Overrepresentation is Not Accidental: Systemic Racism in Australian Child Protection and Out-Of-Home Care Systems

Teaching Note

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Biography: Dr Jacynta Krakouer (she/her) (BSc, MSW, MSP, PhD Melb) is a Mineng Noongar woman originally from southern Western Australia who lives and works on Wurundjeri Country in Naarm, and occasionally works on Kaurna Country in Tarndanya. She is an Enterprise Fellow in the UniSA Justice and Society Unit at the University of South Australia, affiliated with the Australian Centre for Child Protection. Jacynta's PhD in social work at The University of Melbourne focused on cultural connection for First Nations children and young people in out-of-home care in Victoria. Jacynta's expertise centres around child protection and out-of-home care practices, policies and systems, particularly for First Nations children, young people, families and communities. She is passionate about Indigenous self-determination and Indigenous-led research in these contexts. A social worker by background, Jacynta previously worked as a Research Fellow in the Health and Social Care Unit at Monash University, and as an Associate Lecturer in the Department of Social Work at the University of Melbourne. Jacynta also has a current appointment as an Honorary Senior Fellow in the Melbourne School of Population and Global Health at The University of Melbourne.

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Abstract

The overrepresentation of Aboriginal and Torres Strait Islander (hereafter, Indigenous) children in Australian child protection and out-of-home care systems is not a new phenomenon. While there are growing concerns over a second Stolen Generations, this perspective article highlights the continuity of overrepresentation, and systemic racism, in Australian child protection and out-of-home care systems over time. In highlighting the continuities between past and present child welfare practices, this article demonstrates that systemic racism is an ongoing feature of Australian child protection and out-of-home care systems which drives overrepresentation. Indigenous ownership of solutions, and radical transformation, are required to disrupt this status quo.

Keywords: *Aboriginal and Torres Strait Islander; Indigenous; Child protection; Out-of-home care; Overrepresentation; Systemic racism*

It is well documented that Indigenous children are overrepresented at every stage in Australian child protection (CP) and out-of-home care (OOHC) systems, from notification, investigation, substantiation and placement in OOHC (Australian Institute of Health and Welfare [AIHW], 2022, Liddle et al., 2021). Between 2020-2021, 58,034 Indigenous children received CP services in Australia at a rate 8 times higher than non-Indigenous children (AIHW, 2022). At June 30 2021, 19,480 Indigenous children were in OOHC at a rate 11 times higher than non-Indigenous children (AIHW, 2022). Compared to non-Indigenous children, Indigenous children were also 10 times more likely to be on a care and protection order and 6.9 times more likely to be the subject of a child maltreatment substantiation (AIHW, 2022). While this overrepresentation has sparked growing concerns of a second Stolen Generations, Indigenous overrepresentation in care is not a new phenomenon. Rather, it is an enduring feature of Australian CP and OOHC systems. Written from an Indigenous standpoint by an Indigenous academic, this article aims to highlight the continuity of systemic racism in Australian CP and OOHC systems over time. In doing so, this article adds new insights into how CP and OOHC systems are experienced as sites of elimination for Indigenous peoples in Australia.

Explaining overrepresentation in the Australian context

Non-Indigenous social work scholar Clare Tilbury (2015) attributes Indigenous overrepresentation in Australian CP and OOHC systems to a complex interaction between historical and contemporary macro, micro, individual and systemic factors. Tilbury argued that overrepresentation is a consequence of the enduring effects of colonisation – which has resulted in Indigenous socioeconomic disadvantage across multiple measures – coupled with systemic racism, bias, and a lack of cultural competence in tertiary-intervention dominated statutory systems. However, settler-colonial theory (Wolfe, 2006), coupled with theorising on Indigenous childhoods (Nakata, 2018), help me to articulate an alternative explanation for Indigenous overrepresentation in CP and OOHC systems, which historically contextualises Indigenous experiences of socioeconomic disadvantage. Wolfe (2006) asserted that, while official assimilation policies have ended, the end goal of settler-colonial societies is colonial completion, which requires the elimination of the 'native' via genocide or assimilation. Colonial completion cannot be achieved until an inclusive national identity has been established. Furthermore, Torres Strait Islander political theorist Sana Nakata (2018) contended that these paternalistic interventions often target Indigenous peoples during childhood out of a desire to produce future citizens who will not undermine the political legitimacy of the state.

While settler-colonial theory and theorising on Indigenous childhoods are contestable, these theories can be used to demonstrate that what is at stake for Indigenous children and young people in CP and OOHC systems is a matter of survival against eliminatory logics. Australian CP and OOHC systems have operated differently for Indigenous children and families, particularly throughout the Stolen Generations where between 10-30% of all Indigenous children were removed from their families, communities and Countries (Wilson, 1997).

Continued overrepresentation

After the official end of assimilation policies, overrepresentation of Indigenous children in OOHC persisted. A 1977 Victorian Aboriginal Child Care Agency (VACCA) memo reported that 90% of Indigenous children placed in non-Indigenous foster care homes were later returned to institutional care, thus indicating that Indigenous children were not returning home, or receiving good quality care, at this time (VACCA, 2018). Thus, high numbers of Indigenous children were residing in institutional care throughout the 1970s (VACCA, 2018).

There is also evidence that Indigenous overrepresentation in CP and OOHC continued throughout the 1980s and 90s. For example, in 1993, there were 2,419 Indigenous children in care out of a total of 12,363 of all children in care: this equates to 19.7% of Indigenous children in care, despite Indigenous children only constituting 2.7% of all Australian children at the time (Wilson, 1997). This overrepresentation was even higher in the Northern Territory, with 42.3% of the OOHC population being Indigenous in 1993 (Wilson, 1997). The "Bringing Them Home" report (Wilson, 1997) named systemic racism as one of the reasons for enduring Indigenous overrepresentation in CP and OOHC systems.

Contemporary continuities with historical child welfare practices

In a recent systemic inquiry into CP and OOHC in New South Wales led by Cobble Cobble law professor Megan Davis (2019), the continuities between past and present CP practices with Indigenous peoples were reverberated. These continuities included police being used to remove Indigenous children from families; Indigenous babies being removed from hospitals without parents' awareness that CP intended to take their baby; CP systems being motivated to 'rescue' Indigenous children from poverty; and CP workers ignoring and failing to return Indigenous parents' phone calls (Davis, 2019). While some of the reasons for Indigenous child removals, such as chronic substance use and family violence, can result in genuine protective concerns for all children, other reasons – such as poverty and cultural differences in child-rearing practices – unfairly discriminate against and stigmatise Indigenous families.

Systemic racism in Australian child protection and out-of-home care systems

Systems that have differentiated impacts on racial groups, even when unintentional, are systemically racist. Systemic racism is not an obvious form of racism, particularly within CP and OOHC contexts. Rather, it operates through privileging whiteness, which Frankenberg (1993) conceives of as a location of structural privilege, as well as unnamed cultural practices and a position through which non-white people are viewed (Frankenburg, 1993). Within CP practice, whiteness operates through normalising Western, middle-class cultural norms of parenting and simultaneously, demonising other cultural ways of parenting that do not accord with Western, middle-class cultural norms. While understandings of children's *best interests* are historically and culturally bound, and are therefore subject to interpretation and change, for Indigenous peoples, children's best interests have historically been premised on notions of whiteness. This has resulted in concerted assimilation efforts over time, both historically and into the present.

Within contemporary Australian CP and OOHC systems, systemic racism has been most notably evident via the intensive governance and over-surveillance of Indigenous families and childhoods seen during the paternalistic Northern Territory Emergency Intervention (NTER), which commenced in 2008. The NTER was a controversial measure that suspended the *Racial Discrimination Act 1975 (Cth)* to control and correct "dysfunctional" Indigenous family life in the NT (Macoun, 2011). This racially motivated intervention intensively governed the lives of Indigenous children and families via punitive measures such as welfare quarantining and the deployment of the military.

Systemic racism is also apparent in the way that CP systems are deployed against Indigenous peoples where Indigeneity is seen as a prima facie risk factor for CP intervention. As an example, in one Australian study, administrative data retrieved from a CP authority in Queensland were used to examine the factors associated with CP recurrence. It was found that "Indigenous status was a stronger predictor of subsequent reports and investigations than a rating of 'high risk' on the risk assessment tool" (Jenkins et al., 2018, p. 188). In another study, Western Australian administrative data were analysed "to determine the factors associated with an increased risk of infant removal" (O'Donnell et al., 2019, p. 90), where it was found that Indigeneity accounted for almost double the risk of infant removals.

While child maltreatment is complex (and there are cases where the State has a responsibility to intervene to protect children from harm), structural inequality is too readily overlooked. CP systems do not consider and combat structural inequality and the broader macro factors which impact on a family's ability to support and care for their children. Instead, CP in Australia tends to be risk-averse and individually focused (Connolly & Katz, 2019).

Underlying all CP interventions are judgements about normative parenting (Gupta, 2017). For Indigenous peoples, normative parenting is compared to a white, Western, middle-class ideal, which does not suit collectivist communities where child rearing extends beyond the nuclear family. Lack of awareness of these differences can lead to misplaced child maltreatment concerns that construct Indigenous family life as problematic. Systemic racism subsequently underpins overrepresentation through this problematisation of Indigenous family life. This is concerning considering the entrenched socioeconomic disadvantage experienced by many Indigenous families who have contact with CP services.

Compared to non-Indigenous children, Indigenous children have a higher percentage of child maltreatment substantiations in the lowest socioeconomic areas (in 2020-2021, the rates were 42.5% for Indigenous children and 31.7% for non-Indigenous children) (AIHW, 2022). Indigenous children are also more likely to be the subject of a neglect substantiation (30% in 2020-2021) compared to non-Indigenous children (12% in 2020-2021) (AIHW, 2022). Rather than looking to the broader issues impacting on a family's circumstances, poverty and neglect have been constructed as issues that children need to be rescued from, not supported to thrive in.

Neglect substantiations centre around the persistent inability to provide for a child's basic needs, such as clothing, food, and shelter. But consideration of parental intent is overlooked when determining whether child neglect exists (Gupta, 2017). It is one matter to deliberately withhold food or accommodation from a child when means are readily available; it is another when means are unavailable. However, rather than being supported with material resources, Indigenous parents tend to be blamed for their 'dysfunction' by CP systems. Solutions to child maltreatment cases focus on correcting individual 'parental pathology' – such as parents obtaining housing or undertaking parenting courses – while structural inequality is overlooked, as evidenced in the "Family is Culture" review (Davis, 2019).

Conclusion and recommendations

While we can blame entrenched socioeconomic disadvantage for disproportionate Indigenous child removals, the causes that are attributed to overrepresentation – including poverty, family violence and substance abuse – can be explained by systemic racism. We need to interrogate why Indigenous children are also more likely to enter care younger, remain in care longer, and are less likely to be reunified with their parents or caregivers (AIHW, 2022). We need to name systemic racism as the driver behind the overrepresentation.

At this juncture, it is not enough to simply reform Australian CP and OOHC systems. This is because they operate on a logic that does not serve the collective interests of Indigenous peoples. In highlighting the continuity of systemic racism over time, the importance of radically transforming Australian CP and OOHC systems is apparent. This requires Indigenous peoples and communities to own solutions, and for social workers and policy makers to critically interrogate their ethnocentrism and their potential complicity in upholding the status quo.

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