Chapter One

New Directions in Juvenile Justice Reform in Australia

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In recent years in Australia there has been growing public and media concern about what is perceived to be an escalation in offending behaviour by young people, and the juvenile justice system's apparent inability to deal effectively with that offending. In response, a range of parliamentary inquiries have been set up by various State Governments. Since 1990, the Western Australian Select Committee into Youth Affairs, the Queensland Parliamentary Criminal Justice Committee, the New South Wales Standing Committee on Social Issues, and the South Australian Select Committee on the Juvenile Justice System have all been directed to examine and make recommendations regarding current approaches to the processing and treatment of young offenders.

These inquiries, and other reviews of juvenile justice policy, have displayed a strong interest in the juvenile justice system now operating in New Zealand—in particular the innovative concept of family group conferences established under the Children, Young Persons and Their Families Act (1989). Consequently, adaptations of these family group conferences are now either operating, or are about to be established, in at least five Australian States. The most well known of these is in Wagga Wagga (NSW) where conferences have been part of a police cautioning program since 1991 (see Chapter 3). In Western Australia, family group conferences have been included as a strategy option available to the newly created Youth Justice Teams (see Chapter 5). In South Australia, new legislation proclaimed on 1 January 1994 introduces conferencing as a second-level diversionary procedure in a restructured juvenile justice system (see Chapter 4). A non-government youth agency in Victoria is
considering the introduction of a pilot conferencing program for young offenders referred to it by the Children's Court. Finally, in August 1993 the Minister responsible for policing in the ACT announced that the Australian Federal Police would introduce and evaluate family group conferencing in Canberra.

In view of this rapid introduction of family conferences into juvenile justice systems in Australia and the considerable level of interest which they have aroused, the Australian and New Zealand Society of Criminology and the Criminology Department at The University of Melbourne convened a one-day seminar, entitled "Family Group Conferences: Debating the Issues". This was held in Melbourne in June 1993 and brought together from around the country academics and senior decision-makers in juvenile justice. The first half of the seminar focused on presentations by proponents of family group conferences. All of these contributors had played a key role in the development or evaluation of the various conferencing systems. The second half consisted of papers from academics and practitioners who raised a number of philosophical and implementational concerns about the new approach.

This book is a result of the seminar. It brings together all of the papers delivered in the two key sessions in a way that maintains and reflects the fundamental debate structure of the original program.

As the organisers of the seminar, we were concerned that the term "family group conference" was being used to describe systemic changes in juvenile justice which, while sharing some features, also differed significantly on important dimensions. We therefore felt that there was a need to clarify exactly what was being referred to when people spoke of "family group conferences". We were also concerned that this mechanism was being introduced into Australian juvenile justice systems without sufficient informed debate regarding its potential contributions and problems.

**Juvenile Justice Reforms in Australia: A Brief History**

Interest in family group conferences comes at a time when many States in Australia are again reviewing the way in which they process young offenders. The history of juvenile justice in this country has been one of constant review, amendment and reform to legislation, policy and practice. This process is partly a consequence of the complexity of the objectives of juvenile justice which have oscillated between, and have attempted to reconcile, two apparently conflicting agendas, that is, to punish young people for offending behaviour while at the same time acknowledging the
implication of their particular age status and attending to their welfare needs.

In recent years academics have conceptualised juvenile justice practice in terms of a "justice model" or a "welfare model". These terms provide a short-hand way of capturing variations in emphasis between different approaches to the treatment and processing of young offenders. According to this dichotomous categorisation of juvenile justice, the "welfare model" is associated with paternalistic and protectionist policies, with treatment rather than punishment being the key goal. From this perspective, because of their immaturity, children cannot be regarded as rational or self-determining agents, but rather are subject to and are the product of the environment within which they live. Any criminal action on their part can therefore be attributed to dysfunctional elements in that environment. The task of the justice system then, is to identify, treat and cure the underlying social causes of offending, rather than inflicting punishment for the offence itself (Naffine, Wundersitz & Gale 1990, p. 193).

The "justice model", on the other hand, "gives priority to the liberty and agency of its individual citizens" (Naffine 1993, p.3). It assumes that all individuals are reasoning agents who are fully responsible for their actions and so should be held accountable before the law. Within this model, the task of the justice system is to assess the degree of culpability of the individual offender and apportion punishment in accordance with the seriousness of the offending behaviour. In so doing, the individual must be accorded full rights to due process, and state powers must be constrained, predictable and determinate (Naffine & Wundersitz 1994, p. 236).

For much of this century, the "welfare model" has been in the ascendancy in Australia. The establishment of a separate system of justice for young people was, in itself, an acknowledgment that children needed to be treated differently from adults. From the beginning, children's courts were intended to be more informal and compassionate than adult courts (Naffine 1993, p. 5) and to allow for greater consideration of the young person's personal situation in determining the state's response to their behaviour. As a consequence children brought before the court for offending behaviour often were not charged with an offence, but rather were dealt with in the same way as were children who were the victims of parental neglect or abuse: that is, they were considered to be in need of care and placed under the guardianship of the welfare department (Naffine, Wundersitz & Gale 1990, p. 195).

But even when the "welfare model" was at its strongest in Australia, justice elements were never entirely jettisoned, with children's courts still retaining many of the features of the adult criminal courts (Seymour 1993). This underscores a point frequently forgotten in discussions of juvenile
justice—that the so-called "welfare" and "justice" models are in fact conceptual tools, and no juvenile justice system has ever fitted exclusively into either one or other of these categories. In fact, Pratt (1989) has argued that neither "model" provides an appropriate description of the current juvenile justice system in England, even though the justice/welfare rhetoric was central to analyses of juvenile justice practices in that country. The same comment could apply with equal validity to Australian systems. The problem with framing juvenile justice reforms in this way was the underlying assumption that the situation of young people could be similarly dichotomised. The fallacy of this assumption has become increasingly apparent as we begin to observe the consequences for young people of juvenile justice initiatives which were implemented in the late 1970s and 1980s.

During these last two decades, there were several key shifts in policy direction which underpinned a number of changes in juvenile justice. The first of these—the "back-to-justice" movement—was framed by the discourse of the "justice" and "welfare" models and called for a shift away from an emphasis on securing the welfare needs of the young person to ensuring young people's access to formal justice. This entailed the provision of greater procedural protections for the young accused person as well as the requirement that they accept greater responsibility for their offending behaviour. South Australia was the first State in this country to opt for a "back-to-justice" approach. Other States subsequently followed suit, so that by 1992, all except Tasmania had introduced major reforms to their juvenile justice systems which placed greater emphasis on the twin justice concerns of due process and accountability. In general, these reforms included a clearer separation between the way in which offending children and children in need of care were dealt with by the Children's Court; greater procedural protections (including the right to be forewarned of the charges, the right to legal representation and the right of appeal to a higher court); and the introduction of determinate sentencing. Nevertheless, elements of the "welfare model" were not completely rejected. All States continued to recognise, in principle at least, the particular status of the young person in society and the need to consider their future well-being in terms of their continuing education, employment and relationship to the family.

The second major reform agenda during the 1970s and 1980s was the movement towards destructuring. Here the aim was to remove young people from the formal juvenile justice system as much as possible. This move was consistent with the popularity of "labelling theory" in academic criminology. This perspective drew attention to the potentially negative consequences for young people of being formally "labelled" as an offender
or troublesome young person. In one of the first statements of this perspective, Lemert (1967) argued that despite the intention of juvenile justice policies to prevent further offending by the young person, the outcomes may in fact be the reverse, that is, contact with the formal system may increase the likelihood that the young person will engage in further troublesome behaviour.

The degree to which the labelling perspective directly informed policy decision-making is unclear (Polk 1987). Nevertheless, a number of reforms were implemented during the 1970s and 1980s which were consistent with the recommendations that flowed from it. At one level, the general thrust of these reforms was to keep young people, especially first or minor offenders, out of the formal court system for as long as possible by diverting them to alternative programs or by developing different, more informal ways of processing them. At another level, these reforms aimed to keep those young people who were processed through the court system out of institutions. "Diversion" and "deinstitutionalisation" thus became popular catchcries in Australia during this period. The nature of these reforms, however, varied across the different States. For example, South Australia and Western Australia experimented with informal children's panels as alternatives to formal court processing. Each panel consisted of a police officer and social worker who met informally with the young person and his/her parents to administer a formal counselling and warning. Victoria and Queensland, on the other hand, implemented a police cautioning system, which annually diverted approximately 60 per cent of young people from the formal court system. As part of the move towards deinstitutionalisation, most States also expanded the range of community-based sentencing options available to the courts.

Although these reforms are relatively new to Australia (with some States such as Queensland only recently moving towards a justice approach to its young offenders, and New South Wales introducing a diversionary cautioning process in the mid 1980s) increasing expressions of dissatisfaction with these new reforms and legislative changes are now emerging. A backdrop to these concerns, especially amongst academics, is a growing awareness of the unanticipated consequences of some of these changes. In terms of the "back-to-justice" movement, there is now acknowledgment that, despite all the rhetoric of according young people access to due process, it is very difficult for these young people to actually invoke these rights. Very rarely, for example, do they take up their right to contest the case against them by pleading not guilty and forcing the prosecution to plead the case. By so doing, they abandon many of the procedural protections implicit in due process (Naffine, Wundersitz & Gale 1990, p. 196). In effect, despite the rhetoric, they remain passive
spectators in a justice system which continues to be dominated by the professionals.

In terms of diversion, the most noticeable criticism is that of net-widening. This concept refers to the process by which, rather than reducing the number of young people entering the formal juvenile justice system as intended, some of these reforms actually increased the numbers by bringing into the system, either directly or indirectly, young people who otherwise would not have had formal contact with the system. Other unanticipated consequences have been documented in the United States, including the increase in referrals of young people to other formal agencies such as medical, psychiatric and drug programs. Reviews of diversion and deinstitutionalisation have also drawn attention to problems relating to: the extent to which the rights of young people selected for informal processing are contravened; whether or not the community-based programs offer true alternatives to imprisonment; and whether or not the ultimate objectives of these programs are really in the best interests of young people (Cohen 1985).

While discussions in the academic literature may have generated some of the debate about current juvenile justice processing in Australia, the major push for change which has emerged during the 1990s has been motivated by more political and pragmatic concerns. It derives from two generally opposing forces. On the one hand, there are those—generally referred to as the "law and order" conservatives—who want increasing accountability of young people and harsher sentencing. Their argument is that the penalties handed down by children's courts are too lenient, especially in the case of serious offenders or recidivists. As a result, it is claimed that the community is not being adequately protected against the illegal behaviour of juveniles and young people are not being deterred from future offending. The interests and concerns of victim lobby groups are often meshed with this agenda (see Chapter 8). These groups maintain that, from the victim's perspective, the current system has failed on two counts; it has excluded them from the actual process itself, to the point where they are often not even informed about the outcomes imposed on the young person who has offended against them; and they have generally been denied any form of reparation or restitution.

The second push for reform derives from those people working in the field with young people, and relates to the consequences of having separated "care" and "offending" cases. As noted above, this separation was a key feature of the "back-to-justice" movement of recent decades. Youth workers are becoming increasingly frustrated by the inadequacy of services to address the personal well-being of young people which has
resulted from a greater focus on punishing offenders, and decreasing state responsibility for the care of young people.

While their essential objectives and concerns are quite different, all groups—whether they be "law and order conservatives", victim advocates or youth workers—have expressed interest in family conferences. Each group, in fact, has been able to identify elements in this new approach to the treatment of young offenders which mesh with their own reform agendas.

**Family Group Conferencing—What is it?**

In each of the settings in which family group conferences have been introduced as part of the juvenile justice system, the participation of families and victims is considered a key feature of the process. Essentially, a family group conference is intended to be a relatively informal, loosely structured meeting in which the offender and her or his extended family (and a legal advocate in some systems) are brought together with the victim, her/his supporters, and any other relevant parties to discuss the offending and to negotiate appropriate responses. There is clearly an overlap between these conferences and alternative dispute resolution programs. There is also some overlap with earlier diversionary ideas, with a major objective being to divert young people from the formal court process and to reduce the formality and coerciveness of the hearing.

While there is some consistency in the form of family group conferences, a reading of Chapters 2 through 5 in this book makes clear that there are a number of differences in the way in which they operate in the various juvenile justice systems. However, one of the objectives of family conferences is generally "to make young people accountable for their offences by encouraging them to take responsibility for their actions, to make good the damage done, or to accept a penalty" (see Chapter 2). The direct involvement of victims in decision making is an important aspect of this process of accountability. Through direct confrontation with the offender, it is argued that victims are able to express their anger and frustration, and have their needs taken into account.
It also enables them to participate in the process of restitution and reparation.

Another feature of the conferences which is stressed in each of the settings is the involvement of parents. It is argued that by making the extended family central to the decision-making process, family group conferences empower families. At the same time, the conferences are considered to provide a means of ensuring that families take more responsibility, and are held accountable for, their children's behaviour.

There are, however, some differences in emphasis in the objectives for the conferences. For example in New Zealand, where the conferences were first implemented, the overall framework was intended to "emphasise a 'justice' model including accountability (of key decision makers), due process and diversion" (see Chapter 2). However, there is little indication in the rhetoric used to justify them, their stated objectives, or in the form they take, that these principles (other than diversion) are central to the implementation of family group conferences in other settings.

The development of family group conferences in New Zealand grew directly out of a concern to ensure that the juvenile justice system was culturally sensitive to the circumstances and needs of the Maori community. It is claimed that the New Zealand process of family group conferences meshes with the ways of the traditional Maori culture and offers young people's immediate community the opportunity to provide appropriate support and guidance. In Western Australia there has been consultation with the Aboriginal community and two of the five aims of the Juvenile Justice Teams refer to the involvement of the Aboriginal community. Cultural sensitivity is not explicitly stated as a key concern in the development of family conferences elsewhere in Australia.

The use of family conferences as part of the police cautioning program in Wagga Wagga differs in a number of ways from their use in other States. It is in Wagga Wagga that the objectives and justifications for the process are now grounded in the notion of "reintegrative shaming" developed by Braithwaite (see Chapter 3). Family group conferencing initially developed in Wagga Wagga with a set of objectives that were similar to those in other States, such as to reduce the number
of cases appearing in court, increase the options available to police and increase the likelihood of restitution and compensation for the victim. Across time, however, descriptions of the process in Wagga Wagga have increasingly emphasised the opportunities to facilitate the participation of the community in the "reintegration" of the young offender. In fact, Braithwaite (see Chapter 11) suggests that a more appropriate term for describing the conferences is "community accountability conferences".

The development of family group conferences in settings other than Wagga Wagga was not informed by reference to the theory of "reintegrative shaming". In fact when one examines the objectives for family group conferencing, there are few references to the enhancement of life opportunities for young people. Instead, the key goals are most often expressed in terms of the benefits to victims, families and police. For example, the aims of the implementation of family group conferences in South Australia that refer most directly to the young person speak to the need to hold young people accountable for their behaviour, and the need to increase both the severity and the range of available penalties (see Chapter 4). Further, there are no identifiable mechanisms in any of the settings which can be seen to truly hold the community accountable for their actions in regard to the young person.

It is in reviewing the various objectives for family group conferencing that the appeal to opposing audiences becomes clear. The "law and order" lobby is impressed by the calls to hold young people and their families more accountable and to allow victims a direct contribution to the establishment of restitution and compensation. In fact the New Zealand evaluation data indicate that the penalties given to young people by conferences are more severe than those that would have been given by a court, and concern has been expressed that the severity of the sanctions may outweigh the gravity of the offence (see Chapter 2).

Other community members who are concerned about the decreasing access to services of young people "at risk" are more hopeful about the potential for the conferences to facilitate the process of reintegration promised by the rhetoric of the Wagga Wagga program. They can see benefits in the objectives of enhancing and strengthening families, and in the potential for involving other members of the community and drawing upon community resources to
enhance the opportunities available to the young person. Thus far, however, the evaluation of the New Zealand system is not encouraging on this dimension: the majority of outcomes have addressed the offences rather than the young person's needs (see Chapter 2).

The bureaucratic positioning of family conferences also differs in each of the settings: in New Zealand they are administered by the Department of Social Welfare; in South Australia they are a responsibility of the Courts Administration Authority; in Western Australia, Juvenile Justice Teams are interdepartmental; and in Wagga Wagga they were developed as a community policing project and continue to be a police program. The administrative location of family group conferences is indicative of differences in the fundamental understanding of the objectives of the process and has further implications in terms of personnel and funding (see Chapter 4).

There are also differences in the location of family group conferencing in the juvenile justice system. In both New Zealand and South Australia the conferences are essentially an alternative to formal court processing: both these juvenile justice systems have police cautioning programs, as well as conferencing at a second level. In comparison, the police play a particularly strong role in Wagga Wagga where family group conferences are a component of the community policing program and are part of the police cautioning program for young people.

Concerns about the implications of the positioning of family group conferences in the juvenile justice system are central to a number of the issues raised by the authors of the chapters in the second section of this book. Almost all of these contributors raise questions about the role of police in family group conferencing: of particular concern is the Wagga Wagga system. At one level, these questions focus on ethical and rights issues, for example, Sandor (see Chapter 8) expresses concern that the process grants police control over the outcome of their own decisions. At another level, the authors question whether the social justice objectives of family conferences can be best achieved, or achieved at all, in a process for which police have primary responsibility. In fact, Polk (see Chapter 6) and White (see Chapter 10) argue that the juvenile justice system in general may not be the
best place to address the major sources of institutional vulnerability for these young people which are found in the arenas of school, work and health.

The need to ensure due process and the protection of a young person's legal rights is stressed in all of these chapters. Concerns that a number of legal principles might be infringed are the focus of the chapter by Warner (see Chapter 7). This chapter considers the issues of due process, inconsistency with a rational and fair system of punishment, proportionality of punishment, frugality of punishment, consistency of sentencing, and double jeopardy. It may be argued that such concerns are less relevant to family group conferences than to the court process, given that the intent of the conferences is one of consensus and of sharing power in the final decision making. However, whether or not the young person and her/his family are more empowered by this process than by the formal court process is questioned by White (see Chapter 10) and is in fact a claim that remains to be confirmed by the evaluation findings.

Both Carroll (see Chapter 9) and Sandor (see Chapter 8) note that the major concern for juvenile justice systems at this point is the small recidivist group of young offenders who progress into a criminal lifestyle and for whom incarceration is almost inevitable, that is, those young offenders who are at the "back end" of the juvenile justice process. They note that most young people who come into contact with the juvenile justice system at the front end, mature out of further offending without the need for any juvenile justice intervention. Carroll notes that in Victoria, the police cautioning program has been successfully diverting these young offenders from further processing. Family group conferencing, a front end program, is a resource intensive process and its implementation needs to be considered in light of the most pressing needs of juvenile justice systems in each setting.

In conclusion, the intent of this book is to bring together detailed information about the existing experiments with family group conferencing in juvenile justice in New Zealand and Australia. It also raises a number of questions and concerns about this process. Family group conferencing is a very recent innovation which has been incorporated in various ways, with some quite divergent objectives, into a number of juvenile justice systems in New Zealand and Australia. As with earlier juvenile justice reforms, this process attempts to
achieve a range of objectives. One set of objectives relates to the need to hold young offenders accountable for their actions and to punish them when required. Another set of objectives involves recognising the age status and level of development of young people, and addressing difficulties in their personal circumstances. The most innovative and potentially positive aspects of family group conferencing are the involvement of the victim and the young offender's family (in the broadest sense) in decision-making. It is a process which shares with other reforms of the last two decades the intention of diverting young offenders from formal processing. However, if we have learnt any lesson from the juvenile justice reforms over this period, it is that even with the best of intentions and careful planning, reforms can have a number of unanticipated consequences that are not in the best interests of young people. Given this experience, we are obligated to give careful thought to, and to monitor closely, any new reforms to ensure as best we can, that these programs are having beneficial, and not harmful effects, for the most vulnerable young people in our society.
References


Chapter Two

The New Zealand Model of Family Group Conferences

Gabrielle M. Maxwell and Allison Morris

It's different. Instead of going to court, your parents give you punishment.

In the past there have been a number of different approaches to dealing with young offenders. Two main models which contended for legislative implementation internationally in the 1950s and 1960s were the crime control model and the welfare approach. Both have been criticised theoretically and practically. Despite their differences, both led to young people being placed in institutions, either for "their own good" or for punishment.

Recently it has become apparent in New Zealand, as elsewhere, that the institutionalisation of large numbers of children and young people is damaging to them, ineffective in preventing delinquency and quite unjust. Thus the new approach emphasises the need to keep children and young people with their families, in their communities and in contact with their culture. It also follows international trends in emphasising:

- "justice" This includes accountability for offences, equality, and proportionality of punishment and an emphasis on due process. Another related feature recognised in the New Zealand system as important for accountability is that time frames should be realistic so that young offenders can associate the punishment with the offence, repay their debt quickly and then proceed with their lives, putting the past behind them.
- **diversion, decarceration and destigmatisation** Related to the notion of a "justice" model is an emphasis on frugality of penalties, avoiding processes that label and stigmatise, and avoiding the use of institutions unless they are required for public protection.

At the same time, New Zealand has affirmed some aspects of the welfare model by including goals of:

- **enhancing well-being and strengthening families** The New Zealand system, while rejecting the notion that the recognition of "welfare" needs should stand in place of accountability or lead to removal from the family and the community, emphasises the importance of providing support for young people and their families. The expectation is that this will decrease the chances of re-offending and provide a system which is consistent with the best interests of the child.

In addition, the Children, Young Persons and Their Families Act (1989) contains some important new elements:

- **victim involvement, mediation, reparation and reconciliation** Worldwide there has been a trend towards increasing the involvement of victims in criminal justice processes by better provision for their needs through the opportunity to obtain reparation. Trends towards mediation also allow for victims' involvement in outcomes and the opportunity for reconciliation. The potential benefit of mediation for offenders is that it enables them to understand the consequences of their offence and to express remorse. This compares with John Braithwaite's (1988) concept of "reintegrative shaming". In the New Zealand juvenile justice system, these concepts have been given a practical meaning which extends beyond that incorporated in other jurisdictions.

- **family participation and consensus decision-making** This approach emphasises that families and young people should participate in all parts of the decision-making process and be party to outcomes agreed to by all who are involved, including the young person, the family, the police and the victim. The origins for this lie both in the notions of empowerment and control through participation that have been emerging in the psychological research on treatment effectiveness and also in the traditional Maori hui (meeting) in which decisions are taken collectively by all those
involved including, depending on the seriousness of matters, extended family (whanau), clan (hapu) and tribe (iwi).

- **cultural appropriateness** Procedures and services are to be appropriate to the culture of the families and young people including decision-making processes and the arrangements that are made for accountability and enhancing well-being. The political determination to redress the history of Pakeha (people of European origin) domination of a country which was founded on a bi-cultural treaty has come about in response to Maori demands and in response to increasing recognition of the injustice and damage to Maori during the last 150 years of New Zealand history.

The Process

Figure 1 sets out the way the system responds to offenders. The family group conference (FGC) deals with all those offenders whose offences

*Figure 1: Youth Justice. Pathways through the System*
are considered by the police to be too serious or persistent to be dealt with by warnings and informal police sanctions (such as apologies). There are two routes to an FGC, either by a "direct referral" to a Youth Justice Coordinator (YJC) or, when there has been an arrest and charges have been laid, by referral from the Youth Court. In all these cases, the FGC makes recommendations on the outcome. When a case comes through the Youth Court originally, the recommendations of the FGC go to the Youth Court for approval before implementation. Cases may also be decided by the Youth Court if the FGC recommends it or if there is no agreement.

The Family Group Conference

At the heart of the New Zealand system lies the family group conference. The FGC is a meeting at a time and place chosen by the family and attended by the young person, the family (including the wider family), the victim, the police, the youth advocate (young person's lawyer), where one has been appointed and any other people whom the family wish to have present. It is arranged by the YJC who acts as facilitator and mediator between family and the police, although the YJC can invite others to act as facilitator (especially if this is culturally important). Usually, after the introductions and greetings, the police describe the offence and the young person admits or denies involvement. If there is no denial, the conference proceeds with the victim describing the impact on him or her of the offence. Views are then shared about how matters could be set to rights. The family deliberates privately after which the meeting reconvenes with the professionals and the victim to see if all are agreed on the recommendations and plans advanced by the family.

The FGC is both the central forum for decisions and plays a principal role in achieving the goals of the system:

- **Justice** The main method of achieving accountability in the new New Zealand system is through an FGC which, if it agrees, has the power to decide or, in court cases, recommend to the court on appropriate penalties. The new Youth Court's role is limited except when there is a lack of agreement at the FGC or when the charges are denied or in the most serious cases. When cases go directly to an FGC without first being referred by the court, the FGC provides a method of hastening the usually slow court process.

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1. A youth advocate is automatically appointed and paid for by the state when the case has come through the Youth Court.
**diversion** In the New Zealand system there is increased use of police "diversion" through warnings and the use of informal sanctions. But the FGC is itself a new method of diversion which is available for the persistent offender and for those who commit the more serious offences.

**victim involvement** In New Zealand, traditional Maori practice involved the victims, the offender and the families of the victim and the offender, firstly, in acknowledging guilt and expressing remorse and, secondly, in finding ways to restore the social balance so that the victim could be compensated by the group and the offender could be reintegrated into the group. Both pressures to allow Maori to return to their own system of justice and the increasing attention to victims in New Zealand has led to victim involvement becoming an integral part of the new system for dealing with young offenders. Unlike practice in other jurisdictions, the involvement of victims has not been limited to merely minor offences and first offenders. All offences committed by juveniles, excepting only murder and manslaughter, now have an FGC which the victim is entitled to attend and which occurs before the court proceeds to deal with the case.

**enhancing well-being and strengthening families** The FGC is also the forum in which the needs of young people and families can be discussed and where plans can be developed which will provide access to funds for services and programs which are intended to achieve these goals.

**Family participation and consensus decision-making** are provided for through the FGC which is intended to provide a forum which is sufficiently informal and relaxed to give real meaning to the participation of families and young people. The use of a Youth Justice Coordinator (YJC), who is effectively a mediator between the family and young person on the one hand and the police and the victim on the other, is intended to enable consensus to be reached.

**culturally appropriate** And, because the process is not strictly defined, it provides a way in which each culture can, potentially, adapt the justice process to fit its own spirit, philosophy and procedures—for Maori, to their own kaupapa.
Evaluating the System

From 1990 to 1992, we were involved as principal researchers in a project evaluating the new system in five areas of New Zealand. The sample included almost 700 young people who came to the attention of the police. FGCs were arranged for over 200 including 70 who appeared in the Youth Court. The research followed the experiences of these young people. It involved attending FGCs, and interviewing YJCs, police, youth advocates, families, young people and victims. The research covered all those who came to notice in a three-month period in five different districts. Maori, Pakeha and Pacific Island interviewers were involved and, as much as possible, they each interviewed families and young people of a similar ethnic group.

The research was designed to describe the process, examine how decisions were taken by the police, by FGCs and by the Youth Court, and to assess the extent to which the Act had succeeded in meeting its principal objectives. The results are reported more fully by Maxwell and Morris (1993).

This chapter concentrates principally on describing how the FGCs operate—both in theory and in practice. It describes the YJC's role and how FGCs are organised (including how they are set up, who attends them, how decisions are reached and what options there are). The views of young people, families and victims who have actually attended FGCs are also presented. The tables and some of the text are drawn from Maxwell and Morris (1993).

The Youth Justice Coordinator

The YJC has overall responsibility for ensuring that the objects and principles of the Act are being met. In a sense, the YJC is the guardian of these. The YJC also has a number of very specific tasks in relation to the arrangements for FGCs and, in carrying out these tasks, he or she is helped by a team of youth justice social workers. The YJCs are the managers of the youth justice system, information providers and facilitators, and mediators between young people, their families and the police, and between young people, their families and victims.

YJCs are recruited from a range of backgrounds, including social workers, probation officers, and the prison service. They are appointed by and are officers of the New Zealand Children and Young Persons Service (CYPS) within the Department of Social Welfare (DSW). Over half identify as Maori, others are Pakeha or Pacific Island. The majority of Maori young people attending FGCs will have Maori YJCs, but far fewer
Pakeha or Pacific Island offenders will have a Pakeha or Pacific Island YJC. In practice, a complete match between the ethnicity of the YJC and the young person and his or her family is not possible given staffing levels. It is, therefore, important for YJC’s to have access to quality advice on cultural issues from members of the Maori community, both tangatua whenua (local people) and tauiwi (people from another tribal area), and from members of the various Pacific Island communities. This is true whatever the ethnicity of the YJC, because YJC’s need appropriate links to be able to find family and tribal or community connections for those who have become separated from their origins, culture or community. To facilitate FGC’s effectively, YJC’s also need to have the ability to understand and work appropriately in accordance with the cultural values of those attending.

**Arranging the FGC**

*Time frames*

The Act requires that FGC’s should be held within 21 days of the YJC receiving the referral when it is a non-court referral and within 14 days when it is a court referral. It is not always possible to meet these targets. Less than one-half of the FGC’s in the sample took place within the required time limit although two-thirds were convened within a week of the due date. If only the court referred cases are examined, the percentage of cases which met the statutory time frame was slightly higher but still surprisingly low: just over a half. There was also considerable regional variation in meeting time limits. There are a number of reasons for delays: families and victims can be difficult to contact, and work-load pressures and staff shortages in CYPS can be impediments. In addition, some of those arranging conferences felt it was important to take more time to adequately prepare families and victims or to contact whanau or the extended family, especially when they lived out of the area.

*Inviting participants*

The entitled participants of the FGC include: the young person, a family member, whoever the family invites, a coordinator, a victim (if the victim wishes to attend or alternatively someone who can represent the victim), a representative of the police, a youth advocate where the young person has been referred by the Youth Court,² and a social worker where the young

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² It is possible for a YJC to make a case for the appointment of a youth advocate for a direct referral. The research did not find any cases where funding had been made available for this.
person is already in care. One of the first tasks for the YJC is to determine who exactly are the people who should be invited. Usually the YJC or a youth justice social worker will talk with the immediate family and ask them their views. Sometimes the family may be reluctant to involve wider family. However, especially when there has been serious offending or previous offending, the YJC's job is to try to make sure that wider family or family friends and supporters are involved both to help reach decisions and to provide ongoing support to the family and the young person. It is the duty of the police to supply information on the victims who should be invited.

**Time of meeting**

FGCs should be arranged for a time that suits the family and victims. In the sample, most FGCs were held between 9 am and 4 pm on a weekday. This may have been the preference of families but it may also have been to suit the police, YJCs and other professionals who seem to prefer to attend FGCs during normal working hours. Some FGCs, however, were held in the evening and a few were held at weekends.

**Venue**

The most common place for an FGC to be held during the period of our research was in a room in the DSW office. It is, however, possible to hold an FGC in the offender's home, on a marae (Maori meeting house) or, indeed, anywhere where the family chooses. Families and young people often feel more at ease when the FGC is in their own home or on the marae.

There were often difficulties in holding FGCs in DSW premises. The research found that they were either too large or too small for the size of the group; were sterile, cold and intimidating; lacked privacy; and coffee or tea was not usually provided. As one parent put it: "I found the environment a bit intimidating". Holding the FGC at the home of the family is also one way of helping families feel that they are truly involved in deciding what should be done as a result of the offence. Furthermore DSW offices lack the kind of setting that may link Maori and Pacific Island families to their culture and communities. An even greater involvement might occur for Maori if the FGC was more often held on the marae. However, there is a potential problem here in that the setting that is most comfortable for families may be less comfortable for victims.
The Act’s intention was that families would be consulted about time and venue but families often do not realise that they can choose where and when the FGC should be held.3

Procedures

Other arrangements for the FGC that need to be considered are the procedures to be followed at the conference itself. It is important to recognise that the time to consider what the family wants is prior to the FGC. For instance, families may want to consider:

- who should run the FGC (while this is usually the YJC it is possible for the family to ask someone else to do this);
- whether or not they want prayers;
- whether or not greeting should be in English, Maori or another language;
- whether or not food and drink should be served and at what point.

Preparation

A successful FGC needs the various parties involved, particularly the families and victims, to be well prepared for the meeting and to be provided, in advance, with information on both what is going to happen and possible outcomes. Neither is likely to have had any or very much prior experience of such a meeting and is unlikely to know what to expect.

At the FGC, families will have to "come up with" appropriate sanctions for their children's offending. Some YJC provide families with information beforehand and encourage them to check out local programs themselves. During the research, however, many families arrived at the FGC not knowing where to start. They were unfamiliar with what options there were and, in particular, what resources, programs or facilities were available to them locally. Without adequate briefing prior to the FGC about possible outcomes, parents and young persons are likely to follow the suggestions of the professionals rather than come up with some plan themselves. But briefing itself can script the outcomes. Thus effective briefing needs to canvas a wide range of options and avoid suggestions that are very specific. Knowledge is power and if families are denied or given limited knowledge about possible outcomes then they are in effect denied or given limited empowerment.

3. An amendment to the Act is currently before Parliament which proposes that victims should also be consulted about the time and venue of the FGC.
The interview data indicated the need for better briefing not just of families, but of victims. Victims have to be told what to expect in their immediate role at the FGC and what it might be like to meet the offender in person. And victims need to be encouraged to come to FGCs with realistic expectations. In one area a very high level of attendance by victims occurred because the local victim advocate contacted all victims and told them that their chances of reparation were higher if they attended. In reality, the majority of the families had limited financial resources and if victims were led to believe that their attendance would secure reparation, then they would be greatly disappointed.

**Attendance**

The average number of people attending the FGCs in the sample was nine; the smallest number was two and the largest was thirty-nine. For almost two-thirds of FGCs, the number was between five and ten. Ethnicity made a difference; the largest Pakeha FGC included eighteen people but several Maori FGCs exceeded this number, with the largest being thirty-nine. On average there were eight people at FGCs for Pakeha young people, nine for Maori and ten for Pacific Islanders. Table 1 presents information on who was present at the FGCs in the sample.

**Families and Young People**

Contrary to the expectations of some, most young people and their families attend FGCs; non-attendance is very rare.

*Table 1: Summary of Research Findings on who was present at the Family Group Conferences, New Zealand*

<table>
<thead>
<tr>
<th>Person present</th>
<th>% of FGCs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Young person</td>
<td>96</td>
</tr>
<tr>
<td>Parent or carer</td>
<td>98</td>
</tr>
<tr>
<td>Whanau or extended family</td>
<td>39</td>
</tr>
<tr>
<td>Siblings</td>
<td>21</td>
</tr>
<tr>
<td>Family supporter</td>
<td>19</td>
</tr>
<tr>
<td>Victim or victim's representative*</td>
<td>46</td>
</tr>
<tr>
<td>Enforcement agency</td>
<td>94</td>
</tr>
<tr>
<td>Youth advocate*</td>
<td>59</td>
</tr>
<tr>
<td>Social worker</td>
<td>62</td>
</tr>
</tbody>
</table>

*Where applicable*
The New Zealand Model of Family Group Conferences

The new Act encourages the involvement of whanau and the family group in responding to young people's offending. This is viewed as culturally appropriate since the young person, certainly in Maori terms, is the child not simply of the nuclear but also of the extended family. Hence, whanau (and hapu and iwi) have both rights and responsibilities with respect to the development of that child. Whanau and the family group can also provide support and advice in dealing with young people's offending where parents wish that support and advice. Overall, whanau or the extended family attended about two-fifths of the FGC cases in the research sample. However, they tended to be more often involved in cases involving re-offending, in court-referred cases, and in the more serious cases. There was also a tendency for a larger number of extended family to be present in those cases where more than one FGC was held before a resolution was reached. In fact, FGCs were often put off to enable more family members to attend. The research also indicated that whanau involvement tended to be greater for Maori than was the involvement of the extended family for Pakeha. The involvement of aiga (wider family group) for Pacific Islanders was intermediate between that of Maori and Pakeha. The main value for families wanting whanau or the extended family to be present is the support they can offer to both the young person and their immediate family.

Other support people can also attend FGCs—for example, brothers and sisters, family friends, teachers, youth club organisers and the like. The presence of these people who are concerned for the young person is important, in providing both immediate and longer term support, and understanding.

Victims

Providing victims with a voice in how to deal with those who have committed offences against them is a key ingredient of the new system and a major way of achieving this is to encourage victims to attend FGCs. Almost all the victims who were interviewed welcomed the opportunity and indicated that either they had attended the conference or they would have been pleased to do so if that had been possible. Fewer than 4 per cent of victims said that they did not go to the FGC because they did not want to meet the offender. In practice, however, less than half of the FGCs in the sample were attended by at least one victim. The reason that so many did not attend is explained quite simply by their not being invited, not being told of the FGC soon enough or not being able to come at the time chosen.
Victims expressed to us a range of reasons why they decided to come to the FGC. These included: a consideration of their own interests; a willingness to help or support the young person; a belief that victims should be at such meetings; and a sense of duty and curiosity.

From the research it seems that victims are more likely to come to FGCs held on or after 6 p.m. This suggests that they may not want to take much time off work or give up their time just after work. There was no evidence that victims were less likely to be present at FGCs which were held at the offender's home, but it was not possible to test whether or not victims were less likely to attend FGCs which were held on marae.

**Professionals**

Most FGCs are attended by a representative of the police; this is usually a Youth Aid officer. The court-appointed youth advocate should be present at FGCs held for young people referred from the Youth Court. This was not always so in the research. Youth advocates were present in less than two-thirds (59 per cent) of these cases, often because the time was considered by them to be inconvenient.

The role of the youth advocate at an FGC has not been set out in the legislation. Most, however, saw their task as including that of ensuring that any summary of facts was an accurate record agreed to by their client and that excessive penalties were not recommended. In other respects, advocates varied in the way they participated and many were uncertain about their role at this meeting.4

There is provision for a lay advocate to be appointed and to be present at the FGC. Lay advocates can be appointed by the Youth Court to advise the court on cultural matters and, in the FGC, they can help to ensure culturally appropriate arrangements and outcomes. Although there were no lay advocates at any of the FGCs for young people involved in the research, when present, lay advocates are said by YJCs to have been very helpful.

Social workers are only entitled to be present at FGCs when the DSW has some official responsibility for caring for the young person. The reason for limiting the attendance of social workers is that the new system reflects a shift in emphasis from offenders' welfare to their accountability. However, in practice, social workers are present at many FGCs where there is no statutory justification for their presence. Overall, in the sample,

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4. At the time of the research, little training had been provided to youth advocates. Debate has also occurred about the extent to which they should become involved in what is primarily a family decision-making process. No clear guidelines have yet emerged.
62 per cent of FGCs had social workers present; this ranged from just over a quarter in one area to 84 per cent in another. Of all the DSW areas visited, only three reported that social workers rarely attended FGCs. There were a range of reasons for this but most were not in tune with what the Act intended and, in particular, were contrary to the shift towards family control over decision-making. Nor, from research interviews, was this in accord with the expressed wishes of the family.

**Procedure**

Usually the YJC facilitates (conducts) all or almost all the FGCs. It should not really be possible to describe the procedures adopted at a "typical" FGC, for the intention in the Act is to allow families to develop their own. However, in the main, routine procedures have been developed which are followed in almost all cases and so a common pattern can be described.

The most usual beginning for FGCs is for everyone to introduce themselves, although in some areas this may be preceded by prayers or a karakia (a blessing) and a welcome in Maori. The coordinator then explains the procedure to be followed, invites the Youth Aid officer to read the summary of facts and then asks the young person whether or not these are accurate. If the information is incorrect, it may be possible to correct it there and then. If the young person denies his or her responsibility for the offence, however, the FGC then stops and the matter is referred back to the police. If the police still think that the young person committed the offence, the matter will go to the Youth Court by way of a summons. If the young person admits the offence, the FGC can proceed and the coordinator usually then asks any attending victim to speak. If a victim is not present, someone else, usually either a victim's representative or the youth aid officer, reports on behalf of the victim (in some areas this is done by a youth justice social worker). Some victims felt uncomfortable about speaking, often because they had not been adequately prepared for what would happen. Well prepared or well briefed victims, on the other hand, often played a very positive part in the proceedings, enabling the young person to understand the consequences of his or her actions, and suggesting suitable ways of making amends.

The primary focus in FGCs is intended to be the offence and the young person's accountability for it. The research observations confirm that this is what happens in most cases. This does not mean that discussions never focus on attempts to understand the reasons why the young person committed the offence or the circumstances surrounding it, but this is not usual.
Following a general discussion amongst all the participants about possible outcomes, families should be given the opportunity to discuss in private how best they feel they can respond to their child's offending. In the research, however, there were many examples of a failure on the part of professionals to withdraw during the FGC and to give the families some time on their own. Overall, professionals did not withdraw in 42 per cent of the FGCs in the sample. Regional variation was enormous, ranging from 5 per cent to 63 per cent.

Whether or not the professionals have withdrawn, it is the family's task to come up with a "plan" at this stage. There may be some further discussion or negotiation after this with the non-family members. Details are arranged regarding who will supervise and check on whether or not the plans are carried out. The YJC then seeks agreement from the police and from any victim who is present. The agreed plan is recorded and the meeting closes, sometimes with a prayer.

FGCs take much longer than the few moments required for the average court appearance. In the research, just under a third took less than an hour, but almost a third took between an hour and an hour and-a-half while more than a quarter took between one and a half and two hours. Around 10 per cent took more than two hours. FGCs also differ from the court process in that they are frequently resolved in one session. Additional FGCs may be required, however, for a variety of reasons including: the absence of the family or young person, seeking more time to involve the victims, attempting to invite more family and allowing the family more time to think about options.

What has been described so far is the "typical" FGC. But families have their own preferences—for example, whether or not there should be prayers, whether or not there should be food provided and who should facilitate the meeting—and they should be consulted about these matters. It is possible to move from the format outlined and, indeed, the Act intends this. In the research there were examples of FGCs working in a very different way for Maori families.

Outcomes

The primary purpose of the new system is to make young people accountable for their offences by encouraging them to take responsibility for their actions, to make good the damage that was done, or to accept a penalty. In practice, this is most likely to mean that the young person apologises, pays reparation or makes a donation to a charity, undertakes some type of work (in some cases for the victim) or accepts some form of restriction on their liberty such as a curfew, grounding or an agreement not
to drive. In some cases, warnings are given or there may be an agreement about what will happen if the young person re-offends. If the people at the FGC cannot agree about this, then the case is likely to be referred to the Youth Court. The FGC may also agree to refer the matter to the court for orders.

National data and the research data confirm that by far the majority of outcomes reflect responses to young people's offending rather than to their welfare needs. Overall, the most common outcomes were apologies (in 70 per cent of the cases) and work in the community (in 58 per cent of the cases). When work in the community was imposed the number of hours ranged from two to 200; the average was 65 and the most common was 48. These hours are quite high compared with the hours of community work in adult diversion schemes which do not normally exceed 50. However, many of the cases dealt with at FGCs are moderately serious, for example burglary and car theft.

Given the focus on victims in the legislation, it is perhaps surprising that little of the work in the community is done directly for the victims. In the research, less than a quarter was directly for victims. This may be, in part, because victims prefer not to have direct contact with the young person. However, when the victims were actually present at the FGC and there was a decision to arrange work in the community, it was more frequently arranged for the victim or for a group or person suggested by the victim.

Overall, reparation is not widely used. Both the national data and the research data indicated that it was agreed to only in about one-third of cases. To some extent, this indicates the limited financial resources of the families concerned, but of course in many cases the goods taken are recovered or the offence is not one where reparation is appropriate. Reparation was awarded slightly more frequently at FGCs in the sample where the victim was present but it was still only just over 40 per cent, which gives little support to the belief that the victim's presence is more likely to ensure reparation. Orders for supervision with residence and supervision with activity were the least common penalties recommended in the sample: 2 per cent and 3 per cent respectively.

"Active penalties" is a phrase that describes any one of a group of penalties including work in the community, monetary penalties, donations and restrictions on liberty. These are summarised in Table 2. This shows very clearly that the majority of young people are held accountable for their offences. Real and sometimes quite heavy penalties were agreed to at almost all the FGCs in the sample.
Table 2: Summary of research findings on FGC outcomes, New Zealand

- "Active" penalties were agreed to by 83 per cent of the young people involved in non-court referred FGCs.
- "Active" penalties were agreed to by 89 per cent of the young people involved in court referred FGCs.
- If "apologies" are added, the figures become 95 per cent and 94 per cent respectively.

This focus on offending and accountability is what was intended. Sometimes, however, FGCs made recommendations which not only tried to make the young person accountable but also addressed other needs. About a quarter of recommendations in the sample were about the work, educational or skills needs of the young people concerned and a fifth advocated some measure of support and counselling for the young person.

Although the legislation did intend that the issue of the well-being of the young person should be addressed, we also observed many cases where welfare needs were not adequately met by the recommendation and sometimes they were not explored at all during the deliberations. A discussion of this tension between welfare and accountability is included at the end of this chapter.

The Views of Families and Young People

There is no doubt that families and young people feel more involved now than those families and young people who were part of the former court process. In previous research by Morris and Young (1987), families and young people saw the court as alien, remote and frustrating. They described their participation as rare and their communication as routine and felt that they had wasted their time. In the research, more than half the families and more than a quarter of the young persons interviewed felt that they had been involved in what happened at the FGC. A typical response by a young person follows:

It was quite open and quite good . . . you get to talk openly. It's not as if there's any pressure on you.
Similar views were expressed by parents who emphasised the freedom to speak openly; they felt that they were treated with respect and that:

Everything that should have been talked about was talked about . . . we shared what we had to say . . . excellent.

On the other hand, more than a third of the young people interviewed (though less than a fifth of parents) said that they had not been involved in what happened. The responses of these young people are perhaps best summarised by the boy who said: "I didn't know why I had to be there". Other young people answered questions about their involvement in the FGC in a way which indicated that they were either excluded by the adults present (literally by the adults ignoring them almost entirely or by the way in which adults asked questions) or that they did not feel able to participate because of feelings of shame and embarrassment, or simply because they did not know what to say.

The presence of victims at FGCs was generally accepted by the parents and young people interviewed. This was seen as important for potentially reconciling the victim and the young person, and for contributing to teaching the young person to accept responsibility and to be accountable for what he or she had done. The following quote from a parent sums this up:

I really enjoyed being in the meeting as a father. It's great to have the victims as well, and that makes me feel better. I listened to their concerns and everything they said. I felt for them and the pain and hurt they have got. The input that they had . . . taught me a lot . . . I won't forget it.

Young people also referred to the impact and value of the victims' presence:

I didn't want to see the victims but it did have an impact, especially seeing the elderly victim.

In a few cases, however, the victim's presence was not seen as a positive influence; rather it was seen as inhibiting discussions. Indeed, on a few occasions, it was viewed as counter-productive:

The only bad thing was the victims . . . us against them . . . made everyone edgy.

I didn't like the first meeting with the victims, I felt very defensive. They wanted to send my son to prison and that made me feel protective.

These comments underline the extent to which the emotional nature of these encounters is inevitable. Nevertheless, feelings may be able to be
better managed if families and victims know more about what to expect at FGCs.

Who decides?

Parents in particular and to some extent young people are intended to have much more say in the new system. Parents and young people in the sample were asked their views on "who decided" the FGC outcome. The most frequent response by the young people was their family or both their family and the professionals. Few young people identified themselves as having decided. And when asked specifically about their involvement in the decision made about the outcome, young people mainly indicated that they had not been a party to the decision. As before, they indicated either that adults had not allowed them to decide or that they themselves did not feel it appropriate for them to decide. Parents, on the other hand, were much more likely than their children to identify themselves as the decision-makers. Overall, this occurred in more than two-thirds of the cases.

A disturbing feature here is that the professionals alone were identified as the decision makers by 15 per cent of the families. The police, in particular, were often identified as determining the outcome and this underlines the fact that the FGC is still, essentially, a mechanism of state control.

The police [decided]. The family decision ended up being based on what the police were insisting on after the previous decision was thrown back at us by the court. The judge wasn't supporting the family at all. We thought $1000 reparation was a reasonable penalty for two burglaries. It destroyed our faith in being able to make decisions. The family were left with nowhere to go by the police and the judge's attitude.

Parents, nevertheless, do have more say in the FGCs than they previously did in the courts or before Children's Boards. Nevertheless, there are still question marks over the role of some professionals in both shaping and determining outcomes.

Victims' Views

The theory underlying the bringing together of victims, young offenders and their families is to effect a reconciliation between the parties. It is intended that the offender should accept responsibility for the wrong done to the victim and should offer to make amends to the victim. In particular, it is intended that attendance at the FGC should, in part, be a healing experience for victims. There is no doubt that some victims found attending the FGC and, more importantly, participating in the FGC,
helpful, positive and rewarding. Overall, close to 60 per cent of those who attended the FGC and who were interviewed by us said this. Generally, the victims who felt better as a result of the FGC said that they had been involved in, rather than excluded from, the process. They understood better what had happened and why. The meeting with the offender was sometimes seen as a cathartic experience; negative feelings about the offence and the offender could be released. Victims also commented on the "benefit" for them of giving them a voice in determining appropriate outcomes.

Not all victims, however, were as enthusiastic. Some victims clearly felt worse after attending the FGC. Overall, about a quarter of the victims who attended and who were interviewed said that they felt worse. The victims who felt worse expressed feelings of depression, fear, distress and unresolved anger. Some felt that they were seen as "the problem". Some saw the silence of the young person as conveying disinterest or even that "he seemed to be laughing at us". Others felt that their needs were being neglected at the same time as those of the young person and his or her family were being considered. Some reported that they felt a lack of support at the FGC. Overall, it was not so much the absence of reparation that caused distress as a failure to respond to their needs and a lack of a clear expression of remorse by the young person:

I felt worse . . . very, very angry. I was shaking. She didn't seem to care what she had done.

It is a mistake to assume that victims and offenders can simply be brought together without first careful briefing of the parties and without adequate training of coordinators to manage such an emotional and, by its nature, unpredictable meeting.

**Satisfaction with the Outcomes**

The Act intended all the participants in the FGC to reach an agreement about the appropriate outcome and this usually occurs. Ninety-five per cent of the FGCs in the sample were recorded as having reached an agreement; the national figure for 1990 was much the same. This means that, on the whole, participants are likely to be satisfied with FGC outcomes. Certainly this was so for most of the professionals, families and young people in the sample. It was not so, however, for victims. Table 3 summarises this information.
Table 3: Summary of Research Findings on Levels of Satisfaction with Family Group Conference Outcomes, New Zealand

<table>
<thead>
<tr>
<th>Person</th>
<th>% Satisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>91</td>
</tr>
<tr>
<td>YJCs</td>
<td>86</td>
</tr>
<tr>
<td>Parents</td>
<td>85</td>
</tr>
<tr>
<td>Young people</td>
<td>84</td>
</tr>
<tr>
<td>Attending victims</td>
<td>53</td>
</tr>
</tbody>
</table>

Parents and young people

Overall, despite some concerns about how decisions were made at the FGC, levels of satisfaction with outcomes were very high amongst the young people in the sample and their parents. Only a few parents and young people actually expressed dissatisfaction with the outcome. With parents, the issue seems to have been either that their child "got off too lightly" or, more commonly, they believed that some kind of help or treatment which they considered necessary was not offered.

With young people, the issue was almost invariably how their outcome compared with co-offenders or, more generally, with their notion of appropriate penalties.

Victims

Perhaps not surprisingly, those least satisfied with FGC outcomes were the victims. Just over one-half of those contacted by us expressed some satisfaction with the outcome and nearly a third expressed dissatisfaction. Generally, victims who attended FGCs expressed both more satisfaction and more dissatisfaction than victims who did not attend. Often the non-attending victims were unaware of the eventual outcome, while others (both attenders and non-attenders) saw it as too light or doubted the genuineness of the written apologies they received.

The fact that many victims who had attended the FGC had strong reservations about the FGC outcome raises questions about the extent to which they were fully informed that their agreement was necessary for the outcome to be accepted. In one case, the victim was asked how she felt about a proposal for the boy to perform 150 hours community work. She replied:

"Its disgraceful... not punitive. Even 200 hours community work to compensate for $4,000 worth is like $20 an hour payment. I get paid $12 an hour... it's a let off, an easy option."
This was left hanging in the air. There was no further discussion of the penalty and the victim's disagreement was not mentioned in the official record of the FGCs recommendations produced for the Youth Court.

Although 95 per cent of the FGC cases in the sample are recorded as having had an "agreed" outcome, this does not sit well with the high levels of dissatisfaction expressed by victims or with the many comments recorded which expressed dissatisfaction with the lack of severity of the penalties.

This failure on the part of FGCs to satisfy victims may reflect the point made earlier about the lack of adequate briefing. If victims attend FGCs with false or unrealistic expectations, it is not surprising that they remain dissatisfied; for instance, victims may be unaware of the relatively moderate penalties that are normally handed down by the courts for similar offences and may believe that the court would have been more severe. Such perceptions may contribute to the fact that the goal of reconciliation between offenders and victims was not always met in the FGCs observed. However, another reason also became apparent; several victims were quite satisfied at the time of the FGC but became dissatisfied later, especially when they received no further information or promised reparation payments.

Reconciliation, however, did clearly occur on occasions. At one FGC, after tearful apologies had been made by both the youth and his family, there seemed to be a reluctance amongst the parties to leave the meeting. There were handshakes and embraces all round and finally a suggestion by one of the victims that the offender and his family join him for a meal at a later date. In another, the victim became very sympathetic towards the youth and, after the break, moved to sit by him in a symbolic gesture of alliance. In yet another case, victims who were initially very angry with the young person became supportive after spending half an hour with her on their own and subsequently offered to attend court with her. The researcher's field notes ended: "I feel privileged to have been at such a touching and effective FGC".

**Cultural Appropriateness**

The Act intended procedures for dealing with young people who commit offences to become more culturally appropriate. The research data throw some light on the extent to which this has been achieved. The Maori researchers involved in the project were concerned about the number of Maori FGCs that were held in DSW offices. They did not accept that these FGCs could be culturally appropriate for Maori or that Maori families could be empowered by such a foreign environment. They pointed to the
contrast when the FGC was held on a marae or even in the family's home if it was held in accordance with Maori kaupapa (customs).

The Maori researchers also commented on the extent of whanau participation and the conflicts and tensions that could flow from this. It has already been noted that whanau or extended family participation was higher for Maori than for Pakeha. To some extent this is a reflection of the fact that Maori more often retain strong links to their wider family. However, it also reflects the coordinators' belief that this is more important for Maori people. The researchers commented that many families felt whakamaa (a deep sense of shame) at sharing their problems with their whanau. But they also pointed to some Maori families who had only reluctantly allowed whanau to be invited but who were later grateful for the support provided because it enabled solutions that would not have been within the power of the household.

The Maori researchers also believed that it is important to go beyond the tokenism of including greetings and prayers in a different language. They argued, rightly, that cultural appropriateness is not achieved without handing the management of the process over to those who fully understand the culture. In Maori terms, this means running the entire FGC according to the Maori kaupapa (the word refers to both format and values) appropriate to that iwi. This does not mean that every Maori FGC should necessarily become a tribal matter involving kaumatua (tribal elders) and full whanau participation. In more minor cases, satisfactory solutions can usually be achieved in meetings involving the immediate family. However, where the offending is persistent or serious and where immediate family resources seem insufficient, the Maori researchers felt that the importance of careful preparation, the involvement of whanau, hapu and iwi, and the adoption of a Maori approach to the process was crucial.

An appraisal of the FGC process from the perspective of Pacific Island families and young people is difficult because of the variety of Pacific Island groups involved and the relatively small number of Pacific Island young people in the sample. However, there is little doubt that those researchers who attended FGCs involving Pacific Island families were concerned about the communication problems generated by the lack of adequate arrangements for an interpreter and by the general bewilderment of the families. In general, the cultural issues for Pacific Island families are similar to those experienced by Maori families but the difficulties created from having to relate to Pakeha processes not in keeping with their own cultural practices are almost certainly magnified because of the recency of their contact with NZ society and the extent of the language barrier for many.
Finally, families and young people were asked about the cultural appropriateness of the FGCs for them. There were two different types of response depending on whether the families and young people saw the process as Pakeha or saw elements that gave the process a cultural emphasis for them.

*The Pakeha way*

Some saw the process in Pakeha rather than Maori or Pacific Island terms but felt that this was not necessarily bad because they accepted the Pakeha nature of the world in which they lived. Other respondents felt differently and more negatively about the process remaining in Pakeha hands. For these young people and their families, a process based on their own cultural practices would have been preferable.

*The cultural way*

For other families, the presence of whanau, the opportunity to explore wider issues and the fact that they were able to have the FGC in their own home or on a marae was seen as part of what it meant to do things their own way. These aspects of the FGC were appreciated:

> The setting is important—at home is good; it gives us back some power. It was great. The boys felt shame. We had a kaumatua there, there was a powhiri (Maori welcoming ritual), karakia (prayer), and kai (food). All could speak.

> He (the offender) hadn't known Maori culture and now he will.

Only a few Maori explicitly disassociated themselves from attempts to create a Maori process.

In the research there were examples of both cultural process in action and cultural conflict in action. There were also occasions in which interpreters should have been arranged for the FGC and were not. Instances of breaches of protocol were also observed—for example, coordinators welcoming FGC participants in a way which would have been appropriate for an FGC held in DSW but which was quite inappropriate when the FGC was held in the family's own home, and coordinators not using kaumatua who were present to facilitate the FGC. Cultural advisers were rarely used. In the view of the Maori researchers, most of the FGCs they attended were instances in which the interpretation of the Act or neglect of the intent of the Act resulted in culturally inappropriate processes taking place. They saw this situation arising from ignorance of the Act, a dearth of resources and mismanagement, rather than from any inherent faults in the legislation itself.
Other Measures of Success

There are three further measures which can, to some extent, indicate the success or otherwise of the FGCs: completing the tasks agreed to at the FGC, the frequency of reconvening FGCs, and re-offending by the young people involved. Overall, where it was possible to obtain information on the cases in the sample (and in a few cases this was not possible), tasks were completed within three to four months in over half of the cases (59 per cent) and partly completed in a further 28 per cent of the cases. "Partly completed" means that most, but not all, of the tasks were done: for instance, cases where 80 of the 100 hours work in the community had been completed, or cases where reparation had been made but only some of the counselling sessions had been attended. In only 13 per cent of the FGCs in the sample did the tasks remain largely uncompleted. For the most part, these were where young people had re-offended.

FGCs can be re-convened in a number of situations: for example, if the young person did not complete the tasks agreed to at the FGC, or if he or she re-offended, or as a method of monitoring the young person's progress. Overall in the sample, only 18 per cent of FGCs were re-convened within three to four months after the original FGC.

Re-offending is not a particularly good indicator of the success or otherwise of FGCs. One problem is that re-offending may occur without being detected. Equally, offending may occur due to factors extraneous to the way in which the FGC responded to the young person. Nevertheless, information is provided on re-offending by the young people in the FGC sample because it is so often perceived to be relevant. Overall, less than a half (48 per cent) had re-offended within six months. It needs to be stressed here, however, that there was no information on the re-offending rates of young people before the Act and so it was not possible to make any effective comparisons. Some may feel that this figure for re-offending is too high. On the other hand, those referred for an FGC made up little more than a third of the total sample of 700 young offenders in the study and included those who had committed the most serious offences, had committed many offences or had a previous history of offending. Thus the fact that over one-half did not re-offend can perhaps be viewed as a positive result.

Conclusions

FGCs are new and it is hardly surprising that there are some difficulties in their implementation: too many FGCs are held in places and at times best
suited to the professionals involved in the system; victims who say they are willing to attend are not invited or are given inadequate notice; neither families nor victims seem to be given sufficient information regarding what the FGCs involve and what might be expected of them; procedures at FGCs cannot yet be described as culturally appropriate; and not all professionals have yet given up their control over information or decision-making. The fact that victims are the group least satisfied by the new system must also be a matter of some concern.

However, FGCs are clearly working far more effectively than was expected by those who dismissed the possibility that young offender's families would be at all responsive. Almost all the parents or care givers take an active part in the conference and, when offences are serious or persistent, extended family members are prepared to come and provide additional support and help. Victims are willing to attend and most of them play a constructive and helpful part. Agreements are reached in most FGCs about the appropriate outcome and, at the same time, young people are held accountable for their offences and remain, for the most part, with their family and in the community, with support to make a fresh start.

The research clearly indicated that Maori, Pakeha and Pacific Islander alike became distressed when FGCs were not adequately set-up or managed. However, families from all ethnic groups at times expressed appreciation of the informality of FGCs, the facility for all to express their opinions, the possibility of having the FGC in their own home and the opportunity to have family support available. Many families found the FGC far preferable to court as a method of reaching decisions and for involving them in the process. The comments quoted below summarise many of these views:

A great idea—we were really involved. It is an excellent idea to sort it out in the home and to involve families. (Parent)

I'm really pleased that it doesn't go straight to court like the old days. The kids are given a chance now. (Parent)

Really good. I got to see the victim, apologise and help her with money. The victim also got a chance to say things. (Young person)

I like the idea of the victim getting reparation. It is good to meet the victim, good to involve the parents. (Parent)

It was a good idea to meet the offender and his parents and understand how people got to be like this. I was angry at first but later I was sympathetic. I feel we decided the right thing. I preferred this system to the court. At the FGC you get to know what happened and to be involved. (Victim)
But FGCs are not to be judged simply by whether they are meeting practice goals, or even whether they are seen as satisfactory methods of decision-making in the eyes of the participants. Practice difficulties could, in principle, be remedied. And consumer satisfaction can never be the primary criterion of a criminal justice system. Ultimately, the most important criterion of success is whether the FGC is indeed, an integral and effective way of achieving the goals of the system. In this paper it is not possible to recount all the data from the study that bears on this question and these results have been described elsewhere (Maxwell & Morris 1993). However, a brief summary of the findings that relate to whether the Act achieves its objectives is listed below.

Meeting the Goals of Youth Justice in New Zealand

- **accountability** Most young people who commit moderately serious offences now pay an appropriate penalty for their crime (between 80-90 per cent) and most also make some attempt to make good the wrong they have done to others (penalties + apologies = 95 per cent).

- **reducing time frames** Time frames for FGCs are, mostly, realistic given the age of the child or young person. However, when the Youth Court is also involved, short time frames have not generally been achieved.

- **due process** The emphasis on the protection of young people's rights has not always been matched by the quality of practice by front-line police. Youth advocates often fail to attend FGCs.

- **diversion** Far fewer young people now reach the courts; when they do, most are dealt with without court orders and there are far fewer custodial sentences than in the past. The rate of Youth Court appearances has dropped from 67 per 1,000 in 1988 to 16 in 1990.

- **enhancing well-being and strengthening families** Making available services that will assist the young person and their family has proved problematic, principally because of a lack of services.

- **family involvement** Involving families and young people in making the decisions for themselves and taking charge of their lives is being achieved through the FGC process to a greater extent than ever before. Nearly two-thirds of parents are involved but only a third of young people.
victim involvement  Involving victims in the decisions about outcomes occurs in about half the cases.

consensus decision making  In 95 per cent of cases in 1990, decisions were agreed to by the family, the young person, police and victims, though questions can be raised about the reality of this.

culturally appropriate ways of resolving matters  Families can choose their own procedures and the time and place of meetings but the system does not always encourage this.

culturally appropriate ways of providing services  Developing and funding a range of services to suit different cultural needs and wishes and operated by people sensitive to that culture has proved a problem.

culturally appropriate penalties  Encouraging the creation of penalties which reflect different cultural responses has not yet been achieved.

As already noted, to some extent, the failures in the system are due to imperfections in practice. However, other problems stem from inherent conflicts between the multiple objectives. In particular, there is an inherent contradiction between making young people accountable and providing for their welfare needs, and in practice the latter tended to be neglected in favour of the former. Such a contradiction could be resolved by prioritising objectives. Alternatively, the needs of families and young people could be met independently of the youth justice system so that the FGC was no longer the gateway to services and programs.

A second conflict is between meeting the needs of victims and offenders. Inevitably this must involve a contradiction. Indeed overseas research suggests that this is true (Marshall & Merry 1990). Again it can be suggested that the limitation of the FGC in meeting victims' needs must be recognised and that services for victims be provided separately from the criminal justice system.

Two more contradictions are more difficult to resolve. Inevitably there is a conflict between a system designed to both achieve state control of families and young people on the one hand, and goals of participation and empowerment, on the other hand. Yet the participatory approach does result in families and young people feeling a sense of control over their own lives and being enabled, rather than disabled, by their contact with the system. Similarly there is an inevitable conflict between notions of equity
and proportionality of penalties in a system where decisions are made by families and victims who vary in their views.

A Last Word on Family Group Conferences

Much has been said about the FGCs' uniqueness, innovatory nature and potential for revolutionising youth justice systems, not just in New Zealand, but also in other countries. The FGC has been acclaimed as not only achieving appropriate and acceptable outcomes but as having other, more far-reaching, social and psychological benefits. It has been seen as the key to re-engaging families with their young people and providing ways in which, through shaming and remorse, there can be a reintegration into the family and the community: a community which includes the victim who can be released from fear and enabled to forgive the person who has caused the wrongs. It has also been seen as a way to incorporate and validate the alternative processes of different cultural groups within a Western justice system. It is easy to appreciate the appeal of the FGC for those who are advocates of sharing in decision-making because of the potential it has to empower people who might otherwise be disempowered and to restore power to those who have been disenfranchised from the system.

On the other hand, the FGC has been criticised as inappropriate for dysfunctional families, as basically more suited to Maori than to Pakeha, and as suited to Maori and the New Zealand social climate but not suited to other societies such as Australia and its Aboriginal people. Advocates of a crime control philosophy perceive it as a soft option, the police being powerless to deal with young offenders who are protected from the consequences of their actions. Others point to the FGC as yet another method of extending the control of the state over families and of Pakeha over Maori.

What is the truth? Such a question really has no answer—it depends on one's views. On the whole, we see the FGC primarily as a positive, yet moderately tough option and as one which could be adapted to other societies and to other cultural groups. It has the potential to help families who are having difficulties in finding links with those who can support them and to restore to young people a sense of identity and belonging. Enthusiasm is tempered by a recognition that it is impossible to expect the production of a magical event given the unrehearsed cast, a host of different directors and an unexplored script at every performance. But the problem is not that the FGC fails at times to deliver all that is hoped for but rather that, after all, it occupies, at most, only a few hours in the lives of these young people and their families. No single event can possibly
achieve permanent and lasting change however dramatic the impact and however emotional and real the feelings are that are generated at the time. Real and permanent change will depend on the development of those features of society as a whole that help young people and their families solve problems, avoid cycles of poverty and disadvantage and find ways of being productive and effective members of a society that values them. The challenge for New Zealand is to build towards these goals.

References


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The phrase "family group conference" entered the statute books in 1989 when the New Zealand parliament passed the Children, Young Persons, and Their Families Act as described in an earlier chapter. This bold piece of legislation immediately attracted interest in Australia, especially among practitioners and others directly concerned with the justice system. By 1993, however, Australian practitioners and legislators have not simply been looking across the Tasman for a working model of family conferencing. A home-grown variant is now also available. That variant was a scheme developed in the southern New South Wales city of Wagga Wagga. Although only initiated in 1991, it had attracted a good deal of attention by the middle of the following year. At a national conference on juvenile justice held in Adelaide in September 1992, comparison between "the New Zealand model" and "the Wagga model" dominated debate in the plenary sessions. Critics of the model were fairly muted. The charges of ethnic and gender bias routinely fired at any new proposal had to be held in check when several articulate and impressive Aboriginal spokeswomen praised the potential of family conferences to help their communities. In order to address these and other relevant concerns about the program, one requires: first, a clear understanding of the origins of the scheme in Wagga Wagga; second, some knowledge of the theoretical bases of the scheme; third, details of the evaluation that has occurred to date. We begin with a discussion of the origins of family conferencing in Wagga.
**Origins**

Members of the New South Wales Police Service introduced a version of family conferencing in Wagga as part of an "effective cautioning scheme" in August 1991. Before being introduced, the scheme was given consideration by the local Community Consultative Committee and was subject to wide public debate. Although the proposed scheme was greeted largely with support and even enthusiasm from many members of the Wagga community, it was initially viewed with suspicion by a number of police. Two years later, however, it was hard to find a critic of the scheme either among police or among the several thousand people in the Wagga district who had attended a family conference as a victim, an offender or a supporter. This alone would not constitute sufficient reason to proselytise for the scheme's implementation elsewhere; nor would the positive conclusions of various evaluations of the scheme that have been conducted to date. The numbers involved in these evaluations have been too small to produce statistically powerful results. Science proceeds, however, by proposing hypotheses and attempting to disprove them. The working hypothesis of those who have designed and implemented the "effective cautioning scheme" in Wagga is that, in response to juvenile offending, the scheme provides a more just and more meaningful outcome for victims, offenders and their supporters. That hypothesis has yet to be disproved.

Rather than attempting to disprove this hypothesis, some of the scheme's critics have attempted to close the debate by conceding that, although the scheme may indeed achieve its modest aims in Wagga, it is unlikely to work in other areas. Wagga, they argue, is an unusual place. But the debate is not so easily closed. We should certainly ask whether there is some clear reason why the scheme was started in Wagga rather than elsewhere in New South Wales or elsewhere in Australia? There are three quite distinct questions here. The first question concerns the social, economic and institutional arrangements in the city and district of Wagga Wagga. The second question concerns the current legislative and administrative arrangements of the New South Wales Police Service, since it was ultimately members of that organisation who took the initiative to import family conferencing from across the Tasman and use it as the basis of their "effective cautioning scheme". The third question concerns the interests of those individuals who have championed the scheme.

The social and economic arrangements of Wagga Wagga might readily be compared to those of half-a-dozen cities in Australia. With an urban population of 55,000—closer to 75,000 if outlying areas are included—Wagga is the largest city in inland New South Wales. It is situated on the southern bank of the Murrumbidgee river, an hour's drive north of its
historical rival, Albury. In the heart of the rich agricultural region of the southern Riverina, it provides the usual mix of shopping, other services and light industry. State and federal governments provide a good deal of employment at the army and air force bases, scientific research institutes, a regional TAFE centre and the Riverina campus of Charles Sturt University. Political representation of the city has been altered by demographic changes and electoral redistributions over the years. Since the turn of the century, Wagga has been represented by long-serving politicians from the Labor Party, the Country Party, and the Liberal Party. A recent redistribution gave the seat back to the Nationals. So there it is: a relatively prosperous city that caters to farmers, returns conservatives to state and federal parliaments and produces accomplished cricketers.

The suggestion that police can experiment with popular schemes here since they do not have to deal with the crime problem faced by their urban counterparts is, however, simply incorrect. Wagga has its share of social problems, including a significant number of property offences and offences against the person committed by young people. The scale of the problem is clearly indicated by statistics from the New South Wales Police Service. There are 169 police patrols in New South Wales. If these patrols are ranked in order according to the number of reported crimes by young offenders, Wagga emerges as number eleven, ahead of patrols such as Liverpool, Cabramatta, and Fairfield. Nor do these statistics refer to skateboarding in shopping malls. Closer analysis shows a good deal of theft, burglary, arson, and assault. We have no wish to deter tourists from joining in the fun of Wagga's Gumi Festival, visiting Big Murray at the cod hatcheries, or sampling the award winning produce of the local wineries. We do wish to refute the claim that the citizens and police of Wagga have it easy by comparison with their colleagues in the big, mean cities.

What do the statistics mean? One school of academic criminology has spent much of the last two decades urging us not to lose a sense of proportion and perspective when confronted by crime statistics. They are not particularly alarming when compared with statistics from other countries. They are not increasing at any great rate. They are not to be trusted anyway, since lies, damn lies and statistics are all part of the stock-in-trade of many politicians and bureaucrats—including senior police. And even the statistics kept by a respectably independent body such as the New South Wales Bureau of Crime Statistics can only give a very rough picture of what is happening out there. There is some truth in all of this—but little comfort for the victims of crime.

The concern to redress the inadequate response to the needs of victims has now become an important factor in debates about the justice system. Perhaps surprisingly, then, it was not in direct response to pressure from
victims' rights groups that Wagga police took the initiative to establish their "effective cautioning scheme". Rather, the local patrol commander was concerned more generally about procedural justice. Chief Inspector Kevin Wales had observed a lack of consistency in the way his officers dealt with young offenders. He was also concerned about what he considered to be the indecent haste with which the decision was generally made between the option of charging young people who had admitted an offence and the alternative option of cautioning them.

To understand why the Wagga patrol commander came to initiate major changes in the area of juvenile justice, however, we need less to ask about the social characteristics of the town of Wagga than about the current administrative arrangements in the New South Wales Police Service. Certainly, the patrol commander may have been partly motivated by a sense of pride and concern for his community. But how could he initiate changes that would normally filter down as a result of a decree from on high—either from within the Police Service or from cabinet via the Police Minister? How is it that those changes, once publicised, were not simply overruled? The answer is complex, and cannot be related here in any detail (see Moore 1992). In brief, however, the situation can be explained as follows.

As was to be the case in Queensland a decade later, allegations of police corruption played a key role in New South Wales state politics during the 1970s. Indeed the sensitivity of the issue was such that the new Premier, Neville Wran, assigned the police portfolio to himself after the election of his Labor administration to office in 1976. Wran later appointed a commission of inquiry into police administration. The inquiry was headed by Justice Edwin Lusher, who found corruption to be endemic throughout the police organisation. Lusher's detailed reform proposals were delayed for several years, but began to be implemented by 1983. In that year, a new Police Board Act provided for a major change in the structures of police governance. The new Police Board would be responsible for policy development and for overseeing the appointment of commissioned officers.

The Board acted quickly. Their first report to the Wran Government proposed promotion by merit rather than seniority, a complete redesign of recruitment and training procedures, and a simplification of lines of accountability within the police organisation. The ensuing changes created the momentum for further internal reform as they allowed for the promotion to the top job—by merit—of an outstanding Executive Chief Superintendent. From his new position, Commissioner John Avery set about implementing many of the ideas he had proposed in his book Police, Force or Service? The most important of Avery's reform proposals was
almost certainly that of regionalisation. New administrative arrangements introduced under that label divided the State into four regions, each of them overseen by a Regional Commander. Each region was divided into about half-a-dozen districts, each district into patrols, and each patrol into sectors. A key aim of this reform was to increase local responsibility and responsiveness while making lines of accountability to Sydney headquarters much clearer than they had been. Given the habits learned under the old system of police governance in New South Wales, one or two of the new regional commanders were understandably reluctant to grant their district and patrol commanders the autonomy envisaged by the new commissioner. Conversely, many district and patrol commanders were reluctant to exercise that autonomy. This was, however, not the case in Wagga Wagga.

An explanation for the next stage in the development of the effective cautioning scheme in Wagga is to be found not just in the city's socioeconomic characteristics, nor in the arrangements for police governance in the State of New South Wales, but also in the interests of those individuals championing the scheme. Both the district commander and the patrol commander had shown a willingness to consult, to experiment with new programs, and to further devolve responsibility to sectors within patrols. This was true of the various community based policing programs in Wagga, and particularly true of the Beat Policing program introduced in November 1990. Here the choice of officer to establish the program was significant. Senior Sergeant Terry O'Connell had several portfolios at this time. In addition to his local responsibilities, he was Deputy President of the New South Wales Police Association, a position that made him responsible for the welfare of fellow officers across the State. At the same time, he was completing a degree in Social Sciences at Charles Sturt University. This made him one of a growing number of officers in town who were actively bridging the gap between academics and police, a gap long marked by a degree of suspicion and prejudice on both sides. A similar rapprochement can now be observed around the country but it is of particular significance in a city the size of Wagga, where professional networks tend to overlap with social networks rather more than they do in the larger metropolitan centres. The resulting dialogue has encouraged police more readily to evaluate the efficacy of their programs while encouraging academics to make constructive suggestions rather than chant the smug mantra of purported police insensitivity to issues of class, gender and ethnicity.

The Beat Police program, established towards the end of 1990 and prompted by Patrol Commander Kevin Wales, placed a high priority on dealing with the consequences of juvenile crime. The Beat Police took a
conscious decision to apply the "problem-solving policing" approach to all areas of concern, rather than endlessly dealing with symptoms (Goldstein 1990). Identification of a clear link between school truancy and juvenile crime, for instance, led to the proposal of an "Alternative Program for Adolescent School Refusers". In the process, a closer working relationship was developed with the Department of Education's local Home School Liaison Officer. Better links with other community and state welfare agencies were also established. As a result of these initiatives, many of the support networks that would make possible a more effective and more just response to juvenile offending in Wagga were in place when the new approach was proposed.

A key player in the next stage of the development was based not in Wagga but in Sydney. John McDonald, adviser to the Police Commissioner on Youth and Juvenile Justice, had spent part of his career—as some nine years—as a school teacher. Much of that time was spent in Cabramatta and Chester Hill, areas where victimisation of and by young people is not unknown. Later, as a member of the steering committee of the *Kids in Justice* Report, McDonald had put his name to proposals for reform in the juvenile justice system (Youth Justice Coalition 1990). He was not confident, however, that these proposals were adequate. In 1990, he travelled to New Zealand with a colleague from the Policy and Planning Branch of the Police Service. They spoke in New Zealand with police officers, welfare workers, judges and community leaders, all of whom had had some experience with the new justice system provided for by the 1989 Act. One statistic that provided a stark contrast between the arrangements on either side of the Tasman was the comparison of case disposition in New Zealand and New South Wales. In the former jurisdiction, 90 per cent of cases were dealt with by way of negotiated reparation. Only 10 per cent went to court. In New South Wales, however, over 80 per cent of alleged young offenders went straight to court (McDonald & Ireland 1990). This seemed neither just nor efficient.

On their return to Sydney, McDonald and his colleague, Steve Ireland, produced a report proposing that a version of the New Zealand juvenile justice model be implemented in New South Wales. The key difference between the New Zealand model and that now being proposed was the choice of coordinating department. The main player in New Zealand is the welfare department. In McDonald's alternative version, the scheme would be more truly diversionary, more truly community-based, if it operated at the first point of contact with the justice system for victim and offender. The best outcome for all concerned would be achieved if the problems arising from the offence could be addressed effectively with recourse to a minimum of government departments. Logically then, the harm caused by
the offence might be minimised most effectively if conferences were to be coordinated by the department responsible for that first contact—the police department.

The basic proposals in McDonald and Ireland's report received considerable support from the Police Service State Executive Group and, indeed, from other State government departments and agencies. Judge Mick Brown, who had played a key role in overhauling the New Zealand juvenile justice system, spoke about the new system in an address to members of the New South Wales parliament. McDonald subsequently canvassed the proposal among a long list of patrol commanders without evincing great enthusiasm. The proposals were also put to Terry O'Connell in his role of Police Association Deputy President. O'Connell argued that if the philosophy of community policing were to be taken seriously, the proposals were best put not to the Police Association executive, but to members of a community in which the new model of juvenile justice might be trialed. Equally importantly, the local police who would have ultimate responsibility for implementing the new model would have to be fully consulted, and would have to be allowed and encouraged to contribute to its design. Considerable politicking would be required even to have the proposal seriously considered, let alone to have it implemented. That process of politicking began in Wagga early in 1991.

Now formally equipped with the methodology of the social sciences, O'Connell set about randomly surveying some fifty police in the Wagga Patrol. The results revealed a not surprising scepticism about the proposals for a changed approach to juvenile justice. Certainly, officers expressed unanimous dissatisfaction with the current system in which, according to all respondents:

- young offenders were treated too leniently;
- current responses to juvenile offending largely ignored victims;
- families of young offenders often showed little interest in their child(ren);
- the whole community suffered from the effects of juvenile offending.

Despite this dissatisfaction, proposals for change were greeted warily. In the current system, at least, police knew where they stood. They viewed cautions as a soft and therefore inadequate option; they presumed that the victims of juvenile crime felt the same way. Compensation for damage was a matter for the courts alone, since arrangements for compensation could
not be enforced legally if they were agreed to in the process of a police caution. Police understood the dissatisfaction with the current system felt by victims of crime but police would bear no responsibility for that dissatisfaction. If the courts were seen to be too lenient with young offenders, victims should direct their anger at the courts. Police would continue to deliver the same recidivists to court until the judges lost patience with those recidivists and had them locked away in the local detention centre. Police would later have to deal with some of them as adult offenders but the problem was solved in the short term.

O’Connell’s survey confirmed that most of his colleagues were guided by three concerns when dealing with issues of juvenile justice:

- a concern with the perceived attitude of the young alleged offender — respect for police and remorse for victims were expected but often not forthcoming;
- a concern for public accountability — complaints were a constant threat, and scrutiny from internal affairs or external watchdogs was feared;
- the perception that policing was essentially about law enforcement.

Police acceptance of the current system was, like so much else in policing, a strategy of minimising risk while maintaining a modicum of discretion. It was a way of striking some sort of balance between the conflicting demands of various groups. On the one hand, police would be criticised by most academic criminologists, many welfare workers, and some journalists for being too tough on young offenders. They would be criticised by many of the same, and by legal formalists, for exercising too much discretion. On the other hand, police would be criticised by a growing victims’ rights movement, by chambers of commerce and by tabloid newspaper editors for being lenient with young offenders. As long as they adhered to the growing list of disciplinary rules, however, police would be safe. As long as they retained the option of cautioning young offenders, they retained their apparent ability to influence the attitudes of these young people. And as long as they struck some sort of balance between those pundits calling for leniency and those calling for toughness — with a slight bias in favour of the latter — the existing juvenile justice system would remain in equilibrium. People would be cynical but they would know their place. The system would be stable.

The challenge of changing this stable system appeared daunting. Change was unlikely to come from any single agency. It would require cooperation between people who could transcend a loyalty to the
immediate, short-term requirements of their particular bureaucracy and who could work, instead, towards a broader, long-term goal. More importantly, it would require a new way of understanding the causes and consequences of juvenile offending. The solution to this latter problem came not from Wagga or Sydney, but from Canberra. John Braithwaite, a Professor at the Australian National University, had published his book *Crime, Shame and Reintegration* in 1989, the same year in which New Zealand's juvenile justice Act was passed. After travelling to New Zealand the following year and after reading Braithwaite's book, John McDonald contacted Braithwaite and pointed out the obvious parallels between the latter's theories and the new practices being implemented in New Zealand's justice system. The family group conference, both agreed, came very close to the sort of arrangements advocated by Braithwaite.

The connection between Braithwaite's theories and the practice of family conferencing was made again at a meeting of police, academics and justice and welfare professionals held in Wagga in mid-1991. Several of the Charles Sturt University academics in attendance were familiar with Braithwaite's work and saw the potential of McDonald's proposed scheme to translate the theories of *Crime, Shame and Reintegration* into practice. David Moore suggested that Braithwaite's terminology be used in the debate from that point on; that people be encouraged to debate the merits of "reintegrative shaming".

The point of the proposal to debate the relevance of Braithwaite's theories in Wagga was not so much to augment the status of the proposed program—although it had that effect. Rather, the link with Braithwaite's theories would give whatever practices emerged in Wagga a clear point of reference—a link with some carefully articulated and defensible values. New practices could be checked for conformity with the key values of the theoretical model. Indeed, Braithwaite's co-authored work *Not Just Deserts*, published in 1990, provided a comprehensive list of values that should inform what he and his co-author call "a republican system of justice". According to Braithwaite and Pettit (1990), agencies within such a system would share the principles of: parsimony or frugality; checking the power of officials and agencies; reprobation of inappropriate behaviour; and social reintegration of those who have offended against the ethical principles underlying official laws. If the proposed new model of justice violated any of these four principles, it would be unacceptable.

The cautious approval of the proposed model by a group of academics and justice and welfare professionals was matched by the willingness of Wagga's Community Consultative Committee to support a pilot scheme of family conferencing in their city. Members of the committee had already considered the option of experimenting with Community Aid Panels as an
alternative approach to the cautioning of young offenders. But they were aware that the South Australian Parliament was about to phase Children's Aid Panels out of the juvenile justice system after a decade-and-a-half of exceedingly modest success (Wundersitz 1992; Juvenile Justice Advisory Council 1993). Family conferences looked like a more meaningful option.

The next obstacle to implementation was the difficulty of convincing a group of understandably cautious and collectively cynical police to agree to a trial of the proposed scheme. The way forward was to get those involved in beat policing and general duties to consider the following assertions:

- police are the gatekeepers of the criminal justice system, key players in the initial intervention for a transgression of the law;
- the nature of the initial intervention has a significant influence on whatever process follows;
- the decision whether to caution or send a young alleged offender to court is generally taken as a result of this initial intervention;
- victims and police are generally unimpressed with the outcome of court cases for young alleged offenders;

Consequently, any means of increasing the impact of a police caution without violating the rights of the young person concerned, and any means of involving the victim in the process, should prove more acceptable to police and to victims. It may also produce a better outcome for the young offender and the young offender's family. It might also, therefore, represent a better overall outcome for police.

The surveyed officers found these suggestions uncontroversial. It was proposed then, that a new method of juvenile cautioning should be introduced, and that the new method would make use of the family conferencing model from New Zealand. Its aim would be to "maximise the impact of juvenile cautioning". However, the police working party established to consider this approach quickly decided that the stated aim implied an exclusive focus on the young offender. Such a focus would, they argued, lead police to create a scheme with the same flaws as the existing system. An exclusive focus on the young offender would ignore the interests and concerns of the victim. It would ignore the interests of parents and friends of the victim, and parents and friends of the offender. It would do little to accommodate the concerns of the police who were seeking to address not only the consequences but also the causes of offending behaviour. Accordingly, the single, ill-defined aim of
"maximising the impact of juvenile cautioning" was replaced with a set of seven objectives:

- to ensure that the young offender understands the seriousness of his/her offending behaviour;
- to minimise the likelihood of the young person reoffending;
- to provide the juvenile offender with an opportunity to accept responsibility for his/her offending behaviour;
- to address the issue of family and community accountability;
- to provide the victim(s) with an opportunity to contribute to the cautioning process;
- to increase the likelihood of achieving reparation compensation for the victim;
- to enable police to offer a more meaningful response to the harm caused by young offenders.

The conference process was then developed to meet these objectives. The sergeant convening a conference would contact the victim of an offence and explain the rationale of the process. If the victim was willing to attend a conference, contact would then be made with the offender and the offender's family. Since the focus of the conference was the offence rather than the character of the young offender or the psychological state of the victim, more than one victim or offender might be involved. Indeed, all of the victims and all of the offenders involved in a given incident could attend the conference. The supporters of both parties would contribute during the conference process but would also act as subsequent guarantors of any agreement reached at that conference. Unless unreasonable demands were made, the nature of the agreements would be left largely to the discretion of the key parties involved in the dispute and to their supporters. And this was a leap of faith on the part of the officers establishing the scheme. If unreasonable demands were made the scheme would quickly lose both credibility and legitimacy.

The task of reviewing cases and convening all cautions involving family conferences was initially given to two sergeants. Terry O'Connell dealt with the first few cases, which involved vandalism, stolen motorbikes and other property offences. Full material restitution was achieved in all cases, but O'Connell was more impressed by the change of attitude on the part of victims and offenders. A degree of mutual respect was restored.
Victims and offenders who had entered the conference room as enemies dramatically changed their opinion of each other during the course of the conference. Victims wanted to have their say; they wanted any stolen goods returned; they wanted an apology. But they appeared to have no interest in retributive punishment as such (see Appendix 1 for other case studies from Wagga Wagga).

Positive reports about these early conferences arrived unsolicited at the police station. Intelligent media coverage was given to an agreement reached between a group of high school students and the owner of a carwash that had been damaged by the students during a "treasure hunt".

The apparent success of some of these first conferences convinced many of O'Connell's sceptical colleagues that there might be more scope for diversion as an alternative to court. Reports suggested that the family conference was not just another "soft option" as the sceptics had feared it would be. Satisfactory agreements for compensation had been reached; longstanding disputes had been resolved; victims felt relieved of much of their anger, and satisfied that they had "got through" to the young offender. Enthusiastic support for the new scheme by many who had attended a family conference prompted the search for a stronger institutional framework, and that search led, in turn, to the formation of a sergeants' review panel. This group began to meet weekly, in order to decide whether a young person who had been charged and had admitted an offence should be given the option of attending a family conference or should be sent to court, as would hitherto have been the case. Since guilt is readily acknowledged by most young offenders, the sergeants were faced with the option of diverting most cases to a family conference rather than to court. The extent to which they exercised that diversionary option was a measure of their growing confidence in the new cautioning scheme.

An additional effect of the new arrangement is illustrated dramatically in the Wagga Police charge books for this period. The number of charges for minor public order offences (many of which amount to "lack of respect for police officer") began to decline rapidly. There appear to be two reasons for this. One is that general duties police officers had to take account of the fact that a panel of sergeants would review any charge they might make and would not take kindly to trivialities that involved the wounded pride of an officer on the beat or on patrol. A second and perhaps more significant reason seems to be that the rationale for charging young people is shifting. Increasingly, the real issue is not whether there has been some minor technical infringement of the law, but whether anybody has been a victim of the offending behaviour. Anticipating the sergeants' review process, and having the option to involve victims, seems
to be causing police to reassess the purpose of their intervention when young people offend.

Here we have a system, then, with much to recommend it. Early assessments, which will be discussed below, suggest that the conference process offers an outcome that victims, offenders and the supporters of both consider to be more just, more constructive and more meaningful than that offered by other juvenile justice processes. Furthermore, the family conference allows police to play a much more constructive role in the juvenile justice system. It also encourages them to think more carefully about the purpose of their work. The scheme should therefore please advocates of the rights of victims and advocates of the rights of young offenders. It should also delight those critics who would like police to change the way they deal with young people. However, some of the most vociferous criticism of the scheme has come from precisely those quarters where one might expect most support. In order to understand these criticisms, one needs to look not at the effective cautioning system as it operated during its first two years in Wagga. (Certainly the critics have not done so.) One needs to look, rather, at those theories that justify the scheme and that purport to explain why it should work. One needs to look also at how the scheme fits or does not fit into the world view of the critics. From origins, therefore, we turn to theory.

Theory

The original version of the theory of reintegrative shaming is available elsewhere, as is the philosophical justification for a republican justice system (Braithwaite 1989; Braithwaite & Pettit 1990). (Others have labelled the proposed system "communitarian". This question of terminology is interesting but will not be addressed here.) An explanation of how the theory of reintegrative shaming and related theories have informed the evolution of the family conference model in Wagga is also available elsewhere, as is an examination of the cautioning scheme in light of recent theorising in moral and political philosophy and a proposed elaboration of the psychological aspects of the theory (Moore 1993a, b, forthcoming). Some critics appear, however, to have misunderstood or misrepresented important aspects of both theory and practice. A short recapitulation of the theory of reintegrative shaming, despite the risk of oversimplification, is therefore appropriate here.

The theory of reintegrative shaming was developed in response to the perceived inadequacies of "classical" criminology, "positivist" critics of classical criminology, and the intellectual descendants of both schools of thought. Classical criminology assumed that people were essentially
rational; what separated law-abiding citizens from law-breakers was a calculation by the latter that, on balance, breaking the law would bring them more pleasure than pain. The logical policy produced by this view of the world was that increasing the punishment or penalty for transgression of the law would cause potential law-breakers to recalculate the pleasure/pain equation. A sufficiently tough regime of penalties would deter law breakers; the pain of the punishment would outweigh any pleasure derived from the transgression. Successive schools of thought have sought to challenge classical criminology’s view of the rational criminal who makes a "hedonic calculation" to offend. One of the earliest challenges to the model of the rational calculating criminal was proposed by a school of thought that emerged during the developmental stages of evolutionary theory. This school considered that biology was destiny, that those who broke the law were driven to do so by their genetic inheritance. Biological determinism is now unfashionable in criminology. Other variants of determinist theory have proved more popular than biological determinism in recent decades. The ghosts of Freud and Marx continue to haunt us in theories that explain criminal behaviour exclusively in terms of a person's psychological profile or their social circumstances.

To simplify schools of thought to this degree is of course, unfair. Any introductory textbook of criminology will outline theories of "differential association", "cultural transmission", "differential opportunity" or "ethnic succession" which seem quite plausible and reasonably sophisticated. Few of them, however, seem to account for all forms of criminal behaviour. Few strike the right balance between free will and determinism—whether biological, psychological or socioeconomic. To solve this long-standing social theoretical problem, some leading thinkers in criminology have reversed the discipline's fundamental question. Rather than seeking to explain why some people break the law some of the time, they have asked a question so obvious that it has regularly been overlooked: why are most people essentially law-abiding most of the time?

Some interesting and important answers to this question have recently been proposed. According to Michael Gottfredson and Travis Hirschi (1990), the key factor distinguishing those who obey the law from those who break it is self-control. As Gottfredson and Hirschi see it, self-control begins to be learned during the early years of childhood in the course of social interaction. Most people develop sufficient self-control to live sociably. Those relatively few people who fail to develop adequate self-control tend, the authors claim, "to avoid attachment to or involvement in all social institutions" (1990, p. 168). The resulting "tendency of people most in need of the restraining influence of family, school and friendship to be outside of those spheres of influence is a matter of considerable
importance” (ibid). There is little external compensation for their internal lack of control, little to stop them victimising others.

An alternative explanation of why most people obey the law has been provided by Tyler (1990). Emphasising political philosophy rather than social psychology, he argues that most people obey the law not so much because they fear punishment, but because they believe compliance with the law to be just and moral. Tyler’s detailed and persuasive studies of people's attitudes suggest that their willingness to comply with the law is influenced by their views about the fairness of the system. If legal authorities are perceived to be committed to due process and to just outcomes, people are generally willing to comply with the law. Where the law and its enforcement are perceived to be less than just, popular support for the law will be reduced.

What are we to make of these two explanations? One response that can be anticipated is a claim that Gottfredson and Hirschi and to a lesser extent Tyler are trying to foist "middle-class values" on those who transgress against their fellow citizens. A worthy rebuttal to this tiresome and patronising claim would require a lengthy aside on the sociology of contemporary public debate; space precludes this here. Of more interest is the justifiable criticism that both theories only provide a partial explanation for the difference between those who break the law and those who do not. The theories share a concern to bring back some of classical criminology's focus on free will and individual responsibility. But both leave important questions unanswered: what are the mechanisms by which self-control is strengthened or weakened? Aren't Gottfredson and Hirschi leading us back down the path to biological determinism—since they leave a space in their theory for the inheritance of differing capacities to control one's behaviour? How does one account for those people who make a rational, self-controlled decision to offend? Tyler's theory offers a better explanation for the deeds of such characters: experience has undermined their moral commitment to observe the law. But this suggests that, for Tyler, a willingness to break the law arises from rational reflection on experiences of injustice in adolescence, not from problems of socialisation in early childhood, as Gottfredson and Hirschi suggest. Indeed the two theories appear to account best for different categories of offender and offence. Furthermore, Gottfredson and Hirschi emphasise the psychological factor of self-control whereas Tyler emphasises the political factor of concern for procedural justice and shared values. What single phenomenon can unite these differing accounts? As we see it, that phenomenon is shame.

Braithwaite’s Crime, Shame and Reintegration and his co-authored Not Just Deserts answer many of the questions raised by theories of control and theories about perceptions of justice. Like Gottfredson,
Hirschi, and Tyler, Braithwaite does not ask why some people break the law some of the time, but why most people obey the law most of the time. His answer is not that people are generally deterred by the threat of official punishment. Rather, they are deterred from offending against their fellow citizens by two "informal" controls; firstly the potential of social disapproval that would greet an offending act; and secondly, by pangs of conscience. The pressure to conform with collective values is thus applied both externally in the form of disapproval—and internally—through conscience. Only when these twin informal controls fail is the state obliged to respond with the formal control of punishment. This is one of those insights that seems so obvious that it is hard to understand why few have managed to state it so clearly. But the really profound aspect of Braithwaite's theory is his recognition that the underlying aims of formal state control and informal social control can be diametrically opposed. Formal, official punishment seeks to stigmatise those who have transgressed the law; it aims to separate them from the law-abiding majority. It does this in varying degrees, all of which are degrading. The harsher forms of stigmatisation involve temporary removal from society through deprivation of liberty in the form of imprisonment. The ultimate form of stigmatisation involves permanent removal from society through deprivation of life in the form of the death penalty.

In contrast to formal, official punishment, which generally seeks to stigmatise offenders, informal, unofficial punishment generally seeks their social reintegration. And according to Braithwaite, the key to understanding social reintegration is the phenomenon of shame. When people seek to avoid social disapproval and when they feel pangs of conscience, they are avoiding one form of shame and experiencing another. They are avoiding what Carl Schneider has called "disgrace shame". They are experiencing a milder form of shame which Schneider calls "discretion shame" (Schneider 1977, ch. 3). The exercise of this discretion shame prevents people from transgressing against their fellow citizens. It provides a psychological means to distinguish that which is socially appropriate from that which is not.

If this analysis is correct, then shame is not the destructive phenomenon from which twentieth-century psychoanalysis has sought to liberate us. On the contrary, shame is essential to the regulation of social life. It is a vital emotion of self-assessment. Simultaneously cognitive and emotive, it helps to determine an appropriate balance between excessive closeness to one's fellow citizens, on one hand, and excessive distance from them, on the other. It is certainly true that, in a world of social inequality, shame has been put to unjust uses. Whole classes of people have been socialised to feel shame where it suits the purposes of the more
politically and economically powerful. Totalitarian leaders, themselves afflicted with exotic shame-based pathologies, have generally understood the phenomenon with an unusual degree of perception. The libertarian conclusion that the social consequences of shame are inherently negative is nevertheless a profound error. Shame can be used for negative or destructive purposes—as can hydrogen or oxygen. On balance, however, the social function of shame is positive: social life is regulated by shame, and by other emotions of self-assessment such as shame's counterpart—pride.

The claim that most people are deterred from offending against their fellow citizens by the feeling of discretion shame and the fear of disgrace shame has profound consequences for our understanding of contemporary criminal justice systems. The processes of criminal justice systems, such as court trials, are designed to make use of shame in order to stigmatise people who have transgressed the law. Shame is used destructively, to set offenders apart from the law-abiding majority. One of the more concise and best-known justifications for the use of shame as a means of stigmatising offenders is Garfinkel's short piece, "Conditions of Successful Degradation Ceremonies" (1956). As people familiar with this classic of the literature will know, Garfinkel calls the central processes of the criminal justice system "ceremonies of degradation". Such ceremonies aim to convey to the offender the moral indignation felt by the wider community. Garfinkel's justification for ceremonies of degradation is strongly utilitarian. In an argument taken directly from Durkheim, degradation ceremonies are said to promote social solidarity. Shared moral indignation draws a community closer together and this is deemed to be a fine thing. It is also claimed that degradation ceremonies serve to remake the offender. Behind this claim is a belief in the hierarchical ordering of society. Having offended against the moral order enshrined in the law, offenders are literally degraded. They are moved to a lower and more appropriate position on the league ladder of human worth, a position deemed commensurate with their illegal and immoral behaviour.

At the heart of Garfinkel's argument is his understanding of the role of shame in the ceremony of degradation. Garfinkel argues that shame serves to protect a person's ego from further attack; it sets the individual apart from the morally indignant collective. Indeed, it is by evoking shame that the degradation process successfully stigmatises and degrades an offender. But two questions spring to mind immediately: is Garfinkel's understanding of the role of shame in degradation processes correct? Secondly, regardless of the accuracy of his explanation of how shame operates in the justice system, is Garfinkel's defence of the aim of these processes adequate? Does he provide a convincing answer to the question of why the
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system should aim for degradation rather than persuasion and social reintegration. A generation after Garfinkel penned his well-known piece, Braithwaite answers all of these questions in the negative. The question of how shame operates within justice system ceremonies requires complex answers, some of which have been provided elsewhere (Braithwaite 1989; Moore 1993b, forthcoming). However, these answers need not be included in a response to the question of why the justice system should or should not seek to degrade offenders.

Consciously evoking Garfinkel's original formula, Braithwaite and Mugford (1993) rebut his arguments and argue the case against ceremonies of degradation. Instead, they advocate ceremonies of reintegration. The criminal justice system, as they see it, should aim not to degrade those who have committed a criminal offence. Rather, it should seek to integrate such people back into the society against which they have offended. Unless one is prepared to suggest that mistakes can neither be forgiven nor learned from—unless, that is, one wishes to side with the world's backward-looking fundamentalists—one has to recognise that offenders must be reintegrated into society at some point after the official recognition of their offence. Stigmatising offenders, and then weakening their links with family, friends and colleagues by removing them from society, must work directly against the long-term aim of social reintegration. The system should also seek the social reintegration of victims by helping them to deal with their anger and resentment, by teaching them the superficially paradoxical lesson that they need not be ashamed of feeling shame.

It should be made clear that neither Braithwaite, Mugford, nor the present authors are advocating abolition of prisons in the foreseeable future. All of us would, however, like to see the use of detention centres and prisons minimised. Our claim at this stage is that a cautioning scheme using family conferences is an effective way to minimise the use of courts and detention centres for young offenders and that this, in time, may reduce numbers in the adult prison system. However, the scheme does not allow the state to ignore problems surrounding the victimisation of others by young people. The scheme is not like other recent examples of "deinstitutionalisation" involving the mentally ill or state wards. In the case of deinstitutionalisation of the mentally ill, governments and their bureaucracies in Australia and elsewhere have been happy to use the radical writings of thinkers such as Thomas Szasz and R.D. Laing to justify the closure of large psychiatric institutions without fully funding the promised smaller community institutions. On a smaller scale, and more recently, deinstitutionalisation of state wards has involved a similar deal between philosophers and treasury officials.
In contrast with these unhappy developments, the conference-based cautioning scheme with which we are concerned here is one that actively mobilises community resources. The process deals with the anger and resentment of victims. It regularly arranges for compensation where none would otherwise have been forthcoming. It encourages friends and members of extended families to cooperate in providing support and guidance for young offenders. In the process, it encourages the social reintegration of both victims and offenders. It fosters discussion about minimum acceptable community standards and promotes the strengthening of local networks. It builds social capital. And it offers to do all this without requiring additional funding. It is a change in procedure rather than a radical change in institutional arrangements. But underlying this procedural change is a crucial philosophical shift: the aim of the new procedure is social reintegration rather than stigmatisation.

A ceremony of reintegration should not seek to equate the ongoing moral status of the offender with the permanent unacceptability of the offence. Rather, a ceremony of reintegration should draw a distinction between the offence and the person who committed it. The behaviour cannot be condoned. The offender, however, should be offered an opportunity to rejoin the moral community which has rejected the offending behaviour. In a truly democratic society, the people most entitled to make a judgment about an instance of offending behaviour would be those most affected by that behaviour: the victim(s), the family, friends and colleagues of the victim(s), and the family and friends of the offender(s). With their fourteen conditions for a successful reintegration ceremony, Braithwaite and Mugford are suggesting one way to achieve this and thus to promote a justice system that is really more just.

The effective cautioning scheme in Wagga, utilising the family conference as its successful reintegration ceremony, has been modified to take account of some of Braithwaite and Mugford's fourteen conditions. But it has met most of these conditions since its inception in 1991, just as it has met the basic institutional conditions for a republican or communitarian system of justice. Admittedly, the scheme deals only with the legal transgressions of one section of the population, as provided for in the Police Commissioner's standing orders on juvenile cautioning. The scheme is also limited to certain categories of offences; police are not legally entitled to convene cautions to deal with serious indictable offences. The apparent success of the scheme nevertheless suggests ways in which the justice system might gradually be transformed in order to provide a more acceptable outcome for all concerned.
Responding to the Critics

What is it then that the critics dislike about the attempt by police and the wider community of Wagga to respond constructively to the problem of victimisation by young people? Some of the criticisms raised at the national conference on juvenile justice convened by The Australian Institute of Criminology in Adelaide in September of 1992 were anticipated in advance of the conference and addressed in various papers (O'Connell & Moore 1992; Howard & Purches 1992; Moore 1993a). Prominent among these criticisms are the claim that other "informal" schemes for dealing with young offenders are preferable to family conferences. A second concern is that all informalist schemes have hidden or obvious dangers. A third group of critics are concerned to refute the political theory informing the cautioning scheme as it operates in Wagga. These debates can be summarised only briefly here.

Very briefly then, those who are uneasy with Wagga's cautioning scheme but who are not necessarily opposed to alternative "informal" responses to juvenile offending tend to make the following claims: that a scheme employing family conferences will have a "net-widening effect", drawing in young people whose offences are too trivial to warrant official intervention; that police time would be better spent in other ways; that the scheme blurs the line between law enforcement and social work; that families are no longer the most important influence on young people; that the scheme is inappropriate for certain groups of young offenders. Our equally brief responses to these legitimate concerns are as follows:

The scheme deals with young offenders who have come to the attention of the police and with victims of those offenders. There is no change here—people come to the attention of the police in the same way as they did under the old regime. The change is in the nature of the response. A key question now informing police when they exercise their discretion in responding to an incident is whether there is a victim. If so, some response is appropriate. Victims may feel deeply hurt and aggrieved by thefts or assaults that are technically "minor" or "trivial". It is important that victims are given an opportunity to say so and to forgive the offender if they so wish. It is also important that the offender be given this opportunity to understand the impact of the offence and to be forgiven by the victim and the victim's supporters, and by also by their own family and friends. The net of state control is not being widened here. On the contrary, the diversionary process is designed to narrow the net of state control. It offers as an alternative, a network of community control. This community control is likely to be strengthened during and after the family conference.
That police might better spend their time engaged in other activities is a rather short-sighted suggestion. Arranging a conference requires a great deal of care, but not a great deal of time. One must remember here that a conference deals with an incident of offending behaviour. If that incident has involved three offenders and two victims, for example, they are all dealt with at once. Indeed, police in Wagga have, to date, had an average of just over two offenders and slightly fewer victims in each conference. At the same time, police have helped friends and relatives to address their concerns. The court system is not in a position to do this. Furthermore, police appear to have an advantage over their counterparts in other government departments when arranging conferences. A common experience in New Zealand has been that victims are not only reluctant but indeed often refuse to attend a family group conference. One of the reasons for this reluctance or refusal appears to be that youth justice coordinators are not always considered to have the same authority as police, and are often seen to be acting on behalf of the young offender—as has been the traditional and appropriate role of welfare departments. Police do not have this reputation—indeed, quite the contrary. They have been seen by many as the natural enemies of offenders and the natural friends of victims, who therefore seem more willing to attend a conference when the invitation to do so is extended by a police officer. Interestingly, however, while victims have generally been more than satisfied with the outcomes of family conferences as they operate in Wagga, this is not because victims have observed police playing the role of antagonists of young folk—again, quite the contrary. Police are seen as helping to minimise and then repair the harm caused by the incident of offending behaviour which has justified the convening of a family conference. In the wake of successful conferences, many young offenders have stopped seeing the local police as enemies, and have instead used them as a referral service for various matters relating to school, sport, employment and the like. Given the right circumstances, former young offenders are quick to notice that police need not be just law enforcers. Some of the professional advocates of these young people are a little slower off the mark.

The average conference, with perhaps a dozen people in attendance, runs for a period of between forty minutes and an hour-and-a-half. During that time, a conference follows a basic sequence. The offender gives his/her version of events, followed by the version of events as perceived by the offender's supporters. Then it is the turn of the victim to provide what usually proves to be a startlingly different version. The victim's supporters also make a contribution here and these often include further surprising revelations. In a number of cases, for instance, evidence of feuds between individuals, families or larger groups has been revealed. An
apparently straightforward assault may, in fact, be only one small part of a much larger picture. Differences stretching back over a decade have been revealed and addressed in conferences. A long process of reconciliation has then been initiated.

More generally, conferences address problems that the old system ignored, problems such as the anger and resentment of victims and the possibility of victim compensation. The issue of compensation has proved less problematic than anticipated. In many cases, return of goods and monetary compensation for damage has been readily undertaken. In the event of damage to buildings, supervised repair work as agreed to by both parties has normally been arranged. Interestingly, nearly all young offenders offer to impose tougher demands on themselves than the victims consider appropriate. Victims regularly find themselves arguing the case for leniency. Offenders, wishing to emphasise their willingness to earn respect, argue the case for a tougher penalty. The group's collective compromise is rarely considered unfair.

Conferences also offer better solutions to those problems which the old system did address; problems such as the need to disapprove of the offence and to discourage further offending. If recidivism rates are reduced by the scheme, as is confidently predicted, police will have saved themselves and court officials a good deal of future effort. If there is no net change to rates of recidivism—a result we consider unlikely—the scheme will nevertheless have provided a better response to the needs of victims. This can hardly be construed as a waste of time.

Some concern has been expressed that, by conducting family conferences, police are taking on the role of social workers. This does not seem to bother conference participants, but it does concern some social workers and some para-legal academics. It should be noted, however, that the scheme does not represent any change to the police role. Historically, Australian police have had a threefold mandate: law enforcement, order maintenance, and response to emergencies and miscellaneous requests (Moore 1991). The use of family conferences in a cautioning scheme represents a slight shift of emphasis away from law enforcement in the narrow procedural sense, towards the roles of order maintenance and provision of miscellaneous services—as called for by proponents of community policing.

The family conference encourages police to take a problem-solving approach to offending by young people and it encourages a collective, constructive response by the people who have been most affected by that offending behaviour. Achieving this outcome at the first point of contact with the justice system reduces the total amount of official effort while increasing the input of civil society. Many social workers in Wagga are
quite happy with this logic. Overworked as they have been with excessive caseloads, social workers who experience a reduction in the number of young people for whom they are responsible are left with more time to devote to those in greatest need. Furthermore, those few youth refuge workers who have attended a conference in support of one of their temporary charges have had little but praise for the scheme. They understand perhaps better than anyone the need to foster supportive social networks. They, too, feel victimised when someone for whom they have been providing support and trust has breached that trust by committing an offence.

Another criticism of the scheme, as articulated by John Seymour in his major study of juvenile justice in Australia, is that "informal" responses to criminal offences may deprive alleged offenders of important rights (Seymour 1988, ch. 6). This concern raises a host of questions about our entire common law system, questions with which we cannot deal here. It seems a little glib to say simply, as we will have to, that only in cases where there is no denial of guilt will the sergeant's panel consider giving offender(s) and victim(s) the option of a family conference rather than court. Nevertheless, since there is no denial of guilt in around 90 per cent of juvenile justice cases under existing arrangements, that leaves perhaps 10 per cent of young offenders who may feel coerced by the existence of an alternative to court. It should be noted that, for this minority, an escape clause remains. At the start of each conference a formal statement is made to the young offender(s) and to their family. They are advised that they may call a halt to the proceedings at any stage and, without prejudice, exercise their right to have the matter referred to a court hearing. Since nobody has exercised that right to date, we are unable to report further on what might trigger a decision to opt for court rather than conference.

The family conference addresses a lack of conformity to the ethical standards of a community, rather than to the technical rules of common or statutory law. It is simply unethical to steal someone else's motorbike or the clothes from their washing-line, break into their house, burn their possessions or clobber them with a piece of two-by-four. It should be the ethical unacceptability of such actions, rather than their illegality, that is emphasised in any response to actions of this sort. The family conference emphasises the ethical unacceptability of any sort of victimisation, while simultaneously offering the person responsible for the behaviour the chance to rejoin the moral community. There is, of course, a close match between ethical standards and laws. The philosophy informing the cautioning scheme, however, holds that a collective confirmation of the ethical standards of a community should serve to strengthen social bonds within that community. Conversely, a response that recruits legal officials
to deal with conflict within a community may have a debilitating effect on that community.

Interestingly, young offenders who have had the pleasure of a court appearance at some stage prior to their appearance at a family conference have regularly made the comment that the court appearance was "useless" or a "joke", and that the real impact of their offending behaviour only became clear to them when they were confronted by the victim(s) of their behaviour in the context of their own community of family and friends. Many victims have also described the court process to us as a "joke"—but a joke they find exceedingly unfunny. One victim of a crime who recently struggled to attend a family conference with a leg in plaster said after the experience that she would have made it there even with both legs in plaster, knowing as she now did how much more satisfying the experience was in contrast to an earlier court case in which she had been involved. As is the case with most victims once they are actually involved in the process, she did not want the young offenders punished. She did, however, want them to understand the impact of their behaviour and she felt confident afterwards that they had indeed understood. She certainly did not want the young offenders to laugh mockingly at her, as had happened after she had sat in silence through an earlier court case. Shame felt for a breach of an ethical code is something very different to the admission of technical guilt (Moore 1993b). Victims understand this; some legal formalists appear not to.

The contrast drawn here between the ethical standards upheld in a family conference and the legal rules enforced by courts has made use of strong communitarian language. The implication throughout has been that calls for the full exercise of individual rights should be balanced by calls for a full recognition of individual and collective responsibilities. Again, this raises complex philosophical issues, few of which can be addressed here (see ibid). In practice, those who attend family conferences seem to have no problem offering a collective exercise in reparation and harm minimisation in response to individual acts of offending. A common misunderstanding of the critics, however, has been to assume some sort of inverse proportionality between rights and responsibilities: as one increases responsibilities, so one diminishes rights. But this is fatuous. Totalitarian regimes are strong on responsibilities to the collective and weak on individual rights. Libertarians are strong on rights and weak on responsibilities. Vibrant, democratic communities, however, are strong on both rights and responsibilities. They guarantee rights while also requiring their members not to neglect their responsibilities—and not to infringe the rights of others. In order to determine whether rights have been
undermined in the search for responsibility in the Riverina, we turn now to early evaluations of the scheme.

**Evaluation**

Those who helped to design the cautioning scheme in Wagga have monitored it and kept careful records from the outset. External evaluation of such projects is essential, however. The first outside evaluation of the scheme was completed halfway through 1992. A group of four final-year welfare students at Charles Sturt University, all of whom had worked in a state justice system at some earlier point in their careers, chose to evaluate the scheme. None of the four, we hasten to add, were students of either author. Thirty participants were selected and interviewed at random from an unbiased sample of eighty cases. The findings warrant quotation at length. The research concluded that:

The majority of young people and their families who were involved in family group conferences found them to be positive, effective, and an appropriate way of dealing with the first offence committed by a juvenile... It is also suggested that the conference option limits the possibility of net-widening which is prevalent in the traditional system (Dymond et al. 1992, p. 1).

Extracts from the report's concluding discussion warrant careful consideration by critics of the scheme:

The research team, when it began this investigation, had a number of preconceptions. These preconceptions were stereotypical of young offenders. They involved such things as family type, socio-economic conditions, and lack of success at school. Our findings turned these perceptions on their head (p. 6).

It became more and more obvious as the interviews continued that many of the offenders had gained an empathic understanding for the victims of their offences. The majority of the young people believed that the victim was satisfied with the outcome of the conference. In fact some of the families of the young offenders reported that the victim had offered help to their child (p. 7).

Many families believe that as a result of the conference they have perceived real behavioural changes in their children (p. 7).

This report would contend that the conference reduces [the] possibility [of net-widening]. The young offender is not put in contact with other young offenders, the court system or juvenile institutions, thereby limiting the possibility of being seduced into the criminal culture. . . . The majority of young people who were interviewed told us that they had changed their peer group since the offence was committed.] On the other hand, there was also a
realisation by both the young offender and their parents that it was going to take a period of time for real trust to be re-established (p. 7).

A stereotypical view of young offenders is that they lack social support networks. Our research did not find this to be true. The support networks of those interviewed appeared to be quite robust. . . . In terms of other support networks, many of these young people had become involved in sporting and social organisations. This involvement was strongly supported by their parents who have increased their interest in who their young people are with, what they are doing, and where they are. This interest has resulted in both the children and their parents reporting improved communication between them (p. 8).

One of the more interesting support networks, which has arisen as a result of the family group conference, is the relationship that has developed between a number of parents and the police sergeants. . . . There seemed to be a changing perception which saw the police not just as authority figures but as people who offer guidance and help (p. 8).

The report continues in this vein, over-turning one stereotype after another. The final list of recommended modifications to the scheme is relatively short. The point is made strongly that any follow-up program should be optional only, a point with which we are in complete agreement. The compilers of the report also argue that additional training be given to coordinators of family conferences. Again, we agree—and to this end a second, and larger evaluation of the scheme was begun at the start of 1993.

An evaluation of the scheme over eighteen months has been coordinated by the current authors. By studying the dynamics of a large number of conferences, and then relating the views of participants to these observations, we are building a valuable body of knowledge about what techniques of conference preparation and coordination do and do not work. This knowledge will form the basis of a training program for coordinators. The evaluation has also produced some early, unexpected, and exciting theoretical developments. Having compared notes on many dozens of family conferences, with O'Connell as coordinator and Moore as observer, we were dissatisfied with the capacity of most of the better known psychological theories to account for our observations. Braithwaite's predictions about the collective willingness to forgive but not forget, and about the collective concern to achieve social reintegration, were proving to be highly accurate. But neither he nor we could account for the emotional power of conferences. We could not well explain the regular tangible, visible progression through clearly marked stages of tension, anger, shame, remorse, apology, forgiveness, relief, and cooperation. Braithwaite's theory, quite appropriately, emphasises sociology rather than psychology. We needed a psychological counterpart
to the theory of reintegrative shaming. After a lengthy wrestling with the burgeoning literature on shame, we eventually found an account that matched our observations. The account—known as affect theory—accords with our understanding of shame as a regulator of social interaction. The author of the most impressive version of this theory, Donald Nathanson, endorses our interpretation. Nathanson, who is Professor of Psychiatry at the Jefferson Clinic in Philadelphia, considers that the theory of the affect system and the theory of reintegrative shaming complement each other. John Braithwaite essentially agrees with that interpretation (see Tomkins 1962/63/91/92; Singer & Salovey 1993; Nathanson [ed.] 1987 and esp. Nathanson 1992). Details of the application of affect theory to the practice of family conferences are provided elsewhere (Moore forthcoming).

The elaboration of our understanding of the psychology of shame is likely to prove useful in the next stage of evaluating the scheme. As critics will quite rightly point out, the numbers involved in the two evaluations of the scheme in Wagga are too small to provide really useful statistics. Certainly, material compensation of greater than 95 per cent has been achieved; victim satisfaction has been recorded at around 90 per cent; recidivism after a conference appears to be running at a rate of approximately 6 per cent; Koori participants—victims, offenders, and their families—have praised the scheme, indicating thereby that it is "culturally sensitive". But we have no control group against which to compare the present—other than the Wagga of the past, and that past is recorded in a patchy set of inadequate statistics.

What is required is a long-term research project comparing the outcome of family conferences in different patrols, using random assignment and large samples. Only then can we give an accurate answer to questions about the ability of the scheme to reduce recidivism. (Of course, as we continue to argue, the scheme would be worthwhile even if it had no measurable effect on recidivism, because it gives victims of crime a role in the process, and because it aims to find viable collective solutions). An independent evaluation of the scheme over several years in metropolitan Sydney or in the Australian Capital Territory is now being planned. The study will cover perhaps a dozen patrols. The aim is to randomly assign to a family conference half of the young offenders who would otherwise go to court. Some methodologically acceptable answer to the current critics might then be available.

**Conclusion**

In Wagga, only two years after the alternative cautioning scheme began operation, staff at local and district schools began debating whether the
approach taken by police should not, in turn, force schools to review their approach to matters of discipline, education, and social support. The consensus was that a review would be appropriate. Police certainly agreed with this assessment. They are as aware as anyone that police cannot work in isolation, nor can they provide the additional support required by many young people—although the Police and Citizens' Youth Club do their bit. However, when explaining the principle behind their cautioning scheme to school staff, O'Connell and colleagues began with a warning and disclaimer: don't see this simply as a cautioning scheme. Conferences are convened legitimately under the provisions for cautioning young offenders. But as we have learned, conferences are not just about young offenders, nor are they simply concerned with redress for victims. They are an effective way of reaching collective agreement that we need to respect the rights of fellow citizens and fulfil our responsibilities to them. These are conferences about community accountability.

To emphasise the point, and to mark the end of its first two years, the scheme's standard terminology was changed in August 1993. Rather than talking about an effective cautioning scheme using family conferences, police and other members of the community are now talking about "community accountability conferences". Those who have experienced such a conference know that the phrase "community accountability" comes close to capturing the complexity of the processes that occur in a conference. The critics may still need persuading. Few of the participants do. They have experienced an alternative response to the problems caused by the offending behaviour of young people. That alternative response is neither a hard option nor a soft option. It is an effective option, and one that treats people with respect. It provides a practical demonstration that "mobilising the resources of the community" really can produce a more constructive and more just response to incivility and crime.

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Appendix 1

Case Studies from Wagga Wagga
Compiled by Terry O'Connell

Case No 1: Malicious Damage

Background
Following an early morning party, two 17-year-olds and two 18-year-old male offenders drove around Wagga Wagga throwing stones and other debris from the vehicle. They broke windows on five motor vehicles and a window at a local primary school. Damage was approximately $1,400.

Police intervention
Police received information from a friend of one of the offenders about two months after the incident. The offenders were interviewed, and initially, in view of the level of damage and the age of the offenders, police intended to place the matter before the court. However, it was decided that the case should be resolved by conference.

Caution process
The cautioning conference involved the following people:

- four offenders, parents, brothers, sisters, uncles and aunts;
- five victims, relations or friends;
- the reporting police officer;
- the sergeant as the cautioning coordinator.

The offenders gave a version of what had taken place. Each had difficulty in actually relating their version because of what had been described by their families as "senseless acts". Each victim told how this had affected them and their families. One victim (a young university student) explained that because he had no money, he had to contact his brother who paid to have the broken front screen on the vehicle replaced. She said that he was repaying his brother $10 each fortnight. Another
victim (the school principal) explained that he spent two days consoling young schoolchildren and their teachers about the broken window.

When the conference participants were talking about restitution, the offenders volunteered full compensation and suggested they undertake at least eighty hours community work. One victim believed this was excessive. Another reminded them that they would shortly be undertaking their Higher School Certificate so time spent doing community work needed to be realistic.

**Outcomes**

- Each offender publicly apologised to the victim;
- the victims were satisfied with being involved and asked each offender to put this behind them;
- each offender agreed to pay his share of compensation and forty hours community work;
- each offender publicly apologised to his own family;
- all families expressed dismay at what had taken place, but indicated their support for the offenders, although they felt some trust needed to be restored.

**Issues**

- The conference appeared to be a more appropriate option than court;
- victims contributed in a very positive way which provided the offenders and their families with a good platform to resolve issues of trust and so on;
- the investigating police officer who expressed some doubt about the effectiveness of conferences, was most impressed with the process.

**Case No 2: Possess prohibited Drug/Implement**

**Background**

A seventeen-year-old male offender was with a group of young people parked in a local park. A police patrol vehicle attended the location in relation to a noise complaint and whilst speaking to the offender, noticed
the vehicle was filled with smoke. The offender admitted that the smoke was from a marijuana joint which he had just smoked.

**Police intervention**

This matter was one that would normally have been placed before the court. One of the concerns police had about using a conference was the question of who is the victim? However it was decided that a conference was still more appropriate than court.

**Caution process**

The cautioning conference involved the following people:

- the offender;
- the offender's parents, and two sisters (aged 12 & 15);
- the offender's friend;
- the sergeant as the cautioning coordinator.

The offender explained the circumstances of the incident. He talked about how he was interested in experimenting with marijuana and how he had managed to purchase some in Melbourne the previous weekend. He said that since the incident, he understood how his actions (and being detected) had impacted upon his family. The offender's father spoke of his son in positive terms, but stated that the whole family was having difficulty coming to accept that "drugs" were involved. The offender's fifteen-year-old sister was upset because her brother had been selfish in not considering others.

**Outcomes**

- The offender apologised to his family for the anguish caused because of his actions;
- he agreed to enter into a contract with his parents not to smoke marijuana again;
- both parents said that the incident had brought the family closer together;
- the parents reported later that they felt the conference was a positive and worthwhile experience for the offender and family.
Issues

- This conference challenged the view about victimless crime;
- the conference allowed the offender and his family to be involved in a way that is not possible at court;
- the conference strengthened family relationships;
- the investigating officer was satisfied that the conference was a more appropriate alternative to court.

Case No. 3: Larceny as a Servant (stealing)

Background

A seventeen-year-old male stole a quantity of cigarettes and money from his employer over a three-month period. The victim, who ran a mixed business, had noticed money was missing from his office so he installed a video camera to detect the offender/s. The offender was caught on video taking $20 from the office drawer.

Police intervention

The victim contacted the police who viewed the video. The offender was then interviewed and the offender admitted taking cigarettes and other stock. The victim had not realised that this other property was missing. Police were initially inclined to place this matter before court because the total value of the missing property was approximately $650. However, it was decided that the conference was more appropriate.

Caution process

The cautioning conference involved the following people:

- the offender;
- the offender's mother and father, brother (10) and sister (14);
- the victim and his wife;
- the sergeant as the cautioning coordinator.

The offender talked about how he had taken property over a three-month period; he talked at length about the traumatic impact this incident had had on himself, his family and the victims. The conference at this point
became very emotional with all participants becoming distressed. The victims talked about their fondness for the offender and that he had been one of the best employees. The offender's parents then spoke about how the incident had caused the family to undertake a deal of soul searching. They believed that it had brought everyone closer together.

Outcomes

- The offender publicly apologised to the victims and his family;
- the offender agreed to fully compensate the victim;
- the offender volunteered to speak with the victim's family about the incident as they were also very fond of the offender.

Issues

- The conference provided a forum for the offender, his family and the victims to deal with what were very emotional and personal issues;
- the conference allowed the participants to restore their previous close relationships;
- the court process would most likely have been stigmatising and neither group could have properly reconciled the many issues which resulted.

Case No. 4: Stealing (Walkman radio & money)

Background

Two thirteen-year-old male offenders stole a Walkman radio/cassette player and $50 in cash from the campus room of a university student. The two offenders were selling lollies at the time and noticed the door open and the room unattended. One offender took the radio and then the following week, whilst again selling lollies, they found the same room open and began looking through a desk drawer for cash. The victim was hiding in the cupboard as he suspected they were responsible for the earlier theft.

Police intervention

The victim (who was an Asian student) contacted police. The offenders were spoken to at their homes and their parents expressed concern about
the boys' recent behaviour. Both offenders had previously been caught taking money from home and there were difficulties at school.

**Caution process**

The cautioning conference involved the following people:

- the two offenders;
- their mothers, younger sisters and brothers;
- the victim and two friends (Asian students);
- the sergeant as the cautioning coordinator.

Both offenders explained what had happened. Each expressed regret about the problems their behaviour had caused. The victim told them how his life had been disrupted following the first incident. The Walkman radio was given as a present and, because he had few friends in Australia, relied upon it to play cassette tapes from his family in Malaysia. The victim also said that his family now had a very negative view about Australians. During the conference, the offenders handed over the Walkman radio and cash to fully compensate the victim. The victim's friend then spoke to the young offenders about how important family trust and support was.

**Outcomes**

- the offenders apologised to the victim and their own families;
- the offenders handed back the stolen property and cash to the victim;
- the offenders agreed to undertake two days of community work at a nearby hostel for the elderly;
- the families confronted the offenders about their recent behaviour, particularly at school.

**Issues**

- the conference provided a forum for the families to confront the young offenders about their recent unacceptable behaviour;
- the victim was happy that his property had been returned and he was given an opportunity to participate.
Case No. 5: Break, Enter & Steal

Background

Two offenders, a fifteen-year-old male and a sixteen-year-old female, broke into the flat of an elderly woman who lived alone and stole a variety of property including a television, jewellery and food (value around $5,000). Both offenders were living at a nearby caravan park and had watched the victim leave her home. The victim's daughter suspected the offenders as the flat had previously been broken into.

Police intervention

Police became involved, interviewed the offenders and located most of the property. Police also arrested another adult offender, who was charged and placed before the court. This offender was sent to prison because of his criminal history. The issue of a conference or court hearing was discussed at length by police. As the adult offender had been sent to court (and imprisoned), police initially felt that the other offenders should also be charged because of this and the seriousness of the matter. However, the case was referred for a conference.

Caution process

The cautioning conference involved the following people:

- the male offender, his mother, brother and sister;
- the female offender, her mother, sister, boyfriend and two other friends;
- the victim, her daughter and grand-daughter.

Both offenders talked about the circumstances and were confronted by the elderly victim who disclosed that she had been broken into on two prior occasions. The victim talked about living in fear for about two months. She was distressed about the loss of a wooden box her brother gave her when she was fourteen. The victim's daughter spoke about her concern for her mother over the past few months.

The mother of the female offender spoke about the fact that her daughter had not lived at home for about two years. There was considerable emotion between the offender, her sister and mother over many issues. The conference participants were moved by the anguish shown by the elderly victim. The discussion on the $400 compensation resulted in arrangements whereby the two offenders would make
repayments each fortnight into a bank account nominated by the victim's
daughter. Both offenders agreed to undertake twenty hours community
work. The female offender was to work with her mother with a local scout
group (her mother was doing community work there as a result of a court
appearance for social welfare fraud). The male offender was to work at the
St Vincent de Paul Society.

As the elderly victim was leaving the conference, she summoned the
sergeant saying, "Thank you, I now feel safe".

**Outcomes**

- Offenders apologised to the victims;
- they agreed to pay compensation;
- they agreed to undertake twenty hours community work;
- the victim stated she was no longer fearful;
- the victim's daughter felt relieved that her mother's situation would
  now return to some normality;
- the conference provided a forum for the female offender and her
  mother to deal with a number of outstanding issues.

**Issues**

- It would not have been possible to address the victim's concerns if
  this matter had been sent to court;
- the young offenders would not have been confronted in court about
  many of the issues dealt with in the conference;
- the conference brought together members of two offenders' families
  with a history of difficulty, and enabled them to deal with issues in a
  positive and constructive manner.

**Case No. 6: Arson**

**Background**

Two seventeen-year-old male offenders went to their local high school,
where they attend as year 12 students. They placed two large hessian bags
containing waste paper against the door of the science room. They then lit
this paper causing considerable fire and smoke damage to the door. Some books which were also stored near the door were soiled by the smoke.

**Police intervention**

Following extensive inquiries, police spoke to the two young offenders who admitted to the incident. There was considerable pressure for the boys to be charged but it was decided that a conference offered greater potential than court to deal with many of the issues.

**Caution process**

The cautioning conference involved the following people:

- an offender, mother, father and sister;
- an offender, mother, father, two sisters and brother;
- school principal and deputy principal;
- year 12 mentor;
- 3 teachers who occupied the science block;
- school counsellor;
- 2 teachers from the student welfare committee;
- school captains (male and female);
- president of the Parents & Citizens committee;
- member of Parents & Citizens committee (who described himself as a supportive parent);
- the sergeant as the cautioning coordinator.

The conference was convened at the school on a public holiday. The offenders talked about what they did and how many people had been affected. The principal talked about the level of disruption and anger that resulted from the incident. The teachers who used the science block described the condition of the books which they had been gathering for students who could not afford to purchase new ones. They also talked about the constant stench of the smoke and new paint which caused headaches and discomfort for some time after the incident. The offender's families talked about the distress and disbelief they experienced. Each young offender was described as a responsible and valuable member of
their family. The student representatives said that the incident had caused anger amongst the students, but they hoped that the offenders would get on with their lives. The father who was representing the Parents & Citizens committee was keen to share his son's experience at school which resulted in a court appearance. This father was there to say how supportive he was of the conference concept.

The conference participants discussed the issue of restitution for some time, and it was agreed by the offenders to pay compensation ($1,700) and to undertake forty hours work at the school—planting trees, cleaning and painting. The principal also imposed a period of suspension in a way that did not interfere with the year 12 examinations.

**Outcomes**

- Each offender apologised to all conference participants;
- each offender agreed to pay compensation and undertake forty hours of work at the school;
- the teachers were pleased at the opportunity of being involved in the conference;
- the offender's family indicated that the incident and conference brought them closer together;
- school principal was pleased with the conference and resolution of the incident as he had considered expelling the offenders;
- expulsion would have denied the offenders the opportunity of completing year 12.

**Issues**

- The conference provided an ideal forum for all those within the school community to resolve the issue;
- the court would not have allowed the important issues to be resolved, especially for families and victims;
- the students would most likely have been expelled if the matter had been placed before the court.

**Note:**

This matter has been finalised. The full compensation was paid and each offender completed the work at the school with the assistance of their families. It was not an unusual sight to see the offender's family group having a picnic lunch whilst completing this undertaking.
Case No. 7: Steal motor cycle

Background

Two fifteen-year-old male offenders went onto the back veranda of a suburban home and stole a small 50cc motor cycle late at night. They rode this cycle for two days and were stopped by police following a complaint. Both offenders admitted stealing the motor cycle and causing about $60 damage to the fuel tank.

Police intervention

Both offenders were well known to police. The offenders came from difficult family situations and were having problems at school. The conference was still considered a better option than court for dealing with this incident.

Caution process

The cautioning conference involved the following people:

- offender, mother and father;
- offender, grandmother, grandfather and uncle;
- victims—mother, father, daughters aged 12, 10, 8 & 6;
- the sergeant as the cautioning coordinator.

The offenders talked about how they had stolen the motor cycle. The mother from the victim's family spoke about her concern in having her young daughter confront the offenders, but had decided to allow her to do so because she realised it was the only way that many of the problems her family had experienced would be resolved. The mother talked about how each of the children had been affected; one began to wet the bed; the other would not sleep alone; another was now frightened of the dark; and the other did not have the motor cycle to ride. The offender's family expressed their anguish about what had happened but indicated that the incident came as no surprise.

Following the conference, the victim's family was spoken to separately by the coordinator. The eldest girl began to cry saying that she felt sorry for the boys, as they were just ordinary boys. The mother of the victim's family spoke about how important the conference had been for them: as she put it, "it finalised the whole matter for my kids. They now realised these weren't criminals but ordinary boys who did a silly thing".
**Outcomes**

- Offenders apologised for their actions;
- agreed to pay compensation;
- victim's family was satisfied;
- conference provided a forum for the reintegration of the victim's family.

**Issues**

- The court would not have considered the victim;
- the offenders would not have been confronted about many issues nor required to pay compensation.
Family Conferencing and Juvenile Justice Reform in South Australia

Joy Wundersitz

South Australia has always considered itself a leader in the field of juvenile justice within Australia—a claim which is to some extent validated by its record of legislative reform in this area. It was the first State to establish a separate juvenile court and to embrace a welfare approach to the treatment of young offenders. It was also the first to retreat from that welfare model when, in July 1979, it legislated in favour of a greater emphasis on due process and just deserts (Naffine, Wundersitz & Gale 1990). With the passing of new legislation for young offenders in May 1993, it now stands poised to become the first jurisdiction in this country to give statutory endorsement to family conferencing as a key component of its juvenile justice system.

The aim of this chapter is to describe these recent legislative reforms in South Australia and in particular, to outline the family conferencing model being developed, to describe its location within the new juvenile justice system and to compare it with the New Zealand model from which it is derived.

Legislative Reform: the Impetus for Change

Until very recently, juvenile justice in South Australia was governed by the *Children's Protection and Young Offenders Act 1979* which, when first introduced some 14 years ago, was regarded as highly innovative. However, by the late 1980s, there was a growing perception that it had
failed to keep pace with the changing needs and circumstances of young offenders and with community expectations. The push for a major overhaul began to gain momentum and in August 1991, the Government responded by establishing a Parliamentary Select Committee to enquire into all aspects of juvenile justice processing in South Australia.

Evidence presented to this Committee during the course of its twelve-month inquiry identified a number of problems with the current methods of dealing with young offenders (for a detailed description of the present system which the Committee was required to examine, see Naffine, Wundersitz & Gale 1991). Of greatest concern to the public was the perception that the system was not dealing effectively with the serious offender or long-term recidivist. Penalties handed down by the Children's Court were considered to be too lenient or lacking in relevance and, even where appropriate sanctions were imposed, in many cases these were not being adequately enforced. As a result, young people were not held accountable for their behaviour and the community was not receiving adequate protection. Other problems were also identified, including: long delays in processing, with some cases taking over six months to finalise; over-processing due to the absence of a street-based formal police cautioning system; the non-participatory role of the young offender who was often marginalised by the presence of lawyers, social workers and other professionals in the system; the almost total exclusion of the victim from the process; and the failure to include the young person's parents in the decision-making process, which not only undermined their authority but also absolved them from accepting any responsibility for the wrongdoings of their child.

In seeking solutions to these problems, the Select Committee's attention was drawn to the New Zealand juvenile justice system and in particular to its innovative concept of family group conferences. Several months before handing down its Report, the Committee visited New Zealand, where they attended several of these conferences and consulted with a range of youth justice coordinators, youth aid officers and juvenile justice administrators. That they were clearly influenced by what they observed is reflected in their subsequent recommendations for reform.

The Select Committee tabled its first Interim Report in November 1992. This Report called for sweeping changes to both the philosophy and structure of juvenile justice in South Australia. Its recommendations formed the basis for three new pieces of legislation: the Young Offenders Act, which redefines the philosophy and structure of the juvenile justice system; the Youth Court Act, which establishes the Youth Court of South Australia; and the Children's Protection Act, which deals with children in need of care. The first two were passed by Parliament in May 1993, while
the third was endorsed in November 1993. All three were proclaimed on 1 January 1994, thereby replacing the *Children's Protection and Young Offenders Act 1979*.

**An Overview of the New System**

In his Second Reading explanation to the House of Assembly (South Australia. Parliament, *Debates*, 1 April 1993), the Minister of Health, Family and Community Services identified six key aims of the new legislation: namely,

- to ensure that young people are held accountable for their behaviour and experience immediate and relevant consequences for their criminal acts;
- increase both the severity and range of penalties available at all levels of the system;
- enhance the role of police in the juvenile justice system
- empower families to play a greater role and to take more responsibility for their children's behaviour;
- protect the rights of victims to restitution and compensation and allow victims, where appropriate, to confront the young offenders and make them aware of the harm which they have caused.

In line with this agenda, the new laws redefine the philosophy underpinning the treatment of juvenile offenders in South Australia. Whereas the *Children's Protection and Young Offenders Act 1979* gave prominence to the welfare needs of the young person and required that issues of community protection and accountability be taken into consideration only "where appropriate", the *Young Offenders Act 1993* reverses this emphasis. It specifies three factors which must be taken into account by persons exercising powers under this new legislation: first, that a youth "should be made aware of his or her obligations under the law and of the consequences of breach of the law": second, that "sanctions imposed against illegal conduct must be sufficiently severe to provide an appropriate level of deterrence"; and third, that "the community, and individual members of it, must be adequately protected against violent or wrongful acts" (s. 3(2)(c)). South Australia thus becomes the first jurisdiction in Australia to introduce the notion of deterrence as a sentencing principal for juvenile offenders.

Once these primary requirements have been met, consideration can then be given, at least in so far as "the circumstances of the individual case
allow" (s. 3(3)), to an additional five factors. One of these acknowledges that "compensation and restitution should be provided, where appropriate, for victims of offences committed by youths". The other four factors deal with what have traditionally been classified as welfare considerations; notably:

- the need to preserve and strengthen the youth's relationship with his/her parents and other family members;
- the need to ensure that the youth is not withdrawn unnecessarily from the family environment;
- the avoidance of any unnecessary interruption of a youth's education or employment and;
- the non-impairment of a youth's racial, ethnic or cultural identity.

Thus, while the new legislation does not entirely jettison all welfare concerns, it effectively relegates them to a position of secondary importance, while according primacy to the more traditional "justice" concerns of accountability and just deserts.

The philosophical section of the Act is also interesting in terms of what it does not contain. For example, there is no statutory reference to empowering the family or the victim, or of facilitating diversion from a formal court hearing. Yet these aspects are inherent in the new methods of processing (and in particular in the family conferencing model) which South Australia has chosen to adopt. Nor are there any references to the broader concepts of reintegrative shaming or restorative justice which are closely associated with the conferencing approach in other locations such as Wagga Wagga. Instead, the philosophical rhetoric of the Young Offenders Act 1993 remains firmly entrenched within, and retains the language of, the traditional "welfare/justice" debate. In effect, it merely effects a shift in balance between these two long-standing models, rather than embracing any new conceptual approach.

Restructuring the System

In addition to a shift in philosophy, the Young Offenders Act effects a substantial restructuring of the juvenile justice system itself. It borrows heavily from New Zealand in two key aspects: not only does it introduce family conferencing as a second-level diversionary mechanism, but it also adopts a modified version of that country's formal police cautioning system. In so doing, South Australia deviates from other Australian
conferencing "experiments" in that, rather than simply transplanting conferences as a single component, it adopts them as part of a broader "package". In effect, it introduces a two-tiered system of diversion based on the first two levels of processing operating in New Zealand.

The reason for this can be traced to the South Australian Select Committee's observations of New Zealand's juvenile justice system. These observations led it to conclude that the success of family group conferences in that country was predicated upon its highly effective police cautioning process which annually diverts over 70 per cent of juvenile offenders from the system. The Committee noted that, without this level of "front-end" diversion, family conferences would in all likelihood grind to a halt under the pressure of intolerable workloads.

The new South Australian system is outlined in Figure 1. As indicated, police cautioning, both formal and informal, constitutes the first level of diversion in the restructured system. The feature which sets this component apart from more traditional cautioning programs is the greater range of options available to police when dealing with youths at this level. Under the Young Offenders Act 1993, not only are police able to verbally caution the youth in the presence of his or her parents but, as in New Zealand, they also have the power to require the young person to enter into a formal undertaking, which may involve apologising to the victim, completing up to 75 hours of community work, or performing any other tasks considered appropriate. In determining the conditions of the undertaking, the police are required to take into account the needs of the victim, and to consult with the parents. The youth also has the right to refuse an undertaking, but such a refusal may result in the original allegations being referred to a family conference for resolution.

The introduction of this extended cautioning scheme is in full accord with the intentions of the new legislation as spelled out in the Second Reading Speech for the Young Offenders Act 1993. It returns the police to a more central role in the system; where appropriate, it allows the views of both the victims and the parents to be taken into consideration; particular emphasis is placed on the victim's right to reparation; and if implemented successfully, it should also improve the system's ability to ensure immediate consequences for offending behaviour.

However, as already indicated, a more pragmatic aim is also involved: namely, to provide police with a sufficient range of sanctions to enable them to deal with at least 60 per cent of all cases brought to their attention, thereby ensuring a comparatively small caseload for the time-consuming and resource-intensive family conferencing process. Thus, while the introduction of conferences has been viewed as the most significant innovation of the Young Offenders Act 1993, the implementation of an
Figure 2: Restructured South Australian Juvenile Justice System.
effective cautioning system is of crucial importance to the successful functioning of the entire system.

Family conferencing constitutes the second level of diversion and will be examined in more detail in the next sections of this chapter.

The Youth Court stands as the third and final level of processing (see Figure 1).

Apart from a change in name, this Court will function very much as did the previous Children's Court, with the only significant shifts being in the area of sentencing. In keeping with the requirement of the Young Offenders Act 1993 that youths must be held accountable for their actions, court penalties have been increased and extended: the maximum period of detention has been increased to three years; home detention has been included as a new sentencing option; good behaviour bonds have been replaced by specific court undertakings; and community service orders have been extended to 500 hours. It is also likely that the notion of deterrence will become an important sentencing principle at this level. As is currently the case, the Court is to be headed by a senior judge of District Court status, who will have the support of a second judge and two specially appointed Youth Court magistrates.

**Family Conferencing: some Structural Issues**

While the actual processes involved in running family conferences will be discussed in detail in the next section of the chapter, some key structural issues relating to the positioning of conferences within the overall juvenile justice system in South Australia require elaboration at this point.

*Types of matter dealt with by conferences*

The first issue relates to the type and seriousness of offending which conferences will be required to process in South Australia. Under the new structure it is intended that all minor matters (including summary offences and certain minor indictable offences) will be resolved at an earlier stage by way of a police caution. Conferences will therefore be reserved only for the more serious cases. As outlined in police guidelines (Police Commissioner's Office Circular No. 509 1993, p. 8), these may include "any offence or series of offences (not exceeding 3) which result in loss or damage to property, the value of which is in excess of $5,000 but less than $25,000".

Conferences will not, however, be required to handle the most serious offenders or long-term recidivists. Instead, these individuals (estimated at approximately 10 per cent of all youths dealt with) will still be referred
direct to Court, bypassing the conference system entirely. In effect then, South Australia has chosen to retain its faith in the Youth Court as the most appropriate venue for dealing with these extreme cases.

In this respect, the South Australian system differs from its New Zealand counterpart where conferences cannot be bypassed. In that country all cases which are considered to be too serious for a police caution must be referred (either directly by the police or indirectly from the Youth Court) to a family group conference. This means that even the most serious offenders and long-term recidivists in New Zealand must be dealt with by a conference each time they offend. The Youth Court in effect becomes the "default option", with a formal court disposition generally being imposed only when a family conference fails to reach agreement or when the conference itself recommends such a response.

The South Australian decision to allow conferences to be by-passed in the most serious cases may be the more appropriate one. This is evidenced by the fact that, as a result of the recent inquiry into New Zealand's juvenile justice system (Mason 1992), the governing legislation is to be amended to allow long-term recidivists to be referred direct to Court for a formal court disposition, without the need to convene a conference first. Experience has apparently shown that to hold a conference each time a repeat offender re-enters the system ultimately becomes a fruitless exercise.

The referral process

In South Australia, the decision as to whether a matter should be referred to a family conference or sent direct to the Youth Court rests with the police, and will be based primarily on the severity of the offence and the youth's prior record. If the police choose to direct a case to a family conference, the conference convener cannot overrule that decision: under the terms of the legislation, (s)he is obliged to hold a conference even if (s)he considers it inappropriate to do so. In effect then, the conference convener does not have the right of veto. The same situation does not apply, however, to the Youth Court. If police choose to channel a matter straight into the Court system, the Court does have the statutory right to reassess and, if appropriate, redirect the matter back for either a formal police caution or a conference.

The fact that youth justice coordinators in South Australia have no formal gate-keeping role means that they have no way of controlling the number or seriousness of cases which they are required to process. Inevitably, this poses a danger in that, if police cautioning does not operate effectively, family conferences may be required to handle a large number of relatively trivial cases which do not warrant such an intensive and costly
response. Again, this situation differs from the New Zealand model where youth justice coordinators do have a gate-keeping role: there they have the right to refuse a direct referral from police.

**Administering authority**

Probably the most significant feature of the structural positioning of conferences within the South Australian system revolves around the Department which has been selected to control and administer them. The new legislation places the conference system firmly under the umbrella, not of the Police Department or the Department for Family and Community Services, but of the Courts Administration Authority, while responsibility for overseeing and monitoring the scheme on a day-to-day basis lies with the senior judge of the Youth Court. In line with this, the legislation stipulates that youth justice coordinators can only be appointed after consultation with the Senior Judge and are directly responsible to that Judge for the "proper and efficient discharge" of their duties (*Young Offenders Act 1993*, s. 9(4)).

To reinforce further the link between family conferences and the Youth Court, the Act provides for all magistrates who "are members of the Youth Court's principal or ancillary judiciary" to be automatically designated as youth justice coordinators (*Young Offenders Act 1993* s. 11(l)(b)). It seems that the intention is not to use magistrates in this capacity on a regular basis, but simply to ensure that, if a specially appointed youth justice coordinator is not available (which may be the case in some rural and remote areas of the State) then a magistrate will be able to organise and conduct conferences. Nevertheless, it does serve to bring conferences within the purview of the formal court network rather than positioning them towards the more informal end of the justice continuum.

The decision to vest responsibility for conferences in the Courts Administration Authority, rather than with the Department for Family and Community Services, is consistent with the new Act's strong philosophical commitment to the notions of just deserts, accountability and community protection. The Courts Administration Authority is clearly aligned with "justice", not "welfare", and so was perceived to be in a better position to confer independence and neutrality on the conferencing system, as well as provide a higher level of accountability and public scrutiny.

This represents another departure from New Zealand, where conferences are the responsibility of the Department for Social Welfare. In that country, all youth justice coordinators are employees of that department and are accommodated in departmental premises; departmental social workers are assigned to act as support persons, undertaking a range
of tasks associated with pre-conference preparation and post-conference monitoring of outcomes; and many of the conferences themselves are held in departmental offices. Although the Mason Report (1992) was critical of the extent to which the Department had, as a result, managed to gain control of and bureaucratise family conferences, the Report also acknowledged some advantages, including the fact that it gave the youth justice coordinators access to a range of resources which would not otherwise have been available. The Mason Report (1992, p. 63) therefore opted to leave the family conferencing scheme within the Department of Social Welfare.

**Family Conferencing: the Process**

What then, of the conferences themselves? How will they operate? That South Australian family conferences are intended to run along similar lines to those of New Zealand is made explicit not only in the Select Committee's First Interim Report, but also in the Government's Second Reading Explanation for the Young Offenders Bill. Each conference is to be convened by specialist youth justice coordinators, whose task is "to bring together, in an informal and non-threatening setting, those people most directly affected by the young person's offending behaviour and, through a process of discussion and mediation, reach consensus regarding "an appropriate outcome" (South Australia. Parliament, Debates, 1 April 1993, p. 2853). The need to empower parents by encouraging them to participate fully in the decision-making process is acknowledged, as is the need to include members of the extended family and the need to give victims the opportunity to confront the offender with their feelings of anger and hurt, and to have an input into the final outcome. The need to transfer responsibility for decision-making from the professionals to the key protagonists is also clearly recognised: the Second Reading explanation (South Australia. Parliament, Debates, 1 April 1993, p. 2853) stipulates that "decision-making . . . will rest primarily with the parents and victims, with the professionals being there to give advice only when needed". (As noted, however, none of these principles are spelled out in the philosophical section of the legislation).

To appear before a conference, the young person must admit the allegations. Failure to do so means automatic referral to court. This requirement, which is a feature of most types of informal processing, is often criticised on the grounds that it is coercive, with young people being pressured into an inappropriate admission of guilt simply to avoid a formal court appearance and the attendant possibility of acquiring a criminal record. To reduce this coerciveness, the South Australian legislation
ensures that if a youth, who is referred to court because of a refusal to admit the allegation, is subsequently found guilty, the court may refer the matter back to a conference for resolution.

The range of persons who may attend a family conference is contained in Section 10 of the Young Offenders Act 1993. This includes the guardians of the youth, as well as any relatives or other persons who have had a close association with him or her and who may be able to make a positive contribution to the conference. The victim must also be invited, together with a guardian if that victim is aged 17 years or under. The victim is also permitted to "bring along some person" of his or her choice to provide assistance and support (Young Offenders Act 1993, s. 10(2)(c)). Any other individuals may be invited if the youth justice coordinator, after consultation with the youth and members of the youth's family, thinks it appropriate to do so.

Police have the automatic right to be present but, unless the young offender is under a guardianship order, a social worker from the Department for Family and Community Services can attend only with the young person's agreement. According to s. 11(4) of the Young Offenders Act 1993, the youth is also entitled "to be advised by a legal practitioner" during the conference itself to ensure that the young person's legal rights are afforded some protection.

In relation to the decision-making process, the legislation recognises the need for family conferences to act, wherever possible, by way of consensus between the youth and all other invited participants (Young Offenders Act 1993, s. 11(2)). However, it also states (s. 11(3)) that "a decision by a family conference is not . . . to be regarded as validly made unless the youth and the representative of the Commissioner of Police concur in the decision." This means that both the police and the youth have the right to veto any outcome put forward by a conference. However, to ensure that police do not misuse their veto powers, the legislation confers on the Youth Court the right to overturn such vetoes and refer the case back to the family conference for further deliberation. The same applies in relation to outcomes rejected by the young persons themselves.

In terms of outcomes, the intention is to place relatively few constraints on the conference participants, and to encourage them to develop innovative and diverse responses which are tailored to fit the specific circumstances of each offending incident. In line with the Act's philosophical commitment to ensuring accountability and victim reparation, there is a clear expectation that the conferences will, in most instances, require the youth to apologise or make restitution to the victim. The Act also stipulates that the family conference may impose up to 300 hours of community work. The fact that this particular outcome, with a set
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tariff, is built into the legislation is somewhat unusual: it implies the notion of a "penalty" which is more comparable with a court disposition than the open-ended options normally associated with conferences. Another form of "tariff setting" is also specified: to ensure that family conferences do not become inappropriately punitive, s. 12(2) of the Young Offenders Act 1993 stipulates that, in finalising outcomes, the conference must take account of the sentencing policies of the Youth Court. The intention is to ensure that conferences do not agree to outcomes which are obviously harsher than those which a court would have imposed for similar offences.

Supervision of family conferencing outcomes will rest largely with the youth justice coordinator. However, in line with the notion of transferring responsibility from the professionals to the key protagonists, the coordinator will, where appropriate, enlist the aid of the conference participants themselves in ensuring that tasks are met. In the case of certain undertakings, the Act also builds in a more formal accountability structure. Section 12(6) stipulates that where the youth agrees to pay compensation to the victim or agrees to complete a number of hours of community work, those undertakings are to be lodged with the Registrar of the Youth Court, who will be required to monitor their completion and bring any instances of non-compliance to the attention of the youth justice coordinator. In addition, any monetary compensation must be paid to the Registrar who will then dispense it to the victim (s. 12(5)). Failure to complete any agreements may result in referral to the Youth Court where the young person will be formally charged with the original offences.

A final aspect to consider is the question of resources. Although family conferencing is still in its early stages in South Australia, one factor is clear: the scheme will not have access to the same level of resources as in New Zealand. To date, only seven full-time and three half-time coordinators have been appointed to cover the entire State. This equates to one coordinator per 20,000 youth population, compared with one per 9,200 population in New Zealand. Moreover, these coordinators have access to only a limited number of support staff and will therefore be required to handle most of the pre-conference and post-conference work as well as run the conferences themselves. Some assistance may be forthcoming from magistrates, who are automatically designated as youth justice coordinators, but as noted earlier, the intention is to use them only sparingly in this role.

Lower staffing levels will impact, at least to some extent, on how the conferences are run. For example, it is estimated that each coordinator will be required to process approximately 8 cases per week compared with 3.6 cases dealt with by their New Zealand counterparts (Department of Social Welfare, pers. comm). To achieve these targets, each conference will need
to adhere to specific time limits rather than being completely open-ended as is the case in New Zealand.

In turn this may necessitate some streamlining of the way in which the meeting itself is conducted. The coordinator may, for example, need to exert a greater level of control over the conference discussion to ensure that it finishes on time. It also seems that the family will not be given the opportunity within the conference itself to discuss the matter in private before reporting back to the other participants with a proposed plan of action.

The limited availability of resources will also affect other areas: funding will not be provided to facilitate the attendance of conference participants; victims will not be compensated for any loss of pay incurred if they need to take time off work to go to a conference; and travel money will not be available to bring relatives who live in other parts of the State to the conference. Finally, less emphasis will be placed on decentralising the conference venues. Whereas in New Zealand the intention is to hold conferences within the local community—at venues such as a private home, school room or local church which are acceptable to both the victim and the offender—plans are under way in Adelaide to procure premises within the Central Business District as a conference centre.

The impact which these streamlined procedures will have on the conduct of family conferences in South Australia has yet to be gauged. At this stage, however, the Courts Administration Authority believes that they will not produce a less effective or efficient conferencing system; that in fact, successful outcomes can be achieved with a more economical version of conferencing than currently operates in New Zealand.

**Comparison with the Wagga Wagga Conferencing Model**

So far in this discussion, New Zealand family group conferences have been used as the main point of comparison, primarily because they have provided the model on which the South Australian system is predicated. However, one other conferencing approach has received considerable attention in Australia—that currently operating in Wagga Wagga. Although also derived from New Zealand, the Wagga Wagga "cautioning conference" has introduced substantial modifications which differentiates it quite clearly not only from its "parent" version but also from the South Australian model. In this final section then, the South Australian conferencing system will be compared, albeit briefly, with that of Wagga Wagga.

There are at least three main points of difference between the two approaches. For a start, the South Australian scheme is legislatively based
and is designed to operate across the entire jurisdiction, whereas Wagga is very much a localised program which at this stage lacks statutory endorsement. Secondly, there are clear discrepancies in terms of the position of these conferences within the juvenile justice system. In Wagga, conferences form part of a police cautioning process and as such, represent a "front-end" diversionary mechanism designed to handle those comparatively minor matters which would normally attract a caution. By contrast, South Australian conferences are intended to operate as a second level of diversion, processing cases which are considered to be too serious for the police to resolve. Thirdly, there are key differences in terms of the agency which controls and administers them. As a cautioning process, the Wagga conferences are under the umbrella of the Police Department, with each conference being convened at the local police station by a police officer. By contrast, the South Australian Select Committee specifically chose to vest responsibility for conferences in the Courts Administration Authority, rather than the police or social welfare departments on the grounds that this would ensure a greater degree of independence and neutrality for the conferencing system.

Despite these crucial differences, however, there are some points where the South Australian model more closely resembles the Wagga version than it does the New Zealand one on which it was based. In the main, these similarities relate to issues of resourcing and streamlining. In Wagga, for example, comparatively little time is devoted to the pre-conferencing planning stages; the conferences themselves generally take no longer than one hour each; and the family of the offender is not given the opportunity for private deliberation. As already noted, South Australia intends to adopt similar "short-cuts". The danger here, though, is that while these streamlining measures may work in Wagga where many of the cases dealt with are relatively minor (as one would expect from a police cautioning scheme), this is not likely to be the case in South Australia. Instead, in this State, conferences will be required to handle more serious (and presumably more complicated) matters, which may not be amenable to such "shortcuts" in procedures.

**Conclusion**

For much of this century, South Australia has been an innovator in the treatment and processing of young offenders. It is now set to reclaim that position by becoming the first State to introduce family conferencing as a central component of its restructured juvenile justice system. While other States are still experimenting with pilot programs run at a local level, South Australia has opted for a state-wide scheme, the basis of which is
enshrined in legislation. The speed of reform is also significant: its Select Committee on the Juvenile Justice System was established in August 1991; it reported to Parliament in November 1992; new legislation for young offenders was drafted and tabled in April 1993 and was passed one month later; and proclamation took place on 1 January 1994.

It is also noteworthy that, of the three versions of family conferencing so far introduced in Australia (the other two being in Western Australia and Wagga Wagga), it is the South Australian one which adheres most closely to the New Zealand model from which all are derived. This is reflected in a number of aspects including: its relative location within the juvenile justice system, which establishes it as a second level of pre-court diversion designed to deal with matters which are too serious to warrant a formal caution; its use of specialist youth justice coordinators who are completely separate from and independent of the police; its concern to empower the young offender, the victim and their families; and its adherence to a decision-making process based on group consensus. Moreover, these similarities between the South Australian and New Zealand systems extend beyond family conferencing itself to incorporate the formal police cautioning scheme on which conferencing is so heavily reliant.

Yet there are also differences, some of which are deliberate, while others are a response to the more limited resources available in South Australia. It remains to be seen whether the resulting need to streamline the conferencing process will have a detrimental effect on outcomes. Other points of diversion may also emerge as the South Australian system becomes more attuned to the needs and expectations of its own community.

The Young Offenders Act 1993 specifically states that the new system must be evaluated within three years of its inception. Hopefully, its effectiveness in responding to young offenders, their victims and families will become evident well before that time limit has expired.

**Bibliography**


Chapter Five

Youth Justice Teams and the Family Meeting in Western Australia: a Trans-Tasman analysis

Matua Matt Hakiaha

Taku mihi ki oku iwi, hapu me toku whanau, me te Atua

(Many thanks to my tribes, my sub-tribes, my extended family, not forgetting God, author of all things)

KOWAAI HAI KORERO KI TAKU POHO

No Toi raua ko Potiki te whenua No Tuhoe te mana, me te rangatiratanga

Naana matou i kimi,
naana ano hoki matou i rangahau
I te peka o tu aruhe ma,
ka homai, ka whakawhiwhia
Heoi ano, kihai hoki i timata noa i konei,
a kihai hoki i mutu atu i konei
Engari, naana, ka ohine mai i te tahuho o te rangi
Pao te rangi e tu iho nei
Tena, ko te whakahu nei ko
Hinepukohurangi
Heoi ano ra, ka toia ake e te tahu,
te tatau o tona whare,
ka taki rehu atu ki roto, ka whakapi
Kotahi tonu te tipua,
kotahi tonu te iwi
Since the late 1980s, juvenile justice in Western Australia has undergone significant changes, at both a philosophical and structural level. These changes include: the passage of the *Children's Court of Western Australia Act 1988* which embodied a shift away from the welfare model towards greater concern for due process and just deserts; the establishment of the State Government Advisory Committee on Young Offenders; the introduction of a legislatively based formal police cautioning system; and the passage of the *Crime (Serious and Repeat Offenders) Sentencing Act 1992*, which allowed mandatory gaol sentences for young repeat violent offenders. The introduction, albeit on a pilot basis, of juvenile justice teams represents the most recent initiative in the youth justice arena.

Impetus for the establishment of these teams came from two sources. First, there was a growing recognition that the proportion of young people being dealt with by the Children's Court was unacceptably high. Since the late 1960s, Western Australia has operated a system of Children's (Suspended Proceedings) Panels designed to divert first or minor offenders from the court system. However, because of the rigid restrictions which governed access to these Panels (for example, they could deal only with first offenders aged less than 16 who were charged with a minor offence), they have generally diverted only a small proportion of young offenders. In 1988-89 for example, they processed only 15 per cent of all matters dealt with, while the remaining 85 per cent went direct to court (Wundersitz 1993, p. 60). The need for additional and more innovatory diversionary mechanisms was therefore recognised.

One move in this direction came in August 1991 when formal police cautioning was introduced. This gave Western Australia a two-tiered diversionary system, consisting of police cautioning at the front end and the Panel system at the second level. At the same time, the State
Government Advisory Committee on Young Offenders turned its attention to the New Zealand concept of family group conferences. After a detailed investigation of these conferences, the Committee submitted a paper in September 1991. This paper contained a number of recommendations which subsequently formed the basis for the then Labor Government's decision to establish four juvenile justice teams as a pilot program.

A second impetus for the establishment of the teams came from consultation with Aboriginal communities. These consultations raised issues in regard to the need for a higher level of involvement of both the families and the Aboriginal community as a whole in providing appropriate responses to young people who offend.

A meeting of Aboriginal people in Perth was held in November 1991 (Blagg 1991). This meeting asserted that juvenile offending is linked to fundamental problems in the Aboriginal community. These problems include:

- a lack of appreciation or understanding of Aboriginal identity on the part of non-Aboriginal people;
- a lack of Aboriginal cultural awareness; and
- a feeling amongst Aboriginal people of disenfranchisement.

A Consultative Working Party was established and the resulting paper noted that effective intervention requires "Culturally specific mechanisms for indigenising justice in a way which empowers these groups to enhance and develop their own young people, notwithstanding the ability to ensure that young people take responsibility".

The concept of juvenile justice teams fitted with these requirements. In July 1993 two such teams were established as pilot programs—one in Fremantle and one in the Perth district of Thornlie. If successful, the intention is to develop similar teams across the State, as a replacement for the existing system of Children's (Suspended Proceedings) Panels. In line with this and other developments, a new Young Offenders Bill is currently being drafted which will repeal all justice issues contained within the Child Welfare Act 1947.

**Juvenile Justice Teams**

The juvenile justice teams embody a multi-agency and inter-disciplinary approach, which is designed to utilise existing strategies and new initiatives to divert all but the most serious offenders from entry into the formal court system. Each team consists of a youth justice coordinator, a
police officer, a Ministry of Education officer and an Aboriginal community worker. The teams are intended to function essentially as a second level of diversion, dealing with cases which are too serious to warrant a police caution but not serious enough to require a formal court hearing. The main strategy available to these teams in resolving matters referred to them is through the convening of a family meeting, which is designed to run along similar lines to the New Zealand family group conference.

Thus, to understand this new pilot scheme, it is necessary to describe its two key components; first, the juvenile justice teams themselves—in particular, their composition and their role; and second, the family meeting which, as noted above, is the primary tool available to these teams for resolving cases referred to them.

**Juvenile justice teams—their mandate**

It is intended that the juvenile justice teams will act as a conduit to ensure that young people are not placed before the court unnecessarily while at the same time, facilitating an appropriate outcome for offending behaviour and providing support for the family and young person to prevent re-offending.

The aims of these teams are to:

- provide more direct, immediate and relevant consequences for offending which will have a greater impact on young offenders;
- involve victims in determining sanctions;
- involve the parents and family in identifying appropriate outcomes and in supervising the sanctions imposed on young offenders;
- involve Aboriginal communities in managing offenders and assist Aboriginal families of offenders to take responsibility;
- ensure that the culture of the offender and their family, and the victim is considered and given importance in all aspects of the team's work (Youth Justice Diversionary Teams, Work Manual, June 1993).

The ability of teams to involve both parents and victims in the decision-making process is particularly crucial. The juvenile justice system as it currently operates tends to disempower parents by placing responsibility for determining appropriate outcomes in the hands of professionals. At the same time, it largely ignores the needs and wishes of
the victims. By contrast, the juvenile justice teams, particularly through their use of the family meeting, give responsibility back to parents by providing them with the opportunity to play a major role in determining an appropriate consequence for their young person's offending behaviour. The teams also seek to involve victims fully when dealing with young people who offend. Although participation of the victim in family meetings is purely voluntary, their input is always sought and encouraged.

Another strength of the team is its inter-agency approach. In order to tackle the complex problem of youth offending, the juvenile justice teams have the benefit of the individual member's expertise and referrals, in addition to the collective strength derived from working together on each of the cases.

Where possible the team also accesses mainstream services for young people and their families. Team members therefore require an extensive knowledge of community-based resources and the ability to link young people and their families into appropriate government and non-government services which will support them and thereby help to reduce the likelihood of re-offending.

Composition of the teams

As noted earlier, each team consists of four people—a youth justice coordinator, a police officer, a Ministry of Education officer and an Aboriginal community worker. Each of the agencies represented on the team were selected because of their critical role in dealing with young offenders.

Police, for example, perform a pivotal function as "gate-keepers" to the criminal justice system. Because decisions or diversions made by individual officers exert a critical influence on what happens to a young person, their participation on the team was considered essential. It is the responsibility of police on the team to respond to, channel and administer matters of relevance to the police; for example, where the team has decided to issue a caution, this will be a matter for the police representative to action.

An officer from the Ministry of Education was included because the majority of young people coming before the courts and who receive "heavy end" dispositions have been non-school attendees from a very young age. For many youths this is reflected in them having literacy and numeracy skills equivalent to year seven or eight and sometimes lower. Problems which arise early in a young person's life are often reflected in school behaviour and achievement. The early identification and amelioration of these problems can therefore reduce the likelihood of low achievement, truancy and delinquency.
If a team resolution involves actions which are relevant to the Education Department—such as negotiating re-entry to school or appropriate education programs—overseeing this process becomes the responsibility of the education officer on the team.

The presence of an Aboriginal community worker on the team was considered vital because of the over-representation of Aboriginal young people in the juvenile justice system, and because of the insistence of Aboriginal people that they be given responsibility and the necessary support for dealing effectively with their young offenders. The role of the Aboriginal juvenile justice worker is critical in encouraging participation of and negotiating with Aboriginal families of young people who are involved in resolving family meeting outcomes, and in consulting with agencies and community groups.

Overall coordination of the team rests with the youth justice coordinator who is employed by the Juvenile Justice Division of the Ministry of Justice. He or she is specially recruited to this role. Coordinators need to be skilled and competent in justice matters, welfare case practice, strategies of intervention and education. The coordinator must ensure that the multifaceted response can be put into practice by the team and that it is well targeted and appropriate to both the offence and young person's circumstances.

The key responsibilities of each team member are spelled out in the Youth Justice Diversionary Team's Work Manual (June 1993) and are as follows:

Coordinator's role:

- coordinate the operation of the team and activities of the team members;
- receive referrals;
- chair team meetings and family meetings with young offenders;
- maintain appropriate records;
- undertake and coordinate local area and inter-agency liaison;

Police officer's role:

- receive referrals from local police officers and screen them as appropriate, and provide ongoing liaison regarding referrals from police;
- contact victims of crimes as required;
Youth Justice Teams and the Family Meeting in Western Australia

• inform team meetings and family meetings of the "facts" of the alleged offence;
• accept the admission or denial from the young offender at the family meeting;
• participate in the determination of the consequences for the offence;
• if the determination is that a formal caution be issued, refer the matter back to the local police officer or issue the caution themselves.

Aboriginal youth justice community worker's role:
• work with individual young offenders and their families to help prevent reoffending;
• network on behalf of individual youths to improve family and community support and supervision;
• work with victims of crime and manage reparations;
• support the development of local Aboriginal community initiatives;
• advise the team regarding Aboriginal cultural and family issues.

Education officer's role:
• provide educational assessment and advice regarding individual youth offenders;
• assist in the development of appropriate educational programming for young offenders;
• liaise with local schools and alternative educational initiatives;
• provide an educational service with local schools regarding youth justice issues.

The referral process
Cases are referred to the juvenile justice teams from three sources:

■ the police: in lieu of laying criminal charges. However, police cannot refer serious charges contained in the Fourth Schedule of the Child Welfare Act 1947 or Schedule One of the Crime (Serious and Repeat Offenders) Sentencing Act 1992. If the youth fails to
comply with or complete the sanctions imposed by the family meeting, the matter will be sent back to the police who will subsequently charge the young person and have the Children's Court deal with that charge.

- Children's Court: where the Court believes that a matter can be appropriately resolved without the Court directly imposing a sanction, it can remand the matter and refer it to the teams. Upon being advised of a satisfactory outcome, the Court can deal with the matter under Section 34(1)(c) of the *Child Welfare Act 1947*.

- Ministry of Education: in lieu of laying a charge of truancy under the *Education Act*. These referrals are accepted on a preventative basis, as truancy is not an offence. However, the decision to allow truancy to be dealt with by the team stems from an acknowledgment that the current system has proved inadequate in responding to persistent truants.

The team has total discretion in deciding whether or not to accept a referral from these agencies. Criteria for acceptance are still in the developmental stage but generally, acceptance occurs in those cases where the offence is of a minor nature and where it is expected that if the matter were to go to court, the presiding magistrate or judge would discharge the offender under s. 34(1)(c) of the *Child Welfare Act 1947*. However, now that the pilot project has been in place for several months, there is a view that the juvenile justice teams should broaden their acceptance of both court and police referrals. It has been suggested, for example, that minor theft or shoplifting where the value of goods stolen does not exceed $500 could be accepted.

*The Process*

Once the team has accepted a referral by means of an intake meeting, a course of action needs to be devised. This is referred to as the case assessment plan, and all members of the team are involved in its formulation.

As with the pre-family group conference work undertaken in New Zealand, the case assessment is very labour intensive. It may be considered analogous to an iceberg (see Figure 1). The submerged or hidden portion of the iceberg represents the input at the pre-conference or case assessment stage, while the exposed portion (by far the smaller segment of the two) represents the work involved in actually holding the family conference or family meeting.
Deciding to hold a family meeting

The first task of the case assessment is to determine whether a family meeting should be convened. In making this decision, the case assessors (that is the four team members) have a copy of the police summary of facts. They will also have any additional information which specific members of the team have been able to provide. For example, if it is a truancy matter, extra information may be provided by the education representative. A member of the team will then contact the young person and his/her family while another member (usually the police representative) will interview the victim.

Situations in which the team may decide that a family meeting is not required include the following:

- the case assessors, in talking to the victim and the offender, may establish that the parties involved have already resolved the matter themselves and have reached an agreement which is satisfactory to all involved, including the young offender. In such situations, the team will take no further action;
- the family and the victim may decide that they do not want the matter to be dealt with by way of a family meeting. Once the case
assessor has determined that all parties have been consulted and are united in their opposition to a family meeting, the only option available to the team is to direct the case back to the referring agency—that is to either the police, the court or the Education Department. That agency will then initiate any action which it considers necessary;

- where it might otherwise be appropriate to hold a family meeting, the team at its initial intake meeting may decide against having a family meeting. These circumstances could arise where:
  - the youth has had a family meeting in the last three months; or
  - where the youth has had a family meeting in the last twelve months and the team considers that the family dynamics and/or offending behaviour is unlikely to change.

The decision to waive a family meeting will not prevent the team from accepting the referral. The reasons for not holding the family meeting would need to be documented and returned to the referring agency.

Although the teams have been operating for only a short time and data are limited, it seems that of the referrals so far accepted by the teams, just over one half have resulted in a family meeting, while most of the remainder have been sent back to the referring agency for further action. Not surprisingly, very few have been resolved by the protagonists themselves before the team becomes involved.

Preparation for the meeting

If the decision is made to hold a family meeting, the tasks involved in preparing for this meeting are also undertaken at this case assessment stage. As in New Zealand, these tasks include visiting the young offender/s, their parents and extended family, the victim and any other person/s of significance in the young person's life. The identification and visiting of these key people is pertinent in that it establishes who will attend, as well as the date, time and venue of the meeting.

When the pre-meeting tasks have been proficiently addressed, there is a high likelihood that the actual meeting will produce an outcome which is acceptable and suitable to all participants at that meeting. In stark contrast, if the pre-family meeting tasks are not undertaken properly, the meeting is more likely to be non-productive in terms of victim satisfaction. And more often than not, the plan of action agreed to at the meeting will not be acceptable to other participants.
While the task of convening a family meeting is time consuming and labour intensive, it is of critical importance. It is necessary, for example, to identify the relevant people who should attend. A good deal of work should also be put into discussing with the young person and significant others the role and purpose of the meeting and establishing ground rules. Contact with the victim is also crucial, in part to encourage them to attend, but also to identify who they want to bring along as support people. There is also a need to discuss any special concerns the victim may have and to explain what family meetings are all about.

The Family Meeting

The family meeting itself is modelled on the New Zealand family group conference. It is attended by the juvenile justice team members, the young offender, members of his/her family, the victim and the victim's supporters. The main task of the meeting is to determine appropriate consequences for the offending behaviour and work out how these are to be supervised. Agreements reached at a family meeting may require the young person to do any of the following:

- undertake community work as a consequence for the offending and as a form of reparation to the community or the victim;
- do work for the victim;
- provide recompense to the victim by way of an apology, restitution and/or reparation;
- reinforce the consequences already imposed by the parents/family;
- warn the young person; and/or
- refer back to the police for a formal caution.

Additionally, the team may refer the young person and possibly the family to services that can help resolve individual and family problems. If these are directly related to the offence, participation in the service or intervention may be part of the consequence for the offence.

The juvenile justice team members are responsible for ensuring that relevant issues are resolved and that actions agreed upon at the meeting are carried out. Depending on the level of intervention warranted, they may oversee an outcome directly, or link with other appropriate persons/agencies to oversee an outcome.
A constructive relationship between the judiciary, police, other agencies and the juvenile justice team is essential and the coordinator and other team members are responsible for facilitating this.

**Conducting Family Meetings**

As noted earlier, each family meeting is chaired by a youth justice coordinator. Other team members may also attend. A typical family meeting is as follows.

*Introduction*

The coordinator begins by explaining the purpose of the meeting and introducing the participants or arranging for self-introduction. He/she then explains how the family meeting will proceed.

*Details of the alleged offence*

The police representative then provides information on the offence itself. He/she checks the accuracy of this information with the young person and determines whether the young person agrees with the information or whether some details are in dispute and need to be varied. If the young person has major disagreements with the allegations which cannot be rectified at the meeting, the matter is then referred to the Children's Court for determination.

*The victim's perspective*

The victim then tells the meeting of the effect which the offence has had on them and indicates what they would like to see happen.

*The offender's and family's views*

The offender and his or her family then present their views on the offending. They tell the meeting what they have done or think they can do to make amends or to put the matter right. Options available to the family meeting are then discussed.

**Determining a Plan of Action**

The family, in consultation with team members and victim(s) have responsibility for formulating an appropriate course of action. The meeting can accept any suggestions put forward by the family or alternatively, participants may raise any concerns and discuss the plan. The family may
then agree to modifications. If agreement cannot be reached, the family may be given time to reconsider or another family meeting may be arranged. As a third option, the matter may be sent back to the referring agency.

All participants need to agree to the plan. The plan itself needs to be unambiguous: it needs to identify what, who, when and where. A clear distinction needs to be made between the consequences for the offending and any welfare supports that are being offered to the young persons and/or their family.

Record of the family meetings

The coordinator is responsible for ensuring that details of the family meeting and the outcomes reached are recorded. This will include information on the time, date, venue, participants, the nature of the alleged offence, whether the youth agreed to the details of the alleged offence, the impact on the victim, major issues and the final plan. Participants should be forwarded a copy of the plan itself.

Time frame

It is important for family meetings to be held as soon as possible after the commission of the offence. This helps the offender to link the consequences to the act of offending. For court referrals, the court will remand the matter to a fixed date. In most cases, four weeks is considered an appropriate period.

Family meetings should be held within three weeks of the referral. However, this may not always be possible if the victim (or the offenders and/or their family) wants extra time to get over the trauma of the offence. Practical difficulties such as the victim going to the Eastern States, school holidays and so on may also prevent the meetings being held within this period. The team is required to maintain records and monitor the time taken to hold family meetings.

Supervising the outcome

The plan should identify who is to be responsible for monitoring compliance with the sanctions. The coordinator needs to ensure that this occurs so that if the consequence is not undertaken or completed, the matter can be referred back to the appropriate referring agency.

Non-compliance procedures

Where the young person appears to be having difficulty in fulfilling his/her obligations as agreed at a family meeting, the team needs to determine the reasons. Every effort should be made to support the young person to
enable him/her to complete the consequence. Particular emphasis should be placed on encouraging individual and parental responsibility. However, if the young person fails to meet the original or any revised time frame, the matter should be sent back to the referring authority. For Ministry and police referrals, this would probably result in the matter being sent to court. For court referrals, this may result in a formal court penalty.

**Feedback to referring agencies**

The referring agency needs to be advised of the outcome of all cases referred to the teams. The information should be of a general nature such as the nature of the sanction given, whether the family was offered any counselling and whether the consequence was completed. The family's right to privacy should be protected at all times. This feedback is essential as the teams are relying on the goodwill of the referring agencies and their own credibility for referrals.

**Family Meetings and the New Zealand Family Group Conference: A Comparison**

A comparison between Western Australia's family meetings and the New Zealand family group conference reveals some important points of difference, as indicated below.

**Western Australia**

- Family meetings have their origin in the New Zealand family group conference.

- Family meetings do not operate from a legislative base but purely from a pilot project base. They do, however, have the support of s. 34 of the *Child Welfare Act 1947*.

- A family meeting is convened by a juvenile justice coordinator with the support of the:
  - police representative; education representative and; Aboriginal representative on the team.

- Family meetings only deal with minor and first offenders.

- Referrals are accepted from:
  - the police; the court; the Education Department.
In deciding whether to accept a referral, the youth justice coordinator meets with other team members, for case intake.

Family meetings do not deal with excessive reparation.

Family meetings do not allow for the family to discuss penalty plan on their own.

(Pre FGC) case assessment carried out by relevant juvenile justice team member.

Family meeting plan is monitored by juvenile justice team member or brokered out to other agency.

Family meeting plans do not have power to commit funds for victim support.

New Zealand

Family group conference origins derive from the practices of the indigenous people of New Zealand.

Family group conferences have a legislative base, as does the youth justice coordinator and police youth aid officer.

No juvenile justice teams exist within the youth justice system. The family group conference is convened by the youth justice coordinator.

Family group conferences deal with indictable and purely indictable offence.

Referrals are accepted from the police and the Youth Court.

Youth justice coordinator must accept referrals from court but in the case of police referrals, the coordinator consults with the youth aid officer before agreeing to accept the case.

Family group conferences can deal with and address any amount of reparation.

Family group conferences allow family to meet separately from victims and professionals to discuss penalty plan.

Pre-family group conference work is carried out and initiated by youth justice coordinator or youth justice social worker.
• Youth justice social worker monitors the family group conference plan, alongside of family or independent participants.

• Family group conference plans can and do include costs to assist victim.

Conclusion

The Western Australian juvenile justice teams have been in operation for only a short period of time and it is therefore too early to determine whether they are likely to be successful in diverting a larger number of youths from the court while simultaneously providing a more appropriate response to youth offending. They do, however, represent an innovative and different approach to the treatment of those young offenders whose behaviour is not serious enough to warrant a court appearance. As with other family conferencing "models" currently being trialed in Australia, they depart in a number of crucial respects from the New Zealand system of family group conferences. But, in line with New Zealand, they are empowering in that they provide a means whereby the young person, the victim and their respective families can play a stronger role in determining appropriate outcomes. The participation on the team of representatives from the three key departments involved with young people also offers a potential strength in responding to juvenile offending. Whether or not they will subsequently be extended to the remainder of Western Australia, however, cannot yet be determined.

References

Blagg 1991, Consultative Working Party
Appendix I

KOWAAI HAI KORERO KI TAKU POHO

"The land belongs to Toi and Potiki and the prestige and rank belong to Tuhoe."

It is them that have searched
It is them that have ought out our beginning
The branching out from these humble fern-root beginnings
As descendants we are grateful
Time however did not stem forth from here
But goes beyond the time of ages
Filtering down from the ridge pole of
The heavenly realm, the two were destined to clash
Alas, revealed to us is the Goddess of Mist,
Hinepukohurangi
Upon the door being thrust open, she is
lost from sight, clinging to her lover,
together they produce one spiritual overseer
one people

Maungapohato, hear my call and reveal
to me your majesty
As I feast upon your awesome beauty
Rippling from you loose runs, the
infant river Ohinemataroa
Stand as a monument, as a
reminder of power held by children
of bygone ages, where sacrifices
offered to greater intelligences were
honourable acts by both genders
to ensure pure offspring of dual
connections, both of
physical and spiritual nature
Descendants of Tuhoe
Wasteful of food
Wasteful of gifts
Wasteful of human life
To draw breath of life
again

(Translator: Tania Kingi-Waiaua)
Economic developed countries tend to agonise about the state of youth. There is a general recognition that technological development carries with it burdens that press down especially hard upon young people. One of the positive signs in all of this is the constant search for better ways of dealing with those youngsters who begin to drift away from patterns of acceptable behaviour. Since the turn of the century, there have been various waves of new policies designed to meet the particular requirements of dealing with young offenders. These policies attempt to lay down clear boundaries and procedural responses regarding behaviour which the community deems unacceptable. At the same time, they seek to limit the damage any heavy-handed process might have on the future hopes and plans of the young.

Australia and New Zealand are currently experiencing such a wave of innovative development. In New Zealand a system of "family group conferences" has been created which functions, at least in theory, to divert young people away from more traditional justice processes. Cases flow instead into a forum in which individual offenders, victims, their respective families, and representatives of the justice system are able to negotiate a form of social reparation around the original offence (Morris & Maxwell 1993). In Australia, a similar development has occurred in Wagga Wagga. There a "cautioning" model has evolved whereby a police coordinator brings together the offender, his or her family, and the victim to negotiate a
form of social restitution for the offence that has occurred (Braithwaite 1993; Moore 1993).

Both of these approaches are self-conscious attempts to alter the justice process, especially in terms of the role played by families and by victims. The two models draw upon the theoretical notions of Braithwaite (1989), and give special emphasis to the creation of a process of "reintegrative shaming". As such, these programs reject traditional methods of juvenile justice that are deemed to be "stigmatising", and substitute instead a process of negotiation and reparation, whereby the offender is appropriately shamed for the offence that has occurred. Once this has happened, the dealings between the parties are designed to reintegrate the offender into the social networks within the community. In New Zealand in particular, such processes are argued to be consistent with the traditional ways of negotiating deviant behaviour within the community networks of the indigenous Maori people.

The purpose of the present chapter is to carry out a theoretical analysis of the ideas behind these approaches to juvenile justice. It will begin with a review of the conceptual base of these models, asking how such ideas mesh with previous models for changing the form of juvenile justice. It will then move to the question of how these programs might be looked at as examples of juvenile diversion programs, drawing upon the weight of the considerable literature that has emerged over the past two decades regarding diversion in the juvenile justice system.

A Starting Point: an Institutional Analysis

From what has happened throughout the English speaking world over the past twenty-five years, it is clear that in terms of the issue of youthful law violating behaviour there has emerged a deep suspicion of the awesome power of the traditional criminal justice system. This suspicion has focused especially on the potential damage that might result from highly formalised court proceedings or from sentences to large custodial and authoritarian correctional institutions. For the past century, in fact, numerous steps have been taken to provide alternative mechanisms for the processing of juvenile offenders. At the turn of the century, throughout the United States and Australia, forms of children's courts evolved which were designed to remove young people from the jurisdiction of the courts responsible for dealing with adult offenders. Even these, however, still possessed many of the inherent coercive powers of the criminal law. During the past two to three decades a range of new alternatives to the court and institutional process have evolved. These bear such names as "diversion",
"decriminalisation", or "deinstitutionalisation", all of which have been included within what Cohen (1985) has referred to as "destructured".

Despite evidence which suggests that such destructuring efforts may produce results far different from those intended (for discussions, see Austin & Krisberg 1981; Lemert 1981; Polk 1984a; Cohen 1985; Polk 1987), nonetheless new forms of these alternatives to traditional justice models continue to evolve. The family group conference and Wagga cautioning models represent two of the most recent examples of such evolution. These new approaches in common with previous diversion efforts, in theory reject the formalism and coerciveness of formalised justice. Whether these in fact reflect a significant shift from more traditional justice system approaches requires consideration of the institutional networks that shape the lives of young people, many of which lie well outside the boundaries of the justice system.

**Developmental versus Coercive Justice Institutions**

One important starting point is to sketch out briefly the various kinds of social institutions which shape and influence adolescent behaviour. Here a distinction can be made between two forms which these institutions take.

First, there are what might be termed the "developmental" institutions that take on the bulk of the socialisation of young people. These include the family, schools, work institutions, recreational organisations, and the overarching political structures as well. While certainly concerned with issues of social control, a fundamental characteristic of these institutions is that they have the power to confer positive as well as negative labels. For example, while schools have the capacity to denigrate and humiliate through the use of such terms as "failure", "learning disabled", "slow learner", and the like, they provide others with supportive terms and experiences that come from doing well in school and being liked by teachers and other students who are also doing well. Further, schools provide the basic pathways which children and adolescents negotiate as they move toward conventional roles as young adults.

It is the range of developmental institutions that provide the supports and definitions that underpin legitimate and conventional identities. Where a young person is "nested" within school, work, family, residential location, and recreational activities provides major social definitions of who the individual *is*. These experiences also establish the basic parameters regarding who they will *become* when they reach adulthood. When the justice system speaks of "integration" or "reintegration" into the "community" what is being referred to is placement, or insertion, of an individual into a mix of these developmental institutional status's, such as a
school placement, a family location, or perhaps a position within the world of work.

The second set of institutions, those located within the criminal justice system, are fundamentally different. The major characteristic of these institutions is that they derive their power over individuals from the coercive character of the criminal law. As such, and in contrast to the developmental institutions, the labels from these agencies take on only a negative image.

Criminal justice agencies themselves lack the power to confer anything "positive" in a developmental sense. These organisations can "arrest" a person, they can "adjudicate" and place an individual "on probation", or they can exercise their ultimate power and deprive the person of their liberty by making them a "prisoner". While clearly these are inherently negative labels, what may not be so obvious is that the institutions lack any power to transform these into positive labels. These are not experiences that can be viewed as falling along a continuum from "bad" to "good". In school, it is possible to array students along a scale that runs from those who are doing well to those who are doing poorly. When it comes to an institution like the Children's Court, there is no such continuum. There is only the bi-polar choice of doing nothing (a null option), or doing "something", such as giving a fine, or placing the youth in a training school (a "negative" option).

**When Things go wrong: a brief Statement of an integrative Approach to Juvenile Offending**

Young life does not always proceed along a smooth and orderly course. How a community responds when things go wrong varies according to the perception of what has produced these problems. For purposes of the present discussion, let us focus on those attempts to deal with youthful deviant behaviour which maximise the opportunity to reinstate the young person as a full, effective, participating member of the community. Further, let us begin with the assumption that, in general, traditional systems of "correction" are likely to lead to a gradually accumulating process of exclusion and marginalisation. Thus, within both the developmental and the justice institutions, naturally occurring processes work progressively to push those who become officially identified and labelled as deviant outwards to the margins of social life. Data have shown consistently that labels begin to build in the school years around poor school performance. These then serve to trigger a response from the criminal justice system if the youngster is officially apprehended (Polk & Schafer 1972). Such labels can be seen as operating in a centrifugal manner, so that individuals, once
negatively labelled, are progressively pushed further and further outward to the margins of conventional community life. The challenge for a new approach is to evolve a way of responding to young offenders which counters these naturally occurring stigmatising processes, and which instead, provide mechanisms for more effective integration into mainstream community life.

Given these assumptions, it follows that two distinctly different sets of procedures are needed for assuring what might be termed a centripetal approach to misbehaviour, that is, an approach which maximises integration and works against the centrifugal approaches that result from negative labelling and stigmatising processes. These centripetal procedures will require, firstly, a constant expansion of integrative mechanisms within the developmental institutions. In school, work, recreational, housing, health, political, and other human services organisations there will have to be put in place procedures which create new opportunities for young people to engage in productive activity that provide a sense of belonging, of contribution, of competence and of personal efficacy.

Examples of such integrative mechanisms would be youth action programs which focus the talents of young people on solving community problems, or youth service programs which allow young people to provide important forms of community service. These youth programs should provide a wage since youth unemployment is a major problem among many young people, especially the most alienated. The programs should have a wide mixture of social backgrounds to assure the presence of a wide range of youthful life styles, from the most conventional to the most deviant (and to thereby avoid the program being seen as involving only "problem" youth). Where possible, the programs should be closely connected to education in order to improve young people's school qualifications which are becoming essential for entry into work.

These desired features of programs (for a fuller description see Polk & Kobrin 1972, or Polk 1984b) provide experiences which are the base for what Braithwaite (1989) has referred to as "interdependence" and "communitarianism", that is, those experiences which convey to individuals their sense of close connectedness to the community. For present purposes, what is essential is that these integrative experiences are seen as flowing fundamentally from activities within developmental institutions.

A second vector of approaches to youthful deviance concerns what can be termed reintegrative strategies. Here the focus is specifically on how we respond to explicit forms of forbidden conduct, most specifically, law violating behaviour. What the juvenile justice system in the past has done is to establish a vehicle for responding to youthful law violations, using a
family conferencing and juvenile justice

range of coercive options (fines, probation, sentences to youth training institutions) as a way of conveying the message that some forms of youthful misconduct are not to be tolerated by the community. As a general principle, however, there has emerged the rule that the least coercive option permissible is the best option, and that wherever possible young people should be diverted from formal justice dispositions. It took its most extreme form in Edwin Schur's (1973) famous admonition to "leave young people alone wherever possible".

A society concerned with maximising the positive development of its young people, a state consistent with what Braithwaite would term "interdependence", must thereby be constantly developing and expanding both integrative and reintegrative strategies as a way of coping with ever emergent youth problems. Integrative strategies will be located within the developmental institutions, and will address specifically the general and wide-ranging needs required for interdependence. Reintegrative strategies will be likely to emerge from justice-coercive agencies, and address the question of how best to help young people who are "in trouble" to become more tightly connected with the community. It is likely that connections between integrative and reintegrative procedures will be needed. Thus, as schools provide a group of developmental-enhancing programs such as education action teams, a few places within these might be reserved for young persons who have been in trouble, and whose reintegration plan might call for an invigoration of schooling experiences.

This view of reintegration recognises two functions for the coercive justice agencies. Firstly, steps would be undertaken to convey to the young offender that law violating behaviour is not acceptable, and that such behaviour needs to be brought under control. This will be accomplished through processes which range from cautioning to institutionalisation, with the general principle of a reintegrative strategy being that, at all times, the least restrictive option is preferred. Secondly, procedures would be created where agents of the justice system advocate and negotiate a placement for the young person within the integrative, developmental institutions so that effective bonds can evolve between the young person and the community.

Such an approach sees a sharp disconnection between the integrative work which is carried out by the developmental institutions and the coercive procedures of juvenile justice. Integration and enhancement are thus the responsibilities of developmental programs. The justice institutions convey a sense of disapproval of the prohibited conduct (the control function), but their reintegrative work is limited to negotiation and advocacy. Such a disconnection is essential to assure that the coerciveness inherent in the justice system does not carry over, and thereby distort, developmental processes.
What this perspective on overall youth development does is call attention to the need for both integrative and reintegrative processes as part of the support for interdependence. It also explicitly locates the institutional responsibility for such efforts. In particular, it makes clear that developmental responsibilities reside in particular kinds of institutions which fall outside the boundaries of juvenile justice. Justice agencies have the important but more limited role of initiating reintegration strategies where these are required.

The Conferences/Cautioning Model: an Assessment

Institutional location

With that background, we can now turn to the task of assessing the theoretical component of the New Zealand and Wagga models of reintegration. One of the first issues is the institutional location of the programs. In both the New Zealand and the Australian versions, it is explicit that the interventions are located within the juvenile justice system. In New Zealand, the intake flow is controlled exclusively by the police. The youth may be referred either prior to arrest by a direct referral from the police to the youth justice coordinator (who is the formal agent within the Conference program), or after an arrest and charge in the Youth Court, and then a referral to the conference (see Morris & Maxwell 1993, p. 80). This program, then, is tightly interwoven with the juvenile justice system.

If anything, this weave is even tighter with the Wagga program:

In contrast to the New Zealand model, however, the cautioning process in Wagga is coordinated by a police sergeant at the local police station, rather than by a welfare worker at the offender's home. The police station is a setting that favours neither victim nor offender. It also lends a certain gravity to the proceedings (Moore 1993, p. 204).

The model is "confined to juvenile offenders" (Moore 1993, p. 205), and the police serve as the basic agents of the system, controlling both the flow into the program, and the activities of the program itself.

While both of the programs are sometimes referred to as examples of "diversion", it can thus be seen that this is a limited concept of diversion. Unlike previous diversion attempts in Australia such as the police cautioning programs, these are not diversions "out of the system" (Wundersitz 1992), but resemble more the American concept of diversion "into a program", except for one important feature. These current programs are actually no more or no less than alternative forms of justice processing. It is clear that there is no attempt in either of these to remove the offender from the control of juvenile justice. What in theory is changed is the form
of that control. In Australia this is emphatically a police program, while in New Zealand the controlling agent is formally designated as a youth justice coordinator, not a youth development officer, youth empowerment agent, or some such term. These are both justice programs, and undergirding both is the ever present coercive threat of the court.

**Intervention focus**

A second question that can be asked is what is the focal point of the intervention. In both the New Zealand and the Australian models, it is the individual offender and his or her family that is the primary focus of any intervention (with the additional element of the presence of the victim, of course). Within both, the family and the individual are seen as the things to be changed, on the assumption that the delinquency itself represents a symptom of family and individual malfunction. Illustrations of this family focus are to be found in the documents which describe these models. In the New Zealand case, it is asserted that:

> A recurrent theme in conventional criminological literature is that deficiencies in the family lie at the root of juvenile crime . . . (Morris & Maxwell 1992, p. 75).

A similar commitment to the family as the basic causal agent of deviance is found in the Australian model:

Families have the difficult task of producing individuals with a capacity for empathy and a sense of justice (Okin 1989, ch. 1). Unfortunately some families fail this difficult task. Some . . . would argue that family influence is so eroded as to make the question irrelevant. The theory on which the juvenile cautioning program in Wagga is based—and the experience of practitioners—would suggest otherwise . . . there has been overwhelming evidence . . . that families of most young offenders have experienced some dysfunction. The problem is not that families have too little influence over young offenders but, rather, that many young offender resent the influence of their families (Moore 1993, p. 214).

On the basis of the foregoing, we can indicate what these programs emphatically are not. They are not interventions which assume that the locus of the intervention should be within such institutions as work, school, politics, recreation, housing or health. Unemployment, inadequate schooling, inadequate housing or medical care, lack of access to political power, or deficient recreational activities are not presumed to be the focal issues pressing down on the lives of young offenders and their families which must constitute the centre points of intervention. In short, there is within this no statement of an integrative or developmental strategy for dealing with youthful offenders.
To what extent, then, is it possible to evolve a "reintegrative" response that makes no claims upon the developmental institutions which would provide alternatives in terms of employment, schooling, political experiences, housing, recreational and health supports and the like? From a theoretical point of view, the points at issue should be clear. The New Zealand and Wagga programs make much of their base in the model of "reintegrative shaming" posed by Braithwaite (1989). Central to the ideas of Braithwaite is the notion of "communitarianism", which poses a conception of communities in which individuals "...are densely enmeshed in interdependencies which have special qualities of mutual help and trust" (Braithwaite 1989, p. 100). The factors which work against the development of such interdependencies as identified by Braithwaite include unemployment, inadequate ties to schools, and age and gender roles (such as being young and male).

In his book *Crime, Shame and Reintegration*, Braithwaite (1989) sketches a model of the conditions which foster interdependence and communitarianism. This model would imply that developmental institutions and developmental experiences are essential to engender interdependency and communitarianism. What is the appropriate response when there is clear evidence of a breakdown in the vectors which are essential to interdependence? One major symptom of such breakdown, of course, is youth crime. One approach is to work directly with those giving evidence of such breakdown—the young offenders and their families.

But, if one takes seriously the challenge of communitarian theory, is it not essential to address the major questions of unemployment, inadequate schools, institutional racism in its widest context, political structures, health and recreation institutions given that these are central issues for supporting communitarianism? The individual offender, as typically portrayed, lacks qualifications, skills, job experience, access to political power, and the locale and is thereby in a weak position to bring about any alteration of those community structures essential to the closely woven interdependence required in Braithwaite's model.

Neither are the families of offenders much better off—they cannot create jobs for young people, they have little influence over school programs (and certainly are not likely to have the power to generate new educational initiatives), and they, too, are likely to suffer from inadequate housing, health care, recreational options, and the like.

It is highly unlikely, in fact, that working with offenders and their families will allow the major sources of institutional vulnerability to be addressed. Instead, it could easily become a complex form of "victim blaming", where the most vulnerable are identified as the cause, rather than the effect, of social inequalities.
These new models of working with offenders initially appear to speak to such issues. In New Zealand, for example, there is specific reference to "empowering families" and "empowering offenders" (Morris & Maxwell 1993, pp. 75-6), but a close reading of the text will show that what they are empowered to do is not to address the sources of inequality and social vulnerability, but only to participate more effectively in the justice process. As valuable as these opportunities may be, by definition they cannot address the wider social issues which reside well outside of the criminal justice system.

The case being made here is that in the development of these two models of reintegration, the fundamental emphasis has been on changes organised within the juvenile justice system. On the basis of their institutional location these can be defined as being fundamentally stigmatising and coercive. These are programs only for offenders; the responsible coordinators bear titles that identify the organising role of the program as deriving from the justice system: the offenders must admit guilt; and it is the coercive power of the law that gives the whole process its legitimacy.

In their theoretical rationales, the family conferencing models have defined a process of negotiation which is argued to be "reintegrative shaming" rather than "stigmatisation". In order to come to this conclusion the models provide what is an essentially psychological definition of "stigma", rather than one which sees the term as flowing from the nature and character of an institutional experience.

Certainly, as a process of negotiation, the method of reconciliation that Braithwaite identifies is one which warrants close study by theorists and practitioners alike. On the basis of that logic, and the definitions provided, the procedure is one which avoids "stigma". However, an institutional analysis reveals that the New Zealand and Wagga models are both based inherently in coercive procedures of justice and they are stigmatising as that word would be commonly understood and institutionally defined. If only offenders are admitted to the program, the program—by its label—identifies persons who fall within a stigmatised group. If one must admit guilt, one must thereby assume a stigmatised role (that is, one who is guilty of a crime). When the program is organised by the criminal justice system, exclusively for offenders, then that program must confer institutional stigma on its participants.

The psychological processes that are then negotiated in the New Zealand and Wagga programs may be seen as fundamental to a process of reparation and social restoration, and these may result in some lessening of the effects of a stigmatised process. Any process, however, which results
in the official designation of a person as an offender must, by definition, be seen as organisationally stigmatising.

**Evaluation of the Conferences/Cautioning Model**

Let us now shift the focus to evaluation at a different level. Elsewhere there has been considerable experience by the 1990s with various forms of diversion. Based on that experience, it is possible to ask a number of questions about these programs (Polk 1984a).

*The question of recidivism*

One of the most important questions should be whether they work in the most immediate sense. These are justice programs. As such, it is imperative that some attention be paid to the impact of these programs on future offending of the individuals involved. It is noteworthy that none of the existing documents on the New Zealand or Wagga programs addresses this issue. We know from other data, however, that diversion programs have a mixed record. Unfortunately for proponents of these types of interventions, the safest conclusion to be drawn is that these efforts cannot be shown to alter later levels of criminal offending. While some studies claim positive effects (for example Duxbury 1973; Palmer & Lewis 1980), these are more than balanced by evaluations which find, as did one investigation that the hypothesis that diversion "... leads to lower rates of subsequent delinquent behaviour than traditional processing was not supported" (Elliott et al. 1978, *see also* Venezia & Anthony, 1978). In fact, in some cases the story is worse than that. It is possible to demonstrate that diversion programs result in an actual increase in post-program recidivism (Lincoln 1976; Elliott et al. 1978; Polk 1984a).

Data on these issues do not exist currently for the family group conference or the cautioning model. From previous evidence, however, there is the obvious warning that the real effects of a program can be far from what is intended. Do we not have an obligation, at a minimum, to assure that we are doing no harm?

**The Question of Net-widening**

One criticism levelled at many diversion programs is that, rather than meeting their avowed goal of reducing the number of persons who come under the control of the justice system, they have actually increased the level of state control. Evaluating this aspect of these new models is complicated because there is, at least on the part of the Wagga program,
the proud assertion that net-widening is, in fact, one of the goals of the model. It is argued that the program:

... can be said to have a net-widening effect. It is designed that way. But contrary to the recently fashionable theory that all forms of social control were leading us to some sort of totalitarian dystopia, this net-widening is seen as positive. The scheme makes a very important distinction between different types of social control. "The net that is widened is not the net of state control, it is the net of community control" (Braithwaite 1993) (Moore 1993, p. 210).

This analysis unfortunately avoids dealing with some of the empirical claims made by those concerned with the issue of net-widening. There is, firstly, the question of what was intended by the program. Most diversion programs call for a narrowing of the traditional coercive forms of juvenile justice. In many of the US programs, for example, the diversion program was located within an agency such as a "youth service bureau" which in theory was supposed to operate outside of, and apart from, the juvenile justice system. Despite the appearance of independence, these agencies were consistently "captured" by the justice agencies and caught up in the wider web of coercive justice.

Moore (1993, p. 210) argues that the program in Wagga widens the net of control by virtue of having the police operate as "coordinators of a social justice system". What if this assessment is wrong? What if this is merely coercion in other clothing? What ensures that police will be restricted to this role? Bearing in mind that the police operate as part of the coercive system of justice, what concrete evidence over time is there that this expansion of police powers has not brought about an expansion of the most negative aspects of coercion? It is essential that empirical evidence be gathered to answer these questions.

It needs to be said that Moore argues more from concerns about the theoretical claims about net-widening than from concern that has been expressed about its empirical record:

In simplistic versions of the theory, the historical record has been interpreted to show every change in the nature of social control as an increase of power by the state. For some, the policy implications of such a theory were to embrace a sort of ill-defined libertarianism, the consequences of which were never fully thought through. These theories have now reached the end of their shelf life and are of no great importance here.

The concerns of welfare practitioners, however, are important. Many practitioners believe that excessive intervention can undermine rather than strengthen people's control over their own lives (Moore 1993, p. 209).

Contrary to this point of view, some theoreticians writing about the problem of net-widening have been concerned with something more specific than the changes in "social control". They have carefully thought
through the various kinds of issues that can arise with net-widening, and have identified diverse processes that can be involved in net-widening (Austin & Krisberg 1981). From previous experience the following questions can be raised about justice alternatives such as the New Zealand and Wagga models.

Firstly, to what extent has the nature of the client population changed as a result of the expansion of police powers? Data elsewhere, for example, suggest that the diversion programs bring under police control new kinds of clients, especially younger clients who have engaged in much less serious acts (Polk 1984a).

Secondly, to what extent have the new police powers in New Zealand and Wagga expanded the control to new problems previously ignored by the justice system? It has been pointed out in other settings that diversion has resulted in a new form of gender role control, with more girls being brought in for various forms of sexual misconduct (Alder & Polk 1982).

Thirdly, what are the system effects of the intervention? Net-widening influences are potentially multiple in their appearance. An examination of these requires a complex design, observing the total numbers flowing into a range of justice and non-justice programs. (For an example of such an evaluation, see Elliott et al. 1978). In the Wagga case, it would be necessary over a period of years to trace both numbers and transition probabilities into police custody, into the cautioning program, into the Children's Court and into the youth institutions. Further, attention would have to be paid to such issues as the characteristics of offenders at each point, and the nature of their offences. Of particular importance would be the nature of the intervention. In New Zealand, for example, it appears that within the diversion program the actual disposition was seen by the researchers as "moderately severe" (Morris & Maxwell 1993, p. 84).

The essential issue of net-widening is whether or not the program is meeting its intended goals. From the wealth of data accumulated elsewhere, an inference can be drawn that the justice system has the capacity to transform over time even the best designed diversion program (Lemert 1981, Austin & Krisberg 1981). When this occurs, what may be left in place is a juvenile justice system that is larger, that has expanded its coercive control into new arenas of youthful behaviour, and that is drawing in clients who previously would have been ignored. Since it is explicitly the intent of at least the Wagga program to expand the power and reach of the justice system, there is a special obligation to ensure a careful evaluation to assess the individual and system consequences of the designed net-widening process.
The Question of Due Process

Emerging out of the juvenile justice debates of the 1960s and 1970s was the issue of the protection of the rights of young people caught up in the justice system. It became clear early in the process of diversion that the many alternatives could themselves pose significant problems for young offenders, since these often exposed clients to the full weight of the coerciveness of the juvenile justice system without benefit of advice or proper legal representation. In the mid-1970s, Nejelski warned that diversion programs could become "...a means of expanding coercive intervention in the lives of children and families without proper concern for their rights" (Nejelski 1976, p. 410). This worry has since echoed in other writings (Polk 1984a).

There can be little doubt that the present models similarly pose significant problems in terms of the threats to due process rights. In their evaluation of the New Zealand program, Morris and Maxwell concluded that:

With respect to the protection of juveniles' rights, we are concerned about breaches of statutory safeguards by front line police officers and, indeed, about their continuing resistance to these safeguards... Pressures, both explicit and implicit, appear to be placed on young people to admit their guilt (Morris & Maxwell 1993, p. 85).

Some concern has to be expressed about the approach to this problem in the Wagga model, at least as stated by Moore:

The more important concern is that informal schemes undermine the legal safeguard of the presumption of innocence because they may coerce offenders into admitting guilt... However, concerns about coercion need really only be significant if the cautioning scheme is seen as operating in opposition to or outside the boundaries of the legal system. This is a false interpretation. The scheme works within the formal legal system. It retains the option of a court appearance—with its attendant formal safeguards of the defendant's rights. The only coercion involved is that the alleged young offender is now "coerced" [sic] into considering a second option... The safety net of legal formality is not removed. Rather, young offenders are offered a chance to resolve the conflict that they initiated, but to do so using a method that does not involve them falling into the legal safety net and becoming themselves "victims of the system" (Moore 1992, pp. 13-14).

This is in many ways an extraordinary statement. It underestimates the nature of the coercive threat of "informal" justice processes. Confronted with a forced choice between, on the one hand, admitting guilt and being given the chance of an "informal" (less coercive) option, especially without advice of counsel, and, on the other hand, deeper penetration within the justice process, the young person may feel little choice but to admit guilt.
when she or he is, in fact, innocent. Moore's statement, rather than presuming innocence, presumes guilt, and provides a legitimation for what appears to be a most dangerous denial of due process rights of juveniles. From all of the above, there would seem to be a question regarding the degree to which this new model of juvenile justice engages in routine practices which pose threats to fundamental, due process rights of children. Similar problems in diversion programs provoked the following observation many years ago:

Data from our field visits suggest that diversionary referrals from court intake and courts to youth service bureaus essentially facilitate deferred prosecution; generally are contingent upon admission of guilt without the advice of counsel; that "voluntary agreements" or consent decrees are obtained under coercive circumstances which vitiate the meaning of voluntariness; that throughout the diversionary and referral process the youth inhabits a legal limbo which increases his vulnerability to subsequent punishment for offences previously committed, and which is a much more subtle and pernicious problem than double jeopardy (Polk & Schuchter 1975, p. 2).

Concluding Observations

There is much about the New Zealand and Wagga models that merits both enthusiasm and professional interest. Both focus on the role of the victim in a way that is innovative in terms of discussions of diversion. The New Zealand model in particular makes claims that its procedures mesh with the ways of indigenous Maori culture. These claims are worthy of close review and examination.

What the present assessment has done is to raise questions about these models that focus on two distinct levels. The first level is theoretical—at issue is the proper location of programs that aim at youth integration and reintegration. What are the institutions which must be altered in order to provide for the basic integration of a wider range of young people into mainstream society? To put the question in terms of the language posed by Braithwaite, how can we best go about the process of increasing interdependency and dominion?

The Wagga and New Zealand models presume that reintegration is best achieved through a process which begins in the justice system. Assumed thereby is the proposition that the basic levers for this change are those that the coercive system of justice can bring about by increasing the pressures on individual offenders and their families, by confronting them with a new range of social change agents and victims, in a new setting which is argued to be non-stigmatising.

Moore (1993) and Braithwaite (1993), argue that the vehicle for achieving social justice for young offenders is to expand the powers of the
police. On theoretical grounds this seems a strange manoeuvre, since police have no direct access to the implemental educational, political, recreational, housing, health, or other social service institutions that would contribute to social justice. Positive social justice is both the mandate and responsibility of such institutions as schools and employment training institutions. The powers and responsibilities of the police are explicitly derived from the coercive criminal law. On what theoretical grounds does it make sense to give police primary responsibility for enhancing social justice?

An alternative model makes two kinds of claims. First, it states that the proper place to begin positive youth development is with those institutions which are central to establishing conventional and legitimate identities—school, work, politics, recreation, health and family institutions. Second, it argues that only then is it possible to articulate truly non-stigmatising efforts within the coercive justice system. In other words, any attempt to bring about change exclusively within the justice system is inevitably stigmatising, since such programs must derive their power and control from the coercive authority of the justice system. Further, widening the coercive powers of the justice system, without addressing fundamental issues of inequality, including racism in its broadest forms, can only result in a furtherance of those conditions bearing down on young people, and may deflect social intervention away from the essential conditions of interdependence and communitarianism.

The second level of questions, while also theoretical, have a more practical inclination. If the New Zealand and Wagga models of diversion are going forward, the findings from previous investigations suggests that several evaluation questions need to be placed on the agenda. Present documentation suggests that a glib and superficial response is being given to the questions of net-widening and the possibility that the new forms of intervention may represent significant threats to the due process rights of young offenders. What has been learned above all else from the past is that our best intentions efforts can go very wrong. That experience would urge that careful attention be given to the question of whether these programs are having beneficial, or harmful, effects on the youth being served. There is a particular obligation to assure that young people are not worse off as a result of this diversion process. One of the starting points for answering this question is to examine closely the levels of re-offending behaviour of program participants. Programs as intrusive and coercive as these have a history of increasing later levels of criminal behaviour. This may not be the case in these two models, but the danger is manifest, and the responsibility to monitor is unavoidable.
References


Chapter Seven

Family Group Conferences and the Rights of the Offender

Kate Warner

Family group conferences (FGCs) are an exciting development, with claimed advantages for offenders, their families, victims and the community at large. Offenders are said to be empowered by taking an active role in a process which is non-stigmatising and re-integrative. Families benefit and are strengthened by a family centred approach which encourages their involvement and sharpens family responsibilities. Victims are empowered by enhanced possibilities of reparation, by having the opportunity to confront the offender with their account of the impact of the crime and to have an input into the outcome. The community benefits by being empowered to resolve its own conflicts rather than abdicating responsibility to the state. The net of community control is widened in a way that is culturally appropriate, and the net of state control narrowed. Liberals and "law-and-order" conservatives alike are impressed. Nor do FGCs fail to take crime seriously, but seek to offer localised democratic solutions. In short, FGCs seem to have something for everyone. Inevitably though, reservations, notes of caution, even dangers have been raised. These concerns include breaches of due process, pressures to plead guilty, power imbalances, harsh disproportionate or inconsistent penalties, "net-widening", double jeopardy and sex discrimination. Many of these concerns can also be levelled at any form of informal processing, but their consequences are more serious in the context of family conferencing because of the wider range and more severe sanctions to which conferences can agree. This chapter discusses these concerns in the context of the legal principles that may be infringed.
Due Process

Due process considerations arise at the investigatory, adjudicatory and dispositional stages.

Investigatory stage

Will police malpractice be less visible in a system which uses FGCs? One of the ways in which police investigatory powers are scrutinised is by oversight by the courts. If the police act unlawfully or unfairly in the investigation of a case, the judge or magistrate hearing the case may refuse to admit the evidence so obtained or may criticise the police officer concerned. Allegations of failure to require parental attendance during questioning, of refusal to grant access to a lawyer, of unauthorised searches and excessive force could become more hidden in cases dealt with by FGCs. It is true that the vast majority of children's court matters are guilty pleas. This is a situation which already gives rise to concern about a lack of scrutiny and accountability. A guilty plea "immediately suspends the interests of the court in the treatment of the defendant prior to the court appearance" (Hogg & Brown 1985, p. 398). But reducing the number of cases that come to court has the potential to reduce any deterrent effect of public exposure in the courts. Could it be that the progressive dimensions of the current emphasis on procedural justice and rights at the investigation stage will be undermined by a system whose emphasis is on essentially private solutions to alleged offending?

Adjudicatory stage

With the issue of guilt admitted and the focus of the conference being entirely on how the young person should be dealt with, there is a danger that due process considerations may be overlooked at the adjudicatory stage.

When admission of an offence is a prerequisite to participation in a diversionary program, there is inevitably an inducement to admit responsibility to avoid the uncertainty of a court outcome and to dispose of the matter as quickly as possible. This is not to say that pressure does not exist to plead guilty in court, for there is evidence that suspects do so wrongfully (Baldwin & McConville 1977). But where there are diversionary programs, the perceived advantages of admitting guilt may be greater, so this pressure is likely to be greater (Wundersitz et al 1991).

As well as the danger of young people being pressured to admit the offence even when they believe they are not criminally responsible, there is also the danger that they may admit guilt wrongly believing they are guilty. In New Zealand it is one of the youth justice coordinator's
responsibilities to ensure that the young person does not deny the information in the summary of facts and that the facts of the case are fully explored in the pre-conference case assessment. But issues of guilt and innocence are not always black and white. Frequently subtle distinctions and shades of meaning are involved. States of mind—such as intent, recklessness or wilfulness, conduct defined as drunk and disorderly, and language or behaviour that must be indecent or offensive—can be glossed over and admitted without appreciating their precise meaning and significance. The availability of legal defences such as intoxication and self-defence may not be appreciated by the coordinator or the young person. Where criminal responsibility begins for attempt and accessorial liability is not always easy to determine. There is evidence elsewhere that the summary of facts for prosecution files frequently allege that "the defendant fully admitted the offence" when this is not legally accurate (Sanders 1988, p. 516). If contested in court, the prosecution may find such cases difficult to prove. The focus on disposal in a FGC may lead to an assumption of guilt by the participants, which, if challenged, may not be proved beyond reasonable doubt.

Such objections must be put in perspective. Any discussion of due process in the courts must acknowledge the gulf between rhetoric and practice. The majority of defendants plead guilty and in lower courts it is comparatively rare for points of law to be contested. McBarnet (1981) has argued that justice is short-circuited and due process seen as unnecessary in lower courts because offences and penalties are generally considered to be trivial, and the issues and processes such that the niceties of law are largely irrelevant. Although McBarnet was discussing English and Scottish lower courts presided over by lay magistrates, it is difficult to reject her analysis as wholly inapplicable to Australasian lower courts. When it comes to children's courts, procedural safeguards have been secondary. With the welfare of the child paramount, procedural safeguards at the trial and the dispositional stage were less relevant. But the shift towards a justice model of juvenile justice has the advantage of strengthening an awareness of the need for procedural safeguards to ensure that only those who are guilty are punished. While the shortcomings of the court system in providing due process are considerable, the FGC could involve a greater danger of neglect of this issue. While a similar criticism can be made of all informal processing mechanisms, it is not so worrying where the outcomes are limited to warnings and counselling.

Dispositional stage

It is sometimes forgotten that due process considerations can also arise at the sentencing stage. A court, when hearing a criminal case, is bound by a
number of procedural rules designed to ensure that the version of facts accepted for the purpose of sentence is properly established. One of these rules is that the defendant can only be sentenced in respect of the offence or offences for which he or she has been convicted without regard to other similar or more serious offences for which there is no conviction (De Simoni (1981) 147 CLR 383). So an offender who is convicted of causing grievous bodily harm cannot be sentenced on the basis that the harm was intended; nor could an offender be sentenced on the basis that he or she has admitted to ten separate burglaries when there are convictions for only five. Another principle is that a plea of guilty only amounts to an admission of the bare ingredients of the offence. It does not amount to an admission of the particulars stated in the complaint or indictment. If the version of facts suggested by the prosecutor is challenged by the defendant, it must be proved or ignored (Smith [1979] TasSR (NC 13)).

Will these protections be provided to the offender in the FGC? The youth justice coordinator should ensure that the young person does not deny the information in the summary of facts. But is it clear exactly which offence or offences have been admitted to? Or is there a danger that other offences, or the ingredients of more serious offences will be taken into account? In the informal setting of the FGC, will the offender have the opportunity to require challenged particulars of the offence to be ignored? Will the conference be concerned with getting agreement about the facts relating to the offence before the outcome is considered? The finding of Morris and Maxwell that the system has failed to involve young people in the conference suggests they may have difficulty in having their account of the offence heard (Morris & Maxwell 1993, p. 85).

Inconsistency with a Rational and Fair System of Punishment

On a number of grounds FGCs could be said to be inconsistent with a rational and fair system of punishment. First, is the ideal of proportionality of punishment sacrificed by the FGC? Secondly, frugality of punishment may not receive due consideration. And thirdly, consistency, "a fundamental element in any rational and fair system of criminal justice" (per Mason J in Lowe (1984) 154 CLR 606) may be undermined.

Proportionality of punishment

Desert-oriented or proportionalist sentencing, with its emphasis on the seriousness of the offence, has increased in importance in recent years. Proportionality requires that the amount of punishment be related to the gravity of the crime and the culpability of the offender. As a determining principle it requires that punishment fit the crime, setting the upper and
lower limits of the offence within a scale of sanctions, for example, by creating a sentencing grid. In Australia things have not gone so far. Rather, proportionality operates as a limiting principle. It has been judicially recognised as an important sentencing principle which requires that considerations such as rehabilitation, deterrence or protection of the public should not outweigh the criminality of the act (Veen No. 2 (1988) 164 CLR 465; Nash v Whitford [1972] 2 SASR 333). In other words, a sentence cannot be increased beyond a limit appropriate to the severity of the offence on grounds of possible future offending, nor on grounds of the need to treat the offender. While this principle is well established its impact should not be overstated. The limits it imposes tend to be on the outer limits of the range of permissible sentences.

Children's courts dominated by a welfare philosophy have frequently neglected considerations of proportionality and imposed sanctions that are disproportionate to the gravity of the crime committed. But there is evidence of an emerging judicial trend to invoke the principle of proportionality. Two Tasmanian cases illustrate this. In D v Brooks ((1985) 18 ACrimR 275) a 13-year-old girl pleaded guilty to using indecent language and resisting a police officer. The child welfare officer's background report alleged severe behavioural problems and promiscuity and the magistrate made the defendant a ward of state and committed her to an institution. On appeal Neasey J held that the offences were too trivial to justify such orders no matter what other indications there might have been in the child's background justifying such an outcome. Similarly, in B v Marshall ((1983 TasR 156), Everett J held wardship and committal orders imposed on three young offenders for burglary and stealing were manifestly excessive, given that these offences would not have attracted a custodial sanction in courts of petty sessions.

So the principle of proportionality serves a useful limiting role preventing excessive efforts at rehabilitation as well as excessive punishment (Freiberg et al. 1988, p. 215). In determining the outcome in FGCs, rehabilitation could well be considered relevant and with it the danger of disproportionate measures in the offender's best interests. The Children, Young Persons and Their Families Act 1989 (NZ) seeks to address some of the problems of a welfare approach to young children who offend, without abandoning consideration of needs and positive outcomes. It aims to promote the well-being of children and emphasises that sanctions should "promote the development of the child or young person within his or her family" while recognising that criminal proceedings should not be used for welfare purposes and young offenders should be "held accountable, and encouraged to accept responsibility, for their behaviour" (Children Young Persons and Their Families Act 1989
There appears to be no mention in the objectives or guiding principles of the need for sanctions or outcomes of conferences to be proportionate to the gravity of the offence. The evaluation by Maxwell and Morris (1993, pp. 84-8) suggests that fears of an emphasis on welfare and needs to the neglect of accountability and offence considerations are unfounded. They report that welfare issues are a secondary consideration and the conflict between making offenders accountable and enhancing their welfare is resolved in practice by a primary focus on accountability. In the rare cases when welfare considerations dominate the result is a lenient rather than a severe outcome (Maxwell & Morris 1993, p. 97). So promoting well-being does not seem to be leading to disproportionate sanctions. A primary focus on accountability should ensure the offence committed is a central consideration. But could the emphasis on accountability nevertheless lead to disproportionate sanctions, perhaps in order to deter or punish the offender? Maxwell and Morris' study suggests this may be so in some cases and they gave an example of a 13-year-old first offender who had shoplifted goods to the value of $65. She was described as surly and her mother said she could not do anything with her. At the FGC it was decided she should undertake 16 hours work at the hospital, be placed on a curfew for 5 weeks, undertake 6 hours correspondence course each day, write a letter of apology and attend counselling (1993, p. 96).

**Frugality of punishment**

The Benthamite principle of frugality of punishment requires that the court should award the least restrictive sentence. It has been expressed in a number of ways. It may require the court to impose the least restrictive category and duration of sanction that is appropriate to the seriousness of the offence and culpability of the offender (Institute of Judicial Administration 1977; Freiberg et al. 1988, p. 88). It may be expressed as a limit on the goal of general deterrence by requiring the minimum that will operate as a deterrent (Fleming v Commissioner of Transport [1958] NZLR 101 at 103, applied in a number of Tasmanian cases, see K. Warner, Sentencing in Tasmania, 253). Or it may be said to require the minimum which is consistent with due regard to the public interest (Nash v Whitford (1972) 2 SASR 333 at 334). It operates as an additional limiting principle on the amount of punishment that can be imposed. The question for a sentencer is "what is the least severe sanction permissible before it becomes disproportionately low?" (Freiberg at al. 1989, p. 89). The object of minimising stigma is a further expression of the principle of frugality. Avoiding stigma by diversion from courts and institutions was one of the primary objects of FGCs.
Family group conferences suggest two questions relating to frugality of punishment. First, do they apply the least restrictive sanction appropriate to seriousness and culpability? The specific principles governing the Youth Justice sections of the New Zealand Act include the following: that sanctions should take the least restrictive form that is appropriate in the circumstances; they should promote the development of the child within the family; and young people should, where possible, be kept in the community (Children, Young Persons and Their Families Act 1989 (NZ), s. 208). The research findings of Morris and Maxwell suggest that diversion from institutions has been achieved. But despite the enactment of the principle that sanctions should be the least restrictive possible, FGC outcomes "often seemed moderately severe to the researchers" whereas under the old system more than a third of the court orders were nominal dispositions (Morris & Maxwell 1993, p. 84). These results suggest that young offenders may well not receive the least restrictive sanction or the shortest duration of sanction. The moderately severe nature of outcomes resulting from FGCs may be defended on the grounds that the dispositions are agreed to by the families and young persons involved. Also, it has been argued that even if it does involve net-widening it is not the net of state control that is widened, but the net of community control (Braithwaite 1992, p. 4). Neither of these points justify infringing the principle of frugality. Consent in a coercive situation cannot do so. Nor can calling it community punishment rather than state punishment justify it any more than calling punishment treatment.

The second question relating to frugality concerns diversion. Is the FGC effective in terms of minimising stigma by diverting offenders from court? The percentage of young people warned by the police (with or without formal sanctions) increased, and the percentage who appeared in court declined (Maxwell & Morris 1993, p. 133). Arrest rates also declined (Morris & Maxwell 1993, p. 81). But what effect has the introduction of FGCs had on formal intervention rates? It may be that these rates have increased at the same time that the percentage of court appearances has declined. Discussion of stigma suggests a further point: irrespective of the sanctions imposed, are the procedures less stigmatising than court procedures? Braithwaite suggests "that the denunciations of prosecutors, judges and police who enjoy no intimate bond of care and mutual respect with the offender are liable to degrade and stigmatise . . . the courtroom and the detention centre . . . not only fail to prevent crime; they cause it through the symbolic effects of stigmatisation" (Braithwaite 1992, p. 2). Ideally, FGCs should replace the degrading and stigmatising court process with an experience that communicates shame and at the same time fosters reintegration or healing. However,
Braithwaite’s observations of FGCs suggest that they can be highly stigmatising and that it is parents who tend to be stigmatic rather than victims or the police (Braithwaite 1992, p.3). He suggests that this is a result of the focus in the New Zealand model on the offender and that a focus on the victim, as in the Wagga model, can steer the ceremony away from a stigmatising preoccupation with the badness of the offender.

**Consistency**

Considerable value is placed on consistency in sentencing outcomes. Consistency of punishment implies that similar offenders who commit similar offences should be punished in a similar way. It also implies that offenders who commit more serious offences should be punished more severely than offenders who commit less serious offences (ALRC 1988, p.17). True, unjustified disparity in sentencing dispositions imposed by courts is a problem (Australian Law Reform Commission 1988, p. 80). But awareness of the problem of disparity has led to efforts to reduce it. Assistance to sentencers has increased by the use of informal tariffs, the provision of statutory sentencing guidelines, the emergence of a common law of sentencing through appellate decisions and by judicial education.

While some inconsistency in judicial sentencing cannot be denied, such decisions are likely to be more consistent than those agreed to by diverse groups of families, offenders and victims. When outcomes depend on the whims and idiosyncrasies of victims and families, disparities in outcomes are inevitable. Moreover, conference outcomes could well be outside the range of penalties usually imposed by courts. So not only will there be internal inconsistency in FGC outcomes, but in addition there will be disparity between FGC outcomes and Court outcomes for similar offences. Inconsistency cannot be defended on the grounds that because the outcome is agreed, it will not give rise to an unjustified sense of grievance based on disparity with outcomes in similar cases. Such a defence is inadequate because it makes a number of questionable assumptions: first, that the offender or victim will not subsequently become aware of inconsistent dispositions and become aggrieved; secondly, that there is no coercion and offenders will refuse to agree if aggrieved; and thirdly, that there is no public interest in consistent sentencing. In addition, it does not answer the grievance of a cooffender who is referred to court because no agreement is reached at the conference or there is no available family to participate.

Consistency of punishment requires that no account be taken of irrelevant factors. Unequal treatment based on considerations of gender, for example, is unacceptable at least if differential sentencing has no rational basis. It has been suggested that equal treatment is not necessarily
the right objective (Morris 1987, p. 102; Warner 1991, p. 272). It must be acknowledged that the courts may not have been exemplary in this regard, particularly in dealing with young female offenders. It has been frequently asserted that the juvenile courts discriminate against females because the juvenile justice system sexualises the delinquency of girls, regardless of the offence committed, while overlooking the sexual transgressions of boys (Hancock & Chesney-Lind 1985; Naffine 1986). Recently, Carrington (1990) has challenged the "sexualisation thesis" on statistical and conceptual grounds, arguing that girls are not over-represented in statistics for welfare matters in most Australian States and they are not necessarily dealt with more harshly than boys. Acknowledging Carrington's criticisms of the overstating of the sexualisation thesis does not mean female offenders are not disadvantaged by sexist and paternalistic attitudes. Rather she suggests that the statistics do not prove or disprove differential treatment and that to discuss delinquency in terms of the sexualising of female behaviour is gender essentialism and glosses over other factors. The situation is more complex as other writers have also pointed out (Gelsthorpe 1986, p. 142; Morris 1987, p. 101). It seems that lenient treatment may be conditional on the acceptance of stereotypical behaviour, but paternalistic and harsh treatment may result when the offender breaches stereotypical assumptions about appropriate behaviour. In the punishment of young women there may well be a gulf between the practice and rhetoric of the law.

Family group conferences raise concerns in relation to their ability to deal with female offenders in a non-discriminatory way. As Braithwaite (1992, p.6) recognises, young women are often dominated by patriarchal family structures. A boys-will-be-boys attitude of family members could well lead to the wrongdoing of boys being treated in a less punitive and less interventionist way than the identical wrong doing of girls, particularly if the latter are also seen as sexually promiscuous or unconventional. Hancock and Chesney-Lind (1985) use missing persons data and court appearances resulting from reports of parents to illustrate the latter have double standards when it comes to the behaviour of their children. Sensitising courts to the need to treat females in a non-sexist way is a difficult task, as recent judicial comments relating to rape indicate. But sensitising families to this need as well as professionals participating in the conference may well be even more difficult. Moreover, the comments of judges and magistrates and the sentences passed, although made in closed courts, can at least be made the subject of appellate review. But informal justice, as Scutt (1986) has pointed out, may entrench disadvantage.

Similar considerations arise in relation to race. Consistency of punishment requires that offenders not be discriminated against on
backgrounds of race. Will FGCs be able to achieve a better record than the courts in this respect? In theory, by incorporating features of traditional, extended family decision-making methods into the FGC and by selecting youth justice coordinators from a variety of backgrounds, this should be possible to achieve. Nevertheless it will be a challenge to ensure that conferences are not dominated by professionals with a limited understanding of different cultural values and family structures.

**Double Jeopardy**

Double jeopardy refers to the danger, where a conference fails to reach an agreed outcome, of a young person being punished by the court for the failure the conference as well as for the offence (Kadar 1992, p. 9).

What is double jeopardy? It is a fundamental rule of law of all civilised nations that no-one shall be put in jeopardy twice for the same offence. Double jeopardy has deep historical roots in the English common law and can be traced back at least to the writings of Coke and Blackstone. It is enshrined in the fifth amendment to the US Constitution. In Australian law it involves a number of overlapping concepts. First, the pleas of *autrefois acquit* and *autrefois convict* operate so that if an accused person has been acquitted or convicted he or she cannot be tried again for the same offence, substantially the same offence, or one which he or she could previously have been convicted of (*Connelly v. DPP* [1964] AC 1254 at 1305-6). A related concept is that of issue estoppel which prevents the Crown from calling into question issues determined in the accused's favour in an earlier proceeding (*R v. Storey* (1978) 52 ALJR 737). It seems that there may also be a rule which prevents the Crown from unreasonably splitting its case and requires that charges founded on the same facts or forming part of a series of offences of the same or similar character be heard together (*Connelly v. DPP* [1964] AC 1254 at 1347). Another aspect of double jeopardy is the rule in relation to multiple convictions and punishment for the same act, at the same or in successive trials (Friedland 1969, pp. 195-217). This latter rule may operate to prevent an offender from double punishment, where, he or she has been charged, for example, with driving under the influence and exceeding .05.

In the context of Crown appeals against sentence, double jeopardy has been raised. It has been accepted that courts should be more reluctant to entertain Crown Appeals than appeals by a convicted person, because in a Crown Appeal an accused person suffers a species of double jeopardy by reason of having twice to face the prospect of sentencing (*Tait* (1979) 46 FLR 386, pp. 388-9). It has been pointed out by Kirby P in *Hayes* ((1987) 29 A CrimR 452 469) that what is behind a more stringent approach to
Crown Appeals is not true "double jeopardy", but in a practical sense it is a species of double jeopardy: "The prisoner's liberty, pocket and reputation are put in jeopardy both before the sentencing judge and before the appellate court. In addition, the prisoner suffers the anxiety and stress caused by the situation of uncertainty arising from the delay in resolving his or her position".

The situation of a young offender facing a court following the breakdown of an FGC is obviously not true double jeopardy. Nevertheless, it has similarities with the position of a respondent to a Crown Appeal in that uncertainty and delay could well result in anxiety and stress. Far from being aggravating, in such circumstances the breakdown of the conference could well be regarded as mitigating. Just as a court is forbidden from passing a more severe sentence on a person because they have pleaded not guilty or conducted the defence in a certain way, a court could not be justified in increasing the sentence on the basis of a failed FGC. Although I have argued it would be improper for a court to punish a young person for the breakdown as well as the offence, it could happen. For this reason in the Victorian Victim Offender Mediation Programme, strategies have been implemented to ensure that this does not occur. First, the confidentiality protections in the Evidence Act 1958, s. 21L prevent the outcome of the mediation being presented to court. Secondly, if a conference breaks down, no further action can be taken unless the young person did not participate in good faith.

**Conclusion**

Family group conferences have great appeal. They appear to have something for everyone. But in the process of providing alternative ways of dealing with young offenders, empowering families and victims, are the rights of the offender sacrificed? This paper has attempted to identify where those legal principles which protect the rights of offenders may be at risk in a system that lacks public scrutiny and accountability. Due process considerations at the police investigatory stage may be less open to scrutiny. The issue of guilt may be glossed over. There may be no adequate opportunity to challenge the version of facts accepted by the FGC. The ideals of proportionality, frugality and consistency of punishment may be undermined by FGC outcomes. It is acknowledged that the traditional legal system is not exemplary in these respects, that the practice of the law does not always measure up to the rhetoric and a rights-based approach can be a front for a punitive response. The shortcomings of the traditional legal system are plentiful. The challenge of FGCs is to ensure that its positive features are not lost.
References


Gelsthorpe


Wundersitz, et al 1991,
. . . Police departments are like all bureaucracies; they justify their existence by expanding (Dr. Stephen James, *The Age*, 6 April 1993, p.6).

There is a political imperative in being seen to meet the needs of victims of crime. This chapter considers some aspects of a victim focussed discourse, that is, a preoccupation with the rights and interests of victims and use of this as a pivotal reference point for legislation, policy and practice. The chapter then draws connections with the involvement of police in juvenile justice programs and argues against their management of "family group conferences" recovery.

The growing concern to meet the perceived needs of crime victims is manifesting in numerous ways across Australia and was a major campaign strategy of the recently elected Victorian Coalition government (see McCarthy 1993). It is a welcome development if put into practice through improved information resources, better funding of services to aid recovery or procedural reforms that minimise the trauma of giving evidence.

In contrast, it is distinctly offensive when an appeal to the victim lobby is used as a cloak for punitive measures or a short-cut on the just treatment of suspected offenders. This was recently the case in Victoria, to usher in ill-conceived legislation which provides for indefinite prison sentences (the

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1. An edited version of this paper appeared in the *Alternative Law Journal*, vol. 18, no. 3, p. 104.
Sentencing (Amendment) Bill 1993 (Vic.) and encroachments on the right of accused not to disclose the nature of their defence (the Crimes (Criminal Trials) Bill 1993 (Vic.)). Grave public concerns were raised over the breach of human rights and increased costs of trial and confinement which these and other measures entail. The government response attempted to justify the changes by claiming they would promote the interests of victims. The vast majority of professional and academic advice is to the contrary (see the series of articles by Law Reporter Michael Magazanik commencing in *The Age* newspaper on 20 April and subsequent letters). For example, Professor Arie Frieberg points out that the interests of victims are actually damaged by the proposed changes (*The Age*, 6 May 1993, p. 16).

In Victoria, the legislation, although designed to protect women and children will do the opposite, as offenders and their counsel will insist on the right to trial and will cross-examine all witnesses at both the committal and trial stages, in great detail and at great length to reduce the number of relevant offences for cumulation purposes. A decade or more of constructive work to protect victims of sexual offences from further victimisation at the hands of the legal system will have been squandered in the name of "protection of the community".

In the juvenile justice arena, the media have been particularly prone to portraying advocates for young offenders as "villains", "do-gooders" and "bleeding hearts" (Stockwell 1992). The introduction of repressive laws for the sentencing of young offenders in Western Australia provided a vivid illustration. Police and their respective associations have capitalised, some might say even orchestrated, the rhetoric of the victim discourse and its conservative supporters to great effect and used both as a fulcrum for increased powers (Freckelton 1988; Jackson 1992). The powers they seek include but extend beyond those related to criminal investigation (Sandor 1993). Police are also bidding for program control, particularly in relation to dealing with alleged young offenders as an alternative to having the matter heard by a Children's Court.

Handing over such control makes sense to governments which want to be seen as reducing the costs of justice. An appeal to the rights of victims can provide the appearance of a simultaneous concern for "justice". This enables governments to meet criticisms that such changes disregard the special nature and purpose of the juvenile justice system. The prominence of the victim discourse makes it possible for their schemes to be presented as pivoting on the rights of the victim rather than infringing the rights of the alleged offender. The community is expected to view changes as a redefinition instead of a departure from "justice".
Marketing new approaches to juvenile justice as representing an advance for victims is thus emerging as a disguise for cutting costs and disregarding procedural protections. Police are central players in this scenario. In considering these developments, especially for juvenile justice, it is important to begin by appreciating the dangers in permitting an offender/victim dichotomy to go unchallenged.

**Dividing the World into Victims and Offenders**

People do not simply exist in one or other of these caricatured roles. It is episodes and situations that may sometimes allow such casting. The predator in the public schoolyard can be the victim in the private backyard—and vice versa. One need only look to reports on the circumstances behind young people becoming homeless and the way they are forced to survive to see the futility of dividing up people into these categories (Human Rights and Equal Opportunity Commission 1989; Alder & Sandor 1989; Hirst 1989). Similarly, we can point to the over-representation of young males in both the categories of offenders and victims in surveys of reported violence (see Grabosky 1989; National Committee on Violence 1990). The qualification of "reported" is significant given the disincentives to reporting and sexual assault and violence in the private sphere against women.

The discourse invites generalisations about offenders as a discernible group. This risks distortion in the development of juvenile justice programs, especially for young people. They have historically been the "problematised" object of social anxiety. Yet their offending behaviour is for the most part minor and short-lived. In our culture, they are a vulnerable strata of society against whom the justice system imposes "rehabilitation" and, increasingly, "retribution" on an individual basis. A more sophisticated analysis would, instead, concentrate on the situational conditions which provoke offending behaviour and, in turn, address the service gaps and the resource and policy priorities.

Likewise, it is misleading to speak of victims as a homogeneous group. A fundamental distinction should, at least, be drawn between victims of crimes against the person and victims of crime against property. The circumstances of homeless young people are a paradigm example of how violent victimisation and structural barriers to escaping poverty precipitate property offending (Human Rights and Equal Opportunity Commission 1989; Alder & Sandor 1989; Hirst 1989).

The victim/offender dichotomy also invites a misuse of the language of rights. By dividing the world into victims and offenders, it becomes too easy to steal safeguards and protections from alleged or adjudicated
offenders in the guise of advancing the position of victims. Such a "Robin Hood" approach to procedural rights can be used to legitimise the abolition of safeguards accorded to suspects of crime.

Encroaching on a suspect's civil liberties does not necessarily flow on to victims. A current example can be seen in the leaked information about an anticipated Bill to extend police powers to fingerprint and take body samples from suspects (the Crimes (Amendment) Bill 1993 (Vic.)). In police applications to Court, the suspect would not be deemed a party and would be denied the opportunity to call or cross-examine witnesses.

The effect of these and other erosions is to demean confidence in the criminal justice system and tempt miscarriages of justice. Victims do not benefit from abrogating a suspect's due process rights or by limiting the quality and nature of information upon which the court decides an application.

The rise of a victim focussed discourse is paralleled by a corresponding intolerance for the foibles of young offenders. The lack of formal political power available to young people makes them an easy mark for over-policing and the fabrication of "crime waves". The use of police figures will necessarily inflate estimates because the "cleared offence" is a frequent unit of measurement. This encompasses more than accused found guilty. It includes formal police cautions, decisions to charge where guilt was not established, and circumstances where a reported offence was not substantiated (Victoria Police 1992).

In comparison, even a cursory glance at Victorian Children's Court statistics shows that there has been barely any change in crimes against property or the person. It is the remaining category of "Good Order" offences which have sky-rocketed and in the main, these are revenue producing public transport related matters (Department of Justice Victoria 1992).

In the current climate, however, there is less public currency in pointing to persisting structural factors such as family violence, poverty, unemployment, homelessness, and discrimination when we attempt to place juvenile offending into a realistic context. The validity of the arguments have magnified rather than diminished as young people bear the brunt of the current economic pressures. However, material conditions heighten public intolerance. At the same time it is those very circumstances that increase the need and potential for young people to commit income-generating crime (White 1989).

In such a milieu it is easy to capitalise on the distinction between the two caricatures: the violating offenders and the violated victims. The electorate is receptive to catchphrases such as "law and order" and "getting tough". With the cost of justice continually in the spotlight, governments
are attracted to processes that by-pass courts and the concomitant responsibility to fund legal aid. Young people are the easiest targets for such "reforms".

Changes in the powers, influence and budget of the police have long been a major indicator of how politicians perceive community sentiment about a hard line on crime. It now also appears to be a sign of government's assessment of the community's willingness to let police extend their role to the adjudication of young offenders.

**Police and the Victim Discourse**

A classic gambit for appearing to get tough is the extension of police powers. Already in Victoria, police are experiencing a more sympathetic governmental climate and have invoked the victim rhetoric to support their case. In a letter to *The Age* newspaper (27 April 1993), the Deputy Commissioner (Operations) Mr. Robert Falconer expressed concern that an editorial had criticised proposed wider fingerprinting powers:

> This is a complex issue which cannot be dealt with properly in an editorial or letter. We are not seeking change simply to "save time" but because the current legislation is cumbersome, unworkable and does not operate in the interests of victims.

The "complex" reason may well be that courts have mostly been unsatisfied with the cases put forward by police and have frequently rejected their applications (see *The Sunday Age*, 2 May 1993, p. 5). The public concern for victims by police obscures another agenda: that is, to oust the current supervisory jurisdiction of the courts and, where this has not been achieved, limit the due process rights of the suspect. Yet the current statutory system of court oversight was painstakingly developed only a few years ago by an expert Committee.

Any increase in police powers generally will be disproportionately applied and felt by young people. They are already one of the most over-policed segments in our community and the least able to influence policing priorities. Police already acknowledge that they use methods "beyond their statutory or common law powers" (Victorian Community Council Against Violence 1992). While there is substantial literature on the misuse of existing powers, there is another facet to the police powers issue which requires immediate attention—police control of juvenile justice programs.

The cautioning of young people alleged by police to have committed an offence is a long established program in Victoria and elsewhere. There is now an additional interest in shifting away from those legal processes that respect the due process rights of offenders towards a more victim-
focussed approach. A much promoted model is the "family group conference" used in Wagga Wagga NSW (O'Connell 1992) It draws on many features from the product of New Zealand's overhaul of their juvenile justice system (Morris & Maxwell 1993) with one major difference: the Wagga Wagga model puts program control in the hands of police.

The Family Group Conference

The model is associated with a theoretical approach which favours dealing with alleged young offenders through "citizenship ceremonies of reintegrative shaming" rather than formal court processes. According to Braithwaite (1992, p. 4):

\[\text{T}he\ discussion\ of\ the\ harm\ and\ stress\ caused\ to\ both\ the\ victim\ and\ the\ offender's\ family\ will\ communicate\ shame\ to\ the\ offender\ for\ what\ she\ has\ done.\ Secondly,\ the\ intention\ of\ assembling\ around\ the\ offender\ the\ people\ who\ care\ about\ and\ respect\ her\ most\ is\ to\ foster\ reintegration.\]

Such meetings aim to determine an agreed punishment for an alleged young offender with the involvement of his or her family. It is also intended to serve as a mechanism for making reparation to the victim of the alleged crime who is entitled to participate in the conference. Moore (1992, p. 7) describes the design in the following terms:

\[\text{T}he\ focus\ is\ on\ an\ offence\ that\ has\ left\ a\ victim\ feeling\ insulted\ and\ demeaned.\ The\ offence\ can\ also\ be\ seen\ as\ an\ offence\ against\ the\ state\ or\ society\ in\ so\ far\ as\ it\ has\ breached\ the\ trust\ which\ holds\ together\ any\ social\ collectivity.\ Nevertheless,\ the\ most\ direct\ damage\ has\ been\ done\ to\ the\ immediate\ victim\ of\ the\ crime\ and\ that\ victim\ has\ the\ highest\ stake\ in\ negotiating\ a\ settlement.\]

The subject matter of the conference must be properly understood: it is an \textit{alleged} crime. This is because there is no testing of the evidence against the alleged offender. Participation in the conference depends on the young person "choosing" not to have the matter brought before a Court. In doing so, the conference attracts criticisms that have been made of other informal methods of dealing with young offenders (for discussion see Moore 1992; see also James & Polk 1989). Deficits of these diversionary schemes include sexist and racist outcomes and netwidening (Alder & Polk 1985; Gale & Wundersitz 1989; Wundersitz 1992). The overall context in which they operate is one of poor knowledge about legal rights among young people and obstacles to actually exercising those rights (Alder et al. 1992; Brewer & Swain 1993; Federation of Community Legal Centres Victoria 1993). The schemes
encourage young people to acquiesce to an allegation of guilt in order to avoid the stigma of court processing.

This "choice" may well be accompanied by coercion from the alleged young offender's family. In a related fashion, data on the prevalence of family violence in the backgrounds of young offenders, particularly young women, means one must be wary of how the conference process may ignite such episodes. Braithwaite's (1992) optimistic characterisation of families as caring and respectful will too often not apply.

Theoretically too, there are concerns with the conference and its vision of outcomes when assessed as a strategy for addressing offending behaviour by young people rather than an opportunity for victims to confront their alleged violator. For deeply disadvantaged young people, the process merely becomes a new form of alienating shame when tangible integrative opportunities are absent. Polk (1992, p. 16) suggests that:

When adolescents are pushed well out to the boundaries of conventional society by virtue of unemployment and inadequate schools, they lack the basic commitment to conformity that is essential for the process of reintegrative shaming. Arguing for reintegrative shaming approaches may serve, in fact to deflect attention from the important social changes that are a pre-condition for shaming to work.

... Put in other terms, attention must first be given to assuring the presence of the structural supports (decent jobs and good schools) for conventional identities before turning to a social control strategy such as reintegrative shaming.

The remainder of this chapter argues that police management of such conferences is especially counterproductive to the intent of the model. Furthermore, police control increases the risk of deflecting both attention and resources from the essential structural supports identified by Polk.

**A Policing Function?**

Fundamental questions arise from any programmatic push for greater police involvement in juvenile justice. First, there is the question of whether there is any need or demand for further attention to police-driven programs for young offenders. The Wagga Wagga pilot program received prominence at the Australian Institute of Criminology Conference held in September 1992. There appeared to be broad agreement, however, from the participants that the major concern for the juvenile justice system was not at the early stages of contact with the system. Rather, it was the small
recidivist group who progressed into an entrenched offending lifestyle and for whom incarceration was nearly or already the last resort.

Even if there were a perceived need or demand for diversionary systems to receive greater emphasis, the reasoning behind police running such programs is unsatisfactory. One rationale offered for police responsibility is that the scheme can be viewed as part of a crime prevention strategy in which the police shift to an alternative paradigm of policing.

In coordinating the juvenile cautioning scheme they are not acting as gatekeepers of the criminal justice system, although they retain that important role. Rather they are acting as coordinators of a social justice system (Moore 1992, p. 7).

This extended role in informal juvenile justice programs is difficult to justify while there is substantial local and nationwide concern over police violence and the failure of police to fulfil their obligations to the procedural rights of suspects. One would properly expect that ensuring police do not themselves victimise should take organisational priority over making further inroads into programs. Instead, critics of police are unwarrantedly criticised for having "poor methodology" or "vested interests" (see Barnes 1992 and the reply by White and Alder 1993).

Moreover, there are other priorities for policing in the community that currently fail to be fulfilled, in particular the need for effective family violence intervention. As stated at the 1992 Australian Institute of Criminology Conference on Juvenile Justice by the former federal Minister for Justice Senator Tate, the family is a major learning site for violence. It forms the basis of juvenile justice workers' involvement when the victim becomes a young offender. A premium on effective responsiveness would seem a more far-sighted priority for crime prevention by the police and one which better fits within the central function of policing than hosting family group conferences.

Moore identifies the special mediation skills that running a conference requires. He appreciates that:

[i]f the sergeant in charge of the family group conference is not clearly aware of the significant differences between the paradigm of community control and state control, it may be difficult to avoid the temptation to intervene inappropriately in the conference process. Faced with one or more angry, apparently selfish and initially unrepentant young offenders it may be all too tempting to deliver an impromptu lecture on the benefits of good citizenship and other wholesome attitudes in the great tradition of the formal sergeant's caution (1992, p. 8).
Many would have reservations about the extent to which the necessary mediation skills and attitude of dispassion are fostered within police organisations. Equally troubling, however, are Moore's assumptions that "the police station is a setting that favours neither victim nor offender" and that police are as well placed as any other agent of the state to play the "umpiring" role (1992, p. 2) It is difficult to believe that young people view police in this way, given the data on their perceptions and reports of mistreatment from a variety of sources.

In the New Zealand system, conferences are conducted by youth justice coordinators who come from a range of backgrounds and are appointed as officers within the Department of Social Welfare (Morris & Maxwell 1993). The use of conferences in South Australia is foreshadowed in the Young Offenders Bill 1993 (SA). Unlike the Wagga Wagga model, the legislative design provides for external scrutiny on the content and process of the conference through youth justice coordinators being accountable to the Senior Judge of the Youth Court.

**Wider Ramifications**

There are more pervasive consequences to viewing police as just another player in the juvenile justice arena. Given the symbolic value of police activity for the victim discourse, their involvement risks sending a wrong message about rising juvenile crime. Support for new methods of diversion run the grave risk of bolstering alarmist claims of a rising juvenile crime problem when this is simply not supported by data. Coventry, writing of crime prevention programs generally, warns:

> In the absence of any concerted efforts in the field of community based crime prevention initiatives to seriously tackle other sites (such as the workplace or corporate sector) and other behaviours (including tax evasion, fraud and organised crime) young people will continue to be the key clientele of direct service programs and/or viewed as the chief perpetrators requiring attention.

... If community based crime prevention is limited in these respects, and available evidence suggests it is, official crime statistics and media coverage are likely to ensure that young people remain in the crime prevention spotlight (1993, p. 4).

From an organisational perspective, it is a step towards the increased influence of police in the juvenile justice agenda. That influence is likely to be supported and expounded by conservative agencies which are strongly connected to police organisations.
It is hardly surprising that police unions and police command should align themselves with the law and order lobby. What is often not recognised is their influence upon the views of apparently independent victims' groups and other lobby organisations such as SOLO (Supporters of Law and Order) and upon the vast numbers of police-organised Neighbourhood Watch Committees throughout Australia (Freckelton 1988, p. 59).

These voices of the "community" are the least likely to represent those who are most likely to have contact with police under conflicting circumstances (Hogg & Findlay 1988). Given their alliance and composition, such groups are predisposed to favour police-run processes for determining a sanction rather than Children's Courts.

Even if the offender/victim conference concept proposed under the Wagga Wagga scheme could satisfy other concerns, its endorsement cannot be divorced from the question of whether limited resources should be directed towards police conducting these conferences. Once the conduct of such conferences becomes a police responsibility it will not be readily relinquished. When the next call for greater police numbers is made, additional resources will be forthcoming instead of any pruning to their involvement in such programs. There will be a further rise in the power and political muscle of the force and a further reduction in the monies available for other initiatives.

This is precisely what Victorians witnessed in the Coalition mini-budget handed down on April 6 1993. The Age newspaper that morning correctly made the following prediction:

The "thin blue line" is unlikely to be any thinner after the Budget is announced today. Unlike most of the bureaucracy, the police are doing more than holding their own in the spending stakes. This is due in part to a belief that law and order is under threat, and rising crime rates demand more policing. But recent figures and informed opinion provide little support for either assumption.²

Even so, the Treasurer, Mr. Stockdale announced that:

[the Government remains committed to ensuring that operational police numbers are raised by 1,000 during its first term in office. First steps towards this will be announced in 1993-94 (1993, p. 5-7)

No commensurate allowance has been made in other parts of the justice system to deal with the increased "business" which will result. In fact, the special Court treatment of alleged young offenders may already

² The director of the New South Wales Bureau for Crime Statistics calculates that national "per capita spending on police, adjusted for inflation rose by almost 60 per cent between 1975 and 1989" (The Age, April 20 1993, p. 6). Dr. Don Weatherburn suggests expenditure is driven "more by public anxiety and ignorance than by rising crime rates".
be in the process of being dismantled surreptitiously. Less than one month later after the mini-budget it was reported that young people’s cases would no longer be heard only by specially assigned Children's Court magistrates (*The Sunday Age*, 1993). This step has presumably been forced upon the Chief Magistrate by the Victorian Government’s funding priorities. Next, we might see Victoria leaving it to police to mete out penalties, as is the plan for the police cautioning system in South Australia.

**Conclusion**

Advocates for young people are experienced in articulating the arguments against extended police powers and must continue doing so with intelligent and publicised responses to claims of a rising need to deal with "youth crime". No basis for such a claim is substantiated (Wundersitz 1992a).

Governmental interest in police-run family group conferences also requires us to analyse the increased role of police in processes where they determine the outcomes of their investigations and charges. In doing so, it is important to look beyond the specific features of new schemes.

There is a need to be vigilant in guarding against the way in which the victim discourse is superimposed on juvenile justice issues. It will not go away. Police and the community organisations aligned with them will ensure that there is continued pressure to shift towards victim-focussed processes and outcomes. The discourse must be applied to the best possible ends for suspected and adjudicated young offenders.

This will require constant challenges to the attempt to label individuals rather than understand and deal with the environment in which events occur. It is essential to remind decision-makers and the public at large of how young offenders have been offended against. Such a perspective is a key ingredient for keeping the shifting and relative roles of young offenders prominent in the victim discourse. It requires a proactive role with the media at state and local levels such as that recommended by the New South Wales Youth Justice Coalition (1990).

It will therefore be necessary to articulate the ways in which young women and young men portrayed as victimisers are victimised themselves. Such attention requires drawing and maintaining the nexus between family violence and adolescent offending. The recent legislation for mandatory reporting of child abuse in Victoria has been accompanied by increased public discussion of its criminal character. This presents an opportunity to highlight the prevalence of victimisation in the case histories of young offenders to counter what is likely to be an increasingly retributive approach.
It will be equally important to keep three themes in high public profile: the structural determinants of offending; the need for policy measures which are based on such a structural perspective; and the way in which young offenders are victimised by units of the juvenile justice system.

Unfortunately, the recognition of victims' rights is often thought to be indicated by the level and accretion of police and their powers. Challenges to the growth in police powers must be paralleled by watchfulness and a critique of any increased police influence in the agenda and operation of juvenile justice programs. The architects and those implementing police-driven programs may be well intentioned but the advocacy and developmental interests of young people cannot be advanced by the seepage of scarce juvenile justice funds towards increased police influence in the area. The baseline of resources is low to begin with.

Coventry predicts that crime prevention will be a major pivot for future funding. He warns that:

Programs may exacerbate the drawing of young people into the justice system when the police hold leadership and are viewed as the central exponent of crime prevention (1993, p. 13)

Those who value the rights and just treatment of young people must avert this risk. An impressive and unprecedented alliance of social welfare, legal, human rights, public interest and youth organisation has mobilised in Victoria to lobby against the human rights contraventions which are contained in the recently introduced Bills on police powers and sentencing. These organisations and their counterparts elsewhere should lead the arguments for a sound programmatic approach to juvenile justice and the way it is resourced.

Granting control to the police over the outcomes of their investigations is not part of that recipe. It is, however, to be expected when economic rationalism facilitates reducing costs of "justice" while seeming to cater to victims. The Wagga Wagga family group conference is one of many disturbing examples of this trend.

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Chapter Nine

Implementational Issues: Considering the Options for Victoria

Milt Carroll

At present neither Health and Community Services (H&CS) nor the Victorian Government has a policy on family group conferences in the juvenile justice system. This chapter will outline some of the reasons why this is the case. Nevertheless, as a person who has been involved in the criminal justice field for over 20 years it is always heartening to see interest in, and commitment to, the development of new approaches to working with young people who come to attention because of offending behaviour. The "nothing really works" movement which had gained great popularity some years back is, hopefully, dead and buried.

It is pleasing to see debate about family conferencing being facilitated because no new program which focuses on the matter of criminal guilt, involves the imposition of penalties, draws into play the powerful machinery of state control, and seeks to address the issues of victims rights, should be embraced and built into a criminal justice system without such open and searching questioning.

There are a number of aspects—particularly the goals and objectives of the two examples of family group conferencing currently operating in New Zealand and Wagga Wagga which appeal to me. I refer to:

- the diversion of young people from the court process;
- the increased attention to victims' rights and needs;
- the increased involvement and ownership of processes by young person and his or her family; and
- the cultural relevance of processes.
I doubt that anyone would suggest these are unworthy goals and objectives. I do, however, have a number of concerns about the capacity of the family group conference (FGC) to achieve these goals and objectives in a criminal justice setting and at the same time:

- prevent net-widening;
- promote proportionality of outcomes; promote equity of process and outcomes;
- ensure that the rights of victims and offenders are protected as far as possible;
- maintain consistency and balance between goals of reparation on the one hand; and
- mediation/reconciliation on the other;
- ensure professional handling and management of a very emotionally and psychologically charged process and adequate follow-up of "business" unresolved at the end of the conference;
- provide for a cost effective program which does not impose undue budget problems for the community;
- lower crime or recidivism rates; and
- be an accountable and reviewable forum for justice decisions.

My particular perspective is that of a professional participant in the state process charged with developing, implementing and delivering a juvenile justice "package" of programs and services which not only meets legislative requirements, government policy and budget but also adheres to the principles of community accountability. As a former practitioner in the juvenile justice field I am also concerned with the balance between the rights and needs of the client (in this use young people charged with offences) and the exercise of the social control function of society. The chapter will begin by briefly describing the juvenile justice system in Victoria and some relevant trends and developments. Concerns about FGCs will then be identified before setting out the major shortcomings of the Victorian system and problems which need to resolved. Finally there will be a discussion of whether or not FGCs address these issues.
Setting the Scene

Principal legislation governing juvenile justice in Victoria is the *Children and Young Persons Act 1989* (C&YP Act). It is the result of a lengthy process of reviewing and revising both protective services and juvenile justice practice and legislation in Victoria and is based on a number of principles. In particular, its aims are:

- to social justice and equity;
- to support families;
- to maximum accountability;
- to protect cultural differences;
- to voluntary participation in use of services;
- to foster and promote development of communities;
- to increase resourcefulness, independence and self-sufficiency of individuals and families;

The current juvenile justice system (much simplified) involves the following stages:

- apprehension and questioning by police;
- police decision to caution, or charge and send the child to court;
- court deliberation and sentence according to C&YP Act principles.

The hierarchy of court sentences, from the least to the greatest level of intervention, intrusiveness and punishment is as follows:

1. Dismiss the charge (no conviction);
2. Undertaking (no conviction);
3. Accountable Undertaking (no conviction);
4. Good Behaviour Bond (no conviction);
5. Fine (with or without conviction);
6. Probation (with or without conviction);
7. Youth Supervision Order (with or without conviction);
8. Youth Attendance Order (with conviction);

9. Youth Residential Centre Order (detention for 10-14 year olds) (with conviction);

10. Youth Training Centre Order (detention for 15-17 year olds) (with conviction).

Equally as important as having a wide range of graduated sentencing options is the court advice program operated by juvenile justice units. This program assists the court in identifying those personal and family dynamics and characteristics relating to the offender which, together with the nature and pattern of offending, indicate which stage of the sentencing hierarchy is most appropriate to the young person.

**Alternative diversionary programs**

Victoria has a number of programs and policies in place which are designed to address the issues of diversion of young people from court and high tariff sentencing options, cultural relevance of the justice system and the personal development and reintegration of young offenders.

**Pre-court diversion**  The principal form of pre-court diversion in Victoria is the police cautioning program. Discretion to charge or to caution (that is, issue a warning to) a young person is exercised at the local station level. Most often, the decision in respect of a "first offender" is to caution. Until recently, approximately twice as many young people were cautioned, compared with the number who were charged and sent to court. In 1990, for example some 10,000 young people were cautioned while only some 5,500 went to court.

According to police, this low-level response to first offenders is highly successful with only about 15 per cent of those cautioned coming to police attention again.

Advantages of this police cautioning program include its immediacy (it occurs soon after questioning), its simplicity (the criteria and process are well understood by police and others), the low level of resource requirement (no other professionals or costly processes are required) and its high level of success.

**Culturally relevant initiatives**  In April 1991 several Victorian government agencies (including police, Health & Community Services and the Justice department) jointly implemented Community Justice Panels (CJPs) on a statewide basis. Funding was provided to establish semiformal panels or committees within Koori communities in Victoria. The people on these panels were trained by these agencies involved to develop culturally sensitive approaches within the
community to both adult and juvenile Koori offenders. CJPs promoted Koori community involvement in dealing with Kooris who come, or are at risk of coming into the criminal justice system.

More recently, Health and Community Services (H&CS) has committed some $200,000 to fund six Koori Justice Programs in geographical areas with significant Koori populations. These programs are focussed on young people and have both outreach and community development components. They seek to:

- prevent young Koori people from offending or re-offending;
- divert young Koori people from the juvenile justice system as far as possible; and
- develop Koori involvement in advocacy for and supervision of young Koori people.

The approach taken within Koori justice programs is to employ a Koori justice worker who attempts to engage Koori young people who have entered or are at risk of entering the juvenile justice system. These workers also stimulate the development of culturally relevant community programs for young Koori people, which focus on educational, employment, recreational and other significant areas of their lives.

Both the CJPs and the Koori justice programs were responses to the over-representation of Kooris in the Victorian criminal justice system and to recommendations made by the report of the Royal Commission into Aboriginal Deaths in Custody (1991).

The result is that in Victoria there has been a decline in the over-representation of young Kooris in the juvenile justice system since December 1990. In particular there has been a reduction in the number of young Kooris in detention (from 30 to 5) and the number of young Kooris under community based supervision programs (from 62 to 31).

These programs have also been instrumental in ensuring that Victoria has been increasingly sensitive and able to respond to the cultural needs of young Koori offenders in an appropriate way.

**Diversion within sentencing options** For a number of years, Victoria has sought, both in the adult and in the juvenile areas to develop alternative and diversionary approaches to dealing with people who offend against the law. Initially this took the form of diversion from incarceration through community-based sentencing alternatives. Thus beginning in the early 1980s we saw the development of the community service and attendance centre orders to provide additional community-based alternatives to imprisonment for adults. In 1988 the
youth attendance order was developed as an intensive and highly structured community used sentencing alternative for 15 to 17-year-old young people who might otherwise be sentenced to detention in youth training centres.

More recently however, with the implementation of the C&YP Act there has been an expansion of community-based sentencing dispositions to allow for diversion from more intensive to less intrusive sentences. The thinking behind this development is that, in addition to ensuring that entry to detention does not occur prematurely, the earlier and further a young person enters the justice system, the more likely the young person is to remain in that system and to penetrate more deeply into it.

It is our belief therefore that the wider the range of sentencing dispositions open to the court the greater the possibility that a young person can be diverted from further and more serious offending at as early a stage as possible.

**Personal development and reintegration approaches**

**Client Service Planning** In Victoria, client service planning for all young offenders sentenced to H&CS supervised court orders has recently been implemented. The objective of this planning is to assist the young person to avoid future offending. After intensive assessment which is linked wherever possible to pre-court assessment and court advise, a plan of personal development and supervision is developed and implemented. In the case of young people in detention, this planning process links community-based juvenile justice units with youth training/residential centres to provide for consistency and continuity of intervention.

The people who are actively involved in developing and implementing client service plans include H&CS staff, the young person, the family/significant relatives/caregivers, and other appropriate persons involved with the young person in a significant way.

Thus, as is intended with FGCs, this process involves the young person and significant others in the development and implementation of a program of personal development and reintegration for the young offender.

**Challenging offending** We are training staff in the running of the Challenging Rising Offending Program, an innovative approach to working with young people on correctional orders. This program utilises social skills/behaviour modification techniques which promote the development of non-delinquent responses to suggestion and testing out by peers. Based on the correctional curriculum model pioneered by David Thorpe and the British Intermediate Treatment Programs it has been adapted to suit the Victorian juvenile justice system.

Features of the program include the following:

- it confronts the behaviour and disallows excuses by young persons to opt out of their responsibilities;
it addresses the issues relating to victims of crime in a very confronting way;

it provides staff with a clear, structured program to address offending behaviour amongst young people;

it teaches young people new options and alternatives to their offending behaviour;

it builds self esteem and teaches young people an awareness of the impact of their behaviour upon others;

it is suitable to working with young people either in the community or in institutions.

**Statistical trends**  During the past eleven to twelve years in Victoria there has been a significant reduction of young people either incarcerated or under one or another form of community-based sentencing order. The number of young people entering Health and Community Services youth corrections programs have reduced in the following ways:

- probation—from 1,626 in 1981 to 643 in 1992;

- sentences of detention in Youth Training Centre—from 694 in 1981 to 127 in 1992;


One new sentencing option established in October 1991, the Youth Supervision Orders, has grown to 200 admissions in 1992, drawing young people from within existing H&CS supervised programs by presenting to the court a more appropriate sentencing option for some young people. This option lies between probation and the youth attendance order in the hierarchy and involves intensive supervision and optional non-paid community service. It offers a more gradual transition from probation (the least intensive H&CS supervised order) to youth attendant order (a highly structured and intensive order).

The total number of young people admitted by courts to H&CS supervised programs has dropped from 2,332 in 1981 to 1,047 in 1992.

The point of noting this reduction in young people under formal supervision is not to extol Victoria as being particularly "soft" enlightened or progressive. Rather, it is to illustrate that the process of diversion of young people from a higher to a lower level of appropriate intervention responses to young people has been a feature of juvenile justice in Victoria for some time now. Diversion, therefore, is not as pressing an issue for Victoria as it was (or is) in New Zealand and those Australian states which seek a diversion program in the FGC.
Piloting Family Conferencing in Victoria  Victoria is not, however, entirely ignoring the notion of family conferencing for young offenders. For example, a pilot Victim-Offender Mediation Program has recently been trialed in Geelong and Frankston as an alternative diversionary approach. Family, friends and other significant persons are invited to support both the young offender and the victim during mediation.

It operated as a post caution, pre-court option and was based on referrals from police. Mediation was conducted by trained mediators in Dispute Resolution Centres. The emphasis was on diversion and the meaningful participation of the young person in the mediation process rather than on successfully negotiated reparation. Reparation may well, however, have been one of the outcomes.

Originally intended to run for nine months, the pilot program ceased after some seven months when funding was withdrawn from the Dispute Resolution Centre program. Evaluation of the pilot is still under way and the pilot may continue but in a revised form.

In addition, a feasibility study is currently being undertaken by the mission of St James and St John in Melbourne into the possibility of trialing a form of FGC (or at least some of the principal components of family conferencing for young offenders. The results of that study are due in the near future.

To date, however, the relevance of these programs to juvenile justice in Victoria has not clearly been demonstrated.

Key Issues and Concerns

Concerns about the Wagga Wagga model

The principle concern here is that it is a police managed program. One might be forgiven for questioning:

- how universally the view is shared that police represent "neutral" ground. Regardless of whether or not that is the police perception it certainly would not be the perception of many young people apprehended by police and would probably not be the perception of many families of young people, victims or in fact the community in general;

- the fit between police training, experience on the job and their "normally" perceived role in the criminal justice process, and that of impartial mediator/reconciliator who must often have to handle emotionally and psychologically charged sessions with all the inter and intra-personal trauma associated with them;
the fact that a police agency (if not the individual police member) is placed in the position of not only apprehending the offender and "proving" the allegation, but also of ensuring that the rights of both offender and victim are promoted or at least protected, adjudicating an outcome (often, if not ideally, involving a penalty) and finally, enforcing compliance with the outcome. I would suggest this is an inappropriate mix of roles and functions for any agency—particularly one with such a high level of perceived authority and control.

The costs involved in applying FGCs to the police cautioning program in Victoria would be in the vicinity of some $2 million. This is based on the following calculations:

- approximately 11,000 young people are now cautioned per year in Victoria;
- if each worker could plan, prepare, conduct and follow up 200 conferences per year, some 55 workers would be required;
- the cost per worker in Victoria would be a minimum of $35,000 in salaries alone (55 x $35,000 = $1,925,000);
- in implementing a network of statewide FGCs there are likely to be substantial administrative and operational overheads in addition to salaries.

Concerns about the New Zealand model

Evaluations of the family group conference in New Zealand raise a number of concerns, including:

- the reported high level of control of the FGC process by professionals in comparison to the young people involved and their families. This appears contradictory to one of the stated aims of FGCs, that is, to enable young people and their families to take control of the decision making processes (see Maxwell ****);
- the high level of police satisfaction with the process and outcomes compared to that of the victims (roughly 91 per cent compared with 53 percent). Nearly one-third of victims expressed dissatisfaction. This seems to be related to unrealistic expectations by the victim. The imbalance between expectations and outcomes seems to inhibit achievement of reconciliation (see Maxwell ****);
requirement for a legislative base and links to court processes. The question is, to what extent does the FGC really divert young people from court, from formal processes/healings, or from the social control arena?

as with the Wagga Wagga model, the cost of importing the New Zealand model would be substantial. In fact, it is likely to be considerably higher because in addition to cases involving police cautions, it is understood a number of referrals would come from the courts. Another cost to Victoria would be encountered in the process of legislative amendments (in New Zealand, the program has a legislative base) and in "double handling", that is, having both the court and the FGC process involved;

given the complexity of the family group conference process, the often traumatic and challenging issues which arise for both victims and offenders (and their families) and the standard of professionalism required to effectively manage such conferences, to try to implement the program on meagre resources would do a disservice to all.

Concerns with both models

Conflicting objectives Both models try to reconcile apparently conflicting objectives:

- victim empowerment and support versus offender empowerment and support;
- meeting the needs of the young person and his/her family versus concern over the accountability and punishment of the offender;
- mediation and reconciliation versus reparation and compensation;
- informal and consensus decision making versus equity and proportionality of outcomes;
- diversion versus reparation and compensation.

Net-widening Both models involve young people in a complex, highly interventionist process (particularly those young people at the "soft end" of the scale) to a greater degree than applies in Victoria via the current police cautioning program. The police cautioning program in Victoria, which involves a warning only, deals with in excess of 50 per cent of young people who enter the juvenile justice system. This minimum level form of intervention is, by all accounts, quite successful.

What appears to me to be occurring is an over-involvement of young people in an intensive social control process (and it must be acknowledged that; FGCs are both intensive and social control processes). However, it also tends to draw
persons and possibly agencies not normally actively associated with social control into that process.

**The reality versus the illusion of reconciliation** There is little evidence of reconciliation of the young person with family, police, victim, (and family/friends of the victim) or community which lasts beyond the FGC process. How firm is reconciliation and what form does it take three or six months after the conference?

**Pre and post-conference work** Little seems to be documented about the process of preparing both the victim and offender (and their respective family/supporter) for the conference. For an effective conference to take place, it is expected that significant time and effort would have to go into this stage. This again adds to the cost of the process.

In addition, what ongoing support or professional intervention is given to any of the key players after the conference should significant trauma, personal or interpersonal conflicts arise and not be totally resolved in the conference itself?

**Stigmatisation** Involving the young person in such processes, particularly with the emphasis on acknowledgment of guilt and shame, would probably not reduce the incidence of labelling.

**Does it address Victorian needs?**

Probably the most crucial question to ask is "Does this approach, even if it achieved most of its objectives, address the needs of the juvenile justice system in Victoria? My concern is that we have to understand and appreciate both the needs as well as the program and service gaps in Victoria (as no doubt did the Wagga Wagga and the New Zealand systems) before developing new programs for juvenile justice in Victoria.

Because a program or component is functional or achieves its goals in one jurisdiction does not necessarily mean that it is right for all systems. In fact dedication of valuable resources (both personal and financial), and direction of public attention to one approach may very well leave unattended and unappreciated more substantial problems and needs within a system. It would, therefore, be worthwhile identifying some of the significant need, problems and issues which need to be addressed in the juvenile justice system in Victoria.

The following, not necessarily in any order of priority, should be on our agenda of significant issues to address;

- **Alternate ways of dealing with "good order" matter**

  There has been a dramatic rise in the number of young people appearing in the Children's Court in Victoria in the past four years. In 1989, for example, 4,980 appearances were recorded. In 1990, this increased to
5,561, in 1991 to 7,775 and in 1992, to 9,028 (Victorian Department of Justice, Children's Court Statistics 1992). Earlier, however, I referred to the decreasing number of young people receiving higher tariff penalties in court. The obvious question is—"What is happening?". Some indication is provided by an analysis of the trends in the nature of matters before the court, as illustrated in Table 1 below. Overall, the number of matters proven before the court has increased by almost 3,200 in the past three years. Over 3,000 of these fall into the "Good Order" category. This includes such charges as feet on the seats, travelling without valid ticket, failing to wear approved bicycle helmets, illegal consumption of alcohol and so on.

![Table 1: Number of Proven Principal Offences for the Years 1990, 1991, 1992 by Offence Group, Victoria](image)

Table 1: Number of Proven Principal Offences for the Years 1990, 1991, 1992 by Offence Group, Victoria

<table>
<thead>
<tr>
<th>Year</th>
<th>Person</th>
<th>Property</th>
<th>Good Order</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>358</td>
<td>3,170</td>
<td>1,592</td>
<td>5120</td>
</tr>
<tr>
<td>1991</td>
<td>394</td>
<td>3,448</td>
<td>3,257</td>
<td>7099</td>
</tr>
<tr>
<td>1992</td>
<td>450</td>
<td>3,228</td>
<td>4,635</td>
<td>8313</td>
</tr>
</tbody>
</table>

Source: Victorian Department of Justice

The cost to the community in processing and prosecuting these types of matters in court is immense. Thus, working out alternative ways of dealing with them should be high on the agenda in Victoria. A diversion program or response is not being suggested.

- **Structural issues which contribute to family breakdown, family violence, youth homelessness, youth alienation, youth victimisation and youth crime**

Whereas young people generally are a disadvantaged group when it comes to negotiating in the marketplace for housing, employment, income support and other such resources, youth who have been processed one way or another as offenders are doubly disadvantaged by being viewed unworthy. If we are to arrest and hopefully reverse the conditions contributing to alienated and "acting out" youth we need to address quickly these structural problems. And this needs to be done either
before, or at least at the same time as, we develop therapeutic programs which seek to assist young people to become contributing members of the community.

- **Bail advocacy programs**

While I referred earlier to the heartening reduction of young people admitted to institutions over the past 10 years, there is still concern about the high number of young people admitted to remand, pending court hearings. This is particularly worrying given the relatively low number of children who are given sentences of detention following periods of detention on remand. In fact, of 142 young people aged 10 to 14 years admitted to remand in a Youth Residential Centre from 21 September 1991 to 20 May 1993 only 17 were eventually sentenced to detention. Of 396 young people aged 15 to 17 years on remand in a Youth Training Centre from 1 July 1991 to 30 June 1992 only 100 eventually received sentences of detention.

While the C&YP Act prohibits remand solely on the grounds of lack of accommodation it is believed that it remains one of the main reasons for the remand of young people. Lack of access to accommodation, bail advocacy and legal advice, particularly after hours, are problems requiring attention.

- **Victim Support**

More attention must be given to victim support. Such support must be more intensive and longer term particularly in cases where victim trauma is greatest) than appears to be the case in the FGC. In certain cases, victim-offender mediation or contact is appropriate and in the best interests of both. However, it must be part of wider programs for both victim and offender rehabilitation.

It is often noted that young offenders have, in many cases, been young victims themselves. It only makes good sense to put energy and resources into victim support and thus break the cycle. It is of concern, however, that FGCs present superficial and short-term approach to victim support.

**Summary**

The stated goals of the FGC in the juvenile justice area are to be commended but there are a number of concerns about the models implemented. One of the central concerns is reflected in the question "Does the FGC address the gaps, needs and problems facing the juvenile justice system in Victoria today?" I do not believe that it does.
Before passing final judgment, however, further evaluation of both the New Zealand and the Wagga Wagga programs are needed, particularly focuses on longer term outcomes for both young people and victims.

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Given the popularity and growing favour within some criminological and police circles for "shame and reintegration" models, it is particularly important at this point to evaluate critically various aspects of the model. This is especially the case insofar as such models are, by and large, in the earliest stages of their practical development and hence, what happens now will have long-term consequences.

The "shame and reintegration" model needs to be analysed and evaluated across at least two areas of concern: theoretical foundations, and procedures and outcomes. The purpose of this chapter is to raise questions in each of these areas as a means to help clarify the conceptual issues surrounding the use of the model and to identify concerns of a more concrete nature which require further debate and discussion.

The discussions in this chapter are primarily concerned with the type of juvenile justice innovation associated with the theoretical and philosophical model developed by Braithwaite (1989) and Braithwaite and Pettit (1990), in which a strong focus is on shaming, informality and community involvement in response to juvenile offending. This model of intervention—the "shame and reintegration" model—bears elements in common with other programs elsewhere, as in New Zealand, and is remarkable in that it has directly informed the initial stages and continuing development of the police cautioning program in Wagga Wagga, New South Wales. A crucial dividing line between the Australian and the New
Zealand experience appears to be that of the nature and extent of police involvement in the respective programs. Given the pivotal role of the police in the "shame and reintegration" model, and given the increasing appropriation of aspects of the model in several other jurisdictions around Australia, this paper will concentrate on the theoretical and practical implications of this juvenile justice intervention model in particular.

**Theoretical Foundations**

"Shame and reintegration" approaches represent models of alternative dispute resolution which have their origins in efforts to establish a "restorative" form of justice. The basic idea here is that the best way to deal with much offender/victim crime is to repair as far as possible, or make up for the damage done and the hurt caused by the crime (see Wright 1991). The emphasis is restorative, not punitive; on reparation, not retribution. These kinds of approach direct attention to the needs and participation of the victim. But they also include acknowledgment of alternative methods one can use to ensure that re-offending does not occur. Specifically, whereas punitive, formal processes of criminal justice are seen to stigmatise and separate offenders from the rest of the community, "reintegrative shaming" is based upon the principle that we should seek to shame the evil deed but not the offender (Braithwaite 1989). Disapproval is thus extended while simultaneously a relationship of respect is sustained with the offender. This leaves the door open for the offender to re-enter the community after they have acknowledged the harm or wrongdoing they have done, apologised and made some kind of reparation.

It needs to be said that, for all their similarity, there are in fact several different types of victim/offender models, as evidenced, for example, in the differences between the experiment in Wagga Wagga (based clearly on a "shame and reintegration" philosophy) and the New Zealand program (based on a family-based reparation philosophy). The impetus for the adoption of a particular model likewise varies enormously—from administrative efficiency, to attempts to improve policing, through to the "empowering" of victims, offenders and communities. None of these is necessarily mutually exclusive of the other. Nevertheless, the dominant rationale and starting point for the introduction of a specific program is a significant determinant of the future shape and orientation of that program.

This in turn raises the issue of the aims and goals of each program. From the discussions surrounding the different types of offender/victim models, there appear to be significant divergences in the perceived objectives that each program is trying to achieve. For example, depending upon who one talks to, it is not entirely clear as to whether the goal is to
streamline decision-making procedures, to ensure victim restitution, to provide process and/or outcome satisfaction among the participants, to engage in better management of crime and criminal offenders, to reintegrate the offender into a particular community of people, some of the above or all of the above. Again, the weight given to specific goals will have a major bearing on the overall orientation, structure and processes pertaining to a particular program. From an evaluation point of view, it would also seem that the pursuit of some of the listed goals would likely conflict with the pursuit and achievement of other goals.

Having acknowledged differences between programs, it nevertheless can be observed that, generally, such differences exist within the context of a recognisable "framework" which allows us to identify this or that program as being an offender/victim model rather than some other kind of juvenile justice perspective or approach. Here there are a number of questions which must be addressed more systematically if we are to evaluate adequately the efficacy or otherwise of such models. This is especially so with regard to the basic theoretical or political assumptions which underpin the practical application of specific models, such as the "shame and reintegration" model.

*Society*

Certainly one of the major concerns I have with the "shame and reintegration" model is the apparently naive assumptions regarding the nature of Australian society upon which the model is premised. In a nutshell, the basic structures of, and divisions within, Australian society do not appear to have been described or theorised adequately or critically. Even the "master" normative theory upon which the Wagga Wagga "shame and reintegration" strategy is purported to rest (see Braithwaite and Pettit 1990) deals more with abstract concept juggling than with demonstrating the relevance of "republican" criminal justice principles to the empirical realities of economic, social and political life in the 1990s.

The issue of "power"—who holds it, how it is exercised, how it is manifested in institutional arrangements and interpersonal contact—is especially problematic in the "shame and reintegration" model. It is somewhat ironic to focus on this aspect of the theory, given that some stress is placed in the theory upon "empowering" offenders, victims and communities, and dealing with power relationships at the level of interaction. Having said this, it is still the case, however, that the theory really does not come to grips with the manner in which power is channelled into certain dominant structures—in particular, capitalism and the class relations of domination and subordination.
What needs more discussion—and explanation at a theoretical level—are issues such as inequality, class power and the different social interests which are unequally represented in our major institutions. Instead, the theory appears to take-for-granted as "real" the key categories of liberalism (liberty, equality, justice, individualism, plural interests), and assumes that the hallmarks of liberal democracy—universal suffrage and the rule of law—in fact do or will allow scope for reform that is truly equitable, constructive and liberating. This in itself is highly contentious (see Bottomley et al. 1991). It is even more so given the character of the political struggle evident in the criminal justice arena over various "law and order" issues—conflicts which by and large speak to how best to manage unequal social relationships (and their consequences) rather than how to transform them.

Part of the problem here is a failure or reticence to conceive of society in wider structural terms. Society is seen in terms of "individuals" (rather than classes or other defined social categories), and social activity or action is conceived in terms of the interactions of particular individuals and groups (rather than social forces). Within this analytical framework, attention is directed to structural effects (of class location, of "race" and sex discrimination) and to specific institutional or interpersonal relations, rather than to the wider social structure itself. The social attributes of individuals (such as class, age, sex, ethnicity and ability) are acknowledged as sociologically significant at an empirical level. The issues are then constructed theoretically as problems of circumstance and policy, not those of the basic economic or social structures of society. One implication of this is that reform and change are simply a matter of reasoned argument and sufficient lobbying effort, rather than a question of struggle and conflict over basic material interests and differences (see White 1994a).

Related to this, much closer attention needs to be given to the deterioration of the position of young working-class people over the last two decades, and their progressive marginalisation in the spheres of production, consumption and general community life. Such an analysis certainly highlights the deep social divisions in Australian society. It also simultaneously challenges the idea that there exists a "consensus" in how "right" and "wrong" are conceived by diverse sections of the population. For example, theoretically, it is assumed that everyone rejects and objects to "predatory crime", and that what is needed are measures which instil a sort of "self-sanctioning conscience" (see Braithwaite 1989). Practically speaking, however, we need to ask how and why "predatory crime" is construed by those with the power to define its nature. We might ask, for example, how "good order" types of offences are constructed (such as
public nuisance, public drinking, loud noise, offensive language), why certain classes of juveniles tend to be chastised for these sorts of "crimes", and what the relationship is between these types of offences and on-the-street escalation of conflict into the "predatory" crime category. Even where crimes of a predatory nature do take place, we still need to explain why and how it is that the social system can so oppress people that it occasionally produces brutal people who do brutal things. To take into account "social factors" such as poverty, racism, sexism and lack of access to community resources is not good enough. It is precisely these descriptive "givens" which need to be explained, and which are central to any explanation regarding the nature, type and extent of issues affecting particular groups of people.

A more developed theory of society is essential if we are to go beyond approaches and explanations which end up focusing on the misdeeds and activities of "individuals". The "shame and reintegration" model in essence argues for a group response to individual action, rather than beginning from a position which centres on the role of institutions in shaping individual choices, values and behaviour. Politically, it is easy to see how a reform agenda oriented toward changing individuals would appear to be feasible, practical and manageable. Ultimately, however, such strategies do little to challenge the built-in inequities and inequalities of our social institutions, and thus to address the causes of "individual" deviance and offending behaviour.

Crime

Any innovation and program development in the area of juvenile justice must first and foremost acknowledge the structural basis for the causes of youth crime, why and how certain young people are defined as "criminal", the processing of these youths through the criminal justice system (from contact with the police, to the courts, through to institutionalisation), and the practical effects of criminalisation on these young people. More generally, we need to evaluate critically issues relating to the causes of crime, and assumptions about "criminality" and criminal behaviour.

The "shame and reintegration" model is based upon an eclectic theoretical exposition of criminogenesis and continuing criminal behaviour. A multi-factor approach to explaining crime—seen in terms of specific needs, greeds and deeds—is seemingly undercut within its own terms of reference by an over-riding emphasis on "conscience" and the formation of a moral view in the individual who is subject to the shaming treatment. There is nevertheless a logical connection between a multi-factor explanatory approach, and a response to crime which favours re-
organisation of the offender's moral sensibilities. The link is to be found in the notion of individual "choice" and responsibility.

A multi-factor approach implies that crime can best be understood in terms of "situations"—specific circumstances involving particular patterns of opportunity. By stressing human agency in the decision-making process, ultimately it is the individual who is seen to be responsible for the choices they make. Social background and immediate circumstantial features of a situation are factors which may, perhaps, mitigate or attenuate the state's response to offending behaviour. But each person is nevertheless ultimately responsible for their actions.

Offensive behaviour is itself defined in terms of a presumed consensus regarding social harm and deviant conduct. At a theoretical level, this implies a conception of society where basic viewpoints and moral stances are in harmony, where value-conflict and competing interpretations of social events do not exist. It also implies that "the law", in spirit and practice, is to be equated with social consensus. The problem with this perspective, however, is threefold. First, it belies the real antagonisms and clashes of interest which do occur in society, and the links between these and the substantive inequalities which restrict individual choice and freedom and which narrow the scope for the expression of agency in an environment hostile to one's class, sex or ethnic group. Second, it reinforces the notion of "common interests" which plays such a powerful ideological role in maintaining the hegemony of the powerful in society. Third, it fails to consider the active role of state officials, such as the police and members of the judiciary, in creating and applying criminal definitions on a selective basis to certain types of young people.

To put it somewhat differently, if the role of the juvenile justice system is to enhance and protect "personal dominion" (Braithwaite and Pettit 1990), then greater attention needs to be paid to the ways in which existing laws and regulations not only impede the actual dominion of particular groups of young people (Cunneen 1988; Palmer 1991; White 1990) but may in fact also propel young people into law-breaking behaviour as a means to establish their autonomy and presence in the wider social world. A lack of "integration" as conceived in the "shame and reintegration" framework does not adequately address the substantive reasons why some young people do not want to or cannot play by the existing rules as established by the governing consensus.

A "shame and reintegration" model must also come to grips with the nature and causes of different types of crime. In many discussions of the model the actual patterns of criminal activity, and actual rates of commission for different sorts of crime, tend to be underplayed or simply subsumed under the general category of "youth crime". And yet this is
crucial to evaluation of the applicability of the approach insofar as the motives, techniques and underlying causes of each crime surely must bear some relation to both the "moral agenda" of the offender and the "reintegration" process itself. It is important here to go beyond simple crime profiles of each offender, to consider wider patterns of offending behaviour. This is because "crime" has less to do with the social attributes of the offender than the environment within which the offender physically survives and functions socially.

The State

Recent years have seen a marked shift in the nature and role of the state in the advanced capitalist countries—from the social state to the repressive state. This is evident in the privatisation of social welfare functions and services, and the shifting of responsibility for health, education and income away from the state to the individual. Significant changes have occurred in the way in which the state has intervened in the lives of the poor, the unemployed and the working class generally. Within the orbit of welfare provision, for example, the system has become ever more selective and regulatory. The formulation and implementation of specific policy has inevitably been linked to particular class and sectional group interests, with the less powerful and more socially vulnerable the big losers in a time of depressed economic fortunes.

Institutionally, the re-organisation of state bureaucracies along corporate management lines and the centralisation of political power has continued the trend toward "authoritarian statism" (Poulantzas 1978). In the midst of a lengthy recession, we are now experiencing a situation where large sections of the population are not only disenfranchised from the economy and adequate living conditions, but their participation in the institutions of political democracy is similarly fragile. Once again, certain social interests have gained from the exercise of state power in this way, while for the majority it has led to widespread disenchantment with the political process.

An examination of new policy developments in the juvenile justice area must be set within the context of these kinds of economic, social and political developments. Analysis of action taken on behalf of the state (especially in areas such as criminal law, defined as violations against the state) must itself be based upon particular conceptions or theories of the state. The "shame and reintegration" model appears to take the assumptions and rationale of the capitalist state for granted. More precisely, it accepts at face value the liberal democratic notion that the state is somehow neutral and above sectional interests, that it operates for the "common good", and that it is an impartial and independent arbiter of
conflicts. Furthermore, the state and its officials are essentially seen in benevolent terms, as performing functions which are uniformly "good" at the level of structural function, if less so at the level of specific policy or specific methods of intervention. This has several ramifications with respect to implementing "shame and reintegration" strategies.

The most important of these is the privileged role which the police are called upon to play in the "shame and reintegration" process. Ignoring the persistent criticisms regarding the abuse of and specific intervention rationale behind the already extensive and growing powers of the police in most jurisdictions (see, for example, Cunneen 1990; Alder et al. 1992), the model appears to accept a "smiling cop" version of policing. Ostensibly wrapped around the rhetoric of the "community policing" approach, the "shame and reintegration" model tends to place too much faith in the views and actions of a few progressive, charismatic police officers. In so doing, it has by and large omitted from systematic consideration the contradictory roles which police generally are called upon to play in their contact with young people, (such as law enforcement, peacekeeping, welfare assistance) and which in turn generate conflict between police and young people at street level. Furthermore, the influence of the police organisational framework and of "police culture" on police-youth contact have remained largely unexamined and under-theorised, although they are occasionally seen as obstacles to the smooth implementation of the "shame and reintegration" strategy.

The extension of police powers, and the extension of the police role into the realm of sentencing options and "corrections", really needs to be examined closely in the light of the broad economic, social and political trends outlined previously. The "shame and reintegration" model represents a form of control. As such, we need to question the ways in which this control and exercise of power is administered, and to whom accountability is to be provided. The model is essentially a state-run, top-down model, one which is constructed to involve members of the community, but not in a manner which actually places real decision-making power into the hands of that community. It represents an extension of state power into civil society, without the guarantees and protections of formal accountability and democratic participation at the local level. What then is the impetus behind the introduction of such models at this point in time?

The coercive function of the state is brought into sharp relief in periods when its welfare capacity is diminished. The emphasis then is on surveillance and control. Nowhere is this more apparent than in the case of the more marginalised sections of the working class, and Aboriginal people. The poor and unemployed are disproportionately represented in
criminal statistics and in our institutions of criminal justice. With a general fall in living conditions for a substantial number of Australians, it could only be expected that this will be reflected in rising crime rates for certain types of economic offences. Additionally, it would be expected that the brutalisation and dispossession of greater numbers of people will give rise to a wide spectrum of anti-social and self-destructive behaviour. But how does the "shame and reintegration" model deal with these types of issues?

The answer is that, in effect, such strategies reinforce the "blame-the-victim" syndrome (in relation to offenders as victims of social injustice) by presenting the commission of an offence as predominantly a "moral" question. While acknowledging the "background social factors" which may have "influenced" the committing of a crime, the perspective nevertheless puts the responsibility—the guilt—solely on the backs of the "criminal" and their family. It is not too far from the line of argument that it is the values and behaviour of the poor which constitute the main reason for their poverty. It is interesting that "shaming" itself is a moral category, referring to negative community sanctions for certain types of activities and behaviour. Is there a link between this crime control model, and the fact that the "underclass" has increasingly come to public prominence, and in particular has come to denote a class of people who are primarily defined in terms of "behaviour" rather than by reference to social conditions (Robinson & Gregson 1992; White 1994b)? If crime (and members of the "underclass") is defined predominantly in individualistic moral terms, then it is but a small step to see young offenders as dangerous, immoral, irresponsible and to blame for their own behaviour. Crime thus becomes a personal transgression, to be responded to by discipline and the reformation of the offender.

Because "shaming" is the central concept in the model, it opens the door to practical applications which may in fact go against the intentions of the original theorists and practitioners. Again, the political and social context is crucial to consider here. Rather than a system which is premised upon removing negative stigma from the criminal justice process, the emphasis on a moral strategy could be used to justify an approach based squarely on shaming as intimidation. This is especially so in an era witnessing fiscal constraint (and hence concern to cut capital costs, that is, detention centres) and calls for tougher sentencing provisions under the rubric of "law and order". Similarly, the so-called back-to-justice shift in juvenile justice has tended to focus, not on procedural safeguards, but on penalties and outcomes. The concept of individual responsibility is at the cornerstone of many of the recent changes to juvenile justice legislation, (Wilkie 1992; Freiberg et al. 1988; O'Connor 1993) and the translation of such "just deserts" ideology into the community justice context will in all
probability engender the use of shaming as a punishment (rather than reintegrative) strategy. Such a tendency is only reinforced at the theoretical level by the importance attached to "reprobation" as part of the shaming process (see Braithwaite and Pettit, 1990).

Procedures and Outcomes

This section of the chapter will briefly sketch specific concerns relating to the concrete implementation of the "shame and reintegration" strategy in the Australian context. It is important to bear in mind that many of the particular difficulties or questions identified below bear a close relationship to the more abstract political and theoretical problems we have been discussing. The three areas discussed here are the administration of group conferences, the nature of the intervention into the lives of young people and their families, and the possible outcomes of such programs.

Administration

The adoption of "shame and reintegration" type of approaches raises a number of issues relating to "due process", program evaluation and confidentiality. Given the central role of the police in the whole process in Australia it is not surprising that many of these questions revolve around police involvement.

The concerns over "net-widening" stem in part from how the police exercise their discretion with respect to informal intervention, formal cautions and the channelling of young people into formal processes involving "group conferences" or the courts. Certainly evaluation is needed on the effectiveness of existing mechanisms of diversion, such as formal cautioning, and whether or not another layer of offender processing is needed or desirable. The link of cautioning with "group conference" types of procedures is especially worrisome if, as in South Australia, the police are themselves given the power to assign cautions "with conditions". This contradicts the basic tenets of "due process", and provides the police with the power to effectively apprehend, judge and punish a young person without adequate legal safeguards.

Similar types of concern have been expressed with regard to the record-keeping associated with the "group conference". The first concern is, of course, the protection of the privacy of offenders, victims and their respective families, that is, to privilege the information conveyed in the group conference. Related to this is the matter of developing appropriate rules of inclusion/exclusion vis-á-vis the composition of the conference
participants. In part, these kinds of issues also relate to the question of how, in practice, we are to distinguish between reintegrative shaming and stigmatisation. Are we simply widening the circle of stigma through the use of such programs? Not only this, are we also entrenching the young person's identity as offender in the eyes of both police and community, and thus exposing them to future surveillance and intervention on the basis of this supposition?

Where official records are kept of group conference proceedings, several associated issues arise. Should such records be "open" to the police, or should their availability be restricted to the appropriate Children's Court? Should such records have transportability across the States and Territories? What about the precise legal status of the information provided by each of the participants during a group conference? This is especially of concern in cases where a young person may "confess" to other offences. Again, for the police this could create something of a contradictory situation. What criteria should be used, if at all, in evaluating whether or not to ignore and treat as confidential such "confessions", or whether to use these as the basis for further police action.

Questions also need to be asked regarding the selection of offenders, and offences, to be dealt with in the group conference format, and the place of judicial officials in monitoring the activities of a forum which may act in many ways as a form of court. How, precisely, are certain offence categories to be deemed suitable for the group conference and others not? And how will such conferences deal with particular kinds of crimes, such as sexual assault, which carry with them obvious difficulties and dangers? How, precisely, will certain offenders be deemed eligible for the group conference, and others not? Is it only a matter of the history and number of offences committed by the offender? Why is it that certain groups of young people are continually over-represented in the juvenile justice system? Will the group conference simply add yet another incremental tariff to this system? Which young people are actually targeted by the criminal justice system? Which are subject to informal cautions, and which subjected to the full weight of official processes? In other words, the evaluation of this particular sub-system cannot itself be separated off from larger issues relating to the unequal treatment of young people generally within the institutions of the criminal justice system.

**Intervention**

One question which deserves more consideration is whether or not much of the youth (mis)behaviour in fact warrants a "criminal justice" response. This is particularly true for Wagga Wagga because it is a "front-end" sort
of cautioning program. Here the "shame and reintegration" strategy opens the door to official state intervention across a whole range of interactions and social behaviours. This includes, for example, fights between children at school, through to unusual behaviour on the street. The unintended consequence of this may well be the criminalisation of minor infringements and unnecessary escalation of trivial events into major episodes of wrongdoing.

The issue of "net-widening" cannot be dismissed simply by calling attention to the supposed "community" involvement in the sanctioning process. The composition of shaming circles is important in this regard. For example, in one case of school-based misdeeds (such as arson) the Wagga Wagga conferencing program organisers drew upon the more "respectable" elements of the school population (that is, student leaders, rather than the offender's peers) to sit in judgment. This type of selection can mean that "morality" itself will be constructed in very specific class and cultural terms.

The "moral" nature of the strategy also may have unintended consequences with respect to "shaming" an entire family or community. For instance, this form of juvenile justice intervention is based upon active involvement of parents in the process. This could lead to a shifting of the burden of responsibility on to parents and relatives, both in terms of the reasons and blame for offending behaviour, and the administration of punishment. Are we to see whole families evaluated on the basis of abstract notions of "good parenting"? Given that shame is not necessarily an individual phenomenon even if directed at specific individuals, such strategies could penalise people beyond the offender themself. In turn this could lead to more formal means of family punishment (for example parental responsibility to the state for offences committed by the young). The expansion of such strategies into the community also raises the spectre of the creation of a "surveillance society" in which diverse behaviour is self-policed by members of the community. That is, it could lead to a situation where any break from "conventional" behaviour and activities by the young may be pre-empted by parent and older family member intervention in order to forestall potential reprisals via the formal group conference.

How is "shaming" to be carried out? Does one need to be trained the right way to guarantee that "reintegrative shaming" rather than "stigmatisation" takes place? The strategy is premised on the notion that shaming is a constructive means to change individual behaviour. The danger here is that it opens the way to a full-blown agenda of behavioural modification techniques and a new, "scientific" emphasis on the "proper" techniques of shaming. As the "shame and reintegration" model is further
analysed and assessed, it will only be a matter of time before shame testing and measurement comes to the fore in psychological analyses. This could conceivably reinforce the idea that the issue is one of "self-control" requiring change at a personality level, rather than one requiring action at the level of social prevention and institutional change.

If attention is drawn to the techniques of shaming, and the importance of having "expert" advice and involvement, then this bodes ill for greater "community" control and participation over such processes. It also lends itself to a formalisation of the supposedly "informal" processes. This is a phenomenon which is obliquely present at the moment anyway, in that where the police are the main players, and more precisely, the repeat players, in the group conference, there will be a degree of uniformity, deference to experience and thus power concentrated into their hands.

**Outcomes**

The major difficulty with outcomes is that there seems to be some confusion and even conflict over the goals of the "shame and reintegration" strategy. At a practical level, for example, the meaning of the shaming strategy varies considerably depending upon context and objectives, as indicated in the contrasting models adopted in New Zealand, New South Wales, Western Australia and South Australia. Is the goal to make people more satisfied with the justice process itself? Is it to give the police a greater say in the "punishment" process? Is it to ensure greater "justice" for the victim? Is it to modify the offender's behaviour? Is it to "reintegrate" the offender, and the victim, back into their communities of relations and associates? To answer these questions properly we need to know about the local political situation, the type of involvement of the police in setting up institutions and in influencing policy development, the role of local community organisations (and which ones) in establishing such schemes, and whether or not we are talking about the prior existence of a well defined and well integrated community (as is the case with some indigenous peoples).

It would appear that for the most part the emphasis to date has been more on "shaming" than "reintegration". Ambiguities still exist as to what each of these concepts implies and how best to maximise the positive aspects of their application. Shaming tends to centre on changing some feature or characteristic of the individual, to modify their personal behaviour in some way. Reintegration tends to be rather more vague, referring to some form of "re-connecting" with others. Whether this is simply seen in terms of family, guardian or friends, or whether it also is to involve institutional support of some kind (paid work, school) is basically ill-defined at both a theoretical and practical level.
The issue of who, in fact, we are shaming is central to any analysis of outcomes. So, too, is the diverse impact of labels on young people from different social backgrounds and in different social circumstances. With respect to the second point, it can be said that stigma can, in some instances, play an important part in affirming status and identity. This is especially so in situations where a person is basically ignored and devalued by existing institutions, and thus attains a "presence" by going through the formal processes of the criminal justice system. In other words, the process of stigmatisation, while viewed negatively from the consensus mainstream, may be experienced as a positive from the point of view of those who wish to assert "I am" in a world that generally does not recognise their existence.

Shaming is meant to be directed at the act, rather than the person. But the circumstances and background of the person will have a significant impact on whether or not they respond to the shaming provided under the formal ages of the state. It might be the case that "middle-class" young people, who are socially and economically secure, could undergo the requisite psychological shift in regard to their rule-breaking behaviour. To be "wrong" is emotionally and institutionally sensible given their location in the wider social consensus. For members of the more marginalised sectors of the young population, however, there are countervailing pressures to this kind of "reintegrative shaming". For a start, they lack a strong tie to major social institutions. This in turn may mean a lack of psychological connection to these institutions, the people in them, and the values, rules and laws of the dominant system. In a number of instances, offending behaviour may be the result of responses to "authority", such as police interventions on the street, which would further undermine the legitimacy of "shame" in such cases. As well, we need to consider that much offending behaviour, including theft and vandalism, is itself informed by a certain morality. But it is a morality unrelated to that demanded by the system as a whole, and is more closely associated with a different type of communal life and social experience than those who wield state power.

**Concluding Remarks**

The intention of this chapter has been to put on the agenda a number of theoretical and practical issues arising from the use of the "shame and reintegration" model. What I have not done is to identify what could be regarded as some of the more positive aspects of the model. In this respect, it could be pointed out, for example, that a system based upon reparation and victim involvement may, indeed, be a good thing. Or that greater grassroots participation in juvenile justice may be a good thing.
The reason why I have not done so is because I believe the model to be fundamentally flawed at the levels of conception and execution, and, as a whole, doomed to failure from the point of view of meaningfully enhancing the prospects for "social justice" and "empowerment".

Rather than extending the degree of state intervention into the lives of young people, under the guise of providing diversion within the system, it seems to me that we should be diverting young people from the system as a whole. Young people tend to "drift" into and out of crime. Alien notions of consensus should not be imposed on individuals and communities which see themselves in terms of "difference". If harm and wrongdoing does occur, then let us move toward genuine community alternatives, based upon open, accountable participation and judgment processes, not on existing power brokers and the coercive power of the police.

Rather than using "community-based" strategies to better pacify and manage the "underclass", it is time to abolish the conditions which give rise to the underclass. The solution to youth crime will not be found in personalised "shaming" processes and extending "community" disapproval to ever more areas of social life. Such strategies only reinforce the revolving-door syndrome of juvenile justice, without getting to the core structural and institutional causes of youth activity and attitudes. Fundamentally we have to recognise the class nature of the juvenile justice system, and the impact of economic dislocation and, in the case of Aboriginal people, colonisation, on the continuing presence of young marginalised people in our police lockups, courts and detention centres. The major issues of today are those of social resources, jobs and a living income. Without this kind of social justice, "shame and reintegration" strategies will exist as the hollow response of an unjust system—and those who utter "shame, young person, shame" will not know who, really, they hold to blame.

References


Chapter Eleven

Thinking Harder About Democratising Social Control

John Braithwaite

The seminar held in Melbourne in June 1993 provided the forum for a very robust yet constructive dialogue which bears witness to the intellectual seriousness of Australian and New Zealand criminology. A number of legitimate concerns have been raised in this collection of papers about family group conferences, as they are called in New Zealand. I prefer the more generic usage of community accountability conferences, which subsumes the experimentation occurring in New Zealand, Wagga Wagga and many other Australian sites, as well as similarly conceived conferences for dealing with non-juvenile crime (for example, corporate crime—see Braithwaite 1992a). Community accountability conferences is the term used in this chapter.

Instances of conference malpractice can be found to support all of the criticisms advanced in these chapters. There is no doubt that there will be sites where conferences work less satisfactorily than courts or less satisfactorily than almost any other conceivable intervention or non-intervention that might have been applied. There have been some terrible conferences, but there have also been some terrible juvenile court proceedings and some terrible informal police cautions. The questions that matter are about the relative frequency with which such different institutions have good and bad effects measured on a number of evaluative dimensions. That requires systematic empirical research.

It is predicted here that conferencing will emerge from such empirical research, sustained over a number of years and a number of studies, as a
better option, on average, than the alternatives in a range of contexts. However, my prediction is that courts will emerge as a better option in other contexts, albeit a much narrower range of contexts than the applicability of conferences. Finally, my prediction is that doing nothing or informal cautioning with no follow-up action will be found to be the best option for most of the overwhelmingly minor juvenile offending detected by the police. These predictions are grounded in a republican theoretical position that has been outlined in a number of other publications (for example, see Braithwaite & Pettit 1992; Braithwaite & Mugford 1993) and also grounded in preliminary observations of conferences and discussions with citizens and state officials involved in them. As someone who advances these predictions, I have a responsibility to promote research designed to disprove them (Polk 1994), as well as a responsibility to admit the ways in which I may have been wrong.

Many empirical claims are made in the chapters—for example, "... for the most part the emphasis [in conferences] to date has been more on "shaming" than "reintegration"" (White 1994, p. 181). Such empirical claims are not contested here; that is left to empirical research. Rather, remarks are limited to the theoretical critique of conferencing and to correcting some misinterpretations of the empirical evidence already available.

**Tackling Social Injustice**

The criticism is made, particularly in the papers by Polk, Sandor and White, that community accountability conferences do not address the fundamentals of the disempowerment and social vulnerabilities that confront young people. Instead, empowerment is limited "to participat(ing) more effectively in the justice process" (Polk 1994, p. 10). This is true. But it must also be said that for Aboriginal and Maori youth in particular, the criminal justice system is not a minor part of the injustice they suffer on a regular basis; it is a rather central part of it. A more decent, less oppressive criminal justice system must be an important part of any social justice agenda. It may not be as important as tackling unemployment, but it is important.

It is also tempting to reply with some moving stories from conferences where racism was transcended, where conference participants helped the young offender to find a new job, a new home, or to get his expulsion from school reversed. But this kind of reply would not be very persuasive because most conferences involve no such dramatic victories over the entrenched injustices of the wider society.
Polk asks that we do not so focus our energies on reintegrative institutions that we neglect the more important developmental institutions of schools, work and families. These developmental institutions are "the proper place to begin" (Polk 1994, p. 123), though they are not perhaps the proper place to end. Sandor is also concerned that this kind of reform will divert resources from higher priorities, like "the need for effective family violence intervention" (Sandor 1994, p. 153). Sandor also quotes Coventry on the way community crime prevention ideologies privilege the crimes of young people to the neglect of corporate crime, fraud and tax evasion. White sees the "shame and reintegration" model as shifting the focus away from "a position which centres on the role of institutions".

As a matter of the theory, the intellectual practice and the political practice of the people who have been involved in promoting conferencing in Australia, there has not been a neglect of work on developmental institutions, family violence, corporate crime, fraud, tax evasion or "bringing institutions back in" to social science and politics. The track records of my co-authors and I do not belie such neglect, nor do those of the New Zealanders involved in the reforms in that country. More pointedly, perhaps, the people of Wagga should take exception to the suggestion of such neglect. If the critics read Wagga Wagga's Communitarian Response to the Juvenile Justice Advisory Council's Green Paper "Future Directions for Juvenile Justice in New South Wales" (City of Wagga Wagga 1993), they would find in it a profoundly institutional rather than individualistic analysis; they would find a sophisticated community articulation of concern about unemployment, schooling, patriarchy and even the hypocrisy of the justice system's neglect of corporate crime. Community engagement with the conferencing reforms to juvenile justice in Wagga Wagga has not deflected community concern from the wider institutional problems; it has strengthened such community concern. As soon as communities start taking responsibility for the social vulnerabilities of young offenders and start talking about these vulnerabilities at and after conferences, instead of leaving them for the police and courts to sweep away, of course they become more engaged with the deeper institutional sources of the problems.

Social injustice in Australian society is a seamless web. We can start to cut into it from many different directions; it is best when we cut from many directions at once. Some weary, "left" paradigms suffer from a "Don't cut there" mentality, fostering a dithering disablement of practical reform. It is of concern that idealistic young people might read these chapters and think it a politically incorrect thing to work with agents of the criminal justice system in struggles for a freer, richer democracy. It is that concern which animates the line taken in this chapter.
Net-widening

(see Braithwaite 1992b) Net-widening can be a good thing when at the end of a fair process of community dialogue the conclusion is reached that net-widening will increase freedom, where freedom is given the republican interpretation that Pettit and I (1990) label dominion. This leads to a defence of certain particular net-widenings that occur in particular communities after the kind of deliberation that might occur at a community accountability conference.

The republican disposition also requires those of us who subscribe to it to be actively involved in the politics of net-widening with regard to problems such as corporate crime, drink driving, passive smoking and domestic violence, for example. These are not all adult crimes. Masculine violence, particularly in the worst cases, tends to begin at a rather early age in patriarchal families located in a patriarchal culture. A great deal of family violence by children should be confronted earlier and more often than it is at present. These nets should be widened and conferences are a good way to widen them. Again, however, this may be wrong and that is where well designed research is necessary.

When nets of community control are expanded in a way that increases freedom (and at the expense of contracted nets of state control) then this should be applauded. Polk reminds us that it is not good enough to say that conferences necessarily have virtue because they widen nets of community control rather than nets of state control. He is absolutely right to point to the history of diversion being co-opted by the state to expand state control. The challenge is to discover and come to an understanding of how community power can co-opt state power. Wagga Wagga approaches such a reversal (see discussion later in this chapter). Of course, states co-opting communities is more common than the reverse. But have Australian progressives become so nihilistic, so structurally determinist, that they cannot name sites where communities have co-opted state power? If they cannot name them, that is because their theory disables them from looking for such sites, from understanding and appreciating them.

We should be excited by the challenge of discovering principles of institutional structuring that enable citizen power to co-opt state power. How do we design institutions, including criminal justice institutions, that will give us a stronger democracy than the feeble liberal representative democracy that is our present lot? To meet this challenge we need to be positive about processes of community institution building. We need to look for promising sites of communitarian progress and nurture them. That does not mean assuming that people working at these sites will have got it right. Inevitably, they will have got it wrong in many ways. What it means
is building where we find a base of communitarian strength to find solutions to the many weaknesses that inevitably arise there. It means problem-solving rather than knocking fragile prospects for progress. It means a politics of hope rather than a politics of despair. It means intellectual work on a construction site rather than a deconstruction site.

Polk advocates research on the net-widening issue: so do I. There is no doubt that specific instances of net-widening through conferences, some defensible, some indefensible, have occurred in New Zealand and Wagga. At both places, I feel rather confident on the basis of the data available so far that the aggregate effect of the juvenile justice reforms of recent years has been to narrow nets of social control over young peoples' lives rather than to expand them. At Wagga, which I am most familiar with, there has been net-narrowing. This is not stated simply to juxtapose my own empirical prejudices against those of the critics. The reason is that researchers are more likely to get to the bottom of what the net-widening problems will be by doing the research at some of the newer conferencing sites rather than at Wagga.

**Legal Justice and Offender Rights**

Warner's paper is the central critique on aspects of legal justice. Consideration of the police accountability issues raised in her chapter are discussed in the section entitled "Trusting the Police". However, central concern expressed in Warner's chapter is that conferencing compromises a rationally consistent system of justice: it does. When communities of concern are empowered to come up with their own solutions to a problem, there is a system motivated by democratic creativity rather than consistency. Empowering some communities will lead to some idiosyncratic remedies. This is anathema to those whose vision of democracy seems to be limited to representative governments who write laws.

As Pettit and I have sought to argue systematically elsewhere, the liberal legalist's equality before the law is an extremely limited formalistic equality (Braithwaite & Pettit 1990). We claim to show that even though republican theory does not set equality before the law as its objective, in practice it is more able to increase the kinds of legal equality that matter than is just deserts. Following a similar line of reasoning to the book, a provocative hypothesis can be advanced about conferencing. This is that equal wrongs are more likely to be punished more equally in conferences than in traditional juvenile courts, for example, consider the most common sanctions—restitution, community service and incarceration. There is sure to be more equality in use of incarceration by conferences as this will
never be allowed to be imposed at any conference. With restitution and community service, more equality can also be predicted, both because of a lower upper bound than that which is effectively available to courts and because when a conference agrees on restitution or community service, this is more likely to be paid or done than when a court orders it. Most of the restitution ordered by juvenile courts in New South Wales is not actually paid, but almost all of the conference agreed restitution in Wagga has been actually paid, as revealed in O'Connell's presentation to the conference. This is because the restitution is usually the result of a fair process of agreement in which all the parties have a say in shaping a remedy to which they voluntarily commit. There is therefore incurred a different quality of individual and collective obligation than is incurred by the "orders" of a judge. This equality of justice prediction is empirically testable; Lawrence Sherman, Heather Strang and I are proposing to test it in research for which we are seeking funding.

I share Warner's proportionality concerns only insofar as they relate to conferences exceeding upper limits. Conferences should be constrained not only against any incarcerative order but also against any order which is more punitive in its effects than courts typically impose for such offences. In other words, offenders should be able to appeal to Juvenile Courts to have overturned any intervention which is more severe than a court would have imposed. An advocacy group, such as the National Children's and Youth Law Centre, should be given state resources to monitor outcomes of all conferences (which should be communicated electronically to the advocacy group), looking for cases for which it should be suggested to the defendant that s/he might do better to have the case reheard before a court. Under such a system, conferencing would result in fewer breaches of upper limits than juvenile court adjudication of the same types of cases. This is because: (a) under such a system, conferences would be constrained against not only exceeding the maxima in the law but also against exceeding the average sanction that courts would impose; and (b) juvenile courts in any case are not effectively constrained against exceeding upper limits because higher courts exert only the most reactive and infrequent oversight on juvenile courts (compared with the proactive oversight proposed for conferences).

It is true that breaches of lower proportionality limits would be increased by conferencing. Often victims prefer to forgive and forget, or even to offer to give the young offender some help rather than demand any punishment. This worries retributivists, but it does not worry republicans who believe in the principle of parsimony (Braithwaite & Pettit 1990, pp. 79-80). Warner subscribes to the Freiberg et al. (1989, p.89) marrying of the frugality and proportionality principles: "what is the least severe
sanction permissible before it becomes disproportionately low?" However, I do not believe there is any such thing as a disproportionately low sanction, as a matter of justice versus mercy (though there is such a thing as insufficient intervention to prevent bad consequences).

Warner makes some interesting points about double jeopardy. There is a legitimate concern here that must be monitored. Lawrence Sherman, Heather Strang and I will seek to put into the research we are designing an exploration of the frequency with which this concern arises. On rights more generally, we are proposing to measure subjective perceptions of defendants concerning how well various procedural and substantive rights were protected during juvenile court trials versus conferences.

Admission of guilt is the most important issue here. Does conferencing increase pressure for guilty pleas? Some of the critics did not grasp an important difference between New South Wales cautioning, which does require an admission of guilt, and New Zealand family group conferences, which do not proceed on the basis of an admission of guilt, but on the basis of the defendant "declining to deny" the allegations. It is possible that the New Zealand approach is more just in this respect. In Austria, victim-offender mediation occurs not on the basis of an admission of guilt but according to the doctrine of Einstehen für der Tort—acceptance of a kind of civil liability by the defendant. There is merit in a debate about the alternatives to the admission of criminal guilt as a basis for conferences proceeding. Conferences should never proceed in cases where the defendant sees him, or herself as innocent or blameless; they should not become adjudicative forums. However, justice would be better served if an admission of guilt did not have to be extracted from the defendant before a conference proceeded. It is critical that defendants have (as in New Zealand) the right to terminate the conference at any point that they feel moved to deny the charges being made against them. That is, at any point up to the signing of a final agreement defendants should have a right to withdraw, insisting that the matter be either adjudicated before a court or dropped. Even after signing the agreement, defendants should have the right to go to court to have the agreement struck down as oppressive. Generally, we need to liberate our thinking from dichotomising offenders as having admitted guilt or not and then study empirically the effects of proceeding on the basis of different culpability thresholds (such as "declining to deny" or "taking some responsibility"). Then we might rise to the challenge of designing a conferencing court interface where coerced guilty pleas are less of a problem than in contemporary juvenile courts where over 90 per cent of offenders present with a guilty plea.
Consensus

White tackles the question of consensus under the "shame and reintegration" model. There are different issues here in the explanatory theory in Braithwaite (1989) and in the republican normative theory. On the explanatory theory, White asserts that "it is assumed that everyone rejects and objects to "predatory crime". This is not a correct account of the explanatory theory. Empirically, there is overwhelming consensus over the wrongness of predatory crimes like murder, theft and rape in contemporary Western societies. Theoretically, the explanation will not work where that consensus is perfect (an unlikely worry) and when we approach complete "dissensus" (just as many people believe that the crime is a good thing as believe it is a bad thing).

The theory will not work in a world of perfect consensus because there will be no criminal subcultures in such a world, so there will be no sustenance for the stigmatisation effects posited by the theory. Note also here that the theory accommodates richly plural forms of subculturalism. So, for example, the theory can be powerfully relevant to rape in a society in which rape is consensually accepted as shameful but in which a substantial proportion of men accept that in certain contexts women ask for or even deserve to be raped.

At the normative level, White considers that the theory assumes away divisions in Australian society. On the contrary, this critique seems better directed at courts and at traditional police discretion than at conferences. Conferencing holds out some hope of remedying the deficiencies of courts and policing in this regard. The trouble with the proportionality and consistency discourse privileged by courts is that it is empty unless it is proportionality and consistency in terms of a single set of values. Legal discourse, as a discourse of consistency, is forced to be univocal, blindly administering equal justice as in the blindfolded icon. Participants in good conferences are invited to take off their blindfolds, to appreciate differences among each other. If X is a suitable Maori solution to a problem and Y a suitable Samoan solution, a republican ideology does not worry about inconsistency between X and Y (so long as they were both reached through a strongly democratic process and do not breach upper constraints under which the wider polity constitutionalises the conference to operate). The [white] "justice model" does worry about this inconsistency, of course.

The possibility of culturally plural deliberation and remedies is the greatest strength of the community accountability model. Conferences are not about harmony; they are about giving conflicts back to people, conflicts that in recent Western history have tended to be stolen from
citizens by the state (Christie 1977). Certainly, there is the requirement that agreement be reached as to "what will be done" at the end of the conference. If there is no agreement, then a judge will have to decide. But aspiring to agreement on what is to be done does not require any party to accept the values of the others. Commitment to pursue agreement, however, does require that each participant give the other a fair hearing and seek to come to some understanding of the values of the other. Usually, it will also require that they come to some understanding of what it is that has brought the other a hurt that they would like to see healed. There are thus structural features of conferences conducive to appreciation of difference that are not present in courtrooms. Conferences, in short, proceed as a dialectic of difference and accord. As a normative matter, that is how democratic institutions should be structured, as is eloquently expressed in the feminist writing of Iris Young (1990, 1993).

**Trusting the Police**

It is a common reaction to family conferences that they should not be run by the police. The common threads of the critiques here are that the police have a coercive role, their legitimacy is grounded in the invocation of punishment and they do not enjoy the respect of young people, especially young people from oppressed racial groups. So, it is argued, it is naive to believe that the police could do a good job. Again, it is a naivety that be tested empirically. The main point here is that the proper role of a coordinator (police or otherwise) is not as the person who does the reintegrative shaming, who comes up with the solutions, who offers the apology or the compensation. These are roles for the community participants. The role of the coordinator is to convene it, to ensure that the supporters of the principals (the offenders and victims) who want to be there are there, to lay down some procedures to ensure an orderly, non-abusive, discussion and to encourage more intimidated participants to speak up.

This might seem reasonable in theory, but perhaps in practice police have an ideology of power assertion, of taking control. Well trained and sophisticated community police officers do not seek to maximise control. The prediction that conferences can work with police coordinators is not based on an assumption that police officers are benevolent and non-controlling, but that police are not stupid. So long as conferencing is designed so that it is the coordinator who is responsible for ensuring that the agreement reached at the conference is implemented (and taking the matter to court if there is a totally unacceptable breakdown in implementation), the coordinator is foolish to dominate proceedings,
foisting an agreement on the parties to which they are not committed. It is foolish because the coordinator risks all the extra work associated with following up an agreement subject to "chain-dragging" compliance by the defendant and other participants. Coordinators quickly learn that only agreements which the participants own are self-enforcing. It is also true that police are more likely to have to deal with young offenders again as recidivists if, through dominating proceedings, the police officer burdens the young offender with an agreement he or she resents. This line of argument for "policing smarter" can also be introduced into training of coordinators.

If the police do not support conferencing and are not involved and listened to in the development of conferencing policies, then conferencing is not a good idea. This is not just because police resistance will effectively kill the reform. If police do not believe in conferencing and are required to refer young people to someone else to run a conference, they will not refer many cases. Worse, the cases they do refer will be cases they do not regard as serious enough to justify laying a charge themselves. Worse still, conference coordinators will seek to "prove" themselves to the police by showing that they can be tougher than courts, as has happened with Community Aid Panels in New South Wales and many other "diversion" programs. In short, the effect will be net-widening of an unacceptable sort. The bottom line of a conferencing program resisted by the police is no progressive net-narrowing and some unacceptable net-widening. Therefore, family conferencing should not be implemented unless the police are committed to it. This is a common concern about many Northern hemisphere restorative justice programs that make a virtue of being separate from the police, yet receive their cases from the police. It does not follow from this that the police have to coordinate the conferences. New Zealand testifies to the achievability of police support for a conferencing program they do not coordinate.

What is essential to note, however, is that it is not possible to create a more decent juvenile justice system without persuading the police of the decency of the cause. I agree with White's conclusion that "we should be diverting young people from the system as a whole—full stop". Most breaches of the law detected by the police should not be processed in any way: for example, the police officer breaks up a fight outside a disco and sends the protagonists home after a plea that they find some better ways to resolve their differences; another officer takes a minor shoplifter home, suggesting that parents might facilitate appropriate apology and compensation to the shopkeeper. More of this kind of action and less processing or recording of any sort is the highest priority. This can only be accomplished by trusting the police to do it. No-one else can be there
Thinking Harder About Democratising Social Control

looking over the police officer's shoulder at the point where arrest decisions are made. It follows that progressives need to work with the police to persuade them to leave it to communities to deal with a wide variety of breaches of the law. Criminal justice reform ideologies that seek to maximise distance from the police are bound to fail.

The problem must be thought through from first principles. The question must be asked, do we want a substantial state police service? Presumably the answer is yes, because to abolish the police would cause a dramatic acceleration of the privatisation of policing and this would mean even less accountable police, and less rights-respecting policing. So if it is public police who are called by citizens to break up the fight, to pick up the shoplifter, what do we want them to do at this point? We cannot say that we do not want them to be there because we do want them (rather than private police) to be there at this point. We certainly do not want the police to apply a simple justice model—if there is a breach of the law, lay the charge and let the courts decide what to do about it. Rather, what is needed is "better living through police discretion", as Hal Pepinsky (1984) puts it. We do not want the distrust of the police that foists a simple justice model upon them. We want to expand their discretion to issue cautions rather than enforce the law.

The problem is that once this expansion of discretion extends to offences beyond a certain level of seriousness, citizens begin to become concerned about abuse of discretion, and rightly so. Perhaps there was corruption, favouritism to a respectable family, failure to take domestic violence seriously because it occurs in the "private" domain of the family, and a plethora of other legitimate community concerns. Community accountability conferences may be a more appropriate remedy to these concerns than taking all matters to court when they cross a seriousness threshold that renders such concerns a possibility. The counter productivity of mandatory arrest for domestic violence, for example, illustrates the problem and the need for criminologists to rise to the responsibility to discover better approaches (see Sherman 1992; Braithwaite & Daly 1993). Whatever they might be, we will need a philosophy of when we want the police to do something, it should fall between doing nothing and taking the matter to court. Some of the critics argue that if there is no need for such a philosophy, that somehow, these problems can be solved by denying the fact that police make the decisions to initiate problem solving processes short of court.

Of course this problem can be solved rather well, as in New Zealand, by persuading the constable to exercise his discretion to refer the matter to a conference coordinator from outside the police instead of proceeding by way of arrest and court processing. However, there are some
disadvantages of the New Zealand model compared to the Wagga model in this regard. It is simpler and cheaper for the police to run the conference than for it to be referred to another agency. This simplicity not only saves money; it also means that fewer social control agents of the state get involved in the life of the young person. When the police officer refers the matter to a non-police coordinator, he cannot drop out of the conference. So there is a welfare bureaucracy intervening in the life of the young person as well as a police bureaucracy.

There was an interesting difference of view at this symposium on this question between Hakiaha (representing the New Zealand philosophy) and Terry O'Connell (representing the Wagga philosophy). Hakiaha's view was that for a conference to succeed, a great deal of O'Connell argues that is should be kept simple, trusting that if the right citizens are involved, they will sort it out themselves. For the first and probably second conference with a young person, why not try the simpler, less interventionist, O'Connell approach? But when the young person is picked up for another significant offence, perhaps the intensive casework preparation commended in the Hakiaha approach should be mobilised.

When the system is presented with an angry young offender, who has dropped out of a school he hates, who faces a dim employment future, it seems inadequate for the juvenile justice system to do no more for him than convene a community conference, the participants at which might or might not offer constructive help. However, this is probably the best approach for a first conference, given the risks of stigmatisation arising from systematic intervention in the lives of young people targeted for reason of their delinquency, rather than because of their needs. Here Polk's warnings on the limitations of reintegrative institutions compared with developmental institutions should be heeded. The criminal justice system should settle for communicating disapproval and securing compensation for the harm done and tending to the legitimate concerns of victims. There is hope that in spite of their life circumstances, this ceremony of disapproval will be enough and the system will not see the young person again, a hope that will be realised in the majority of such cases. Then it must be hoped that developmental institutions will do a better job with the terrible life circumstances that this young person (and many other non-delinquent young people) have been dealt, but this will not be achieved until there are major changes to our economic and social institutions.

When young people keep coming back for conference after conference, however, and developmental institutions continually fail, there is no choice but to escalate intervention, in the name of both concern for the young person and community protection, to the professional casework
commended by Hakiaha. The alternative—to lock them up—is deeply undesirable.

A blend of the O'Connell and Hakiaha prescriptions is to be preferred. Keep it simple at first: do not hand it over to professionals, but to the communities of people who care about the offender and the victim. When that fails and fails again, then bring in the welfare professionals. Needless to say, therefore, I do not share Carroll's view that we must "ensure professional handling and management of a very emotionally and psychologically charged process and adequate follow-up of business unresolved at the end of the conference" (Carroll 1994, p. 2). Conferences being overwhelmed by the professional discourse of social work or psychology professionals, with their potential for stigmatisation, are more of a concern than the legal/responsibility and victim/harm discourse that tends to typify police contributions to conferences. Furthermore, when social workers become involved, that could be a decision of the conference participants who could select appropriate child welfare professionals, rather than allowing the process to be taken over by a state welfare monopoly. In summary, it is both inevitable and desirable that a state policing monopoly participate in conferences convened by the state; however, it may be neither inevitable nor desirable that a state welfare monopoly participate until citizens ask them to participate.

Police can be trained to be competent, empowering conference coordinators. In fact, my rejection of state-sponsored mediation professionalism runs deeper than this. I am attracted to a world where schools run Wagga-style conferences without bringing the police in when breaches of the criminal law occur within schools. Similarly, churches, Aboriginal elders, trade unions, extended families and any number of other intermediate institutions between the state and the individual can run conferences. This is potentially a path to a richer democracy, a less coercive society and a community safer from crime, given that for every offence the police detect, parents detect at least four, teachers detect about two and peers detect more than five, according to a German study (Karstedt-Henke 1991). With the state decentred in this way in matters of crime control, the most attractive conferencing models do not depend on coordination by state-certified youth welfare professionals for success. Wagga is a simple, practical model for how lay people with a little training, working through intermediate institutions, can organise their own community accountability conferences.

Having argued in favour of police coordinating conferences, it is true that there are some communities where the police do not enjoy respect or manifest the sense of fair play and caring for young people and victims and so may not be the best people to run conferences. Each community must
make its own decision. The more local the argument that prevails in such matters, the better. For example at one conference observed in New Zealand the "official" Department of Social Welfare coordinator handed over coordination completely to a police officer, because he was a respected Maori and this was an all Maori conference. It is also quite common for de facto conference coordination to be handed over to Maori elders.

**Taking Local Democracy Seriously**

A theme throughout this paper has been that the critics have taken their pre-existing theoretical commitments as criminologists more seriously than listening to local voices. What would some of these local voices have to say about these expert knowledges? Take, for example, White's use of limited local knowledge: "in one case of school-based misdeeds (that is, arson) the organisers drew upon the more "respectable" elements of the school population (student leaders, rather than the offender's peers) to sit in judgment". It is true that the student representatives at this conference were "respectable" student leaders. It is also true that resentment by the offenders at their treatment by respectable elements in the school was discussed. But these student leaders were not selected by the police; they were elected by the students. Respectable they might have been, but they did not "dump" on the offenders; in fact, they were rather supportive of them. They did communicate how students had been hurt by the fire: while the fire was directed at the staff room, this room contained many marked and unmarked student assignments. This conference was hardly a conspiracy to assemble custodians of a "specific class morality"; it was some human beings with legitimate grievances against one another talking about those grievances and how to move beyond them.

White suggests that Wagga is a "top-down model" which "represents an extension of state power into civil society". This is an account strangely out of contact with the history of this reform as a reform from below (just as was the New Zealand model—a reform imported from Maori culture). Wagga started when, at the suggestion of John McDonald and Kevin Wales (frustrated progressives within the New South Wales Police Service) Marie Thompson, Chairman of the Wagga Wagga Police Community Consultative Committee visited New Zealand with a local sergeant, Terry O'Connell, to learn from the Maori ideas about juvenile justice. They did learn and they adapted the model to one that the Wagga Police Community Consultative Committee considered appropriate to local circumstances. The state, who White says were extending their power through this manoeuvre, did not support the idea. The Police Minister
ordered, more than once, that it stop. He believed in being tough on juvenile crime and saw conferencing as a soft option. The community response was to communicate back to the Minister that his policy was community policing and that this was the kind of policing the Wagga community wanted. This was certainly no conspiracy to extend state power into civil society.

As an aside, some of the critics have an exaggerated view of the influence of my writings on this subject. They have had some small influence on Australian developments, but only of a secondary sort; however, they had no influence in motivating the New Zealand reforms, which were grounded in Maori theories of social control.

Warner described conferencing in her conclusion as "a system that lacks public scrutiny and accountability". This is only true if one subscribes to a thin theory of democracy, conceiving courts as the venues that count. Public scrutiny and accountability through the courts is something that should not be jettisoned in favour of conferencing, as has been argued here. But courts provide an extremely weak form of public scrutiny and accountability. Under the Wagga model, police who abuse power by verballing or assaulting young people remain vulnerable in this limited way to the court. But they also face a new and less predictable vulnerability—the vulnerability of exposure to a group of Aboriginal citizens at a conference who might be angry at what they believed to be the racism of the way police handled the situation. Citizens are not empowered in courtrooms to say anything they like about the criminal justice system; indeed, if they do embark on a tirade against the racism of the judge, they risk contempt charges. In conferences, citizens are given the opportunity to say what they want about the alleged offence in their own way. There is no restriction of dialogue to legally relevant evidence, no contempt of court. Traditionally, police rarely consult with communities concerned about the offence, on either the offender or victim side, before deciding whether to exercise their discretion to lay charges. In conferences they do just this. In fact, this is an understatement: de facto, police completely delegate to the community conference the decision over whether charges should be laid once a particular case goes to the conference. Conferences no more than courts are a panacea to the challenging problems of police accountability. But community accountability conferences do not reduce police accountability; they increase it. Perhaps there are better strategies for routinely and locally confronting police with public disapproval and approval over specific policing practices on neighbourhood streets, as opposed to the vague "talk shopping" that characterises most police/community consultation. These
more promising accountability mechanisms cannot be found on the Australian policing landscape.

**Conclusion**

Clear conclusions from the foregoing are difficult to formulate when there is so little empirical experience. What has been attempted here is to put on the table some counter-arguments. It is premature to reach any conclusions beyond the fact that what is happening in juvenile justice in New Zealand and Australia is exciting, challenging, more innovative than what is happening elsewhere in the world. It is grounded in a theory of intervention that is more sophisticated than is usually the case, but there are dangers. Clearly, I am on the hopeful side of the debate, suspecting that the dangers can be managed in a way that enriches rather than threatens democratic values, suspecting that the dangers are less than those of the status quo.

There is a way to move forward and that is with evaluation research of high quality. Polk may be right that "the New Zealand and Wagga models are both based inherently in coercive procedures of justice, and their very nature is stigmatising". That is an empirically testable claim and we have a special responsibility in this part of the world to test it. I do think, however, that a little reformulation is needed of Polk's hypothesis that "When the program is organised by the criminal justice system, only for offenders, then that program must convey institutional stigma on its participants". There is an essentialism about this view of criminal justice institutions as automatically stigmatic. We live in a rather stigmatic culture: developmental institutions are woefully stigmatic also. While Makkai and I found empirically that nursing home inspectors with a reintegrative shaming philosophy were more effective in improving regulatory compliance than those with a stigmatising philosophy, stigmatisers were much more common than reintegrative shamers (Makkai & Braithwaite 1993). The questions which must be addressed here are: which of the competing sets of institutional arrangements for dealing with crime are more stigmatising? Is that stigmatisation positively correlated with subsequent re-offending? Which institutional arrangements increase the ratio of reintegrative shaming to stigmatisation? When that ratio goes up, is offending reduced? In seeking to accomplish this, what do we find empirically to be the effects on respect for rights, cost to the public purse, police accountability, democracy and other important values?

There will be different answers to these questions depending on the details of implementation at specific sites. No one needs to be convinced that these reforms can be implemented in the most coercive, undemocratic
and ineffective way. The question is whether there is a successful way of implementing community accountability conferences that shows a positive direction for struggle toward a more decent criminal justice system. A search for such a direction is assisted by the fact that rather disparate models have sprung up in New Zealand and in different Australian States. It is not the time to reject any of these models or to want to settle on the best one. Rather it is time to commit to learning from the dialogue about their differences. A good start was made toward this objective at this Melbourne symposium.

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