Chapter Eleven

Thinking Harder About Democratising Social Control

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

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

It is predicted here that conferencing will emerge from such empirical research, sustained over a number of years and a number of studies, as a

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

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

Tackling Social Injustice

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

It is also tempting to reply with some moving stories from conferences where racism was transcended, where conference participants helped the young offender to find a new job, a new home, or to get his expulsion from school reversed. But this kind of reply would not be very persuasive because most conferences involve no such dramatic victories over the entrenched injustices of the wider society.

Polk asks that we do not so focus our energies on reintegrative institutions that we neglect the more important developmental institutions of schools, work and families. These developmental institutions are "the proper place to begin" (Polk 1994, p. 123), though they are not perhaps the proper place to end. Sandor is also concerned that this kind of reform will divert resources from higher priorities, like "the need for effective family violence intervention" (Sandor 1994, p. 153). Sandor also quotes Coventry on the way community crime prevention ideologies privilege the crimes of young people to the neglect of corporate crime, fraud and tax evasion. White sees the "shame and reintegration" model as shifting the focus away from "a position which centres on the role of institutions".

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

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

Net-widening

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

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

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

We should be excited by the challenge of discovering principles of institutional structuring that enable citizen power to co-opt state power. How do we design institutions, including criminal justice institutions, that will give us a stronger democracy than the feeble liberal representative democracy that is our present lot? To meet this challenge we need to be positive about processes of community institution building. We need to look for promising sites of communitarian progress and nurture them. That does not mean assuming that people working at these sites will have got it right. Inevitably, they will have got it wrong in many ways. What it means

is building where we find a base of communitarian strength to find solutions to the many weaknesses that inevitably arise there. It means problem-solving rather than knocking fragile prospects for progress. It means a politics of hope rather than a politics of despair. It means intellectual work on a construction site rather than a deconstruction site.

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

Legal Justice and Offender Rights

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

As Pettit and I have sought to argue systematically elsewhere, the liberal legalist's equality before the law is an extremely limited formalistic equality (Braithwaite & Pettit 1990). We claim to show that even though republican theory does not set equality before the law as its objective, in practice it is more able to increase the kinds of legal equality that matter than is just deserts. Following a similar line of reasoning to the book, a provocative hypothesis can be advanced about conferencing. This is that equal wrongs are more likely to be punished more equally in conferences than in traditional juvenile courts, for example, consider the most common sanctions—restitution, community service and incarceration. There is sure to be more equality in use of incarceration by conferences as this will

never be allowed to be imposed at any conference. With restitution and community service, more equality can also be predicted, both because of a lower upper bound than that which is effectively available to courts and because when a conference agrees on restitution or community service, this is more likely to be paid or done than when a court orders it. Most of the restitution ordered by juvenile courts in New South Wales is not actually paid, but almost all of the conference agreed restitution in Wagga has been actually paid, as revealed in O'Connell's presentation to the conference. This is because the restitution is usually the result of a fair process of agreement in which all the parties have a say in shaping a remedy to which they voluntarily commit. There is therefore incurred a different quality of individual and collective obligation than is incurred by the "orders" of a judge. This equality of justice prediction is empirically testable; Lawrence Sherman, Heather Strang and I are proposing to test it in research for which we are seeking funding.

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

It is true that breaches of lower proportionality limits would be increased by conferencing. Often victims prefer to forgive and forget, or even to offer to give the young offender some help rather than demand any punishment. This worries retributivists, but it does not worry republicans who believe in the principle of parsimony (Braithwaite & Pettit 1990, pp. 79-80). Warner subscribes to the Freiberg et al. (1989, p.89) marrying of the frugality and proportionality principles: "what is the least severe

sanction permissible before it becomes disproportionately low?" However, I do not believe there is any such thing as a disproportionately low sanction, as a matter of justice versus mercy (though there is such a thing as insufficient intervention to prevent bad consequences).

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

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

Consensus

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

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

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

The possibility of culturally plural deliberation and remedies is the greatest strength of the community accountability model. Conferences are not about harmony; they are about giving conflicts back to people, conflicts that in recent Western history have tended to be stolen from

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

Trusting the Police

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

This might seem reasonable in theory, but perhaps in practice police have an ideology of power assertion, of taking control. Well trained and sophisticated community police officers do not seek to maximise control. The prediction that conferences can work with police coordinators is not based on an assumption that police officers are benevolent and non-controlling, but that police are not stupid. So long as conferencing is designed so that it is the coordinator who is responsible for ensuring that the agreement reached at the conference is implemented (and taking the matter to court if there is a totally unacceptable breakdown in implementation), the coordinator is foolish to dominate proceedings,

foisting an agreement on the parties to which they are not committed. It is foolish because the coordinator risks all the extra work associated with following up an agreement subject to "chain-dragging" compliance by the defendant and other participants. Coordinators quickly learn that only agreements which the participants own are self-enforcing. It is also true that police are more likely to have to deal with young offenders again as recidivists if, through dominating proceedings, the police officer burdens the young offender with an agreement he or she resents. This line of argument for "policing smarter" can also be introduced into training of coordinators.

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

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

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

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

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

Of course this problem can be solved rather well, as in New Zealand, by persuading the constable to exercise his discretion to refer the matter to a conference coordinator from outside the police instead of proceeding by way of arrest and court processing. However, there are some

disadvantages of the New Zealand model compared to the Wagga model in this regard. It is simpler and cheaper for the police to run the conference than for it to be referred to another agency. This simplicity not only saves money; it also means that fewer social control agents of the state get involved in the life of the young person. When the police officer refers the matter to a non-police coordinator, he cannot drop out of the conference. So there is a welfare bureaucracy intervening in the life of the young person as well as a police bureaucracy.

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

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

When young people keep coming back for conference after conference, however, and developmental institutions continually fail, there is no choice but to escalate intervention, in the name of both concern for the young person and community protection, to the professional casework

commended by Hakiaha. The alternative—to lock them up—is deeply undesirable.

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

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

Having argued in favour of police coordinating conferences, it is true that there are some communities where the police do not enjoy respect or manifest the sense of fair play and caring for young people and victims and so may not be the best people to run conferences. Each community must

make its own decision. The more local the argument that prevails in such matters, the better. For example at one conference observed in New Zealand the "official" Department of Social Welfare coordinator handed over coordination completely to a police officer, because he was a respected Maori and this was an all Maori conference. It is also quite common for de facto conference coordination to be handed over to Maori elders.

Taking Local Democracy Seriously

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

White suggests that Wagga is a "top-down model" which "represents an extension of state power into civil society". This is an account strangely out of contact with the history of this reform as a reform from below (just as was the New Zealand model—a reform imported from Maori culture). Wagga started when, at the suggestion of John McDonald and Kevin Wales (frustrated progressives within the New South Wales Police Service) Marie Thompson, Chairman of the Wagga Wagga Police Community Consultative Committee visited New Zealand with a local sergeant, Terry O'Connell, to learn from the Maori ideas about juvenile justice. They did learn and they adapted the model to one that the Wagga Police Community Consultative Committee considered appropriate to local circumstances. The state, who White says were extending their power through this manoeuvre, did not support the idea. The Police Minister

ordered, more than once, that it stop. He believed in being tough on juvenile crime and saw conferencing as a soft option. The community response was to communicate back to the Minister that his policy was community policing and that this was the kind of policing the Wagga community wanted. This was certainly no conspiracy to extend state power into civil society.

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

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

more promising accountability mechanisms cannot be found on the Australian policing landscape.

Conclusion

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

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

There will be different answers to these questions depending on the details of implementation at specific sites. No one needs to be convinced that these reforms can be implemented in the most coercive, undemocratic

and ineffective way. The question is whether there is a successful way of implementing community accountability conferences that shows a positive direction for struggle toward a more decent criminal justice system. A search for such a direction is assisted by the fact that rather disparate models have sprung up in New Zealand and in different Australian States. It is not the time to reject any of these models or to want to settle on the best one. Rather it is time to commit to learning from the dialogue about their differences. A good start was made toward this objective at this Melbourne symposium.

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