

# ACCEPTED

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## **Creating the Aboriginal vagrant: protective governance and indigenous mobility in colonial Australia**

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**‘Creating the Aboriginal “Vagrant”’: Protective Governance and Indigenous Mobility in Colonial Australia’**

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The politics of humane governance that drove colonial policy during the 1830s was concerned with mitigating the impacts of colonization on Indigenous peoples without deterring the future possibilities of imperial development.<sup>1</sup> The program of Aboriginal protection that emerged from this political moment took shape from the reasoning that if the privileges of British law and education in “civilised” habits were extended to Indigenous people, their capacity for colonial citizenship would be developed and their potential as British subjects fulfilled. One of the most pressing debates about how to achieve this centred on the question of how to manage Indigenous mobility.<sup>2</sup> The British Empire itself was extraordinary mobile during the early to mid-nineteenth century, its social and economic development dependent upon a constant flow of people, commodities and translatable modes of governance.<sup>3</sup> Indeed, it was this unprecedented pace of global migration that fuelled the political ascendancy of humanitarianism as a response to the impact of “explosive colonization” on Indigenous peoples.<sup>4</sup> However, while the movement of European people

was accepted as a vital sign of colonial progress and modernity, the movement of colonised populations was characteristically regarded as a sign of their essential nomadism and, by extension, their absence of civilisation.<sup>5</sup>

Through the 1840s, this ideological distinction between civilisation/settledness and primitivism/mobility strongly influenced the work of the Protectors of Aborigines who were appointed by the Crown in the Australian jurisdictions of Port Phillip, South Australia and Western Australia.<sup>6</sup> In each of these colonial sites, Protectors worked to quell Indigenous mobility as part of their efforts to make Indigenous people amenable to the cultural and legal codes of “civilised” society. Yet regulating human mobility in the colonies was also a matter of much wider importance beyond the Aboriginal protectorates. The key mechanism of such regulation was vagrancy legislation. Across the British Empire, colonial governments drew upon vagrancy laws as a means through which to order social groups in flux, monitor degrees of inter-racial exchange, and control the availability of labour.<sup>7</sup> In effect, the program of Aboriginal protection introduced in the late 1830s as the underpinning of humane governance sat within a much broader framework of social governance concerned with the regulation of mobility.

With particular focus on the three Australian colonies where Aboriginal protectorates were first introduced in the 1830s, this paper will examine how programs of protection responded to Indigenous mobility as a problem of colonial governance and how, over time, they contributed to creating an emergent discourse of the Aboriginal “vagrant.” There has been limited attention to how the legal classification of vagrant became applied to Indigenous people in colonial Australia or to how programs of protection contributed to this process, no doubt because the very notion of the “Aboriginal vagrant” was subject to vacillation and

ambivalence through most of the nineteenth century.<sup>8</sup> This ambivalence about the extent to which Indigenous people could be considered “vagrant” reflected their ambiguous status as being neither clearly part of colonial society nor entirely excluded from it. While an assumed colonial social underclass comprising professional criminals, prostitutes and the poor was particularly susceptible to vagrancy charges, Indigenous people were not perceived as being sufficiently internal to colonial society to warrant the same kind of social order policing, in spite of their formal status as subjects of the Crown.<sup>9</sup> Instead, to the degree that Indigenous people were perceived to live beyond the social order of the settler state, they remained immune from legal classification as vagrants.<sup>10</sup> Bringing them within the fold of that social order was in fact one of the principal tasks of the Protectors of Aborigines who were appointed by the Crown during the late 1830s. However, as urban settlement became more concentrated through the latter decades of the nineteenth century and dispossessed Indigenous people became an assumed but marginal part of settler society, the concept of Indigenous vagrancy became more pronounced and re-conceived programs of protective governance became central to its management.

### **Indigenous Settlement and the Competing Agendas of Protection**

When outlining a policy of protection for Britain’s settler colonies, the 1837 House of Commons Select Committee Report on Aborigines (British Settlements) had mixed advice on the degree to which Indigenous people should be allowed to remain mobile and be induced to settle. At least in the first instance, the Select Committee saw the protection of Indigenous people’s capacity to move at will as being important on more than one count. Firstly, a capacity for mobility was seen as being conducive to their incorporation into colonial economies by increasing their options for seeking employment amongst the settler body. For

this reason, the report specified that Indigenous people should be exempt from vagrancy laws, or indeed any other regulatory mechanism that would “cripple” them from gaining the kind of labour that would be “convenient for themselves.”<sup>11</sup> Secondly, their rights to traverse lands in search of game was seen as being necessary to mitigate the impacts of dispossession, as well as being a right of compensation for lost lands.<sup>12</sup> Ultimately, however, the Select Committee urged the desirability of settledness, recommending that Indigenous people be encouraged to gain stable employment and to live on lands reserved for their support. Achieving this transition would form a core part of the duties of Protectors of Aborigines.<sup>13</sup>

The Select Committee’s stipulation that Indigenous people be exempt from vagrancy laws was reflected in the statutes introduced into all of Australia’s colonies between the mid-1830s and the early 1860s.<sup>14</sup> As historians have shown, vagrancy laws provided wide discretionary scope for monitoring social order in developing colonial cities, and they were liberally applied in the policing of “undesirable” social groups.<sup>15</sup> At least initially, Indigenous people were explicitly excluded from such policing and this was clearly consistent with the Select Committee’s protective vision of enabling them to be free both to sell their labour and to maintain the hunt. More widely, however, the idea that Indigenous people should be excluded from vagrancy laws was also consistent with a colonial sentiment that their propensity to “roam over the soil” was a natural and impregnable trait.<sup>16</sup> Periodically, settlers petitioned colonial authorities to apply vagrancy laws to Indigenous people as a means of keeping them away from pastoral runs, but such suggestions were regarded as unreasonable, if not ludicrous. In 1853, for instance, a settler petition presented to the New South Wales Legislative Council asking that “the aborigines might be included under the operations of the Vagrant Act” produced “[g]reat laughter from all sides of the house.”<sup>17</sup> An editorial in *The Sydney Morning Herald* stated that it was outlandish to suggest that people of naturally

“roving disposition” should be subject to the Vagrancy Act: “Why if this were complied with there is not an aboriginal native in the whole colony, except those in private service, who would not be seized and clapped into gaol.”<sup>18</sup>

The colonial sentiment that Indigenous people could not be made subject to vagrancy laws because they were naturally given to roam was closely tied to the widespread assumption that, since they lacked a recognisable tradition of agriculture, they forfeited any binding rights to the soil.<sup>19</sup> The 1837 Select Committee report had recommended that one of the duties of Protectors of Aborigines would be to apply for lands to be set aside for Indigenous support. However, charging Protectors with a duty to reserve lands for Indigenous people’s use was somewhat different from acknowledging that Indigenous people held proprietary rights to land through a competing claim to sovereignty. In fact, the Select Committee’s argument for urgency in implementing a policy of Aboriginal protection in the Australian colonies arose from the premise that Indigenous people were entitled to the Crown’s protection because “Her Majesty’s sovereignty over the whole of New Holland is asserted without reserve.”<sup>20</sup> Thus while there was an expectation that Protectors would reserve lands on which Indigenous people would be encouraged to settle and learn the skills of agriculture, this did not quite amount to an imperative on Protectors to protect Indigenous interests in land.

South Australia appeared to offer an exception in that administrative debates about the colony’s foundation in 1836 included the principle that a Protector of Aborigines would act as a broker in negotiating “treaties” for Indigenous lands. The Colonization Commissioners’ first annual report of 1836 made the assurance that no land “which the natives may possess in occupation or enjoyment will be offered for sale until previously ceded by the natives,” and it

would “be the duty of the Protector of the Aborigines not only to see that such bargains or treaties are faithfully executed, but also to call upon the Executive Government of the Colony to protect the Aborigines in the undisturbed enjoyment of the lands over which they may possess proprietary rights, and of which they are not disposed to make a voluntary transfer”<sup>21</sup> This assurance was mirrored in the guidelines scripted in August 1837 by South Australia’s inaugural governor for the colony’s interim Protector William Wyatt, which included specific instructions to protect Indigenous people “in the undisturbed enjoyment of their proprietary rights to such lands as may be occupied by them in any especial manner”<sup>22</sup> However, since Wyatt considered that “the natives occupy no lands in the especial manner contemplated by this instruction, I found it of no avail to keep my attention directed to it.”<sup>23</sup> Limited reserves of land were subsequently made by Protectors on behalf of Indigenous people, but this was undertaken on the condition that such lands would be turned to cultivation.<sup>24</sup> Notably, when Crown-appointed Protectors of Aborigines arrived in Port Phillip, South Australia and Western Australia between 1839 and early 1840, the preservation of lands was not specified anywhere in their instructions.<sup>25</sup> While all their instructions included a duty to defend Indigenous people from encroachment upon their persons and property, none explicitly referenced the Select Committee’s recommendation that Protectors of Aborigines had a duty to claim lands for their “maintenance.”<sup>26</sup>

Rather than safeguard Indigenous rights of access to land, including the rights to traverse and travel that the Select Committee had anticipated as part of an adaptive strategy of conciliation, the energies of the Protectors of Aborigines who worked in all three Australian jurisdictions during the 1840s were more clearly directed towards schemes for encouraging Indigenous settlement. Scholars of the Port Phillip Protectorate have explored the extent to which the efforts of its personnel were concentrated on the regulation of

Indigenous mobility from the outset, and how those efforts were countered by resistance from Indigenous people themselves.<sup>27</sup> Chief Protector George Augustus Robinson and Assistant Protector William Thomas worked particularly hard through 1840 and 1841, although with limited success, to keep the Woiwurring and Boonwurring clans from camping in the vicinity of Melbourne and to settle them instead at the site Thomas selected for his Narre Narre Warren station to the south-east of Melbourne.<sup>28</sup> In face of Indigenous people's non-compliance, Robinson could only express his "displeasure" and "disapprobation," and assure Port Phillip's Superintendent La Trobe that their efforts would continue.<sup>29</sup>

But importantly, as Rachel Standfield has pointed out, Thomas's efforts to settle Indigenous people at the Narre Narre Warren station arose not just from a conviction that settlement would provide them with the best pathway to "civilisation" but also from the desire to provide asylum from the rapid appropriation of Indigenous lands by settlers who were arriving in the Port Phillip district at a rapid rate, overtaking Indigenous resources and flaring the risks of violence.<sup>30</sup> In this sense, creating suitable sites of Indigenous settlement and cultivation was not the only motivation of the Port Phillip Protectors. One of the protectorate's primary objectives was also to establish a spatial buffer that would provide Indigenous people with refuge from settlers' "intrusion and interference."<sup>31</sup> This plan was constantly frustrated by Indigenous people's refusal to follow the program planned for them, however. In his journal, Thomas recorded his disappointment in being unable to "persuade" Indigenous people to stay at his station "where they were comfortably provided for," and over time he resorted to more coercive measures to make them stay at home.<sup>32</sup>

In the more recently-founded colonies of Western and South Australia, the pace of settlement by the early 1840s was not as intense as it was in Port Phillip. This, and the

explicit intention included in the foundational Proclamations of both colonies that Indigenous people would be dealt with as subjects of the Crown, shaped the work of these other protectorates around different kinds of objectives. Rather than pursuing a policy of protection as a project of Indigenous refuge, in both these newer colonies a policy of protection was conceived more clearly as a project of humanitarian governance, one that saw Protectors working within a larger administrative system geared towards drawing Indigenous people under the umbrella of colonial society, law and government. In contrast to the frustrated efforts of Port Phillip's Protectorate to shield Indigenous people from settler "interference," the plan of protective governance that unfolded in South and Western Australia was directed towards incorporating Indigenous people more fully into colonial society through education, labour and physical proximity to settlers.

Two Crown-appointed Protectors of Aborigines arrived in Western Australia in January 1840 to superintend the developing regions around Perth and York. Like Port Phillip's Protectors, they were charged with a responsibility to defend Indigenous people from injury and introduce them to civilised habits. However, unlike Port Phillip's Protectors they held a clearly articulated place within a larger system of colonial governance that included police and the judicial system.<sup>33</sup> As part of this network, Protectors worked to build Indigenous people's capacity for colonial citizenship through a program of regulation that would encourage Indigenous people to occupy a shared civic and economic space with settlers. In fact, Governor John Hutt believed that setting aside reserve lands for Indigenous people's particular use would be 'productive of evil much more than good'. It was inevitable, he thought, that settlers would quickly envelop any such spaces of safe haven, making the idea of reserve lands redundant, but even more importantly, he believed that Indigenous people themselves were unlikely "to remain cooped up" within the limits of reserved lands:

“any one acquainted with their ways and feelings will declare that the attempt might as well be made to confine a flock of birds by tracing a circle round the place on which they have accidentally alighted.”<sup>34</sup>

Instead, Governor Hutt considered it “more in accordance” with the Colonial Office’s expectations of protective policy that Indigenous people be encouraged “to mingle among us.” By this means, he hoped, they would develop their own motivations for attaining “the goal of civilised independence.”<sup>35</sup> This model of protection as a plan of social and economic integration involved considerable policing. The Perth-based Protector of Aborigines Charles Symmons refused Indigenous people entry into town unless they were clothed and unarmed with spears, and banished those who broke expected codes of conduct.<sup>36</sup> He worked to facilitate their employment amongst settlers so that labour could serve “as a sort of normal school, habituating them to the observance of order and regularity.”<sup>37</sup> A significant part of the Protector’s role was to ensure that if Indigenous people committed any crime, they would be “made to bear the full penalty” of the law, and thereby come to understand the rules of British justice and the consequences of breaching them.<sup>38</sup> Reporting to the Secretary of State in 1841, Governor Hutt praised this work of the Protectors as part of his government’s wider goal to bring Indigenous people “within the pale of regular government and of civilisation.”<sup>39</sup>

In South Australia, the role of protective policy in building the foundations of humane governance was similarly interpreted in terms of coaxing Indigenous people into capacity for inclusion in settler culture by bringing them into proximity with settlers and educating them in habits of “civilised” domesticity and labour. The colony’s early Protector William Wyatt actively encouraged Indigenous people’s visits into Adelaide during his two year term from 1837 to 1839, on the grounds that “friendly intercourse” with settlers would help to curb their

habits of “rambling” around the country and encourage them into local settler employ.<sup>40</sup> This policy of encouraging Indigenous people into town where they could be influenced by proximity to “civilisation” continued for some time after the arrival of the Crown-appointed Protector Matthew Moorhouse in mid-1839. Like Protectors in the other colonial jurisdictions, he held the view that Indigenous people “must be prevented from wandering about the country.”<sup>41</sup> But whereas Port Phillip’s Protectors concentrated on attaching Indigenous people to protectorate stations away from Melbourne, Moorhouse’s efforts focused on encouraging Indigenous people to settle down within the town precincts of Adelaide, at a dedicated site known as the Aborigines Location built on the river bank near the town’s northern boundary. A Native School was also built for the education of Indigenous children.

Through the 1840s, South Australia’s governor and the Protector concurred in a plan, mirroring the 1837 Select Committee report recommendations, that Indigenous people should enjoy controlled mobility of a kind that would ease them into the economies and habits of colonial society. Thus they would be able to pass freely through town “in search of employment and food,” but at the same time, they would “be required to dwell in the huts constructed for them by the Government.”<sup>42</sup> Moorhouse also involved himself in schemes for their employment in Adelaide, recommending their suitability as assistants to the police and to the town surveyor “in order that they may have a field for labour constantly open.”<sup>43</sup> As was the case in Port Phillip, however, this was a regime of regulation that Indigenous people themselves were largely disinclined to follow. By the mid-1840s, Moorhouse was despairing either of making people permanently settle at the Aborigines Location or of keeping children in the Native School.<sup>44</sup> In early 1846 he reported that, despite the six-year experiment of providing them with dwellings at the Location, Indigenous people “do not locate there except

a few weeks in the Summer Season. They prefer moving from place to place along the banks of the Torrens & it is almost impossible to prevent them doing so.”<sup>45</sup>

However, as the traffic of Indigenous people in and out of the urbanising town increased through the 1840s, the energies of the Protector shifted. Only a few years earlier when the colony was first founded, the efforts of the Protector had been focused on enticing Indigenous people into town as an avenue of conciliation and civilisation. But by the mid-1840s, greater numbers of Indigenous people from more distant regions were coming into town, attracted by the possibilities of new resources and exchange. In particular, the flow of traffic between Adelaide and the frontier government station Moorundie, established in 1841 on the Murray River, raised the Protector’s concerns about increased rates of begging, theft and inter-tribal conflict.<sup>46</sup> In this evolving social climate, Moorhouse turned to more coercive strategies to contain the “Adelaide tribes” at the Aborigines Location and to keep other groups at a distance.<sup>47</sup> He worked closely with Edward Eyre, Sub-Protector of Aborigines at Moorundie, to implement a system of giving or withholding rations as a means to prevent Indigenous people from travelling from the Murray River district to Adelaide.<sup>48</sup> In particular, he instructed Eyre to inform Indigenous people in his district that if they came into town without permission, “they would be driven back by the Police”.<sup>49</sup> There is little sign, however, that such threats had a significant impact on Indigenous travel. Four years later in 1847, Moorhouse was still advising Eyre’s successor Sub-Protector Edward Bate Scott that

the natives will not be allowed to wander and beg in the streets of Adelaide; and provided there be not sufficient employment for them amongst the inhabitants, the government will require them to work upon the streets and pay them at the rate of 1d per hour. If they persist in begging, the adults will be treated as vagrants, by being sent to gaol.<sup>50</sup>

As settlement became more consolidated, the pressures on Protectors of Aborigines to manage Indigenous mobility undoubtedly increased. In this context, the threat of vagrancy charges must have appeared to Protectors as a possible avenue of legal leverage through which they could compel Indigenous people to stay put at the sites allotted to them.<sup>51</sup> To the degree that Protectors struggled to keep people in place, they shared the concerns of those settlers who demanded greater levels of surveillance on grounds that Indigenous people retained too much scope “to prowl about our streets and even to come to our very doors to beg, to insult, or to menace with impunity.”<sup>52</sup> In making such complaints, settlers deployed the argument that since Indigenous people were considered British subjects under the law’s protection, then so too should they be considered amenable to all the law’s provisions, including vagrancy charges.<sup>53</sup>

Despite Protector Moorhouse’s explicit warning in 1847, however, it does not appear that Indigenous people were ever arrested as vagrants at this stage of the nineteenth century, in South Australia or elsewhere.<sup>54</sup> Instead of being applied to Indigenous people, vagrancy charges were applied to Europeans who were found within Indigenous camps, supplying liquor to Indigenous people, or co-habiting with Indigenous women.<sup>55</sup> Each of Australia’s colonial vagrancy statutes carried a provision against consorting with Indigenous people, and as a criminal offence this could carry stiff sentences. The harshness of these laws caused dispute in New South Wales in 1861 when two white men arrested as vagrants in an Indigenous camp were each awarded a year’s imprisonment with hard labour.<sup>56</sup> Other commentators also pointed out that the statutes against consorting were absurd in practice. For instance, New South Wales MP James Hoskins observed to Parliament that in the interior, Indigenous workers were employed widely across the pastoral sector and were in the service of every squatter, including in their homes; any one of these respectable people, he

argued, might be subject to imprisonment under the existing provisions of the *Vagrancy Act*.<sup>57</sup>

This provision within vagrancy legislation to criminalise inter-mixing between settlers and Indigenous people highlighted a fundamental tension in protective governance between the objective to incorporate Indigenous people into colonial society and the perceived necessity to shield each race from the worst influences of the other. The work of Protectors of Aborigines encompassed this tension, as over time and across jurisdictions they pursued different kinds of projects designed either to enmesh Indigenous people into colonial culture or to keep them apart from it. Importantly, it was not the concept of inter-racial exchange *per se* that sparked concern amongst Protectors or other colonial administrators. As Christina Twomey has argued in the context of Port Phillip, Indigenous people's disinclination to settle in the ways expected of them increasingly brought them into alignment with the perceived moral failures that were commonly ascribed to Britain's "undeserving" poor, including indolence and a tendency to crime.<sup>58</sup> While an early conception of protective policy had relied upon the "positive" effects of exposing Indigenous people to the "civilised habits" of colonial society, as the nineteenth century progressed official concern came to focus on the perceived association between Indigenous people and a wider range of social ills that included unemployment, homelessness, intemperance and prostitution.

Between 1849 and 1857, the early colonial protectorates established in three Australian jurisdictions during the late 1830s were all allowed to lapse. This shift away from the kind of protective policy outlined in the 1837 Select Committee report coincided with the era of settler self-government, when responsibility for Indigenous people's welfare and legal protection shifted largely from the Colonial Office to local governments.<sup>59</sup> By this stage, officials responsible for a local model of humanitarian governance were increasingly voicing a view that segregation of the races would guard against the "demoralisation" of Indigenous

people by preventing the transfer of intemperate and indecent habits from the lower orders of colonial society.<sup>60</sup> From the 1860s onwards, with the fading of the earlier ideal to incorporate Indigenous people into colonial citizenship, protective governance took two different turns in the Australian colonies, each of which entailed the marginalisation of Indigenous people from settler social space. In Victoria, Aboriginal protection became a program of centralised management that involved moving the colony's "remnant tribes" onto contained government reserves.<sup>61</sup> In the other larger colonies, where new settler frontiers were still emerging and reserves did not yet present a feasible option of Indigenous governance, protection became largely limited to distributions of rations that were usually undertaken at outlying depots distant from urban centres.<sup>62</sup> However, dispossessed Indigenous people retained a visible presence on the margins of colonial cities and towns, and as colonial urbanisation became more concentrated, a discourse consolidated around them of destitution, degeneration and vagrancy.<sup>63</sup>

### **Indigenous Vagrancy and the Interventions of Protection**

A decade after the close of the Port Phillip Protectorate, Victoria held a Select Committee Inquiry into the condition of Indigenous people in the colony. The imperial government's earlier vision of protection through amelioration was assumed to have failed, and its failures helped to justify the introduction of a locally-controlled system of protection based on the supervision and management of Indigenous people.<sup>64</sup> One of the Select Committee's key witnesses was William Thomas, former Assistant Protector and subsequently Guardian of Aborigines. Thomas had always been committed to a project of settling Indigenous people away from the concentration of colonial settlement, and this was still the case. His core recommendation was that reserves and depots be created for their "preservation," supported by programs of education and agriculture.<sup>65</sup> Shortly afterwards, Victoria became the first

Australian colony to re-shape the imperial government's earlier concept of protective governance around a segregated reserve system that would be overseen by a centralised governmental body.<sup>66</sup>

In the much larger colonies of South and Western Australia, where no systematic program of government oversight was implemented to replace the colonial protectorates that lapsed in 1856 and 1857, Indigenous populations still remained largely mobile. However, through the 1860s and 1870s, as the “fringe dweller” became a permanent aspect of the urban colonial landscape, Indigenous people became increasingly susceptible to arrest on public order offences. While vagrancy charges were still rarely applied before the 1870s, Indigenous people's increasing rates of arrest on related public order charges when within the boundaries of settler towns - being in a state of undress, appearing in a state of destitution, begging, being drunk or disorderly – served a similar purpose to vagrancy charges by removing them from the social landscape, with prison terms of anywhere from a few days to a year at a time.<sup>67</sup> As Mark Finnane and Stephen Garton have shown, a general increase in public order policing in colonial Australia in the last decades of the nineteenth century reflected the police's role not just to keep the peace but also to manage social hierarchies as colonial cities grew and consolidated.<sup>68</sup> By this stage of the century, when Indigenous people were no longer considered external to colonial society but constituted a familiar part of its marginalised urban underclass, their susceptibility to public order policing seems to have opened the door to their policing as “regular vagrants.”<sup>69</sup> Ironically, of course, the Indigenous people who were arrested as vagrants in colonial cities and towns were often not itinerant at all, but had permanent residence in the camps that had come to be a feature of the colonial city fringe.<sup>70</sup>

During these last decades of the nineteenth century, Indigenous people's susceptibility to arrest on vagrancy and related public order charges led to the cyclical incarceration of 'repeat offenders', people who were released from gaol only to be returned there soon thereafter for the same or a related offence. In late colonial South Australia, the frequent court appearances of camp-dweller Tommy Walker on charges of being vagrant, drunk or disorderly became so legendary as to make him an iconic figure in local popular culture.<sup>71</sup> In Western Australia, a similarly well-known Indigenous vagrant was Maggie Thomas, whose conduct brought into clear relief late colonial concerns about the parallels between Indigenous destitution and immorality. Maggie was known to police as "a nuisance about the town" and "a snare to young men"; her regular convictions on charges of vagrancy, loitering, prostitution and disorderly behaviour meant that she served one term in goal only to receive another soon after her release.<sup>72</sup> The problems and expense of repeat incarcerations led some local magistrates simply to send Indigenous people arrested on vagrancy offences out of town with instructions to return to "the bush." In South Australia this was tried repeatedly with Tommy Walker and his wife, although they always returned to the fringe camps in Adelaide. A generation earlier, Protectors Wyatt and Moorhouse had sought to entice Indigenous people into town as a means of settling them down; by the 1880s, a later generation of colonial officials was absorbed with sending them out of town to "their haunts in the country."<sup>73</sup> The same practice was tried in other Australian colonies, whereby Indigenous people who came before the court as vagrants were liberated "on condition of joining their tribes" away from the urban areas.<sup>74</sup>

This generational transition in colonial policy that turned Indigenous people from being exempt from vagrancy laws to being perceived as vagrant also served in the control of Indigenous labour. This was a risk that the 1837 Select Committee report had attempted to

offset with the recommendation that Indigenous people should retain freedom to move at will in seeking work “convenient to themselves.” Despite this recommendation, use of vagrancy legislation to manage colonized labour forces became a pattern around the British Empire.<sup>75</sup> On Western Australia’s northern pastoral and pearling frontiers, Indigenous workers who absconded from their employers were routinely arrested as vagrants, and police also used vagrancy charges as a means of keeping unwanted Indigenous people away from pastoral stations.<sup>76</sup> As one constable put it, the police custom of “arresting natives for vagrancy has been in existence a good while” because it provided a workable remedy for dealing with ‘bush natives’ who hung around the pastoral stations and disturbed the “working natives.”<sup>77</sup> At one point this system was queried by the gaoler at Roebourne, who challenged the two month sentence awarded to an Indigenous prisoner charged with vagrancy because he was found “loafing” around a station. Nearly “every Aboriginal native might be considered on a similar charge to this,” he argued, and it was “a very convenient one to hold over the heads of natives on a station who are required to work but are not so disposed.”<sup>78</sup>

Programs of protection, now refashioned and administered by local colonial governments, very much contributed to this later nineteenth-century shift towards classifying the “Aboriginal vagrant” as a perceived problem of governance and conceiving of ways to manage it. Victoria’s Central Board for the Protection of Aborigines regarded the *Vagrancy Act* as being positively beneficial in its potential to keep Indigenous people within the protective bounds of government-run mission stations. Applying vagrancy charges to Indigenous people if found in “any city, borough or town” without a written pass from the station superintendent, the Central Board reported in 1871, would minimise their vulnerability to “intemperate habits.”<sup>79</sup> Some years later, superintendents of Victoria’s mission stations repeatedly recommended the strategy of applying the *Vagrancy Act* to

Indigenous people in their witness testimony to the 1877 Royal Commission on Aborigines. The Reverend John Bulmer, manager of Lake Tyers Aboriginal station, was concerned that those people who lived away from the station could make their living by begging, whereas “I daresay if the Vagrant Act were brought to bear upon such they might be induced to return.” Former guardian at the Mount Hope Aboriginal station, Molesworth Greene, argued that policing Indigenous people under the *Vagrancy Act* would work as an effective means of preventing them from visiting “bush public-houses.” William Goodall, superintendent of the Framlingham Aboriginal station, also agreed that arresting Indigenous people under the *Vagrancy Act* would reduce the evils of prostitution, intemperance and begging, and be the best mechanism for “gathering” people onto the station.<sup>80</sup> Despite this enthusiasm for applying the *Vagrancy Act* as a means of keeping Indigenous people under the umbrella of protective governance, Susanne Davies’ research suggests that they were rarely arrested on vagrancy charges in colonial Victoria, a reflection no doubt of the effective reach of the colony’s government-run reserve network by the end of the 1860s.<sup>81</sup>

As the other former locations of Crown-appointed protectorates, South Australia and Western Australia did not yet have in place the kinds of statutory powers of protection of the kind that were available in Victoria after 1869. Moreover, the kind of centralised management over Indigenous lives that was made feasible in Victoria by the government-run reserve system remained unfeasible in these much larger colonies, where northern frontiers were still expanding and Indigenous populations remained dispersed. Instead, an altered course of protective governance in both these colonies was focused not on Indigenous containment but on the removal of Indigenous people from settler-populated centres.

Having been the first Australian colony to introduce the position of a Protector of Aborigines, South Australia was the last to discard it. Although the dedicated position of Protector of Aborigines and various Sub-Protector posts disappeared after Matthew Moorhouse's retirement in 1856, the position was revived on the recommendation of an 1860 Select Committee Inquiry established, like Victoria's just-completed Inquiry, to consider the future of Indigenous people in a new climate of self-government.<sup>82</sup> A Protector was not continuously employed through the 1860s, but Edward Hamilton became the long-running incumbent of the position from 1873 until the close of the nineteenth century. Throughout Hamilton's long term as Protector, managing Indigenous vagrancy prevailed as a key concern. Like his Victorian counterparts, Hamilton saw the provisions of vagrancy legislation as having protective value in deterring Indigenous people from "loitering" about town, and he asked police to "do what you can to induce these natives to remain in their own district, and impress upon them that any repetition of their part ... will render them liable to be imprisoned."<sup>83</sup> He considered this strategy to have a salutary effect, noting in his annual report for 1874, for instance, that more than fifty "Aborigines have been convicted for various offences chiefly drunkenness and vagrancy."<sup>84</sup> In his concern to repress the traffic of Indigenous people to the city and offset the risk of their "demoralisation," he continued to ask police through the 1880s and 1890s to caution "any native found hanging about Town, that unless they immediately clear out, they will be sent to gaol as vagrants."<sup>85</sup>

In Western Australia, a similar Select Committee Inquiry on the condition of Indigenous people was not held until 1884, but it led to the introduction of an *Aborigines Protection Act* (1886) which set the colony on the path of a statutory model of protection of the kind already in place in Victoria, managed by an Aborigines Protection Board as a centralised government body.<sup>86</sup> While Protector Hamilton was deterring Indigenous people in

South Australia from “loitering” in town on threat of vagrancy charges, any Justice of the Peace was empowered under Western Australia’s *Aborigines Protection Act* to remove from town any Indigenous person found “loitering” or not “decently clothed from neck to knee,” on threat of a month’s imprisonment.<sup>87</sup> This strategy of dispersing Indigenous people from towns on grounds of their own protection continued when the Aborigines Protection Board was replaced with an Aborigines Department, supervised by a Chief Protector.<sup>88</sup> In order to deter Indigenous people from “gathering in places where they would deteriorate under the influence of vicious whites,” the inaugural Chief Protector Henry Prinsep proposed that the government make selected portions of the state “anti-native reserves.”<sup>89</sup> Although the Crown Solicitor rejected this suggestion as unlawful, police were still instructed to “keep natives not in employment” out of towns.<sup>90</sup>

This practical shift of protective governance into a program of social policing raised the problematic question of where dispossessed people might go when their homelands were all taken up by pastoralism.<sup>91</sup> Eventually, the problem of enforced Indigenous homelessness helped to justify the introduction of reserve systems of the kind that had been inaugurated in Victoria during the 1860s.<sup>92</sup> With the passage of Western Australia’s *Aborigines Act* in 1905, the Aborigines Department had authority to have any Indigenous person “removed to and kept within the boundaries of a reserve, or to be removed from one reserve or district to another reserve or district, and kept therein.”<sup>93</sup> In 1911, South Australia became the last Australian colony or state to pass an *Aborigines Act* with similar powers of state guardianship, bringing it into alignment with a model of protective governance as a program of centralised management and surveillance that by this time was in place across the country.

## **Conclusion**

The transition that occurred over the nineteenth century from perceiving Indigenous people as exempt from vagrancy laws to perceiving them as regularly vagrant reflected a parallel transition in the politics of protection. While the vision of humane governance articulated in the 1837 Select Committee report was premised on an ideal of settling Indigenous people within colonial society and economies, this ideal shifted over the era of settler self-government into a model of protection based on “welfare” management and social policing. During the lifetime of the early colonial protectorates, Indigenous people were presumed sufficiently external to colonial society to be immune from vagrancy laws, although the consorting provisions that prevented Europeans from “lodging” or travelling with them allowed authorities to police the nature and extent of inter-racial exchange. In lieu of subjecting Indigenous mobility to legislative control, Protectors of Aborigines played a vital role as the official mediators who were tasked, whether through persuasion or coercion, to bring Indigenous people within the fold of colonial order. Over time, however, Indigenous people’s immunity from vagrancy ceased to hold as the perceived negative implications of inter-racial exchange fuelled a building discourse of Indigenous “demoralisation.” With the consolidation of urban settlement and the hardening of a prejudicial sentiment against Indigenous people as a perceived social underclass, protective governance became adapted around an imperative to exclude Indigenous people from settler spaces, justified on grounds that this would guard them from their own vulnerabilities.<sup>94</sup>

By the end of the nineteenth century, the term “vagrant” had become routinely employed to describe Indigenous people as irreversibly destitute, lending support to arguments that in the name of protection they should be confined to government reserves where they could be shielded from further abjection. However, while this transition in the

nature and intent of protective policy was notable over time, it reflected a tension that had always troubled the objectives of protection as a mode of colonial governance. On the one hand, the policy of protection aimed to bring Indigenous people inside colonial society as equal subjects of the Crown; on the other, it sought to protect them from colonial culture's worst excesses. Penny Brock has argued that by the early twentieth century, the systematic containment of Indigenous people on reserves made the criminal law largely redundant as a key instrument of control and regulation, since the statutory provisions of protection now fulfilled this role.<sup>95</sup> From the mid-twentieth century, however, the policies of protection transitioned again from segregation to assimilation, and revived concerns about the visible place of Indigenous people in Australian society became reflected in increasing rates of their arrest and imprisonment on vagrancy and other public order charges.<sup>96</sup> In this respect, the renewed energy for the social policing of Indigenous people that emerged during the mid-twentieth century era of assimilation mirrored the earlier pattern enabled by protective policy.

In face of an emerging discourse of Indigenous vagrancy during the late nineteenth century, some commentators continued to express ambivalence about its validity. In part, colonial hesitation about whether Indigenous people could be considered vagrant reflected an enduring sentiment in settler culture that it was in the unchangeable nature of Indigenous people to traverse the country, but this hesitation also reflected a discomfiting awareness that they had been forcibly evicted from their own lands and were only rendered "vagrant" by virtue of dispossession.<sup>97</sup> As one correspondent to the press asked in 1899, in what sense could an Indigenous person "be classed as a vagrant when he is de facto hereditary owner of the soil?"<sup>98</sup> This ambivalent reminder of Indigenous people's hereditary rights to lands and their alienation from those rights called to the surface the extent to which the concept of protection was shaped and limited by the Crown's claim to sovereignty over Indigenous

lands. While the imperial government's policy of protection had been founded on a humanitarian expectation that Indigenous people would come to hold a meaningful place in colonial society, it could not ultimately resolve the fundamental dilemma opened up by the assumed dominion of the settler colonial state and the continuing presence of dispossessed people who had nowhere else to go.

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<sup>1</sup> See most recently Alan Lester and Fae Dussart, *Colonisation and the Origins of Humanitarian Governance: Protecting Aborigines across the Nineteenth Century British Empire* (Cambridge: Cambridge University Press, 2014).

<sup>2</sup> Colonial authorities were concerned to achieve Indigenous settlement but as Jane Carey and Jane Lydon have argued, Indigenous cultures were always mobile, “connected and adaptive prior to their confrontation with colonising powers.” “Introduction”, in *Indigenous Networks: Mobility, Connections and Exchange*, eds., Jane Carey and Jane Lydon, (London and New York: Routledge, 2014), 2.

<sup>2</sup> James Belich, *Replenishing the Earth: the Settler Revolution and the Rise of the Anglo-World* (Oxford: Oxford University Press, 2011).

<sup>3</sup> For instance, David Lambert and Alan Lester, *Colonial Lives Across the British Empire* (Cambridge: Cambridge University Press, 2006); Tony Ballantyne and Antoinette Burton, eds. *Moving Subjects: Gender, Mobility and Intimacy in an Age of Global Empire* (Urbana and Chicago: University of Illinois Press, 2009); Tony Ballantyne, “Mobility, Empire, Colonisation,” *History Australia* 11 no. 2 (2014).

<sup>4</sup> Belich, *Replenishing the Earth*).

<sup>5</sup> Nan Seuffert, “Civilisation, Settlers and Wanderers: Law, Politics and Mobility in Nineteenth Century New Zealand and Australia,” in *Under the Eye of the Law: Mobile Peoples in the Pacific*, eds. Nan Seuffert and Tahu Kukutai, special issue, *Law, Text Culture* 15 (2011): 10-13.

<sup>6</sup> For recent analysis of how the Māori protectorate operated during the same decade in the neighbouring colony of New Zealand, see Lester and Dussart (2014), 173-225.

<sup>7</sup> For instance, David Arnold, “European Orphans and Vagrants in India in the Nineteenth Century,” *Journal of Imperial and Commonwealth History* 7 no. 2 (1979): 104-127; Elizabeth Elbourne, “Freedom at Issue: Vagrancy Legislation and the Meaning of Freedom in Britain and Cape Colony, 1799-1842,” *Slavery and Abolition* 15 no. 2 (1994): 114-50; Jeremy Martens, “Polygamy, Sexual Danger and the Creation of Vagrancy Legislation in Colonial Natal,” *Journal of Imperial and Commonwealth History* 31 no. 3 (2003): 24-45; A.L. Beier and Paul Ocobock, eds., *Cast Out: Vagrancy and Homelessness in Global and Historical Perspective* (Athens: Ohio University Press, 2008). For histories of vagrancy in relation to the British labouring poor, see particularly William Chambliss, “The Law of Vagrancy,” *Social Problems* 12 no. 1 (1965): 67-77; A. L. Beier, *Masterless Men: The Vagrancy Problem in England 1560-1640* (New York: Methuen, 1985); Lionel Rose, *Rogues and Vagabonds: Vagrant Underworld in Britain, 1815-1985* (London: Routledge, 1988); Nicholas Rogers, “Policing the Poor in Eighteenth-Century London: The Vagrancy Laws and their Administration,” *Social History* 24 (1991): 127-47; Laura Sagolla Croley, “A Working Distinction: Vagrants, Beggars and the Labouring Poor in Mid-Victorian England,” *Prose Studies* 18 (1995): 74-104.

<sup>8</sup> In relation to colonial Melbourne during the 1840s, Christina Twomey and Penelope Edmonds have both discussed the concept of Indigenous vagrancy as a moral construction, in a period before Indigenous people were legally classified as vagrants. Christina Twomey, “Vagrancy, Indolence and Ignorance: Race and Civilisation in the era of Aboriginal ‘Protection,’ Port Phillip 1839-1845” in *Writing Colonial Histories: Comparative Perspectives*, eds., Julie Evans and Tracey Mar (Carlton: University of Melbourne, 2002), 93-113; Penelope Edmonds, *Urbanizing Frontiers: Indigenous Peoples and Settlers in 19<sup>th</sup> Century Pacific Rim Cities* (Vancouver: UBC Press, 2010): 35-37. There is more detailed analysis of the application of vagrancy laws to

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Aboriginal people in Australia during the twentieth century. See Elizabeth Eggleston, *Fear, Favour or Affection: Aborigines and the Criminal Law in Victoria, South Australia and Western Australia* (Canberra: ANU Press, 1976); Bill Day, "The Freedom to Sleep: A History from the Long Grass in Darwin, Northern Territory," *Parity* 19 no. 10 (2006): 14-16; Tamara Walsh, "From 'Vagrant' to 'Nuisance': 200 Years of Public Space Law in Queensland," *Parity* 19 no.10 (2006): 22; Haidee Ireland, "The Case of Agnes Jones: Tracing Aboriginal Presence in Sydney through Criminal Justice Records," *History Australia* 10 no. 3 (2013): 236-251.

<sup>9</sup> In her study of vagrancy in colonial Melbourne, Susanne Davies shows how the "inherent breath and flexibility" of vagrancy laws served in the targeted social policing of particular social groups, especially criminals, prostitutes and the poor. "Vagrancy and the Victorians: the Social Construction of the Vagrant in Melbourne, 1880-1907," (PhD thesis, University of Melbourne, 1990), 115-16.

<sup>10</sup> Australia's first *Vagrancy Act*, introduced in New South Wales in 1835, specified that those unable to supply a fixed place of abode included "every person not being a black native or the child of any black native," including those "found lodging or wandering in company with any of the black natives of this Colony". *Vagrancy Act 1835* should this should be italicised? (NSW) (6 Will 4 No 7). Legislation subsequently introduced into the other Australian colonies contained a similar stipulation.

<sup>11</sup> Report from the Select Committee Report on Aborigines (British Settlements), British Parliamentary Papers No. 425 (1837), 78.

<sup>12</sup> *Ibid*, 83.

<sup>13</sup> Select Committee Report, 83.

<sup>14</sup> *Vagrancy Act 1835* (New South Wales) (6 Will 4 No 7); *Regulation of Police and Preservation of Peace Act 1838* (Tas) (2 Vict No 22); *Police Act 1844* (SA) (7 & 8 Vict No 19), *Act for the better prevention of Vagrancy 1852* (Vict) (16 Vict No 22); *Police Ordinance 1861* (WA) (25 Cit No 15). See Andrew McLeod, "On the Origins of Consorting Laws," *Melbourne University Law Review* 37 no. 1 (2013): 119.

<sup>15</sup> For instance, Michael Sturma, *Vice in a Vicious Society: Crime and Convicts in Mid-Nineteenth Century New South Wales* (St Lucia: University of Queensland Press, 1983), 57-58; Christina Twomey, "Courting Men: Mothers, Magistrates and Welfare in the Australian Colonies," *Women's History Review* 8 no. 2 (1999): 231-46; Julie Kimber, "'A Nuisance to the Community': Policing the Vagrant Woman," *Journal of Australian Studies* 34 no. 3 (2010): 275-293 and "Poor Laws: A Historiography of Vagrancy in Australia," *History Compass* 11 no. 8 (2013): 537-50; Leigh Straw, "'The Worst Female Character': Criminal Underclass Women in Perth and Fremantle, 1900-1939," *Journal of Australian Studies* 37 no. 2 (2013): 208-224.

<sup>16</sup> For instance, *Sydney Morning Herald*, May 13, 1839; *Australasian Chronicle* May 20, 1840.

<sup>17</sup> *Sydney Morning Herald*, August 27, 1853.

<sup>18</sup> *Sydney Morning Herald*, August 30, 1853.

<sup>19</sup> In an 1847 editorial titled "Modern Civilisation – the Aborigines," the *Sydney Chronicle* rejected the widely accepted argument that "the natives have no rights ... because they do not plough, sow, and reap," and argued instead that the appropriation of their lands in Australasia would prove to be "the indelible blot on British history in the nineteenth century". *Sydney Chronicle*, May 12, 1847.

<sup>20</sup> Select Committee Report, 83.

<sup>21</sup> *First Annual Report of the Colonization Commissioners of South Australia*, House of Commons Sessional Papers, 39, no. 426 (1836), 8.

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<sup>22</sup> Protector's instructions issued 11 August 1837, printed in the *Southern Australian*, February 27, 1839.

<sup>23</sup> Wyatt did however request a reservation of land to be set aside for Indigenous people's benefit, but his application to the Resident Commissioner was declined on grounds that such a reservation was not included in the Act of Parliament. William Wyatt, letter to the Editor, *South Australian Gazette and Colonial Register*, May 18, 1839.

<sup>24</sup> Robert Foster and Amanda Nettelbeck, *Out of the Silence: The History and Memory of South Australia's Frontier Wars* (Adelaide: Wakefield Press, 2012), 23-25.

<sup>25</sup> Chief Protector George Augustus Robinson and four Assistant Protectors were appointed to Port Phillip in early 1839 and received instructions earlier provided by Secretary of State Lord Glenelg in 1838. Their core tasks were to travel with Aboriginal people in order to befriend and conciliate them, "watch over" their rights and interests, and "encourage" them in the arts of civilisation and Christianity (British Parliamentary Papers, *Aborigines [Australian Colonies]*, No. 627 [1844], 166-67). South Australia's Crown-appointed Protector Matthew Moorhouse arrived in July 1839, and received instructions scripted by the local colonial Governor George Gawler along similar lines to Glenelg's instructions ("Instructions to the New Protector," *South Australian Register*, July 6, 1839). Crown-appointed Protectors Charles Symmons and Peter Barrow arrived in Western Australia at the beginning of 1840 and received instructions scripted by the colony's second Governor John Hutt (British Parliamentary Papers, *Aborigines [Australian Colonies]*, 34, no. 627 [1844], 371-73).

<sup>26</sup> Select Committee Report, 83.

<sup>27</sup> Rachel Standfield, "'The Vacillating Manners and Sentiments of these People': Mobility, Civilisation and Dispossession in the Work of William Thomas with the Port Phillip Aboriginal Protectorate" in *Under the Eye of the Law: Mobile Peoples in the Pacific*, eds., Nan Seuffert and Tahu Kukutai, special issue *Law Text Culture* 15 (2011): 162-184; Twomey (2002), 97-99.

<sup>28</sup> For instance, VPRS 10, item 2, files 1840/782, 1840/784, 1840/909, 1840/931, 1841/173, 1841/417, 1841/562, 1841/1070, 1841/1095, Public Records Office of Victoria (PROV).

<sup>29</sup> Robinson to La Trobe, VPRS 10, item 2, files 1840/784, 1840/909 and 1841/173, PROV.

<sup>30</sup> Standfield, "'The Vacillating Manners and Sentiments of these People'," 178-180.

<sup>31</sup> Encl. in La Trobe to the Colonial Secretary, August 28, 1841, British Parliamentary Papers, *Aborigines (Australian Colonies)*, 34, no. 627 (1844), 130.

<sup>32</sup> Journal of William Thomas, June 1843, British Parliamentary Papers, *Aborigines (Australian Colonies)*, 34, no. 627 (1844), 325-25. Standfield, "'The Vacillating Manners and Sentiments of these People'," 181.

<sup>33</sup> Amanda Nettelbeck, "'A Halo of Protection': Colonial Protectors and the Policy of Aboriginal Protection as Punishment," *Australian Historical Studies*, 43 no. 3 (2012): 396-411.

<sup>34</sup> Hutt to Lord Russell, May 15, 1841, British Parliamentary Papers, *Aborigines (Australian Colonies)*, 34, no. 627 (1844), 382.

<sup>35</sup> *Ibid*, 383.

<sup>36</sup> Annual report of the Protector of Aborigines, 1840, is this a title? *Perth Gazette* January 9, 1841.

<sup>37</sup> "Instructions to the Protectors of the Aborigines of Western Australia," British Parliamentary Papers, *Aborigines (Australian Colonies)*, 34, no. 627 (1844), 371-73.

<sup>38</sup> *Ibid*.

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- <sup>39</sup> Hutt to Lord Russell, May 15, 1841, British Parliamentary Papers, *Aborigines (Australian Colonies)*, 34, no. 627 (1844), 383.
- <sup>40</sup> William Wyatt, letter to the Editor, *South Australian Gazette and Colonial Register*, May 18, 1839.
- <sup>41</sup> 'The Aborigines', *South Australian*, June 15, 1847.
- <sup>42</sup> Colonial Secretary to Matthew Moorhouse, GRG 24/4/1847/188, State Records Office of South Australia (SROSA).
- <sup>43</sup> Moorhouse to the Colonial Secretary, April 12, 1847, Protector's Letterbook GRG 52/7, SROSA.
- <sup>44</sup> Robert Foster, "The Aborigines Location in Adelaide: South Australia's First 'Mission' to the Aborigines," *Journal of the Anthropological Society of South Australia* 28 no. 1/2 [typo or double issue?] (1990): 14-18; Barry Patton, "Aboriginal Child Separations and Removals in Early Melbourne and Adelaide" in *Evangelists of Empire?: Missionaries in Colonial History*, eds., Amanda Barry, et al., (Melbourne: University of Melbourne eScholarship Research Centre, 2008), 128-130.
- <sup>45</sup> Moorhouse to the Colonial Secretary February 18, 1846, Protector's Letterbook GRG 52/7, SROSA.
- <sup>46</sup> For instance Moorhouse to the Colonial Secretary, March 17, 1845, Protector's Letterbook GRG 52/7, SROSA.
- <sup>47</sup> Like Port Phillip's Chief Protector George Augustus Robinson, who complained that "little kindnesses" from settlers encouraged Indigenous people to beg rather than to work, Moorhouse considered that "mendacity and idleness" were encouraged by gifts of food from settlers "without any labour being required in return." Robinson to La Trobe, September 17, 1840, VPRS 10, item 2, file 1840/909, PROV; Moorhouse to the Colonial Secretary, [title?] January 4, 1844, *South Australian Government Gazette*, January 11, 1844.
- <sup>48</sup> Eyre to Colonial Secretary, January 20, 1844, British Parliamentary Papers, *Aborigines (Australian Colonies)*, 34, no. 627 (1844), 352-53.
- <sup>49</sup> Moorhouse to the Colonial Secretary, April 25, 1843, Protector's letterbook, GRG 52/7, SROSA.
- <sup>50</sup> Moorhouse to Sub-Protector Edward Bate Scott, March 20, 1847, Protector's letterbook, GRG 52/7, SROSA.
- <sup>51</sup> Standfield, 181; Moorhouse to the Colonial Secretary, April 12, 1847, GRG 24/6/1847/440.
- <sup>52</sup> *South Australian Register*, April 5, 1843.
- <sup>53</sup> Ibid.
- <sup>54</sup> Adelaide Gaol Police Register, GRS 2414, SROSA. Edmonds (2010) notes a similar pattern in colonial Melbourne, 35-37. Even at a later stage, the 1862 Report of the Central Board showed only one arrest and conviction of an Indigenous person for vagrancy, although this pattern would increase through the 1870s. *Second Report of the Central Board Appointed to Watch Over the Interests of Aborigines* (Melbourne: Government Printer, 1862), Appendix V, 22. Although further research is needed, a survey of cases from local police and magistrate courts reported in colonial newspapers suggests a similar pattern in Australia's other colonies.
- <sup>55</sup> McLeod: 121.
- <sup>56</sup> In New South Wales, anyone with no visible means of support, fixed abode, or found lodging with or wandering in company with Aboriginal people could be subject to two years' imprisonment. *Vagrancy Act 1851* (15 Vict. No 4).
- <sup>57</sup> Legislative Assembly debate, August 1, 1862, [title or descriptor?] *Sydney Morning Herald*, August 2, 1862. Despite such debate, New South Wales' vagrancy laws remained in place until repealed by an amended

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*Vagrancy Act* (1901) which reduced the penalty for lodging with Indigenous people from two years' imprisonment to six months.

<sup>58</sup> Twomey draws the distinction between the deserving poor, who were not associated with criminalised tendencies, and the undeserving poor, who were. Twomey, [1999 or 2002?] 97-101.

<sup>59</sup> The Port Phillip protectorate was closed in 1949, two years before Victoria became an independent colony and six years before it became self-governing. The protectorate lapsed in South Australia in 1856, just before the colony was granted self-government. Western Australia was not granted self-government until 1890 but no formal system of Aboriginal protection was in place between 1857 and the passing of the *Aborigines Protection Act* (1886). See also Ann Curthoys, "Indigenous People and Settler Self Government," ed. Ann Curthoys, special Issue, *Journal of Colonialism and Colonial History* 13 no. 1 (2012).

<sup>60</sup> See for instance the discussions on intemperance in Victoria's *Report of the Select Committee of the Legislative Council on the Aborigines* (Melbourne: Government Printer, 1859), 28-29 and South Australia's *Report of the Select Committee of the Legislative Council Upon the Aborigines* (Adelaide: Government Printer, 1860), 85.

<sup>61</sup> Select Committee Report (Victoria, 1859), iv.

<sup>62</sup> Amanda Nettelbeck and Robert Foster, "Food and Governance on the Frontiers of Colonial Australia and Canada's North West Territories," *Aboriginal History* 36 (2013): 27.

<sup>63</sup> As Penelope Edmonds notes, this was less so in Victoria where by the 1860s "many southeastern Aboriginal peoples had been placed in remote mission stations, and relatively few were permitted into Melbourne." "The Intimate, Urbanising Frontier: Native Camps and Settler Colonialism's Violent Array of Spaces around Early Melbourne" in *Making Settler Colonial Space: Perspectives on Race, Place and Identity* eds., T. Banivanua Mar and P. Edmonds (London: Palgrave, 2010), 145.

<sup>64</sup> Select Committee Report (Victoria, 1859), ix-iv.

<sup>65</sup> *Ibid*, 3-4.

<sup>66</sup> The "Central Board Appointed to Watch Over the Interests of the Aborigines" was established in 1860 [perhaps quotation marks around the long position titles could enhance clarity here?]. In 1869 it was replaced with the "Central Board for the Protection of the Aborigines" which operated to 1900. With the *Aborigines Act* 1869, Victoria introduced a statutory program of Aboriginal protection of the kind that became more familiar in the twentieth century.

<sup>67</sup> Adelaide Gaol Police Register, GRS 2414, SROSA; Neville Green, "Aboriginal Sentencing in Western Australia in the Late 19<sup>th</sup> Century, with Reference to Rottneest Island Prison," *Records of the Western Australian Museum* 79 (2011): 77-85.

<sup>68</sup> Mark Finnane and Stephen Garton, "The Work of Policing: Social Relations and the Criminal Justice System in Queensland, 1880-1914," *Labour History* 62 (1992): 52-70.

<sup>69</sup> Reverend George Taplin, Superintendent of South Australia's Point Macleay mission, attempted to stop Indigenous people's access to Adelaide in order to prevent them from becoming "regular vagrants." "The Aborigines in Adelaide", *South Australian Register* February 8, 1865.

<sup>70</sup> Edmonds (2010); Robert Foster, "Tommy Walker Walk Up Here" in *History in Portraits: Biographies of Nineteenth Century Aboriginal People*, eds., Jane Simpson and Luise Hercus (Canberra: Aboriginal History Inc., 1998), 191-220.

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- <sup>71</sup> Foster, 191-220.
- <sup>72</sup> Acc 255 1899/203 and Acc 255, 1900/317, SROWA.
- <sup>73</sup> *The Register*, June 3, 1885.
- <sup>74</sup> *Sydney Morning Herald*, June 1, 1877
- <sup>75</sup> See in particular Elbourne (1994); Martens (2003); Obocock (2005).
- <sup>76</sup> “The Native Question,” *The West Australian* September 11, 1899; report of Constables James on the case of Pilibung, sentenced at Roebourne as a “rogue and vagabond,” Acc 255, file 1900/616, State Records Office of Western Australia, SROWA.
- <sup>77</sup> Constable Edward Duffy to Sergeant Houlahan December 8, 1899, Acc 430, file 1900/320, SROWA.
- <sup>78</sup> Acc 968, file 1901/623, SROWA.
- <sup>79</sup> Seventh Report of the Board for the Protection of Aborigines in the Colony of Victoria, 1871, Appendix IX, 28.
- <sup>80</sup> Royal Commission on the Aborigines, *Report of the Commissioners Appointed to Inquire into the Present Condition of the Aborigines of this Colony, and to Advise as to the Best Means of Caring for and dealing with them in the Future* (Melbourne: Government Printer, 1877), 50, 56, 66.
- <sup>81</sup> Davies (1990), 20.
- <sup>82</sup> Select Committee Report (South Australia, 1860), 1-2.
- <sup>83</sup> Hamilton to Corporal Dann, December 16, 1874, Protector’s letterbook GRG 52/7, SROWA.
- <sup>84</sup> Hamilton to the Commissioner of Crown Lands, February 26, 1875, Protector’s letterbook GRG 52/7, SROWA.
- <sup>85</sup> Hamilton to Fred Taplin, June 14, 1880; Hamilton memo August 15, 1890; Hamilton to the Commissioner of Police, 24 August 1891, Protector’s letterbook, GRG 52/7, SROSA. [italics?]
- <sup>86</sup> *Report of the Commission appointed by His Excellency the Governor to Inquire into the Treatment of Aboriginal Native Prisoners of the Crown in this Colony and also into Other Matters Relative to Aboriginal Natives* (Perth: Government Printer, 1884).
- <sup>87</sup> *Aborigines Protection Act* 1886 (50 Vict. No. 25), s43.
- <sup>88</sup> The Aborigines Protection Board was abolished and an Aborigines Department established on the authority of the *Aborigines Act* 1897 (61 Vict. No. 5).
- <sup>89</sup> Chief Protector Memo, April 22, 1902 and Crown Solicitor response, April 25, 1902, Acc 430, file 1903/123, SROWA.
- <sup>90</sup> In 1895, for instance, police were directed to take steps to prevent Indigenous people “from loitering in or about” goldfield towns (Acc 964, file 1895/3519, SROWA), while in 1903 they were directed to “cleanse” Broome of Indigenous people (Acc 430, file 1903/123, SROWA).
- <sup>91</sup> For instance, East Murchison warden to Inspector of Police, November 1, 1885, Acc 964, file 1895/3519, SROWA.
- <sup>92</sup> In Victoria, the policy of protection as a program of containment changed into one of forced assimilation with the introduction of the *Aborigines Protection Act* (1886) or so-called Half-Caste Act, which compelled people of mixed race to leave mission stations and find work elsewhere.
- <sup>93</sup> *Aborigines Act* 1905 (5 Edw. VII No. 14), s12.

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<sup>94</sup> For instance, letter to the Western Australian Aborigines Protection Board, June 25, 1895, Acc 964, 1895/3519, SROWA.

<sup>95</sup> Peggy Brock, "Protecting Colonial Interests: Aborigines and Criminal Justice," *Journal of Australian Studies* 21 no. 53 (1997): 124-25.

<sup>96</sup> Brock: 126; see also Tamara Walsh, *No Vagrancy: An Examination of the Impact of the Criminal Justice System on People Living in Poverty in Queensland* (St Lucia: T.C. Beirne School of Law, University of Queensland, 2007), 19.

<sup>97</sup> *The Empire*, April 30, 1865.

<sup>98</sup> *The West Australian*, September 11, 1899.