

**Conferencing in Australia and New Zealand:
Variations, Research Findings, and Prospects**

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Introduction

Australia and New Zealand are laboratories of experimentation in one form of restorative justice: conferencing. No other countries in the world have moved as quickly and as completely in embracing the conference idea. Large variation exists between the countries and among the Australian states and territories in how conferences are organised, the theory(ies) animating practices, and the stated aims and purposes of conferences. A growing body of research exists on how well conferences meet the expectations of participants, how they compare with court, and the degree to which they may succeed in reducing the likelihood of re-offending and in assisting victims' recovery from the disabling effects of crime.

In this article, I first consider how and why Australia and New Zealand differ from other world jurisdictions in embracing conferencing, and I examine common misconceptions about conferencing in the region. I then describe the major sources of jurisdictional variation in both legislation and practice. I highlight findings from research studies in the region, and then turn to an extended discussion of my research: the South Australia Juvenile Justice (SAJJ) Research on Conferencing Project. I conclude by noting the limits of jurisdiction-specific thinking and the potential for innovative research.

How and why Australia and New Zealand differ

Australia and New Zealand differ from other world jurisdictions in the following ways:

- With the exception of two jurisdictions in Australia, all jurisdictions have statutory-based schemes, with conferences typically used as one component in a hierarchy of responses to youth crime.
- The overarching goal in legislative frameworks is to keep juveniles out of the formal system as much as possible.
- In addition to statutory-based schemes for juvenile offenders, conferencing is used in a variety of other contexts, including school and workplace disputes, family and child

welfare (or care and protection matters), and as pre-sentencing advice to magistrates and judges.

The typical candidate for youth justice conferencing in the two countries is an offender under the age of 17 or 18 (depending on the jurisdiction),¹ but there is increasing interest in both countries to use the conference process as a diversion from court for adults.² Despite critical analyses suggesting that conferencing has been imposed on indigenous people (see Blagg 1997; Cunneen 1997), at a Canberra conference in July 2000, Australian indigenous conference convenors were generally optimistic about the benefits of youth justice conferencing. However, in addition to conferencing, there are other justice forms in Australia that may prove to be as consequential (if not more so) in changing indigenous-white justice practices. Among them are consultation by magistrates and judges with indigenous justice groups on the disposition of particular cases, and special sentencing days convened by individual magistrates for indigenous cases. The point to underscore is that conferencing is one of several innovations on the justice landscape.

While other countries have introduced legislation that attempts to make restorative justice an explicit feature of juvenile and criminal justice systems (for Canada, see LaPrairie 1999; for England and Wales, see Dignan 1999 and chapter by Dignan and Marsh in this book) and while other countries are experimenting with forms of restorative justice such as victim-offender mediation in the United States and some European countries (see chapters in this book by Umbreit et al and by Walgrave) and sentencing circles and other types of circles in the United States and Canada (see chapter by Lilles in this book), there has been an extraordinary degree of sustained, legislated activity in Australia and New Zealand that is not evinced in any other jurisdiction. What explains the force and speed with which these developments have taken hold in Australia and New Zealand compared to other parts of the world?

¹ The minimum age of criminal responsibility is 10 years in Australia and New Zealand. However, there can be differences in the minimum age a person can be prosecuted in court: in South Australia, the age is 10, but in New Zealand, it is 14 (except if the offence is murder or manslaughter).

² In New Zealand, conferences have been used to provide pre-sentencing advice to magistrates or judges in sentencing adults since 1995. In 1996, in New Zealand, three pilot schemes of "Community Panel Diversion" for adults were put in operation (Maxwell et al 1999). In the ACT, diversionary conferences have been used in adult cases (besides drink driving), but the number of cases is unknown. There is discussion in other jurisdictions about using conferences in adult cases, but no legislation has yet been passed or proclaimed.

A satisfactory answer would call for a more sophisticated political analysis than I shall give here, but I offer some brief comments. Compared to the United States, Canada, and England and Wales, Australia and New Zealand continue to be more ideologically committed to policies that emphasise social welfare and crime prevention. And, compared to those European countries with a similar degree of welfare orientation and interest in victim-offender mediation schemes (such as Belgium, Germany, and Austria), the common law tradition in Australia and New Zealand permits a greater degree of experimentation with new justice forms than is possible in civil law jurisdictions. Despite the fact that some elements of United States criminal justice policies have been incorporated into Australian jurisdictions (such as "three strikes" in Western Australia and the Northern Territory or the idea of "zero tolerance policing"), Australia and New Zealand pride themselves in actively not following "the lead" of the United States, and perhaps even of England. One clear example for Australia is its policy of harm reduction in controlling illegal drugs as compared to an explicit criminalisation policy in the United States.

Thus, we can read developments in Australia and New Zealand as reflecting something positive about the conditions of life and modes of governance in these countries, where there is an openness to addressing social problems and to redressing inequalities. At the same time, and as importantly, the neo-liberal turn in political life is as keenly felt in Australia and New Zealand as in other countries. For criminal justice policy, this means that services and programs that might have been supported by the government in the past are now being returned to communities and volunteers (Crawford 1997). Conferencing as one kind of restorative justice may be viewed as a less costly method of disposing of cases; it can rely on the labour and good will of citizens, especially with its rhetoric of decentring professional authority. In the past decade in New Zealand, it has become apparent that while there is general consensus in the goals and aspirations for juvenile justice (and for child and family welfare) set out in the historic *Children, Young Persons and Their Families Act 1989*, a lack of government provision of the necessary resources has made it difficult to carry out the goals in a meaningful way.

The histories of the emergence of conferencing in Australia and New Zealand are quite different. In New Zealand, the conference idea emerged from a political process that involved both "top down" and "bottom up" activism: top down from state officials and professional workers (who were subsequently supported by members of the judiciary) and "bottom up" by Maori groups (Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare 1988). Also, in New Zealand, the 1989 *Act* arose from concerns with how decisions were made in child and family welfare cases; the application of conferencing to juvenile justice has been described as an "after thought" (Maxwell, personal communication). In Australia, by comparison, the idea of conferencing moved into the policy and legislative process almost entirely via mid-level administrators and professionals (including the police), exhibiting comparatively less of the constructive race politics evident in New Zealand.³ Also in Australia, conferencing has mainly been applied to juvenile justice, not to child and family welfare.⁴ My discussion here will focus on conferencing in juvenile justice cases.

Clearing the ground: redressing misconceptions

There are several misconceptions about conferencing in Australia and New Zealand. They are derived from (1) incorrect characterisations of the "number of victim-offender programs" existing in Australia, (2) the assumption that "Wagga model" (or police-run) conferencing is the norm in Australia, and (3) the claim that conferencing reflects the ways that justice used to be done (or is done) by indigenous people.

³ I am not suggesting that racial engagement was absent in Australia; rather, I am saying that the country-wide discussion that took place in New Zealand during the 1980s, centring on the Treaty of Waitangi, had the effect of framing juvenile justice (and welfare) reform within the terms of racial (indigenous) social justice.

⁴ As reported in Strang (2000: 28-31), conferencing was introduced in child and family welfare (or child protection) cases in Victoria in 1992 on a limited basis; it has statutory authority in South Australia (*Children's Protection Act 1993*), in the ACT (*Children and Young People Act 1999*), and to a limited degree, in New South Wales (*Children and Young Persons Care and Protection Act 1998*, not proclaimed as of October 2000).

Misconception 1: "The number of programs in existence".

Mark Umbreit's chart of "victim-offender mediation programs" in 16 countries (most recently published in an edited collection by Bazemore and Walgrave 1999: 216) reports that these programs are "available in all jurisdictions" in New Zealand, but that Australia has "five" such programs. It is not clear from which source Umbreit gleaned this figure (other figures are reported in his book *Victim Meets Offender* 1994: 5), but it is not accurate in characterising conferencing in Australia today.

The more accurate claim is that six of eight Australian states and territories have legislated conferencing schemes; they are New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, and Western Australia. Two other jurisdictions use conferencing, but it is not statutory-based: the Australian Capital Territory (ACT) and Victoria. For the jurisdictions with statutory schemes, conferencing is available state wide in all except one (Queensland). Moreover, conferencing is not just an idea on the books: it is a high-volume activity in three jurisdictions (South Australia, New South Wales, Western Australia), which together run 4,500 to 4,800 youth justice conferences per year. In other jurisdictions (the ACT and Queensland), about 180 to 250 conferences are run in each jurisdiction per year. For the three remaining jurisdictions (the Northern Territory, Tasmania, and Victoria), conferencing has just recently been established or the numbers are considerably smaller. Counts of conferences are always smaller than the number of offenders (and victims) affected. If we wanted to estimate the annual number of offenders who have participated in a conference across the five jurisdictions where conferencing is underway (South Australia, Western Australia, New South Wales, Queensland, and the ACT), the annual number is about 5,300 to 5,800 young people. There is, in short, a lot more going on in Australia than "five programs". Here, I would want to reinforce a point made by Allison Morris that "... conferences are not programmes, interventions or treatment. Rather they are a process of decision making about how best to respond to ... offending" (Morris 1999: 181).

Misconception 2: Wagga model conferencing is the norm in Australia.

Commentators, especially those not from the region, are unaware of the chronology of events that moved conferencing into Australia and how the conferencing idea evolved over time.⁵ In 1990, John MacDonald travelled to New Zealand with a colleague from the Policy and Planning Branch of the New South Wales Police Service to learn about family group conferencing. When he returned, he and his colleague (Steve Ireland) proposed that New South Wales adopt features of the "New Zealand model" of conferencing, but that it be located within the Police Service. A pilot scheme of police-run conferencing was introduced in Wagga Wagga, New South Wales in 1991 to provide an "effective cautioning scheme" (Moore and O'Connell 1994: 46). It was also MacDonald who initially told Braithwaite of the link between his theory of reintegrative shaming and the family group conferences that MacDonald saw in New Zealand. Braithwaite published *Crime, Shame and Reintegration* (1989) unaware of developments in New Zealand during the 1980s, which subsequently led to New Zealand's historic *Children, Young Persons and Their Families Act 1989*.

The theory of reintegrative shaming was connected to police-run (or "Wagga model") conferencing in 1991 and, in December 1993, at a meeting of Australian Police Commissioners, police services Australia wide were encouraged to trial Wagga model conferencing. Trials continued or were proposed in New South Wales, the ACT, Queensland, the Northern Territory, and Tasmania. Intense debate arose during the first part of the 1990s about the merits of Wagga and New Zealand models of conferencing.⁶ Also during this period, parliamentary inquiries were established in Western Australia, Queensland, New South Wales, and South Australia to address the perceived problem of increased juvenile offending and to consider more effective approaches to juvenile justice (Alder and Wundersitz 1994: 1). Legislated approaches, which incorporated conferencing as one component in a hierarchy of responses to youth crime, emerged first in South Australia in 1993. Since then, all other Australian jurisdictions, except the ACT and Victoria, have

⁵ The story of conferencing in Australia is more complex than what I sketch here. Each jurisdiction has a set of politics, personalities, and legislative precedents that call for a more detailed analysis.

⁶ There are some features of the New Zealand model, as practiced in New Zealand, such as a break for private family decision-making, which are not typical in Australian conferencing. It is also my understanding (from published reports and discussions with others) that Wagga model conferencing is more incident-focused with less time spent in pre-conference preparation.

introduced legislation, with all but one of the six statutory schemes *rejecting the Wagga model* in favour of the New Zealand model of non-police run conferences.

In other parts of the world where conferencing has been introduced (e.g., the United States, Canada, England and Wales), an opposite trend is occurring: in general, these jurisdictions use the Wagga model and, depending on the jurisdiction, conferences are used as a "caution plus" or as a diversion from court.⁷ The Wagga model differs from the New Zealand model in two fundamental ways (see also footnote 6): it is facilitated by a police officer, and it draws heavily on the theory of reintegrative shaming. Practitioners in jurisdictions with the New Zealand model are more likely to say that reintegrative shaming is one of several theories structuring their practice, or that restorative justice, not reintegrative shaming, is the theory structuring their practice.

Today in Australia, the Wagga model is used in three jurisdictions, none of them high-volume. In the ACT, conferencing was introduced in 1995 and was sustained because of the Re-Integrative Shaming Experiments (RISE). In Tasmania, which proclaimed legislation in 2000 to establish New Zealand model conferencing, there is currently (as of December 2000) a parallel practice of both police-run diversionary conferences and facilitator-run community conferences, the latter being used in those cases that the police believe require a "more serious format". In the Northern Territory, police diversionary conferences were introduced in September 2000 for 10 to 17 year olds; these conferences are in addition to "post court" conferences, which judges or magistrates can order for 15 to 17 year olds as a diversion from

⁷ In England and Wales, Wagga model conferencing is used in the Thames Valley Police's restorative cautioning programme, applied to all cautions as of April 1998 (Young and Goold 1999). At the same time, other forms of legislated conferencing have since been introduced. The *Crime and Disorder Act 1998* creates a hierarchy of escalated responses to juvenile offending, first "reprimands", then "final warnings", and if a subsequent offence comes to the attention of the police, then the offender is likely to be charged in court. "Final warnings" and court "reparation orders" use some elements of nonpolice-run conferencing. The *Youth Justice and Criminal Evidence Act 1999* provides for automatic court referral of an offender to a "youth offender panel", if the offender meets certain conditions (first appearance in court, guilty plea entered). The panels differ in composition from those in Australia and New Zealand, in particular, the two of three panel members are lay community representatives, in addition to the offender, victim, and their supporters.

mandatory sentencing.⁸ Two key articles in the field (Braithwaite and Mugford 1994; Blagg 1997) draw on examples of the Wagga model conferencing for Australia and, unless readers know otherwise, they may believe that this model remains the norm in Australia when it is not. Despite considerable debate concerning police-run conferencing (Alder and Wundersitz 1994) and police presence in conferences more generally (Bargen 1996, 1998), there is no research on the comparative merits of police-run and nonpolice-run conferences, on the effects of any police presence at a conference, or on the strengths and drawbacks of conferences lodged within police organisations (but see the chapter by Young in this book).

Misconception 3: Conferences reflect or are based on indigenous justice practices.

The claim that conferences reflect or are based on indigenous justice practices (or on premodern forms of justice) is ubiquitous; among the more prominent examples are Braithwaite (1999: 1), Consedine (1995: 12), and Weitekamp (1999). Efforts to write histories of restorative justice, where a pre-modern past is romantically (and selectively) invoked to justify a current justice practice, are not only in error, but also unwittingly reinscribe an ethnocentrism they wish to avoid. The point I shall develop is straightforward: people should be honest about what conferencing is and what it is not.

In New Zealand, conferencing emerges as a story of Maori political challenge to white New Zealanders and to their welfare and criminal justice system. Investing decision-making practices with Maori cultural values meant that family groups (whanau) should have a greater say in what happens, that venues should be culturally appropriate, and that processes should accommodate a mix of culturally appropriate practices. New Zealand's minority group population includes not only the Maori but also Pacific Island Polynesians. Therefore, with the introduction of conferencing, came awareness of the need to incorporate different elements of "cultural appropriateness" into the conference process. But the devising of a justice practice that is *flexible and accommodating* toward cultural differences does not mean

⁸ The initial legislation establishing "post court" conferences (*Juvenile Justice Act 1997*, amended 1999), targeted 15 to 16 year olds; it was again amended in June 2000, when the age of juveniles was raised from 16 to 17. "Post court" conferences are described as one of "several programs" in lieu of a mandatory 28-day detention sentence for juveniles 15-17 years who are convicted of a second property offence. Police-run diversionary conferences were established by another legislative mechanism, by changes to the *Police Administration Act*, assented November 2000.

that conferencing *is* an indigenous justice practice. Maxwell and Morris (1993: 4) are clear on this point:

A distinction must be drawn between a system which attempts to re-establish the indigenous model of pre-European times and a system of justice which is culturally appropriate. The New Zealand system is an attempt to establish the latter, not to replicate the former. As such, it seeks to incorporate many of the features apparent in whanau decision-making processes and seen in meetings on marae today, but it also contains elements quite alien to indigenous models.

Conferencing is better understood as a fragmented justice form: it splices white, bureaucratic forms of justice with elements of informal justice that may include non-white (or non-Western) values or methods of judgment (Daly 1998; see also Pavlich 1996). With the flexibility that informal justice offers, practitioners, advocates, and members of minority groups may see the potential for introducing culturally sensible and responsive forms of justice. In this way, conferencing has the potential to be open to different cultural sensibilities. But to say that conferences are "like" indigenous justice practices is to re-engage a white-centred view of the world. It erases the many histories of indigenous justice practices, some of which would not be comprehensible or acceptable in the modern worldview. And, as Blagg (1997) suggests, it may lead to a "double failure" for indigenous groups: not only will they appear to have "failed" to act in a law-abiding fashion, and but also they will appear to have "failed" to act appropriately as indigenous people according to a white-centred justice script (see Daly 2000 for evidence of this problem).

A great deal was learned in the 1970s and 1980s from socio-legal analyses of justice practices in pre-capitalist tribal societies. In Abel's two-volume treatise (1982), he and his colleagues are clear that "the characteristics of informal justice in pre-capitalist societies ... cannot be re-created under Western capitalism" (Abel, vol 2, 1982: 2). To this point, it should be added that modern indigenous justice forms have been affected by centuries of colonialism and by having to adopt "both ways" of thinking to crime and to legal or political authority in response to crime (Williams 1987).

Jurisdictional variation

In Australia and New Zealand, there is considerable variation in where conferences are located on a flow chart of discretionary decision-making, and where they are housed organisationally.⁹ Each jurisdiction has a different history and politics of what preceded conferencing and this affects how the idea has taken hold and evolved. My discussion here focuses on Australia.

Although conferences vary, they take the following form when used as a diversion from court prosecution. A young offender (who has admitted to the offence), his or her supporters (often, a parent or guardian), the victim, his or her supporters, a police officer, and conference convenor (or coordinator) come together to discuss the offence and its impact. Ideally, the discussion takes place in a context of compassion and understanding, as opposed to the more adversarial and stigmatising environment associated with the youth court. Young people are given the opportunity to talk about the circumstances associated with the offence and why they became involved in it. The young person's parents or supporters discuss how the offence has affected them, as does the victim, who may want to ask the offender "why me?" and who may seek reassurances that the behaviour will not happen again. The police officer may provide details of the offence and discuss the consequences of future offending.

After a discussion of the offence and its impact, the conference moves to a discussion of the outcome (or agreement or undertaking) that the young offender will complete. Jurisdictions vary in the length of time to complete an outcome: this ranges from 6 weeks in Western Australia (in practice, although not stipulated in the legislation), to 6 months in New South Wales (which can be extended), and 12 months in South Australia. The sanctions or reparations that are part of agreements include verbal and written apologies, paying some form of money compensation, working for the victim or doing other community work, attending counselling sessions, among others. While all jurisdictions prefer that the outcome be reached by consensus, they vary on which people, at a minimum, must agree to it (or have a "veto"). For example, in South Australia, the young person and the police officer must, at a minimum, agree to the undertaking; in New South Wales (a jurisdiction where a police officer need not be present), the young person and victim (if present) must agree to the

outcome plan; and, in Queensland, the young person, victim, and police officer must approve the outcome. In all jurisdictions, the outcome is a legally binding document.

Among the major dimensions of variation in diversionary conferences are the kinds of offences that can be conferenced, the amount of time to complete outcomes and upper limits on outcomes, and the degree to which a jurisdiction is engaged in high-volume activity. At one end of a continuum is Western Australia, which has a list of offence types that may not be conferenced ("scheduled offences"); it tends to conference a high volume of less serious cases (including traffic offences) with relatively short lengths of time to complete the outcome of a family meeting. At the other end is South Australia, which has no specifically prohibited offences (although the *Act* states that conference offences are those that "can be dealt with as a minor offence" because of the "limited extent of the harm", among other reasons). While South Australia conferences a high volume of cases, it uses conferences in serious offences (including sexual assault), and has the highest maximum of community service hours (300) and the longest period of time to complete an undertaking.

Some people may desire greater uniformity in legislation and practices, but there may be strengths to experimenting with a variety of practices during this early phase. For example, New South Wales has introduced an innovative method for providing legal advice to young people: a free telephone hotline. In light of the critiques of conferencing for promoting coerced admissions, coupled with concerns by the defence bar (especially in Queensland) for the disclosure of pleas to some offences in any future court sentencing, the hotline is an effective means of legal access. In Queensland, which currently convenes conferences only in the state's southeast and has a relatively small number of conferences per year (about 180 for 1999-2000), more resources can be put into preparation for each conference, including pre-conference face-to-face interviews with the victim and young offender. And, in the ACT, contrary to the usual focus on juvenile offending, adults were conferenced for drink driving offences during 1995-97 as part of the Re-Integrative Shaming Experiments.

⁹ Portions of the discussion on jurisdictional variation and research draw from Daly and Hayes (2001).

Legislation and practice in context

In the early 1990s, during the initial phases of legislative development in Australian jurisdictions, delegations of state parliamentary committees travelled to New Zealand to learn what was happening there. New Zealanders played key roles in laying the legislative foundations for Australian statutory schemes and in demonstrating to a world audience that it was possible to make a different kind of justice work. A history has yet to be written of that early period of the transmission of and receptivity toward a new justice idea. It is likely, however, that without the goodwill and generosity of key New Zealanders, developments would have been slower.

The story behind the emergence of conferencing, both its politics and the legislation preceding it, is unique to each jurisdiction. However, several broad characterisations can be made. First, some jurisdictions (New South Wales, Queensland, and Tasmania) began by experimenting with police-run conferences, and then moved to statutory-based schemes. Others (South Australia and Western Australia) never used police-run conferences; instead, they moved more rapidly into drafting legislation. Second, there are common elements to the legislation. In all the legislated schemes, there is a central role for police formal cautions (or police diversion) for first- or second-time offenders. In general, conferences are viewed as appropriate for relatively more serious offences or for young people who have been in trouble before. Another common element is an effort to fuse "welfare" and "justice" concerns, that is, to see the conference process as both assisting young people as well as holding them accountable for crime. New Zealand legislation differs markedly from that in Australia in that the "welfare" and "justice" responses are incorporated in a legislative framework that includes both youth justice and child welfare. In Australia, the legislative focus is almost entirely on youth justice. However, the point that Maxwell and Morris (1993: 188-90) make for the New Zealand legislation applies with equal force to that in Australia: without an "explicit or implicit ordering of the objectives of the *Act*", there remain "inherent contradictions" in what justice system decisions ought to be focused upon. It appears as though legislators put incommensurates together, expecting that justice system workers would sort them out. The politics underlying the legislation is that consensus could be achieved by appearing to be "tough" with a diversion scheme that retained elements of rehabilitation.

The only two Australian jurisdictions having Children's Panels¹⁰ in the 1960s through the 1980s - South Australia and Western Australia - were the earliest to proclaim legislation to establish conferencing. However, as discussed in Wundersitz (1992; as cited in the South Australian Parliamentary Select Committee Report 1992: 25), the two states utilised panels quite differently: a substantially higher share of juvenile cases were disposed of "informally" (that is, diverted from court) in South Australia (about 62 percent over 1979-91) than in Western Australia (30 percent in the early 1980s, dropping to 20 percent or less by 1991). One reason for the difference is that referral procedures in the states differed: South Australia had Screening Panels, composed of a social worker and police officer, but Western Australia did not (South Australian Parliamentary Select Committee Report 1992: 167-68). More of a "social worker perspective" was therefore present in South Australian court diversion.

The introduction of conferencing in South Australia follows a century-long tradition of being a "social laboratory" and "trend setter" in legal reform (South Australian Parliamentary Select Report 1992: 7). It was among the first jurisdictions in the world (arguably the first) to establish a separate court for juveniles (*State Children's Act 1895*), the first Australian jurisdiction to introduce children's aid panels (*Juvenile Courts Act 1971*), and then the first Australian jurisdiction to emphasise elements of a "justice model" in juvenile justice decision-making with the *Children's Protection and Young Offenders Act 1979*. It was the first jurisdiction off the block in establishing a statutory-based conferencing scheme (*Young Offenders Act 1993*) with its legislation and principles largely based on the New Zealand model. However, its legislation is less detailed than that subsequently put forth in Queensland and, especially, in New South Wales. For example, whereas the South Australian legislation devotes three pages to rules and principles governing conferencing, that for New South Wales (*Young Offenders Act 1997*) is four times longer.

Compared to South Australia and Western Australia, New South Wales took longer to introduce a statutory-based conferencing scheme, despite the proliferation of a variety of conferencing approaches in the first half of the 1990s. Drawing on Jenny Barga's detailed

¹⁰ Children's Panels were introduced in 1964 (Western Australia) and 1972 (South Australia) as a diversion from court for admitted offenders. These panels were normally composed of a police officer and social welfare worker, along with the child and his/her parents (see Wundersitz 1997). South Australia's and Western Australia's experiences with panels may have facilitated legislative interest in conferences (and restorative justice, more generally), although panels and conferences differ in scope and aim.

summary (1996: 10-19), police-run conferencing was in place in Wagga from 1991 to 1994, when it was replaced by a pilot of Community Youth Conferencing (CYC), under the aegis of the Attorney-General's Department and run by local justice centres. Since 1987 and prior to the introduction of a "more effective cautioning scheme" in Wagga Wagga, Community Aid Panels (CAPs) had been operating for adults and juveniles as a kind of pre-sentence mitigation. CAPs were phased out by the mid 1990s, and a pilot CYC scheme was introduced in a small number of New South Wales districts. The CYC's had some elements in common with South Australian conferencing; however, Bagen (1996) says that there were few legal protections for young people and, without a legislative framework, police discretion was not sufficiently regulated, especially when giving a formal caution. Upon evaluating the CYCs in 1995, the New South Wales government established a Working Party to consider the recommendations that came from it, to write a discussion paper, and to draft legislation. In June 1997, the *Young Offenders Act* was passed in the New South Wales Parliament, and it was proclaimed in April 1998. Unlike legislation in other Australian jurisdictions, the New South Wales *Act* explicitly draws on the United Nations Convention of the Rights of the Child (CROC), which was ratified by Australia in December 1990 (for text, see Alston and Brennan 1991; for background, see Dolgopol 1993). With over 50 articles and sub-sections, the CROC lists a variety of children's rights, including the right "to be heard, to be protected from abuse, to participate in all decisions concerning their lives, ... to have equitable access to justice through the legal system and be able to choose an advocate to assist them ... " (Bagen 1996: 16).

The New South Wales *Act*, which also drew a good deal from New Zealand's *Children, Young Persons and Their Families Act 1989*, is a model for legislation concerned with offenders and their rights in the criminal process; however, it is less adequate in contemplating the role and "rights" of victims. Indeed, in all legislation to date, the place of victims in the conferencing process is generally secondary to offenders. In light of the history of criminal law jurisprudence and safeguards of the accused against abuses of state power, it may be difficult to know where victims should belong in criminal law and procedure. However, it is worth noting that the potential of conferencing to bring victims effectively into the criminal process is far less regulated and more uncertain than it is for offenders.

Research on conferencing

Knowing how conferences vary in process and organisation is crucial to comparing results from research in different jurisdictions. For example, in New Zealand where, in the past decade, 70 to 80 percent of youth justice cases were disposed of by police diversion, with the remaining 20 to 30 percent referred to a conference (10 to 12 percent as pre-sentencing advice to the court and the remainder as diversion from court) and where less attention was given to ensuring that victims attended the conference (at least in the first several years of conferences), we should expect to see lower levels of victim satisfaction than in a jurisdiction like Queensland, where more time is spent on case preparation, relatively less serious cases are conferenced (even though some serious cases are conferenced), and victims have greater power. In Queensland, a victim's consent is required for the police *to refer a case to* conference, and victims can veto the conference outcome. What follows is a necessarily selective review of research. In particular, I do not review evidence on conferencing and re-offending because that would require a close examination of the different methods and definitions used from study to study, which is itself the grist for another piece.

Conferencing was first researched in New Zealand (Maxwell and Morris 1993, 1996). Interviews with 157 young offenders and 176 of their parents attending family group conferences between August 1990 and May 1991 show that 84 and 85 percent, respectively, were satisfied with the outcome of the Family Group Conference (satisfaction decreased to 70 percent for young offenders receiving the most severe penalties) (Maxwell and Morris 1993: 115). By comparison, just half of victims reported being satisfied with the outcome (the level of satisfaction was even lower for sentencing advice to courts) (Maxwell and Morris 1993: 120).¹¹ When examining the sources of dissatisfaction in the open-ended portions of the interview (Maxwell and Morris 1993: 121), one sees that victims were critical of too lenient outcomes. Moreover, some were "simply never informed about the outcome" (Maxwell and Morris 1996: 100). A quarter of victims said "they felt worse as a result of attending" the conference. While many reasons were given for this, Maxwell and Morris suggest that the

¹¹ It is, of course, not clear what it means to be "satisfied" with the conference process and outcome. Maxwell and Morris (1993: 116) note that "researchers have uniformly failed to identify what it actually means when parents and young people say they are 'satisfied' ... This [may] mean nothing more than relief that 'nothing worse' happened". "Satisfaction" with *an outcome* is partly a function of what people expect and partly a function of the outcome itself. Likewise, the meaning of being dissatisfied is varied and has multiple sources.

most frequent was the victim's sense that the young person and his/her family did not feel "truly sorry" (1996: 100).

Studies of conferences in Queensland, New South Wales and Western Australia, focused mainly on participants' perceptions of fairness of the process and on their satisfaction with the process and outcome¹². Collectively these studies show that conferences receive high marks on the fairness and satisfaction variables. In Queensland, Palk et al (1998) analysed survey data collected by the Department of Justice over a 13-month period. Of the 351 offenders, parents (or carers), and victims interviewed, 98 to 100 percent said the process was fair, and 97 to 99 percent said they were satisfied with the agreement made in the conference (1998: 145). To statements such as "I was treated with respect", "I got to have my say", and "The conference was just what I needed to sort things out", 96 to 99 percent of participants agreed (Palk et al 1998: 146).

In New South Wales, Trimboli (2000) gathered data from 969 victims, offenders, and offenders' supporters across all state regions during 1999. Overall, 92 to 98 percent of the groups said that the conference was "somewhat" or "very fair" to victims and to offenders, with more detailed procedural justice variables (such as "You were treated with respect" and the "Conference respected your rights") showing similar results (Trimboli 2000: 36-40). Across the three groups, 80 to 97 percent agreed that they were "satisfied with the conference outcome plan" (Trimboli 2000: 45). The study goes beyond the fairness and satisfaction variables in asking questions about the degree of information participants had about the conference and what they expected would happen, and what they viewed as the best and worst features of the conference process and outcome.

In Western Australia, following passage of the *Young Offenders Act 1994*, Cant and Downie (1998) conducted an evaluation of family meetings and the *Act*. In the Perth portion of the study, they interviewed 265 offenders, their parents, and victims who had participated in family meetings during 1996-97. For fairness of the process, 90 to 95 percent felt that they (or their child) were treated fairly (Cant and Downie, 1998: 45, 51, 58). For the global

¹² These studies, along with others in the ACT, South Australia and Victoria, provide some evidence of participants' views on the conference process, but they are constrained by government demands on researchers for a quick evaluation of conferencing and insufficient resources to conduct more in-depth research.

satisfaction item on "how the Juvenile Justice Team dealt with" the case, 90 to 92 percent of offenders and their parents were satisfied (Cant and Downie 1998: 47, 52), but fewer victims (83 percent) were (1998: 58).

In Tasmania and the Northern Territory, conferencing has only just begun under statutory-based schemes. Tasmanian police have been running conferences since 1994, but there is no research on those conferences. With the proclamation of the *Youth Justice Act 1997* in 2000, a research study of conferencing is now underway. Except for a study of Wagga model conferencing in Alice Springs (Fry 1997), there is no research on conferencing in the Northern Territory. The Territory's 1999 legislation includes conferencing as one of several court-ordered diversion programs from a 28-day minimum period of detention; unlike other statutory schemes, what is termed "post court" conferencing in the Territory is used as a diversion from incarceration, not court. However, since September 2000 and owing to pressure caused by the mandatory detention of juveniles for a second property offence conviction, the Territory has shifted to a policy of diverting juvenile cases from court with a variety of mechanisms, including police diversionary conferences for 10 to 17 year olds. The Territory is the first jurisdiction to have introduced a legislative basis for police-run conferencing, with changes made to the *Police Administration Act* (Part VII Police Powers, Division 2b, assented on 14 November 2000). Thus, in the Territory today, both the New Zealand and Wagga models are operating.

During a small pilot project in 1995-97, Victoria used court-referred conferencing. The project (which is still running) targets young people who have appeared in court previously, but who are deemed eligible for an alternative to probation. Markiewicz (1997: vii) reports that "victims found the process helpful and healing" and "young people [said] that the conference had a beneficial impact on them" and that it was "preferable to probation".

The Re-Integrative Shaming Experiments (RISE) Project (Canberra, ACT) is important for its research design of randomly assigning RISE-eligible cases to court or conference. Assuming there are an adequate number of cases, random assignment ensures that the two groups are equivalent on both known and unknown variables. When using this design, any post-treatment differences between the court and conference groups can be attributed to the "treatment" rather than to general characteristics of the individuals making up each group.

There is no other project with a randomised design in the region, and just one other in the world (McCold and Wachtel 1998). RISE began in 1995 and set out to measure the impact of "restorative policing" on offenders' and victims' perceptions of procedural justice and on offenders' post-conference offending. Researchers also plan to compare the monetary costs associated with court and conference. The RISE project will test Braithwaite's (1989) theory of reintegrative shaming which, in a nutshell, argues that individuals will be most effectively "shamed" for their behaviour by those close to them and that the *act* not the actor should be the target of shame. Reintegrative shaming presumes elements of Tyler's (1990) theory of procedural justice, which emphasises respect, decision-makers' neutrality, being treated fairly, and having a say.

RISE gathered data on these offences: drink driving, juvenile property (personal and organisational victims) and juvenile violent crime (including adult offenders up to 29 years old). Highlights include the following (Strang et al 1999; Strang 1999: 194-95):

- Offenders report greater procedural justice (defined as being treated fairly and with respect) in conferences than in court.
- Offenders report higher levels of restorative justice (defined as the opportunity to repair the harm they had caused) in conferences than in court.
- Conferences more than court increased offenders' respect for the police and law.
- Victims' sense of restorative justice is higher for those who went to conferences rather than to court (defined as, for example, recovery from anger and embarrassment).

The results from RISE suggest that conferences deliver a better kind of justice than do courts. There remains a mass of data to be analysed and reported, including similarities and differences in court and conference experiences, offence-based variation in procedural and restorative justice, the comparative effects of court and conference on re-offending, and the costs associated with courts and conferences.

SAJJ Research Project

In planning SAJJ, I wanted to build upon, but depart from RISE. Both projects are similar in that they are assessing whether conference participants experience elements of procedural and restorative justice. SAJJ differs from RISE in these ways:

- SAJJ does not use a randomised experimental design to compare outcomes of court and conference cases.
- SAJJ is studying non-police facilitated conferences.
- SAJJ focuses on whether (or how) participants' roles and social locations affect judgments of restorative and procedural justice.
- SAJJ examines specific movements between an offender and victim during and after a conference, whereas RISE centres on an offender's behaviour, recording relatively little about the victim's behaviour or the relationship between an offender and victim.
- SAJJ is not testing a theory of reintegrative shaming or restorative community policing.

For the last item, the SAJJ project takes an *iterative* view of restorative justice, that is, one that emerges from moving between actual practices and ideal theoretical principles. RISE addresses questions on the impact and the costs of court and conference, using a research design that can test for the different effects of each. SAJJ addresses questions of variability in the conference process (along dimensions of procedural and restorative justice), variability in participants' judgments of the "success" of the conference process, and the variable effect of conferences for different groups and in different areas.

SAJJ data collection

SAJJ had two waves of data collection in 1998 and 1999 (Daly et al 1998). In 1998, SAJJ researchers observed a total of 89 conferences that were held during a 12-week period in the metropolitan Adelaide area and in two large-sized country towns (Port Augusta and Whyalla). The observed conferences were selected on the basis of the offence category. SAJJ-eligible offences were personal crimes of violence and property offences that involved personal victims or "community victims" (such as schools, churches or housing trusts). Excluded were shoplifting cases, drug cases, and public order offences.

Here are some features of the conference sample:

- Forty-four percent of conferences dealt with personal crimes of violence (serious and simple assault, but including robbery and sexual assault), and 56 percent with property offences (breaking and entering a residence, school, or community building; property damage, including arson; illegal use [or theft] of a motor vehicle; and embezzlement).

- In 68 percent of the conferences, the victim was a personal victim of crime; 20 percent were organisational victims, and the remaining 12 percent were a combination of the two (either personal-occupational or personal-organisational victims).
- In 28 percent of conferences, the victims were under 18 years of age.
- Of the personal victims of violence, close to half required medical attention and 35 percent needed to see a doctor.
- Of the property offence victims, the total amount of out-of-pocket expenses (that is, after insurance) ranged from none to \$6,000; the mean was over \$900 and the median was \$400.
- In 74 percent of the conferences, the victim was present and, in an additional 6 percent, a victim representative was present.
- In 15 percent of the conferences there was more than one offender in the conference.
- The number of conference participants (*excluding* the coordinator and the police officer) ranged from 1 to 12, with a median of 5 participants.
- Excluding the coordinator and the police officer, 53 percent of the participants were male and 66 percent were adult (18 years and over).
- Including the coordinator and the police officer, 61 percent of the participants were male and 71 percent were adult.
- Twelve percent of conferences had Aboriginal offenders and 7 percent had offenders of other racial or ethnic minority groups.
- Seventy nine percent of conference offenders were male and 49 percent of conference victims were male.
- Half of the conferences involved offences between people who did not know each other at all.

For each conference, the police officer and the coordinator completed a self-administered survey¹³, and a SAJJ researcher completed a detailed observational instrument. The project aimed to interview all the young offenders (N=107) and the primary victim associated with

¹³ The police and coordinator surveys have items about perceived procedural and restorative justice, about the judgments of the other's behaviour and professionalism in the conference, and about their "justice aims" for that particular conference. See Daly et al (1998: 31-45) for discussion of the police and coordinator surveys and their links to the SAJJ researcher's observational protocol. Where appropriate, the same items were used in the instruments for the five groups (police officer, coordinator, SAJJ observer, offender, and victim), especially those tapping procedural and restorative justice.

each offence (N=89) in 1998 and a year later, in 1999. Out of a total of 196 offenders and victims, SAJJ researchers interviewed 172 (or 88 percent) in Year 1; of that group, 94 percent were again interviewed in Year 2. Therefore, the overall response rate (that is, completed interviews for victims and offenders in Years 1 and 2) is 82 percent.¹⁴

The interview schedules in 1998 and 1999 had open- and close-ended items. All the interviews were conducted face to face, except those with victims who did not attend the conference, which were conducted by phone. For the offenders, the length of the interview was 35 to 40 minutes; for the conference victims, the interview length was typically longer, about 45 to 60 minutes. The interviews were tape-recorded and the open-ended questions were transcribed.

In Year 1 the focus of the interviews was on the offenders' and victims' judgments of whether elements of procedural and restorative justice were present in the conference. In Year 2, we were interested in how the passage of time affected offenders' and victims' judgments of the process and of promises made; whether victims and offenders changed their attitudes toward the other; whether or not the conference had an impact on "staying out of trouble" (for offenders) or on "getting the offence behind them" (for victims); and for victims, how their experience in the conference process affected (or not) their views of young people and the politics of crime control. Here I shall report selected findings from the quantitative items. I see the project's strength, however, in providing a rich and detailed blend of quantitative and qualitative data on the conference process and its effects on participants.

Procedural and restorative justice

Like previous studies, the SAJJ project finds very high levels of procedural justice registered by offenders and victims at conferences. To items such as, "were you treated fairly", "were you treated with respect", "did you have a say in the agreement", among others, 80 to 95 percent of victims and offenders said that they were treated fairly and had a say. Victims' responses were even higher on the procedural justice items than offenders'.

¹⁴ Disaggregated response rates are as follows. Offenders: 93/107 = 87 percent in Year 1; 88/93 = 95 percent in Year 2. Victims: 79/89 = 89 percent in Year 1; 73/79 = 92 percent in Year 2. Overall, interviewed in both years: 161/196 = 82 percent.

Compared to the high levels of perceived procedural justice, there is *relatively* less evidence of restorativeness. The measures of restorativeness tapped the degree to which offenders and victims recognised the other and were affected by the other; they focused on the degree to which there was positive movement between the offender and victim and their supporters during the conference. Whereas procedural justice was present in 80 to 95 percent of conferences, restorativeness was present in about 30 to 50 percent (depending on the item), and perhaps most solidly in about one-third of conferences. These findings suggest that although it is possible to have a process perceived as fair, it can be harder for victims and offenders to resolve their conflict completely or to find common ground, at least at the conference itself.

Limits on repairing the harm

It is often remarked that, if conference processes do not go well, this may be overcome by "better practices" and appropriate resources (see discussion in Maxwell and Morris 1996: 108). While improvements may help, other constraints are operative. In particular, I suspect that there are *limits* on offenders' interests to repair the harm and that there are *limits* on victims' capacities to see offenders in a positive light. Indicative of these limits is a sampling of responses by offenders and victims to interview questions asked in 1998.

The young people (offenders) were asked to recall their feelings before the conference: 31 percent said that the conference was not important to them, and 53 percent replied that they had not at all thought about what they would want to do or to say to the victim. For what occurred in the conference, only half said that the victim's or the victim representative's story had an effect on them. Over 40 percent said that they were still not sorry or they were less sorry for the victim after the conference.

For the victims' feelings before the conference, 34 percent said they had not at all thought about what they wanted to do or to say to the offender. For what occurred in the conference, just 38 percent said that the offender's story had an effect on them, and just 53 percent said they had a better understanding of why the offender committed the offence. When interviewed a year later, in 1999, only 28 percent of victims believed that the main reason the offender apologised was because s/he "was really sorry". The rest thought that the offender wasn't sorry, but thought s/he would get off easier if s/he said sorry (31 percent), the offender

was pushed into saying sorry (26 percent), and that the offender said sorry to make his/her family feel better (15 percent). When asked if they would say that the young person did a bad thing because of who they *were* or that the young person was not bad but what they did was bad, one third of victims elected the first option, seeing the young person as intrinsically a bad person. Therefore, for a significant minority of victims - one-third - it was not possible to separate the "badness" of the act from the person, suggesting little capacity or desire to reintegrate the offender into the community.

Conference dynamics and emotions

Conferences are calm events, and participants are civil towards each other. In 10 percent of conferences, there were angry or aggressive remarks aimed at the young person, and these were made mainly by victims or their supporters. In 9 percent of conferences there was arguing between participants, with varied combinations of protagonists; however, in half the cases, it was the young person and his/her parent or guardian who argued. Compared to angry remarks and arguments, there was more crying: 25 percent of the conferences had crying participants, most of whom were young people and their parents and supporters. Based on what they could observe in conferences, SAJJ researchers thought that 11 percent of victims were revictimised in some way by the young person or their supporters. Interviews with the victims revealed that a somewhat higher percent (18 percent) said they left the conference upset by what the offender or their supporters said. Again, based on what they could observe, SAJJ researchers found that, in 9 percent of conferences (or 8 conferences), people intimidated others. In five of these eight conferences, the target of the intimidation was the offender; the people intimidating the offender were the offender's supporters, the victim or victim's supporters, and in one instance, the apprehending police officer. In another item asking the SAJJ observer if the young person appeared to be "a powerless youth in a roomful of adults" (adapted from the evocative comment by Haines 1997), 62 percent said "no, not at all". These findings suggest that, contrary to many commentators who have been concerned with inappropriate forms of coercion and control of young people in the conference process, and especially by police officers, SAJJ researchers find that, young people can hold their own and that with the exception of angry remarks made, the people who argue with or intimidate young people are their family members, not the police or victims. Moreover, in three of eight conferences, the young person intimidated the victim (in all three cases the victim was also a young person). To the question, "do you think you were disadvantaged in the conference

because of your sex, race or ethnicity, or some other reason?", small percentages of both victims (5 percent) and offenders (6.5 percent) said "yes".

Impact of conferences on victims

Conferences reduce victims' anger and fear. Over 75 percent of victims felt angry toward the offender before the conference, but this dropped to 44 percent after the conference and was 39 percent a year later. Close to 40 percent of victims were frightened of the offender before the conference, but this dropped to 25 percent after the conference and was 18 percent a year later.

For victims who attended conferences, there is an increasing positive orientation toward the offender over three points in time: from 8 percent feeling positive pre-conference in 1998 to 38 percent after the conference and 44 percent a year later. Negative orientations toward offenders were high before the conference (61 percent of victims felt negative), dropping to 32 percent after the conference and rising slightly to 40 percent a year later. Thus, while there are increasing positive orientations of victims toward offenders, a similar proportion of negative and positive orientations was found a year later. Despite these equivocal findings, in the 1999 interviews, close to 80 percent of victims said that the conference was worthwhile and 63 percent said they had fully recovered from the incident.

Satisfaction

Like findings from research in New Zealand (Maxwell and Morris 1993: 115-122), SAJJ finds that offenders are more likely to be satisfied than victims with how their case was handled: whereas 90 percent of offenders were satisfied or very satisfied, 73 percent of victims were. One reason (among several) for victims' greater dissatisfaction and offenders' greater satisfaction is their contrary perceptions of how easy (or harsh) the outcome is. In a sub-set of cases that contains only the conference pairs of offenders and victims (N=53)¹⁵, 17 percent of offenders thought the agreement was "too easy" and 68 percent thought it was about right; the remaining 15 percent thought it was too harsh. Victims were twice as likely as offenders to say the agreement was too easy (36 percent); 62 percent said it was about

¹⁵ This sub-sample includes those pairs having a victim who attended the conference and the primary offender when there were multiple offenders present, both of whom were interviewed in Year 1.

right, and only 2 percent thought it was too harsh. Of note is that the SAJJ observer's responses for this sub-set of cases are nearly identical to those of the *offender*, suggesting that a portion of victims either expected (or wanted) more in the way of a sanction or reparation than either the offender or researcher believed was necessary or just.

Of the larger sample of conference victims interviewed in Year 1, 12 to 20 percent registered negative reactions to the conference: 13 percent each said they felt pushed into things and the conference made them angry, 16 percent thought that the conference was a waste of time, and 17 percent were "not at all" satisfied with how their case was handled. Likewise, for the larger sample of offenders interviewed in Year 1, 14 to 22 percent registered negative reactions to the conference: 22 percent said they felt pushed into things, 14 percent said that the conference made them angry, and 15 percent thought that the conference was a waste of time. The majority of both victims (52 percent) and offenders (61 percent) said that the agreement was *better* for the offender than what they expected, and small proportions said it was *worse* for the offender than what they expected (12 and 15 percent for victims and offenders, respectively). To the item "the agreement was unfair to you", 20 percent of victims and 11 percent of percent of offenders agreed. Therefore, offenders came into the conference anticipating that outcomes would be more severe than they turned out to be, and, while some were critical of elements of the conference process, very high proportions said they were "satisfied". As Maxwell and Morris (1993: 128) suggest from New Zealand data on offenders so too for SAJJ offenders: the meaning of being "satisfied" was "relie[f] that nothing worse (more severe) happened". A portion of victims came into the conference with raised expectations, which were subsequently not met; in addition to outcomes, other elements were salient to victims, and in particular, how the offender acted toward them. Two variables - the offender not showing remorse and the offender not taking responsibility for what they did - were the most frequently mentioned reasons for victims' negative judgments of offenders. Victims can separate their conference experience, and the degree of satisfaction they have with it, from the general idea of conferences. Whereas 74 percent were satisfied with how *their case* was handled and 77 percent said they would go to a conference again, a somewhat higher share (87 percent) recommended that the government keep conferencing.

Conclusion

As one form of restorative justice, conferences have become a major fixture in New Zealand and in most Australian jurisdictions in handling juvenile crime. The degree of variation in how conferences are organised is substantial, and this creates research opportunities to explore the strengths and limits of various models. In addition to using conferences in juvenile cases, there are other justice innovations occurring in the region, including using conferences in adult cases and collaborative methods by which indigenous groups and white justice officials decide how to handle certain cases. All of these developments are quite recent so that with the exception of the first wave of New Zealand research (Maxwell and Morris 1993), we know very little about what happens in conferences and how they affect people. The RISE and SAJJ projects promise to fill many gaps in our knowledge of the conference process and how it compares with court processes. Other research projects are planned or are underway, including studies in New South Wales and Tasmania, a second major study in New Zealand, and a program of international collaborative research on conferencing¹⁶.

Several observations can be made about the current state of legislative development and research on conferencing. First, my impression is that there is a form of "jurisdictional jingoism" in Australia, where spokespeople for jurisdictions see their state or territory as having the best approach to conferencing. Relatedly, there can also be a kind of jurisdictional tunnel vision where spokespeople can only apprehend the conferencing idea through the lens of what occurs in their jurisdiction. Some cross-jurisdictional understanding is now emerging: (1) a National Practitioners' Forum was held in November 1998 at which Australian and New Zealand coordinators and police discussed practices; and (2) government officials, managers of conferencing units, and practitioners do travel to other jurisdictions. However, there can be institutional brakes on deepening cross-jurisdictional understanding as officials and managers work to keep conferencing practices afloat and well-resourced in their

¹⁶ The New South Wales research is evaluating the implementation and impact of the *Young Offenders Act 1997*, including the uses of police discretion and conferencing; it is a collaborative project between the University of New South Wales, the New South Wales Department of Juvenile Justice, and the Aboriginal Justice Advisory Council (Janet Chan, personal communication). The Tasmania research is evaluating police-run and nonpolice-run conferences, which are currently working along side each other in Tasmania, as well as the influence of the judiciary in establishing a restorative system; the project is based at the University of Tasmania (Jeremy Prichard, personal communication). The New Zealand research aims to identify factors associated with achieving effective outcomes in youth justice using an evidence based approach (Gabrielle Maxwell and Allison Morris, personal communication).

jurisdictional patch. They need to show that conferences are "successful" and that participants are "satisfied", which leads to my second observation.

Government-sponsored evaluations of conferencing, which are carried out quickly to suit ministers or department heads, often lack empirical depth and theoretical grounding (this problem is also evident in advocacy-oriented research). Their main purpose is not to contribute to a stock of scientific knowledge, but rather to be accountable to bureaucratic elements. No doubt, it is better to have some research than none at all, and there is value in conducting research with different aims and purposes. However, the contribution that Australia and New Zealand can make to the wider field of restorative justice is considerable. It would be a pity to squander that potential on a set of jurisdiction-specific small studies that do not add up to something larger or that do not address the difficult theoretical and political problems posed by the conferencing idea. In its most ideal application, restorative justice poses major challenges to old and settled modes of thinking about the response to crime. It also poses major challenges to old and settled modes of conducting research on justice practices. Australia and New Zealand are well-positioned to be innovative on both fronts and to become international leaders in the field so long as those in research, policy, and practice seize the moment to look beyond their jurisdictional borders and to stretch their theoretical and research imaginations.

References

R Abel, 'Introduction' in R Abel (ed.), *The Politics of Informal Justice*, Vol 1 & 2 (New York, Academic Press, 1982)

C Alder and J Wundersitz (eds), *Family Conferencing and Juvenile Justice* (Canberra, Australian Institute of Criminology, 1994)

P Alston and G Brennan (eds), *The UN Children's Convention and Australia* (Canberra, Human Rights and Equal Opportunity Commission, Australian National University Centre for International and Public Law, and Australian Council of Social Service, 1991)

J Bagen, 'Kids, Cops, Courts, Conferencing and Children's Rights: A Note on Perspectives', *2 Australian Journal of Human Rights* 209, 1996.

J Bagen, 'Update for 1996-98', unpublished, on file with the author, 1998.

G Bazemore and L Walgrave, 'Restorative Juvenile Justice: In Search of Fundamentals and an Outline for Systemic Reform' in G Bazemore and L Walgrave (eds), *Restorative Juvenile Justice: Repairing the Harm of Youth Crime* (Monsey, New York, Criminal Justice Press, 1999)

H Blagg, 'A Just Measure of Shame? Aboriginal Youth and Conferencing in Australia', *37 British Journal of Criminology* 481, 1997.

J Braithwaite, *Crime, Shame and Reintegration* (Cambridge, Cambridge University Press, 1989)

J Braithwaite, 'Restorative Justice: Assessing Optimistic and Pessimistic Accounts', in M Tonry (ed), *Crime and Justice: A Review of Research* (Chicago, University of Chicago Press, 1999)

J Braithwaite and S Mugford, 'Conditions of Successful Reintegration Ceremonies: Dealing with Juvenile Offenders', 34 *British Journal of Criminology* 139, 1994.

R Cant and R Downie, *Evaluation of the Young Offenders Act (1994) and the Juvenile Justice Teams* (Perth, Social Systems & Evaluation, 1998)

J Consedine, *Restorative Justice: Healing the Effects of Crime* (Lyttelton, Ploughshares Publications, 1995)

A Crawford, *The Local Governance of Crime: Appeals to Community and Partnerships* (Oxford, Clarendon Press, 1997)

C Cunneen, 'Community Conferencing and the Fiction of Indigenous Control', 30 *Australian and New Zealand Journal of Criminology* 292, 1997.

K Daly, 'Restorative Justice: Moving Past the Caricatures', paper presented at Seminar on Restorative Justice, Institute of Criminology, University of Sydney Law School, April 1998, <http://www.gu.edu.au/school/ccj/kdaly.html>

K Daly, 'Restorative Justice in Diverse and Unequal Societies', 17 *Law in Context* 167, 2000.

K Daly and H Hayes, 'Restorative Justice and Conferencing in Australia', *Trends and Issues* No. 186 (Canberra, Australian Institute of Criminology, 2001)

K Daly, M Venables, M McKenna, L Mumford and J Christie-Johnston, *South Australian Juvenile Justice (SAJJ) Research on Conferencing, Technical Report No. 1: Project Overview and Research Instruments* (Griffith University, Queensland, School of Criminology and Criminal Justice, 1998, <http://www.aic.gov.au/rjustice/sajj/index.html>)

J Dignan, 'The Crime and Disorder Act and the Prospects for Restorative Justice', *Criminal Law Review* 48, 1999.

U Dolgopol, 'The Convention of the Rights of the Child as Part of the International System for the Protection of Human Rights' in J Harvey, U Dolgopol and S Castell-McGregor (eds) *Implementing the UN Convention on the Rights of the Child in Australia* (Adelaide, South Australian Children's Interests Bureau, 1993)

D Fry, *A Report on Community Justice Program, 'Diversionary Conferencing'* (Alice Springs, Northern Territory Police, 1997)

K Haines, *Some Principled Objections to a Restorative Justice Approach to Working with Juvenile Offenders*, unpublished manuscript (Swansea, Centre for Criminal Justice and Criminology, University of Wales, 1997)

C LaPrairie, 'Some Reflections on New Criminal Justice Policies in Canada: Restorative Justice, Alternative Measures and Conditional Sentences', 32 *Australian and New Zealand Journal of Criminology* 139, 1999.

A Markiewicz, *Juvenile Justice Group Conferencing in Victoria: An Evaluation of a Pilot Program, Phase 2 Report* (Moorabin, Anglicare Southbridge Youth Services, 1997)

G Maxwell and A Morris, *Family, Victims and Culture: Youth Justice in New Zealand* (Wellington, Social Policy Agency and the Institute of Criminology, Victoria University of Wellington, 1993)

G Maxwell and A Morris, 'Research on Family Group Conferences with Young Offenders' in J Hudson, A Morris, G Maxwell and B Galaway (eds), *Family Group Conferences: Perspectives on Policy and Practice* (Annandale, Federation Press, 1996)

G Maxwell, A Morris and T Anderson, *Community Panel Adult Pre-Trial Diversion: Supplementary Evaluation* (Wellington, Crime Prevention Unit, Department of Prime Minister and Cabinet, and the Institute of Criminology, Victoria University of Wellington, 1999)

P McCold and B Wachtel, *Restorative Policing Experiment: The Bethlehem, Pennsylvania Police Family Conferencing Project* (<http://www.realjustice.org>, 1998)

Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare, Puaoteata (Day break), The Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare (Wellington, Department of Social Welfare, 1988)

D Moore and T O'Connell, 'Family Conferencing in Wagga Wagga: A Communitarian Model of Justice', in C Alder and J Wundersitz (eds), Family Conferencing and Juvenile Justice (Canberra, Australian Institute of Criminology, 1994)

A Morris, 'Creative Conferencing: Revisiting Principles, Practice and Potential', in A Morris and G Maxwell (eds), Youth Justice in Focus: Proceedings of an Australasian Conference held 27-30 October 1998 at the Michael Fowler Centre, Wellington (Wellington: Institute of Criminology, Victoria University of Wellington, 1999)

G Palk, H Hayes and T Prenzler, 'Restorative Justice and Community Conferencing: Summary of Findings from a Pilot Study', 10 Current Issues in Criminal Justice 138, 1998.

G C Pavlich, Justice Fragmented: Mediating Community Disputes under Postmodern Conditions (New York, Routledge, 1996)

H Strang, 'Recent Research on Conferencing: the Canberra Experiments', in A Morris and G Maxwell (eds), Youth Justice in Focus: Proceedings of an Australasian Conference held 27-30 October 1998 at the Michael Fowler Centre, Wellington (Wellington, Institute of Criminology, Victoria University of Wellington, 1999)

H Strang, Restorative Justice Programs in Australia: A Report to the Criminology Research Council (Canberra: Centre for Restorative Justice, Research School of Social Sciences, Australian National University, on file with the author, 2000)

H Strang, G Barnes, J Braithwaite and L Sherman, Experiments in Restorative Policing: A Progress Report on the Canberra Reintegrative Shaming Experiments (RISE) (Australian Federal Police and Australian National University, <http://www.aic.gov.au/rjustice/rise/progress/1999.html>, 1999)

South Australia Parliamentary Select Committee on the Juvenile Justice System, Interim Report (Adelaide, South Australia Government Printing Office, 1992)

L Trimboli, An Evaluation of the NSW Youth Justice Conferencing Scheme (Sydney, New South Wales Bureau of Crime Statistics and Research, 2000)

T Tyler, Why People Obey the Law (New Haven, Yale University Press, 1990)

M Umbreit, Victim Meets Offender: The Impact of Restorative Justice and Mediation (Monsey, Criminal Justice Press, 1994)

M Umbreit, 'Avoiding the Marginalisation and 'McDonalization' of Victim-Offender Mediation: A Case Study in Moving Toward the Mainstream' in G Bazemore and L Walgrave (eds), Restorative Juvenile Justice: Repairing the Harm of Youth Crime (Monsey, Criminal Justice Press, 1999)

E Weitekamp, 'The History of Restorative Justice', in G Bazemore and L Walgrave (eds), *Restorative Juvenile Justice: Repairing the Harm of Youth Crime* (Monsey, Criminal Justice Press, 1999)

N M Williams, *Two Laws: Managing Disputes in a Contemporary Aboriginal Community* (Canberra, Australian Institute of Aboriginal and Torres Strait Islander Studies, 1987)

J Wundersitz, 'The Net Widening Effect of Aid Panels and Screening Panels in the South Australian Juvenile Justice System', *25 Australian and New Zealand Journal of Criminology* 115, 1992.

J Wundersitz, 'Pre-Court Diversion: The Australian Experience' in A Borowski and I O'Connor (eds) *Juvenile Crime, Justice & Corrections* (South Melbourne, Addison Wesley Longman, 1997)

R Young and B Goold, 'Restorative Police Cautioning in Aylesbury -- From Degrading to Reintegrative Shaming Ceremonies?', *Criminal Law Review*, 126, 1999.