Communities, Children and Families Australia

Official publication for the Australian College for Child and Family Protection Practitioners Inc.

Aims and scope:

Communities, Children & Families Australia is the official journal of the Australian College for Child and Family Protection Practitioners. The journal welcomes manuscripts relevant to the theory, research, and practice of community, family and child welfare. Articles relating to the education, training, standards and standing of child and family protection practitioners are also encouraged. The ACCFPP is Australia's only specialist professional organisation seeking to improve the standards and standing of child and family protection practice and practitioners. The Journal is published bi-annually.

All articles, unless otherwise identified, are peer-reviewed by at least two research experts in the field of the submitted paper.

Address for editorial correspondence:

Communities Children and Families Australia Journal
C/- Institute of Child Protection Studies
Australian Catholic University
PO Box 256 Dickson ACT 2602
Attention Pam Floro. Email: icps@acu.edu.au
For submission guidelines, see the back cover of this edition

"…the question of trust and relationships is a key message in all of these thoughtful papers."

Morag McArthur and Gail Winkworth, Editors

This special edition of the journal brings together leading child welfare academics from Australia and overseas to reflect on the issue of child protection as a problem of regulation. It is a timely edition, as the Commonwealth Government, endorsed by all state and territory governments, implements the National Child Protection Framework. The papers in this edition of the journal will contribute to the debate about the implementation of the framework and what it means for children and their families.

Val Braithwaite and her colleagues Nathan Harris and Mary Ivec from the Australian National University are currently conducting an ACT study that aims to apply the theory of responsive regulation to the context of child protection. They argue that responsive regulation is a way of reconciling practices that aim to support and empower families within a context of social control. This dichotomy of care and control is a longstanding tension identified in many fields of practice in the human services.

In this paper, they go back to fundamental questions about the purposes of regulation. Braithwaite et al. point out that when government is involved in "coordinating what people should do", as it does when it intervenes to protect children, it is involved in regulation. The paper asks whether problems in the current system, including the stress experienced by families and child protection workers, is at least partly due to failures to satisfactorily address three basic principles of regulation: "identifying the purposes of the intervention; justifying the intervention in a way that is respectful of broader principles of democratic governance; and understanding how the informal regulatory system intersects with the formal child protection system".

Eight leading child welfare academics were invited to respond to the issues raised in the paper. These academics were chosen because they provide a range of different views and perspectives on the issues of child abuse. We thought it was also important to hear from others internationally. Finally, in their rejoinder at the end of this edition, Braithwaite et al. outline in more detail elements that might be key to a responsive regulation approach.

Each academic has taken a quite different approach to the task, but they all broadly agree with the central idea that we have a problem in the regulatory systems adopted in most states to keep vulnerable children safe from harm. Connolly acknowledges the "fraught" context of child protection and asks whether the right regulatory frameworks are being used in current systems. She focuses specifically on the statutory response to domestic violence as a case in point. Her argument is that while research indicates that exposure to domestic violence can be harmful to children, directing all cases to child protection systems unleashes a set of unintended consequences, overwhelming statutory services and providing a response that is "out of sync" with the needs of many families.

Cashmore reiterates the conclusions in many recent reports that most of the children reported to the statutory level of the child protection system do not need a statutory response but their families *do* need assistance. Cashmore addresses a key point in the paper—that formal child protection systems, with their largely coercive approaches, may discourage the informal regulatory and self-regulatory processes in families and communities. Even when the child protection system endeavours to play a supportive role, its methods are often not experienced by families as inclusive and respectful. Harries agrees that it families and communities—these informal self-sanctioning systems—that require strengthening.

Scott argues that tertiary child protection systems have screened huge numbers of referrals for child abuse and neglect to identify but a small number of cases. Using a public health analogy, she likens this to hospitals adding to their core function of acute care the screening of large sections of the population for an ever-increasing range of disease risk factors. She identifies the doubling of children in state care over the past decade as evidence of the state's increasing use of its formal regulatory powers and, indeed, its most extreme sanction: the removal of children.

Parton, writing from the UK, points to how the key areas discussed in the paper have been fundamental concerns to child protection experts in the UK and internationally for some time. Three interrelated issues have always provided the context for child protection services: "the primacy of parents vis-à-vis the child protection system; the scope of government intervention; and the nature of government intervention". Drawing on the work of Waldfogel (1998), he names the main problems in our current top-down, tertiary focused system as "overinclusion" (families experience a level of intrusion that is not responsive to the level of risk), "underinclusion" (some children who should be the focus of tertiary intervention are not); "capacity" (reports to be responded to far exceed the ability of the tertiary end to do so); "service delivery" (getting the nature and level right); and "service orientation" (moving beyond investigation and actually engaging with children and families).

Our invited commentators also help us understand how theoretical elements raised in the paper look or may look in practice. Their key overarching message is that a more responsive approach would strengthen practice that is respectful of children, young people, families and workers.

For example Burford, Cashmore and Scott identify the potential for increased formal and informal decision-making processes, such as family group conferences, restorative justice mechanisms in juvenile criminal matters and child inclusive mediation in family law matters, to recognise that those affected by decision-making need a chance to participate in decisions and be heard. An ideal regulatory system would, Burford argues, involve families (understood in the broadest possible way) being given real support and opportunities to self-regulate and participate meaningfully in decision-making. Connolly calls for more nuanced responses to domestic violence that have the potential to provide increased options for families, particularly those with mental health

and drug and alcohol problems, who want to live safely together.

Scott articulates some of the policy and practice implications by comparing the different approaches to regulation used by NSW and Victoria over the past 10 years. The escalating notifications in NSW, extended mandatory reporting provisions and penalties, centralised intake and route to prevention services predominantly via the statutory child protection system have "paradoxically" been accompanied by a decrease in referrals to family support services. This has occurred because there were insufficient resources to process referrals to less formal regulatory services which may have helped prevent statutory intervention. She contrasts this highly regulated approach with Victoria's "vigorously pursued" responsive regulation. The greater role played by non-government agencies to not only divert vulnerable families from the statutory system in Victoria but also link them to support earlier is evidence of a more responsive approach. Whether these systemic changes lead to better outcomes for children is yet to be seen.

Commentators also challenge some assumptions put forward by Braithwaite et al. For example, Delfabbro questions whether all families have the ability "to achieve self-regulation". He refers to recent research which provides evidence that most children entering the care system come from situations of very high risk, not from families who, as Braithwaite et al. claim, "sailed too close to the wind". Scott also refers to "an increasing failure of kith and kin to perform their traditional function of informal regulation in relation to child rearing", with relatives of children now often the notifiers to child protection systems.

Some commentators make the point that there is a need to look beyond blaming the child protection system for the highly regulatory nature of systems that have developed. Both Delfabbro and Harries recognise the role that the political context and the media play in embedding highly regulatory systems. Provocative messages about government regulatory failure often fuel public and then political pressure to increase regulation, in particular, in more coercive and punishing ways.

The point is also made that children and young people and their views need to be explicitly considered in a regulation framework. Cashmore agrees that government agencies need to be transparent and inclusive and give people affected by decisions a chance to be heard. She adds it is important that such recognition and acknowledgement extend to children. Parton argues that any reform of the child protection system should place the views and experiences of young people at the centre. In his view, without asking how child-centred we want our child protection regulatory principles to be, our regulatory principles, however "responsive", will continue to be "adult-centric".

Scott also argues that we will need to go far beyond regulatory responses at the individual case level if we are to reform child protection. There is a need to incorporate population-based formal and informal regulation strategies in keeping with a public health approach. She cites, for example, the case of parental alcohol abuse as the most significant issue in the history of child protection and the need for a range of population based regulatory measures (e.g., volumetric taxing of all alcohol products and bans on alcohol advertising) that have the potential to make a major difference to alcohol consumption where children are involved.

While there is agreement with the argument by Braithwaite et al. that tools and checklists can be destructive, Delfabbro claims it not the methods that are problematic but how these are used. Evidence informed tools can assist in helping to identify children and families most urgently in need of assistance in the short term or who would most benefit from early interventions. Delfabbro argues that there is a need for more robust risk instruments that differentiate levels of risk.

Finally, both Healy and Parton warn of possible unintended negative consequences of responsive regulation. In what she refers to as the harmful consequences of "greater clarity", Healy critiques the Queensland experience in which, following the Crime and Misconduct Commission inquiry into abuse in foster care, the tertiary level of intervention was clearly differentiated from the primary and secondary levels. Healy points to the resulting

redirection of funds away from early intervention towards the tertiary end and the negative impact specialised tertiary level investigations had upon the child protection workforce. She argues that what occurred in the Queensland workforce supports other international research that job satisfaction/ retention in child protection is correlated with workers' perceptions that they are valued by the organisation, that their work provides them with a chance to help vulnerable families and that they are given an opportunity to use and develop a range of professional skills.

However, Parton observes that it is ironic that in attempts to move policy and practice away from the narrow emphasis upon a forensic investigatory approach in the UK (described above in the context of Queensland by Healy) children, parents and professionals found themselves caught up in the orbit of ever-increasingly complex but unreliable systems of surveillance. Surveillance led to further erosion of the trust families had in the people around them, such as teachers and health care professions. This cautionary note is important in the Australian context as we move towards the implementation of one goal of the national framework: to develop a common assessment framework across primary (universal) and secondary (tertiary) service providers.

The paper by Braithwaite et al., their rejoinder and the invited responses of these experts provide a great deal of material for reflection Some of the strongest messages on these pages point to the negative unintended consequences of all systemic responses despite the good intentions of their architects. To chart a new course for child protection requires it to be, as Scott states, evidence based as well as values based whilst recognising some of the enduring challenges in this difficult field of public policy. For example, many problems experienced by families have macro causes, such as poverty and homelessness, and intergenerational impacts, as witnessed with the Stolen Generations. These and other problems, such as mental health and substance misuse, which fundamentally impact on parenting capability means that it is really hard and sometimes not possible for some parents to take responsibility and change behaviour. It will also confront the challenge of incorporating into the framework those whose voices are still the least heard in their own right—children—and to be clear that the framework ultimately exists, using Harries's expression, "to improve the world for children".

Finally, the question of trust and relationships is a key message in all of these thoughtful papers. Parton reminds us not to miss the point that relationships should be the dominating frame around the way work is conducted. It is "people and relationships, be they with children, young people, parents or professionals, that are key to improving child protection…not systems we seem to spend so much time trying to service".

AUTHORS

Associate Professor Morag McArthur
Institute of Child Protection Studies
Australian Catholic University

Morag.McArthur@acu.edu.au

Dr Gail Winkworth
Institute of Child Protection Studies
Australian Catholic University

Gail.Winkworth@acu.edu.au

Seeking to Clarify Child Protection's Regulatory Principles

Valerie Braithwaite, Nathan Harris and Mary Ivec

ABSTRACT

Child protection systems are expected to scrutinise the care offered to children and to coordinate the provision of improved quality of care. They are under stress in many developed countries with burgeoning caseloads and a mixture of positive and negative outcomes. Because child protection systems seek to change the course of parenting, they can be thought of as highly formalised regulatory systems that cut across one of our most entrenched informal systems—how parents raise children. This paper asks whether the stress experienced by child protection workers, support agencies and families alike is associated in part with failures to satisfactorily address three basic regulatory principles: identifying the purposes of the intervention; justifying the intervention in a way that is respectful of broader principles of democratic governance; and understanding how the informal regulatory system intersects with the formal child protection system. Child protection interventions are plagued by multiple purposes that are not necessarily compatible; non-transparent processes; and a high risk of counterproductive outcomes.

KEYWORDS

Child Protection, Responsive Regulation, Restorative Justice, Informal Support, Informal Network

INTRODUCTION

The Australian government has canvassed a broad range of issues in developing a national child protection framework (Council of Australian Governments, 2009). The consultation process has provided opportunity for comment from many different quarters; an important initiative in a policy domain where the public's exposure to instances of child abuse has given rise to so much outrage on the part of citizens, officials and governments (Ayre 2001; Munro 2005). This article and the responses to the issues it raises contributes to these deliberations.

Many public inquiries over the past two decades have revealed the difficulty that states have in enacting child protection in a productive way (The Crime and Misconduct Commission, 2004; Forde, 1999; the Ombudsman of Tasmania, 2004; Senate Community Affairs References Committee, 2001, 2004; Vardon,

2004; Mullighan, 2008; and Wood, 2008). Recurring themes in Australia's public deliberation are the need for more resources and better coordination in collecting data across the country, aligning laws, integrating services and bringing a certain seamlessness to the activities of workers and carers (Santow, 2007; Crime and Misconduct Commission, 2004; Council of Australian Governments, 2009; National Youth Commission, 2008; submissions to Special Commission of Inquiry into Child Protection Services in NSW, 2008).

While resources promise relief from workload burden, it is important to recognise that increased resources do not necessarily lead to better coordination. There may be multiple goals and pathways that are potentially effective, but principles need to be articulated for when and why goals and pathways are followed and by whom. Coordination does not occur naturally; families and professionals have different views (O'Brien, 2005) and professions and agencies have their own perspectives and operational protocols (Moran, Jacobs, Bunn & Bifulco, 2007). An essential part of coordination is dialogue to contest the best way to achieve outcomes and systematically trial and evaluate different arrangements to allow pathways of best practice to unfurl.

The basic proposition we make is that as soon as government is involved in the task of coordinating actors, as it is in child protection, it is involved in regulation. Within a democratic society, regulation is fraught with difficulty unless principles for intervention can be clearly delineated and endorsed by the community. Through openly addressing these issues and the kinds of government-led initiatives that are desirable, practicable and effective, it is hoped that the political minefield that has dogged child protection implementation can be cleared. By inviting leading figures in child protection from around the world to reflect on these issues, we hope this issue of Communities, Children and Families Australia will generate debate about the implementation of child protection measures and lead to a clearer understanding of what we can reasonably expect of government and what is best delegated to civil society to organise from the ground up.

WHY IS CHILD PROTECTION SUCH A DIFFICULT REGULATORY PROBLEM?

Regulation is a term that covers the package of policy, law, rules, guidelines, commands, norms, expectations, values and preferences that steer the flow of events (Parker & Braithwaite, 2003) and enable us to work effectively alongside each other. Child protection requires the coordination of children, families, carers, authorities and often support agencies, which all have their own ways of doing things. Coordination assumes that actors are willing to change the way they do things to achieve an outcome that all believe is desirable and important. But, in practice, a willingness to accommodate others' expectations varies. Such willingness drops off quickly when there is no shared goal as to what the intervention should achieve. This is one reason why child protection ends up being a challenging regulatory problem. Considerable effort is required to ensure that the many protagonists share a common agenda, are prepared to work in concert with each other and have an incentive to prioritise their collaboration on a day-to-day basis (Moran et al., 2007; Scott & Campbell, 1994).

The desirability of regulation at the abstract level often attracts a fair degree of consensus. For instance, communities might be expected to support politicians who want to prevent the neglect and abuse of children. The more practical step of developing action plans to manage this problem, however, is often greeted with less consensus, as we have seen in the Australian case of the Northern Territory intervention. The intervention was designed to address, among other things, problems of sexual abuse in Indigenous communities, but critics have highlighted the degree to which it has ridden roughshod over many Indigenous Australians, failing to discuss purpose and means with them and, in effect, excluding them at both the planning and operational levels (e.g., Brown & Brown, 2007; Northern Territory Emergency Response Review Board, 2008). The devil invariably lies in the detail when it comes to doing something to address a social problem, even one that is well-documented and of almost universal concern.

It is at the "nuts and bolts" stage of implementation of

policy that the term regulation makes its presence felt in public consciousness. Most commonly, regulation is associated with government and the rules it imposes on citizens. Regulation has connotations of interference and intrusiveness; of demanding that people do things differently; and of coercion in so far as these demands are enforced through regimes of punishment (e.g., Northern Territory Emergency Response Review Board, 2008). But it is important to recognise that regulation is not simply the rules that government imposes on us. Regulation includes social processes of education, persuasion, cajoling, being socially connected, feeling useful, being helpful and gaining recognition. Regulation is something that we all do, occurring whenever we take action to protect or improve others' wellbeing. We may hold the hand of a child crossing the street—a form of regulation that is expected of us if the child is very young. Or we may offer to drive a neighbour's child to school if transport is a problem—again, a form of regulation that we may offer spontaneously to help keep routine for a child whose family is going through a rough patch. Regulation is both formal and informal. It is carried out by governments, professional bodies, service organisations, carers, families and their communities, sometimes as a newly devised action plan, sometimes more spontaneously as an expression of shared social norms.

When we consider all the different forms of regulation that coexist, many of them quite entrenched in people's behaviour, it is not surprising that additional regulatory initiatives can go pear-shaped. We may intend that regulation have a certain outcome, but when such regulation is imposed on an already existing and established set of norms and practices, the results may be quite different from that which was expected. Regulation can have unintended consequences. In worst-case scenarios, the consequences of government intervention are entirely counterproductive to the goals we wish to achieve (Grabosky, 1995). Inquiries into child protection services reveal many cases of counterproductive consequences—where intervention has made things worse, not better (Alaggia, Jenney, Massuca & Redmond, 2007; Baistow & Hetherington, 1998; Johnson & Sullivan, 2008; Nathanson & Tsioumi, 2007; for most recent Australian case material, see Special Commission of Inquiry into Child Protection Services in NSW, 2008).

Child protection authorities represent a formal layer added to an already complex regulatory system. It is hard to imagine that there is not considerable agreement in society about responsibility for the care of children. Parents care, but there are well-established routines of backup from families and friends, health and educational institutions, sometimes sporting and religious institutions, government welfare systems and charities. Multiple and overlapping sources of care are important for children in any society (Bould, 2003; Broffenbrenner, 1979; Furstenberg, Cook, Eccles, Elder & Sameroff, 1999; Marshall, Noonan, McCartney, Marx & Keefe, 2001). In the best of possible worlds, the richness of care provision ensures not only protection but also growth and development. By contrast, social isolation is a factor that cross culturally defines families where abuse and neglect are problems (Gracia & Musitu, 2003). Social connectedness, however, does not guarantee safety; things can go wrong.

It is at such times that state actors regulate by scrutinising the activities of those responsible for "coordinating" their children's care—parents and families. Investigation is intrusive (Scott, 1996). If children are not being provided with "appropriate" care, authorities take action in the belief that they can improve the child's circumstances.

When child protection agencies enforce appropriate standards of care, experiences of punishment may be felt at many different levels—by families as well as the children taken into care (Farmer & Owen, 1995). Punitiveness may be psychological, social or economic. Parents are sanctioned through a criticism of their parenting skills and sometimes the loss of custody of their child. Sometimes there are other consequences. Ivec, in her study of Indigenous children taken into care, identified the family's loss of access to public housing as a significant problem, reducing prospects of reunification (Ivec, Braithwaite & Harris, 2009).

Adverse effects ripple out. Children, even those who come to feel safe when placed in out-of-home care, grieve for lost attachments, perhaps to parents,

particularly the non-abusive parent, and siblings. They also express concern for family members left behind who may be vulnerable to abuse. Siblings staying with the family similarly experience disruption and loss. Regardless of whether families are left intact or not, family members struggle with shame at what has happened in their family (e.g., Farmer & Owen, 1995; Scott, 1996). These emotional wrenches are punishing in their own right.

Ultimately, there is implicit punishment in the uncertainty of child protection procedures. Children may be removed from a family circle for an indeterminate time. The removal is presumed to protect and enable the child to grow and develop. The evidence shows, however, that there are no guarantees this will be the case (Doyle, 2007; Mullighan, 2008; National Youth Commission, 2008; Wood, 2008). When reunification is an option, its timing is uncertain. It is a highly formalised process, yet ultimately it depends on the state's subjective judgement of whether the child will be safe and given appropriate care (Arad-Davidson & Benbenishty 2007). Reunification may also be a last resort when no-one is left to care (Ivec et al., 2009)

As these various stages unfold in a child protection investigation, emotions run high for all the parties involved (Burgheim, 2002; Farmer & Owen, 1995; Holland, 2000; Scott, 1996). Against this highly emotionally charged backdrop, the regulatory agenda is played out. Consensus has arisen that all regulatory interventions must be based on the best interests of the child. This addresses some of the competing interests and conflicts in child protection cases, but it does not map out a path forward. It does not, for instance, deal with the important issue of how to steer parties toward cooperation in the best interests of the child (Pennell, 2006). Establishing the regulatory principles to put into effect the overarching policy directive of the best interests of the child is proving elusive for governments.

UNPACKING THE REGULATORY AGENDA OF CHILD PROTECTION

Three questions are central to an analysis of any regulatory intervention: (a) What is the purpose of the intervention?; (b) When and how is the intervention justified, given that individual liberties will be curtailed when coercion is involved?; and (c) What are the likely consequences of the intervention, both productive and counterproductive? In the area of child protection, as in many other areas of regulatory intervention, the answers are not unproblematic. In considering the purposes of child protection regulatory interventions, we need to tease apart higher order publicly disclosed purposes and unspoken, possibly serendipitous, agendas. At the same time, we need to take a step back to reflect on the circumstances in which a democratic state has a responsibility and a right to intervene in the name of child protection and how authorities might do that without compromising their own integrity and without substituting one form of harm for another. We will do things better if we develop and share with the community a mature understanding of the difficulties, uncertainties and risks surrounding these issues.

From a regulatory perspective, this paper raises four questions about purpose:

1. To what extent does a child protection system protect from harm or enable development?

2. To what extent does a child protection system build a care network for the child for the longer term?

3. To what extent does a child protection system control "uncontrollable" children?

4. To what extent does a child protection system control "inadequate" parents?

A further set of issues for deliberation is when and how intervention is justified. A regulatory intervention interferes with individual liberty (Holland & Scourfield, 2004) and, therefore, cannot be undertaken on an arbitrary basis. Interventions become particularly contentious if their consequences create new harms. The following four questions require open debate in the child protection field, bearing in mind that desired outcomes should be achieved while honouring the tenets of democratic governance:

1. Are threshold models of intervention sufficiently

finetuned to be able to deliver fair and reasonable decisions that are respectful of human rights?

2. Do child protection regulatory interventions routinely observe standards of procedural justice that apply in other areas of government intervention?

3. Who should decide that regulatory intervention is warranted and the form it should take, and what are the best processes for making such a decision?

4. How can interventions be tailored to consider the purpose and consequence of the intervention, factors that are often trumped by the seriousness of neglect or abuse?

PURPOSES OF REGULATORY INTERVENTION IN CHILD PROTECTION

The Convention on the Rights of the Child resonates with social expectations of how children should be cared for (UNICEF, 1989). Children have "the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child" (http://www.unicef.org/crc/).

Few would challenge a government wishing to ensure that these rights are respected and few would condone government inaction when these rights are usurped. Ideally, regulatory interventions would stop the occurrence of harmful actions in the future, build capacity for care in the community, motivate carers to improve their parenting skills and ensure responsible care is provided across different institutional bases to better manage risks to the child. This is a broad agenda for any one regulatory agency. The question that we should ask is whether it is an achievable agenda for government and what needs to change to improve performance on these outcomes.

Reports of child protection interventions suggest that the goals of the authority are multiple, intertwined, not always explicit or compatible, and not necessarily all achievable given the resources available and the central role the state assigns itself in the regulatory process (Munro, 2005; Spratt, 2001). Child protection authorities act with the priority that they are protecting the child from harm. But, as regulatory actors, they are also active participants in constructing other roles and creating new expectations, not all of which are about children's wellbeing (Bernstein, 1955; Munro, 2005). Organisational agendas and demands creep in to dictate the shape that child protection practices take (e.g., Munro, 2005).

At the same time, organisations respond to public demand and embrace scenarios of alternative care that will give children new opportunities for development. In practice, capacity falls short of expectations (Spratt, 2001). In providing alternative care beyond the family, authorities are further challenged when their offer of safety in the short term develops into a public expectation that they will ensure continued security for the child in the long term. The purposes of a child protection agency are further expanded by a public perception of their merging the enforcer and care provider roles as protectors of Australia's children and guardians of parenting standards. Child protection authorities seem to have acquired notoriety as agencies that deal with children who are uncontrollable as well as parents who need to be under constant surveillance (Ayre, 2001; Munro, 2005; Shedlosky, 2007).

The proposition put forward here is that, intentionally or unintentionally, these multiple and competing purposes have infiltrated the cultural sensibility of our communities. Such purposes need to be articulated and critically evaluated in terms of their authenticity and practicability as state regulatory goals.

Purpose 1:
Protecting From Harm, Enabling Development

A common point of tension in all regulatory settings is whether the regulator focuses on preventing harm (disabler) or enabling good (enabler) (Braithwaite, Makkai & Braithwaite 2007). In child protection, this translates into whether the objective is to prevent abuse and neglect of the child or whether it is to

provide the child with improved opportunities for development. The former purpose involves removing the danger—that is, ridding the child's environment of impediments to his or her development and wellbeing. The second purpose is enabling rather than disabling; the child is exposed to a greater set of options to advance his or her development. Like the main character in Annie, the child's environment changes from one that threatens to one that offers opportunity. These are not mutually exclusive objectives, of course, but they require different organisational practices (Spratt, 2001; Munro, 2005) or, in other terms, different regulatory strategies and a specially devised regulatory framework to allow for both possibilities.

While there has not been a rethink of how child protection systems should be designed to allow this to happen (Spratt, 2001), there has been intense interest in what might be done to improve conditions for children's development. Evidence from the social sciences has shifted attention from the more limited concern of harm caused by discrete instances of abuse to the broader issue of the welfare of children (Parton, 2006). We now have quite a sophisticated understanding of what children need if they are to grow up to be happy and healthy adults as well as a considerable body of data showing that many parents lack the resources to provide the support their children need. Social policymakers have become increasingly interested in the prevention of the conditions that lead to abuse and neglect, early childhood intervention programs to improve children's opportunities for development and emotional wellbeing, integrated services, and comprehensive assessments of children's environments (Gracia & Musitu, 2003; Holland, 2000; Houston, 2001; Jack & Jordan, 1999; Scott & Campbell, 1994; Spratt, 2001; Wright, 2004). The implication of these changes is that the state increasingly sees itself as responsible for intervening in the lives of many more children and intervening on a broader array of concerns (Wood, 2008).

In the minds of many Australian parents, the state's participation in providing opportunities for their children is welcomed. But the assumption that most Australian parents make is that the decision about whether or not they take up the services on offer is theirs. It is imagined that the use of state coercion to "rescue" children is applied to children only in desperate circumstances when the parents' behaviour has crossed clearly demarcated and publicly endorsed boundaries of acceptable parenting. Yet important shifts in child protection policy in recent decades have seen the state challenge the decisions of parents on the grounds that the state, not the parents, know what is in the best interests of the child. As the state has taken responsibility for the welfare of children in broad terms, it has dramatically increased its sphere of interest and control. The state, in effect, regulates parenting (Parton, 2006; Scott & Swain, 2002; Shedlosky, 2007).

This increasing awareness by policymakers of factors that harm or promote the wellbeing of children over the long term has complicated the regulatory dilemmas facing agencies. No longer are the harms that child protection authorities adjudicate upon immediate or concrete (e.g., physical trauma). They may involve "emotional abuse". It is harder to effectively police the social dynamics that occur between a parent and child that might constitute emotional abuse. In many cases, it is contestable whether the emotional harm caused by intervention, such as removal of the child, is less damaging than the emotional harm that provoked the intervention.

Increasingly, child protection agencies view themselves as enabling development rather than just preventing harm (Spratt, 2001). While this may seem to be a natural progression along a continuum, it presents an organisation with significant challenges (Spratt, 2001; Munro, 2005). As the state assumes greater responsibility for providing opportunities for the child, either by imposing direction on parents or taking matters into their own hands, it must increasingly shoulder the burden of developing a whole-of-child care plan. The power balance shifts with risk for government. Individuals and communities that respond to government intrusiveness with grievance and a sense of powerlessness are likely to distance themselves from child protection agencies (Scott, 1996), leaving the state to manage their newly acquired responsibilities with little family cooperation (Braithwaite, 2009; Dumbrill, 2006; Farmer & Owen, 1995; Forrester, Kershaw, Moss & Hughes, 2008; Ivec et al., 2009). Current failings

by child protection agencies call into question the capacity of the current regulatory framework of the state to deliver on the responsibilities they have assumed.

Purpose 2:
Providing Support for the Child Long-term?

A second point of tension in the child-centred philosophy is the degree to which the purpose of the intervention should include intrusion into the structure and functioning of the child's family and planning for the longer term. Is part of the purpose of child protection to strengthen the child's familial circle of care, lifting the quality of that care, and to provide a safe place to which the child may return at a future date? Or is the purpose to break ties with the familial circle of care, providing the child with a new family to provide support? Child protection authorities are in the business of making permanency plans for children based on the assessment of the child's needs and the family's circumstances. The plan commonly involves reunification with the birth parents, but too commonly children re-enter the child protection system at a later date (Wulcsyn, 2004). In a minority of cases, the recommended permanency option is adoption or legal guardianship (Bass, Shields & Behrman 2004), although US data suggest that these proportions are increasing (Walcsyn, 2004). Whichever the preferred option, clarification is required on the responsibility of the child protection agency to the birth family, the adopted family and the child in the longer term.

For child protection authorities, the task of deciding upon the prospects of reunification, doing the preparatory work so that the family can potentially be reunited, and setting in train a back-up plan for alternative long-term quality care for the child is fraught with difficulties (Holland, 2000). Families expect to be informed of the options, of the authority's deliberations and to have a voice in the process (Dumbrill, 2006; Farmer & Owen, 1995; Scott, 1996). Families expect that authorities will change their mind if families change their behaviour to meet the authority's standards of care. They also expect that a regulatory agency will help them meet the standards of care required (Dumbrill, 2006; Farmer & Owen, 1995; Ivec et al., 2009).

In effect, this means that agencies need to be nimble and inclusive decision-makers. Assessments and options may change in response to new situations, new information and new care capacity. Bureaucracies generally tend not to cope well with these demands, although public administration is coming to terms with the need for their workforces to be more flexible and responsive to external expectations (Adler & Borys, 1996). While rethinking bureaucratisation is a significant issue, the more immediate concern in the context of a national child protection framework is how well-equipped child protection authorities are to engage with the kind of open dialogue, flexibility, responsiveness and long-term planning that communities hope will be provided for children.

This challenge cannot sensibly be avoided by denying involvement in care needs for the longer term. Often the needs of children and families who come to the attention of child protection authorities are complex and intensified for children who have the emotionally wrenching experience of being placed in out-of-home care (Bass, Shields & Behrman, 2004; Farmer & Owen, 1995; Jack & Jordan, 1999). When a formal regulatory system intrudes upon an informal system, even when it is clearly justified, effort needs to be directed at noticing and managing collateral damage. Children who have been taken into care invariably long to reconnect with their families at some level (Farmer & Owen, 1995; Shirk & Stangler 2004) and parents hope for reconciliation (D'Arcy Pope, 2007). Others express genuine concern for the wellbeing of children should such reunions take place (Lau, Litrownik, Newton & Landsverk, 2003; Moyers, Farmer & Lipscombe, 2005).

The purposes of, and justification for, intervention by child protection authorities are unlikely to stay the same over time. Best practice is an evolving process in response to new events unfolding. The question must be asked whether child protection agencies have the capacity to be effective in laying the foundations for a community of support around a child for the long term. The data and accounts available suggest that intervention in practice prioritises short-term harm reduction (Connolly, 1994; Crime and Misconduct Commission, 2004; National Youth Commission, 2008). A similar problem occurs in the UK and the

US, which Munro (2005) and Spratt (2001) attribute to the state's concern to manage risk through maintaining tight control. Limited resources and demanding caseloads drive short-termism (Munro, 2005; National Youth Commission, 2008).

This raises questions about whether resources can be used more effectively for long-term planning for children in care. In particular, what might be the benefits if resources and responsibility were passed to non-state actors? Non-government agencies may need to take more of a leadership role in long-term child protection through providing ongoing support to families or alternative carers. While partnerships between government, NGOs and private agencies are well-established, the child protection system in Australia remains highly state-centric. Government may need to relinquish some control in order for it to be more effective and productive in meeting its obligations to the community (Harris & Wood, 2008; Wright, 2004).

Purpose 3:
Controlling the Child

Associated with the purposes of long-term support or short-term alleviation is the issue of control. Is the purpose of regulatory intervention by the state to control the activities of the child because parents and volunteers have failed? If so, is the state's objective containing bad behaviour and limiting damage in a crisis, and at what point does the state hand back responsibility to parents or to the community? These questions raise a third question: what institutional blueprints exist for sharing the workload of care for children with such complex needs that they are likely to tax the resources of any single individual? Research evidence suggests that it is not uncommon for parents who have been subject of investigation to expect child protection authorities to offer help (Dumbrill, 2006; Edleson, Gassman-Pines & Hill, 2006; Hardy & Darlington, 2008). They may not necessarily be wishing to relinquish control of their children; they may just need some respite care to see them through (Dale, 2004). Parents' notions of shared care with the state, however, do not appear to resonate so well with the regulatory framework adopted by child protection authorities (Spratt, 2001).

State bureaucracies, perhaps not surprisingly given the intensity of emotion in this area, tend to approach these issues through a legal lens. If guardianship of children is removed from parents and given to the state, the state (or its agent) asserts its control. They become "the state's children". When child protection authorities use this argument to extinguish a parent's expectation of control, the message being sent has serious and adverse implications for the authority's social compact with the community. A child protection authority, through claiming a child as its own, is using its power to push others away and dismiss whatever the circle of care was that existed around the child (Ivec et al., 2009). When state authorities talk about "our children," the concern and care they may wish to communicate to parents is swamped by a message of domination, eliciting a sense of powerless and unworthiness—a loss of personal efficacy to try harder for their children's sake.

While the state may well be more resilient than many parents, the important question to ask is whether the state will meet the promises implied through assuming the status of parent. It may be difficult, if not impossible, for the state to meet its own standards of good parenthood given the number of children in its care, its distance from the daily lives of children and the need for on-the-ground support, sometimes at a moment's notice.

Purpose 4:
Controlling the Parent

Child protection cases are rarely simple. Children can be victims or offenders, as can the adults involved in their care (Belsky, 1993). Our laws and customs, however, place children at the centre of society's concern because children lack maturity—physically, mentally, socially and emotionally. They are our responsibility, no matter how difficult they are, until they reach maturity. The assumption that we make in white Australian society is that parents are responsible for their children, and there is disapproval, expressed through legal or social sanctioning, when parents act irresponsibly. The extended nature of appeals by police for the mothers of abandoned babies to come forward and the attention that such stories receive in the media reflect

how very seriously we take the notion of parental responsibility and the idea that parents should be prepared to make sacrifices for the wellbeing of their children.

These deeply ingrained norms give rise to the fourth question about the child protection agency's purpose: insofar as child protection agencies disapprove of harmful parenting practices, are they also becoming involved in identifying parents who are not fit to be parents? Mass and Van Nijnatten (2005) argue that child protection has moved into the territory of normalisation and moralisation, sometimes with more of a focus on protecting society's sensibilities than on acting in the best interests of the child.

Beyond the obvious direct standards by which it is possible to assess parenting, such as adequate nourishment, education, housing or affection, there are indirect markers or environmental characteristics that suggest that certain parents are likely candidates for failing to meet the direct standards. These risk profiles inform regulatory agencies where they should concentrate their efforts to get the greatest benefits from deploying their limited resources.

In child protection, concerns are raised when parents behave outside certain social norms—drug use, prostitution, criminality, poverty, mental health issues and nonconventional family structures. While these also may be "indicators" of risk within risk assessment frameworks, the question is whether child protection should play a role in policing these aspects of a parent's life. For example, if a father's criminality does not appear to be affecting the attitudes and opportunities of his child, should government intervene to limit the child's access to the father until the father conforms to social expectations? What role should child protection shoulder in terms of controlling the parent? And can child protection authorities have credibility with the public when they make judgements about a parent's fitness or deservingness to be a parent without demonstrating the link between the non-normative behaviour of the parent and the risk this places on the child?

Child protection workers are not without their own prejudices and defensive postures (Arad-Davidson & Benbenishty, 2007; Freymond, 2007), which are likely to become accentuated when individuals feel that they may be taking undue risk and they will be challenged by their superiors (Munro, 2005). Associating risk factors with a sensibility that such people don't deserve to be parent and should have their parenting rights curtailed gains legitimacy in cultural contexts where there is low consideration for mutual respect, human rights, social inclusion and structural inequalities (Khoo, Hyvonen & Nygren, 2003; McConnell & Llewellyn, 2005). Race and ethnicity have been identified as risk factors that increase the likelihood of intervention from child protection authorities (Johnson, Clark, Donald, Pedersen & Pichotta, 2007; Stukes Chipungu & Bent-Goodley, 2004). Forcing parents to fit the mould of the dominant culture's ideal mother or father invites resistance, game playing and pretence from both sides and enables everyone to sidestep the issue of the safety of the child (Dumbrill, 2006).

JUSTIFYING AND IMPLEMENTING AN INTERVENTION STRATEGY

If the first challenge is to identify the purposes of a regulatory intervention, the second is to define at what point and how it is appropriate for agencies to intervene in the "parenting" process. Developing a clear understanding of the incidents or conditions that will trigger action by child protection agencies is critical for both those in the front line of the intervention attempting to protect children as well as parents and young people who are expected to comply with the agency's parenting standards.

Dangers in Decontextualising the Assessment Process

Current approaches to this question have focused on the importance of identifying the threshold at which intervention is warranted (Munro, 2005). For example, in introducing the idea that abuse has to be considered on a continuum, the influential British report Protecting children: Messages from research (Department of Health, 1995) has argued that a key role of professionals is to "draw a threshold; this involves deciding both the point beyond which a behaviour (or parenting cycle) can be considered maltreatment and the point beyond which it becomes necessary for the state to take action" (p. 15). While

identifying points on continua provides a simple and straightforward answer in theory to when an authority should intervene, the reality of people's lives does not fit a static, compartmentalised model. Four or five decades ago, IQ testing was heralded as the objective metric signalling who should be given educational opportunities (Berg, 1992). While IQ testing remains an important tool in the hands of a skilled practitioner, the idea that a threshold test score could predetermine educational and vocational options would now be viewed with considerable concern. What we have learnt in intervening years is the degree to which the behaviour and performance of individuals is context sensitive and how IQ is only one of a complex set of factors shaping our capacity to grow and achieve as individuals (Sternberg, 1992). These same lessons in appreciating the extent to which human capacity is context dependent caution against relying too wholly on thresholds in assessing the quality of parenting.

In summary, using dimensions and defining thresholds may be very helpful in identifying particular strengths and weaknesses that are of concern to a child protection worker. But to jump from particular scores on a risk assessment instrument to an overall judgement of the quality of parenting needs to be challenged. Threshold incidents represent just one aspect of the complex domain of parenting. Child protection authorities support the importance of comprehensive assessments but, in a regulatory sense, reliance on schedules that allow for box ticking and routinised appraisal often blind assessors to context and the nuances of the case before them (Braithwaite et al., 2007; Munro, 2005; Scott, 1996).

Procedural Justice

The process of assessment with proper disclosure and consultation with the child, the family and the community brings to light the question of procedural justice. Procedural justice has emerged as one of the most important things that governments can offer citizens if they wish to elicit cooperation and compliance (Tyler, 1990; 1997). Procedural justice means that decisions are made through a process that is impartial, fair and respectful of all parties, regardless of their guilt or innocence. In the case of a child protection investigation, everyone deserves to have their story heard, to know what is about to happen and why it is being done in the way that it is, and be confident that if someone else were in their shoes, they would receive the same treatment—in other words, their treatment was neither discriminatory nor vindictive.

The right of each individual to be treated in a procedurally fair and reasonable way does not stop with assessment but flows into the question of what kinds of intervention should occur. In the child protection context, this issue can create uncertainty for regulators. It makes little sense to use the same intervention for everyone—that is, to treat everyone in exactly the same way. Lack of consistency, however, does not mean that child protection workers are responding in a procedurally unjust way. Fundamentally important in procedural justice is engaging with families within a culture of respect (Braithwaite, 2009). For respect to be communicated, understanding of context is critically important, and genuine understanding is communicated through the nature of the intervention proposed. There is little respect shown or purpose served should a child protection worker operate on a rule to remove a child from a family if a certain threshold is met, if this means distressing and alienating a caring extended family network and ultimately realising there are no options for alternative, safe, long-term care anyway. Procedural justice means being prepared to go beyond the rulebook and not hide behind a formula of consistent sameness. It is being responsive to the person and the problem in a way that is lawful yet respectful of the people involved.

Who Should Decide?

Given the complexity and significance of decisions related to assessment and intervention, it seems probable that in most cases they can be dealt with fairly only through an extensive deliberative process. An important normative question is: who should be involved in interpreting a family's actions as warranting intervention and deciding how the family's care practices are to be modified? Courts, as the final arbitrator, play a significant role, but in the vast majority of child protection cases they are not involved. Statutory child protection workers and

their agencies generally are called upon to interpret legislation and decide what kinds of intervention might be required.

A central regulatory question is whether such decisions are best left primarily in the hands of government agencies or whether a broader range of community actors (professionals, such as teachers, and/or laypeople) should be enrolled in interpreting how legislation is implemented (Pennell, 2006). In some countries, moves to provide a greater plurality of views in decision-making have already occurred (Burford & Adams, 2004; Crampton, 2007; Pennell, 2004, 2006; Pennell & Burford, 2000). For example, family group conferences in New Zealand are used in every case where statutory action might be warranted, and these conferences require the family's broader community to decide, with advice from professionals, whether a child is in need of protection and, if so, how that might be provided (Connolly, 1994; Harris, 2008). Family group conferencing and restorative justice processes provide an opportunity for hurts and wrongdoing to be openly and honestly discussed in an institutional space that provides support, encourages empathy and seeks ways to make amends (Braithwaite, 2002; Burford, 2005; Connolly, 2006; Pennell, 2006).

At the end of the day, all families should feel secure in the knowledge that a child protection authority will not interfere in how they are raising their children without proper consultation, contestable explanation and a plan of action. Parents need to know that if the authority interferes, they have serious concerns that certain practices are harmful to the child, that they have the support of the community in forming this judgement, that other family members are of the same view, and that an action plan will be developed that will be reasonable, fair and respectful of the child's and family's views on how future care should be provided. It is likely to be difficult for a child protection authority to achieve these goals without heavy reliance on third parties or "go-between" agencies that are trusted by families and that can reinforce the regulatory message.

Uncoupling Seriousness and the Nature of the Intervention

In all regulatory contexts there needs to be a critical evaluation of the wisdom in coupling the seriousness of a problem with the intrusiveness of the regulatory response. Models of just desserts have lulled us into a false sense of correctness that highly irresponsible behaviour should be met with a highly intrusive, usually punitive response (Ahmed, Harris, Braithwaite & Braithwaite, 2001). The intensity, constancy and multiple demands of parenting mean that most parents frequently find themselves sailing close to the wind as satisfactory carers, taking risks or allowing distractions that could potentially place their child in a vulnerable situation. Sometimes such moments result in accidents in which children are seriously hurt. For most parents, reflecting on these moments is heart-wrenching. This reflection process and associated self-criticism is self-regulating. In the vast majority of cases, parents ruminate on and learn from their mistakes, put in place procedures so that their slip-up is a one-off and become better parents as a result. Arguably the most destructive thing a child protection system can do is to weaken the informal self-sanctioning system that already exists (Burford, 2005). Too great a fear of external punishment can lead parents to deny or conceal what they have done. The failure to acknowledge removes the opportunity to learn to correct or improve parenting practices (Holland, 2000).

Apart from the risk of being counterproductive, rigid adherence to the notion that the seriousness of abuse or neglect should directly determine the kind of response taken is in many instances wasteful (Ayres & Braithwaite, 1992; Braithwaite, 2002). The state does not need to use its limited resources to chastise or punish parents who learn from their mistakes. On the other hand, these resources may make a big difference if used to assist parents whose mistakes are so minor that they fail to even register on the seriousness scale. Parents themselves may identify the incident as a warning and a precursor of future problems. Help from authorities at an early stage may prevent entrenchment and the escalation of harmful practices, teaching parents in a timely fashion to be better parents. Child protection is one area where there are likely to be significant gains in regulatory effectiveness if the seriousness of the situation can be uncoupled from the form that the intervention takes.

By coupling, what we mean is that the current models of child protection tie the seriousness of child protection concerns to the degree to which authorities are willing to intervene. At the less serious end of the spectrum, this means that there is a resistance to providing support for families, who don't have "real" problems. At the serious end of the spectrum, it involves an assumption that problems can be addressed only through court orders that remove control from the hands of parents. Increased emphasis on statutory provisions as a basis for intervention has only exaggerated this requirement. Thus, the focus of child protection activity is on identifying thresholds in the seriousness of "abuse or neglect" to justify a prescribed level of intervention. Types of interventions have become coupled with degree of abuse or neglect or, increasingly, in legislation with the degree of risk to a child[1] (Parton, 1998).

While we would not want to see governments intervening in ways that undermine the legal and moral rights of families, an important regulatory question is whether the seriousness of concerns is the best indicator of how much intervention is needed in order to resolve those concerns. It is conceivable that this assumption in practice leads to an overreaction by government in some cases and insufficient action in others (Ayres & Braithwaite, 1992; Braithwaite, 2002). It seems reasonable to suggest that better outcomes for children might eventuate if child protection authorities adopted a different regulatory framework. It might be justified to offer greater resources to less serious cases brought to the attention of agencies because doing so would prevent more serious problems in the future (English, 1998) It might also be justified to resolve some serious cases more efficiently with less coercive interventions in many cases. Current child protection models struggle to implement this kind of responsiveness.

1 While child protection decisions are now often based on estimations of future risk, in some jurisdictions there is little evidence to show that the decisions made on this basis result in significantly different outcomes than decisions made on assessments of past abuse or neglect.

THE CURRENT REGULATORY MODEL AND ITS CONSEQUENCES

The current regulatory model is bringing a rapid increase of cases into the system. Better detection and greater awareness of child neglect and abuse may be part of the explanation; social and economic upheaval that moves many families into crisis is another. That said, the effect of a regulatory system in an ideal world would be to reduce the cases coming before the child protection authority. The argument for such a downturn is that regulatory authorities have a responsibility to educate the population about the standards of care required and, through working with government and partnering with civil society, harness resources to put these standards into practice. A successful regulatory program provides the reasons and means for most people to self-regulate.

Why might families not be responding to the self-regulatory challenge when it comes to looking after their children? No small part of this problem is that interventions may solve some problems but create others. The significant costs of intervening in many cases outweigh the potential benefits for children, leaving them in worse circumstances (Doyle, 2007). If research shows that certain kinds of child protection concerns can be addressed better through non-coercive approaches, would these forms of intervention not be preferable to highly statutory interventions? Furthermore, if interventions are more effective when they are undertaken by non-government actors in partnership with or even beyond the reach of child protection authorities, is there an argument for limiting the role of child protection agencies? In essence, do we need a broader debate about when different kinds of interventions are justified and whether significant proportions of child protection cases should be dealt with through entirely different regulatory frameworks and perhaps even different organisations? (Wood & Harris, 2008).

Whatever the fate of child protection authorities in terms of their purpose, scope for intervention and resources, authorities cannot serve the interests of the child without respecting his or her social relationships. Social infrastructure, no matter how

"shonky", gives children their identity. The social infrastructure can be tinkered with, remodelled, recast, kept at a distance or demonised, but it cannot be denied. One way or another, child protection authorities have to deal constructively with this infrastructure. Otherwise, through being discarded, it will assume a toxicity that is destructive to all associated with it, including the estranged child.

The emotions that are unleashed by child protection cases are at the heart of this toxicity. Feelings of hate, abandonment, failure, shame and anger stand in the way of the resumption of normal relationships between parents and children, often stand in the way of children forming attachments with others, and compromise their capacity to grow and develop. Whatever the form that a child protection regulatory framework takes in the future, regulatory agencies will continue to be powerful educators in relationship management. Positive learning experiences for children cannot come about through an inspectorial system, the completion of checklists, the writing of reports, formal notifications, the removal of children and placement in new homes. Traumatised children cannot be expected to understand bureaucratic processes, particularly not in circumstances where their parents and families are fearful, mistrustful and mystified by them. Possibly the greatest contribution of child protection authorities is to work with partnering agencies to help children manage their relationships, provide them with an opportunity to find and give support and respect, and to build trust and a circle of support that will be there to help them in times of need.

REFERENCES

Adler, P.S. & Borys, B. (1996). Two types of bureaucracy: Enabling and coercive. *Administrative Science Quarterly*, *41*(1), 61-89.

Ahmed, E., Harris, N., Braithwaite, J., & Braithwaite, V. (2001). *Shame management through reintegration*. Melbourne: Cambridge University Press.

Alaggia, R., Jenney, A., Massuca, J., & Redmond, M. (2007). In whose best interest? A Canadian case study of the impact of child welfare policies in cases of domestic violence. *Brief Treatment and Crisis Intervention*, *7*(4), 275-290.

Arad-Davidson, B., & Benbenishty, R. (2007). The role of workers' attitudes and parent and child wishes in child protection workers' assessments and recommendation regarding removal and reunification. *Children and Youth Services Review, 30*(1), 107-121.

Ayre, P. (2001). Child protection and the media: Lessons from the last three decades. *British Journal of Social Work*, *31*(6), 887-901.

Ayres, I., & Braithwaite, J. (1992). *Responsive regulation: Transcending the deregulation debate.* New York: Oxford University Press.

Baistow, K., & Hetherington, R. (1998). Parents' experiences of child welfare interventions: An Anglo-French comparison. *Children & Society, 12*(2), 113-124.

Bass, S., Shields, M.K., & Behrman, R.E. (2004). Children, families, and foster care: Analysis and recommendations. *The Future of Children, 14*(1), 4-29.

Belsky, J. (1993). Etiology of child maltreatment: A developmental-ecological analysis. *Psychological Bulletin, 114*(3), 413-434.

Berg, C.A. (1992). Perspectives for viewing intellectual development throughout the life course. In R.J. Sternberg and C.A. Berg (Eds.), *Intellectual development* (pp. 1-15). Cambridge: Cambridge University Press.

Bernstein, M.H. (1955). *Regulating business by independent commission*. Princeton, NJ: Princeton University Press.

Bould, S. (2003). Caring neighbourhoods: Bringing up the kids together. *Journal of Family Issues*, *24*(4), 427-447.

Braithwaite, J. (2002). *Restorative justice and responsive regulation*. New York: Oxford University Press.

Braithwaite, J., Makkai, T., & Braithwaite, V. (2007). *Regulating aged care: Ritualism and the new pyramid.* Cheltenham, UK: Edward Elgar.

Braithwaite, V. (2009). *Defiance in taxation and governance: Resisting and dismissing authority in a democracy.* Surrey, UK: Edward Elgar.

Broffenbrenner U. (1979). *The ecology of human development: Experiments by nature and design*. Cambridge, Mass.: Harvard University Press.

Brown, A., & Brown, N.J. (2007). The Northern Territory intervention: Voices from the centre of the fringe. *Medical Journal of Australia*, *187*(11/12), 621-623.

Burford, G. (2005).Families: Their role as architects of civil society and social inclusion. *Practice*, *17*(2), 79-88.

Burford, G., & Adams, P. (2004). Restorative justice, responsive regulation and social work. *Journal of Sociology and Social Welfare*, *31*(1), 7-26.

Burgheim, T. (2002). The grief of birth parents whose children have been removed: Implications for practice in out of home care. *Developing Practice: The Child, Youth and Family Work Journal, (13),* 57-61.

Connolly, M. (1994). An act of empowerment: The Children, Young Persons and their Families Act (1989). *British Journal of Social Work*, *24*(1), 87-100.

Connolly, M. (2006). Up front and personal: Confronting dynamics in the family group conference. *Family Process, 45*(3), 345-357.

Council of Australian Governments. (2009). *Protecting children is everyone's business: National framework for protecting Australia's children 2009-2020*. Canberra: Commonwealth of Australia.

Crampton, D. (2007). Research review: Family group decision-making: A promising practice in need of more programme theory and research. *Child & Family Social Work*, *12*(2), 202-209.

Crime and Misconduct Commission. (2004). *Protecting children: An inquiry into the abuse of children in foster care*. Brisbane: Author.

Dale, P. (2004). Like a fish in a bowl: Parents' perceptions of child protection services. *Child Abuse Review*, *13*(2), 137-157.

D'Arcy Pope, J. (2007). Staying connected and holding onto hope: A community document created by three mothers who have been separated from their children due to statutory child protection intervention. *Developing Practice: The Child, Youth and Family Work Journal*, *(18)* 12-20.

Department of Health. (1995). *Child protection: Messages from research*. London: HMSO.

Doyle, J.J. (2007). Child protection and child outcomes: Measuring the effects of foster care. *American Economic Review*, *97*(5), 1583-1610.

Dumbrill, G.C. (2006). Parental experience of child protection intervention: A qualitative study. *Child Abuse & Neglect*, *30*(1), 27-37.

Edleson, J.L., Gassman-Pines, J., & Hill, M.B. (2006). Defining child exposure to domestic violence as neglect: Minnesota's difficult experience. *Social Work*, *51*(2), 167-174.

English, D.J. (1998). The extent and consequences of child maltreatment *Protecting Children from Abuse and Neglect*, *8*(1), 39-53.

Farmer, E., & Owen, M. (1995), *Child protection practice: Private risks and public remedies.* London: HMSO.

Forde, M. (1999) Report of the commission of inquiry into abuse of children in Queensland institutions. Brisbane: Queensland State Government.

Forrester, D., Kershaw, S., Moss, H., & Hughes, L. (2008). Communication skills in child protection: How do social workers talk to parents? *Child & Family Social Work*, *13*(1), 41-51.

Freymond, N.C. (2007). *Mothers of children placed in out-of-home care: Everyday realities and child placement experiences*. Unpublished doctoral dissertation, Wilfrid Laurier University, Canada.

Furstenberg, F.F. Jr., Cook, T.D., Eccles, J., Elder, G.H. Jr., & Sameroff, A. (1999). Managing to make it: Urban families and adolescent success. Chicago: University of Chicago Press.

Grabosky, P.N. (1995). Counterproductive regulation. *International Journal of the Sociology of Law*, *23*, 347-369.

Gracia, E., & Musitu, G. (2003). Social isolation from communities and child maltreatment: A cross-cultural comparison. *Child Abuse and Neglect*, *27*(2), 153-168.

Hardy, F., & Darlington, Y. (2008). What parents value from formal support services in the context of identified child abuse. *Child & Family Social Work*, *13*(3), 252-261.

Harris, N. (2008). Family group conferencing in Australia 15 years on. *Child Abuse Prevention Issues*, *27*, 1-19.

Harris, N., & Wood, J. (2008). Governing beyond command and control: A responsive and nodal approach to child protection. In M. Deflem (Ed.), Surveillance and governance: Crime control and beyond. Sociology of crime, law and deviance. Vol. 10 (pp. 327-344). . Amsterdam: Elsevier.

Holland, S. (2000). The assessment relationship: Interaction between social workers and parents in child protection assessments. British Journal of Social Work, 30(2), 149-163.

Holland, S., & Scourfield, J. (2004). Liberty and respect in child protection. British Journal of Social Work, 34(1), 21-36.

Houston, S. (2001). Transcending the fissure in risk theory: critical realism and child welfare. Child and Family Social Work, 6(3), 219-228.

Ivec, M., Braithwaite, V., & Harris, N. (2009). *Can responsive regulation reset the relationship between child protection authorities and Indigenous communities*? Regulatory Institutions Network (RegNet) Occasional Paper 15. Canberra: Australian National University.

Jack, G., & Jordon B. (1999). Social capital and child welfare. Children and Society, 13(4), 242-256.

Johnson, E.P., Clark, S., Donald, M., Pedersen, E., & Pichotta, C. (2007). Racial disparity in Minnesota's child protection system. Child Welfare, 86(4), 5-20.

Johnson, S.P., & Sullivan, C.M. (2008). How child protection workers support or further victimise battered mothers. *Affilia*, *23*(3), 242-258.

Khoo, E.G., Hyvonen, U., & Nygren, L. (2003). Gatekeeping in child welfare: A comparative study of intake decision making by social workers in Canada and Sweden. *Child Welfare*, *82*(5), 507-525.

Lau, A., Litrownik, A., Newton, R.R., & Landsverk, J. (2003). Going home: The complex effects of reunification on internalising problems among children in foster care. *Journal of Abnormal Child Psychology*, *31*(4), 345-358.

Marshall, N.L., Noonan, A.E., McCartney, K., Marx, F., & Keefe, N. (2001). It takes an urban village. *Journal of Family Issues*, *22*(2), 163-182.

Mass, M., & Van Nijnatten, C. (2005). Child protection and the conception of parental responsibility. American Journal of Orthopsychiatry, 75(2), 220-229.

McConnell, D., & Llewellyn, G. (2005). Social inequality, 'the deviant parent' and child protection practice. Australian Journal of Social Issues, 40(4), 553-566.

Moran, P., Jacobs, C., Bunn, A., & Bifulco, A. (2007). Multi-agency working: Implications for an early-intervention social work team. Child & Family Social Work, 12(2), 143-151.

Moyers, S., Farmer, E., & Lipscombe, J. (2005). Contact with family members and its impact on adolescents and their foster placements. *The British Journal of Social Work*, *36*(4), 541-559.

Mullighan, E. (2008) *Allegations of sexual abuse and death from criminal conduct: Commission of inquiry into children in state care*. Adelaide: South Australian Government.

Munro, E. (2005). Improving practice: Child protection as a systems approach. *Children and Youth Services Review*, *27*(4), 375-391.

Nathanson, D., & Tsioumi, D. (2007). Health needs of Australian children living in out-of-home care. *Journal of Paediatrics and Child Health*, *43*(10), 695-699.

National Youth Commission. (2008.) *Australia's homeless youth: A report of the national commission inquiry into youth homelessness*. Melbourne: Author.

Northern Territory Emergency Response Review Board. (2008). *Northern Territory Emergency Response (NTER) Review Board report*. Canberra: Australian Government.

O'Brien, M.J. (2005). Exploring and comparing client perception of need and social worker perception of risk: A key to improved intervention in cases of child neglect. Unpublished doctoral dissertation, McGill University, Canada.

Ombudsman of Tasmania. (2004). *Listen to the children: Review of claims of abuse from adults in state care as children*. Hobart: Author.

Parker, C., & Braithwaite, J. (2003). Regulation. In P. Cane and M. Tushnet (Eds.), *The Oxford Handbook of Legal Studies* (pp. 119-145). Oxford: Oxford University Press.

Parton, N. (2006). *Safeguarding childhood: Early intervention and surveillance in a late modern society*. Basingstoke: Palgrave Macmillan.

Parton, N. (1998). Risk, advanced liberalism and child welfare: The need to rediscover uncertainty and ambiguity. *British Journal of Social Work*, *28*(1), 5-27.

Pennell, J. (2004). Family group conferencing in child welfare: responsive and regulatory interfaces. *Journal of Sociology and Social Welfare*, *31*(1), 117-135.

Pennell, J. (2006). Restorative practices and child welfare: Toward an inclusive civil society. *Journal of Social Issues*, *62*(2), 259-279.

Pennell, J., & Burford, G. (2000). Family group decision making: Protecting children and women. *Child Welfare*, *79*(2), 131-158.

Santow, S. (Writer). (2007). *Ombudsman highlights child protection failings* [Television broadcast]. Sydney: Australian Broadcasting Service. Retrieved November, 30, 2007, from http://www.abc.net.au/news/stories/2007/10/26/2071955.htm

Scott, D. (1996). Parental experiences in cases of child sexual abuse: A qualitative study. *Child and Family Social Work*, *1*(2), 107-114.

Scott, D., & Campbell, L.M. (1994). Family-centred practice in the interface between child welfare and the alcohol and drug field. *Drug and Alcohol Review*, *13*(4), 447-454.

Scott, D., & Swain, S. (2002). *Confronting cruelty: Historical perspectives on child abuse*. Carlton, Vic.: Melbourne University Press.

Senate Community Affairs References Committee. (2001). *Lost innocents: Righting the record, report on child migration*. Canberra: Commonwealth of Australia.

Senate Community Affairs References Committee. (2004). *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*. Canberra: Commonwealth of Australia.

Shedlosky, E.C. (2007). Protecting children from the harmful behavior of adults. *Journal of Criminal Law and Criminology*, *98*(1), 299-326.

Shirk, M., & Stangler, G. (2004). *On their own: What happens to kids when they age out of the foster care system?* Boulder, Col.: Westview Press.

Special Commission of Inquiry into Child Protection Services in NSW. (2008). Public submissions. Retrieved September 26, 2008, from http://www.lawlink.nsw.gov.au/lawlink/special_projects/ll_splprojects.nsf/pages/cpsi_cpsi_sub_received.

Spratt, T. (2001). The influence of child protection orientation on child welfare practice. *British Journal of Social Work*, *31*(6), 933-954.

Sternberg, R.J. (1992). The princess grows up: A satirical fairy tale about intellectual development. In R.J. Sternberg and C.A. Berg (Eds.), *Intellectual Development* (pp. 381-394). Cambridge: Cambridge University Press, .

Stukes Chipungu, S., & Bent-Goodley, T.B. (2004). Meeting the challenges of contemporary foster care. *The Future of Children*, *14*(1), 75-93.

Tyler, T. (1990). *Why people obey the law: Procedural justice, legitimacy and compliance*. New Haven: Yale University Press.

Tyler, T. (1997). The psychology of legitimacy: A relational perspective on voluntary deference to authorities. *Personality and Social Psychology Review*, *1*(4), 323–345.

Convention on the Rights of the Child, UNICEF (1989). Retrieved September 26, 2008 from http://www.unicef.org/crc

Vardon, C. (2004). *The Territory as parent: Review of the safety of children in care in the ACT and of ACT child protection management*. Canberra: ACT Government.

Wood, J. (2008). Special commission of inquiry into child protection services in New South Wales. Sydney: New South Wales Government.

Wright, S. (2004). Child protection in the community: A community development approach. Child Abuse Review, 13(6), 384-398.

Wulcsyn, F. (2004). Family reunification. *The Future of Children*, *14*(1), 95-113.

AUTHORS

Professor Valerie Braithwaite
Regulatory Institutions Network
The Australian National University
Canberra ACT 0200, Australia

Valerie.braithwaite@anu.edu.au

Dr Nathan Harris
Regulatory Institutions Network
The Australian National University
Canberra ACT 0200, Australia

Nathan.harris@anu.edu.au

Mary Ivec
Regulatory Institutions Network
The Australian National University
Canberra ACT 0200, Australia

Mary.ivec@anu.edu.au

Who's Regulating Whom? Challenges to Families Looking After Their Children

Gale Burford

ABSTRACT

Like the systems in place to scrutinise them, families have experienced an increasingly complex landscape of challenges, expectations and assumptions in self-regulating. This paper unpacks what is meant by "family" in this context and examines what happens when parents and extended family attempt to self-regulate in the face of a system that is built on regulatory formalism. Evidence suggests that many more parents, family members and other non-government supports are willing to step up to help families self-regulate in child protection than happens at present. The bigger challenge would seem to be creating responsive and transparent systems that enlist and support their efforts rather than exclude and undermine them.

KEY WORDS

responsive regulation child protection family engagement

INTRODUCTION

The perspective taken by Braithwaite, Harris and Ivec (this issue) grows from research and theory building in the developing field of regulation. Drawing on their own and others' well-developed work, the authors unpack the regulatory agenda of child protection practice from others which often compete with or muddle regulation. Their paper, and the national effort in Australia of which it is a part, will surely be welcome around the world where reforms of child welfare systems are either underway or being contemplated. Internationally, most reform efforts in child protection acknowledge that lasting solutions to child protection matters are ones that can build capacities in the child's family and social networks that outlast the capacity of the state to stay involved.

There may not be widespread acceptance that top-down regulatory approaches will inevitably fail, but there is certainly heightened awareness of the dangers of providing bad or no regulation at all (Braithwaite, Coglianese & Levi-Faur, 2008). This said, many efforts in child protection to develop bottom-up approaches that would engage affected persons in decision-making are bolted onto top-down systems whose infrastructures render self-regulatory efforts invisible or undermine them. The authors' paper is a welcome and refreshing presentation of important issues. I found their

question about why families are not responding to what they call the self-regulatory challenge in matters pertaining to their children to be a useful catalyst for my own reactions to the paper.

A CONTEXT FOR FAMILIES

Most families self-regulate most of the time. They have done so in new ways during years of sustained government deregulation by stepping up to the plate to shoulder the needs of a globalising economy for a mobile, low-paid workforce. Trends indicate declining benefits associated with work; more adults working in households to make ends meet; adult children moving back with their parents; longer work hours; less job security; more years in the workforce; parents making their own childcare arrangements in an increasingly regulated childcare environment; more kin raising grandchildren; and mothers continuing to perform the bulk of work inside the home (Barette, 2009; Gornick, et al., 2007). Families are stepping up to the plate, but it's largely been with the purpose of fuelling a deregulated economy in which parents have the right to self-manage their declining resources. Supports are often available only begrudgingly, temporarily and with strings attached. Time that people had for building community and neighbour relations can be understood as having been diverted largely to the service of economic goals and away from regulating the health and wellbeing of children, neighbourhoods and communities. These efforts have increasingly become luxuries with the erosion of the middle class. The need for adaptive solutions has been given less attention in recent years than technical fixes. This has implications for families seen as failing to self-regulate in matters of child protection.

THE FAMILY IN CHILD PROTECTION

To begin, the word *family* needs clarification. In the eyes of the formal child protection system, extended family members, in most places, have no legal standing beyond that of ordinary citizen unless they are required as a mandated reporter to step forward or when the child protection authorities contact them at their discretion. Typically, at least in the USA, extended family and other members of the child's natural support network have been excluded at crucial decision points by formal authorities. Exceptions occur under laws governing the Indian Child Welfare Act in the USA and in New Zealand, where designated relatives or others who can demonstrate a significant relationship with the child are entitled to have a say in crucial decisions, particularly if those decisions could lead to the child becoming a "state's child", as the authors so aptly characterise them. Elsewhere, parents—too often, mothers only—are more directly regulated, presumed to have rights, and often become the objects of investigation themselves for having failed to protect their children. Sometimes referred to as "mother-bashing" this is a by-product of top-down regulatory formalism in which blame figures centrally.

The authors are quite right in calling for a detailed examination of the fit of regulatory theory and practice with child protection work. Unlike theory building and empirical research in areas such as compliance with taxation and nursing home regulations, child protection is to a large extent concerned with children and families who live with multiply-intersecting challenges (Morris et al., 2007). The language of compliance and regulation will no doubt raise for some scholars images of regulating the poor and adjusting mothers to fit in with normative family expectations. As was reported by the authors in the special issue of the *Journal of Sociology and Social Welfare* under the editorship of Paul Adams (Adams, 2004), which explored the applicability of John Braithwaite's book *Restorative justice and responsive regulation* to child welfare, the theory and research appear to fit empowerment approaches to social work and support the aim of ensuring safety for children and other vulnerable family members. The potential for a system crafted around responsive regulation to move discussions beyond what I regard as an unhelpful and stalemated polemic of family support versus child rescuing is cause for optimism.

Insofar as the concern about regulating the lives of the poor and disenfranchised goes, the work in the UK sponsored by the Cabinet Office Social Exclusion Task Force (2008) on "whole family" approaches is useful and points to the need to "think family" across all systems. Braithwaite, Harris and Ivec (this issue) are again quite correct in their view

that the level of coordination of services and the involvement of help from the informal system ought to be among the top priorities. This is important in considering the authors' concerns about the use of risk assessments and the dangers they point to in decontextualising assessment, both of which pose sources of contamination for a responsive regulatory agenda and practice.

Most families need some help raising their children, but if they first have to be constituted by assessment as posing a certain level of risk for abusing their own children in order to get any help (May-Chahal, 2004), it risks eroding their motivation, capacities and perception of opportunity to near irrelevance. Assessment processes that overrely on so-called objective measures to the exclusion of the family's engagement pose what is perhaps the greatest threat to informal helpers demonstrating their ethic of care for the child and their willingness to cooperate. Perhaps more damaging, they risk confounding the capacity of professionals to understand the family members' cooperation as genuine by over-emphasising pathology or past events and behaviours.

On the other hand, risk assessment tools were developed in part to solve problems associated with families who need the services not being the ones that actually get them. Governments will need assurance that services are indeed the right ones, that the people who get them need them and that the services themselves have the programmatic strength and integrity to achieve over time the ends that have been specified. A regulatory approach would support transparency in monitoring the services to ensure they are tied to the purpose of the intervention. Children in the care of the state certainly need and deserve all the customary social, recreational, health and educational supports and services that children who are not in the care of the state would receive. However, clarity is needed to differentiate which services are clearly connected to the justification for the state being involved and which are not lest regulatory power is used to undermine democratic processes. Questions will be raised, at least in the USA, about the extent to which a responsive regulatory system in child protection will depend on the availability of a universal system of social, health and justice services.

WHAT HAPPENS WHEN FAMILIES STEP UP TO SELF-REGULATE IN CHILD PROTECTION?

Braithwaite, Harris and Ivec (this issue) deftly spell out the need for clear and shared understandings of the purpose of interventions and for the provision of justification that is well-understood and accepted as credible by the family and the wider community. Further, they point to the importance of getting the right mix of informal and formal helpers involved and of getting their efforts coordinated to sustain the effort.

At the same time, the authors acknowledge, as a well-known song and dance man has observed, that "a lot of things can get in the way when you're trying to do the right thing" (Dylan, 2001). They rightfully set the chaos that characterises much child protection work at the centre of their concern about the capacity of government to deliver all that it has taken on or has handed to it. Reducing the turmoil and conflict in child protection work is understood to have a variety of benefits (Munro, 2005; Glisson, Dukes & Green, 2006), and the impact of negative work environments, translated into worker turnover and decreased worker contact, is associated with an increased likelihood of child maltreatment and longer times to achievement of placement stability and permanency (Wagner, Johnson & Healy, 2009). This turmoil does not support personnel, children, young people, families and communities to build pro-social, self-regulating relations. These are not new concerns in human services, but they are given fresh understanding in the paper as they relate to child protection.

Prior to authorities stepping in, parents and other family members have often done everything they can to try and get help on their own terms (*Child Welfare and Juvenile Justice*, 2003) or to influence things with their relatives. Too often when families step forward, rather than finding encouragement and support for their self- or other-family regulatory efforts, they are met with formalism or exclusion. This can set in motion reactivity and escalation on the part of family members and professionals and can result in the original purpose for the assistance-seeking being lost. The ties between the formal and informal

system need to be able to kick in very quickly when things rise to the point where the state gets involved. The authors acknowledge the well-known iatrogenic effects of taking children into custody, and this is understood to include the impact of multiple placements on children; parents and children not having meaningful and regular contact with each other or having their connections undermined; and the negative effects of congregate care on young people, especially those who have come into conflict with the law. The authors' position that these relations may need brokering by trusted others is well-taken and has been central to thinking about the need for impartial or independent facilitators or coordinators in programs that have embraced the use of family engagement strategies. If the whole system were reshaped to be more responsive, much work would need to be done to understand the role of these other altruistic and paid actors who could be enlisted for assistance..

In the piecemeal system we have now, self-regulation becomes an even more distant hope when courts get involved. Huntington (2008) points out that family courts in the USA fail to make way for the very expression of emotions and reparation necessary to sustain ongoing family relationships that are necessary for children's development and wellbeing. She points out that traditional models of family law do not account for the fact that, despite the legal alteration of relationships, many people continue to have ongoing connections or seek them out later. These facts are well-understood by practitioners and researchers in child welfare, who see how often young people "go home" after they age out of the system, often with disastrous results, especially if family connections have not been cultivated while the child has been in the care of the state.

Some challenges to genuine self-regulation on the part of family can come, according to critics such as Bartholet (2002, 2009), from the very application of family engagement approaches when they are used to pressure families into taking in their relative children. She claims that such strategies, which are intended to help families self-regulate, are being used to reduce racial disparity in foster care at the expense of child safety. I agree with Bartholet that any practice that shames or pressures families into prefigured decisions to take in their young relatives is wrong in and of itself and does not meet the test of a just process. Research on the use of family group conferences in the USA does not support Bartholet's claim, but the possibility she suggests—that of professionals driving the decision-making—certainly exists, whether reducing racial disparity is the goal or not, when the principles of family engagement are not clear, agreed upon and backed by sanction and support. When programs take shortcuts by not casting a wide net of inclusion of family and other informal supports and do not take the time to employ strategies for inviting family leadership, self-regulation is undermined.

International research on the use of approaches that engage the family group is clear on the point about families stepping up to the plate when space is opened for parents, extended family and friends to be part of the decision-making in matters related to child welfare, including child protection (Merkel-Holguin et al., 2003; Burford & Pennell, 2009; Pennell & Burford, 2009). They want to be involved; they come to meetings; they take part safely; they engage in making plans that put their own homes and other resources on the table; their plans are acceptable to CPS social workers, and families, from different culture like the process.. Yet so many of these efforts are "add-on" options to top-down systems and often impact little in moving the system to a new place. This places such innovative practices at risk of being cast as "flavour of the month" and discarded during governmental regime change and shifts in political winds.

This leads to a final point about the ethic and practice of self-regulation. As the authors point out, the current configuration of services seems always vulnerable to public opinion. This has contributed to the swings between so-called family support and child rescuing. The challenge of self-regulation calls for strong belief in the institutions that serve them and in the people who do the work. The present system of laws, policies and frontline practices is organised around the impact of the most extreme situations. The very organisation of child death reviews and commissions of inquiry—that is, those formal investigations launched to try and learn something from the most tragic of circumstances—can be

seen as contributing to the increased application of regulatory formalism and blame-finding (Gove, 1995; Connolly & Doolan, 2007; Fish, Munro & Bairstow, 2008; Hughes, 1991; Markesteyn & Day, 2006). The role of the media in shaping public opinion in these matters is well-documented (Leyton, O'Grady & Overton, 1992; Shirk, 1997).

In short, the very organisation of the child protection system seems to push toward the exclusion of people who might be able to help and who are willing to cooperate with the state's definition of the behaviour in need of regulation. Again, as the authors point out, the value and practice of enlistment would need to trump exclusion.

SUMMARY

We need to know a lot more about what happens in families, including those who do self-regulate, and about families who have a willingness to step up. The problem for many families would seem to be not one of too little regulation or too much regulation to keep children safe and protect them from harm but one of too little security to underwrite the kind of risk-taking and creativity that builds and sustains healthy and productive families, communities and states. It is a case of not getting the right kind of regulation, including support, offered at the right time. A sad fact of the top-down regulatory child protection system is that it stifles family members' attempts to demonstrate their care and cooperation. It also frustrates the efforts of workers to engage family members in self-regulation. Families cannot get the help they want on their terms when CPS is the service gateway. Genuine invitations to self-regulation would have to foster confidence in the system and leave parents and family members feeling that the helpers are being responsive to them. Too often, families report that they are put on the defensive to prove their worth as parents yet they have little understanding of what is expected of them or influence over what constitutes proof. Instead, they are met with workers who have little time for them and are directed by predetermined protocols that limit possibilities. They are offered services from a menu of what is available and then monitored on their compliance with what are often conflicting expectations.

Even though federal requirements in the USA tie funding to the expectation that extended family and other significant members of a child's support network will be involved, children are left with no real rights that can be asserted to the resources of their extended family members or to other potential help in their natural helping networks. It is the benevolent intention of the state that looks to these others for their involvement when the state thinks they are needed. Several states, such as Vermont, have set into legislation that workers "must actively engage families in case planning, and solicit and integrate the input of the child, the child's family, relatives and other persons with a significant relationship to the child" (Vermont Judicial Proceedings Act, 2008, p. 5121). This seems like a step in a positive direction insofar as it can be understood as strengthening the rights of people connected to the child to be involved and a child's right to have alternatives considered before becoming a ward of the state. If the intention of such legislation is to fully engage families and other supporters, this can be realised only if practices truly foster conditions under which workers and families can work together to help the families self-regulate.

Alternative or differential response approaches promise to divert many families away from investigative or top-down approaches, but these are, as their name suggests, alternatives to the present system. As such, they are residual or safety net in their conceptualisation and may be limited in their capacity to provide a responsive regulatory approach.

A responsive regulatory approach would focus on finding solutions and build on existing strengths and capacities. As has been found in other areas of regulatory practice (Lochner, Apollonio & Tatum, 2008), we predict that it is not just the expansion of regulatory sanctioning options that will make a difference in child protection but an expanded capacity to monitor and enlist needed supports. This means providing the personnel with support, including education and supervision, to create a climate in which regulation can be carried out as a responsive activity. That seems to me to be a bigger challenge than getting the families to cooperate.

REFERENCES

Adams, P. (2004). Special issue on restorative justice and responsive regulation. *Journal of Sociology and Social Welfare*, *31*(4),.

Barette, J. (2009) *Work-family balance: What do we really know?* Ottawa, ON: The Vanier Institute of the Family, Contemporary Family Trends. Retrieved June 27, 2009, from http://www.vifamily.ca/library/cft/barrette/work_family_balance.pdf

Bartholet, E. (2002). *Nobody's children: Abuse and neglect, foster drift, and the adoption alternative*. Boston, MA: Beacon Press.

Bartholet, E. (2009). The racial disproportionality movement in child welfare: False facts and dangerous directions. *Arizona Law Review*, *51*. Harvard Law School Public Law & Legal Theory Working Paper Series, Paper No. 09-2. Social Science Research Network Electronic Library. Retrieved May 30, 2009, from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1373892

Braithwaite, J. (2002). *Restorative justice and responsive regulation*. New York: Oxford University Press.

Braithwaite, J., Coglianese, C., & Levi-Faur, D. (2008). Change and challenge in regulations and governance: Editor's introduction. *Regulation & Governance, 2*, 381-382.

Braithwaite, V., Harris, N., & Ivec. M. (this issue). Seeking to clarify child protection's regulatory principles. *Communities, Children and Families Australia.*

Burford, G. (2005). Families: Their role as architects of civil society and social inclusion. *Practice*, *17*(2), 79-88.

Burford, G., & Pennell, J. (with Connolly, M. & Morris, K.). (2009). *International family engagement review.* Presentation at the annual conference of the American Humane Association on Family: The Keystone for Systems Change, Pittsburg, PA.

Burford, G., Connolly, M., Morris, K., & Pennell, J. (2008). Family Group Decision Making: Annotated Bibliography on Engaging the Family Group in Child Welfare Decision Making. Retrieved May 30, 2009, from http://www.americanhumane.org/protecting-children/programs/family-group-decision-making/re_annotated_bibliography/

Cabinet Office Social Exclusion Task Force. Retrieved September 14, 2009, from http://www.cabinetoffice.gov.uk/social_exclusion_task_force/news/2008/080110_families.aspx

Child welfare and juvenile justice: Several factors influence the placement of children solely to obtain mental health services: *Hearings before the Senate Committee on Governmental Affairs,* GAO–03–865T (2003) (testimony of Cornelia M. Ashby).

http://www.gao.gov/new.items/d03865t.pdf

Connolly, M., & Doolan, M. (2007). *Lives cut short: Child death by maltreatment*. Wellington, NZ: Dunmore Publishing for the Office of the Commissioner.

Dylan, B. (2001). Honest with me. On *Love and Theft* [CD]. New York: Columbia Records.

Edwards, M., Tinworth, K., Burford, G., & Pennell, J. (2006). *Family team meeting (FTM) process, outcome, and impact evaluation: Phase II*. Englewood, CO: American Humane Association.

Edwards, M., Tinworth, K., Burford, G., Fluke, J., & Pennell, J. (2005). *Preliminary report on family team meeting (FTM) process, outcome, and impact evaluation: Evaluation of Washington, DC Child, Family Service Agency use of family team meetings*. Englewood, CO: American Humane Association.

Fish S., Munro, E., & Bairstow S. (2008). *Learning together to safeguard children: Developing a multi-agency systems approach for case reviews*. London, SCIE publications. Retrieved September 14 2009 from http://www.scie.org.uk/publications/guides/guide24/files/guide24.pdf

Glisson, C., Dukes, D., & Green, P. (2006). The effects of the ARC organizational intervention on caseworker turnover, climate, and culture in children's service systems. *Child Abuse & Neglect*, *30*(8), 855-880.

Gornick, J. C., Heron, A., & Eisenbrey, R. (2007). *The work-family balance:*

An analysis of European, Japanese, and U.S. work-time policies. Washington, DC: Economic Policy Institute Briefing Paper No.189. Retrieved June 27, 2009, from http://www.sharedprosperity.org/bp189/bp189.pdf

Gove, T. I. (1995). *Report of the Gove inquiry into child protection in British Columbia*. Victoria, British Columbia, Canada: Ministry of Social Services.

Hughes, S. (1991). *The royal commission of inquiry into the response of the Newfoundland criminal justice system to complaints*. St. John's, Newfoundland: Office of the Queen's Printer.

Huntington, C. (2008). Repairing family law. *Duke Law Journal*, *57*(5), 1245–1319. Reprint.

Leyton, E., O'Grady, W., & Overton, J. (1992).*Violence and public anxiety: A Canadian case*. St. John's, Newfoundland: Institute of Social and Economic Research, Memorial University of Newfoundland.

Lochner, T., Apollonio, D., & Tatum, R. (2008). Wheat from chaff: Third-party monitoring and FEC enforcement actions. *Regulation & Governance, 2,* 216-233. Retrieved June 27, 2009, from http://www3.interscience.wiley.com/cgi-bin/fulltext/119423174/PDFSTART

Markesteyn, P., & Day, D. (2006). *Turner review and investigation (V. I & II)*. Newfoundland: Office of the Child and Youth Advocate, Province of Newfoundland & Labrador.

May-Chahal, C. (2004). *The science and morality of 'child abuse risk'*. Manuscript submitted for publication, Lancaster University.

Merkel-Holguin, L., Nixon, P., & Burford, G. (2003). Learning with families: A synopsis of FGDM research and evaluation in child welfare. Protecting Children, 18(1 & 2), 2 - 11.

Morris, K., Hughes, N., Clarke, H., Mason, P., Burford, G., Galvani, S., Tew, J., Lewis, A., & Becker, S. (2007). *Think family: A literature review.* Social Exclusion Task Force, EU/Cabinet Office, Admiralty Arch, The Mall, London, UK. Retrieved August 14, 2008 from http://www.cabinetoffice.gov.uk/media/cabinetoffice/social_exclusion_task_force/assets/think_families/think_family_report.pdf

Munro, E. (2005) Improving practice: Child protection as a systems approach. *Children and Youth Services Review*, *27*(4), 375-91.

Pennell, J., & Burford, G. (with Connolly, M. & Morris, K). (2009). *Family rights & engagement: An international review of the research.* Plenary address at the annual conference of the American Humane Association on Family: The Keystone for Systems Change, Pittsburg, PA..

Shirk, M. (1997). Covering child abuse: A report on the conference on 'Rethinking the blame game: New approaches to covering child abuse'. *American Journalism Review, 19*(7), 1-12.

Wagner, D., Johnson, K., & Healy, T. (2009). *Agency workforce estimation: Simple steps for improving child safety and permanency.* Madison, WI: Children's Research Center, National Council on Crime and Delinquency. Retrieved September 14, 2009 from http://www.nccd-crc.org/crc/pubs/focus09_agency_workforce_estimation.pdf

AUTHOR

Gale Burford
Professor, Department of Social Work
University of Vermont
Burlington, Vermont, USA

Gale.Burford@uvm.edu

Relational Aspects in the Regulation of Systems for Protecting Children

Judy Cashmore

ABSTRACT

One of the key points Braithwaite, Harris and Ivec (this issue) make is that the formal child protection system, with its largely coercive approach, intrudes upon and discourages the informal regulatory and self-regulatory processes in families and communities. An essential element of these processes is the way relationships are managed, and these relational aspects are the focus of this commentary. Relational features are central to several aspects of regulation outlined by Braithwaite et al. (this issue)—the purpose, consequences and manner of intervention of formal regulatory processes in the child protection system. In particular, providing families and children affected by the decision-making process a chance to be heard; protecting children's relationships with those who are important to them; and building networks around children in care are essential relational features of a system that is respectful and supportive.

KEYWORDS

Relational processes; participation; alternative dispute resolution; procedural justice

ARTICLE

The difficulties child protection agencies are facing in a number of states in Australia and in various other English-speaking countries have been outlined and analysed in a host of government inquiries, child death reviews and various consultative processes over the last decade or so. The most obvious difficulties relate to ever-increasing reports about children that include serious concerns about children's safety as well as a multitude of reports concerning children's wellbeing in families with multiple and complex problems. Despite increasing recognition over the last two decades of the need to intervene early and prevent problems developing in families, the child protection system is still dominated by investigation and assessment. The responsibility for child protection is still assumed by, or assigned to, the statutory department rather than taken up more broadly by health, education, housing and other universal services. This contrasts with what has been termed a broader "family service orientation" in the Scandinavian countries and other northern European non-English speaking countries,

such as Germany, Belgium and the Netherlands, where the focus is on universal services to support the family and the parent-child relationship (Allen Consulting Group, 2008).

The conclusion in recent reports from the Wood inquiry in New South Wales, for example, and the Australian Research Alliance for Children and Youth (Allen Consulting Group, 2008) is that the current approach to child protection in the jurisdictions they refer to is unsustainable, risks becoming increasingly counterproductive and is unable to meet the often-cited goals of protecting children and promoting their wellbeing. Many, if not most, children who are reported to statutory departments in English-speaking jurisdictions do not need a statutory response. But their families do need assistance. They need help to develop their capacity to parent; overcome substance abuse, manage problems with housing; build budgeting and life skills; and escape or deal with family violence. Labelling these parents as dysfunctional, abusive and neglectful and imposing decisions upon them is unlikely to elicit their cooperation or even compliance. Labelling programs as child abuse prevention is unlikely to attract willing participants or engage community support.

The debate is now being pushed beyond the usual call for more resources, reduced caseloads and greater interagency collaboration to a questioning of the underlying principles, goals and values of child protection systems in English-speaking countries. This rethinking of the system is based on analyses of more deep-seated structural and systemic issues that have their roots in the political and historical analyses of people such as Nigel Parton, Dorothy Scott and Gary Melton and their colleagues (Lonne, Parton, Thomson & Harries, 2008; Melton & Thompson, 2001; Scott, 2006; Parton, 2009). The introductory paper by Valerie Braithwaite, Nathan Harris and Mary Ivec (this issue) is in this vein. It explores the value base and "regulatory" functions of the child protection system in a very thoughtful discussion of the challenges facing the current system. But this is regulation in a much broader sense than it is commonly used and understood.

Braithwaite, Harris and Ivec's basic proposition is that "as soon as government is involved in the task of coordinating actors, as it is in child protection - it is involved in regulation". But their definition of regulation goes beyond the rules and legislation formulated by government and includes "the package of policy, law, rules, guidelines, commands, norms, expectations, values and preferences that steer the flow of events (Parker & Braithwaite, 2003) and enable us to work effectively alongside each other". Importantly, their definition includes the informal system of regulations within families and communities—the "social processes of education, persuasion, cajoling, being socially connected, feeling useful, being helpful and gaining recognition". It includes as well the self-regulation that parents impose on themselves when they recognise that their own parenting practices have stepped beyond the bounds of accepted behaviours and risked their children's safety and wellbeing.

One of the key points made by Braithwaite et al. is that the formal child protection system, with its largely coercive approach, intrudes upon and discourages informal regulatory and self-regulatory processes in families and communities. An essential element in these processes is the way relationships are managed. Among the many important points these authors make, this is perhaps the most important and is the focus of this commentary. Relational features are central to several aspects of regulation outlined by Braithwaite et al — the purpose, consequences and manner of intervention of formal regulatory processes in the child protection system.

Braithwaite et al. (this issue) argue that the formal child protection regulatory system in most Australian states and territories has come to have multiple and contradictory functions that have expanded to include promoting children's wellbeing; building community capacity and educating parents about appropriate care for children; and intervening to protect children from harm when their development is deemed to be at risk. Conflict between its supportive and punitive functions has been noted by a number of commentators. It is one factor in the argument for separating its functions and moving the supportive functions to non-government agencies. Echoing the findings of research on the effects of formal intervention on

families and children, Braithwaite et al. argue that the coercive form of statutory interventions by the formal child protection system alienates parents and families and impedes collaborative arrangements between families and statutory agencies. Worse, the perceived punitive approach puts at risk the critical network of relationships surrounding children in their families and communities, particularly when children are deemed unable to live safely within their families and are removed from their families into out-of-home care.

A significant reason, according to Braithwaite et al. (this issue) and other commentators, why the formal child protection regulatory system alienates parents, families and children, even when it would wish to play a supportive role, is that its methods, particularly in relation to decision-making about the complex problems in families that affect children's lives, are not experienced as inclusive and respectful (Thorpe, 2007). As Braithwaite et al. point out, if government agencies want "cooperation and compliance", they need to be transparent and inclusive and give those affected by the decision-making process a chance to be heard; they need to provide procedural justice. This goes beyond being heard ("voice") to recognition and respect. Though Braithwaite et al. (this issue) do not refer to children in their discussion, the importance of recognition and acknowledgement applies to children as well as adults (Cashmore, in press; Graham & Fitzgerald, in press; Tyler & DeGoey, 1995). It also applies to both formal and informal decision-making processes. There are now recognised and generally well-evaluated alternative dispute resolution processes that facilitate more inclusive and responsive decision-making. These include family group conferences in care matters, restorative justice mechanisms in juvenile criminal matters, child-inclusive mediation and less adversarial trials in family law matters.

An important advantage of these processes is that they allow for a plurality of views that reflect the cultural and community context, not just the experience and subjective values of caseworkers. This is even more important when the yardstick is the "best interests of the child", which is an indeterminate and difficult concept (Mnookin, 1975). As Braithwaite et al. rightly point out, "Parents need to know that if the authority interferes, they have serious concerns that certain practices are harmful to the child, that they have the support of the community in forming this judgement, that other family members are of the same view, and that an action plan will be developed that will be reasonable, fair and respectful of the child's and family's views on how future care should be provided". They argue that it is "difficult for a child protection authority to achieve these goals without heavy reliance on third parties or "go-between" agencies that are trusted by families and that can reinforce the regulatory message". This is in fact what non-government agencies provide in family group conferences, for example. The evaluations indicate some success in this regard. The big issue, though, is whether there is any follow-through on the commitments made in the conference by both family members and workers (Cashmore & Kiely, 2000). Like intensive family preservation, the changes that are required generally necessitate a longer term investment and the development of more supportive relationships than are often available.

Similarly, a continuing and shared responsibility for children who cannot live safely with their families is often absent. Despite legislation in some states that specifically allows for parenting responsibility to be shared between families and the state, it appears that the formal system has great difficulty sharing responsibility with families and supporting them or, in many cases, replacing those relationships with anything better. Our longitudinal study of a cohort of young people (Cashmore & Paxman, 2006) and similar research elsewhere (Stein, 2004; Stein & Munro, 2008) found that the absence of supportive relationships in the lives of children in care is the main predictor of poor outcomes for young people after they leave care. Robbie Gilligan (2001) and Gillian Schofield (2003) and her colleagues have also highlighted the importance of attachment and supportive relationships for children while they are in care and relationships that last beyond their time in care. Children who are able to establish strong, supportive relationships with carers, their family or within wider networks do well in care and, by their own reckoning, much better than they would otherwise (Kufeldt & McKenzie, 2003; Selwyn, Saunders & Farmer, 2008). It is not all a

picture of gloom, but the negative consequences and the children left feeling adrift are far too common. While committed workers and caring foster carers can make a real difference in children's lives, the problem is that there is a shortage of time for the former and a decreasing supply of the latter. The "corporate parent" can facilitate and provide the conditions and resources that would allow children's needs to be met. It can also set various standards and try to exact compliance. The state, as corporate parent, however, cannot act as carer. Indeed, if the approach is too prescriptive and procedural, it can undermine the development of a network of positive relationships around children, especially in kinship placements, by over-regulating and excluding the voices of those most affected—the children, the carers and the families (Tilbury, 2008; Winkworth & McArthur, 2007).

The questions that remain to be answered concern the way forward. If, as it appears, there is some consensus that we need to rethink the direction, form and functions of a system for protecting children, how do we create a different system? It is no simple matter to change the culture of a child protection system to one that more broadly protects children and promotes their welfare and wellbeing and supports the all-important cocoon of relationships within which children can thrive (Sroufe, Egeland, Carlson & Collins, 2005). A system that recognises respects and prioritises relationships is key to this. In Braithwaite et al.'s terms, this means a system that deals with and does not deny "the social infrastructure surrounding children". Braithwaite et al. (this issue), there is a relational turn in social work and legal thinking, with a call in various quarters for a return to relationship based practice. This is not necessarily inconsistent with evidence-based practice but is supported by a body of literature that points to the importance of relationships in children's development and in the success of various interventions and treatments with both children and adults. The message is consistent: what most children and families say they want is help that is timely, respectful and inclusive. Ideally, they want help from people they can come to know and trust and to whom they matter.

REFERENCES

Allen Consulting Group. (2008). *Inverting the pyramid: Enhancing systems for protecting children.* Australian Research Alliance for Children and Youth. Available at: http://www.aracy.org.au/publicationDocuments/REP_Inverting_the_Pyramid_Enhancing_Systems_for_Protecting_Children_2009.pdf

Braithwaite, V., Harris, N., & Ivec. M. (this issue). Seeking to clarify child protection's regulatory principles. *Communities, Children and Families Australia.*

Cashmore, J. (in press). Children's participation in family law decision-making: Theoretical approaches to understanding children's views. *Children and Youth Services Review.*

Cashmore, J. & Kiely, P. (2000). Implementing and evaluating Family Group Conferences: The New South Wales Experience. In G. Burford & J. Hudson (Eds.), *Family Group Conferences: New directions in community-centered child and family practice* (pp. 242-252). New York: Aldine De Gruyter.

Cashmore, J. & Paxman, M. (2006). Predicting after-care outcomes: The importance of 'felt' security. *Child and Family Social Work*, *11,* 232–241.

Gilligan, R. (2001). *Promoting resilience: A resource guide on working with children in the care system.* London: British Agencies for Adoption and Fostering.

Graham, A., & Fitzgerald, R. (in press). Progressing children's participation: Exploring the potential of a dialogical turn. *Childhood*.

Kufeldt, K., & McKenzie, B. (Eds.) (2003). *Child welfare: Connecting research, policy and practice.* Waterloo Ontario: Wilfrid Laurier University Press.

Lonne, B., Parton, N., Thomson, J., & Harries, M. (2008). *Reforming child protection*. London: Sage.

Melton, G., & Thompson, R. (2001). The conceptual

foundation: Why child protection should be neighborhood-based and child-centered. In G. Melton, R. Thompson, & M. Small (Eds.), *Toward a child-centered, neighborhood-based child protection system: A report of the consortium on children, families and the law* (pp. 3-27). Westport, CT: Praeger.

Mnookin R.H. (1975).Child-custody adjudication: Judicial functions in the face of indeterminacy. *Law and Contemporary Problems*, *39*, 226-293.

Parton, N. (2009). Challenges to practice and knowledge in child welfare social work: From the 'social' to the 'informational'? *Children and Youth Services Review*, *31*, 715–721.

Schofield, G. (2003). *Part of the family: Pathways through foster care*. London: British Agencies for Adoption and Fostering.

Schofield, G., Beek, M., Sargent, K.,& Thoburn, J. (2000). *Growing up in foster care*. London: British Agencies for Adoption and Fostering.

Scott, D. (2006). *Sowing the seeds of innovation in child protection.* Paper presented at the 10th conference on Australasian Child Abuse and Neglect, Wellington, New Zealand.

Selwyn, J., Saunders, H., & Farmer, E. (2008). The views of children and young people on being cared for by an independent foster-care provider. *British Journal of Social Work,* Advance Access published on August 27, 2008; doi:10.1093/bjsw/bcn117.

Sroufe, L.A., Egeland, B., Carlson, E.A., & Collins, W.A. (2005). *The development of the person: The Minnesota study of risk and adaptation from birth to adulthood*. New York: Guilford.

Stein, M. (2004). *What works for young people leaving care?* Ilford: Barnardos.

Stein, M., & Munro, E. (Eds.). (2008). *Young people's transitions from care to adulthood.* London: Jessica Kingsley.

Tilbury, C. (2008). The regulation of out-of-home care. *British Journal of Social Work, 37*, 209–224.

Tyler, T.R., & Degoey, P. (1995). Community, family, and the social good: The psychological dynamics of procedural justice and social identification. In G.B. Melton (Ed.), *The individual, the family, and social good: Personal fulfilment in times of change* (Vol. 42 Nebraska Symposium on Motivation) (pp. 115–191). Lincoln: University of Nebraska Press.

Thorpe, R. (2007). Family inclusion in child protection practice: Building bridges in working with (not against) families. *Communities, Children and Families Australia*, *3*, 5-18.

Winkworth, G., & McArthur, M. (2007). Collaboration and systems of support for vulnerable children and their families: Improving the interface between primary, secondary and tertiary intervention. *Communities, Children and Families Australia*, *3*, 45–55.

Wood, The Hon James AO QC (November 2008). *Report of the Special Commission of Inquiry into Child Protection Services in NSW.* Sydney: State of NSW through the Special Commission of Inquiry into Child Protection Services in NSW.

AUTHOR

Associate Professor Judith Cashmore
Sydney Law School
The University of Sydney
Sydney, NSW 2006

judyc@law.usyd.edu.au

Professional Responses: Who Does What in Domestic Violence and Child Protection?

Marie Connolly

ABSTRACT

In recent years most English speaking child protection jurisdictions have seen significant increases in the number of children reported in situations of domestic violence. A child's exposure to witnessing domestic violence in the home consequently been framed as a child protection issue. This article explores a number of questions relating to this: is a child protection intervention justified in these situations?; does the child protection approach provide the most responsive regulatory framework?; and do we have the right service responses to facilitate change? In considering these questions the article suggests the need for more nuanced family violence systems responses.

KEYWORDS

Domestic violence; child protection; service responses

Over the past two decades, it is clear that Western systems of child protection have been the source of immense critical analysis. This subject article by Braithwaite and her colleagues (this issue) provides an important exploration of the fraught regulatory context of child protection work and the need for us to think carefully about the ways in which the state intervenes in the lives of children and their families. The authors raise key questions for us to consider: when are state interventions justified? Are the right regulatory frameworks being used in response? Do we even have the right organisations responding?. Such questions must surely rest at the heart of critical debate about the provision of quality services in child welfare.

As the authors suggest, statutory systems have struggled to meet the increased and complex demands of protecting children within contemporary Western societies. There is no question that the one-stop statutory shop has buckled under the pressure of increased notifications of children at risk and the expectations that it will respond to a broader array of child protection concerns. A good example of this extension of responsibility is the increased involvement of child protection services in situations of domestic violence when children are present in the home. These referrals, which come generally from police, have placed enormous pressure on child protection systems in recent years. This is not only because of the dramatic

increase in referrals they represent but also because child protection professionals are expected to act in situations where risk to children is ambiguous. In this short paper, I will use the questions raised in the subject article to explore whether child protection interventions are indeed justified in these situations of domestic violence; whether a child protection approach provides the most appropriate regulatory framework; and whether we have the right mix of service responses to meet the needs of families in these situations.

In recent years, a child's exposure to witnessing domestic violence in the home has increasingly been framed as a child protection issue. This analysis was supported by research, particularly in the 1980s and 1990s, suggesting it was harmful for children to be exposed to violence in this way (e.g., Appel & Holden, 1998; Fantuzzo & Lindquist, 1989; Groves, 1999; Jaffe et al., 1986). Child protection services responded, as one might expect, using a child protection regulatory intervention, investigating the risk to children and considering the impact of witnessing violence on the wellbeing of the child. In framing the child's exposure to domestic violence in child protection terms, any further intervention is likely to be based on risk to the child and the parent's capacity to protect.

The first question we now ask is whether a child protection intervention is justified in these situations. Exposure to domestic violence may be potentially harmful, but is it necessarily child maltreatment? This question was challenged in Minnesota, when state legislature changed the definition of child neglect to include a child's exposure to domestic violence (Edleson et al., 2006). Although seen as a modest change in law, it did, in fact, unleash a set of unintended consequences as statutory child protection services were quickly overwhelmed with reports of children witnessing domestic violence. Reframed as an issue of child neglect, protective services put pressure on abused women to leave the violent home situation; to remain within the home demonstrated a lack of protective parenting and, therefore, neglect of the children. Not surprisingly, advocacy services for battered women in Minnesota expressed considerable concern about this shift toward "woman-blaming" and worked with the Minnesota child protection services (who also had misgivings about the change) to successfully repeal the law in 2000. A child protection statutory intervention was no longer justified and, according to Edelson et al. (2006), "Minnesota no longer considers children exposed to adult domestic violence to be neglected" (p. 172). The state of Minnesota is not unusual in having reframed a child's witnessing of domestic violence as a type of child maltreatment, although arguably it went further than most other jurisdictions in defining it as such in law. Many Western child protection systems continue to receive referrals for children exposed to domestic violence and continue to reframe the issue as one of child protection.

This logically takes us to the second question: does the child protection approach provide the most appropriate regulatory framework for responding to situations of domestic violence when children are within the home? If the problem is essentially one of interpersonal violence, it could be argued that a child protection intervention package is unlikely to be the most useful in facilitating change within the family system. A child protection regulatory intervention generally assesses a child's exposure to domestic violence on the basis of seriousness of risk. Its focus is on parenting rather than reducing harm within the parent's relationship. A solution from the perspective of the child protection service is to encourage the woman to distance herself from her abusive partner. Yet these expectations often lack synergy with the needs and experiences of the people involved (Friend et al., 2008). For a variety of reasons, the woman may not want to leave the home. She may be concerned about the potential for heightened risk if she tries to leave. Or there may be religious or cultural barriers that make such decisions more complex. Despite the abuse, she may continue to value the relationship and the unity of the family.

Providing a regulatory response that is out of sync with the needs and concerns of the family is unlikely to support good long-term solutions. Situations of low-risk family violence are unlikely to demand authoritative child protection action and, in the absence of remedial service support, may result in multiple referrals to child protection services and

multiple investigations with a similar outcome. In situations of more serious family violence, where an authoritative child protection intervention does occur, the solutions may be equally out of sync and may even have the potential to make things worse instead of better. This raises the question of whether a different type of regulatory intervention aimed at stopping the violence in the home would be more effective.

The last question is: do we have the right organisations responding to these family situations? If the argument for an alternative regulatory intervention in domestic violence cases involving children is accepted, an important next question is: who is better able to provide it? Shlonsky and his colleagues (2007) argue that, after 30 years of providing services in the context of domestic violence, we may be at the point of challenging some fundamental issues relating to the responsiveness of family violence interventions. As noted earlier, many women are unable or unwilling to leave abusive partners. For these women, the provision of safe house facilities is not necessarily a solution or appreciated. Frustratingly for many service providers, even when women do leave violent situations, many go back or find themselves in other relationships that are equally abusive while their abusive partners go on to abuse other women and children. This creates a serial domestic violence cycle that is all too familiar to professionals working in the fields of child protection and family violence.

In situations of intimate partner violence where the risk to children is ambiguous, the provision of specialist family violence services that respond more directly to the presenting issues of violence and intimidation within the couple relationship is worthy of consideration. It is clear that domestic violence referrals to statutory child protection services often create a mismatch with respect to the presenting issues and service responses (Humphreys, 2007). While undoubtedly the right response for some women, the provision of support and safe housing through traditional domestic violence services also represents a mismatch for others. Providing additional, more nuanced family systems responses to domestic violence, addressing the safety interests and needs of all family members, may be more likely to facilitate enduring positive change for families over time. These services would be staffed by professionals familiar with complex family violence dynamics and skilled in addressing risk factors associated with domestic violence (e.g., mental health issues and drug and alcohol misuse) (Mackness, 2008). Interfacing closely with services for women, men and children, they would have the potential to provide increased options for couples wanting to stay together. Shlonsky et al. (2007) refer to this type of service as one of harm reduction in couple relationships, giving people a chance to live together safely and ultimately creating "a coordinated, cross-sector effort to work with families…[to] help our clients be informed consumers and to determine, to the greatest extent possible, the course of their lives" (p. 359).

Clarifying the justification for intervening in the lives of children and families and determining the most appropriate regulatory response is a complex endeavour that challenges jurisdictions internationally. Extending child protection statutory responsibility across a broader range of child related issues typically results in retracted statutory services that are focused primarily on assessing risk and referring families to services. This underutilises a vast professional resource that arguably would be better directed toward facilitating change in family systems where statutory intervention is indicated. Investing in services across the sector that are aimed at reducing cycles of violence is likely to be cost effective in the longer term. This includes investment at all levels of regulatory activity. Assessing risk for children in family situations is only one part of the role statutory child protection services can play. If we were better able to match presenting issues with more appropriate regulatory intervention, services could apply their expertise and professional interventions more effectively toward change in their areas of specialism. Multiple service pathways would enable family support services to work toward facilitating change in family systems that do not require a statutory intervention. Specialist family violence services could apply their particular expertise in reducing interpersonal violence, providing greater capacity for child protection services to shift from their front-end focus, strengthen their service delivery and work more intensively with families to

reduce child abuse and neglect.

There are many challenges in developing regulatory processes that are responsive to children and families. Creating more robust ways of differentiating levels of risk will provide greater clarity regarding the type of service most suited to the child's needs. Whilst differentiating risk will never be an exact science, the better we are at linking needs and services, the better positioned the service community will be to respond. In considering the possibilities of alternative and less formal regulatory responses, particularly in the area of domestic violence, it is also important that a child's protective needs do not fall between the cracks in service delivery silos. Any moves toward the development of a family focused service would need to ensure that we do not return to times when children's needs were not adequately recognised in domestic violence situations. The service community needs to be integrated in ways that support the ongoing interests and aspirations of the people receiving the service. Perhaps then we will have more genuinely responsive regulatory frameworks.

REFERENCES

Appel, A.E., & Holden, G.W. (1998). The co-occurrence of spouse and physical child abuse: A review and appraisal. *Journal of Family Psychology, 12,* 578-599.

Edleson, J.L., Gassman-Pines, J.Y., & Hill, M.B. (2006). Defining child exposure to domestic violence as neglect: Minnesota's difficult experience. *Social Work, 51*, 167-174.

Fantuzzo, J., & Lindquist, C. (1989). The effect of observing conjugal violence on children: A review and analysis on research methodology. *Journal of Family Violence, 4*(1), 77-94.

Friend, C., Shlonsky, A., & Lambert, L. (2008). From evolving discourses to new practice approaches in domestic violence and child protective services. *Children and Youth Services Review, 30,* 689-698.

Groves, B.D. (1999). Mental health services for children who witness domestic violence. *The Future of Children, 9*(3), 122-132.

Humphreys, C. (2007, May). *Domestic violence and child protection: Challenging directions for practice* (Issues Paper No. 13). Sydney: Australian Domestic & Family Violence Clearinghouse. available from http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/IssuesPaper_13.pdf

Jaffe, P., Wolfe, D., Wilson, S., & Zak, L. (1986). Similarities in behavioral and social maladjustment among child victims and witnesses to family violence. *American Journal of Orthopsychiatry, 56*(1), 142-146.

Mackness, L. (2008). Improving treatment paradigms for multi-abuse domestic violence clients. *Te Awatea Review, 6*(2), 4-6.

Shlonsky, A., Friend, C., & Lambert, L. (2007). From culture clash to new possibilities: A harm reduction approach to family violence and child protection services. *Brief Treatment and Crisis Intervention, 7*(4) pp 345-363.

AUTHOR

Marie Connolly

PhD, Chief Social Worker, Ministry of Social Development, and Honorary Professor at the University of Auckland, New Zealand

connolly005@cyf.govt.nz

Beyond Political Imperatives and Rhetoric in Child Protection Decision-Making

Paul Delfabbro

ABSTRACT

This article provides a response to the critique by Braithwaite et al. (this issue) of current approaches to child welfare in Australia and other similar countries. The present paper underscores concerns that political imperatives and media scrutiny have led to a system that focuses more strongly on protecting children, minimising risk and assessing families rather than the provision of community-level interventions to prevent abuse and enhance child wellbeing. The paper highlights the difficulties associated with a sole reliance on self-regulatory systems in the child protection context. Drawing from evidence related to actual intervention or out-of-home care cases, this paper draws attention to the need for balance in the child protection system. Although there may be evidence of overregulation and extension in current government practices in many cases, the variety of family problems and complexity in cases suggests the need for a mixture of regulatory systems. Finally, while the paper agrees that risk assessment tools and "need-based" approaches to resource allocation have led to an overemphasis on tertiary interventions at the expense of prevention, it is argued that risk assessment and tools (if used appropriately and in context) have a place in primary interventions, as is certainly the case in the broader area of public health provision.

KEYWORDS

Rhetoric, Child protection, Child protection decision-making

INTRODUCTION

One of the most significant hallmarks of a civilised society is the extent to which it respects the welfare of children. The importance of child welfare is recognised by the United Nations in its International Convention on the Rights of the Child (UNICEF, 1989) and in legislative, policy and service policy documents throughout the world. All of these documents recognise that child wellbeing and healthy development are fundamental indicators of a society's capacity for social justice, its general humanity and its likely future cohesion and prosperity. However, as Braithwaite, Harris and Ivec

(this issue) point out in their paper, there remains considerable debate about the ways in which these ideals should be realised. Although most governments recognise that families and the community play the principal role in nurturing and protecting children, a number of complexities arise when the "best interests" of children are considered an objective of government policy as well as a responsibility of governments. When this occurs, it is no longer assumed that parents or families, however defined, have a monopoly on the care of children or that the community necessarily knows what is in the best interests of children. Instead, the best interests of children becomes a matter for government regulation and control or determination through the court system. In effect, families continue to have the right to care for a child only to the extent that they can demonstrate a capacity to provide a level of care and protection that the government and the community consider appropriate at this current point in history.

In an ideal world, such a system might not be inherently problematic in that the government would usually be expected to intervene only when there was a reason to. Happy, functioning families would be left alone, and those in need of support would be provided with the support they require. In some cases, this might extend to the need to remove children and place them into alternative care (foster, relative or other forms of care) if their safety and wellbeing could not be provided at home. However, as Braithwaite et al. (this issue) have pointed out, a difficulty with government processes and responses is that they are not always undertaken entirely for the purposes stated in policies and tend to reflect the modus operandi and imperatives of today's society.

At present, Australia, the United States and other modern countries operate in a highly politicised, litigious and media-saturated society that is often preoccupied with the minimisation of risk and the avoidance of scandal. Political parties thrive on the need to appear active and accountable and in touch with the perceived moral views of society so as to remain attractive to voters and superior to their political opponents. For politicians, child wellbeing is, in a sense, an easy and attractive topic to champion because its importance is irrefutable and the problem of child abuse is undeniable. Similarly, for media outlets, the topic provides an opportunity to evoke the moral indignation of society by highlighting the apparent failings of government, weaknesses in the social fabric of the community and the apparent irresponsible, immoral and neglectful behaviour of some parents. Such stories evoke not only the sympathy and anger of readers but also, for some, an element of moral superiority in that it confirms their belief that they are better parents and that there are some people in society who should not have children. Together, these factors contribute to an imperative to take decisive action to protect the needs of children in a way that is politically attractive, acceptable to the community and which is defensible in the media when politicians are inevitably asked what they are doing to address this problem.

On the whole, I agree with many tenets and observations of the Braithwaite et al. (this issue) article. An undesirable outcome of this situation is that it can lead to governance structures that devote more resources to the protection of children and the surveillance of families rather than give a primary focus to child wellbeing and long-term development (see also Harries, Lonne & Thomson, 2007). In Australia, the cornerstone of the child protection system is mandatory reporting. A desirable consequence of mandatory reporting is that it has led to a greater number of abused children being detected by the system and brought assistance. It has also created significant difficulties (Scott, 2006 ; 2008). First, so great are the numbers of reports that government departments are able to investigate only the most urgent cases. As such, many cases of significant abuse remain under-investigated or not considered at all. Second, an enormous amount of time and resources is expended in attempting to identify cases where action should be taken. Such time and money does not directly benefit children and often does not lead to further action. Third, mandatory reporting and child protection creates an adversarial system that reduces the ability of welfare workers, teachers and health care professionals to assist families in children without "betraying" them to child protection authorities. Families who urgently need help may therefore be reluctant to seek assistance for fear of losing their children, and

service providers may attempt to circumvent the child protection system by avoiding discussion of children's issues during consultations.

As Braithwaite et al. (this issue) point out, this type of regulatory system may be unsustainable. As well as being impractical because of the shortage of out-of-home placements, the so-called "epidemic" of abuse will continue because the fundamental causes of abuse (poverty, mental illness, substance abuse and unsustainable family sizes) will continue to exist. Accordingly, there is a need to consider ways in which the system might be improved to avoid these problems. A common way in which the existing system has tried to respond to these difficulties is to enhance the efficiency of the child protection system by introducing structured decision-making tools and thresholds of abuse. The adoption of such methods is not necessarily based on the assumption that the existing system is inherently flawed, only that it needs to be refined. If there is abuse and the system cannot deal with all of it, there needs to be a way to narrow down the focus to only those cases where there is a greater level of risk. The magnitude and expediency of the response would be matched to the severity of the risk.

Braithwaite et al. (this issue) and other authors (Harries et al., 2007) are highly critical of such techniques because they do not usually involve any ideological change in approach. Such methods are considered undesirable, they argue, because they attempt to reduce casework down to simple rules that fail to consider the complexity, diversity of circumstances and existence of mitigating factors. It also prioritises cases based on the level of risk to the child rather than the needs of families and may also impose certain normative standards of care or parenting in judging the suitability or "riskiness" of the home. Such decision-making, Braithwaite et al. (this issue) argue, negates parents' ability to self-regulate their behaviour and learn from their mistakes, and may punish otherwise good parents who find themselves "sailing close to the wind as satisfactory carers" as a result of external pressures. Braithwaite et al. (this issue) argue that the current system needs to focus more strongly on providing support for families, building better communities and addressing the causes of abuse that justified the creation of the child protection system.

On the whole, I agree with the general direction of these arguments. Such views accord well with the argument that one needs to develop a system that focuses more strongly on child abuse as a public health issue that can be reduced by placing a greater emphasis on addressing the causes of abuse or by supporting families that are vulnerable (Scott, 2008) rather than waiting until problems are severe enough to intervene. However, it is important to recognise that not all families will be amenable to early interventions and that many will be very difficult to identify until significant problems are well-established. Therefore, although I agree with Braithwaite et al. (this issue) when they argue that governments (via mandatory reporting provisions) unnecessarily impose punitive and intrusive regulatory responses on many parents faced with poverty or mental illness and who fail to live up to normative standards of parenting, this argument cannot be maintained for many families. When one reviews the circumstances of families subject to the most tangible and intrusive government interventions (e.g., those whose children have required placement into out-of-home care), it is usually much more than normative standards that have been violated.

TYPICAL NATURE OF INTERVENTION CASES

Although there are undoubtedly out-of-home care cases where workers have made inappropriate and unjustified judgments about certain parents or situations based on prejudice or other adherence to normative expectations, it is largely false to say that governments are in the business of punishing parents who sail too close to the wind, especially when notifications are so rarely followed by action. Given that departments struggle to investigate even the most severe cases and typically have a policy of family reunification and preservation, it is very rare that parents with minor difficulties in parenting are subjected to significant intrusion from the government. The fact that the government did this with often appalling results in the past in indigenous communities should not be generalised to all current decision-making. As evidence for this, Table 1 summarises the family backgrounds of infants

Table 1

Factors Contributing to Children Being First Placed into Care in South Australia 2000-2005

Factor	n = 498 n (%)
Severe neglect	336 (67.5)
Financial problems	330 (66.3)
Domestic violence	261 (52.4)
Parental substance abuse	250 (50.2)
Physical abuse	224 (45.0)
Homelessness	214 (43.0)
Parental mental health	177 (35.5)

Note. For reasons of parsimony, only the most common factors are reproduced. Adapted from "The social and family backgrounds of infants in care and their capacity to predict subsequent abuse notifications: A study of South Australian out-of-home care 2000-2005," by P.H. Delfabbro, M. Borgas, N. Rogers, H. Jeffries & R. Wilson. (2008), *Children and Youth Services Review, 31,* p221 .

Table 2

Prevalence of Multiple Family Background Problems in Infant Sample

Number of major problems	n (%)
0	23 (4.6)
1-3	157 (31.5)
4-6	275 (55.2)
7+	43 (8.6)

Note. Adapted from "The social and family backgrounds of infants in care and their capacity to predict subsequent abuse notifications: A study of South Australian out-of-home care 2000-2005," by P.H. Delfabbro, M. Borgas, N. Rogers, H. Jeffries & R. Wilson. (2008), *Children and Youth Services Review, 31,* p222

coming into care in 2000-05 in South Australia. Table 2 lists the cumulative number of problems identified (Delfabbro, Borgas, Rogers, & Wilson, 2009. These infants are not cases that would be considered very complex or at the so-called "pointy end" of the out-of-home care system—many were respite only—but they represent the typical cases entering the care system in any given year.

What is immediately evident from these statistics is that the vast majority of infants who enter care or respite only come from families with very significant difficulties. Almost two-thirds come from families with multiple problems (usually physical abuse, poverty, substance abuse and mental health issues combined). Three-quarters have been significantly neglected and most have been exposed to multiple forms of ongoing abuse (see Delfabbro et al., 2008). These are not families who have just sailed too close to the wind but families who need significant assistance and whose children are likely to be significantly at risk. In this study, emotional abuse was not even listed as a reason for children entering care. In other studies (e.g., Osborn, Delfabbro & Barber 2008 200 8), we examined the case histories of children with very unstable placement histories and behavioural problems in care and found multiple cases of malicious, systematic and repeated physical and sexual abuse where it was very difficult to attribute the behaviour of parents to their circumstances or to characterise them as victims of poverty. Such cases indicate the obvious limitations of self-regulatory systems and the need to encourage balance in the objectives of the existing child protection system and the more self-regulatory system that Braithwaite et al. (this issue) propose. Nevertheless, I support their broader contention that adversarial child protection interventions should not be the only "assistance" available to parents and that self-regulation should still be sought, wherever possible, for the vast majority of families subject to child protection notifications. For low-risk cases, ongoing surveillance and distrust is unlikely to encourage help-seeking, collaboration or transparency when disadvantaged families come in contact with service systems.

THE ROLE OF ASSESSMENT TOOLS AND INDICATORS

There are several reasons why routine assessments, checklists and indicators are not always undesirable tools in child protection systems. Although I accept that decision-making tools can be simplistic and should never take the place of a full case-by-case analysis of context by child welfare practitioners, such tools can nevertheless perform very useful purposes. A regretful characteristic of social welfare systems is that the outcomes of decision-making as well as the characteristics of families are often more

similar than they are different. Using only a relatively small number of variables (e.g., the number of times a child has been physically abused, a child's age and the number of unplanned placement terminations), we have found that it is often relatively easy to predict with considerable accuracy what is likely to happen in the future. Some children and families with certain characteristics are much more likely to have repeated notifications than others, and some children are more likely to have poorer placement outcomes (Barber, Delfabbro & Cooper, 2001; Barber & Delfabbro, 2004). The existence of such variables does not necessarily imply that either families or children are to blame for these outcomes. However, the fact remains that simple assessment tools can often assist service providers to identify which children and families are most urgently in need of assistance in the short term or who would most benefit from early interventions. For example, in our recent work in South Australia (Delfabbro et al., 2009), we found that the likelihood of subsequent abuse notifications could be very reliably predicted by previous histories of abuse. Similarly, in longitudinal tracking research (Barber & Delfabbro, 2004), we found that simple measures of behavioural functioning, age or early placement experiences could reliably predict which children were unlikely to be stable two years later or who might have benefited from more intensive, therapeutic placements outside conventional foster care. In more recent work (Delfabbro, Borgas, & Jeffreys, 2008), I have found that it is possible to develop reliable but short screening instruments that can be used to identify children and families in need of greater placement support and who are unlikely to be served well by conventional foster care funded at the usual fortnightly rates.

In other words, it is not the methods that are problematic but how they are used. If, as Braithwaite et al. (this issue) contend, these methods are only used to identify families that should be subject to the most severe and punitive responses (e.g., the removal of children), the broader utility of assessment tools is lost. When used properly, such rubrics and tools can be used as starting point to highlight areas of failure in the system (e.g., placement options that are not working, children and families who are not faring well) that could then be subjected to more qualitative and detailed scrutiny by practitioners.

THE MILLSTONE OF POLITICAL ACCOUNTABILITY

The view of Braithwaite et al. (this issue) that we should attempt to address the causes of child abuse appears well-founded. The child welfare system often unfairly attracts criticism because problems within this sector are often symptomatic of broader social and economic problems that are not caused by the child protection system itself. Increases in poverty, substance abuse, domestic violence and abuse all contribute to a greater likelihood of children coming in contact with child welfare services. It makes logical sense, therefore, to discuss the possibility of addressing these problems in families to avoid much of the abuse before it occurs. A challenge for such an approach, however, is that these problems may be much larger than any welfare system could hope to address when considered at a macro level. Thus, it may be very difficult to demonstrate that one has made a substantial difference in the shorter term if these systemic problems take time (sometimes half a generation) to be resolved. It may be possible to show that a smaller number of people in particular urban renewal or program areas have benefited from a broader intervention, but outcomes may not be as politically salient as they are when governments are able to show how many cases of abuse have been detected and children "rescued" from dangerous homes. Finance managers working in government may find it more difficult to justify expenditure on broad-based primary care programs when the outcomes may be less well-defined and where it is more difficult for politicians to quantify the benefits to taxpayers.

SUMMARY AND FINAL ANALYSIS

In summary, this paper supports many of the arguments advanced in the Braithwaite et al. (this issue) article. In particular, the paper supports their vision of a less punitive, adversarial and judgmental child welfare system that elevates the needs of families and children above political expediency and media image-making. Although there is a place for mandatory interventions for some families with

very complex problems, there also clearly needs to be a greater focus on primary intervention and flexible responses to enable vulnerable families/parents to obtain the support they require without fear of retribution. In effect, this requires a policy focus away from a preoccupation with surveillance and control towards a system that uses the identification of abuse as a vehicle through which to help families gain access to skills, resources and other services that can reduce the likelihood of this abuse reoccurring.

A second important consideration, informed by the varying severity of cases that come in contact with the child protection system, is understanding the difference between abuse that requires a more intrusive and legal intervention as opposed to abuse that requires access to support and services. As pointed out in this paper, the article by Braithwaite et al. (this issue) focuses very much on the overextension of the system into families which may have only slightly transgressed social norms concerning appropriate parenting and standards of care. It refers to cases where the system appears to place a greater emphasis on the perceived adequacies of parents than recognising the often difficult circumstances that contribute to incidences of abuse and neglect. In such cases, it is logical to consider the role of self-regulation and empowerment as well as primary intervention. However, as highlighted by the severity of cases entering the out-of-home care system, there remains a need to determine the threshold at which one intervenes to assist children significantly at risk.

As discussed, a principal objection to using risk-assessment and related tools is that the urgency and magnitude of responses has typically been linked to the severity of the assessment, so families will only receive help once problems have developed (the "bottom of the cliff" metaphor). Despite this, I argue that it is not so much the tools and research that is at fault, but how they are used by government. The same tools used in risk assessment can be used to identify families most likely to develop problems in the future—that is, who might be most suitable for primary care interventions. Such tools, if combined with appropriate qualitative detail (e.g., as is often achieved in medical information systems and patient notes), could be used to enhance primary interventions and direct services and supports towards families with the highest likelihood of being able to achieve a form of "self-regulation". A similar argument can be extended to communities.

Finally, in recognising the potential value of not only early or primary intervention services but also the realities of government funding, accountability and evaluation requirements, there is a need to emphasise the further development of well-focused and achievable programs with measurable outcomes that are consistent with the realities of government tendering and evaluation provisions. Nurse visitation and other similar programs described in the Braithwaite et al. (this issue) article provide very promising examples of how this might be achieved.

REFERENCES

Barber, J.G., Delfabbro, P.H., & Cooper, L. (2001). Predictors of the unsuccessful transition to foster care. *Journal of Child Psychology and Child Psychiatry, 42,* 785-790.

Barber, J.G., & Delfabbro, P.H. (2004). Children in foster care. London: Taylor & Francis.

Convention on the Rights of the Child, UNICEF (1989).

Delfabbro, P.H., Borgas, M., & Jeffreys, H. (2008). A standardised instrument for assessing complexity in children entering out-of-home care. Report prepared for the S.A. Department for Families and Communities

Harries, M., Lonne, B., & Thomson, J. (2007). Protecting children and caring for families. *Communities, Families and Children Australia, 2,* 39-48.

Osborn, A., & Delfabbro, P.H., & Barber, J.G. (2008). The psychosocial functioning and family background of children experiencing significant placement instability in Australian out-of-home care. *Children and Youth Services Review, 30,* 447-460.

Scott, D. (2006). *Sowing the seeds of innovation in child protection*. Paper presented at the 10th conference on Australasian Child Abuse and Neglect Conference, Wellington, New Zealand.

Scott, D. (2008). *Looking back to see ahead: From child protection to child wellbeing.* Paper presented at the conference of the Association of Children's Welfare Agencies, Sydney, Australia.

AUTHOR

Paul Delfabbro
Associate Professor
School of Psychology
University of Adelaide
Adelaide 5005

paul.delfabbro@adelaide.edu.au

The Downside of Regulation and the Opportunities for Public Engagement about the Care and Protection of Children

Maria Harries

ABSTRACT

In this response I embrace the theoretical challenges presented by Braithwaite, Harris and Ivec in their depiction of child protection as a series of regulatory processes and in so doing acknowledge that there are numerous problems that have become apparent as child protection regulatory frameworks have expanded and consolidated worldwide. I argue that urgent review of the regulatory systems of child protection is indeed required and that this could well be undertaken using the concept of 'responsive regulation'. Finally, I suggest that such an analysis could usefully accommodate contemporary stakeholder views and research on the paradigms, assumptions, processes and outcomes associated with contemporary child protection practices.

KEY WORDS

Child welfare, regulation, public participation

ARTICLE

It is only very recently that scholarship in the general arena of child and family welfare, and specifically in the more focused arena of child protection, has paid serious attention to the theoretical framework of regulation within which the activities in these overlapping arenas are situated. This is despite the fact that scholars such as Foucault (1977), Garland (1985), Parton (1986) and Bauman (1987), amongst others, have highlighted the significance of, and dangers in, the emergent regulatory agenda in the developments of modern society for some years now. In his book *Social theory, social change and social work*, Parton (1996) notes, "The emergence of modern forms of social regulation was an integral element in the development of modernity" (p. 7). He adds that it involved the recognition that the control of various factors in human society was both necessary and possible in order to improve the world.

Since its early days, child protection has been a significant and publicly sanctioned social regulatory function of governments aimed at improving the world for children. There is no doubt that the span and intensity of that

regulation, in the form of accompanying legislative and policy bases, has increased dramatically in recent years. There can be no argument that the world is clearly a better place if children are protected from harm. There is equally little doubt that regulation alone has not and will not solve the problems we face in the care and protection of our next generation.

There is much to reflect on as we ponder why we have reached the regulatory miasma in which we find ourselves. And there is little doubt in my mind that the time is right for us to (a) mull over some of the implicit historical assumptions about the role and function of regulation; (b) reconsider its capacity to control for all human frailties and; (c) think about the potential for serious negative consequences from what can be seen as the contemporary preoccupation with regulation.

The paper by Valerie Braithwaite, Nathan Harris and Mary Ivec (this issue) follows a number of interesting and challenging publications by these members of the Regulations Institutions Network at the Australian National University. It provides a most welcome opportunity to analyse questions about the form of the child protection regulatory systems that have evolved and their purpose, effectiveness and outcomes in the light of contemporary research and scholarship that highlight emerging tensions in practice. It asks serious questions about whether, in trying to improve the world for children, we are creating new opportunities for harm. This is a rare paper that has the potential to shift the imagination to other ways of thinking and other solutions as we all grapple with the serious imperative of caring for and protecting children and building family and community capacity.

Most usefully, the article starts by noting the fact that we do have a problem in this regulatory system, and a significant one at that. It asserts what is generally well-documented; public inquiries, commentary and research over many years have identified the difficulties the state has in providing effective child protection services. It highlights the tensions revealed by the inquiries in the coordination, alignment, integration and functionality of service provision that generally involve the complex management of competing needs. What makes this observation most powerful is that the authors note that underneath the problems and the competing needs is the almost certain absence of a "shared goal about what the intervention should achieve". This means that there are likely to be, and undoubtedly are, not just competing but contradictory purposes that are currently obscured and, arguably, collide in terms of decisions about assessment, intervention and the efficacy of outcomes.

This seems such an obvious observation. But what is different—where this thinking really challenges us—is that they invite us to grapple with the sources and trajectories of this problem of competing needs rather than immediately suggest simplistic, technical and incremental changes to just "fix it". They do this by using their framework of "responsive regulation", which provides a set of requirements for articulating the competing purposes in child protection regulatory activities and invites a public airing of the competing purposes and alternative interventions that aim to meet those purposes. They also invite us to be clear with the public about the potential for punishment in the current child protection regulatory systems and their capacity for producing counterproductive adverse effects ("collateral damage") for children, families and communities.

What is axiomatic is that people expect that their government services are active in protecting children from harm meted out by "abusive" and "neglectful" parents and caregivers. The community's understanding of child protection regulation is that there are thousands of dangerous parents and their children can and will be "saved" from them. Presumably, there is also an expectation that the children in question will thrive in alternative families and that the errant parents will be punished. Regular news items about increases in the number of reports of child abuse and neglect—associated in part with increased reporting requirements and net widening—occur alongside provocative media messages of "failures" on the part of government instrumentalities and their staff when there is a major tragedy, such as a child's death. The outcome is an escalating demand for tighter regulation, more funding, more scrutiny, more surveillance and more intervention. This is fuelled by well-meaning individuals and groups who appear to believe that

any regulatory intervention is acceptable if it weeds out children who are assessed by someone to be "at risk".

What appears to happen less is that questions are asked publicly about the child protection regulatory system itself. The assumption appears to be that we simply need to have more of what we already have and that the reason there are failures is there are insufficient resources and/or skills and/or controls in the regulatory system. Anyone who raises questions about the efficacy of the system is fearful of being labelled "anti-children" or, worse, "pro abuse". This labelling represents in part the well-known human tendency to binary thinking—"you are either with us or agin us"—and is represented in another reaction to people who challenge the efficacy of contemporary child protection systems: "you are family rather than child focused". This labelling may also represent the anxiety and fear that sits in us all as we experience our own failure to make the system work perfectly and project onto others who appear to oppose us some blame for our individual or collective failure.

As is succinctly pointed out by Braithwaite and her colleagues (this issue), and highlighted in a recent publication by Lonne, Parton, Thomson and Harries (2009), there is significant evidence of iatrogenesis in the system from researchers, families, indigenous communities, NGOs, young people and practitioners themselves. There is clearly a need to do more than add the technical fixes to the current system that have been recommended in so many inquiries into child deaths. Thankfully, there are some notable exceptions to this acceptance of the need to simply "refine" the status quo of the current system. The recent Wood report (2008), informed by numerous submissions from organisations challenging the current regulatory paradigm; the Mullighan report (2008), informed by the terrible experiences of adults who as children were taken into the "care system"; and the report by the Australian Research Alliance for Children and Youth (ARACY), *Inverting the pyramid* (2009), are three examples of Australian scholarship that provide palpable momentum for the changes explicitly outlined by Braithwaite and her colleagues (this issue). Similarly, the voices of families and communities as stakeholders are increasingly being heard via organisations such as the Family Inclusion Network in Western Australia (http://www.finwa.org.au/) and other states, and these, too, are challenging the acceptance of the status quo.

The core question implicit in the work of these ANU researchers is: what about the assumptions in the system itself? What an important question! This question begs more. Assumptions about what? The article provides a skeleton by which to unpack some of the assumptions in the child protection regulatory system. Assumptions about purpose, intervention and outcomes veil important questions about iatrogenesis at multiple levels. Is the purpose only protection from immediate harm? If so, what harm does the public believe justifies the sort of interventions in our current regulatory system? Does protection from immediate harm enable development in the longer term? What sort of harm justifies the potential additional harm caused by the shattering of the child's social and family network? Does protection from one form of harm to children simply lead to the perpetration of a different form of harm? Is it possible to build a new care network for children? How much of the purpose is about punishing "inadequate" parents who don't comply?

Additional questions are important in the skeleton that is provided by these authors. Who should be responsible for justifying the decisions to intervene? What assessment and judgment processes do justice to the complexity of family and community life and respect all parties? How is procedural justice for all parties safeguarded? These and other questions are familiar to workers and managers in the regulatory agencies and others, and they are not easily answered. But the convincing argument that is put is that these questions must be aired and debated publicly alongside the evidence about iatrogenesis in the contemporary system. What Braithwaite and her colleagues (this issue) raise is the very real risk of what they term "toxicity" in all regulatory systems and, in this instance, the child protection system. They urge a public review informed by questions around a series of principles that are important for all regulatory systems to address. Most important amongst these principles is that regulatory systems should result in a decrease in "the number of cases

coming before the child protection authority" on the grounds that:

> …regulatory authorities have a responsibility to educate the population about the standards of care required and, through working with government and partnering with civil society, harness resources to put these standards into practice. A successful regulatory program provides the reasons and means for most people to self-regulate.

Given that across the Anglophone world there has been an explosion in the number of children being reported to, and coming into the care of, the state (and it is apparent that the outcomes for these children are often appalling), it is clear that the regulatory function of the state is either not geared to increasing, or is failing to increase, the self-regulation of families and parents. If it is not geared in part to this outcome, it undoubtedly has a problem as it is likely that the iatrogenesis will only get worse for children, communities, families and workers and it will continue to "weaken the informal self-sanctioning system that already exists". If it does wish to increase "voluntary compliance" with standards and assist families to provide the care that children need whilst providing the best care possible for those children who cannot remain with their families of origin, a very good place to start is for government agencies to relinquish their hold on the net and enable and trust community partners to engage early by not only working with families and children but informing the possibilities for a more successful regulatory framework.

However, to do this requires more than trust and courage on the part of government agencies, managers and frontline workers alike as they deliberate about the nature and function of their child protection regulatory systems. It requires public debate about the contested nature of the standards of care the community requires and an understanding of current outcomes for those who fail these standards and their children. It requires a preparedness to expand community awareness and consciousness about what is meant by the expression "child protection is everyone's business". Governments must certainly regulate. But if child protection is everyone's business, as I agree it is, we need to work with the idea of "human togetherness"—that is, that people live a set of relationships in civil society whereby they are engaging with each other rather than simply monitoring regulations.

Most importantly, if we are to take seriously the exciting opportunities that the scholarship of Braithwaite, Harris and Ivec (this issue) offers, we must at a deeply practical and respectful level listen to the voices of those often not heard in the regulatory systems—the people affected most by them. And, at a level that is every bit as powerful, we need to actively engage across disciplinary boundaries. Whilst developing evidence for new ways of acting, we should also connect with the challenges of scholars such as Zygmunt Bauman (1987), who target the misfit between the ideal and reality of everyday experience and present alternative ways for conceptualising the fluidity of modernity and the opportunities for change and regulatory emancipation.

REFERENCES

Australian Research Alliance for Children and Youth. (2009). *Inverting the pyramid: Enhancing systems for protecting children*. Canberra, ACT: Author.

Bauman, Z. (1987). *Legislators and interpreters: On modernity, post-modernity and intellectuals*. Cambridge: Polity Press.

Foucault, M. (1977). *Discipline and punishment: The birth of the prison*. Harmondsworth: Allen Lane.

Garland, D. (1985). *Punishment and welfare: A history of penal strategies*. Aldershot: Gower.

Lonne, R., Parton, N., Thomson, J., & Harries, M. (2009). *Reforming child protection*. London: Routledge.

Mullighan, T. (2008). *Allegations of sexual abuse and death from criminal conduct*. Commission of Inquiry into Children in State Care, Adelaide: South Australian Government.

Parton, N. (Ed.). (1996). *Social theory, social change and social work*. London: Routledge.

Wood Report (2008) Special *Commission of inquiry into child protection services in New South Wales, November, Department of Premier and Cabinet, Sydney*

AUTHOR

Associate Professor Maria Harries AM PhD
Senior Hon Research Fellow
School of Social & Cultural Studies
The University of Western Australia
M256 Stirling Highway
Crawley, Western Australia 6009

maria.harries@uwa.edu.au

Critical Questions about the Quest for Clarity in Child Protection Regimes

Karen Healy

ABSTRACT

This paper is a response to the article by Braithwaite, Harris and Ivec (this issue) entitled "Seeking to Clarify Child Protection's Regulatory Principles". While I agree with their observations about the capacity of child protection systems to exacerbate harm to vulnerable children and their families, I raise critical questions about the authors' proposed directions for reform. I take issue with the position of Braithwaite et al. (this issue) that clarification of the purpose and responsibilities of child protection regimes will reduce their potential for harm. Drawing on examples from recent reforms in the Queensland child protection system, I argue that the quest for clarity can lead to a dangerous oversimplification of the purpose and nature of child protection systems. I contend that any attempt to clarify the regulatory principles of child protection systems must also embrace the inherent complexity of these systems.

KEYWORDS

child protection systems, workforce, child protection reforms

ARTICLE

In their paper, "Seeking to Clarify Child Protection's Regulatory Principles", Braithwaite, Harris and Ivec (this issue) raise many important issues about the nature of state intervention in the lives of vulnerable children and families. The authors' analysis brings to our attention the capacity of child protection systems to exacerbate harms to vulnerable children. These harms include intrusive interventions into families' lives and the destruction of children's social identities and family relationships. Their conclusions about these harms are well supported by public inquires over the past decade. Public inquiries into the institutional abuse of vulnerable children have shown that, far from helping these children, these systems have also contributed to personal damage of a magnitude almost beyond our imagination (Community Affairs References Committee, 2004; Forde, 1999). It is necessary that those of us involved in child protection systems, either as policymakers, practitioners or commentators, are critically aware of the history of child protection regimes and the damaging outcomes that can arise from society's intentions to protect vulnerable children.

Despite agreeing with the analysis by Braithwaite, Harris and Ivec (this issue) of the harms caused, I have reservations about their call for greater clarity of purpose in the state's relationship with vulnerable children and their families. Drawing on illustrations from the failed systemic reforms of the Queensland child protection system, I argue that the quest for clarity is dangerous, especially when it is accompanied by a narrowing of the state's responsibility to assist vulnerable families to address the many challenges they face. Rather than seek to narrow and split the roles of child protection agencies, I argue that we must ensure that these systems have the capacity, particularly in their workforce, to understand and respond to the inherent complexity of child protection regimes.

CHILD PROTECTION SYSTEMS AND THE QUEST FOR CLARITY

In their insightful analysis, Braithwaite, Harris and Ivec (this issue) assert that child protection systems are charged with multiple and often competing purposes, particularly in relation to goals of protecting children and supporting families who may have been responsible for harming children. They argue for these purposes to be articulated and critically evaluated in terms of their authenticity and practicality as state regulatory goals. They contend that problems arise because of the limited capacity of the state to "deliver on the responsibilities they have assumed". On the basis of their critique, the authors ask if resources and responsibilities might be transferred to other sectors. Of course, while the authors do not mention it, the non-profit sector has long played a central role in the delivery of a range of non-statutory services, especially in relation to alternative care and family support services in Australia. This contrasts with other comparable countries, such as the United Kingdom, where the role of the government is far more central to the delivery of a range of child protection and child welfare services.

The authors assert that the lack of clarity arising from the competing nature of purposes contributes to negative outcomes. This is reminiscent of the findings of the Crime and Misconduct Commission (CMC) inquiry into abuse in foster care in Queensland (Crime and Misconduct Commission, 2004). The inquiry reviewed systemic failures in the Queensland child protection agency, then known as the Department of Families, and concluded that that at the heart of the problems with the child protection system lay:

> *A lack of clarity* [italics added] and focus about the roles of the Department of Families and other key stakeholders in protecting children at risk. Additional resources alone will not provide a solution to this problem. The immediate need is to engender confidence in the child protection system by *sharpening the focus* [italics added] on the safety and security of children. As a result of this Inquiry, the Commission is persuaded that the Department of Families is at present so overburdened, and its stakeholders so lacking in trust, that *a new approach is needed* [italics added].
>
> Only by *concentrating unambiguously* [italics added] on meeting the needs of children at risk will it be possible to make the necessary changes. This can most readily be achieved by way of a *new department focused exclusively* [italics added] on the following core functions:
>
> - intake, assessment and investigation of notifications
> - targeted support for children identified as being at risk
> - the provision of alternative care for children identified as being at risk. (p. 133)

The Crime and Misconduct Commission concluded, like Braithwaite, Harris and Ivec (this issue), that the multiple and competing purposes of the then Department of Families had contributed to confusion and a lack of capacity to deliver on its policy objectives. The major outcome of the Crime and Misconduct Commission inquiry was the abolition of the Department of Families and the creation in 2004 of a new child protection authority called the Department of Child Safety. The Department of Child Safety was presented as a world first—a standalone tertiary child protection authority that was focused entirely on the investigation, assessment and intervention of children at risk. The vision was one of a radically pared back child protection authority

that was entirely child-centred and staffed by highly skilled professionals committed to child safety. Responsibility for other purposes, such as early intervention and family support, usually assumed by child protection authorities was delegated to the non-government sector and the Department of Communities.

The Queensland government's focus on tertiary child protection services was associated with a crystal clear vision about the limited role of the state government in the lives of vulnerable families. Indeed, alongside a retraction of the role of the state in the direct delivery of early intervention and family support services, the Queensland government also rolled out permanency planning initiatives focused on providing permanent homes for children whose families were deemed unable to provide appropriate care. This "child-focused" position of government was accompanied by a "zero tolerance" message towards parents involved with the child protection system from the Premier and his ministers. In introducing the "One Chance at Childhood" permanency planning initiative, Premier Peter Beattie asserted:

> The message to neglectful parents must be absolutely clear. The government will give you intensive help but if you don't get your act together then your children will get their chance at a happy, stable home in [sic] permanent home elsewhere (Department of Child Safety, 2007a, p. 5).

Similarly, the Minister for Child Safety, Desley Boyle, asserted :

> There remains an unacceptable level of parental neglect and abuse in this state. Our budget shows are we are committed to taking action by extending and strengthening child protection services across the state. But in the end, it is the parents who must face up to their responsibilities to provide a loving home for their children (Department of Child Safety, 2007a, p. 1).

Few would dispute the importance of a stable and loving home for enhancing children's wellbeing. However, the Premier's and his minister's message of zero tolerance towards parents deemed to be "neglectful" occurred at a time when funding for early intervention and family support services was a small fraction (around 11%) of the funds allocated to child protection investigation services. The message to vulnerable families was a clear and hostile one focused on the family's personal responsibility and limited government commitment to assisting them to confront the challenges they face.

NARROWING THE VISION OF CHILD PROTECTION SERVICES

Despite the high hopes associated with the clarity of purpose underpinning the new Department of Child Safety, by 2009 it had become clear that the implementation of the vision had failed to deliver better services to children and vulnerable families. Indeed, by April 2009, the idea of a standalone child safety authority, a key recommendation of the CMC inquiry, was abandoned. The Department of Child Safety was merged as an agency within the Department of Communities.

Far from a panacea, the clarity of vision associated with a standalone child safety authority "concentrating unambiguously on meeting the needs of children at risk" (Crime and Misconduct Commission, 2004, p. 133) was a failure by many measures of service effectiveness and system quality. Between 2004 and 2009, there was a more than 40% increase in the number of children under child protection orders (a rise in orders from 4,837 in 2003–04 to 6,942 in 2007–08) (Department of Child Safety, 2009). Despite the increased levels of tertiary intervention by government, death rates of children known to authorities almost doubled from 36 children in 2003–04 to 63 in 2007–08 (Department of Child Safety, 2009).

Of course, child protection agencies across Australia have experienced substantial increases in notifications and numbers of children in care (e.g., Australian Institute of Health and Welfare, 2007). However, the Queensland Department of Child Safety also demonstrated other signs of systemic failure that appear to be related to the narrowing of focus on tertiary child protection. First, a remarkable lack of balance emerged in funding allocated to the delivery

of tertiary services and other forms of service delivery. In 2007–08, the Department of Child Safety received revenue in excess of $553 million. In its performance report, the agency asserted that this funding was focused on its tertiary service delivery activities (Department of Child Safety, 2009). By contrast, in the same period, the Queensland government allocated $60 million in recurrent funding to non-government agencies for the provision of early intervention and family support services (e.g., Department of Child Safety, 2008, p108-111; Department of Communities, 2008, p. 161). Essentially, expenditure on early intervention and family support services by the Queensland Government was approximately 11% of the allocation to tertiary intervention services.

Within the Department of Child Safety itself, systemic failures directly related to the narrowed, yet clear focus of the agency became apparent. The most notable of these was the record rates of turnover amongst casework staff following the introduction of the reforms. In 2004, the CMC inquiry had noted that high staff turnover rates had contributed to an inexperienced workforce and poor workforce capacity. At the time of the CMC inquiry, the Minister for the Department of Families, Judy Spence, acknowledged that 28% of caseworkers left the organisation in their first year of practice (Spence, 2003). In 2007, three years after the reforms were introduced, the Department of Child Safety reported that turnover amongst staff had grown to 42% of staff leaving within their first year of practice and 73% leaving within three years (Department of Child Safety, 2007b). A number of factors are likely to have contributed to escalating rates of turnover, including the expansion of the casework workforce following the CMC inquiry. This growth in demand for frontline workers led the agency to employ large number of workers with qualifications in a range of social and behavioural sciences. This contrasted markedly with other Australian states and comparable Anglophone countries, such as the UK and New Zealand, where the bulk of child protection caseworkers are qualified social work or human service professionals (Healy & Oltedal, in press). This lack of educational preparation for child protection work, in one of the most complex areas of human service delivery, is likely to be a contributing factor to the elevated rates of workforce turnover (Healy & Meagher, 2007; Vinokur-Kaplan, 1991).

Beyond the problem of the diverse qualification base of workers in this highly specialised and demanding field of work, staff turnover appears to be linked to the narrow vision of child protection adopted by the Department of Child Safety. This narrow vision limits the child protection caseworkers' role to that of investigation and assessment. Little, if any, emphasis is placed on helping families achieve change. International research has demonstrated that job satisfaction and, by extension, workforce retention in child protection work is correlated with child protection worker perceptions that they are valued by the organisation (Tham, 2006); their work provides them with the opportunity to make a positive difference to the lives of vulnerable families (Vinokur-Kaplan, 1991); and they have the opportunity to use and develop a broad range and depth of professional skills (Glisson & Durrick, 1988; Glisson & Hemelgarn, 1998). The restriction of child protection work to an essentially forensic investigative role has contributed to a devaluing of caseworker knowledge and the commitment to achieving positive change with families that usually attracts workers to this field (Healy & Meagher, 2007). Evidence of tensions between the knowledge and value base of the casework workforce and the leadership vision of the child safety authority is evident in the workforce reform document released in 2007 (Department of Child Safety, 2007b):

> Historically, these degrees [in social work, human services and behavioural sciences] were well aligned with the underpinning knowledge required to work in the child protection sector. In all cases they contain material relevant to child and family issues which matched respective roles of CSOs [child safety officers]. This role has now changed [italics added]. The change has not merely been in the form of repositioning the department to a solely statutory child protection focus, but in the specialization of roles and the sophistication of systems and processes essential to working in a high risk, statutory environment [italics added]. (p. 7).

Essentially, the clear and narrow vision adopted by the leadership of the organisation regarded the knowledge and values held by the casework staff as irrelevant to the "sophisticated" environment of the child safety authority. Of equal concern is that the radical vision stated within the workforce reform document had little basis in, or accountability to, the substantial international evidence about factors contributing to job satisfaction or workforce retention in child protection services (see Zlotnik et al, 2005). In other words, emboldened by the narrow and clear vision of a forensically orientated child protection workforce, the leadership in the agency apparently saw no need to take heed of the evidence about what promotes retention in child protection service work.

In a further sign of systemic failure, the Department of Child Safety appeared not to have realised its vision of a pared back, service delivery focused agency. Significantly, in 2004, the CMC inquiry raised concerns about the disproportionate allocation of resources to bureaucracy in the former Department of Families:

> The fact that only 52 per cent of the current Department of Families child-protection workforce appears to be engaged in direct service delivery is a matter of serious concern (Crime and Misconduct Commission, 2004, p. 149).

However, the newly created Department of Child Safety seemed to maintain a similar staffing structure, with a large proportion of staff employed in administrative and managerial roles. In June 2006, the total number of staff in the Queensland child protection authority was 2,051, of which 725 (35%) were i child safety caseworker roles (Crime and Misconduct Commission, 2007).

THE WRONG FOCUS?

In this essay, I have drawn on the Queensland experience to demonstrate the harmful consequences that can arise from the quest for clarity. The Queensland government was successful in creating a clear and distinct vision for the statutory child protection authority, yet the emerging evidence has shown this vision to be associated with serious negative outcomes for service users and the frontline workforce. For those still committed to this quest, it could be argued that the problem lay in the focus on tertiary intervention rather than the quest for a clear set of principles underpinning the government's purpose and role. This question needs to be asked: for the sake of clarity, should the responsibilities for primary, secondary and tertiary services be separated?

In some countries, particularly the social democratic states such as Norway, the state is able to marry the multiple purposes of primary, secondary and tertiary child protection services within the one institutional setting of local government service delivery. Notably, however, the Norwegians prefer the term *child welfare* to *child protection services*. In Norway, for example, a large number of local government authorities and mutual accountability between citizens and governments facilitates a greater sense of trust in government. Far from seeing different forms of child welfare intervention as distinct, the Norwegian government, in its child protection legislation, asserts its joint responsibility with families to ensure both the wellbeing and protection of children and their families (Healy & Oltedal, in press). The Norwegian government has multiple purposes in relation to families yet, through balanced investment in different levels of intervention, appears able to manage these different purposes (Healy & Oltedal, in press).

It may be that in liberal welfare states such as Australia the distrust of governments is such that the delivery of different types of child protection services needs to occur through different institutional forms. In Australia, this has contributed to state government agencies holding primary responsibility for the delivery of tertiary services whilst the non-government sector is responsible for primary and secondary interventions. In general, though, the same agency is responsible for the delivery of services and for funding other child protection services in the non-government sector. This arrangement, while undoubtedly problematic, appears to be preferable to the institutional separation of responsibility for funding, policy and program development that occurred in Queensland in 2004-09. In Queensland, the institutional separation of the state's responsibilities

for tertiary child protection services from any other forms of service provision has created a clarity of role but at great cost to the range and quality of child protection services.

CONCLUSION

In liberal welfare states such as Australia, much frustration exists amongst some sections of government, the bureaucracy and the public about the complexity of child protection service delivery. In this context, the quest for clarity is attractive because it appears to hold out the promise of liberating us from the messiness of child protection regimes. Yet a child protection system free from competing purposes is impossible. This is not to say that we cannot achieve greater clarity; such clarity can be achieved only in full recognition of competing purposes inherent in child protection regimes. We have much to learn from the recent reforms of the Queensland child protection system about the dangers of the quest for clarity for the citizens whom these systems should protect and support. To paraphrase the Spanish poet and essayist George Santayana, those who do not learn from the lessons of history are doomed to repeat them.

REFERENCES

Australian Institute of Health and Welfare. (2007). *Child protection Australia, 2006-2007* (Series No. 43, Cat No. CWS 31). Canberra: Author.

Braithwaite, V., Harris, N., & Ivec. M. (this issue). Seeking to clarify child protection's regulatory principles. *Communities, Children and Families Australia.*

Community Affairs References Committee. (2004). *Forgotten Australians:*

A report on Australians who experienced institutional or out-of-home care as children. Canberra: Commonwealth of Australia.

Crime and Misconduct Commission. (2004). *Protecting children: An inquiry into the abuse of children in foster care*. Brisbane: Author

Crime and Misconduct Commission. (2007). *Reforming child protection in Queensland: A review of the implementation of recommendations contained in the CMC's protecting children report.* Brisbane: Author.

Department of Child Safety. (2007a, June). *Brighter futures magazine*. Brisbane: Author.

Department of Child Safety. (2007b). *Review of the qualifications and training pathways: Consultation paper.* Brisbane: Author.

Department of Child Safety. (2008). *Annual report 2007-2008*. Retrieved June 18, 2009, from www.childsafety.qld.gov.au/department/annual-report/2007-08

Department of Child Safety. (2009). *Performance report 2007-2008*. Brisbane: Author.

Department of Communities. (2008). *Annual report 2007-08*. Retrieved December 16, 2008 from http://www.communities.qld.gov.au/department/publications/annualreport/2007-08/documents/annual-report-full.pdf

Forde, L. (1999). *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions*. Brisbane: Queensland Government.

Glisson, C., & Durick, M. (1988). Predictors of job satisfaction and organizational commitment in human service organizations. *Administrative Science Quarterly*, *33*(1), 61-81.

Glisson, C., & Hemmelgarn, A. (1998). The effects of organizational climate and interorganizational coordination on the quality and outcomes of children's service systems. *Child Abuse & Neglect*, *22*(5), 401–421.

Healy, K., & Meagher, G. (2007). Social workers' preparation for child protection: Revisiting the question of specialization. *Australian Social Work*, *60*(3), 321-335.

Healy, K., & Oltedal, S. (in press). Child protection systems in Australia and Norway: An institutional comparison focused on workforce retention. *Journal of Social Policy*.

Spence, J. (2003). *Opening statement to the Crime and Misconduct Commission by the Minister for Family Services*. Retrieved June 23, 2009 from http://www.childsafety.qld.gov.au/fostercare/documents/cmc-minister-families-opening-2003.pdf

Tham, P. (2006). Why are they leaving? Factors affecting intention to leave among social workers in child welfare. *British Journal of Social Work, 37*, 1225-1246.

Vinokur-Kaplan, D. (1991). Job satisfaction among social workers in public and voluntary child-welfare agencies. *Child Welfare*, *70*, 81-91.

Zlotnik, J. L., DePanfilis, D., Daining, C., & Lane, M. M. (2005). *Factors influencing retention of child welfare staff: A systematic review of research.* Washington, DC: Institute for the Advancement of Social Work Research.

AUTHOR

Professor Karen Healy
School of Social Work and Human Services
The University of Queensland
Brisbane QLD 4072

K.Healy@social.uq.edu.au

How Child Centred are Our Child Protection Systems and How Child Centred Do We Want Our Child Protection Regulatory Principles To Be?

Nigel Parton

The paper by Valerie Braithwaite, Nathan Harris and Mary Ivec is important. It recognises that many of the stresses and difficulties experienced by child protection systems in Australia and other English-speaking countries result from a failure to satisfactorily address some of the fundamental regulatory principles on which the systems are based. Their paper discusses three key functions which any system needs to consider seriously: identifying the purposes of intervention; justifying the intervention in a way that is respectful of broader principles of democratic governance; and understanding how the informal regulatory system intersects with the formal child protection system. These are all issues with which I have been intimately concerned over a number of years in an English context (e.g., Parton, 1985; 1991; 2006; Frost & Parton, 2009) and, increasingly, internationally (Lonne et al., 2009).

Locating these discussions in the context of recent critical debates and analyses of regulation (Braithwaite, 2002; Braithwaite, 2005) and, in particular, the importance of "responsive regulation" (Harris & Wood, 2008) to developing our child protection systems is important in not just the nature of the questions asked but also in the way we can envisage different ways of developing policy and practice. It is in this context of broad support for what Braithwaite, Harris and Ivec (this issue) are attempting to do that I wish my comments to be read. I thoroughly agree with their conclusion that:

> Positive learning experiences for children cannot come about through an inspectorial system, the completion of checklists, the writing of reports, formal notifications, the removal of children and placement in new homes. Traumatised children cannot be expected to understand bureaucratic processes, particularly when their parents and families are fearful, mistrustful and mystified by them.

I argue that such comments should provide a central springboard for trying to reform child protection systems. Any attempts to consider the future principles and purposes of child protection systems should place the views and experiences of children and young people at the centre. I argue that in order to advance the arguments presented by Braithwaite, Harris and Ivec

(this issue), two additional questions need serious consideration: (1) how child centred are our child protection systems? and (2) how child centred do we want our child protection regulatory principles to be? Unless we try to address these questions, our regulatory principles, however responsive, will continue to be "adult-centric". Before doing so, I will briefly analyse what I see are some of the key contextual issues that inform the operation of contemporary child protection systems in the English-speaking world. This will help us understand their adult-centric nature.

THE KEY CHARACTERISTICS AND CHALLENGES OF CHILD PROTECTION POLICY AND PRACTICE

The period since the rediscovery of child abuse in the early 1960s has been one where child protection policy and practice in all countries in the English-speaking world has been subject to conflicting demands and increasingly high-profile political and media opprobrium. Child protection systems have been subject to continual change and reform, often in the wake of a major child abuse scandal—usually where a child has died and where a variety of health, welfare and criminal justice agencies are seen to have failed to intervene appropriately. Social workers, in particular, have come in for considerable criticism and have not been seen as competent in fulfilling the tasks expected of them. As a consequence, policy and practice have been changed, primarily in response to systems failure and a context of crisis, and rarely have the views and experiences of children and young people themselves been taken into account.

At the core of child protection policy and practice is a key challenge—namely, how a legal basis can be devised for the state to intervene into the privacy of the family in order to protect children in a way that does not at the same time undermine the institution of the family and the responsibilities of parents. As a consequence, three interrelated issues have always provided the key contexts for child protection services:

- the primacy of parents vis-à-vis the child protection system
- the scope of government intervention
- the nature of government intervention.

The balance in the way these three issues are addressed varies according to the changing demands and the political, economic and social contexts in which they are located. While recent years have seen a growing interest in the notion of "children's rights" (Reading et al., 2008), these three key issues continue to be the primary concerns framing day-to-day child protection policy and practice.

The original designers of modern English-speaking child protection systems in the 1960s and 1970s made two interconnected but fundamental errors. Both can be seen to emanate from the assumptions which underpinned the original idea of the "battered baby syndrome"—the physical abuse of very young children. As a consequence, both the scope and complexity of the problem of child abuse and neglect have been misunderstood and underestimated. While the battered baby syndrome provided the dominant underlying metaphor for child abuse and the rationale for child protection systems for many years, the category of child abuse itself has been subject to various developments. By the late 1980s, it included emotional abuse, neglect, sexual abuse and physical abuse and was no longer focused only on young children but included people up to the age of 18.

In addition, in the last 30 years, we have witnessed other considerable social changes. In particular, the changing nature of the family and communities, particularly under the impact of growing globalisation and widening ethnic diversity, has led to an increased sense of risk and social anxiety. These have major implications and consequences for both children and the institution of childhood itself, which is seen as being under threat. These wider concerns about childhood are clearly articulated in the recent UK publication of the *Good Childhood* report by the Children's Society (Layard & Dunn, 2009). The loss of traditional families embedded within secure communities and the growing individualisation of social life has created a context in which childhood is seen as at risk and there is a greater emotional investment in children in what seems a more uncertain and less safe world. Therefore, what happens to children increasingly seems to symbolise

the key benchmarks for the kind of society we have become and is a primary focus for the aspirations, projections and longings of adults.

By the mid 1990s, considerable evidence was emerging in the US, Australia and the UK that there were significant problems with the child protection systems established over the previous 20 to 30 years. Jane Waldfogel (1998) identified five major problems with the US child protection system. Similar issues can be seen to apply to all English-speaking countries, which, in large part, followed the US approach:

- The first problem is overinclusion, whereby some children and families are dragged into the child protection system and are subject to unnecessary adversarial and forensic investigation when the parents pose very little risk for their children (false positives).
- The second problem is underinclusion, whereby some children and families that should be involved with child protection services are not. This may be because they have been missed and not reported; because the families asked for voluntary assistance at an earlier stage of difficulty but did not meet the threshold for inclusion; because adults resist being involved; or, most crucially, because children and young people do not tell anyone about the abuse they are subject to (false negatives).
- The third problem, which reflects and arises from the first two, is capacity. Because the number of reports has increased significantly over the last 30 years, the number of children and families involved far exceeds the capacity of the system to serve them.
- The fourth problem is service delivery. Even if children and families appropriately cross the threshold for inclusion, many do not receive the right sort of service or, in many cases, any service at all.
- The fifth problem is service orientation. In being concerned about investigating cases of child abuse, there can be a failure to engage with children and families to address their concerns and needs.

In many ways, we can see that, over the last 15 years, all English-speaking countries have been trying to come to terms with these major challenges, particularly in the context of debates about the most appropriate relationship between child protection and family support (Parton, 1997). More recently, there have been increased efforts to develop broader, more holistic and integrated approaches where the current and future welfare and wellbeing of children is a central focus. Such developments are not simply about protecting children from harm and supporting families but have the overall health and development of the child as their focus (Parton, 2006).

However, as Braithwaite, Harris and Ivec (this issue) suggest, the complexities and tensions in the work are in great danger of increasing even further. In broadening the focus and trying to integrate a whole variety of systems and agencies, the demands on frontline staff are likely to intensify. This is particularly the case with the introduction of a whole variety of new procedures, the growing demands for accountability and, in particular, the growth in the managerialisation of the work of all professionals involved. While the language is often framed in terms of trying to improve children's wellbeing, the context in which this takes place is dominated by ideas of performance management and an outcomes-driven business culture. In recent years, we have seen the increased curtailment of professional discretion together with the requirement that frontline professionals follow increasingly detailed and complex procedural guidelines. These changes have been furthered by the introduction of computers and various ICT systems, where the gathering, sifting, assessment, sharing and monitoring of information has become central and where there is less time available for direct work with children, young people and adults (Parton, 2009).

Ironically, attempts to move policy and practice away from a narrow emphasis upon a forensic investigatory approach can have the effect of increasing the managerialisation and proceduralisation of the work. In the process, it includes a wide variety of children, parents and professionals in the orbit of ever-increasingly complex but unreliable systems of surveillance (Parton, 2006; 2008). Many changes in recent years have been premised on

the assumption that it is better to have confidence in new electronic systems than trust in individual frontline professionals. The continual refinement and reform of systems demonstrates that services for children are conceived increasingly as instrumental machines which need to be updated to take account of new challenges and new technologies. The fact that they may have failed points only to the need for their repair and the need to introduce ever more sophisticated procedures, diagrams and flowcharts to try and make the complexities of the new systems readily comprehensible.

CHILDREN AND YOUNG PEOPLE'S EXPERIENCES OF CHILD PROTECTION SYSTEMS

I suggest that at the core of the current problems is what Andrew Cooper and his colleagues (2003) have called a "confidentiality crisis". While on the one hand confidentiality is deemed to be a fundamental part of the professional-client relationship that is essential if the relationship is to be built on trust, on the other hand, professionals are required to share information not only to aid child protection but also to ensure that all children reach their potential. As a consequence, both adult and child clients become sources of information so that assessments can be made, resources allocated and child development monitored.

However, a lot of research in recent years has demonstrated that the most important factor which influences whether children and young people are prepared to discuss their problems is confidentiality. This is a major reason why, generally, they rarely talk to adults, particularly those in formal agencies (Hallett et al., 2003; Featherstone and Evans, 2004). The experience of confidential children's helplines provides considerable evidence of this (ChildLine Casenotes, 2006; 2008). Children and young people are often very concerned that adults will take control of their problems and insist that something be done against their wishes. Trust and confidentiality are absolutely key to ensuring that the way child protection services develop does not disempower and alienate the very children and young people that they are aimed to help and protect (Evans, 2009).

In addition, it is clear that children and young people are active agents in their own lives. When we look at the evidence of what troubles them, as opposed to what worries adults, and what they want done about it, we often find that children and young people develop strategies that bypass adult-centric children's services.

Addressing these issues is a major challenge given the historical and legislative frameworks in which child protection work is carried out. In this respect, there is no doubt that in explicitly recognising the views and experiences of children and young people, we are raising highly sensitive issues and trying to move things forward differently to just a few years ago. However, some of the solutions introduced can have a whole series of unintended consequences. In recent years in England, children's services have been reorganised and reconfigured to be much more explicitly focused on the child such that the rhetoric is about being "child-centred". This was made explicit in the green paper *Every Child Matters* (Chief Secretary to the Treasury, 2003), where it was stated that the government intended "to put children at the heart of our policies, and to organise services around their needs" (p. 9). As a consequence, the family-focused and generic social services departments were replaced by departments of children's services.

But, beyond this, the key unit for the organisation of information and communication has increasingly become the individual child as opposed to the family. Information inputted and extracted from the new ICT systems is framed in terms of the particular needs of individual children. A central feature of the new ICT systems is that, in being "child-centred", the family has been disaggregated and fragmented. This is evident in two ways. First, the templates on the systems restrict the way that issues can be described as family or parental issues; they have to be expressed in terms of "children's needs". Second, separate files are required for each child. In the process, the loss of a family perspective becomes evident. The real danger—and there is considerable evidence of this (Parton, 2009; Hall et al., in press)—is that information becomes fragmented and it becomes very difficult to locate analysis in terms of the relationships among people. This can be as basic

as trying to establish whether particular children are in any way related and, if so, in what ways. This is not to say that previous ways of recording and the use of family files were perfect; far from it. The real danger is that in organising our work to be "child-centred", our focus becomes particularly individualised and the wider social and relational aspects of the work get lost.

These are major challenges. For many years, I have been a strong believer in the importance of trying to gain the views and experiences of children and young people and making them central. Increasingly, however, I am becoming aware of some of the unintended consequences of this. I think the real problem arises from trying to develop an approach to the work which is explicitly child-centred in a context where the adult organisational culture is dominated by key concerns about performance management, following procedures and an audit culture which is anything but child-centred. For me, the key challenge is ensuring that we encourage trust in, and support for, frontline professionals and develop the workforce in such a way that frontline professionals can work closely and collaboratively with children, young people and adults. Systems, be they more traditional or dependent on new information technology, are only valuable if they support this work. If the systems become the dominating frame and professionals, children and families simply have to fit in with them, we are in great danger of missing the point. In many respects, I suggest that this is just what has been happening over recent years. If the current crisis in child protection has the effect of opening up this issue for serious debate and reform, that would be excellent. It is people and relationships, be they with children, young people, parents or professionals, that are key to improving child protection policy and practice and not the systems we seem to spend so much time trying to service.

My concern is that, while the paper by Braithwaite, Harris and Ivec (this issue) raises important issues, if we are serious about trying to make our principles and systems more responsive, it is important that we explicitly insert the views and experiences of children and young people into the discussions and any reforms that take place. Often the time and space that children and young people require to articulate their concerns and what they want done about them are very different to those of the adults operating the systems. The biggest challenge is to ensure that our systems and services are both responsive and sensitive to the needs and wishes of children and young people.

REFERENCES

Braithwaite, J. (2002). *Restorative justice and responsive regulation*. New York: Oxford University Press.

Braithwaite, V. (2005). Ten things you wanted to know about regulation but never wanted to ask. *Australian Law Librarian*, *14*(3), 19-28.

Braithwaite, V., Harris, N., & Ivec, M. (this issue). Seeking to clarify child protection's regulatory principles. *Communities, Children and Families Australia.*

Chief Secretary to the Treasury. (2003). *Every child matters*. (Cm5860). London: Stationery Office.

ChildLine Casenotes. (2006). *What Children and young people tell ChildLine about physical abuse*. London: NSPCC.

ChildLine Casenotes. (2008). *Children talking to ChildLine about bullying*. London: NSPCC.

Cooper, A., Hetherington, R., & Katz, I. (2003). *The risk factor: Making the child protection system work*. London: Demos.

Evans, H. (2009). *To report or not to report: Encouraging young people to access professional help*. London: NSPCC.

Featherstone, B., & Evans, H. (2004). *Children experiencing maltreatment: Who do they turn to?* London: NSPCC.

Frost, N., & Parton, N. (2009). *Understanding children's social care: Politics, policy and practice*. London: Sage.

Hall, C., Parton, N., Peckover, S., & White, S. (in press). Child-centric ICTs and the fragmentation of child welfare practice in England. *Journal of Social Policy.*

Hallett, C., Murray, C., & Punch, S. (2003). Young people and welfare: Negotiating pathways. In C. Hallett & A. Prout (Eds.), *Hearing the voices of children: Social policy for a new century* (pp. 123-138). London: Routledge Falmer.

Harris, N., & Wood, J. (2008). Governing beyond command and control: A responsive and model approach to child protection. In M. Deflem (Ed.), *Surveillance and governance: Crime control and beyond sociology of crime, law and deviance* (pp. 327-344). Bingley: Emerald, JAI.

Layard, R., & Dunn, J. (2009). *A good childhood: Searching for values in a competitive age*. London: Penguin Books.

Lonne, B., Parton, N., Thomson, J., & Harries, M. (2009). *Reforming child protection*. London: Routledge.

Parton, N. (1985). *The politics of child abuse*. Basingstoke: Macmillan.

Parton, N. (1991). *Governing the family: Child care, child protection and the state*. Basingstoke: Macmillan.

Parton, N., Thorpe, D. and Wattam, C. (1997). *Child protection: risk and the moral order*. London: Macmillan

Parton, N. (2006). *Safeguarding childhood: Early Intervention and surveillance in a late modern society.* Basingstoke: Palgrave/Macmillan.

Parton, N. (2008). The 'Change for Children' programme in England: Towards the 'Preventive-Surveillance State'. *Journal of Law and Society, 35*(1), 166-187.

Parton, N. (2009). Challenges to practice and knowledge in child welfare social work: From the 'social' to the 'informational'? *Children and Youth Services Review*, *31*(7), 715-721.

Reading, R., Bissell, S., Goldhagen, H., Masson, J., Moynihan, S., Parton, N., Santos, M., Thoburn, J., & Webb, E. (2008). Promotion of children's rights and prevention of child maltreatment. *Lancet*, December, 52-63.

Waldfogel, J. (1998). *The Future of child protection: How to break the cycle of abuse and neglect*. Cambridge, MA: Harvard University Press.

Wattam, C. (1999). Confidentiality and the social organisation of telling. In N. Parton & C. Wattam (Eds.), *Child sexual abuse: Responding to the experiences of children* (pp. 71-89). Chichester: Wiley.

AUTHOR

Nigel Parton
NSPCC Professor in Applied Childhood Studies
University of Huddersfield England

n.parton@hud.ac.uk

Regulatory Principles and Reforming Possibilities in Child Protection: What Might be in the Best Interests of Children?

Dorothy Scott

ABSTRACT

Clarifying and applying principles related to responsive regulation offers some new possibilities for reforming Australia's struggling and unsustainable child protection systems at a time when the climate may be more conducive to change than in the past. However, there are two major challenges. One is the knowledge gap in relation to determining whether child protection policy based on responsive regulation delivers better outcomes for children. The other is the need to encompass within a responsive regulation framework population based preventive strategies that can reduce the risk factors associated with child abuse and neglect.

KEYWORDS

Child Protection; Responsive Regulation; Policy;

ARTICLE

This critique of child protection policy and practice adds a welcome dimension to the longstanding sociological analysis of the state's role in "policing families". It strongly identifies with the negative way in which many parents experience the use of regulatory powers by statutory child protection services. Not surprisingly, those who work closer to the coalface often see such critiques as minimising the suffering of children and lacking an appreciation of the nuanced nature of the use of authority in child protection practice. I expect that this is how some child protection practitioners will respond to this critique.

Applying regulatory principles to child protection practice provides food for thought, especially in the wake of the recent release of *Protecting Australia's Children is Everyone's Business: National Framework for Protecting Australia's Children 2009–2020* by the Council of Australian Governments and the release of *Inverting the Pyramid: Enhancing Systems for Protecting Children* by the Australian Research Alliance for Children and Youth. Both these policy documents emphasise the importance of preventive and diversionary

strategies, which fit well with both public health and responsive regulation approaches to child protection.

The regulatory principles applied to child protection by Braithwaite, Harris and Ivec (this issue) raise key three core questions:

1. What are the purposes of child protection intervention?
2. How does intervention respect broader democratic principles, such as procedural justice?
3. How might informal regulatory systems (e.g., the normative pressures exerted by kith, kin and community) intersect with the formal regulatory system of child protection?

This commentary will concentrate on the first of these three questions. In relation to the second question, I believe that the authors advance a strong values-based argument for greater transparency and adherence to principles of procedural justice in relation to families involved in statutory child protection proceedings. This supports the recent case put forward by Lonne, Parton, Thomson and Harries (2009) for a new ethical framework for child protection practice.

In relation to the third question, renewed interest in processes such as family group conferencing is a hopeful sign of attention being paid to the interface of formal and informal regulatory systems in child protection. On a more pessimistic note, however, I suspect we may be witnessing an increasing reluctance of kith and kin to perform their traditional function of "informal regulation" in relation to childrearing. The fact that relatives of a child are frequently the notifiers to child protection services and that some family members have been awarded compensation by the state in the wake of child abuse related deaths in cases previously known to child protection authorities may be indications of a shift in this function from the family to the state.

The authors highlight the multiple purposes that current statutory child protection services are trying to fulfil. Without most of us realising, there has been a profound historical transformation in the purpose of statutory child welfare services in just one generation. Having come into existence as a result of a fundamental shift in the relationship between the state and the family, which began well over a century ago (Scott & Swain, 1992), statutory child welfare services have moved far from their original purpose of being in loco parentis—assuming guardianship for neglected and destitute children whose parents could not or would not care for them. By the end of the 20th century, statutory child welfare services had acquired another purpose—screening huge numbers of referrals for an ever-widening group of parental behaviours seen to constitute child abuse and neglect, some of which were normative childrearing practices a generation earlier (Scott, 2007).

Think of this as akin to changes in the health system. It is tantamount to a hospital adding to its core function of acute care the screening of a large section of the population for an ever increasing range of risk factors for an ever increasing range of diseases. Its primary purpose would be not to reduce such risk factors but to find those in need of urgent hospital admission. Add to this metaphor the pressure on hospital beds (a lack of out-of-home care placements) and a shortage of nurses and doctors (a crisis in recruiting and retaining child protection workers) and it is obvious why the state is having great difficulty performing its two child protection functions.

The pressures created by the escalating demand in relation to both these purposes is reflected in two key indicators. One, in recent years Australia has witnessed escalating child protection notifications (AIHW, 2009) such that in some jurisdictions one in five children is now the subject of a notification by age 16 (Hirte, Rogers & Wilson, 2008). Two, there has been a doubling in the number of children in state care in Australia over the past decade (AIHW, 2009). Such systems are unsustainable.

A new policy direction requires both political and community understanding of two fundamental but unpalatable facts. One, no child protection system can prevent all child abuse deaths, just as there is no mental health system which can prevent all suicides. Two, removing increasing numbers of children from their families on the basis that they are at risk of

possible harm can inflict serious harm on a large scale on children and their families.

The argument advanced by Braithwaite, Harris and Ivec (this issue) for responsive regulation policies and practices needs to be supported by robust evidence related to population level and individual level outcomes for children. Population level outcomes concern the prevalence or overall extent of child abuse and neglect in the community. (This is not the same as the number of reports of alleged child maltreatment.) Whether this would be greater or less under a responsive regulation framework is the critical question. Individual level outcomes concern the wellbeing of children who are the clients of child protection systems. Whether these outcomes would be better or worse under a more responsive regulation regime is also a critical question. At this stage we do not have the evidence to answer these questions with confidence.

However, Australia does have relatively good data on the incidence of child abuse and neglect (i.e., the number of reports of alleged cases of maltreatment made to statutory agencies). It also has good data on the number of children in state care as at June 30 each year, which is one measure of the use of the state's coercive regulatory powers in child protection.

Just as the level of policing may bear little relationship to the level of crime in a society, the level of child protection activity may bear little relation to the level of child abuse and neglect in a society. As such, the number of notifications of alleged child abuse and the number of children on statutory orders or in care cannot provide an accurate picture of the extent of child abuse and neglect in a jurisdiction. We therefore cannot currently determine an association between the prevalence of child maltreatment or outcomes for individual children and high or low levels of formal child protection regulation in different states.

While there are some problems with interjurisdictional comparisons of child protection data, there is sufficiently comparable data across Australia to provide some useful insights and hypotheses about responsive regulation. If we take the most serious sanction of child protection formal regulation—that is, the removal of children from their families by the state—we can conclude from the data that this regulatory power is being used increasingly in Australia. The number of children in state care in Australia has doubled in the past decade from 14,470 children as at June 30, 1998 to 31,166 children as at June 30, 2008 (AIHW, 2009)[1].

What is striking but so often missed when reference is made to the rapidly increasing number of children in state care in Australia is the marked variation among jurisdictions. For example, on June 30, 2008, the highest rate of children in state care was 8.4 children per 1,000 in New South Wales while the lowest was half that—4.2 children per 1,000—in Victoria (AIHW, 2009). A decade earlier, there was only a slight difference between these two states, with both having rates between 3 and 4 children per 1,000 in state care on June 30, 1998 (AIHW, 2009). These two jurisdictions can thus be seen as providing contrasting case studies in relation to the use of the strongest measures of regulatory powers in child protection.

The dramatic New South Wales trajectory over the past 10 years in relation to both notifications and out-of-home care reflects policies that embrace the use of high formal regulation. The extension of mandatory reporting provisions and penalties, a centralised intake system and the route to preventive services typically being via the statutory child protection system all reflect this[2]. Paradoxically, as child protection notifications escalated in New South Wales following the introduction of some of these measures, the number of referrals to family support services decreased. This is because there were insufficient resources to process referrals to less formal regulatory services, which may have helped prevent cases requiring statutory intervention

1 It should be noted that these figures do not give an indication of the total number of children in state care in any given year and that the overall growth in the numbers reflects the trend in some jurisdictions for children to remain in care longer as well as an increase in the number of children entering state care.

2 The Wood Commission of Inquiry may represent a turning point in the highly regulated NSW policy trajectory in child protection. The recommended increase in the mandatory reporting threshold from 'harm' to 'significant harm' is an indication of this as are some new diversionary strategies in relation to notifications.

(Fitzgerald, 2002.

By contrast, Victoria has vigorously pursued an explicit responsive regulation approach, especially over the past five years, as the projected and unsustainable demand pressures became the stimulus for significant legislative and policy changes. Such an approach is consistent with Victoria's history of child welfare, in which non-government organisations played a far more central role than in other Australian jurisdictions. It is too early to say whether the Victorian approach has produced better outcomes for children. However, in the face of the increasingly disturbing international evidence that many children are harmed as a result of being in state care (Doyle, 2007; Rubin et al., 2007), a low rate of children in state care in a jurisdiction should be seen as a positive indicator unless there are strong prevalence measures, such as a consistent pattern of higher child maltreatment related death rates, to indicate otherwise.

It is not too early to say that, in better managing demand on the child protection system through a range of diversionary strategies, the Victorian responsive regulation approach has much more chance of recruiting and retaining the paid and volunteer workforce necessary to meet the needs of children involved with their statutory child protection system. Given the current and looming shortage of both child protection workers and foster carers, it is possible that resource scarcity and "demand management" will inevitably drive a policy shift toward responsive regulation in other jurisdictions. However, in the context of a weak infrastructure of both primary preventive child health services and secondary preventive non-government services in most other states and territories, the capacity to implement such a policy shift across Australia *in ways that enhance outcomes for children* is problematic.

While the Victorian child protection system is still under very considerable strain, it is distinctive in Australia in having a broad range of services aimed at reducing the dependence on statutory child protection regulation. At the primary prevention level, for example, by international standards, Victoria's universal maternal and child health services are very highly utilised by families with infants (KPMG, 2006). An increasing proportion of families with complex needs also receive the targeted "enhanced maternal and child health service".

Beyond these services, there is a regional network of secondary prevention family support services delivered by non-government organisations (NGOs). These can be accessed directly by families as well as through statutory child protection services. Closer to the tertiary end of the service system, where there is a risk of placement, intensive family support services are more likely to be used in Victoria than elsewhere in Australia. For example, in 2007-08, Victoria had 5,694 children who commenced intensive family support services compared with 285 in New South Wales, 1,844 in Queensland, 371 in Western Australia, 48 in South Australia, 63 in Tasmania, 439 in the Australian Capital Territory and 104 in the Northern Territory (AIHW, 2009).

There are also significant legislative differences between Victoria and New South Wales. While Victoria has mandatory notification legislation, it is restricted to physical and sexual abuse and applies to a more limited group of occupational groups than in New South Wales and most other Australian jurisdictions. Under the recently introduced child protection legislation in Victoria, the initiative *Child First* also provides potential notifiers with the option of referring a family to a regional non-statutory intake service. This service can assess the child's needs and mobilise a range of responses aimed at obviating the need for statutory involvement or redirect the matter to the statutory service if this appears necessary.

Family group conferencing is also far more available in Victoria than in states such as New South Wales (Harris, 2008). In addition, Victoria has well-established alternative dispute resolution processes prior to cases coming before the Children's Court. The combination of all of the above, along with some other elements, has created in Victoria an interesting case study of responsive regulation in child protection.

However, we will need to go far beyond calibrating the repertoire of regulatory responses at an individual case level if we are to reform child protection. We

will also need to incorporate population-based formal *and* informal regulation strategies in keeping with a public health approach to child protection (O'Donnell, Scott & Stanley, 2008).

There is compelling evidence on the success of such measures. For example, consider the problem of supervisory neglect. The great advances in the last four decades in reducing the number of young children ingesting poisons and suffering accidental burns, vehicular injuries and accidental drowning have been due to formal regulation at a population level. Legislation requiring the labelling of poisons, the use of tamper- proof medication containers and car child restraints, the banning of flammable children's nightwear and the use of compulsory swimming pool fences are excellent examples of the state using its regulatory powers to prevent harm. This has typically been backed by strategies targeting the informal regulatory system of the family through "social marketing" and health promotion campaigns aimed at changing parental and caregiver behaviour.

How far formal and informal population-based regulatory measures can be taken in a democratic, market-driven society is an interesting question. The regulation of alcohol is a case in point. Parental alcohol abuse is the most significant issue in the history of child protection. In at least one Australian state, parental alcohol abuse is now a factor in over half the cases of children entering state care for the first time (Jeffreys, Hirte, Rogers & Wilson, 2009). An estimated 13% of Australian children live in households where at least one adult is regularly binge drinking (Dawe et al., 2008). Given that parental alcohol abuse is strongly associated with all forms of child abuse and neglect, especially exposure to domestic violence, the problem is of such a magnitude that it can be effectively addressed only by population based regulation. The recent imposition of restrictions on alcohol consumption in some remote Aboriginal communities may help to test the degree to which community level strategies regarding child welfare and domestic violence are feasible.

Formal regulatory measures in relation to alcohol consumption include volumetric taxing of all alcohol products, periodic sharp increases in prices and bans on alcohol advertising. Informal regulatory measures include social marketing strategies aimed at inculcating "alcohol and children don't mix" attitudinal and behavioural norms at the family and community level. Given the vested interests of the liquor industry, such regulation is politically difficult. However, it is one of the few strategies that has the potential to make a major difference to the problem of child abuse and neglect.

In conclusion, ideas related to both formal and informal responsive regulation at both the individual and population levels offer some new possibilities in a field that urgently requires new policy and practice directions. The case advanced by Braithwaite, Harris and Ivec (this issue) needs to be operationalised and empirically tested if the argument for responsive regulation in child protection is to be evidence-informed and *is to deliver better outcomes for children*. This represents a major challenge in knowledge creation and application. We must rise to meet this challenge.

REFERENCES

Australian Institute of Health and Welfare. (2009). *Child protection Australia 2007–08*. Canberra, Australian Capital Territory: Author.

Braithwaite, V., Harris, N., & Ivec. M. (this issue). Seeking to clarify child protection's regulatory principles. *Communities, Children and Families Australia.*

Dawe, S. , Harnett, P. & Frye, S. (2008) Improving outcomes for children living in families with parental substance misuse: what do we know and what should we do. Child Abuse Prevention Issues, 29. Melbourne. Australian Institute of Family Studies.

Doyle, J. (2007). Child protection and child outcomes: Measuring the effects of foster care. *American Economic Review, 97*.1583-1610.

Fitzgerald, R. (2002). Hopes and reality: A sorry tale. *Developing Practice, 3*,5-8.

Harris, N. (2008). Family group conferencing in Australia 15 years on. *Child Abuse Prevention Issues, No. 27*. Melbourne: Australian Institute of Family Studies.

Hirte, C., Rogers, N., & Wilson, R. (2008). *Contact with the South Australian Child Protection System: A statistical analysis of longitudinal child protection data*. Adelaide: South Australian Department for Families and Communities.

Jeffreys, H., Hirte, C., Rogers, N., & Wilson, R. (2009). *Parental substance misuse and children's entry into Alternative Care in South Australia*. Adelaide: South Australian Department for Families and Communities.

Lonne, R., Parton, N., Thomson, J., & Harries, M. (2009). *Reforming child protection.* London: Routledge.

O'Donnell, M., Scott, D., & Stanley, F. (2008). Child abuse and neglect; Is it time for a public health approach? *Australian and New Zealand Journal of Public Health, 32*, 325-330.

Rubin, D., O'Reilly, A., Luan, X., & Localio, R. (2007). The impact of placement instability on behavioral well-being for children in foster care. *Pediatrics, 119*, 336-344.

Scott, D., & Swain, S. (2002). *Confronting cruelty: Historical perspectives on child protection in Australia.* Melbourne: Melbourne University Press.

Scott, D. (2007). Towards a public health model of child protection. *Communities, Families and Children Australia, 1*(1), 9-16.

AUTHOR

Professor Dorothy Scott
Centre for Child Protection
University of South Australia
GPO Box 2471, Adelaide SA 5001

Dorothy.A.Scott@unisa.edu.au

Rejoinder: A Responsive Approach to Child Protection

Nathan Harris, Valerie Braithwaite and Mary Ivec

Our article was intended to question the "regulatory" assumptions, whether acknowledged or unacknowledged, that underpin the operation of current child protection systems. Approaching child protection as a form of regulation is in itself a fairly uncommon approach, and orienting the debate around the unique questions that this perspective might ask is important in its own right. We hoped to elicit new thinking about the principles that governments and other actors might want to endorse to engage in a more fundamental debate about the aims and justifications of intervening in the lives of families. In doing so, we very partially outlined elements of responsive regulation theory (Ayres & Braithwaite, 1992; Braithwaite, 2002), which has guided our own recent thinking in this area. The invitation to write a rejoinder presents an opportunity to outline some elements of what we think might be key to a responsive regulation approach. Many of the points made by other contributors to the special edition resonate with these ideas, and some of the concerns might also be addressed through providing further detail.

RESPONSIVE VERSUS FORMALISTIC APPROACHES

Ian Ayres's and John Braithwaite's (1992) theory of responsive regulation (see also Braithwaite, 2002) was originally developed in a very different context from child protection. It argues that authorities will be more successful in regulating behaviour if they respond in a highly flexible way to the actions of those they are trying to regulate, while prioritising the use of dialogue and persuasion to solve whatever concerns have arisen. This approach contrasts with what Ayres and Braithwaite (1992) describe as "formalistic" approaches, which determine how to respond to cases based upon the category or seriousness into which a problem falls. The theory argues that more coercive forms of intervention will sometimes be necessary but that agencies will be more effective if they employ these only after they have attempted dialogue and negotiation first.

Responsive regulation is typically implemented through a regulatory pyramid that entails gradual escalation or deescalation of regulatory interventions in response to non-compliance or cooperation (see Figure 1). At the bottom of the pyramid are education and support and a setting of ground rules that make it clear that the child protection agency will intervene should parents be unable or unwilling to use the support available

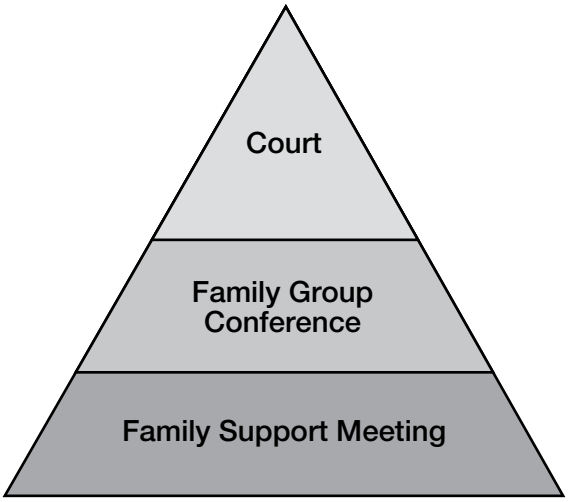

Figure 1. A possible pyramid for decision-making in child protection (Harris & Wood, 2008).

to care satisfactorily for the child. As cases move up the regulatory pyramid, interventions are directed at protecting the child through increasingly coercive means. While the bottom of the pyramid is principally about empowering families and their communities, there are increasing costs and increasing levels of coercion as cases are escalated up the pyramid. The assumption is that most families would like to solve problems that they have and so intervention at the bottom of the pyramid is all that is necessary. If not, the disincentives of increasingly coercive intervention exert pressure to move down the pyramid and behave more cooperatively. It is also hypothesised that "enabling" as opposed to "disabling" regulatory strategies will prove the most effective for both protecting and enhancing the lives of children.

INCREASING POLICY EMPHASIS ON EARLY INTERVENTION AND DIVERSION

The theory of responsive regulation has already received some attention in the context of child protection. A special issue of the *Journal of Sociology and Social Welfare* edited by Paul Adams (2004) contains an important collection of articles that explore the potential value of responsive regulation to social work. In the local policy context, a report commissioned by the Victorian government to guide the reform of child protection in that state also drew extensively on responsive regulation (Allan Consulting Group, 2003). As noted in Dorothy Scott's contribution to this issue (Scott, this issue), Victoria has subsequently implemented a number of programs to expand both universal and targeted services that assist parents. They have also expanded the range of options for diverting parents from the child protection system through services provided by the non-government sector, including the diversion of Aboriginal families through family group conferencing.

Indeed, general support for earlier, diversionary and non-statutory intervention with families has grown amongst policymakers, as is evidenced by recent government and non-government initiatives. In the UK, this trend has been in evidence for some time with the *Every child matters* (Chief Secretary to the Treasury, 2003) report and now the *Reaching out: Think family* report (Social Exclusion Task Force, 2007). In Australia, we have recently seen the publication of the Australian Research Alliance for Children and Youth (ARACY) commissioned report *Inverting the pyramid: Enhancing systems for protecting children* (Allen Consulting Group, 2009) and the recent *Protecting children is everyone's business: National framework for protecting Australia's children 2009–2020* (Council of Australian Governments, 2009). A related, but in some respects more ambitious, idea is that child protection should be addressed through a public health model (Scott, 2006, this issue); that the wellbeing of children should be evaluated using population level statistics that show how well children in our society are doing on a range of criteria that measure underlying wellbeing; and that initiatives should focus on increasing the proportion of the population that does well on these criteria. This would represent a significant shift towards dealing with the underlying causes of problems that lead to child protection concerns.

These approaches are consistent with responsive regulation to the degree that they promote a system-wide approach in which families experiencing problems are initially funnelled towards services that assist them to solve their problems themselves or with some support but that if problems continue, there is an increasing chance of the statutory system stepping in. However, an increased emphasis on early intervention and diversion only partially describes

what we would understand as a responsive regulatory approach, which we see as providing principles for how individual cases would be managed. While we are strong supporters of a redirection of resources into programs that address the underlying causes of concerns, we see responsive regulation as most important for defining what we do when these have failed—for circumstances where active regulation is required. Even when societies provide multiple opportunities for parents and/or children to receive help, some will fail to find it, accept it or benefit from it. It is when the primary and secondary support systems have failed that formal regulation, with the potential for coercive action, becomes important to ensure the safety and wellbeing of children.

RESPONSIVENESS WITHIN THE CONTEXT OF STATUTORY INTERVENTION

This is where the regulatory pyramid assists in applying principles for how the community might intervene more effectively as it seeks to navigate the inherent tensions between caring and controlling, as well as the challenge of interweaving informal and formal support for families (Burford & Adams, 1994). The regulatory pyramid takes as its starting point the presumption that parents will work with an authority to address concerns for their children and that initial intervention should be based on negotiating what the problems are and what might solve them. Escalation up the pyramid occurs if this is unsuccessful in improving the safety or wellbeing of the children. Further escalation up the pyramid should occur if intervention at the next level also proves unsuccessful. Equally, authorities should seek to deescalate down the pyramid whenever this is possible. An important consequence is that decisions about where on the pyramid a family is regulated are made retrospectively, based on the family's response to the concerns that have been raised, rather than made prospectively on the basis of seriousness of the concerns.

Rob Neff (2004) and Adams and Chandler (2004) have suggested that when the regulatory pyramid is applied to the child protection context, escalation up the pyramid brings about changes in how decisions are made rather than what decisions are made. At the bottom of the pyramid, the emphasis is on families and their immediate communities having the power to make decisions. At the top of the pyramid, we are removing their power to make decisions and we are placing those decisions in the hands of the court. What is decided as being the best way to promote the wellbeing of children may not differ at different levels of the pyramid. As Adams and Chandler (2004) state:

> For example, a decision to remove a child permanently from the care of their parents, through guardianship or other mechanisms, could be an outcome arrived at even at the base of the regulatory pyramid. That is, it could be part of a plan developed by the extended family… (p. 100)

While empowering families is emphasised at the bottom, at the top, it becomes increasingly coercive because decisions are imposed on families and they have fewer opportunities to contribute to what is decided.

As is pointed out by Paul Delfabbro (this issue), it would be insufficient to develop a regulatory model that relied solely on self-regulation and goodwill because there are some families whose children are not being cared for adequately and who won't cooperate. It is important that the community is able to intervene swiftly where the safety of children is compromised. It also needs the authority to intervene decisively to secure the ongoing wellbeing of children after it has exhausted efforts to empower parents to do so. The regulatory pyramid facilitates these requirements, but also maximises the opportunity for interventions to occur through building the capacity of parents and those close to them. One reason that this is a critical goal is that very high numbers of families are investigated each year (Australian Institute of Health and Welfare, 2009). In most cases, this involves low levels of intrusiveness, but these low levels can be perceived as highly threatening and unfair (Farmer & Owen, 1995; Baistow & Hetherington, 1998; Klease, 2008). Many of the families investigated will not require (or even be offered) intervention, yet maintaining trust and being able to facilitate support from universal or secondary services is critical. A second reason is that many families with serious and multiple problems will be willing to work with services

to solve or manage their problems, and there is no reason not to work in the most empowering, inclusive and respectful ways possible with even the most difficult cases. Experience as well as theory suggest that some individuals who are not inclined to engage with authorities do so because of the awareness that more coercive interventions might otherwise be employed (Adams & Chandler, 2004; Braithwaite, 2002; Braithwaite, Murphy & Reinhart, 2007). Finally, working through the options provided by a regulatory pyramid increases perceptions of legitimacy and procedural justice if court orders are ultimately required.

FAMILY GROUP CONFERENCING AND COMMUNITY CAPACITY BUILDING

Implementing responsive regulation in child protection requires significant change, not least because child protection systems have limited decision-making options available to form a regulatory pyramid. In cases where concerns are serious or families prove difficult to work with, the primary option in most English speaking child protection systems is to seek orders. One of the more important developments in child protection systems for building a more responsive approach is the family group conference (Marsh & Crow 1998; Connelly, 1994, 2006; Pennell & Burford, 2000; Merkel-Houguin, Nixon & Burford, 2003). These were first used in New Zealand, where they are the central decision-making process within the child protection system, but have been implemented in a much more limited and ad hoc manner in countries such as Australia (Harris, 2007, 2008) and the United Kingdom (Brown, 2003).

What is significant about family group conferences is the degree to which they empower families (Adams & Chandler, 2004; Burford & Adams, 2004; Pennell, 2004). Although decisions are made with advice from professionals and these decisions must satisfy the concerns of statutory agencies, the family and their immediate community play the central role in identifying how they can address concerns and the best way to implement solutions. This is significant because conferences are often convened where court orders would otherwise have been sought. The underlying philosophy that led to the introduction of conferencing is that nuclear families and their immediate communities, such as extended family and friends, have a right to be involved in making decisions about their children and that empowering this extended community to solve problems is more likely to result in better outcomes for children. A key reason for this is that family group conferences provide the opportunity to harness and protect the important relationships that children have with family members and extended networks, which Gale Burford and Judy Cashmore discuss in this issue as being so important to the success of interventions. Research suggests that family group conferences can be effective in both empowering families and increasing the safety of children and other family members (Marsh & Crow, 1998; Merkel-Holguin, Nixon & Burford, 2003; Pennell & Burford, 2000; Sundell & Vinnerljung 2004; Pennell, 2006).

Conferencing, and responsive regulation more broadly, signal a shift away from an approach that relies on professionals to collect, scan and interpret information derived through an investigative model and then apply the correct interventions to "clients". The confidentiality crisis highlighted by Nigel Parton (this issue) shows how important the role of trust is for children and parents. Although both groups may need and want help, they may be wary of coming forward for fear that they will be worse off with the loss of control that occurs as a result of statutory intervention. In order to gain the trust of children and parents, it is important that they know they will be given a significant say in how to solve their problems—that things won't simply be done against their wishes. This is all the more important when the benefits of intervention are often uncertain and, in some cases, intervention is detrimental to children, as is pointed out by Maria Harries (this issue). Conferences can be understood as regulated self-regulation in which families and their communities play the principal role in working out how to solve problems but with feedback and a degree of overview from the broader community, including professionals.

TOWARDS A RESPONSIVE MODEL

In this rejoinder we have briefly described the theory of responsive regulation and highlighted some

of the ways it applies to child protection practice, but are far short of describing a new model. The responsive pyramid and family group conferencing offer practical initiatives for making child protection systems more responsive. They enable much greater involvement of immediate and extended communities in making decisions and helping families overcome problems. They also provide the opportunity for much greater openness in the decisions that are made and, in doing so, enhance the quality of procedural justice. However, there are significant challenges to transforming current practices. Research shows that current investigatory practices often alienate and anger families, which undermines the potential for the kinds of engagement envisaged at the bottom of the pyramid. Mandatory reporting and risk assessment also pose difficulties for how to more successfully involve families and communities in problem resolution.

It seems to us that moving forward requires an ongoing conversation about the principles underlying child protection systems. Karen Healy's paper in this issue warns against getting sidetracked on clarity if that means narrowing the range of functions that government "units" are accountable for. Clarity, as Healy points out, should mean engaging with complexity. A broader debate about what can be achieved and how this can best be achieved is required. Marie Connolly (this issue) illustrates such complexity through drawing attention to domestic violence cases. Here, a "child protection" approach, which is focused primarily on the child, is not necessarily the most productive. We think it is time for a more fundamental debate that acknowledges the very real limits of coercive intervention, recognises the capacities that families and communities have and identifies the most productive ways to help children.

REFERENCES

Adams, P., & Chandler, S. (2004). Responsive regulation in child welfare: Systemic challenges to mainstreaming the family group conference. *Journal of Sociology and Social Welfare*, *31(1),* 93-116.

Allen Consulting Group. (2003). *Protecting children: The Child Protection Outcomes Project: Final report for the Victorian Department of Human Services*. Melbourne: Author.

Allen Consulting Group. (2009). *Inverting the pyramid: Enhancing systems for protecting children*. Melbourne, Vic: Author.

Australian Institute of Health and Welfare. (2009). *Child protection Australia 2007-08*. Canberra: Author.

Ayres, I., & Braithwaite, J. (1992). *Responsive regulation: Transcending the deregulation debate*. *Oxford socio-legal studies*. New York: Oxford University Press.

Baistow, K., & Hetherington, R. (1998). Parents' experiences of child welfare interventions: An Anglo-French comparison. *Children & Society*, *12*(2), 113-124.

Braithwaite, J. (2002). *Restorative justice & responsive regulation*: *Studies in crime and public policy.* Oxford: Oxford University Press.

Braithwaite, V., Murphy, K., & Reinhart, M. (2007). Taxation threat, motivational postures, and responsive regulation. *Law & Policy*, *29*(1), 137–158.

Brown, L. (2003). Mainstream or margin? The current use of family group conferences in child welfare practice in the UK. *Child & Family Social Work*, *8*, 331-340.

Burford, G. (this issue). Who's regulating whom? Challenges to families looking after their children. *Communities, Children and Families Australia.*

Burford, G., & Adams, P. (2004). Restorative justice, responsive regulation and social work. *Journal of Sociology and Social Welfare*, *31*(1), 7-26.

Cashmore, J. (this issue). Relational aspects in the regulation of systems for protecting children. *Communities, Children and Families Australia.*

Chief Secretary to the Treasury. (2003). *Every child matters*. London: Stationery Office.

Connolly, M. (1994). An act of empowerment: The Children, Young Persons and their Families Act (1989). *British Journal of Social Work*, *24*(1), 87-100.

Connolly, M. (2006). Up front and personal: Confronting dynamics in the family group conference. *Family Process*, *45*(3), 345-357.

Connolly, M. (this issue). Professional responses: Who does what in domestic violence and child protection? *Communities, Children and Families Australia.*

Council of Australian Governments. (2009). *Protecting children is everyone's business : National framework for protecting Australia's children 2009-2020: An initiative of the Council of Australian Governments*. Canberra: Dept. of Families, Housing, Community Services and Indigenous Affairs. Retrieved September 2, 2009, from http://www.fahcsia.gov.au/sa/families/pubs/framework_protecting_children/Pages/default.aspx, http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/docs/child_protection_framework.pdf.

Delfabbro, P. (this issue). Beyond political imperatives and rhetoric in child protection decision-making. *Communities, Children and Families Australia.*

Farmer, E., & Owen, M. (1995). *Child protection practice: Private risks and public remedies: A study of decision-making, intervention and outcome in child protection work*. London: HMSO.

Harries, M. (this issue). The downside of regulation and the opportunities for public engagement about the care and protection of children. *Communities, Children and Families Australia.*

Harris, N. (2007). *Mapping the adoption of family group conferencing in Australian states and territories*. Adelaide: Australian Centre for Child Protection.

Harris, N. (2008). Family group conferencing in Australia 15 years on. *Child Abuse Prevention Issues*, *27*, 1-19.

Healy, K. (this issue). Critical questions about the quest for clarity in child protection regimes. *Communities, Children and Families Australia.*

Klease, C. (2008). Silenced stakeholders: Responding to mothers' experiences of the child protection system. *Children Australia*, *33*(3), 21-28.

Marsh, P., & Crow, G. (1998). *Family group conferences in child welfare*: *Working together for children, young people, and their families*. Malden, MA: Blackwell Science.

Merkel-Holguin, L., Nixon, P., & Burford, G. (2003). Learning with families: A synopsis of FGDM research and evaluation in child welfare. *Protecting Children*, *18*(1&2), 2-11.

Neff, R. (2004). Achieving justice in child protection. *Journal of Sociology and Social Welfare*, *31*(1), 137-154.

Parton, N. (this issue). How child centred are our child protection systems and how child centred do we want our child protection regulatory principles to be? *Communities, Children and Families Australia.*

Pennell, J., & Burford, G. (2000). Family group decision making: Protecting children and women. *Child Welfare*, *79*(2), 131-158.

Pennell, J. (2004). Family group conferencing in child welfare: Responsive and regulatory interfaces. *Journal of Sociology and Social Welfare*, *31*(1), 117-135.

Pennell, J. (2006). Restorative Practices and Child Welfare: Toward an Inclusive Civil Society. *Journal of Social Issues*, *62*(2), 259-279.

Scott, D. (this issue). Regulatory principles and reforming possibilities in child protection: What might be in the best interests of children? *Communities, Children and Families Australia.*

Social Exclusion Task Force. (2007). *Reaching Out: Think family*. London: Cabinet Office.

Sundell, K., & Vinnerljung, B. (2004). Outcomes of family group conferencing in Sweden: A 3-year follow-up. *Child Abuse & Neglect, 28*(3), 267-287.

AUTHORS

Professor Valerie Braithwaite
Regulatory Institutions Network
The Australian National University
Canberra ACT 0200, Australia

Valerie.braithwaite@anu.edu.au

Dr Nathan Harris
Regulatory Institutions Network
The Australian National University
Canberra ACT 0200, Australia

Nathan.harris@anu.edu.au

Mary Ivec
Regulatory Institutions Network
The Australian National University
Canberra ACT 0200, Australia

Mary.ivec@anu.edu.au

Guidelines for Contributors

Communities, Children and Families Australia is the professional journal of the Australian College for Child and Family Protection Practitioners [with support from the Institute for Child Protection Studies of the Australian Catholic University, and the ACT Office for Children, Youth and Family Support of the Department of Disability, Housing and Community Services]. Through the journal the College seeks to promote practice research, teaching and learning in the area of improving outcomes for vulnerable children, families and the communities they live in. It aims to promote the profile and professionalism of people working with vulnerable children and families in statutory and non-statutory practice. It also seeks to reflect the current views about and by the child protection profession by encouraging cross-disciplinary, cross sectoral thinking and research.

The Journal is interested in publishing review articles and original research, practice and theoretical articles on individual, family, group and community work; ethical and professional behaviour; and value, ideological and ethical debates facing the profession.

All articles submitted for publication are subject to peer review (articles are reviewed with due respect for authors' confidentiality). The Editorial Board has authority for determining the editorial content of the journal and may make minor alterations to articles on their own initiative. The Editorial Board may accept or return articles for amendment and reserves the right to refuse any articles for publication. The decision of the Editorial Board is final.

Articles must be the original work of the author(s) and are submitted on the understanding that the content has not been published or submitted for publication elsewhere.

Copyright

Papers accepted for publication become the copyright of the Journal and authors will be asked to sign a transfer of copyright form. In signing the transfer of copyright it is assumed that the author(s) has obtained permission to use any copyrighted or previously published material. All authors must read and agree to the conditions outlined in the Copyright Assignment Form. Articles cannot be published until a signed Copyright Assignment Form has been received.

Preparation of articles

Contributors should submit one electronic copy of an article to the Editorial Board. Articles should be written in a clear, concise, direct style and adhere to the following requirements:

1. Typed, double-spaced.
2. All pages should be numbered consecutively in the top right hand corner of each page, beginning with the title page.
3. Top, bottom and side margins should be at least 3cm.
4. Empirical and theoretical articles should not exceed 5000 words (excluding references and abstract); and
5. Practice papers should not exceed 1000 words.

The following guidelines apply, where applicable, to all submitted articles:

Title page: The title page should contain (i) the title of the paper (no more than 12 words); (ii) the full name(s) of the author(s); (iii) the name and address of the institution(s) to which the work should be attributed; (iv) the position held by the author(s); and (v) the mailing address, telephone and facsimile numbers and email address of the author responsible for correspondence about the article and to whom requests for proofs and reprints should be sent.

Abstract and key words: All articles must include a brief, but informative, abstract of no more than 150 words. The abstract should summarise the context or background for the study and should state the study's purposes, basic procedures, main findings and principal conclusions.

Text: Authors should consider the use of appropriate subheadings to identify specific sections of their article. All articles should include an introduction that provides a background to the article, describes its purpose and outlines its relevance to the child protection field.

Acknowledgements: The source of financial grants and other funding and the contribution of colleagues or institutions should be acknowledged. Personal thanks and thanks to anonymous reviewers are not appropriate.

References: The Journal uses the Author, Date (Harvard) System of referencing. References should be included in the text, giving the author's surname and year of publication (with page number if necessary). Note that initials are only added to surnames within text to distinguish between authors of the same surname. Where a reference contains the names of more than two authors, all names are given the first time the reference is cited; on subsequent occasions only the first name followed by 'et al.' is required. At the end of the article references are arranged in alphabetical order of authors' surnames and chronologically for each author. The author's surname is placed first, followed by the year of publication in parentheses, examples are as follows:

Books:

Smith, N.J. & Jones, M. (1979), *A Companion Guide to Good Authorship*. Social Work Press, Sydney.

Journal articles:

Wright, O.R. (1969), Summary of Research on the Selection Interview Since 1964. *Personal Psychology,* 22, 391-413.

Chapter or article within a book compiled or edited by others:

Morris, J.S. (1986), The art of the review. in: Warren, E.G. (ed.), *Innovations in Editing,* Bromley Press, Sydney, 8-20.

Electronic material:

Swan, N. & Tonkin, A. (2003), The health report: Mystery over hidden risk factors for heart disease is cleared up. ABC Radio National [homepage on the internet]. Australian Broadcasting Corporation, Australia; [cited 11 September 2003]. Available from URL: http://www.abc.net.au/rn/

For further information please consult the Style Manual for Authors, Editors and Printers (2002), Sixth edition, John Wiley & Sons Australia, Brisbane.

Appendices: These should be placed at the end of the paper, numbered in Roman numerals and referred to in the text. If written by a person other than the author of the main text, the writer's name should be included below the title.

Spelling: Spelling should conform to the usage of the Macquarie Dictionary and abbreviations should be kept to a minimum. Single quotation marks as opposed to double are recommended. Frequent or lengthy quotations should be indented (no quotation marks are then necessary) and placed in italics.

Articles that do not comply with the style and format requirements will be returned without review.

Please send all articles via email, for the attention of The Editorial Board, Communities, Children and Families Australia, at: icps@acu.edu.au

Author material archive policy

Authors who require the return of any submitted material that is accepted for publication should inform the Editor after acceptance. If no indication is given that author material should be returned, the Australian College for Child and Family Protection Practitioners will dispose of all hardcopy and electronic material two months after publication.

Communities, Children and Families Australia

Volume 4, Number 1 – October 2009

Journal contents

The cover artwork is entitled *The Dreamtime Corroboree Frog* by artist, Paul Mundy.

Acknowledgment: Paul would like to thank the Ngarigo people, his family for passing on to him his talent and Di Panchaud, his art teacher, for working with and encouraging him.