Punitiveness and the Criminalisation of the Other: State Wards, Unlawful Non-citizens and Indigenous Youth

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This paper explores the genealogies of bio-power that cut across punitive state interventions aimed at regulating or normalising several distinctive 'problem' or 'suspect' deviant populations, such as state wards, unlawful non-citizens and Indigenous youth. I begin by making some general comments about the theoretical approach to bio-power taken in this paper. I will then outline the distinctive features of bio-power in Australia and how these intersected with the emergence of penal welfarism to govern the unruly, unchaste, unlawful, and the primitive. I draw on three examples to illustrate the argument – the massive criminalisation rates of Aboriginal youth, the history of incarcerating state wards in state institutions, and the mandatory detention of unlawful non-citizens and their children. In each case the problem child or population is expelled from the social body through forms of bio-power, rationalised as strengthening, protecting or cleansing the Australian population and expunging the nation's penal past, with its roots in convictism and the violent practices of colonisation, from the present.

Theorising Bio-power

In this paper I have borrowed heavily from Foucault's concept of bio-power, which he conceived as a modern form of technology of power with two prongs. The first disciplined the body through normalising corrective interventions as operations of power which assesses and

measures deviance and seeks to restore normality or manage its effects. The other was conceived as a form of power or government of the population through 'interventions aimed at the entire social body' (Foucault 1978: 146). For Foucault, the body (individual and social simultaneously) became the juncture of these two prongs of power. Importantly bio-power is distinguished from sovereign power, or a power focused on death, symbolised by forms of punishment such as capital punishment (as opposed to incarceration or normalisation). Rather, bio-power concerns itself with the administration of life not death, and the distribution of the population across space and territory, and the health, prosperity and future of the social body. Hence, a 'normalising society is the historical outcome of a technology of power centred on life' (Foucault 1978: 144).

While there is nothing wrong with being influenced by international bodies of scholarship and thought such as the work of Michel Foucault and Frantz Fanon, the uncritical importation of theories from the northern hemisphere risks producing grand narratives and false universalisms through what Connell calls 'readings from the centre' (Connell 2007: 237). It is vitally important, then, that southern theorists pay particular attention to local and historical specificities in order to destabilise uncritical readings from the centre. I attempt to do this by weaving an argument about the peculiarities of bio-power that operated in an Australian context in the southern hemisphere – in a territory sparsely and not densely settled, and where questions about crime, punishment and social control are inextricably linked to its distinctive history of nation building through convictism.

In Australia, perhaps more than anywhere else, these forms of bio-power were intensified by a collective conscience bent on distancing its identity from the convict stain and the violence of dispossession of the colonial past. These modern technologies of power operated through a bio-regime of strict immigration and quarantine controls, which focused on strengthening the nuclear family and normalising children of ex-convict heritage in the nineteenth century, and the off-spring of dysfunctional families in the twentieth century. This occurred against a backdrop of a bio-eugenicist regime concerned with protecting the purity of Australia's white British blood stock from the threat of inter-racial reproduction and sexual contamination. I argue that these modern forms of bio-power led to the criminalisation and punitive treatment of three population groups – state wards, unlawful non-citizens and the children and youth of Indigenous peoples. These forms of bio-power, while having profoundly disciplinary impacts on those assessed as abnormal, savage, unruly or deficient, were generally

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not understood, or discursively represented, as forms of repression arising from illiberal acts of sovereignty – in fact quite the opposite. The normalising interventions of the Australian state and its agencies, consisting of punitive means such as mandatory detention, forced segregation on missions, forced removal of children through committal to wardship, and confinement in institutions, were generally constructed in terms of a positive discourse of protection and benevolence. Immigration controls, the forced removal of Aboriginal children of mixed parentage, and the forced removal of children of dysfunctional families through wardship were represented as acts of bio-power necessary to protect the nation, the population, its health, future, prosperity and wellbeing.

Governing the Unruly, Unchaste, Unlawful, and Primitive

Established as a British penal colony in 1788, Australia was for the next 50 years, the dumping ground for the social outcasts of Britain's industrial revolution – a vast, unwalled prison substantially populated by convicts (Hughes 1986: xiii). From such unpromising beginnings a prosperous, reasonably egalitarian democracy was established, although the social contract excluded the continent's Indigenous peoples, women, children, and immigrants of predominantly non-British stock (Carrington and Hogg forthcoming). These genealogies of bio-power have historically influenced the patterns of criminalisation of 'problem' populations in Australia, shaping a power which selectively punished and criminalised (Hogg and Brown 1998).

The construction of Indigenous people as a dangerous presence necessitating special 'protection' and regimes of regulation has a counterpart in the racial and other exclusionary criteria operating through border control for much of the twentieth century (Carrington and Hogg forthcoming). This form of bio-power has effectively created a new class of criminal and new categories of criminality. A related form of bio-power, arising from the increasing social control or government of family life in the twentieth century, led to the 'rescuing of children' from 'dysfunctional families' and their institutionalisation as state wards in prison-like conditions. The nation building efforts of the Australian state were implemented through a range of policies such as immigration restriction, Aboriginal protection, and child welfare. These aimed to cleanse the social body, to protect it from the contaminating influences of immigration and criminality, to protect children from dysfunctional families, and to expunge the convict stain of Australia's past from the future Australian social body. For much of

the twentieth century these mammoth normalising projects operated through a regime of penal welfarism, targeting the children of the unruly, unchaste, unlawful, and primitive.

Penal Welfarism[1]

Penal welfarism extended the normalising powers of the state in ways which had particularly devastating effects on certain categories of non-normative (Othered) populations. Let me explain how. Penal welfarism, a form of justice administration that combined assistance and rehabilitative ideals with punitive sanctions for non-compliance, had a number of major consequences for governing and normalising the unruly. The objects of penal welfare governance were the unloved and unwanted Australian populations – especially their children. As a form of bio-power aimed at improving the stock of the population, and couched in terms of benevolence and protection, penal welfarism elevated the power of extra-judicial experts and the role of the 'sciences of the family and the child' in assessing, selecting, and supervising those to appear before the children's courts for neglect or delinquency. Regimes of penal welfarism allowed children's court proceedings to become focused on the character and nature of the individual child and his or her family background and not the offence. Children who were neglected, destitute or abused came before the same courts as children identified as delinquent, and were sentenced to the same or similar institutions, and treated as products of the same problem – the dysfunctional family. Consequently the administrative apparatus surrounding the children's courts – community service departments and institutions – did not distinguish between neglected children or delinquent children. This system of juvenile justice and child welfare permitted the blurring of delinquency and neglect for the better part of a century in most Australian jurisdictions. The 'problem child' became an instrument for policing non-normative families, Indigenous communities, and bad mothers.

Deficit Discourses

Deficit discourses are forms of knowledge which measure deviations from the norm. These discourses were absolutely crucial to the operation of forms of bio-power and social control that resulted in the punishment and institutionalisation of the children of the unruly, the unwanted, the primitive, or the deficient. As pathology is assessed in deficit discourses as deviation from the norm (Rose 1985: 123)

categories of deviance tend to be diagnosed in the image of the Other, with particular criminalising effects for non-normative populations. These forms of knowledge, or deficit discourses, construct non-normative populations as the Other, and rationalise individualised solutions to wider social problems that arise from poverty, marginality, and colonisation. Within such discourses, the delinquent or neglected child are symptomatic of the same problems – a range of deficits attributable to a maladjusted childhood, a dysfunctional family, deficiencies in character, or poor social background. The impact of social inequities, forms of exclusion and the historical residues of colonialism, and the opportunities, social background and prospects for prosperity of the child before the court, are individualised and evaporate as relevant considerations in explaining why the child might be before the court.

Despite the disavowal of race, class, status, and other forms of prejudice as the grounds for modern day state punitive intervention, deficit discourses operate as a form of bio-power with specifically criminalising effects on non-normative populations. One of the most striking examples of this in the Australian context is the history of the stolen generations and the massive criminalisation rates of Aboriginal youth in contemporary times. Another is the history of incarcerating state wards in institutions, and a more recent example is the mandatory detention of asylum-seekers and their children, defined as unlawful non-citizens. In each case the problem children or persons are expelled from the social body through forms of bio-power rationalised as strengthening or cleansing the Australian population. This expunges its penal past and roots in convictism and colonisation, rescuing children from failing families or protecting the prosperity of the nation and the population. I will elaborate on each of these examples.

The Stolen Generations and the Criminalisation of Indigenousness

The over-representation of Indigenous peoples in Australia's penal and criminal justice systems is now well documented (Cunneen 2001, 2008; Chen et al. 2005; Ferrante, Loh and Maller 2004; Taylor 2007; Snowball 2008). Indigenous youth in Australia are massively over represented in juvenile detention – by 21 times the proportion of their population (Taylor 2007). At any one time in Australia around one in five Indigenous youth are under some form of criminal justice supervision. Indigenous over-representation in incarceration first came

to national prominence through the Royal Commission of Aboriginal Deaths in Custody (RCADIC) established in 1987 to investigate 99 deaths in custody (RCADIC 1991). The Royal Commission found that Aborigines died in custody at a rate far higher than the non-Aboriginal population only because they were much more likely on national average to be detained in custody. Indigenous incarceration rates have since assumed an important symbolic significance as a nagging register of unresolved historical injustice (see Behrendt 2003). Taking a longer term view however, the high rates of Indigenous youth under some form of state custody, supervision or control, is the product of the historically shifting modes of bio-power regulating Indigenous peoples in Australia (Hogg 2001).

Looking historically, the opportunities and freedoms afforded to ex-convicts and free settlers in the new Australian colonies in the nineteenth century came at a devastating cost to the Indigenous population of Australia. The Australian colonies historically assigned Indigenous people largely to spaces of non-freedom through forced removal and segregation on missions, reserves, pastoral camps or town fringes, where their lives were circumscribed by the most direct forms of government control, policing and supervision, under pieces of legislation variously named Aboriginal Protection Acts (Goodall 1996). While exact figures are impossible to calculate, it has been estimated that as many as one in three Aboriginal children were removed from their families through these provisions during the protection era from early 1900s to 1969 (Human Rights and Equal Opportunity Commission [HREOC] 1997). The removal of Aboriginal children, particularly those of mixed-blood parentage, operated through a form of bio-power that rationalised this practice as a form of benevolence or protection in the interests of the nation. Children who could pass as white were to be removed from the corrupting influences of their 'savage' forbears and assimilated into white society.

After the repeal of protection legislation which removed Aboriginal children on the basis of race alone, a new regime of child welfare intervention, operating under various pieces of Child Welfare legislation, justified the removal of Aboriginal children on the basis of expert knowledge, as in Brook's case (see Carrington and Pereira 2009, Appendix). Brook, made a state ward in 1980, was one of the 1046 girls in my doctoral study of female delinquency.

Brook came from a large extended family well known to the local police. Brook's brothers had criminal records and had spent time in jail. Brook herself was not regarded by the authorities as a troublesome child and had no criminal record, but she did regularly congregate

with a group of young people who met at the local park. According to the case notes, over time Brook had formed sexual relationships with some of the boys in this mixed race peer group. Parents of some of the white boys in that group, concerned Brook might fall pregnant or infect their sons with some sexually transmitted disease, raised concerns about her conduct with the local child welfare authorities. She was charged with being uncontrollable (no longer an offence) under the Child Welfare Act (NSW) 1939 and sentenced to an institution. Upon Brook's committal, details of her offence were described in her record of committal in the following terms.

> The young person would leave places of residence and engage in sexual intercourse with a number of boys. She was not of good behaviour. (Record of Case on Committal to Institution, 3 May 1980)

Forms of bio-power directed at purifying and cleansing the social body, removing impurities and preventing the spread of sexual disease, underpinned the state's normalising intervention into Brook's life. She was removed from her family and community and confined to the normalising regime of an institution – even though she had not committed any criminal offence. Brook's sexuality was symbolic of the threat to white racial purity, jealously guarded by the guardians of the *gemeinschaft* in small rural communities. Having effectively been represented in these powerful discourses as a source of moral decay and contagion, Brook was forcibly removed and incarcerated, in the wider interests of protecting the racial purity and sexual health of the social body.

Belittling, devaluations, and demeaning comparisons of the Other are strategies that self-validate the colonisers as superior (adapted from Fanon 1967: 213). The structures of perception and images of morality and goodness produced by social, cultural, and psychological constructions of normality then serve as a standard by which 'defective' children, families, and populations sometimes even come to evaluate their lives, their souls, and that of their children (Rose 1990: 130). The psychological report quoted below, of an Indigenous girl from my study of 1046 delinquent girls (Carrington 1993), presents a particularly striking example of deficit discourses at work in providing the justice system with a 'scientific' means for pathologising cultural difference, in this case Aboriginality.

> Sally was seen twice at the remand shelter . . . She presented as a tall, thin, insecure aboriginal (sic) girl who was reluctant to talk about her family. She says she is one of eighteen children . . . Sally has lived her whole

childhood on the reserve and thus has developed the inner instincts of survival but is lacking social awareness.

Cognitive testing indicates her to be in the mentally retarded group. However educational factors and cultural factors and lack of social (urban) stimulation would have effected (sic) the scores. Verbal tests indicate her to be educationally retarded. On performance tests she is poor in visual – motor areas especially of the spatial nature ... Sally presents as functioning on an upper borderline low dull normal level.

Sally is unmotivated to achieve and has poor resistence (sic). She is functioning at present in a basic concrete level where she seeks gratification of her primary needs. She has few behavioural controls and has little value of other's property. She lacks concepts of time, finance, and maintaining social relationships. She is happy with her egocentric lifestyle and reacts strongly when the stability of this is threatened. Thus counselling will be of little help to this girl both because of her mental functioning and her motivation ... Recommend training to continue. (Psychological Report, 6 February 1979)

Sally was committed to an institution after four convictions for drunkenness and one for unseemly words. At the time of Sally's committal, most juveniles committed to institutions in New South Wales (NSW) were, like Sally, sentenced in general terms. It is in the context of the general committal that psychological discourses take on a particularly powerful role in the administration of juvenile justice, in recommending that training either continue, or the inmate be discharged. The psychological assessment quoted above rationalised Sally's continued institutionalisation on the basis that she had not responded to the normalising regime of detention. Sally's cultural differences in regard to concepts of time, finance, and disregard for private property were represented as obstacles to her training and normalisation. Fanon had a particularly poetic way of expressing how this form of bio-power operates, when he wrote, 'the blood of the negro is a manure prized by experts' (Fanon 1967: 216).

Reflecting on the condition of black men in white European society, Fanon made the point that the psychological discourses of deficiency (which I refer to as deficit discourses) can lead to the internalisation of the abject, manifesting as a self-loathing and inferiority – a violence turned inward among millions of black men (sic) (Fanon 1967). These collective processes of internalisation nurture inter-generational cycles of violence of the kind investigated and documented as affecting some Australian Indigenous communities (Northern Territory Government 2007; Aboriginal and

Torres Strait Islander Women's Task Force on Violence 2000; Memmott et al. 2001; Blagg 2000; National Committee on Violence 1989; Fitzgerald and Weatherburn 2001).

Bio-power, Rescuing Neglected Children and Disciplining State Wards

During the nineteenth century, asylums and orphanages for destitute and orphaned children were established in the Australian colony by Christian philanthropic charities. These asylums housed the neglected and destitute and often illegitimate offspring of ex-convicts whose fathers were either unknown or had abandoned them and/or whose mothers had left them to fend for themselves (van Krieken 1991). Importantly, the establishment of these asylums was not simply a way of addressing increasing numbers of destitute children, but also a way of establishing a new form of bio-power – a way of normalising children with convict heritage through religious, moral, and industrial training (van Krieken 1991: 52).

In the second half of the nineteenth century and well into the twentieth century, the state assumed this normalising role through the establishment of industrial and reformatory schools for neglected, destitute, and delinquent children (Ramsland 1986: 116). The Industrial Schools Act gave the police broad powers to clear the streets of gangs of children and to deal with destitute children under the age of sixteen. Street children who were found begging, loitering, sleeping outside, or were in undesirable company could be apprehended and sent to an industrial school. Industrial schools provided accommodation, detention, training, care, and apprenticeship for destitute and seriously neglected children (Ramsland 1986: 112). Under this legislation, an Industrial School for Females located in Parramatta was established in 1887. It operated under various names till 1983: Girls Industrial School (1888–1925), Girls Training School (1925–1966), Parramatta Girls Home (1966–1974), and Kamballa (1974–1983) (Parragirls 2010).

On entry to the institution all signs of individuality were removed. Girls were strip-searched, provided with institutional clothing and removed from contact with the outside world. Inside they were subject to a brutal daily regime of industrial training in a limited range of skills associated with domestic labour. Girls aged between 10 and 18 years were subjected to a range of punishments including hard labour, isolation, time out, removal of privileges, scrubbing floors with toothbrushes, and digging gardens. Girls who objected

could be sent to harsher institutions, such as the Institution for Girls Hay, a maximum security detention centre that operated from 1961–1974 (Parragirls 2010).[2]

The use of reformatories and industrial training schools coincided with new ideas about the purposes of asylums (prisons, orphanages, and other places of exclusion) and new forms of bio-power aimed at reforming the soul of the inmate through supervision, panopticism, discipline, industry, regimentation, and toil (Foucault 1977). Broadly, the goal of the reformatory was to remove children from corrupting home, social, and environmental influences and to instil a new disciplinary regime through governing the self. Reformatory life, according to John Pratt, a justice historian, inculcated religious virtues of thriftiness, sobriety, prudence and self-reliance, the value of private property, and a work ethic (Pratt 1997: 47–54). Central to this model was the assumption that reform could only be achieved if the child's stay in the institution was a lengthy one. By the end of the nineteenth century there was widespread agreement that when a child was committed to an institution the state should take over guardianship and fulfil a parental role for an extended period of time (Seymour 1988: 64–7). Children under the parental authority of the state became state wards.

There have been a number of recent government inquiries into the treatment of children as state wards in Australian reformatories and institutions over the past century. The 1997 National Inquiry into the Stolen Generations estimated that as many as one in three Indigenous children were forcibly removed between 1910 and 1970 and placed in institutions where they suffered greatly and were treated appallingly (HREOC 1997). The *Child Migrants Report* (2001) documented a different but equally appalling severing of children from their cultural backgrounds through the Child Migrant Scheme. Children mostly from Malta, Ireland, and the United Kingdom bought into Australia under this scheme were subject to exploitation and physical, sexual, and emotional abuse. In 2005 two reports were produced by the Australian Government's Senate Inquiry into Children in Institutional Care – *Forgotten Australians* and *Protecting Vulnerable Children* (Senate Community Affairs Reference Committee 2005a and 2005b)[3]. The Forde inquiry in Queensland documented the abuse of children from 1911 to the present in over 150 orphanages and detention centres in the state (Forde 1999: i). Not surprisingly this inquiry also found that children in institutions were subject to emotional and mental cruelty, and gross excesses of physical and sexual abuse (Forde 1999: iv).

A common theme documented by these inquiries is that historically, children placed in state institutions came from the most vulnerable sectors of the social body, comprising abandoned, neglected, orphaned, impoverished children or children stolen from their families and communities by virtue of their ethnicity, 'poor' parenting, or mixed Aboriginal heritage. Most should never have been institutionalised or removed from their families in the first place. These children were drawn into the system for correction by the deepening penetration of penal welfarism which selectively extended forms of bio-power and social control over non-normative populations in the social body (see also van Krieken 1991; Carrington 1993; McCallum 1993).

How did Australian state agencies and children's courts rationalise such punitive treatment of neglected children? The short answer is through a regime of penal welfarism supported by deficit discourses. The children's court had the jurisdiction to deal with both welfare matters relating to neglect and criminal matters relating to delinquency, creating a strategic nexus between child welfare and punishment (Carrington 1993: 114), or what I call penal welfarism. This nexus remained in place well into the later part of the twentieth century (Carrington 1993), leaving a legacy of 'lost' or 'stolen' children, mainly state wards, institutionalised for long periods who had not committed any offence. Under the logic of penal welfarism children could be institutionalised until they were 18 on the grounds that they were neglected, 'uncontrollable' or 'exposed to moral danger' due to behaviour such as truancy, hanging around the streets, or running away from abusive homes (Carrington 1993; van Krieken 1991). Ironically, while recognition of the special rights of the child was central to the separation of industrial and reformatory schools from prisons, and the establishment of asylums for state wards, this system of bio-power widened the opportunity for state agencies to punish children who had not committed an offence and were not even officially defined as delinquent.

Of the 59 delinquent girls whose cases I studied in detail, 36 were state wards. Some had even been born into state wardship. Their failing parent was the state, rather than a non-normative family. State and Commonwealth governments have recently issued long overdue apologies to those who suffered abuse in institutions during their childhood and to Aboriginal people forcibly severed from their families as children. No survivors yet have been successful in seeking civil damages for the harm to their lives caused by their removal

and institutionalisation (Atkinson 2005). There is some small consolation in that they can now tell their stories of harm at the hands of the state.

Bio-power, Border Control and the New Criminals[4]

While Australia is an immigrant society, populated largely by progressive waves of immigrants predominantly of European stock, the process has been historically fraught. In 1901 the new Australian Commonwealth, born from a federation of the self-governing colonies, adopted as one of its first legislative enactments the Immigration Restriction Act 1901. The Act instituted the 'white Australia policy' which was to remain a centrepiece of immigration policy and Australian nationhood for the next 70 years. In addition to non-Europeans, classes of prohibited immigrants included: paupers, idiots or insane persons, persons suffering a 'loathsome or contagious disease', certain criminals, and prostitutes or persons living on the prostitution of others. With the echo of the convict era and its 'stain' far from faded, the new nation was to be built on racial and social purity, and bio-power was absolutely crucial to promulgating the health and prosperity of the Australian population (Carrington and Hogg forthcoming).

The machinery of legislation of the Immigration Restriction Act 1901 and the subsequent Migration Act 1958 conferred wide discretionary powers upon the Minister to grant entry permits, cancel permits, deport unlawful non-citizens and others deemed to be undesirable (Crock 1998: 42; McMillan 2002: 16). This left considerable scope for the unfettered exercise of ministerial and departmental (state) discretion to expel a person from Australia for the better part of the twentieth century (Crock 1998: 218). Additionally, for most of that century immigration policy was not subject to any systematic scrutiny by the public, the parliament, or judicial review (Crock 1998: 33–41; Betts 2003: 16; York 2003). Prior to the establishment of the Federal Court in 1976, appeals against discretionary decisions in immigration matters were rare and generally restricted to highly politicised cases (Power 1995). In 1989 reforms to the Migration Act 1958 established a statutory regime for granting visas, which substantially reduced that discretion. Importantly however the Minister's discretionary powers remained non-compellable and non-reviewable (Carrington 2003). Today a strict regime of regulations governing visa entry and stay in Australia is balanced by a residual power of ministerial discretion supposedly only used in

'unique and exceptional' circumstances in the public interest (Carrington 2003).

The point here is that the wide, non-reviewable discretion permitted by immigration legislation and policy for the better part of the last century created a positive 'bio-political' regime, incorporating substantial powers of exclusion, detention, and removal of unwanted aliens. This ensured the Australian population was not only white, or 'whitish', but also hygienic and even healthier in body, mind, and morals than the average of the predominantly British colonial stock from which it was ideally to be drawn. To that regime of bio-power, in 1992 the Labor Government added mandatory detention (although the Australian Labor Party no longer supports the detention of children and has softened its approach to the indefinite detention of asylum seekers who are effectively stateless). Under section 189 of the Migration Act 1958 unlawful non-citizens, including children, must be detained until they are either granted a valid visa or removed from Australian territory. Any form of detention is symbolically associated with banishment, exclusion, punishment, and the prison. The detainee is consequently associated with guilt and wrong-doing (see Weber 2002) and their processing is often lengthy and stigmatising. Their deviant status is reinforced by labels such as unlawful non-citizens, 'boat people', 'human cargo', 'queue jumpers', 'unauthorised arrivals', 'aliens' or 'illegals' (see Poynting 2002; Pickering and Lambert 2002; Grewcock 2010). Thus the mandatory detention regime has effectively created a new class of criminal and new categories of criminality – the unlawful non-citizen.

There have been at least 25 inquiries into Australia's detention centres, and a great deal of controversy over detention centre standards, deaths in detention, breaches of human rights, the use of chemical sedatives, the use of force, wrongful detention, the detention of children, and the arbitrary detention of failed asylum seekers. The 2005 Palmer Report investigated the unlawful detention of Cornelia Rau, an Australian citizen, who was illegally detained for six months at Brisbane Women's Correctional Centre, then another four at Baxter Detention Centre. Following the Rau case was the unlawful deportation of another Australian citizen, Vivian Alvarez Solon. The cases of mistaken detention and deportation highlight the inadequacies of the mandatory detention regime (see Prince 2005 for a detailed legal analysis). The Palmer inquiry concluded that Australia's immigration detention system had become defensive, entrenched, and deeply cynical, if not disrespectful of the asylum claims made by people categorised as 'unlawful non-citizens' (Palmer

2005). In the weeks after the Palmer Report, the government introduced legislation – the Migration Amendment (Detention Arrangements) Act 2005 – allowing for new community arrangements for families in detention, and the release of all children from mandatory detention (Amanda Vanstone, MP, *Press Release*, 28 July 2005). Prior to this, around a hundred children had been held in immigration detention in Australia at any one time, attracting national and international criticism for its detrimental effects on the mental and physical health of children (Phillips and Lorrimer 2003; Mares et al. 2002).

The case of Shayan Badraie, an Iranian boy held in immigration detention for two years, from the age of 5, is a powerful illustration that like state wards, children in immigration detention, while innocent, are nevertheless subject to punitive forms of bio-power that rationalise their incarceration as protecting the national interest. Shayan was diagnosed as suffering from trauma and post-traumatic stress syndrome by several doctors as a result of his detention 'after witnessing suicide attempts and riots and living in prison-like conditions at the age of six' (Australian Broadcasting Corporation [ABC] TV 2003). He was also hospitalised on several occasions for refusing to eat, drink or talk. Shayan's lawyers successfully sued the Australian Government 'on the grounds that he was psychologically harmed while living at Woomera and Villawood detention centres between 2000 and 2002' (ABC 2006). The $400,000 compensation was described by his lawyers as a landmark payout, drawing attention to the responsibility of the Australian government for detaining innocent children in 'brutal circumstances' (*The Age* 2006). After contesting adverse rulings from the Department of Immigration and Citizenship, Shayan's parents were eventually awarded permanent residency (*The Age* 2006).

Once again I ask – how can such a punitive state invention be sanctioned within a democratic society like Australia? The answer is not a terribly palatable one. The principles of enclosure within borders and the segregation of populations who belong from those who do not, are the cornerstone foundations of the modern state (Hindess 2000). Citizenship is consequently a system for classifying which populations belong or not in 'a large, culturally diverse, and interdependent world population' (Hindess 2000: 1486). Citizenship is a device that apportions the world population into a series of manageable sub-populations which compete for prosperity in a global economic system. Consequently the dark side of citizenship, argues Barry Hindess, demands the state and its agencies discriminate in

favour of their citizens against non-citizens in ways that criminalise the illegal border crossings of the unlawful non-citizen. Sovereignty is about exclusion as much as it is about inclusion (Giannacopoulos 2007). This might explain the popularity of border control among both Howard's 'battlers' and Labor's traditional working class supporters.

Concluding Comments

The construction of Indigenous people as a dangerous presence, alongside the construction of the unruly, neglected children of the colony – the larrikin descendants of convicts as necessitating special regimes of internal controls and institutions – found a counterpart in the racial and other exclusionary criteria operating through immigration controls for much of the twentieth century. The bio-historical practices of containing Aboriginal populations within reserves and missions and the forced removal of children with mixed parentage to orphanages, state wardship, and special institutions, were facilitated through bio-controls over family life designed to normalise the wayward, larrikin or neglected child. These practices have all had a significant historical place in shaping the character and structure of the Australian population. The structures of perception that conflate social disorder, contagion, invasion, and immigration, have long shaped Australian anxieties about the security of our island border, its border controls, quarantine legislation, population controls, and child welfare policies. It strikes me that deporting unlawful non-citizens, and especially those who arrive by boat, is the mirror reverse of the colonial practices of convict transportation by boat. Just maybe deep within the Australian collective consciousness, lurks an anxiety about our convict past and our own bio-pollutant. It is as if every effort must be made to expunge the violence of the past from collective memory – all, of course, in the national interest and, sadly, with widespread popular support.

Notes
1. The following two sections draw upon material previously published in *Offending Youth* (Carrington and Pereira 2009).
2. The experiences of 37 female survivors of Parramatta Girls Industrial School, portrayed in a play 'Parramatta Girls', and retold in a book *14 Years of Hell* (Djuric 2008) present stories of great suffering. Historical evidence of boys being subject to systemic abuse and brutal regimes of punishment in institutions and reformatories is not hard to source either (see Frank Goulding's personal account of this cruel treatment in state care in Ballarat, Victoria from 1940–53, submitted to the Senate Inquiry into Institutional Care).

3. The inquiry took submissions from survivors who described harrowing accounts of physical, emotional, and sexual abuse while in institutional care as children. 'Punishments ranged from beatings with straps, canes, cricket bats, bunches of keys; being forced to perform additional and often repetitive tasks; withdrawal of privileges such as watching television or being allowed visits; food rationing; forced immobility for long periods; isolation and humiliation' (Senate Community Affairs Reference Committee 2005a: 96).

4. This section draws on an argument made in Carrington and Hogg (forthcoming).

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