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JUVENILE COURTS – AN AUSTRALIAN INNOVATION?

Abstract

The Juvenile Court is usually depicted as an American invention, first established in Chicago in 1899, before spreading across the United States and into other English-speaking areas in the first decade of the 20th century. This article suggests that the Adelaide Children's Court in South Australia, which began operating informally in 1890 and gained legislative recognition in 1895, should more appropriately be called the first juvenile court. While the Adelaide Children's Court has attracted considerably less scholarly and popular attention than its United States equivalents, the South Australian model was the first to bring together elements that were subsequently identified as essential components of children's courts. The Court also exerted considerable, and again often undocumented, influence on other legislative schemes in Australia and overseas. The article argues that a close historical analysis of the Adelaide Children's Court's early years, between 1890 and 1910, reveals just how innovative the South Australian scheme was. It concludes by calling for a more expansive approach to the development of the juvenile jurisdiction.

I Introduction

In 1927 the Chinese-born American scholar Herbert Lou published his doctoral dissertation on juvenile courts in the United States. Lou's book was one of the earliest comprehensive studies of America's juvenile court system and was soon accepted as a major authority on the subject. Lou's main argument was that juvenile courts were a modern 'scientific' response to the complex problem of youthful delinquency. In the juvenile court, he believed, law worked alongside biology, sociology and psychology 'to administer justice in the name of truth, love, and understanding.'[1] In tracing the history of the courts, Lou proposed that they were underpinned by the idea of parens patriae; the theory that the Crown (in America the state) had an inherent welfare jurisdiction over all children. Under the juvenile court system, he suggested, the state's duty to protect was extended to offending as well as 'dependent' or neglected children.[2] Lou's second major contention was that juvenile courts were a uniquely American phenomenon: 'It is … a generally accepted fact that the first juvenile court … in the world, began in 1899 with the establishment

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1 Herbert Lou, *Juvenile Courts in the United States* (Arno Press, 1972) 2.

2 Ibid 3–4.

of the Chicago Juvenile Court'.[3] Lou acknowledged that '[c]ertain features of the juvenile court … developed both abroad and in some [other] American states.' Lou even identified an earlier precedent for the Court itself: 'conceding that children's courts, though not under that name, were practically provided in South Australia by ministerial order in 1889, legalised by the State Children Act of 1895.'[4] Nevertheless, he still maintained that North America was the real, or higher, model for the separate jurisdiction concluding that '[t]he systematic development of the idea of the juvenile court … has taken place in the United States'.[5]

Since the 1960s the theories of Lou and his contemporaries have been extensively revised. 'Social control' scholars of the 1960s and 1970s argued that, far from a benign regulatory regime, the juvenile court was an oppressive institution, established by middle-class agents to manage the urban and immigrant poor.[6] The next generation pointed out the limits of these arguments, analysing juvenile courts from the perspectives of gender, race and postmodernism, but they too challenged Lou's contentions.[7] Yet in one important respect Lou's foundational narrative has remained virtually intact. The vast majority of scholars have continued to assume that juvenile courts were an American invention. Studies in the United States have invariably located the source of the separate Court in Chicago in 1899,[8] and scholars of other jurisdictions have usually pointed to American influences. Historian George Behlmer suggested that the English *Children Act 1908*[9] was largely inspired by American models, particularly those of Chicago and New York. He acknowledged that some English reformers were aware of the South Australian model, but believed that Chicago and New York, bigger and better promoted, were more important.[10]

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3 Ibid 19.

4 Ibid 19, 15.

5 Ibid 15.

6 Anthony Platt, *The Child Savers: The Invention of Delinquency* (University of Chicago Press, 1969); Christopher Lasch, *Haven in a Heartless World: The Family Besieged* (Basic Books, 1977); Steven L. Schlossman, *Love and the American Delinquent: The Theory and Practice of 'Progressive' Juvenile Justice, 1825–1920* (University of Chicago Press, 1977); Robert M. Mennel, *Thorns and Thistles: Juvenile Delinquents in the United States* (University Press of New England, 1973).

7 Eric C. Schneider, *In the Web of Class: Delinquents and Reformers in Boston, 1810s–1930s* (New York University Press, 1992) 2–13; Elizabeth J. Clapp, *Mothers of All Children: Women Reformers and the Rise of Juvenile Courts in Progressive-Era America* (Pennsylvania State University Press, 1995) 1–18; Ruth M. Alexander, *The 'Girl Problem': Female Sexual Delinquency in New York, 1900–1930* (Cornell University Press, 1995) 1–7; Victoria Getis, *The Juvenile Court and the Progressives* (University of Chicago Press, 2000) 2–7; David Tanenhaus, *Juvenile Justice in the Making* (Oxford University Press, 2004) xxvi – xxviii.

8 See for example Getis, above n 7, 9–27; Tanenhaus, above n 7, 4.

9 8 Edw VII.

10 George Behlmer, *Friends of the Family: The English Home and its Guardians, 1850–1940* (Stanford University Press, 1998) 242–244. Elsewhere at 240 he states that 'the juvenile court [was] first deployed in America.'

Australian legal historians, too, have tended to downplay the significance of their local courts. In his study of Australian social welfare legislation, Brian Dickey noted that Australian states adopted the 'American technique of the children's court' in the early 20th century.[11] In the most extensive account to date of Australian children's courts, John Seymour was also ambivalent about South Australia. He conceded that in 1890 the colony 'established the elements of a distinctive tribunal which would today be recognised as a children's court,' and that it influenced other Australian systems. However he also pointed to Massachusetts as a precedent and suggested that the jurisdiction of the Adelaide Children's Court was unclear.[12]

Given these ambiguities, it seems worthwhile to look anew at the Adelaide Children's Court and see what light a detailed historical analysis of its early development can shine on such arguments. Was this Court, as Lou and some Australian scholars have contended, a separate court of sorts, but whose features were derivative and whose jurisdiction was uncertain? Or was it indeed an early example of a juvenile court, but one that, as Behlmer has suggested, lacked the publicity of its more aggressively promoted American equivalents? Alternatively, has it merely suffered from lack of scholarly attention? This article examines the establishment of the Adelaide Children's Court between 1890 and 1910, drawing primarily on the records of the South Australian State Children's Council and contemporary legislative debates, before turning to the broader awareness of the Court and its legal influences, at home and abroad. I argue that while some of the Court's individual attributes were derived from the United States, the Adelaide Children's Court was Australia's first juvenile court and indeed the first such court in the English-speaking world. The South Australian model brought together for the first time elements that were subsequently identified as the essential components of children's courts, and its contemporary impact was considerably greater than later commentators have suggested. The South Australian legislation was the starting point for other Australian children's courts and the philosophy of those Courts permeated the English *Children Act*. The Adelaide Children's Court was also another important example of legal innovation in a decade already particularly noteworthy for its expansion of the role of the state in social and economic welfare,[13] and joins the

11 Brian Dickey, *No Charity There: A Short History of Social Welfare in Australia* (Allen & Unwin, 1987) 99. This argument has been reiterated in a number of more recent publications as well, see Kerry Carrington and Margaret Periera, *Offending Youth: Sex, Crime and Justice* (Federation Press, 2009) 24–5; Daniel King, Andrew Day and Paul Delfabbro, 'The Emergence and Development of Specialist Courts: Lessons for Juvenile Justice from the History of the Children's Court in South Australia?' (2011) 4 *The Open Criminology Journal* 40, 40–41.

12 John Seymour, *Dealing with Young Offenders* (Law Book Co, 1988) 77–83.

13 On the 1890s as a particularly radical decade in South Australian political life see Margaret Anderson and Mandy Paul, 'In Search of a History of Social Innovation in South Australia' in *The History and Future of Social Innovation Conference Papers* (Hawke Research Institute for Sustainable Societies, 2009) 5; Eric Richards, 'Chapter 1 – South Australia Observed, 1836–1986' in Eric Richards (ed), *The Flinders History of South Australia* (Wakefield Press, 1986) 21–3.

list of South Australian progressive social experiments which some historians have argued made the jurisdiction 'exceptional' throughout its history.[14]

Part II of this article looks at four stages in the development of the Adelaide Children's Court, beginning with its executive beginnings in 1890 and subsequent legislative interventions in the 1890s and early 1900s, before turning to the influence of other contemporary Children's Courts and the introduction of probation in the 20th century. Part III explores the circulation of knowledge about the Court and its legislative legacy in three other jurisdictions: Victoria, New South Wales and the United Kingdom. The paper concludes with a reconsideration of the 'American innovation' thesis.

II The Court

A *The Early Court, 1890–1895*

The establishment of a Children's Court in South Australia was first proposed in the Way Commission's *Destitute Act Commission Report* in 1885.[15] The Way Commission, named after Chief Justice Samuel Way who chaired the inquiry, had been convened by the Bray Government in 1883 to investigate the operations of the *Destitute Persons Act 1881* (SA) (the South Australian legislation regulating state provision for impoverished adults and 'neglected' children).[16] Part Two of the report recommended a distinctive trial system for juveniles. It suggested that all charges against children under 17, for offending or neglect, should be heard at different times from adults. In the city of Adelaide, these cases should not be conducted in the police court. Parents should be obliged to attend the proceeding and an officer of the department should also be present to enquire into the child's home background and to make recommendations as to sentencing. In particular, a special report should be prepared if a child was to be sent to the reformatory.[17] The report also

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14 Whether South Australia has shown a distinctive developmental pattern in the area of social reform, stemming from its establishment as the first 'free' Australian colony with a large population of dissenters, has been much debated by historians, some of whom have argued that this reputation has been exaggerated. Nevertheless, South Australia does have an impressive list of 'firsts,' and most historians have agreed that the colony did forge ahead in social and economic legislation in the later decades of the nineteenth century. On this debate see Wilfrid Prest, 'Preface' in Wilfrid Prest, Kerrie Round and Carol Fort (eds), *The Wakefield Companion to South Australian History* (Wakefield Press, 2002) xi, xiv–xv; Richards, above n 13, 18–9; Anderson and Paul, above n 13, 5–7.

15 *Second and Final Report of the Commission Appointed to Report on the Destitute Act 1881* (E. Spiller, Government Printer, 1885) ('*Destitute Act Commission Report*').

16 Ibid, xi. The suggestion originated from Caroline Emily Clark, a founding member of the State Children's Council, see Alex C. Castles and Michael C. Harris, *Lawmakers and Wayward Whigs: Government and Law in South Australia, 1835–1986* (Wakefield Press, 1987) 214.

17 *Destitute Act Commission Report*, above n 15, xcv.

recommended changes to then current sentencing practices. While the colony had already established a boarding-out scheme for children committed to the care of the state as neglected or destitute, there was no home-based alternative for offending children.[18] The Way Commission highlighted the use of probation, or monitoring in the community, already in use in Massachusetts, and urged that a similar system be adopted in South Australia. It argued that institutionalisation should be a last resort, and if a child could not be dealt with through corporal punishment or a surety, then a government officer should monitor the child at home.[19] If a sentence of imprisonment was imposed, the Commission insisted that this should not be served in an adult gaol and that children should never be brought into contact with adult offenders.[20]

Elements of this scheme began to be put into effect in 1890, initially without supporting legislation. Frustrated by the failure of amending legislation to pass Parliament in 1887 and 1888, in early 1890 the State Children's Council — the semi-independent body responsible for the management of committed children — persuaded the liberal Cockburn Government to issue a decree establishing separate juvenile hearings in the city of Adelaide. The State Children's Council Annual Report for 1890 noted that in April 'the plan of holding a court at the department for the hearing of all charges … against girls under 18 years and boys under 16 years' was inaugurated.'[21] The Council justified the provisions as avoiding the contamination of children by adult offenders at the police court as well as 'the degraded and hardening effects of a public trial.' To further separate out youthful offenders, provision was made to remand children at the department pending hearing, rather than in a police lock-up or the Adelaide Gaol.[22]

In November 1890 George Guillaume —Secretary of the Department for Neglected Children in the neighbouring colony of Victoria — travelled to Adelaide to see the new Court. He reported on its operations in his yearly departmental report. Guillaume noted that the Court was closed, with 'no outsiders present in the room,' that a departmental officer attended proceedings and that the children's situations were investigated by a government representative who then reported to the Court.[23] Initially not all children were dealt with under the new scheme. In its 1891 report the Council noted that 'efforts to secure the arraignment of children altogether apart from the police court have not been entirely successful'

18 Ibid xlvi – xlviii.

19 Ibid xlvi.

20 Ibid.

21 South Australia, *Report of the State Children's Council for the Year ending June 30 1890*, Parl Paper No 39 (1890) 4. The distinction between the genders had its precedent in the *Destitute Act*, which also established jurisdiction over boys under 16 and girls under 18.

22 Ibid.

23 Victoria, *Report of the Secretary of the Department of Neglected Children and Reformatory Schools for the Year 1890*, Parl Paper No 121 (1891) 70–1.

and urged the government to take action.[24] By 1892 it documented more success in this regard.[25]

One of the major difficulties for the Council lay in the Court's lack of a firm legal foundation. Notwithstanding executive support, the Court's legislative basis rested, as John Seymour has argued, on a 'tangle' of existing provisions.[26] As in other English-speaking jurisdictions, in South Australia over the course of the 19th century, there had been a gradual extension of summary jurisdiction for children. Under amending legislation in 1884, young offenders could be dealt with summarily for most matters, and first offenders released 'on probation,' although this did not include supervision.[27] The *Destitute Act* of 1866–67 provided for 'neglected' children under the age of 16 to be committed to the care of the state if they were found wandering or begging, residing in a brothel, associating with criminals or prostitutes, if they had committed a criminal offence or if their parents were unable to control them.[28] After 1881 'destitute' children could also be committed to state care.[29] Section 19 of the 1886 *The Destitute Persons Amendment Act 1886* (SA) allowed cases involving neglected children to be held in closed courts.[30]

Behind all of this, and overseeing the Court's operations, stood the State Children's Council. The Council had been created formally in 1886, when it was separated from the Destitute Board. Its mandate was to manage 'state children' and it consisted of 12 honorary officials, male and female, who supervised the operations of other paid and unpaid officials.[31] Two of its early members were particularly influential. Caroline Emily Clark (1825–1911), a cousin of the English reformer Florence Davenport-Hill, and the very prominent Catherine Helen Spence (1825–1910) had been instrumental in the establishment of South Australia's boarding-out scheme. They went on to have a prominent role promoting other initiatives for children, including separate courts.

The State Children's Council reports began to publish information about the children processed in the new Adelaide Children's Court from 1892. The report for that year claimed that the Court dealt with 'all boys under 16 and all girls under 18' who were charged with 'any offence whatsoever' or as neglected children.[32]

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24 South Australia, *Report of the State Children's Council for the Year ending June 30 1891*, Parl Paper No 39 (1891) 5.

25 South Australia, *Report of the State Children's Council for the Year ending June 30 1892,* Parl Paper No 28 (1892) 5–6.

26 Seymour, above n 12, 78.

27 By the *Justices Procedure Amendment Act 1883–1884* (SA) s 13, see Seymour, above n 12, 29.

28 *Destitute Act 1866–1867* (SA) ss 35 and 36.

29 *Destitute Persons Act 1881* (SA) s 3.

30 See Seymour, above n 12, 78.

31 *Destitute Persons Act Amendment Act 1886* (SA) s 2.

32 *Report of the State Children's Council for the Year ending June 30 1892*, above n 25, 6.

The Court was held in one of the departmental offices and departmental officials were present to both 'conduct the cases' and act as clerk of court, although children were still tried by a Magistrate.[33] In the 1891–92 year, the 'departmental court,' as it was called, dealt with 111 children. Fourteen were charged with criminal offences, while 30 were processed as 'uncontrollable', five as 'neglected,' 51 as 'destitute' and 11 as absconders from institutions. The low number of criminal offenders suggests that, despite departmental claims, many children were still appearing in the police courts. Of these 111 children, 69 were sent to the industrial schools (ie, committed to the care of the state), and 14 to reformatories. Seven children were discharged with a caution, 10 were whipped, two were fined and four absconders were 'ordered bread and water.'[34] The following year 207 children appeared before the Court and the number of criminal cases rose substantially, although they were still a minority of all charges, or 71 out of 207.[35] In the 1893–94 year, numbers fell to 178, before rising again to 202 in 1894–95. Outcomes remained relatively consistent throughout. In the 1894–95 year, 90 out of 202 children were charged with criminal offences, and the remainder as destitute, uncontrollable or neglected. In all, 88 children were sent to the industrial schools and 35 to the reformatories. Forty-four were whipped and eight fined. Thirteen cases were dismissed and two children were discharged under the *Offenders Probation Act 1887* (SA).[36]

B *Legislative intervention, 1895–1900*

The 1890 Adelaide Children's Court contained most of the features that later commentators would deem distinctive markers of a juvenile court system. The Court was constituted at a separate time and place from adult hearings and was held in private, with only those directly affected by the case allowed to participate in hearings. The government welfare department was closely involved at all stages. Separate remand facilities were provided, and children sentenced to imprisonment were not sent to adult institutions but to reformatories. In themselves, many of these features had precedents. Separate hearings for children had taken place in Massachusetts from the 1870s[37] and many countries had developed separate institutions for young offenders prior to 1890.[38] Many reformers also aspired to separate remand

33 Ibid.

34 Ibid. Of the remainder, four still had warrants outstanding and one child was discharged because he was no longer a minor when charged.

35 South Australia, *Report of the State Children's Council for the Year ending June 30 1893,* Parl Paper No 123 (1893) 4.

36 South Australia, *Report of the State Children's Council for the Year ending June 30 1895,* Parl Paper No 81 (1895) 3.

37 Lou, above n 1, 16.

38 On the early English industrial and reformatory institutions, and their counterparts elsewhere, see Leon Radzinowicz and Roger Hood, *A History of English Criminal Law and its Administration from 1750: Volume Five – The Emergence of Penal Policy* (Stevens & Sons, 1986) 148–161, 172–181, 377–384; on Illinois see Platt, above n 6, 101–114; on Australia generally see Seymour, above n 12, 15–67.

facilities, although this was less widespread before the 20th century.[39] What was unique about South Australia was the combination of features. No other jurisdiction in the early 1890s had a special court that managed children's cases from pre-trial to sentence and which was held outside a court house. Even Massachusetts, the pioneer in other respects, scheduled children's cases in the lower courts. The Adelaide Children's Court still lacked two important features of a 'typical' children's court. Firstly, it lacked specially trained magistrates to hear children's cases, which later became a feature of American courts in particular.[40] Secondly, despite the recommendations of the Way Commission, the first Court did not include a probation scheme and as we have seen, its sentencing outcomes remained fairly conservative. The majority of offending children were sent to reformatories, while destitute and neglected children were customarily committed and then either sent to training institutions or foster homes.

The legislative authorisation that the Adelaide Children's Court lacked took some time to arrive, despite continual agitation by the State Children's Council for the government to establish a formal basis for the Court and to clarify the types of children who could be dealt with by the Council.[41] In 1894 John Hannah Gordon, Chief Secretary in the progressive Kingston Government, introduced a State Children Bill which passed both Houses of Parliament, but lapsed at the end of 1894.[42] In September 1895 the government, which had meanwhile introduced legislation establishing female suffrage (the first in Australia) and a new system of conciliation and arbitration,[43] returned to the subject. The next State Children Bill was introduced by another key reformer, Dr John Cockburn, Minister for Education, and was evidently based on State Children's Council recommendations. As well as formalising children's courts in line with existing practice, the Bill proposed an extended definition of 'neglect', to cover children selling newspapers on the streets at night, a particular bane of the Council, as well as children whose employment 'endangered life, health or safety' — an attempt to better regulate children working in the entertainment industry.[44] It also, controversially, argued that the government should have the power to detain state children until they turned 21, rather than 18. After much debate, Cockburn moved to limit this to female children, which in turn attracted criticism from advocates of equality. George Ash, member for Albert and a supporter of women's suffrage, argued that this distinction was 'unjust, as the parliament had accepted that men and women

39 Radzinowicz and Hood, above n 38, 624–9.

40 Lou, above n 1, 70–8.

41 *Report of the State Children's Council for the Year ending June 30 1891*, above n 24, 5; *Report of the State Children's Council for the Year ending June 30 1892*, above n 25, 5–6; South Australia, *Report of the State Children's Council for the Year ending June 30 1894*, Parl Paper No 94 (1894) 3.

42 South Australia, *Parliamentary Debates*, Legislative Assembly, 5 September 1894, 1216–7 (John Hannah Gordon), and 19 September 1894, 1413 (John Hannah Gordon).

43 Anderson and Paul, above n 13, 5.

44 South Australia, *Parliamentary Debates*, Legislative Assembly, 10 October 1895, 1774–6 (John Cockburn), 19 November 1895, 2230 (various), 19 November 1895, 2234–5 (John Cockburn).

had equal political rights,' but the amendment carried.[45] The State Children's Council campaigned strongly for the Bill, which also, of course, enhanced its own powers. It argued in the Adelaide *Register* in September 1895 that it had been swamped with 'uncontrollables,' but that the 'scope of [the Council's] operations has far outgrown the limits of its legislative authority.'[46]

The *State Children Act 1895* (SA) received royal assent in December 1895, by which time it had become a comprehensive piece of legislation governing many aspects of the lives of state children. The Court provisions were contained in Part IV. Section 31 provided that the hearing of 'all complaints and informations against any child for offences, punishable, on summary conviction, before a Justice' in Adelaide and Port Adelaide should be held at 'some room or place approved of … by the Chief Secretary and not in any police or other court house'. Outside Adelaide, children's hearings could take place in the police court but only 'at any hour other than that at which ordinary trials are taken …'[47] A child was now defined as a boy or girl under 18,[48] and neglected, destitute and 'uncontrollable' children were all included in the scheme. Section 32 provided that the police could arrest a child suspected of being destitute or neglected without a warrant and bring the child before the Justices. Section 34 allowed parents to bring complaints against 'uncontrollable' or 'incorrigible' children. Although the Act did not state specifically that children's hearings should occur in private, this was generally understood and attracted some debate. Robert Homberg, conservative MP for Gumeracha, argued that clause 31 'provided for an absolute star chamber,' but his objection did not lead to change.[49] The Act also expanded the definitions of 'destitute,' 'neglected' and 'uncontrollable' in line with Council recommendations. A 'destitute' child was defined as a child who 'has no sufficient means of subsistence … and whose near relatives are … in indigent circumstances and unable to support such child'. 'Neglect' now included children under 10 who sold items in the street after 8pm, illegitimate children whose mother was dead (in the absence of other suitable guardians), children under 'unfit' guardianship and 'uncontrollable' or 'incorrigible' children.[50]

As well as confirming changes to Court procedure, Part IV of the Act set up distinctive sentencing regimes, depending on the type of charge for which children appeared. Destitute or neglected children could be 'sent to an institution, to be there detained or otherwise dealt with … until such child shall attain the age of eighteen years.'[51] 'Uncontrollable' or 'incorrigible' children could either be sent to an institution, or, if they were under 14, whipped. However in a new development, they could also

45 Ibid 2231 (John Cockburn, George Ash).

46 'State Children and their Guardians', *Register* (South Australia), 25 September 1895, 4–5.

47 *State Children Act 1895* (SA) ss 31(a)–(b).

48 Ibid s 4.

49 South Australia, *Parliamentary Debates*, Legislative Assembly, 31 October 1895, 2016–7 (Robert Homberg).

50 *State Children Act* 1895 (SA) s 4.

51 Ibid s 33.

be released on probation, or 'subject to the supervision of the Council until [they] attain the age of eighteen years'.[52] Children placed on probation were to report to the Council 'at such times and places and in such manner as the Council shall direct.'[53] If children failed to report on probation they could be arrested and re-sentenced.[54] Finally, 'uncontrollable' children could be sent to a probationary school for up to three months.[55] By contrast, probation was not formally available to offending children, for whom there were only three options. Children found guilty of any crime (apart from homicide) could be sent to a reformatory school until they turned 18. They could also be released on a parent's security for their good behaviour until they turned 18 'or during such period as the Judge … may think sufficient',[56] or the case could be adjourned until they had been punished by a 'near relative'.[57] Once the punishment (whipping) had taken place, the Court would dismiss the charge. Section 48 recreated the offence of absconding from an institution, punishable both by return to the institution and one month's extra detention.[58] Children were customarily supervised until they turned 18, but, after Cockburn's amendment, the period could also be extended for female wards until they turned 21, on the Council's recommendation.[59]

After their long campaign for legal change, the State Children's Council celebrated the new legislation as making the Court 'absolutely a lawful institution.'[60] Their jubilation was premature. Ironically, there was a jurisdictional challenge as soon as the Act came into effect. The problem lay in the wording of s 31, which conferred jurisdiction on the Court. Presumably in error, s 31 only provided for separate hearings for children facing summary charges, which excluded a number of common offences, like larceny, which was a felony. To the Council's indignation, magistrates responded by having theft charges heard 'in the justices' room at the police court' rather than in the departmental court.[61] Perhaps it was magistrates asserting their authority against legal change driven by a welfare authority. This practice continued through 1897, 1898 and 1899, and the Council again found itself in the position of campaigning for legislative amendment. In 1899 the Council forcibly argued that '[a] separate court for the trial of all children is a necessary, proper and humane institution'.[62] Between 1897 and 1899 the Council's report included two separate sets

52 Ibid s 34(c).

53 Ibid.

54 Ibid s 35.

55 Ibid s 34.

56 Ibid s 36(b).

57 Ibid s 36(c).

58 Ibid ss 48 and 49.

59 Ibid s 51.

60 South Australia, *Report of the State Children's Council for the Year ending June 30 1896*, Parl Paper No 81 (1896) 4.

61 South Australia, *Report of the State Children's Council for the Year ending June 30 1897*, Parl Paper No 81 (1897) 3.

62 South Australia, *Report of the State Children's Council for the Year ended June 30 1899*, Parl Paper No 63 (1899) 3.

of court statistics, one for the 'departmental court,' or the Adelaide Children's Court and one for the Adelaide Police Court. In 1897, 238 children appeared before the departmental court for summary matters and 66 before the police court for felonies. In 1898, the numbers were 194 and 89 and in 1899, 149 and 114, so the departmental court was losing ground significantly. The new option of probation hardly registered. Thirty-four 'uncontrollable' children were charged in 1897, 16 in 1898 and 28 in 1899. In 1899 the Court only released one child on probation. The most common sentences continued to be committal to the industrial school for neglected and destitute children, and committal to the reformatory and whipping for children charged with criminal offences, in both the departmental and police courts.[63]

C *The Court in international context, 1900–1905*

The Council's agitation again eventually resulted in legal change. In October 1900, the new Holder Government introduced a *State Children's Amendment Act*, which clarified the Court's jurisdiction. Section 3 of the amending Act noted that 'the provisions of s 31 (summary offences) … shall extend to the hearing or trial before a Justice or Justices of all complaints and informations against children … whether on summary conviction or otherwise.' The Amendment Act attracted very little debate and was passed without amendment in the Parliament within one month of its introduction.[64] Numbers at the Departmental Court rose instantly. In the 1899–1900 year, 273 children appeared before the departmental court, 135 of them charged with criminal offences.[65] The following year 337 children appeared, with 207 offenders, and in 1901–1902, 221 offending and 171 'neglected, uncontrollable and destitute' children had their cases heard in the Adelaide Children's Court. In the 1902–1903 year numbers rose significantly again to 443, with 288 offenders, before falling back down to 325 in 1904 and 248 in 1905. The Court's sentencing practices also began to shift, particularly regarding financial penalties, although the option of probation was still employed relatively little. Of the 188 children charged with criminal offences in 1902–1903, only 30 children were committed to the reformatories, while 71 children were whipped, 119 were fined and 60 had their charges withdrawn or dismissed, or were discharged with a caution.[66] Between 1900 and 1905 only nine children were formally sentenced to probation, although it seems

63 *Report of the State Children's Council for the Year ending June 30 1897*, above n 61, 3–4, South Australia, *Report of the State Children's Council for the year ending June 30 1898*, Parl Paper No 92 (1898 – 1899) 3–4; *Report of the State Children's Council for the Year ended June 30 1899*, above n 62, 3.

64 South Australia, *Parliamentary Debates*, Legislative Assembly, 23 October 1900, 286 (John Hannah Gordon).

65 South Australia, *Report of the State Children's Council for the Year ended June 30 1900*, Parl Paper No 63 (1900) 3.

66 South Australia, *Report of the State Children's Council for the Year ended June 30 1903*, Parl Paper No 64 (1903) 4; South Australia, *Report of the State Children's Council for the Year ended June 30 1904*, Parl Paper No 64 (1904) 4; South Australia, *Report of the State Children's Council for the Year ended June 30 1905*, Parl Paper No 64 (1905) 10.

that other children discharged under the *Offenders Probation Act 1887* (SA) were also subject to some form of monitoring.[67] Nevertheless, the availability of probation was definitely extended during these years. Although the *State Children's Act 1895* theoretically only allowed 'uncontrollable' children to be dealt with in this way, of these nine children, three were 'neglected,' two 'destitute' and one was an offender.

This change to sentencing practices took place in an international as well as a local context. By the early 20th century, the South Australian Court was no longer alone in operating a separate children's jurisdiction. Early efforts in Ontario, Canada, from the 1890s to hear children's cases in chambers seemed to have escaped the notice of South Australian campaigners[68] but they were well aware of contemporary developments in Chicago. In 1899 the Illinois State Legislature established a new Juvenile Court in Cook County, Chicago. Other Children's Courts followed across the midwestern and eastern states, including New York in 1903. Also in 1903, legislation was enacted in Denver, Colorado, under the auspices of the colourful and persuasive Judge, Ben Lindsey.[69] The Chicago and Denver Courts became extremely well-known, and as the dominant institutions in the 'American origins' narrative, it is worthwhile comparing the main features of these Courts with those in South Australia. The *Illinois Juvenile Court Act of 1899* established jurisdiction over two classes of minors under 16, 'dependent' and 'delinquent' children (broadly speaking children who were deemed to be in need of welfare intervention) and children who had committed criminal offences, although the two overlapped.[70] The two classes were subject to very similar treatment. The Chicago Court promoted itself as a Court of Chancery, rather than one exercising criminal jurisdiction. Its first Judge, Richard Tuthill, declared that 'no child under 16 years of age shall be considered or be treated as a criminal.'[71] Both dependent and delinquent children 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'.[72] This included foster placements, release on probation and committal

67 See comments in the *State Children's Report for the Year ended June 30 1905*, above n 66, 10, for the unofficial use of probation in this respect.

68 The federal government in Canada did not legislate to establish juvenile courts until 1908, but before then some provinces had begun to separate out children's cases and hear them in chambers, see Lou, *Juvenile Courts in the United States*, above n 1, 15; Carolyn Strange and Tina Loo, *Making Good: Law and Moral Regulation in Canada, 1867–1939* (Toronto, 1997) 95–96. This development was apparently unknown (or at least not noted) across Australia, although British reformers later documented it.

69 On Lindsey and his reputation see Paul Colomy and Martin Kretzmann, 'Projects and Institution-Building: Judge Ben B. Lindsey and the Juvenile Court Movement' (1995) 24(2) *Social Problems* 191, 197–208; Clapp, above n 7, 105–132. Clapp argues that while Lindsey was an extremely well known Judge, the Chicago judicial model was more influential.

70 Richard S. Tuthill, 'History of the Children's Court in Chicago' in International Prison Commission (ed), *Children's Courts in the United States: Their Origin, Development and Results* (Government Printing Office Washington, 1904) 1, 2.

71 Ibid 1.

72 *Illinois Juvenile Court Act of 1899*, Ill Laws 131 §21.

to 'reform' institutions.[73] Although no separate Court building was set aside initially for juveniles, Chicago Court proceedings mimicked civil, rather than criminal jurisdiction. Minors were not tried but 'investigated' and hearings were informal and held at separate times from adults.[74]

The Denver Court, like the Adelaide Children's Court, operated informally before gaining legislative sanction. In 1899, the Colorado state legislature passed an Act that granted the County Court new powers to deem truant children 'juvenile disorderly persons.'[75] Over the next four years Judge Lindsey used the provision to process young offenders as well, arguing that they were 'juvenile disorderly persons'. In 1903 Colorado passed *An Act Concerning Delinquent Children*,[76] which brought offending children specifically within the jurisdiction of a juvenile court. The Act defined 'delinquent children' widely as children who had committed a criminal offence; 'incorrigible' children; children associating with 'thieves, vicious or immoral persons' or 'growing up in idleness or crime'; children knowingly visiting gaming saloons or public houses and children 'wandering the streets at night-time without … any lawful business or occupation.'[77] It also encompassed any child who 'wanders about any railroad yards or tracks' or who rode on moving trucks or trains; and children who used indecent language or who were 'guilty of any immoral conduct in any public place or about any schoolhouse.'[78] 'Dependent' children were not included for constitutional reasons, but they were processed in the Court.[79] The Colorado legislation, like the Illinois Act, declared that the juvenile court was a Court exercising chancery, or welfare, jurisdiction. The Court's guiding legislative principle was that the child's 'care, custody and discipline … shall approximate as nearly as may be that which should be given by its parents.'[80] The Colorado Act again placed considerable emphasis on the probation system. The legislation made three dispositions available for delinquent children. Children could be sent home under the supervision of a probation officer, placed in a foster home or boarded out subject to supervision, or committed to an industrial school. Children under 14 could not be imprisoned at all.[81]

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73 Lou, above n 1, 20.

74 Ibid.

75 Ben Lindsey, 'The Juvenile Court of Denver,' in *Children's Courts in the United States*, above n 70, 28, 31.

76 The text of the Act is extracted in *Children's Courts in the United States*, above n 70, 168–179.

77 Ibid 168.

78 Ibid.

79 Lindsey noted that the Colorado constitution prohibited legislation dealing with more than one subject, and that dependent children were the subject of an 1895 Act which was judged sufficient to bring their cases into the juvenile jurisdiction. Lindsey himself would have preferred to have included these children in the Juvenile Court legislation, see Ben Lindsey, 'Additional Report on Methods and Results' in *Children's Courts in the United States*, above n 65, 47, 56–8.

80 Tuthill, above n 70, 171.

81 Ibid 169–171.

The Illinois, Colorado and Adelaide Children's Courts had considerable areas of overlap. All three had jurisdiction over 'neglected,' 'dependent' or 'destitute' children, as well as children charged with criminal offences, although in South Australia the upper age limit was higher. Courts were held at separate times from adult offenders, and officials (at least theoretically) tried to make court procedures more 'child friendly.' Only in South Australia, though, did the hearings take place consistently outside court buildings. The Chicago Juvenile Court, as David Tanenhaus has described, had a rather chaotic early life. It first opened in a room in the County Court and then had temporary homes in various buildings in the business district, before returning to the County Court in 1913. A separate juvenile court was not constructed until 1923.[82] Judge Lindsey also conducted his cases in a County Court room, albeit shifting the furniture around to make it less formal for the children appearing before him.[83] South Australia was also distinctive in having its cases heard in private. Chicago reformers aspired to this, but did not actually succeed in obtaining closed courts until the post-war period.[84]

Where the courts differed significantly was in the philosophy underpinning their jurisdictions, and the role of probation. The American courts operated under an overarching welfare, or civil, model. 'Delinquent' children, as we have seen, were formally treated as children in need of protection, with less attention paid to guilt or innocence and more to background and association. The Adelaide Children's Court was still mandated by legislation to try a child, and sentences retained a penal element. Both Chicago and Denver also had special magistrates attached to their courts, while South Australia shared Police Court magistrates. Finally, Chicago and Denver had probation officers from the beginning, although they were initially unpaid in Chicago and overloaded in both.[85]

D *The development of probation, 1906–1910*

While differing in some important ways from its American equivalents, the Adelaide Children's Court was clearly a 'juvenile court.' In some respects, indeed, it superseded its contemporaries, although there were also areas where it fell short of the latest developments. One of those areas was probation, where the American courts definitely took the lead. After 1905, however, both the Adelaide Children's Court and the State Children's Council began to prioritise this form of sentencing. In its 1905–1906 annual report, the Council noted that a paid female probation officer, Miss Cocks, had been appointed in April 1906, 'to enable special attention to be given to delinquent children in their parents' homes, so preventing their becoming a charge on the State'.[86] At the time of her appointment, there were

82 Tanenhaus, above n 7, 23–34.

83 Lindsey, 'Additional Report,' above n 79, 80.

84 Tanenhaus, above n 7, 49–50, 53.

85 Ibid 35–6, 46–7.

86 South Australia, *Report of the State Children's Council for the Year ended June 30 1906*, Parl Paper No 59 (1907) 11. There are more notes about the role of the probation officer in Catherine Helen Spence, *State Children in Australia: A History of Boarding*

already 35 children on probation and four more since she had assumed office, a number far exceeding those children recorded in the Court's statistics as 'released on probation'. The Council's notes on those children indicated that most of them were released on probation after committal, so they were presumably children who had been formally 'sent to the industrial schools'. Council delegates, or later the probation officer, already visited these children, monitored their school attendance, and, if old enough, helped them to find work. The Council recorded that '[o]ne girl, licensed on probation as soon as committed, and who had never before kept a situation … was placed in service at once,' while '[a] little boy … who had never been to school, now attends school regularly.'[87] Probation was intended to 'improve' not only the subject children, but their parents and home environments as well. The Council observed with approval that '[s]everal homes that were very dirty and untidy have shown improvement'.[88]

After the appointment of the probation officer, the Council began to record more information about the children released on probation, allowing us to assess more accurately how the South Australian scheme was working. In its 1907 report, the Council noted that there were 34 children on probation as at 30 June 1906, with 40 more placed on probation over the next 12 months. Of these, six were released, 10 turned 18 and 10 were recalled. On 30 June 1907, 48 children remained subject to supervision. Most of the probation children performed well: 40 were rated 'good', and six 'fair', with only two deemed 'indifferent'.[89] Again, these numbers greatly exceeded those recorded by the Court. The Court statistics indicated that only two children were released on probation that year, both for criminal offences.[90] The 1908 figures make it clearer what was happening. The report for that year indicated that in the two years since the appointment of the probation officer (1 July 1906–30 June 1908) the Council had released 68 boys and 25 girls on probation but in the vast majority of cases this followed a period of committal in an institution ranging from one month to two years. The children were released on probation after conviction for both criminal offences (reformatory children) and for being 'uncontrollable', 'neglected', 'destitute' and under 'unfit guardianship'.[91] In addition, the Council recorded a new category of child 'paroled by the Court'. 'Besides the [children on probation]' the Council noted, 'there have been 97 children placed under supervision by the Court by the simple process of remanding from time to time, and making the future depend on the report by the inspectress' — in other words, probation on a deferred sentence.[92]

Out and its Developments (Vardon & Sons, 1907) 106.

87 *Report of the State Children's Council for the Year Ended June 1906*, above n 86, 11.

88 Ibid.

89 South Australia, *Report of the State Children's Council for the Year ended June 30 1907*, Parl Paper No 59A (1907) 9.

90 Ibid 10.

91 South Australia, *Report of the State Children's Council for the Year ended June 30 1908*, Parl Paper No 55 (1908) 13.

92 Ibid 11.

By 1908, therefore, Adelaide had a probation system, but one operating in a manner quite distinctive from that of courts in the United States. In the United States, probation was an alternative to imprisonment or institutionalisation, designed to keep children in their home environment as long as that home met certain standards.[93] Other Australian courts followed this system. In Adelaide, by contrast, probation tended to be employed after children had spent a period in an institution, when the Council (not the Court) decided which children should then be released under supervision.[94] In its annual report for 1908, the Council noted that it was examining carefully the probation statistics 'to decide on the length of time needed to accomplish reform of character, as also if detention in an institution [first] is or is not helpful.'[95] Probation was also used by the Adelaide Children's Court prior to institutionalisation, but here again it was deployed somewhat differently from other jurisdictions. In the United States and other parts of Australia, probation was used as a final sentence, although further sentencing options were available in the event of unsatisfactory performance. In the Adelaide Children's Court, sentencing tended to be deferred while the child was 'on probation' or parole. The 1908 Court records do not show any children 'released on probation' as a final determination.[96] It is unclear exactly how performance under supervision was reflected in the final outcome. Presumably children who did well had their charges dismissed, and those who failed to improve were committed to institutions after all. Numbers in institutions certainly declined noticeably between 1902 and 1908. In 1902 there were 243 children in industrial, reformatory and probation schools, and 252 in 1903, but after that numbers fell every year, to a low of 190 children in 1908.[97]

Reflecting the movement away from institutionalisation, in 1909 John Brice, Chief Secretary in the short-lived Peake Coalition Government, introduced another *State Children's Amendment Act*,[98] which for the first time introduced a form of probation for all children, including offenders. Brice noted in his second reading speech that 'the State Children's Council had pushed for the Bill to enable it to better carry on its work', and much of the Bill enhanced the Council's administrative powers.[99] Section 2 of the Amendment Act further expanded the definition of a 'neglected child' to include 'any child … found in a brothel or house of ill-fame; [a]ny child under fourteen who not being on any lawful business or errand, habitually frequents public streets or places' between 8pm and 5am; and children under 16 who were found in the bar of a public house (unless they were the child or ward of the licensee) or who 'on more than one

93 Platt, above n 6, 135; Schlossman, above n 6, 60–3.

94 See comments in Seymour, above n 12, 106.

95 *Report of the State Children's Council for the Year ended June 30 1908*, above n 91, 12.

96 Ibid 14.

97 Ibid 13.

98 *1909* (SA).

99 South Australia, *Parliamentary Debates*, Legislative Assembly, 24 August 1909, 62 (John Brice).

occasion' were served with intoxicating liquor in a bar.[100] Section 14 provided that any member of the police force or Council could tender reports regarding neglected children and s 20 allowed courts to punish the parents of criminal or 'neglected' children. The most controversial provision was s 18, which allowed the Council to inspect the home of any illegitimate child under the age of seven without court order, a provision designed to reduce the infant mortality rate and the only provision of the Bill that attracted really vehement debate.[101] Finally, s 21 allowed a court to 'place such child in the custody and under the care of the Council' in lieu of committal to an institution, although these children could still be placed in institutions post-release, on the Council's recommendations.[102] With the exception of s 18, the Bill attracted little controversy and passed through Parliament quickly.[103]

As well as formalising the Council's practices with regard to probation, the 1909 Amendment Act further clarified the jurisdiction of the Adelaide Children's Court. A new s 3 replaced s 31 of the 1900 Amendment Act, and stated that:

> no information against any child in respect of any offence, whether such offence is punishable on summary conviction or otherwise … and no information alleging that any child is a destitute, neglected or uncontrollable or incorrigible child, shall be heard in any Court, room or place within the city of Adelaide or Port Adelaide except in such … rooms … as are … approved by the Chief Secretary.

This excluded decisively any possible jurisdictional overlap with the Police Court. As with the introduction of probation under the 1895 *State Children's Act*, though, these two provisions did not lead immediately to a significant change in sentencing practices. In the 1909–1910 year only eight out of 312 children appearing before the Departmental Court were 'committed to the care of the council', while 136 were sent, as before, 'to the industrial schools'.[104] The same year, however, 138 children were released on probation by the Council and 93 children were 'paroled' by the Court. For all these children there was still only one paid probation officer, Miss Cocks, although she evidently continued to be assisted in her duties by Council officers. The Council, according to Catherine Helen Spence, expected that the probation officer would visit the family regularly 'so that the home should be improved as well as the [child]' a task which would have been impossible for one person alone to perform for 235 children.[105]

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100 *State Children Amendment Act 1909* (SA), s 2.

101 South Australia, *Parliamentary Debates*, Legislative Assembly, 24 August 1909, 76–97 (various).

102 *State Children Amendment Act* 1909 (SA), s 23.

103 South Australia, *Parliamentary Debates*, Legislative Assembly, 29 September 1909, 158.

104 South Australia, *Report of the State Children's Council for the Year ended June 30 1910*, Parl Paper No 66 (1910) 17.

105 Spence, above n 86, 106. Miss Cocks' comments, as reported in Spence's book, suggested that she visited some families at least several times over the course of a probation order, see 106–9.

Despite greater legislative support, by the end of the decade it was clear that the Adelaide Children's Court, whose role had been progressively expanded without a concurrent increase in funding, was under considerable financial strain. At an Interstate Congress of Workers Among Dependent Children, held in Adelaide in May 1909, members of the State Children's Council praised South Australian methods, but acknowledged the lack of funding for important initiatives, particularly in non-metropolitan areas. Spence argued that in the few years since the appointment of the first probation officer 'the results had been most remarkable', but that the lack of other probation officers was a 'weakness'.[106] Further, probation officers were only available in Adelaide. In country areas there was no-one at all 'to watch the child'.[107] Spence's comments highlighted one of the major limitations of the South Australian model. While Adelaide had a separate Court, paid officers and, increasingly, dedicated magistrates, country areas had nothing but separate times for hearings. Mr Gray of the Council noted that the Adelaide Court was now attended mostly by one particular magistrate, James Gordon, and in his absence 'men [who] had proved from experience [that they] were capable of dealing with children,' but the country areas were dependent on whoever attended the police courts.[108] One attendee, Mr Harker, recommended that all towns should have a dedicated magistrate, who 'would be a kind of father to the children of the district, and to whom the mothers could apply.'[109] In Adelaide the Court itself, which was still housed in the State Children's Council building, was also showing its age. In its 1909 report, the Council reported that 'more accommodation is urgently required. These premises are old and much infested with rats and … [and] the accommodation is most inconvenient and inadequate.'[110]

III The Court's Legacy

Adelaide may have had a Children's Court, but how many people outside South Australia knew of its existence? In his discussion of English children's court legislation, George Behlmer acknowledged the South Australian Court, but thought it insignificant on the international scale, a victim of Adelaide's small size and American campaigners' more sophisticated publicity machines. He argued '[w]ith the exception of a few brief notices in English newspapers … the Australian scheme remained far less visible than its slightly more recent counterparts in Chicago, New York and Denver.'[111] It is certainly true that the South Australian Court never gained the reputation of either Chicago or Denver internationally, though in Australia the three were often mentioned together. But to say that the Adelaide Children's Court had negligible impact outside its own borders is an under-estimation. The Court was publicised from the early 1890s, gained even wider recognition after 1900, and

106 *Dependent Children: Interstate Congress of Workers* (Adelaide: W.K. Thomas, 1909) 54.

107 Ibid 203.

108 Ibid 49.

109 Ibid 169.

110 South Australia, *Report of the State Children's Council for the Year ended June 30 1909*, Parl Paper No 70 (1909) 14.

111 Behlmer, above n 10, 242–3.

arguably had more concrete legislative influence in Australia and England than any of the American models. Word of the new court had spread widely as early as 1892. The State Children Council's report for that year noted proudly that the Adelaide Children's Court had attracted commentary in the *Review of Reviews*; the Nebraskan *Industrial School Courier*; the *Child's Guardian*, the journal of the National Society for the Prevention of Cruelty to Children ('NSPCC'); the London *Philanthropist*; and the annual report of the Howard Association. The notice in the *Child's Guardian* was written by Benjamin Waugh, NSPCC President and a long-standing supporter of separate tribunals for children. Waugh argued that '[i]n South Australia the experiment of such a court has been tried with immense advantages to the criminal and unhappy children of the colony … The time is well-nigh to make such a departure in the mother country.'[112]

The actual influence of the South Australian Court can be charted in more detail through an analysis of three comparable jurisdictions that established Children's Courts in the decade after 1900. In Victoria, a campaign for a separate Court, which began shortly after the Adelaide Children's Court was established in 1890, finally resulted in a *Children's Court Act* in 1906. In New South Wales, similar pressure led to the *Neglected Children and Juvenile Offenders Act* in 1905, which followed even more closely the South Australian example. In the United Kingdom, the Asquith Liberal Government introduced the *Children Act* in 1908, which provided for separate hearings and sentencing principles for juvenile offenders. South Australia was not the only model for any of these pieces of legislation. They all drew on their existing schemes for dealing with neglected children and young offenders, and they also looked to the American Courts for further inspiration. Nevertheless, the model of modified criminal procedure which these three Courts adopted was clearly based on that of Adelaide, reflecting both the widely circulated information about the Adelaide Children's Court and a close relationship between local reformers and South Australian campaigners like Spence.

A *Victoria*

The South Australian Court attracted interest in the neighbouring colony of Victoria from the moment of its establishment. On 14 November 1890, George Guillaume, Secretary of the Department for Neglected Children, gave a speech to the Australasian Charities Conference in Melbourne. Guillaume, already an advocate for separate sentencing principles for minors, the probation scheme and removing children from adult gaols, used the opportunity to advocate for a separate court for offending and neglected children. Basing his recommendations explicitly on South Australia, Guillaume suggested these children 'should … be dealt with by a special court, presided over … by an experienced stipendiary magistrate.' Prior to the court hearing, a Department agent should investigate the child's circumstances.[113]

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112 *Report of the State Children's Council for the Year ending June 30 1892*, above n 25, 17.

113 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* (Robert S. Brain, Government Printer, 1891) 103.

In country courts, children's cases should at least be heard apart from other matters. In addition, Guillaume recommended that children always be remanded separately from adults.[114] Guillaume reiterated his support for separate courts in his department's annual report for 1890, which 'strongly recommend[ed] the adoption of the like course for this colony.'[115] Guillaume argued that a 'special court' for neglected and offending youth, presided over by 'special magistrates,' would spare children 'the undesirable and injurious associations of the police court, and also of the lock up or … gaol.'[116]

Guillaume's interest in juvenile courts spurred on the establishment of a children's court reform movement, made up largely of men and women working for Melbourne's numerous private charitable organisations and youth associations, as well as a few sympathetic government officials. In August 1891 this coalition of reformers produced a report which recommended the establishment of a separate children's court in the city of Melbourne, 'where all cases of children be dealt with apart from all police court business and surroundings.' As in South Australia, in the suburbs or country areas where separate buildings were not available, children's matters should be heard before all other police court business, and again like Adelaide, the report also recommended that hearings be conducted *in camera*. Separate sentencing options were endorsed, prioritising education or monitoring at home. The report also suggested that 'lads charged with petty offences' could be whipped, either by a Court officer or parent.[117] The location of the Melbourne Court was not determined, although the Gordon Institute, a charity specialising in work placements and leisure facilities for adolescent boys, had offered earlier in the year to host a 'little court' to hear truancy cases.[118] Although the Victorian Government did not respond as enthusiastically as had been hoped to the proposal, successive secretaries of the Department for Neglected Children continued to agitate for change. In 1892 Guillaume's replacement, Thomas Millar, hoped that 'the very important reform lately brought into operation in South Australia, where children's cases are dealt with in a special court … will yet receive favourable consideration.'[119] The daily newspaper *The Age*, with its influential editor David Syme, also threw its weight behind the new court, publicising information about reformers' meetings and Juvenile Court publications.

Children's Courts did not progress further in Victoria in the 1890s, falling victim to the colony's severe financial depression and conservative governments unwilling to

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114 Ibid 105.

115 *Report of the Secretary of the Department of Neglected Children and Reformatory Schools for the Year 1890*, above n 23, 21.

116 Ibid 72.

117 'Treatment of Neglected Children – Recommendations to the Government', *The Age* (Melbourne), 4 August 1891, 6.

118 'The Care of Neglected Children – Deputation to the Government', *The Age* (Melbourne), 17 February 1891, 6.

119 Victoria, *Report of the Secretary of the Department for Neglected Children and Reformatory Schools*, Parl Paper No 35 (1893) 4.

incur extra expenditure. Public interest in a separate jurisdiction revived after 1900, however, with Adelaide once again a key inspiration. On 11 August 1900 *The Age* published a lengthy article on 'Juvenile Immorality.' Charles Strong, Minister of the Australian Church, suggested that young people should be removed from 'police courts, public houses and other places where temptation is particularly strong.'[120] In December 1900, the Victorian *Charity Review*, publication of the Charity Organisation Society, also came out in favour of children's courts, maintaining that 'it is not beneficial to catch a child and then propel him through the police court …'[121] The article drew attention to the establishment of a new juvenile court in Chicago, as well as the South Australian model.[122] In March 1901, the journal *Woman's Day*, edited by Spence's friend and fellow campaigner, the feminist Vida Goldstein, published a letter from Spence which advocated strongly for the South Australian 'court of quiet inquiry', rather than the police court 'with its low, degrading surroundings.'[123] The Adelaide Children's Court was given further and very influential publicity in an article by the Melbourne journalist Alice Henry, another friend of both Spence and Goldstein. 'A Children's Court of Justice,' published in *The Argus* on 12 September 1903, documented a typical afternoon's session at the Adelaide Children's Court, which Henry had observed on a visit to South Australia. Henry emphasised the Court's informal setting, 'a plain little room in a plain building', which resembled a school room more than a court. The Court was held in private. Lawyers rarely attended and 'desperadoes' who might distract the child were banned.[124]

Victorian reformers' efforts were finally rewarded when the Bent Government agreed somewhat reluctantly to introduce legislation establishing children's courts in mid-1906. The *Children's Court Act 1906* (Vic), which passed parliament in December, decreed that '[a] Children's Court … shall be held at every place within the State of Victoria where a Court of Petty Sessions is to be held.'[125] Like the South Australia model, the Victorian Act established jurisdiction over both neglected and offending children, with an upper age limit of 17,[126] although it was more limited in some respects than its predecessor. Unlike their South Australian counterparts, Victorian children's courts were all allowed to sit in court buildings, albeit at different times from ordinary business, and either an ordinary or 'special' magistrate could hear children's cases.[127] In its sentencing provisions, however, the Victorian Act was more expansive. Section 7 allowed the government to appoint

120 'Juvenile Immorality – Its Extent, Causes and Remedies', *The Age* (Melbourne) 11 August 1900, 13.

121 *Charity Review* (Melbourne) Volume 1, No 4, December 1900, 5.

122 Ibid.

123 Catherine Helen Spence, 'Children and the State in South Australia', *Woman's Sphere* (Melbourne), March 1901, 59.

124 Alice Henry, 'A Children's Court of Justice', *The Argus* (Melbourne), 12 September 1903, 4.

125 *Children's Court Act 1906* (Vic) s 6.

126 Ibid s 2.

127 Ibid.

probation officers and s 10 noted that 'any child may be released by the Court on probation', although other sentencing options were retained. Imprisonment for children under 12 was abolished, and children over 12 could be sentenced only to a maximum of six months' imprisonment.[128] The Act also mandated that children were to be remanded in separately from adults.[129] John Mackey, Minister for Lands, who introduced the Bill, argued that the Act was designed 'to cure an evil which undoubtedly exists at the present time [where] children of immature age … are hauled before the Courts, and get accustomed to the Courts and the Court procedure.'[130] South Australia was less cited in second reading speech debates than the more recent courts in Denver and New South Wales, although William Watt, Liberal MP for Essendon and a cautious supporter of the Bill, reminded his colleagues that 'the children's court system had [already] become firmly implanted in … South Australia.'[131]

B *New South Wales*

As in Victoria, in New South Wales the establishment of Children's Courts followed agitation by groups of charitable reformers, with the support of sympathetic politicians and government employees. The first official mention of the South Australian regime in New South Wales came in 1897, when Captain Frederick Neitenstein, newly appointed Comptroller-General of Prisons, recommended the establishment of separate tribunals for juvenile offenders in his annual prisons report. Neitenstein, formerly superintendant of the training ships *Vernon* and *Sobraon*, cited the Adelaide Children's Court as his inspiration.[132] The campaign for Children's Courts in New South Wales accelerated in the early 20th century. In August 1902, an alliance of boys' brigades and charitable institutions attended upon Bernhard Wise, Attorney-General in the reformist See Government, to request the introduction of legislation regulating street selling by minors. Wise agreed that a licensing system was necessary, and announced that he had been circulating a draft Bill dealing not only with neglected children, but the establishment of Children's Courts. He argued that 'based on the experience of South Australia, … [i]t was in the highest degree desirable that children should be kept as far as possible from the tainting influence of police courts.'[133] Neitenstein, who was given a copy of the draft Bill in acknowledgement of his expertise in the area, was interviewed by the *Sydney Morning Herald* a few days later. As anticipated, he threw his support behind the new legislation, agreeing that 'the establishment of courts to which children could be brought instead of to the police courts,'

128 Ibid ss 26(1), 27(1).

129 Ibid s 18(4).

130 Victoria, *Parliamentary Debates*, Legislative Assembly, 28 November 1906, 3201 (John Mackey).

131 Ibid, 3207 (William Watt).

132 Cited in New South Wales, *Parliamentary Debates*, Legislative Council, 15 October 1902, 3362 (Bernhard Wise).

133 'Neglected Children – Outlines of a New Bill – The Attorney-General's Proposals – Deputation of Boys' Brigades', *Sydney Morning Herald*, 27 August 1902, 6.

would remove young people from 'the contaminating influence' of the ordinary court system.[134]

In September 1902 Wise introduced the legislation into the Legislative Council. Like the South Australian Act, the new statute was entitled the State Children Bill, and in other respects also it mirrored its South Australian predecessor. The Bill, as Wise stated in his second reading speech, established 'sole and exclusive jurisdiction over all infants, whether under this law or the common law or any statute.'[135] The Bill provided for all neglected children and juvenile offenders under 18 to be dealt with by a 'special court'. In Sydney and large towns, this court would sit in separate premises from the police court, and would be held in private. In smaller areas, the court would sit at different times from the police court. The Bill would be administered by the State Children's Relief Board, the government agency that dealt with applications for relief and committals to institutions, and children could only be made state wards by the children's court.[136] Although obviously drawing on South Australia, Wise in fact cited Massachusetts as the earliest example of a separate jurisdiction.[137] Arthur Renwick, member for East Sydney prior to his life appointment to the Legislative Council, promptly interjected that there was no need to go as far as the United States for relevant models. '[I]n South Australia they have had these Courts for a considerable period, and it is there that we shall have to go to learn our lessons on the subject,' he pointed out.[138] The Bill was endorsed by charitable workers,[139] but hotly debated amongst parliamentarians on both sides of politics for its extensive definition of neglect, the role of the State Children's Council, the age limit of the jurisdiction and whether children's courts should be heard in private.[140] Ultimately, the Bill failed to pass the Legislative Assembly the following year after the Opposition speaker, John Charles Fitzgerald, argued successfully that the Legislative Council was out of order for appropriating finances in the Bill.[141]

Following an unsuccessful attempt to pass similar legislation in 1903, in July 1905 Charles Wade, Attorney-General in the Carruthers Government, introduced new legislation, the Neglected Children and Juvenile Offenders Bill 1905 (NSW), this time directly into the Legislative Assembly. This Act, which passed both Houses in September 1905, was significantly modified, reducing the scope of the term

134 'Neglected Children – Interview with Captain Neitenstein', *Sydney Morning Herald*, 29 August 1902, 7.

135 New South Wales, *Parliamentary Debates*, Legislative Council, 24 September 1902, 2931 (Bernhard Wise).

136 Ibid, 15 October 1902, 3357–8 (Bernhard Wise).

137 Ibid, 15 October 1902, 3362 (Bernhard Wise).

138 Ibid, 15 October 1902, 3650 (Arthur Renwick).

139 See reference to charitable agitation in ibid, 15 October 1902, 3354 (Bernhard Wise).

140 See debates in ibid, 15 October 1902, 3354–67, 22 October 1902, 3643–56, 29 October 1902, 3902–12.

141 'State Children Bill – Action of the Legislative Assembly – Statement by the Attorney-General', *Sydney Morning Herald*, 18 September 1903, 8.

'neglect',[142] leaving control of institutions with the Minister for Public Instruction,[143] and bringing the age limit of the jurisdiction down from 18 to 16.[144] In its provisions for children's courts, however, the new Act was little changed. The Act provided for the establishment of 'special courts, to be called children's courts', which were to be presided over by specially trained magistrates. Children's courts could be held in a separate building, although this was not mandatory. If held at the local police court, they were to be held at different times from other court business. Hearings were private and the courts were to be held, if possible, near to children's remand facilities, or 'shelters'.[145] The Act, again like the South Australian model, modified criminal procedure rather than attempting to incorporate American practices. The New South Wales Children's Court had jurisdiction over two categories of youth under 16; neglected children and children charged with all summary and indictable offences except homicide.[146] Neglected and offending children could be released on probation, committed to the care of an asylum or suitable person, or committed to an institution. The Children's Court had the additional power to sentence children found guilty of criminal offences 'according to law.'[147] Imprisonment was not outlawed, but the Act mandated that the Minister be notified in such cases, and the Minister had the power to send that child to an institution instead.[148] The *Sydney Morning Herald* also strongly supported the new legislation. In January 1905 it reprinted Alice Henry's article on the Adelaide Children's Court,[149] followed by an article on the New York Juvenile Court in July 1905.[150]

In addition to serving as a legislative model, the Adelaide Children's Court was clearly the inspiration for the practical operation of the Sydney Children's Court, which began sitting in October 1905. On 2 October 1905 the *Sydney Morning Herald* noted that A N Barnett, the City Coroner, had been appointed as the first 'special Magistrate' of the new Court, and outlined the arrangements for hearings. Like the Adelaide Children's Court, the Children's Court in Sydney would sit away from the police court, at Ormonde House in Paddington, the depot for neglected children. To avoid the 'appearance of a court', the paper noted, Mr Barnett would 'sit in a room furnished with a table and a few chairs, but [with] no provision for a gaping public.'[151] *Herald* journalists were also present at the opening of the Court on 3 October 1905, and noted, in accordance with the plan, that the new Court was

142 *Neglected Children and Juvenile Offenders Act* 1905 (NSW) s 4.

143 Ibid s 7.

144 Ibid s 4.

145 Ibid ss 9–13.

146 Ibid ss 24, 26.

147 Ibid s 24.

148 Ibid ss 24, 30.

149 Alice Henry, 'Juvenile Courts', *Sydney Morning Herald*, 25 January 1905, 11.

150 'Children's Courts', *Sydney Morning Herald*, 6 July 1905, 10.

151 'Children's Courts – Magistrate Appointed', *Sydney Morning Herald*, 2 October 1905, 10.

constituted in 'a cosy little room at Ormonde House'.[152] The magistrate sat 'at the head of a long table', and Dr Mackellar, President of the State Children's Relief Board and A W Green, a boarding out officer, also attended the hearing. 'Two or three constables in plain clothes' and the children (standing) and their parents made up the other attendees. Barnett noted that the purpose of the Act was to 'reclaim, assist and encourage, by kindly methods, those children who had not sinned against the civil law but whose mode of life suggested that their doing so was only a matter of time, as well as to reclaim and reform those who had broken the law …'[153] As in South Australia, Barnett adjourned the further hearing of the case for a few days to allow a report to be prepared about the three boys who were the Court's first subjects.[154] The friendly atmosphere was promptly put to the test by the escape of the three boys from custody that evening, Ormonde House not yet having special security arrangements.[155]

C *United Kingdom*

England followed a similar pattern to Victoria and New South Wales. Early publicity about the new jurisdiction in the 1890s was followed by a period of hiatus. Interest in Juvenile Courts revived in the early 20th century, before culminating in legislative intervention in 1908. As we have already seen, a number of prominent British organisations had documented the existence of the new court as early as 1892. The Howard Association, England's premier prison reform league, observed in its 1891 annual report that '[in providing] that juvenile offenders awaiting trial shall not be kept in lock-ups or at police courts, but in some other suitable place … the colony [of South Australia] is in advance of the mother nation and of other nations.'[156] The Adelaide Children's Court was also cited in the Howard Association's publication of papers from the World Prison Congress, held in Paris in 1895 and attended by delegates from Europe, Britain and the Americas. In the 'Juvenile Offenders' section, a M. Moldenhauer described the appointment of special magistrates to hear children's cases in Warsaw as well as arrangements made by jurisdictions in America and Australia to avoid remanding children and adults together. He observed '[i]n this matter, Warsaw and Massachusetts and some of the Australian colonies are in advance of Great Britain'.[157]

The Adelaide Children's Court gained more widespread attention after 1903, in the wake of political agitation about children's wellbeing and national fitness that

152 'The Children's Court – a Novel Experiment – opened by Mr A. N. Barnett', *Sydney Morning Herald*, 4 October 1905, 6.

153 Ibid.

154 Ibid.

155 They were found at home that evening and recaptured, although the youngest boy escaped again two days later, see ibid and 'Children's Court', *Sydney Morning* Herald, 9 October 1905, 9.

156 *Report of the State Children's Council for the Year ending June 30 1892*, above n 25, 17.

157 *The Paris Prison Congress 1895 Summary Report* (Howard Association, 1896) 11.

followed a public scandal about the poor physical condition of working-class Boer War recruits.[158] On 27 October 1903, *The Times* printed a letter from Florence Davenport-Hill on Children's Courts in Australia. Davenport-Hill was a prominent reformer who had campaigned since the 1860s against the confinement of young people in workhouses, and the author of the well-known *Children of the State*,[159] which promoted the boarding out of such children. She was also the cousin of Emily Clark, had visited Australia herself,[160] and had considerable knowledge about Australian developments. Davenport-Hill's letter included extracts from Henry's article, and she noted that she had written to *The Times* in the hopes that 'this clear account of [the children's court's] practical workings in another part of the Empire may aid in establishing it in the mother country.'[161] The article sparked immediate interest amongst children's welfare campaigners across Britain. In July 1904 the English Inter-Departmental Committee on Physical Deterioration included a recommendation that juvenile offenders be dealt with in separate courts by 'specially selected magistrates.'[162] The State Children's Association, a group of prominent children's charities, adopted the establishment of separate Children's Courts as a policy platform the same year.[163] In the absence of national legislation, a number of cities began to set up their own tribunals. By 1906, there were de facto Children's Courts operating in Manchester, Birmingham, Dublin, Belfast, Cork and Glasgow, amongst others, and some London boroughs scheduled children's cases at different times.[164] Alice Henry, who was travelling through Britain in late 1905, visited a number of these courts, reporting enthusiastically on their establishment at home. She may have provided practical advice as well.[165]

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158 On this 'crisis' see Richard Soloway, 'Counting the Degenerates: The Statistics of Race Deterioration in Edwardian England' (1982) 17 *Journal of Contemporary History* 137, 137–8, 147–51; Daniel Pick, *Faces of Degeneration: A European Disorder, c. 1848–c. 1918* (Cambridge University Press, 1989) 185–6; Vanessa Heggie, 'Lies, Damn Lies, and Manchester's Recruiting Statistics: Degeneration as 'Urban Legend' in Victorian and Edwardian Britain' (2007) 63(2) *Journal of the History of Medicine and Allied Sciences* 178, 179–81.

159 Florence Davenport-Hill, *Children of the State* (Macmillan and Co, 1868).

160 Richards, above n 12, 17.

161 Florence Davenport-Hill, 'A Court of Justice for Children', *The Times* (London), 27 October 1903, 14.

162 Inter-Departmental Committee on Physical Deterioration, *Report of the Inter-Departmental Committee on Physical Deterioration*. Volume One – Report and Appendix. (Wyman & Sons, 1904) 90 (recommendation 40).

163 'Separate Courts of Justice for Children', *The Times* (London), 3 October 1904, 10.

164 Spence, *State Children in Australia*, above n 86, 52; Diane Kirkby, *Alice Henry – The Power of Pen and Voice: The Life of an Australian-American Labor Reformer* (Cambridge University Press, 1991) 38. Behlmer, though, also notes the influence of Denver in Birmingham, see Behlmer, above n 10, 244. There is a list of the early British Children's Courts in Florence Davenport-Hill's letter, 'Children in Police Courts', *The Times* (London), 20 June 1906, 17.

165 See for example Henry's report about the Children's Court in Glasgow, in 'Children's Courts', *The Australian Herald* (Melbourne), 1 December 1905, 42.

The Adelaide Children's Court was also cited as a major inspiration during the debates leading up to the enactment of the *Children Act*,[166] a comprehensive piece of legislation that passed Parliament in 1908 as part of the new Liberal Government's social reform initiatives.[167] Adelaide was, again, not the only influence on this Act. George Behlmer has noted how British reformers were influenced by the American Courts and their probation systems, especially the charismatic figure of Ben Lindsey.[168] Nevertheless, an openly expressed motivation behind the government's decision to legislate for a separate jurisdiction was to keep up with its former colonies. On 24 March 1908, in the Commons debate following the Bill's second reading speech, Thomas Shaw, Lord Advocate, noted (somewhat inaccurately) that juvenile hearings had precedents in the United States from 1863, Canada from 1884 and South Australia from 1895 and that '[the] example from our dominions across the seas is worth following.' He maintained that '[i]n all these cases the record is unfailing that the effect of separate treatment of the children … has been wholly helpful.'[169] On 1 April 1908, Mr Maclean, MP for Bath, likewise argued that '[t]hese things had been dealt with effectually in America, even in Egypt, and certainly in Australia, and thousands of young people had been rescued from an undesirable life and surroundings.'[170] Perhaps partly due to the colonial imperative, the *Children Act* had bipartisan support from the beginning. Even the conservative editor of the *Times* offered his support for Children's Courts and other measures to protect children, albeit regretting 'that it should be necessary for the criminal law to meddle with such matters.'[171] He believed that the Bill was an 'honest attempt to cut at the root of certain evils', given that '[t]he hope of the future is in the children.'[172]

Although Australia was only one of the countries mentioned in these debates, like the Australian courts the new English jurisdiction modified the criminal law rather than adopting new forms of civil procedure. Part V of the *Children Act* established separate juvenile courts for young offenders. Section 111 mandated that children under 14 and young persons between 14 and 16 who were charged with criminal offences should have their charges heard 'in a different building or room' or 'on different days or at different times' from 'ordinary sittings.'[173] The courts were held

166 *1908* (UK).

167 On this see Behlmer, above n 10, 245; Kate Bradley, 'Juvenile Delinquency and the Evolution of the British Juvenile Courts, c. 1900–1950' (2008) 14 *History in Focus* 1, 1–8; Kate Bradley, 'The Children Act 1908: Centennial Reflections, Contemporary Perspectives' (2009) 68 *History Workshop Journal* 303, 303–5.

168 Behlmer, above n 10, 244 – 245.

169 United Kingdom, *Parliamentary Debates*, House of Commons, 24 March 1908, vol 186, col 1260 (Thomas Shaw). The United States example referred to Massachusetts, the Canadian presumably to Ontario, although as we have seen that was a somewhat later development.

170 United Kingdom, *Parliamentary Debates*, House of Commons, 1 April 1908, vol 187, col 579 (Mr Maclean).

171 'The Children's Bill – Editorial', *The Times* (London), 15 February 1908, 9.

172 'The Children's Bill – Editorial', *The Times* (London), 3 April 1908, 11.

173 *Children Act* 1908 8 Edw VII Ch. 67, s 111(1).

in private, although the press were admitted.[174] Again like its Australian predecessors, s 102 abolished any form of imprisonment for children as well as the sentence of 'penal servitude' for young persons, while s 107 set out a variety of sentencing options for youth, including release on probation.[175] Children on remand were to be held at different facilities from adults.[176] The *Children Act* was distinctive from its Australian equivalents in one key respect. Unlike South Australia, New South Wales and Victoria, children brought in as neglected children under the *Industrial Schools Acts*[177] were not specifically included in the British scheme of separate courts. They were dealt with separately in Part IV of the *Children Act*, which did not mandate that such applications should be heard in a juvenile court.

IV Conclusion

This article has explored two issues: whether the Court established in Adelaide in 1890 can legitimately be called the first 'juvenile court' in the English-speaking world and the extent of contemporary knowledge about and legislative influence of the Court. The Adelaide Children's Court, as we have seen, was very much a work in progress in its first 20 years. From its outset it was promoted as a welfare initiative and it began operating on fairly shaky legal foundations in 1890. The first legislative intervention in 1895 created new problems even as it established a concrete basis for a separate jurisdiction. Subsequent legislative amendments in 1900 and 1909 expanded further the Court's jurisdiction and its sentencing options, although without allocating funding commensurate with the Court's new responsibilities. The Court shared some features with its better-known American cousins, but in other respects was quite different, particularly in its approach to criminal responsibility and the use of probation.

Difference, though, does not negate the achievements of the South Australian Court. From 1890, most charges against children in the city of Adelaide were heard at a separate, closed, court, not located in a legal building, with different procedures and sentencing options. While individual features of this Court had predecessors, it was South Australia that first combined them into a recognisable juvenile jurisdiction, almost a decade before the equivalent development in Chicago. The Adelaide Children's Court did not gain the huge contemporary publicity of either Chicago or Denver, but it was not as obscure as some later commentaries have suggested. From a very early stage, the Adelaide Court attracted attention in other Australian colonies, Britain, parts of the United States and Europe. After 1900 it exercised a strong influence on legislative schemes in Victoria, New South Wales and the United Kingdom, so much so that these courts might be described as examples of

174 Ibid s 111(4).

175 Ibid s 107(c).

176 Ibid ss 95, 108.

177 These Acts were: the *Industrial Schools Act* 1857 20 & 21 Vict, Ch 48; *Industrial Schools Act* 1866 29 & 30 Vict, Ch 118; *Industrial Schools Act Amendment Act* 1880 43 & 44 Vict Ch 15; *Reformatory and Industrial Schools Act* 1891 54 & 55 Vict, Ch 23; *Industrial Schools Acts Amendment Act* 1894 57 & 58 Vict Ch 33.

a distinctive 'Anglo-Australian' model of juvenile jurisdiction. Further work could profitably be done to see what influence the Court might have had on reformers in the United States and other former British colonies, and, at home, how the legal profession and other parties reacted to this avowedly welfare legislation and the expanding role of the State Children's Council. Even so, it is fair enough to conclude that the Adelaide Children's Court was indeed the 'pioneer' of which its founders boasted.