OVER-REPRESENTATION OF ABORIGINAL CHILDREN IN CARE PROCEEDINGS BEFORE THE CHILDREN'S COURT OF SOUTH AUSTRALIA

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ntroduction

Much attention has been focused in recent years on the treatment of young offenders.)f no less interest nor importance is the operation of the system which deals with hildren who are in need of care and protection by reason of their situation or non-riminal behaviour.[1] This is variously referred to as the 'protective', 'welfare' or 'civil' urisdiction. Its existence represents society's assertion that intervention by the state nto family autonomy is justified when accepted minimum standards of child care and ontrol are not observed by parents. Such public intervention into the autonomy of the amily unit is a serious step. Where the line is to be drawn between too much and too lit-le intervention is a matter for the judgment of the particular society concerned.

> . . . To permit unrestricted parental autonomy would be to negate children's rights. The conflict is resolved by the expectation that parents will do their best for their children. Failure to do so invites social criticism, and specific failures attract legal accountability. The basic principle according to which parents are accountable is that, given existing social and economic restraints, all children should have an equal opportunity to maximise the resources available for them during their childhood (including their inherent abilities) so as to minimise the extent to which they enter adult life affected by avoidable prejudices incurred during childhood. This, it is suggested, is the root principle of children's rights. The extent to which it is implemented is dependent on the inroads which any society is prepared to make on parental (or family) autonomy. The state thus intervenes on behalf of the child against the parents, calling the parents to account for their stewardship (Eekelaar 1984:175).

Goldstein *et al* (1980:10-12,77), for example, advocate the principle of minimal tate intervention, and argue that intervention is justified only on serious grounds, such s the infliction of serious bodily injury. Those authors would exclude emotional amage as a ground because of the breadth and uncertainty of the term and of the oncept.

In South Australia, as elsewhere, there are two procedures whereby a child in need of are may be admitted to a degree of long-term state control: one judicial, one adminis-ative. The latter is employed relatively infrequently in South Australia[2] and so this rticle is concerned solely with Court proceedings relating to children in need of care.

Part III of the *Children's Protection and Young Offenders Act* 1979 (SA) governs this 'civil' jurisdiction of the Children's Court. The grounds for state intervention are found in s 12 of the Act:

s 12

(1) Where the Minister is of the opinion that a child is in need of care by reason that:
   (a) a guardian of the child has maltreated or neglected the child to the extent that the child has suffered, or is likely to suffer, physical or mental injury, or to the extent that his physical, mental or emotional development is in jeopardy;[3]
   (b) the guardians of the child are unable or unwilling to exercise adequate supervision and control over the child;
   (c) the guardians of the child are unable or unwilling to maintain the child;
   or
   (d) the guardians of the child are dead, have abandoned the child, or cannot, after reasonable enquiries, be found
   the Minister may apply to the Children's Court for a declaration that the child is in need of care.

(2) The child the subject of an application under this section and each guardian of the child, shall be parties to the application.

If the Children's Court finds that a child is in need of care, its powers are contained in s 14 of the Act:

s 14

(1) Upon finding that a child the subject of an application under this Part is a child in need of care within the meaning of section 12 of this Act, the Court shall declare accordingly and:
   (a) may, by order, place the child under the guardianship of the Minister for such period of time as the Court thinks fit; or
   (b) may, by order:
      (i) place the child under the control of the Director-General in respect of such matters relating to the care or welfare of the child as the Court specifies in the order, for such period of time as the Court thinks fit;
      (ii) direct that the child shall reside with such person as the Court thinks fit;
      or
      (iii) direct any guardian who is a party to the proceedings to take such steps to secure proper care and control of the child as the Court thinks fit.

A guardianship order involves the complete transfer of guardianship rights from the parents to the Minister, whilst a control order (an innovation of the 1979 legislation) involves a sharing of responsibilities between the parents and the Director.

The making of an order under s 14 does not necessarily mean that the child will cease to live with his or her own family. Section 7 of the Act (the 'policy section') requires the Children's Court and others who administer the Act to consider (*inter alia*):

   (a) the need to preserve and strengthen the relationship between the child and his parents and other members of his family;
   (b) the desirability of leaving the child within his own home.

A child of whom the Minister is guardian may therefore be permitted to remain in the physical care of his parents.[4] Conversely, a child who remains under the guardianship

of parents may, with the consent of the parents, be placed in a foster home. This latter situation represents the majority of foster children in South Australia. Of the 1700 children in foster care for a period during 1983-1984, 700 were under the guardianship of the Minister and 1000 remained under parental guardianship.[5] A child cannot be taken away from the parents' home (and placed in foster care or elsewhere) by the Department for Community Welfare in the absence of parental consent, unless an order is obtained placing the child under the Minister's guardianship. Applications under s 12 of the *Children's Protection and Young Offenders Act* 1979 may be vigorously opposed and defended by the parents, with legal representation.

The current legislation, which repealed the *Juvenile Courts Act* 1971 (SA), effects a strict separation between the criminal and 'civil' jurisdictions of the Children's Court. The new legislation was based on the recommendation of the *Royal Commission into the Administration of the Juvenile Courts Act and Other Associated Matters* (Mohr 1977).[6] Influenced by the philosophy exemplified in American decisions such as *Re Gault* (1966) 397 US 1, the Commissioner asserted the undesirability of using the commission of an offence as a pretext for long-term 'welfare' intervention. From July 1979, a child in South Australia could no longer be placed under the guardianship of the Minister of Community Welfare as the result of offence-related proceedings. Fixed-term detention, bond or fine are the penalties now imposed on offenders as such. If the Department for Community Welfare is of the opinion that a young offender is also in need of care and protection, separate 'civil' proceedings under Part III of the Act must be taken in order to secure a guardianship or control order, and wider evidence must be laid before the Court.

Aboriginal Children in Care Proceedings

It is commonly asserted that the intervention of state welfare authorities has resulted in a disproportionately high number of Aboriginal children being taken into care in Australia.

> Another fear is that such broadly drawn grounds (of intervention) risk the imposition of uniform standards of child care upon groups which may legitimately differ by class or ethnic origin (Eekelaar 1984:176).

Welfare authorities in Australia have always been 'white' dominated. Under the protectionist terms of the *Aborigines Act* 1911 (SA) the Chief Protector of Aborigines became the legal guardian of 'every Aboriginal and every half-caste child, notwithstanding that any such child attains the age of twenty-one years'.[7] Such guardianship did not require parental consent. These powers were further entrenched by the *Aborigines (Training of Children) Act* 1923 (SA), which gave the Chief Protector the authority to commit any Aboriginal child to a special children's home and to have that child declared a Ward of the State (Gale 1972:61-62). It was not until 1962, with the passage of the *Aboriginal Affairs Act*, which was based on the 'more enlightened' policy of assimilation, that these powers were revoked, making it necessary for a Court order to be obtained before children could be removed without parental consent (Gale 1968:8). However, by this stage, many such children had already been taken away from their families and although the extent of this removal has never been adequately documented in South Australia, a 1966 survey of Aborigines in Adelaide found that of the 2039 individuals resident in the city, approximately 265 (13 per cent) were children brought to Adelaide 'by government or voluntary agencies for placement in a foster

home, a children's home or some kind of children's institution other than those set aside for committed children' (Gale 1972:87).

Do a proportionately high number of Aboriginal children in South Australia continue to be the subject of care orders even after the inception of the *Children's Protection and Young Offenders Act* 1979 (SA)? To investigate this question, and to identify further areas of inter-group variations in care matters, we analyse statistics dealing with appearances before the Children's Court under Part III of the Act; that is, that Part which deals with 'Protection of Children who are in Need of Care'. Access to these statistics was made available by the South Australian Department for Community Welfare, which has maintained detailed computerised records on Children's Court and Children's Aid Panel appearances in this State since July 1972. However, in this article, only the five year period (1 July 1979-30 June 1984) immediately following the inception of the new Act will be considered.

Only those appearances at which a final outcome was reached have been included. Adjournments are not considered. The variable of identity (*ie* Aboriginal or non-Aboriginal) is employed throughout the analysis to permit examination of the comparative degrees of representation of these two groups in the proceedings.

APPEARANCES IN CARE PROCEEDINGS BEFORE THE CHILDREN'S COURT: 1 JULY 1979—30 JUNE 1984

During the five year period under investigation, there were 45,604 appearances before the Children's Court and Children's Aid Panels in South Australia for which information relating to identity was available. Of these appearances, only 672 (1.5 per cent) related to care proceedings. Nevertheless, despite the relatively low numbers involved, care proceedings accounted for a somewhat higher proportion of Aboriginal than non-Aboriginal appearances; namely, 104 (2.9 per cent) of the 3606 Aboriginal appearances compared with 568 (1.4 per cent) of the 41,998 non-Aboriginal appearances. Further analysis showed that, although Aboriginal children are statistically over-represented in offence-related appearances before the Children's Court and Children's Aid Panels (see Gale and Wundersitz 1985) the degree of Aboriginal over-representation is even higher in relation to care proceedings.

As Table 1 shows, of the 672 appearances for care matters during this five year period, 15.5 per cent were appearances by Aborigines. Yet, according to the 1981 census, this group constituted only 1.3 per cent of those persons in South Australia aged less than eighteen years, which is the age range covered by the protective jurisdiction of the Children's Court. This means that the rate of Aboriginal appearances for civil matters is 11.9 times greater than might be expected, given this population baseline. In contrast, Aborigines accounted for only 7.8 per cent of all Aid Panel and Court appearances relating to offence matters. Given that this group made up 1.2 per cent of the South Australian population aged ten to eighteen years (the age range covered by the offence-related provisions of the *Children's Protection and Young Offenders Act* 1979 (SA)[8]) this indicates that the rate of Aboriginal appearances for offence matters is 6.5 times higher than expected. On the basis of these figures then, Aboriginal over-representation in care proceedings is considerably higher than that recorded for offence-related appearances.

Table 1

Comparative rates of Aboriginal and non-Aboriginal appearances for (a) offence matters before the Children's Court and Children's Aid Panels and (b) care matters before the Children's Court: 1 July 1979-30 June 1984

Identity	Children's Aid Panels Children's Court — criminal matters		Children's Court— care matters	
	n	%	n	%
Aborigines	3,502	7.8	104	15.5
Non-Aborigines	41,430	92.2	568	84.5
Total	44,932	100.0	672	100.0

A longitudinal analysis of care proceedings during the five year period under consideration indicates an overall increase in the numbers of such appearances since the inception of the *Children's Protection and Young Offenders Act* 1979. As Table 2 shows, in the first year of operation of the new Act (July 1979-June 1980), there were only 74 appearances before the civil jurisdiction of the Children's Court. However, during the fifth year of operation, 204 such appearances were recorded—an increase of 175 per cent. The only exception to this upward trend came in 1981-82, when numbers fell slightly from 123 in the preceding year to 119.

Table 2

Comparative rates of Aboriginal and non-Aboriginal Children's Court appearances for care proceedings per financial year: 1 July 1979 – 30 June 1984

Identity	1979-80		1980-81		1981-82		1982-83		1983-84	
	n	%	n	%	n	%	n	%	n	%
Aborigines	8	10.8	21	17.1	25	21.0	19	12.5	31	15.2
Non-Aborigines	66	89.2	102	82.9	94	79.0	133	87.5	173	84.8
Total	74	100.0	123	100.0	119	100.0	152	100.0	204	100.0

It is not easy to account for this increase over the five year period. It might be suggested that during the first year or two of the operation of the Act, effecting as it did a new and radical separation of the civil and criminal jurisdictions of the Children's Court, the relative unfamiliarity with a new system resulted in a degree of caution with the bringing of care applications. Also relevant may be the increase, in the last few years, of awareness of the problem of child abuse and consequent reporting. The Annual Report of the South Australian Department for Community Welfare for the year ending 30 June 1983, noted a 44 per cent increase in the number of reported cases that year compared with the previous year. The Annual Report for the following year (1983-84) noted a further increase of 37 per cent in the number of cases reported that year compared with the previous year. However, by no means all care proceedings concern abused children, and so this can be no more than a partial explanation.

The proportion of care proceedings involving Aborigines has also increased over the five year period, but this increase has not been constant. As Table 2 shows, from July 1979-June 1980, only eight (10.8 per cent) of the 74 appearances for care matters

involved Aborigines. In the two subsequent years, this proportion increased, reaching a peak in the period of July 1981-June 1982, when they accounted for 21.0 per cent of all care-related appearances. This was followed by a dramatic decrease in the subsequent year when the proportion of Aboriginal appearances was almost halved. However, the final year for which data are available (July 1983-June 1984) indicates that an upward movement is again occurring.

1. Demographic Details

Of the 672 appearances for care proceedings which took place during the five year period, 49 were applications for variations of an order made earlier, while 623 were appearances by children coming before the Children's Court for the first time on an allegation of being in need of care. In the following analysis, only these 623 first appearances are considered.[9] Do Aboriginal and non-Aboriginal children involved in care proceedings differ in terms of demographic and social background characteristics? Ideally, we would like to have tested a range of variables, but adequate information on background details such as family structure, parent's income and occupation etc, were not available from the computerised data. Instead, only the three demographic factors of gender, age and residential address could be used. Nevertheless, for each of these three variables, significant inter-group differences were evident.

1.1 Gender

When Children's Court appearances involving care proceedings are analysed, male predominance is obvious, accounting for 55.5 per cent of the 623 appearances recorded. Moreover, males also constitute a higher proportion of Aboriginal than non-Aboriginal appearances; namely, 62.8 per cent compared with 54.3 per cent respectively.

Table 3

Comparative rates of Aboriginal and non-Aboriginal Children's Court appearances for care proceedings involving males and females: 1 July 1979-30 June 1984

Identity	Males		Females	
	n	%	n	%
Aborigines	59	17.1	35	12.6
Non-Aborigines	287	82.9	242	87.4
Total	346	100.0	277	100.0

The degree of over-representation for Aboriginal males in care proceedings is illustrated in Table 3. As shown, Aborigines accounted for 17.1 per cent of the 346 appearances by males. Yet this group constituted only 1.3 per cent of the total male population aged less than eighteen years resident in South Australia at the time of the 1981 census. This means that the rate of appearance by Aboriginal males is 13.2 times greater than expected, given this population baseline. Aboriginal females are also over-represented in civil matters, although the degree of over-representation is lower than that recorded for Aboriginal males. As Table 3 shows, Aboriginal females, who constituted 1.3 per cent of the State's female population aged less than eighteen years, accounted for 12.6 per cent of all female appearances involving care matters. This rate of appearance is thus 9.7 times greater than expected.

How can this substantial over-representation of both male and female Aborigines in care proceedings be explained, and why is there such a difference between male and female Aboriginal children? Is there a possible relationship between the over-representation of Aboriginal males in care proceedings and the predominance of female-dominated Aboriginal households (Gale and Wundersitz 1982)? In other words, are Aboriginal mothers without partners perceived as unsuitable to retain full guardianship rights over their male children though not over their female children? But the fact that female Aboriginal children are also over-represented (although to a lesser degree than males) suggests that Aboriginal child care standards in general are perceived by the State authorities as less satisfactory than those of their white counterparts.

1.2 Age

Table 4 shows the age of those appearing for the first time in care proceedings. Younger children constitute a higher proportion of Aboriginal appearances than they do of non-Aboriginal appearances. Children aged less than five years represented 37.2 per cent of all Aboriginal appearances in care proceedings compared with only 25.3 per cent of non-Aboriginal appearances. In contrast, a lower proportion of Aboriginal than non-Aboriginal appearances involved children who were aged fifteen years and over; namely, 4.3 per cent compared with 13.4 per cent respectively. These inter-group differences in age proved to be statistically significant (raw chi square = 12.55: df = 3: sig. $<.01$).

Table 4

Age: a comparison between Aboriginal and non-Aboriginal Children's Court appearances for care proceedings: 1 July 1979-30 June 1984

Age in Years	Aborigines		Non-Aborigines	
	n	%	n	%
Less than 5	35	37.2	134	25.3
5 — 9	24	25.5	104	19.7
10 — 14	31	33.0	220	41.6
15 — 17	4	4.3	71	13.4
Total	94	100.0	529	100.0

In care proceedings, applications involving younger children tend to be based on the child's situation, rather than on his/her behaviour. Very young children may be neglected or maltreated by parents, but cannot appropriately be described as inadequately supervised or controlled. The concept of inadequate control applies more readily in the case of older children who are able to exercise a degree of self determination in their behaviour. Taking figures on child abuse as a particular example of maltreatment, the Annual Report of the South Australian Department for Community Welfare for the year ending June 1984 noted that, of reported cases that year, 56 per cent were children under nine years of age, while only 17 per cent were over fourteen years of age. Of course, child abuse cases account for only a part of the total number of care applications.

2. Residential Location

Are there any inter-group variations in the residential location of children appearing before the Court in care matters? To investigate this, a locational variable, based on the child's address at the time of the appearance, and dichotomised into the categories of 'Adelaide'[10] and the 'remainder of South Australia' was derived. The results indicate that whilst the majority (84.0 per cent) of the 94 Aboriginal appearances in care proceedings involved children living in country areas, most non-Aboriginal appearances (namely, 61.2 per cent) were appearances by children residing in Adelaide.

To a large extent, these figures reflect variations in the population distributions of the two groups, in that the majority of the non-Aboriginal population of South Australia resides in the metropolitan area, whereas Aborigines remain predominantly rural dwellers. In fact, according to the 1981 census, only 33.2 per cent of the State's 9825 Aborigines and Torres Strait Islanders lived within the Adelaide Statistical Division, compared with 72.7 per cent of the non-Aboriginal population.

Table 5

Comparative rates of Aboriginal and non-Aboriginal Children's Court appearances for care proceedings by individuals resident in Adelaide and in the remainder of South Australia: 1 July 1979-30 June 1984

Identity	Adelaide		Remainder of S.A.	
	n	%	n	%
Aborigines	15	4.4	79	27.8
Non-Aborigines	324	95.6	205	72.2
Total	339	100.0	284	100.0

Yet, even after controlling for these inter-group variations in population distributions, the degree of Aboriginal over-representation still seems to be higher in country areas than in Adelaide. As Table 5 shows, Aborigines made up 4.4. per cent of all care-related appearances by children living in the city, yet they accounted for only 0.6 per cent of those children aged under eighteen years of age resident in Adelaide. Thus the rate of appearances for Aboriginal children in the metropolitan area is 7.3 times greater than expected, given this population baseline. In contrast, Aborigines accounted for 27.8 per cent of all appearances by country-dwelling children while, according to the 1981 census, this group constituted 2.8 per cent of that population aged under eighteen years living in rural areas of South Australia. On the basis of these figures, the rate of appearance for Aboriginal children living outside of Adelaide is 9.9 times greater than expected.

3. Person Presiding

The constitution of the Children's Court of South Australia is outlined in s 8 (2) of the *Children's Protection and Young Offenders Act* 1979 (SA).

> Persons who hold office as judges under the *Local and District Criminal Courts Act* must be specially designated before they may exercise jurisdiction in the Children's Court, as must special magistrates appointed under that Act or under the *Justices Act* . . . With regard to special magistrates, the practice is to designate all such magistrates as members of the Children's Court . . . (Seymour 1983:40-41).

Table 6 reveals quite pronounced differences between Aborigines and non-Aborigines in relation to the person presiding over care proceedings. Whereas the majority (67.0 per cent) of Aboriginal appearances were presided over by a special magistrate, most non-Aboriginal appearances (namely, 63.5 per cent) came before a judge. Justices of the peace (who are not full time nor necessarily legally qualified) do not play a large part in this jurisdiction. Usually they do no more than adjourn the matter for later hearing by a judge or magistrate. Hence, the proportion of appearances presided over by a justice of the peace was relatively low. Nevertheless, inter-group variations were again evident, with proportionately more Aboriginal than non-Aboriginal appearances coming before a justice.

Table 6

Person presiding: a comparison between Aboriginal and non-Aboriginal Children's Court appearances for care proceedings: 1 July 1979-30 June 1984

Person Presiding	Aborigines		Non-Aborigines	
	n	%	n	%
Judge	26	27.7	336	63.5
Special Magistrate	63	67.0	189	35.7
Justice of the Peace	5	5.3	4	0.8
Total	94	100.0	529	100.0

The degree of Aboriginal representation in each category of person presiding is shown in Table 7. Because of the low number of appearances heard by a justice of the peace, this category has been combined with that of special magistrate. Of the 623 appearances for care proceedings, 94 (15.1 per cent) were appearances by Aborigines. Taking 15.1 per cent as the baseline, Aborigines are under-represented in appearances before a judge, in that they constitute only 7.2 per cent of all such appearances. In contrast, Aborigines account for 26.1 per cent of all appearances before a special magistrate or justice of the peace, which is well above the baseline of 15.1 per cent.

Table 7

Comparative rates of Aboriginal and non-Aboriginal Children's Court Appearances for care proceedings coming before judges or special magistrates/justices of the peace: 1 July 1979-30 June 1984

Identity	Person Presiding					
	Judge		SM/JP		Total	
	n	%	n	%	n	%
Aborigines	26	7.2	68	26.1	94	15.1
Non-Aborigines	336	92.8	193	73.9	529	84.9
Total	362	100.0	261	100.0	623	100.0

To a large extent, these differences can be explained in terms of location. As Seymour (1983) explains:

> . . . Two judges have been designated as Children's Court judges. They sit in metropolitan Adelaide and devote their full time to Children's Court work. . . Three (magistrates) sit full time in the Children's Court in metropolitan

> Adelaide. Special magistrates go on circuit to small towns and preside over regular sittings of the Children's Court. These magistrates divide their time between the Children's Court and work on the adult bench.[11] In between their visits, the Children's Court is constituted by a special justice or justice of the peace. In South Australia there are over 100 centres at which the Children's Court may sit . . . (p.40-41).

Hence, all appearances which take place before a country-based Children's Court in South Australia are presided over by a special magistrate or a justice of the peace, and a judge will preside only if the appearance takes place in Adelaide. The majority of Aboriginal appearances in care proceedings involved children living in country areas and of these, only a handful (namely, eight of the 79 appearances by rural-dwelling children) were transferred to Adelaide. As a result, just over 75 per cent of all Aboriginal appearances took place in the country and so went before a special magistrate or justice. In contrast, not only did most non-Aboriginal appearances involve city children, but in addition, a much higher proportion (namely, 36.6 per cent) of the 205 non-Aboriginal appearances by country-based children were transferred to Adelaide for the hearing. Consequently, just under one quarter (24.6 per cent) of the non-Aboriginal appearances came before a country Court.

Of those Aboriginal appearances which did take place in the city, 82.6 per cent came before a judge, as did 82.0 per cent of those non-Aboriginal appearances which took place in Adelaide. Thus, when locational variations are controlled for, there seem to be no differences between the two groups in terms of the person presiding. Overall, these results indicate that the low proportion of Aboriginal appearances coming before a judge can be explained almost entirely by the fact that so few Aboriginal appearances involve city-dwelling children.

4. Outcome of Care Proceedings

Variations in the person presiding over care applications are not, in themselves, particularly relevant unless it can be demonstrated that the outcome of proceedings (that is, the type of order made by the Court once a child has been found to be in need of care) is affected by whether the case is heard by a judge or a special magistrate. The relationship between the person presiding and the orders made under s 14 of the *Children's Protection and Young Offenders Act* 1979 will now be discussed.

Table 8

Outcome of Aboriginal and non-Aboriginal appearances before the Children's Court for care proceedings: 1 July 1979-30 June 1984

Outcome	Aborigines		Non-Aborigines	
	n	%	n	%
Guardianship of Minister	72	78.3	296	56.3
Control of Director-General	20	21.7	226	42.9
Direction to Reside	0	0	4	0.8
Total	92	100.0	526	100.0

Unknown = 5

623

Table 8 details the distribution of orders for those appearances which took place during the five years. As shown, a greater proportion of Aboriginal than non-Aboriginal appearances resulted in the complete transfer of guardianship rights to the Minister; namely, 78.3 per cent compared with 56.3 per cent respectively. In contrast, a control order was imposed in less than one quarter (21.7 per cent) of all Aboriginal appearances, compared with almost one half (42.9 per cent) of all non-Aboriginal appearances. The differences between the two groups proved to be statistically significant (raw chi square = 14.80: df = 1: sig. < .001 [12]).

These figures are, on first impression, startling. Aboriginal children are clearly over-represented in terms of the number of guardianship orders applied. In fact, of the 368 appearances which resulted in such an order, 19.6 per cent were appearances by Aborigines. In contrast, this group accounted for only 8.1 per cent of the 246 appearances which had a control order imposed.

How can these inter-group variations be accounted for? One factor which may be relevant is that of the judicial officer presiding over the care application. As noted earlier, there are variations between Aborigines and non-Aborigines in terms of the person presiding at the appearance. Do outcomes also vary according to who presides? As Table 9 indicates, this may be the case, since overall, it seems that judges are less likely to place the child under the guardianship of the Minister than are special magistrates.[13] In fact, 52.5 per cent of all appearances heard by judges resulted in a guardianship order, compared with 69.4 per cent of all appearances which came before special magistrates. Conversely, judges are more likely to order the child to be placed under the control of the Director-General than are other officers of the Court. This relationship between the person presiding and the type of order imposed proved to be statistically significant (raw chi square = 17.08: df = 1: sig. < .001).

Table 9

Variations in the outcome of Children's Court appearances for care matters according to the person presiding: 1 July 1979-30 June 1984

Outcome	Person Presiding			
	Judge		SM/JP	
	n	%	n	%
Guardianship of Minister	189	52.5	179	69.4
Control of Director-General	169	46.9	77	29.8
Direction to Reside	2	0.6	2	0.8
Total	360	100.0	258	100.0

Unknown = 5

623

Because of their largely rural distribution, proportionately more Aboriginal than non-Aboriginal appearances take place before special magistrates. Could this account for the relatively high rate of guardianship orders imposed on Aboriginal children? A reassessment of the relationship between identity and outcome while controlling for the person presiding is detailed in Table 10.

Table 10

Relationship between outcome and identity, controlling for the person presiding: appearances before the Children's Court for care proceedings: 1 July 1979-30 June 1984

Outcome	Aborigines				Non-Aborigines			
	Judge		SM/JP		Judge		SM/JP	
	n	%	n	%	n	%	n	%
Guardianship of Minister	16	64.0	56	83.6	173	51.6	123	64.4
Control of Director-General	9	36.0	11	16.4	160	47.8	66	34.6
Direction to Reside	0	0	0	0	2	0.6	2	1.0
Total	25	100.0	67	100.0	335	100.0	191	100.0

Unknown = 5

623

For both Aboriginal and non-Aboriginal appearances alike, special magistrates were more likely to order the child to be placed under the guardianship of the Minister and less likely to impose a control order than were judges. Nevertheless, in each category of person presiding, proportionately more Aboriginal than non-Aboriginal appearances resulted in a guardianship order. In fact, 64.0 per cent of those Aboriginal appearances which came before a judge had a guardianship order imposed compared with only 51.6 per cent of those non-Aboriginal appearances presided over by a judge. Similarly, a high 83.6 per cent of all Aboriginal appearances presided over by a special magistrate resulted in a guardianship order, compared with only 64.4 per cent of non-Aboriginal appearances in the same 'person presiding' category.

This suggests that variations in the person presiding cannot adequately account for the inter-group differences in the type of outcome observed earlier. In fact, irrespective of who presides, proportionately more Aboriginal than non-Aboriginal appearances still result in a full guardianship order being made by the Children's Court in care proceedings. This is of crucial importance, given that the guardianship order is more drastic in its legal effect than the control order, since it involves the complete transfer of guardianship rights away from the parents.

What other factors could account for these inter-group variations in the outcome of care proceedings? In deciding on the appropriate order for a child found to be in need of care, the Children's Court has access to, and may be influenced by, a range of information concerning the child and his or her family background. However, we could not analyse these factors because the computerised data files maintained by the Department for Community Welfare recorded very few details on the social background of those children involved in care proceedings.

Despite this, it was possible to investigate whether the variables of age, gender and residential address correlated with appearance outcomes, and, if so, whether these accounted for the observed inter-group variations in the types of orders imposed.

4.1 Controlling for age

As Table 11 shows, there is a statistically significant relationship between the outcome and the age of the child appearing (raw chi square = 9.49: df = 3: sig. $<.05$). It seems that as age increases, the proportion of appearances resulting in a guardianship order decreases, while conversely, the proportion resulting in other orders, principally control orders, increases.

Table 11

Variations in the outcome of Children's Court appearances for care proceedings according to age: 1 July 1979-30 June 1984

Outcome	Age in Years							
	Less than 5		5-9		10-14		15 and over	
	n	%	n	%	n	%	n	%
Guardianship of Minister	112	66.7	86	67.2	133	53.6	37	50.0
Other	56	33.3	42	32.8	115	46.4	37	50.0
Total	168	100.0	128	100.0	248	100.0	74	100.0

Unknown = 5

623

Given that Aboriginal appearances involve a greater proportion of younger children than do non-Aboriginal appearances, could this finding explain why proportionately more Aboriginal appearances result in a guardianship order? The answer seems to be no, since, as Table 12 shows, within each of the four age groups analysed, a higher percentage of Aboriginal than non-Aboriginal appearances had a guardianship order imposed. Of the 34 Aboriginal appearances by children aged less than five years, 85.3 per cent resulted in a guardianship order, compared with only 61.9 per cent of the 134 non-Aboriginal appearances by children in the same age bracket. At the other end of the scale, a guardianship order was made in three quarters of the Aboriginal appearances involving children aged fifteen years and over, compared with less than one half (48.6 per cent) of the non-Aboriginal appearances by children in this age range. Thus, irrespective of age, proportionately more Aboriginal than non-Aboriginal appearances result in a guardianship order.

Table 12

Proportion of Aboriginal and non-Aboriginal appearances per age category resulting in a 'guardianship' or 'other' order: 1 July 1979-30 June 1984

Age in years	Aborigines				Non-Aborigines			
	Guardianship		Other		Guardianship		Other	
	n	%	n	%	n	%	n	%
Less than 5	29	85.3	5	14.7	83	61.9	51	38.1
5 — 9	19	79.2	5	20.8	67	64.4	37	35.6
10 — 14	21	70.0	9	30.0	112	51.4	106	48.6
15 and over	3	75.0	1	25.0	34	48.6	36	51.4

Unknown = 5

623

4.2 Controlling for gender

As with age, gender also proved to be significantly related to the outcome of the appearance (raw chi square = 4.84: df =1: sig.< .05), with females more likely to be placed under a guardianship order than males. Of the 274 appearances involving females, 64.6 per cent resulted in such an outcome, compared with only 55.5 per cent of the 344 appearances by males.

These results are interesting in view of an earlier finding that it is males who constitute a higher proportion of Aboriginal than non-Aboriginal appearances. Since pro-

portionately more Aboriginal appearances involve males and since proportionately fewer males are placed under guardianship orders, one would expect that proportionately fewer Aboriginal appearances would have a guardianship order imposed. Since this is obviously not the case, gender cannot, in any way, account for the observed inter-group differences in appearance outcomes.

4.3 Controlling for residential location

The third variable analysed was that of the child's residential location at the time of the appearance, with location again being dichotomised into 'Adelaide' and 'the remainder of South Australia'. The results indicated significant differences in outcome between appearances involving children living in the city and those living in country areas. Overall, children living in rural South Australia were more likely to have guardianship orders imposed than were those children living in Adelaide. In fact, of the 281 appearances by country children which took place during the five year period and for which relevant data were available, 68.7 per cent resulted in the removal of guardianship rights from the parents to the Minister. In contrast, a guardianship order was made in only 51.9 per cent of the 337 appearances involving Adelaide-based children.

Table 13

Residential location: proportion of Aboriginal and non-Aboriginal appearances per category resulting in a 'guardianship' or 'other' order: 1 July 1979-30 June 1984

Residential location	Aborigines				Non-Aborigines			
	Guardianship		Other		Guardianship		Other	
	n	%	n	%	n	%	n	%
Adelaide	10	71.4	4	28.6	165	51.1	158	48.9
Remainder of SA	62	79.5	16	20.5	131	64.5	72	35.5

Unknown = 5

623

Since a greater proportion of Aboriginal than non-Aboriginal appearances relating to care matters involved children who were rural-dwellers, could this finding account for the higher rate of guardianship orders imposed on Aborigines? Further analysis indicated that this was not the case. Table 13 shows that, although numbers were extremely small, 71.4 percent of the Aboriginal appearances involving city children resulted in a guardianship order compared with ony 51.1 per cent of the 323 non-Aboriginal appearances by Adelaide children. Similarly, a much higher proportion of Aboriginal than non-Aboriginal appearances involving country-dwelling children resulted in a guardianship order; namely, 79.5 per cent compared with 64.5 per cent respectively.

In summary then, neither gender, nor age, nor residential location could explain the disproportionately high rate of guardianship orders imposed on Aboriginal children.

Conclusion

The following principal points emerge from the foregoing analysis:

(i) There is an over-representation of Aboriginal children in care proceedings before the Children's Court in South Australia, and this is greater for

Aboriginal males than for Aboriginal females.

(ii) A greater proportion of Aboriginal than non-Aboriginal appearances involve younger children. This may suggest that neglect or maltreatment is the more common ground for the initiation of proceedings relating to Aboriginal children, whereas inadequate control may be more common in proceedings relating to non-Aboriginal children.

(iii) The over-representation of Aboriginal children in care proceedings is more pronounced in country areas of South Australia than in metropolitan Adelaide, even allowing for urban-rural differences in population distributions.

(iv) The majority of non-Aboriginal appearances are presided over by a judge, whereas most Aboriginal appearances come before a special magistrate. These differences proved to be entirely due to variations in the hearing location.

(v) Aboriginal children are over-represented in terms of the most drastic order that can be made in care proceedings: that is, a guardianship order which involves the complete transfer of legal rights from the parents to the Minister of Community Welfare.

(vi) Taking the total appearances for both groups, judges of the Children's Court make fewer guardianship orders than do magistrates. Judges appear to favour the control order which involves a sharing of rights and responsibilities between the State and parents.

(vii) However, the status of the judicial officer presiding over the care proceedings does not, in itself, seem to account for the high proportion of guardianship orders made in relation to Aboriginal children. Irrespective of who presides, proportionately more Aboriginal than non-Aboriginal appearances result in full guardianship orders.

(viii) In addition, neither gender, age, nor residential location, when analyzed separately, explain the disproportionately high number of guardianship orders made over Aboriginal children.

Thus, despite recent legislative changes in South Australia and despite significant shifts in government policy towards Aborigines over recent decades, Aboriginal children in South Australia continue to be subjected to a disproportionate amount of welfare intervention. The extent and profile of Aboriginal over-representation in care proceedings before the Children's Court in South Australia is clear: the reasons for it remain obscure. It also remains to be ascertained whether the pattern of appearances by Aboriginal children in care proceedings observed in South Australia differs from those in other states of Australia. If differences do exist, then explanations must be sought.

The approach of this paper has been empirical only. We have detailed the degree of Aboriginal over-representation in care proceedings but the explanations for that over-representation have still to be identified. Our analysis has primarily served to eliminate certain factors as contributors to the observed over-representation, rather than to identify those which have positive explanatory value. Yet even this limited analysis leads us to question whether the extent of this form of welfare intervention in the lives of Aboriginal children and families is justified. Do proportionately more Aboriginal than non-Aboriginal parents fail in their attempts to provide 'accepted minimum standards'

of child care and control, thus validating the high levels of intervention outlined in this paper? Or alternatively, is the protective and essentially paternalistic jurisdiction exercised over children judged to be in need of care being differentially applied by the agencies of social welfare and control within our society? If so, then is this differential application based on considerations of ethnic or racial identity, socio-economic status or other group characteristics? In other words, are certain 'marginal' groups, such as Aborigines, being disadvantaged simply because they do not conform to the normative standards held by the agencies of mainstream society? If so, then it may be that the criterion of 'acceptability' in child care practice itself requires examination and reassessment.

Many of the criteria currently used to evaluate the 'suitability' of a child's familial environment are based on the middle-class norms of a nuclear family household, headed by an employed male. Yet even urban Aboriginal households (let alone rural or traditional Aboriginal family units) often fail to meet such criteria. For historical, cultural and economic reasons, Aboriginal households in Adelaide, for example, tend to consist of large, multi-family units, headed by a single female and characterised by high unemployment levels, low income levels, high residential mobility, high dependency ratios and low masculinity ratios (Gale and Wundersitz 1982). To the outsider, such households may appear to be disorganised and unsuitable for the rearing of children. Yet this is often not the case. In fact, the larger households, with their reliance on an extensive kin system, may, in fact, provide greater support for the child than does a nuclear-family unit. It is therefore crucial to determine whether the institutions of our welfare state and judicial system disadvantage Aboriginal and other 'marginal' groups within our society simply because such groups adhere to somewhat different values and behavioural standards from those on which institutional guidelines are based.

If this is the case, then legislative changes, on their own, will have very little effect in overcoming or reducing the apparent disadvantages experienced by Aboriginal children in their degree of contact with the civil jurisdiction of the Children's Court.

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Endnotes

1. In 'The Law Relating to Parents and Children', Gamble (1981:272) estimates that in the late 1970s approximately twice as many children per year were under welfare control in Australia as came to the attention of the Family Court of Australia in custody and access matters.
2. In the year 1 July 1983-30 June 1984, for example, 227 children were placed under guardianship orders or control orders for the first time by the Children's Court, whereas only 6 (excluding 13 interstate transfers) were admitted to long-term guardianship by administrative process under the *Community Welfare Act* 1972 (SA). (Department for Community Welfare 1984:98).
3. Note the inclusion of 'mental injury' and jeopardy to 'emotional development', grounds which Goldstein *et al* (1980) would find unacceptable.
4. *Children's Protection and Young Offenders Act* 1979 (SA), s 23.
5. Figures from the *Department for Community Welfare 1983-1984, Annual Report* (1984:34).
6. The ideology of the Mohr Report, and the conceptual and practical differences between the repealed and the current legislation, are discussed in Bailey (1984).

7. *Aborigines Act* 1911, s 10.
8. *Children's Protection and Young Offenders Act* 1979 (SA), ss 4 and 66.
9. Since the care data now being discussed relate to first appearances only, any subsequent data which relate to appearances before the Children's Court and Children's Aid Panels for offence matters will also deal with first appearances only.
10. This refers to the Adelaide Statistical Division.
11. The degree of specialisation in South Australia is roughly comparable with that found elsewhere in Australia, where magistrates sit full time in Children's Court only in Melbourne, Sydney, Brisbane and Perth. In Darwin and Hobart, and in country areas throughout Australia, magistrates combine Children's Court work with general jurisdiction.
12. For this and subsequent chi square calculations the two outcome categories of 'direction to reside' and 'control of director-general' have been combined.
13. In the tables, special magistrates are combined with justices of the peace. As explained earlier, justices play only a minor role in Children's Court proceedings and so, for convenience, the single designation of magistrate will henceforth be used in discussion.

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