ABORIGINAL GIRLS AND JUVENILE JUSTICE: WHAT JUSTICE? WHITE JUSTICE

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This paper has several focuses. One of these is simply to present the empirical evidence which demonstrates that Aboriginal girls, like their male counterparts, are massively over-represented in the New South Wales juvenile justice and child welfare systems, as they are in other Australian States and Territories. Another more complex trajectory of this paper is to develop an argument which goes beyond the assertion that a combination of over-offending and over-policing explains such gross levels of over-representation. Central to the argument developed here is the notion that implicit in welfare and juvenile justice interventions are constructions of 'otherness' of Aboriginal girls, families and communities, which have the effect of pathologising their cultural differences, as well as criminalising their more explicit resistances to the dominant cultural order.

The Evidence of Over-Representation

Evidence of the over-representation of Aboriginal girls, youth and adults more generally in the juvenile justice, child welfare and criminal justice systems, is overwhelming. Drawing on my research, as well as the research findings of other Australian studies, the following provides a summary of this evidence.

Table 1 in the appendix presents the female delinquency detection rates for the rural regions of N.S.W, in rank order from highest to lowest[1]. The correlation between increasing proportions of Aboriginal residents in the rural regions of

1. Because this paper draws on material based on my PhD research, it is necessary to provide a brief account of the manner in which this research was carried out. The primary data of the study was generated by three procedures executed in the following order. The first task undertaken was a ten per cent random sample of the Juvenile Criminal Index records held in NSW. For girls born in the years 1960 -1964. A case history study of the case notes, ward files, and criminal dossiers of fifty-nine girls (six of whom were Aboriginal) chosen from the 1046 in the random sample constituted the second procedure. An observational study of Sydney Metropolitan Children's Courts comprised the final procedure. The female delinquency detection rates presented in tables 1 & 2 are based on data derived for from the random sample. The argument developed in this paper draws heavily upon an analysis of the records, in particular the social enquiry, home background and psychological reports, contained in the criminal dossiers and ward files of six Aboriginal girls committed to juvenile corrective institutions in NSW from the case history sample.

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NSW and high detection rates for female delinquency is strong (r=0.61). This does not say much, but when the rates are broken down into more localised regions the extent of variation among them is remarkable.

Table 2 in the appendix presents in rank order from highest to lowest the detection rates for female delinquency for the five local government areas (L.G.A.s) in NSW with the highest recorded residential concentrations of Aboriginal people in the State. At the time of the 1981 census, the average population of Aboriginal people in these L.G.A.s was 22 times the state average[2]. What is so striking about this table is the remarkably high detection rate for female delinquency in all five localities. The average detection rates was 7.94 delinquent girls per 1000 head of female population aged 10-19. This average is four times the average detection rate of 1.94 delinquent girls per 1000 for the rural regions of NSW, and more than three times the average detection rate of 2.53 delinquent girls per 1000 for metropolitan localities. Thus, the highest rates of detection for female delinquency in the state of NSW occur, outside the metropolitan area, in regions with proportionally large Aboriginal communities. An examination of the 1986-1987 official statistics for juvenile cautions and convictions in NSW, by Cunneen, reported a similar finding. This study found that the highest rates of conviction in the State occurred outside the Sydney statistical division, in those L.G.A.s in the north-west of the State with large proportions of Aboriginal people, such as Wilcannia, Bourke, Brewarrina and Walgett (Cunneen, 1988:26).

The statistical picture of over-representation presented above, is corroborated by the research of others concerned with exploring the relation between Aboriginal youth, crime and criminal justice. The problem with this data is that the specificity of Aboriginal girls tends to get lost in the category 'Aboriginal youth', but there is no other comparable or available research of this kind. The most significant study of the relation between Aboriginal youth and criminal justice was undertaken for the NSW Bureau of Crime Statistics and Research by Chris Cunneen and Tom Robb. The authors of this study provide indisputable evidence that Aboriginal juveniles are dramatically over-represented in the State's official delinquent population. The study found that 'the charge rates for Aboriginal youth are 6 times greater in Dubbo, 47 times greater in Wellington, 57 times greater in Brewarrina, 36 times greater in Bourke and 90 times greater in Walgett than those which exist for non-Aboriginal youth' (Cunneen, Robb, 1987:143).

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2. The reason for choosing only these five L.G.A.s is that few other Aboriginal communities proportionate to total population of a particular region in NSW, are significant enough for statistical analysis of this kind.

Studies comparing prosecution and incarceration rates of Aboriginal youth to non-Aboriginal youth in other Australian States also report a massive variation between the two groups. In Western Australia, Aboriginal youth comprise only 1.2% of the population, but account for 19.6% of appearances in the Children's Courts (Freiberg, Fox, Hogan, 1988:49). A South Australian study found that while Aboriginal youth comprise only 1.2% of those aged 10 to 17, they account for 4.1% of appearances before Juvenile Aid Panels, 14.0% of those appearing in Courts and 31.9% of all youth sentenced to a detention centre (Gale, Wundersitz, 1985:213-214). The authors conclude that Aboriginal youth come to be increasingly over-represented as they move up through the hierarchy of punishments available to the South Australian juvenile justice system. In NSW this also seems to be the case as Aboriginal people comprise only 0.3% of the metropolitan population, and 0.7% of the total population of NSW (A.B.S., 1981) yet constitute about 25% of the inmates in the State's juvenile correctional institutions (Hogan, 1989:25).

Explaining Over-Representation

Cunneen and Robb's report on Criminal Justice in North West NSW offers a dual explanation for the over-representation of Aboriginal youths and adults in the criminal justice system. They argue that part of that explanation accepts a higher rate of commission of offences by Aboriginal people and seeks to explain this through socio-economic factors (such as resistance to policing, poverty, sub-standard housing, and so on). The other side of the explanation of over-representation rests on an acceptance of a level of over-policing (Cunneen, Robb, 1987:220). British researchers have similarly suggested that over-offending associated with economic deprivation and cultural factors such as greater reliance on the street, combined with the over-policing of black communities, explain the higher arrest rates of blacks in Britain (Brogden, Jefferson, Walklate, 1988:139).

The remainder of this article seeks to develop an argument, however tentative, which adds a cultural dimension to the argument that the over-representation of Aboriginal people in the juvenile justice and criminal justice systems is a matter of the over-commission of offences and the over-policing of Aboriginal communities. I want to demonstrate how the criminalisation process, the way Aboriginal girls are detected, arrested and presented to court is predicated on institutionalised forms of racism, even though there may be no obvious nor overt racist intentions on the part of the individual juvenile justice authorities.

3. The Selective Nature of Policing

The first aspect of the criminalisation process examined here seeks to show how the selective nature of routine police work institutionalises the differential

policing of Aboriginal communities. The process of criminalisation, of maintaining law and order so to speak, is predominantly concerned with policing public space, the streets and the roads in particular, regulating public conduct and protecting property to the detriment of an adequate level of concern with other kinds of offences, such as domestic violence, industrial negligence, corporate corruption, tax evasion and other such crimes of the more privileged sectors of the community (Wilson, 1988:5; Schwendinger, Schwendinger, 1981:67). The visibility of Aboriginal people, particularly young Aboriginals, on the streets, and around the town make them obvious targets for routine policing which focuses on public order offences. The empirical evidence provided by Cunneen and Robb's study certainly suggests this is the case. The bulk of matters for which Aboriginal youth and adults appear before the courts involve 'public order offences', such as drunkenness, unseemly words and offensive behaviour and 'police offences', such as hindering police, assaulting police and resisting arrest (Cunneen, Robb, 1987:91). Cunneen and Robb's study of Brewarrina police charge books found this to be almost exclusively the case. According to these records, in 1964 public order and police offences constituted 96.1% of all charges laid against Aboriginal people in Brewarrina (Cunneen, Robb, 1987:199). It is no surprise then, that the level of Aboriginal over-representation reaches its peak in these particular offence categories (Cunneen, Robb, 1987:221). Hence the concentration of policing resources channelled into the regulation of public conduct and the protection of property brings Aboriginal communities into the centre of the criminalisation process and Aboriginal children into the sharper focus of the juvenile justice authorities.

The criminalisation process is also predicated on institutionalised forms of racism because so much policing has as its target families and communities concentrated in low-income, high unemployment and high welfare dependency regions. The policing resources of both the juvenile justice and criminal justice systems are disproportionately directed at these communities in anticipation of juvenile delinquency, family pathology, social decay and disorder, thus exposing the residents of regions socio-geographically defined by poverty and Aboriginality to much higher risks of criminalisation. The residential concentrations of both Aboriginal and welfare dependent sections of the population in housing commission satellites and Aboriginal reserves[3] and other identifiable major urban centres of the Sydney metropolitan area, such as Redfern and Blacktown, facilitate the ease with which policing can be directed at such communities. The rural town of Bourke is an exemplary illustration of this. It has one of the highest concentrations of Aboriginal people proportionate

3. Aboriginal reserves are the historical residue of colonial practices toward Aboriginal people in NSW. They were primarily sites for the institutionalisation of Aboriginal people so that they could be managed, 'civilised' and assimilated. In recent years, those that have not been sold off have been given over to the Aboriginal residents.

to total population in the State (Cunneen, Robb, 1987:16). It also has 27 police for a shire population of around 4000 - the highest proportion of police per head of population in Australia (Cunneen, Robb, 1987:211).

The combined effects of a policing process which elevates a concern for public order and property offences above other kinds of offences, and which then directs and concentrates its resources at certain sections of the population in anticipation of these kinds of offences occurring in these places, inevitably results in the over-representation of Aboriginal people in the criminal and juvenile justice systems. Thus the criminalisation process to which Aboriginal people have been historically subject since colonisation has a self fulfilling effect which then produces all kinds of ideological spin-offs. Conservative politicians, such as Gerry Peacock the National Party member for north west Orana electorate of NSW, for example, argue that because Aboriginal crime levels are massively higher than those for non-Aboriginal people they require disproportionate police attention. Thus the empirical evidence of over-representation can be used politically to construct and perpetuate a 'law 'n' order' crisis demanding more police, and more draconian measures such as blanket curfews for all Aboriginal youth in these towns (Cunneen, Robb, 1987).

The disproportionate surveillance and monitoring of Aboriginal communities and the subsequent relationship to public order offences can be more clearly understood if we consider some specific cases of Aboriginal juvenile offenders. Lucy's case[4] provides a clear example of the focused nature of policing and its consequences for youth, both male and female, in Aboriginal communities. She was apprehended with other Aboriginal youths drinking alcohol around a camp fire one Friday night at the back of the reserve. They were detected as the result of a routine police check of the reserve[5]. By comparison, because of the long-standing reluctance to intervene in the private space of most non-Aboriginal communities, police patrols of what most non-Aboriginal kids do in the privacy of the social space of their backyard on Friday nights are not

4. Lucy is a pseudonym for one of the Aboriginal girls in the case histories I examined. The other names used in this text to refer to specific cases of Aboriginal girls are also pseudonyms.

5. On the basis of events explained in the Sworn Statement made by the apprehending police officer and quoted at length below, six Aboriginal children aged between eleven and fourteen were charged with being uncontrollable and committed to institutions.

'*...On the arrival of the police the majority of the children decamped to the nearby bush... However some children remained... and the child before the court Lucy was affected by intoxicating liquor... Police enquiries later revealed, sir, the children had accumulated together what little money they had and this was an amount of $5.00 approximately. Then two of the children went to a hotel in the area seeking the aid of an adult person they knew in the hotel, obtained a flagon of wine and seven cans of beer. They returned to (the back of the reserve) where the children began drinking. Eddie (one of the children) ended up in hospital with alcohol poisoning.*' (Sworn Statement, 6/7/76)

In cross-examination the constable was asked, 'You agree as far that this was an isolated incident and not a regular occurrence?', to which the constable replied, 'It would appear so, sir, yes' (Court Transcripts, 6/7/76). So despite even police evidence that this event was unusual, all six Aboriginal children were committed to institutions, including Lucy and her older sister.

routinised. The law in its field of operation thus extends to the youth of such communities a relative immunity against detection. On the other hand, because reserves are policed to a large extent as public spaces, like local parks, river banks and other public places, Aboriginal youth are predisposed to much higher levels of detection and criminalisation than non-Aboriginal youth for public order offences.

Criminalising Otherness

The social and cultural content of behaviour defined by the juvenile justice agencies as constituting legitimate grounds for punitive state intervention contributes in large part to the over-commission of offences attributed to Aboriginal youth. Before I proceed with this argument it is necessary to provide some background information about the way juveniles actually come to be criminalised and thus *how* cultural relations of otherness become juridical objects in Children's Court proceedings.

Because the Children's Court is primarily concerned with determining outcomes (and not adjudicating guilt since most matters dealt with are negotiated guilty pleas), it examines individuals, their home background, their friends and associates, their past and their probable futures. The Children's Court is therefore a site whereby an array of judgements about individuals assemble. Hence the Children's Court pronounces penalties which fit the criminal and not the crime (Donzelot, 1979:110). Home reports, court reports, psychological reports and other such documents tendered as admissible evidence in Children's Court proceedings, are fundamental to this process because they effectively provide a means for placing the accused child's familial and cultural surroundings on trial, making them objects of adjudication in Children's Court proceedings. Once 'guilt' is admitted or established, determinations about what to do with the child before the court, therefore rest heavily upon the character and reputation of the family and social surroundings of that child supplied by the various normalising/welfare agencies and not, as commonly believed, on events surrounding the commission of a discrete act or crime. Within the family the mother is often the one singled out for particularly intense forms of censure and moralisation by child welfare and juvenile justice agencies. This all has the effect of marginalising the legal categories of crime for which juveniles appear before the court and of blurring the distinction between welfare matters and criminal offences. Nevertheless, it is the legal grounds for intervention which authorise the 'advice' and recommendations of extra-judicial agencies and instruct the Children's Court to consider such assessments in sentencing

children who come before the court in both welfare and criminal matters[6]. Thus the legislative basis of intervention, which was until January 1988 provided by the Child Welfare Act (NSW) 1939, but has now been replaced by a package of Acts[7], permits a great deal of extra-judicial discretion in dealing with children and families who come to the notice of the authorities. In NSW, district officers, social workers, psychologists and Y.O.S. workers employed by the Department of Family and Community Services are the primary bearers of this discretion. Punishment or court action is usually seen as a last resort for those who have continued to disregard the 'advice' or tutelage of these extra-judicial agencies.

In the cases I examined of Aboriginal girls appearing before the courts, moral transgressions such as 'disrespect for authority', 'hanging around the streets', 'idleness', 'dislike of school', 'educational failure', 'truancy', 'undesirable peer dependence', 'lack of regard for the property of others', 'bad home environment' and 'associations with youths adversely known to the department or the police' comprised the bulk of what was presented to the Children's Court as the grounds for legitimising punitive intervention. In the following material I examine the racially specific and gender specific implications of some of these 'crimes' more closely.

The proportion of public order offences attributed to Aboriginal youth although partly an effect of a criminalisation process which focuses on maintaining public order, as I argued above, can also be considered in terms of cultural relations. Those same girls had also been apprehended at some time during their adolescence for their public demeanor and use of public space, such as 'hanging around the streets', 'without adult supervision', 'making a public nuisance of themselves' and 'showing no respect for authority'. Here, there is a clear overlapping of judicial and extra-judicial policing of Aboriginal youth. In some of the particular cases examined, such moral infractions were presented as a package to the court as evidence of uncontrollability, parental neglect or

6. Section 89 (2) of the Child Welfare Act, NSW 1939 instructs the Magistrate in making an order to give consideration to reports, 'setting out the details and results of investigation into antecedents, home environment, companions, education, school attendance, habits, recreation, character, reputation, disposition medical history and physical or mental characteristics or defects, if any, of the child or young person' (Child Welfare Act, No. 17:108).

   Under the legislation which has replaced the 1939 Act, Section 7.4 (1) of Children (Care and Protection) Act 1987, and Section 25 (1) of the Children (Criminal Proceedings) Act 1987, instructs the Children's Court not to sentence or make an order in relation to a child before the court without first considering assessment reports in welfare matters and background reports in criminal matters which deal with the following (as set out in Regulation 6 of the Children (Criminal Proceedings) Act 1987 and Regulation 11 of the Children (Care and Protection) Act 1987). The person's family background, employment, education, friends and associates, disabilities, antecedents; the nature and extent off the person's participation in the life of the community; the range of care orders for welfare matters or sentencing orders for criminal offences that are available to the court in respect of the person; and the resources available within the Department to administer each kind of care or sentencing order in that range.

7. This package of legislation includes: Children (care and Protection) Act 1987 (NSW), Children (Detention Centres) Act 1987 (NSW), Children (Criminal Proceedings) Act 1987 (NSW), Children (Community Service Orders) Act 1987 (NSW)).

delinquency of one kind or another. What is important about this is the way political tensions over the use and control of public space, (i.e. should the park in Bourke be 'Aboriginal land' or should it be reserved for the sole use by town whites) underscore court action against Aboriginal girls whose social visibility and use of public space contests the dominant power relations which seek to regulate the use of that space.

Unequal gender relations also enter into the policing of public space used by Aboriginal girls. It is my impression from a reading of court documents, that popularised male discourses, mythologies and fantasies about the black female body underscore the hysterical fears expressed by extra-judicial agencies that the publicly visible presence of Aboriginal girls is somehow 'harmful to the local community' (an oft quoted phrase in Court Reports). A fear that nice white boys in the town might be tempted into the dens of black seductresses, thus upsetting the race relations of apartheid which reign in towns like Bourke, arguably underscores the additional forms of tutelage and moralisation directed at Aboriginal girls. In this way, Aboriginal girls are made morally responsible for the sexual fantasies of white boys, in much the same way as working-class girls are made morally responsible for male discourses about uncontrollable male sexuality (See for example, Tyler, 1986).

Concern about the regulation of public space is therefore socially focused, and not neutral or arbitrary. Obviously in the north west of NSW where Aboriginal youth swell the ranks of the young unemployed and welfare dependent, their use of public space is subject to heightened surveillance by the juvenile justice authorities. Aboriginal girls, because of white male discourses about black female bodies, are subject to additional forms of regulation and surveillance for their use of public space. Under such circumstances those Aboriginal girls whether they choose to, or have to, resort to public space for their leisure activities are much more vulnerable to policing than non-Aboriginal girls in the same towns (Clarke, Critcher, 1985:126).

Cultural relations of otherness are implicit in many of the other offences for which Aboriginal girls were brought before the courts. Five of the six girls in the study were alleged to have had 'associations with youths adversely known to the department'. Most Aboriginal youth would have 'associations with youth adversely known to the department or the police' given that about half the Murri[8] girls and most of the Murri boys in towns like Bourke have criminal records. The implication is clear. Unless Aboriginal youth extricate themselves from kin and cultural associations they are subject to constant suspicion for their mere cultural and familial relations with other Murris.

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8. The term *Murri* is used by Aborigines in the Western region to refer to themselves and other Aborigines rather than the European word Aborigine.

In the cases I examined where court action centred around 'disrespect for authority', (for example charges of unseemly words which arose from incidents of swearing, or breach of probation charges resulting from refusing to comply with the directions of a supervising welfare worker), disrespect for three such figures stood out in particular - the school teacher, the police officer and the district officer or welfare worker. Again we see the overlapping of judicial and extra-judicial forms of power. It should be obvious that Aboriginal youth are predisposed to committing 'offences' of this type given the inevitable tensions, antagonisms, and disrespect for authority figures whose job it is to police, assist, teach and instruct them in the ways of 'gubbas'[9], backed with punitive sanctions for non-compliance. In this sense, what may simply be to Aboriginal girls a legitimate expression of disrespect for the intrusiveness of non-Aboriginal agencies of authority can be translated into delinquent behaviour and presented to the court in the form of charges for unseemly words, uncontrollability, offensive behaviour, resisting arrest, charges for breaching probation and so on.

Court action for truancy, authorised by Section 72 (o) of the Child Welfare Act 1939, has been another way in which the foundations of child welfare and juvenile justice have operated to the persistent disadvantage of Aboriginal children. Since the proclamation of the package of new Acts which replaced the Child Welfare Act, on 18th January 1988, truancy has ceased to constitute legal grounds for juvenile justice intervention. Nevertheless arguments about the implications of making truancy a status offence are important in the current political climate given the push from the NSW Liberal National Party government to reinstitute truancy as an offence[10] (*Sydney Morning Herald*, 17/11/88; *Sydney Morning Herald*, 4/5/89).

Court action, either for truancy under Section 72 (o) of the Child Welfare Act 1939, or involving truancy under some other section of the Act, was proceeded with for five of the six Aboriginal girls whose cases comprise the basis of the argument developed here. Lucy's second committal to an institution arose from court action initiated by the supervising district officer for truancy. The records in Lucy's dossier also provide information that her younger brother and older sister had as well been committed to institutions for truancy. Truancy and 'educational retardation' were contributory factors in Terese's committal to wardship and subsequent committal to an institution. Jenny, another Aboriginal girl whose case I studied, was committed to state wardship for being uncontrollable. Having a 'poor school attendance record', 'stealing 50 cents from a teachers desk which she spent on food', and displaying 'behavioural problems at school' comprised the basis of the uncontrollable allegations against

9. *Gubbas* is a term applied by Aborigines to whites.

10. The first attempt to reinstate truancy as an offence, in May 1989, the Children (Care and Protection) (School Attendance) Amendment Bill 1989, was blocked in the upper house. However, the Education Reform Bill to be debated in May this year, if successful, will reinstate truancy as a welfare offence and provide for fines for parents who fail to send their children to school of up to $2,000.

her. Initial court action against Debbie, another Aboriginal girl in the study, also arose out of poor school attendance. She was subsequently committed to wardship and forcibly severed from her kin and community for a breach of probation which involved, among other things as serious as 'smoking' and 'bed wetting', truanting from school. For Sally, the last of the five, although her Juvenile Criminal Index card records that she was committed to an institution for the offence of drunkenness, her previous expulsion from school for disruptive behaviour and non-attendance was used to justify a period of 'environmental manipulation' in an appropriate training school. The single Aboriginal girl in my study who did not appear before the court at some time or another for charges related to truancy, was in fact never sent to school due to a physical birth disability.

Truancy and dislike of school by Aboriginal children is a defensible cultural response given the historical context in which Aboriginal children have been, or rather have not been, schooled. Prior to the 1940s, the attendance of Aboriginal children in State schools was, in fact, prohibited by State and Commonwealth policies of racial segregation (Fletcher, 1975:30). In 1940, NSW was one of the first Australian States to reverse racial segregation in favour of absorption through the implementation of programs in Aboriginal education (McConnochie, 1982:23). There was general agreement among educationalists of the time that assimilation was most likely to succeed if racial integration began at an early age. Hence schools have been used instrumentally in achieving the political objective of 'assimilation' (Fletcher, 1975:30), a euphemism for cultural genocide.

Two contemporary studies of race relations in the north west of NSW provide support for the argument that racism is an institutionalised feature of State schools in the region. Aboriginal children enrolled in schools in these areas are faced with conflicting pressures, whereby their school attendance is compulsory, yet their presence at school is discouraged and unwanted (Cowlishaw, 1988; Cunneen, Robb, 1987). Hence Cowlishaw argues that 'For Aboriginal parents truancy expresses a legitimate dislike of schools' (Cowlishaw, 1988:235). It is therefore not surprising that high schools in these areas have the highest truancy rates and the lowest retention rates in the State. Bourke High School, for example, has a truancy rate of 22.5 days per term per child (Cunneen, Robb, 1987:32). The point is, truancy would appear to be a legitimate and commonplace cultural response of Aboriginal children to forms of institutionalised racism experienced at school. Thus a punitive state response to the truancy of Aboriginal children effectively blames, punishes and locates the source of 'difficulty' with Aboriginal children and their families, and hence perpetuates the institutionalised racism historically explicit and implicit in the enterprise of schooling. The response to Aboriginal truancy is treated in judicial, extra-judicial and educational apparatuses in the same bureaucratic way as responses to other 'deviant' individuals. The issue of racism is simply erased.

Like court action for truancy, court action through wardship proceedings has also operated to the persistent detriment of Aboriginal families and communities. This is because the ideological constructions of 'normal' family life implicit in child welfare interventions are culturally and class specific.

Mary's case exemplifies the point being made here. Overcrowding was presented as one of the reasons for her committal to wardship. She lived in what court documents described as a 'dirt floor shack on the reserve' with 'a dozen other siblings'. Thus different kinds of living arrangements, family cultures and parenting practices, particularly those circumscribed by poverty and welfare dependence, represent the 'other' - those failing families who need 'welfare assistance'. The point is that within such a discourse Aboriginal families become constructed as obvious, or almost natural or inevitable, candidates for 'welfare assistance', rationalising unnecessary and often overly punitive kinds of welfare intervention. Thus, the type of families targeted by child welfare agencies for normalising intervention is predicated on an institutionalised form of racism which has resulted in the persistent and extensive removal of Aboriginal children from their families and communities.

The history of the 'stolen generations' is now well documented. Read estimates that almost 6000 children were removed from their Aboriginal families over the period from 1883 to 1969 (Read, undated:9). Heather Goodall estimates that up till 1929 as many as one in three Aboriginal children were taken away by the child welfare system (Goodall, 1988:5). The common practice was to foster them out to non-Aboriginal families or place them in special institutions set up for Aboriginal girls, such as Cootamundra Girls Home. For Aboriginal communities, the legacy of separation and institutionalisation deriving from such a child welfare practice has been devastating (Edwards, Read, 1989).

Of the six Aboriginal girls whose cases I examined, all were variously described to the court as coming from a 'bad home environment' of one kind or another. Four of them were forcibly severed from their families through wardship proceedings. One of these girls was made a ward of the Aborigines Welfare Board (under Section 13A of the 1909 Aborigines Protection Act) at the age of one. Her mother had taken her to the local doctor for treatment, and without any knowledge or warning the child was literally stolen, out the back door of the surgery and taken to the local 'welfare office'. This girl remained in the care of the department until the age of 21, during which time she had no contact with her Aboriginal family or community. She spent her early childhood years in the care of non-Aboriginal foster families but ended up being committed to a psychiatric institution in her early adolescence because ward establishments could not cope with her behaviour. At the age of 21, when released from the care of the department, this girl was a long-term psychiatric inmate.

After 1969, the control and legislative power to remove Aboriginal children ceased from being the sole responsibility of specialised departments such as the Aborigines Welfare Board, and of specialised institutions, such as Aboriginal reserves, Aboriginal boy's homes and Aboriginal girl's homes. In the contemporary context there has been a multiplication of the sites of bureaucratic and legislative control of Aboriginal communities and an intensification of the mutual interplay between judicial and extra-judicial agencies. The cases of the other three Aboriginal girls who were made state wards after the abolition of the Aborigines Welfare Board in the same way as non-Aboriginal wards under the 1939 Child Welfare Act[11] illustrates the argument. Like Mary, they were placed in an array of non-Aboriginal foster families and ward establishments. But unlike Mary all three were sometime subsequently committed to corrective institutions for absconding from these establishments to return to their communities and families. Since so many Aboriginal children are still made state wards, they are particularly vulnerable to criminalisation of this kind. Thus the over-representation of Aboriginal children in the child welfare system contributes in no small measure to the over-representation of Aboriginal youth in the juvenile justice system. Terese's case illustrates the point.

In little over a year after being made a state ward, Terese reappeared before the Children's Court four more times, three of which were for stealing money to purchase train tickets to return to her family and Aboriginal community in the north west of rural NSW. During that year she had been placed in six different ward establishments and two sheltered workshops, from which she absconded at least a dozen times to return to her family before being committed to an institution for stealing money from other residents of the ward establishment which she used to purchase train tickets to return to her family and community. She appealed against her committal but lost. The supervising district officer presented a lengthy report to the District Court outlining the details of her family, previous court appearances, schooling, employment history, and placements by the department. The report described the failed attempts to place Terese in six different departmental establishments. The District Court was informed that Terese had absconded from all at least once and from some, several times. The District Court was then informed that:

> 'During the above placements, Terese has had a history of absconding if she was not happy with the surroundings. To my knowledge she has not been a behaviour problem whilst under departmental care. Terese is a very quiet lass who finds difficulty in settling into new situations, particularly if she feels there is any possibility of her returning to the care of her relatives. She has difficulty in accepting the decisions of this department, re her placement, and usually resorts to absconding from any situation not to her liking... Terese is a very quietly spoken aboriginal (sic) girl who identifies strongly with the Aboriginal community and particularly with her own family. In her

11. Historically in NSW, the forcible removal of Aboriginal children by the state has been authorised by numerous pieces of legislation. The first of these was the Aborigines Protection Act (1909). In 1969, the Aborigines Act 1969, dissolved the Aborigines Welfare Board and transferred the power to remove Aboriginal children to the Child Welfare Act 1939, which was transferred again in January 1988 to the Children (Care and Protection) Act NSW 1987. For more details see McMorquodale, 1987 and Read, undated:5.

> own way Terese is quietly determined to have her own way and will often use manipulative behaviour, such as absconding to achieve her own desires...Having worked with Terese for the main part of this year I do not feel that any of the alternatives suggested by the lass are feasible nor has it been possible to find an alternative placement in which Terese would receive (and accept) necessary supervision and guidance.' (District Court Report, 23/6/78)

In both the Children's Court and District Court the justification for her committal rested on the fact that other less punitive forms of intervention, such as probation and committal to wardship, had failed to prevent Terese from returning to her Aboriginal family and community as instructed by the supervising district officer. Terese refused to adhere to the conditions of probation ordered by the Children's Court after her second appearance for absconding and stealing, namely that she 'be of good behaviour, accept the supervision of the district officer and reside only where approved by the department'. Her case is a clear example of the mutual dependence between judicial and extra-judicial agencies. Her case is also a particularly transparent example of the way resistance becomes redefined as an individual pathology justifying additional tutelage, surveillance and punishment of various kinds administered by judicial and extra-judicial agencies of normalisation.

Terese's crime was really her non-compliance with departmental instructions about how, where, and with whom she ought to live. The tragic irony is that the removal of Terese from her family through child welfare intervention effectively created a relationship of tension, resistance and domination, which set in motion the events, referred to in the District Court Report quoted above, that finally led to her committal to a corrective institution.

Extensive evidence and research produced by the Royal Commission Into Aboriginal Deaths in Custody, suggests that the experience of Aboriginal state wards being catapulted into more disciplinary penal regimes, such as juvenile institutions and prisons can be devastating. In his report on the death of Malcolm Charles Smith, Commissioner Wootten (1989) argues that the death of Malcolm Smith is the story of a life destroyed 'in large measure by the regular operation of the system of self-righteous, heartless and racist destruction of Aboriginal families that went on under the name of protection or welfare well into the second half of this century' (Wootten, 1989:1).

Deficit Discourses: Psychological and Social Work Knowledges

The final explanation I want to advance as a contributory factor to the over-representation of Aboriginal girls in the juvenile justice system concerns the way social work and psychological knowledges on the one hand, and the practices and powers of juvenile justice associated with them on the other are mutually productive of institutionalised racism. It is these particular discourses which have been pressed into the service of the administration of juvenile justice.

Deficit discourses rest on the assumptions of voluntarism and bourgeois individualism. They locate the source of pathology in the alleged deficit group, family or individual and hence assume that individuals can be held responsible for the social relations in which they are enmeshed. Deficit models of individual behaviour find their most scientised expression in the discipline of psychology which seeks to diagnose pathology in terms of deviation from statistical norms (Rose, 1985: 123). Deficit discourses also inform much of the theory and practice of social work which seek to diagnose and assess family pathology in terms of deviation from social and familial norms (Donzelot, 1979).

Deficit models of individual and family behaviour, backed up by a battery of psychometric tests, social enquiry reports, home background investigations and so on, which locate the source of pathology in the supposed deficit group or individual, are readily employed in the administration of juvenile justice as a way of defining and selecting their 'clients'; for example, who needs welfare assistance, family support, normalising intervention or surveillance, who are likely delinquents, child abusers and so on. Those practices, informed by psychological and social work discourses which seek to diagnose social pathology in terms of deviation from statistical norms (Rose, 1985:123) have the effect of redefining cultural, social and sexual differences as individual pathologies or deficits. Thus punitive measures, such as the forcible removal of Aboriginal children continue despite such recent reforms as the 'Aboriginal Child Placement Principle'[12] because they can be rationalised within psychological and social work discourses as the logical and legitimate response of benevolent and humane state interventions merely concerned with the welfare and preservation of children. The psychological report quoted at length below from Sally's dossier presents a particularly striking example of the pathologisation of cultural difference.

> 'Sally was seen twice at the remand shelter... She presented as a tall, thin, insecure aboriginal (sic) girl who was reluctant to talk about her family. She says she is one of eighteen children,... Sally has lived her whole childhood on the reserve and thus has developed the inner instincts of survival but is lacking social awareness.
>
> Cognitive testing indicates her to be in the mentally retarded group. However educational factors and cultural factors and lack of social (urban) stimulation would have effected (sic) the scores. Verbal tests indicate her to be educationally retarded. On performance tests she is poor in visual - motor areas especially of the spatial nature... Sally presents as functioning on an upper borderline low dull normal level.
>
> Sally is unmotivated to achieve and has poor resistance (sic). She is functioning at present in a basic concrete level where she seeks gratification of her primary needs. She has few behavioural controls and has little value of other's property. She lacks concepts of time, finance, and maintaining social relationships. She is happy with her

12. The Children (Care and Protection) Act 1987 (NSW), Section 87, provides the legislative backing for what has become known as the Aboriginal Child Placement Principle. This principle involves two components. First, that Aboriginal children be placed with their own immediate or extended family or with members of the Aboriginal community, and secondly, that there should be Aboriginal participation in the decision making process (Chisholm, 1988:4).

> egocentric lifestyle and reacts strongly when the stability of this is threatened. Thus counselling will be of little help to this girl both because of her mental functioning and her motivation. ....Recommend training to continue.' (Psychological Report, 6/2/79)

At the time of Sally's committal, most juveniles committed to institutions in NSW were, like Sally, sentenced in general terms[13]. It is in this context that psychological assessment takes on a particularly important role in the administration of juvenile justice, because they recommend that training either continue or that the inmate be discharged. The psychological assessment quoted above clearly endorses Sally's continued institutionalisation on the grounds that she has not responded well to training. It is Sally's cultural differences, for example in regard to concepts of time, finance and disregard for private property, which effectively provide the bureaucratic rationale for her continued training. Thus her cultural differences are represented not only as deviations, but also as obstacles to her training and normalisation - to the voluntaristic and individualised solutions imposed by judicial and extra-judicial state apparatuses. In this way, forms of psychological knowledge which service the administration of juvenile justice reproduce and perpetuate bureaucratic and overly punitive solutions to the 'problems' posed by cultural differences associated with Aboriginality.

Conclusion

The over-policing of Aboriginal communities (by all kinds of policing agencies including child welfare, juvenile justice and other policing authorities) contributes in no small measure to the over-representation of Aboriginal youth in the juvenile justice system. However, it was argued that this level of over-policing is as much a consequence of the stress placed on policing public order and property offences as it is a consequence of conscious political decisions to subject Aboriginal communities to disproportionate degrees of policing. Similarly, the over-zealous removal of Aboriginal children from their communities is as much an effect of providing 'welfare assistance' to 'needy families' as it is the consequence of deliberate and overtly racist child welfare practices. To construe the over-representation of Aboriginal girls, or boys for that matter, in the juvenile justice system simply as a matter of over-policing or over-zealous welfare workers runs the risk of succumbing to what Henriques calls the 'rotten apple' theory of racism (Henriques, 1984:60). Such a view leads to politically naive strategies for reform such as attempts to remove the rotten apples, by ridding the juvenile justice system of its racist personnel or overtly racist practices, while leaving the institutionalised forms of racism intact.

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13. Most juveniles in NSW committed to institutions are committed in general terms. In 1982 for example, 917 of the 1285 juveniles in the State's institutions were committed in general terms. Only 386 juveniles were committed for a specified period of training (Y.A.C.S. Annual Report, 1982:19).

Resistance to authority, contestation over the use of public space and defiance of departmental instructions do undoubtedly contribute to the over-commission of offences by Aboriginal girls. In addition to all this the over-representation of Aboriginal children in the child welfare system creates a situation whereby Aboriginal youth are likely to abscond, defy departmental instructions and hence end up in one way or another in juvenile correctional institutions. Thus the over-representation of Aboriginal girls in the juvenile justice system can be attributed in some measure to their over-commission of offences. But what I have tentatively endeavoured to do is to demonstrate that the issue is more subtle, complex and institutionalised than this. The problem of institutionalised racism is more difficult to alter because it is deeply embedded in the fundamental discourses of juvenile justice administration in the organisation of its resources and field staff, in conceptualisations of delinquency and crime, in knowledges produced by social work and psychological discourses of what characterises a competent as opposed to a 'malfunctioning' family, as well as what constitutes inappropriate adolescent or girl-like behaviour. All such practices, whether they have racist intentions or not are predicated on institutionalised forms of racism because they diagnose pathology as an individual deficit in the image of the 'other', representing normality in the image of the imperial mode - the socially and culturally dominant. Thus the social and cultural content of behaviour defined by the juvenile justice agencies as constituting legitimate grounds for judicial and extra-judical forms of normalising intervention contributes in a significant way to the over-commission of offences attributed to Aboriginal girls. Otherness, in this case Aboriginality, is effectively criminalised in such a context.

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APPENDIX

TABLE 1

Detection Rates For Female Delinquency By Rural Statistical Divisions For N.S.W., 1981#

Rural Statistical Division	Rate	Female Pop. Aged 10-19	% Of Pop. Aboriginal	No. In Sample
Far West	4.65	2578	2.7	12
North West	3.59	9201	5.9	33
Central West	2.48	14115	1.0	35
Murrumbidgee	2.20	12728	1.0	28
South East	2.11	12344	.9	26
Murray	1.96	8685	1.0	17
Northern	1.86	16138	2.9	30
Illawarra	1.76	26657*	.5	47
Hunter	1.57	38259	.4	60
Mid-North Coast	1.54	14320	1.6	22
Richmond-Tweed	1.14	11419	1.2	12
Total		166444*		323

#Excludes migratory and Lord Island populations of adolescent girls

*Includes 1638 girls aged 10-19 from Wollondilly

TABLE 2

Detection Rates For Female Delinquency For The Five L.G.A.S With The Highest Concentration Of Aboriginal Populations, In N.S.W., 1981

Locality	Rate	Female Pop. Aged 10-19	% Of Pop. Aboriginal	No. In Sample
Bourke	15.35	391	19.0	6
Walgett	11.39	527	16.1	6
Brewarrina	8.00	251	30.1	2
Central Darling (Wilcannia)	7.66	261	18.1	2
Moree	5.00	1592	11.5	8
Total		3022		24
Average	7.94		15.3	