

DIVERSIONARY CONFERENCES IN AUSTRALIA:
A REPLY TO THE OPTIMISTS AND SKEPTICS

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Diversionsary Conferences in Australia: A Reply to the Optimists and Skeptics

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I travelled to Australia in September of 1995 to work on a project under a loose rubric of "restorative justice." At the time, I did not fully appreciate two things:

** restorative justice is a large concept, containing many practices and ideas, and

** recent challenges to restorative justice revisit debates in the 1980s on informal justice, and in the 1970s, on diversionary programs in the juvenile justice system.

That larger picture and historical perspective is important in understanding debates today over one form of restorative justice in Australia and New Zealand: what are termed diversionary conferences (in the ACT), family group conferencing (in New Zealand), family conferencing (South Australia), juvenile justice teams (in Western Australia), and community accountability conferences (in Queensland), among others. These are alternative methods of responding to adolescent lawbreaking.

Here is an outline of my paper:

- I. Sketch the big picture
- II. Turn to Australia and New Zealand
 - A. Compare three conferencing models
 - B. Review the critiques of conferencing in Australia
 1. rights and due process
 2. anti-racist
 3. feminist
 4. potpourri
 - C. Present results of my observations of conferences in the ACT and South Australia
 - D. Discuss the critiques in light of my results

My summary: Conferencing is probably a good idea. However, it is not as trouble-free as optimists argue nor as dreadful as skeptics fear. On items I can compare, my findings from a small set of cases in two jurisdictions in Australia are strikingly similar to Maxwell and Morris' (1993) major study of conferencing in New Zealand.

First -- What is a diversionary conference? What is supposed to happen? (the general scenario for Australia)

A conference is composed of a group of people who have been brought together by a conference facilitator to discuss an offense. The person(s) has already admitted responsibility for the offense; they bring with them their mothers and fathers, and other supporters (family and friends). The crime victim(s) are also present, along with their supporters.

At least one police officer will be there. Depending on the jurisdiction, the officer will have a different role. In the ACT the police are the conference facilitators; they convene and run the conference. In South Australia, "youth justice coordinators" (non police) convene and run the conference, but a police officer is also there to "represent the community" and to have a role in deciding the outcome.

The conference has 4 phases:

** Introductory, when the conference coordinator lays out the purpose of conference, its legal standing, and the rights of participants.

** The second phase focuses on the offender(s) and their supporters: how did the offense come about and what were the consequences?

** The third phase focuses on the victim(s): what was the impact of the offense on them, and what were their feelings and reactions?

** The final phase contains a group discussion on what the offender should do to "get the incident behind us" or to compensate for the harm.

Conference time typically ranges from 45 minutes to an hour and a half, not counting time spent in post-conference discussions. Most conference time is taken up with phases 2 and 3.

I. THE BIG PICTURE

A. Restorative justice is a "a movement, rather than a particular practice. It is a way of thinking about crime and the response to crime" (New Zealand Ministry of Justice 1995: 16, 7). The term grew out of victim-offender mediation programs, which were developed in North America and Britain in the 1970s. These programs focused on victim-offender reconciliation or on ways that offenders could repair or repay harms (e.g., Wright and Galaway 1989).

B. Although restorative justice is a broad concept, it is one element in an even larger field of informal justice.

And what is informal justice? This too is difficult to define. In 1982, Rick Abel said in his edited collection on the topic: "Informalism is less a positive ideal than a set of loosely associated aversions to characteristics attributed

to formal justice." It may include qualities such as being disconnected from state power, nonbureaucratic, decentralized, and having flexible (or unwritten) substantive and procedural rules ..." (Abel 1982: 2)

In the 1970s there emerged a variety of alternative dispute institutions, which were variously termed informal justice, community justice, neighborhood justice, and popular justice.

Summarizing these developments in 1988, Roger Matthews said: "In the beginning there was optimism ... [but] less than a decade [later, this] optimism was overshadowed by an equally forceful wave of pessimism [as] practitioners and academics came increasingly to see ... informal justice in negative terms" (Matthews 1988: 1)

A large literature exists on informal justice institutions and practices. It remains to be a lively area of theoretical interest, especially for sociologists of law (see, e.g., Norrie 1996). YET, in the contemporary debates on conferencing in Australia and New Zealand, few people seem to be aware of it.

The main lessons I draw for debates on conferencing today are

** We should be wary of the great optimists for disillusionment and pessimism will surely follow.

** We should also be wary of dichotomous characterizations that draw a sharp contrast between retributive and restorative justice and between formal and informal justice.

** We should avoid the polarized positions of advocacy and critique, or to quote Matthews (1988: 2) we should "avoid the twin pitfalls of idealism and impossibilism." We would do better to examine "the specific details of ... various forms of informal dispute processing," and at the same time, consider "the political and social frameworks within which they operate."

II. AUSTRALIA AND NEW ZEALAND

A. THREE CONFERENCING MODELS

There are important differences in the aims and organizational features of conferences in Australia and New Zealand (Table 1; see also Alder and Wundersitz 1994; Hudson, Morris, Maxwell, and Galaway 1996). Good comparative research needs to recognize these differences. I will briefly compare conferencing models in New Zealand, Wagga/ACT, and South Australia.

1. New Zealand. In 1989 New Zealand passed new legislation for juvenile lawbreaking and welfare. It resulted from political struggles and accommodation between Maori and white New Zealanders on how to address the overrepresentation of Maori youth in the juvenile justice system. This legislation, which introduced family group conferences, is significant for two reasons: (1) it departed from the typical victim-offender

mediation model in that it included people who supported offenders and victims and (2) it was not an alternative or diversion to court but rather it was mandatory "when criminal proceedings are contemplated (non-arrest cases) or brought (arrest cases)" (Maxwell and Morris 1993: 10). The best published research available to date on conferencing is on the New Zealand model (Maxwell and Morris 1993; Morris and Maxwell 1993). For the 5 geographical areas in New Zealand studied by Maxwell and Morris in September-November 1990, about 30% of cases were conferenced, 10% were heard in court, and the remainder were handled by the Youth Aid section (Maxwell and Morris 1993: 20).

2. Wagga Wagga (NSW)/ACT. One Australian version of conferencing was developed during 1991-93 in Wagga Wagga (NSW) by a police sergeant and others there (Moore and O'Connell 1994). The initial impetus was to devise a "more effective cautioning scheme," but this expanded to include victim reparation and offender accountability. As the Wagga model evolved, it incorporated ideas from John Braithwaite's (1989) book, *Crime, Shame and Reintegration* (see also Braithwaite and Mugford 1994). The Wagga model grafts Braithwaite's construct of "reintegrative shaming" on a modified version of New Zealand's family group conferencing, in which conferences are run by a police officer.

Diversionsary conferencing has ended in Wagga, but it remains an important model for several reasons: (a) its proponents persuaded the Annual Meeting of Police Commissioners in 1994 that diversionsary conferencing should be trialled in other police departments (which happened in NSW, Queensland, and the Northern Territory); (ii) it has been marketed to police departments in the USA; and (iii) it is the model studied in RISE (the Reintegrative Shaming Experiment), a major field experiment, now being conducted in the ACT, which randomly assigns cases (both juvenile and drink driving) to conference and to court. That experiment began in July 1995 and is planned to run for 2 years.

3. South Australia. In 1993, South Australia passed legislation that restructured its juvenile justice system. It incorporated the idea of family group conferencing as part of a 3-tiered system of cautions, conferences, and court. Its philosophy is closer to New Zealand than to Wagga. This state, which handles the most cases per year with conferencing (about 1500 to 1800 per year) has been the least studied. A major report, just out, presents a statistical analysis of the juvenile justice system for fiscal year 1995, which includes an analysis of conferences and interviews with those involved in family conferencing (Wundersitz 1996; see also Wundersitz and Hetzel 1996). Like New Zealand, most cases in SA were handled by the police (informal and formal cautions were 56% of cases), but a higher fraction in South Australia are heard in court (30%) and a lower fraction are conferenced (12%) in comparison to New Zealand (Wundersitz 1996: 28).

Refer to Table 1 where contrasting dimensions of the three models are shown. The asterisked notes highlight the major differences.

B. CRITIQUES OF CONFERENCING IN AUSTRALIA

My remarks focus on four areas of critique: rights and due process, anti-racist, feminist, and potpourri.

1. Rights and due process

Conferencing may not respect the rights of young offenders, e.g., they may be coerced into admissions and agreements to do things; they may not be able to express their opinions. Sanctions may not be parsimonious and consistent (Bargen 1996; Warner 1994).

2. Anti-racist

There is a misappropriation of indigenous Maori culture in justifying the idea of conferencing in Australia or in justifying its applicability to other indigenous cultures. This critique by Blagg (forthcoming) has elements in common with earlier critiques of informal justice (Merry 1982, 1989).

Blagg bases his critique on the Wagga/ACT model. He suggests that

(a) reintegrative shaming may not be appropriate in conferences that involve Aboriginal and non-Aboriginal participants, especially when members of the latter group control the conferences;

(b) a likely development will be increasing powers of the police over Aboriginal youth, which is not a positive sign in light of the history of policing Aboriginal communities; and

(c) advocates of conferencing promote it AS an indigenous invention, denying (or overlooking) their own investment in particular neo-colonial forms of control.

For the Australian case, one element not developed by Blagg is cross-cultural differences in communication in the conference itself. Participants require "bicultural competence," that is, the "ability to use both Aboriginal and non-Aboriginal English [and ...] to switch between Aboriginal and non-Aboriginal ways of interacting" (Stubbs and Tolmie 1995: 136, who draw from Eades 1992). Among areas of confusion and misinterpretation between white justice and Aboriginal offenders and victims (or others) are the ways information is elicited, the meanings of silence, and the degree of precision required concerning "time, location, and quantity" in answering questions (Stubbs and Tolmie 1995: 136-37).

We should also be aware of class differences among

participants, which also have cultural and race-ethnic referents and linkages. Drawing from her work in the USA, Sally Merry (1989: 248) suggests that the mediation "process serves ... to train working class families in the more verbal, negotiative styles of conflict resolution favored by the middle .. class," rather than a "confrontational style of conflict management" that had been part of labor and grass roots political organizing.

3. Feminist

There are several areas of concern:

(a) Are women expected to do more of the "work of community" by their participation in conferences or by supervising offenders in the agreements made?

(b) What of the experiences of victims (especially female victims of male violence) in a conference? Will they (or their supporters) be able to speak effectively to offenders and their supporters? Or will the conference turn out to be another forum for revictimization?

For item (b), Julie Stubbs (1995) cites (i) problems of power imbalances in violence cases, which have been identified in the mediation literature (Astor 1995); (ii) research on conferencing in New Zealand, which showed that victims were the least satisfied of all groups and that a quarter of victims felt worse as a result of attending the conference (Maxwell and Morris 1993: 119-120), and (iii) research on mediation programs in England (Marshall and Susan Merry 1990, as summarized in Maxwell and Morris 1993: 189), finding that "when reparation and diversion are sought in one forum, the victim almost inevitably loses out ... diversion becomes the over-riding objective."

Putting the anti-racist and feminist critiques together, scholars ask, what does "community" mean to women in these contexts? (Razack 1994; Stubbs 1995). Writing from developments in Canada on "healing" First Nation men who have sexually assaulted female family members and kin, Razack (1994: 910, 907) suggests that "community has not been a safe place for women, and that "culture, community, and colonialization can be used to compete with and ultimately prevail over gender-based harm."

4. Potpourri

A potpourri of largely offender-centered concerns has been identified by Ken Polk (1994).

(a) Polk challenges the concept of "reintegrative shaming," saying that conferencing may not be psychologically stigmatizing, but it is organizationally stigmatizing. He wonders, how can "reintegration" happen in an institution of criminal justice?

(b) He argues there is too much focus on individual offenders and their family members, ignoring wider social issues such as inequality and social vulnerability.

(c) He point to previous research on diversion, which finds (i) a mixed record of effectiveness to deter future offending and (ii) unintended negative effects. He asks, do conferences do no further harm? Do they rope in a new set of "clients"?

(d) Polk, along with most critics, is concerned with the role of the police in the conferences. Should police officers be involved? Will conferences permit police greater coercive powers?

In sum, critics are concerned with (1) the reproduction of age, gender, race-ethnicity, and class relations in conferences; (2) putting rights and perspectives of offenders and victims into jeopardy (some are concerned with victims, others with offenders); (3) cultural misappropriation and cross-cultural misunderstanding; and (4) police abuses of power.

C. OBSERVATIONS OF CONFERENCES IN THE ACT AND SOUTH AUSTRALIA

From late September 1995 through the end of May 1996, I observed 30 conferences in the ACT and South Australia. Six were for drink driving in the ACT, and I am eliminating them from my analysis.¹

The final group of 24 cases is small (I have 10 from the ACT and 14 from South Australia). For the ACT, they represent all the cases I was able to observe during my time there. For South Australia, these were all the cases I could attend during 2 one-week visits to the state in late October (Adelaide, the city) and in early December (Port Augusta area, the country).

During my observations I took notes of what happened in the conferences and after them. I did not have a pre-set of questions or an observational checklist. Not until later, after I had observed all the conferences, did I attempt to create a systematic way of counting and classifying what I observed.

¹ More precisely, I began with 15 conferences each from the ACT and South Australia. For the ACT, I dropped the 6 drink driving cases; and of the 9 conferences remaining, one involved a cross-complaint, which I treated as two conferences. For South Australia, I dropped one of the 15 cases because the conference coordinator terminated it: the offender was not responsible for the charge, which came out early on in the conference.

For data reduction, I prepared a coding sheet for each conference, which included these questions:

** Did the conference coordinator give a clear explanation of conference aims and the legal options and context?

** What was my impression of whether young people understood their rights and options?

** What happened during the conference?

** Did offenders take responsibility for their actions?

** What was their behavior over the duration of the conference: no change, positive change, or negative change (i.e., became hardened)?

** Were victims able to convey the harm effectively?

** What was their behavior over the duration of the conference: no change, positive change, negative change (i.e., "revictimized" by the conference)

** What was the quality of interaction between the offenders' supporters and the victims or victims' supporters? Was there evidence of a positive connection or not?

** Who decided the outcome? Did the young person have any say?

** Was the conference successful?

Summary of results

The 24 conferences had 39 offenders and 30 victims present or represented (see Table 2). Conferences lasted about an hour and 15 minutes, not counting the time pre- and post-conference. There were an average of 9 participants at each conference (including the conference coordinator), although this ranged from 4 to 21. The majority of those at the conference were offenders and their supporters (55%); victims and their supporters were 25% of participants.

In Table 2, I combine the results of conferences observed in the ACT and South Australia, but there were differences between the two jurisdictions (indicated with a double asterisk and described at the end of the table).

About 45% of the offenses dealt with were graffiti and shoplifting, and 42% were of minimum seriousness (using the same scale as Maxwell and Morris 1993: 202). Just over half of victims were organizations.

In the conference itself, most offenders (62%) took responsibility for what they did, and I judged that most offenders (67%) were engaged with the process, wanted to repair the harm, or were responsive to victims. For the victims who were present at the conference, I judged that 43%

were "empowered" by the process in that a positive connection was made between them and offenders. However, I noted that 25% of victims were negatively affected or "revictimized" in some way. This category includes victims who were treated with disrespect (N=3) and those who were emotionally upset or distraught by what offenders (or their supporters) said (N=4).

These situations arose when victims did not have supporters with them or when offenders and their supporters outnumbered victims and disputed incident facts.

I had two conference-level measures of change (if any) in offender-victim relations during the conference. One is a measure of an improved or worsened state of relations between the victim and the offender. The other is a measure of an improved or worsened state of relations between the victim (and at times the victim's supporters) and the offender's supporters. For the first, about a third each of conferences saw improved, worsened, and no change in victim-offender relations. However, for the second measure, a more promising picture emerged. I noted that some positive connection was made between the offender's supporters and victims in two-thirds of the conferences. This finding suggests that goodwill can be established across victim-offender lines, but it may not be the offender who can communicate that message. Moreover, it suggests that fragile moments of "community building" can emerge from the conference. As an observer, I found that these bonds of recognition and understanding that occurred (typically between the offender's mother or father and the victim or victim supporters) were one of the most significant moments at a conference.

Agreements (as they are referred to in the ACT) or undertakings (South Australia) are supposed to be fashioned from a general, open discussion with the young person and others at the conference. I found, however, that in just half of conferences did offenders have some say (and often this was very little). There was an admixture of reasons for this result:

** The agreement was decided by the conference coordinator with no input from participants (this occurred in two conferences in the ACT).

** Only the conference coordinator suggested an idea; the offender and supporters and the victim were passive, seemingly without ideas.

** The offender's supporters and victims did most of the talking, and the offender was largely a bystander wanting to please. Most would ask, "what do you want me to do?" or "I'll do whatever you want" or "whatever you say" or "whatever you decide."

These results are similar to Maxwell and Morris' (1993: 110) for New Zealand: 45% of young people felt involved or partly involved in the process; for family members, however, the percent was much higher at 70%.

Was the conference a success? I judged a conference to be successful when offenders participated and took responsibility for what they did, when victims were able to communicate the harm effectively, when there was movement toward recognition and understanding between victims and offenders (or their supporters), and when there was discussion about the agreement. Most conferences did not meet these objectives (54%). However, most conferences did meet some of these objectives and could be called "partial successes" (70%).

D. DISCUSSION OF CRITIQUES

1. Rights and due process

(a) Legal context

All the conference coordinators gave some notice of rights, although some did this better than others. It was clear that a young person could decide to terminate the conference at any time and that the likely result would be that the case would go to court.

More uncertain to me as an observer were the implications of failing to reach an agreement. In South Australia, there was a reference of the case being "reviewed by the judge" when participants failed to reach agreement, but I learned later that this meant something different than what I originally thought. In the ACT, the conference coordinators said that the case may be reviewed "by the Department of Public Prosecutor," but I did not learn later why this was so. If I were a parent or offender, I would have inferred that I should be agreeable; otherwise, there was a good chance of court proceedings and the liability of a conviction. After putting questions to conference coordinators and others on these matters, I learned that the likelihood of going to court and being convicted (though ambiguous and uncertain) was lower than conference participants may have assumed.

(b) Participation and coercion

With some exceptions, the offender's parents saw the conference as a good thing for their son or daughter, and they wanted to be sure that their kids complied and performed well. That sentiment was shared by most of the kids (about two-thirds). But about one-third were disengaged from the process, and one-half were not involved (or only minimally) in discussions about what they should do to restore the harm.

Critics may be unduly focusing on the coercive power of the police in conferences. As common (if not more common) was the

coercive power of the adults (especially parents), unless there was a greater share of young people in the room.

A reflexive comment. At several conferences, the offenders and their supporters outnumbered the adults or took over the conference. (They were invariably boys.) They would laugh or not participate, treating the situation with disrespect. I felt annoyed with the offenders when this happened, but I can imagine that from their point of view, this was a "successful" conference. The age power relation deeply structures these events, and I wondered whether our research protocols reproduce it uncritically.

2. Anti-racist

There were only three conferences I observed that had Aboriginal participants. I will say something about these conferences, and in addition, draw from statistics in South Australia and Western Australia, and my field notes from Alice Springs (the Northern Territory) on conferencing.

For the conferences I observed: the dynamics work more smoothly when, in addition to offenders (or victims), there are Aboriginal participants as police officers (police aids) and as community workers or legal representatives. With this presence (in 2 of the 3 conferences I observed), there is not a major balance of power problem.

Blagg's observation of the overpolicing and criminalizing of Australian indigenous populations is surely right. I suspect that he is wrong, however, in claiming that conferencing will become the vehicle by which police are able to exercise added coercive power. Statistics from South Australia suggest a different problem: a far higher proportion of Aboriginal than non-Aboriginal youth are referred to court, rather than to the two diversionary routes of caution or conference (Wundersitz 1996: 31). A preliminary evaluation of conferencing in Western Australia finds that 16% of participants were Aboriginal, which is the same share of those who received formal cautions (Jones 1994: 8). In Alice Springs (the Northern Territory), a city whose population is 15% Aboriginal, a pilot project on conferencing over a 6-month period yielded a small number of conferences (Fry 1996).² Conferencing does not appear to be a vehicle by which the police are roping in more Aboriginal youth in South Australia, the Northern Territory, or Western Australia. Indeed, commentators argue that Aboriginal youth may not be offered diversionary options to the same degree as non-Aboriginal youth (Wundersitz 1996; Lincoln and Wilson 1994).

² During the 6-month period in 1995-96 when conferences were trialed, 22 conferences were scheduled. For the 18 where information was given, 9 had Aboriginal or Maori offenders and 9 had non-Aboriginal offenders (Fry 1996). Of those juveniles in custody in the Northern Territory, 69 percent are Aboriginal (Dagger and Atkinson 1996).

3. Feminist

(a) With respect to women's work in the conference or in supervising agreements, I learned the following (see Table 3). Conferences are highly gendered events: few offenders are female (15%), but women are 52% of the offender's supporters, and 58% of the victim's supporters. (Note that although women were 54% of victims, this includes their role in representing organizations for shoplifting offenses.)

More mothers than fathers were present at conferences, but women were not more involved than men in supervising agreements. I did not see any major gender differences in the small group work of participants.

(b) I found that a quarter of victims were treated with disrespect or were revictimized in the conferences. In New Zealand, Maxwell and Morris (1993: 119) also found that 25% of victims "felt worse" as a result of attending the conference. In the cases I observed, the main problem was the offender's denial of injury or of responsibility for the act; this was likely to happen when victims did not have supporters or were outnumbered by offenders and their supporters.

4. Potpourri

(a) Conferencing is organizationally stigmatizing.

By definition this is "true" in that it is an event recorded by the state. I would take issue with this criticism, however, in that no conviction is recorded as might occur in a court disposition.

I did see a positive change (or shift) for two-thirds of offenders. What I mean by this is NOT reintegrative shaming, which I would find difficult to determine from observing participants at conferences. Rather, I am referring to the offender's recognizing the victim and wishing to do something about rectifying the harm.

(b) Conferencing focuses too much on individuals and their family members.

Yes, this is true. But it is true of virtually all social and economic policies in Australia and elsewhere. One thing conferences can do is establish connections between offender's supporters and victims (or their supporters). This has the potential to create bonds, social glue, and community well-being that was not there before.

(c) Conferencing may produce similar findings as earlier research on diversion, e.g., mixed results on deterrence and system net widening.

(i) We do not know whether patterns of future offending

(or being caught) differ for those who go court or conference. The RISE research will be able to give us more definitive answers. For now, another question is: do we see differences in future behavior after "successful" and "less successful" conferences? I will be checking that with my cases.

(ii) As to whether conferences do no further harm, we should be aware of potential harm not only to offenders, but also to victims. For net widening, the concern is that more cases that would have received formal cautions in the past are now being conferenced. From South Australia, Wundersitz (1996: 10) finds "a definite increase in the [overall] number of young people coming to official notice" from 1993 to 1994.

An analysis of the composition of cases that are cautioned, conferenced, and sent to court, using the South Australian data for 1995 and 1996, will shed light on this question.

(d) Role of the police. Some police officers do a good job in the role of conference coordinator; others do not. I thought that the conference coordinators in South Australia were able, on balance, to run better conferences. It would be important to conduct comparative analyses of ACT and South Australia conferences on the differing coercive potentials of police officers in conferencing situations. In South Australia, for example, the offender and the police officer (a specially assigned "youth justice officer" with responsibilities for pipelining and attending conferences) are expected to reach agreement. This is not the case in the ACT. However, in the ACT, the police officer can use the role as conference coordinator to bypass full discussion on the agreement.

My observations suggest that the South Australia model may turn out to produce "better conferences." But it remains unclear what the effect of a "better conference" is on the future behavior of offenders or a sense of safety for victims.

A SHORT CONCLUSION

With some important exceptions, the current literature on conferencing and restorative justice is oriented in two ways:

1. One sings the praises of restorative justice: it provides glowing examples of how well the process went, how victims received offenders with open arms, and other intense moments of repair. The message is framed in dichotomous terms of how the values of restorative justice are opposite of and superior to those of retributive justice.

2. Another criticizes conferencing and informal justice practices, more generally, on the grounds of legal principle and the the potential for unchecked power imbalances. It stresses the lack of formal safeguards in informal processes and questions the optimism of the advocates.

Common to both is a framing of complex legal relations and justice modalities in oppositional, dichotomous, and hierarchical terms. And common to both is a lack of systematic empirical work.

Based on the small number of conferences I have observed, I would say that conferences are a good thing: they do more good than harm. They surely offer more communicative potential for victims and offenders than a court proceeding can. They have the potential to promote community goodwill and a positive sense of citizen engagement with legal authority. However, they are not a panacea and not without problems.

We would do well to learn some lessons from the previous decade on informal justice: to transcend the idealism-impossibilism duality, to see the interweaving of formal and informal elements in law and legal process, and to recognize the falsity of pitting restorative justice values against those that are termed retributive. The character of the debate in some quarters today suggests that we remain unable to "unthink" the adversarial, oppositional frame that so many wish to abandon in favor of a kinder, more responsive justice.

REFERENCES

- Abel, Richard (ed.) (1982) *The Politics of Informal Justice*, vols. 1 and 2. New York: Academic Press.
- Abel, Richard (1982) "Introduction." Pp. 1-13 in Abel (ed.), vol. 2 (see also his introduction to vol. 1, plus the contributors to vols. 1 and 2).
- Alder, Christine and Joy Wundersitz (eds.) (1994) *Family Conferencing and Juvenile Justice*. Canberra: Australian Institute of Criminology.
- Astor, Hilary (1995) "The weight of silence: talking about violence in family mediation." Pp. 174-197 in *Public and Private: Feminist Legal Debates* (Margaret Thornton, ed.). New York: Oxford University Press.
- Bargen, Jenny (1996) "Kids, cops, courts, conferencing and children's rights: a note on perspectives." *Australian Journal of Human Rights* 2(2): 209-28.
- Blagg, Harry (forthcoming) "A just measure of shame? Aboriginal youth and conferencing in Australia." *British Journal of Criminology*.
- Braithwaite, John (1989) *Crime, Shame and Reintegration*. Cambridge: Cambridge University Press.
- Braithwaite, John and Stephen Mugford (1994) "Conditions of successful reintegration ceremonies: dealing with juvenile offenders." *British Journal of Criminology* 34(2): 139-71.
- Dagger, Dianne and Lynn Atkinson (1996) *Persons in Juvenile Corrective Institutions*, No. 75, June 1996. Canberra: Australian Institute of Criminology.
- Eades, Diana (1992) *Aboriginal English and the Law*. Queensland University Law Society, Brisbane.
- Fry, Don (Detective Senior Sergeant) (1996) Reports gathered from Alice Springs Police Department, June.
- Hudson, Joe, Allison Morris, Gabrielle Maxwell, and Burt Galaway (eds.) (1996) *Family Group Conferences: Perspective on Policy and Practice*. Monsey NY: Willow Tree Press
- Jones, Neville (1994) *Juvenile Justice Teams--A Six-Month Evaluation*. Ministry of Justice, Strategic and Specialist Services Division, Western Australia.
- Lincoln, Robyn and Paul Wilson (1994) "Aboriginal offending: patterns and causes." Pp. 61-86 in *The Australian Criminal Justice System--the Mid 1990s* (Duncan Chappell and Paul Wilson, eds.). Sydney: Butterworths.
- Marshall, Tony and Susan Merry (1990) *Crime and Accountability: Victim-Offender Mediation in Practice*. London: Home Office, HMSO.

Matthews, Roger (1988) "Reassessing informal justice." Pp. 1-24 in *Informal Justice?* (Roger Matthews, ed.). Newbury Park CA: Sage.

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

Merry, Sally (1982) "The social organization of mediation in nonindustrial societies: implications for informal community justice in America." Pp. 17-45 in Abel (ed.), vol. 2.

Merry, Sally (1989) "Myth and practice in the mediation process." Pp. 239-50 in Wright and Galaway (eds.).

Morris, Allison and Gabrielle Maxwell (1993) "Juvenile justice in New Zealand: a new paradigm." *Australian and New Zealand Journal of Criminology* 26: 72-90.

New Zealand Ministry of Justice (1995) *Restorative Justice: A Discussion Paper*. Ministry of Justice, Wellington.

Norrie, Alan (1996) "From law to popular justice: beyond antinomianism." *Social & Legal Studies* 5(3): 383-404.

Polk, Ken (1994) "Family conferencing: theoretical and evaluative concerns." Pp. 123-40 in Alder and Wundersitz.

Razack, Sherene (1994) "What is to be gained by looking white people in the eye? Culture, race, and gender in cases of sexual violence." *Signs: Journal of Women in Culture and Society* 19(4): 894-923.

Stubbs, Julie (1995) "'Communitarian' conferencing and violence against women: a cautionary note." Pp. 260-89 in *Wife Assault and the Canadian Criminal Justice System* (Mariana Valverde, Linda MacLeon, and Kirsten Johnson, eds.). Centre of Criminology, University of Toronto.

Stubbs, Julie and Julia Tolmie (1995) "Race, gender, and the battered woman syndrome: an Australian case study." *Canadian Journal of Women's Law* 8: 122-58.

Warner, Kate (1994) "The rights of the offender in Family Conferences." Pp. 141-52 in Alder and Wundersitz.

Wright, Martin and Burt Galaway (eds.) (1989) *Mediation and Criminal Justice*. Newbury Park CA: Sage.

Wundersitz, Joy (1996) *The South Australian Juvenile Justice System: A Review of its Operation*. Office of Crime Statistics, Attorney General's Department, Adelaide, South Australia.

Wundersitz, Joy and Sue Hetzel (1996) "Family conferencing for young offenders: the South Australian experience." Pp. 111-39 in Hudson et al.

Table 1. Different models of conferencing

	NZ	SA	NSW (Wagga) and ACT
1. initial theory or aim*	avoid criminal proceedings; involve family	avoid criminal proceedings; deter offenders; protect community; victim reparation	more effective caution; offender accountability; victim reparation; reintegrative shaming
2. pipeline	all cases are considered	police have discretion to divert	police have discretion to divert
3. police role in conference	informant; rep- resents police & community	informant; rep- resents police & community	convene & run
4. political authority	legislated	legislated	local policy
5. offenses handled	all juvenile	minor** & more serious	minor** & drink driving (adults)

*In this category I focus on what the initial aim or emphasis was for conferencing, drawing from legislation (NZ and SA) or from local documents (ACT and Wagga). (How practices may differ across jurisdictions is another matter.) In NZ, there is greater emphasis given to involving family members in decision-making and in diverting offenders away from court in comparison to SA and the ACT (or the Wagga model). In SA and the ACT, there is greater emphasis on "repairing the harm" for victims and on "making offenders accountable." SA alone has elements of "protecting the community" and "deterrence," whereas the ACT (or the Wagga model) alone uses the theory of "reintegrative shaming."

**South Australia handles both minor and more serious offenses, although the initial legislation said "minor." Major indictable offenses, domestic violence, and sexual assault are not eligible for conferencing in the ACT. Discretionary judgments by the police in SA and the ACT are based on the offense and the lawbreaker's previous contacts with police authorities. This may explain why some seemingly trivial offenses, especially shoplifting, are conferenced.

South Australia and New Zealand use diversion from court conferencing only for juvenile lawbreakers, whereas in the ACT, conferencing may be used in some adult non-drink driving cases.

Table 2. Observations of conferences

Observations of 24 conferences in SA (N=14) and ACT (N=10).
There were 39 offenders and 30 victims present or represented.
All but one offender was a minor.

Average length of conference: 1 hour, 15 minutes

Average number of participants: 9 (range 4-21)

Composition of participants:

		(N=210)	
O's and supporters	116	55%	
V's and supporters	52	25	
cc's (includes police)	23	11	
police	18	9	
other	1	<1	
			(N=24 confs)
Offense			
graffiti	3	12.5%	
shoplifting	8	33	
stolen/damaged car	4	17	**
break and enter	3	12.5	
assault	5	21	
serious property damage	1	4	
Seriousness*			
1 (least)	10	42%	
2	0	0	
3	9	38	**
4	1	4	
5 (most)	4	16	
Type of victim			
organizational (school, store)	13	54%	
person-property	6	25	
person-violence	5	21	
Offender took responsibility		(N=39 O's)	
not fully: quiet or evasive	15	38%	
fully	24	62	
Offender's behavior			
no change	11	28%	
positive change, responsive	26	67	**
hardened, more negative	2	5	
Victim's behavior/experience		(N=28 V's)	
no change	9	32%	
positive connection made, "empowered"	12	43	
revictimized	7	25	
[V not present = 2]			

Victim-offender relations		(N=22 confs)
same, no change	7	32%
improved	8	36
worsened	7	32
[V not present = 2]		
Victim (or supporters) and offender supporters relations		(N=21 confs)
same, no change	5	24%
improved	14	67
worsened	2	9
[V or O's supporters not present = 3]		
Was the young person involved in fashioning the agreement or the undertaking?		(N=24 confs)
no, or only a little	12	50%
some or much involvement	12	50
Was the conference a success?		
no, a failure	1	4%
mostly a failure, some positive elements	6	25
mostly a success, some negative elements	6	25
a success	8	33
really great	3	13
Types of agreements or undertakings*		
community service	8	
community service and restitution	4	
restitution	3	
apology only	3	
take counselling	2	
make public announcement	2	
make repair (paint bench)	1	
donate money to charity	1	
Average (mean) length of community service:	28 hrs	
(range 8-80 hrs)		
Average (mean) amount of restitution:	\$58	
(range \$5-283)		

*In addition, offenders may have apologized and have been told to stay away from certain people or stores.

** ACT and SA differences: ACT offenses were mainly shoplifting and were less serious than those in SA; community service hours were lower in the ACT than in SA. In SA, there was more evidence of positive change in the offender's behavior and of improvement in the V-0 relationship. This is likely because there was a higher number of organizational victims, especially stores, in the ACT group.

Table 3. Gender and conferencing

3a. Female share of participants

Of all the conference participants (N=210), 40% were female

	N fem/total	female share (%)
Offenders	6/39	15
Offender's supporters	40/77	52
Victims*	15/28	54
Victim's supporters	14/24	58
Police	3/18	17
Others (cc's)	6/24	25
	84/210	40%

*Many were organizational victims, e.g., security personnel for stores.

3b. Offender's family members at the conference

	(N=37)*
mother or mother and others (no father)	40%
father or father and others (no mother)	14
mother and father	30
no parent or family member present	16

*In two conferences, there were two offenders who were brothers; thus, the N dropped from 39 to 37.

3c. Supervision of the agreement or undertaking

	N
by victims or offender's supporters	16
male only	6
female only	3
male and female	7
by the conference coordinator	8

NOTE: Four victims supervised voluntary labor or community service by offenders. All were men.

3d. Of the 28 victims present at conferences, I judged 3 to have been treated with disrespect and 4 to have been emotionally distraught as a result of the conference. Of these, 6 were women. The one male was an Aboriginal boy.