Some aspects of the early history of child protection in Australia

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Child protection has both a short and a long history. With early roots in the animal welfare movement of the 19th century, the modern child protection system has really only developed in the past 30 years. As an “insider” who played a critical role in shaping and refining key aspects of the child protection system in Victoria and more broadly in Australia, Justice Fogarty provides his perspectives on some of its rich history. In the 1988 Fogarty Review, Justice Fogarty recommended that the role of the police in investigating notifications of child abuse in Victoria should be phased out and the government should have sole responsibility for receiving reports of suspected child abuse. These changes made Victoria consistent with other states and territories, where the relevant child/family welfare department has full responsibility for the statutory child protection service.

Transportation

Manning Clark, in his A History of Australia, relates that “early on a golden summer morning of 13 May [1787] a fleet of eight ships … together with three storeships, weighed anchor in Plymouth harbour, and sailed down the channel for the high seas” (1971, p. 81).

Thus, the First Fleet sailed from England on the journey to Botany Bay and the establishment of a penal colony in the newly discovered continent of the south. There were 736 convicts (the first of almost 160,000 transported to Australia over the next 70 years). A most striking feature is that, aside from children of the garrison, children who were with their convict mothers and children born of convict mothers during the eight-month voyage, there were at least four children in the First Fleet who were themselves convicts—John Hudson, Elizabeth Hayward, and George and Elizabeth Youngson.

In October 1783, John Hudson, then aged 9, an orphan and sometime chimney sweep, was charged with burglary. At that time, a child under 7 years could not be tried for a criminal offence, and for children between 7 and 14 years, there was a presumption of innocence. Beyond that, the child was treated as an adult. John was tried at the Old Bailey in December, having been in prison with adult male prisoners during that two-month period, there being no concept of juvenile justice or of segregating youthful offenders. He was not represented at his trial, legal assistance not being available except perhaps if a point of law arose.

The jury returned a verdict of guilty of entering and stealing, but not of burglary—a fortunate circumstance because the latter conviction may have attracted the death penalty. John was sentenced to seven years transportation. For the next four years until he was transported in the First Fleet, he remained as one of an increasing number of prisoners living in the hulks. The prison population had built up due to the closure of the American colonies as a transportation destination, which resulted in years of uncertainty about a satisfactory alternative.
On arrival in Australia, Governor Phillip had the immense task of conducting a penal colony remote from the rest of the world. It also meant a confrontation at all levels between the values of 18th century Europe and those of Australia’s long-term inhabitants—a clash of values that resonates down to the present time and which will be referred to again later.

Shortly after the fleet’s arrival, John Hudson was transferred to Norfolk Island. This was part of an exploratory trip under Lieutenant King as it was not yet the notorious penal settlement it was later to become. But the records state that in February 1791 John was punished “with 50 lashes for being out of his hut after 9 o’clock”.

The stories of Elizabeth Hayward and George and Elizabeth Youngson are sketchy and can briefly be related. Elizabeth Haywood, then aged 13, stole clothing to the value of 7 shillings from her employer. She was sentenced to seven years transportation and shortly afterwards was placed on board the First Fleet to await its departure. After arrival, she was assigned to the household of Reverend Johnson, the chaplain of the First Fleet. In February 1789, she was sentenced to 30 lashes for “insolence”. She was then aged 14.

Little is known about the Youngson children. George, aged 13, was convicted with his sister, Elizabeth, who was then 14, of burglary, and both were sentenced to death. At the last minute that was commuted to transportation and they were among the last arrivals aboard the First Fleet. Shortly after his arrival, George was among those children removed from Sydney to Norfolk Island. Otherwise, they seemed to have merged into the new Australian settlement.

The transportation of children continued in the Second Fleet, which carried six children convicts between the ages of 9 and 12. Children continued to be transportees until very late in that process, finally ending in 1853 in the eastern colonies and in 1868 in Western Australia.

Of course, “transportation”—in the more polite sense of the removal of children from England to the colonies and states—continued until quite recent times, especially during the Second World War. Many thousands of children—described, often incorrectly, as orphans or abandoned—were
and later through writings of Dickens. The scene generally in London that would have been familiar to these children is portrayed to us through paintings of Hogarth and later through writings of Dickens.

Towards protection of children

Western Europe was a rather brutish society, with little attention paid to the ininfirmities or rights of children. Child protection as we would understand it, even in its most basic form, is a relatively recent social concept. Until the 19th century, Western society showed little interest in and had no particular policies for protecting children from society generally or from their caregivers.

By the 16th century, rapid social and economic changes had taken place in English society, leading to greater poverty, vagrancy and unemployment. The Poor Relief Act 1601—the poor laws—imposed on each parish responsibility for the support and employment of the destitute. Poverty was regarded as akin to sin and a breeding ground of crime. This scheme introduced a harsh regime of begrudging support and protection, often cruelly administered, for the abandoned and destitute child. This continued until at least the end of the 19th century when more enlightened attitudes began to prevail, but which, as late as the middle of that century, were still vividly being portrayed by Dickens and others.

In those times, society was not concerned with child abuse itself. No concept of the protection of children from the misuse of parents or guardians existed. Society’s concerns were essentially twofold: the protection of society and its property against children, who were an increasing criminal class; and the begrudging need for and cost of basic support for these children, who were seen as a threat to orderly society.

Society did not contemplate intervening in any way into the standard of care provided by parents. It essentially identified these problems as arising in the lower classes, which had been characterised for centuries as being brutish and incapable of love and care for their offspring and having the innate absence of qualities of industry and religion. These attitudes bred the past and present conviction that child abuse was and is essentially concentrated in the lower orders of society.

It was not until the 19th century that English society concerned itself with saving children. Even then, in reality, society was concerned with saving itself from the public actions of abused or deserted children, and especially the protection of property.

The story of change over time is a slow, uneven and frustrating one. It starts with the assertion of absolute authority by the father and a denial of the right of the state to interfere. It ends with a wide range of powers—legislative, judicial and administrative—to protect children and advance their welfare, aligned with social, economic and educational services designed to advance the safety and wellbeing of families and children.

The courts had little influence in child abuse situations. At common law, the care and control of at least legitimate children was clear-cut. The father’s position was effectively unchallengeable other than in the most exceptional cases. It was he who determined all aspects of the child’s life, even though it was unlikely that he would be involved in the daily minutiae of his or her life. Questions of education, basic support, marriage and employment fell entirely within his province and were not able to be challenged by the mother and was rarely was challenged by the courts.

The parens patriae jurisdiction developed in parallel with the common law. It arose from the prerogative power of the Crown to intervene to protect any person with a disability who may have needed its protection. Gradually, the jurisdiction devolved to the chancellors and courts of equity but, at least until the 19th century, it was rarely concerned with what today would be described as child abuse cases. Indeed, it was confined entirely to the upper and middle classes; that is, it was concerned with issues of property and its control, especially inheritance, and the scandals that arose from the actions of fortune hunters and their speculative marriages to heiresses (especially those resorting to marrying in places such as Gretna Green)
It would be difficult to imagine that jurisdiction being used to protect a young working-class child from serious abuse. Access to it required literacy and wealth. For present purposes, its significance lies in its longer-term influence over the adjudication of custody cases and the increasing emphasis both by the courts and the legislature on the interests of the child as the paramount consideration.

It is not especially surprising that there was no public outcry or concern, even by the reform-minded, about the spectacle of children at such tender years as John Hudson being convicted, transported from his native country to the other side of the world and left in the most primitive circumstances.

Despite the elegance of the arts, the development of sciences and the revolutionary movements across Europe after the French Revolution, Western society by the end of that century was still essentially a brutal one. Public hangings were common and were spectacles to be enjoyed, there was a shocking death rate for young children, with many babies abandoned at birth, and there was an absence of educational and social welfare structures for any but the wealthy. Children were put to work at the earliest age to make their expected contributions to the support of the family, but in totally unregulated circumstances. England only extricated itself from involvement in the slave trade in 1807 and it remains a remarkable circumstance that slavery continued and flourished in the United States for another 60 years.

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The first legislative attempt in England to alter the father’s virtually absolute rights was the *Custody of Infants Act 1839*, which empowered courts to make orders giving custody of a child up to the age of 7 to the mother. In 1873, this was amended to extend it to a child up to the age of 16. However, these legislative changes were conservatively approached by the courts. In *Re Agar-Ellis*, the English Court of Appeal said:

> This court holds this principle—that when, by birth, a child is subject to a father, it is for the general interest of families, and for the general interest of children, and really for the interest of the particular infant, that the Court should not, except in very extreme cases, interfere with the discretion of the father, but leave to him the responsibility of exercising that power which nature has given him by the birth of the child. *Agar-Ellis v. Lascelles*, 1883, 24 Ch. D. 317, 334

In the meantime, namely in 1857, legislation had been passed in England giving the courts the power to grant a divorce. In the centuries leading up to that time, the ecclesiastical courts in England had acquired complete jurisdiction over matrimonial matters although, for relevant purposes, the jurisdiction was confined to nullity (although the grounds were expansive) and judicial separation. There was no provision in canon law for divorce, because this was regarded as contrary to Christian doctrine. Divorce could only be obtained by a private Act of Parliament—an expensive and exclusive process. Percy Joske, in his great work, *Matrimonial Causes and Marriage Law and Practice in Australia and New Zealand*, said that “obtaining a divorce by parliamentary process was a luxury, which only the extremely rich could afford and even the moderately opulent had to forego” (1969, p. 197).

In the two centuries leading up to 1857, there were 250 such private Acts in England (about one per year), of which nine were granted on the petition of the wife.

In Australia, ecclesiastical courts were not established, and only one petition to parliament for divorce was lodged in the colonies. That was on behalf of a wife in New South Wales, brought forward by W. C. Wentworth. The Act of divorce was passed, but ultimately it was not given royal assent.

By the end of the 19th century, all the colonies in Australia had passed divorce legislation and this continued to be the case until 1961, when divorce was taken over by the Commonwealth. However, it would be entirely misconceived to consider that the passing of divorce legislation either in England or in Australia had much to do with the rights of children or even remotely with the question of child abuse. The divorce courts were granted power to make custody orders in relation to children, but that power was exercised in parallel with the ways in which custody cases in non-divorce situations were dealt with.

However, by the 20th century, legislation in both England and Australia had moved towards the principle that decisions in relation to custody of children were to be determined on the basis of the best interests of that child and not from any preconceived position of the superior rights of one parent. The courts slowly adopted these changes.

While allegations of abuse of the child by either party could form a basis for determining that child’s custody, the reality was that there were remarkably few such cases. The courts were reluctant to deal with them and ill-equipped to do so. In addition, and in particular in the earlier years, access to divorce proceedings was confined to the wealthy. For the average family, issues of custody were settled in pragmatic ways or sometimes through magistrate’s courts on the hearing of maintenance applications. In that context, the question of abuse of the child by a party had varying degrees of significance, but only in an indirect way.

**The United States and England**

The consideration of child abuse issues and the steps taken to protect the child from the continuance of that behaviour have been the subject of a long and painful development. This development called for specific and, at the time, confronting ideas and legislation that challenged entrenched social values.

The 19th century saw parallel problems and responses to this on both sides of the Atlantic. Urbanisation and the Industrial Revolution meant dramatic movements of the population to the cities, the extension of slums, the proliferation of factories that attracted cheap child labour, and extraordinary personal abuses.
The early American colonies inherited the English poor law tradition. The primary methods of protection for abused or abandoned children were through apprenticeships to a master or placement in a poor house, where children mixed indiscriminately with adult paupers and the insane. By the latter part of the 19th century, the number of children in these institutions had reached alarming levels, but the problem of what to do with them was not easily solved. Court intervention was rare.

The reform movement began firstly with the establishment of refuges to which courts could commit neglected, abandoned or vagrant children. The forerunner of the various child protection societies was the establishment of the New York Children’s Aid Society in 1853, and similar societies were soon established in other American cities. But it was the development of the American Society for the Prevention of Cruelty to Animals and its association with the dramatic and widely published case in New York of Mary Ellen Wilson that provided the catalyst for major reform.

Henry Bergh, President of the Animal Protection Society, was approached to assist in relation to the circumstances of Mary Ellen. She was a 10-year-old girl who had been indentured to foster parents who treated her most cruelly.

The generally received history, but one which appears to be partly apocryphal, is that, there being no laws relating to cruelty to children, the Animal Society intervened on Mary Ellen’s behalf, arguing that she was a member of the animal kingdom and thus entitled to the protection of the animal protection laws. The reality seems to be that the case was not brought by the Animal Society; rather it was initiated by officers of that society in their personal capacities, seeking redress from the court by way of an analogy with the animal cruelty provisions. In any event, the outcome was that Mary Ellen was placed in an orphanage and one of her carers was imprisoned. In the meantime, the case had become a cause célèbre, attracting widespread public attention.

One consequence was that the New York Society for Prevention of Cruelty to Children was established in 1874, and similar societies appeared in other American cities in the following decades. This in turn gradually led in the United States, over the decades at the end of the 19th century, to child protection legislation and the establishment of juvenile courts specific to these cases. This first wave of child protection legislation followed a similar pattern in Canada from 1893 onwards.

As with the United States, the history in England was slow and incremental. There could have been little doubt about the gravity of the situation or the circumstances in which children were the subject of abuse—both outside the home and within it—but there was a marked reluctance to interfere with conduct within the home, and in particular with the position of authority of the father.

Consequently, the reform process directed itself firstly to the externals, that is, abusive situations outside the home that could be dealt with without intruding inside the home. This process was as much influenced by society’s concerns about abandoned and neglected children and their potential for crime as it was by a dawning recognition of the individual rights of children and their entitlement to special protection.

The Industrial Schools legislation of the 1850s and 1860s were attempts to house vagrant and offending children and provide them with some education, but were largely unsuccessful, as was the Elementary Education legislation of the 1870s. Up to that point, it seemed doubtful that specific child protection legislation, seen by many as an invasion of the family, would ever be passed. Lord Shaftesbury in 1881 dismissed the possibility of Parliament intervening in an area “of so private, internal and domestic a character as to be beyond the reach of legislation”.

A seminal factor was the foundation in 1883 of the Society for the Prevention of Cruelty to Children, a development influenced by the American experience. Similar societies were formed in other English cities, and ultimately the National Society for the Prevention of Cruelty to Children was established, with Queen Victoria as its patron.

The agitation was successful with the passing of the Prevention of Cruelty to and Protection of Children Act in 1889. It created an offence for any person who had the custody or control of a boy under 14 or a girl under 16 wilfully mistreating, neglecting or abandoning that child. Upon conviction, a court could commit the child to the charge of another person. The Protection Society’s inspectors were authorised to investigate cases and remove children. At that time, it was necessary to convict the carer—a prerequisite that has long disappeared from child protection legislation—although legislation continues to provide for prosecutions in some circumstances.

**Early Australian developments**

The history of child protection in Australia followed a somewhat similar path, except that initially the defining forces were different. Australia was established as a penal colony and the fleets brought with them a number of children as convicts or as children of convicts. It was not long before abandoned and neglected children became a serious problem. The result was that, very early in the colony’s life, Governor Phillip had to arrange for the boarding out of those children to approved families, and the establishment of orphanages.

Female factories were also established as places of confinement and compulsory labour for convict women and their young children, as an alternative to assignment to free settlers. Apprentice schools and female factories were established early in the 19th century in Van Diemen’s Land, but in the harsh environment that prevailed there the outcomes were uniformly distressing.

The gold rush, in the 1850s in the eastern colonies and later in the west, had a tremendous social and economic
impact, and led to a large increase in the number of destitute children.

Although Australia did not experience an Industrial Revolution in the same sense as America or England, nevertheless by the latter part of the 19th century there were significant movements of the population into the cities who were attracted by the hope of work in factories. However, with them came the usual abuses of an unregulated system, including child labour. Slums, with their quota of neglected and abused children, sprang up. This aspect was worsened by the circumstance that the last decade of that century was one of severe economic depression in Australia. This threw large numbers of wage earners out of employment and, with the absence of any form of social security, many families lived in destitution. Consequently, poverty brought about not by conscious neglect by parents but by economic and social forces was a dominating factor in the child protection movement at that time, as individuals and societies sought to “save” children from those circumstances.

In each of the colonies there was also agitation for laws to protect children from cruelty and neglect, and various child protection societies developed, partly in imitation of developments in England and the US. For example, the Victorian Society for the Prevention of Cruelty to Children was established in 1896 and has continued to operate to the present time (more recently under the name of the Children’s Protection Society). The consequence in Australia was the development, albeit unevenly, of child protection legislation in the colonies/states, and the establishment in most states of specialist children’s courts to adjudicate those matters.

The increasing tendency was to place children in orphanages, industrial schools and other largely private and religious institutions. But this proved disastrous, as the level of care was shocking even by the standards of those times—described in a NSW royal commission in 1874 as “a legalised gateway to hell”. Increasing public agitation led to the gradual demise of these institutions, together with the notorious “baby farms”.

It is a typical irony of child protection that resort to institutions on a large scale re-emerged in the 1920s and again in the 1950s with the same cycle of abuse. After many years, they were closed under the weight of public disgust.

In the convention debates that preceded the establishment in the Commonwealth of Australia in 1901, the possibility of Commonwealth intrusion into child protection was not discussed and was not envisaged. The powers of the Commonwealth in relation to children were confined essentially to marriage and divorce. It was many years before the Commonwealth sought to legislate in those areas but, when it did, its powers in relation to children were confined to children of a marriage. Other children remained within state legislation, creating an unsatisfactory dichotomy. That was partly removed in 1986, when four of the states referred their powers in relation to ex-nuptial children to the Commonwealth, followed by Queensland in 1992. Western Australia has not followed that course. That referral of power specifically did not include child protection. Decisions of the High Court and the present legislation make it clear that orders of the Family Court or the Federal Magistrates Court under the Family Law Act in relation to children are subservient to state child protection orders.

In more recent years, the Family Court has become more involved in child abuse cases, usually but not exclusively in cases where allegations of sexual abuse are made in proceedings relating to children against a background of separation and divorce. The Commonwealth legislation has been amended several times to place increasing emphasis upon the court’s duties in relation to issues of abuse, and the court has developed detailed principles and procedural responses for these cases. But the result is not satisfactory in that there is potential for the same issue to be agitated in both the state and federal courts, with different procedures, approaches and possible outcomes.

The result overall has been that each state has its own child protection legislation and its own administration and practice. Although there are many common features, the reality has been that, until recent years, the legislation and practice of the various states (and the two territories) has varied considerably, both in detail and philosophy. After the initial drive towards child protection at the end of the 19th century and into the 20th century, the subject seemed to go off the public agenda for many decades. Although government agencies and voluntary organisations continued their work, particularly directed to physically abused and neglected children, neither governments nor the general public evinced great interest in it.

Later developments

This lack of interest was dramatically changed in the early 1960s. The writings of Kempe, Silverman, Steele, Droegemueller, and Silver in the US in 1962 dramatically recouped public and professional attention on child abuse. Their articles directed attention to the clinical and radiological impact, and led to a large increase in the number of destitute children.
manifestations of serious and repeated injury to children, indicative of abuse by parents and other caretakers and child abuse generally. Dr Kempe coined the phrase “the battered child syndrome”.

This phrase was widely taken up in the media. It led to dramatic — almost overnight — changes in approaches to child protection in America. Within a few years the American states had introduced far-reaching legislation and, in particular, established mandatory reporting, at least in relation to groups more closely associated with children.

Similar work was being done in Australia. In 1965, Werfel and Maxwell (1965) reported their investigations into child maltreatment cases. In 1966, Dr Bialestock (1966) published work about neglected babies and the “failure to thrive”, and the work of Drs John and Bob Birrell (1968) in relation to serious physical and emotional abuse largely coincided with the work of Dr Kempe.

This led to considerable public and media agitation in Australia, and the redefining of child abuse as a serious social issue that required greater government response than had been the case up to that time. With the exception of Victoria, the other states moved down the path of a government-based, professional child protection approach, and the majority of them introduced some level of mandatory reporting.

In Victoria, the child protection investigations continued to be the province of the police and the Children’s Protection Society. The involvement of the Victorian government was confined to the placement of children, who became the subject of orders of the Children’s Court; nor did it then introduce mandatory reporting. However, by the mid 1980s, this system in Victoria had become untenable and the Children’s Protection Society ceased its involvement in investigations. By the late 1980s, Victoria had established a state-based, professional child protection system and, in 1993, introduced limited mandatory reporting. However, all states and territories continue to experience considerable difficulty in coping with an ever-increasing workload.

The gradual intervention by the Commonwealth into areas of social welfare began to have its effect by reducing the level to which poverty caused child abuse and neglect. These developments commenced in the 1940s with child endowment, and later reforms (after a referendum to give the necessary power to the Commonwealth) included widows’ pensions (gradually extending to single parents), unemployment and sickness benefits, health care (leading to Medicare), the child support scheme, and Commonwealth involvement in various family support schemes.

But other developments have counter-balanced these positives, making child protection even more complex. These include the widening of the concept of child abuse, extending mandatory reporting and managing greater public and media interest. The influence of drugs on both parents and children has been dramatic, as has been the much more frequent reporting in recent times of child sexual abuse.

At the same time, there was a significant worldwide switch in the ideology of child protection, from one that focused upon the protection and, if necessary, removal of the child from dysfunctional circumstances, to one that placed emphasis upon supporting the family and maintaining the child within that family. There was recognition that removal of children from their homes to foster care or institutions was not necessarily successful. The tenacity with which children continued to attach themselves even to an abusive family, and increasing dissatisfaction with the quality of care in institutions gave rise to serious reconsideration.

This was worsened by a continuing crisis in out-of-home care. There has been a significant drop in the number of foster carers, especially those willing to care for “difficult” children, and this has in turn led to multiple placements for children. It raises acutely the question that if children are removed from their home, where do they go? Is abuse by the system any better than home abuse? Of course, that largely depends on the nature and risks of the abuse from which the child is being protected.

The current emphasis upon family support at almost any cost has its critics. It runs the risk that, although lip service is given to the fundamental principle of the interests of the child as being paramount, the reality may be that the emphasis is upon the interests of the parents to the detriment of the child.

Aboriginal children

The tragic history of the Aboriginal people and especially their children since European settlement continues as a major issue in Australia, and more especially again in recent times. Much has been written and spoken about it and it is not possible to summarise those issues in this short general article.

White settlement as it gradually extended across the Australian landscape had a profound impact upon the ancient inheritance of the Aborigines. Their land, beliefs and mode of living were pushed aside. Dispossession, alcohol and hopelessness replaced their previously settled ways.

The issues surrounding children, especially part-Aboriginal children, were acute. Their care degenerated, and attempts to...
“save” them for a “useful life” often ended in tragedy, exemplified in the era of the “Stolen Generations” in the 19th and 20th centuries. The basic facts at the present time paint a stark, almost hopeless, picture—the extraordinary differences between white and Aboriginal or part-Aboriginal children in areas of general and specific health, housing, morbidity, life expectancy, education and employment tell their own story.

In earlier times, child protection intervention was heavy-handed and in many cases unsuccessful. In recent times, intervention in the Northern Territory has been sporadic at best, while in the southern states, protective action seems disproportionately high.

The recent report *Little Children are Sacred*, by Wild and Anderson (2007), paints an extraordinary picture of widespread abuse of young children in Aboriginal communities in the Northern Territory. The result of that has been intervention by the Commonwealth on a scale not previously seen or envisaged. However, whether this initiative will be more successful than previous initiatives remains an open question.

**International developments**

Domestic developments in Australia need to be seen against the background of increased international action aimed at creating benchmark standards for the protection of children.

In 1920, through the Red Cross, the Save the Children International Union was created to seek financial support for the relief of children, which proved to be very successful. In 1923, the Union drafted the first declaration on the rights of the child (commonly known as the Declaration of Geneva), which was adopted by the League of Nations in 1924. It was directed towards the development of international norms concerning the global protection of children.

The Second World War created incredible family suffering and in its aftermath left many thousands of children homeless and destitute. A response to this was the establishment in 1946 of the United Nations International Children’s Emergency Fund.

In 1990, Australia was one of the countries actively involved in the negotiations leading to it, and one of the countries which immediately ratified it (an executive step), the reality is that the convention has had no direct impact on Australian domestic law other than the circumstance that it is an international instrument for the purposes of the *Human Rights and Equal Opportunity Commission Act* 1986. This is because the Australian government has not taken the steps necessary to implement the convention (a legislative step).

Whilst there are some clauses in the convention that the Commonwealth Government may not wish to enact as part of Australian domestic law, it seems unfortunate that there is not at least a partial implementation of it. That would enable the establishment of at least basic uniform principles and benchmarks for child protection legislation and practice in Australia.

Australia has also ratified or implemented a number of human rights treaties containing provisions relating to children, such as the Hague Convention on the Civil Aspects of International Child Abduction, the UN Declaration on the Social and Legal Principles Related to the Protection and Welfare of Children, the UN Convention against Discrimination in Education, and the International Labour Organisation convention concerning minimum ages for employment.

**Endnote**

1 Transportation of convicts to Australia has been the subject of many writings. The stories of these four children are described in detail in *Orphans of History: The Forgotten Children of the First Fleet* (Holden, 1999). Robert Hughes, in his 1988 work, *The Fatal Shore*, suggested that there were five convict children in the First Fleet.

**References**


