and the length of committal. Once committed to state care in Victoria, all children remained wards until they turned 16.[84] A further amending Act in 1878 ensured that children stayed under state supervision until the age of 18, and this status of 'state ward' remained irrespective of where the child was actually placed.[85] Middle-class women played a key role in the administration of the new Act. The responsibility for selecting suitable foster parents, paying the state boarding out allowance and inspecting children in state care was again delegated, this time to voluntary 'Ladies' Committees.' Operationally these were very similar to the LBS and they had overlapping memberships. The Committees were divided into localities and had considerable authority within their regions, although they reported to the (male) Inspector of Industrial and Reformatory Schools.[86]

(c) Youth Crisis and Urban Poverty in the 1880s

The sense of crisis about poor urban children in Melbourne accelerated again in the late 1870s and 1880s. Unlike England, in Victoria the 1880s was a boom decade, symbolised by the rise of 'Marvellous Melbourne.' As I shall discuss in Chapter Two, this boom collapsed spectacularly in the 1890s.[87] However as immigration increased and Melbourne expanded, the spatial divisions between rich and poor consolidated. As the middle classes moved out to new garden suburbs alongside the expanding railway network, poorer populations became increasingly concentrated in distinct areas of inner Melbourne.[88] To middle-class commentators, the youthful members of these suburbs were notorious for their criminal tendencies. Australian historian Chris McConville has pointed out that crime rates were in fact falling and ideas about 'respectability' were spreading

[84] *Neglected and Criminal Children's Amendment Act* 1874 (Vic), s 12.
[85] *An Act to further amend the Law relating to Criminal and Neglected Children* 1878 (Vic).
[86] Jaggs, *Child Welfare*, 40.
[87] Davison, *Marvellous Melbourne*, 14 – 16.
[88] Kennedy, *Charity Warfare*, 20; Davison, *Marvellous Melbourne,* 50, 178, 180.

rapidly.[89] The new Australian literature about urban life and juvenile delinquency perpetuated the opposite theory. Historian Graeme Davison has argued that these writings borrowed extensively from English 'slum' literature to which Melbourne writers had easy access.[90] One of the earliest local examples of the genre was journalist John Stanley James's 'The Outcasts of Melbourne' (1876) (under the pen-name 'the Vagabond'). James warned that Melbourne was in danger of becoming another Paris or London, with extremes of wealth and poverty and a substratum of 'outcasts.' James claimed that a large group of the 'criminal classes' resided right in the centre of Melbourne. 'I do not suppose any city in the world can show such foul neighbourhoods centred in its very heart,' he noted.[91]

James's article concentrated particularly on Melbourne's youth, who once more symbolised the dangers of urban life. For boys, the problem was summed up in the figure of the 'larrikin' or rough. The larrikin, a term first used in this context in Melbourne,[92] was a disorderly youth who prided himself on robbing, assaulting and generally harassing respectable onlookers.[93] As historian Melissa Bellanta has argued, larrikinism was both a phenomenon and a discursive creation. The larrikin embodied one particularly distinctive 'colonial' trait: contempt for authority.[94] 'In Europe the rough avoids the neighbourhood of police courts … [b]ut here the larrikin not only chaffs and annoys the policeman on his beat but daily crowds the police court …' James claimed.[95] The Melbourne larrikin also seemed to flourish physically on unlawful activities, simultaneously an indictment of and compliment to the colony. 'Another marked difference [to Europe] is his generally better-fed and better-clothed appearance. The rowdy and thief in the old world after all lead a miserable life … but here, in the first stage, they seem physically in good shape,' James noted.[96] For girls, on the other hand, sexual

[89] Chris McConville, 'From 'Criminal Class' to 'Underworld,'' in *The Outcasts of Melbourne*: *Essays in Social History*, ed. Graeme Davison, David Dunstan and Chris McConville (Sydney: Allen & Unwin, 1985), 71.
[90] Graeme Davison, 'Introduction' to *The Outcasts of Melbourne,* 1 – 5.
[91] John Stanley James, 'The Outcasts of Melbourne,' *Argus* (Melbourne), 20 May 1876, 4.
[92] Melissa Bellanta, *Larrikins: A History* (St Lucia: University of Queensland Press, 2012), 3.
[93] Ibid, 4 – 10.
[94] Ibid, 16.
[95] James, 'The Outcasts of Melbourne,' 4.
[96] Ibid.

immorality was the major issue. James saw young prostitutes as the most acute symbol of Melbourne's corruption. Visiting little Lonsdale Street in central Melbourne, he argued that 'the number of very young girls to be seen in these quarters is something to shock even one used to the aspects of vice in the Old World.'[97] James also argued that Melbourne's young women fell into 'vice' earlier than their European equivalents and that their behaviour was bolder and more confronting. '[T]he state of morality among the working girls of Melbourne is worse than in Paris,' he maintained.[98] The alleged 'precocity' of 'colonial girls' was another enduring theme in local literature.[99] I shall discuss further in Chapter Two how this led to considerable debate about when girls left the state of childhood and the limits of legal protection.

The 'larrikin problem' continued to be a prominent topic in commentaries from the 1880s and early 1890s. In 1883 Richard Twopeny, English visitor to the colonies, described larrikins as 'roughs of the worst description, insulting and often robbing people in Melbourne itself, and moving about in gangs with whose united force the police is powerless to cope.'[100] Larrikins were fearless, allegedly terrorising Melbourne neighbourhoods day and night, and Twopeny believed that their numbers were growing. 'On all sides it is acknowledged that the larrikin element is daily increasing, and has already reached, especially in Melbourne, proportions which … [will] amount to a social danger within a few years,' he warned ominously.[101] In 1892, another English observer, Edward Kinglake, described the larrikin in very similar terms. 'Knots of these creatures collect in the evening, and the streets are not the most pleasant to walk in,' he observed.[102] Larrikins gathered into groups called 'pushes'[103] and there were frequent conflicts between rival gangs, although Kinglake noted that the boys 'only attack in

[97] Ibid.
[98] Ibid.
[99] Bellanta, *Larrikins*, 32 – 33, 39.
[100] Richard Twopeny, *Town Life in Australia* (Sydney: Sydney University Press, 1973, first published 1883), 98.
[101] Ibid, 99.
[102] Edward Kinglake, *The Australian at Home: Notes and Anecdotes of Life at the Antipodes, Including Useful Hints to Those Intending to Settle in Australia* (London: Leadenhall Press, 1892), 107.
[103] Bellanta, *Larrikins*, 61 – 62.

company,' and left to themselves were rather more cowardly.[104] For both Twopeny and Kinglake, larrikinism was a class phenomenon. Kinglake believed that they were mostly 'factory boys, and the youths … of the low neighbourhoods of the cities,' although there were some children from the ranks of the 'respectable poor,' who were 'allowed to run uncontrolled about the streets.'[105] In addition to the influence of the streets, Twopeny and Kinglake popularised another cliché to explain the emergence of larrikins: inadequate colonial parental and by extension social discipline. '[I]ts real point and origin seem … to lie in the absence of parental authority at home and the unpopularity of [corporal punishment],' Twopeny maintained.[106]

One distinctive feature of local discussions of 'delinquency' was their overtly racialised language. In 1880s Melbourne, settler children were often depicted as at risk of corruption from foreign influences, most particularly Melbourne's Chinese community. I discussed in the Introduction how settler-colonial Victoria was founded on the displacement of Aboriginal populations, and how an exclusionary European identity stood at the heart of settler-colonial society. Following the gold rush, however, settlers' racial fears in Melbourne focused largely on the Chinese. Chinese settlers first entered Melbourne in large numbers in the mid-1850s, and a distinctively Chinese area emerged around the eastern end of Little Bourke Street in central Melbourne, a trading post en-route to the goldfields. After the gold rush, many residents returned permanently to this area.[107] Chris McConville has argued that Melbourne's 'Chinatown' came to represent the worst and most alarming aspect of the city slums.[108] One perceived danger lay in Chinese 'opium' and 'gambling dens,' alluring enticements for urban youth.[109] In February 1884, the Melbourne *Herald* commented approvingly that 'the authorities are taking steps to deal with the Chinese opium dens at the rear of

[104] Kinglake, *The Australian at Home*, 108.
[105] Ibid, 106 – 107.
[106] Twopeny, *Town Life in Australia*, 100.
[107] Beverley Kingston, *The Oxford History of Australia Volume Three: Glad, Confident Morning* (Melbourne: Oxford University Press, 1988), 135.
[108] Chris McConville, 'Chinatown,' in *The Outcasts of* Melbourne, 58.
[109] These existed, although 'gambling dens' were hardly confined to the Chinese community, see Kingston, *Oxford History of Australia Volume Three*, 135.

Bourke Street … the festering sore within five minutes' walk of the most fashionable portion of the city.'[110] For girls, the major threat was depicted as - once again - sexual contamination. Commentators envisaged young European girls becoming 'white slaves' in Chinese brothels.[111] In 1889, the new local branch of the Salvation Army, whose establishment is discussed further below, argued that 'the attention of the army [in Melbourne] was first called to the vices and traps set for young girls by Chinese opium dens and other places.'[112] Not all contemporaries accepted this idea of the 'Chinese threat.' James argued in 1876 that 'the danger existing from the … outcasts of Melbourne is not affected by the Chinese element.'[113] White slavery in particular seems to have been urban mythology, as Australian historian Rae Frances has noted in her history of urban prostitution.[114] Increasingly, however, views like this were in the minority. As I shall demonstrate further in Chapter Two, the threat of the 'foreign menace' was an enduring theme.

(d) Early Interventions: Melbourne Clubs and Societies, 1870s and 1880s

In response to these perceived threats, religious and secular groups rallied to provide more structured activities, with the aim of removing children and adolescents from the city streets. This section outlines some key groups, which, as I shall discuss further in Chapter Two, would come to play an increasingly significant role in the Victorian charitable scene and in child welfare administration over the next two decades. The Young Men's Christian Association of Melbourne (YMCA) was one of the colony's earliest youth societies. It was established in 1853, but grew particularly from the late 1870s. In 1878 the Association built a hall in Russell Street, Melbourne,[115] from which it 'drew together all classes of young men for pleasant recreation and religious teaching.' By 1890, it had the funds to build larger premises in Bourke Street.[116] In 1883, the

[110] 'The Plague Spot,' *Herald* (Melbourne), 4 February 1884, 2. This was one of many failed attempts to 'clear out' opium houses.
[111] Kingston, *Oxford History of Australia Volume Three*, 65.
[112] 'Public Meeting,' *Age* (Melbourne*),* 26 April 1889, 7.
[113] James, 'The Outcasts of Melbourne,' *Argus*, 20 May 1876, 4.
[114] Raelene Frances, *Selling Sex: A Hidden History of Prostitution* (Sydney: University of New South Wales Press, 2007), 147 – 148, 114 – 115, 123.
[115] 'The Young Men's Christian Association,' *Age*, 9 July 1890, 6.
[116] 'The Young Men's Christian Association,' *Age*, 23 April 1890, 5.

Young Women's Christian Association (YWCA) was established. This female version of the society aimed to 'promote the spiritual, social and intellectual improvement of the young women of Victoria.'[117] By 1884, the YWCA had rooms open every evening in Collins Street, where girls might 'spend an evening profitably and also meet with those who will do them good.'[118] The Melbourne branch of the Salvation Army also formed in late 1882. The Army had originated in London's East End in the 1860s under the direction of a Methodist Minister, William Booth. It aimed at salvation for its members but also provided practical relief for inner city communities, and women were prominent amongst his members.[119] By the 1890s, as I shall demonstrate in Chapter Three, the Salvation Army also performed a key role in Victoria's decentralised welfare administration by managing industrial training schools.

Secular institutions also expanded during the decade. In 1883 William Forster, a wealthy businessman, set up the Toorak and South Yarra Try Society, to provide educational facilities and activities for working boys. The aim of the Society was quite explicitly to remove boys from the city streets, or as the Melbourne *Herald* put it in October 1883, 'providing recreation for lads who might otherwise be idling about the streets.'[120] The Society, which was funded by members' contributions, held meetings and classes in a Church hall in Toorak, as well as annual 'country camps.' [121] In 1886 Forster set up the Herald Boys Try Excelsior Class, later the City Newsboys' Society. This was a similar project for young newspaper sellers, but one which was more explicitly welfare based, given the circumstances of the boys who attended. The City Newsboys Society was based in the Excelsior Hall, Little Collins Street, and boys could obtain meals and educational materials for a small (sometimes waived) contribution.[122] A former hatter, William Groom, began his career in youth welfare with an attempt to set up a 'Try Excelsior' class for boys in Fitzroy, a notably 'rough' suburb in

[117] 'Melbourne Young Women's Christian Association – to the Editor of the Age,' *Age*, 21 June 1883, 7.
[118] 'The Young Women's Christian Association – to the Editor of the Age,' *Age*, 20 June 1884, 7.
[119] Walkowitz, *City of Dreadful Delight*, 73 – 76.
[120] 'Toorak Try Society,' *Herald*, 26 November 1883, 3.
[121] Ibid.
[122] 'Dire Distress in Melbourne,' *Herald*, 21 June 1887, 3.

Melbourne's inner north east which will be my particular focus in Chapter Seven.[123] This endeavour failed, so Groom turned his attention to a new Home for Boys in Brighton in December 1886. As I shall explore in the next chapter, from the 1890s Groom's Home operated primarily as a reformatory institution.[124] Forster and Groom were also instrumental in the establishment of the Gordon Institute in 1889, a boys' club and labour exchange for city youth. The Gordon Institute operated out of premises in Bowen Street, Melbourne, not far from the YMCA. Chapters Four to Six will examine how the Gordon Institute went on to play a particularly important role in the campaign for and early establishment of Children's Courts.[125]

(e) Child Rescue

Younger children in Melbourne's poorest areas were also the subject of heightened attention as the 1880s progressed. The number of child welfare societies increased hugely over the decade, following the English movement mentioned above. Local groups agreed that poor environment, inadequate parenting and the influence of the streets were to blame for neglect and delinquency. Their interventions were a mixture of removal, education and (restricted) relief. The dissenting Churches were particularly influential, a pattern which continued into the twentieth century. One of these charities was the (Presbyterian) Scots' Church Children's Aid Society, established in 1881. The Children's Aid Society was coordinated initially by Selina Sutherland, a Scottish nurse who had emigrated to Australia in 1880. The Society removed children from 'undesirable' homes and place them in (unpaid) country foster placements.[126] Miss Sutherland rapidly became a prominent and somewhat controversial figure amongst Melbourne's charitable workers, particularly for her efforts in 'rescuing' girls. The Reverend Charles Strong (1844 – 1942), a dissenting Minister and formerly of Scots' Church, founded the liberal Australian Church in 1885. This set

[123] 'Excelsior Class History,' *Herald*, 11 October 1887, 4.
[124] 'The Gordon Institute – to the Editor of the Age,' *Age*, 8 December 1889, 14.
[125] For more on these organisations and their philosophies see Swain, 'Victorian Charitable Network,' 55, 175 – 192; Jaggs, *Neglected and Criminal*, 52 – 56.
[126] Swain, 'Victorian Charitable Network,' 54; Jaggs, *Neglected and Criminal*, 52 – 53.

up its own Children's Aid Society in 1886, which provided both 'rescue' and outdoor relief to poor children in inner Melbourne.[127] Other Churches followed. Pastor Herman Herlitz of the Lutheran Church founded the Immigration and City Mission in 1887, which provided relief to new immigrants and the sick poor.[128] The Wesleyan Church Neglected Children's Aid Society followed in 1891,[129] and the Central Methodist Mission was established in 1893. It concentrated mainly on outdoor relief and educational activities.[130]

(f) Change and Continuity: The *Juvenile Offenders* and *Neglected Children's Acts* 1887

Charitable organisations were instrumental in the next phase of Victorian legislative developments for 'criminal' and 'neglected' youth. Throughout the 1880s, these groups lobbied the government to extend state powers over children and to increase the powers of private agencies to manage these children. In 1887 parliament responded with an overhaul of existing legislation which did exactly this. Conceptually, however, there were more continuities than changes. In particular, the fluid boundaries between 'criminality' and 'neglect' I have emphasised as a key theme in this chapter and thesis remained, and in fact were enhanced, while the overall response remained penal. Jurisdiction over young offenders was increased and modified by a new *Juvenile Offenders Act*. This Act covered children under seventeen who were convicted of a crime which could attract a sentence of imprisonment.[131] Young offenders could be sent either to reformatory schools or alternatively committed to the Department for Neglected Children, depending on their age and alleged moral character. Child offenders over the age of 12 went to the reformatory. Children under 12 were normally committed to the state Department for Neglected Children, unless 'they had been leading an immoral or depraved life,' in which case the penal provisions

[127] Swain, 'Victorian Charitable Network,' 54.
[128] S. M. Tarnay, 'Herman Herlitz,' *Australian Dictionary of Biography Volume Four* (Melbourne: Melbourne University Press, 1972), at http://adb.anu.edu.au/biography/herlitz-hermann-3758.
[129] Swain, 'Victorian Charitable Network,' 53 – 54.
[130] 'Central Methodist Mission,' *Age*, 2 October 1894, 6.
[131] *Juvenile Offenders Act* 1887 (Vic), s 19.

applied.[132] The 1887 legislation gave equal powers to government and private institutions to receive children and funding.[133] However as with the industrial training schools I discussed above, I shall show in Chapter Three that by the early 1890s all reformatories in Victoria were actually managed by private organisations. Once a child was committed to the reformatory, he or she became a state ward until the age of 18, which could be extended to 20.[134] Children often did not remain in institutions for the duration of their wardship. The Act allowed for a child to be placed in service, apprenticed to a trade, or released into the care of a suitable person.[135] I shall demonstrate in Chapter Three how many state wards ended up as poorly-paid domestic servants and farm labourers.

An amended *Neglected Children's Act* was enacted at the same time. Like the *Juvenile Offenders Act*, the age of intervention was extended, in this case to 17. The maximum age of guardianship for a neglected child rose to 21.[136] The categories for intervention largely continued from the 1864 Act, with a strong focus on public order. Effectively then, this legislation continued the existing criminalisation of poverty[137] Legal processes, including 'sentencing' provisions, also remained criminal, the practical implications of which will be discussed further in Chapters Three and Six. In fact, certain penal provisions were strengthened. After hearing a charge of neglect, Magistrates could either commit a child to the care of the department or to the reformatory school 'if in the opinion of the justices the child has been leading and immoral or depraved life.'[138] Importantly, there was no requirement for any criminal charge to trigger this provision. For girls there was a particular overlap between welfare concerns and criminality. Reflecting anxieties about premature sexualisation, and drawing on recent English *Industrial School Act* amendments, discussed above, the Act created a new category of intervention for children under 16 'found residing in a brothel or associating or

[132] Ibid, s 19.
[133] Ibid, s 5 – 6.
[134] Ibid, s 25.
[135] Ibid, s 30.
[136] *Neglected Children's Act* 1887 (Vic), s 18.
[137] Ibid, s 18.
[138] Ibid, s 20.

living with a prostitute, whether the mother of the child or not.'[139] For these (overwhelmingly) girls, there was a presumption that they should be sent to the reformatory, regardless of age, unless a Magistrate found that they 'had *not* been leading an immoral or depraved life.'[140] The Act did retain other placement options in the 1874 legislation, including the boarding-out presumption.[141] For industrial schools, private management was now explicitly preferred and the Act specifically legislated that they could receive the boarding out allowance for each child.[142]

The influence of charitable organisations was even more evident in a new Part VIII of the *Neglected Children's Act*, which specifically authorised private persons and organisations to take legal charge of neglected children. This was a key development, and it further entrenched the blurred boundaries between private and state which so distinguished the Victorian administration. As I shall argue in Chapters Four and Five, this also set a precedent for the key role of private organisations in the establishment and administration of Children's Courts, which ultimately proved problematic. The new provisions clarified that charitable organisations and individuals could be approved by the Department to care for neglected children.[143] Neglected children could then be committed to the care of these organisations, either by the Court as an alternative to the department, or privately by their parents. In either case, the organisation assumed guardianship of the child until they turned 18, which again could be extended to 21.[144] It was envisaged that this provision would save the state money. In an article on Miss Sutherland's Children's Aid Society in December 1887, the journalist Stanley James argued that the 'Society can claim … that its operations directly lighten the burden of the taxpayer in lessening the cost of maintaining Industrial Schools.'[145] Given (as I have argued above) that most children's charities were in fact overwhelmingly state supported, savings may have been more illusory than

[139] Ibid, s 20.
[140] Ibid, s 21 - 22. My emphasis.
[141] Ibid, s 31.
[142] Ibid, s 7.
[143] Ibid, s 62.
[144] Ibid, ss 64, 65 and 68.
[145] 'The Vagabond,' 'For Our Sake,' *Age*, 3 December 1887, 4.

actual. What the provision also did, however, was sanction an alternative, often extra-judicial, committal system and it removed a vulnerable group of children from direct state oversight. I shall discuss in Chapter Three how inadequate supervision of wards in the care of these private organisations ultimately attracted significant public criticism.

(g) Aboriginal Children – An Alternative Penality

None of these interventions, legislative or social, was directed towards Victoria's Aboriginal children, who by the 1880s were subject to a distinctive, and considerably more punitive, legal and administrative system. This section outlines the early legislative framework for Aboriginal children in settler-colonial Victoria and how this intersected with the regime for neglected and criminal children. I shall argue in Chapter Five that these differences ultimately meant that Aboriginal children were excluded from the *Children's Court Act*. As I foreshadowed in the introduction, the impact of European colonisation on Victoria's Aboriginal communities was particularly abrupt and severe. Historians have estimated recently that in the first two decades of European settlement the Aboriginal population may have been reduced from 10,000 – 15,000 individuals to as few as 2000.[146] By the late 1850s, most communities had been wholly or partially dispossessed from their lands.[147] Historians Ann Curthoys, Jesse Mitchell and Leigh Boucher have argued that this dispossession contributed to a uniquely Victorian governance dynamic. Without the active threat of the frontier to manage, and combined with a growing settler population of middle-class philanthropists,

[146] Jesse Mitchell and Ann Curthoys, 'How Different Was Victoria? Aboriginal Protection in a Comparative Context,' in *Settler Colonial Governance in Nineteenth-Century Victoria*, ed. Leigh Boucher and Lynette Russell (Canberra: ANU Press, 2015), 184; Leigh Boucher, 'The 1869 *Aborigines Protection Act:* Vernacular Ethnography and the governance of Aboriginal subjects,' in *Settler Colonial Governanc*e, 69; see also Giordano Nanni and Andrea James, *Coranderrk: We Will Show the Country* (Canberra: Aboriginal Studies Press, 2013), 6 - 7, 11, 182 – 186; Penelope Edmonds, *Urbanising Frontiers: Indigenous Peoples and Settlers in Nineteenth Century Pacific Rim Cities* (Vancouver: University of British Columbia Press, 2010), 5 – 9, 79 – 85, 87 – 89. Earlier studies also note swift population decline although estimated numbers vary, see for example Henry Reynolds, *Forgotten War* (Sydney: University of New South Wales Press, 2013), 133 – 134; Richard Broome, *Aboriginal Victorians: A History Since 1800* (Sydney: Allen and Unwin, 2005), 6 – 7, 29 – 31, 54, 69 – 71, 73 – 83, 90 – 93.

[147] Curthoys and Mitchell, 'How Different Was Victoria?' 184, 200; Nanni and James, *Coranderrk*, 6.

including those from the evangelical churches whose influence I have discussed above, from the late 1850s public, government and church attention turned towards 'protection' of Victoria's surviving Aboriginal population and concern at their living standards.[148] In 1860, as I noted in the introduction, this led to the creation of a Central Board 'Appointed to Watch Over the Interests of the Aborigines,' the first such regime in any Australian colony.[149] Over the next seven years the Board oversaw the establishment of three church mission stations and three government stations (Framlingham, Coranderrk and Lake Condah) with the aim of concentrating remaining Aboriginal groups in defined areas to 'protect,' 'educate' and 'civilise.'[150] By the late 1860s, as Curthoys and Mitchell have emphasised, Victoria, the colony with the smallest Aboriginal population, had by far the most comprehensive system of intervention, including an extensive reserve system.[151]

Scholars including Giordano Nanni, Andrea James, Ann Curthoys and Jesse Mitchell have emphasised that the reserve system was not simply imposed unilaterally. Local Aboriginal communities seized the opportunity to regroup on land otherwise lost to colonisers, and stations like Coranderrk, near the town of Healesville to Melbourne's east, very rapidly became established and successful.[152] In 1869, however, settler-colonial power over Aboriginal people in Victoria was further confirmed through law in the *Aborigines Act*, again the first

[148] Curthoys and Mitchell, 'How Different Was Victoria?' 184 – 186, 200; Boucher, 'The 1869 *Aborigines Protection Act*,' 69 – 72; Ann Curthoys and Jesse Mitchell, *Taking Liberty: Victorian Indigenous Rights and Settler Self-Government in Colonial Australia, 1830 – 1890* (Cambridge University Press, 2018), 23; Nanni and James, *Coranderrk*, 11.
[149] Curthoys and Mitchell, 'How Different Was Victoria?' 186; Nanni and James, *Coranderrk*, 11.
[150] For further discussion of the concept of 'protection' see Samuel Furphy and Amanda Nettleback, 'Imagining Protection in the Antipodean Colonies: Actors, Agency and Governance,' in *Aboriginal Protection and Its Intermediaries in Britain's Antipodean Colonies*, ed. Samuel Furphy and Amanda Nettlebeck (New York: Routledge, 2020), 5 – 14; Samuel Furphy, 'Philanthropy or Patronage? : Aboriginal Protectors in the Port Phillip District and Western Australia,' in *Aboriginal Protection and Its Intermediaries*, 58 – 71.
[151] Curthoys and Mitchell, 'How Different Was Victoria?' 186.
[152] Nanni and James, *Coranderrk*, 8 – 10; Curthoys and Mitchell, *Taking Liberty*, 274 – 276, 278 – 280, Julie Evans and Giordano Nanni, 'Re-Imagining Settler Sovereignty: The Call to Law at the Coranderrk Aboriginal Reserve, Victoria, 1881 (And Beyond),' in *Indigenous Communities and Settler Colonialism: Land Holding, Loss and Survival in an Interconnected World*, ed. Zoe Laidlaw and Alan Lester (Cambridge: Palgrave Macmillan, 2015), 24 – 44.

such piece of legislation in the Australian colonies.[153] The Act gave the Board, now renamed 'the Board for the Protection of Aborigines,' enormous regulatory powers, including the capacity to prescribe where Aboriginal people could live, work and financial arrangements. The Board was also confirmed as overall manager of the reserve regime. Appointed (non-Aboriginal and male) 'guardians,' including missionaries, actually implemented the scheme.[154] The Act defined an 'Aboriginal' person as 'every aboriginal native of Australia, and every aboriginal half-caste or child of a half-caste … habitually associating with aborigines.'[155] As Leigh Boucher has emphasised, this was a 'transformational' moment in settler-colonial governance, creating a distinctive (and lesser) legal status of Aboriginality.[156] The Act also included a very broad power to make regulations for the 'care, custody and education' of Aboriginal children.[157] Aboriginal children, and particularly 'half caste children,' were of particular interest to the government and the Board due to their perceived potential to be trained into 'productive' (that is, assimilated) subjects.[158] One of the first regulations made under the new Act, in 1871, granted the Governor in Council the power to 'order the removal of any Aboriginal child neglected by its parents, or left unprotected, to any of the places of residence [i.e. stations] … or to an industrial or reformatory school.'[159]

The 1871 regulations entrenched several key differences between Aboriginal and non-Aboriginal children, as well as beginning what became an entrenched blurring of the lines between the status of Aboriginality and that of neglect. I examine this particular aspect further in Chapters Two and Three. The first and most profound distinction was that there was no requirement for a Court appearance for an Aboriginal child prior to removal from their family. Rather, this could be done solely on the recommendation of the Board.[160] The second, and related, difference was that while the 1864 *Neglected and Criminal Children's Act*

[153] Boucher, 'The 1869 *Aborigines Protection Act*,' 66 – 67.
[154] Nanni and James, *Coranderrk*, 12; Curthoys and Mitchell, *Taking Liberty*, 286 – 287.
[155] *Aborigines Act* 1869 (Vic), s 3.
[156] Boucher, 'The 1869 *Aborigines Protection Act*,' 67.
[157] *Aborigines Act* 1869 (Vic), s 2.
[158] Broome, *Aboriginal Victorians*, 137.
[159] 'Regulations and orders made under the Act to provide for the protection and management of the Aboriginal natives of Victoria,' *Victorian Government Gazette*, 24 February 1871, 338.
[160] Broome, *Aboriginal Victorians*, 134 – 136.

required a child to be first convicted of an offence before being sent to the reformatory schools (although as I have discussed above, in 1887 this precondition was removed), this regulation made no such distinction. The third was that while the main Act imposed a statutory limitation of seven years as the maximum committal time, there was no such time restriction for Aboriginal children. The Board certainly exercised the power of removal, although it is unclear how many Aboriginal children were actually sent to industrial or reformatory institutions rather than being moved on to reserves. In 1873, the Board's annual report noted that 'The Inspector of Stations has instructions to enquire into the condition of [Aboriginal] children in all parts of the colony, and, when necessary … remove neglected children to stations where they can be taught and trained to useful employments.'[161] By 1874, the Board noted that the police were assisting in the removal of 'destitute children' on to reserves.[162]

The Board's attitude to its Aboriginal 'subjects,' including children, shifted noticeably in the late 1870s and early 1880s. As historians John Chesterman and Brian Galligan have argued, the Board was increasingly influenced by what historian Russell McGregor and others have labelled the 'doomed race theory' - as well as a desire to make financial savings in the management of the reserves.[163] The 'doomed race theory' was the social Darwinist theory that the inferior Aboriginal 'race' would naturally die out in the face of ongoing settler competition.[164] 'Half castes' were more numerous, but it was envisaged that they would ultimately integrate into European society.[165] The Board pushed for a stronger delineation between these two 'types' of Aboriginal person and to restrict reserve living to 'full bloods' only. This came to fruition in a new *Aborigines*

[161] Board for the Protection of the Aborigines, *Ninth Report of the Board for the Protection of the Aborigines in the Colony of Victoria* (Melbourne: Government Printer, 1873), 4.
[162] Board for the Protection of the Aborigines, *Tenth Report of the Board for the Protection of the Aborigines in the Colony of Victoria* (Melbourne: Government Printer, 1874), 4.
[163] John Chesterman and Brian Galligan, *Citizens Without Rights: Aborigines and Australian Citizenship* (Cambridge and New York: Cambridge University Press, 1997), 19; Russell McGregor, *Imagined Destinies: Aboriginal Australians and the Doomed Race Theory, 1880 – 1939* (Melbourne: Melbourne University Press, 1993), 14 – 18. In the case of Coranderrk, local settlers sought more farming land, and the local council wanted to expand the railway, see Nanni and James, *Coranderrk*, 16 – 31.
[164] McGregor, *Imagined Destinies*, 18, 49 – 53.
[165] Ibid, 53.

Protection Act in 1886. This Act now defined an 'aboriginal person' as 'all aboriginal natives of Victoria;' 'half castes' over the age of 34; 'female half castes' married to an 'aboriginal,' and those children of aboriginals who were not old enough to earn their own living, that is, children under 14, then the school leaving age.[166] Only these people could remain on the reserves. Other 'half castes,' or young men and women, were to be moved off the stations, and, ultimately, government support.[167] The Board very promptly implemented this provision, [168] in the face of very strong resistance by reserve residents who argued for their right to self-determination in their new communities.[169] For children, the Act made two other significant changes. The first allowed the executive to make regulations allowing for the administrative transfer of orphan 'half caste' children to the Department for Neglected Children or other institution, replacing the use of the now disfavoured stations.[170] The second authorised regulations to apprentice 'half caste infants,' an attempt to create a self-supporting workforce.[171] I shall discuss in Chapters Two and Three how the administrative removal of Aboriginal children and young people from their communities accelerated from the late 1890s, at exactly the same time as non-Aboriginal children were more likely to be supported at home.

Conclusion

In this chapter I have demonstrated, through a close analysis of reformers' writings and the legislation they promoted, how settler-colonial Victoria deployed and modified key English theories about delinquency and legislative structures in response to local concerns and conditions. Nineteenth-century English reformers

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[166] *Aborigines Protection Act* 1886 (Vic), s 4; for analysis see Clare Land, 'Law and the Construction of 'Race': Critical Race Theory and the Aborigines Protection Act, 1886, Victoria, Australia,' in *Rethinking Colonial Histories: New and Alternative Approaches,* ed Penelope Edmonds and Samuel Furphy. (Melbourne, RMIT Publishing, 2006), 137 – 140.
[167] Land, 'Law and the Construction of 'Race,' 140.
[168] Chesterman and Galligan, *Citizens Without Rights*, 21 – 22; Broome, *Aboriginal Victorians*, 185 – 199; Nanni and James, *Coranderrk*, 182 – 186.
[169] Coranderrk residents had already fought and won a legal battle to remain in the early 1880s, only to be broken up after the 1886 legislation. For the Coranderrk 'rebellion' see Nanni and James, *Coranderrk,* 178 – 182; Diane Barwick, *Rebellion at Coranderrk*. (Canberra: Aboriginal History Monographs, 1998); Julie Evans and Giordano Nanni, 'Re-Imagining Settler Sovereignty,' 25 – 40.
[170] *Aborigines Protection Act* 1886 (Vic), s 8.
[171] Ibid.

focused overwhelmingly on the perceived menace of the urban poor. By the middle of the nineteenth century, a distinctive concept of the 'juvenile delinquent' had consolidated. As I discussed using the key example of Mary Carpenter, this concept incorporated elements of poverty and neglect, as well as criminality. Melbourne reformers borrowed strongly from this literature. In their depictions of larrikins and young prostitutes, authors feared that Melbourne was replicating English urban social problems, compounded by the local commitment to 'freedom' and democracy. Also like their English predecessors, Melbourne reformers prioritised legislative interventions in response to this perceived social crisis. Initially, the colony replicated closely English models for dealing with poor children. I argued that this was a largely penal response which effectively consolidated the criminalisation of poverty. However from the 1870s, while the criminal framework was retained and indeed enhanced, Victoria had moved towards a distinctive decentralised administrative approach. This new regime drew on existing models of charitable relief, delegating to private organisations with nominal state oversight. This created a very distinctive local dynamic which I shall return to repeatedly in later chapters. Victoria's legislative regime for children was also strongly racialised, reflecting its origins as a settler colony founded on the displacement and legal dispossession of Aboriginal peoples. From 1869, Aboriginal children were created as distinctive and inferior legal subjects, another consistent theme throughout this thesis. In the next chapter, I shall examine how Melbourne reformers further consolidated their influence on child welfare policies between 1890 and 1906, and the shifting responses to juvenile offending and neglect in another period of rapid social and economic change.

CHAPTER TWO
RESPONDING TO DELINQUENCY IN MELBOURNE, 1890 – 1906

In Chapter One I identified key reformers and the discursive constructions of 'juvenile delinquency' in nineteenth-century England, and how these translated in settler-colonial Victoria. I demonstrated that in both jurisdictions middle-class reformers' theories incorporated class and gendered ideas about the causes of criminality, poverty and neglect. In settler-colonial Victoria, discourses were also strongly racialised. These perspectives formed the basis for a series of largely penal legislative responses targeting poor urban children. This Chapter examines the major players and dominant themes in debates about delinquency in Melbourne between 1890 and 1906. It draws again on archival sources generated by reformers themselves, as well as historical press commentary. I argue that during this period earlier theories were overlaid by new cultural and racial ideas about nation building and the prevention of physical degeneracy. This reflected social, economic and political changes in Melbourne itself and in the newly federated Australia, and fuelled growth in non-legislative as well as legislative interventions. Nevertheless, strong continuities with earlier periods remained. Poor urban children continued to be the subject of reformers' attention and most writers continued to promote personal and parental responsibility. The first part of this Chapter examines debates around larrikinism, street children and adolescent sexuality in the early 1890s, and the regulatory proposals advanced in response to these concerns. The second turns to reformers' emerging interest in white Australian nationhood in the early twentieth century, and the huge growth in clubs and societies for city children. These initiatives also consolidated further the role of private organisations in Victorian child welfare. I distinguish once more the regime for Aboriginal children in Victoria. These children were also subject to increasing control, but of a very different nature. The Chapter concludes with a discussion of Melbourne's emerging social purity movement and relevant legislative change between 1904 and 1906. I suggest that this movement's campaigning tactics, as well as their particular interest in redirecting youth, set crucial precedents for what became the Children's Court movement.

The Concern about Street Children, 1890 – 1891

(a) Larrikins, Truants and Street Sellers

In Melbourne there were three distinct periods of heightened agitation about children between 1890 and 1906. The first occurred in the early 1890s. I tracked key themes and reformers' responses through their own publications and newspaper reports. For boys, the major concern was criminal or proto-criminal behaviour, summed up once more in images of 'the larrikin.' Between 1890 and 1892 there was a rush of newspaper reports about boys and young men terrorising shopkeepers, passers-by and sometimes police in the poor suburbs of inner Melbourne.[1] On 21 January 1890 *The Age* complained that 'larrikinism is asserting itself so extensively in Footscray and Yarraville [in Melbourne's west] that people cannot pass along the streets, especially on Sunday, without being insulted.'[2] On 20 January 1891, the paper listed some examples of recent 'outrages.' Boys hassled members of the public from street corners, raided shops, 'rushed' customers in pubs or 'bounced' landlords, 'molest[ed] men out with sweethearts,' 'us[ed] filthy language in the open streets,' and assaulted police.[3] As historian Melissa Bellanta has argued, and as I discussed in Chapter One, larrikinism was both an actual phenomenon and a literary creation.[4] The *Age* promoted an image of the 'professional larrikin,' noting that he wore 'bell bottomed trousers over a pair of light high-heeled boots,' a 'slouch hat,' and no collar but a 'flame-coloured handkerchief around his throat,' a visual difference which set the larrikin apart both from middle-class norms but also from the 'respectable' working class.[5] The causes of larrikinism continued to attract debate. On 7 February 1891 *The Age* printed a feature article, 'The Larrikin's Progress,' which linked larrikinism to inadequate familial discipline and lack of lawful alternatives. The author suggested that because boys in Melbourne could not join the army, and had few other recreational options, they spent their time drinking, 'lurking on street corners' and offending.[6]

The second set of boys causing anxiety in the early 1890s were the 'children of the streets,' or truants and street sellers. As I shall discuss further below, concerns about this

[1] 'The Police Attacked by Larrikins: An Officer Badly Treated,' *Age* (Melbourne), 2 January 1890, 5; 'Police News – Larrikin Offenders,' *Age*, 21 January 1890, 6; 'Police News,' *Age,* 11 February 1890, 7; 'Police News,' *Age,* 14 August 1890, 7; 'Affray with Larrikins at Collingwood – A Constable Disabled,' *Age,* 9 February 1891, 6.
[2] 'Larrikin Offenders,' *Age*, 21 January 1890, 6.
[3] 'Larrikin Outrages and Robberies – the Police Force Undermanned,' *Age,* 20 January 1891, 6.
[4] Melissa Bellanta, *Larrikins: A History* (St Lucia: University of Queensland Press, 2012), xvi – xviii.
[5] Ibid, 108, 111 – 112, 115 – 116.
[6] 'The Larrikin's Progress,' *Age*, 7 February 1891, 4.

group remained high throughout our period. The underlying fear was that these children were at risk of becoming offenders (or larrikins) through their exposure to undesirable influences. In May 1891, *The Age* printed a series of articles on 'Truants and Street Children,' an 'exposé,' it promised, of the 'large extent' of truancy in Melbourne.[7] The first article contended that while the *Education Act* mandated compulsory school attendance amongst the 'poor classes,' in practice about 12 per cent of children living in impoverished areas did not attend school regularly.[8] The paper followed with a foray into three 'typical streets' in the poor suburbs of Port Melbourne, Richmond and Collingwood. In these houses, tenanted by 'the poorer classes of artisans and day labourers,' and 'widows who had to go out charing to earn their daily living,' there was a high rate of rental turnover and transitory living arrangements. There was also a failure to enrol children in school and endemic 'habitual truancy.'[9] The paper expressed particular concerns about truant boys. The writer believed that girls were the minority of truants and where they were, domestic duties usually explained their absence. 'Either the mother is dead, or her presence is imperatively needed in connection with the domestic arrangements of the household,' the paper conceded. Boys, on the other hand, were more likely to be selling newspapers, matches and cards in the street. The *Age* (almost certainly exaggerating) estimated that there were '800 – 1000 boys selling newspapers in Melbourne.'[10] The other major identified problem was that truant children escaped the moral effects of education. 'If the city child is not educated,' the reporter emphasised, 'he hardly ever escapes the pernicious influences of his environment. He grows inevitably to be either a thief or a knave.'[11]

This rising wave of panic about street children in the early 1890s reflected a city and a colony under increasing economic, social and political strain. In 1889, Melbourne was the largest city amongst the Australian colonies, but the decade-long economic boom was coming to an end. In 1890 wool and wheat prices fell in the wake of drought.[12] In 1891 the economic situation worsened dramatically as English investment was withdrawn following a London banking collapse. Small colonial banks and building societies, already

[7] 'Truants and Street Children Part I' *Age*, 9 May 1891, 15.
[8] Ibid.
[9] Truants and Street Children, Part II,' *Age*, 16 May 1891, 13.
[10] Truants and Street Children Part I,' *Age*, 9 May 1891, 15.
[11] Ibid.
[12] Don Garden, *Victoria: A History* (Melbourne: Thomas Nelson, 1984), 202 – 203.

over-committed, promptly went into liquidation. The Victorian economy virtually collapsed and unemployment rose rapidly, reaching a peak in 1893.[13] As I foreshadowed in Chapter One, Victoria's decentralised charitable system faced particular pressures. Revenue from both government and individuals dried up while demand increased exponentially.[14] At the same time, Victoria was also experiencing acute class conflict. An 1890 maritime workers' strike brought down the colonial government and two widespread shearers' strikes followed in 1891 and 1894. These all ended unhappily for the strikers, but it alerted middle-class onlookers to the prospect of working-class revolt.[15] Mass demonstrations of the newly unemployed in 1892 fuelled the sense of crisis.[16]

(b) Melbourne Reformers and Regulatory Responses

Melbourne reformers largely agreed with newspaper accounts which depicted 'delinquent' and pre-delinquent boys as an urban class menace to be tamed. On 20 May 1891 Sir Frederick Sargood, Minister of Education, convened a meeting at the Education Department to discuss 'truants and neglected children.'[17] The attendees were a roll call of familiar faces, all selected for their purported expertise in this field. Charles Barber, manager of the Gordon Institute and the Newsboys' 'Try' Society was there, as was William Groom, whom we met in Chapter One as manager of the Brighton Boys' Home. William Forster of the Toorak and South Yarra Try Society was 'regrettably absent.' All of the major religions which ran outreach services in inner Melbourne had a representative. They included Charles Strong, the Catholic Archbishop of Melbourne, Thomas Carr, Alexander Marshall, who was Charles Strong's less controversial replacement at the Scots' Church, Edmund Bickford for the Methodists and Commissioner Coombs and Colonel Taylor from the Salvation Army. Three women were also in attendance. Emma Varcoe described by the *Sydney Melbourne Herald* as a 'lady evangelist,'[18] ran the Wesleyan Church Neglected Children's Aid Society. We also met Selina Sutherland, the

[13] Ibid, 205 – 207.
[14] Shurlee Swain, 'The Victorian Charitable Network in the 1890s,' (PhD Thesis, Department of History, University of Melbourne, 1977): 20 – 22.
[15] Garden, *Victoria,* 202 – 203.
[16] 'Unemployed Demonstration,' *Age*, 7 June 1892, 6.
[17] 'Truants and Neglected Children – Conference at the Education Department,' *Age*, 21 May 1891, 6.
[18] 'Centenary Hall Anniversary – The Ladies' Meeting,' *Sydney Morning Herald*, 24 April 1891, 7.

second female attendee, in the Chapter One, as manager of the Presbyterian Neglected Children's Aid Society. The third woman, Miss Langley, ran the Collingwood Creche, which cared for the small children of working mothers.[19] In addition, there were a few interested politicians, representatives from the Education Department and George Guillaume, secretary of the Department for Neglected Children and Reformatory Schools.

The group offered four main explanations for boys' offending and quasi-offending, all of them familiar. One was the financial reward of selling papers, and the danger of street associations. Mrs Varcoe maintained that 'there were numbers of boys of 8, 10 and 12 years of age who were in the habit of picking up their own living and sleeping at lodging houses … [t]hey were led into crime by reason of their surroundings.'[20] An associated problem was the lack of licensing and employment regulations which allowed school-aged boys to sell newspapers. All of the attendees agreed that boys should be licensed to sell papers: the major debate was around the minimum age. Archbishop Carr stated without controversy that 'boys who sold newspapers should be licensed … and if the boys were licensed, their conduct should be watched.'[21] The third theme was the enduring 'problem' of poor parenting, although not all attendees agreed that this was the major cause. Mrs Varcoe contended that 'parents who drank or were idle, sent their children out to sell papers.'[22] Others, however, claimed that the streets tempted children despite the efforts of their parents. Charles Barber noted that 'many lads ran away from home and made a living selling articles in the streets … parents frequently applied to him to find their children who lived in this way.'[23] The final and closely related subject of discussion was endemic truancy, compounded by the inadequate provision of truant officers, which again made children more likely to forge undesirable associations on the city streets.[24]

George Guillaume, secretary of the Department for Neglected Children and Reformatory Schools, was another prominent voice about child offending and neglect in the early 1890s. Guillaume had been appointed as head of a newly amalgamated Department dealing with both offending and neglected children in 1881. He remained in this position

[19] 'The Collingwood Creche,' *Mercury and Weekly Courier* (Melbourne), 24 December 1891, 3.
[20] 'Truants and Neglected Children: Conference at the Education Department,' *Age*, 21 May 1891, 6.
[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] Ibid.

until his accidental death in a carriage accident in 1892. Guillaume effectively served as a bridge between the government department and charitable organisations. He was a strong believer in legislative intervention, noting that 'it is … the first duty alike of the State and of society to rescue and train these children at the earliest possible moment.'[25] However he also had close relationships with Melbourne's child welfare charities, and had been instrumental in introducing the 1887 *Neglected Children's Act* amendments, which, as discussed in Chapter One, enhanced the authority of private organisations in dealing with 'neglected' youth. In his 1890 report, Guillaume singled out three classes of children as needing particular attention: children in prison, truants and street sellers, and children living in brothels. Guillaume used both moral and economic arguments to advance his arguments for further intervention. 'So long as such children continue 'neglected,'' he warned, 'they are on the high road to becoming vagrants and criminals, at once a heavy burden to the community.'[26] In dealing with these children, Guillaume largely promoted regulatory responses, including enhanced licensing arrangements for street sellers, more truant officials,[27] and an expanded definition of neglect. This, he argued, should encompass all children 'not under proper guardianship,' even if they had a home and parents. After this, however, he clearly envisaged that private organisations would take over the day-to-day management of these children. [28]

Guillaume's regulatory proposals echoed those of Melbourne's reformers more generally. Just before the *Age* took up the cause of truancy in May 1891, Charles Barber, William Forster, William Groom and George Guillaume submitted a report to the government which recommended licensing street sellers, better regulation of truancy and, as I shall discuss in Chapter Four, special Courts for 'neglected and truant children.' For young male street sellers, they suggested restricting licenses to boys over 10 and that boys under 13 should not trade on the streets after 8PM on weekdays, and after 2PM on Saturdays.[29] After the meeting at the Education Department on 20 May 1891, Sir Frederick Sargood agreed to appoint a sub-committee to investigate and provide further recommendations to the government. The sub-committee, which included Charles Barber, William Forster,

[25] Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1890* (Melbourne: Government Printer, 1891), 64.
[26] Ibid, 64.
[27] Ibid, 11.
[28] Ibid.
[29] 'Neglected Children and Habitual Truants – Scheme of Treatment,' *Age*, 6 May 1891, 6.

William Groom, Selina Sutherland, Mrs Varcoe and Miss Langley, held several meetings before presenting a list of regulatory proposals on 3 August 1891. They now recommended forbidding boys under 10 from selling on the streets unless their school agreed and preventing boys aged between 10 and 17 from trading after 8PM (amended to 9PM) on weekdays and 9PM on Saturdays (later changed to 10PM). It recommended that habitual truants be classified as a subset of 'neglected child,' that a central truant school should be established, and the number of departmental truant officers be increased significantly.[30]

(c) Minority Voices: Structural Poverty and Neglect

These debates indicate that most Melbourne reformers in the early 1890s continued to advance long-held moral and environmental theories for the continued presence of child offending and neglect. As discussed at length in Chapter One, these theories focused on the contamination of the urban environment, including the 'temptations' of street selling and prostitution, inadequate parenting and disengagement from education as explanations for the supposed 'youth crisis.' This drove a largely legal response, with the implicit understanding, again articulated in Chapter One, that penal laws would force behavioural change. There were some dissenting voices, although they remained very much in the minority. The Australian Church Minister Charles Strong, whom we met in the previous chapter, was one such dissenter. He argued strongly during this period for the importance of poverty and structural inequality in explaining both apparent 'neglect' and criminality. Strong had a practical as well as theoretical commitment to redressing disadvantage. As well as founding the Children's Aid Society, outlined in the previous chapter, in 1891 he established the 'Working Men's Institute' which provided further education to labouring men. As I shall observe in Chapter Five, by the middle of the next decade a number of progressive working-class parliamentarians were graduates of the Institute.[31] In the 1890s he was involved in the Village Settlement Movement, an ultimately unsuccessful relocation scheme for labouring men.[32] I shall discuss in Chapter Four how Strong also became a strong advocate for penal reform.

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[30] 'The Treatment of Neglected Children,' *Age*, 4 August 1891, 6.
[31] C.R. Badger, 'Charles Strong (1844 -1942),' *Australian Dictionary of Biography Volume Six* (Melbourne: Melbourne University Press, 1976), at http://adb.anu.edu.au/biography/strong-charles-4658/text7697.
[32] Ibid.

Strong's views on poverty were expressed most clearly in his evidence to a new Royal Commission on Charitable Institutions, another official attempt to document the labyrinthine operations of Melbourne's charitable system. In February 1891, Strong gave a forceful account of the poor housing and employment opportunities in Collingwood, one of Melbourne's most deprived suburbs. Strong argued that 'the houses [there] are wretched – as wretched as anything I have seen in the back lanes of Melbourne.' These 'ill-ventilated, ill-lighted, kennel[s] of house[s]' were inhabited by the poor and outcast: 'widows, deserted wives, families afflicted by sickness [and] old people who cannot work.'[33] Strong argued that their poverty resulted not from innate 'immorality' but from irregular work, endemic low pay, particularly for women who worked in the 'sweated' clothing industries, absence of male breadwinners, sickness and incapacity. Drink and 'improvidence' were the effect, not the cause, of this hardship.[34] (The Mayor of Collingwood was so incensed by these remarks that he issued an official disclaimer).[35] Strong raised similar underlying economic factors in the debates about truants and street sellers. He made the obvious point that employers would always use child labour if they could (to save costs), and that working-class households always needed extra income, making children vulnerable to exploitation. He supported regulation, but on the basis that this would protect children from predatory employers. In May 1891 he stated that a 'child's labour was altogether objectionable … it was quite unnatural for little boys and girls to be out on the streets so long, and so late.'[36]

(d) 'Saving Girls' : Sexual Contamination and the Age of Consent

While street boys were the subject of anxiety as future larrikins, girls attracted discussion of a different nature. Melbourne reformers, female and male, all expressed particular concern about the presence of girls on the city streets. This was partly due to age-old gendered theories about girls' risk of moral or sexual contamination in city environments, discussed in the previous chapter. I also discussed in Chapter One how girls were

[33] 'The Charities Commission – Dr Strong's Evidence – Poverty in Melbourne,' *Herald* (Melbourne), 27 February 1891, 1.
[34] Ibid.
[35] 'Topics of the Week,' *Australasian* (Melbourne), 7 March 1891, 22.
[36] 'Neglected Children and Habitual Truants – Scheme of Treatment,' *Age*, 6 May 1891, 6.

generally seen as more vulnerable than boys of an equivalent age and thus in need of enhanced protection. Again, this prompted recommendations for regulatory change. In their first set of proposals in early May 1891, Groom, Barber, Forster and Guillaume recommended banning all girls under 18 from selling on the streets at all.[37] Some reformers pushed for even greater intervention. Selina Sutherland argued that '[g]irls who sold newspapers on the streets were exposed to dreadful temptations,' and that girls in their late teens required more, not less, protection. '[T]here was no period in a girl's life when more care was needed on her behalf than between 15 and 20,' she maintained.[38] George Guillaume also emphasised the importance of 'saving' girls in his 1890 departmental report. He noted with regret that boys outnumbered girls as a proportion of departmental committals. '[I]t is to be feared' he commented, 'that a large number of girls … remain exposed to the unfavourable surroundings from which their brothers have been withdrawn, and when it is considered how far greater an injury is suffered by a non-rescued girl … the disproportion is a matter for regret.'[39] I shall argue in the next Chapter that these assumptions translated into distinct sentencing trends for girls who appeared before the Courts for 'streetwalking' and so-called 'neglect.'

The other issue which attracted significant debate in the early 1890s was juvenile prostitution, including girls' alleged presence in brothels. As I discussed in Chapter One, an 1887 amendment to the *Neglected Children's Act* created a specific category of 'neglect' for children living in brothels or with prostitutes. The amendment also saw these girls sent to the reformatories for their apparently 'corrupted' characters, whether or not they had in fact been engaging in prostitution. This intervention had a distinctly racial overlay. A particular fear was that European girls would be 'lured' into Chinese brothels, and thus subjected not only to sexual but racial corruption.[40] These fears continued and in fact intensified through the 1890s and early twentieth century, as I shall explore further below.[41] Selina Sutherland held particularly strong views on this subject. At an Australasian charitable conference held in Melbourne in 1891, the Reverend Whitton

[37] Ibid.
[38] 'Truants and Neglected Children – Conference at the Education Department,' *Age*, 21 May 1891, 6.
[39] Department for Neglected Children, *Report for the Year 1890*, 9.
[40] Beverley Kingston, *The Oxford History of Australia Volume Three: Glad, Confident Morning* (Melbourne: Oxford University Press, 1988), 65.
[41] Patricia Grimshaw et al, *Creating a Nation* (Ringwood: McPhee Gribble, 1994), 178 – 180.

read her paper, 'Slum Life in Melbourne.'[42] The paper argued that Melbourne's lanes were populated with Chinese opium dens, 'gambling hells' and 'houses of ill fame, where young girls are brought to ruin, from which they are seldom reclaimed.'[43] Miss Sutherland put her theories into practice. In the early 1890s she conducted regular forays into the 'Melbourne slums' after dark to retrieve young girls. In April 1891 a *Herald* journalist accompanied Miss Sutherland on her 'night rescue' work in Chinatown. The reporter faithfully reproduced every negative stereotype about Little Bourke Street. 'The slums adjacent to Little Bourke Street are one mass of festering and corrupt humanity,' it maintained. 'Vice runs riot, and every form of wickedness indulges in a saturnalia.'[44] Despite their efforts, however, they only sourced one young woman, and not with a Chinese man but a 'European.' She had even 'refused to do as he wished.' She was nevertheless 'sent to the Mission Hall.'[45]

One of the major problems associated with 'rescuing' girls from prostitution was Victoria's low age of consent, which in 1890 still stood at 12. Female reformers drew on interrelated anxieties about girls on the streets and juvenile prostitution to generate interest in a campaign to raise the age of consent to at least 16. They were inspired by the English *Criminal Law Amendment Act* in 1885, which I discussed in Chapter One.[46] The Victorian branch of the Woman's Christian Temperance Union (WCTU) led this campaign, noting in 1891 that 'the present state of the law in Victoria for the protection of young girls … is a scandal to the community.'[47] The Victorian WCTU had formed in 1886, following the establishment of a parent American organisation in 1880.[48] Members pledged that they would 'abstain from all intoxicating liquors … and to employ all proper means to discourage the use of, and traffic in, the same.'[49] The organisation was staffed largely by middle-class women, and in addition to liquor control and the age of consent,

[42] Selina Sutherland, 'Slum Life in Melbourne,' in *Proceedings of the Second Australasian Conference on Charity, held in Melbourne 17 – 21 November 1891* (Melbourne: Government Printer, 1892), 121.
[43] Ibid, 122.
[44] 'In the Slums of Melbourne,' *Herald*, 21 April 1891, 1.
[45] Ibid.
[46] Woman's Christian Temperance Union of Victoria, *Fourth Annual Report of the Woman's Christian Temperance Union of Victoria during the Year 1891* (Melbourne: Peacock Bros Printers, 1892), 4.
[47] Ibid, 4.
[48] Ian Tyrell, *Woman's World, Woman's Empire: The Woman's Christian Temperance Union in International Perspective, 1880 – 1930* (Chapel Hill & London: University of North Carolina Press, 1991), 9.
[49] Woman's Christian Temperance Union of Victoria, *Fourteenth Annual Report of the Woman's Christian Temperance Union of Victoria during the Year 1901* (Melbourne: Spectator Publishing Co, 1902), 1.

the WCTU supported women's suffrage and abolition of the 'double standard.' Amending legislation was introduced into parliament in 1890, but failed to pass due to parliamentarians' disagreement about age and whether younger boys should be exempted from prosecution. Conservative commentators argued that 14 was sufficient protection, given the allegedly 'advanced' physique of Australian girls compared to their English peers.[50] Supporters rallied to avoid the next Bill suffering a similar fate. In November 1891 the WCTU collected a petition of 30,000 signatures, including 300 doctors and philanthropists.[51] An amending Act, which raised the age of consent to 16 and created a new offence of incest, finally passed in December 1891.[52] I shall discuss in Chapters Four and Five how the WCTU and other women's organisations continued their advocacy for the protection of girls by arguing for the inclusion of this group within the jurisdiction of the Children's Court.

(e) Aftermath: The 1890s Depression

Age of consent legislation was the only legal change reformers achieved in the early 1890s. None of the regulatory measures proposed in 1890 and 1891 advanced any further over the rest of the decade. This was due largely to the depression, which pushed social causes to the periphery. After Victoria's catastrophic economic collapse in the early 1890s, documented unemployment rose to well over 20 per cent by 1893 and Melbourne's banking system virtually ceased operating. From 1894 Victoria's new Premier, George Turner, responded to the crisis with an attempt to balance the budget through severe spending cuts and raising taxes. This did not assist the economic recovery.[53] The results were devastating. Melbourne's population fell as men of working age left the colony, many of them seeking work on the new goldfields of Western Australia. In many cases, they left behind wives and young children who, as I shall argue in Chapter Three, had no choice but to turn to the state via the Court system in a desperate attempt to keep their families together. As the crisis deepened, charitable organisations struggled even to perform their basic functions. They certainly had no energy left to

[50] Victoria, *Parliamentary Debates (Legislative Assembly)*, 25 June 1890, 439 – 443 (Henry Cuthbert); Victoria, *Parliamentary Debates (Legislative Assembly)*, 27 August 1890, 1285 – 1287 (Henry Cuthbert, Joseph Pratt, George Davis, Cornelius Job, Simon Fraser).
[51] Woman's Christian Temperance Union of Victoria, *Fourth Annual Report 1891*, 4.
[52] *Crimes Act* 1891 (Vic), s 5(1).
[53] Garden, *Victoria*, 209 – 210.

advocate for legislative change.[54] The situation began to improve only after 1897. Unemployment fell and the population stabilised. However pay rates, working conditions and standards of living were worse in 1900 than they had been a decade earlier. I shall observe throughout this thesis how this legacy of extreme poverty dominated Melbourne's working-class communities for the rest of the decade.[55]

Children and Nation Building, 1900 - 1902

(a) Youth Crisis Revives

A second wave of agitation about juvenile (mis)behaviour in Melbourne began in mid-1900. In some respects, particularly in its focus on 'street children,' it resembled closely the panic of the early 1890s. In June 1900, *The Age* reported a speech by Lord Beauchamp, Governor of New South Wales, which he had delivered to the New South Wales Teachers' Association. Lord Beauchamp argued that youthful crime and immorality plagued the Sydney streets. 'According to statistics,' he claimed, 'a large number of children [were] *not* attending school.' Large numbers of children thronged the Sydney streets, with the end result of 'vagrancy and crime.' 'It is agreed among social reformers in England and the United States that truancy [is] the most prolific source of juvenile crime,' he maintained.[56] For girls, the situation was even more dangerous. '[T]he prevalent habit of street wandering had most deplorable results,' Lord Beauchamp maintained, including 'unbridled wantonness' and 'rising illegitimate births.'[57] The article drew an immediate response from Melbourne reformers and the Melbourne press, who equated the situation in Sydney to that of Melbourne – if not worse. On 11 July 1900, *The Age* devoted five columns to the 'the Truancy Question – a Growing Evil.' This article claimed, in an exact echo of a decade earlier (indeed apparently recycling the same numbers) that '12,000 of 300,000 school age children were unaccounted for in statistics.' '[T]his number every year is allowed to grow up in a state of heathen darkness,' it maintained, 'manifested in the number of embryo criminals who throng the police courts and the streets.'[58] In

[54] Charity Organisation Society of Melbourne, *Sixth Annual Report for the Charity Organisation Society of Melbourne for the Year ended 30 June 1893* (Melbourne: McCannon, Bird & Co, 1893), 5.
[55] Kingston, *Oxford History of Australia Volume Three,* 45, 54.
[56] 'Juvenile Crime – Speech by Lord Beauchamp – Prevalence of Immorality,' *Age*, 27 June 1900, 8.
[57] Ibid.
[58] Ibid.

August, *The Argus* weighed into the debate. It noted gravely that '[m]ost people have been deeply hurt by the discovery of a great spread of juvenile immorality in the Australian colonies. There is an uneasy feeling that the children … have been neglected.'[59]

(b) Children and the Nation

While the specific subjects of reformers' anxieties in the early twentieth century remained the same, after 1900 their concerns were increasingly overlaid with a new language about nation building and the importance of children to Australia's economic and military future.[60] Boys in particular were still a class threat to be contained, but they were also a social asset to be cultivated. This led to a wave of voluntary interventions which I discuss in detail below. I also argue that this growing emphasis on the child as 'social asset' and these new interventions were important preconditions for the later Children's Court model. In July 1900, the *Herald* published a front-page column by the activist Melbourne City Magistrate Joseph Panton (1831- 1913),[61] whom we shall meet again in Chapter Three, which summarised these emerging themes. Panton's main premise was that boys offended due to lack of organised alternatives. '[T]here is not sufficient provision for healthy recreation for the working youths residing in the chief centres of population,' he maintained. While this had antecedents, what followed was new. In overtly militaristic and nationalistic language, Panton lamented that offending boys were a 'sad example of good material for soldiers running to seed for want of discipline and training.' He argued that Australia was 'an important outpost of the Empire [and boys] must be taken in hand … and moulded into soldiers, athletes and good citizens.'[62] William Forster made similar comments in an article on truancy the same month. '[Truant boys] will grow up to be men and they will have a vote,' he noted. 'Are we to put this power in their hands without safeguarding it?'[63]

Panton and Forster's language of nation and empire building reflected both local and international developments. By the turn of the twentieth century the Australian colonies

[59] 'Editorial,' *Argus* (Melbourne), 21 August 1900, 4.
[60] Grimshaw et al, *Creating a Nation*, 206 – 208.
[61] On Mr Panton's life and achievements, see 'Death of Mr J A Panton,' *Argus*, 27 October 1913, 18.
[62] 'Save the Boys – From Going to Gaol – And Make them Serviceable,' *Herald*, 9 July 1900, 1.
[63] 'The Truancy Question – a Growing Evil,' *Age*, 11 July 1900, 11.

were on the brink of federation. Melbourne, still the largest colonial city, was poised to become temporary capital.[64] Federation contributed to anxious debates about national identity and by the late 1890s these discussions had taken a decidedly militaristic and racialist turn. As historians like Marilyn Lake and Henry Reynolds have emphasised, white 'Australian' identity was increasingly framed in hostile opposition to that of other cultures. Lake and Reynolds have called these discriminatory attitudes a 'religion of whiteness.'[65] Its adherents envisaged an 'imagined community' of white men, with these individuals alone deemed capable of higher civilisation.[66] The perception, encouraged by journals like the *Bulletin*, was that Australia was not only isolated but actively threatened by the 'Asian menaces' of Japan and China, and required aggressive counter action. International military developments accelerated local anxieties. Throughout the 1890s the arms race and fight for colonial influence amongst European nations increased. In 1899, the Australian colonies sent contingents to the Boer War, and after 1901, the new Commonwealth Government also provided troops.[67] The War and its aftermath only heightened consciousness about national fitness and Australia's apparently fragile 'outpost of empire.'[68] One of the first pieces of legislation passed by the new Commonwealth government was the notorious *Immigration Restriction Act* (1903) which effectively banned non-European entry through selective use of a dictation test, again confirming the racist underpinnings of the new nation.[69] Aboriginal people in Australia also suffered severely from this 'religion of whiteness,' as many scholars have emphasised. The Commonwealth *Franchise Act* (1902) specifically excluded Aboriginal people from the national franchise, except those already enrolled to vote in state elections.[70] I shall examine further below how racial theories played out in relation to Aboriginal children.

(c) Creating Citizens and Soldiers: The Boys' Club Movement in Melbourne

[64] Garden, *Victoria,* 267.
[65] Marilyn Lake and Henry Reynolds, *Drawing the Global Colour Line: White Men's Countries and the International Challenge of Racial Equality* (Cambridge: Cambridge University Press, 2008), 4.
[66] Ibid, 7.
[67] Garden, *Victoria*, 265.
[68] John Barrett, *Falling In: Australians and 'Boy Conscription' 1911 – 1915* (Sydney: Hale & Iremonger, 1979), 7 – 19, 36.
[69] Lake and Reynolds, *Drawing the Global Colour Line*, 137.
[70] John Chesterman and Brian Galligan, *Citizens Without Rights: Aborigines and Australian Citizenship.* (Cambridge and New York: Cambridge University Press, 1997), 11.

These new theories fed into a huge growth in the provision of structured leisure for poor urban children from 1900, in an attempt to redirect them away from the city streets. This had precursors in organisations like Forster's 'Try Society,' discussed in Chapter One, but in the early twentieth century the number of these clubs, especially for boys, expanded exponentially.[71] The growth of clubs and societies was highly significant for the development of the later Victorian Children's Court model, for two main reasons. The rapid expansion of these groups further enhanced Melbourne reformers' role within the community, as well as their standing to speak about child welfare. This paved the way for reformers' close involvement in Children's Courts. The clubs also advanced a mixed model of individual responsibility and middle-class intervention, which, as I shall argue further in Chapters Four and Five, was a key foundational premise of both the Children's Court itself and its probation service. In Melbourne, most suburbs had at least one club by the middle of the decade, and some of the most impoverished had several. They were run by charitable or church associations and often had a militaristic bent.

Melbourne newspaper *The Herald* took a keen interest in this phenomenon and documented multiple examples of the new clubs. In December 1899, the ever-active William Groom set up a class for boys in a hall in Brighton. For a penny per week, boys could use gymnastic equipment, access a library and get training in drill.[72] In September 1900 Reverend Cole of the Methodist Mission rented a hall in Bouverie Street Carlton, offering games, drill and a tea to local boys once per week.[73] A year later, the Bouverie Street Club was well established and had multiple sessions for different age groups, including a girls' class.[74] The Mission activities were free and were aimed explicitly at the most impoverished of the local community. 'The task' the *Herald* noted in September 1900, 'was to … reclaim from the streets the boys of the poorest parts of Carlton.'[75] In July 1900, the Brunswick and Prahran branches of the Australian Natives' Association also started a campaign to raise funds to establish gyms for local boys.[76] The Australian

[71] This was a development across the English-speaking world, see John Springhall, *Youth, Empire and Society: British Youth Movements, 1883 – 1940* (London: Croom Helm, 1977), 13 – 16.
[72] 'Save the Boys – a Present Day Problem – the Brighton Enterprise,' *Herald*, 5 August 1900, 2.
[73] 'Save the Boys – How it is Being Done,' *Herald*, 24 September 1900, 3.
[74] 'Boys and Girls – Kept from the Streets,' *Herald*, 20 September 1901, 3.
[75] 'Save the Boys – How it is Being Done,' *Herald*, 24 September 1900, 3.
[76] 'Save the Boys – Natives Take Action,' *Herald*, 20 July 1900, 1.

Natives' Association (ANA) was established in Melbourne in 1871 as a benefit society for Australian born (white) young men. It was nationalistic, militaristic and promoted the interests of a 'white Australia,' in which it included federation, Australian interests and a strong defence force. By the late 1890s it had considerable political influence.[77] The two branches argued in support that 'young men and boys, instead of loitering about street corners at night … might obtain healthy recreation.'[78] A month later, the Brunswick branch was granted £130 by the local Town Council to enable the ANA to purchase gym apparatus, books and games.[79]

(d) Female Reformers and Saving Girls

Poor boys were the major focus of the club movement, due to their status as future vote-bearing citizens. Girls, however, did attract discussion and interventions of their own. As with boys, these set precedents for their (very different) perceived place within the Children's Court regime, discussed in Chapter Five. The major concern about poor girls, as in previous years, was their presence on the city streets, and associated fears about compromised morality and juvenile prostitution. Like their male peers, by 1900 these discussions had taken a distinctly nationalist turn. More specifically, as the future mothers of a white Australian nation, girls' corruption was seen as undermining the nation's future by increasing illegitimacy and 'lowering' national character. Their rescue was necessary not only to maintain order, but to increase the legitimate birth rate.[80] Two key themes interacted in these commentaries, again reflecting broader social concerns in Melbourne and across Australia. During the 1890s, Australian women had made considerable economic and social advances. Despite the depression, they entered higher education and the workplace in larger numbers, and as a result, were a much more visible public presence.[81] Women had yet to gain the vote in Victoria (this came only in 1908), but successes in New Zealand, South Australia and Western Australia fuelled women's arguments locally, and influential suffrage organisations formed.[82] These changes caused

[77] Marian Quartly, 'Mothers and fathers and brothers and sisters: The AWA and the ANA and Gendered Citizenship,' *Journal of Australian Studies* 17 (37) (1993): 23.
[78] Save the Boys – Natives Take Action,' *Herald*, 20 July 1900, 1.
[79] 'Save the Boys – the Brunswick Movement – Progressing Satisfactorily,' *Herald*, 7 August 1900, 3.
[80] Grimshaw et al, *Creating a Nation*, 198, 207.
[81] Ibid, 170 – 173.
[82] Garden, *Victoria*, 250 – 251, Grimshaw et al, *Creating a Nation*, 176, 182 – 183.

considerable anxiety amongst social conservatives, who attacked the 'new woman' for undermining family life. A related area of concern was that the (legitimate) birth rate was falling and illegitimacy rates allegedly increasing.[83] Conservative commentators argued that if white birth rates continued to fall, Australia was at risk of being swamped numerically by Asian 'hordes.'[84] In New South Wales the debates led ultimately to the Royal Commission on the Decline of the Birth Rate in 1903 - 104. This blamed the fall on growing female independence and social liberality: women were not consulted.[85]

As in previous years, female reformers led the way with new interventions for girls. The number and membership of women's organisations grew considerably from the late 1890s, largely stemming out of the suffrage movement. In addition to the WCTU, in 1898 the first Women's Progressive Leagues ('WPL') formed. These were local groups of middle-class women who formed originally to advocate for women's suffrage, but soon branched out into other areas of social change.[86] In 1903, the National Council of Women of Victoria (NCWV) formed, an organisation which, I shall demonstrate in Chapters Four and Five, came to play a particularly significant role in Melbourne social reform over the next two decades, including the campaign for Children's Courts.[87] The NCWV was modelled on an American organisation, the National Council of the United States, an umbrella organisation for women's groups which had formed in 1888. An Australia-wide branch formed in 1899.[88] Like its American equivalent, the NCWV aimed to join together smaller women's groups, aiming at strength in numbers. While the Councils were theoretically inclusive, in practice they again attracted mostly educated middle-class women.[89] Many middle-class Melbourne women were members of multiple organisations, as I shall show further in Chapters Four and Five. This increased further their lobbying power. The NCWV in particular had considerable success. By the end of

[83] Grimshaw et al, *Creating a Nation*, 193 – 196.
[84] Lake and Reynolds, *Drawing the Global Colour Line*, 157.
[85] Royal Commission on the Decline of the Birth Rate and on the Mortality of Infants in New South Wales, *Report* (Sydney: Government Printer, 1904), 157 – 158.
[86] Janice E. Brownfoot, 'Women's Organisations and the Woman Movement in Victoria c. 1890 – c.1908.' (Honours Thesis, History Department, Monash University, 1968), 47 – 48.
[87] Marian Quartly and Judith Smart, *Respectable Radicals: A History of the National Council of Women of Australia, 1896 – 2006* (Melbourne: Monash University Publishing, 2015), 12 – 13.
[88] Leila J. Rupp, *Worlds of Women: The Making of an International Women's Movement* (Princeton: Princeton University Press, 1997), 14 – 16.
[89] Before World War One, for example, the office of President was usually bestowed upon the governor's wife, see Quartly and Smart, *Respectable Radicals,* 10, 53 – 54.

1903, 32 women's societies had affiliated with the NCWV, giving the organisation an incredible pool of experience and lobbying potential to draw upon.[90]

Many of these societies were either directly involved with or supported the establishment of girls' clubs. As with boys, their main aim was to keep poor urban girls off the city streets. Their other object, in line with the emphasis on motherhood and family life, was to train girls in domestic duties. The earliest girls' clubs in Melbourne were set up by the WCTU. Local juvenile branches provided programs of sewing, speakers and musical activities. Girls were also exhorted to avoid alcohol and set a moral example. In 1903 the renamed 'Frances Willard Clubs' (after the prominent American temperance leader) offered instruction in fancy work, dressmaking, physical culture and cooking, with the occasional 'mandolin social evening' for light relief.[91] In 1900, the Try Society established the 'Hawksburn Girls' Club.' The feminist advocate and suffrage campaigner Vida Goldstein, whom I discuss further in Chapter Four as a leader in the campaign for Children's Courts, was one of the organisers. The Club met twice weekly in the School of Arts room at the Prahran Town Hall and offered (for a fee) classes in singing, writing, elocution and calisthenics. It also had an onsite library.[92] The various branches of the Women's Progressive League also entered the club movement. In the then outer eastern suburb of Kew, the local League was established in April 1900. In July 1902 the League took a 'House … near High Street for a girls' club,' and purchased a piano.[93] The 'Kew Girls' Club,' open to girls over 15, met weekly, with cooking and educational classes and music.[94] In Prahran, the council offered a room in 1902 and the local WPL sourced volunteers to teach cooking, dressmaking, calisthenics and elocution. 'An excellent feature,' the *Age* noted in its coverage of the club, 'will be the instruction of the girls in the making of children's clothes.'[95]

(e) The Regulation of Aboriginal Children

[90] Brownfoot, 'Women's Organisations and the Woman Movement in Victoria,' 56.
[91] Woman's Christian Temperance Union of Victoria, *Sixteenth Annual Report of the Woman's Christian Temperance Union of Victoria for 1903* (Melbourne: Spectator Publishing Co Ltd, 1904), 42.
[92] Toorak and South Yarra Try Society, *Twenty-Fourth Annual Report for the Year Ending 30 June 1907*, in SLV, *Records of the William Forster Try Boys' Society*, 1887-1986, MS 9910, Box 1, 12.
[93] 'Kew Girls' Club,' *Kew Mercury,* 18 July 1902, 2.
[94] 'Items of News,' *Kew Mercury*, 22 April 1904, 2.
[95] 'Girls' Club at Prahran,' *Age*, 29 November 1902, 10.

None of these initiatives was aimed at Aboriginal children in Victoria who, as I demonstrated in Chapter One, had been the subject of a distinctive (and discriminatory) legislative regime since 1869. From the late 1890s, the treatment of Aboriginal children was distinguished further from those of their non-Aboriginal peers. This came through an acceleration in the use of regulatory powers, again driven by the Board for the Protection of Aborigines. This confirmed Aboriginal children's very different legal status, one consequence of which was, as I shall argue in Chapter Five, their exclusion from the jurisdiction of the Children's Court. I discussed in Chapter One how the 1886 *Aborigines Act* created a settler-colonial definition of 'Aboriginality,' with the primary aim of restricting government support to 'full bloods' and a limited number of 'half castes' who were deemed unable to support themselves.[96] Children under the school leaving age were included within the definition of 'Aboriginality' unless they left the reserves with their 'half caste' parents. Orphan children could also be transferred by administrative order to the Neglected Children's Department. [97] Once they reached the age of fourteen, however, 'half caste' children were deemed able to support themselves.

The Board's aim, reflecting the racial theories driving settler-colonialism made operational by law, as well as the pragmatic desire to save the state money, was to integrate 'half caste' children into European society - albeit in a very clearly defined servile capacity.[98] Following the 1886 Act, the Board's initial response was to push for these young people to be placed in compulsory service placements or (for boys) in apprenticeships. In its 1890 annual report, the Board noted that new regulations had been made authorising the Board to place children, with '28 girls placed in service' and 'a few boys' in apprenticeships. 'Six little orphans' had also been 'transferred to the orphanage and industrial schools.'[99] These decisions caused some unease from mission directors, largely due to girls' vulnerability to sexual exploitation. In 1888, the Reverend Johann Stahle, manager of the Lake Condah Mission in south-western Victoria, argued

[96] Clare Land, 'Law and the Construction of 'Race': Critical Race Theory and the Aborigines Protection Act, 1886, Victoria, Australia,' in *Rethinking Colonial Histories: New and Alternative Approaches,* ed Penelope Edmonds and Samuel Furphy (Melbourne, RMIT Publishing, 2006), 137 – 140.
[97] Richard Broome, *Aboriginal Victorians: A History Since 1800* (Sydney: Allen and Unwin, 2005), 185 – 187.
[98] Ibid, 187 – 188.
[99] Board for the Protection of the Aborigines, *Twenty-Sixth Report of the Board for the Protection of the Aborigines in the Colony of Victoria* (Melbourne: Government Printer, 1890), 3.

that it would be better to maintain adolescent girls on the stations until they could marry 'self-supporting' young men, rather than risk them entering short-term relationships with 'unprincipled fellows.'[100] For the time being, however, the Board pushed on.

The removal of Aboriginal children from their families and communities increased from the late 1890s, at exactly the same time as the interventions I have discussed above were emerging to support non-Aboriginal children in their home environments.[101] This was hardly coincidental. Elevation of the white Australian family unit, and increased financial and social supports to ensure its survival, had as their corollary distrust of Aboriginal society and parenting. Increasingly, this was by definition deemed neglectful.[102] In 1899, the Board achieved a considerable enhancement to its regulatory powers, with the support of Thomas Millar, secretary for the Department for Neglected Children and Reformatory Schools. A new regulation under the *Aborigines Act* gave the executive power to order the transfer of *any* 'aboriginal child' to the Department for Neglected Children or Reformatory schools 'for the[ir] better care, custody or education.'[103] This regulation shifted Aboriginal children's legal status even further away from those of non-Aboriginal children. Not only did institutionalisation remain an executive decision, but there was no longer even a prior requirement for these children to be 'neglected,' 'unprotected' or 'orphaned.' As historians John Chesterman and Brian Galligan have emphasised, this regulation 'gave an administrative board a relatively unfettered power to remove children from their parents.'[104] The Board began exercising this power immediately. Its first targets were children aged between 12 and 14. This was avowedly in the interests of better 'industrial training,' but presumably also to shift the responsibility of finding these children employment to the Department for Neglected Children. In its 1900 annual report it noted that 'the practice of transferring these half-caste children on leaving the station schools has been adopted; and the system of training the boys on the farm at Bayswater and the girls at the home for domestic service, has been working remarkably well.' The children, it reassured its readership, were 'happy in

[100] Board for the Protection of the Aborigines, *Twenty-Fourth Report of the Board for the Protection of the Aborigines in the Colony of Victoria* (Melbourne: Government Printer, 1888), 8.
[101] Broome, *Aboriginal Victorians*, 192 – 193.
[102] Ibid, 189 – 191.
[103] 'Aborigines Act 1890 – Alteration of Regulations,' *Victorian Government Gazette*, 1 December 1899, 4383.
[104] Chesterman and Galligan, *Citizens Without Rights,* 27.

their new surroundings.'[105] I shall discuss in Chapter Three what these training regimes in fact involved, and the very different assumptions underlying the placement of Aboriginal children in industrial institutions. Overall, it was an overt confirmation of difference.

'Legislating Morality' and the Social Purity Movement, 1901 - 1906

(a) Delinquency and Degeneracy

In the last section of this Chapter, I demonstrated that a major change for (non-Aboriginal) children in Melbourne during the period between 1900 and 1906 was the enormous expansion in the provision of regulated leisure and training. This was largely coordinated by charitable organisations with existing roles in Victoria's decentralised welfare regime. The increased provision of 'organised leisure' reflected the growing emphasis on nationalism and Empire building in settler-colonial Melbourne, as well as the continuation of older anxieties about maintaining social order. Alongside these longstanding and emerging discourses, Melbourne reformers were also increasingly using a new language about offending and neglected children: the association between 'delinquency' and so-called 'degeneracy.' My close analysis of reformers' writings on 'degeneracy,' the specific subject of the next part of this Chapter, indicates that different individuals used this terminology in different, and sometimes quite contradictory, ways, but at its core it signalled a belief in physical or behavioural preconditions for perceived social problems. In this they were aided by the growth of the so-called 'social purity movement,' also discussed further below, which pushed strongly for greater government intervention against identified social harms, for adults and children, and used a variety of lobbying methods to promote their cause. In turn, as I argue further in Chapter Four, these legislative achievements persuaded reformers to campaign harder for Children's Courts.

In their writings about 'degeneracy', Melbourne reformers drew on a variety of influences, some of them contradictory. From the late nineteenth century, academic

[105] Board for the Protection of the Aborigines, *Thirty-Sixth Report of the Board for the Protection of the Aborigines in the Colony of Victoria* (Melbourne: Government Printer, 1900), 4.

concepts of criminality had increasingly stressed the importance of heredity in creating offenders.[106] Criminology as a distinctive discipline emerged in these years, drawing on another new discipline, anthropology. The positivist school, as it became known, included writers like the Italian academic Lombroso, the English writer Havelock Ellis and the American Richard Dugdale, author of 'The Jukes.' This school argued that criminals were marked by inherited physical differences, particularly underdeveloped cranial capacity and 'moral imbecility.'[107] Some Melbourne reformers borrowed this language. The Reverend Alexander Edgar, Superintendent of the Central Methodist Mission, argued in 1900 that 'hundreds [of] these boys and girls … are mere stunted beings, veritable 'human weeds' with bad faces.'[108] Selina Sutherland also stated on at least one occasion that young mothers were likely to be 'weak and feeble minded.' She advocated removing their children from their care, to ensure that (the children) could be 'trained to be strong.'[109] A more nuanced approach came through the work of the English writer William Douglas Morrison, a popular author amongst Melbourne reformers and much cited in their commentaries. Morrison (1852 – 1943) had been a prison chaplain, and his book *Juvenile Offenders*, first published in 1896, advocated for a number of reforms, including, notably, Juvenile Courts. Morrison combined moral and environmental theories with new ideas about heredity. He distinguished 'neglected' and 'criminal' from 'ordinary' children, maintaining that they were 'distinctly more degenerate than the rest of the community,'[110] but he also argued that 'what shape those tendencies will assume depends on … social conditions.'[111]

Morrison's was more often the approach actually adopted by Melbourne reformers. As historian Mark Peel has observed in relation to a slightly later period,[112] local charitable workers continued to focus on social and environmental influences as the principal cause of youthful deviancy. Reformers did, however, increasingly contemplate how

[106] Leon Radzinowicz and Roger Hood, *A History of English Criminal Law and its Administration from 1750: Volume 5 – The Emergence of Penal Policy* (London: Stevens and Sons, 1986), 9.
[107] Ibid, 3 – 12.
[108] 'Juvenile Immorality – Its Extent, Causes and Remedies,' *Age*, 11 August 1900, 13.
[109] Ibid.
[110] William Douglas Morrison, *Juvenile Offenders* (New York: AMS Press Inc, 1972, first published 1896), 95 – 99.
[111] Ibid, 121. On Morrison's history, see Radzinowicz and Hood, *The Emergence of Penal Policy*, 87.
[112] Mark Peel, 'Charity, Casework and the Dramas of Class in Melbourne, 1920 – 1940: 'Feeling Your Position,'' *History Australia* 2(3) (2005): 83.9 – 83.10.

'contaminating' environments (home or external) could cause physical or moral weakness, in turn possibly transmitted to the next generation. Removal of the initial cause of corruption, therefore, was doubly important. 'The children of drunkards,' argued Commandant Booth of the Salvation Army in August 1900, 'are peculiarly liable to drift into immorality.'[113] Medical analogies were often deployed. In November 1901, Thornton Pearson of the Young Men's Christian Association, discussed in the previous chapter, argued that 'gross ignorance prevails as to the dangerous disease inducing effects of immorality.' The causes of this 'disease' included 'the almost irresistible demoralising effect of children growing up in locations of known immorality,' 'the publication of questionable literature,' and 'the display of unbecoming and indecent pictures.'[114] The same month, Brigadier Kyle, also of the Salvation Army, argued that juvenile immorality was fostered by 'the cheapening of amusements of every kind, and especially of pernicious reading matter.'[115] Cigarette smoking was a particular target. In April 1901, the *Australian Herald*, a publication of Charles Strong's Australian Church, argued that the practice needed to be 'legislated against immediately.' 'The cigarette habit,' the paper argued, 'may become a dangerous tyranny, hurtful to boys, physically, mentally and morally … especially if [there is] an hereditary tendency to nervousness.'[116]

(b) The Social Purity Movement and Legislative Change

In these calls for legislative change, Melbourne reformers were supported and sometimes led by the growth of another social movement. Australian historian Don Gardner has argued that Melbourne society after 1903 was influenced very strongly by the so-called 'social purity movement.'[117] The early twentieth-century social purity movement in Melbourne was dominated by the dissenting Churches and had parallels across the English-speaking world. It rallied against 'degrading' aspects of public culture, mostly working-class entertainments. Restricting (or ideally eliminating) alcohol consumption, gambling, smoking and 'lewd' publications were its particular aims, and legislative change was a preferred mechanism. To achieve these ends, the movement deployed

[113] 'Juvenile Immorality – Its Extent, Causes and Remedies,' *Age*, 11 August 1900, 13.
[114] 'Juvenile Depravity: The Cause and Cure No I,' *Age*, 2 November 1901, 4.
[115] 'Juvenile Depravity: The Cause and Cure No 2,' *Age*, 6 November 1901, 7.
[116] 'Cigarette Smoking,' *Australian Herald* 8(8) (April 1901): 143.
[117] Gardner, *Victoria*, 292.

lobbying techniques like mass public meetings, often headed by preachers, marches on parliament, and mass petitions to demonstrate and garner support.[118] Ultimately, the pressure was significant enough that the Victorian government felt obliged to respond. As I shall discuss in more detail in Chapter Five, Victorian politics during this period were inherently conservative. However after 1904 Victoria entered into a period of heightened legislative activity, headed by the new Premier, Thomas Bent (later Sir Thomas, 1838 - 1909). Bent was a flamboyant figure who, while nominally conservative, also prioritised 'progress.' In fact, his administration behaved in a rather more activist manner than anyone could have anticipated.[119] William Forster noted approvingly in September 1906 that 'a wave of goodness or morality is spreading through our Australian land. All good men are agitating hard to rid this country of many social evils.'[120]

Two of these legislative changes were directed particularly towards children and young people. At the turn of the century cigarette sales were unregulated and smoking was a popular activity amongst adolescents. However by 1905 there was a growing literature on the harmful effects of nicotine on children's physical and moral development. In September 1906 the *Australian Boys' Herald*, a publication of the Try Society, maintained that cigarette smoking 'blights wit, conscience, muscle [and] will,' and led to a taste for 'strong liquor.'[121] On 13 July 1905 Alfred Outtrim, Liberal MP for Maryborough, introduced a private members' Bill restricting the sale of tobacco to children under 16.[122] The Bill was endorsed by the City Newsboys' Society, the Try Society and the WCTU, as well as members of the medical profession,[123] but it failed to pass following a counter-campaign by the Tobacconists' Association of Victoria.[124] Undeterred, Outtrim introduced the measure a year later,[125] and this Bill passed with amendments in September 1906.[126] Underage liquor consumption was another major object of both Melbourne reformers (particularly the WCTU) and the social purity movement. Like cigarettes, the sale of

[118] Ibid, 292 – 297.
[119] Ibid, 276 – 77.
[120] W.M. Forster, 'Letter to Country Boys,' *Australian Boys' Paper* 9(2) (1 September 1906): 38, in SLV, *Records of the William Forster Try Boys' Society*, 1887-1986, MS 9910, Box 3.
[121] 'Cigarette Smoking,' *Australian Boys' Paper* 9(3) (1 October 1906): 71, in SLV, *Records of the William Forster Try Boys' Society*, 1887-1986, MS 9910, Box 3.
[122] Victoria, *Parliamentary Debates (Legislative Assembly)*, 9 August 1905, 877 (Alfred Outtrim).
[123] Ibid, 879.
[124] Ibid, 880.
[125] Victoria, *Parliamentary Debates (Legislative Assembly)*, 1 August 1906, 655 – 656 (Alfred Outtrim).
[126] *Juvenile Smoking Prevention Act* 1906 (Vic).

alcohol to minors was not regulated.[127] In 1904, a new Licensing Amendment Bill made it illegal to 'knowingly sell or deliver or allow any person to sell or deliver … any liquor to any person under the age of 16 years.'[128] Reformers gained further successes in 1906, when a more comprehensive *Licensing Act* passed Parliament.[129] This included provisions that girls under 21, unless they were the wife or daughter of the publican, were not allowed to 'sell, supply or serve liquor' at all on licensed premises.[130]

(c) Legislating Against Truancy: The *Education Act* and Private Hearings

For reformers, both of these pieces of legislation served as models for enhancing the role of the state in children's lives, and, ultimately, a separate Court. In 1905, Melbourne reformers succeeded in advocating for another legislative change which set an important procedural precedent for Children's Courts. I have examined above and in Chapter One reformers' anxieties around truancy. In 1901 the Victorian government introduced amendments to the *Education Act* which had raised the threshold for attendance.[131] As in previous years, parents could be charged and fined for children's non-attendance.[132] The non-attendance provisions, however, proved difficult to enforce and after 1904 Melbourne reformers agitated for further changes. In December 1905 another amendment Act passed parliament. This raised the school leaving age to 14, with technical amendments to enhance implementation. The aim was that children could be picked up within a week if they were not in school.[133] The Act's major innovation, however, lay in its procedural provisions. This allowed parental prosecutions for truancy to be heard 'behind closed doors.' The major reason provided was that children could be called to give evidence in such cases and that privacy would encourage frank disclosure and a supportive environment.[134] As I shall demonstrate in Chapter Five, this was the first such legislative provision in Victoria. In formally acknowledging the desirability of

[127] Garden, *Victoria,* 297; Grimshaw et al, *Creating A Nation*, 173 – 174.
[128] *Licensing Act* 1904 (Vic), s 6(1).
[129] *Licensing Act* 1906 (Vic), s 8(1)(i).
[130] Ibid, s 87.
[131] *Education Act* 1901 (Vic), s 4.
[132] Ibid, s 5.
[133] *Education Act 1905* (Vic), s 3 (1) and (2); 'New Education Laws,' *Age*, 12 December 1905.
[134] *Education Act 1905* (Vic), s 6; Victoria*, Parliamentary Debates (Legislative Assembly)*, 31 October 1905, 2390.

private hearings for children, this provision of the *Education Act* paved the way for a central feature of the *Children's Court Act* a year later.

Conclusion

This Chapter has outlined key players in the debates about delinquency in Melbourne between 1890 and 1906 and the social and legislative interventions they promoted. Through a detailed analysis of reformist literature and newspaper articles, I have demonstrated key discursive changes as well as continuities from previous years. I argue that these discourses and interventions set key precedents for Children's Courts. During this period, earlier theories about offending children were overlaid by new cultural and racial ideas about nation building and the prevention of physical degeneracy. Poor urban children were increasingly depicted as potential assets to be cultivated in the national interest. This reflected social, economic and political changes in Melbourne and across Australia, most importantly the growth of settler-colonial nationalism and the social purity movement. These discursive shifts in turn fuelled an enormous growth in social interventions in Melbourne from 1900. This development further entrenched the role of non-state agencies in Melbourne's child welfare scene and prioritised a mixed model of individual responsibility and middle-class community intervention which became the model for Children's Courts. Reformers also achieved a significant amount of new legislation for children after 1900, including tobacco and liquor regulation and an expanded truancy regime. As I shall discuss further in Chapter Four, these successes, and the tactics to achieve them, strongly influenced Children's Court campaigners. By contrast, Aboriginal children also experienced an expansion of state regulation, but of a very different kind. From 1899 the removal of Aboriginal children from their communities accelerated without the prior requirement of 'neglect' or the minimal protection of a Court hearing. This entrenched further legal differences between Aboriginal and non-Aboriginal children and led ultimately, I shall argue in Chapter Five, to Aboriginal children's exclusion from the jurisdiction of the Children's Court. In the following Chapter, I shall explore the circumstances of those children who entered the Melbourne Court system between 1890 and 1906 to demonstrate how the complexities of their lives severely challenged theories about the moral bases for neglect and offending.

CHAPTER THREE
CHILDREN IN THE POLICE COURTS, 1890 – 1906

In Chapters One and Two I focused on middle-class reformers in Melbourne and how their anxieties about criminal and 'neglected' children led to new legal and social interventions between 1890 and 1906. I demonstrated that while reformers raised concerns about a variety of social and economic factors, their proposed legislative responses were invariably penal. Voluntary initiatives like clubs and societies were of necessity less so, but they did have the effect of establishing further the influence and remit of Victoria's charitable organisations. The importance of this will be discussed further in Chapters Four and Five. This Chapter now turns to the experiences of children in Melbourne's Police, or lower, Courts during the same period, the second focus of this thesis.[1] Children came before the Melbourne Police Courts in three major capacities, which often intersected. One was as criminal offenders. Children under 17 could also be charged with neglect. Finally, girls in particular appeared to give evidence as victims in sexual assault cases. I argue that the penal frameworks under which these children were dealt were manifestly inadequate to deal with the complex situations leading to a Court appearance, most obviously, the social consequences of poverty in a society without state welfare provision. This Chapter reveals that, overwhelmingly, economic and social disadvantage was the unifying experience for these children. Working-class children were considerably more likely to be charged with both neglect and criminal offences. They were also far more likely to come before the Courts as victims of sexual crimes.

The first part of this Chapter examines prosecution and sentencing trends for offending children, and reveals the limitations of an already modified criminal system in responding effectively to children's needs. The second turns to neglected children, whose situation generated considerable debate, but where actual change occurred outside the formal provisions of the *Neglected Children's Act*. I also outline the treatment of Aboriginal children, who were not granted even the formality of a Court hearing, but were increasingly subject to state wardship. The third part of the Chapter explores the

[1] I noted in the Introduction that I had been able to trace the further histories of some of these children. Their stories are detailed in Appendix E. In this Chapter I have highlighted the names of these children in bold.

particularly dire experiences of young girls in sexual offence cases, which, as I shall argue in Chapters Four and Five, formed the basis of women reformers' arguments for child victims to be included within the remit of a Children's Court. Overall, these children's life experiences present a stark counterpart to the largely comfortable backgrounds of reformers who claimed to speak on their behalf.

Juvenile Offenders

(a) The Legislative Framework

I discussed in Chapter One how juvenile offenders were subject to a distinctive legal regime in Victoria from the 1860s. In 1890, this regime was consolidated in Part II, Division 2 of a revised *Crimes Act,* which effectively re-enacted the *Juvenile Offenders Act* of 1887. It confirmed the existing reformatory system and allowed most charges against children under 17 to be heard summarily, or without the need for a jury trial.[2] The Act made fewer procedural distinctions. Once children reached the age of seven, which remained the age of criminal responsibility in Victoria throughout this period,[3] they could be formally charged and processed like adults. Cases in the Police Courts were heard before a bench of three Magistrates, recruited from a combination of stipendiary officials and unpaid local Justices of the Peace. More serious criminal charges (including carnal knowledge cases) were heard in the Supreme Court,[4] but these were always preceded by a committal hearing in the Police Court. Every Melbourne suburb had a Police Court. A busy inner-city Court often sat six days per week. Outer suburban Courts convened less often, perhaps once or twice per week. In addition to their adjudication role, unofficially Police Courts also provided entertainment for their local communities. Commentators routinely documented large crowds congregating in the Police Courts.[5] As well as attending their own hearings, young people came to support their friends and sit in on interesting cases. I shall discuss in Chapter Four how this spectacle attracted sustained criticism from Melbourne reformers.

[2] *Crimes Act* 1890 (Vic), s 329.
[3] The age was raised to eight in 1949, see *Crimes Act* 1949 (Vic), s 9.
[4] *Crimes Act* 1890 (Vic), s 386.
[5] Alice Henry, 'Juvenile Courts,' *Sydney Morning Herald*, 25 January 1905, 11.

City Police Court, Russell Street Melbourne, c. 1894
State Library Victoria, H15549/15.

Until 1907, children's hearings were conducted in the Police Courts. The City Police Court was unusually large (for comparison see the Williamstown Police Court on the cover page) but none of them made any specific provision for children.

(b) Was Juvenile Crime Rising? : Arrest Rates in Victoria, 1890 - 1906

In Chapter Two I explored Melbourne reformers' fears that juvenile crime was rising uncontrollably. My analysis of age-related statistics for the period 1890 - 1906, based on police returns for arrests across the colony (later state), indicates the opposite. The proportion of children and young people as a percentage of the arrested population, always relatively low, peaked in the late 1890s, before falling noticeably in the early twentieth century. This fall occurred alongside declining arrest rates for all age groups.[6] There are limits to the information about children's offending during this period. It is not possible to determine the exact amount of (reported) offending by age between 1890 and 1906. My major source, Victoria's annual government statistical registers,[7] documented the ages of people arrested but did not note the age of those charged by the alternative

[6] Appendix A, Table 1.
[7] The Statistical Registers (Law/Crime and Social Condition) are available online at the State Government of Victoria's parliamentary papers database, https://pov.ent.sirsidynix.net.au/client/en_GB/parl_paper/ I set out relevant statistical information regarding children's offending between 1890 and 1906 in Appendix A. When citing statistics in this Chapter, I refer to the Appendices rather than the registers.

way of summons. Court registries did not include any information about offenders' ages prior to the establishment of Children's Courts. As I shall discuss below, children and young people's arrest rates also included the charge of neglect, which in some years made up a very high percentage of all charges. Finally, these statistics, as with any of this nature, necessarily reflected policing patterns or apprehended crime (or neglect), rather than actual incidence.[8] Nevertheless, given the strong concentration of police attention on street offences in this period, which were more likely to involve younger people,[9] we can assume that the arrest statistics give us an indication of at least some key patterns of youthful (mis)behaviour.

In 1893, the peak depression year in Victoria, 466 children under 10, 634 children between 10 and 15 and 1733 young people between 15 and 20 were arrested and charged by the Victorian police force, out of a total of 28,623 people arrested and charged state-wide.[10] Overall, children and young people under 20 constituted 9.9 per cent of the arrested population.[11] It is important to note, however, that 696 (or 24.6 per cent) of these children and young people were charged with 'offences against public welfare,' mostly neglect. More than half of the children charged with neglect were under 10 (435).[12] The overall arrest statistics, then, obscure the lower rate of *criminal* offending amongst children and youth, particularly in the youngest age group. Juvenile arrest rates rose as a proportion of the population during the 1890s, before falling noticeably after 1900.[13] In 1900 children and young people under 20 made up 9.7 per cent of the arrested population (27,568). This fell to 7.8 per cent (23,631) in 1905. However this proportion continued to include neglect charges, which in some years made up a very high percentage of all arrests. In 1899, for example, children and young people constituted a seemingly high 10.5 per cent of the overall arrested population. But in fact, 45 per cent of these arrests were made under the *Neglected Children's Act* (1172 individual arrests).

[8] Mark Finnane, *Police and Government: Histories of Policing in Australia* (Melbourne: Oxford University Press, 1994), 71 – 73.
[9] Ibid, 71; Mark Finnane, 'Larrikins, Delinquents and Cops: Police and Young People in Australian History,' in *The Police and Young People in Australia,* ed. Rob White and Christine Alder (Cambridge and Melbourne: Cambridge University Press, 1994), 8.
[10] Appendix A, Table 1.
[11] From 1893, criminal statistics were calculated on the basis of individual arrests and primary charge. See note in the *Statistical Register of the Colony of Victoria for the Year 1893: Volume VIII Law/Crime* (Melbourne: Melbourne Government Printer, 1894), 29.
[12] Appendix A, Table 2.
[13] Appendix A, Table 1.

Children under 10 made up 71 per cent of these 1172 cases. In all but three years (1890 – 1892) neglect charges made up between a quarter and 40 per cent of these arrests.[14] Overall, then, a child in late nineteenth-century Melbourne, particularly a young child, was significantly more likely to come to the attention of the police for neglect than any individual criminal charge. I discuss the implications of this in more detail in the second section of this Chapter.

(c) Patterns of Offending

The charges laid against children and young people were very consistent over this decade, although unfortunately while charges were distinguished by age, individual offenders were not further distinguished by gender. As I set out in full in Appendix A, Tables 2 and 2A – 2C, after neglect, the most common charges for children aged between 10 and 15 were lower-level property offences, followed by offences 'against public order.' For the few criminal offenders under 10, property offences also dominated. For young people aged between 15 and 20, public order charges (including public drunkenness) were more numerous, followed again by minor property offences. There were very few violence or sexual charges laid against children and young people over this period. Boys outnumbered girls very significantly in the arrest statistics. Boys made up between 74 and 82 per cent of children and young people arrested between 1890 and 1906.[15] However as this included neglect charges, an examination of the comparative arrest rates of older boys and girls aged between 15 and 20 (thus involving significantly fewer charges of neglect) gives a better indication of girls' percentage of the offending population. In 1893, girls in this age group made up 14.4 per cent of arrests. In 1900 this had fallen slightly to 13 per cent, and by 1905 had fallen again to just over 10 per cent.

Other statistics provided information about the class status of offenders. The statistical registers tracked both the occupations (by gender, but not age)[16] and education levels (by age and gender) of people arrested. Both of these confirm that poor people were far more

[14] Appendix A, Tables 2, 2A, 2B and 2C.
[15] Appendix A, Table 3.
[16] The only age-related exception was the category 'no occupation under 15 years,' see for example *Statistical Register of the State of Victoria for the Year 1905: Volume VIII Law/Crime* (Melbourne: Melbourne Government Printer, 1906), 17.

likely to be arrested and charged. In 1905, for example, the most common occupation for males by a significant margin was unspecified 'labourer' (8,635). For females, after 'no specified occupation' (1912, which included all girls under 15) prostitutes were the most numerous (1,480), followed by domestic servants (523).[17] I argued in Chapter Two that much controversy about juvenile offending and neglect in Melbourne between 1900 and 1906 centred around truancy rates. The statistics give some weight to reformers' association between poor educational attainment and crime. Victoria's statistical registers reported on the capacity of all offenders to read and write when they came into custody. Juvenile offenders, and indeed the offending population overall, had noticeably poor literacy skills. While total illiteracy declined slightly amongst the 10-to-20-year age group during this period, most still had poor literacy skills, including the ability to read but not write. In 1905 24 (6.4 per cent) of 375 arrested children between 10 and 15 were unable to read, and the remaining 351 had imperfect literacy (so 93.6 per cent). For the 15 to 20 years age group, the situation was not much improved. Out of a total of 1060 young people charged, only 8 could 'read and write well.' (0.75 per cent). 1029 had poor literacy (97 per cent) and 23 were illiterate (2.1 per cent). During this whole period, no children aged between 10 – 15 were deemed to have 'superior instruction,' and only 12 young people between 15 and 20 had this higher level of education.[18]

(d) Offending Boys: Street and Property Offences

For information about the circumstances of individual children in the Melbourne Courts, my best sources were contemporary newspaper reports. Before 1907, there were no limits on reporting children's matters. Melbourne's daily newspapers had regular Court columns, and due to the frequency of these reports, they included accounts of more mundane proceedings as well as the sensationalist. Indeed what stands out for a modern readership is just how trivial many of these charges were, especially in the context of general anxiety about 'rising crime.' For boys, public order or minor street nuisances dominated many reports. Public order offending included 'playing games in the street,' a charge which by its nature targeted working-class children who had no other place to

[17] Ibid, 17.
[18] Appendix A, Tables 4A (children 10 – 15) and 4B (young people 15 -20). The register also included statistics for children under 10, but given the high numbers of children under school age in this group, they are less indicative of educational attainment.

associate or play. On 24 August 1891, for example, Thomas Walsh, 'a schoolboy,' was fined the large sum of 10 shillings plus 1/6 costs (default 12 hours' imprisonment)[19] by the Fitzroy Police Court for throwing stones. The Court heard that the police had received numerous complaints from neighbours about state schoolboys fighting in the street, and had obviously decided to take action.[20] Patterns of offending were seasonal. In summer boys came before the Courts for nude bathing. On 29 January 1894, Henry Delaney, aged 15, was fined five shillings (default 12 hours' imprisonment) at the Port Melbourne Court for 'indecent behaviour.' Henry had been swimming nude 'off the drain pier, Beaconsfield Parade.'[21] In winter, street football predominated. Magistrates sometimes recognised the inequity of these proceedings. On 22 May 1899 the *Herald* reported that six boys had appeared at Port Melbourne charged with playing football on the Esplanade. The Magistrate commented that 'the local authorities were to blame for not providing spaces where boys could play in the town. They could not stay indoors from school-time until they went to bed.' Nevertheless, the penal provisions of the law were applied. The boys were fined one shilling each, default six hours' imprisonment.[22]

Public gambling was another subject of significant police attention. Throughout this period, the police waged an ongoing battle to stop 'schools' of working-class boys gambling in the streets, particularly on Sundays, although with little apparent success.[23] Boys were usually caught playing the popular game of 'pitch and toss' or 'two up.' Sometimes this was not even for money but for cards or matchsticks.[24] Magistrates dealt with these charges with varying severity. On 18 September 1899 the Collingwood Police Court fined five youths (ages not specified) the huge sum of 50 shillings each (default three days' imprisonment) for playing two-up.'[25] On 22 August 1898, on the other hand, **Arthur and Reuben Brown** and James Renwick, appeared before the Melbourne City Police Court for the same charge. The boys had been part of a larger group of youth playing on a street corner in East Melbourne the previous evening, when they were

[19] For context, an adult male agricultural labourer that year generally earned between 18 and 28 shillings per week, see *Victorian Year Book 1890 – 1891: Volume II, Production* (Melbourne: Government Printer, 1891), 315.
[20] 'Police News,' *Age* (Melbourne), 25 August 1891, 6.
[21] 'Another Bathing Case,' *Herald* (Melbourne), 29 January 1894, 1.
[22] 'Street Football – A Magisterial Opinion,' *Herald*, 22 May 1899, 4.
[23] 'Two-Up Etiquette,' *Punch* (Melbourne), 2 August 1906, 189.
[24] 'Two Up for Safety Matches,' *Herald*, 9 June 1898, 2.
[25] 'Police Court – Today's Doings – Pitch and Toss,' *Herald*, 18 September 1899, 4.

surprised by three Constables. Police had been targeting the area because the Secretary of the Education Department had complained that gambling was occurring next door to the 'model' state school. A family friend of the Brown boys informed the Court that 'the father of the boys had died a week or two previously and their mother was presently ill in bed.' The Magistrate, Mr Panton (whom we met in Chapter Two) remarked that 'it would be much better for the police to disperse them, and not bring them here. They had no place to go for means of recreation, and they must go somewhere.' The boys were discharged with a warning not to appear before the Courts again.[26]

The other major reported category of public order offending for boys was 'offensive behaviour.' This was often used to target so-called 'larrikin' activities. 'Offensive behaviour' encompassed anything from blocking the pavement and jostling passers-by to whistling, shouting and swearing on the streets. Again, this was a working-class charge. Adolescent boys from the 'larrikin belt' of Fitzroy, Carlton and Collingwood, a phenomenon I discussed in Chapters One and Two, dominated newspaper articles. Offenders in these categories tended to be somewhat older and they were often treated severely by the Courts. On 10 February 1890 the Carlton bench handed down the very hefty fine of 60 shillings (alternatively one month's imprisonment) to Francis Dellegenne, a 'youth,' for using obscene language on Princes Oval on Sunday evening. Francis's crime was less the language than his status as one of a group of 'youths of the larrikin type' who frequented the park and 'made it almost impossible for respectable people to pass through.'[27] In February 1891, another 'youth,' John Gillis, also described as a 'larrikin,' appeared before the Collingwood Court. John had ridden a horse through the ranks of a Salvation Army parade, scattering the participants. He then fought the Constable who arrested him, causing an injury. The journalist noted that he had an impressive 22 prior Court appearances and had been flogged twice for robberies, but did not record his sentence.[28] The Salvation Army was also the target in an incident reported by the *Herald* a month later, when several boys, including William Pender, created 'a disturbance' at the Brunswick Barracks. They then used 'insulting language' to Army members, 'including a female' when told to leave. William was charged with trespass and insulting language. He

[26] 'Pitch and Toss in the Street,' *Age,* 23 August 1898, 6.
[27] ''Police News,' *Age*, 11 February 1890, 7.
[28] 'Affray with Larrikins at Collingwood – a Constable Disabled,' *Age,* 9 February 1891, 6.

pleaded drunkenness and lack of prior history in mitigation, but still received the very high fine of £10 or three days in default.[29]

After public order offending, theft (larceny) and related property offences made up the next largest category of reported cases. Again, poor boys dominated. Theft was taken seriously by Magistrates, reflecting those long-held legal assumptions, inherent within the English common law system, about the primacy of private property.[30] Difficult family circumstances were, though, the background to many of these reported cases. On 14 January 1902, for example, 13-year-old Frank Turner appeared before the Collingwood Court alongside his adoptive father, John Turner, for larceny of £20 worth of jewellery. The items had been taken from a pawnbroker, Frank's former employer, and had then been pawned. *The Age* reported that John Turner was a housepainter, 'formerly in good employment' but who had subsequently 'become addicted to drink.' Unusually, the Turners were represented, and both pleaded guilty. John received six months' imprisonment, and Frank was sent to the reformatory.[31] At the other end of the scale, eight-year-old **Albert Conquest** attracted much press attention when he appeared before the Melbourne Police Court on 6 April 1904 for theft of a toy trumpet, mostly due to his young age.[32] Albert was a state ward, but like many children formally committed to departmental care in Victoria, in fact lived with his mother Sarah and younger brother Norman in an impoverished locality in South Carlton. (I shall discuss this particular phenomenon below). The Police Court was a familiar environment for the Conquests, whose circumstances exemplified the close relationship between poverty, neglect and offending. Albert's father had deserted the family in late 1901.[33] Albert had appeared before the Courts twice before for neglect,[34] and his mother Sarah had recently been acquitted of soliciting.[35] Albert stated that he had taken the toy 'to get money for his mother.'[36] Magistrate Mr Panton, who was well acquainted with the family, ultimately

[29] 'Disturbing the Salvation Army – A Youth Arrested,' *Herald*, 30 March 1891, 1.
[30] Clive Emsley, *Crime and Society in Twentieth Century England*. (London and New York: Routledge, 2013), 57 – 58; Drew Gray, *Crime, Policing and Punishment in England, 1660 – 1914*. (London and New York: Bloomsbury, 2016), 329.
[31] 'Police Intelligence,' *Age* 15 January 1902, 7.
[32] 'The Pity of It! A Child of Eight Years in the Cells,' *Age*, 6 April 1904, 5.
[33] 'North Melbourne Police Court,' *North Melbourne Courier and West Melbourne Advertiser*, 7 March 1902, 2.
[34] Ibid. I was unable to trace these proceedings in the newspaper records.
[35] 'A Remarkable Case,' *Age*, 8 March 1904, 4.
[36] 'The Pity of it,' *Age*, 5.

discharged Albert into the care of his mother, albeit with a command to follow up the errant father, as 'the state should not be expected to support his family.'[37]

(e) Offending Girls: Larceny and Vagrancy

I demonstrated above, using Victoria's arrest statistics, that girls made up a small percentage of the offending population. They also tended to appear for different types of offences. Reported cases usually involved charges of either larceny (theft without violence) or vagrancy. Once more poverty was the unifying theme. Larceny cases often involved domestic servants who had stolen from their employers, reflecting the life circumstances and temptations of poor girls who were likely to be employed in private houses at low wages.[38] On 6 June 1903 teenager Mary Page (exact age not documented) appeared before the Fitzroy Court for stealing £4 worth of clothing from her 'invalid' employer, Mrs Williams. Mary pawned some of the articles and decamped to Seymour before being apprehended. She was fined 40 shillings, default 14 days' imprisonment, a sum which may have been as much as eight weeks' income.[39] Mary's motivations were not recorded, but desperate poverty formed the background to another case reported at length in *The Age* in 1905. On 9 June 1905, Elsie Evans, 'a little girl aged 14,' came before the South Melbourne Police Court for larceny of a diamond ring, worth £38, from her employer. Elsie, who 'cried bitterly' throughout the proceedings, admitted to the theft. She stated that she had pawned the ring for five shillings to buy boots for her brother and food for her mother and two younger siblings, aged four and two. Elsie's circumstances were severely impoverished. Elsie's stepfather, and father of her two younger siblings, had deserted the family. The family had apparently been squatting at their latest place of residence, and relied on neighbours and local charities for food and clothing. The Bench expressed some sympathy towards Elsie, and instead of convicting her for theft, committed her to state care, then discharged her into the custody of the Presbyterian Neglected Children's Aid Society. Miss Stewart from the Society attended Court to support Elsie and may already have been aware of the family.[40]

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[37] 'Juvenile Criminals,' *Age*, 6.
[38] Victoria Nagy and Alanna Piper, 'Risk Factors and Pathways to Imprisonment Among Incarcerated Women in Victoria, 1860 – 1920,' *Journal of Australian Studies* 42(3) (2018): 23.
[39] 'Police Intelligence,' *Age* 8 June 1903, 8.
[40] 'A Little Girl's Theft,' *Age*, 10 June 1905, 9.

The other major type of reported criminal cases for poor adolescent girls involved vagrancy charges. I argued in Chapter One that the charge of vagrancy had always been used to target various forms of 'problematic' behaviour, for adults and children. Sexual 'misconduct,' in various guises, was the most common example. In December 1904, two girls (names not recorded), aged 15 and 20, were charged with vagrancy following their 'recovery' from an 'Opium Den' in Little Collins St. *The Age* alleged that the girls were 'known in houses of ill fame in Little Bourke Street.' The elder was imprisoned and the younger girl sent to the reformatory.[41] Prostitution was also the major allegation against 17-year-old Susan Gray at the Richmond Police Court on 19 November 1900. Susan, described by *The Age* reporter as 'a rather prepossessing but very forward girl,' had come down from the country to 'stay with a girl named Sarah Hayward.' Through Sarah she met 'a young man,' George Turnbull, who seems to have used a combination of financial inducements and actual violence to convince her to engage in prostitution. George was convicted of keeping a disorderly house, and Susan of vagrancy. She was remanded for a week to allow her mother to return to Melbourne and take her home.[42] Parents could also instigate charges against teenage girls. In June 1906, 14-year-old **(Elizabeth) Emily McGee** ran away from home with John Hughes, her older boyfriend. Emily's mother filed charges of vagrancy against Emily and the police subsequently charged John with abduction and carnal knowledge. At John's committal hearing, the Fitzroy Police Court heard that Emily regularly 'stayed out and ran away,' smoked cigarettes, and drank beer. She also told the Court she had been previously 'tampered with' at the age of twelve. For her 'misbehaviour,' Emily was sent to the Abbotsford Convent, an industrial training institution which I discuss further below.[43] John Hughes was subsequently convicted of carnal knowledge. By contrast, he was sentenced to a week's imprisonment.[44]

A mere presence on the city streets could be enough to make out a vagrancy charge, even without evidence of either prostitution or offending. As I shall demonstrate in the second part of this Chapter, hanging around the streets could also constitute neglect. These

[41] 'Sidelights of Slum Life – Young Girls in an Opium Den,' *Age*, 20 December 1904, 8.
[42] 'Police Intelligence – Shocking Depravity,' *Age*, 20 November 1900, 6.
[43] 'Girl of Fourteen Leaves her Mother's House – Man Charged with Abduction,' *Herald*, 15 June 1906, 6.
[44] *R v John Hughes*, Melbourne Supreme Court, 16 July 1906 (PROV, Office of Public Prosecutions, *Criminal Trial Briefs*, VPRS 30/P/0000, Unit 1426, Item 292).

charges reflected enduring assumptions, explored in Chapters One and Two, about the moral dangers of the streets for young working-class girls. The story of **Mary Lee** and her friends illustrates this well. On 7 December 1897, Mary Lee, aged 17, and Alice Denham, aged 14, appeared before the Melbourne City Court on charges of vagrancy. Police alleged that the girls 'had been in the habit of frequenting [the streets] for some weeks past and misconducting themselves with young men and boys.' Alice's parents attended Court, stating that they thought she was 'in a situation.' Mary, described as a 'half-caste Chinese,' was an orphan. Her brother attended Court and stated that he would send her to relations in Ararat. Alice was committed to the reformatory and Mary discharged home.[45] Five months later, however, Mary was back before the Court with her friend Matilda McNeil. Police alleged that the conduct of the two was 'outrageous. They were the companions of … street thieves and the 'Rats' push,' living vagrant lives.' On this occasion both girls were represented by Mr Kane, a well-known criminal defence solicitor (presumably paid for by Mary's brother). He argued that their behaviour 'was a little wild [but] the same conduct by boys would be winked at.' Kane's defence was not successful. The Magistrates 'considered that the best thing for the girls would be the reformatory.' They were duly committed.[46]

(f) Sentencing Young Offenders

The *Crimes Act* also set out a sentencing regime for juvenile offenders. This replicated the *Juvenile Offenders Act* (1887), the feature of which I outlined in Chapter One. The lowest rung on the sentencing hierarchy allowed first offenders to be released on what was called 'probation,' actually a suspended sentence with a recognisance to be of good behaviour. In addition, children could be fined or cautioned.[47] Section 329 of the Act stated that children who had been convicted of any offence punishable by a term of imprisonment could be committed to a reformatory or the Neglected Children's Department instead of gaol. Children could also be transferred from gaol to the reformatory.[48] As I argued in Chapter One, these options remained primarily penal in nature. Even the availability of a departmental committal, supposedly in recognition that

[45] 'Two Bad Girls – A Distressing Case,' *Herald*, 7 December 1897, 1.
[46] 'Deplorable Depravity – Young Girls Charged,' *Herald*, 18 May 1898, 2.
[47] *Crimes Act* 1890 (Vic), s 353.
[48] Ibid, s 335.

a child was more in need of 'welfare' than 'criminal' intervention, was highly discretionary and depended on age and alleged moral standing. Children under 12 who had 'not … been leading an immoral or depraved life' could be committed to the Department for Neglected Children instead of the reformatory. Children over 12, and those under that age who had 'been leading an immoral or depraved life,' were supposed to go straight to the reformatory. In practice, as I discussed in relation to Elsie Evans, older offenders were also sometimes committed to the Neglected Children's Department, but this required a certain amount of legal subterfuge.

Both these case examples and statistics from the *Statistical Registers* indicated several clear sentencing trends over the period 1890 - 1906. Younger children were quite often simply cautioned and discharged, especially for minor offences. While there was no debate as such about the age of criminal responsibility during this period, Magistrates increasingly expressed unease about 'criminalising' small children, including their attendance before the Courts. On 21 August 1891, for example, the Brighton bench 'let off' two 'little boys,' charged with breaking into the Wesleyan church and theft of 6 ½ d, 'with a severe caution, being of tender years.'[49] The other major sentencing option, as demonstrated in many cases above, was a fine. Girls were less likely to be dealt with in this way, for reasons I shall explore shortly. Fines were intended as an alternative to immediate detention, and in this way were somewhat progressive. Children also tended to be fined at lower rates than adults. Nevertheless, they still had penal consequences. All fines had a term of imprisonment attached in default of payment, and even a low-level fine was usually well beyond what most poor boys – or their families – could pay easily.[50] Many fines were not paid. The Victorian statistical register for 1905 reveals that 5,494 males and 1468 females served a period of imprisonment in lieu of paying Police Court fines: a staggering 45 and 46 per cent, respectively, of all prisoners. The number who actually paid their fines were noticeably less, at 4952 males and 884 females.[51]

What was also very noticeable in the cases and statistics during this period was a decided move away from sentencing juvenile offenders to imprisonment, or indeed a reformatory

[49] 'Police News,' *Age*, 22 August 1891, 10.
[50] See for example a mother's protest against a fine in 'Police Intelligence,' *Age*, 28 April 1905, 8.
[51] *Statistical Register 1905 - Law/Crime*, 18.

committal. Again, this was most evident in younger age groups. The *Statistical Registers* revealed that in 1890 there were 977 children and young people in Victorian gaols, 854 boys and 123 girls. This included nine boys and four girls aged under 10. By 1906, overall numbers had more than halved to 445. There were no children under 10, and only 23 boys (no girls) aged between 10 and 15.[52] Reformatory committals were more common, but again these were generally in decline.[53] As I set out in Appendix B, the numbers of new committals peaked in the mid-1890s before falling. In 1896, there were 156 new committals to the reformatories (not distinguished by gender). By 1906, numbers had fallen to less than a third of this, or a total of 51 (36 boys and 15 girls). Quite why Magistrates were turning so decisively away from incarceration is not entirely unclear, but presumably it reflected changing attitudes to children as in need of 'paternal guidance,' which I explored in Chapter Two. Certainly, my analysis of reported cases, discussed further in the second part of this Chapter, indicates that reformatory committals for boys (girls, as I discuss further below, were treated somewhat differently) tended to be reserved for either particularly serious offending, repeat offenders, or for those who presented as 'out of control.' A reformatory committal did not necessarily mean long-term incarceration. As I foreshadowed in Chapter One, after 1887, large-scale government institutions were broken up and the responsibility for managing reformatory children was delegated to private organisations. By 1900, there were ten private reformatories in Victoria.[54] In these institutions' boys were largely trained to be farm labourers or sometimes in trades, and once over the school leaving age they were usually sent into service, which also saved the Department paying for their upkeep.[55]

(g) Girls and Reformatory Committals

Girls were treated differently both by the Courts and by the Department for Neglected Children and Reformatory Schools. While they offended in significantly smaller numbers, my analysis of statistics and reported cases reveals that they were often dealt with more severely. This continued gendered differential was another major sentencing trend I

[52] Appendix A, Table 5.
[53] Appendix B, Table 1.
[54] Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year* 1900 (Melbourne: Government Printer, 1901), 9.
[55] Ibid.

observed for this period. As I outlined in the Introduction, for a later period, scholars like Kerry Carrington have noted a consistent tendency for girls to be institutionalised in greater numbers than boys.[56] This reflected enduring moral assumptions, explored in Chapters One and Two, that offending girls presented particular moral problems and that special training was necessary. For the years between 1890 and 1906 in which gendered figures are available, again set out in Appendix B, girls' reformatory committal rates were certainly significantly higher than their percentage of the offending population. I shall also discuss below how they dominated admissions to 'industrial' institutions. In 1893, for example, girls between 10 and 15 made up 10 per cent of all criminal offenders. For girls between 15 and 20 the proportion was 14.4 per cent. Yet girls that year made up 26 per cent of all new reformatory committals (19 out of 72). By 1905 overall numbers had reduced noticeably, but girls were still significantly overrepresented. They made up only eight per cent of young offenders under 20, but 20 per cent of committals (seven out of 35). Girls were also more likely to remain under state guardianship, and in institutions, for longer periods of time. In 1905, significantly more girls than boys were 'reformatory wards' (128 as opposed to 107 boys) and in institutions (90 girls to 61 boys), which reflected the lower release rate. 'Delinquent girls' were certainly viewed as particularly challenging by reformatory staff. 'It has been very hard indeed trying to teach the girls,' Mary Faris, matron of St Ann's Reformatory School in Heywood, near Portland, declared in 1901. '[T]here is incapacity all around.'[57]

Another method by which children could be sent to the reformatories in Victoria was via an administrative transfer from the Neglected Children's Department. Although the transfer had to be signed off by the relevant Minister, there was no requirement for a Court appearance.[58] Again, girls were considerably more likely to be dealt with in this way than boys.[59] For every year for which we have gendered figures, except one, more girls entered the reformatories via administrative transfer than through a Court conviction. In 1905, for example, seven girls were committed to the reformatories by the Courts. Seventeen came in via the transfer provision. As I shall argue further below, girls facing charges of neglect due to sexual 'misconduct,' including cases where they had in

[56] Kerry Carrington, *Offending Girls: Sex, Youth and Justice* (Sydney: Allen and Unwin, 1993), 128 – 139.
[57] Department for Neglected Children, *Report for the Year* 1900, 12.
[58] *Neglected Children's Act* 1890 (Vic), s 28.
[59] Appendix B, Table 1.

fact been the victims of adult sexual exploitation, were at particularly high risk of ending up in the reformatories. Girls' reformatory institutions were managed, like boys', by private organisations which trained their inmates in domestic service.[60] Once deemed sufficiently trained and tractable, girls were sent out to service, and employers then paid their wages. Interestingly, more 'reformatory girls' than boys were in service, but this may again have reflected the fact that they remained wards of the state for longer. In 1905, 33 reformatory girls were in service placements, as opposed to 21 boys.[61]

Neglected Children

(a) Definitions and Numbers

'Neglected' children also appeared very regularly before the Melbourne Police Courts. Between 1890 and 1906 these children were dealt with under the *Neglected Children's Act* (1890). I argued in Chapter One that this Act had precursors in English vagrancy and industrial schools legislation, all of which were concerned primarily with the maintenance of public order. For this reason, the Act's terminology and procedures were criminal in nature. Sections 18 and 21 – 24 of the 1890 Act provided that children under 17 could be apprehended for begging; if they had been found 'wandering about' without a home or visible means of subsistence; if they had associated with criminals or vagrants, or if they had committed an offence not punishable by imprisonment. If they were under 10 they could also be arrested for trading on the streets after dark. Children under 16 who had been living in brothels or associating with prostitutes could likewise be committed, as I discussed in Chapter One, as could children under 15 if their parents were 'unable to control them.'[62] With the noticeable exception of Aboriginal children, as I have noted in previous Chapters and shall discuss further below, 'neglected' children were formally charged and had to appear in person at the Police Court. When they were committed to the care of the Department a conviction was recorded against their name.[63] I have already pointed out the blurred lines between criminal and neglect charges in

[60] Department for Neglected Children, *Report for the Year 1900*, 6, 12.
[61] Department for Neglected Children and Reformatory Schools, *Report of the Acting-Secretary and Inspector for the Year 1905* (Melbourne: Government Printer, 1906), 6.
[62] *Neglected Children's Act* 1890 (Vic), ss 18, 21 and 23.
[63] Ibid, s 25.

practice. This elision was also reflected in the way in which neglect continued to be reported in the *Statistical Registers.* Until 1907 it was included as a sub-category of 'offences against public welfare.' In all, this normalised and embedded the criminalisation of welfare concerns.

I analysed the total number of charges laid under the *Neglected Children's Act* between 1890 and 1906, again drawn from the *Statistical Registers*. These are set out in full in Appendix A, Tables 1 and 2. Numbers rose significantly between 1890 and 1900, from 700 in 1890 to 1184 in 1901. From 1902, Departmental alarm at rising numbers led to an attempt to enforce the technical meaning of 'neglect,'[64] and charges fell to a low of 524 in 1904. However after this they rapidly began to rise again, and in 1906 817 neglect charges were laid. Not all children were 'convicted' of neglect, but this proportion also rose significantly. The annual reports of the government office responsible for administering the system of state wardship, the Department for Neglected Children and Reformatory Schools, recorded the number of new committals each year.[65] In the early 1890s numbers were relatively modest. In 1890, 390 children were committed to state care. Committals grew rapidly from the middle of the decade in the wake of the depression. By 1898, admissions had shot up to 1,020, or 84 per cent of all charges. The admission rate declined slightly in 1899 and 1900, before rising to a new peak of 1,152 in 1901 (97 per cent). Numbers fell between 1902 and 1904 but then rose again swiftly. In 1906, 702 children were committed (86 per cent of all charges). Successive Department secretaries reluctantly acknowledged that economic factors played a part in this growth rate, although they still placed a moral overlay over this explanation. In 1898, secretary Thomas Millar conceded that the depression did partially explain rising numbers, but argued that 'much must [also] be attributed to a wholesale undermining of that strong feeling of reliance on personal and local effort in times of adversity.'[66]

(b) Neglect in the Police Courts: Impoverished Families

[64] Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1901* (Melbourne: Government Printer, 1902), 4; Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1902* (Melbourne: Government Printer 1903), 3.
[65] These are set out (by age at committal and total numbers) in Appendix B, Table 2.
[66] Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1898* (Melbourne: Government Printer, 1899), 4.

My analysis of both departmental records and newspaper reports, which often covered these cases in some detail, certainly indicates that many neglected children came before the Courts due to parental, and more specifically maternal, poverty. As I discussed in Chapter One, Victorian parliamentarians had always refused to contemplate formal state welfare provision, preferring to leave this to what historian Shurlee Swain has described as Victoria's 'charitable network.'[67] However by the mid-1890s, as I noted in Chapter Two, this 'network' had almost collapsed under the weight of unprecedented demand in the face of economic collapse. In the absence of other alternatives, the *Neglected Children's Act* increasingly became a de-facto safety net for impoverished families. Mothers (and almost exclusively they were mothers) applied to have their children committed to state care, in the hopes that they would be paid the foster parents' allowance to have their children 'boarded out' to them.[68] This scheme had no basis in law, unlike in neighbouring South Australia, the model for the Boarding Out scheme but which also made specific provision for 'destitute' children.[69] However from the middle of the 1890s Magistrates increasingly made such orders, presumably out of both sympathy and practicality. In the process, they pushed severely the boundaries of the *Neglected Children's Act*. In 1898, the first year that the phenomenon was documented, 611 of Victoria's 4,196 state wards, or 14.5 per cent, were residing with their mothers. By 1906, 972 out of 4,920, or nearly 20 per cent, were living at home. Overall, between one quarter and one half of all new committals were returned home over this decade.[70] Department secretaries were evidently conflicted about this trend. On the one hand, they remained deeply uneasy about encouraging 'dependence.' But they also acknowledged, as Thomas Millar conceded in 1898, that it was a 'humane' development assisting women in need.[71] Millar's own preference was for the legislature to develop an alternative scheme, to avoid 'deserving widows and deserted wives … having to go through the ordeal of taking their

[67] Shurlee Swain, 'The Victorian Charitable Network in the 1890s,' (PhD Thesis, Department of History, University of Melbourne, 1977): 8 – 9, 45.
[68] Marian Quartly and Judith Smart, *Respectable Radicals: A History of the National Council of Women of Australia, 1896 – 2006* (Melbourne: Monash University Publishing, 2015), 59.
[69] *Destitute Persons Relief Act* 1866 (SA), s 16.
[70] Appendix B, Table 4.
[71] Department for Neglected Children, *Report for the Year 1898*, 4

little ones before the justices.'[72] As I shall discuss in Chapter Five, for various reasons this recommendation gained no traction during this period.

'Deserving widows' were one of the major categories of applicants in reported cases, as historian Christina Twomey has also argued in relation to an earlier period.[73] When family and charitable supports had been exhausted these women essentially had only two options: seek state support via the Courts, or hand over their children to the guardianship of one of Victoria's private charities. Most preferred to try and keep their children at home, although they faced two major hurdles. The first was whether the children should be made wards at all, and the secondary issue was whether they should be returned home. To succeed on both counts, a mother needed to prove not only that she was poor and without male support, but that she was of good character and had the capacity to care for her children appropriately if provided with financial support. In other words, for a successful application, a woman had effectively to demonstrate that her children were *not* neglected according to the terms of the Act. The process clearly favoured 'respectable' working-class women who had fallen on hard times through no perceived fault. On 8 October 1901, Mary Thomas applied to the Essendon Police Court to commit her four youngest children (of eight), aged between one and ten. Mary was a widow whose husband, a railway porter, had been killed in an accident 18 months previously. His colleagues had contributed money towards the support of Mary and the children, but these funds were now nearly exhausted. Mary was assisted in Court by Mrs Brunton, 'visitor for the local Ladies' Benevolent Society.' The LBS had been providing some financial support for the past six months and Mrs Brunton 'gave the applicant an excellent character.' The children were committed and presumably returned home.[74]

Alongside widows, deserted wives were the other major category of impoverished applicants seeking state assistance for their children. Deserted wives were viewed with more ambivalence by the Courts. This was largely because they had living husbands who might be located and forced to maintain their families. Magistrates were certainly

[72] Department for Neglected Children, *Report for the Year 1900*, 4.
[73] Christina Twomey, 'Gender, Welfare and the Colonial State: Victoria's 1864 *Neglected and Criminal Children's Act*,' *Labour History* 73 (1997): 171 – 177; for this period see my 'Deserving Widows and Deserted Wives: The *Neglected Children's Act* and State Support of Motherhood in Victoria, 1890 – 1910,' *Australian and New Zealand Law and History E-Journal* 4 (2012): 96 – 125.
[74] 'Fatherless Bairns – the State Will Provide,' *Herald*, 8 October 1901, 4.

inclined to try and get fathers to pay. Only particularly compelling cases seem to have been granted assistance in the first instance. Sarah Collier was one such successful applicant. Sarah, who was partially blind, appeared before the South Melbourne Police Court on 29 January 1898 with her three youngest children, **Lydia, Eveline and George**, aged seven, four and one. Sarah's husband had been a caretaker at the Melbourne Cricket Ground but had 'lost his position due to drink' and had then deserted his family. The police sergeant prosecuting the application described her husband as 'a most unmitigated scoundrel.' Before her husband left, Sarah had tried to provide for herself and her family by obtaining a situation, but her husband had 'compelled her to leave it.' Sarah was supported in Court by her mother and an (unnamed) charitable representative. The South Melbourne bench not only granted Sarah's application for all three children and recommended that they be boarded out to her, but also gave her 10 shillings from the poor box to tide her over and issued a warrant of arrest for the errant husband.[75] On the other hand, Sarah Conquest, mother of Albert whose case I discussed above, first sought a maintenance order against her husband a few months after he deserted his family.[76] Only after this was not paid did she go down the route of a neglect committal for her two young sons.

The third major category of parental applicants under the *Neglected Children's Act* were the mostly young mothers of illegitimate children. In these cases, however, the dynamic was significantly different. Single mothers were not granted support to maintain their children at home (the state could not 'sanction sin') and Magistrates were often reluctant to commit children for the same reason, even if the mother's situation was demonstrably desperate. At the Richmond police Court on 16 May 1892, for example, several mothers tried to commit six illegitimate children, but the only one who was successful was the one who most approximated dominant norms of respectability. Jessie Williams, although unmarried, had been in a long-term relationship with the father of her three children, who had left her to live in Western Australia. Crucially, her application was also supported by Miss Sutherland. The remainder were dismissed, even though, *The Age* noted, the women were 'shabbily dressed females, who had pitiful tales to tell.'[77] The

[75] 'Police Intelligence,' *Age*, 2 February 1898, 10.
[76] 'North Melbourne Police Court,' *North Melbourne Courier and West Melbourne Advertiser,* 7 March 1902, 2.
[77] 'Police News,' *Age*, 17 May 1892, 7.

support of charitable workers often made the difference between grudging success and failure. In October 1901, Margaret McVeigh, a 16-year-old former state ward, applied to the Carlton Police Court to commit her baby son **Alfred McVeigh.** Margaret had come to a charitable worker, Mrs Goldspink, as she was homeless and 'had no relatives.' Mrs Goldspink assured the bench that if Margaret's baby was committed, she would get the mother shelter in an institution and help her to find work. Baby Alfred was committed.[78]

(c) Neglected or Criminal? : Adolescents Before the Courts

Older children were more likely to come within the public order provisions of the *Neglected Children's Act*. Overall, far fewer adolescents were charged with neglect than younger children during this period. The major reason was that children over 13 were unlikely to be brought within a 'family' committal. As discussed in Chapter Two, for most of this period the school leaving age was 13, and older children were expected to work and contribute to the family income. The relative fall in the numbers of teenagers charged with neglect reflected the increasing use of the committal process as a form of social welfare. In 1893, 57 out of 437 new committals involved children aged 12 or over (26 per cent). In 1900 there were more adolescents numerically (93), but they were only 10.6 per cent of cases. By 1906, they made up only 59 out of 702, or 8.4 per cent.[79] Neither Court registry records nor departmental reports documented precisely the circumstances which brought older children to the attention of the authorities. In newspaper reports, however, these teenagers often stood on the borders of neglect and criminality. A number of scholars across English-speaking jurisdictions have argued that girls were more likely to be charged with these sorts of 'status' offences than boys, in the early twentieth century and after, reflecting greater social anxiety about girls in public places.[80] Interestingly, in Victoria this does not seem to have been the case, at least during this period. For the years in which we have gendered statistics, boys outnumbered girls in this age group.[81] Of

[78] 'A Neglected Child,' *Herald*, 15 October 1901, 4.
[79] Appendix B, Table 2.
[80] Meda Chesney-Lind and Randall G. Shelden, *Girls, Delinquency and Juvenile Justice (Fourth Edition).* (Oxford and Malden: Wiley Blackwell, 2014), 37 – 38; Ruth M. Alexander, *The 'Girl Problem' : Female Sexual Delinquency in New York, 1900 – 1903* (Ithaca and London: Cornell University Press, 1995), 4, 7, 12; Carrington, *Offending Girls*, 1; Shani D'Cruze and Louise A. Jackson, *Women, Crime and Justice in England Since 1660* (London: Palgrave Macmillan, 2009), 149.
[81] Appendix B, Table 3.

course, because girls made up such low numbers of criminal offenders, as a group they were considerably more likely to be charged with neglect than with a crime.

'Out of control' adolescent boys certainly featured in newspaper reports. They were often either charged simultaneously with a criminal offence or had a history of criminal offending. Poverty was again an overriding feature of these cases. **Ernest and John Quilty**, described as 'two very small boys … aged 12 and 13 respectively,' came before the Melbourne Court in April 1905 charged with using insulting language at Flinders Street railway station. The boys were arrested after they threw an apple at a porter which hit a passenger, and then 'defied' the police officer who arrested them. A neglect charge followed. Police argued that they were 'always hanging about the entrance' to the station where they 'hung around [the] booking windows and asked passengers for change.' The boys' family life was impoverished and difficult. Their 'father drank [and] did not work.' Their mother worked at the station every day from 2PM to 11PM (presumably why the boys spent so much time there). Both boys were committed to state care and their unemployed father was ordered to pay five shillings per week each in maintenance. The *Age* noted that '[t]he boys howled lustily as they were led away.'[82] On 22 January 1903, **Albert Treble**, also aged 13, was charged with neglect before the Port Melbourne Police Court. Albert had a history of offending, but the neglect charge was for absconding. The *Age* noted that 'the evidence of the boy's father and of the police went to show that he was almost incorrigible.' Albert had received a three-month suspended sentence for larceny and had then been charged with other theft offences. His father had been fined for his truancy and complained that 'it was almost impossible to keep him at home.' Albert was committed to the Department but was sent straight to the reformatory under the transfer provisions.[83]

For adolescent girls, alleged sexual contamination, or simply a presence on the city streets, were the most commonly-reported triggers for neglect proceedings. In these circumstances neglect overlapped virtually indeterminately with the criminal offence of vagrancy. The only difference seems to have been that older teenagers were relatively

[82] 'Two Neglected Children – A Gross Case,' *Age*, 18 April 1905, 8.
[83] 'An Uncontrollable Boy,' *Age*, 23 January 1903, 6; 'Items of News,' *Standard (Port Melbourne)*, 17 February 1900, 2; 'Bay Street Disturbance,' *Standard*, 3 January 1903, 2.

more likely to be charged with vagrancy. Again, impoverished girls were far more likely to come to the attention of the authorities. On 21 October 1895, **Mabel Luxton** and her companion, both aged 14, came before the City Police Court charged with neglect. The prosecution gave evidence that the girls 'were continually about the streets of the city, selling flowers and matches, and occasionally frequenting … places where seamen gather.'[84] Once more, these girls' employment seems to have resulted from familial poverty. Mabel's mother attended Court to plead for sympathy, arguing that 'she had been compelled to send her out selling flowers in the past, but was now in a position to keep her at home.' She got little sympathy from the presiding Magistrate (Mr Panton again), who criticised Mrs Luxton severely. 'It was disgraceful,' he thundered, 'to send girls out on the streets to their ruin.' He was prepared, however, to remand the girls for a week rather than immediately committing them to the care of the Department.[85] In another case, on 11 July 1901 Maud (Mary Alice) Stobaus and Louisa White, described as 'only 13 years of age,' were charged with neglect before the Carlton Police Court for juvenile prostitution. The *Age* reported that they had run away from home, instead 'occupying a room in a local hotel.' The evidence, the reporter noted primly, 'disclosed a shocking state of immorality.' Both girls were committed to the Department and were promptly transferred to the reformatory.[86] Robert Gibbins, a 'middle-aged man,' (and Victoria's hangman, which attracted considerable press commentary) was subsequently sentenced to four years' imprisonment for carnal knowledge of Maud, although the charge against Louisa was withdrawn.[87]

(d) The Placement of State Wards

The *Neglected Children's Act* also set out the placement options for neglected children after their committal, which were identical to those for reformatory children. The Act allowed state wards to be boarded out, sent to service, apprenticed to a trade, detained in an industrial institution or, as I have discussed above, to be transferred administratively to the reformatory.[88] I have demonstrated already that although outside

[84] 'Juvenile Depravity,' *Age*, 22 October 1895, 6.
[85] Ibid.
[86] ''Shocking Depravity,' *Age*, 12 July 1901, 7; 'On His Trial,' *Herald*, 20 August 1901, 4.
[87] 'Serious Accusation,' *Weekly Times* (Melbourne), 24 August 1901, 28.
[88] *Neglected Children's Act* 1890 (Vic), s 18(4).

the terms of the legislation, a substantial and growing proportion of state wards were in fact returned home to their mothers. The other option, particularly for younger children, was a foster placement. I argued in Chapter One that from the 1870s the Victorian government legislated to enshrine the principle of 'boarding out' for neglected children. Children were placed with foster families, ideally outside urban areas, who were paid a (modest) amount for their maintenance. Between 1890 and 1906 the majority of Victoria's state wards did indeed live in foster homes or with family. As at 31 December 1905, out of an overall 4813 'neglected' state wards, 2225 children (or nearly half) were in foster placements, 819 children were living at home with departmental support and 761 were in so-called 'probation homes' - that is, with family, but without financial support from the state.[89] The oversight of all 'boarded out' children, including those who lived with their mothers, was vested in 'ladies' committees,' who theoretically visited the children on a regular basis to ensure that they were being treated appropriately. As I shall discuss shortly, lack of resources meant that this was more aspirational than actual practice.

The use of institutionalisation, or 'industrial schools,' was much less common. With the exception of Aboriginal children, whose distinctive situation I shall discuss shortly, it tended to be reserved for older, more problematic, adolescents who were considered to need targeted intervention. On 31 December 1905 there were only 135 children in Victorian industrial institutions, so a very small percentage of all wards.[90] Of these 103 were girls and 32 were boys, once again a noticeable gender differential which will also be discussed further below. Like the reformatories, in the 1890s the Victorian government delegated the training of neglected children to private organisations. These were paid by the state for each child admitted. By 1905, there were three 'industrial schools' for girls, the Albion Home in Glenroy, run by the Salvation Army; the Abbotsford Convent, for Catholic girls; and the Training Home for Protestant Girls, in East Melbourne. For boys, there were two institutions, the Bayswater Home (which also ran a reformatory on site) and – rather ironically given the association between alcohol and offending discussed in Chapter Two - the newly established Rutherglen Viticultural College, which

[89] Department for Neglected Children, *Report for the Year 1905*, 3.
[90] Ibid, 6.

trained boys in viticulture.[91] The difference between the industrial schools and the reformatories was minimal. Boys were largely trained to be farm labourers, or in trade skills with the aim of finding them an apprenticeship. The smaller numbers of boys in these schools reflected both the demand for (cheap) unskilled country labour, and the enduring assumption that 'neglected' working-class girls were of 'worse' character than their male counterparts, and so required more careful handling and training. The Abbotsford Convent, for example, was reserved for girls, as the Department's report for 1905 put it, 'that require *special* supervision and training.'[92] Like the reformatories, girls' industrial schools trained their inmates to be domestic servants, with the ultimate aim of placements in suburban households. 'Quite a number of girls have been placed in service during the year,' the Albion Home report also noted in 1905, 'and with the exception of one, all are doing well and giving every satisfaction.'[93]

(e) Aboriginal Children and Industrial Training Institutions

Industrial training schools were also, of course, the intended destination for Aboriginal children removed from their families under the 1899 *Aborigines Act* regulation for 'education or training.' I noted in Chapter Two that this sweeping regulation allowed any Aboriginal child, 'neglected' or otherwise, to be transferred to the Neglected Children's Department, and placed in an institution. In other words, the very status of Aboriginality was equated with that of neglect.[94] Unlike non-Aboriginal children, this removal did not have to be preceded by a Court hearing. In the first year of its operation, 10 'half caste' children (eight boys and two girls) were transferred under this provision. Their situation was discussed in detail in the Aboriginal Protection Board's report for that year as well as the report of the Neglected Children's Department, both with a strong air of justification. Both reported that five of the boys were sent to the Bayswater Farm, and two straight to service. One of the girls was sent to the Albion Home and then into domestic service. The other went immediately into service.[95] 'I feel sure,' stated Thomas

[91] 'Rutherglen Viticultural College,' *Bendigo Advertiser*, 7 November 1904, 6.
[92] Department for Neglected Children, *Report for the Year 1905,* 4 (emphasis in original).
[93] Ibid, 5.
[94] Richard Broome, *Aboriginal Victorians: A History Since 1800* (Sydney: Allen and Unwin, 2005), 189 – 191.
[95] Department for Neglected Children, *Report for the Year 1900,* 7 – 8; Board for the Protection of the Aborigines, *Twenty-Sixth Report of the Board for the Protection of the Aborigines in the Colony of Victoria* (Melbourne: Government Printer, 1900), 4.

Millar of the Department, 'that [this] is a step in the right direction, seeing that it practically places at [the Board's] disposal for the benefit of their wards the machinery of this Department.'[96]

There were some key differences between the adolescents who usually entered industrial training schools and this group of Aboriginal children. Far from being 'neglected' in any sense of the term, these children had what even the Department acknowledged to be 'respectable' parents, who were obviously distressed at their children's removal. Millar conceded that it was an 'anxious and difficult problem … when paternal claims conflict with the higher welfare and interest of their children.' This did not get in the way of the intended training regime. Millar's concession was to allow 'respectable parents' to visit their children, and '[s]ome … have already done so and have expressed themselves as being greatly pleased,' he reported reassuringly, if somewhat improbably.[97] Nor were these children in any way problematic. In fact, this first group seem to have been selected for their capacity to integrate into European society, presumably to justify this course of action.[98] Just how many 'half caste' children were removed under this regulatory provision is very unclear from the official records. After 1901, the Aborigines' Protection Board did not regularly report on these children, and the Department for Neglected Children did not document its admissions in a way which could distinguish them. Yet even if numbers were relatively small, the policy, as many scholars have emphasised, contributed to the further break up of families and communities, as well as displacing Aboriginal children, often permanently, from their cultural inheritance, with long lasting and devastating consequences.[99]

(f) The 'Children of the State' : Rescue or Exploitation?

These cases demonstrate again that the other major placement option for both Aboriginal and non-Aboriginal children over the school leaving age was domestic service, or, for boys, rural labouring. Children who became state wards over the age of 13 could be sent directly into placements facilitated by the Department. However as all children were

[96] Department for Neglected Children, *Report for the Year 1900*, 7.
[97] Ibid, 8.
[98] Board for the Protection of the Aborigines, *Report for the Year 1900*, 4.
[99] Broome, *Aboriginal Victorians,* 186 – 187.

made state wards until at least their eighteenth birthdays, children also often transitioned out of foster homes, or indeed their own homes, into some form of service before they left departmental care. The numbers of state wards 'in service' were significant. As at 31 December 1905, 854 'neglected' children were in service placements.[100] Except during the worst years of the 1890s depression, demand for these children was high. Victoria had an endemic shortage of domestic servants and the children were cheap, despite the Department theoretically advocating for appropriate pay and conditions.[101] As I foreshadowed above, the major advantage of these arrangements for the Department was that the employer assumed financial responsibility for the child. John Davies, then Acting Inspector of the Department for Neglected Children, remarked warningly in his annual report for 1905 that '[t]he provision of the Education Act … which requires children to attend school until fourteen years of age … is one which will largely increase the annual vote [i.e. allocation of funds] for boarded out wards …' [102] The children did not usually receive their wages directly, beyond a living allowance. The Department encouraged employers to bank the rest, returning the money to the children when they left state care. This was justified as encouraging 'prudent saving.' In the same report, Davies noted that '[a] proportion of wages is saved for the future advantage of the children, and it is quite common for a boy or girl to receive as much as £20 at the expiration of the term of control.' [103]

Department reports tended to paint a rosy picture of state wards in their rural foster placements and industrious 'service homes.'[104] The reality was often rather less benign, and exposed yet more limitations in the quasi-public, quasi-private Victorian welfare system. In February 1905, *The Age* launched the first of three exposés into the treatment of 'children of the state.' The articles highlighted multiple examples of inadequate supervision, exploitative work conditions, underpayment (or, indeed, non-payment) and – for girls – sexual abuse. Ultimately, it argued, the state had not 'rescued' these children

[100] Department for Neglected Children, *Report for the Year 1905,* 6.
[101] Wages for wards, already low, seem to have been extremely low during the 1890s depression, as unemployment was so high that the Department took whatever placements it could. In 1900, the Department reported that it was 'reviewing' the wage rates for state wards, see Department for Neglected Children, *Report for the Year 1900,* 4.
[102] Department for Neglected Children, *Report for the Year* 1905, 3.
[103] Ibid, 4.
[104] Ibid, 3.

but rather created the preconditions for 'a new generation of criminals and paupers.'[105] The paper began by criticising the supervision of male wards placed in rural households, often as farm servants. '[T]he system is open to abuse,' the article emphasised. '[E]vidence may be found at any time to show that a number of people who are entrusted with state children … apply for a boy simply with the idea of getting a cheap little drudge.'[106] For girls, the major danger was moral corruption, of which the press found multiple examples. 'It is quite possible under present methods,' the *Age* argued in August 1905, 'for innocent little girls to be sent into service in … country homes, where the household consists of men and youth under conditions approximating to those of savagery.'[107] The root of the problem, according to the *Age,* was the system of delegated authority. The paper attacked severely Victoria's private charitable organisations, arguing that they were 'professional philanthropists,' exploiting children for money.[108] The paper argued for an immediate return to state authority, 'instead of leaving them to the mercy of anybody who may … set up as a philanthropist.'[109] I shall argue in Chapter Six that this critique may have led to a decline in the use of foster placements after 1906, or at least more scrutiny of potential foster parents. The influence of charitable associations, and their role in child welfare administration, however, continued unchanged.

Child Victims

(a) Sexual Offences in the Police Courts: Legislation and Numbers

The third major capacity in which children, overwhelmingly girls, appeared before the Melbourne Police Courts was as victims of sexual offending. [110] This, as I have already demonstrated above, could also trigger a charge of neglect. I discussed in Chapter Two

[105] 'Boys of the State – Are We Making Criminals and Paupers?' *Age*, 2 February 1905, 5.
[106] Ibid.
[107] Ibid.
[108] 'Boys of the State – Professional Philanthropists Living on 'Waifs and Strays,'' *Age*, 6 February 1905, 5.
[109] 'Children of the State,' *Age*, 29 August 1905, 11.
[110] Girls were overwhelmingly the victims of (reported) sexual offending during this period, although there were a few cases involving young boys. Yorick Smaal's work on young male offenders and victims discusses the different dynamics of these prosecutions, see Yorick Smaal, 'Boys and homosex: Danger and Possibility in Queensland, 1890-1914', in *Children, Childhood and Youth in the British World*, ed. Shirleene Robinson and Simon Sleight. (Basingstoke and New York: Palgrave Macmillan, 2016), 221-36; Yorick Smaal, 'An Imbecility of Body as Well as Mind: Common Law and the Sexual (In)capacity of Boys,' *Criminal Law Journal* 36 (2012): 249 – 251.

how women's organisations campaigned vigorously for changes to Victoria's age of consent legislation in the early 1890s. The 1891 *Crimes Amendment Act* raised the age of consent to 16 for carnal knowledge and indecent assault, and created a new offence of incest.[111] This brought within the purview of the criminal law a significantly wider group of potential victims and led to more sexual offence charges, although hardly a flood. Between 1892 and 1906, Victorian Police laid (colony/state-wide) 499 charges of carnal knowledge involving girls under 16 and 129 charges of attempted carnal knowledge.[112] These charges were ultimately heard and determined in the Supreme Court, but they were preceded by a committal (or preliminary) hearing in the Police Court. There was a considerable attrition rate at the committal stage. My analysis of numbers in the *Statistical Registers* reveals that the committal rate for carnal knowledge cases varied from 62 per cent to 82 per cent between 1893 and 1906. On average, therefore, about a quarter of cases did not proceed. Interestingly, almost all attempted carnal knowledge cases proceeded to trial, perhaps because this was a less serious offence.[113] Conviction rates were lower still. In my own study of the 68 carnal knowledge and attempted carnal knowledge cases listed before the Melbourne Supreme Court between 1900 and 1906,[114] only 37 per cent of defendants were convicted of the main charge. Ten per cent pleaded guilty, although this was more often to a lesser charge. Of the others, 43 per cent were acquitted and six per cent were convicted of a lesser charge. The remainder did not proceed to trial.[115]

(b) Giving Evidence

Girls' treatment by the Courts in these cases was usually poor. As with other criminal matters, there were no special arrangements for child witnesses.[116] Evidence was mostly given in public, and frequently before exclusively male audiences. Magistrates routinely gave directions to clear the Courts of women and children before 'indelicate' evidence

[111] *Crimes Act Amendment Act* 1891 (Vic), ss 5(1) and 8(1).
[112] Appendix A, Table 6.
[113] Appendix A, Table 6.
[114] Jennifer Anderson, 'Using the Law: Working-Class Communities and Carnal Knowledge Cases in Victoria, 1900 – 1906,' in Diane Kirkby (ed), *Past Law, Present Histories.* (2012: ANU E-Press): 85 – 106.
[115] Ibid, 89.
[116] Robyn Blewer has noted the ad-hoc arrangements which were put in place to assist children, see Robyn Blewer, 'Making Kiddies At Home in Court: Supporting Child Witnesses in Twentieth Century Australian Courtrooms,' *Law and History* 62(4) (2017): 71 – 76.

was given, leaving girls, as feminist campaigner Vida Goldstein put it tartly in 1902, 'alone in a room crowded with men.'[117] Perhaps predictably, these sorts of cases also often attracted onlookers. Courts were often described as 'crowded' in carnal knowledge matters.[118] Giving evidence in this space could be an overwhelming challenge. The newspaper accounts I analysed were full of girls hesitating, stumbling and crying as they tried to recount what had happened. The problem was compounded by Magistrates threatening girls with contempt of Court if they did not proceed. At the Brunswick Police Court on 24 August 1898, Arthur Orford, 'a married man with four children' was charged with what was described as 'improper intimacy' with **Maud Jones**, aged 14.[119] The Court was cleared of women before Maud was sworn in. Maud gave evidence that the two had previously been neighbours and Arthur had assaulted her when he walked her home after a visit. She became pregnant. When asked for details, however, Maud 'burst into tears and refused to give definite evidence as to the offence.' Maud was threatened with contempt of Court, but was still unable to speak coherently. Eventually 'and after being over an hour in the box,' *the Age* reported, she 'asked for her mother, who was brought into Court.' Maud then gave her evidence.[120] Arthur Orford was committed for trial before the Melbourne Supreme Court in December 1898, but was acquitted.[121] In Chapters Four and Five I shall examine how the treatment of young female complainants fuelled female reformers' resolve to incorporate child victims into the Children's Court.

Another impediment for girls was the practical, if not legal, requirement for corroboration. Unlike some other jurisdictions, in Victoria there was no legislative requirement for corroboration in carnal knowledge cases if girls were old enough to give sworn evidence.[122] In practice Magistrates rarely committed – or Judges convicted - an accused on the evidence of a victim alone.[123] On 6 December 1898, for example, Thomas

[117] ''Children's Courts and Police Matrons,' *Woman's Sphere*, 145.
[118] 'A Grave Accusation,' *Independent (Footscray)*, 30 September 1905, 2.
[119] 'Serious Charges Against a Married Man,' *Age*, 18 August 1898, 6.
[120] 'Police Intelligence,' *Age*, 25 August 1898, 3.
[121] 'Criminal Court,' *Age*, 17 December 1898, 10.
[122] The only carnal knowledge offence in the 1891 *Crimes Act Amendment Act* which required corroboration was the specific offence of carnal knowledge against a woman housed in a lunatic asylum, benevolent institution or charitable institution (presumably because these women would often be deemed incapable of giving sworn evidence). *Crimes Act 1891* (Vic), s 11(1) and (2). Some other jurisdictions required corroboration for all carnal knowledge offences, see Constance Backhouse, 'Skewering the Credibility of Women: A Reappraisal of Corroboration in Australian Legal History,' *Western Australian Law Review* 29 (2000): 87.
[123] Backhouse, 'Skewering the Credibility of Women,' 107.

Carmichael was charged before the Fitzroy Police Court with 'attempting to criminally assault' **Mary Ann Ehlers**, aged 12. Mary Ann gave evidence that she had left her home to go to the circus in Fitzroy. Afterwards, she had intended to stay with friends in North Fitzroy, but it was too late, so she walked instead to Collingwood. On her way, she met Carmichael, who offered to take her to the watch-house and then assaulted her. In cross-examination, Thomas's solicitor, Mr Maxwell, got Mary Ann to admit that she had run away from home and had lied about her residence. There was no concrete medical evidence, and the Fitzroy Bench discharged Thomas without requiring any defence evidence.[124] For little girls not old enough to give sworn evidence corroboration was a legal requirement and the practical impediments even higher.[125] In February 1895, the Collingwood Police Court committed 33-year-old Alfred Bright[126] for trial after **Henrietta Dobbs**, aged five, gave unsworn evidence that she had met him outside the tannery where her father worked and he had 'put me in his lap and put his tommy into mine.'[127] However the Crown Prosecution Office subsequently discontinued the prosecution. The note on the brief advised that as Henrietta was 'not sufficiently intelligent to be sworn and [there was] no corroborating evidence implicating the accused,' there was no likelihood of conviction.[128]

(c) Class and Morality

At the heart of these cases stood dominant discourses about working-class girls' morality and (un)reliability. Although carnal knowledge trials were ostensibly concerned with the behaviour of the defendant, in practice they tended to focus as much or more on the girl's character, as well as those of her family and immediate associates.[129] In such

[124] 'A Baseless Charge,' *Age*, 8 December 1898, 9.
[125] Capacity was a common law doctrine and was not legislatively prescribed during this period. From the age of about seven or eight children were assumed to be able to understand the nature of an oath, although they were still questioned rigorously on this point before giving evidence, see Jill Bavin-Mizzi, 'Understandings of Justice: Australian Rape and Carnal Knowledge Cases, 1876 – 1924,' in *Sex, Power and Justice: Historical Perspectives of Law in Australia*, ed. Diane Kirkby (Melbourne: Oxford University Press, 1995), 28. Younger children were assessed for their capacity to give sworn evidence, but were less likely to be found capable, as the next case indicates.
[126] Alfred Bright had a past conviction for sexual offending, detailed in Appendix E (Henrietta Dobbs).
[127] *R v Alfred Bright*, Melbourne Supreme Court, February 1895. (PROV, Office of Public Prosecutions, *Criminal Trial Briefs*, VPRS 30/P/0000, Unit 1008, Item 75); 'A Serious Charge,' *Age*, 28 January 1895, 7; 'Collingwood Police – Friday,' *Mercury and Weekly Courier*, 7 February 1895, 3.
[128] *R v Alfred Bright*, Melbourne Supreme Court, February 1895.
[129] Bavin-Mizzi, 'Understandings of Justice,' 28, 32.

circumstances, **Ruby Lever's** case against Samuel Pimlott[130] in 1900 was doomed. Fifteen-year-old Ruby lived with her widowed mother Christina in a particularly deprived area of Fitzroy. Her mother, an impoverished seamstress, seems to have also engaged in casual prostitution. Ruby complained that Samuel, a 'friend' of her mother, had forced his way into her room and raped her. At his committal hearing at the Fitzroy Police Court, Samuel gave evidence that 'it was an immoral house and I thought Mrs Lever was a prostitute,' although he conceded that Ruby did not have an 'immoral reputation.'[131] Samuel was committed for trial, but again ultimately acquitted.[132] These assumptions were compounded by the differential class status between these girls and the Magistrates and Judges who determined their cases. Like other matters before the Melbourne Police Courts, 'carnal knowledge' was an overwhelmingly working-class jurisdiction and working girls, as I argued in the previous two Chapters, were presumed to be more 'precocious' and 'uncontrollable' than their middle-class peers.[133] Even young children were not immune from these assumptions. **Sarah Barber** was nine years old when she was raped by her aunt's husband, Charles Thompson, in 1904. She contracted gonorrhoea as a result (Charles also suffered from the disease). Before the case went to trial, the Crown Solicitor's Office demanded further information from the police about Sarah's school attendance, 'truthfulness' and whether she was allowed out on the streets by herself.[134] Presumably the answers satisfied the prosecution, and later the Court. Charles was convicted and formally sentenced to death, a term later reduced to ten years' imprisonment.[135]

(d) Victims or Offenders? Neglect and Reformatory Committals

Girls in carnal knowledge cases were vulnerable in another way to dominant discourses about morality. I demonstrated above that sexual 'contamination' was an established ground for a charge of neglect. A conviction for neglect in these circumstances usually led

[130] Samuel Pimlott had a history of his own, see Appendix E (Ruby Lever).
[131] *R v Samuel Pimlott*, Melbourne Supreme Court, 22 May 1900. (PROV, Office of Public Prosecutions, *Criminal Trial Briefs*, VPRS 30/P/0000, Unit 1216, Item 215).
[132] 'Alleged Criminal Assault,' *Age*, 30 April 1900, 3.
[133] Jill Bavin-Mizzi, *Ravished: Sexual Violence in Victorian Australia* (Sydney: University of New South Wales Press, 1995), 83, 87 – 88.
[134] *R v Charles Thompson*, Melbourne Supreme Court, 18 October 1904. (PROV, Office of Public Prosecutions, *Criminal Trial Briefs,* VPRS 30/P/0000, Unit 1367, Item 393).
[135] 'Criminal Court,' *Age*, 29 October 1904, 14; 'News of the Day,' *Age*, 16 November 1904, 6.

to a committal, in most cases ultimately to the Reformatory. I found numerous examples of the path from sexual exploitation to institutionalisation in Melbourne newspaper reports. In August 1895, two girls aged 14 and 16 were arrested at the Melbourne Ports 'coming off a vessel berthed in one of the lower wharves.' Enquiries revealed that the girls 'had for some weeks been living immoral lives.' The girls were committed to the reformatory and handed over to the care of Mrs Hutchinson of the Salvation Army.[136] Even quite young children could take the same route, despite evidence of considerable exploitation. In January 1904, Constable Chrisfield of the Melbourne City Police apprehended **Sarah Lawton**, aged 11, and **Gertrude Bigwood**, aged 12, in Bourke Street as they were being led away by a man 'in suspicious circumstances.'[137] The girls made statements which implicated Edward Martin, a Collingwood bootmaker.[138] On 26 February 1904, Edward Martin was convicted of carnally knowing Sarah.[139] Sarah's evidence at committal revealed circumstances of extreme poverty. Sarah did not attend school, stating that her mother 'used to send me out cadging.' She had had sexual relations with at least three men, including Martin, stating frankly that 'I did this sort of thing for the money.'[140] A week later, Sarah and Gertrude were committed to the Neglected Children's Department by the Collingwood Police Court.[141] Gertrude spent two years at the Oakleigh Reformatory (a Catholic institution) before being sent out to service for the remainder of her wardship.[142] Sarah was sent to the Murrumbeena Girls' Home (another reformatory, this one run by the Salvation Army) where she remained for eight years, except for a brief and presumably unsuccessful interlude in service.[143] By contrast, Edward Martin served a term of three years' imprisonment.[144]

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[136] 'Juvenile Depravity – Two Sad Cases,' *Age*, 23 August 1895, 4.
[137] 'Extraordinary Juvenile Depravity,' *Age*, 13 January 1904, 6. Constable Chrisfield seems to have had had a particular interest in rescuing Melbourne's neglected children. Sometimes, he overstepped the mark. In December 1902 he was rebuked for arresting two 'respectable' teenage girls who had been to the market with parental consent. He was later fined £3 for this transgression. 'A Hasty Arrest – Charge Refused,' *Age*, 26 December 1902, 6; 'News of the Day,' *Age,* 6 January 1903, 4. Constable Chrisfield also apprehended Albert Conquest, discussed above.
[138] Edward Martin also had a history of previous offending, see Appendix E (Gertrude Bigwood and Sarah Lawton).
[139] *R v Edward Henry Martin*, Melbourne Supreme Court, 15 February 1904 (PROV, Office of Public Prosecutions, *Criminal Trial Briefs,* VPRS 30/P/0000, Unit 1348, Item 68).
[140] Ibid.
[141] 'Police Intelligence,' *Age*, 3 March 1904, 9.
[142] Chief Secretary's Department, *Ward Register* 1904. (PROV, VPRS 4527, Unit 68, Volume 42).
[143] Chief Secretary's Department, *Ward Register* 1904. (PROV, VPRS 4527, Unit 68, Volume 42).
[144] *R v Edward Henry Martin*, Melbourne Supreme Court, 15 February 1904, verdict.

Conclusion

This Chapter has examined the experiences of children appearing before the Melbourne Police Courts between 1890 and 1906 in three capacities, as offenders, as neglected children, and as the victims of adult crimes. I drew on a range of archival sources including contemporary newspaper accounts, Crown Prosecution Briefs, Department reports and the Victorian statistical registers to tell the stories of these children. These narratives reveal the limitations of both dominant arguments which linked 'delinquency' to moral fault, and a legal system structured around penal principles. Poverty was the dominant experience for these children. While Melbourne reformers expressed considerable anxiety about 'rising crime,' in fact juvenile crime was neither rising nor, in most cases, serious. As I have documented, most children were prosecuted for relatively trivial offences reflecting the constraints of urban poverty. The association between 'neglect' and disadvantage was even clearer. Department reports and the statistical registers recorded that the numbers of neglected children before the Melbourne Courts grew significantly between 1890 and 1906, in the wake of financial depression and enduring poverty. My examination revealed clearly that considerable numbers of children appeared before the Courts due to parental poverty. Increasingly, the *Neglected Children's Act* and from there the Courts, operated as a de facto welfare safety net. The third subject of discussion, girls who were the victims of sexual crimes, fared particularly poorly. They were often treated with hostility through the Court process, while being the victim of a sexual crime led frequently to a charge of neglect and a reformatory committal. Yet outside even the theoretical protection of the Courts, Victoria's Aboriginal children fared worst of all. Early twentieth century regulations and policies endorsed their removal from their families and communities with limited legal oversight and placed them in 'training' institutions. Overall, despite overwhelming evidence of structural disadvantage in these children's histories, this remained largely beyond Melbourne reformers' consideration. The next two Chapters will explore how reformers came to recommend Children's Courts as a remedy for the 'contamination' of the Police Courts.

PART TWO

THE CHILDREN'S COURT MOVEMENT

CHAPTER FOUR
THE CAMPAIGN FOR A COURT

In Part One of this thesis, I examined how successive Victorian governments devolved day-to-day responsibility for child welfare to charitable and Church organisations. Members of these organisations largely ascribed to a set of moral assumptions about the causes of offending and neglect, based on longstanding theories about inadequate working-class parenting and the dangers of the urban environment. These theories were the foundation for a series of regulatory and voluntary interventions. However as I demonstrated in Chapter Three, these assumptions bore little resemblance to the daily reality which brought children before the Melbourne Police Courts, most obviously the impact of poverty in a society without formal state welfare provision. Part Two of this thesis turns to how Melbourne reformers came to advance the particular project for legislative change which culminated in the *Children's Court Act*. This Chapter identifies the main campaigners in Melbourne from the early 1890s until the introduction of draft legislation in mid-1906, and their various proposals for legislative change. It focuses again on one of the central paradoxes addressed in this thesis, between reformers' stated desire to enhance children's welfare and their focus on a modified Court of criminal jurisdiction to achieve this end. To understand this apparent contradiction, I examine closely the reports, articles and minutes generated by reformers themselves, as well as the interstate and international authorities on which they drew. When read together, these sources illustrate that there were three distinct periods of agitation for Children's Courts in Melbourne. These replicated the episodes of social crisis I discussed in Chapter Two, and I also organised this Chapter around these three phases. These time periods were linked by reformers' continued beliefs about the causes of delinquency and the need for middle-class moral redirection. Overall, this Chapter argues that despite their ostensibly progressive remit, Children's Courts consolidated a long line of criminal interventions for the poor and the marginalised.

Early Proposals for Legal Change, 1890 – 1891

In the immediate aftermath of the passing of the *Children's Court Act* in December 1906, the *Charity Review,* journal of the Charity Organisation Society, celebrated '15 years'

[work by] child saving societies … [for the] establishment of a Children's Court.'[1] In applauding recent success, and before administrative issues would come to tarnish the achievement, the organisation was taking the path of many successful reform movements: creating a coherent history out of what had been distinct and indeed sometimes contradictory strands of a broader reform agenda. In fact, the path to a Children's Court had been far from smooth or united. The first part of this Chapter examines the first calls for legislative reform in Melbourne in the early 1890s, at a time when a separate jurisdiction for children was very new and largely untested. It argues that some Melbourne reformers agitated for judicial separation as a means of enhancing regulation over urban working-class youth, at a time of significant class upheaval and economic disruption. This, however, was very far from a political 'movement.' Children's Courts were initially proposed as one set of recommendations for greater regulation amongst others and the potential jurisdiction and operation of the separate Court were very far from settled.

(a) 'A Special Court' : George Guillaume Launches the Cause

The first recorded proposal for a separate Children's Court in the city of Melbourne came in November 1890. At an Australasian Charities Conference held at the Melbourne Town Hall, George Guillaume, whom we met in Chapter One as the secretary of the Neglected Children's Department, delivered a paper arguing that neglected and offending children should be 'dealt with by a special Court, presided over … by an experienced stipendiary Magistrate.'[2] According to Guillaume, the aim of the 'special Court' should be twofold. Its principal purpose was to protect children from 'the undesirable and injurious associations of the police court.' However equally importantly, a separate Court would allow the presiding Magistrate to come to a careful decision about the appropriate outcome for an individual child, with imprisonment to be the course of last resort.[3] Given the later dominance of the 'Children's Court movement' by non-state agencies, it is an interesting anomaly that this first proposal for a separate jurisdiction was advanced by a

[1] 'A Battle Won for Childhood,' *Charity Review* 7(4) (December 1906): 12.
[2] George Guillaume, 'Neglected Children and Wards of the State,' in *Proceedings of the First Australasian Conference on Charity, Held in Melbourne 11 – 17 November 1890* (Melbourne: Government Printer, 1891), 105.
[3] Ibid.

member of the government administration. However, as I discussed in Chapter One, Guillaume was an unusually activist departmental secretary. Children's Courts stood in a long line of reforms he had promoted since the 1880s and he was closely aligned with many of Melbourne's reformers. Predictably, his proposal met with a positive response from his audience, drawn largely from local charitable agencies.[4]

Guillaume based his proposal for a separate jurisdiction upon an actual establishment, the new Children's Court in the city of Adelaide. This Court, which opened in July 1890, was effectively a Court of modified criminal procedure. It initially had jurisdiction over boys under 16 and girls under 18 charged with neglect and less serious criminal offences.[5] Guillaume followed up his November speech with a detailed account of this Court in his Department report for 1890, which emphasised its procedural innovations. The Adelaide Court, Guillaume noted, was held at the local State Children's Department rather than at a Police Court. It was closed to 'outsiders,' or those not a party to the case. The Court was attended by departmental representatives who had the responsibility of investigating the circumstances of children before the Court. If necessary, children were remanded to the care of the department.[6] What also attracted Guillaume was the relative simplicity of the scheme. The Adelaide Court initially had no authorising legislation (which also limited its powers) and operated under ministerial decree.[7] Guillaume argued that children's cases could be dealt with at home in the same way.[8] While this was a potentially controversial elision of the general separation between executive and judicial power, it had other Victorian precedents, most notably for Aboriginal children, as I discussed in Chapters One and Two.

(b) 'Dealing with Truants and Street Children' : The Role of Charitable Organisations

[4] Ibid, 110.
[5] On the early years of the Adelaide Court see Jennifer Anderson, 'Juvenile Courts – An Australian Innovation?' *Adelaide Law Review* 35(2) (2014): 334 – 337.
[6] Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1890* (Melbourne: Government Printer, 1891), 21, 70.
[7] This method of establishment was somewhat controversial, as I explore in Anderson, 'Juvenile Courts,' 336 - 337.
[8] Neglected Children's Department, *Report for the Year 1890*, 21 – 22, 71.

Melbourne's reformers did not take long to advance their own similar proposals for legal change. I demonstrated in Chapter Two that a middle-class 'social panic' about poor urban children emerged in Melbourne between 1890 and 1891. This stemmed from unease about the city's enormous growth in the 1880s, combined with growing class conflict and economic volatility. For children, debate focused particularly on truants and street sellers, visible symbols of apparent disorder. The next mention of a separate jurisdiction, in early May 1891, was in direct response to this controversy. With the assistance of George Guillaume, Charles Barber, William Groom and William Forster, whom we also met in Chapters One as important representatives of Melbourne charitable organisations, advanced a series of proposals to the government for 'dealing with truants and street children.' Their report included a recommendation that 'truancy and juvenile cases of every kind [should] be dealt with apart from the ordinary Police Court business and surrounds.' In addition to a distinctive Court, they also argued that children should be remanded to a separate 'receiving depot,' rather than the Police Cells. Before the child's case was determined, a report should be provided by a truant officer or a departmental official, and Magistrates should include 'at least one person having an intimate knowledge of the habits of street children.' The men also suggested that truancy cases should be dealt with in the same way as neglect, targeting truant children rather than fining their parents. Finally, confirming the association of criminalisation and disadvantage, they argued that the new Court should be able to order a whipping for boys for low level crimes 'or even … obstinate truancy.'[9]

This separate Court was one amongst a number of regulatory mechanisms designed to tackle the apparently intertwined problems of urban street life, truancy and offending, already detailed in Chapter Two. Groom, Barber and Forster advanced the whole package again at the charitable conference held at the Education Department on 20 May 1891, an important meeting I also documented in Chapter Two. Other attendees generally expressed their support for a distinct Court. *The Age* reported that Selina Sutherland, the prominent and somewhat controversial spokeswoman for 'girls' rescue,' whose background I outlined in Chapter One, 'agreed that it was advisable to deal with neglected children as a whole, quite apart from other police court business.' Charles Strong,

[9] 'Neglected Children and Habitual Truants – Scheme of Treatment,' *Age* (Melbourne), 6 May 1891, 6.

Minister of the Australian Church and a very prominent proponent of social change, also endorsed the principle of a 'special court [to deal with] all unmanageable or neglected children.' He objected, however, to whipping, maintaining that it was 'a lazy way to deal with a child … sinned against by a society which had permitted him to be born and reared in certain conditions.' A separate Court was ultimately deemed to be of sufficient importance to be included on the agenda of the newly formed sub-committee of charitable workers, religious leaders and a few bureaucrats appointed to make further recommendations to government.[10]

The new sub-committee convened again on 3 August 1891, at which point they put forward a considerably more advanced model for a separate Court. Firstly, the sub-committee proposed that special Courts be established to deal with 'all cases dealing with or affecting neglected or criminal children in Melbourne and suburbs, where practicable.' Justices should include at least one trained Magistrate. The recommended jurisdiction of the Court was very broad, and considerably wider than the Adelaide Court. The sub-committee suggested that it include 'all other acts by which power is given to justices to deal with complaints, information and other matters relating to or affecting children,' including licensing applications for street sellers. In the city of Melbourne, the sub-committee advocated for an entirely separate Court house, 'to be called the children's court,' as well as a central depot for truants and neglected children awaiting trial. Other clauses reiterated earlier provisions about the power of the special Court to deal with truants like neglected (or criminal) children. The controversial whipping provision remained.[11] More generally, the separate Courts, as in Adelaide, were intended to protect children from Police Court 'contamination.' '[A]s things were at present,' another prominent sub-committee member, Mrs Varcoe of the Woman's Christian Temperance Union, argued, 'young children had … to await the hearing of their cases whilst all sorts of criminals were dealt with and heard things that were bad for them to hear.'[12] A separate building, or at the very least separate hearing times, would remedy this defect.

(c) Government Responses, 1891 - 1894

[10] 'Truants and Neglected Children – Conference at the Education Department,' *Age*, 21 May 1891, 6.
[11] 'The Treatment of Neglected Children,' *Age*, 4 August 1891, 6.
[12] Ibid.

Victorian government and departmental representatives, with the key exception of George Guillaume, were less convinced of the efficacy of these proposals. In what would become an enduring theme, reformers proposed a model for a separate Court, and government delegates responded with a considerably more pared back version – if they supported any changes at all. In 1891, their key objections were to the 'welfare' (and more expensive) aspects of the proposed jurisdiction. Edward Broadribb, Inspector-General of the Department of Education, raised the first objection on 3 August 1891, opposing the sub-committee's proposal for the appointment of special Magistrates. 'He thought,' *The Age* reported, that this may cause discord as 'the ordinary Magistrates would not be inclined always to agree with the special Justice.' Dr Charles Pearson, MP for East Bourke and former Minister of Education, also maintained that 'th[is] clause would complicate jurisdiction and he did not think the parliament would consent to it.'[13] Their objections did not ultimately affect the Committee's recommendations, but Pearson in particular opposed successfully other elements of the new jurisdiction. He vetoed the establishment of a physically separate Court in central Melbourne, largely on financial grounds. Pearson argued (somewhat presciently, as I shall discuss in Chapter Five) that 'every city and town in Victoria [would then] agitate to get a Court for the same purpose there. That would mean a very heavy and unnecessary expense.'[14] In fact Pearson was opposed to most aspects of the new regime, on moral as well as economic grounds. He thought 'existing machinery' adequate to deal with truants and 'would be exceeding sorry to see special courts established to deal with school absentees.' He disputed separating out 'neglected children's court business from criminal business' at all, arguing that '[i]f parents allowed their children to consort with thieves they should bear the disgrace of seeing them associated with thieves in the courts.'[15] While other delegates were not as negative, the final 'agreed' model was watered down. The government did concede the principle of dealing with children's matters before other Police Court business, including truancy cases.[16]

[13] Ibid.
[14] Ibid.
[15] Ibid.
[16] Ibid.

Legislative change progressed no further over the rest of the 1890s. In early 1892, George Guillaume was killed in a carriage accident. His successor was Thomas Millar, who was generally supportive of change, but seems to have lacked Guillaume's influence.[17] We met Millar in Chapter Three, arguing for an alternative process to provide support for impoverished mothers. Millar noted optimistically in 1892 that 'the Crown Law Department has kindly undertaken to get the necessary provision inserted in one of the Acts as soon as an opportunity arises.'[18] However the times were against him. As I discussed in Chapter Two, by 1893 the Victorian economy had virtually collapsed, and the new Turner government introduced a policy of stringent retrenchment.[19] The charitable organisations which had been the principal supporters of Children's Courts came under huge financial strain. Neither they nor the government had the energy or money to pursue social innovation.[20] The idea of a separate Court did not vanish altogether. In the absence of legislation, Millar managed to persuade the Crown Law Department to introduce some administrative changes. In February 1894, Crown Law published a notice to the clerks of the Courts of Petty Sessions, requesting that children's cases be heard 'before the other business of the Courts,' and privately in Magistrates' chambers, in accordance with the sub-committee's recommendations. In March 1894 a further notice was inserted, directing that police apply to the clerks when they had children's cases, to ensure that they were dealt with separately.[21] Overwhelmingly, though, Melbourne's Police Court Magistrates seem to have remained largely ignorant about - or perhaps chose to ignore - the notices.[22] And in this way, half a decade of reformist agitation, itself revealing inherent tensions between the ostensibly welfare mandate of a separate jurisdiction and its implementation through criminal, often overtly penal, measures, fizzled out in the face of economic crisis.

The Second Phase, 1900 – 1902.

[17] 'About People,' *Age*, 8 December 1902, 4.
[18] Department for Neglected Children and Reformatory Schools, *Report of the Secretary for the Year 1892* (Melbourne: Government Printer 1893), 4.
[19] Don Garden, *Victoria: A History* (Melbourne: Thomas Nelson, 1984), 209.
[20] Richard Kennedy, *Charity Warfare: The Charity Organisation Society in Colonial Melbourne* (Melbourne: Hyland House, 1985), 162, 185 – 186; Shurlee Swain, 'Destitute and Dependent: Case Studies in Poverty in Melbourne, 1890 – 1900,' *Historical Studies* 19 (1980): 98.
[21] Department for Neglected Children and Reformatory Schools, *Report of the Secretary for the year 1893* (Melbourne: Government Printer, 1894), 5.
[22] 'Children's Courts,' *Charity Review* 1(4) (December 1900): 5.

Reformers' arguments to establish Children's Courts in Melbourne reignited in mid-1900, following a partial economic recovery and in the wake of yet another perceived social crisis about poor children. I demonstrated in Chapter Two that the agitation in 1900 and 1901 again focused on street children and juvenile 'immorality,' but this time with an additional emphasis on nation and empire building. My reading of local sources revealed key themes around rescuing poor (white) urban children, not just because they threatened social order, but because they were vital to the strength of a federated Australia. Arguments for Children's Courts reflected this emphasis. Reformers positioned separate Courts both as saving children from immorality and offending and contributing to the nation-building project through middle-class moral redirection. This section identifies influential groups and individuals during the period 1900 – 1902 and also outlines the growing number of interstate and international examples from which they sought inspiration. It argues that while still far from a coordinated campaign, the growing number of associations advocating for separate Courts created the preconditions for the more organised movement after 1904. The Charity Organisation Society and the Woman's Christian Temperance Union, whose local origins I explored in Chapter One, were at the forefront of this new agitation. They were joined by a new Criminology Society and the Victorian Association for the Prevention of Cruelty Against Children. These two groups formed in the mid-1890s and they added intellectual weight to the arguments for judicial separation. The suffrage campaigner Vida Goldstein, a member of the WCTU, the COS and the Criminology Society, brought a new emphasis on the protection of girls which would form the basis for even more radical jurisdictional proposals in later years.

(a) The Charity Organisation Society

All of these groups shared basic understandings about the benefits of a separate Court for children. However individual organisations' reasons for supporting the new jurisdiction were somewhat different, and this contributed to some tensions about the primary purpose of legal change. As I outlined in Chapter One, the Melbourne branch of the Charity Organisation Society (COS) was established in 1887, with the aspiration of streamlining charitable provision in Melbourne. Its major target was 'indiscriminate' charity, or

assistance given to the 'undeserving.'[23] The COS conceptualised Children's Courts as part of their longstanding commitment to greater regulation over poor urban children. The organisation viewed early 'contamination' as a predecessor to a lifetime of 'vagrancy' and crime, with its inevitable corollary, 'undeserved' charitable assistance. In its 1897 annual report, the COS argued strongly for the licensing of street traders to prevent begging. 'When [a child] finds that he can live without working,' the paper maintained, 'he becomes a professional vagrant, and does all he can to demoralise others of his own age.'[24] The COS first publicly promoted Children's Courts in December 1900 in an article in its new quarterly journal, the *Charity Review.* The article argued that the contamination inherent within the current Court system undid the social benefit in 'rescuing' a child from neglect. 'It is not beneficial to catch a child and then propel him through the police court and charge him with neglect,' the paper pointed out.[25] The *Review* emphasised in particular the importance of physical separation in reforming children's behaviour. The December article pointed out that in an open Court, the example of older offenders led youth further astray, while crowds of onlookers encouraged bravado.[26] Finally, the *Review* pointed to the example of two other Courts, in Adelaide and Chicago, as key inspirations for local reformers.[27] These Courts, and their influence on Melbourne reformers, will be discussed further below.

(b) The Criminology Society

The Criminology Society was another enthusiastic advocate for Children's Courts, but from the viewpoint of progressive penal reform rather than social regulation of urban youth. I discussed in Chapter Two the origins of Melbourne's first Criminology Society, which began in 1895 under the leadership of Charles Strong. Its major aim was the abolition of capital punishment, in which it was unsuccessful, and the Society ultimately disbanded.[28] In July 1900 the Society revived under the direction of a Mr A. Macgeorge,

[23] Kennedy, *Charity Warfare*, 150, 177 – 180.
[24] Charity Organisation Society, *Tenth Annual Report For the Year Ended 30 June* 1897 (Melbourne: Varley Brothers, 1897), 20 – 21.
[25] 'Children's Courts,' *Charity Review*, 5.
[26] Ibid.
[27] Ibid.
[28] 'The Criminology Society,' *Age*, 28 September 1895, 8.

formerly of the Criminology Society of Adelaide. Charles Strong joined as Chair.[29] Between 1900 and 1905 the Society advocated for a series of penal changes, including the introduction of the indeterminate sentence, or keeping prisoners in goal until they were 'reformed.'[30] The Society's arguments were underpinned by an understanding of crime as a social and moral disease which was amenable to appropriate treatment.[31] The Criminology Society viewed the reformative approach as especially important for young offenders, whose prospects for rehabilitation were correspondingly higher. In August 1902, the Society devoted its monthly meeting to sentencing practices for first offenders, arguing that 'the present system sent these into a school of vice, instead of a school of reformation … it was cruel, outrageous and unchristian to send girls and boys to gaol.'[32] Children's Courts embodied this approach through both physical separation and different sentencing principles. Charles Strong's Australian Church journal, *The Australian Herald* (published 1889 – 1908) promoted strongly a separate jurisdiction and those local, interstate and international reformers advocating for change. In January 1903, Strong cited William Douglas Morrison, the English juvenile penal reformer, in support of his arguments that 'the great thing is to rescue the young and prevent them becoming criminals.'[33] In the same volume, he rallied against publication of details of young people's offending, arguing strongly that this prevented rehabilitation.[34]

[29] 'News of the Day,' *Age*, 7 July 1900, 8; 'News of the Day,' *Age*, 23 July 1900, 4; 'Criminology Society – History,' *Australian Herald* 8(6) (February 1901), 110.
[30] 'Criminology Society Revived,' *Australian Herald* 8(1) (September 1900): 12; 'Our Penal System – Reforms Suggested,' *Herald* (Melbourne), 21 November 1901, 4.
[31] 'Letter to the Editor,' *Age,* 12 July 1901, 7.
[32] 'First Offenders – Recent Decisions Discussed,' *Argus* (Melbourne), 23 August 1902, 14.
[33] 'Treatment of Criminals,' *Australian Herald* 10(5) (January 1903): 82.
[34] 'The Abuse of the Press,' *Australian Herald* 10(5) (January 1903): 98.

Charles Strong, Melbourne minister and reformer, pictured here c. 1881 when he was still Minister of Scots' Church.
John William Lindt (1845 – 1926), State Library Victoria, A/S29/01/81/36.

(c) The Woman's Christian Temperance Union and Child Victims

The COS and the Criminology Society, whilst very different in some respects, shared a focus on the benefits of separate Courts for young offenders, who were generally assumed to be male. Women's organisations, on the other hand, were increasingly advocating for *all* cases involving children to be heard in a separate Court. They emphasised the particular advantages of private hearings for girls, especially those who were the victims of sexual offending. The Woman's Christian Temperance Union (WCTU) played a major role during this period in highlighting the detrimental impact of Police Court procedures on young girls who were complainants in sexual offence cases. This campaign had begun in 1895, when the WCTU executive heard from local members that cases of child assault were being routinely dismissed by Police Court Magistrates in Fitzroy and Collingwood. WCTU members began attending hearings, and found to their outrage that 'after what, in their judgement, was most conclusive evidence of the guilt of the accused, one after the other was acquitted.'[35] One major issue was the legal requirement for children to give 'intimate' evidence in public. Given the routine practice of 'clearing the Courts' of women and children, whose impact I discussed in Chapter Three, this evidence was often given

[35] Woman's Christian Temperance Union of Victoria, *Eighth Annual Report During the Year 1895* (Melbourne: Spectator Publishing, 1896), 46 – 47.

in front of exclusively male audiences.[36] Another issue was the practice of charging girls with perjury if they gave any form of (allegedly) false evidence, regardless of the circumstances of a particular case. I also cited some examples of this in Chapter Three.[37] The WCTU explicitly linked their arguments for moral and legal reform to a greater public and political role for women. '[T]here will be no improvement,' the organisation argued in 1895, 'until women have a voice in making the laws by which they are governed.'[38]

The WCTU first publicly advocated for the establishment of Children's Courts in 1900. In line with their emphasis on protecting girls and public morality, the organisation recommended the establishment of a legislated, separate jurisdiction '[b]elieving that it would further the cause of morality … in this colony as in Canada and Adelaide.'[39] The WCTU identified other benefits to a separate Court, for offenders as well as victims. Firstly, it would 'protect[] the accused children from the hardening influences inseparable from appearing in the open court and facing the gaze of the curious and vicious.' Privacy would also foster rehabilitation. '[If guilty, and after he has undergone his [*sic]* punishment,' the report argued, 'he has not to carry the weight of public odium in his struggle to find a fresh footing for himself in the world.'[40] Above all, privacy and care would ensure that the interests of justice were not overridden, as the WCTU had observed in so many sexual offence cases. In 1902 the organisation pushed for a general provision for 'judges … to ''clear the court'' when [morality] cases are proceeding; thus preventing those thronging the court from … gratifying a morbid curiosity.'[41] Overall, it was a distinctive approach to the separate jurisdiction and one which, as I shall explore further in Chapter Five, was advocated for strongly but was ultimately unsuccessful.

(d) Vida Goldstein and *Woman's Sphere*

[36] Woman's Christian Temperance Union of Victoria, *Sixth Annual Report During the Year 1893* (Melbourne: Spectator Publishing, 1894), 46.
[37] Ibid, 47.
[38] Ibid.
[39] Woman's Christian Temperance Union of Victoria, *Thirteenth Annual Report during the Year 1900* (Melbourne: Spectator Publishing, 1901), 10. Canada had passed legislation in 1894 which did not actually establish separate Courts, but did provide for the separation of juvenile offenders on remand and at trial. *An Act respecting the Arrest, Trial and Imprisonment of Youthful Offenders,* S.C. 1894, c. 58.
[40] WCTU, *Thirteenth Annual Report*, 10.
[41] Woman's Christian Temperance Union of Victoria, *Fifteenth Annual Report during the Year 1902* (Melbourne: Spectator Publishing, 1903), 55.

The prominent Melbourne feminist Vida Goldstein (1869 – 1949) was another strong advocate for Children's Courts and the rehabilitative approach.[42] Like the WCTU, Goldstein emphasised the particular benefits of a private jurisdiction for girl victims. Goldstein was a well-known suffrage campaigner, speaker and child welfare advocate. She and her family attended Charles Strong's Australian Church, and she also had close, albeit sometimes conflictual, relationships with the burgeoning Labor party as well as the COS. In 1903 she formed the Women's Federal Political Association, renamed the Women's Political Association of Victoria in 1904, and ran – unsuccessfully – for federal parliament.[43] In 1900, Goldstein launched a new journal, the *Woman's Sphere*, which she used to promote Children's Courts amongst other progressive causes. In March 1901, Goldstein published a letter from her friend Catherine Helen Spence which highlighted the advantages of the Adelaide model, discussed above and further below. In Adelaide, the letter emphasised, children faced a Court of 'quiet inquiry,' rather than the Police Court 'with its low, degrading surroundings.'[44] Unique amongst her peers, Goldstein also argued that women should become Children's Court Magistrates. In May 1901, Goldstein highlighted yet another example of a girl complainant charged with perjury in a sexual assault case, arguing that this 'emphasise[s] the necessity for a children's court, presided over by properly qualified men *and women*.'[45] Goldstein also urged other women's organisations to commit more to the cause, not always tactfully. In October 1901 she criticised the 'Ladies' Committees,' who still did much of the administrative work under the *Neglected Children's Act*, for their social conservatism. 'For several years,' she argued, 'the WCTU and suffrage associations have asked [for a Children's Court] … if the women who are really looking after boarded out children had shown the Minister that they considered a children's court desirable, we should have had one long ago.'[46]

[42] See for example her unpublished manuscript, 'The George Junior Republic, or, how to deal with the seemingly hopeless delinquent' (c. 1903), in SLV, *Papers 1902 – 1919*, MS MSM 118.
[43] Janette M. Bamford, *That Dangerous and Persuasive Woman, Vida Goldstein* (Melbourne: Melbourne University Press, 1993), 9 – 10, 12 – 14, 30, 54 – 57.
[44] 'Children and the State in South Australia,' *Woman's Sphere* 1(7) (March 1901): 59.
[45] 'General Comments,' *Woman's Sphere* 1(9) (May 1901): 73, emphasis mine.
[46] 'General Correspondence,' *Woman's Sphere* 1(14) (October 1901): 110.

Vida Goldstein, prominent Melbourne reformer and suffrage campaigner, pictured here c. 1900. National Library Australia, PIC/6937 LOC Drawer PIC/6937.

(e) The Victorian Association for the Prevention of Cruelty Against Children

One more charitable organisation played a particularly significant role in advocating for Children's Courts in the first years of the twentieth century. The Victorian Society for the Prevention of Cruelty Against Children (VSPCC) formed in 1896, one of the few associations established during the 1890s depression. The Society was the initiative of the incoming governor's wife, Lady Sybil de Vere Brassey, and it attracted support from those amongst Melbourne's 'fashionable' set who were interested in social causes.[47] The Victorian Society consisted largely of voluntary officers who investigated reports of neglect and abuse, and it promoted itself primarily as an 'educational' operation. Removal

[47] Shurlee Swain, 'The State and the Child,' *Australian Journal of Legal History* 4 (1998): 72; 'The Care of Children – Society for the Prevention of Cruelty to Children,' *Age*, 1 June 1897, 5.

was a last resort where parents were unwilling to address identified concerns,[48] although the VSPCC did initiate some prosecutions in particularly severe cases of abuse or neglect. In these cases, it invariably recommended that the children be committed to the care of the Neglected Children's Department.[49] The VSPCC, like the COS, advocated for Children's Courts as a more effective and humane method of intervention for mistreated children than the 'ordinary Police Courts.' In November 1900 William Church, VSPCC secretary, gave a speech at the Australian Church in favour of enhanced regulation for children more generally, and Children's Courts in particular. His recommendations were familiar and included the licensing of street vendors, removing 'girls from the streets,' truant schools to provide targeted education for this particularly risky group and, ultimately, 'the institution of children's courts for the hearing of charges against young people.'[50]

(f) Other Inspirations: Adelaide and Chicago

I have noted throughout this section that while reformers generated proposals in response to specific local issues, they were also inspired by the example of Children's Courts elsewhere. In the first years of the twentieth century, two Courts, in Adelaide and Chicago, were frequently cited as successful examples of the new jurisdiction in action. While often mentioned together, in fact these Courts were somewhat different, and their citation reflected the intellectual tension between the Children's Court as a Court of modified criminal jurisdiction, primarily catering to young offenders, and a more protective Court with a welfare mandate. Adelaide was an example of the former, although its jurisdiction encompassed neglected children. In 1895 this Court had acquired legislative recognition by amendment to the existing *State Children Act* (SA), which regulated the process by which children became state wards. The 1895 Act confirmed three categories of youth whose cases were to be heard separately from adults - neglected children, destitute children (defined as a child 'who has no sufficient means

[48] The Society only had two paid staff members in the 1890s. See Dorothy Scott and Shurlee Swain, *Confronting Cruelty: Historical Perspectives on Child Abuse in Melbourne* (Melbourne: Melbourne University Press, 2002), 30 – 31.
[49] Two fairly typical cases prosecuted by the VSPCC (both involving physical abuse) were reported in 1900: 'Neglected Children,' *Argus*, 6 June 1900, 8; and *Herald*, 'Neglected Children,' *Herald*, 5 June 1900, 4. Both concluded with the children's committal to the Department for Neglected Children.
[50] 'Neglected Children,' *Age*, 15 November 1900, 8.

of subsistence and whose relatives were unable to provide support) [51] and offending children. A 'child' was now defined as a boy or girl under 18, removing the previous sex-based distinction as to age.[52] The *State Children Act* also mandated that children's hearings in Adelaide and Port Adelaide take place in a different building from the Police Court, and in these Courts legal formalities were also reduced.[53] In other areas, children's cases were only required to be heard at different times.[54] At basis, though, the South Australian Court remained a criminal Court. While somewhat less formal, children were still 'charged' and 'sentenced.' Police attended to prosecute matters, and both 'neglected' and 'criminal' children could be institutionalised, in schools or reformatories.[55]

The Chicago Juvenile Court was rather different, certainly in theory if rather less in practice. This Court was established in Cook County, Chicago, in 1899 following almost a decade of agitation by local reformers, many of them again middle-class female philanthropists.[56] The Court, which rapidly garnered huge publicity internationally, had jurisdiction over two classes of minors under 16, 'dependent' and 'delinquent' children. These categories, as in English and Australian legislation, often intersected, but were generally broader. 'Dependent' children were defined as destitute children; children without proper guardianship or living in unfit surroundings; children found begging and children under eight found selling on the streets at night. 'Delinquent' youth included offenders, children associating with 'thieves, vicious or immoral persons;' knowingly frequenting 'houses of ill fame' or gaming houses; or children 'growing up in idleness and crime.'[57] Unlike Adelaide, Chicago was founded as a Court of Chancery. One of its earliest Judges, Richard Tuthill, declared that 'no child under 16 years of age shall be considered or be treated as a criminal.'[58] Both categories of children, once convicted, became wards of the state, and the legislation mandated that the state was obliged to provide care and discipline equal to 'that which should be given by its parents.' All categories of children

[51] *State Children Act* 1895 (SA), s 4.
[52] Ibid, s 4.
[53] Ibid, s 31(a).
[54] Ibid, s 31(b).
[55] Ibid, ss 36, 40 and 41.
[56] Elizabeth J. Clapp, *Mothers of All Children: Women Reformers and The Rise of Juvenile Courts in Progressive-Era America* (Pennsylvania: Pennsylvania State University Press, 1998), 19 – 45; David Tanenhaus, *Juvenile Justice in the Making* (New York: Oxford University Press, 2004), 3 – 22.
[57] Richard S. Tuthill, 'History of the Children's Court in Chicago,' in *Children's Courts in the United States: Their Origin, Development and Results* (Washington: Government Printing Office, 1904), 2.
[58] Ibid, 1.

were also sentenced in the same way. This could include foster placements, release on probation or committal to 'reform' institutions.[59] Chicago Court proceedings also mimicked civil, rather than criminal jurisdiction. Minors were not tried but 'investigated' and hearings were informal, held in private and at separate times from adults.[60] In all, then, this Court had a noticeably different emphasis.

The Creation of a Movement, 1904 – 1906

So far, this Chapter has charted Melbourne reformers' proposals for legal change between 1890 and 1902. I have noted that proposals were varied and organisations tended to advance their own ideas with limited cross-collaboration, although they shared basic understandings of the procedural benefits of a separate Court. This dynamic changed significantly after 1904. A new period of heightened concern about poor urban children, as well as the growing strength and influence of the 'social purity' movement, both discussed in Chapter Two, persuaded reformers to combine their efforts into a coordinated campaign for legislative change which led ultimately to the introduction of draft legislation. This section outlines the role of key organisations and events between 1904 and 1906, again drawn largely from sources generated by charitable organisations themselves. I emphasise the increasingly significant role of women's organisations and individual female campaigners. The growing involvement of women's associations created a specific dynamic, and some tensions, within the new 'Children's Court movement.' On the one hand, as I also noted in Chapter Two, middle-class women were organising in growing numbers from the early twentieth century, and the addition of Children's Courts to their organisational platforms added critical numerical weight to this campaign and broadened its popular appeal. However as women were still excluded from official avenues of power, they had to promote their cause through alternative means, or combine with male-led organisations, which often had a somewhat different agenda. I shall argue in Chapter Five that this led ultimately to the abandonment of some elements of legal change, most specifically, the better protection of girl victims.

[59] Herbert H Lou, *Juvenile Courts in the United States* (Chapel Hill: University of North Carolina Press, 1927), 20.
[60] Ibid.

(a) The National Council of Women of Victoria

The new National Council of Women of Victoria (NCWV) and its close affiliate the WCTU played particularly important roles in forging the new 'movement' for legal change. As I discussed in Chapter Two, the NCWV formed in 1903 as an umbrella association for women's organisations, with the explicit intention of bringing together groups to gain political influence.[61] The NCWV rapidly gained widespread support amongst Melbourne's female reformers. During its first few years, its executive included Janet Strong (wife of Charles), Mrs Kirk from the Woman's Christian Temperance Union, Louisa Bevan (wife of Dr Bevan, the Congregationalist Minister) and Vida Goldstein. Its first president was Lady Margaret Talbot, the new governor's wife, who also had a particular interest in social causes.[62] An examination of the minutes of NCWV meetings reveals that the Council discussed the desirability of Children's Courts as early as June 1903, but that their interest accelerated from late 1904.[63] In October 1904 the NCWV's second annual conference was dedicated entirely to children's affairs. At the general meeting which followed, the social, legal and economic sub-committee was delegated with investigating 'the advisability of having a Children's Court established.'[64] The sub-committee wasted no time. In November 1904, it approached the Minister of Justice, John Davies, to ask for 'the establishment of a children's Court in Melbourne.' The delegation, the committee noted, 'was met with a moderately sympathetic reception.'[65] The same month, the *Australian Herald* noted approvingly the work being done by the National Council 'to have a Children's Court established in Victoria.'[66]

(b) Alice Henry and the Influence of the Press

One of the key speakers at the WCTU Conference in October 1904 was a Melbourne journalist, Alice Henry, who delivered a paper on 'A Children's Court of Justice.' Henry

[61] Marian Quartly and Judith Smart, *Respectable Radicals: A History of the National Council of Women of Australia, 1896 – 2006* (Melbourne: Monash University Publishing, 2015), 12 – 13.
[62] *National Council of Women of Victoria Minutes* [1904 – 1960], NLA, Microfilm MFM G7541, Program for the Second Annual Congress, 27 – 28 October 1904.
[63] 'News of the Day,' *Argus*, 24 June 1903, 4.
[64] *National Council of Women of Victoria Minutes*, Annual Meeting, 28 October 1904.
[65] Ibid; see also Quartly and Smart, *Respectable Radicals*, 72.
[66] 'A Children's Court,' *Australian Herald* 12(3) (November 1904): 27.

was an influential writer and an important figure in the history of journalism, and she played a key role in publicising the concept of Children's Courts across Australia and abroad. Henry (1857 – 1943) was born in Melbourne to Scottish immigrants and worked initially as a teacher. In the 1880s she became one of Victoria's first paid female journalists when she began contributing articles to the *Argus* and the *Australasian*. Due to conservatism, her writings were initially published under a male pseudonym.[67] From the 1890s she promoted a host of 'progressive' causes, including female suffrage.[68] She was a close friend of Vida Goldstein and Catherine Helen Spence, as well as Charles Strong, and from 1905 contributed regular articles to his journal, the *Australian Herald*.[69] 'A Children's Court of Justice' was published originally in the *Argus* in September 1903. The article documented a typical afternoon's session at the Court, which Henry had observed on a recent visit to South Australia. Henry began by contrasting the setting for the Adelaide Court, which she compared to a school room, with the typical environment of the average Police Court. 'We are so accustomed to associate legality with formality,' she noted, 'that it comes as something of a surprise to be shown into … a plain little room, in a plain building, and to be told that this is the Children's Court.'[70] Henry recorded approvingly that the Magistrate sat on a level with the child, at one end of the table, to encourage communication. The Court was held in private, lawyers rarely attended and 'desperadoes' who might distract the child were banned.[71]

Henry published another important article on Children's Courts in the *Sydney Morning Herald* in January 1905. This article reinforced just how much Children's Courts had become part of the Australian nation-building project. Henry maintained that Children's Courts helped to create 'good citizens.' 'As an instrument for preventing the child delinquent from developing … into the true criminal, the juvenile court … fulfils a function that no other … method of administration has been capable of performing,' Henry argued. In an evocative image, she contended that the Juvenile Court 'takes [the child] … at the junction of the points and switches him off the line that leads to crime on to the lines

[67] Alice Henry, *Memoirs of Alice Henry*, ed. Nettie Palmer (Melbourne: [s.n.] 1944), 13 – 14.
[68] Diane Kirkby, *Alice Henry: The Power of Pen and Voice – The Life of an Australian-American Labor Reformer* (Cambridge: Cambridge University Press, 1991), 25 – 27, 36.
[69] Ibid, 36 – 38, 48.
[70] Alice Henry, 'A Children's Court of Justice,' *Argus*, 12 September 1903, 4.
[71] Ibid.

leading to credible and useful citizenship.'[72] Henry ascribed two main reasons for the 'immense revolution and advance' of the Juvenile Court system. One was again the physical removal of children from the Police Court environment. 'The child mind is extremely sensitive to the effect of its surroundings,' she contended, and the 'sordid and demoralising atmosphere of the ordinary Police Court' undermined any tendency to 'innocence' or reform. For one, 'habitués and procurers' regularly attended Police Court hearings, encouraging children in a life of crime.[73] Further, as children's cases were rarely prioritised, youthful offenders and neglected children were exposed to the details of serious adult cases while they waited.[74] The other was the availability of different sentencing options in the Children's Court, along with more time to hear the details of their circumstances.[75] Henry devoted a significant proportion of her article to promoting probation in the community. She maintained that while gaols encouraged recidivism, 'helpful oversight' helped children stay at school or work and at home.[76]

Alice Henry, prominent journalist, reformer and campaigner for Children's Courts. This photograph was taken c. 1920, after her move to the United States.
State Library Victoria, H36114.

(c) The Gordon Institute

[72] Alice Henry, 'Juvenile Courts,' *Sydney Morning Herald*, 25 January 1905, 11.
[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] Ibid.

Another female-led organisation with a growing interest in Children's Courts was the Gordon Institute. In Chapter One I outlined how the Institute was established in 1889 to provide leisure and employment opportunities for poor city boys. Between 1890 and 1902 the Superintendent was Charles Barber. As I have noted in Chapter Two and above, Barber was very closely involved in arguments for legal change in the early 1890s. Barber in fact offered the Institute as a venue for the City Children's Court in 1891. As I shall discuss in Chapter Six, ultimately this did in fact occur.[77] In 1902 Barber surrendered his position to the Reverend James Gibson of the Presbyterian Church and Miss Emilie Walker, a wealthy philanthropist. Gibson resigned in 1904, leaving Emilie Walker sole manager. Miss Walker's 'unanimous' appointment as director of a boys' institution[78] in itself confirmed the increasingly important role of female charitable workers in Melbourne. *Gordon Boys* began its own publicity campaign for Children's Courts in May 1905. In its journal, *Gordon Boys,* the Institute noted disapprovingly that '[Melbourne] has no children's court as yet (as in Adelaide), where in a room set aside for the purpose, all the children's cases can be tried away from the hardening influences of the Police Court.'[79] In October 1905, *Gordon Boys* devoted an entire issue to the treatment of juvenile offenders. Its overall position was 'that there is something grievously wrong, first with the creating, and second with the treatment of boy law-breakers.''[80] It argued that the aim of sentencing should be 'improvement not punishment,' and recommended either probation, or monitoring in the community, or the use of the alternative 'voluntary' committal process to avoid the need for a Court conviction.[81]

(d) Key Influences (1): The Denver Court and Judge Ben Lindsey

In addition to advocating their own visions of change, Alice Henry and the Gordon Institute were also inspired by another new American Court, the Juvenile Court in Denver, Colorado. They played a key role in introducing the features of this jurisdiction to a local audience. 'A child is not a criminal, said the brilliant Judge Ben Lindsey of Colorado,' Henry quoted approvingly in her 'Children's Court of Justice.' '[A]t worst he is only the

[77] 'Truants and Neglected Children – Conference at the Education Department,' *Age*, 21 May 1891, 6.
[78] 'News of the Day,' *Age*, 8 April 1903, 5.
[79] 'The Day's Work,' *Gordon Boys* 1(2) (May 1905): 12.
[80] 'The Treatment of Juvenile Offenders,' *Gordon Boys* 1(4) (14 October 1905): 8.
[81] Ibid.

making of one.'[82] Ben Lindsey (1869 – 1943) was a charismatic Judge who played an instrumental role in forging the new jurisdiction in Denver. He was a particular favourite amongst Melbourne reformers for his thoughts on sentencing and alternative Court procedures - some of which, as I shall discuss in the next two Chapters, were partially implemented in Melbourne. Like Chicago, the Denver Juvenile Court (a subset of the Denver County Court from 1899, and a separate jurisdiction from 1903) was constituted as a Court of Chancery. Section 12 of the Act stated that 'as far as practicable any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.' The Court's guiding principle was that the child's 'care, custody and discipline … shall approximate … that which should be given by its parents.'[83] To this framework Lindsay added his own considerable influence. Lindsay was opposed to imprisonment for children, famously arguing that '[t]o reform a child by … putting it in jail is like trying to cure it of illness by first depositing it on the city garbage dump.' [84] He advocated instead for a widespread system of probation. Lindsey was also a great believer in the personal touch, and he promoted the Colorado Court as a 'teaching' environment. 'In the court room … counsel tables have been removed … and it has the appearance of a schoolroom as far as possible,' he noted (the similarity to Henry's description of the Adelaide Court is noteworthy). Proceedings were informal. The Judge 'comes down among the boys at the table immediately in front of them,' Lindsey recorded, and private communications in chambers were also encouraged.[85]

(e) Key Influences (2): The New South Wales Children's Court

Denver, however attractive, was far away and it does not seem to have caught the attention of Victoria's governing bodies in the same way. The general mood and government support for change shifted noticeably from September 1905, when Victoria's neighbour and chief rival New South Wales passed a *Neglected Children and Juvenile Offenders Act*. This legislation established Children's Courts, and with a more comprehensive remit than South Australia. The New South Wales Act had jurisdiction

[82] Ibid.
[83] *An Act Concerning Delinquent Children* 1903, s 12, cited in 'Juvenile Court Laws,' in *Children's Courts in the United States*, 171.
[84] Ben B. Lindsey, 'The Juvenile Court of Denver,' in *Children's Courts in the United States,* 31.
[85] Ben B. Lindsey, 'Additional Report on Methods and Results,' in *Children's Courts in the United States*, 71, 80.

over offending and 'neglected' children, defining a 'child' as a boy or girl aged between five and sixteen.[86] 'Neglect' included children who were ill-treated, who were 'living in conditions likely to be conducive to vice or crime,' and who engaged in unlicensed street trading.[87] The Act also provided for the issuing of trading licenses to boys over 10 (girls could not be licensed),[88] and it made available the disposition of probation. In October 1905, the first Children's Court opened in Paddington in inner Sydney. The new Court had a separate building, (a room in the neglected children's depot), private hearings and special magistrates, as well as separate remand facilities. Like the Denver Court, it was modelled on a school room, rather than a Court. The *Sydney Morning Herald* noted that '[t]he only additions to its plain furniture were a desk for the presiding Magistrate, a table for his clerk, and a box for witnesses.' All officials wore plain clothes.[89] The *Age* publicised the Sydney Court, although it could not resist a dig at the new Court's security arrangements. 'The first Children's Court was opened today … the first three offenders dealt with showed their contempt for the proceedings by escaping from custody immediately,' it noted pointedly.[90]

(f) The Campaign Consolidates

Melbourne reformers reacted immediately to the news of the New South Wales legislation, using it to accelerate their arguments for legal change at home. On 16 October 1905 the Charity Organisation Society convened an urgent conference at its city office. Attendees included members of other charitable associations, representatives from the Department of Neglected Children and a 'senior inspector' from the New South Wales Children's Department.[91] Charles Strong and William Groom moved that a deputation should wait on the government and urge it to pass legislation 'on the same lines as the

[86] Younger children were dealt with under the state's *State Children Relief Act* 1901 (NSW) and *Infant Protection Act* 1904 (NSW).
[87] *Neglected Children and Juvenile Offenders Act* 1905 (NSW), s 5.
[88] Ibid, s 47.
[89] 'Young Offenders,' *Sydney Morning Herald*, 4 October 1905, 4.
[90] 'Sydney Children's Court – Incorrigible Juveniles,' *Age*, 4 October 1905, 11.
[91] 'Conference of Child Rescue Societies, held at the Offices of the Charity Organisation Society, 16 October 1905,' in University of Melbourne Archives, Child Protection Committee Minute Book and Sundry Meetings, *Child Protection Committee Minutes*, MS 62/13-25, 9; 'Children's Courts – Charitable Societies' Conference,' *Age*, 17 October 1905, 5.

New South Wales Act.'[92] A sub-committee was then appointed to approach the government. It seems to have been carefully chosen. The group included Miss Sutherland of the Children's Aid Society, Evelyn Gough, secretary of the National Council of Women, Major Brodribb from the Salvation Army, William Groom and Thomas Mackley, current secretary of the COS. This was the first time these organisations had combined publicly to advance the cause.[93] On 19 October 1905 the Criminology Society organised a second meeting at the Melbourne Town Hall on this subject, again attended by a wide range of groups and individuals including Mr Church from the VSPCC, William Groom, William Judkins, the flamboyant and controversial 'social purity' campaigner introduced in Chapter Two, and Samuel Mauger, Federal MP for Melbourne Ports. Mauger was a member of Strong's Australia Church, President of the YMCA and a committed social reformer.[94] On 1 November 1905, Groom and Judkins approached the Attorney-General, John Davies, where they were informed that a Bill was being drafted, but without provision for special Magistrates or probation.[95] The same month, a WCTU delegation also approached Davies about the 'desirability of having a place set apart where young offenders could be heard without having to go into the ordinary police court.'[96] The WCTU followed up immediately with a letter querying whether the delegation's request was being actioned. As with the COS and Criminology Society, they were advised that a draft Bill had gone to Cabinet for discussion.[97]

From these sources, joined together, it becomes possible to see the complexity of the Melbourne reform movement and its jurisdictional solution. Responding to local circumstances, but in close conversation with cross-jurisdictional developments, it was temporally located, politically contextualised and given shape and character through the efforts, beliefs and somewhat diverse values of differently situated actors, both men and women. What is particularly important to note, is reformers' increasingly united approach. After 1905 Melbourne's charitable representatives made concerted efforts to

[92] 'Children's Courts,' *Age*, 17 October 1905, 5; 'New South Wales – Act to Establish a Juvenile Court,' *Charity Review* 6(4) (December 1905): 74.
[93] 'Conference of Child Rescue Societies,' 9; 'Children's Courts – Charitable Societies' Conference,' *Age*, 17 October 1905, 5.
[94] ''Criminology Society,' *Australian Herald* 13(3) (November 1905): 29.
[95] 'News of the Day,' *Age*, 7 November 1905, 4.
[96] Woman's Christian Temperance Union of Victoria, *Eighteenth Annual Report During the Year 1905* (Melbourne: Spectator Publishing, 1906), 8.
[97] Ibid, 9.

work together, even if individual organisations' views about the remit of the new jurisdiction varied. They invited each other to meetings and corresponded on the latest developments. I emphasise again how important women's organisations were in this process. By 1905 they were numerically dominant, and their administrative capacity was considerable. Campaigners were also adopting more aggressive tactics, including strategies employed by the successful social purity movement. In addition to large-scale meetings, these groups, individually and in combination, lobbied the government continuously, targeted individual members and circulated a large amount of information about Children's Courts. In this they were aided by two of Melbourne's influential daily newspapers. The *Age*, edited by David Symes, had always been a broadly liberal paper and it was used to providing a persuasive voice on political issues.[98] It now devoted considerable publicity to Juvenile Courts. The more populist evening *Herald* also promoted Children's Courts. In October 1905 the *Herald* argued that '[t]he need of a special court is being exemplified every day … Children charged with minor offences, we have repeatedly argued, [should] be subject to special and separate treatment.'[99]

(g) A Children's Court? : The Impact of the *Education Act*

An unexpected win for Children's Court campaigners occurred in late 1905. I noted in Chapter Two that amendments to the *Education Act* to deal with the 'truancy menace' included a provision that truancy prosecutions could be heard 'behind closed doors.'[100] As I have documented above, reformers had long argued for the hearing of truancy matters, amongst other cases involving children, in a separate Court. While this legislation did not go so far, it was a good way there. When the *Education Bill* was debated in the Legislative Council in October 1905, MPs queried whether this clause in fact created a 'Children's Court.' Arthur Sachse, Conservative MP for the North-Eastern region and a supporter of separate Courts, agreed that 'closed doors practically made the court a children's court in truancy cases.'[101] Emboldened by this modest victory, strategic cooperation amongst Melbourne reformers grew in early 1906. In January 1906, the National Council and the WCTU urged all interested societies to join together to promote

[98] Garden, *Victoria*, 275 – 76.
[99] 'Children's Courts Immediately Needed,' *Herald*, 24 October 1905, 2.
[100] *Education Act 1905* (Vic), s 6.
[101] Victoria, *Parliamentary Debates (Legislative Council*), 31 October 1905, 2390 (Arthur Sachse).

the cause. They praised the Criminology Society for publicising Children's Courts so effectively.[102] In April the Criminology Society held another public meeting on Children's Courts. The National Council sent a communiqué to the meeting, inquiring what progress was being made drafting the legislation. The Criminology Society responded, suggesting that the two organisations should consider the provisions together when they were released.[103] In May 1906 the COS inaugurated another similar meeting, which was again widely attended by representatives from other Melbourne societies. The Secretary, Thomas Mackley, read a paper on 'Methods for Promoting the Welfare of Children.' Mackley argued that Children's Courts were not only humane and stopped 'criminals in the making.' They were also economical institutions, as they prevented further expenditure on adult criminals.[104]

(h) The First Bill

Reformers' tactics finally achieved their desired outcome. In July 1906, the government released a *Children's Court Bill* for commentary. However to campaigners' disappointment, the draft legislation made only minimal procedural changes to the existing system. The proposed Court had jurisdiction over offending and neglected children under 17, as defined under existing legislation. Children's hearings were to be held at separate times, but in the Police Courts rather than different locations. Probation, separate places of detention and special magistrates were not mentioned at all.[105] An *Age* editorial on 18 July 1906 expressed the general view of Melbourne reformers when it remarked reprovingly that the scheme 'shows signs of being hastily drawn up and devised.' It urged the government to reconsider separate Court buildings, specially trained Magistrates, juvenile remand facilities, probation and proper sentencing provisions. '[I]t is in the public interest' the editorial argued, 'that [the Bill] should be given all the thoughtful care for its elaboration and perfection that it so manifestly merits.'[106] By mid-1906, then, reformers had succeeded in their overall objective, the introduction of legislation creating a Children's Court. As I shall discuss in Chapter Five,

[102] WCTU, *Eighteenth Annual Report*, 8.
[103] 'Criminology Society,' *Australian Herald* 13(9) (1 May 1906): 120.
[104] 'Some Methods for Promoting the Welfare of Children,' *Charity Review* 7(2) (June 1906): 5 – 8.
[105] ''Editorial – Children's Courts,' *Age,* 18 July 1906, 6.
[106] Ibid.

the remainder of 1906 would be devoted to intense advocacy about the form this new Court should take.

Conclusion

This Chapter has argued that the campaign for Children's Courts in Melbourne between 1890 and 1906 developed in three stages. At all times debate was led by middle-class reformers who held important roles in Victoria's devolved system of child welfare administration. The sources they created revealed a central paradox between the stated desire to enhance poor children's welfare and an overriding focus on a Court of modified criminal jurisdiction to achieve this aim, a largely penal response. In the early 1890s, reformers argued for a separate jurisdiction in the context of growing social agitation about poor urban street children and inspired by the example of the new Adelaide Court. Proposals for jurisdictional change receded as the 1890s economic depression deepened, reviving in 1900 in the wake of another perceived social crisis, this time fuelled by new theories about nation building. Growing numbers of organisations proposed a separate Court for offending and neglected children, also encouraged by the new Chicago Juvenile Court. Women's associations also argued increasingly for the advantages of private hearings for girls, particularly those in sexual offence cases. Of note, and important in understanding the final form of the Court to come, was that reformers were invariably met with a distinct lack of interest from within government administrations which were concerned largely with saving expenditure. This situation changed only after 1904. Borrowing from the tactics of the social purity movement, Melbourne reformers combined their efforts into coordinated campaign for legal change which ultimately persuaded the government to draft legislation in mid-1906. Women's associations played a pivotal role in this final phase, both as a central coordination point and as lobbyists in their own right. Despite all efforts, however, the first Bill made minimal changes to existing jurisdiction and procedures and was a 'Children's Court' only in the most technical sense of the term. The next Chapter will explore reformers' final campaign for further change in the second half of 1906, and the process of negotiation as the *Children's Court Act* finally passed the Victorian Parliament.

CHAPTER FIVE
CREATING THE CHILDREN'S COURT

The previous Chapter examined the origins and membership of what I argued began as a loosely organised coalition that worked towards the establishment of Children's Courts in Melbourne. After 1904, these groups and individuals combined their efforts into a more coordinated campaign for legislative change, which eventually resulted in a government-drafted Bill in July 1906. This Chapter explores the process by which reformers' proposals became a distinctive legislative creation, the Victorian Children's Court. I highlight key historical conflicts which are still echoed in current debates, in particular between reformers' stated desire for social transformation and the reliance on largely penal legislation to effect this change, as well as the impact of a largely conservative political and economic context which favoured the dilution of potentially expensive legislative reforms. The first part of this Chapter examines reformers' final push for legal change in the second half of 1906, including a close analysis of the central question of this thesis - why reformers became so strongly attached to a separate Court as a solution to social issues. As I foreshadowed in the Introduction, this issue has been explored very little in academic literature to date. The second part begins by outlining the complexities of the Victorian parliamentary system at the turn of the twentieth century and how that influenced the passage of law, before examining the series of negotiations which marked the progress of the *Children's Court Bill* through Parliament. I argue that the Act was shaped from within and without by a series of compromises which saw some more innovative proposals sidelined to secure consent. The *Children's Court Bill* was promoted by a small and surprisingly disparate group of politicians from across the political spectrum. I also explore the backgrounds of these individuals and why they supported Children's Courts. The third and final part of the Chapter outlines the major features of the final *Children's Court Act*, highlighting major exclusions, continuities with and developments from existing legislation.

The Final Campaign for Change, July – November 1906

(a) Debating the New Jurisdiction

Chapter Four concluded with the release of a first *Children's Court Bill* in July 1906. The Victorian Crown Law Department, which had the responsibility for drafting government legislation, had also prepared this Bill, to which reformers responded with great disappointment. As I outlined in that Chapter, although the Bill nominally provided for 'separate Courts' for children, it was a very minimalist piece of legislation, presumably designed to placate increasingly vocal campaigners without actually committing the government to additional expenditure. Melbourne reformers took immediate action. Between July and December 1906, they embarked on a concerted political lobbying campaign as they attempted to ensure not just that a Children's Court Act passed, but one which more approximated to their ideals. In July 1906, the Woman's Christian Temperance Union (WCTU) commissioned Victoria's first female lawyer, Flos Greig, to prepare a commentary on the draft Bill and propose amendments. Greig (1880 – 1958) was a very interesting figure and a trail blazer for women's and children's legal rights. She graduated from the University of Melbourne in March 1903, the second woman in Australia to complete a law degree. She was admitted to practice in August 1905, following a campaign by supporters to pass enabling legislation which removed a previous ban on female lawyers.[1] One of those supporters was John Mackey, Liberal MP for Gippsland West and Minister for Lands. As I shall discuss below, he was also the sponsor of the final version of the *Children's Court Bill* when it was introduced into Parliament in November 1906. Greig was a strong supporter of female suffrage, campaigned against many legal inequities affecting women and children, and was a member of the WCTU, the National Council of Women of Victoria (NCWV) and the Criminology Society.

On 24 July 1906 Greig and Mrs Kirk of the WCTU scheduled a meeting with John Davies, the current Attorney-General, to put forward Greig's proposals. Greig's suggestions were in line with reformers' previous arguments, and in particular those of women's organisations, but she also added a new element of legal and jurisdictional detail which most other reformers could not match. The first was the introduction of a probation

[1] Larissa Halonkin, 'Greig, Flos (1880 – 1958),' in *Encyclopedia of Women and Leadership in Twentieth-Century Australia*,' Australian Women's Archives Project (2014), online at http://www.womenaustralia.info/leaders/biogs/WLE0643b.htm.

scheme. To save money, Greig suggested that this could be administered voluntarily by charitable organisations. Secondly, Greig recommended that children on remand be kept separately from adults, or that special remand facilities be set up for children pending a Court appearance. Thirdly, Greig argued again for 'specially appointed' Magistrates to hear children's cases and for the government to consider separate buildings, to ensure that children were not exposed to the 'contamination' of Police Court cases. Greig's arguments around jurisdiction were more radical. Presumably drawing on South Australia, she pushed for the upper age limit of the Court to be raised from 17 to 18. She also recommended strongly that all cases involving child witnesses or victims should come before the Court, particularly paternity and carnal knowledge cases. This would include cases (the great majority) when the defendant was over 18. To further protect young girls, she suggested a key procedural change that female complainants and defendants be allowed to keep an adult or friend with them in Court at all times, even if the Courts were cleared.[2] In an article in the *Age* the same month, the WCTU reported (in hindsight, perhaps rather optimistically) that the government had listened 'with due interest' to Greig's proposals.[3]

Debates about the primary purpose of the Bill continued through the next three months between different organisations and between these groups and the government. In another illustration of the driving force of private organisations behind this legislative change, associations sought to sway each other, MPs and government administrators to their particular version of a Children's Court. Women's associations remained strongly committed to an expanded jurisdiction which would bring child victims and witnesses, as well as offenders, within the scope of a separate Court. In this aim they were joined by the Victorian Society for the Prevention of Cruelty to Children (VSPCC), which in July 1906 separately lobbied the Premier for a legislative amendment to bring all cases involving children before the special Court. The *Age* reported that the VSPCC's members 'are much dissatisfied at the absence … of provisions to treat cases in which children are offended against, by way of assault and other cruelties.'[4] The VSPCC was probably contemplating a clause modelled on the United Kingdom's 1889 *Prevention of Cruelty to Children Act,*

[2] ''Juvenile Courts – Suggestions by the Women's Christian Union,' *Age* (Melbourne), 25 July 1906, 5.
[3] Ibid.
[4] 'Children's Courts,' *Age*, 17 July 1906, 8.

discussed in Chapter One, which had criminalised parents for neglecting or ill-treating minors.[5] On 3 August 1906 the NCWV convened a large meeting of charitable representatives in the Melbourne Town Hall, chaired by Janet Strong, Charles Strong's wife and also a prominent reformer in her own right. The group adopted 'unanimously' an eight-point proposal for reform. Once more, a key suggested amendment was that 'all cases involving children [] be tried in the children's court, including offences against, as well as by, children.' Mr Church from the VSPCC weighed in to 'emphasise[] the desirability of providing that offences against children … be investigated away from the ordinary Courts.'[6] The *Australian Herald* also wrote in support of the NCWV's agenda. In September 1906, the paper endorsed the proposal 'that all cases in which children were implicated should be tried in such a Court.'[7]

(b) Juvenile Offenders and Probation

While women's organisations and the VSPCC emphasised the value of expanding the proposed jurisdiction to include girl victims, other organisations focused their efforts on improving processes for young offenders, in particular, the inclusion of a probation scheme. This was, as I have already discussed in Chapter Four, also the more politically acceptable aspiration given the longstanding focus on the benefits of a separate Court for juvenile offenders. On 23 and 24 July 1906 the Charity Organisation Society (COS) convened a meeting attended by other leading supporters of Children's Courts, including the Gordon Institute, the Criminology Society, Vida Goldstein's Women's Political League and the Children's Aid Society. This group drew up a separate list of suggested amendments. Many of these were similar to Greig's, but without the argument for an expanded jurisdiction. The COS-led group advocated for special Magistrates, probation officers and separate Court buildings, with an overarching principle that 'the idea of punishment should be entirely eliminated,' not the protection of children more generally.[8] They also made a financial argument to support their case for probation,

[5] *An Act for the Prevention of Cruelty to, and better Protection of, Children* 1889 (52 & 53 Vict. Cap. 44), s 1.
[6] Ibid.
[7] 'Social News – News for the Month,' *Australian Herald* 15(1) (1 September 1906), 22.
[8] 'Charity Organisation Society, Meeting 24 July 1906,' in University of Melbourne Archives, Child Protection Committee Minute Book and Sundry Meetings, *Child Protection Committee Minutes*, MS 62/13-25, 13; 'Children's Courts,' *Age*, 27 July 1906, 5.

suggesting (like Greig) that the work could be performed without extra cost by charitable associations. On 19 July 1906 Charles Strong argued similarly in a letter to the *Age* that '[i]n New York City the work is undertaken by the Society for the Prevention of Cruelty to Children. Might not the … societies whose work is among children, be arranged with to carry out the necessary supervision [here]?'[9] On 17 August 1906 the COS held its nineteenth annual meeting, at which Vida Goldstein moved a resolution that 'probation is the keystone to the effective working of Children's Courts.'[10] These somewhat different emphases did not prevent continued cooperation. At the same meeting, attendees inaugurated a joint Special Committee which consisted of the COS, the NCWV, the WCTU, and the Victorian Board of Advice (an advisory body of the Victorian Education Department), to monitor the progress of the Bill through Parliament.[11]

Ultimately, it was the COS version of the Bill, albeit still somewhat watered down, which eventually gained parliamentary endorsement. In November 1906, the Victorian government introduced a revised Bill with some key changes. Again, the Bill essentially incorporated the administration of two existing pieces of legislation, the *Neglected Children's Act* and the children's provisions of the *Crimes Act*. It stated that cases involving children would be dealt with at separate times from other Police Court matters, and they would be heard in private, although the Bill did not go so far as to mandate that the matters must be heard at separate locations. It did require children to be remanded separately from adult prisoners - if possible. The Bill also allowed for, although again did not mandate, the appointment of special Magistrates to hear charges against children. The greatest difference was the inclusion of a probation scheme. The new Bill allowed children charged with both offences and neglect to be placed on probation, and provided for the appointment of probation officers to monitor these children. It specifically excluded paying the officers, however, assuming that the roles would be filled by voluntary organisations. In their 1907 annual report, the WCTU documented the political machinations behind this change, noting that the government had agreed to include a probation scheme if the charities undertook to supply the probation officers without

[9] 'Children's Courts: To the Editor of the Age,' *Age*, 19 July 1906, 9.
[10] 'Children's Courts,' *Charity Review* 7(3) (September 1906): 15 – 16.
[11] Ibid, 21.

additional cost - which they had duly done.[12] There was no consideration at all to expand the jurisdiction to include child victims. I shall discuss further below some legal, social and political reasons why this more expansive vision of a Children's Court did not attract parliamentary support.

(c) Why a Children's Court?

So far, this thesis has traced the consolidation of the 'Children's Court movement' in Melbourne and the translation of reformers' ideas into legislative reality. Along the way, I have discussed how campaigners advanced various reasons in support of a separate Court. This section turns specifically to that central question of just what it was about a new Court system that so galvanised Melbourne reformers. This question has been considered surprisingly little in the scholarship on Children's Courts to date, in Australia and internationally. Most scholars have agreed that Juvenile Courts were conceived in response to very similar concerns about urban street children, but with scarcely any discussion about the choices made in promoting a Court.[13] Like other cities, the movement towards a Children's Court in Melbourne undoubtedly gained momentum from middle-class fears about 'street children.' As I emphasised in Chapter Four, the campaign for this particular legal change came in parallel with periods of heightened social agitation, and reformers shaped their proposed jurisdiction in response to particular concerns of the time. In the early 1890s they focused on truancy, street sellers and the dangers of the city streets, in the context of a general sense of political, economic and social crisis. The next wave in 1900 – 1901 followed the panic about 'immorality' and 'degeneracy,' with a Children's Court promoted as part of the nation-building project. The final campaign gained momentum in the wake of the growing social purity movement and successful legislative interventions to enhance children's physical and moral 'fitness.' The rest of this section details the various reasons which combined to make this particular jurisdiction so attractive.

(i) Legislative History

[12] Woman's Christian Temperance Union of Victoria, *Twentieth Annual Report During the Year 1907* (Melbourne: Spectator Publishing, 1908), 14.
[13] With the noticeable exception of American sociologist John Sutton, *Stubborn Children: Controlling Delinquency in the United States, 1640 – 1981* (Berkley: University of California Press, 1988), 4 – 5, 121 – 122. I discuss Sutton's arguments further below.

The periodic agitation about poor children was not the only explanation for why Children's Courts became such a popular solution in Melbourne. Other forms of intervention already existed and could have been prioritised. Some, like the state committal system, already had a legislative basis. Others, like the club movement, operated voluntarily but were growing rapidly in the same period. I argue that there were three main reasons why Melbourne reformers prioritised a Court system. One was the long history of using criminal legislation to regulate problematic youth. Another, especially in later years, was the force of example, and the fear that Victoria might fall behind as a social and political innovator. The third, which I argue was ultimately determinative, was the particular attraction of the Juvenile Court as an institution, or what the American sociologist John Sutton has called the 'ceremonial' aspect of Juvenile Courts.[14] In Chapters One and Two I demonstrated through close archival analysis that middle-class reformers defaulted to criminal legislation to manage 'neglected' and offending youth from the 1860s. English literature and legislation from the 1850s instituted a particular idea of the delinquent child, based on existing criminal and vagrancy legislation. Poverty and crime were theorised as moral problems, to be solved by the penal responses of removal, institutionalisation and training. Melbourne reformers, and then the Victorian government, adapted this legislative tradition to align with local methods of child welfare administration, but overall continued to preference the regulatory and criminal law approach. This continued despite significant intellectual challenges, particularly around the number of impoverished but not 'neglected' children and very minor offenders before the Courts. Children's Courts were a different way of managing the urban poor, but they were still at basis conceptualised as a form of criminal and moral regulation.

(ii) The Force of Example

The force of example was also a very strong rationale behind the campaign for Children's Courts in Melbourne. As I argued in Chapter Four, Melbourne reformers cited repeatedly the introduction of Juvenile Courts elsewhere in support of local change. In the early

[14] Ibid, 121 – 122.

1890s, commentators praised the modified criminal jurisdiction in Adelaide as a successful model. After 1900 comparisons abounded as Juvenile Courts spread rapidly throughout the English-speaking world. As I discussed in Chapter Four, the 'equitable' Chicago Court, and its use of probation, was the next Court Melbourne charitable workers publicised. By 1905 the Denver Court and its charismatic Judge Ben Lindsey were very much admired. Lindsey's approach was cited frequently in reformist publications. In October 1905, for example, *Gordon Boys* argued that Lindsey's success lay in his 'paternal rather than judicial' approach and his 'informal' and 'man to man' communication' (a comment which also highlighted again the overriding focus on offending boys)[15] Closer to home, the New South Wales legislation seems to have been a final tipping point for Melbourne reformers and indeed the Victorian government. New South Wales was Victoria's longstanding rival, and even a largely indifferent government administration proved markedly more receptive after its main competitor took action. Interestingly, after an initial burst of publicity in October 1905, Melbourne campaigners cited this Court in their campaign literature far less than Adelaide or the United States - possibly reflecting this historical rivalry – but they were very keenly aware of its existence.

(iii) The 'Therapeutic' Court

The third reason Melbourne reformers promoted a Juvenile Court was the particular attributes of the jurisdiction itself. The Juvenile Court, to a unique degree, promoted a close interaction between law, science and social work: a classic example of, in the words of Canadian sociologist and criminologist Mariana Valverde, the infusion of law with other popular theories to gain credibility and power.[16] American sociologist John Sutton, one of the few academics to concentrate on the reasons (American) reformers promoted a separate Court, has suggested that the individual features of Juvenile Courts were not particularly original. Legal distinctions between children and adults were already established, if not necessarily acted upon, and Juvenile Court procedures also had precedents in themselves, if not in combination. Rather, Sutton argues, the Court's major innovation lay in its capacity to provide a legal framework to implement the goals of

[15] 'A Commonsense Court – Justice for the Juveniles,' *Gordon Boys* 1(4) (14 October 1905): 10 – 11.
[16] Mariana Valverde, *Law's Dream of a Common Knowledge* (Princeton and Oxford: Princeton University Press, 2003), 6.

charitable organisations, or the child saving movement. Juvenile Courts formalised in law a discretionary, theoretically rehabilitative approach to the administration of justice, where Magistrates would be guided by 'science' rather than legal precedent.[17] The Courts were conceived of, and in some cases constituted as, hybrid bodies, both judicial and therapeutic. In the quasi-medical language often employed, the Juvenile Court would provide advanced 'treatment' for the problematic young, providing the comprehensive solution voluntary initiatives lacked.[18] To ensure this, an informal school-like atmosphere was preferred, albeit strongly directed by specialist Magistrates and enforced by trained probation officers. But the Court was also legalistic, and it relied ultimately on the force of law to compel compliance. As we have seen, Melbourne reformers clearly envisaged that the Children's Courts would ensure that young delinquents would be led towards productive citizenship through middle-class guidance, in a way that voluntary initiatives could not.

Melbourne reformers' debates around three key areas - separation and privacy, probation and special Magistrates – illuminate well this concept of the separate Court. Protecting children from the contaminating environment of the Police Court was a very strong theme in Melbourne campaigners' literature. This was based in part on the observable deficiencies of the Police Courts. I demonstrated in Chapter Three that Melbourne's Police Courts were, undeniably, intimidating environments, crowded and full of rowdy commentators, and children's distinctive needs were largely disregarded. For girls the situation was especially dire. As I discussed in Chapters Three and Four, female reformers were rightly horrified by the treatment of child complainants in the Police Courts, where little allowance was made for age or for the nature of the subject matter. Arguments for separating children also stemmed from concerns about rehabilitation in the face of contamination from adult offenders and onlookers. Campaigners argued that separate sessions would assist in determining the reasons for offending behaviour, by encouraging open communication. In 1903 the prominent journalist and reformer Alice Henry, whom I introduced in Chapter Four, argued that 'the truth is more likely to be extracted from the ordinary child if he's taken quietly.'[19] Ideally,

[17] Sutton, *Stubborn Children*, 121 – 125.
[18] Anthony M. Platt, *The Child Savers: The Invention of Delinquency* (Chicago and London: University of Chicago Press, 1969), 137 – 145.
[19] Alice Henry, 'A Children's Court of Justice,' *Argus* (Melbourne), 12 September 1903, 4.

as Henry maintained in her 1905 *Sydney Morning Herald* article, 'the juvenile court passes over nothing, goes below the surface [and] seeks to get at the cause.'[20] A knowledge of causation then allowed the Court to devise an appropriate course of 'treatment.' The *Charity Review* argued similarly in June 1906 that the Juvenile Court, 'is not an instrument of punishment but a means for supplying each child with influences he has missed in the past.'[21] Separation, as Henry emphasised in both of her articles, also deprived 'the budding larrikin' of encouragement or publicity. 'Here [in the Juvenile Court],' she maintained, 'he can be neither hero nor martyr.'[22]

At its core, this was an optimistic vision. Melbourne reformers believed firmly that children and adults were different, and that young people were capable of rehabilitation with appropriate interventions. '[We] doubt if any child is irreclaimable, if only he can have the right treatment,' *Gordon Boys* argued in October 1905.[23] Reformers' belief in the potential for redemption came through particularly clearly in their discussion of probation. Probation was often depicted as an alternative to incarceration in an adult gaol, although as I demonstrated in Chapter Three, the Melbourne Courts had already largely moved away from imprisonment, or indeed reformatory committals, for children. 'The probation system strives as far as possible to do away with imprisoning young people at all,' Alice Henry noted in her 1905 article.[24] Instead, a probation officer would monitor the young person in the community. The officer's role was to ensure that the young person engaged in productive activity and stayed out of trouble. '[T]he probation officer,' Henry claimed, 'will see to it that he is either at school or at work.'[25] Monitoring was intensive. Henry recommended that the officer visit the home and come to know the parents and the workplace or school. The aim was to substitute a form of 'friendly' parental authority that, it was generally assumed, had previously been lacking. In June 1905 the *Charity Review* cited Judge Harvey, drafter of the Chicago Juvenile Court legislation, that a probation officer should 'become the child's confidential advisor and friend.'[26] Reformers also argued, as I discussed in Chapter Four, that probation was an

[20] 'Juvenile Courts,' *Sydney Morning Herald*, 25 January 1905, 11.
[21] 'Children's Courts: the American System of Probation Officers,' *Charity Review* 7(2) (June 1906): 20.
[22] 'Juvenile Courts,' *Sydney Morning Herald*, 25 January 1905, 11.
[23] 'The Treatment of Juvenile Offenders,' *Gordon Boys* 1(4) (14 October 1905): 8.
[24] 'Juvenile Courts,' *Sydney Morning Herald*, 25 January 1905, 11.
[25] Ibid.
[26] 'Juvenile Court Law: its Essential Principles,' *Charity Review* 6(2) (June 1905): 47.

economical option – a strategic contention in the light of Victorian government attitudes to expenditure. 'This experiment has proved [both] cheaper and more humane,' *The Charity Review* maintained in June 1906, as 'it prevents criminals in the making.'[27]

Much of this, of course, sounds familiar, not least in its overt class assumptions. And at basis, probation was indeed conceptualised as an extension of the existing work of Melbourne child welfare organisations with working-class communities. The figure of the presiding Magistrate was also class-based, and thoroughly 'parental,' or rather paternalistic, in nature. As I explored in Chapter Four, Children's Court campaigners in Melbourne had long argued for the appointment of 'special Magistrates' to conduct children's hearings. He (and with the exception of Vida Goldstein, whose more radical views I noted in Chapter Four, Children's Courts Magistrates were always envisaged as male)[28] played a vital role in ensuring that the principles of the jurisdiction were actually carried into effect. On 18 July 1906 the *Age* editorial criticised particularly strongly the failure of the first *Children's Court Bill* to provide for special Magistrates. '[U]nder our existing system children of the tenderest years are … tried … by men whose finer feelings have been dulled by habitual intercourse with the worst specimens of our species,' the paper argued in strong language.[29] In Melbourne reformers' publications, the most important qualities of the 'special Magistrate' were empathy and practicality. Ben Lindsey was invariably the preferred model. '[There is] an urgent need …,' *Gordon Boys* argued in October 1905, 'for a man [like Lindsey] with a special gift for dealing with juvenile offenders.'[30] In accordance with the avowedly therapeutic aim of the jurisdiction, some reformers even advocated that a legal background was not essential if an individual had particular knowledge of 'street' children. [31] On 9 August 1906 the *Age* published a letter from James Furzer, President of the Executive Council of the State Boards of Advice. The Boards of Advice were local committees which regulated state schools, and Furzer suggested that 'gentlemen with experience dealing with truants' and officials from the Education Department would be ideal Children's Court Magistrates.[32]

[27] 'The Children's Court and Probation,' *Charity Review* 7(2) (June 1096): 8.
[28] 'General Comments,' *Woman's Sphere* 1(9) (May 1901): 73.
[29] 'Editorial – Children's Courts,' *Age*, 18 July 1906, 6.
[30] 'Wanted, A Specialist,' *Gordon Boys*, 1(4) (14 October 1905): 9.
[31] Ibid.
[32] James L. Furzer, 'Children's Courts – Letter to the Age,' *Age*, 9 August 1906, 8.

The *Children's Court Bill* in Parliament

In the first part of this Chapter, I outlined the final stage in Melbourne reformers' campaign for legislative reform. I argued that reformers promoted different models for the Children's Court, with women's organisations favouring a more expansive jurisdiction which would have included child victims within its remit. Ultimately, however, the preferred model focused largely on juvenile offenders, with charitable organisations effectively bargaining for the inclusion of probation by offering to supply unpaid officers to implement the scheme. However as I also demonstrated, all reformers were very much unified in their desire for a Court above other forms of intervention, thoroughly embracing the vision of the Children's Court as simultaneously judicial and (in theory) therapeutic. This part of the Chapter turns to the machinations by which the draft Bill became law, through a close study of the Victorian government's *Hansard* publications (parliamentary debates) for the period between November and December 1906. Before this, however, I summarise in brief the Victorian political system at the turn of the century, to document the complexities of the state's parliamentary makeup, and hence to understand the difficulties Melbourne reformers faced in gaining parliamentary attention and support.

(a) The Victorian Political System

The Victorian political system at the turn of the twentieth century was fragmented and inherently conservative. In 1856 the then new colonial government had passed an *Electoral Act*, which established a framework by which the colony was governed by a lower House, the Legislative Assembly, headed by the Premier, and an upper House, the Legislative Council. Parliament was overseen by an Executive, represented by a (during this period English) Governor. The Legislative Assembly was elected by universal male franchise and, unusually, paid its members. As I noted in Chapter Two, (white) women were granted the vote only in 1908, despite gaining the Commonwealth franchise in 1902. The 1856 *Electoral Act* also introduced the secret ballot.[33] Despite these more progressive elements, Legislative Assembly seats were weighted significantly towards

[33] Garden, *Victoria: A History*. (Melbourne: Thomas Nelson, 1984), 123, 197, 205 – 209.

rural areas and did not reflect the city of Melbourne's enormous growth in the 1880s.[34] In the June 1904 elections, the last before the passage of the *Children's Court Act,* the Assembly had 68 seats, of which only 20 were held by Melbourne metropolitan members (or 29 per cent), despite Melbourne residents making up 43 per cent of the state's population.[35] The Legislative Council, on the other hand, had no particular pretensions towards democratic inclusion. It had restrictive property or educational qualifications for both voters and members, as well as excluding women. Only (white) men over 21 who owned property valued at over £1000, leased property with an annual value of at least £100, or who held professional qualifications, were able to vote. Members also had to be over 30.[36] Inevitably, this meant that the Council was dominated by a small, wealthy, rural and Protestant elite.[37] As at June 1904, the Council had 35 members. Ten represented metropolitan Melbourne.[38]

The Victorian government was also inherently unstable. As historian Don Garden has argued, unlike in other states and federally, the party system was less influential in Victoria prior to World War One. Political parties did exist. The Victorian branch of the Labor Party, which consolidated in the 1890s, stood for key socialist principles including progressive income tax, (white, male) workers' rights and tariff protections. It made some headway in urban areas, but it remained a relatively minor force overall in this period due to the electoral weighting against metropolitan Melbourne. In the 1904 elections Labor gained six seats.[39] The remaining members were made up of Conservatives, who supported economic restraint, free trade and existing land arrangements; Liberals, who generally supported protection and progressive reform but not socialism; Nationalists,

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[34] The Victorian population - excluding 'Aboriginal natives' - was estimated at 1,231,940 in December 1906. Commonwealth Bureau of Census and Statistics (Melbourne), *Population and Vital Statistics Bulletin No 1.* (Melbourne: Acting Government Printer, 1907), 19. The population of Melbourne (again excluding Aboriginal people) as at 31 December 1906 was estimated at 530,655. *Statistical Register for the State of Victoria for the Year 1910 : Volume IX - Population.* (Melbourne: Government Printer, 1911), 12.

[35] See list of Legislative Assembly members in Victoria, *Parliamentary Debates (Legislative Council and Legislative Assembly)*, Preface to 1904 Session, at https://www.parliament.vic.gov.au/images/stories/historical_hansard/VicHansard_19040629_19040712.pdf.

[36] Garden, *Victoria*, 106.

[37] Ibid, 271

[38] See list of Legislative Council members in Victoria, *Parliamentary Debates (Legislative Council and Legislative Assembly)*, Preface to 1904 Session, at https://www.parliament.vic.gov.au/images/stories/historical_hansard/VicHansard_19040629_19040712.pdf.

[39] Garden, *Victoria*, 270 – 271.

who had advocated for federation and a white Australia; and Independents.[40] Governments formed through shifting alliances of Conservative and Liberal members, which in turn tended to divide into rural and urban blocks.[41] This political instability was reflected in a rapid turnover in government leadership. Between 1890 and 1906 Victoria had nine Premiers.[42] The passage of legislation was often fraught. Given the transient nature of political alliances, as well as the conservative Legislative Council, much legislation failed to progress, as I have already demonstrated in Chapter Two. After 1904, however, this situation began to alter. Between 1904 and 1909 the Premier was Thomas (later Sir Thomas) Bent. As I also argued in Chapter Two, Bent was nominally conservative, but he also prioritised 'progress,' and his administration increased public investment significantly. His tenure as Premier also coincided with an improved economic situation.[43] Influenced by the growing social purity movement, which as I shall explore further below, also attracted members from within Parliament, from 1904 a considerable amount of 'reform' legislation passed Parliament. It was in this environment that the second *Children's Court Bill* was introduced, negotiated, and finally passed Parliament in December 1906.

(b) The Legislation in Debate, November – December 1906

The amended version of the *Children's Court Bill* was introduced into the Victorian Legislative Assembly on 28 November 1906. This section identifies the particular issues which gained parliamentary attention and outlines the circumstances of those parliamentarians who supported change. As I foreshadowed above, the sponsor of the Bill was John Mackey, Member for Gippsland West and Minister of Lands in the Bent government.[44] Mackey (1863 – 1924) came from a working-class rural background and had subsidised his own university studies in law. After graduation he practised law and taught at the adult education institute, the Working Men's College. Mackey was elected to the Victorian Parliament in 1902. Politically, he identified as a Liberal free trader, and later joined the Nationalist party.[45] Mackey was a strong supporter of 'progressive' legal

[40] Ibid, 271.
[41] Ibid.
[42] Ibid, 272 – 277.
[43] Ibid, 277.
[44] Victoria, *Parliamentary Debates (Legislative Assembly)*, 28 November 1906, 3201 (John Mackey).
[45] Geoffrey Serle, 'Mackey, Sir John Emanuel,' *Australian Dictionary of Biography Volume Ten* (Melbourne: Melbourne University Press, 1986), at http://adb.anu.edu.au/biography/mackey-sir-john-emanuel-7395.

causes. As well as sponsoring the Bill enabling women to practice law, discussed above, he also promoted a variety of criminal law reforms, including indeterminate sentencing (that favourite of the Criminology Society, as I noted in Chapter Four), the establishment of a Court of Criminal Appeal and statutory consolidation.[46]

The introduction of the *Children's Court Bill* was low key. William Watt, Liberal MP for Essendon and another supporter of the Bill, commented that 'the House was rather thin' for the second reading speech. Reflecting the Bill's external popularity, however, the public gallery was packed with supporters.[47] Mackey introduced the Bill with some familiar arguments. The purpose of the legislation, he stated, was to 'cure an evil which undoubtedly exists at the present time,' or young people's contamination by the Police Courts.[48] Mackey's second major point was the legal distinction between child and adult. He emphasised that 'mind of a child should be regarded in a totally different way from that of a person of mature age.' Children often lacked 'deliberation and control' and so 'the[ir] treatment should be altogether different.'[49] A key issue for campaigners was that although the government did ultimately introduce the Bill, it was not associated with any broader political or party interest. In May 1909, Victoria's first Chief Probation officer, Alfred Clarke, noted that the Act 'was a forced measure, because no MP had claimed it as his child, but it was forced on the legislature by public opinion.'[50] The Bill did have a group of parliamentary supporters and certain provisions attracted debate, but these men were of diverse affiliations, and in other respects were unlikely to combine. As I shall discuss in the next Chapter, this lack of political investment would cause significant issues during the Act's implementation.

(i) Separate Courts

One group of supporters of the new legislation was the Victorian Labor party. As discussed above, after the 1904 elections the new party had six members in the Assembly. Labor came out in support of the separate jurisdiction in March 1904, although the party

[46] Victoria, *Parliamentary Debates (Legislative Assembly)*, 28 November 1906, 3201 (John Mackey).
[47] Ibid, 3207 (William Watt).
[48] Ibid, 3201 (John Mackey).
[49] Ibid, 3201 (John Mackey).
[50] A.E. Clarke, 'Delinquent Children and their Improvement under Supervision in the Homes of their Parents,' in *Dependent Children: Interstate Congress of Workers* (Adelaide: W.K. Thomas & Co, 1909), 52.

does not seem to have been consulted about any drafting.[51] In August 1906, the party journal, the *Labor Call*, published a withering criticism of the first *Children's Court Bill*, noting that it 'does not constitute a Children's Court … [it] just makes unimportant alterations to proceedings in the Court of Petty Sessions.'[52] George Prendergast, Labor MP for North Melbourne and parliamentary leader of the Labor party in the Assembly, led his party's response to the Bill. Following Mackey's introductory speech, Prendergast advocated enthusiastically for legal change, stating that '[T]he intention of the Bill … is to form the characters of children who have lapsed into offences more from want of knowledge than anything else … and … to teach [the child] to regard the Court as a benevolent institution formed for the purpose of doing him good.'[53] Prendergast (1854 – 1937) came from a rural working-class background (his father was a publican). He was apprenticed to a printer in his teens and later worked on the staff of several newspapers, before founding and managing the Labor party journal, the *Tocsin* (later renamed the *Labor Call*) between 1897 and 1906. Prendergast became a union member in 1874, was the first secretary of the Progressive Political League in 1891 and president of the Trades Hall Council from 1893 – 1894. He was elected to the seat of North Melbourne in 1894, which he held from 1894 – 1897 and then again from 1900 until he moved to a new West Footscray seat in 1927. He was later Premier of Victoria from 1924 to 1926. In the early twentieth century Prendergast advocated for a minimum wage for factory workers, land reform and free secondary education.[54]

Although a key supporter of Children's Courts, Prendergast also criticised aspects of the proposed legislation. These included certain moral assumptions, which I shall explore further below. Prendergast's first critique, about the physical location of the new Courts, reveals how the Children's Court began to move from aspiration to institutionalisation, and establishes central procedural and administrative concerns as the jurisdiction began to take a more concrete legal form. The proposed section 6 of the Bill, as I noted in the first part of this Chapter, allowed for but did not require separate premises. It stated that Children's Courts could be held 'in some room of the building in which the Court of Petty

[51] 'Woman's Point of View,' *Tocsin* (Melbourne), 24 March 1904, 7.
[52] 'The Children's Court Bill,' *Labor Call* (Melbourne), 9 August 1906, 2.
[53] Victoria, *Parliamentary Debates (Legislative Assembly),* 28 November 1906, 3201 (George Prendergast).
[54] Geoffrey Serle, 'Prendergast, George Michael,' *Australian Dictionary of Biography Volume Eleven* (Melbourne: Melbourne University Press, 1988), at http://adb.anu.edu.au/biography/prendergast-george-michael-8103.

Sessions … sits' or 'in any building or room.' Prendergast argued that entirely separate venues were vital. He believed that to fulfil its purpose the Act would have to 'strip the surroundings of all the appearance of law … and to do everything to relieve the child's mind of any fear.' Prendergast recommended that the Act should mandate physical separation and suggested that the Courts be held at State school premises after hours.[55] Prendergast was supported in this by a man from the opposite side of the political and wealth spectrum. Norman Bayles was the new MP for Toorak, Melbourne's most exclusive suburb. Bayles proposed that Children's Courts should not be tied to any particular location at all, invoking the ancient notion of the peripatetic Court to suggest that Magistrates hold informal hearings wherever was convenient, including the street or the child's home.[56]

Norman Bayles' (1865 – 1946) interest and involvement in the debates around the *Children's Court Bill* was an excellent example of the odd alliances this particular cause could attract. Bayles came from a highly privileged urban background and practised as a solicitor before entering the Victorian Parliament in an Independent in a 1906 by-election. Politically, he was conservative and opposed land reform, land taxes and increased government expenditure. He was, however, supportive of the social purity movement as well as women's suffrage, and he endorsed anti-gambling and anti-liquor legislation. This element presumably attracted him to Children's Courts.[57] Bayles' proposed amendment did not succeed. Donald MacKinnon, Liberal MP for Prahran, and another supporter of the Act,[58] pointed out that even an informal Court needed to keep proper records, a challenging task if the Court were not bound to a physical location.[59] Prendergast's more modest attempt at ensuring physical separation also failed. The final version of the Act still allowed for, but did not mandate, separate premises.[60]

(ii) Court Procedure

[55] Victoria, *Parliamentary Debates (Legislative Assembly),* 28 November 1906, 3202 (George Prendergast).
[56] Ibid, 3211 (Norman Bayles).
[57] John Rickard, 'Bayles, Norman,' *Australian Dictionary of Biography Volume Seven* (Melbourne: Melbourne University Press, 1979), at http://adb.anu.edu.au/biography/bayles-norman-5161.
[58] Geoffrey Serle, 'MacKinnon, Donald,' in *Australian Dictionary of Biography Volume Ten* (Melbourne: Melbourne University Press, 1986), at http://adb.anu.edu.au/biography/mackinnon-donald-7397.
[59] Victoria, *Parliamentary Debates (Legislative Assembly),* 28 November 1906, 3213 (Norman Bayles, Donald MacKinnon).
[60] *Children's Court Act* 1906 (Vic), s 6.

Bayles was more successful in achieving what became one of the most radical clauses in the new legislation, around the conduct of proceedings. While Melbourne reformers had long drawn on the examples of the Adelaide, Chicago and Denver Courts to argue for a more 'informal' atmosphere in the new Court, neither the July nor November drafts modified legal processes. Bayles now proposed a new section overriding the usual rules of evidence. His clause initially read that 'at the trial of any child the Court shall be guided by the real justice of the case, without regard to legal forms and solemnities, and shall direct itself by the best evidence it can procure.'[61] This provision was borrowed from the Illinois and Colorado legislation, although Bayles did not go so far as to advocate for the next step, which would have been the creation of a Court of Chancery. Interestingly, the spirit of the clause was generally accepted by other parliamentarians, who agreed that the new Court should operate in a distinctive manner. Bayles' proposal ultimately became section 28, which ultimately read that 'the court shall be guided by the real justice of the case, without regard to legal forms and solemnities, and shall direct itself by the best evidence it can procure or that is laid before it.'[62] This clause offered a fundamental change to existing processes. It not only mandated that children and adults should be treated differently in a Court hearing, but also flagged the possibility of the Children's Court becoming a more inquisitorial jurisdiction, rather than the traditionally adversarial approach of the common law. As I shall discuss in Chapter Six, some Children's Court Magistrates certainly interpreted the provision in this way.

(iii) State-wide Courts or Melbourne?

Another issue which attracted parliamentary debate was whether Children's Courts should operate state-wide from the outset, or be trialled in the city of Melbourne only. William Watt, since 1904 Liberal MP for Essendon in north-west Melbourne, argued that Children's Courts should, at least initially, only operate in urban areas. Reflecting the traditional assumption that juvenile crime was largely a product of the urban environment, Watt suggested that Juvenile Courts had achieved their greatest successes in cities and that the jurisdiction also needed to be administered by trained staff to

[61] Ibid, 3217 (Norman Bayles).
[62] *Children's Court Act* 1906 (Vic), s 28.

achieve optimal results. 'The fundamental thing,' Watt maintained, 'is to start the Court by getting … men of the right stamp. Without that, the whole system will break down.' Once the system was working successfully in Melbourne, it could be extended to country areas.[63] Mackey would have accepted this change, but other MPs argued that all children should be entitled to the same protections. (Although as I shall examine further below, there was an unstated limitation here: at no point did these men consider that Aboriginal children should come within the purview of the Act). Donald MacKinnon, whose intervention around physical location I discussed above, stated that 'injustice might be done to children in other areas by allowing them to be treated in a different way.'[64] MacKinnon was a more typical example of a reformist parliamentarian, and in background similar to many Melbourne reformers. He came from a privileged rural background and was privately educated in Geelong before attending both Melbourne and Oxford Universities. By the late 1880s he had embraced radical liberalism and supported many reform causes. Frederick Bromley, Labor MP for Carlton, maintained similarly that 'a humanitarian bill of this character should be applied to the whole State at once as … [otherwise] many hardships might occur.'[65] In the end the Act was applied state-wide. As I shall argue in Chapter Six, while theoretically equitable, in fact this led to significant administrative challenges. One key challenge was, as William Watt had recognised, obtaining enough trained staff to implement the scheme.

(iv) Special Magistrates

William Watt (1871 – 1946) was another supporter of a range of reform causes. Like MacKinnon, in 1906 he identified as a Liberal. Unlike MacKinnon, Watt came from a working-class background and was largely self-educated, including at the Working Men's College. Although anti-socialist, which alienated him from the Labor Party (he was Prendergast's successful rival for the largely working-class seat of North Melbourne in 1894, although he subsequently lost it again in 1902), like Labor he supported progressive taxation, land reform and factory legislation. He was a member of the Australian Natives' Association, which, as I noted in Chapter Two, advocated both for an

[63] Victoria, *Parliamentary Debates (Legislative Assembly),* 28 November 1906, 3207 (William Watt).
[64] Ibid, 3216 (Donald MacKinnon).
[65] Ibid, 3216 (Frederick Bromley).

exclusionary 'white Australia' and better working conditions for white (male) Australians, and he agreed with female suffrage. Watt was lately briefly Premier (1913 – 1914) and from 1914 – 1929 federal member for the Melbourne seat of Balaclava.[66] Watt's particular contribution was to advocate strongly for the appointment of special Magistrates to hear children's cases. As I noted above, the November Bill did allow for the appointment of specially trained Magistrates, but only if they were already acting as Magistrates or Justices of the Peace. Watt argued that Children's Court magistrates should be drawn from a wider pool of candidates, noting provocatively that outsiders would come to the task 'untrammelled by any traditions of police court practice.'[67] Prendergast agreed that the executive should be allowed to appoint 'any person' as a special Magistrate, if they had relevant experience.[68] Mackey was responsive to these suggestions, agreeing that 'the best possible man should be obtained to administer the Bill, because the futures of a great many of the rising generation depended on [this],' although he urged caution in regional areas.[69] The proposed amendment carried. A redrafted section 4 of the Act gave the Executive power to appoint 'any person or any police magistrate … or any one of more justices of the peace' as a special Magistrate. However a Children's Court could still sit without a special Magistrate if none had been appointed.[70]

(v) The Probation Scheme

The probation scheme was another aspect of the Bill which attracted some parliamentary discussion, and led to one key amendment. As I discussed above, probation was included belatedly in a proposed section 10 which stated simply that 'any child may be released by the Court on probation.' Section 7 also allowed the executive to appoint 'one or more fit and proper persons, male or female' as probation officers. There was no provision for payment in this clause.[71] As I documented above, Melbourne reformers had effectively

[66] John Anderson and Geoffrey Serle, 'Watt, William Alexander,' *Australian Dictionary of Biography Volume Twelve* (Melbourne: Melbourne University Press, 1990), at http://adb.anu.edu.au/biography/watt-william-alexander-9011.
[67] Victoria, *Parliamentary Debates (Legislative Assembly),* 28 November 1906, 3211 (William Watt).
[68] Ibid, 3212 (George Prendergast).
[69] Ibid, 3212 (John Mackey).
[70] *Children's Court Act* 1906 (Vic), s 5.
[71] Ibid, s 7.

bargained for the inclusion of probation on the understanding that they would act as probation officers. They had not, however, necessarily envisaged that their services would be provided entirely free of charge, and in this they attracted support from a group of again rather disparate supporters. John Bowser, (later Sir John), Conservative MP for the rural seat of Wangaratta and another future Premier (1917 – 1918), argued that probation officers should at least be able to claim travel expenses. He was no doubt thinking of the distances involved in country areas.[72] Bowser was an unexpected supporter of the Bill. He was a country conservative who strongly opposed additional government expenditure, and unlike Bayles, another economic conservative, he does not seem to have been aligned with other reformist causes. His political opponent, William Watt, also supported the option of payment. '[I]f it was found impossible to get proper volunteer assistance,' he pointed out, 'it might be found necessary to reward these persons for their services to the state.' The clause was ultimately amended to allow for - although not mandate – remuneration.[73] I shall examine in Chapter Six the significant impediments caused by the overwhelming reliance on unpaid probation officers in the first years of the *Children's Court Act*.

(vi) Parental Responsibility

The final issue which attracted discussion was parental responsibility for children's wrongdoing. Both the July and November drafts included clauses making parents liable to pay children's fines 'if the Court has reason to believe that such child's parent has contributed to the commission of the said offence by wilful default or by habitually neglecting to exercise due care of the said child.'[74] This liability included, ultimately, imprisonment for non-payment.[75] Melbourne reformers largely approved of this proposal. This reflected longstanding middle-class assumptions, which I explored in depth in Chapters One and Two, that inadequate working-class parenting was a key contributor to juvenile delinquency. The Labor party did not agree, arguing that the provision was simply 'class legislation.' In August 1906, the *Tocsin* queried the ability of working parents to monitor children's activities, asking sarcastically how the proposal

[72] Victoria, *Parliamentary Debates (Legislative Assembly)*, 28 November 1906, 3213 (John Bowser).
[73] Ibid, 3214 (William Watt).
[74] *Children's Court Act* 1906 (Vic), s 21(1).
[75] Ibid, s 22(1).

would 'keep boys out of trouble by putting their father or stepfather in goal, or their mother …'[76] In November, George Prendergast raised the same arguments, noting that the clause effectively penalised poverty. He pointed out that a strictly worded clause would impact unfairly on poor families where parents, especially mothers, could not be at home all day to supervise children. ''I can conceive instances where … the very poverty of the parents is such that neither they nor their children can escape from their environment,' he warned.[77] Prendergast's objections were accepted in part. Mackey agreed to an additional subclause which stated that 'the charge shall not be proved [where] it is shown that a parent's want of pecuniary means is the cause of such default or neglect.' Interestingly, as I shall discuss in Chapter Six, this clause does not seem to have been used in practice, perhaps due to the legal difficulty in proving parental 'default or neglect.'

(vii) The Bill Passes

The *Children's Court Bill*, with the Assembly's amendments, was debated in the Legislative Council on 12 December 1906.[78] It was agreed to, with the exception of Bayles' proposed procedural amendment. The inquisitorial model this foreshadowed was too radical for the Council to contemplate, and they refused to pass the legislation with this clause.[79] This particular clause was again debated in the Assembly on 14 December 1906, where William Watt proposed a slight amendment to retain the Court's procedural informality, but to delete the sentence allowing Magistrates to 'receive or reject any evidence tendered to [the Court.]'[80] On 20 December 1906 the Council agreed to this change.[81] The Bill received Royal Assent on 28 December 1906 and came into effect immediately – indeed, technically speaking, retrospectively.[82] Melbourne reformers may not have got all they had wanted, but they were still enormously pleased and relieved. In February 1907, the Charity Organisation Society declared the Act 'a noble present for the rising

[76] 'The Children's Court Bill,' *Labor Call*, 9 August 1906, 2.
[77] Victoria, *Parliamentary Debates (Legislative Assembly)*, 28 November 1906, 3203 (George Prendergast).
[78] Victoria, *Parliamentary Debates (Legislative Council)*, 12 December 1906, 3704 – 3707.
[79] Ibid, 3706 – 3707.
[80] Victoria, *Parliamentary Debates (Legislative Assembly),* 14 December 1906, 3851 – 3852.
[81] Victoria, *Parliamentary Debates (Legislative Council*), 20 December 1906, 4048.
[82] In fact, possibly through an oversight, the Bill was actually deemed to have come into effect retrospectively on 1 December 1906. *Children's Court Act* 1906 (Vic), s 1.

generation.'[83] The new Act, though, had some noticeable limitations. Some of these were inherent within the Act's jurisdiction, including the incorporation of existing legislative schemes without adaptation. Some resulted from sentencing provisions and the new probation scheme. The next, and final, section of this Chapter will examine the key features of the *Children's Court Act*, including consideration of those children who were excluded from its purview. I shall also demonstrate in Chapter Six that the combination of existing legislation and the new principles underpinning the separate jurisdiction gave rise to continual contradictions in effective implementation. It also created the preconditions for the legal tension between children's welfare and criminal procedure that continue to present in the jurisdiction today.

The Children's Court Act

(a) The Crime/Welfare Court

I have already noted that the *Children's Court Act* had jurisdiction over two types of cases: juvenile offenders who came within the age-specific provisions of the *Crimes Act* (1890) and children who were charged with neglect under the *Neglected Children's Act* (1890). Interestingly, despite the significant amount of earlier agitation about 'truants and street children,' the new Act did not include any provisions to deal with truancy or licensing applications. Nor did reformers express particular concern about this. Possibly the new *Education Act,* which, as discussed in Chapter Four, allowed for truancy applications to be heard 'behind closed doors,' took some of the heat out of this argument.[84] For young offenders and neglected children, the *Children's Court Act* largely restated existing legislation. The new Act provided that children aged under 17 should be tried before the separate Children's Court for all criminal charges except homicide and other capital offences (there was no debate about the age of criminal responsibility, which remained seven under common law).[85] Changes to procedure and sentencing will be discussed in more detail below. The Act made no definitional or sentencing changes to the administration of the *Neglected Children's Act*, with the exception of an optional probation

[83] 'Charity Organisation Society – Children's Courts,' *Age*, 13 February 1907, 10.
[84] *Education Act* 1905 (Vic), s 6.
[85] *Children's Court Act* 1906 (Vic), s 26.

regime, again discussed below. Neglected children continued to be charged and convicted of the 'crime' of neglect, and they were required to physically appear before the Children's Court for that purpose.[86] The Act, then, created a dual crime/welfare jurisdiction, but one which operated within a modified criminal law framework and effectively consolidated further the criminalisation of poverty.

There were inherent tensions within this framework which became evident very quickly and whose legacy persists today. As I discussed in Chapter Three, while the *Neglected Children's Act* formally prioritised the maintenance of public order, in practice its application had expanded significantly over the course of the 1890s to act as a de facto social welfare net for Melbourne's most disadvantaged families. Successive Department secretaries had advocated for an alternative system to remove impoverished mothers and children from the criminal process, for this reason.[87] Interestingly, this argument was never advanced by Children's Court campaigners, presumably because most charitable organisations were heavily dependent on the government funding which followed a state committal. Inevitably, however, these types of cases were very different. As I shall demonstrate in Chapter Six, the welfare arm of the Court very rapidly deviated from its criminal cousin, to follow the path already established by earlier Police Court practice. There was also some friction between the principles and procedures of the criminal arm of the Children's Court and the *Children's Court Act's* quasi-inquisitorial mandate, which I explore further in the next section. The *Children's Court Act* retained the basic premises of criminal law, including proof beyond reasonable doubt, the right to trial (rarely invoked), the formal laying of charges and sentence upon conviction. But the Court was also based around procedural informality, and the requirement for a separate Court was in itself a welfare measure. Certainly, reformers and some Magistrates interpreted the new legislation as requiring a different approach to all children, neglected and criminal.

(b) Children's Court Procedures

[86] Ibid, s 23.
[87] Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1901* (Melbourne: Government Printer, 1902), 4.

The tension between an overarching criminal framework and children's welfare was also inherent within the new Court's procedural provisions. Section 13 of the Act stated that the Children's Court would operate under the same procedures as the Courts of Petty Sessions (Police Courts), unless specifically altered by the Act. Children's hearings also remained by default in the Police Courts, albeit at separate times.[88] This criminal approach was, however, modified by a few key additions with a decidedly welfarist slant. One was private hearings. Section 15 of the Act stated that '[o]n the hearing of any … charge or application under this Act, a Children's Court shall order any persons who in its opinion are not directly interested in the case … to leave the court-room.' As I argued in Chapter Four, privacy was a defining characteristic of other Juvenile Court legislation, and reformers pushed this very strongly for its rehabilitative potential.[89] It was very much not a feature of the Police Courts, as I discussed in Chapter Three, and its intention was clearly protective. Another welfare provision was the sole remnant of female reformers' arguments for greater protections for girls. Section 15 allowed a female witness under the age of 18 or a female defendant to be accompanied by a female friend at all times when giving evidence, although this only applied to the Children's Court, not to girls giving evidence against adult defendants in the police Court.[90] The Act also established a greater role for parents, invoking Ben Lindsey's image of 'paternal' justice. Parents had the right to be heard separately by the Court. Magistrates could also order their attendance if they failed to appear.[91] The Act's most radical procedural change, Bayles' procedural amendment, has already been discussed above. It too introduced a potentially very different approach to Children's Courts operations.[92]

(c) Sentencing

The sentencing provisions of the *Children's Court Act* changed less, with the major exception of the probation regime which I shall discuss separately. The sentencing regime for neglected children was unchanged except for the addition of probation, which in this area proved nominal.[93] I shall discuss in the next Chapter how this actually played out in

[88] *Children's Court Act* (Vic), s 6.
[89] 'Charity Organisation Society – Children's Courts,' *Age*, 13 February 1907, 10.
[90] *Children's Court Act* 1906 (Vic), s 15.
[91] Ibid, s 19.
[92] Ibid, s 28.
[93] Ibid, s 23(1).

practice. The Act did make some modifications for juvenile offenders, although again these were not as extensive as reformers had wished. The new Act provided that children charged with misdemeanours (offences which did not attract imprisonment as a possible penalty) could have their charges proven and dismissed, be released on good behaviour bonds or recognisances, fined, be released on probation, or dealt with as neglected children.[94] The last option remained dependent on the child's alleged moral status, that persistent theme which I explored in Chapters One and Three. The Act stated that a 'depraved' child should always be dealt with under the criminal provisions.[95] A new section also allowed boys under 16 to be whipped (ideally by their fathers) and then discharged without conviction. As I discussed in Chapter Four, some reformers had advocated for this particular form of punishment since the early 1890s.[96] Children convicted of felonies, or charges which could attract a term of imprisonment, were treated differently according to whether they were over or under 12. The Act prohibited the imprisonment of children under 12, although they could be sent to reformatories. Children over 12, however, could still be sentenced to imprisonment, although this was now limited to a maximum of six months.[97] This included for the non-payment of fines, although the Act set out a schedule according to the amount owed.[98] In this respect the Victorian Act was considerably more conservative than the South Australian regime, which abolished imprisonment for children altogether, and the New South Wales legislation, which required 'special justification.'[99]

(d) The New Probation Scheme

The most innovative feature of the *Children's Court Act* was its probation scheme. Section 10(1) of the Act stated simply that 'any child may be released by the Court on probation.' A later provision made it clear that neglected children as well as offenders could be released on probation, although unlike offending children, for whom no time period was specified, neglected children could only remain on probation for a maximum period of 12

[94] Ibid, s 20(d).
[95] Ibid, ss 20(a), 26(1) and 27(1).
[96] Ibid, s 25(1).
[97] Ibid, s 27(1)(c).
[98] Ibid, s 30.
[99] *State Children's Act* 1895 (SA), s 36; *Neglected Children and Juvenile Offenders Act* 1905 (NSW), s 24.

months.[100] In fact, as I shall demonstrate in the next two Chapters, only very small numbers of neglected children were actually dealt with in this way. In part this was because the neglected cohort was so much younger, but it was also because these children did not usually present with the types of circumstances amenable to change through supervision. The operating premise of the probation scheme, as discussed in Chapter Four, borrowed very heavily from the charitable visiting model, including its voluntary nature. Like the rest of the Act, the probation regime had inherent contradictions between penal and welfare approaches. The Act required the probation officer to 'inquire and furnish the Court with information as to the child's habits conduct and mode of living;' 'visit and supervise any child before and after the hearing' and more generally 'render to the Court such assistance as it may require.'[101] Officers could also appear in Court to advocate for the child, and if the child was not legally represented they could be formally heard on the child's behalf.[102] Probation officers could also assume care of a child prior to a Court appearance.[103] However a probation officer was also responsible for ongoing monitoring and reporting, and could return a child to Court if they failed to comply.[104] The conflict between these requirements went entirely unremarked by parliamentarians. The great advantage of probation was that children were not convicted. After successful completion they were formally discharged with no Court record.[105] A breach of conditions, though, could lead to a return to Court, and from then conviction and sentence.[106]

(e) Exclusions: Child Victims

There were two very significant exclusions from the new Court's jurisdiction. I discussed in the first part of this Chapter how the protection of child victims, particularly girls in carnal knowledge cases, was a major focus of women's organisations from the early 1890s. By 1900 this had consolidated into a campaign for all matters involving child victims to be dealt with in the Children's Court. In this they were strongly supported by

[100] *Children's Court Act* 1906 (Vic), s 23(b).
[101] Ibid, s 9(1).
[102] Ibid, s 9(2).
[103] Ibid s 18(4)(b).
[104] Ibid, s 9(3).
[105] Ibid, s 10(1).
[106] Ibid, s 10(3).

the VSPCC. Ultimately, as I have noted already, they were unsuccessful. This is not surprising, for it would always have been an uphill battle. What these groups were asking for was legally and procedurally, as well as socially, complex. Their proposals would have tried adults – and moreover adults who were subject in serious sexual offence cases to Supreme Court jurisdiction – within a Court of lower jurisdiction, which was by now firmly framed as an intervention directed at the young. The alternative, of course, would have been to modify Police and Supreme Court procedures, but this was not what reformers were suggesting. There was no precedent for private hearings outside Juvenile Courts and any calls to restrict the publicity of the adult jurisdiction would inevitably have invoked the spectre of the so-called 'star chamber.'[107] Finally, as I discussed in Chapter Three, negative assumptions about young sexual complainants were entrenched and widespread. Even if procedural hurdles could have been overcome, it is rather unlikely that (male) parliamentarians would have seen greater protection for adolescent working-class girls as desirable at the expense of adult male defendants. Whatever the reason, at no point did the new legislation contemplate the inclusion of child victims, and this particular cause then lay dormant for many years.[108] This exclusion of girl victims from the remit of the new Act had one other very important implication. It confirmed the focus of the Children's Court on young male offenders, and it ensured that most interventions and processes were designed with this group in mind.

(f) Exclusions: Aboriginal Children

The Children's Court jurisdiction was not just aimed primarily at offending boys. It was also, as I have already argued in Chapter Four, an example of nation-building legislation with all of the racial implications this entailed. This was reinforced by a final and very significant exclusion. Aboriginal children, who were regulated under the *Aborigines Acts*, were not brought within the purview of the Children's Court. Nor, as I have already noted, was their inclusion ever contemplated by reformers or parliamentarians. In fact, there was no mention whatever of Aboriginal children throughout the entire campaign for Children's Courts. As I argued in Chapters One and Two, from 1869 Aboriginal children

[107] As I shall discuss further in Chapter Six, the Melbourne press did make these arguments about the Children's Court, see 'A Secret Court,' *Herald* (Melbourne), 26 February 1907, 2.
[108] Robyn Blewer, 'Making Kiddies at Home in Court: Supporting Child Witnesses in Twentieth Century Australian Courtroom,' *Law and History* 62(4) (2017): 79 – 80, 81 – 82, 84 - 86.

were the subject of distinctive, and discriminatory, regulation under the successive *Aborigines Acts*. The 1869 Act allowed the executive to make regulations for the 'care, custody and education' of Aboriginal children.[109] From 1871 regulations confirmed that 'neglected' or 'unprotected' children could be administratively removed from their families on to either stations or into the care of the Neglected Children's Department.[110] The distinctions hardened under the 1886 legislation. As I discussed in Chapter Two, 'half caste' children under 14 were deemed to be 'Aboriginal.'[111] As a result, they were also subject to significant control. Orphan children could – again administratively – be made state wards. From 1899 *any* Aboriginal child, orphan or otherwise, could be committed to the Department for Neglected Children for education or training, without any prior finding of neglect and again without a Court hearing.[112] Effectively, then, this meant that the very status of being an 'Aboriginal child' was in itself deemed neglect, even if an individual child did not lack appropriate parental care.

This history also meant was that there was no precedent for Aboriginal children being dealt with in a Court system, as opposed to a virtually autonomous administrative regime.[113] As I argued in the Introduction, the differential legal status of Aboriginal children was a direct consequence of the advance of white settler society and the racial framework which deemed Aboriginal peoples inferior, and ultimately doomed to extinction.[114] Conversely, from the late 1890s the emphasis on white children as the foundation of a nation increased. I discussed in Chapter Two how exclusionary ideas of Australian nationhood increased in the decade to Federation and accelerated in the early twentieth century. These theories sat alongside a variety of legislative and voluntary initiatives aimed at increasing the physical and moral fitness of the nation's (non-Aboriginal) youth. This system also had a strong emphasis on keeping children at home with support, and the new probation scheme embodied this development. Through the

[109] *Aborigines Act 1869* (Vic), s 2
[110] 'Regulations and orders made under the Act to provide for the protection and management of the Aboriginal natives of Victoria,' *Victorian Government Gazette*, 24 February 1871, 338.
[111] *Aborigines Protection Act* 1886 (Vic), s 4.
[112] 'Aborigines Act 1890 – Alteration of Regulations,' *Victorian Government Gazette*, 1 December 1899, 4383.
[113] As I also noted in Chapters One and Two, the absence of Court oversight was a unifying theme amongst Australia's various 'protection' regimes for Aboriginal children, see Chris Cunneen, Rob White and Kelly Richards, *Juvenile Justice: Youth and Crime in Australia*. (Melbourne: Oxford University Press, 2015), 146.
[114] Patrick Wolfe, 'Logics of Elimination: Colonial Policies on Indigenous Peoples in Australia and the United States,' University of Nebraska Human Rights and Human Diversity Initiative Monograph Series, Volume 2 No 2 2000: 2 – 4.

omission of Aboriginal children, then, the 1906 Act not only confirmed their inferior status, but in fact exacerbated existing differences. Other children not only had a Court hearing prior to state committal, and one which was (at least theoretically) more tailored to their needs, but they were also subject to a legislative framework which had an overt commitment to keeping them with their parents. Aboriginal children, by contrast, were subject to a regulatory regime which had the opposite mandate. The consequences were devastating and longstanding.[115] As I shall note further in the Conclusion, the modern Children's Court inherits and continues to struggle with this legacy of discrimination and dispossession.[116]

Conclusion

This Chapter has explored the legislative creation of the first Victorian Children's Court. It argued that while the new Court had its origins in reformers' aspirations for change, the final form of the Court was informed by a series of political compromises. This created a somewhat inconsistent regime which had ongoing implications for effective operation. I highlighted throughout this Chapter the conflicts between reformers' stated desire for social transformation and the political and economic reality in which they operated. I also emphasised the inherent contradictions between penal and welfare imperatives within the *Children's Court Act*. The Children's Court's jurisdiction over both criminal and neglect matters in itself created tension and its overarching criminal framework, drawn from existing legislation, sat uneasily alongside new, more obviously welfare-inspired provisions. The Act had other jurisdictional limitations. Women's organisations had argued for a more expansive jurisdiction which would have included child victims, particularly girls who were the victims of adult sexual offending. Ultimately, this proved too radical for the government to contemplate and these proposals were abandoned, leaving these children in the ordinary Court system. No reformer contemplated the inclusion of Aboriginal children within Act's remit and they were indeed excluded, an omission which exacerbated their already inferior legal status. The new probation

[115] Richard Broome, *Aboriginal Victorians: A History Since 1800*. (Sydney: Allen and Unwin, 2005), 186 – 187.
[116] Commission for Children and Young People, *Always Was, Always Will be Koori Children: Investigation into the circumstances of Aboriginal children and young people in out-of-home care in Victoria*. (Melbourne: Commission for Children and Young People, 2016), 39 – 41.

scheme, the Act's most obvious 'welfare' initiative, also had significant limitations. It gave children the option of avoiding a criminal conviction and reinforced the growing trend, which I discussed in Chapter Three, of supporting (white) children in their home environment. But in another reflection of the fiscal environment, the new scheme was largely unfunded and relied heavily on charitable organisations for implementation. As I shall demonstrate in Chapters Six and Seven, demand rapidly exceeded the capacity of these organisations to manage the regime, leading to significant operational problems. I shall explore these challenges, and others, in Part Three of this thesis, which traces the implementation of the new Court system across Melbourne in its first few years.

PART THREE

CHILDREN'S COURTS – SOLUTION OR PROBLEM?

CHAPTER SIX
CHILDREN'S COURTS IN OPERATION, 1907 - 1910

In Part Two of this thesis, I examined the backgrounds and attitudes of Melbourne reformers who advocated for Children's Courts as a primary solution for offending, and to a lesser extent, neglected children. I also documented the campaign for legal change and evaluated the main features of the new *Children's Court Act*. In combination these exposed key tensions and omissions that inform an overriding proposition of this thesis - the limitations of legislation and the Court system in responding to economic and social disadvantage. As I argued in Chapter Four, reformers' theories about the moral causes of delinquency and the need for middle-class redirection meant that the Children's Court ultimately consolidated a pattern of penal interventions against the poor and the marginalised. The final form of the legislation also concentrated overwhelmingly on white boys. For legal, political and social reasons, girls, who were far more likely to appear before the Courts as victims than offenders, were excluded from the jurisdiction of the new Court. Aboriginal children, who were regulated in a very different manner under the *Aborigines Act*, were not even contemplated throughout the campaign for Children's Courts. Overall, Part Two made visible the social and political decisions which underpinned the creation of the Children's Court, linking Melbourne's past to its present and so raising relevant questions about how this institution can respond effectively to the complex and ever-changing needs of children today.

Part Three of this thesis furthers these arguments by engaging in a close study of how the *Children's Court Act* was introduced across the city of Melbourne in its first four years. I focus here on how the structural limitations of the new legislation, outlined in Chapter Five, were exacerbated and made visible by a fragmented and poorly coordinated implementation process. I also seek to continue and demonstrate my contribution to the social history of law and the Courts. I draw on a wide range of archival material, including the new Children's Court registers themselves, to paint a comprehensive picture of the tensions between reformers' intentions and processes on the ground. This includes the experiences of those children and their families who appeared before the new Courts.

Chapter Six documents the implementation of the Act across Melbourne city more generally, before I turn in Chapter Seven to a close study of one particular site, the Fitzroy Children's Court. The first part of this Chapter looks in detail at how the Courts were established, before turning to the implementation of the new probation regime. These both demonstrate that a lack of government direction, severely limited funding and inadequate training for new probation officers meant that implementation was haphazard and experiences variable. The third part of the Chapter examines the impact of the new regime for offending and neglected children, with a particular focus on commentators' allegations, very familiar to modern readers, that the new Courts had ushered in an era of 'lenient sentencing,' with rising crime the result. Overall, I argue that these early years demonstrate in the clearest way possible the critical importance of political support and financial investment for the effective implementation of legal change. This is another fundamental theme of this thesis and another lesson for modern readers as we continue to debate the effective operation of the separate jurisdiction.

Establishing the Children's Courts

(a) Separate Hearings

Confusion dominated the new scheme from the outset. One problem was the sheer number of Children's Courts. Section 3 of the *Children's Court Act* mandated that Children's Courts should be established in every locality with an existing Police Court. As I discussed in Chapter Five, this was a political decision to avoid city children coming before Children's Courts while country children continued to attend the Police Courts. This meant, however, that there were large numbers of widely dispersed Courts (about 200 across the state), all presided over by different Magistrates, and sometimes involving only very small numbers of children. To compound the problem, the Police Courts do not seem to have received any directive from the government about when to hold their Children's Courts. Individual Courts, therefore, had to work out their own systems. Initially, most Courts convened in a haphazard fashion whenever children appeared on the list. On 16 January 1907, the *Age* recorded that children attending the Carlton Court in inner Melbourne were admitted as usual to the Court room, before the Chair noticed and instructed 'all boys present' to leave and remain outside. The boys were then

'compelled to wait about in the street for over two hours whilst the ordinary cases were being dealt with.'[1] In early 1907, the nearby Fitzroy and Collingwood Children's Courts also sat on an ad hoc basis, usually after Police Court business had finished for the day.[2] This situation continued in some areas until well into 1908. In April 1908, the *Argus* reported that the Hawthorn Magistrates, in Melbourne's east, had kept children and their parents 'waiting about the precincts of the building from 10 o'clock in the morning until 3 o'clock in the afternoon.' Upon being challenged by the Crown Law Department, the Hawthorn Magistrates responded defiantly that 'they could not have been justified in keeping … business and professional men waiting about [for the Children's Court].'[3]

Of necessity, by mid-1907 many Courts had devised their own scheduling arrangements. Children's matters were set down for particular days and times, either before general Court business, or later in the afternoon. The number of hearings varied, depending on numbers and available resources. The busy Carlton Court had a daily session for children, held first thing in the morning.[4] Most of the other metropolitan Courts had weekly or fortnightly hearings, depending on demand. Fitzroy held its Children's Courts every Thursday morning, while Collingwood settled on Wednesday afternoons.[5] Following the impasse at Hawthorn in 1908, the Crown Law Department appointed a special Magistrate for that Court, to preside on a separate day.[6] But some smaller Courts without the resources or numbers to accommodate dedicated sessions for children continued to convene only as required. In June 1908 the *Age* noted that the Kew Bench, again in Melbourne's east, had cleared the Court to hold a Children's Court in the middle of Police Court business. This in turn attracted complaints from 'a number of the public and several legal practitioners … compelled to hang about the precincts of the court in the bitterly cold weather.'[7] The Kew Magistrates expressed their regret, and suggested strategically

[1] 'Children's Courts – Action by the Carlton Bench,' *Age* (Melbourne), 17 January 1907, 6.
[2] 'Police Courts,' *Collingwood Observer*, 14 February 1907, 5; 'Police Courts,' *Collingwood Observer*, 21 February 1907, 5.
[3] 'Hawthorn Justice Obdurate – An Official Rebuke,' *Argus* (Melbourne), 9 April 1908, 5.
[4] 'Children's Courts: Sittings, Special Magistrates, Probation Officers,' *Probation Officers' Record* 1(1) (16 January 1911): 11 – 12.
[5] Ibid.
[6] 'Hawthorn Justice Obdurate – An Official Rebuke,' *Argus*, 9 April 1908, 5.
[7] 'News of the Day,' *Age*, 25 June 1908, 4.

that the issue could be solved by the appointment of a special Magistrate, as in neighbouring Hawthorn.[8]

One major difficulty was that no specific government funding was made available for the separate accommodation of Children's Courts. Although the Act allowed for Children's Courts to be held in different locations from the Police Courts, in practice, as I discussed in Chapter Five, full physical separation was uncommon. With the exception of the Melbourne Children's Court, discussed further below, children's hearings continued to take place in the Police Courts. One solution which achieved some delineation was to hear children's cases in the Magistrates' Chambers, after the Denver model. At the South Melbourne Police Court on 25 January 1907, the *Age* noted that a Children's Court was 'constituted in the Magistrates' room' to hear a charge of larceny against a young girl.[9] On 1 February 1907 the paper recorded that two boys had appeared before the Children's Court at Fitzroy 'in the magistrates' room.'[10] By 1909 juvenile hearings in Chambers seem to have become widespread. In his annual report for 1909, Melbourne's new Chief Probation Officer, Alfred Clarke, noted that 'most of the Children's Courts are held in places apart from the Petty Sessions Court rooms.'[11] In 1910 the South Melbourne Council stepped in and arranged for the local Children's Court to be held at a room in the Town Hall. This was not replicated elsewhere during this period.[12]

(b) Court Procedures

Children's Court procedures also developed incrementally and individually. Although the *Children's Court Act* allowed for a more informal atmosphere, Magistrates seem to have been somewhat confused about how to implement this in practice. Again in the absence of any clear direction from above, many seemed to have deferred to the usual legal formalities, an excellent example of the inherent conservatism of the Court system. *The Age* noted on 24 January 1907 that 'useless and lengthy depositions' were read in a Port Melbourne case involving a 16-year-old girl charged with larceny from a dwelling. The

[8] Ibid, 4.
[9] 'A Girl's Love of Finery,' *Age*, 26 January 1907, 15.
[10] 'Children's Courts – Now Held in Private,' *Age*, 1 February 1907, 3.
[11] Office of the Chief Probation Officer, *The Children's Court Act: Report of the Chief Probation Officer for the Year 1909* (Melbourne: J. Kemp, 1910), 3.
[12] 'Children's Courts – Satisfactory Results,' *Argus*, 17 March 1910, 9.

author noted that as the charge was subsequently reduced to simple larceny and the girl was dealt with summarily, 'the time and labour thus involved were wasted.'[13] Court formalities seemed to have been more likely if cases were heard in the Police Courts. When the South Melbourne Children's Court relocated to the Town Hall, the presiding Magistrate, Dr Aitchinson, applauded the decision because it would now mean that police could appear in plain clothes and 'all proceedings would be carried out with as little formality as possible.'[14] The legislative requirement to hear children's matters in private, also discussed in Chapter Five, was adhered to, although there was debate about whether this included the press. Individual Courts again interpreted the privacy provision differently, with some allowing reporters to attend and some initially excluding them. The press fought back. In February 1907 the *Herald* criticised the 'secret court,' conceding that while a lack of publicity enhanced children's rehabilitation, press exclusion was 'contrary to the principles of British justice.' The paper offered to suppress the names of children attending the Courts.[15] This course of action had already been suggested by William Judge, President of the Victorian Society for the Prevention of Cruelty to Children.[16] Other papers adopted the same practice, although not always willingly.[17] Thereafter reporters seem to have been admitted into hearings without issue, although the overall coverage of Children's Courts cases diminished.

(c) Special Magistrates

The government was equally slow to appoint trained Magistrates to the new Courts, no doubt once more because this would have entailed extra expenditure. As I noted in Chapter Five, the government had not initially included any provision for special Magistrates, and this was added only after hard campaigning by reformers. The Crown Law Department did not actually start making many appointments until well into 1908, and then only sporadically. Instead, the Magistrates and Justices of the Peace (unpaid Magistrates) already staffing the Police Courts were tasked with dealing with the new juvenile jurisdiction. Some individuals were sympathetic to the new ideals. In February

[13] 'Children's Courts – Peculiar Case at Port Melbourne,' *Age*, 25 January 1907, 8.
[14] 'Children's Courts – Satisfactory Results,' *Argus*, 17 March 1910, 9.
[15] 'A Secret Court,' *Herald*, 26 February 1907, 2.
[16] 'Charity Organisation Society – Children's Courts,' *Age*, 13 February 1907, 10.
[17] 'Editorial,' *Collingwood Observer*, 25 July 1907, 2.

1907 Mr Edwards, JP at the Port Melbourne Court, insisted that children be dealt with one at a time in the Magistrates' room to avoid 'the Police Court, and its associated negative publicity.'[18] Others most definitely were not. Alfred Clarke noted in 1908 that many Magistrates had not digested the spirit of the new Act at all. 'The ideal to be aimed at,' Clark reminded them, 'is that the personal influence of the justice should be [felt] at all times and places.'[19] He also recommended that the same Magistrate hear cases throughout, so that a Magistrate would get to know the particular child intimately. This suggested that this was mostly not done in practice.[20] Continued pressure by reformers gradually led to the appointment of more specialist Magistrates, although this was still far from universal. By January 1911, Brighton, Camberwell, Essendon, Hawthorn, Kew, Malvern, Melbourne, North Melbourne, Prahran, Richmond, South Melbourne and St Kilda Children's Courts each had Children's Court Magistrates, although it is unclear whether these were paid or voluntary appointments. However the busy Carlton, Fitzroy, Collingwood and Port Melbourne Courts, all in particularly disadvantaged areas, still relied on the regular Bench to hear cases, and specialist Magistrates were very uncommon outside Melbourne.[21]

(d) Melbourne Children's Court – The Great Exception

The great exception was the central Melbourne Children's Court, which followed a very different trajectory. By 1908 it not only had separate premises, special Magistrates and a fleet of probation officers, but even a dedicated Court Constable and new remand facilities. The Melbourne Children's Court rapidly came to symbolise the new regime, but its development was anomalous. The establishment of this Court also revealed a great deal about the limits of state involvement and the influence of charitable organisations in Melbourne, as well as the subsequent struggle of those organisations to administer a scheme of this nature. The Victorian government proposed as early as February 1907 to set aside a space for a separate Children's Court in central Melbourne. On 27 February 1907 the *Argus* reported that the Attorney-General, John Davies, had suggested a

[18] 'Children's Courts,' *Argus*, 8 February 1907, 8.
[19] Office of the Chief Probation Officer, *The Children's Court Act: Report of the Chief Probation Officer for the Year 1907* (Melbourne: J C Stephens, 1908), 2.
[20] Ibid.
[21] 'Children's Courts,' *Probation Officers' Record*, 11 – 12.

dedicated Court room at the Melbourne Police Court, which had a separate entrance.[22] Another possibility was to establish the Children's Court entirely offsite at the Gordon Institute. The Gordon Institute, as I noted in Chapters Four and Five, was a committed campaigner for Juvenile Courts. As early as 1891 it had offered to host a 'little Court' to hear truancy cases.[23] In March 1907, the Institute 'offered the Government [the] use of two large and well-ventilated rooms on its premises.' It also volunteered to 'house and look after all juvenile offenders awaiting trial.'[24] By April, the new Attorney-General, Douglas McKinnon, had inspected the premises and noted that after a few alterations were made 'it is probable that the institute will be accepted for the purpose intended.'[25]

The Institute swung into action. By late 1907, largely through its own efforts, it had accumulated enough resources to carry out substantial alterations to its city headquarters. This included a small contribution from the government. Two upstairs rooms were renovated 'to be used for Children's Court work,' and other rooms were refurbished to accommodate remandees.[26] In line with Victoria's long history of delegating children's affairs to private charities, the Victorian government seems to have been happy to leave the practicalities entirely to the Institute. By February 1908 the building work was complete,[27] and from the middle of that month the Institute leased three rooms, (or rather loaned, as it did not charge rent) to the government for a bi-weekly sitting of the Children's Court. One room was used as the Court room, and the other two as waiting areas.[28] In December 1908 *Gordon Boys* noted that the Court room itself and one waiting room had the luxury of fires in winter and even a telephone had been installed.[29] Special magistrates attended the Court, and a special Children's Court Constable, J.T. McIntosh, was appointed to prosecute cases.[30] In September 1908 the Institute hosted a visit from Adelaide from the renowned feminist campaigner for women's and children's rights, Catherine Helen Spence, and reported with pride her

[22] 'Children's Courts – Administration Proposals,' *Argus*, 27 February 1907, 8.
[23] 'Truants and Neglected Children – Conference at the Education Department,' *Age*, 21 May 1891, 6.
[24] 'News of the Day,' *Age*, 12 March 1907, 6.
[25] 'News of the Day,' *Age*, 5 April 1907, 4.
[26] 'Progress of Alterations,' *Gordon Boys* 14(1) (21 December 1907): 3.
[27] 'News of the Day,' *Age*, 11 February 1908, 4.
[28] 'Children's Court and Detention Work,' *Gordon Boys* (21 December 1908): 3, 8.
[29] 'The Children's Court and the Institute,' *Gordon Boys* (21 December 1908): 4.
[30] Office of the Chief Probation Officer, *Report of the Chief Probation Officer for the Year 1908* (Melbourne: Government Printer, 1909), 5.

comment that 'the Melbourne Children's Court was the most rationally equipped institution of the kind she had seen.'[31]

The Melbourne Court might have had state of the art facilities, but the precedent it set was ultimately somewhat unfortunate. Observing that charitable organisations could play a leading role in the administration of justice, the government encouraged others to do likewise and did not volunteer funding at a level which would cover costs. The expenses of the Melbourne Court were borne largely by the Gordon Institute, and these were considerable. As well as paying for the Court's upkeep, between August 1907 and December 1908, the Institute admitted 124 children on remand, aged between four and 17, for periods of between a few hours and a few days. The children were accepted at any hour of the day or night, fed, given clothes if their own were unwearable, and allowed to use the Institute's pool and gym facilities. Except for very young children, they were not allowed to mix with the regular inhabitants of the Institute, which required the appointment of special officers to guard them.[32] The society also accommodated girls for short periods until alternative arrangements could be made, which meant that female attendants had to be employed.[33] The Institute noted in December 1908 that 'the housing of the Children's Court has not entailed very much additional work … [but] the care of the detention children has meant a great deal of extra labour.'[34] In its first year, the scheme cost £658 for housing and laundry, and £65 for extra labour. The government contributed just £75.[35] Attempts to extract more money were unsuccessful. By December 1908, the Institute was forced to appeal to the public in the hope that it would 'provide the additional funds necessary' and allow the dual remand and Court scheme to continue operating.[36]

Probation and the Charities

[31] 'Children's Court and Detention work,' *Gordon Boys*, 8.
[32] 'The Children's Court and the Institute,' *Gordon Boys*, 3 – 4.
[33] 'Children's Court and Detention Work,' *Gordon Boys*, 8; 'Report and Balance Sheet,' *Gordon Boys* (December 1910): 6.
[34] 'Children's Court and Detention Work,' *Gordon Boys,* 8.
[35] 'The Children's Court and the Institute,' *Gordon Boys,* 4.
[36] 'Children's Court and Detention Work,' *Gordon Boys,* 8. The Institute continued to host the Melbourne Children's Court until 1941. A state facility opened only in 1960, in Batman Avenue, Melbourne. See https://www.childrenscourt.vic.gov.au/about-us/history.

The establishment of the Melbourne Children's Court in particular reveals very clearly the quasi-public, quasi-private dynamic of the new jurisdiction. It also illuminates the weaknesses within this system, as the Gordon Institute struggled to administer such a complex project without adequate state funding or direction. The new probation scheme followed a similar model. In this section I shall demonstrate, through an in-depth examination of key archival sources generated by probation officers themselves, how Melbourne's new probation regime faced considerable challenges from the outset due to rapidly increasing demand and limited resources. Probation was the major innovation of the *Children's Court Act*. As I outlined in Chapter Five, the Act allowed Magistrates to sentence both offending and neglected children to a period on probation, as well as providing for the appointment of probation officers and outlining their major responsibilities. The inclusion of a probation scheme was the result of considerable campaigning by Melbourne reformers. The initial Bill did not include such a scheme, and, as I argued, the change came about largely because charitable organisations offered to supply the officers free of charge. Like the Courts themselves, the probation scheme was launched with little apparent coordination or planning. On 18 February 1907, the Attorney-General, John Davies, announced the appointment of Alfred Clarke to the new role of Chief Probation Officer. Clarke was the secretary of the Discharged Prisoners' Aid Society, a position which he continued to hold. This meant, as Mr Davies noted happily, that he need 'receive only a nominal salary' for this position.[37] Clarke set up his office, with a small support staff, in the Temperance and General Building, on the corner of Swanston and Collins Streets, Melbourne.[38] Clarke's role was largely managerial, although it was anticipated that he would undertake some probationary work. His own writings reveal just how much the demands of the role exceeded his 'nominal salary.'[39]

(a) Melbourne's Probation Officers

Probation officers had to wait a further two months for official authorisation. On 23 April 1907 the government finally made its first appointments, gazetting 56 'ladies and gentlemen' as probation officers. Forty-one of these appointees were women and the

[37] 'Children's Courts – Probationary Officers,' *Age*, 19 February 1907, 3.
[38] *Report of the Chief Probation Officer for the Year 1907*, 1.
[39] 'Children's Courts – Probationary Officers,' *Age*, 19 February 1907, 3.

majority were members of children's or benevolent charities. All except Clarke were unpaid.[40] I examined in Chapter Five how the payment of probation officers had been the subject of some parliamentary debate in late 1906. While the charities had offered to supply officers, they seemed to have hoped for some funding to support their activities, possibly along the same lines as the administration of the *Neglected Children's Act*. Some parliamentarians had also argued for payment, given the high level of responsibility the work would entail. Ultimately, however, the Act allowed for but did not mandate payment and arguments about funding continued. At a meeting of charitable representatives shortly after Clarke's appointment in late February 1907, prominent feminist reformer Vida Goldstein (soon to be a voluntary probation officer herself) moved for the appointment of at least one paid female officer 'to investigate cases concerning girls and infants.' She noted critically that 'when the government spent thousands of pounds yearly on criminals, surely it could afford £4 to £5 a week for an officer.'[41] The government was unresponsive. In April 1907, Donald MacKinnon, now Acting Attorney-General, admitted that 'the work would be of a somewhat arduous nature,' and that 'in some countries officers were paid' but reiterated that 'for the present' all appointments would be voluntary. MacKinnon's main deflective strategy seems to have been flattery. He emphasised the importance of these roles to the administration of the new Act. '[I]t was … believed,' McKinnon remarked, 'that the officers would do their work faithfully and be of great use in carrying out the objects of the Act.'[42]

Victoria's new probation officers lacked formal training as well as pay. While the new appointees were familiar with the requirements of charitable work, they were all, of necessity, new to this particular role. Clarke arranged some training and published a number of educational articles. The probation officers themselves organised further meetings, seemingly as much for support as instruction. But on the whole, new officers learned their role on the job. Clarke admitted in his 1907 annual report that so far '[t]he work has been almost wholly educational. All concerned have been learning how to apply

[40] Alfred Clarke, *The Children's Court Act 1906: Notes for the Guidance of Probation Officers and Others Engaged in the Administration of the Children's Court Act, and the rules and regulations thereunder* (Melbourne: Urquhart and Nicholson, 1908), 1. 'Children's Courts – Probation Officers Appointed,' *Age*, 24 April 1907, 6.
[41] 'Children's Courts,' *Age*, 26 February 1907, 10.
[42] 'Children's Court Act,' *Age*, 26 April 1907, 6.

the new system.'[43] A year later, he reiterated the sentiment. '[This] is [our] first full year' he noted, 'but I have nevertheless to report that the work has in the main been educational in character.'[44] The basics were established fairly quickly. Practices in Melbourne were apparently modelled, with necessary local modifications, on probation schemes in Chicago and Denver. Probation officers were attached to specific Courts, mostly in districts where they themselves lived, or where their institutions were based. It was felt that local residence was necessary to ensure ongoing contact with the children.[45] Children were assigned probation officers of the same religion, and sometimes of the same sex, though there was more flexibility about this. Female probation officers (themselves numerically dominant) advocated for the right to monitor boys, the vast majority of probationers. Male officers usually accepted that women could monitor younger boys at least. Both agreed that women should always be in charge of girls.[46]

(b) The Aims of the Scheme

The publications from Clarke's office were the major source for my examination of the new regime in Melbourne, as they reveal a great deal about both aspiration and reality. Between 1907 and 1910, Clarke's office published an annual report, a guide to the *Children's Court Act* and several collections of conference papers, an excellent repository of the views of individual officers. In January 1911 the office began a quarterly journal. In 1909 the Crown Law Department also printed a manual on the Act, which seems to have been intended as a Bench Book for Magistrates. Collectively, these set out the principles underlying the new system, as well as functioning as guides for those in the field. The aims of the new scheme were clear. As I noted in Chapter Five, the main object of a probation officer was 'the formation of character' or the creation of 'good citizens.' Clarke argued that the new Act recognised that children offended 'less out of malice than ignorance or misfortune.' The role of the probation officer was to 'lend a guiding hand

[43] *Report of the Chief Probation Officer for the Year 1907*, 2.
[44] *Report of the Chief Probation Officer for the year 1908*, 3.
[45] 'Work of Societies and Persons Registered under Part VIII of the Neglected Children's Act,' *Probation Officers' Record* 1(1) (16 January 1911): 8.
[46] J. J. Griffin, 'The Children's Court Act, Part III,' in Office of the Chief Probation Officer, *Conference of Probation Officers of the State of Victoria, 29 and 31 March and 2 April 1909* (Melbourne: Thomas Urquhart & Co 1909), 27

while there is still time.'[47] Medical analogies were frequently deployed. Clarke emphasised that children were all different and that the 'treatment' provided could vary according to the needs of the individual child.[48] The 1909 Crown Law handbook on probation adopted a more evangelical tone, but the message was the same. The handbook set out a sharp distinction between the 'old' method of dealing with children and the 'new method' of Children's Courts. The 'old' was fixed and 'stereotyped.' The 'new' viewed crime as 'the result of early association,' to be rectified by careful monitoring. The ultimate aim of a successful probation system, it stated, was to generate in children the desire to behave appropriately. 'By the *Children's Court Act* … a system has been established whereby [children] … may be … permitted, under sympathetic supervision, to work out their own salvation,' it declared.[49]

As I emphasised in Chapters One and Two, these were very familiar principles for Melbourne's charitable organisations. They underpinned children's rescue work, as well as forming the ideological foundations for the growing number of clubs and societies directed at poor adolescents. The everyday workings of probation, as set out by Clarke and other senior administrators, also borrowed significantly from the charitable visiting system. If done properly, the job required a significant commitment of time and energy. Clarke recommended that the probation officer's task should begin before the Court hearing. The officer should interview the child and his or her parents to find out as much as possible about the child's background. Ideally, the Court would order a preliminary report, giving the probation officer a week or two to observe the child in his or her home environment, as well as to interview school teachers, employers, police and any other relevant individuals. The probation officer would then prepare a report, setting out the details of the child's situation and recommend an appropriate sentence, which would usually be a period on probation. Once released on probation, the probation officer would either visit the child regularly (ideally, weekly) or have the child report to them, as well as ensuring that they kept any conditions on the order. In 1909 John Griffin, a probation officer at the Melbourne Children's Court, urged officers to make regular home visits in order to ensure that the probation regime was followed, and presumably also to monitor

[47] Clarke, *The Children's Court Act*, 1.
[48] *Report of the Chief Probation Officer for the Year 1908*, 4.
[49] Crown Law Department Victoria, *A Short Manual for the Guidance of Children's Court Magistrates and Probation Officers* (Melbourne: Albert J. Mullett, 1909), 3 – 4.

the home situation itself.[50] Before the case returned to Court, the officer had to prepare another report.[51] If the child's behaviour was deemed to be unsatisfactory, the officer could bring the case back to Court before the end date of the order, although Griffin believed that this should be discretionary.[52]

I argued in Chapter Five that probation was based explicitly on an enduring set of class assumptions. As probation officers were not paid, the roles largely fell to those with the finances and leisure to commit to voluntary work - that is, middle-class women and some men. When they spoke of their target population, probation officers assumed that they would come from the disadvantaged sections of society. Melbourne's probation officers invariably reiterated long-held moral assumptions, discussed in Chapters One and Two, about poor parenting, inadequate supervision and the dubious moral values of the children and their families. '[T]rue family life is quite unknown to most of the children who commit offences,' Charlotte Bingham, probation officer at the South Melbourne and St Kilda Courts, stated unequivocally in 1909.[53] Probation officers also emphasised the great value of middle-class intervention. The ostensible aim of the scheme, as we saw in Chapter Five, was to effect change through persuasion rather than force. Charlotte Bingham emphasised the importance of gaining a family's trust. The probation officer, she stressed, was 'not a policeman with a new name,' and their task was not 'to spy … but to advise, assist and befriend.'[54] In practice probation relied on a level of compulsion, directed not only at the children but also towards their parents. John Griffin noted that the probation officer 'often need[s] to correct parents as well as children.' And while he, like Mrs Bingham, believed that that 'kindly advice, persistently given, will accomplish much,' he also recommended setting down a regime with 'great firmness' from the outset.[55]

(c) Probation in Practice

[50] Griffin, 'The Children's Court Act, Part III,' 31.
[51] Clarke, *The Children's Court Act*, 3 – 14.
[52] Griffin, 'The Children's Court Act Part III,' 32.
[53] Charlotte Bingham, 'The Children's Court Act Victoria Part I,' in *Conference of Probation Officers,* 17.
[54] Ibid, 18 – 19.
[55] Griffin, 'The Children's Court Act, Part III,' 30 – 31.

While it is important to outline reformers' aspirations for the new regime, not least because this informed how they went about their work, I argue that that it is even more valuable to examine how the scheme was actually working on the ground. This reflects the key tenet of social histories of law, on which this thesis is based, to go beyond legal and judicial formalities – in this case, practice guides and Bench Books - to explore how laws and systems were actually implemented, and the implications of this for both practitioners and children. I noted at the outset that probation officers, invariably middle-class, literate and often vocal, generated much archival material to assist in this examination, but there is one profound limitation in their sources. The voices of those children (and their parents!) who were subject to the probation regime are far more obscure. While probation officers wrote a good deal about their subject class, the moral assumptions which overlay their analysis, already demonstrated above, makes it difficult to pinpoint individual experiences. We can, however, extrapolate from these texts that children and their families were far from meekly submissive to this new regime, and in fact there is a good deal of evidence to suggest that working-class communities viewed probation officers in exactly the same light as they viewed other charitable intervenors – in other words, with considerable wariness.

The many strains inherent within the Victorian probation regime became apparent very quickly. While middle-class charitable workers volunteered their services enthusiastically in early 1907, it soon became evident that this would fail to meet demand. One issue was the sheer number of Courts they had to cover, an issue I have explored above. At an interstate congress of probation officers in 1909, Catherine Helen Spence and Vida Goldstein (since 1908 a probation officer at the Melbourne Children's Court) agreed that covering the '200 courts of petty sessions' was a huge and probably impossible enterprise. Goldstein conceded that resources were concentrated in metropolitan areas.[56] Even within inner Melbourne there were considerable discrepancies in the services available. In 1910, Melbourne Children's Court had 16 probation officers formally attached to the Court. In Chapter Seven I shall examine in detail operations at the equally busy Fitzroy Children's Court, but note here that they had only five probation officers, most of whom did not attend regularly. Lack of payment

[56] Vida Goldstein, 'Special Magistrates - Debate,' in *Dependent Children: Interstate Congress of Workers* (Adelaide: W.K. Thomas & Co, 1909), 200.

remained a continual issue. The work was a huge burden on the charitable institutions which supplied the officers. Alex McKinley, chairman of the Melbourne Children's Court, and former Mayor of Malvern, noted in 1912 that 'the Court depends almost wholly on honorary work, which cannot be said to be the most satisfactory way of handling a great system.'[57] Partly reflecting this, there was a high drop-out rate amongst voluntary officers. Only 32 of the 51 original appointees in April 1907 were still working in the field by January 1911.[58]

Workload pressures also seem to have contributed to the drop-out rate. Probation officers quickly found the day-to-day reality considerably more challenging than anticipated. There were continual references in the literature to the 'difficulties' and 'demands' of dealing with children and their parents. Mrs Bingham exhorted her colleagues 'not to lose heart … [but] keep pegging away.'[59] Clarke acknowledged these trials, noting in 1909 that 'the work is arduous.'[60] Workloads could be high. Exactly how many children Victoria's early probation officers were supervising at any one time is not documented, but in 1909 John Griffin warned officers to 'limit the numbers' as otherwise the work was 'likely to degenerate into mere routine.' This suggests that large caseloads were standard.[61] The weekly home visiting routine certainly seems to have been faltered quickly. At a conference convened by the National Council of Women of Victoria (NCWV) in October 1908, a Mr Beechey (position undocumented) complained that probation officers were asking children to visit them rather than the other way round and that 'at present there was too much law and to [*sic*] little supervision.'[62] Clarke's statistics support Beechey's criticisms. By 1908 considerably more children visited probation officers than the other way round.[63] Charlotte Bingham's detailed account of her supervision of one 13-year-old boy indicated that she visited him three times in the first

[57] Alex McKinley, *The Child and its Pitfalls: A Plea for Extended Social Effort – An Address on the Working of the Children's Courts* (Melbourne, 1912), 8.
[58] Clarke, *Children's Courts*, 1; and 'Children's Courts,' *Probation Officers' Record*, 11 – 12.
[59] Bingham, 'The Children's Court Act Victoria Part I,' 19.
[60] Alfred Clarke, 'Delinquent Children and their Improvement under Supervision in the Homes of their Parents,' in *Dependent Children,* 43.
[61] Griffin, 'The Children's Court Act Part III,' 27.
[62] 'Women in Conference – National Council of Women – Annual Congress,' *Argus*, 9 October 1908, 9.
[63] *Report of the Chief Probation Officer for the Year 1908,* 6; Office of the Chief Probation Officer, *The Children's Court Act: Report of the Chief Probation Officer for the Year 1909* (Melbourne: Government Printer, 1910), 10.

quarter, but he visited her eight times. By the second quarter, he was visiting her once per week.[64]

Another issue for new probation officers was the variable level of support from Melbourne's Magistrates. As I have already noted, many Magistrates were far from committed to the new system. Some do not seem to have been across the provisions of the new Act at all. In his 1907 report, Clarke argued that 'the justices do not yet seem to realise how much they might aid probation officers in supervision.' Clarke noted multiple examples of Magistrates confusing the role of probation officer with that of the police (an enduring issue in a largely penal regime) or refusing to delay cases by ordering preliminary reports.[65] By 1909, Clarke was criticising Magistrates for avoiding probation in trivial cases. 'I]t is still common to convict and discharge, or discharge with a reprimand,' he complained, rather than undertaking more 'thorough' investigations.[66] Limiting the use of probation may also, of course, have stemmed from a lack of services. Interestingly, while Clarke acknowledged that resources were strained, he never related this to Magistrates' decisions to avoid probation in less serious cases. Clarke also criticised the government for failing to appoint enough special Magistrates. He raised this issue repeatedly between 1907 and 1909, emphasising in 1909 that 'the success of a Children's Court depends greatly upon the work of the special Magistrate.'[67] The slow progress in that respect was of great disappointment to both Clarke and the probation officers. In January 1911 Clarke reiterated that '[i]n this state we have a Children's Court Act, but it can hardly be said that as yet we possess a Children's Court.'

How individual children and their families reacted to the new scheme is harder to pinpoint, as probation officers focused overwhelmingly on their own experiences. However it seems from these accounts that children and their families were, not surprisingly, not necessarily receptive to the new regime. Despite - or perhaps rather reflecting - the exhortations to build relationships, there is a good deal of evidence to suggest that poor children and their parents viewed probation officers with exactly the same suspicion as they regarded the police and other charitable officials. Clarke for one

[64] Bingham, 'The Children's Court Act Victoria Part I,' 19.
[65] *Report of the Chief Probation Officer for the Year 1907*, 3.
[66] *Report of the Chief Probation Officer for the Year 1909*, 4.
[67] Ibid, 3.

emphasised the importance of getting to know a family before an order was made, warning that otherwise the probation officer ran the risk of being seen as yet another official demanding compliance. 'Already on more than one occasion Probation Officers have found this idea a serious obstacle in the way of their advances towards a good understanding with parents and children,' he remarked tellingly.[68] Vida Goldstein, as I emphasised in Chapters Four and Five, was a prominent advocate for probation. Nevertheless, Goldstein too found the work very difficult in practice, and her work offers important insights on the relationship between probation officers and working-class families. Despite being one of the few reformers to acknowledge structural disadvantage, she often reverted to moral assumptions in her descriptions of this work. In 1909 Goldstein noted that parents were a 'huge difficulty,' who could substantially undermine probation officers' efforts. 'In 9 cases out of 10,' she contended, 'in dealing with a delinquent child, to correct him we have to begin by correcting the parent.' (We can only imagine how these efforts were received!).[69] Goldstein also equated poverty with inadequate moral training. 'Most children in the court are poor,' she argued, '[and these] children [are] not trained in order, punctuality, method, respect for their elders, neatness, cleanliness in mind or body.'[70] Somewhat surprisingly for a woman who had so forcefully advocated for better protection of working-class girls in the Courts, Goldstein also noted that girls on probation presented 'exceedingly tough problems.' 'When a girl goes wrong,' Goldstein stated in the same publication, 'it is more difficult to reform her.'[71]

The Courts in Operation

The first two parts of this Chapter examined how the structural limitations of the new *Children's Court Act* were exacerbated by a fragmented, poorly coordinated and underfunded implementation process. This applied to both the establishment of the Courts themselves and the introduction of the new probation regime, whose operational issues also exposed once again the limitations of Victoria's delegated system of child welfare administration. This next, and final part of the Chapter turns to the impact of the new Courts on offending and neglected children. It begins with contemporary anxieties

[68] Clarke, *The Children's Court Act*, 5.
[69] Goldstein, 'Save the Child on Probation,' in *Dependent Children,* 45 – 46.
[70] Ibid.
[71] Ibid, 48.

about whether the new Court's sentencing regime had increased juvenile crime rates. Using statistics generated from Victoria's annual *Statistical Registers (Law/Crime* and *Social Condition)* and the reports of the Department for Neglected Children, which I set out in detail in Appendix C, I demonstrate that in fact juvenile offending rates declined slightly over this period. Court sentencing patterns were very consistent before and after the introduction of the new legislation. The second section turns to the growth in the numbers of neglected children before the new Courts, and how their circumstances challenged the overarching penal framework of the new jurisdiction. It argues that by 1910 an effectively extra-legal 'welfare' arm of the Court was very firmly established, although limited sentencing options and a decline in the use of boarding out over this period meant that children's experiences were variable, and not necessarily 'benevolent.'

(a) Young Offenders: Reducing or Increasing Crime?

I argued in Chapters Four and Five that offending boys were the major target of the Children's Court regime. Girls, who were more likely to be the victims of crime, were largely overlooked, while Aboriginal children were excluded. Supporters of Children's Courts argued that an individualised regime for young offenders which focused on 'treatment' rather than 'punishment' would both improve immediate outcomes and, in the longer term, reduce crime rates. Yet virtually from the time the Melbourne Children's Courts opened their doors, this aspiration came under serious attack. Commentators argued that the 'soft' approach of the Courts had led not to a diminution but an increase in juvenile crime. James McAlpine Tait was the editor of one of Melbourne's local papers, the *Collingwood Observer*. As I shall discuss in more detail in Chapter Seven, Tait was highly sceptical about the benefits of the separate jurisdiction. In January 1909, Tait argued that 'since the advent of Children's Courts, juvenile crime has quadrupled in some of the Melbourne suburbs.' Tait blamed this on lenient sentencing and the prohibition on publishing children's names which allegedly encouraged offending because individuals would never face publicity.[72] By June 1910, the question of whether Children's Courts had diminished or elevated crime rates in Victoria had attracted widespread publicity. This led to the Premier, John Murray, launching an investigation into Children's Court

[72] 'Editorial,' *Collingwood Observer*, 28 January 1909, 2.

sentencing practices. Murray did not actually believe that Children's Courts had actually increased crime rates, but he 'held strong doubts as to whether the punishments inflicted … had a sufficiently deterrent effect.'[73] In September 1910, the Melbourne Crime Investigation Bureau weighed into the debate, releasing a report which argued that 'the present goody-goody milksop fashion … of dealing with juvenile offenders at the Children's Court and of detaining them in the Gordon Institute' had led to an increase in violent offending amongst juveniles.[74]

While this was obviously inflammatory language, the themes these commentators raised remain very relevant. I argued in the introduction that anxiety around whether Children's Courts reduce or increase crime continues unabated, with opponents of the 'soft' approach driving a 'law and order' agenda which has recently seen children's treatment more aligned with adults than any time since 1906.[75] It is very relevant, then, to turn our attention back to this critical historical juncture and ask whether juvenile crime did actually 'rise' after the introduction of the new Court system in 1907, and how children were in fact being dealt with by the Children's Courts. Some scholars in other jurisdictions have argued that juvenile offending rates apparently increased after the introduction of Juvenile Courts, but this was because police were more inclined to bring younger children and girls before a separate Court.[76] My examination of age-related information in Victoria's statistical registers, which includes Children's Court returns and probation records, reveals that this was not the case in Victoria. In fact, a comparison of children and young people's arrest rates before and after 1907 indicates that these rates remained virtually flat as an overall percentage of the offending population, while individual arrests fell slightly (as did those in the population more generally).[77] In addition, while there was

[73] 'Children's Courts – Question of Efficacy,' *Argus*, 24 June 1910, 9.
[74] 'Children's Courts – Police Reports Unfavourable – Attorney-General Disagrees,' *Argus*, 3 November 1910, 4.
[75] *Children and Justice Legislation Amendment (Youth Justice Reform) Act* 2017 (Vic), s 5.
[76] John Springhall, *Coming of Age: Adolescence in Britain, 1860 – 1960* (Dublin: Gill and Macmillan, 1986), 178 – 179; Carolyn Strange and Tina Loo, *Making Good: Law and Moral Regulation in Canada, 1867 – 1989* (Toronto: University of Toronto Press, 1997), 98; Anthony Platt, *The Child-Savers: The Invention of Delinquency* (Chicago and London: University of Chicago Press, 1969), 137 – 138; David Tanenhaus, *Juvenile Justice in the Making* (Oxford: Oxford University Press, 2004), 51 – 52; Mary Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885 – 1920* (Chapel Hill and London: University of North Carolina Press, 1995), 115 – 118.
[77] Pre-1906 arrest rates, as discussed in Chapter Three, are set out in full in Appendix A. Post-1906 arrest rates, again extracted from Victoria's annual *Statistical Registers*, are set out in Appendix C, Tables 1 and 2.

a slight shift in the patterns of children's offending over this period, offences of violence did *not* rise numerically. This section examines these and other available statistics in more detail.

I noted in Chapter Three that it is difficult to come to an exact estimate of exactly how many children and young people were appearing before the Melbourne Courts prior to 1907, largely due to the lack of age-specific information for summons matters. I did however document that between 1890 and 1906 arrests for children and young people under 20 fell both numerically and as a percentage of the population. These statistics are set out in Appendix A. By 1906, children and young people made up 8.7 per cent of all offenders, although this also included the 'charge' of neglect, so the actual rate of criminal offending was in fact lower. Age-related arrest statistics were also published after 1907, although these were now calculated on the basis of individual offenders, rather than total arrests, so overall numbers were less.[78] We can however make exact comparisons of arrest *rates* by age as a percentage of the total offending population before and after the introduction of Children's Courts. In 1907, children and young people under 20 made up 1070 of 16,816 individual criminal offenders (excluding neglect charges), or 6.4 per cent. In 1908 they constituted 1000 out of 15,159 (6.5 per cent), in 1909 869 of 14,031 (6.2 per cent) and in 1910 925 out of 13,907 (6.6 per cent). Girls made up less than 10 per cent of the children and young people arrested in 1907, 1909 and 1910, and just over 10 per cent in 1908.[79] In other words, the introduction of Children's Courts did not lead to a rise in children's arrest rates. Nor did they alter the gendered dynamic of offending amongst children and young people, discussed in Chapter Three, which remained very strongly male.

After 1908, the Victorian statistical registers included separate returns for Children's Courts. This allowed me to track in more detail the types of offences and outcomes for children appearing before the new jurisdiction. Notably, these reports included summons as well as arrest cases. These statistics further negate contemporary arguments that juvenile crime was rising after the introduction of Children's Courts and they are set out

[78] *Statistical Register of the State of Victoria for the Year 1908 Volume VIII - Law/Crime* (Melbourne: Government Printer, 1909), 19 – 20.
[79] Appendix C, Tables 1 and 2.

in full in Appendix C, Table 3. The total number of Children's Court hearings, including neglect charges,[80] rose from 3671 in 1908 to 3715 in 1909, before falling again to 3607 in 1910. The number of *criminal* hearings, however, fell, from 2927 in 1908 to 2666 in 1909 and again to 2577 in 1910. The types of offences for which children appeared also remained fairly consistent.[81] As in previous years, children's offending was mostly minor and non-violent. The most common set of charges involved property offences, dominated by theft, with 1158 hearings in 1908, 1051 in 1909 and 1157 in 1910. Public order came second, with 971 hearings in 1908, falling to 929 in 1909 and 855 in 1910. Offences against the person were a very decided third, and contrary to the Criminal Investigation Bureau's complaint, in fact fell slightly between 1908 and 1910, from 92 to 85 hearings. The fall in public order offending, especially that associated with drunkenness, was a trend across all age groups from the 1890s. The *Victorian Year Book* for 1906 – 1907, an annual commentary on the statistical register, linked this phenomenon to the decrease in young males as a percentage of the Victorian population following the economic crisis, while associated financial constraints reduced disposable income.[82] The reduction may also have been linked to the growing influence of the social purity movement which I discussed in Chapter Two.

There was also considerable continuity in sentencing patterns for offending children before and after the establishment of Children's Courts, despite the ostensibly more therapeutic approach of the new jurisdiction. Again this belies contemporaries' claims that the new Courts had ushered in an era of 'soft' handling. Reflecting the minor nature of much offending, the most common outcome between 1908 and 1910 was a withdrawal or discharge.[83] The next most popular penalty was a fine, although fines did fall, largely replaced, as I shall discuss further below, with probation orders. At the other end of the scale, reformatory committals were low, again consistent with trends prior to 1906.[84] In 1908 there were 52 new reformatory committals (47 boys and 5 girls). In 1909, there

[80] Unlike the general statistics, the Children's Court statistics reported the total number of hearings (by primary charge). This also included neglect charges. This means that the number of individual children appearing before the Courts would have been somewhat lower.
[81] Appendix C, Table 3.
[82] *Victorian Year Book 1906 – 1907* (Melbourne: Sands and McDougall Ltd, 1908), 418.
[83] Appendix C, Table 4. This included some children on probation, where the final outcome was a discharge. This is discussed further below.
[84] Appendix C, Table 5.

were 43 (37 boys and 6 girls), and in 1910 there were 47 (39 boys and 8 girls). In 1906 there had been 51 committals (36 boys and 15 girls). There remained a significant gender imbalance in reformatory numbers, a trend I identified in Chapter Three. Girls were a higher proportion of reformatory committals than their rates of offending, and they remained in the care of the Department, and in institutions, for considerably longer. As at 31 December 1910, there were 88 'reformatory boys' and 116 'reformatory girls' under supervision. Of these, only 23 boys were in reformatory schools, as opposed to 93 girls.[85] Girls were also more likely to be the subject of an administrative transfer from the Neglected Children's Department to the reformatory. Between 1907 and 1910, 94 girls entered the reformatories via a neglect committal, as opposed to 56 boys. Girls were nearly four times as likely to enter the reformatories by way of administrative transfer than through the Courts.[86] Very few children were sentenced to a term of imprisonment after 1907. Most of these were also transferred to the reformatories.[87] Children's Courts, then, also did not usher in any particular challenges to the social norms around managing offending and 'neglected' girls, hardly surprising in an institution which concentrated so heavily on male youth.

(b) The Use of Probation

Despite the publicity which surrounded its introduction, the new option of probation was in fact used relatively sparingly in these first few years. As I shall argue further in Chapter Seven, this may have reflected lack of resources as much as residual conservatism. It did, however, seemingly have successful results. Alfred Clarke's reports provide our most detailed evidence for the use of probation across the state. Clarkes' records noted that 79 children in Victoria (65 boys and 14 girls) were placed on probation in 1907.[88] In 1908, 217 children were placed on probation,[89] and in 1909 319 children.[90] As at 31 December

[85] Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1910* (Melbourne: Government Printer, 1911), 7.
[86] Appendix C, Table 5.
[87] *Statistical Register of the State of Victoria for the Year 1908 – Law/Crime*, 31.
[88] *Report of the Chief Probation Officer for the Year ending 1907*, 6 – 10. These numbers do not correlate exactly to the statistics included in Appendix C, Table 4. For reasons I will explore further in Chapter Seven, it is quite likely that Clarke's statistics were more accurate, as probation was recorded inconsistently in the Children's Court registers in their first few years. For consistency with other statistics, however, I have included only the information in the statistical registers in the Appendices.
[89] *Report of the Chief Probation Officer for the Year Ending 1908*, 6 – 7.
[90] *Report of the Chief Probation Officer for the Year Ending 1909*, 11.

1909, a total of 417 boys (92.3 per cent) and 32 girls (7.7 per cent) were on probation.[91] Older children (13+) were more likely to receive a probation order, although this also reflected their numerical dominance of the offending population. The most common charge for which both boys and girls were placed on probation was larceny (191 boys and 20 girls). For boys, this was followed by offensive behaviour (66) and wilful damage (24). Three girls also received probation for offensive behaviour. Reformers may have complained about the hard work involved in monitoring their young charges, but statistically, the vast majority of these children complied with their orders. In 1908, Clarke reported that only 15 out of 275 total probationers were charged with new offending, while nine additional children were reported to the Children's Court for (undefined) 'unsatisfactory behaviour.' [92]

(c) Neglected Children – The 'Welfare Court?'

While much of the anxiety around Children's Courts in their first few years involved young offenders, in fact the real growth came from another direction entirely. The numbers of neglected children before the new Courts increased significantly between 1907 and 1910. In 1908, there were 744 neglect charges brought state-wide. This rose to 1049 in 1909 before a slight fall to 1030 in 1910.[93] Appendix C, Table 3, demonstrates that neglect applications took up a significant amount of Children's Court business, from about 20 per cent of all matters in 1908 to nearly 30 per cent just two years later. Court committals to the Neglected Children's Department also rose every year, from 707 in 1907 to 1067 in 1910.[94] Many of these children were very young. In 1907, 47 per cent of all new neglect committals were aged under five. By 1910, partly as a result of amendments to the *Infant Life Protection Act,* discussed further below, 30 per cent of all new wards were under one and a further 29 per cent were aged between one and five.[95] As I discussed in Chapter Five, the Children's Court had not been established as a 'welfare'

[91] Ibid, 11.
[92] *Report of the Chief Probation Officer for the Year Ending 1908*, 6.
[93] Appendix C, Table 3. Statistics about neglected children were again drawn from the reports of the Department for Neglected Children and Reformatory Schools and the annual *Statistical Registers (Social Condition)*.
[94] This included children charged with criminal offences who were sent instead to the Department for Neglected Children. Neglect committal rates are set out in Appendix C, Table 6.
[95] Appendix C, Table 7.

Court as such, although it had some provisions which reflected a more hybrid approach. The rapid rise in neglect applications, however, meant that it was rapidly becoming one, and this exposed even more than in previous years key tensions around the use of penal processes and sentencing options to remedy social disadvantage. This section of the Chapter discusses these particular challenges.

(i) Impoverished Families

I argued in Chapter Five that the *Neglected Children's Act* was brought within the Children's Court jurisdiction due to a long association between poverty, welfare concerns and penal responses, but with little debate from reformers about whether this was the most effective way of dealing with this particular cohort of children. As I demonstrated in Chapter Three, by the early twentieth century the vast majority of 'neglected' children appeared before the Courts due to parental (mostly maternal) poverty and its associated disadvantages. This particular pattern continued unchanged in the early years of the Children's Court. According to the Departmental records, every child committed to the care of the Department for Neglected Children between 1907 and 1910 had 'poor' parents, and the overwhelming majority of their mothers were widows or deserted wives.[96] Department reports also conceded that these applications were driven by sheer necessity. In response to the continued rise in cases in 1908, Thomas Smith, then secretary of the Department for Neglected Children, suggested that 'an increase in the cost of living and of house rent may, to a certain extent, be a factor. [I]n every case, inquiries were made, and … each case proved to be deserving.'[97]

Neglected children had a decided impact on the operation of the new Children's Courts. Magistrates once again found themselves dealing with large numbers of impoverished families whose circumstances fell outside the technical definition of 'neglect,' but who were patently in need of assistance. Even more than before 1907, expediency increasingly overcame legal form. Instead of removing children, growing numbers were provided with state support to stay at home. In his 1908 report Alfred Clarke noted matter of factly that

[96] Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1909* (Melbourne: Government Printer, 1910), 12.
[97] Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1908* (Melbourne: Government Printer, 1909), 4.

'the majority [of neglected children] are brought to the court for the purposes of having them committed to the Department for Neglected Children and then boarded out to their own mothers.[98] In 1907, 398 children (56 per cent of new committals) were returned home and in 1908 620 (53 per cent) were dealt with in this way. In 1909, numbers rose again to 668 (55 per cent) and in 1910 to 750 of all new wards (again, 55 per cent).[99] This development was supported by the Department for Neglected Children, which had overcome its earlier reluctance to endorse state support for poor mothers. In 1907, Thomas Smith noted that 'I am favourably impressed with the success of this policy, as there is no doubt that the mothers are the best guardians for their own children.'[100]

A number of developments contributed towards this conceptual shift favouring state support for (non-Aboriginal) children at home. I discussed in Chapter Three how the exploitation of state wards in foster and 'service' homes was the subject of scandal in 1905. The Department may have decided that keeping children at home was both safer and cheaper, or less foster families may have been approved. There was certainly a fall in the number of children who were 'boarded out' after 1907, over and above the numbers of children who were returned home, which I shall discuss further below. Another factor was the growing emphasis on (again, non-Aboriginal) children as a key national resource and associated concerns about falling birth rates and infant mortality, which I discussed in Chapter Two.[101] In 1912 the Commonwealth government introduced a maternity allowance, paid to all white women, married or single, again a policy which prioritised children's needs over concerns about morality.[102] A third consideration was the increasing role of women in public and political life. In 1908, Victorian women were finally granted the suffrage, and promptly began to agitate for greater provision for (once again, white) mothers and children.[103] More female employees also entered the Department for Neglected Children after 1908 and they contributed to a greater focus on maternal and child wellbeing.[104] One key role of these women was to administer

[98] *Report of the Chief Probation Officer for the Year 1909*, 9.
[99] Appendix C, Table 8.
[100] Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the year 1907* (Melbourne: Government Printer, 1908), 2.
[101] Patricia Grimshaw et al, *Creating a Nation* (Melbourne: McPhee Gribble, 1994), 193 – 195.
[102] 'Asiatics' and 'Aboriginal natives' were not paid the maternity allowance, see ibid, 206.
[103] Ibid, 196 – 199.
[104] Department for Neglected Children, *Report for the Year 1908*, 9 – 10, 12 – 13.

amendments to the *Infant Life Protection Act* (first enacted 1890), which from 1907 significantly expanded the administrative role of the Neglected Children's Department. The 1907 amendments established a registration process for all illegitimate children not living at home and prescribed minimum payments for their upkeep.[105] The Department for Neglected Children was handed oversight over the scheme, and the legislation provided for the automatic conversation of all children in registered homes to state wards if their mothers were more than four weeks' in arrears of maintenance. The statistics I set out in Appendix C indicate that this legislative change led to an immediate increase in the number of infants who became state wards.[106]

The Children's Courts themselves also played a role in normalising state support for impoverished families. Some Magistrates certainly believed that they had a 'benevolent' mandate which extended to providing financial assistance where possible. At the Melbourne Children's Court, Magistrate Alex McKinley even included single mothers within the Court's welfare jurisdiction, although this was more unusual, as I shall discuss further in Chapter Seven. Under his leadership, the Melbourne Court provided impoverished young women temporary support from the poor box after they were released from hospital, and then assisted them with a committal application to keep their babies. '[I]n every case we try, while committing the infant to the [Department], to get the mother to attach herself to her baby by contributing a small amount to her keep,' McKinley noted.[107] By mid-1909 so many Children's Courts were using the committal process as a route to supporting children at home that the government became concerned. In late September, the Crown Law Department issued a directive to the Chief Commissioner of Police that prosecutors should oppose applications 'unless they strictly conform to the definition in that Act, or circumstances of extreme urgency exist.' [108] The order was immediately criticised. The *Age* condemned the measure as a return to the 'bad old days' when desperate parents were obliged 'to turn children out into the streets so that the police could arrest them.'[109] In fact, Magistrates seem to have either disregarded the directive or, as I shall again demonstrate in Chapter Seven, worked around it. Despite

[105] This was in response to the high death rate of children in these arrangements. *Infant Life Protection Act* 1907 (Vic), s 10(1).
[106] Ibid, s 9(5).
[107] McKinley, *The Child,* 9.
[108] 'Neglected Children's Act – A Departmental Order,' *Age*, 1 October 1909, 4.
[109] Ibid.

its issues, the committal process continued to be the primary mechanism of providing state support for impoverished children until 1919, when it was replaced by the *Children's Maintenance Act*. This allowed mothers to make a Court application for financial assistance for their children, bypassing the need for a departmental committal, if not a Court hearing.[110]

(ii) Neglected or Criminal? : Wayward Adolescents

This use of the *Neglected Children's Act* created two very different streams within the Children's Court. One dealt with offending children, and the other, effectively operating extra-legally, handled applications for financial assistance by poor mothers. In between these quite distinctive jurisdictions were so-called 'wayward' children, not yet offenders, but the 'street' children whom reformers feared would become so, without intervention. I argued in Chapter Three that these children demonstrated particularly clearly the close, yet conflictual, relationship between neglect and crime and welfare and law. I discussed how police used both neglect charges and status offences like vagrancy to target allegedly problematic adolescents, particularly those congregating on the city streets. Children's Court supporters argued that that their regime offered a better mechanism to redirect these potential offenders, but they did not challenge this conflation. 'One of the advantages of Children's Courts,' McKinley declared in 1912, 'is that children can be taken in hand by the law before they commit any actual offence. If the police or the probation officer sees them beginning to run wild he can bring them before the Court as neglected children.'[111] The circumstances of the 'neglected' children in McKinley's accounts were very similar to earlier years. For boys, McKinley singled out truancy, parental neglect, hanging about Flemington racecourse 'with evil-minded pony race-goers' and 'drinking and going to picture shows' as causes of ruin.[112] As in previous years, poor girls seem to have been targeted for moral indiscretions. One of McKinley's neglected girls was arrested for involvement in housebreaking, but had also been 'seen about the streets until a late hour of the night, always with boys and at picture shows.'[113] McKinley explicitly

[110] *Children's Maintenance Act* 1919 (Vic), s 3. This Act required the Department for Neglected Children to first investigate the mother's circumstances and provide a report to the Court.
[111] McKinley, *The Child*, 10.
[112] Ibid, 9 – 10, 12.
[113] Ibid, 8.

justified his Court's emphasis on girls' 'salvation.' '[I]s not a girl's fall more awful than that of a boy?' he emphasised.[114]

Yet despite this apparent emphasis on the benefits of earlier intervention, the numbers of 'wayward' adolescents before the Children's Courts did not increase after 1907. My analysis of statistics from the Department for Neglected Children indicates that children over 13 remained a small minority of those committed to departmental care. In fact, their actual number declined slightly between 1907 and 1910, and fell quite noticeably in percentage terms. In 1907, 45 new wards were aged between 13 and 16 (6.4 per cent). By 1910, there were 36 new teenage wards, a tiny 2.3 per cent.[115] Exactly what triggered individual committals is impossible to establish with certainty from the statistical records. The Department's annual reports did set out the grounds recorded in the Court record, but this was very general. In 1910, for example, 1026 new wards were committed for 'having no means' (the substitute for the old 'found wandering.') Of the remainder, 30 were committed for property offences (presumably as an alternative to a criminal sentence), five for begging and four for 'dwelling with a drunkard.' One child was also committed as 'uncontrollable.'[116] There is very little specific information elsewhere either. Alfred Clarke, whose publications, as already discussed, are a considerable source of information about juvenile offenders, devoted almost no attention to 'pre-delinquent' children. In 1909, he merely stated that in cases of '[both] delinquency [and] dependency, a report should be ordered and [the child] can be released on probation if the home life is not absolutely adequate but the parent is genuine in attempts to redress this.'[117] Very few 'neglected' children were dealt with by way of a probation order, partly, as I have already noted, because so many of them were very young. At the end of 1909, there were only 24 children on probation for neglect (19 boys and five girls). Their ages ranged considerably, from seven to 16.[118]

(iii) The Growth of Industrial Institutions

[114] Ibid, 9.
[115] Appendix C, Table 7.
[116] Department for Neglected Children, *Report for the Year 1910*, 3.
[117] *Report of the Chief Probation Officer for the Year 1909*, 4.
[118] Ibid, 11.

One thing that changed noticeably for neglected children after 1907 was their destination after a Court committal. I demonstrated in Chapter Three that in the decade to 1906 the number of children in training institutions declined significantly, particularly for boys. In 1906, there were 30 boys and 80 girls in industrial schools. After 1907, however, this trend reversed sharply. In 1908, numbers leapt up to 159 boys and 132 girls. By 1910, there were 179 boys and 145 girls in the so-called 'industrial schools.'[119] These statistics are noteworthy for two other reasons. One is that they do not reflect a similar rise in reformatory committals. As I discussed above, the number of reformatory committals remained low and stable between 1907 and 1910. Secondly, the figures overturned an earlier tendency, which I also explored in Chapter Three, where more girls than boys were in industrial training institutions. Relative numbers were now far more even, and approximated committal rates. Departmental reports offered no explanation for this change. As I suggested above, it may have reflected the 1905 agitation about the treatment of state wards in foster homes and service placements. There was certainly a decline in the number of children who were boarded out, and this would accelerate further after 1910, a factor the Department also blamed on the low rates paid to support fostered children.[120] By 1910 a noticeably lesser proportion of Victoria's state wards were living in foster homes (2645 out of 6656 state wards), although a considerably higher number of children were also living with their mothers (2230 wards, or more than a third). In practice, this shift meant that increasing numbers of children were being institutionalised for non-criminal 'charges,' an outcome very much at odds with the home-based support mandate of the Children's Court. For these children, the new Court system may not have seemed very 'benevolent' at all.

Conclusion

This Chapter has documented how the *Children's Court Act* was introduced across Melbourne between 1907 and 1910. It has argued that the Act's structural limitations were exacerbated by a haphazard and poorly coordinated implementation process. This has confirmed a central argument of this thesis: the need for sustained government

[119] Appendix C, Table 9.
[120] Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1918* (Melbourne: Government Printer, 1919), 3.

support and investment to implement legislative change effectively. As I have demonstrated through a close analysis of newspaper reports, reformers' commentaries and government publications, a lack of central planning, oversight and above all funding left small suburban Courts to implement the Act with little assistance or direction. The results were, not surprisingly, variable. Some Magistrates were very supportive of the new regime. Others seemed hardly aware of the change or were hostile to it, a factor compounded by the government's reluctance to invest in trained judicial officers. Nor was there any financial commitment to separate premises, leaving most children's hearings in the Police Courts. The great exception, the new Melbourne Children's Court, revealed again the tension points in the Victorian's government's longstanding approach to child welfare administration. The government relied heavily on charitable institutions to staff – indeed in the case of Melbourne, to build – Children's Courts. However unanticipated demand and training needs meant that these organisations struggled to cope, and as a result many Courts were inadequately serviced. For children themselves, the new Court system had less immediate impact than reformers had envisaged. Young offenders were dealt with similarly before and after the new legislation, except for some modest use of the new probation system, which was heavily constrained due to lack of resources. Certainly the new Courts made no discernible impact on the (already low) rate of juvenile crime. By contrast, the numbers of neglected children before the Courts rose noticeably after 1907. As in previous years, Magistrates struggled to deal with these children, revealing the conflict within this penal framework in responding to economic and social disadvantage. In the next Chapter, I shall explore in depth the circumstances of individual children appearing before the Children's Court in Fitzroy, in Melbourne's inner north-east. These illustrate in detail the operations of the new Court system and, once again, its limitations in responding to profound structural disadvantage.

CHAPTER SEVEN
FITZROY CHILDREN'S COURT

In Chapter Six, I examined the implementation of the *Children's Court Act* across Melbourne between 1907 and 1910. I argued that the structural limitations of the new legislation were exacerbated and made visible by a fragmented and poorly-coordinated implementation process. The successful establishment of the new Courts was hampered by a lack of government direction and funding, as well as a heavy reliance on overstretched charitable organisations. This chapter examines the day-to-day operations of the new regime further through an in-depth study of the children and their families who came before the Fitzroy Children's Court in its first four years. Fitzroy was (and is) a geographically small but densely-settled suburb in Melbourne's inner north east. At the turn of the twentieth century, it had a largely working-class population, high levels of deprivation and a busy Court.[1] My analysis is based on a close reading of the Fitzroy Children's Court registry records as well as local newspaper reports. I argue that Fitzroy revealed many of the limitations of the new jurisdiction in practice, as well as some surprising strengths. Unlike the Melbourne Children's Court, with its state-of-the-art premises, dedicated Magistrates, and fleet of probation officers, the Fitzroy Children's Court operated out of the far from salubrious local Police Court. It had no special Magistrates and struggled to attract even a couple of regular probation officers. On the other hand, Fitzroy Magistrates readily adopted rehabilitative principles for young offenders, and they demonstrated a largely sympathetic attitude towards neglected children and their local community.

The first part of this Chapter sets the scene by exploring Fitzroy's physical environment and the social and economic circumstances of the local community in the early twentieth century, drawing on statistical records and newspaper reports. I emphasise the consistent patterns of social deprivation during this period. I then turn to the Fitzroy Court, the establishment of the new Children's Court in January 1907 and the overall numbers before the Children's Court between 1907 and 1910. The second part of the

[1] Melissa Bellanta, *Larrikins: A History* (St Lucia: University of Queensland Press, 2012), 9, 128 - 131; on the Fitzroy Court see 'Editorial,' *Fitzroy City Press*, 19 April 1907, 2.

Chapter discusses in the detail the circumstances of offending children, through an examination of Court registry records and, again, local newspaper reports. I establish, consistent with Victorian statistics more generally, that most young offenders in Fitzroy were charged with minor matters which reflected the constraints of working-class poverty. The third turns to neglected children, whose numbers rose significantly over even this short period. Again, I document that these children appeared before the Court largely due to parental, and particularly maternal, poverty, with dead or absent fathers the most consistent theme. Overall, I argue that the Fitzroy Children's Court could do relatively little in itself to alter the life circumstances of the majority of children who appeared before it, another key theme of this thesis. In part this reflected a lack of support services, but it was mostly due to the social and economic disadvantage which the Court alone was powerless to redress.

Fitzroy and the Children's Court

(a) Fitzroy

Early twentieth-century Fitzroy was not one of Melbourne's more scenic locations. The area had been established between the 1850s and 1870s as a fairly prosperous middle-class municipality within walking distance of central Melbourne.[2] In 1873 community members paid for an elaborate, classically-inspired Town Hall. The suburb boasted a number of Churches, a Convent and the Edinburgh Gardens to the north. The 1875 *Australian Handbook* described the area around the Edinburgh Gardens as '[o]ne of the pleasantest parts of the City, and of late a place of frequent resort …'[3] From the 1880s, however, the better off largely moved further out, and the suburb's status declined. Larger houses were subdivided into rooms and boarding houses, and residential overcrowding, with all of its associated issues, increased significantly.[4] By the time of the 1901 Victorian census, Fitzroy was the most densely populated municipality in greater Melbourne. The suburb had a population of 31,687, crammed into a relatively small area of 923 acres, or 35 people to the acre. A decade later the population had risen further to

[2] Don Garden, *Victoria: A History* (Melbourne: Thomas Nelson, 1984), 214; Richard Broome et al, *Remembering Melbourne, 1850 – 1960* (Melbourne: Royal Historical Society of Victoria, 2016), 266.
[3] 'Fitzroy,' *The Australian Handbook and Almanac 1875* (London: Gordon and Gotch, 1876), 158.
[4] Broome et al, *Remembering Melbourne,* 255.

34,199.[5] By the turn of the century Fitzroy had also become a highly urban and industrial environment.[6] The suburb was scattered with small factories and workshops, and aside from the Edinburgh Gardens on the northern edge, had no designated parklands or public spaces. Even the once fashionable Gardens had fallen into disrepute. One of Fitzroy's local papers, the *Collingwood Observer*, noted disapprovingly in late 1909 that 'the Edinburgh Gardens have gained some notoriety for filthy doings there in both day and night, and decent women will not pass through them at night unless safely escorted.'[7] Other writers noted that Fitzroy had poor sanitation, was dusty in summer and badly lit.[8]

Fitzroy's already impoverished people suffered badly in the 1890s depression. The suburb's population declined slightly, and men of working age in particular left the area in search of employment.[9] Even after Victoria began to recover financially, unemployment and underemployment were constant features of local life. The other local paper, the *Fitzroy City Press*, noted annually the rise in seasonal unemployment and near destitution for labourers in winter and the constant need for outdoor relief, particularly fuel.[10] Children were particularly vulnerable. Between 1904 and 1907, Fitzroy had the highest infant mortality rate in metropolitan Melbourne.[11] Local crime rates were perceived to be high.[12] Fitzroy's young people in particular had a reputation for 'disorderliness' and larrikinism,[13] although, as discussed in Chapters Three and Six, offending rates across Melbourne in fact fell from the 1890s. The suburb also increasingly attracted prostitutes moving out from central Melbourne, who were singled out for their risk of spreading contagious disease.[14] There were some positives. Fitzroy was the object of significant philanthropic efforts, including the establishment in 1897 of the Salvation

[5] *Statistical Register for the State of Victoria 1911, Part IX - Population* (Melbourne: Government Printer, 1911), 12.
[6] Garden, *Victoria*, 236.
[7] 'Police Court,' *Collingwood Observer*, 25 November1909, 5.
[8] 'Editorial,' *Fitzroy City Press*, 5 April 1907, 2; 'Editorial,' *Fitzroy City Press*, 19 April 1907; 'Passing Notes,' *Fitzroy City Press*, 28 June 1907, 3.
[9] *Statistical Register for the State of Victoria 1901, Part VII - Population* (Melbourne: Government Printer, 1902), 15.
[10] 'Editorial Notes,' *Fitzroy City Press*, 28 June 1907.
[11] *Victorian Year Book 1907 – 1908* (Melbourne: Government Printer, 1908), 396.
[12] 'Editorial – the Crime Wave,' *Fitzroy City Press*, 19 July 1907, 2.
[13] Ibid.
[14] Chris McConville, 'The Location of Melbourne's Prostitutes, 1870 – 1920,' *Historical Studies* 19(74) (1980): 86.

Army 'Haven,' a state-wide refuge for single women and their children.[15] The suburb also boasted Melbourne's first free library (established in 1877) and by 1907 the local Council was making significant attempts to improve the urban landscape. Footpaths and roads were repaired,[16] and in 1908 new public swimming baths opened.[17] By 1909, the sewage system had improved. In February of that year, the *Fitzroy City Press* noted with approval that more trees and shrubs had been planted, helping the population withstand the summer heat.[18]

(b) The Fitzroy Court

The Fitzroy Courthouse was a focal point for the suburb. The Court was a relatively modern building, constructed between 1887 and 1889 to replace an earlier structure.[19] It was located in a central position just off Brunswick Street, Fitzroy's major thoroughfare, within the grandiose Town Hall complex, pictured below (which itself underwent substantial improvements at the same time). Yet only a decade after its construction the Court was attracting sustained criticism for its poor maintenance. In April 1899, the *Argus* noted that 'for some time past frequent complaints have been made respecting the disgraceful condition of the Fitzroy Police Court ... from [1889] to the present [the Court] has not been renovated (i.e. cleaned).'[20] The article painted an abysmal picture of the Court's interior. The walls were 'black and grimy with soot' from a nearby factory chimney. The dock was a 9 foot long and 6 foot high 'wooden cage … locally termed the ''bird cage,'' in which up to 16 male and female defendants were sometimes crammed at once. There was no separate witness room, so all witnesses, including 'sick and weakly women and children,' were obliged to stand in the 'draughty passage.' Repeated complaints, however, resulted only in a desultory once-off grant of six shillings.[21] By March 1900 the Court finally seems to have received some long-needed maintenance. The

[15] The *Herald* described the building and fittings as 'of a most modern and tasteful character,' see 'The Haven – New Maternity Home,' *Herald* (Melbourne), 14 May 1897, 8.
[16] 'Editorial Notes,' *Fitzroy City Press*, 22 May 1908, 2.
[17] 'Editorial,' *Fitzroy City Press*, 26 February 1909, 2.
[18] Ibid. The previous year the death rate had spiked during a heat wave, see 'Editorial Notes,' *Fitzroy City Press*, 24 January 1908, 3.
[19] Rosemary Kiss, 'The Business of Politics,' in *Fitzroy – Melbourne's First Suburb*, ed. Fitzroy Historical Society (Melbourne: Melbourne University Press, 1989), 45.
[20] 'Fitzroy Court – Departmental Liberality,' *Argus* (Melbourne), 8 April 1899, 10.
[21] 'The Fitzroy Police Court – Departmental Liberality,' *Argus,* 8 April 1899, 10.

Fitzroy City Press noted that '[a]t last the Fitzroy Court House is receiving a clean-up and it certainly required it very badly,' although no money had apparently been provided for routine cleaning. 'We certainly think an allowance should be made … for the purpose of having the floors and woodwork washed at least weekly,' the paper argued.[22]

The Fitzroy Courthouse had presumably fallen victim to Melbourne's straightened economic circumstances in the 1890s. It was certainly not neglected due to lack of business. Like all Police Courts in Melbourne's more populous areas, the Fitzroy Court was a busy one. It sat six days per week, Monday to Saturday, and dealt with a huge variety of matters, including criminal charges, licensing applications, civil debts, maintenance claims and applications under the *Neglected Children's Act*. Every day, the Court swarmed with defendants, applicants and other witnesses, their families and supporters, as well as police officers, the press, representatives from local charities and curious members of the public. The throng attracted disapproving commentary from concerned locals. In January 1908, a contributor to the *Fitzroy City Press* noted that 'the police court and police buildings at [the Town Hall's] rear … and the crowds that assemble there to await the dispensation of the law, take much from the dignity of this really fine building.'[23]

[22] 'Editorial,' *Fitzroy City Press*, 30 March 1900, 2.
[23] 'Passing Notes,' *Fitzroy City Press*, 17 January 1908, 3.

The Fitzroy Town Hall complex c. 1906
State Library Victoria, H90.160/991.

(c) The Fitzroy Children's Court

After the passing of the *Children's Court Act*, this rather dilapidated building also hosted the new Children's Court. The first press mention of a separate Court came on 21 February 1907. The *Observer* noted that on the previous Friday 'a Children's Court was held in the Magistrates' rooms. The list included two neglected children and a boy who had driven an ice cream cart on the wrong side of the street.' The following Monday, another Children's Court was 'held with closed doors,' this time dealing with three neglected children.[24] Like many Courts, as I discussed in Chapter Six, initially the Fitzroy Children's Court was convened in a haphazard fashion every time a child appeared on the Police Court list. Sometimes they were held before and sometimes after the Court's other business, and their location also seems to have varied, from the (closed) Court room to the Magistrates' chambers. By April 1907, though, some consistency had emerged.

[24] 'Police Courts,' *Collingwood Observer*, 21 February 1907, 5.

Children's Courts were now held once per week at a consistent time, on Thursday mornings before the Police Court began, and they seem to have mostly taken place in the Magistrates' chambers.

In a more formal sign that the Children's Court had officially started, from 10 June 1907 the Fitzroy Court began recording children's cases separately.[25] The first Children's Court registry entry documented that 13 teenagers aged between 14 and 17 were summonsed for 'offensive behaviour on the corner of Moor and Napier Streets.' The charges were proven and dismissed, 'with the defendants promising to keep off the streets at night.'[26] After that date, all neglect and criminal charges involving children under 17 were recorded in this separate ledger which noted their names, (usually) ages, charge, status (arrest or summons) and sentence, as well as the names of the Magistrates hearing the cases. The Children's Court registers are a particularly valuable historical source. For the first time, it is possible to track with a high degree of accuracy all cases involving children before any particular Court, delineated by age, sex and outcome. The Fitzroy register does have some limitations for research purposes. The records included only very basic information about the children before it, and more detailed case files have not survived. There were also omissions. Legal requirements such as age took some time to become universal. In the Court's first year of operation, the registry did not record the ages of 34 out of 118 children, although this had improved significantly by 1909. Overall, however, the registries provide exceptionally useful and largely accurate statistical information.

Support services were slow to make their way to Fitzroy. Like many other Courts, as I demonstrated in Chapter Six, no special Magistrates were appointed at this site, and children's cases continued to be heard by the regular bench. As late as January 1911 Fitzroy was one of the Courts which still did not have any formally trained Magistrates.[27] It did little better with probation officers. In the first government gazetting of probation

[25] This Chapter drew on the following Children's Court registries: *Children's Court Register – Fitzroy, 10 June 1907 – 18 March 1909* (PROV, Fitzroy Courts, *Children's Court Registers,* VPRS 6063/P/0001, Volume 1); *Children's Court Register – Fitzroy, 25 March 1909 – 27 January 1910*. (PROV, Fitzroy Courts, *Children's Court Registers*, VPRS 6063/P0001, Volume 2) and *Children's Court Register – Fitzroy, 3 February 1910 – 21 September 1911* (PROV, Fitzroy Courts, *Children's Court Registers*, VPRS 6063/P0001, Volume 3). In this Chapter these sources will be referred to as *Children's Court Registers* (1), (2) and (3) respectively.
[26] *Children's Court Register (1)*, 10 June 1907.
[27] 'Children's Courts,' *Probation Officers' Record* 1(1) (16 January 1911): 11 – 12.

officers in April 1907, two officers were attached to the Fitzroy Court. These were Annie Tregear, wife of the superintendent of the Methodist Mission, and the chief probation officer, Alfred Clarke.[28] The two officers do not seem to have attended Court very often in the months following (Clarke, as I outlined in Chapter Six, had many other responsibilities!). The *Collingwood Observer* noted cuttingly in July 1907 that 'we hear little of the host of probation officers who offered their services free.'[29] A year later, the newspaper observed again that probation officers were very thin on the ground. It complained that 'the probation officers referred to [in one of Clarke's publications] seem to be mythical. At least, we have never heard of one at Collingwood … while at Fitzroy Mr Hocking has been in court two or three times.'[30] A month later, however, the *Observer* made a rapid about turn, praising Mr Hocking as a 'valuable adjunct to the Fitzroy Children's Court.'[31] Perhaps Mr Hocking had noted the unfavourable remarks. By early 1911, Fitzroy had five probation officers attached to the Court, and Mr Hocking and Mrs Tregear were mentioned by name in Court registry entries in 1910.[32]

(d) Children's Court Cases

I discussed in Chapter Five how the *Children's Court Act* granted the new Courts jurisdiction over most criminal offenders under 17 and all cases of neglect. I used the Fitzroy Children's Court registers to calculate the numbers of criminal and neglect matters before this particular Court between 1907 and 1910, including the ages of the children involved, the charges against them and sentencing outcomes.[33] Unfortunately I cannot provide any direct numerical comparison of children's Court appearances before and after the new legislation. While there is plenty of anecdotal evidence to suggest that children appeared in significant numbers at the Fitzroy Police Court prior to 1906, there are no specific statistics available. As discussed in Chapter Three, state-wide statistics and Police Court registries did not document the age of offenders. Neglected children were of

[28] Alfred Clarke, *The Children's Court Act 1906: Notes for the Guidance of Probation Officers and Others Engaged in the Administration of the Children's Court Act, and the rules and regulations thereunder* (Melbourne: Urquhart and Nicholson, 1908), 1.
[29] 'Editorial,' *Collingwood Observer*, 25 July 1907. 2.
[30] 'Editorial,' *Collingwood Observer*, 16 July 1908, 2.
[31] 'Queer Cases – the Seamy Side,' *Collingwood Observer,* 20 August 1908, 5.
[32] 'Children's Courts,' *Probation Officers' Record*, 11.
[33] These statistics are set out in full in Appendix D.

necessity under 17, and it would be possible to draw comparisons, but this work has not been done to date. State-wide, as I analysed in Chapter Three, there were noticeable patterns in young people's arrest rates in the period before 1907. From the mid-1890s the number of juveniles arrested was falling, both in actual numbers and as a percentage of the total offending population. I argued in Chapter Six that the new legislation did not lead to any overall rise in the number of young offenders before the Courts. Neglect committals, on the other hand, were generally rising from the mid-1890s, at times very significantly. This trend also continued after 1907.

The Fitzroy Court statistics largely reflected these general trends. The number of criminal matters before the Court varied only slightly over this three-year period while the number of neglect applications rose significantly. In the Court's first full year, 1 July 1907 to 30 June 1908, there were 119 cases before the Court. Of these, 86 were criminal matters and 33 were neglect cases. The next year there were also 119 matters, involving 73 criminal cases and 46 cases involving neglect applications. In 1909 - 1910 numbers rose to 164, but of these 87 were criminal cases and 77 involved children charged with neglect.[34] Even more so than the state-wide patterns I analysed in Chapters Three and Six, there was a distinct sex differential amongst offenders. Only four offending girls appeared before the Fitzroy Court over this period. Neglect cases, on the other hand, were largely evenly distributed. Boys slightly outnumbered girls in two out of three years, but the difference was not statistically significant.[35] The overall age cohort at the Fitzroy Court was a very young one. For offenders, the median age dropped from 14.7 in 1907 – 1908 to just over 13 in 1909 – 1910.[36] Appearances of children under 10 rose to 11.5 per cent of all cases by 1910, a development which I shall examine further below. Neglected children were younger still, reflecting the large numbers of very small children in these cases. Once again, infants were the age group most likely to be charged with neglect, and the median (recorded) age at a Court appearance for all years was between four and five years.[37]

[34] Appendix D, Tables 1 and 5.
[35] Appendix D, Table 5.
[36] Noting however that the Children's Court registers did not record information about age in 22 of the 87 matters involving young offenders in 1907 – 1908. See Appendix D, Table 2 for age statistics (where reported) in criminal matters.
[37] Appendix D, Table 6.

The types of criminal charges prosecuted at Fitzroy also reflected the state-wide trends I demonstrated in Chapter Six. The two most common groups of criminal charges at the Fitzroy Children's Court were public order offences and offences against property, mostly theft or burglary (breaking and entering) or both. Despite Fitzroy's reputation for 'larrikinism,' (prosecuted) crimes against the person were very rare. Only four children (three boys and one girl) were charged with assault between 1907 and 1910. One 17-year-old boy was also charged with indecent assault, but given his age this matter was uplifted to the adult jurisdiction. In another reflection of general trends, the relative numbers of particular offences did shift. In 1907 – 1908, there were 55 public order matters before the Court (16 of these involved gambling in public). Property offences came a decided second, at 28 matters. By the next year, public order offending had begun to fall as a percentage of cases. In 1908 - 1909, there were 46 public order matters and 24 property cases. In the Court's third year of operation, there was a decisive change. That year, charges involving property (46 matters) overtook public order (35 matters). As I noted in the previous Chapter, this may have reflected a more 'law abiding' society generally, in particular a decline in public drinking and its associated criminalisation.[38]

Young Offenders

(a) Offending Boys

For a more detailed picture of the circumstances involving individual children before the Court I drew on contemporary newspaper reports. In this respect Fitzroy was unusually well documented. Both local papers had some coverage of Court proceedings, but the *Collingwood Observer* was particularly comprehensive. The *Collingwood Observer* was published weekly before it ceased publication in December 1909 and its editor, James McAlpine Tait (1828 – 1911) was something of a local character. Tait immigrated to Melbourne in 1852 from Glasgow. He owned the *Observer* from 1864 to 1866 and again from 1870, and wrote many of its articles. Tait was a radical in some respects. He supported the eight-hour day, land reform and reform of Victoria's Upper House, and he

[38] Garden, *Victoria*, 292 – 297.

also championed tariff protections.[39] He opposed federation and union politics, however, and by the early 1900s he was waging war against what he called 'faddism,' or social reform. Tait viewed Children's Courts as one of these 'fads,' although at times he modified this stance. For the purposes of my research, Tait's interest in documenting what he saw as a foolhardy enterprise meant that he included a significant amount of detail about the new Court. Information about children's cases was included in two sections of the *Observer*: the Police Court News and a lengthy column entitled 'Queer Cases – the Seamy Side.' This highlighted the week's more notorious cases, many of them involving children. Children were not identified as such, but Tait opposed the press prohibition on publishing identifying details (I shall discuss this further below),[40] and the *Observer* included as much information as possible bar actual names. This makes it possible to match many of the newspaper reports with Court registry entries.

Despite Tait's interest in the 'seamy side,' many criminal cases reported by the *Observer* were in fact very minor. As I argued in Chapter Three, police prosecutions often involved poor boys charged with street 'crimes' due to lack of alternative leisure facilities. On 8 July 1909, the *Observer* reported the case of Ernest Allson, James Hill, and Leslie Bourne, aged 13 and 11, who were charged with 'playing football in the street.' The boys protested that they had only played in the street because 'there was no playground at their school.' They were still fined 2/6 each and the ball was confiscated.[41] Other offenders were dealt with more leniently. On 18 July 1907, two 'North Fitzroy youths, charged with playing football in Rae Street at night,' were released on 'promising to mend their ways.'[42] In the summer months cricket replaced football as the problem sport. On 27 February 1908, Frederick Wheeler and James Carlyle, aged 15, and William From, aged 14, three younger members of a 'batch of street cricketers,' were fined 2/6 (default six hours' imprisonment).[43] Police also continued to wage war on public gambling, also discussed in Chapter Three. Again, this had little noticeable impact. On 16 January 1908 four boys

[39] Bernard Barrett, 'Tait, James McAlpine (1828 – 1911),' *Australian Dictionary of Biography Volume Six* (Melbourne: Melbourne University Press, 1976), at http://adb.anu.edu.au/biography/tait-james-mcalpine-4684/text7751.
[40] 'Editorial,' *Collingwood Observer*, 25 July 1907, 2.
[41] 'Queer Cases – The Seamy Side,' *Collingwood Observer*, 8 July 1909, 2; *Children's Court Register (1)*, 1 July 1909.
[42] 'Police Courts,' *Collingwood Observer*, 18 July 1907, 5.
[43] *Children's Court Register (1),* 27 February 1908, 'Queer Cases – The Seamy Side,' *Collingwood Observer*, 5 March 1908, 5.

aged between 14 and 16 appeared before the Children's Court for 'playing an unlawful game on the steps of the National Bank.' According to the *Observer*, they had been apprehended after a crowd had gathered, causing 'a great nuisance to the bank's customers,' and watched by others from windowsills 'using blasphemous language.' Edward Heatley, aged 15, already had two previous convictions for playing two up and was fined 5 shillings. The other three were fined 2/6.[44]

Street crime could sometimes be more destructive. By 1907, Fitzroy's larrikin heyday was past,[45] but vestiges of this culture sometimes bubbled up. On 1 August 1907 the *Observer* reported the case of Thomas Clifford, a 'youth,' whose age was not recorded. Thomas was fined five shillings (12 hours' imprisonment in default) for 'insulting behaviour, being one of a gang of local larrikins who had been worrying local tradesmen at night.'[46] This particular situation had a nasty anti-Semitic undercurrent. The gang of which Thomas was part, after 'hooting and yelling' down Johnston Street, 'burst open the shop of Mr Cohen, watchmaker, to 'have a lark with the old Jew.'' At this point, fortunately, they were apprehended by Constable Chapman.[47] On 29 October 1908 the *Observer* documented another example of 'larrikin' type group offending, this time with a distinctly class-based element. On this occasion, a large group of boys 'took possession of Queen's Parade' and stoned a motor car 'driven by a Melbourne manufacturer who had his wife and son with him.' When the irate manufacturer returned shortly afterwards with a Constable, the boys surrounded the car, 'hooted' at them and threw more stones. The Constable managed to apprehend five boys aged 16. They were all fined.[48] In 1909, the paper devoted an indignant column to boys' recent misbehaviour at the Cyclorama (an early precursor to the cinema). The *Observer* reported that 'a crowd of hoodlums' had been 'bombarding the Cyclorama with stones and hooting' as well as using offensive language. 'The Cyclorama,' the column argued, 'is becoming a plague spot in Fitzroy. [H]ordes of roughs are drawn to the locality on the off chance of getting a free admission.'[49] George

[44] *Children's Court Register (1),*16 January 1908; 'Police Courts,' *Collingwood Observer*, 23 January 1908, 5.
[45] Bellanta, *Larrikins*, 8 – 12, 66.
[46] 'Police Courts,' *Collingwood Observer*, 1 August 1907, 5.
[47] Ibid. On the racist element of larrikinism, see Ballanta, *Larrikins*, 87.
[48] 'Editorial,' *Collingwood Observer*, 29 October 1908, 4.
[49] 'Queer Cases – The Seamy Side,' *Collingwood Observer*, 18 November 1909, 3.

Bingham, aged 14, was the only boy caught. He was placed on three months' probation for this and for swearing at the police officer who apprehended him.[50]

The *Observer* devoted less press space to property offending. Reported cases varied in their severity, but again the majority were low level and apparently opportunistic. In November 1907, Herbert Phillips, George Wigstaff and David Young, whom the *Observer* described as 'three comfortably dressed imps,' (their ages were not recorded), were charged with stealing pastries from the kiosk at the North Fitzroy Railway station. The boys were released after their parents promised to pay for the pastries and to make a donation to the poor box.[51] Others were clearly motivated by familial poverty. In August 1909, Joseph Quick, aged 11 and Percy Downey, aged 13, were charged with stealing wood from the North Fitzroy sidings. The boys had been sent by their mothers to gather chips for heating, an accepted practice, but had taken home blocks of wood instead. Joseph and Percy were discharged upon payment of costs.[52] Boys also stole to buy entertainment, food and sweets with their friends, temptations no doubt beyond the reach of their families' constrained incomes. On 20 August 1907 Charles Boundy, aged 16, Henry Quick (15) and Albert Abbey (14) appeared before the Children's Court charged with 'stealing a money box, containing 50 shillings, from the Salvation Army barracks, North Fitzroy.' The boys, noted the *Observer*, had 'divided the money [and then] went into Melbourne for refreshments, winding up with a 'Dare Devil Dick' at the Hippodrome.' (a live entertainment venue).[53] The boys were remanded for a week, then placed on three months' probation.[54]

I noted above that larger numbers of younger boys appeared before the Fitzroy Children's Court. As I discussed in Chapter Six, some scholars in other jurisdictions have argued that with the advent of Children's Courts, police became more willing to initiate charges against children, including against younger age groups.[55] I also argued in Chapter Six that

[50] *Children's Court Register (2)*, 11 November 1909.
[51] 'Police Courts,' *Collingwood Observer*, 7 November 1907, 5; *Children's Court Register (1),* 31 October 1907.
[52] 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 12 August 1909, 2; *Children's Court Register (2)*, 5 August 1909.
[53] 'Police Courts,' *Collingwood Observer,* 22 August 1907, 5.
[54] *Children's Court Register (1)*, 20 August 1907 and 27 August 1907. They were discharged on 26 November 1907.
[55] John Springhall, *Coming of Age: Adolescence in Britain, 1860 – 1960* (Dublin: Gill and Macmillan, 1986), 178 – 179; Carolyn Strange and Tina Loo, *Making Good: Law and Moral Regulation in Canada, 1867 – 1989*

this was not reflected in Victoria's state-wide arrest rates. Indeed, these Fitzroy children virtually constituted the state-wide numbers[56] It is very difficult to tell whether Fitzroy Court was an exception to the general rule. The statistics for these three years were dominated by two large groups of younger boys, so research over a longer period would be needed to see whether this pattern continued. In June 1909, five boys aged between six and 10 appeared before the Fitzroy Court for breaking into 'Cowan's Novelty Factory' and taking money from a cupboard. The *Collingwood Observer* reported that the boys had 'got in under a gate, climbed up a roof and went in through a window.'[57] They took more than two pounds in cash and caused about 25 pounds' worth of damage to factory premises. The boys included two sets of siblings, John and Samuel Parsons, aged eight and ten, and Henry and Leslie Shipp, aged nine and six. The Bench, patently unsure of how to handle the children, placed them all on probation. This included six-year-old Leslie, despite the fact that he was in fact under the age of criminal responsibility. Even the cynical *Collingwood Observer* noted that '[t]o punish such babies in a manner commensurable with their crimes would be impossible.'[58] Little boys also offended in groups of slightly older children. In February 1910, Stanley Medley, aged eight, and William Sheldon, aged nine, were amongst a group of seven boys, including their older brothers, who broke into the local state school and stole 'a pair of scissors and a medal.' Stanley was charged with a separate offence of breaking into a house on Christmas Day 1909. William and his brother Norman (12) were committed to the Neglected Children's Department and Stanley was placed on six months' probation. The *Collingwood Observer* did not include any other information about their families' circumstances.[59]

(b) Offending Girls

(Toronto: University of Toronto Press, 1997), 98; Anthony Platt, *The Child-Savers: The Invention of Delinquency* (Chicago and London: University of Chicago Press, 1969), 137 – 138; David Tanenhaus, *Juvenile Justice in the Making* (Oxford: Oxford University Press, 2004), 51 – 52; Mary Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885 – 1920* (Chapel Hill and London: University of North Carolina Press, 1995), 115 – 118.

[56] *Statistical Register for the State of Victoria 1911, Part VIII - Law/Crime* (Melbourne: Government Printer, 1912), 27.

[57] 'Queer Cases – The Seamy Side,' *Collingwood Observer*, 1 July 1909, 2

[58] Ibid.

[59] *Children's Court Register (3)*, 17 February 1910.

As I have already outlined, girls made up a tiny minority of criminal defendants before the Fitzroy Children's Court. Of the four offenders between 1907 and 1910, two were charged with theft, one with assault and the other with behaving in an offensive manner. These numbers are too small to draw any conclusions about girls' offending more generally, but the circumstances of the three girls whose cases were reported in the *Collingwood Observer* are very similar to those I discussed in Chapter Three. Maud Felmingham, aged 14, was working as a domestic servant in February 1908 'at 3 shillings per week,' when she stole property from her employer, or, as the *Collingwood Observer* put it, 'looted her mistress wholesale.' She spent 11 shillings and the rest of the property was recovered. Maud was fined 5 shillings after her father promised to repay the money.[60] Olive Medley, aged 13 (and older sister of Stanley, whose case I discussed above), came before the Children's Court on 18 March 1909 for theft from two smaller children, who had been sent to run errands. Olive had persuaded them to hand over the change 'to help wrap it up.' She spent the money on 'fish and lollies.' Olive was placed on three months' probation.[61] Elsie Garston, also 13, appeared before the Court on 16 September 1909 for assaulting another girl. She in turn made allegations of assault. The matter evidently had a considerable back story. Both girls had lawyers who called witnesses in what the *Collingwood Observer* described pointedly as a 'long hearing.' Elsie was ultimately placed on six months' probation, a term further extended for another four months before she was finally discharged in June 1910.[62]

(c) Sentencing Young Offenders

I argued in Chapters Four and Five that Children's Court campaigners' overriding aim for the new jurisdiction was to create a separate and individualised regime for sentencing juvenile offenders. As I revealed in Chapter Six, this was not implemented in practice in many Courts, partly due to a lack of resources. This limitation is also evident at the Fitzroy Court. My analysis of the outcomes of criminal matters before the Court indicates some changes over the first three years, but also some significant continuities. Certainly, young

[60] *Children's Court Register (1)*, 13 February 1908; 'Queer Cases – The Seamy Side,' *Collingwood Observer*, 20 February 1908, 3.
[61] *Children's Court Register (1)*, 18 March 1909, and 10 June 1909; 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 25 March 1909, 2.
[62] 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 16 September 1909, 4; *Children's Court Register (2)*, 9 September 1909; *Children's Court Register (3),* 24 February 1910, 24 March 1910 and16 June 1910.

offenders in Fitzroy do not seem to have been treated with particular attention. Reformers had hoped that allocating specific times for children's cases would give Magistrates extra time to consider children's individual circumstances. This rarely occurred. As the Children's Court shared the ordinary Court facilities (and Magistrates), it was always secondary to 'real,' i.e. Police Court, business. Even after the Court had moved to its Thursday morning slot, the *Observer* complained in July 1907 that '[Children's Courts] are a positive nuisance. The other day, the solicitors and businessmen had to wait half an hour, while a Children's Court was being held.'[63] The next year, the paper conceded that a morning time was better than late afternoon, as the children could be sent away early, rather than 'bothering' other Court users by congregating around the premises.[64] This dual use also created significant time constraints. Most days, the Children's Court seems to have sat only for a maximum of an hour and a half - for a list including both criminal charges and neglect applications - before moving on to the main business of the day.

My study of criminal outcomes, again set out in full in Appendix D, does reveal that the Children's Court sentencing regime made some impact, although change was modest.[65] As I argued in Chapter Three, the distinct trend in Victoria prior to 1906 was towards cautions and fines for young offenders. Reformatory committals were reserved for particularly serious offences or repeat offenders, and they too were generally declining. At the Fitzroy Court between 1907 – 1908, 47 out of 86 criminal matters (55 per cent) were dealt with by way of a fine. 42 of these matters involved public order offending. The second most popular disposition was a discharge, or a discharge with a caution (30 per cent). Seven children were placed on probation. After 1908, however, financial penalties lost favour and the use of cautions, discharges and probation increased. In 1908 – 1909, 27 matters (35 per cent) were dealt with by way of a fine, equal in number to the 27 cautions and discharges. Fourteen offenders (18 per cent) were placed on probation and three matters were finalised with suspended sentences, or good behaviour bonds. In the 1909 – 1910 year, only 18 matters were dealt with through fines (20.6 per cent) and there were 31 cautions or discharges (35.6 per cent). Probation was now growing in popularity,

[63] 'Editorial,' *Collingwood Observer*, 23 July 1907, 2.
[64] 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 9 April 1908, 4.
[65] Appendix D, Table 3.

although it was still in the minority. Twenty matters (23 per cent) were finalised with a probation order, and eight younger children were committed to the Neglected Children's Department for criminal offending. Interestingly, no child was sent either to the reformatory or to prison by the Fitzroy Children's Court between 1907 and 1910.

The relatively limited use of probation may have reflected a lack of local services. As I discussed above, few probation officers actually attended at Fitzroy, even if they were nominally assigned to the Court, and only after mid 1908 were individual officers noted as attending Court hearings. Working out exactly how the new system was operating in Fitzroy is somewhat complicated by the recording system used. The Children's Court register often did not document explicitly whether or not a child was placed on probation, merely noting an adjournment and subsequent discharge. It is only supplementary evidence from the *Collingwood Observer* which confirms that these children were in fact placed on probation. A breakdown of the main charges for which children were placed on probation between 1907 and 1910 is set out in Appendix D, Table Four. This reveals that the significant majority (30 out of 41, or 73 per cent) were placed on probation for property offending. Again, this is consistent with the state-wide trends I examined in Chapter Six. Theft charges constituted nearly half of these matters (14) and break and enter and theft (11) followed. Nine children received a probation order for public order offending (three for public gaming) and only two, including one girl, for assault. All of these children completed their probation orders successfully, and were marked as discharged at the return date.

There was one noticeable change in these years, which comes through clearly in the rather hostile newspaper reports. Fitzroy Magistrates increasingly used different language about juvenile offenders. Although none of them was apparently specially trained, or at least they were not appointed as 'special Magistrates,' the Fitzroy Bench often expressed an observably 'benevolent' attitude to juvenile crime. Much to the *Observer's* vexation, in Fitzroy children were often deemed as in need of 'fatherly' guidance rather than hardened criminals in the making. The *Observer* reports are sprinkled with accounts of Magistrates' 'geniality' and 'paternalism.' On 4 April 1907, the Bench gave a 'paternal lecture' to 'a small regiment of well-dressed but wild boys' who 'in view of the approaching Japanese or German invasion … [had] purchased a small pistol

and stack of ammunition, with which they practiced at windows.' The boys were discharged and their mothers also took up a collection for the poor box.[66] On 7 January 1909 the Bench discharged Leonard Finnegan (11), who had been on probation for throwing stones, and 'other imps' with 'friendly advice from the Chairman and all promised to be good boys in the future.'[67] I argued in Chapter Three that 'respectable' boys with no prior convictions seem to have been particular beneficiaries of the 'paternal' approach, especially if their parents were in a position to make a financial contribution. This also seems to have been the case at Fitzroy. On 15 April 1909 James Devers, aged 16, was 'given the benefit of the doubt and let off with a paternal lecture' for using offensive language in the street. James's mother stated that he had 'worked since he was seven [and] kept his situation. He seldom went out at night.' She also agreed to donate to the poor box.[68]

Neglected Children

The real growth area at the Fitzroy Children's Court, however, was in neglect matters. This too reflected state-wide trends. I argued in Chapter Six that applications to commit children to the Department for Neglected Children rose significantly state-wide between 1907 and 1910, posing a significant challenge for the new regime, which had not been designed with this group in mind. In Fitzroy, as I noted above, neglect cases more than doubled in just three years, and the vast majority of these led to a departmental committal. In 1907 – 1908, 25 out of 33 children became state wards, as did 32 out of 46 the next year and 61 out of 77 in 1909 – 1910. A further six children (four in 1907 – 1908 and two in 1909 – 1910) were committed to the care of private organisations.[69] Most of the reported cases in the *Observer* involved impoverished mothers without male breadwinners who were struggling to provide for their children. They sought Court assistance as a last resort when family or charitable assistance ran out. Fitzroy Magistrates handled these cases with a level of pragmatism that reflected their knowledge of local circumstances and economic disadvantage. While they could – and did – reject some applications, overall they seem to have accepted that poverty was in itself

[66] 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 4 April 1907, 5.
[67] 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 14 January 1909, 2.
[68] 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 22 April 1909, 2.
[69] Appendix D, Table 3.

a reason to grant state assistance. I argued in Chapter Six that practices like this effectively created a distinct welfare arm of the Children's Court which had little basis in legislation. They did, however, respond to obvious local need. In Fitzroy, an application to commit a child to the Department for Neglected Children was one of the more certain mechanisms to obtain ongoing financial assistance, and thus to keep a family together.

(a) Families in Crisis

The circumstances of the 'neglected' children before the Fitzroy Court between 1907 and 1910, and whose cases were reported, were very similar to those I discussed in Chapter Three. They reveal the enduring nature of urban poverty in Melbourne, as well as the restricted work and support options for working-class women with dependent children. As in previous years, many widowed and deserted mothers sought Court assistance to try and retain care of their children. On 11 June 1908, Ada Rankin, a widow, applied to commit her four children, Joy, David, Lily and Douglas, aged between four and 13. The *Observer* noted that she had 'struggled for two and a half years without outside help,' and made the application 'with a view to having them boarded out to her.' The Bench 'could not promise the latter' but committed the three younger children with a recommendation that they be kept at home.[70] On 26 November 1908, Florence Field, a 'deserted mother' applied to commit her four children, Leslie, aged eight; Alice, aged six; Elsie, aged three, and Irene, 22 months. Mrs Field, who was expecting another child, had been deserted by her husband Robert four months previously. The prosecution supported the application, noting that 'the father was a sawyer by trade, but was such a drunken, worthless fellow, he never kept a job long.'[71] Mrs Field stated that her husband 'had often left her before, but this time he had been gone nearly four months and there was a warrant out for his arrest.' Mother and children had meanwhile been supported 'by the Benevolent Society and kindly neighbours.' All of the children were committed to the Department for Neglected Children, again evidently with an intention to return home.[72]

[70] *Children's Court Register (1)*, 4 June 1908; 'Queer Cases – the Seamy Side,' *Collingwood Observer* 11 June 1908, 3.
[71] 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 3 December 1908, 3; *Children's Court Register (1)*, 26 November 1908.
[72] Queer Cases – the Seamy Side,' *Collingwood Observer*, 3 December 1908.

Mothers sometimes also sought assistance when their husbands were at home, but where illness or disability prevented the men from working.[73] Again, the clear intention was not to have the children removed but to obtain financial assistance to tide the family over. On 17 June 1909, Mary Jane Cornell applied to the Children's Court to commit her six children, William, Minnie, Albert, Florence, Ivy and Harold, aged between 18 months and 13 years. The *Observer* noted that 'the father [William] is consumptive and cannot work.' The family 'lived on charity in a squalid place; but being unable to pay rent, were under notice to quit.' Compounding the family's difficult circumstances, Mrs Cornell had recently given birth to twins who had died. The children were all committed.[74] Applications from 'respectable' families, where fathers had worked consistently until misfortunate struck, seem to have been treated with particular sympathy by the Fitzroy Bench. Again, they were probably attuned to local circumstances, including the limited availability of long-term charitable assistance. On 30 September 1909, the Fitzroy Bench heard the case of the Phillips family. The *Observer* recorded that their 'father [had been] unable to work for some months due to rheumatism. He was in a liftman when in work, and earned 30 shillings [per week]. Meanwhile they were in sad straits.' Elizabeth and Spencer Phillips had six children. The Magistrates committed three of the younger children, Gertrude, six, Murray, five, and Dorothy, two.[75]

(b) Single Mothers

The other major category of impoverished applicants before the Fitzroy Children's Court were unmarried mothers. I demonstrated in Chapter Three that historically these women were not granted assistance to keep their children at home due to 'moral disapproval.' After 1907, as I discussed in Chapter Six, some Magistrates' attitudes shifted in favour of keeping babies with their mothers, but this was far from universal.[76] The Fitzroy

[73] On the correlation between the illness of male breadwinners (and resulting incapacity to work) and extreme family poverty see Swain, 'The Poor People of Melbourne,' in *The Outcasts of Melbourne: Essays in Social History*, ed. Graeme Davison, David Dunstan and Chris McConville (Sydney: Allen and Unwin, 1985), 99 and Shurlee Swain, 'Destitute and Dependent: Case Studies in Poverty in Melbourne,' *Historical Studies* 19 (1980): 98 – 99.
[74] 'Police Courts,' *Collingwood Observer*, 24 June 1909, 5; *Children's Court Register (2),* 17 June 1909.
[75] 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 7 October 1909, 2. It is unclear why the other three children were not committed, as the eldest was only ten, but the Bench may have thought that payment for three children would be sufficient to support the family.
[76] Shurlee Swain and Renate Howe, *Single Mothers and their Children: Disposal, Punishment and Survival in Australia* (Melbourne: Cambridge University Press, 1995), 5 – 6.

Magistrates were certainly not as sympathetic to single women as those 'respectable' married women who had fallen on hard times. They were subjected to considerable questioning, in particular around the identity of their children's fathers, with the aim of establishing whether those fathers could pay maintenance. On 21 January 1909 Hilda James, 'a young woman from the Salvation Army Haven,' applied to commit her two-month-old baby boy, Gordon. Under questioning, the young woman responded that she came from Williamstown and that the baby's father was 'employed in the railway workshops.' She had not taken out an application for maintenance 'although his brother had given her money for the child.' The Fitzroy Court struck out her application, noting that the '[a]pplicant must first take action against the father, so as to compel him – not the state – [to] pay for his profligacy.'[77] In another case from July 1909, further enquiries revealed sexual abuse. On 1 July 1909, Mary Macers, originally from Shepparton and probably also a Haven resident, applied to commit her baby daughter, three-week-old Hilda. The young woman stated that Hilda's father was a farm labourer who had disappeared. The case was adjourned for two weeks for the Shepparton police to make enquiries. Over the adjournment period it emerged that the baby's father was in fact the girl's stepfather, who was arrested for incest. Baby Hilda was committed to the department, but not before her mother was lectured by the Bench for misleading the Court.[78]

To commentators like the *Collingwood Observer*, applications by unmarried women seemed to be growing. Tait's paper devoted a number of indignant columns to what he called 'the wholesale dumping of illegitimate children [on the state].'[79] The *Collingwood Observer* advanced a number of explanations for this. One, not surprisingly for an opponent of Children's Courts, was the new Court system itself. 'The Children's Court,' the *Collingwood Observer* argued in January, 'is made a vehicle for saddling illegitimates on the state, freeing the parents of the burden of their wickedness, and hiding their shame.'[80] Tait blamed in particular the prohibition on publishing names, which, it argued, encouraged women to bring applications in the knowledge that their identities would be

[77] *Children's Court Register (1)*, 21 January 1909; 'Queer Cases –the Seamy Side,' *Collingwood Observer*, 28 January 1909, 2.
[78] *Children's Court Register (2),* 1 July 1909 and 15 July 1909; 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 8 July 1909, 3; and 22 July 1909, 3.
[79] 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 7 January 1909, 5.
[80] 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 28 January 1909, 2.

concealed. 'Children's Courts,' he argued, 'screen the immoral people.'[81] Another theory he advanced was 'the growth of socialism,' or increased dependence on the state. I argued in Chapter Two that successive secretaries of the Department for Neglected Children had also bemoaned this 'tendency' in the 1890s, although as I noted in Chapter Six, by 1907 they had definitely moved away from this position. In September 1909 the *Observer* argued provocatively – and inaccurately - that 'Ninety-nine per cent of illegitimate children not suffocated or strangled at birth are taken over by the state.'[82] There is no way of assessing whether single mothers did indeed dominate the Fitzroy Court lists, or whether they simply attracted more negative attention. However the presence in Fitzroy of refuges such as the Haven, one of the few refuges which took in women from across the state and even interstate (often following their baby's birth at the nearby Carlton Hospital for women),[83] may indeed have increased their relative numbers. Certainly, in 1908 and 1909 the *Observer* recorded a number of cases involving women from country Victoria and New South Wales, arguing that '[g]irls from all parts of the state and Commonwealth come to Melbourne to be confined and hide their shame … thereafter coming to the Haven.'[84]

(c) Fitzroy Children's Court: The Benevolent Bench?

Another factor which almost certainly encouraged applications across the spectrum was the relatively generous approach of the Fitzroy Bench to poor women. While Fitzroy Magistrates made periodic pronouncements on the need to discourage state assistance, in practice they mostly committed children, including those illegitimate children whose fathers could not be traced. Indeed Magistrates sometimes went to considerable lengths to get around the legislative technicalities. On 17 June 1909 Mary Knight applied to commit her two-month-old daughter, **Alice**. Mary had come from St Arnaud in country Victoria to the Haven and stated that the father was a labourer who had deserted her. The Bench noted that there was 'no corroboration as to paternity,' but the mother's only

[81] 'Editorial,' *Collingwood Observer*, 27 May 1909, 2. In fact, as paternity cases were not heard by the Children's Court, there was no prohibition on disclosing identifying details.
[82] Queer Cases – the Seamy Side,' *Collingwood Observer*, 30 September 1909, 3.
[83] 'The Haven – New Maternity Home,' *Herald*, 14 May 1897, 8
[84] 'Editorial,' *Collingwood Observer*, 14 October 1909, 2; see also 'Queer Cases – The Seamy Side,' *Collingwood Observer,* 7 January 1909. On this latter occasion the young woman was directed back to New South Wales to make an application for assistance there.

relative was 'an old age pensioner' (who, impliedly, was incapable of supporting her). Baby Alice was committed.[85] The reputation of the Fitzroy Bench is evident in another case reported in the *Collingwood Observer* in January 1909. The recent widow of a miner, 'three weeks' resident in the locality, having come from Maldon' (north-east of Castlemaine) to live with her mother, applied to commit her three children. She had some money left from the miners' association compensation, and noted that she was hoping to obtain factory work. The Bench refused to commit the children, 'remarking that she had been too premature with her application.' The woman responded that 'she did not want to be run bare of money before applying.'[86] Certainly, when the Crown Law Department issued their directive in late 1909 that the police should oppose committal applications unless the family was 'absolutely destitute,' the Fitzroy Magistrates seem to have done what they could to interpret this order humanely. On 2 December 1909, the Children's Court heard the case of **(John) William Edwards**, aged 3 months. His mother Lillian, an 'orphan without relatives or friends,' had come to the Haven from Warburton. The father was 'a married man who had cleared out.' Although the young woman was technically not 'destitute' whilst in the Haven, 'the Magistrates studied the case for a long time and at last discovered a loophole.'[87]

(d) Wayward Adolescents

'Wayward' adolescents were the other reported category of neglect cases before the Fitzroy Children's Court, though in significantly fewer numbers. We saw in Chapters Three and Six that teenagers made up an increasingly small proportion of neglect applications from the mid-1890s as the number of young children rose. In Fitzroy the situation was similar. Children between 13 and 16 constituted just 18 of all neglect matters between 1907 and 1910 (whose ages were recorded).[88] The dynamics of these matters bore little resemblance to those of the young families detailed above, aside from the fact that these young people were also poor, although not usually destitute. Of the reported cases, absconding and associating on the streets dominated. George Green was an example of this. George was first charged with neglect before the Fitzroy Children's

[85] 'Police Courts,' *Collingwood Observer*, 24 June 1909, 5.
[86] 'Queer Cases – The Seamy Side,' *Collingwood Observer*, 21 January 1909, 2.
[87] 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 9 December 1909, 2.
[88] Appendix A, Table 6.

Court on 25 June 1908, aged 11. His case was adjourned for a month, possibly on probation, and he was discharged on 23 July 1908. The *Observer* did not report this hearing, so we have no further information about what prompted this initial appearance[89] On 30 September 1909, George appeared again, now aged 13. He had run away from the Burwood Boys' Home, to which he had presumably been admitted (possibly through a private arrangement) in the interim. The police had found him 'sleeping out at night in vans.'[90] George was sent to the Royal Park Depot for a month and then placed on probation for 24 weeks. He was discharged for a second time on 14 April 1910.[91] Another case from December 1908 involved 14-year-old Victor Gourd, 'who would never stop at home but dossed out anywhere.' Victor was remanded to his mother for a month, presumably on probation, and then also discharged.[92]

Girls, as in previous years, were more likely to be apprehended for being 'in moral danger.' Although there were not many reported cases, in Fitzroy some girls were certainly arrested for street walking, frequenting the suburb's more notorious entertainment venues, and engaging in prostitution. In September 1908 the *Observer* documented the case of a 14-year-old girl charged 'with being an incorrigible stroller [and] frequenting the Hippodrome' (The Hippodrome again!). This girl had been on probation previously, impliedly for the same conduct, and 'remanded from time to time.' She was discharged after her mother assured the Court that the girl now 'stopped at home.' The Bench did however deliver a warning 'that if she did not behave better, she would be sent to a reformatory.' [93] In October 1909 the *Observer* reported a matter involving 'two girls of 16,' whose 'parents seem respectable, yet they permitted the girls to roam the streets at night. Now they are unblushing prostitutes, badly diseased.' The *Observer* did not note the Court outcome in this case, but we saw in Chapter Three that many girls in this situation ended up in the reformatories.[94]

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[89] *Children's Court Register (1),* 25 June 1908 and 23 July 1908.
[90] 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 7 October 1909, 2.
[91] *Children's Court Register (2)*, 30 September 1909 and 28 October 1909; *Children's Court Register (3)*, 4 April 1910.
[92] *Children's Court Register (1),* 10 December 1908; 'Police Courts,' *Collingwood Observer*, 17 December 1908, 3.
[93] 'Queer Cases – the Seamy Side,' *Collingwood Observer*, 3 September 1908, 3. It is not possible in this case to match definitively the newspaper account with a Court registry entry.
[94] 'Editorial,' *Collingwood Observer*, 28 October 1909, 2. These girls do not seem to match any cases recorded in the Children's Court registry, although the *Observer* reported them as being heard at Fitzroy.

The Fitzroy Children's Court admitted very few of these older children to the Department for Neglected Children. Only five (two girls and three boys) in these 18 matters were committed to the Department. One of these, 13-year-old Thomas Hodgson, was boarded out to his mother in August 1907 along with his six-year-old brother John, so this was presumably a 'family' committal initiated due to maternal poverty.[95] Another teenage boy, 16-year-old Jack Jackson, was found to already be a state ward. Jack seems to have absconded from his placement in late 1909 and his case was then struck out January 1910.[96] Another teenage girl, 14-year-old Henrietta Griffiths, who appeared before the Court in December 1909, was sent to the Presbyterian Girls' Home, a new industrial training institution in Elwood, instead of the Department.[97] Most of the remainder were discharged and sent home. The Fitzroy Court occasionally placed neglected children on probation, usually, as we have seen, teenage 'streetwalkers.' Girls as well as boys received probation in these circumstances. Marion Payne, aged 15, was placed on probation in March 1910. Marion was arrested with another girl, 14-year-old May (or Mary) Cullen, on 26 February 1910 and formally declared to be 'found wandering with no visible means of subsistence.' The two girls were remanded to the Royal Park Depot for a week. May's case was ultimately withdrawn, while Marion was given 12 weeks' probation. Unfortunately, once more their case was not reported in the newspapers, so we have no further detail about what prompted the charge. The co-arrest and the description, however, suggest that the girls most likely came to the attention of the police on the streets.[98]

Conclusion

This Chapter has explored how a 'typical' Children's Court in Melbourne operated in practice between 1907 and 1910, through a close analysis of registry and contemporary newspaper reports. I argue that these records demonstrate that while the Court experience improved somewhat after 1907, the Fitzroy Children's Court could do very little to alter the life circumstances of the majority of children appearing before it. In part

[95] *Children's Court Register (1)*, 16 August 1907.
[96] *Children's Court Register (2)*, 26 January 1910.
[97] Ibid, 9 December 1909.
[98] *Children's Court Register (3)*, 26 February 1910.

this reflected a lack of Court support services. Unlike the model Melbourne Court, Fitzroy's children continued to attend the local, inadequately maintained Police Court. No special Magistrates were allocated, and few probation officers volunteered their services. The Fitzroy Bench did make some efforts. Magistrates tried to fulfil the spirit of the Act by holding private hearings in Chambers and dealing with young offenders in a 'benevolent' fashion (to the dismay of the *Collingwood Observer*). Overall, though, the real issue was structural. As in previous years, poverty lay behind many charges and, most obviously, neglect applications. The majority of offences were low-level street 'crime,' reflecting the lack of leisure facilities in this poorly serviced suburb. Neglected children were overwhelmingly the victims not of abuse or maltreatment but of parental (usually maternal) poverty. I have demonstrated that Fitzroy Magistrates often agreed that poverty was in itself a ground for a state committal, in the process cementing the Court's largely extra-legal welfare jurisdiction. But the blunt tool of a committal, although it could indeed provide financial support, was a final, often desperate avenue for mothers who otherwise faced total destitution. The circumstances of many of the children and parents appearing before the Fitzroy Court reveals that it was largely beyond the capacity of the Children's Court to offer meaningful solutions for economic and social disadvantage, which led these children into the Court system in the first place.

CONCLUSION

I began this thesis by highlighting how modern anxieties about child welfare and youth crime have been projected on to the physical environment and procedures of the Children's Court. I noted the tension in contemporary reports between the Court as problem and Court as solution, and how the focus on legislation and Court processes has deflected attention away from the actual needs of children and their families. This thesis has provided critical historical context to modern debates by examining the origins of this much-contested jurisdiction. It has demonstrated how and why a separate Court came to be understood as a primary response to children's social and economic disadvantage, or how reformers' concerns about the public behaviour of poor urban children were linked to Court environment and procedures. My analysis brought together three interrelated histories. Firstly, I examined the backgrounds and motivations of those Melbourne reformers who campaigned for Children's Courts and how they came to influence the government decision to legislate for a new Court system. Secondly, I explored the experiences of children who appeared before the Melbourne Courts, as well as those Aboriginal children who did not. I documented how these children's complex circumstances revealed fundamental problems with the use of the Court system to respond to social disadvantage. Their experiences also revealed enduring patterns of gender and racial differentiation. Finally, I discussed the features of the jurisdiction itself. I explained the structural limitations of the *Children's Court Act*, and demonstrated how the Court's institutional shortcomings were exacerbated by a haphazard and underfunded implementation process. Overall, I argued that the *Children's Court Act* consolidated some valuable changes around the legal treatment of children and in this respect is an institution worth defending. However the new legislation also masked structural inequalities, entrenching further the criminalisation of poverty and embedding racial and gender inequalities. The problematic implications of these founding premises continue today in children's Court experiences and outcomes.

Summary of Key Findings

(a) Melbourne Reformers

I demonstrated in this thesis that the campaign for Children's Courts in Melbourne was driven by reformers who operated largely outside the political establishment, although due to the state of Victoria's delegated administrative model, many occupied central roles in child welfare management. Their status had significant implications for the underlying assumptions and operating model of the new jurisdiction. Specifically, I argued in Chapters One, Two and Four that Children's Court campaigners in Melbourne were overwhelmingly middle-class and drawn from the city's growing numbers of private child rescue agencies, the dissenting Churches and reform associations. Reformers inherited longstanding discursive, political and legal traditions linking crime and neglect with poverty and moral fault. In a settler colony based on the disinheritance of Aboriginal peoples and, increasingly, the marginalisation of any 'non-European' communities, their attitudes were also strongly racialised. In Chapter Two, I explored in detail how emerging early-twentieth century discourses about Empire building contributed significantly to campaigns for greater intervention in children's lives. A few reformers challenged these dominant discourses, but overall, crime, poverty, moral fault and racial exclusion remained tightly linked. Victoria's strongly decentralised approach to welfare administration also had significant implications for the operations of the new Children's Courts. Like child welfare more generally, the *Children's Court Act* embedded a central role for private agencies. However as I demonstrated in Chapter Six, the absence of government direction, funding or oversight meant that these charitable bodies were in themselves incapable of implementing long term, significant change.

(b) Children in the Courts

The experiences of children before the Melbourne Courts, the second focus of this thesis, revealed a considerably more complex picture than reformers' moral arguments suggested. I demonstrated in Chapters Three, Six and Seven that children who entered the Court system overwhelmingly faced economic and social disadvantage. However the penal frameworks under which these children were processed conflated crime and welfare, as well as normalising racial and gender differences. I documented that most young offenders were prosecuted for relatively trivial offences which reflected the life constraints of urban poverty. While reformers expressed increasing concern about the criminalisation of young children in particular, these patterns continued throughout this

period. The association between neglect and disadvantage was even more obvious. The numbers of 'neglected' children before the Melbourne Courts grew significantly between 1890 and 1910, reflecting the ongoing impact of the 1890s depression and enduring poverty. I argued in Chapters Three and Six that from the mid-1890s this led to extra-judicial interpretations of the *Neglected Children's Act*, where children were increasingly committed for parental poverty alone. However this practice never gained legislative acknowledgement and the inherent conflict between penal responses and welfare concerns remained. Girls were treated differently, and often poorly, by the Courts. I discussed in Chapter Three how girls were subject to harsher sentencing regimes, while gendered assumptions about class behaviour and morality fuelled some appalling treatment of young female complainants in sexual offence cases. Overall, though, it was those outside even the theoretical protection of the Courts, Aboriginal children, who fared worst. They were increasingly distinguished in law from non-Aboriginal children, with early twentieth-century policy and regulations increasingly linking the status of Aboriginality to that of 'neglect.' This association was employed to justify removal from family and community and institutionalisation, with devastating results and ongoing consequences in the continued differential and more punitive treatment of Aboriginal children by the Courts.[1]

(c) The Children's Court

The *Children's Court Act* reproduced this key theoretical contradiction between 'crime' and 'welfare,' a conflict which still remains unresolved. The final form of the Act also reflected a process of negotiation between Melbourne reformers who campaigned for a new Court system and the largely conservative government agencies and parliamentarians who were responsible for its drafting and progress into legislation. I argued in Chapter Five that Melbourne reformers were attracted to the idea of a Children's Court for its apparent consolidation of law, science and social work: or, in the words of Canadian criminologist Mariana Valverde, the infusion of law with other popular theories to gain credibility and power.[2] However the Court as legislated was in fact a

[1] Chris Cunneen, 'Racism, Discrimination and the Overrepresentation of Indigenous People in the Criminal Justice System,' *Current Issues in Criminal Justice* 17 (3) (2005): 336, 340.
[2] Mariana Valverde, *Law's Dream of a Common Knowledge* (Princeton and Oxford: Princeton University Press, 2003), 6.

Court of modified criminal jurisdiction, with somewhat contradictory 'welfare' additions. The Court also excluded key categories of children from its purview. Aboriginal children continued to be dealt with through an autonomous and largely unaccountable administrative process, confirming their differential legal status and treatment. Child victims, overwhelmingly girls, remained subject to the unforgiving environments of the Police and Supreme Courts. These structural limitations and contradictions were considerably exacerbated by underfunding and a poor implementation process which relied heavily on voluntary organisations. I explored in Chapters Six and Seven how a combination of badly planned rollout, lack of government direction, severe lack of resourcing and inadequate training for (unpaid) probation officers meant that the establishment of the Courts, including the new probation scheme, was exceedingly haphazard. The central Melbourne Children's Court, discussed in detail in Chapter Six, symbolised these issues. While praised for its state-of-the-art facilities and progressive approach, its quasi-public, quasi-private operating structure left it very vulnerable, not least to arguments about who should be responsible for such basics as maintenance and staffing.

Thesis Contributions

(a) History of the Victorian Children's Court

This thesis offers the first comprehensive history of the foundation and early operation of Children's Courts in Victoria and Australia. I noted in the Introduction that the existing histories of Children's Courts in Australia have concentrated largely on legislative developments, with an overriding assumption that the Courts were 'progressive' institutions consolidating the separation of children from adults in law.[3] I argued that while the Victorian Children's Court did indeed confirm valuable legal distinctions for (some) children, in other respects it was a product of early twentieth-century nation-

[3] Diane Alley, 'The History and Development of the Children's Court in Victoria,' *Australian Crime Prevention Council Forum* 11 3(3) (1980): 11 – 12; Donella Jaggs, *Neglected and Criminal: The Foundations of Child Welfare Legislation in Victoria* (Melbourne: Phillip Institute of Technology, 1986), i – iii, 90 – 91; John Seymour, *Dealing with Young Offenders* (Sydney: Law Book Co, 1988); Robyn Blewer, 'Commonsense Tribunals for Erring Little Folks:' Children's Court Legislation in Australia, 1895 – 1907,' *Limina* 22(2) (2017): 69 – 84.

building[4] and settler-colonialism. The new legislation replicated existing social divisions, including the further criminalisation of poverty, and it entrenched racial and gender differences. As I have discussed at length, Aboriginal children were omitted from the remit of the new Court, with longstanding consequences in continued differential and discriminatory legal treatment. Female reformers' aspirations for a more comprehensive jurisdiction to protect young girls were also ultimately sidelined, reflecting dominant discourses which focused on the importance of male youth for the nation's future. This thesis also analysed, again for the first time in Australian scholarship, how Children's Courts were implemented and experienced by the children and families who were the subjects of intervention. My research revealed the considerable gap between reformers' aspirations and practice. This included the lack of government investment in the new jurisdiction and a heavy reliance on voluntary effort, the limitations of which exposed again considerable weaknesses in Victoria's delegated model of child welfare administration. I discuss this particular point further below. I also documented the relatively limited impact of the new jurisdiction on child offenders and 'neglected' children. While children and their families benefitted somewhat from private hearings and procedural modifications, the profound disadvantage facing many of these children remained well beyond the scope of the Court system alone to remedy. This too is a pattern we can see today in repeated debates about the Court's scope and effectiveness.

Another central argument of this thesis is the importance of local historical studies in understanding the imperatives behind legal change. This study was consciously limited in time and place. I focused on the city of Melbourne between 1890 and 1910, drawing on multiple archives and sources, including previously unexplored Children's Court registry records, to provide a detailed account of this local Children's Court movement and its impact. As I noted in the Introduction, each Australian colony, later state, had different legislative regimes for criminal law and child welfare, which federation left intact. While these regimes certainly had key similarities, they also reflected distinctive social, economic and political imperatives and these benefit from close and contingent analysis. Yet while I emphasise the significance of the local, I also argue for the broader significance of my study for Children's Court scholarship, in Australia and internationally. By

[4] Patricia Grimshaw et al, *Creating a Nation* (Melbourne: McPhee Gribble, 1994), 2 – 3.

comparison with well-known Courts in the United States, Australian Children's Courts have gained very little broader academic attention, in part reflecting their lack of scholarly attention at home. This thesis demonstrates that Melbourne reformers contributed to national and international movements for legal change and the Victorian Children's Courts were important early examples of the separate jurisdiction. The *Children's Court Act*, while distinctively local, was also a hybrid creature, incorporating features and principles from multiple jurisdictions, not always coherently. Overall, then, this thesis argues for the contribution of Victorian, and Australian, Courts to international Juvenile Courts scholarship and ultimately for a broader understanding of the origins, development and features of this new jurisdiction.

(b) Methodology

This thesis makes a persuasive case for the use of social history methodologies, in particular social histories of crime and the criminal law, to approach and to animate the study of Australian Children's Courts, and indeed Australian Courts in general.[5] This use of social history is not unknown in other jurisdictions, as studies of Juvenile Courts in the United States demonstrate,[6] but it has not yet gained local impetus. My focus is of course on one Court, the Children's Court in Victoria. But my approach demonstrates the value that social history offers as a comprehensive research approach, capable of revealing key themes of the past which continue to resonate in the present, and which inform important questions for contemporary Courts and administrators about funding levels, participation in the justice system, and projects of legislative and procedural amendment. My thesis drew on two main tenets of social history: the experiences of 'ordinary people' before the Courts, or their interactions with institutions created and largely staffed by those more privileged, and the use of a variety of archival sources to illuminate the experiences of children and their families beyond official records. I joined these together with close legal analysis to write a different history of this specific institution and

[5] Ann Genovese, Trish Luker and Kim Rubinstein, 'Introduction' to *The Court as Archive* (Canberra: ANU Press, 2019), 6, 16.

[6] Mary E. Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885 – 1920* (Chapel Hill and London: University of North Carolina Press, 1995); Ruth M. Alexander, *The 'Girl Problem'* : *Female Sexual Delinquency in New York, 1900 – 1930* (Ithaca and London: Cornell University Press, 1995); Elizabeth J. Clapp, *Mothers of All Children: Women Reformers and The Rise of Juvenile Courts in Progressive-Era America* (Pennsylvania: Pennsylvania State University Press, 1998).

jurisdiction, demonstrating both how a particular legislative framework came into being and how Court processes were actually implemented and experienced on the ground by practitioners, children and their families. By focusing on law in its social context, this method shifts from legislative developments alone and allows consideration of the critical and enduring class, gender and racial foundations of this new jurisdiction. My work also argues for the value of considering multiple archival resources, and introduces for the first time the Children's Court registry records. In isolation all sources had significant limitations, not least the registry records themselves. By combining a variety of records I was able to build a detailed picture of the motivations behind and day to day operations of this new Court system.

(c) Contemporary Policy Debates

(i) The Limits of the Children's Court

As well as making historical and methodological contributions, this thesis contributes critical historical context to contemporary policy debates around the role, value and appropriate resourcing of Children's Courts. I noted in the Introduction and above that modern commentators have often projected their anxieties about child welfare and youth crime on to the physical environment and processes of the Children's Court, with an unresolved tension between the Court as 'solution' and the Court as 'problem.' My thesis demonstrates that this projection has a very long history, with early twentieth-century reformers likewise using the Court environment and processes to symbolise both crisis and remedy. Children's Court campaigners prioritised legal change over other interventions, only to express much disappointment when the new jurisdiction failed to achieve its remit of social change. My history, then, assists in understanding not only the entrenched reliance by the state on law as an apparent solution to structural disadvantage, but also the critical limits of this approach, then and now. My historical review demonstrates that the circumstances which led to a child's appearance before the Melbourne Courts, most notably poverty and social disadvantage, remained consistent throughout the period of this thesis. Legal outcomes shifted to some extent following the *Children's Court Act*, and children and their families probably had a somewhat improved Court experience. However in a core lesson for us today, structural issues were not able

to be solved retrospectively by the legal system and attempts to do so ultimately generated considerable frustration. In fact by the end of the period I examine in this thesis, some reformers were themselves coming to recognise that the Children's Court stood at the end point of a series of possible interventions, and were focusing more on earlier strategies, albeit in the form of enhanced policing and (paid) community probation officers.[7]

(ii) The Value of a Separate Court

While I note the limitations of this (or any) Court jurisdiction in remedying social issues, this is not an argument for the abolition of Children's Courts. By contrast, I suggest that my study demonstrates considerable *procedural* value in a separate Court for children and that some of the core principles of this jurisdiction are well worth emphasising in a modern context. The experiences of children in the Melbourne Courts prior to the *Children's Court Act* revealed the acute limitations of an adult jurisdiction and Court environment in dealing with vulnerable children. Separately, the treatment of Aboriginal children under a virtually administrative regime serves as a stark reminder about the dangers of removing judicial oversight. These are important historical learnings at a time of generally increased penal responses and recommendations (now legislated) to remove certain categories of young offenders out of the Children's Court,[8] or to have child protection cases heard by administrative panels.[9] Melbourne reformers' vision had at its core two very positive values: the distinction between children and adults in law and the need to treat children in an age-appropriate manner which facilitated rehabilitation. Reformers also acknowledged children's participation in the Court process and advocated for appropriate spaces for children and their families, as well as specialist adjudicators with the training and time to respond to children's needs. While these principles have been imperfectly realised, then and now, they continue to justify the establishment of a distinctive Court system. Overall, then, this thesis argues for separate

[7] Alex McKinley, *The Child and its Pitfalls: A Plea for Extended Social Effort – An Address on the Working of the Children's Courts* (Melbourne, 1912), 10.
[8] *Children and Justice Legislation Amendment (Youth Justice Reform) Act* 2017 (Vic).
[9] Victorian Law Reform Commission (VLRC), *Protection Applications in the Children's Court* (Report No 19 of 2010), 212; State Government Victoria, *Report of the Protecting Victoria's Vulnerable Children Inquiry* (Melbourne: Department of Premier and Cabinet, February 2012) ('Cummins Report'), 381 – 82. (Noting that neither of these reports ultimately recommended this model).

Courts, but with an emphasis on their judicial role, and an acknowledgement of their necessary limitations.

(iii) Resourcing the Courts: The Lessons of the *Children's Court Act*

If Courts cannot in themselves solve the social problems which so often trigger their involvement, my thesis has also emphasised that they can bring about considerably more change if they are appropriately resourced to do so. A key historical learning from my research, again very applicable today, is that the implementation of the new Courts without adequate state support and funding was – hardy surprisingly – often ineffectual. This in turn created a self-fulfilling prophecy of perceived failure. I demonstrated that the early Children's Courts in Melbourne lacked both government coordination and investment. This stemmed in part from the government's lack of interest in this particular legislative change, but it was also a result of Victoria's delegated system of child welfare administration, which relied heavily on voluntary effort. Local Police Courts were left to implement the new legislation individually without funding for separate spaces or to pay for trained Magistrates, while the new probation scheme relied heavily on the unpaid efforts of charitable organisations. The weakness of this scheme became apparent very rapidly. Well-intentioned but inadequately-trained voluntary officers collapsed under the pressure of growing case numbers, whilst Courts with comparable numbers attracted markedly different levels of support. These issues continue to resonate. Modern critiques about overcrowding and delay in the Court system are at basis resourcing issues, including insufficient personnel to manage growing case numbers.[10] Youth justice services (the modern equivalent of the probation officer) and child protection services have faced similar workforce issues.[11] In the circumstances, it is hardly surprising that the modern Children's Court appears to be 'in crisis.'

Areas for Further Research

[10] In its submission to the 2010 VLRC investigation, the Children's Court noted that 'the Court does not currently have the number of judicial officers and registry staff it requires to deal with its workload. Inevitably, delays have worsened,' Children's Court of Victoria, *Submission* to the Victorian Law Reform Commission, *Protection Applications in the Children's Court*, Submission No 46 of 2010, 69, at https://www.lawreform.vic.gov.au/projects/child-protection/child-protection-received-submissions.
[11] Victorian Ombudsman, *Investigation into the Department of Human Services Child Protection Program* [2009] VicOmbPRp 9 (1 November 2009), 17; *Cummins Report,* 120 – 122.

(a) Children's Courts in Australia

This thesis has also demonstrated ways in which Australian scholarly literature could be expanded in the future, both analytically and in the use of archival resources. As I have emphasised at various points, I focused on the origins and implementation of one particular *Children's Court Act*. This allowed me to explore in detail this legislation in its individual social and political context. The story of the Children's Courts was also the story of early twentieth-century Melbourne and the reformers and children who respectively developed and experienced the new jurisdiction. But as I also noted, Melbourne reformers operated in a national and international context. More in-depth and comparative studies of the establishment of Children's Courts in other parts of Australia would add considerably to our knowledge of this jurisdiction, and would be a valuable contribution to research. Comparative studies would emphasise Australia's often innovative but little-known legislation, and allow fruitful international dialogue between Australian Courts and those in the United States and beyond. I also confined my narrative to the period between 1890 and 1910, ending as the Victorian Children's Courts moved from early implementation towards ongoing operation. Children's Courts, however, have been the subject of continual contestation and change throughout their histories. A detailed history of the Victorian Court after 1910 is also yet to be written. This would be a narrative of equal historical significance, both in itself and for the reflections on the society from which it emerged and to which it contributed.

(b) Children in the Courts

This thesis has also opened up possibilities for further research about children's experiences in the Victorian, and Australian, Courts. As I discussed in the Introduction, there has been some Australian historical scholarship about children in the Courts, but it has concentrated heavily on specific areas, particularly sexual offending against young girls.[12] This thesis has highlighted the varied matters for which children appeared before

[12] Judith Allen, *Sex and Secrets: Crimes Involving Australian Women Since 1880* (Melbourne: Oxford University Press, 1990), 77 – 80, 123 – 126; Jill Bavin-Mizzi, *Ravished: Sexual Violence in Victorian Australia* (Sydney: University of New South Wales Press, 1995), 10 – 13; Jill Bavin-Mizzi, 'Understandings of Justice: Australian Rape and Carnal Knowledge Cases, 1876 – 1924,' in *Sex, Power and Justice: Historical Perspectives*

the Courts. This included large numbers of children who were charged with minor criminal offences as well as the many who appeared as 'neglected' children. No Australian scholarly literature to date has discussed children's historical criminal offending in detail,[13] or documented shifting patterns across periods. Some historical research has been conducted about mothers who sought state assistance through the committal system and the use of the *Neglected Children's Acts* and their equivalents as de facto welfare systems,[14] but with few exceptions this research has not concentrated on the children themselves,[15] or explored fully the intersections between children's circumstances and neglect proceedings. The Victorian Children's Court registries, now in open access for their first decade and more, in themselves offer exciting possibilities for further scholarship. This thesis examined one set of Children's Court records in detail (Fitzroy), but other registries have survived, as well as earlier Police Court records. A larger-scale examination of these resources would allow for comparisons around what brought children before the new Children's Courts, as well as sentencing patterns and the differences between individual Courts.

(c) Aboriginal Children

I noted in the Introduction that a comprehensive analysis of Aboriginal children's experiences under settler-colonial law was beyond the scope of this thesis. My research, however, shed new light on the past and ongoing significance of their progressively discriminatory legal treatment in the lead up to the *Children's Court Act*, as well as their exclusion from this jurisdiction. In particular, I noted how the status of Aboriginality was increasingly associated with 'neglect,' and how options for Aboriginal children contracted at the same time that they expanded significantly for their non-Aboriginal counterparts.

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of Law in Australia, ed. Diane Kirkby (Melbourne: Oxford University Press, 1995), 27 – 32; Lisa Featherstone and Amanda (Andy) Kaladelfos, *Sex Crimes in the Fifties* (Melbourne: Melbourne University Press, 2016), 55 – 57, 63 – 67.

[13] See the general summary in Chris Cunneen, Rob White and Kelly Richards, *Juvenile Justice: Youth and Crime in Australia* (5th ed.) (Melbourne: Oxford University Press, 2015), 2 – 4, 6 – 8.

[14] Christina Twomey, 'Gender, Welfare and the Colonial State: Victoria's 1864 *Neglected and Criminal Children's Act*,' *Labour History* 73 (1997): 171 – 172, 174, 175 – 178; Marian Quartly and Judith Smart, *Respectable Radicals: A History of the National Council of Women of Australia, 1896 – 2006* (Melbourne: Monash University Publishing, 2015), 59; Jennifer Anderson, 'Deserving Widows and Deserted Wives: The *Neglected Children's Act* and State Support of Motherhood in Victoria,' *Australian and New Zealand Law and History E-Journal* 4 (2012): 96 – 125.

[15] The key exception here (for a later period) is Kerry Carrington, *Offending Girls: Sex, Youth and Justice* (Sydney: Allen and Unwin, 1993).

The trend towards removal of Aboriginal children accelerated just as non-Aboriginal children were increasingly supported to remain at home. For this reason, further research into the comparative treatment of Aboriginal children and those non-Aboriginal children who came within 'neglected children's' regimes would be well worth undertaking. Scholars including historian Richard Broome have noted the virtually seamless transition from child removals under successive *Aborigines Acts* to interventions under mainstream child welfare legislation in the 1950s when those Acts were revoked.[16] A fuller study of these legal intersections and their implications over the intervening period would provide valuable insights. Equally valuable would be a study of those Aboriginal children who did enter the 'mainstream' Court system from 1906. I noted in the Introduction the disproportionate number of Aboriginal children in the modern criminal justice system relative to population, which many scholars have linked to enduring patterns of settler-colonial discrimination.[17] Tracing the experiences of Aboriginal children during this early period would undoubtedly have challenges, including how children's status was recorded. It may, however, also reveal patterns in perception and treatment which, as in the 'welfare' jurisdiction, associated the status of Aboriginality with that of offender, setting the scene for the unequal treatment and outcomes that we see today.

Conclusion

This thesis has demonstrated that Children's Courts were an emotive subject in early twentieth-century Melbourne. They remain so today. Although the social context has changed significantly, an enduring theme is how concerns about child offending and neglect have been projected on to the physical environment and procedures of the Children's Court. The Court was and continues to be promoted as the ultimate solution to social issues. Just as often, it has been blamed as key contributor. Overall, I have established that the Court has always occupied a contested and political space, reflecting the anxieties and aspirations of the society in which it has operated. This thesis has provided the first comprehensive study of the establishment and early operations of the

[16] Richard Broome, *Aboriginal Victorians: A History Since 1800* (Sydney: Allen and Unwin, 2005), 328 – 329.
[17] For example, Chris Cunneen, 'Racism, Discrimination and the Overrepresentation of Indigenous People in the Criminal Justice System,' *Current Issues in Criminal Justice* 17 (3) (2005): 336, 340.

Victorian Children's Court. I have argued for the importance of documenting in detail the founding premises of this jurisdiction and opening it up for constructive critique. Through charting the history of the Courts, I have revealed how structural and operational patterns emerged and continued. While I suggested that Children's Courts were an optimistic vision and ushered in procedural changes which are well worth defending, they also embodied the class, gender and racial attitudes of their time. The *Children's Court Act* masked deep social inequalities, entrenching further the criminalisation of poverty and embedding racial and gender differences, including the exclusion of Aboriginal children. The implications of these decisions have continued today in unequal Court experiences and outcomes. My research has also demonstrated the inevitable limitations of any Court system in responding to children's multifaceted social problems, which is compounded by lack of state support and investment. Regrettably, my history of the Victorian Children's Court has revealed persistent patterns of lack of government interest and funding, as well as reliance on external agencies to deliver core services. I conclude with the observation that, ultimately, the Children's Court can only ever be as good as the support it receives.

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APPENDIX A: CRIMINAL STATISTICS, 1890 - 1906

These statistics were compiled from the following sources:

Statistical Registers for the Colony of Victoria – Law and Crime, 1890 – 1900

Statistical Registers for the State of Victoria – Law and Crime, 1901 - 1906

Table 1: Arrests of children and young people in Victoria as a percentage of total arrests, 1890 – 1906

Year	Under 10	10 - 15	15 - 20	Total children and young people	Total arrests *Neglected Children's Act*	Total arrests all ages	Percentage arrests: children and young people	Percentage of neglect to total arrests for children and young people
1890	435	646	2237	3318	700	38,594	8.5	21
1891	449	656	2039	3144	592*	35,429	8.8	18.8
1892	476	665	2038	3179	739	33,283	9.5	23.2
1893	466	634	1733	2833	696	28,623	9.9	24.6
1894	517	593	1532	2642	760	24,846	10.6	28.7
1895	516	510	1346	2372	772	23,139	10.3	32.5
1896	543	583	1504	2630	838	22,787	11.5	31.9
1897	623	457	1193	2273	824	20,106	11.3	36.3
1898	951	529	1540	3020	1217	26,587	11.4	40.3
1899	855	417	1223	2495	1128	23,669	10.5	45
1900	750	503	1410	2663	1003	27,568	9.7	37.7
1901	948	425	1314	2687	1184	29,039	9.3	44
1902	702	442	1237	2381	959	24,720	9.7	40
1903	343	396	1163	1902	557	22,475	8.5	29.3
1904	353	364	1039	1756	526	24,122	7.3	30
1905	430	375	1060	1865	585	23,779	7.8	31.4
1906	619	376	1064	2059	817	23,631	8.7	39.7

* Described as 'charges against public welfare.'

Table 2: Types of charges, children and young people in Victoria aged under 20, 1893 – 1906*

Year	*Neglected Children's Act*	Property offences	Offences against the person**	Sexual offences	Public order	Other	Total
1893	696	901	135	27	979	95	2833
1894	760	696	72	19	977	118	2642
1895	772	611	66	22	844	57	2372
1896	838	683	78	37	902	92	2630
1897	824	586	78	14	700	71	2273
1898	1217	664	78	43	936	82	3020
1899	1128	497	86	15	705	64	2495
1900	1003	579	79	22	899	81	2663
1901	1184	547	76	27	801	52	2687
1902	959	497	55	23	793	54	2381
1903	557	593	72	15	600	65	1902
1904	526	555	44	11	549	71	1756
1905	585	565	45	14	577	79	1865
1906	817	520	55	25	594	48	2059

*Age specific statistics were only published after 1893

** This includes assault and related offences, excluding murder, manslaughter and sexual offences

Table 2A: Types of charges, children under 10

Year	Public welfare, including *Neglected Children's Act**	Property offences	Offences against the person	Sexual offences	Public order	Other	Total
1893	435	26	-	-	5	-	466
1894	481	29	-	-	7	-	517
1895	493	20	-	1	2	-	516
1896	510	21	5	-	7	-	543
1897	589	27	-	-	7	-	623
1898	914	24	-	-	11	2	951
1899	835	17	1	-	1	1	855
1900	729	17	-	-	4	-	750
1901	942	4	-	-	1	1	948
1902	687	15	-	-	-	-	702
1903	330	12	-	-	-	1	343
1904	342	11	-	-	-	-	353
1905	415	13	-	-	2	-	430
1906	605	13	1	-	-	-	619

***** While the total number of neglect charges for each year were published, these charges were not further delineated by age. The 'public welfare' category included a small number of additional offences, such as absconding from an institution.

Table 2B: Types of charges, children 10 – 15

Year	Public welfare, including *Neglected Children's Act*	Property offences	Offences against the person	Sexual offences	Public order	Other	Total
1893	240	292	12	1	84	5	646
1894	268	234	4	-	85	2	593
1895	233	202	3	8	62	2	510
1896	307	208	2	3	61	2	583
1897	212	197	4	-	41	3	457
1898	283	188	4	2	49	3	529
1899	238	126	12	-	39	2	417
1900	251	189	5	-	56	2	503
1901	201	168	7	1	40	8	425
1902	225	169	6	3	33	6	442
1903	196	153	6	2	33	6	396
1904	162	168	3	-	28	3	364
1905	151	179	7	-	37	1	375
1906	177	152	3	-	36	8	376

Table 2C: Types of charges, young people 15 - 20

Year	Public welfare, including *Neglected Children's Act*	Property offences	Offences against the person	Sexual offences	Public order	Other	Total
1893	80	583	123	26	890	31	1733
1894	93	433	68	19	885	34	1532
1895	78	389	63	13	780	23	1346
1896	87	454	71	34	834	22	1504
1897	65	362	74	14	652	26	1193
1898	69	452	74	41	876	28	1540
1899	99	354	73	15	665	17	1223
1900	77	373	74	22	839	25	1410
1901	59	375	69	26	760	25	1314
1902	78	313	49	20	760	17	1237
1903	72	428	66	13	567	17	1163
1904	62	376	41	11	521	28	1039
1905	67	373	38	14	538	30	1060
1906	56	355	51	25	558	19	1064

Table 3: Arrests by gender and age, children and young people in Victoria, 1890 – 1906

Year	Under 10 Male	Under 10 Female	10-15 Male	10-15 Female	15-20 Male	15-20 Female	Total arrests	Total male and percentage	Total female and percentage
1890	270	165	569	77	1886	351	3318	2725 (82)	593 (18)
1891	263	186	564	92	1747	292	3144	2574 (82)	570 (18)
1892	302	174	576	89	1722	316	3179	2600 (82)	579 (18)
1893	268	198	568	66	1483	250	2833	2319 (82)	514 (18)
1894	317	200	523	70	1316	216	2642	2156 (82)	486 (18)
1895	306	210	419	91	1150	196	2372	1875 (79)	497 (21)
1896	322	221	479	104	1313	191	2630	2114 (80)	516 (20)
1897	320	303	363	94	1029	164	2273	1712 (75)	561 (25)
1898	524	427	410	119	1300	240	3020	2234 (74)	786 (26)
1899	458	397	332	85	1062	161	2495	1852 (74)	643 (26)
1900	426	324	404	99	1225	185	2663	2055 (77)	608 (23)
1901	498	450	326	99	1152	162	2687	1976 (74)	711 (26)
1902	378	324	366	76	1052	185	2381	1796 (75)	585 (25)
1903	186	157	337	59	1017	146	1902	1540 (81)	362 (19)
1904	203	150	305	59	907	132	1756	1415 (81)	341 (19)
1905	230	200	317	58	951	109	1865	1498 (80)	367 (20)
1906	334	285	309	67	940	124	2059	1583 (77)	476 (23)

Table 4A: Literacy rates of arrested children in Victoria aged 10 - 15, 1890 – 1906

Year	Cannot read or write	Read only, or both imperfectly	Read and write well	Superior instruction	Total	Percentage poor literacy
1890	89	543	14	-	646	98
1891	70	567	19	-	656	97
1892	69	573	23	-	665	97
1893	94	527	13	-	634	98
1894	85	496	12	-	593	98
1895	68	439	3	-	510	99.5
1896	47	507	29	-	583	95
1897	59	394	4	-	457	99.2
1898	65	464	-	-	529	100
1899	47	370	-	-	417	100
1900	51	451	1	-	503	99.8
1901	44	381	-	-	425	100
1902	50	392	-	-	442	100
1903	34	362	-	-	396	100
1904	35	329	-	-	364	100
1905	24	351	-	-	375	100
1906	41	335	-	-	376	100

Table 4B: Literacy rates of arrested young people in Victoria aged 15 – 20, 1890 – 1906

Year	Cannot read or write	Read only, or both imperfectly	Read and write well	Superior instruction	Total	Percentage poor literacy
1890	107	1932	195	3	2237	91
1891	89	1802	146	2	2039	93
1892	78	1784	173	3	2038	96
1893	78	1545	109	1	1733	94
1894	66	1379	85	2	1532	94
1895	55	1231	60	-	1346	96
1896	50	1393	61	-	1504	96
1897	40	1102	49	2	1193	96
1898	55	1430	55	-	1540	96.5
1899	43	1154	25	1	1223	98
1900	53	1332	25	-	1410	98
1901	54	1216	44	-	1314	97
1902	42	1161	34	-	1237	97
1903	41	1094	28	-	1163	98
1904	30	996	13	-	1039	99
1905	23	1029	8	-	1060	99.3
1906	38	1003	23	-	1064	98

Table 5: Children and young people aged under 20 in Victorian gaols*, 1890 – 1906

Year	Under 10 Male	Under 10 Female	10 – 15 Male	10 – 15 Female	15 – 20 Male	15 – 20 Female	Total
1890	9	4	94	12	751	107	977
1891	10	6	87	8	619	129	859
1892	8	1	64	8	587	90	758
1893	4	1	54	4	595	69	727
1894	3	2	58	4	509	81	657
1895	2	2	54	4	418	52	532
1896	3	-	35	4	505	74	621
1897	3	-	40	15	521	70	649
1898	-	1	22	4	691	97	815
1899	-	-	40	4	1091	71	1206
1900	1	1	47	3	492	67	611
1901	-	-	13	8	518	50	589
1902	-	-	21	1	432	47	501
1903*	1	-	27	5	576	52	661
1904	-	-	24	3	395	53	475
1905	1	2	19	-	445	37	504
1906	-	-	23	-	393	29	445

* After 1903 the statistics included prisoners in police cells (previously counted separately).

Table 6: Carnal knowledge and attempted carnal knowledge arrests and committal rates in Victoria, 1892* – 1906

*The *Crimes Act Amendment Act* (December 1891) raised the age of consent from 12 to 16.

Year	Carnal knowledge arrests	Number committed for trial	Percentage committed for trial	Attempted carnal knowledge arrests	Number committed for trial	Percentage committed for trial
1892	43	34	79	14	13	93
1893	42	26	62	5	4	80
1894	36	27	75	7	7	100
1895	30	23	77	5	5	100
1896	48	35	73	10	10	100
1897	27	19	70	2	2	100
1898	43	27	63	13	13	100
1899	38	30	79	11	11	100
1900	39	31	82	12	9	75
1901	32	26	81	14	13	93
1902	26	17	65	10	10	100
1903	16	12	75	7	7	100
1904	27	19	70	6	6	100
1905	22	16	73	7	7	100
1906	30	21	70	6	4	67

APPENDIX B: NEGLECTED CHILDREN AND REFORMATORY COMMITTALS, 1890 - 1906

These statistics were compiled from the following sources:

Statistical Registers for the Colony of Victoria – Social Condition, 1890 – 1900
Statistical Registers for the State of Victoria – Social Condition, 1901 – 1906
Department for Neglected Children and Reformatory Schools, *Reports of the Secretary and Inspector*, 1890 – 1906.

Table 1: Reformatory committals in Victoria, including transfers from the Neglected Children's Department (NCD), 1890 – 1906

Year	New committals male	New committals female	Total new committals	Transfer from NCD male	Transfer from NCD female	Total transfers	Total
1890	46	16	62	26	34	60	122
1891	50	11	61	40	19	59	120
1892	50	20	70	15	28	43	113
1893	53	19	72	24	20	44	116
1894	42	16	58	12	32	44	102
1895	51	25	76	11	20	31	107
1896*	-	-	80	-	-	76	156
1897*	-	-	57	-	-	61	118
1898*	-	-	42	-	-	68	110
1899*	-	-	49	-	-	35	84
1900*	-	-	61	-	-	52	113
1901*	--	-	48	-	-	43	91
1902*	-	-	42	-	-	51	93
1903	44	2	46	13	19	32	78
1904	37	13	50	11	20	31	81
1905	28	7	35	4	17	21	56
1906	36	15	51	6	15	21	72

* These years did not report statistics by gender

Table 2: Neglect committals in Victoria by age, 1892* – 1906

Year	Under 1	1 - 2	2 - 5	5 - 10	10 - 13	13 - 16	Total
1892	85	30	76	102	74	48	415
1893	119	31	67	115	65	40	437
1894	128	27	86	127	59	55	490
1895	113	46	85	131	69	41	485
1896	83	35	116	182	83	52	551
1897	120	49	175	253	115	58	770
1898	150	89	239	370	124	48	1020
1899	143	62	232	348	99	44	928
1900	171	61	172	279	127	64	874
1901	211	81	258	407	130	65	1152
1902	143	54	180	316	112	37	842
1903	70	27	76	119	67	38	397
1904	91	22	86	77	49	39	382
1905	118	27	105	142	58	43	493
1906	135	58	164	227	79	39	702
Total	1880	699	2117	3195	1310	711	9938

* Age at committal was not reported in 1890 and 1891.

Table 3: Neglect committals in Victoria by gender, 1890 – 1906

Year	New committals boys	New committals girls	Total committals
1890	217	160	377
1891	232	156	388
1892	130	285*	415
1893	131	306*	437
1894	159	331*	490
1895	146	339*	485
1896**	-	-	551
1897**	-	-	770
1898**	-	-	1020
1899**	-	-	928
1900**	-	-	874
1901**	-	-	1152
1902**	-	-	842
1903	221	176	397
1904	222	160	382
1905	244	249	493
1906	382	320	702

* Between 1892 and 1895, the reports noted whether a neglected child was committed at first instance to the 'boys' depot' or 'girls' depot' at the Royal Park receiving home. However boys under six were generally placed in the girls' depot, and so were included in the 'girls' statistics.

** These years did not report statistics by gender.

Table 4: New committals (neglected children) placed with mothers, 1899*– 1906

Year	New committals	Total placed with mothers	Percentage of new admissions
1899	928	420	45
1900	874	328	37.5
1901	1152	585	51
1902	842	-	-
1903	397	131	33
1904	382	95	25
1905	528	193	36.5
1906	753	395	52

* The Department for Neglected Children and Reformatory Schools only published these statistics from 1899

APPENDIX C: CHILDREN'S COURT STATISTICS (VICTORIA), 1907 – 1910

These statistics were compiled from the following sources:

Statistical Registers for the State of Victoria – Law and Crime, 1907 – 1911

Statistical Registers for the State of Victoria – Social Condition, 1907 – 1911

Department for Neglected Children and Reformatory Schools, *Reports of the Secretary and Inspector*, 1906 – 1911.

Table 1: Arrest rates for children and young people in Victoria by age and as a percentage of total arrests (excluding neglect) 1907 – 1910*

Year	Under 10	10 - 15	15 - 20	Total	Total all ages	Percentage arrests: children and young people
1907	14	165	891	1070	16,816	6.4
1908	10	147	843	1000	15,159	6.6
1909	7	111	751	869	14,051	6.2
1910	13	101	811	925	13,907	6.7

* After 1907, the Statistical registers reported these as distinct persons arrested, rather than the total number of arrests.

Table 2: Arrest rates for children and young people in Victoria by gender (excluding neglect), 1907 – 1910

Year	Under 10 Male	Under 10 Female	10-15 Male	10-15 Female	15-20 Male	15-20 Female	Total arrests	Total male and percentage	Total female and percentage
1907	13	1	158	7	817	74	1070	988 (92)	82 (8)
1908	10	-	139	8	745	98	1000	894 (89)	106 (11)
1909	7	-	105	6	686	65	869	798 (92)	71 (8)
1910	11	2	98	3	731	80	925	840 (91)	85 (9)

Table 3: Children's Court hearings, all charges (arrest and summons), 1908* – 1910

Year	*Neglected Children's Act*	Offences against property	Offences against the person	Public order	Other	Total
1908	744	1158	92	971	706	3671
1909	1049	1051	75	940	600	3715
1910	1030	1157	85	855	480	3607

* Children's Court statistics were reported separately after 1908. These statistics refer to the total number of cases by primary matter heard by the Courts (not the number of individual children who appeared).

Table 4: Children's Court sentencing outcomes, 1908 – 1910*

Year	Discharge/caution / dismissed (including after payment of costs)	Fine	Suspended sentence (good behaviour bond)	Reformatory	imprisonment	Neglected Children's Department	Probation	Other	Total
1908	1420	721	75	68	34	1006	210	137	3671
1909	1457	733	36	77	34	1074	222	82	3715
1910	1306	654	55	63	30	1123	280	96	3607

* Criminal and neglect charges are not distinguished in these statistics. These statistics also refer to the total number of cases, not the number of children who appeared.

Table 5: Reformatory committals in Victoria by gender, including transfers from the Neglected Children's Department (NCD), 1907 – 1910*

Year	New committals male	New committals female	Total new committals	Transfer from NCD male	Transfer from NCD female	Total transfers	Total	Total under supervision male	Total under supervision female	Total under supervision
1907	34	7	41	14	26	40	81	78	126	204
1908	47	5	52	21	24	45	97	97	129	226
1909	37	6	43	14	17	31	74	99	115	214
1910	39	8	47	7	27	34	81	88	116	204

* These statistics refer to individual children committed to the reformatories

Table 6: Neglect committals in Victoria by gender, 1907 – 1910*

Year	Male	Female	Total
1907	382	325	707
1908**	610	568	1178
Court committals	529	483	1012
Infant Life Protection Act	81	85	166
1909	640	579	1219
Court committals	564	497	1061
Infant Life Protection Act	76	82	158
1910	731	634	1365
Court committals	577	490	1067
Infant Life Protection Act	154	144	298

* These statistics refer to individual children committed to the Neglected Children's Department

** From 1908, the *Infant Life Protection Act* provided for the automatic committal of illegitimate children under five if they were not cared for at home and their mothers were more than a month in arrears of maintenance payments. Most of the children committed under this provision were infants under one.

Table 7: Neglect committals in Victoria by age, 1907 – 1910

Year	Under 1	1 - 2	2 - 5	5 - 10	10 - 13	13 - 16	Total
1907	128	54	150	190	98	45	707
1908	272	125	278	329	126	48	1178
1909	327	123	266	377	90	36	1219
1910	405	115	283	379	147	36	1365

Table 8: New committals (neglected children) placed with mothers, 1907 – 1910

Year	New committals	Total placed with mothers	Percentage of new admissions
1907	707	398	56
1908	1178	620	53
1909	1219	668	55
1910	1365	750	55

Table 9: Placement of Victorian state wards (neglected children), 1906 -1910

Year	Institution - girls	Institution - boys	Institution - total	Foster placement	Home	Service	Other (including home without payment)	Total wards
1906	80	30	110	2343	972	751	744	4920
1907	66	45	111	2303	1055	777	762	5008
1908	132	159	291	2281	1430	748	727	5477
1909	153	166	319	2435	1812	728	713	6007
1910	145	179	324	2645	2230	742	715	6656

APPENDIX D: CHILDREN'S COURT STATISTICS (FITZROY), 1907 – 1910

These statistics were compiled from the following sources:

Children's Court Register – Fitzroy, 10 June 1907 – 18 March 1909 (PROV, Fitzroy Courts, *Children's Court Registers,* VPRS 6063/P/0001, Volume 1)

Children's Court Register – Fitzroy, 25 March 1909 – 27 January 1910. (PROV, Fitzroy Courts, *Children's Court Registers,* VPRS 6063/P/0001, Volume 2)

Children's Court Register – Fitzroy, 3 February 1910 – 21 September 1911 (PROV, Fitzroy Courts, *Children's Court Registers,* VPRS 6063/P/0001, Volume 3).

These statistics record the number of distinct matters or cases before the court, not individual children. Children who appeared for different types of cases had each counted separately. Any secondary criminal charges in the same hearing were not counted as separate charges.

Children who were charged with both criminal offending and neglect simultaneously had these matters counted separately.

Cases with multiple hearings were counted as one matter.

Table 1: Types of criminal charge, July 1907 – June 1910

Year	Public order	Property	Offences against the person	Sexual offences	Other	Total
1907 – 1908	55	28	-	1	2	86
1908 - 1909	46	24	1	-	2	73
1909- 1910	35	46	3	-	3	87

Table 2: Offending children by age, July 1907 – June 1910

Year	Under 10	10 - 12	13	14	15	16	17	Not stated	Total
1907 - 1908	1	11	6	5	18	21	2	22	86
1908 - 1909	5	5	5	8	25	19	2	4	73
1909- 1910	11	24	16	9	13	12	1	1	87

Table 3: Sentencing outcomes (criminal charges), July 1907 – June 1910

Year	Discharge/ caution/ withdrawal	Fine	Suspended sentence/ good behaviour bond	Neglected Children's Department	Reformatory	Probation	Other	Total
1907 - 1908	26	47	-	-	-	7	6	86
1908 - 1909	27	27	3	-	-	14	2	73
1909 - 1910	31	18	5	8	-	20	5	87

Table 4: Probation orders and types of charges (criminal matters), July 1907 – June 1910

Year	1907 - 1908	1908 - 1909	1909 - 1910	Total
Property charges	**6**	**9**	**15**	**30**
Break and enter and theft	1	5	5	11
Burglary and theft	3			3
Theft		4	10	14
Theft of bicycle	2			2
Public order charges	**1**	**4**	**4**	**9**
Behave offensive manner			1	1
Drunk and disorderly	1			1
Play game in public		3		3
Discharge missile		1	1	2
Obscene exposure			1	1
Behave indecent manner			1	1
Offences against the person	**-**	**1**	**1**	**2**
Assault			1	1
Inflict grievous bodily harm		1		1
Total	**7**	**14**	**20**	**41**

Table 5: Neglect charges by gender, July 1907 – June 1910

Year	Male	Female	Not stated	Total
1907 - 1908	18	15	-	33
1908 - 1909	22	24	-	46
1909 - 1910	41	34	2	77
Total	81	73	2	156

Table 6: Neglect charges by age, July 1907 – June 1910

Year	Under 1	1 - 2	2 - 5	5 - 10	10 - 12	13 - 16	Not stated	Total
1907 - 1908	3	3	3	4	6	2	12	33
1908 - 1909	11	2	5	10	4	4	10	46
1909 - 1910	22	5	12	14	7	12	5	77

Table 7: Sentencing outcomes (neglected children), July 1907 – June 1910

Year	Committed to NCD	Committed to private institution	Withdrawn/ struck out	Probation	No outcome recorded	Total
1907 - 1908	25	-	3	3	2	33
1908 - 1909	32	4	9	1	-	46
1909 - 1910	61	3	10	2	1	77

APPENDIX E: CHILDREN IN THE COURTS: FURTHER HISTORIES

This appendix sets out further information about some of the children whose Court events I discussed in this thesis. The year of the Court event and charge is included.

It was not possible to ascertain additional details about all children mentioned in the thesis, particularly if the child had a common name or surname.

The information below was obtained either through *Trove* searches (National Library of Australia database), in which case individual citations have been included, or through the 'family history' research function on the Victorian Births, Deaths and Marriages website (https://www.bdm.vic.gov.au/).

There is a 100-year public access restriction for information about births in Victoria, a 60-year restriction for information about marriages and a 30-year restriction for information about deaths.

Barber, Sarah (1904, carnal knowledge)

Sarah was born in 1896 in the small town of Laen, north east of Horsham. Her father died in 1900, aged 32. In 1904 Sarah was living with her aunt (her mother's sister) and uncle so that her widowed mother could work in the country. In 1918 Sarah married James Davison, a farmer ('Wedding Bells – Davison-Barber,' *Donald Times*, 20 September 1918). By this time her mother was dead, and Sarah seems to have returned to the Laen area. The couple remained in Laen, where a daughter, Dorothy, was born in 1921. ('Family Notices,' *Argus*, 22 November 1921, 1).

Bigwood, Gertrude (Gertie) and Sarah Lawton (carnal knowledge and neglect, 1904)

Sarah Lawton was born in Brunswick East in 1892, the eldest of five siblings. By 1899, the family was living in Collingwood.

Gertie Bigwood was born in Collingwood in 1891, the third of four siblings. The family moved between Fitzroy North and nearby Collingwood.

After her wardship expired, Gertie gave birth to a daughter, Fran, in Collingwood in 1913. Gertie was then aged about 21. No father was named on the birth certificate. The baby seems to have survived, but I could find no further records about Gertie's life after this.

After her release from the reformatory, Sarah also gave birth to a son, Leonard, at the Women's Hospital in Carlton in 1915, aged 21. No father was named on the birth certificate. Baby Leonard

also seems to have survived. Five years later, Sarah married Frederick Crawford, a widower described as a boot finisher. By then Sarah was again living in Fitzroy.

This was not the first, nor the last occasion where the defendant in this case, Edward Martin, was accused of sexually assaulting young girls. On 22 May 1903 he had appeared before the Melbourne Supreme Court on a charge of indecent assault against a 10-year-old girl, but she was deemed unable to understand the nature of an oath, and so the matter did not proceed. ('Could Not Be Sworn – A Child's Ignorance,' *Argus*, 23 May 1903, 14).

Edward Martin was married with a child, but deserted his wife in 1901. She obtained a divorce from him in 1905 (seemingly ignorant that he was then in prison). ('A Deserted Wife – The Chief's Opinion of the Husband,' *Weekly Times*, 25 November 1905, 24). In May 1915 Martin, by now living in Canterbury in Melbourne's middle-class east, and still working as a bootmaker, was convicted of indecent assault upon a 12-year-old girl in very similar circumstances. For this he received another three years' hard labour. ('A Social Leper – Beastly Bootmaker Severely Sentenced,' *Truth (Melbourne)* 22 May 1915, 7). His prison record does not contain any further entries, Prison Register (Edward Martin), PROV, VPRS 515/P1, Unit 57.

Brown, Arthur and Reuben (1898, playing two-up)

Arthur appeared again for gambling in 1902, and was again discharged, ('Two-Up on Sunday – A Demoralising Practice,' *Herald*, 9 April 1902, 4).

Reuben had previously been charged with neglect for sleeping out. He was described in that account as a street seller, ('Neglected Children,' *Age*, 12 February 1895, 7). In 1901, now a young adult, he was arrested with a large group for the same offence, for which he was fined £1 and 7/6 costs, ('The 'Two-Up' School: Accused before the City Court,' *Age*, 24 April 1901, 8).

Collier, Lydia, Eveline and George (1898, neglect)

Lydia (b. 1894), Eveline (b. 1897) and George (b. 1899) were all born in Richmond to Sarah (nee Morton) and Thomas Collier. They were the youngest three of seven siblings, Lily (b. 1880), Emily (b. 1882), Alice (b. 1885) and Linda (b. 1888), all of whom were born in Collingwood. Emily died in 1884, aged two.

Eveline married Reginald Sleight in 1916.

Lydia married Henry Wadge in 1916.

Their blind mother Sarah Collier survived, and died at the age of 69 in 1929.

Conquest, Albert (1904, theft)

Albert Conquest was born in 1895 in Hotham East, a small community near Bright in Victoria's Alpine region. Another sibling, Norman, was born in Carlton in 1901.

Albert's father, Albert Conquest senior, had multiple convictions for drunkenness. He deserted his family in late 1901. ('Prahran Police Court,' *Prahran Telegraph*, 1 March 1902, 3).

In March 1902, Albert's mother Sarah brought maintenance proceedings against Albert senior at the North Melbourne Police Court. Albert senior was described as a carpet layer 'if he liked to work.' A maintenance order was made, although apparently not able to be enforced. ('North Melbourne Police Court,' *North Melbourne Courier and West Melbourne Advertiser*, 7 March 1902, 2).

Sarah Conquest also appeared regularly before the Melbourne Courts. In March 1904 she was charged with soliciting in Flinders Street. She was subsequently acquitted and then brought a charge of wrongful arrest against the Constable. After some of her evidence proved false, he was acquitted, and Sarah was then charged with perjury (she was also acquitted of this charge). ('A Remarkable Case,' *Age*, 8 March 1904, 4). In May 1904 she was charged, and in this case convicted, of assault. The victim had given evidence against her at her soliciting trial. ('Assaulting a Witness – Sarah Conquest Fined,' *Argus,* 27 May 1904, 7).

Albert Conquest junior seems to have stayed out of trouble until his late twenties, when he was arrested twice for pickpocketing and associating with criminals, one of whom was his younger brother Norman. Albert was then working as a milkman. ('Loitering With Intent – Two Brothers Convicted,' *Argus*, 21 November 1924, 9).

Norman Conquest, Albert's memorably named younger brother, was the most prolific offender of the family. He first appeared before the courts aged 13, charged with escaping from a training ship for state wards, and then absconding from the Gordon Institute, where he had been remanded. ('Norman Conquest Escapes in Pyjamas,' *Herald,* 29 March 1913, 5). From the age of 16 he was in and out of goal on multiple charges, from pickpocketing to assault, and under various aliases. See for example, ('Norman Conquest in Court,' *Herald,* 29 March 1923, 14). Later, he was convicted of bigamy. ('Norman Conquest Sent to Gaol,' *Herald*, 18 July 1930, 3).

Cornell, William, Minnie, Albert, Florence, Ivy and Harold (1909, neglect)

The Cornell family moved frequently between the birth of their children. William was born in Preston, in Melbourne's north, in 1896. Miriam (Minnie) (b. 1898) and Albert (b. 1900) were born in Waterloo, a small town near Beaufort in north west Victoria. By the time Florence was

born in 1902 the family had moved back to Melbourne and were living in Fitzroy, and they had moved to Fitzroy North by 1905, when (Leticia) Ivy was born. Harold was born in 1908 in Carlton North. Twins Sydney and Mary were born (and died one day later) in the Women's Hospital in Carlton in 1909. Another sibling, Ruby, was born in 1910 in Fitzroy North.

William Cornell senior died in 1922.

Minnie married William Warne in 1920.

Albert married Annie Sutton in 1921.

Florence married Robert Noonan in 1923.

Ivy married Walter Law in 1926.

Harold married Beatrice Hagart in 1928.

Dobbs, Henrietta (1895, attempted carnal knowledge).

Henrietta was born in Brunswick East in 1890, the second of twelve children. The family moved between Brunswick, Collingwood and Carlton between the births of their children. The two youngest siblings (twin boys) died in infancy in 1906.

Henrietta married Arthur Armstrong in 1914 (under the name Ettie Dobbs), but I was unable to confirm any children of that relationship. She died in East Melbourne in 1931, aged 40.

Alfred Bright, the accused, had a history of similar offending. In 1891 Alfred, described as a 'married man of about 30' was sentenced to one month's imprisonment for indecent assault of a young woman, Maggie McLaren. ('Outrageous Conduct – Assaulting a Young Woman,' *Herald*, 7 December 1891, 2).

Edwards, (John) William (1909, neglect)

(John) William Edwards was born in the Carlton Hospital in 1909. He survived his committal to the Department for Neglected Children. His mother, Lillian Edwards, married Walter Pinkerton, caretaker at the Port Melbourne Cricket Ground, in 1914. Walter was killed in action in France on 9 October 1917 ('South Melbourne's Honour Role,' *Record (Emerald Hill*), 24 November 1917, 2).

Ehlers, Mary Ann (1898, carnal knowledge)

Mary Ann was born in Eltham in 1886, the second of two daughters. Her older sister Eva had died in infancy in 1885. Her mother, Mary Jane, died in St Kilda in 1900, and her father Charles remarried in 1901. Mary Ann died in Abbotsford in 1950 (possibly in the Convent?) There is no record of any marriage or children.

Felmingham, Maud (1908, theft from employer).

Maud married Frederick Whittingslow in 1911. I could not find records of any children over the next decade. In 1918 Frederick Whittingslow, described as a 'railway employee' and 'married man' was convicted of trespass and using insulting language on a property in Benalla, after being caught poaching. ('Alleged Trespass and Insulting Words,' *Benalla Standard*, 27 September 1918, 3).

Field, Leslie, Alice, Elsie and Irene (1908, neglect)

The Field family also moved frequently between the births of their four children. Leslie was born in Carlton in 1900 and Alice in Northcote in 1902. In 1904 baby Elsie was born in Collingwood but died the same year, aged 3 months. The second Elsie, the subject of these Court proceedings, was born in 1905 in Fitzroy North. By the time (Emily) Irene arrived in 1907, the family had returned to Collingwood.

Robert Field, the children's father, was well known to local police. In September 1905 he had come before the Fitzroy Police Court for public drunkenness and 'using insulting words.' ('Abused the Constable – Young Man Fined,' *Herald*, 25 September 1905, 1). In March 1907 he was fined for striking his baby daughter Elsie, a blow directed at his wife. ('Struck the Baby – Blow Meant for the Wife,' *Herald*, 5 March 1907, 4). When asked about her husband's character on that occasion, Florence Field stated that 'he's all right when he's not drunk' but that he drank to excess weekly. The police prosecutor had requested that he be flogged by way of example.

Following the neglect case, baby Harold was born in 1909. Robert Field does not seem to have returned to his family. In June 1909 Florence charged her husband with desertion and a maintenance order was made against him for the five children, all living with her. ('A Worm Will Turn,' *Age*, 22 June 1909, 6).

Florence Field remarried William Paull in 1922 (Robert seems to have died the same year).

Leslie Field married Amelia Lawford in 1921.

James, Gordon (1908, neglect).

Gordon was born in the Carlton Hospital in 1908. He survived his early years, but it was not possible to confirm his mother's (or Gordon's) subsequent history.

Jones, Maud (1898, carnal knowledge)

Maud was born in Echuca in 1883, the youngest of four siblings. Following this court case in 1898, she gave birth to baby Violet Muriel in Carlton, probably in the Women's Hospital.

Maud married Daniel Rogers in 1909, and they had four children together, all born in country Victoria (Henry, b. 1909, Julia, b. 1910, James, b. 1912 and Maud, b. 1916). Violet evidently remained part of the family, as she also took the name Rogers and married Allen Bateman in 1926.

Knight, Alice (1909, neglect).

Alice was born in the Carlton Hospital in 1909. Her mother, Mary Alice, was born in Ararat in 1890. Mary's own father was also not named on her birth certificate.

Alice survived her early committal to the Department for Neglected Children and married Eric Carlsson in 1940.

Lee, Mary (1897, vagrancy).

Mary was back before the Melbourne Police Court for 'larrikin' behaviour in 1905 ('Midnight Melee,' *The Herald*, 25 March 1905, 4), and for selling opium in 1908. ('Smuggled Opium,' *Age*, 19 August 1908, 8).

Lever, Ruby (1900, carnal knowledge)

Ruby was the second of six children. In 1897 her father, a carter, was seriously injured when he was crushed against a wall and later died in the Melbourne Hospital. ('Family Notices,' *Age*, 10 July 1897, 5). Her mother, Christina, evidently struggled to keep her family together following his death. In 1901, she was convicted of the theft of eight shirts she had been employed to finish. She argued that she had pawned the shirts 'to buy her children bread.' ('She Pawned Shirts,' *Herald*, 11 January 1901, 6).

Ruby never married and died, like her father, in the Melbourne Hospital at the age of 26 in 1910. ('Family Notices,' *Hamilton Spectator*, 17 May 1910, 4).

Samuel Pimlott, the accused, had a significant history of trouble with the law, although he was less often convicted. In July 1896 he came before the Fitzroy Court but was ultimately acquitted of stealing from a dwelling ('Stealing from a Dwelling,' *Fitzroy City Press*, 30 July 1896, 3). Less than a week later he was also acquitted of robbery and theft before the Melbourne Court. ('Alleged Robbery,' *Argus*, 6 August 1896, 6). His luck ran out in 1897, when he was convicted of insulting behaviour (and fined £5), again at Fitzroy, in the company of Annie Lambert, by implication his (married) girlfriend. ('Insulting Behaviour,' *Age*, 1 February 1897, 6).

Luxton, Mabel (1895, neglect).

Mabel was born in 1881 in Kangaroo Flat, near Bendigo, the fifth of nine siblings. By 1891, when her youngest sister Nina was born, the family was living in Armadale, a suburb of Melbourne.

Nina died the following year, aged seven months, and Mabel's older sister Gertrude also died in 1893, aged 16. In Gertrude's death certificate her father was described as a 'spectator.'

Macers, Hilda (1909, neglect)

Hilda was born in the Carlton Hospital in 1909. She survived her early committal to the Department for Neglected Children, but it was not possible to trace her subsequent history.

McGee, Elizabeth (Emily) (1906, vagrancy)

Emily was born in South Melbourne in 1891. A brother, William, died in 1890 aged 9 months, but there is no record of any other sibling births in Victoria (presumably the family had relocated). Emily married Frederick Dunn in 1908 and Arthur Clarke in 1918. I was unable to find records of any children from either of these marriages.

McVeigh, Alfred (1901, neglect)

Alfred survived his early committal to the Department for Neglected Children. He married Mary McCarthy in 1927. His mother Mary married Sydney Maynard in 1905. I was unable to find any records for any children of this relationship.

Medley, Olive (1909, theft)

Olive was born in North Fitzroy in 1895, the third of the Medley siblings (see **Stanley Medley**). She married William Matthew in 1921.

Medley, Stanley (1910, break and enter and theft)

Stanley was born in Collingwood in 1901, the fifth of seven children. The family lived in various low-rent areas, moving between Collingwood, Carlton, Brunswick East and Fitzroy North between 1892, when Stanley's eldest brother George was born and 1906. In 1919, then aged 18, Stanley was charged with stone-throwing following an altercation between football supporters at a local match. He was then living in Northcote. ('Football Rowdyism – Trouble at Northcote,' *Argus*, 12 May 1919, 6). I found no further press reports of any offending.

Payne, Marion (1910, neglect)

Marion was the fourth of sixth children. Again, this family moved often between the births of the children. Her eldest sister Olive was born in the country town of Ararat in 1885. By 1891, the family had moved to Melbourne, where Beatrice was born in 1891. Archibald (b. 1893) and Marion (b. 1895) were born in Brunswick. By the time Florence (b. 1899) arrived the family had moved to Collingwood, and Sylvia (b. 1906) was born in Carlton.

Marion married Roy Levens in 1927. Marion died aged 76, in Fitzroy, in 1972.

Phillips, Gertrude, Murray and Dorothy (1909, neglect)

The Phillips family were another family who moved frequently in between the births of their (ultimately) seven children. Lillian, their eldest, was born in 1899 in Boort, a tiny community in north west Victoria. Spencer (b. 1901) and Gertrude (b. 1903) were born in St Arnaud, a small town between Bendigo and Horsham, also in north-west Victoria. By the time Murray (b. 1904) arrived, the family had moved to the working-class suburb of Footscray, in Melbourne's inner west. Dorothy (b. 1907) and Ellen (b. 1909) were born in Fitzroy. By the time Francis (b. 1915) was born the family had moved again, this time to nearby Brunswick East.

Gertrude married John Prior in 1929.

Murray married Myrtle Foster in 1932.

Quilty, Ernest and John (use insulting language, 1905).

Ernest and Denis (John) Quilty were the second and third of five boys, born in Hawthorn in 1892 and 1893. The family later moved to Fitzroy, then returned to Hawthorn by 1900, when their youngest brother was born.

After his committal to the Department for Neglected Children in 1905, Ernest was sent initially to the Geelong orphanage, before being sent out to service in Mansfield as a farm hand in 1907. He absconded from that placement in 1908 and was described in the local newspaper as '16 years of age, about 4 foot six inches tall, dark complexion and hair, round shouldered.' ('Absconding Boys,' *Benalla Standard*, 5 May 1908, 2).

In October 1911 Ernest was arrested in Collins Street at 1AM on a charge of attempted larceny, and sentenced to one month's imprisonment, suspended. ('Show Case Attraction – Two Men Convicted,' *Herald*, 18 October 1911, 8).

In 1917, Ernest married Mary Savage. Their daughter, Shirley, was born in 1918. In June 1920 Ernest was sentenced to six months' imprisonment for theft. Ernest, now 28 years old, was working as a 'packer' in Flinders Lane, Melbourne. ('Packer Sent to Gaol,' *Argus*, 23 June 1920, 10). Perhaps partly due to this sentence, his marriage did not last. In 1920 or 1921 Mary sought a maintenance order on behalf of herself and their daughter, stating that she had left Ernest due to cruelty. Ernest appealed the order, which was upheld for Shirley, but not Mary. ('Maintenance Order Quashed,' *Herald*, 21 June 1921, 9).

Ernest and John's mother Rose died in 1943, by which time Ernest was described as 'deceased,' but John attended the funeral. ('Family Notices,' *Age*, 14 July 1943, 5).

Rankin, Joy, David, Lily and Douglas (1908, neglect)

I was able to trace birth records for three of the four Rankin siblings. Atholin (Joy) was born in 1895 in Fitzroy North. David was born in 1898, also in Fitzroy North, and Douglas was born 1904 in Brunswick East. Their father, David Rankin, died in Brunswick East in 1905, aged 43.

Joy married Joseph Solomons in 1913. They had three children - Adelaide, born 1914, Mizpah, born 1915 and Douglas, born 1917 (presumably named after his uncle). By the time Douglas Solomons was born this family was living in Malvern, a largely prosperous suburb in Melbourne's south east.

Douglas Rankin died on 9 February 1917, aged 13. ('Family Notices,' *Argus*, 12 February 1917, 1). At the time of his death David Rankin junior was not listed amongst the other family members and I could find no further records for him. He may have died in World War One.

Sheldon, Norman (1910, break and enter and theft)

Norman was born in 1898 in Fitzroy North, the eldest of five children. He died in action in France on 22 March 1918, aged 20. ('Family Notices,' *Age*, 13 April 1918, 7).

Treble, Albert (1903, neglect)

Albert (full name George William Albert Treble) was born in Kingower, a small town in western Victoria, in 1889. He continued to offend in later years. In 1913, by now in his early twenties, he received three months' imprisonment for larceny before the Rochester Police Court, near Bendigo. Like many state wards he had presumably been sent out to country employment. ('Our Country Service,' *Bendigo Advertiser*, 28 May 1913, 4).