

## “Resetting the Relationship” in Indigenous Child Protection: Public Hope and Private Reality

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*A qualitative study explored the private realities of forty-five Australian Indigenous parents and carers who had experiences with child protection authorities. Interviews focused on the nature of the relationship between parents and authorities, how these regulatory encounters served to enlist or dissolve cooperation, and how child-focused outcomes could be delivered. The descriptions of encounters with authorities challenged the public hope for reconciliation between government and Indigenous Australians through reports of procedural injustice, failure by the authority to communicate and demonstrate soundness of purpose, and through lack of interest in identity affirmation and relationship building. In spite of these perceptions of integrity failings in how child protection authorities have operated, a positive role was acknowledged for authorities' future involvement, albeit with different strategies from those currently experienced. How this progression might be facilitated by principles of restorative justice and responsive regulation is discussed.*

### INTRODUCTION

In view of the inadequate provision as regards housing, food and care of the children of . . . , on the Aboriginal reserve at . . . , would you kindly charge the children as neglected and commit them to the care of this Board.

—Letter from Aboriginal Welfare Board to Police Sergeant at a mid-Western town in New South Wales, 1958. (Read 1981, 3)

The removal of children from their families, white or black, is a regulatory activity of the state. The justification is one that, on the face of it, would meet with few objections: all children have the right to feel safe and be protected, and they should be given every opportunity to grow into healthy,

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Our thanks to Indigenous Elders for their guidance, study participants, and those who facilitated contact. We are also grateful to Fiona Haines and to anonymous reviewers for their insightful criticisms of earlier drafts of this article.

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independent, and happy adults. Such was the acceptability of this position that for some fifty years, Australian state governments passed laws that enabled inspectors to forcibly remove Aboriginal children from their parents and families and place them in children's homes. Many of these children, taken in the most frightening of circumstances, never saw their families again. Complete separation from family and race was considered necessary if Aboriginal children were to learn to assimilate into white Australian society.

These children became known as the "Stolen Generations." The policy of assimilation failed miserably, leaving in its wake an Indigenous population that felt betrayed and dislocated, and generations of Indigenous children who grew up in overcrowded institutions where abuse, exploitation, racial discrimination, and neglect were rife (Read 1981). The removal of children from Aboriginal parents ceased being government policy in the 1970s (Australia. Human Rights and Equal Opportunity Commission 1997). It took considerably longer before governments acknowledged that their policies had caused immeasurable harm to generations of Aborigines.

In April 1997, Australia's Human Rights and Equal Opportunity Commission documented the forced separation of Aboriginal children from their families and its devastating consequences in their *Bringing Them Home* report. Fifty-four recommendations were made, one being reparation for gross violations of human rights. The first of five principles guiding the reparation measures was an acknowledgement and apology to individuals, families, communities, and descendants of those forcibly removed as children. Almost eleven years later, in February 2008, a formal apology was issued by the Australian government for what was acknowledged as the wrongful removal of children.

The National Apology had bipartisan support and hopes were high for "resetting the relationship" between Indigenous and white Australians. The then-prime minister described the apology as "a starting point for reconciliation and the beginning of a bridge of respect between Indigenous and non-Indigenous Australians" (Prime Minister of Australia 2009, 1). Public hope was invoked in relation to reconciliation. The apology signaled "a new page in Australia's history" and opportunity for "moving forward with confidence to the future" (Australia. House of Representatives 2008, 167). In the foreword to a new 2007 edition of Read's seminal *Stolen Generations* document, the New South Wales minister for Aboriginal Affairs described past practices as "one of the most shameful episodes in our nation's history" (Lynch, cited in Read 2007, 1). It seemed that the lessons learnt from the experiences of the Stolen Generations would be remembered and would take policy in new directions.

The private reality for Indigenous parents and carers with children in the child protection and criminal justice systems, however, did not augur well for such a rosy future. The percentage of children on care and protection orders remained proportionally higher for Indigenous than non-Indigenous children.<sup>1</sup> Indigenous children made up 4.5 percent of the Australian population

aged 0 to 15 years (Australian Bureau of Statistics 2008), yet they accounted for 29 percent of all children in out-of-home care. Reasons given for removal by child protection authorities were abuse and neglect, often associated with poverty, substance abuse, and homelessness. All of these conditions disproportionately affect Indigenous Australians (Australia. Productivity Commission 2009a, 2009b; Australian Institute of Health and Welfare 2009a, 2009b). Reports dealing with Aboriginal services emphasize poor outcomes in all areas of human services more broadly (Baldry, Green, and Thorpe 2006). Indigenous juvenile justice and adult incarceration rates remain disproportionately high, with the current generation of detained Indigenous juveniles being characterized as “the new removals” (Cunneen and White 2007; Muncie and Goldson 2006; O’Connor and Cameron 2002; O’Connor 1994). The statistics suggest that Aboriginal families continue to be torn apart, albeit through different institutional means, in response to children being assessed as abused, neglected, uncontrollable, or at risk.

Much research has sought to understand how discrimination permeates institutional practices and how patterns of oppression and victimization continue in dealings with Indigenous populations in post-colonial societies (see Cunneen 2008, 2005; Cunneen and Libesman 2000; Tuhiwai Smith 1999). The value of these contributions is not in dispute. Indeed, the findings of this research lend support to the view that institutions perpetuate past injustices in spite of shared hopes of doing better. This article, however, takes a different approach to address a related question: What can be done in a regulatory sense to contribute to resetting the relationship? Can regulatory scholarship provide a useful lens for identifying weaknesses in child protection systems that stand in the way of building more cooperative and mutually respectful relations between Indigenous Australian families and child protection authorities?

#### VIEWING THE PROBLEM THROUGH A REGULATORY LENS

Child protection straddles two worlds, that of social work and that of law enforcement. A social work approach emphasizes empowerment and strengths-based learning with families who are lacking capacity or know-how to care for children (Burford and Adams 2004). The practice is one of trust-building, support, and assistance. An enforcement approach emphasizes the administration of the law, collecting evidence, and applying rules consistently with the intention of delivering “just outcomes” (Harris 2011; Harris and Wood 2008). The practice is that children at risk can be removed from dangerous situations without the consent of parents or families. The regulatory tensions that arise are immediately apparent: Is the purpose to help families or remove children? How does one respect families, and at the same time break them up when a child is assessed as being at risk? How can one be sure that through providing resources, risks to children will be reduced, and children will receive better care? These dilemmas give rise to a

regulatory problem that is common across most regulatory agencies—finding the right balance between a soft, supportive approach and a tough, interventionist approach. The former has placed child protection agencies in the firing line when faced with child deaths. The latter creates alarm when children are removed from families that are capable of and committed to providing quality care, yet fail to score adequately on risk assessment criteria.

Child protection agencies internationally are struggling to resolve these tensions in how they operate (Braithwaite, Harris, and Ivec 2009; Adams 2004). Not surprisingly, they also struggle to elicit community support and confidence (Lonne et al. 2008; Adams and Chandler 2004; Neff 2004). One way of interpreting their difficulties is that child protection authorities are experiencing an integrity crisis. Integrity refers to authenticity (Selznick 1992), that is, to the public's seeing child protection authorities performing their functions with commitment to children's well-being, respect for children, families and communities, and fairness, while being at all times responsive and willing to try to fix problems in the system (Braithwaite 2009). Integrity demands that a regulatory agency build connections between its goals and objectives, and that these goals and objectives are pursued in ways that are sound and fair and that respond to community needs (Braithwaite 2003). Integrity is much broader in its scope than procedural justice (Tyler 1990), but the concepts are related. Procedural justice is part, but not all, of integrity. Integrity is not possible without procedural justice.

Tyler (2001, 1997, 1990) has made the case for why procedural justice is so important in regulatory contexts. His research has shown that when people perceive authority acting in procedurally unfair ways, they are likely to see that authority as less legitimate, to trust it less, and withdraw cooperation. Procedural injustice might be expected to undermine cooperation of carers and parents in the Indigenous child protection context.

The concept of integrity takes this analysis further to include the attainment of the authority's objectives, in this case, acting in ways that keep children safe and building families' capacity to provide quality care for their children in the future. Given the experiences of the Stolen Generations and its aftermath, it is likely that any grievance Indigenous families have with child protection extends beyond procedures and processes. Lack of clarity in the stated aims of child protection systems has been well documented in Australia (Braithwaite, Harris, and Ivec 2009; Ford 2007; Allen Consulting Group Victorian Review 2003). Workers, families, and communities struggle with the tension between child protection authorities as entry points to access government support services and as regulators with powers to intervene and remove children if they are considered at risk. Ambiguity around an authority's purpose is likely to rebound negatively on Indigenous communities, more so than others because they are marginalized from conversations about regulatory priorities.

The National Apology gave way to public hope that from all sides good will could be harnessed. But actioning this hope in areas as sensitive as child protection is no small task. A colonized history (some would argue “continuous colonization”) has left Indigenous people knowing all too well the heavy hand of regulation in their lives, through regulating spaces of where they will live, and through regulating identities, including dictating what language they will speak and what customs they will follow (Haebich 2000; Tuihawai Smith 1999). If grievance over processes and disillusionment over purposes are sufficiently entrenched, it is possible that the trust relationship of parents and carers with authorities is so irreversibly destroyed that parents and carers hold no hope for a better future. Loss of hope has been linked with dismissive defiance, a form of defiance intent on destroying rather than reforming institutions (Braithwaite 2009). If Indigenous families are of the view that there is no relationship with child protection authorities worth resetting, the path forward will be difficult.

#### THE PROMISE OF RESTORATIVE JUSTICE AND RESPONSIVE REGULATION

One approach that might prove useful in working through some of these tensions with Indigenous Australians is restorative justice and responsive regulation (Burford and Adams 2004; Braithwaite 2002). Both give rise to institutional arrangements that prioritize the importance of relationship-building and repair. First, an understanding of the situation is sought through dialogue with all parties. In planning a way forward, access to services and resources are offered to encourage and assist in reaching compliance goals. Only when families fail to put their best foot forward to solve their problems do child protection authorities exert more pressure and consider interventions with the intent of enforcing compliance. Such interventions are designed to intrude incrementally as small steps up a regulatory pyramid. As pressure is increased with each intervention, parents lose a degree of freedom to decide what is best for their child. Both parents and agencies find that it is in their interests to work together at the bottom of the pyramid: Parents have much greater say and freedom, while agencies find it easier to identify and implement successful solutions.

At the lower levels of a regulatory enforcement pyramid might be regular meetings with a caseworker. The next step might involve bringing in other parties to either moderate the behavior of the parent or provide care and protection for the child. Such interventions would not necessarily be state-led or top-down, though the state and others may have a role in ensuring nonarbitrary use of power in accord with the rule of law. A restorative justice conference might be held—or several might be held in the course of dealing with a particular family—in which people who care about the child and the parents work together to build capacity around the family. A restorative justice meeting would aim to provide a circle of safety around the child at risk of harm and, at the same time, support parents who wish to gain the capacity

to care for their child. Only when hope of restoring capacity had been exhausted would the state intervene to arrange alternative care for the child. At all stages, procedural fairness is adhered to. The processes are signaled and explained in advance. While the idea of responsiveness means that context is taken into account, and people will be treated in different ways depending on the context, treatment is not arbitrary. Authorities are always held to account for how they proceed and for explaining next steps to parents and families.

Responsive regulation and restorative justice bring regulators, regulated communities, and civil society together to share responsibility for solving serious social problems like the care of children (Adams and Chandler 2004; Braithwaite 2004, 2002; Burford and Adams 2004; Pennell 2004). It is implicit in the approach that all parties are motivated to understand each other's situation or can be motivated to talk to each other and work toward an agreed-upon solution. When given opportunity to participate, the underlying assumption is that each person can do so constructively. The hope for restorative justice and responsive regulation would be as empowering regulatory mechanisms that create space for dissent and understanding from authorities while protecting the interests of children.<sup>2</sup> If evidence can be found that child protection authorities are accepted in principle, even if not in practice, by Indigenous communities, regulatory interventions that promote empowerment and seek to build cooperation may be viable options. This would be a small but significant step forward along the path of resetting relationships with Indigenous Australians. Restorative justice and responsive regulation, while regulating parents and carers to provide security for children, provide authorities with ways to learn about and respect culture, change unfair processes and clarify purposes to build shared community expectations, and empower families to own and develop their own solutions.

#### RESEARCH OBJECTIVES

The objectives of this article are twofold: First, it teases apart the experiences of parents and carers in terms of (a) the procedural fairness of their encounters with child protection authorities; (b) the soundness of purpose observed in authorities' operations; and (c) the success of authorities in empowering parents and carers to do better, affirming them in efforts to improve parenting skills and play a responsible role in their children's future. Second, this article uses the experiences of carers and parents to address the question of whether or not they were interested in reform to child protection practices. Or had parents and carers become so disengaged from and disillusioned with the system that they would not want any further interaction—good or bad? Restorative justice and responsive regulation are ideally suited to dealing with the anger and resistance to authority that accompanies procedural unfairness and the pursuit of unsound goals. Bringing parties to the table in the first place, however, requires some hope for better relations with child protection authorities in the future.

## METHODOLOGY OF STUDY

In 2008, in-depth interviews were conducted with forty-five Australian Indigenous parents and carers<sup>3</sup> from Canberra, New South Wales, and Queensland as part of a study on "Building Capacity in Indigenous Child Protection." Thirty-seven were female and eight were male. Those interviewed were asked to tell their story. They were asked to describe how they were treated by child protection, whether they were helped, and had they thought that changes could be made to make the system work better. The focus of the study was on the perspective of Indigenous parents and carers, in keeping with the notion that how people interpreted and made sense of what was happening to them shaped their future behavior (Lewin 1951). There were no records accessible to the researchers detailing events as perceived by child protection workers. So the study does not seek to contest accounts of events. Interviews were conducted between March and December 2008. The semistructured interviews averaged one hour.

To understand the responses of those interviewed, it is necessary to understand parenting practices in an Indigenous context. Parenting responsibilities are assumed not only by parents, but also by other family members in a child's kinship network such as siblings, aunts, uncles, and grandparents. Other family members assume critical roles from a child protection context, roles such as disciplining and supervising children. On this basis, kinship carers, not just biological parents, were included in the study. The criterion for inclusion was that the parent or carer had had direct experience with a child protection authority. The sample comprised twenty-six biological parents and nineteen carers. In total those interviewed were caring for approximately one hundred and forty-eight children.

Of the twenty-six biological parents, twenty-one had had children removed from their care involuntarily. For twelve of the parents interviewed, children had been returned after a period of time. For nine parents, the return of children had not occurred.

Of the nineteen carers who took part in the study, eleven were grandparents. Only four of the nineteen carers were not related to the children being cared for. Two of the four nonrelated carers were not Indigenous, but they were accepted by the children's parents, extended family, and community as suitable and appropriate to provide care.

The majority of participants (thirty-six of the forty-five) referred to experiences with authorities that had taken place since 2000; twenty-six spoke of experiences in 2005 or after. Three participants identified their experiences with authorities as predating 2000, including a mother who had had five children in care for the past fourteen years. In the case of six participants, a time frame of involvement with authorities was unable to be clearly determined from their stories.

Backgrounds of participants were diverse. Almost half were in paid work, and while not directly asked about their qualifications, six interviewees

referred to study, including postgraduate study, being undertaken. Domestic violence, alcohol, and drug use were mentioned in about one-half of the interviews. Incarceration of parents was an issue in twelve cases.

In order to find an adequate number of parents and carers to interview, a "snowball" technique was used. Contact was made with local Indigenous Elders, Indigenous community-based organizations, Indigenous liaison officers in mainstream organizations, and various other mainstream service providers to discuss the study and to ascertain interest in and support for promoting the study through different Indigenous networks. Posters, fliers, Indigenous e-mail networks, and Indigenous media promoting the study attracted a small number of participants. Most participants were enrolled in the study through "word-of-mouth." Extensive notes were taken at all interviews and then transcribed. As the content of these interviews was anticipated as being potentially distressing for parents and carers, participants were invited to bring along a trusted companion to accompany them at the interview if they so wished.

#### LIMITATIONS OF THE STUDY

All participants who came forward to be interviewed had experiences with child protection authorities. Most were relying on memories of past events that were not verifiable through other sources. The justification for relying on these data is that perceptions and attitudes that have endured over time are likely to have special significance and will shape future behavior. We acknowledge that in telling and retelling over time, stories may undergo change.

The use of a snowballing technique to attract participants may draw the criticism that the sample is biased toward those with an unhappy history with authority and who want to share it. With no basis for comparison, it is difficult to say whether this is the case or not. But even if the sample is biased in this way, the views of this segment of the population matter. If those interviewed for this study are among the more challenging child protection cases, understanding more fully their sources of grievance may provide insight into how such cases might be handled in a more effective manner.

#### MAIN FINDINGS

##### ANGER FROM THE PAST

While not directly questioned about experiences of transgenerational removal, it is significant that approximately half of those interviewed referred to the "Stolen Generations" and historical encounters with authorities as part of their own family history. Three parents told of three generations of

removals. Contemporary child protection authorities may or may not be surprised that they were perceived by a significant proportion of respondents as an extension of the historical authorities who were responsible for the coercive removal of children from Aboriginal families and communities (Australia. House of Representatives 2008; Australia. Human Rights and Equal Opportunity Commission 1997). The following quotes illustrate this expression of historical experience well:

[Child Protection] are a threat to our freedom; we're fearful of [CP]; the police take the adults away, welfare take the kids away. How do you gain respect for an authority which was responsible for Stolen Generations. (Interviewee 18)

They used to be the Aborigines Protection Board, then the Aboriginal Welfare Board and now [CP]. The attitudes are the same. (Interviewee 20)

We have reconciliation but these same old things keep going on. There's nothing good from them fellas [CP]. Every time they come they're making threats. (Interviewee 38)

For eighteen of the parents and carers interviewed, the history and experience of coercive child removal remained a real and ongoing threat in the present day despite government intention for reparation and despite commitment to authorities' mission of keeping children protected from danger.

#### ANGER ABOUT THE PRESENT

The significant number of participants who still felt affected by experiences of the Stolen Generations gave rise to a sense of continuity between past and present in participants' contemporary stories. Anger about the way child protection authorities went about their job, about perceived injustice, and about lack of respect were the predominant feelings in these stories, as in the stories of the Stolen Generations. The themes that emerged in the narratives told by parents and carers revolved around issues of procedural justice and respect, the soundness of purpose of the authorities, and the construction of social identities that strengthen future caregiving capacities in Indigenous communities.

#### PROCEDURAL JUSTICE AND RESPECT

A clear theme in the interviews was a perception by the majority of not being treated fairly by child protection. The way in which respondents talked about their unhappiness resonated strongly with Tyler's (1990) theory of procedural justice. Tyler (2008) identifies a number of dimensions that characterize the way in which procedural justice is engendered, including processes that communicate respect and trustworthiness to those being regulated, and neutrality or impartiality in the decision-making process.

Of Tyler's dimensions, concern over the expression of respect was most prominent in these interviews and underpinned a number of participants' grievances. Indeed, many participants explicitly addressed respect. While as many as a third of participants identified instances in which practice was respectful, or where workers "had a bit of a laugh and a joke . . . friendly [who] didn't think you were lying," the overwhelming response was a perception of disrespect. For example, participants often made statements in the interviews such as "They come to the house with an attitude. They don't have a good attitude—talking down to you" (Interviewee 39); from another participant, the following statement was made: "I hate how they talk to you. They don't listen, they talk down to you" (Interviewee 42).

Disrespect was also at the core of participants' feeling discriminated against, child protection workers not trusting parents or carers, and, perhaps most intensely, in feelings of being stigmatized by child protection agencies. Stigmatizing shaming (Ahmed et al. 2001; Braithwaite 1989), where disapproval is focused on shaming of the person rather than his or her behavior, has a powerful influence on the individual's sense of status and belonging. Each of these forms of disrespect that were evident in the interviews will be addressed below.

### *Discrimination through Race and Age*

Child protection authorities were often seen as looking down on and lacking appreciation of Aboriginal culture and norms for raising children. One stated, "Nothing about our Indigenous heritage was ever asked" (Interviewee 17), while another commented that critical differences in parenting practices were ignored: "I am an Indigenous girl—we have different ways of looking after our children—they don't know how we act" (Interviewee 11).

Overtone of racial discrimination were also evident in comments suggesting that authorities were demanding old-style assimilation: "They just want to make us black people like white people" (Interviewee 11). For another, not being white meant being singled out for intervention: "Aboriginal women like my daughter—I believe they get targeted" (Interviewee 38, Grandmother).

Statutory child protection agencies have taken steps to address issues of misunderstanding between child protection workers and Indigenous families, and redress discrimination when it occurs. Special Indigenous Units have been set up with Indigenous officers who can build trust with families through shared understanding and empathy, and in the process improve prospects of cooperation with authority (Australia. Queensland. Crime and Misconduct Commission 2004). Their prospects for improving understanding between white and Aboriginal Australians, however, may be limited. According to one interviewee, "I asked for the Aboriginal Liaison worker, I was told 'no, she's related to you.' I told them, 'she's related to the whole (area)'" (Interviewee 23).

For some participants the basis of discrimination was not whether families were black or white. Indeed, the age of the parent was mentioned five times as a discriminatory factor. Young parents were seen as being judged prematurely as unworthy of keeping their child: “Young mums don’t get a chance. I feel like they still look at me like I’ve got drug and alcohol problems” (Interviewee 8).

### *Untrustworthiness*

A perceived lack of respect was in many instances based on the perception that workers had treated parents or carers as if they were untrustworthy, “as part of the problem” (Interviewee 27). As research into child protection has shown, the assessment process that is at the heart of child protection practice tends to be highly investigative. As questions are asked, doubts are communicated about whether parents can be trusted (Harris, forthcoming). In the words of one interviewee, “They put us on show, putting us to shame, putting us on the spot” (Interviewee 28).

Another interviewee saw untrustworthiness playing out in a less personalized way, but one that was equally damaging for parents. Lack of trust by authorities in parents, children, and carers resulted in standard practices that created social distance between parties and prevented communication:

Carers and parents are kept separate. [They’re] not meant to interact . . . [you] should be able to go out to a neutral place so that the kids can see the carers and parents together—for parents to see the carers. We know nothing about the carers and we want to know about the carers. (Interviewee 1)

### *Stigmatization*

A recurring theme in how parents and carers described their treatment by child protection officers was stigmatization. The overarching perception of those interviewed was that authorities held out little hope that satisfactory care could be provided for children by their biological parents—an attitude of “once a bad parent always a bad parent” seemed to prevail.

Stigmatization occurred when parents and carers interpreted child protection authorities as communicating unworthiness—unworthiness of the whole person, not just disapproval of a practice. “Bad” or “unfit parent” was the stigmatizing label that emerged in thirty-three interviews: “The bottom line is that they see her as a bad parent” (Interviewee 38, Grandmother).

In addition, thirty-three of the forty-five people interviewed held out little hope of ever gaining approval from child protection authorities. Parents perceived that any efforts they made to reintegrate—to be accepted as “good parents” were ignored:

I realize I stuffed up but I’ve made positive changes . . . I’ve made mistakes but don’t punish me for the rest of my life . . . I was told “if you get a job, do a

parenting course, stay away from the ex[partner]" . . . has any of it helped? Nope. So many groups I've done. (Interviewee 1)

Perceptions of being treated as untrustworthy or in a stigmatizing or disrespectful way may be a reflection of overbureaucratization or of an uncaring and alienated workforce fatigued by overly demanding clients and impossible workloads (Fleming and Grabosky 2009). While not refuting either interpretation, data collected recently from government child protection workers suggest that they do not see their own actions in such ways and that such actions would be antithetical to their professional values (McArthur and Conroy 2009). There remains a question of how these different worldviews, one from government workers, the other from a select sample of Indigenous Australians, can be reconciled.

One possibility is that the social and cultural distance between professionals and government, on the one hand, and Indigenous families, on the other, has become so great that these groups are unable to connect in a meaningful and respectful manner. Perhaps child protection officers genuinely cannot see how to achieve better outcomes through building strategic relationships with those being regulated, even though success has been achieved in other fields (see Heimer and Staffen 1995 for an account of parental support in neonatal care units). In part the fault may lie not so much with individual professionals, but rather with a bureaucratic structure that cannot meet the needs that exist among Indigenous groups. It should never be assumed that as institutions evolve, they do so in ways that are inclusive of the demands of all segments of the population; they may evolve to meet one set of political demands, leaving a large proportion of the relevant population behind. Exclusion then leads to this population disengaging from the authority's domain of influence, sowing seeds for further and more widespread defiance and noncompliance that can swamp the enforcement capacities of the authority (Kennedy 1997; Kleiman 1993; Pontell 1978).

#### SOUNDNESS OF PURPOSE OF AUTHORITIES

A second theme running through the interviews was questioning of the purpose of actions that were taken by child protection systems. Unlike the criticisms directed at the injustice of procedures or the processes for getting things done, this theme expressed confusion as to what the goals of child protection were and questioning whether their methods led to positive outcomes.

#### *Where Is the Help?*

Much confusion centered on the belief that authorities should be supportive and able to help parents keep their children: "They're meant to keep families together, not to rip families apart" (Interviewee 25). Another questioned the

authorities' priorities: "Why don't they help people who want to be a family, help them work together, work out their issues and be positive not negative about the family" (Interviewee 11). This expectation of keeping families together was central to the stories of participants: two-thirds sought help, having recognized gaps in the care they or their family provided.

Half of those recognizing gaps were parents. As one stated, "I called them in good faith, I needed help, I believed I was wise enough to recognize that I needed help" (Interviewee 3). Parents either initiated contact or recognized that contact with authorities by another party was justified because of issues that may have compromised children's safety.

Carers, too, looked to child protection authorities for support. Grandparents, in particular, were clearly concerned to do what they could to provide a better life for their grandchildren but also for their biological children. Grandparents were not walking away from their responsibilities, but they expected help from the authorities: "[Child Protection could ask] if you needed help with respite. Everyone needs time away from the kids, even your own kids. The kids are there because of problems, otherwise [they] wouldn't be there" (Interviewee 15, Grandmother).

Another interviewee echoed these sentiments: "They say kinship care is best but they give us no support. If they listen to us—we know what we need—especially in the first few months, you need support" (Interviewee 27).

Such help, however, rarely was forthcoming: "I was offered services, but they didn't come through—lots of promises but no action" (Interviewee 2). There were exceptions, albeit rare. In three cases, interviewees expressed mixed feelings about the help received, and in one case a father who had moved from interstate shared a positive story. His sister suggested he ask child protection authorities for help for himself and his children, who were homeless. The child protection authority helped without being involved in an investigation: "[CP] helped us out immensely, got us on the housing waiting list, . . . they advocated on our behalf to get a house . . . gave us hampers, toys and tucker, linked us in with support" (Interviewee 21).

### *The Importance of Family Bonds*

Participants believed that child protection authorities should understand the importance of relational bonds, even if they saw them as damaging in some way for the child. They perceived little evidence of such understanding. Moreover, parents questioned whether what the child protection authority was doing for children was desirable, that is, whether workers were acting in accord with socially shared values, norms, and beliefs on best practice for children. Two aspects of failure to appreciate the importance of relational bonds emerged in the interviews: (1) failure by authorities to acknowledge familial bonds; and (2) failure by authorities to identify and harness existing caring partnerships with others.

Defined broadly, attachment is the long-lasting emotional bond that infants typically develop toward their principal caregivers and that is integral to a child's development (Bowlby 1969). In this study those interviewed believed that attachments to family more broadly were important, consistent with parenting within Indigenous communities. What was seen as authorities' dismissiveness of the bonds children have not only to parents, but also to other family members, generated distress and anger toward child protection agencies:

I was given a DVD of (child) at his first day at school—he was bawling his eyes out—I just wanted to be there and comfort him. [CP] said they couldn't see how it was beneficial for me to be there for him at his first day at school. Their idea of my contribution was to get him a drink bottle and a lunch box. (Interviewee 1)

Carers often recognized the attachment between the children they were caring for and the children's attachment to their biological parents and siblings, even if the authorities did not:

We've asked for counseling for the older one—her heart's broken about her Mum. She's very vulnerable but [CP] won't organize counseling. We're really worried about her. She's desperate to be with her mother and to have a relationship with her. (Interviewee 16, Carer)

Another recounted,

[The caseworker] doesn't see those children crying and cuddling each other when they have to leave—the escort person sees it, they just cling to each other. I have a recliner chair, they sit there with their arms around each other. I've never known a caseworker or social worker to be here when the children are with each other. (Interviewee 20, Grandmother caring for two of her four grandchildren)

Carers spoke of their own efforts to provide children in their care with opportunities for contact with birth parents. This included contacts that were "secretly arranged outside the department. It was really important that this father who had shown an interest have some contact" (Interviewee 44). Grandparents, in particular, regarded it as important to keep families working together to sort out their problems. While welcoming contact with authorities to share their concern for a child or young person, disappointment was expressed when problems were taken out of their hands: "We offered to sort it out ourselves . . . sit down, have a cup of tea, and they said, 'no, we're the workers'" (Interviewee 14, Grandmother).

While not discounting the complexity of these situations, parents and carers believed that authorities failed to acknowledge parent-child attachment, and they lacked interest in or willingness to enter into copartnering arrangements with informal networks. The perceptions of parents and carers that child protection authorities were unable to be responsive, not merely to

the needs of families, but more importantly to the efforts of families to build their capacity to care, is a disturbing finding.

### *Good Outcomes for Children?*

Finally, parents and carers were not convinced of the ability of child protection systems to deliver on the most fundamental of aims: to achieve better outcomes for children. Participants spoke of negative outcomes for children and young people not because child protection authorities wanted to harm children but because things got “bogged down,” and the authorities were unable to keep on top of what needed to be done. Those interviewed reported having to consistently advocate for educational, health, and other services to be provided to their children in out-of-home care. Highly formalized, process-oriented regulation meant that parents, grandparents, and carers had to seek permission from authorities before undertaking what would normally be understood as appropriate action.

When I took my grandson to the doctor the Department said “you took him to the Doctor’s without our permission. You have no right to take him to the Doctor.” [When I challenged them] I was told, “Lose your attitude. Don’t you make demands on me” by the caseworker. (Interviewee 27)

Parents felt that their children’s educational outcomes were poorer because young people were not attending school while in the care of authorities as illustrated by the following comment: “[One son, aged nine] missed a year of school in [foster care] . . . [Other son, aged ten] had no schooling during this time” (Interviewee 28, Parent referring to children’s foster placements).

Parents and carers commonly saw the child protection system as inflicting its own harm on children in its care. One interviewee described a path from child protection “to juvenile justice to adult corrections—that’s the training” (Interviewee 13). Another recounted a more personal version of this story:

[Child Protection] let the young teenagers go into hostels. They went to ruin since being under [CP]. I haven’t seen them so bad. They’ve been in more danger since they’ve been under [CP]. [I’m] writing a letter to the Ombudsman. They’re in juvenile detention now—got into trouble with ice and stuff. (Interviewee 7)

### CONSTRUCTING SOCIAL IDENTITIES: AFFIRMING AND EMPOWERING INDIVIDUALS?

An important function of regulatory authorities—and one that is known to improve their effectiveness in eliciting future compliance—is praise (Braithwaite 2002; Makkai and Braithwaite 1993). Praise by an authority

strengthens both willingness to meet social expectations and belief in self that one is capable of doing what is required, in this case good parenting. Perceptions of self-efficacy build capacity and compliance (Jenkins 1994). Equally important is a shared understanding of what good parenting means and commitment from parents, families, and child protection workers to work together to continuously improve performance until agreed goals are reached.

In this study there was little evidence that child protection systems had been effective in building a shared understanding of parenting goals or self-efficacy in capacity to attain those goals. Indeed there was considerable evidence that bureaucratic decision-making processes had lost sight of the person, inducing a state of alienation, if not helplessness, in families.

For individuals trying to improve their situation, context presents constraints and opportunities. The accounts of interviewees suggested that child protection workers tended not to engage with the constraints and opportunities presenting themselves in Indigenous families. Child protection authorities projected indifference to context and were intent on rigidly applying rules. Bureaucracies might defend this behavior as a way of ensuring that their officers are not arbitrary in their decision making or inconsistent in their record keeping. Parents and carers, however, deeply resented what they interpreted as lack of empathy and dominance and control. The absence of an attempt to engage with individuals and understand their circumstances was considered unacceptable:

They [CP] should talk it through. Not say, "We're going to do this and this is our job." They talk about themselves, not listen to parents; [they just] listen to themselves, their job's inside their mind. They only understand what they have to do, not understand what the human being inside the parent wants. Do they have children of their own? Do they know how it feels? I bet they don't. It's like they've got no heart. They rub their heart out. (Interview 11)

In many cases, participants felt that decisions were a consequence of applying formal rules that were destructive of hope to rebuild families. For example, a number of mothers found themselves in an unenviable dilemma. They had left their family home to escape domestic violence, but then they found that they were not eligible for housing, because their children were not living with them, and that child protection would not allow them to have their children, because they had no housing.

I had to throw my housing in when I came here [detox center] . . . [The Department of] Housing wouldn't hold it. I'll have to apply for housing again. I put myself in rehab. There's a family program here—I could have brought my kids here—I was given no option to bring my kids here. I have to go back to court to get them back. Get some secure housing . . . (Interviewee 25)

The capacity for child protection to exacerbate the difficulties people were having was significant. Parents and carers referred to having to "gather the

debris” (Interviewee 4) following child protection intervention. Others spoke of having their “life . . . turned completely upside down” (Interviewee 29), having “a great job—lost it, . . . [leaving their] whole life wrecked” (Interviewee 13). Indeed, with the exception of one interviewee, it is reasonable to conclude that encounters with authorities were routinely described in the following way: “They walk in and leave your life in pieces . . . turn your life upside down. . . they fight you in court then leave you and say ‘go and see your psychiatrist’ ” (Interviewee 1).

#### COMMITMENT AND HOPE FOR A BETTER FUTURE

Given the significant complaints that participants had and the historical context, it was striking to find hope for positive engagement between child protection systems and Aboriginal families, albeit tempered by the insistence of respondents that intervention occur through cooperation with them.

Most important for a regulatory system is acknowledgement by those whom it seeks to regulate that it has a valid role. The data showed that two-thirds of interviewees directly referred to the need for child protection authorities to keep children safe and an expectation that this responsibility lies with government when all else fails:

When there is child abuse something has to be done, who else can intervene, intervention must come from the state. (Interviewee 32)

[Child Protection is] needed in society, yes, just like the police, it’s just the process that needs to change. (Interviewee 6)

Those interviewed were resistant of authority, not dismissive. They wanted to change the system to make it fairer and more effective. They did not want to do away with it altogether.

Parents also talked of the possibility of child protection systems one day working with Indigenous parents rather than against them. Indeed, the issue of partnerships involving formal and informal care networks is one that received a sympathetic hearing from respondents, even though they interpreted the authorities as lacking interest. Forty percent of respondents mentioned the possibility of “partnering” with authorities, even bringing in “third party regulators” to keep children safe: “Instead of taking the kids, put the carer in the house or take the family and put them in a house with a carer” (Interviewee 2).

Finally, it was significant to find that many of these parents had hope in themselves and in their families. While accepting that they had problems, many of the parents and carers had faith that they and their extended families had the capacity to do well if given the support they wanted: “I knew I was a good person. I knew I was a good mother. I had an open mind and I wanted to strive to improve” (Interviewee 4).

DISCUSSION

Interviews with forty-five parents and carers of Indigenous children placed in care revealed indignation over the historical removal of children from their families and despair at how present practices perpetuated injustices of the past. They reported disrespectful procedures that were discriminatory and stigmatizing, and that communicated to parents and carers that they were untrustworthy without an important social role to play in the lives of children. Interviewees challenged the ways in which authorities claimed they were protecting children, the soundness of purpose in the interventions they initiated, and their follow-through. Interviewees also challenged the failure of authorities to be responsive to individuals as human beings and to be responsive to the cultural context in which they were exercising their power. Together these findings reflect perceptions of integrity failings in government that can be expected to undermine cooperation with authorities (Braithwaite 2009).

Integrity failings, real or perceived, need to be addressed within the regulatory context, but the regulatory agenda cannot be abandoned while this happens. In this respect, the data presented in this article are supportive of a responsive regulatory approach. There is need to enforce as well as persuade. On the basis of the forty-five interviews conducted in this study, a positive sign for future progress emerged through interviewees expressing hope for finding better ways of protecting children in the future. Importantly, at least some of those interviewed were ready to constructively engage with authorities to improve current practices. Not one of those interviewed expressed the view that child protection lacked legitimacy as an authority set up to protect children from harm. Generally, interviewees recognized the dangers facing the children once in their care.

There was, however, confusion and discontent about less abstract outcomes, purposes and goals. The perceived failures of the state to care adequately for children and Stolen Generations more broadly, and the tension between helping families to care versus removing children to ensure their safety, emerged as major obstacles to reforming child protection systems. In these data, there are warnings that applying a standard responsive regulatory approach is not going to be sufficient for delivering cooperative outcomes with Indigenous communities. There appears to be too little agreement or shared understanding about regulatory goals to give authorities confidence to escalate up the regulatory pyramid. Such lack of confidence is likely to be fuelled by the criticisms and resistance of parents and carers. Responsive regulation requires regulators to have clarity of communication and emotional intelligence to withstand difficult behaviour on the part of those being regulated. On the basis of the interviews conducted for this study, the settings are not yet right for reasonableness and emotional intelligence in regulatory encounters to triumph.

It is in this respect that restorative justice assumes a crucial role within a responsive regulatory framework, one that is even more important than that

foreshadowed in the introduction. Restorative justice is a tool for empowering marginalized voices and creating opportunity for authorities to understand and change practices that may do more harm than good. Restorative justice can be thought of as the entry point to building acceptance of an enforcement regulatory system through creating better understanding between authorities and Indigenous families around purpose and grievance. The anger, frustration, and historical injustice expressed in the interviews suggested that much more collective and individual healing of the kind that can be made possible through restorative justice is required before cooperation might reasonably be expected. The central idea of restorative justice is to talk through the harm and use the strengths of individuals in the group, including the perpetrator(s) of the harm, to make amends (Adams and Chandler 2004; Burford and Adams 2004; Pennell 2004; Braithwaite 2002). The approach does not walk away or hide hurts—be they abuse of a child, stigmatization of parents, or humiliation of family. All these harms can be addressed with the cooperation of those in the restorative justice circle.

In theory, a restorative justice circle can be convened at the request of families without involvement of child protection authorities if there is no evidence of child abuse or neglect, that is, if the law has not been broken. This is an important point for authorities always wary of involvement in resource intensive activity. A restorative circle can build support for Indigenous children and parents and prevent escalation of poor parenting to the point where it is identifiable as abuse and neglect. That said, when the law has been broken—when there is evidence that a child has been neglected or abused, the starting point also should be a restorative justice circle or conference. Court proceedings inadvertently switch the focus to the parent, and when the story captures the media attention, the switch is complete with preoccupation with stripping that parent of rights and privileges because of what she/he has done. A restorative justice approach keeps the focus on restoring well-being to the child, giving everyone a chance to agree that things can be done to give the child a better future, and that everyone in the circle can contribute in a constructive way to making that future a reality.

The argument for making the restorative process so central within a responsive regulatory framework, regardless of the seriousness of the problem, is empowerment of the Indigenous family and its support network. Empowerment is a forerunner of parents' and families' accepting responsibility. Equally important is a clearly articulated and agreed plan to ensure the child's safety—who will do what and when will it be done. The command and control imperative of some regulators for "assessment compliance" (Harris, forthcoming) and telling people what must be done takes a backseat to listening, understanding the family's problems, and allowing families to develop their own solution to ensure the safety of the child. At the level of restorative conferencing, the child protection authorities are on a par with other participants: they do not dominate or dictate the agenda, although they are expected to meet their responsibilities of clarifying standards and insisting that they be met.

If the restorative justice space fails to provide a net of support around the child and parents, a responsive regulatory approach would ratchet up the authority's intrusiveness. Responsive regulation recognizes the multiple levers that can act on individuals to ensure they meet regulatory standards, but the priority is to use the minimum force required within the law to elicit compliance. With this in mind, a third-party nongovernment agency, for instance, might be asked to increase its involvement in managing the case, and others may be required to work more intensively with the family. If the child was in danger, the child might be temporarily removed. Ideally, this would be done with the permission of the parents. The restorative conference would have set out a plan for ensuring the child's safety, and when the plan proved unsustainable, parents would understand that the child would be safer in another's custody until a new plan could be worked out and implemented. Another restorative justice conference of the care network would be called to revise or strengthen earlier decisions.

If progress toward creating security for the child could not be made through the help of an agency, deterrent measures through the court system might be initiated. The court would determine the nature of the contact between parent and child. If all else failed, the state would assume custody of the child. Again, restorative justice conferencing would be used to discuss the problem and implications. This time, it would be a more formal gathering presumably given the involvement of the court in the case. These graduated steps of coerciveness would not be a surprise to any participants in the restorative justice circles. The important feature of this process is that it commits to working with parents and families in a manner that empowers, values their point of view, and seeks to persuade and encourage change in a respectful and collaborative manner. Should this process break down, the authority ratchets up its control and assumes greater decision-making power—an outcome foreshadowed, expected, and agreed to as the appropriate course of action at the outset.

## CONCLUSION

Helping parents become good parents has long-term benefits for a society, benefits that extend beyond the family—investing in parenting programs is much like investing in education. These data affirm that the well-being of children is of concern to parents who have lost their children, to carers who have become surrogate parents, and to child protection authorities that regulate both parents and carers. For this reason, harnessing the caring response within parents and families, and coordinating caring networks, should not be as difficult as it has become. This article recommends reform that enables a bottom-up approach to goal setting (restorative justice) and a top-down approach to ensuring shared and agreed goals are achieved by all parties (responsive regulation).

If the process is managed properly and the goals shared and articulated, a more emotionally intelligent approach to child protection should be available to all. Parents who engage positively in ensuring a safe future for their children may not choose to commit to being their child's primary guardian. They may elect to give up their parental rights permanently—or temporarily. This is not necessarily a bad outcome. Through restorative processes, a journey of transition in parenting occurs, coparenting may be an option, adopting children yet another. Undoubtedly the journey will be difficult for families, with fear, sorrow, and shame. But on offer through a restorative justice/responsive regulatory approach are the benefits of honesty, genuine and useful support, and a shared understanding of circumstances. Such benefits seem to be sadly lacking for the Indigenous families interviewed in this study and historically for generations of Indigenous Australians.

## NOTES

1. The rate of Indigenous children in out-of-home care was almost nine times the rate of non-Indigenous children, 41.3/1,000 Indigenous children compared to 4.6/1000 for non-Indigenous children (Australian Institute of Health and Welfare 2009a).
2. It is sometimes assumed that social workers and law enforcement officers rescue children. We don't dispute this contribution. But it should be acknowledged that children may fear these people. Having Indigenous children fear officers constitutes abuse of power, as does fear of harm from parents.
3. Two of the forty-five carers identified as non-Indigenous were caring for Indigenous children. On the basis of their close involvement with and acceptance by the children's Indigenous communities' the carers were accepted as part of the study. Both were heavily involved in Indigenous welfare and cultural activities and played facilitating roles between the children they cared for and their parents and families in order for an ongoing relationship to be maintained.

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