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Conferencing as a Response to Youth Crime

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Abstract

There is a growing interest in the UK in approaches to offending, which are predicated upon the principals of restorative justice. Until recently, practical developments have been limited primarily to mediation and reparation schemes - usually operated by voluntary organisations as an alternative to prosecution in the adult courts - although the interests of victims are increasingly featuring on the policy agenda. More recently, however, interest has been shown in the use of family group conferences as an alternative model to, for example, the children's hearing system for responding to young people who offend. This paper considers issues presented by different models of family group conferencing in Australia and New Zealand to identify the potential benefits and limitations of adopting such an approach.

Introduction

There is growing interest in Scotland in approaches to offending which are predicated upon the principles of restorative justice. Until recently, practical developments have been limited to mediation and reparation schemes - usually operated by voluntary organisations as an alternative to prosecution in the adult courts - although the interests of victims are increasingly featuring on the policy agenda. More recently, however, interest has been shown in the use of family group conferences as an alternative method to the children's hearings system for responding to young people who offend. This paper will consider issues presented by different models of family group conferencing in Australia and New Zealand in order to identify the potential benefits and limitations of adopting such an approach in Scotland.

The paper is based on a study trip to Australia, undertaken in 1998^[1], in which we observed conferences for young offenders and interviewed police, prosecutors, magistrates, conferencing staff and researchers involved in evaluating conferencing. We consider the evidence that we collected in the context of research literature on conferencing. During our trip we observed two different models of conferencing: diversionary conferencing and pre-sentence conferencing. We shall briefly describe the background to conferencing as a preliminary to presenting the characteristics of the types of conferences we studied and some of the issues associated with each. We shall then discuss the potential of conferencing as a response to criminal behaviour in Scotland.

Background to Conferencing

Conferencing is an example of a restorative justice process.

Restorative justice is about healing the harm done to victims and communities as a result of criminal acts, while holding offenders accountable for their actions. (Schiff, 1998)

Restorative justice is centrally about *restoration*: restoration of the victim, restoration of the offender to a law-abiding life, restoration of the damage caused by crime to the community.

Restoration is not solely backward-looking: it is equally, if not more, concerned with the construction of a better society in the future. (Marshall, 1999: 7, original emphasis)

For justice to be restorative it must evidence

- Consistent involvement of all parties affected by the crime
- A focus on the development, implementation and maintenance of healing and reparation rather than retribution and punishment
- Satisfaction with the process and the outcome on the part of both the victim and the offender. (Schiff, 1998)

We should note the distinction between processes and outcomes. For the present we simply note that some outcomes of traditional criminal justice processes, such as community service, may have restorative elements to them and that there is no *necessary* link between processes aimed at being restorative and genuinely restorative outcomes. How far any system of justice is restorative in relation to each of these elements is an empirical question.

The origins of contemporary interest in conferencing lay in dissatisfaction, in New Zealand, with justice processes which offered little victim involvement and which often resulted in discriminatory outcomes for the Maori population. Recognition of these problems brought the legitimacy of traditional justice processes and their outcomes into question. Conferencing was seen as providing a mechanism both for involving victims more directly in the justice process and allowing Maoris to return to their own system of justice. As Maxwell and Morris (1994) explain

....traditional Maori practice involved the victims, the offender and the families of the victim and the offender, firstly, in acknowledging guilt and expressing remorse and, secondly, in finding ways to restore the social balance so that the victim could be compensated by the group and the offender could be reintegrated into the group.

Issues of cultural relevance, who is involved in the justice process and the nature of their involvement are central to restorative justice in general and conferencing in particular. Responses to these issues have differed across jurisdictions and often reflect varying social and political priorities. They are expressed through the range of objectives which are apparent within different conferencing models. These can include: redressing harm to victims; managing the offender in the community; encouraging community involvement in the criminal justice process.

The objectives of conferencing in New Zealand include: holding the young offender accountable while enhancing their welfare; diversion from court; the use of detention as a last resort; protection of children's rights; participation in decision making by young people and their families; strengthening of family bonds; victim involvement; consensus decision making; and cultural appropriateness (Maxwell and Morris, 1994; Borgen, 1996). These objectives are apparent in varying combinations in the different approaches to conferencing which have subsequently developed in Australia (Alder and Wundersitz, 1994a).

The first development of conferencing in Australia was in 1991 at the city of Wagga Wagga in New South Wales (Moore and O'Connell, 1994). The model, which was based on the theory of Reintegrative Shaming developed by Braithwaite (1989), aimed to shame the young person for their offending behaviour and then reintegrate them into the community. Unlike the New Zealand model, there was no explicit objective to repair family bonds by providing young people and their families with access to appropriate resources and services. Since then conferencing has developed across Australia, taking a variety of forms and operating at different points in the criminal justice process. It was first introduced in the UK by the Thames Valley Police, using the Wagga Wagga model as adapted by the Australian Federal Police in Canberra in the RISE project (Re-integrative Shaming Experiment).

Model Conferencing	of Statutory Basis?	Objectives	Point which conferencing operates	at What is it alternative to?	Who refers (1) and who convenes (2)	Who is referred	Legal Representation	Who ratifies the agreement
Canberra ACT	No	Re-integrative shaming	Prior prosecution	to Charge and prosecution in court	1) Police 2) Police	Drink drivers; juveniles No serious offences	No entitlement	Police
Victoria	No	Build support for/empower the young person; victim/offender reparation	At point of sentence	of Supervisory sentence	1) Court; 2) Non-government Youth Agency	Young people at risk of a supervisory sentence	No entitlement but a present ensure fair agreement	Court lawyer to fair
South Australia	Young Offenders Act 1993 (SA)	Bring together those affected by offending and reach consensus regarding 'an appropriate outcome'	3 tier system of cautioning and conferencing court.	Not an alternative	1) Police 2) Dept. of Social Welfare Youth Justice Co-ordinator	All but most serious	Entitled	Not ratified by court
Queensland	Juvenile Justice Act 1992	Hold young person accountable; put right to damage to victim; involve family, victim and offender in decision-making; re-integration of young person	Prior prosecution, as alternative to or prior to sentence	Prosecution or sentence	1) Police or court 2) Department of Justice Community Conferencing Project	Juveniles and adults; all but most serious offences	Young person and victim have right to legal advice	No formal ratification but outcomes guided by legislation
New Zealand	Children, Young Persons and their Families Act (1989)	Justice; diversion; victim involvement; strengthening families; family participation and consensus decision-making; cultural appropriateness	Prior charge instead of youth disposition	to Additional or not of alternative court	1) Police or court 2) Department of Social Welfare Youth Justice Co-ordinator	All offenders 14-17 years who admit offence; all except most serious	Entitled and paid by state if court-initiated referral	Youth court if court-initiated referral
Western Australia	Young Offenders Act 1994	Minimise intervention; hold young person accountable; empower parents and victims	Prior prosecution or alternative to prosecution	to Prosecution or court	1) Police or court 2) Ministry of Justice Juvenile Justice Team	Juvenile; serious offences excluded	No entitlement	Juvenile Justice Team
New South	Young	Encourage	Prior	to Prosecution	1) Police	Juveniles	Legal	Department

Wales	Offenders discussion; prosecution in court Act 1997 produce negotiated response to offending; provide offender with support and services to overcome offending	2) Serious representative of Juvenile Department offences in advisory Justice of Juvenile and first capacity Justice offenders Facilitators excluded
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Table 1: Features of the Conferencing Process

As Table 1 illustrates, in some parts of Australia conferencing has a statutory basis in juvenile justice legislation. In New Zealand the Children, Young Persons and Their Families Act 1989 placed responsibility for making decisions about children and young people on their immediate and extended families and significant other members of the young person's community. A court proceeding cannot take place unless there has been a conference (Markiewicz et al. 1997a), leading to a description of conferencing in New Zealand as 'the decision making hub of juvenile justice..' (Bargen 1996:211). A statutory basis for conferencing may provide certain safeguards, such as: setting out rights which must be guaranteed to victims and offenders in the process; guaranteeing privacy and confidentiality; preventing information disclosed in a conference from being subsequently used to pursue further charges against the offender; and preventing the imposition of unduly harsh or inappropriate outcomes.

Juvenile justice conferencing has been variously described as, 'a method of community policing for processing criminal suspects' (Sherman et al., 1994) and a mechanism for 'mobilising community support for avoiding offending' (Sherman et al., 1994). Alder and Wundersitz (1994b: 7) suggest that the essential features of juvenile justice conferences are as follows:

...a family group conference is intended to be a relatively informal, loosely structured meeting in which the offender and his or her extended family (with a legal advocate in some systems) are brought together with the victim, her/his supporters, and any other relevant parties to discuss the offending and to negotiate appropriate responses.

As we can see from column three in Table 1, different conferencing models have similar, but not identical objectives. Indeed, there may be tensions between objectives relating to victims and those relating to offenders. Criminal justice institutions, policies and practices embody varying assumptions about the causes of crime and the appropriateness of sanctions. They can be characterised as placing greater or less emphasis upon holding the offender responsible and accountable for his/her behaviour, as attaching more or less significance to the social welfare of offenders and as involving victims to a greater or lesser extent. This is no less true of conferencing. As one interviewee told us

....the whole principle of conferencing as we see it is that it is an opportunity for people to resolve their own problems..... you get into a room all the people affected by this offence and you provide them with the opportunity to discuss it and resolve it themselvesand also for those who care about the offender in particular to have the opportunity to take a greater role in their life.

The underlying principles and aims of conferencing give rise to issues of organisation and practice which have implications for justice and crime control. In order to illustrate this two examples of conferencing which are currently in use in Australia are considered in some detail.

Models of Conferencing

Diversionsary Conferencing

We looked at an example of diversionsary conferencing, run by the Australian Federal Police in Canberra, which is based on an approach developed in New South Wales. It was set up because of police interest in working with the model developed in Wagga Wagga, and academic interest from researchers at the Australian National University and the Australian Institute of Criminology in evaluating conferencing in comparison with traditional court processes^[2]. The approach taken is that arrestees can be diverted from being charged if they agree to attend a conference to discuss their offence and if they adhere to any resolution that is agreed at that conference.

A conference consists of a meeting of victims(s) and up to four supporters (6 in drink driving cases) - family & friends; the arrestee(s) and their supporters; other interested parties - e.g. the arresting officer; a facilitator, a specially trained police sergeant who is not the arresting officer. Where there is no direct victim, a community representative, such as someone from victim support who has been affected by drink driving will also attend. The higher number of supporters for an arrestee in a drink driving case increases the likelihood that at least one supporter will also have been personally affected by drink driving. The principle underpinning the conference is that the action of the arrestee should be condemned, but the arrestee should not be rejected.

Participants in the conference are seated in a circle. The facilitator asks the arrestee to say what happened, how they have felt about the crime since committing it, what they think they should have done. The facilitator then asks the victim and their supporters to describe the physical, financial and emotional consequences of the crime. There is often an apology to the victim. A plan of action is developed by the conference and written up by the facilitator and signed by the arrestee. The plan can include, for example, reparation or community work.

'The conference usually ends with re-acceptance of the offender into the community of conference participants after his contrite rejection of the crime.' (Sherman, et al., 1994: 2) This is known as reintegrative shaming.

Arrangements

Diversionsary conferencing in Canberra is an extension of police powers to caution offenders. The rules governing the process of conferencing have the status of internal police guidance and were devised by police and the research team who are evaluating conferencing there. They have been agreed by a committee which oversees the operation of conferencing. The committee consists of magistrates; police; prosecutors; the Law Society; the Bar Association; the research team; representatives from the Victims of Crime Assistance League and other community organisations.

The cases referred to conferences in Canberra are cases which would otherwise go to court and which involve: drunk drivers; property offenders under the age of 18; and violent offenders under the age of 30. Cases can only go to a conference where there have been full admissions by arrestees. Conferences are normally held within 3 to 4 weeks of arrest although they can take up to 8 weeks to arrange if there are difficulties getting everyone together^[3]. The victim is contacted, information is given to them about conferencing and the potential for a diversionsary conference to be called in their case is explained to them. Most victims attend the conference. Arrestees are also told about the potential to have a conference, that they can attend and that if a suitable agreement is reached and successfully completed, their case will not go to court. At the time of organising a conference the facilitator will not have information about the record of the arrestee(s). This is not seen as relevant since the conference will focus on the offence rather than the offender. Arrestees may seek legal advice, though they are not entitled to legal advice before giving their agreement. Arrestees are not entitled to have a legal representative at the conference though it is possible for them to bring a lawyer as one of their supporters. If they did this then the lawyer's role and the status of their comments would be no different to that of any other supporter.

Criminal Justice Views

There were mixed views about the value of conferencing amongst our interviewees, although everyone valued it for dealing with juveniles. Police at both the operational and the management level were very enthusiastic and saw it as a way of maximising the impact of their powers to caution. They wanted to see conferencing extended to a broad range of crimes, including drugs offending and domestic violence, which is a specific offence in Australia. They hope that their experience of conferencing so far will enable them to develop the guidance and approach necessary for this to happen. While other interviewees were also generally positive about conferencing, they were more cautious about extending its use at this early stage in the criminal justice process which is not under the supervision of the court. In part, this was associated with issues of principle. As one interviewee put it, '...You have got the police as the prosecutor, judge and jury...'

But there were also a range of practical issues, to do with difficulties which could arise in cases. For example, difficulties arise where some arrestees in a case agree to a conference but others do not; or where a conference breaks down, perhaps because, in the course of the conference an arrestee makes counter-allegations against a victim, or because an arrestee doesn't genuinely participate in the conference. There can also be problems when an arrestee doesn't fulfil their conference agreement. Although at conferences arrestees are warned that if they fail to complete their agreement the case will be referred to the Director of Public Prosecutions, in practice there is difficulty in proceeding in court against accused in cases which have previously been referred for conferencing.

In short, for criminal justice interviewees other than police, "accountability measures and enforcement mechanisms for diversionary conferencing....are not sufficient.." for there to be support for extending conferencing to a wider range of offences such as drugs offences. These interviewees wanted to see statutory safeguards developed.

There was a recognition amongst all interviewees that conferencing is expensive and it is resource intensive for the police. Nevertheless, while police recognise that conferences could, in principle be run by other organisations, they saw their involvement as establishing the legitimacy of the conferencing process in the eyes of offenders and victims. Police made it clear that they would be unhappy if their role were restricted to one of enforcing conference procedures by, for example, arresting those who failed to turn up for a conference. If responsibility for conferencing were removed from them they indicated that they would be likely to withdraw their support and would therefore not refer cases. Police said that they would only accept another organisation running conferencing if it were to take place at the pre-sentence stage, when the conferencing process would have the backing of court sanctions.

Conferencing in Canberra is the subject of a major randomised controlled trial which is evaluating: whether offenders and victims find conferences fairer than court; whether there is a difference in the level of repeat offending for offenders who have been to a conference and for those who have been to court; and, the costs of conferencing compared with the costs of court. The evaluation is still in progress and there are no findings currently available on recidivism or on costs. Preliminary findings are that offenders find conferences more stressful than court and that overall, responses on a number of questions indicate that both victims and offenders perceive conferences to be fairer than court.

Pre-Sentence Conferencing

In Victoria responsibility for group conferencing with young offenders has been assumed by a voluntary organisation - Anglicare - and it operates as a pre-sentence option in the youth courts. The pilot programme in Victoria - which accepts referrals from children's courts in Melbourne - was established in 1995. It was funded initially by a philanthropic trust and hosted by the Mission of St James and St John, who had piloted family decision-making in the child protection area. The project subsequently received government funding and the organisation is now referred to as Anglicare. Unlike most of the Australian conferencing projects which are police-based and which are predicated upon the principles of reintegrative shaming, the New Zealand model of juvenile justice group conferencing formed the basis of the Victoria pilot. As Markiewicz et al. (1997a) note, the aims of the conferencing pilot were 'to improve decision making with young offenders, as well as reducing the rate of juvenile offending, and diverting young people away from state programs' (p.vii), with these aims being achieved by 'utilising the resources of the family and significant others, and empowering them in the decision making process' (Markiewicz et al., 1997a, p.1). As one interviewee explained:

The emphasis in terms of our conference is very much resourcing young people as well. So you are looking at who in the young person's world...is going to be able to help them make some decisions about addressing their offending behaviour. The other side of it is about them taking responsibility and being able to account for what they have done. We try to do it in a very much consequential learning way - not around blaming and shaming them. It's very much around getting into their mind to see what was going on at the time of the offence.

Therefore although the concept of reparation to the victim is intrinsic to the Victoria model, the emphasis primarily is upon the offender and his/her offending behaviour.

Arrangements

The target group in Victoria is young people aged between 10 and 18 years who have one or more previous convictions for which they received non-supervisory orders, who are facing sentence for a second or subsequent offence which is likely to result in the imposition of a supervisory order (such as a probation, youth supervision or youth attendance order⁽⁴⁾) and who agree to participate in the conferencing process. Referrals are made by the children's court, with the majority involving young people convicted of a range of property offences. By September 1997, 61 young people had participated in 59 group conferences, with all but one resulting in the generation of a conference plan.

Conferences bring together the young person, family members, any other people identified by the young person, a police informant (who may not necessarily be the arresting officer but who is present to put forward the details of the case), the victim or a representative from a victims' organisation (VOCAL) and community supporters who may be professionals and who have been identified as having the potential to help address the young person's problems. A solicitor is also present at each conference, not to represent the young person in an adversarial context but, rather, to advise in respect of the content of plans and ensure that due process is observed. Conferences consist, on average, of between 12 and 15 members and last, on average, around three hours (Markiewicz et al., 1997b).

The Victorian model has three distinct stages. The pre-conference stage involves preparatory work for the conference, which includes engaging with, assessing and briefing the young person and their family and the victim; briefing the police informant, solicitor and community agencies; making practical arrangements for the conference; developing a strategy for the conference; and developing a written assessment of the young person and his/her family within a community context.

The second stage is the conference itself which involves three consecutive steps. First there is a process of sharing information about the young person and offence. Second, the young person and the family have their own 'private time' to develop a conference plan. Plans consist of two strands. One strand is aimed at making reparation to the victim for the offence and may include, for instance, making an apology, making financial reparation or carrying out unpaid work. The second strand identifies activities or courses of action to be undertaken by the young person as a means of preventing further offending, often with the assistance of

community supporters. The third step involves the reconvening of the full conference to discuss the proposed plan and provide the opportunity for the young person to accept the plan following consultation with his/her legal representative.

The third stage in the process consists of the convenor presenting the plan to the court and making the necessary arrangements for its resourcing and review. This will include identifying who - for instance, family member or professional - is responsible for monitoring fulfilment of the plan. The second evaluation of the Victoria pilot (Markiewicz et al., 1997b) showed that in more than three-quarters of cases the conference plan was accepted as a condition of a good behaviour bond while a supervisory order was imposed in around a fifth of cases and sentence deferred in the remainder.

The Effectiveness of the Model

The Victoria pilot has been subject to two evaluations which have focused both on process and on a range of outcome measures (Markiewicz et al. 1997a, b). These studies indicated that young people, victims, family members and professionals tended to be positive in their appraisal of the process, though some professionals and family members expressed reservations about its potential efficacy in terms of reducing re-offending. Ninety per cent of conference plans were said to have been implemented partially or in full, with plans which were monitored by professionals being more often fulfilled than those monitored by family members. A comparison of re-offending rates between conference participants and a group of young people given probation suggested that the former were slightly lower than the latter, though the low number of cases prevents any firm conclusions being reached in this regard.

Conferencing was, on the other hand, acknowledged to be very resource intensive and costly, with cases taking, on average, 38 hours to complete and costing, on average \$3500^[5] (Markiewicz et al., 1997b) and there were significant delays between the original court case and the convening of the conference which arose for a variety of practical and organisational reasons. In her critique of juvenile justice group conferencing, Barga (1996) argues that the model of conferencing developed in Victoria contains many of the procedural safeguards that are absent in other models, by being operated at the pre-sentence stage by an organisation which is independent of the criminal justice system and including legal representation, but that its resource-intensiveness may serve as a disincentive to its adoption on a wider basis.

Of all the schemes presently operating in Australia, this Victorian pilot appears to have the potential to meet many of the criticisms mentioned in earlier sections of this article...[but it] is still in its infancy and may prove to be unacceptable to governments on economic grounds. Enormous resources (both financial and human) will have to be expended on each conference in order to meet the ambitious goals of this project. (Barga, 1996, p. 226).

The Victoria juvenile justice group conferencing project does not yet have a statutory basis. It is not clear precisely where it best fits within the juvenile justice and its potential size and scope have yet to be properly established system (Markiewicz et al., 1997b).

Advantages and Disadvantages of the Models of Conferencing

The two models of conferencing we have described share certain broad objectives. However, they embody different theoretical assumptions about the nature of youth crime and how, therefore, it might most effectively be addressed. This manifests itself most clearly in the differing emphases that are placed in the conferencing process upon the offender and the offence which in turn determines the priority accorded to specific objectives and shape the procedures and practices which have evolved.

The Canberra model focuses more upon the offence than upon the offender and has as its central concern the accountability of offender for the harm caused. The Victoria model, in contrast, rejects shaming as an objective of conferencing and, instead, promotes conferencing as a means both of holding the offender accountable and accessing services and supports which will help the young person avoid offending in future.

Table 2 outlines some strengths and weaknesses of the two models we have been discussing. We noted earlier that different models of conferencing give rise to different organisational issues as well as issues of justice and crime control. As we mention some of these issues in relation to the process and outcomes of conferencing, we shall highlight key points about safeguards and rights which need to be considered.

	STRENGTHS	WEAKNESSES	
Diversionsary Conferencing	Police led model - emphasises pro-victim stance "..victims ... rightly feel that this is not a level playing field...the starting point is that this person has done something wrong....."	Police led model - police not trained or resourced to identify when offender or family needs information or help to access support services	T a b l e 2 : S t r e n g t h s a n d W e k n e s s e s O
	Overall offenders see conferencing as fairer than the court?	Limited arrangements to protect offender rights	
	No criminal charge	Arrestees may agree to conferences even where sufficiency of evidence is borderline.	
	Relatively short delay between offence and conference		
Pre-Sentence Conferencing	Potential for net-widening reduced since conferencing follows a conviction	Resource intensive - significant amount of preparatory work undertaken prior to conference	
	Improved mechanisms for protection of offender rights e.g. legal representation/advice at conference Less attention to victims: conferencing aims to address offenders' problems rather than provide redress for the offence		
	Offenders less likely to agree to avoid alternatives	Delays in arranging conferences mean long period of time between offence and disposition	
f	Two	Models	of Conferencing

Process Issues

Figure 1 outlines police and court responsibilities in traditional justice and conferencing processes. Processes of justice operate through a series of stages which incorporate into them arrangements for assessing the quality and legality of procedures. Typically these involve different justice agencies with different responsibilities which should operate as an independent check on earlier stages in the process. Thus, police will collect and assess evidence; prosecutors will assess whether what the police have discovered constitutes a case to answer; and court processes will test the strength of the evidence and, ultimately, reach a verdict. As others have pointed out, in principle, restorative justice could be applied at any point in the criminal justice process - although typically it tends to be used either prior to conviction (diversionary conferencing) or prior to sentence (Bonta, et al., 1998).

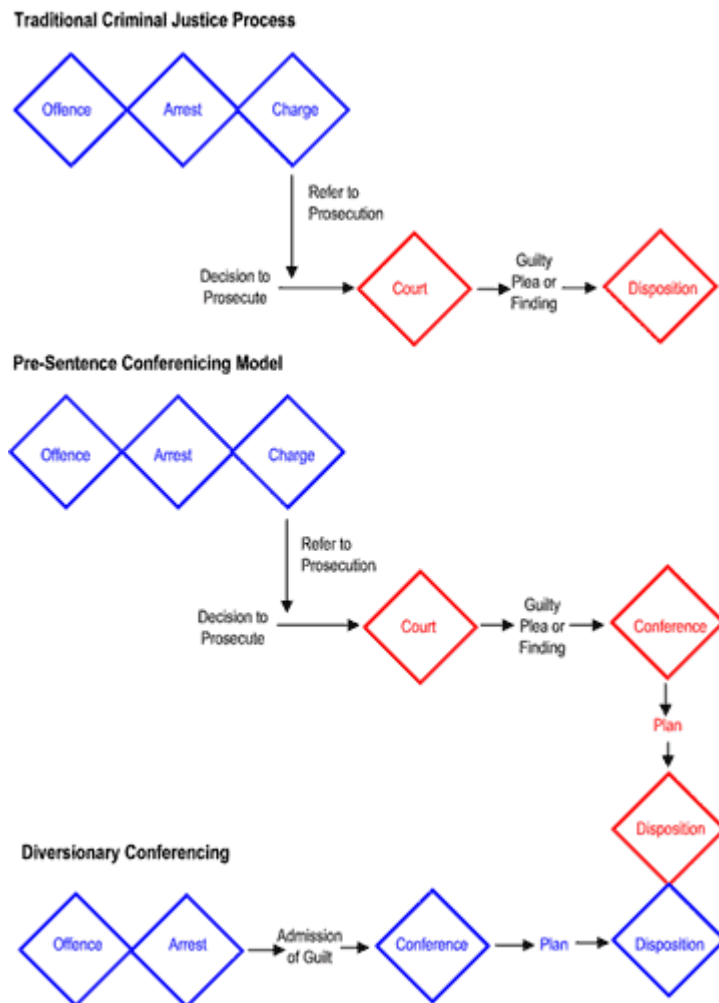


Figure 1: Police and Court Responsibilities in Traditional Justice Process

Within the traditional criminal justice process the emphasis of activity is on establishing responsibility for the offence and only limited attention is given to the disposition of a case. In conferencing, the focus of activity is on the disposition as conferencing is not about adjudication. Research in Canberra has found that the average court case for young offenders lasts 13 minutes and the average conference lasts 71 minutes. Similarly, for drink driving the average court case lasts 6 minutes, compared with an average of 88 minutes for a conference (Sherman and Strang, 1997).

In all systems adjudication goes to court if it is an issue. Both the traditional criminal justice process and the pre-sentence conferencing model operate with a presumption of innocence until guilt is established at court. The diversionary conferencing model operates with an admission of guilt prior to an accused being charged. This means that safeguards which would normally accompany an adjudication process are not in place and it is not clear that the safeguards available within conferencing arrangements are always sufficient. Police-led diversionary conferencing, in particular, has been criticised for its failure to pay due attention to the rights of offenders in the conferencing process (e.g. Polk, 1994; Sandor, 1994; Warner, 1994; Bargan, 1996).

It is important to note the distinction between safeguards in principle and in practice. For example, criminal justice interviewees in Canberra mentioned instances of using conferencing where the sufficiency of evidence for a case was borderline. Thus, the value of avoiding arrestees being charged needs to be weighed against the potential for arrestees to feel pressured to plead guilty and accept outcomes, in circumstances where it is unclear that a court would consider that there was sufficient evidence for a case to be answered.

Despite police telling offenders that if they did not honour their conference agreement they would be prosecuted, it was not clear that a prosecution would be competent under those circumstances. In one instance in Canberra where an offender had not kept their agreement, the police had put the case forward for prosecution; the case went all the way to the high court. The judgement there was that it was not competent to prosecute a case which had previously been considered as suitable for conferencing. Further clarification of this situation was still under consideration at the time of our interviews.

Some of these issues may arise because there is no separation between the agency responsible for solving crime and that responsible for conferencing. In some models conferences are dealt with by separate Youth Justice Co-ordinators who may be located within welfare organisations.

In contrast to the clear distinctions which are made in courts between proceedings and information which are public and those which are private, the status of conference discussions and of information which may be disclosed is not always clear. From our observations and interviews we found that there were no real safeguards to protect privacy of information disclosed during a conference. In particular, though at the start of conferences in Canberra police refer to the Privacy Act, as one interviewee told us

...the reference to the Privacy Act...is...a device that the police are using. The Privacy Act actually has no binding power if people want to...disclose what they heard there is no action that can be taken.....you are pretty powerless in trying to control children in terms of what they will reveal.

We noted earlier, when pointing out the diversity of objectives in Table 1, that there were potential tensions between objectives relating to victims and those relating to offenders. These may be evident in the arrangements for offenders or victims to access services and they may also be played out through the interactions within individual conferences. For example, within the Canberra model, while there was the capacity for the conference co-ordinator to refer a young person to other agencies if a need was identified, there was no formal mechanism for this, or for identifying or assessing need. Although we were told that, if approached by the offender or their family, an individual police officer, at their personal discretion, might give occasional support to help an offender complete their agreement.

Fundamental to all conferencing is the idea that all parties should have an opportunity to contribute to the discussion about what should happen in an individual case. Yet the use of the 'community' in conferencing has the potential to leave arrestees vulnerable to lack of support, since the status and role of 'supporters' can sometimes be ambiguous. For example, a stated reason for allowing accused in drink driving cases to have more 'supporters' was to increase the likelihood that supporters would include someone who had been directly affected by drink driving. As one researcher has noted,

Research to date has not determined how much coercion is associated with restorative interventions. (Schiff, 1998)

The costs of conferencing are likely to be influenced substantially by the model adopted. As Figure 1 shows, pre-sentence models of conferencing introduce a new stage which is overseen by the court. The Victoria model demonstrates that if a primary objective of conferencing is reducing the risk of further offending through the mobilising of community supports, this process can be time-consuming and resource intensive. A significant amount of preparatory work is required with the offender and his/her family prior to the conference to identify the factors which have contributed to the young person's behaviour and to identify individuals or agencies in the community who can provide relevant services and support and who may participate in the conferencing process.

The model in Canberra is less resource-intensive since the primary purpose of the conference is to allow the airing of different perspectives on the offence and to reach an agreement as to what constitutes a satisfactory outcome. However, conferencing may still have cost more, overall, than a court case which resulted in the imposition of a good behaviour bond, principally on account of the police time involved in arranging and convening a conference. Given the concerns that have been expressed about the net-widening potential of diversionary conferencing (e.g. Polk, 1994), it cannot be assumed that conferencing always operated as an alternative to court. The cost effectiveness of conferencing will also be influenced by conferencing's impact upon subsequent re-offending in comparison with alternative responses to offenders. It is to issues associated with the outcomes of conferencing that we now turn.

Outcomes

Preliminary results of the evaluation of conferencing in Canberra indicate that victims can benefit from the process of conferencing, which can provide an opportunity for victims to voice their experience of the crime and its impact, as well as benefits in conferencing outcomes. Early results from the evaluation indicate that 86% of victims invited to conferences actually attended. Victims were more likely to receive an apology from offenders (74%) sent to a conference than from offenders who are sent to court (11%). Victims were also more likely to receive some reparation for the harm of the crime (83%) than victims whose cases were dealt with in court (8%) (Strang and Sherman, 1997). These results are more positive for victims than evaluation results have been for conferencing elsewhere (for example, Maxwell and Morris, 1993).

The agreements reached in conferences can take a variety of forms, often involving the payment of compensation to the victim or the undertaking of unpaid work (either for the victim or for the community in general). One of the advantages of operating conferencing on a statutory basis is that statutory limits can be placed on the nature and scope of agreements reached. Two considerations are important in this respect: ethics/human rights and the proportionality of outcomes. Ethical and human rights questions were raised, for instance, by one criminal justice interviewee, discussing drink driving conferences in Canberra, who was concerned about the need to limit the range of options for outcomes of conferences:

...I know it was only jokingly said at the time but, it wasn't a joke, about someone who had offered to donate a kidney as a result of an accident, road trauma thing and (another interviewee) had said to me since then, "That's an urban myth" and I said, "No it's not because I was with the police officer that was involved in the diversionary conference at the time"....

While the interviewee indicated that the kidney donation offer was not accepted, and, as the quote indicates, the example is controversial, we were told that an outcome of conferences for drink drivers had, on occasion, been that they should donate blood.

The issue of proportionality was raised, particularly in relation to diversionary conferencing where some interviewees maintained that most cases eligible for the conferencing experiment, but which go through court, end up with a good behaviour bond 'a slap on the wrist' as one interviewee described it. Results so far from the evaluation of RISE indicate that the average 'fine' (payable to a community charity) in a drink driving conference is \$120 while the average fine imposed by the courts is \$414. However, the average number of community service hours imposed on drink drivers in conferences is 26 compared with an average of 2 hours community service imposed by the court (Sherman and Strang, 1997). Interviewees in

Canberra told us that the initial reaction of police to diversionary conferencing in that area had been sceptical. However, there had been a gradual change in view amongst operational police who thought that young people were sometimes dealt with too lightly by the court and who now saw conferencing as more punitive. As a result they were keen to refer cases to the diversionary conferencing team and were reluctant, in some instances, to take the chance of a case going to court. For this reason, even though the conferencing experiment was still in progress at the time of our visit, police were also operating conferencing outside of the RISE experiment^[6].

Diversionary conferencing based upon re-integrative shaming is argued to be more effective than traditional juvenile justice processes because, although courts may shame, they also stigmatise since they lack the reintegration ceremonies for which conferences provide (Coumarelos & Weatherburn, 1995). However, it has also been argued that conferencing may be as shaming and stigmatising as its alternatives, if not more so. As Polk (1994: 132-3) observes, 'any process...which results in the official designation of a person as an offender must, by definition, be seen as organisationally stigmatising'. The stigmatising potential of conferencing was vividly illustrated by a case in Canberra in which a child caught shoplifting was required to walk around the shopping centre wearing a t-shirt with the words 'I am a thief' printed on it. The child had been involved in previous offences and his parents had been unsuccessful in their attempts to change his behaviour. Although the conference facilitator had pointed out that this was an exclusionary form of shaming and could not therefore, be re-integrative, the conference agreed to the proposal - which had been made by the parents - and the following day, when the child fulfilled the agreement there was a public outcry.

Marshall (1999: 14) has similarly questioned the effectiveness of shaming in the context of juvenile justice conferencing:

Braithwaite's theory held that shaming was only positive in its effects if it occurred within and by a community of people that the shamed person respected and was attached to. The artificial imposition of a shaming experience by agents of a statutory power does not seem to accord with that proposition, so it is doubtful whether such a process would be beneficial in its effects on future behaviour.

The popularity of conferencing has been derived in large part from its appeal to communitarianism and promise of improved access to justice for minority ethnic groups. However, Polk (1994) has argued that conferencing fails to take cognisance of - and therefore to impact upon - wider institutional processes and structures which contribute to marginalisation and exclusion from society.

There is, furthermore, a risk that in attempting to achieve simultaneously a range of objectives which may be incompatible, conferencing fails adequately to deliver on any one. As Marshall (1999: 15, original emphasis) cautions:

In its combination of victim restoration, offender reintegration, individual participation and community involvement, conferencing might be seen as Restorative Justice par excellence, but it is debatable whether it is either practical or desirable to meet all these ends at one time in the majority of cases.

The evaluation of conferencing in New Zealand, for example, reported disappointing victim attendance and satisfaction with the outcomes and limited offender participation in conferences, with 48% of young people who participated in a conference having re-offended within six months (Maxwell & Morris, 1993, 1994). Subsequent analysis of re-conviction rates has revealed that offenders who feel involved in a family group conference are less likely to be reconvicted than are those who experience it as negative and shaming (Morris and Maxwell, 1998).

Conferencing in Scotland

The key features which differentiate approaches based upon restorative justice from those which are associated with more traditional western approaches to criminal/juvenile justice are represented in Figure 2. Victim involvement is the defining feature of restorative justice and approaches derived from it are located in the top quadrants of the diagram. By contrast, justice processes in which little or no account is taken of the victim's wishes in the resolution of the offence are located in the lower quadrants. As we have already shown, however, conferencing itself is not a unitary approach. Different models can be identified not just according to where they operate in the criminal justice process but also, more fundamentally perhaps, according to the emphasis they place upon the welfare of the offender. In Figure 2, therefore, approaches in the right hand quadrants represent a low level of attention to offender welfare in justice processes while those located to the left of the axis embody include offender welfare as an explicit operational concern. The Victoria model of conferencing is, accordingly, most appropriately represented in the top left hand quadrant while approaches based upon a the concept of re-integrative shaming are located in the top right. Mediation and reparation, as currently operated in Scotland, would similarly be placed in the top right quadrant. Whilst shaming is not at feature of this approach, its aims are predominantly focused upon: diversion (with mediation and reparation most often operating as an alternative to prosecution in the adult courts); reparation (enabling the accused/offender to make amends for the [alleged] offence); and increased victim involvement in the justice process.

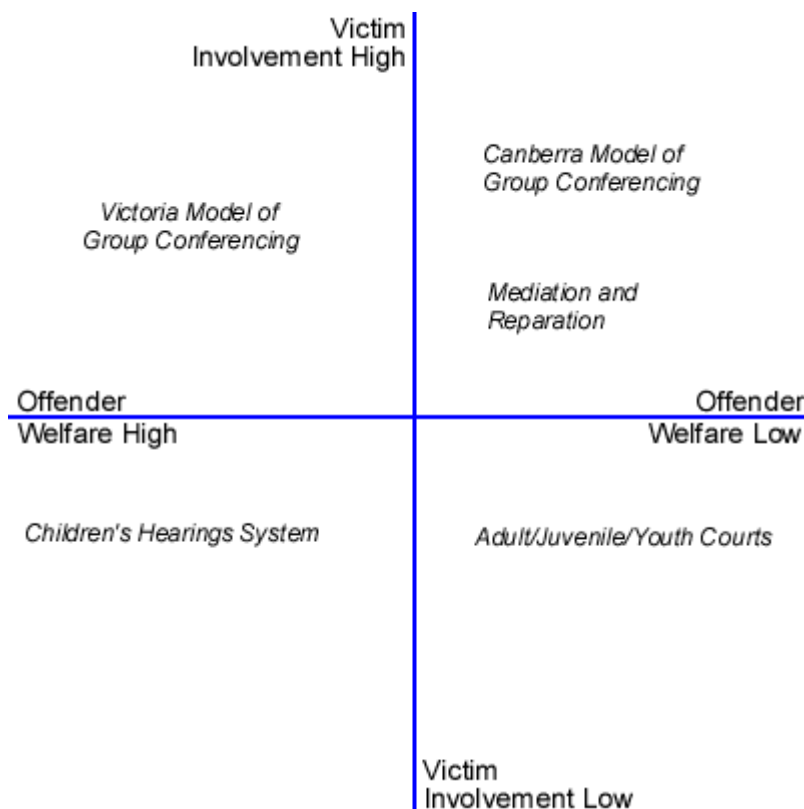


Figure 2: Victim Involvement and Offender Welfare in Justice Process

Traditional approaches to youth/adult justice are characterised by their lack of victim involvement and their emphasis upon retribution. Whilst attention to the welfare of the offender is not entirely absent - probation orders, for instance, are essentially rehabilitative in purpose - this takes second place to retributive aims. By contrast, the Scottish children's

hearings system embodies an explicitly welfare-oriented approach to children and young people who offend. In Scotland, criminal justice social work policy emphasises offender accountability/responsibility; the 1968 Social Work (Scotland) Act gives local authority social work departments the duty to promote social welfare; and the current government has a commitment to promote social inclusion. The implication of these factors is that the development of conferencing in Scotland, if it is to be consistent, should be structured to involve victims *and* to attend to offender and social welfare. It must also be acknowledged, though, that at the level of individual cases, there may be a tension between these policy aims. A policy emphasis upon social inclusion will also demand that attention be given to the impact and potential of wider social and community structures rather than focusing exclusively upon individual social networks as has tended to happen in other conferencing models.

As we noted at the outset, there is growing interest in the development of conferencing in Scotland. Equally, there is a danger that insufficient attention to the implications of different models will undermine the potential of conferencing to provide an effective response to young people which is consistent with broader policy aims. Conferencing might potentially operate at a number of points in responding to criminal behaviour: at the point of arrest but prior to a report to the reporter to the children's hearings system or the procurator fiscal; as an alternative to a children's hearing; as an outcome of a children's hearing; as an alternative to prosecution in the adult courts; as a condition of a deferred sentence; or as an element of a probation order. Each of these potential locations will require different operational arrangements and have different implications with respect to the exercise of discretion and the protection of rights. Decisions about the location of conferencing must, however, go hand in hand with and be informed by a more fundamental decision regarding its objectives. As we have found, these objectives will shape subsequent decisions about which features of conferencing should be incorporated into arrangements. Objectives to increase victim involvement or to impact on offender welfare will affect decisions about :

- who should have responsibility for convening conferences;
- how and by whom cases should be referred;
- who should attend conferences and the capacity in which they can attend;
- where conferencing sits in relation to other options available to decision makers;
- whether conferencing can be accommodated within existing statutory frameworks or whether new legislative arrangements are required;
- what mechanisms can be instituted to protect offenders' and victims' rights; and
- what the implications of these decisions are for the cost-effectiveness of group conferencing with young people who offend.

As we reflect on the contribution which conferencing might make in Scotland, we should bear in mind that there are no criminal justice utopias to be found, just better and worse directions to head in. (Braithwaite and Mugford, 1994:168)

Some areas in Scotland are exploring the potential of conferencing for children who offend. It is crucial that such developments are subject to careful evaluation. We concur with Schiff (1998) who suggests that greater attention is required to be paid in the evaluation of initiatives predicated upon principles of restorative justice to: the relative impact of process and outcomes; the nature, extent and consequences of coercion; the process of implementation in a restorative framework; and the restorative impact that they have. These will be essential questions to ask if we are to identify how any approaches to conferencing that are adopted in Scotland are working and how effective they are.

Notes

1 The trip was funded by the Carnegie Trust, The Scottish Office and the University of Stirling

2 The evaluation involves a randomised controlled trial for juvenile crime; adult assaults; and adult drink driving. Over a 2 year period a sample of 300 of each of the first two types of crime and 800 drink drivers are being randomly allocated to court or conferences. The research team is observing court and conferences; victims, offenders and supporters are being interviewed about their views. The study is examining both the process (victim satisfaction; police satisfaction; perspective of offender) and the outcomes of conferencing and court (whether there is a difference in the levels of reparation paid by offenders found with court or conference ordered payments; impact on re-offending rates).

3 . This compares with 5-6 weeks for a guilty plea case to be dealt with at court .

4 In Victoria a probation order is the lowest level supervisory court order with youth supervision orders and youth attendance orders respectively becoming increasing intensive.

5 In the first two years of the pilot the average cost per order - excluding indirect costs - was estimated at approximately \$7500. This sum subsequently reduced as referrals increased, conferences became slightly shorter and convenors spent less time travelling and on case finding activities.

6 This suggests that a bias may have been introduced into the population from which the RISE cases were drawn. To the extent that police were screening out cases which they thought were stronger candidates for conferencing, they were likely to be introducing a bias against successful outcomes for RISE conferences.

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