

# RESTORATIVE JUSTICE: THE CURRENT USE OF FAMILY GROUP CONFERENCING IN THE BRITISH YOUTH JUSTICE SYSTEM

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## SUMMARY

*This paper will examine the current use of family group conferencing with regard to young people in the British youth justice system. Restorative justice is currently at the pinnacle of the British political agenda and policy makers are seeking to legislate for more restorative justice practices to take place within the criminal justice system. Much has been written about restorative justice interventions, especially family group conferencing, which in England and Wales is heralded as a new way to address youth crime, a perennial problem for these countries and many other Western nations. However, the conference model used and practice context of these approaches, have received little attention in the literature with their additional implications for young people, their families, social workers and their practice. This paper begins with a brief clarification of terms and literature review before critically examining the contemporary use of this approach.*

**Key Words:** restorative justice, youth delinquency

## INTRODUCTION

The aim of this paper will be to examine the current use of family group conferencing within the British youth justice system. It will draw on findings from my Masters in International Social Work dissertation research project and took the form of an exploratory, comparative case study that analysed and compared the processes of two Wagga Wagga models of family group conferencing used in a youth justice context in British Columbia, Canada and the South East of England (Fox, 2004). This also provided the basis for a discussion paper on the current use of family group conferencing in the United Kingdom (Fox, forthcoming). It is my intention to offer the reader a brief and comprehensive synopsis of the definition of restorative justice, the varied restorative justice models in use and how historically family group conferencing emerged

from traditional Maori First Nations practice, as a way of resolving conflict.

## RESTORATIVE JUSTICE: HISTORY AND CURRENT TRENDS

In contrast to the conventional model of criminal justice, restorative justice today is heralded as a just and fair way to deal with criminal behaviour, a new unified theory of justice, a shift in paradigm and fundamental ways of thinking (Umbreit and Cary, 1995; Richardson, 1997; Shaw and Janè, 1999; Umbreit and Coates, 1999; Graef, 2000; Du Pont, 2001; Family Rights Group, 2003). Marshall's (1996) commonly quoted definition describes Restorative Justice as "a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the

aftermath of the offence and its implications for the future" (McCold, 1998; McCold, 1998a; Walgrave and Bazemore, 1999). Daly and Immarigeon, (1998, p.22) define restorative justice as a process that "emphasises the repair of harms and of ruptured social bonds resulting from crime; ...focus[ing] on the relationships between crime victims, offenders and society".

Restorative justice moves the established notion of a crime being committed against the state, to one that focuses on the actual victim and community where it occurred and then is dealt with by those most affected by it (Morris, 2002). The financial and human costs, in terms of fiscal expenditure and lack of meaningful consequences to the offender makes restorative justice a cost effective and an accountable way of dealing with crime (Shaw and Janè, 1999). It is also valued as a way of hearing the voices of all those involved in the incident and subsequent potential to heal and restore community harmony. This is in contrast to the adversarial criminal justice system in which the victim, offender and community are silenced by the representatives of the State. The victim can talk about the incident in a safe forum and can actually ask offenders to undertake certain tasks by way of their punishment. This element of the conference is seen as the healing of the criminal episode and the tasks undertaken by the offenders as the restoration to the victim and the community.

The history of restorative justice is a long and extensive one. Its historical practices are rooted in both Aboriginal and non-Aboriginal societies, in Europe before the Norman Conquest (Van Ness, 1986) and in numerous Aboriginal communities (Llewellyn and Hoebel, 1941).<sup>1</sup> The latest resurgence of restorative justice started about 30 years ago and is thought to be rooted in the social, feminist and prisoner's rights movements of the 1970's (Daly and Immarigeon, 1998; Sullivan and Tift, 2001)<sup>2</sup>.

## MODELS OF RESTORATIVE JUSTICE

McCold (1999) describes three models of restorative justice, mediation, conferencing, and circles under the following four headings:

1. mediation models:
  - community mediation
  - victim offender reconciliation programs
  - victim offender mediation

2. child welfare conferencing models:
  - social welfare family group conferences
  - family group decision-making
3. community justice conferencing models
  - New Zealand's youth justice conference
  - Wagga Wagga police conferences
  - Canberra's victimless conferences
  - Real Justice community conferences
4. circle models:
  - peace circles
  - sentencing circles
  - healing circles

All the various types of conference models highlighted in category 2 and 3, originate from the New Zealand model based on the traditional Maori practices and encased in law in New Zealand in 1989 (Shaw and Janè, 1999). However, in the United Kingdom (UK) like many countries, there are variations within these models, their uses and where they take place within the judicial process (Mirsky, 2003(a); Family Rights Group, 2003). Within the above framework I will be concentrating on the Wagga Wagga model of conferencing. To provide context, I will describe the original New Zealand model and then compare the differences between the two models and how they developed.

## NEW ZEALAND MODEL

Family group conferencing was adopted from the Maori First Nation's people and used as a model initially for practicing child protection and child welfare policy and then youth justice in New Zealand. It was primarily established in response to the criticisms levelled at the government for the over representation of Maori youth in the welfare and judicial systems. The conference model was deemed so successful that *The Children, Young Persons and their Families Act* of 1989 was passed which mandated conferencing for nearly all young offenders and families with child care concerns (Umbreit and Zehr, 1996; Graef, 2000). The model is based on the restorative principle that "families can usually find their own solutions to the difficulties they are facing and that children and young people have the right to have their families fully involved in their future planning" (Essex County Council, 2004, p.1).

1 For a comprehensive description of the evolution of restorative justice in England see Hirsch and Ashworth (1998).

2 Daly and Immarigeon (1998) give a comprehensive historical overview of restorative justice programs and practices over the last three decades in their chapter 'Restorative Justice' in the Criminal Justice Review (1998).

## WAGGA WAGGA MODEL

The model used mainly for youth justice in Australia, Canada, England and Wales, was pioneered in 1991, by Terry O'Connell who revised and formally scripted the New Zealand version, which was in turn adopted as a community policing technique in Wagga Wagga, New South Wales, Australia (O'Connell 1998; O'Connell, Wachtel and Wachtel 1999). The Wagga Wagga model further developed into 'Community' conferencing (also known as Real Justice Conferencing and Community Accountability Conferencing). This model uses a script comprising of a series of questions that are asked in structured order, that assist young people to take responsibility for their actions, while helping the victim to seek closure regarding the offending incident and reintegrating the offender back into their community (O'Connell, Wachtel and Wachtel 1999). In addition to offending behaviour this model is used for wrongdoing in such places as schools, workplaces, communities, youth organisations and college campuses (McCold, 1999; *The Guardian*, 9th June 2004; Thames Valley Police Force, 2004).

These two conference models have the same principle focus and are designed to heal the damage caused by an offender's behaviour, restore harmony between those affected by that behaviour, encourage the participation of those who have a direct interest in either the offender, perpetrator or the offence (Maxwell and Morris, 1993), empower the victim, and positively 'reintegrate' the offender within the community (Stewart, 1996). Ultimately it is intended as a healing rather than a punitive process with an emphasis on restoring balance between the perpetrator and victim or community (Solicitor General Canada, 1999; Winterdyke, 2000; Mirsky, 2003a).

## VARIATIONS AND SIMILARITIES

There are numerous differences and similarities in how the conferences have developed.

Conferences and most restorative justice interventions require a lot of preparatory work before the event can actually take place. The victim, community members, families and offender are all interviewed to ascertain their willingness to participate, along with the families and perpetrator's motivation to comply with the conference process and outcome. Additionally, the elements of Coordination and Advocacy, Family Time and Community Involvement are seen as essential prerequisites in the New Zealand model (Mirsky, 2003a). In the Wagga Wagga model used in Canada, England and Wales, many of the elements of the New Zealand

model overlap however, it is compliance with the script used by the facilitator that is deemed the most important factor (Community Justice Forum, 1998; Restorative Justice Oak Bay, 2003).

In New Zealand a court-appointed youth justice coordinator who is usually a trained social worker, facilitates the conference. In addition to those directly involved in the incident professionals from different fields such as social services, police and mental health inter alia, would also attend to ensure that any agreements made fulfil statutory requirements. In the Wagga Wagga model used in England and Wales it is either a police officer, designated police staff, social service professional or trained volunteers from the community where the crime took place that facilitates the process. Many of the conference programs around the world view the role of coordinator / facilitator as paramount and should be as independent as possible (Family Rights Group, 2003; Mirsky, 2003(a); Essex County Council, 2004).

Family time is where families, extended families and friends involved in the conference, having discussed the incident are given the time and opportunity to talk and come up with a plan to help heal the wrong that has been committed. The conference is halted and the professionals leave the family to decide on the plan of action. Once the plan has been decided all the participants resume the conference and the victim listens to what the offender and their supporters have to offer by way of a remedy to heal the harm done. They then negotiate the terms of an agreement until the victim and community are satisfied and it meets with the facilitator's approval that statutory obligations are met. This ensures that the process is one that encompasses the community, victim and offender and establishes healing along with reparation and not just retribution. This brings the focus back to the family decision making process and not the professionals in the room. The general consensus of the research undertaken by Mirsky is that 'Family time is key' to the whole process (Mirsky, 2003a). Family Time is more often used in the original New Zealand approach to conferencing but can be incorporated into the Wagga Wagga model.

In New Zealand, the government retains judicial oversight over family conference agreements giving them more authority (McElrea 1996), whereas in England, Wales and many other European nations family group conferencing is not a statutory requirement and has no legal obligations attached to its outcomes (Shaw and Janè, 1999). However, within the Crime and Disorder Act (1998) in England and Wales, 'Referral Orders' a statutory intervention is based on some of the same

restorative justice principles as conferencing and do have legal repercussions if decisions made within the order are not adhered to (Home Office, 2002). To safeguard young offenders' rights, the New Zealand youth justice conference could include a youth legal advocate ensuring that the consequences of the conference were judicially prudent and did not infringe on the young person's human and legal rights, a concern that has often been levelled at justice focussed conferences and Referral Orders which according to some author's additionally contravene the Beijing rules and the United Nations Convention on the Rights of the Child (Warner, 1994; Goldson, 2001; Morris, 2002).

The Wagga Wagga model used mainly in judicial matters in Australia, Canada, England and Wales is considered 'incident-focused', limited to repairing the damage caused by a specific offence rather than being victim-focused or offender-family focused, as in the New Zealand model, where harm caused to the community is addressed. The difference between the incident and the family offender focussed conferences is viewed by the relationship between the people involved in the episode. If people did not really know each other before the event then it seems to become incident focussed. However, where people are already connected through community ties, it becomes a more holistic victim-offender and community process (Stubbs, 2002). Community involvement is another key element in the conference process, as the main goal is the reintegration of the young person back into their community (Zehr, 1990; Zehr and Mika, 1998). This links to the concept of 'reintegrative shaming' through which offenders are encouraged to experience shame for their behaviour in the context of efforts to integrate them back into the community (Braithwaite, 1989).

## CHILDREN AND THE LAW

There are two major pieces of legislation regarding children and youth in England and Wales, the Children Act (1989) and the Crime and Disorder Act (1998). The former brought together various statutes regarding children and comprehensively reformed them under one primary piece of legislation (Brayne and Martin, 1997; Allen, 1998; Ball, 1998). On 14 October 1991, The Children Act (1989) came into force "making radical changes in the law relating to children and their families" (Shared Parenting Information Group, 2004, p.1). The Act embodies a change in philosophy, emphasising the rights of the child moving toward cooperation and the sharing of parental responsibilities the "child should be brought up with the child's

family, and the local authority should be providing support to that" (Brayne and Martin, 1997, p.64).

Similarly with the focus on partnership working, the Crime and Disorder Act (1998) was an attempt by the British government to establish a statutory obligation on local authorities and professional bodies to create a unified and structured approach to preventing youth offending (Card and Ward, 1998; Home Office, 1998). It was heralded as the biggest shake up in addressing the perennial problem of youth crime and the youth justice system for over fifty years (Pickford, 2000). Section 37 of the Act clearly states that "It shall be the principal aim of the youth justice system to prevent offending by children and young persons". How this is to be achieved is set out later on in the Act as it places a duty on local authorities to create multi-disciplinary Youth Offending Teams (YOT) to establish youth crime strategies to address and prevent youth crime. Section 39 of the act states that YOT 's will "ensure the effective delivery of youth justice services for young offenders and those accused of offending".

## WELFARE V JUSTICE

It can be seen that over time the original New Zealand model has been transformed, absorbed and co-opted into the welfare and justice systems to varying degrees in many different countries (Mirsky, 2003a,b,c). In general terms the components of the original model, reflect that it is used more for child and adult welfare concerns and in many settings use families and community to assist in the resolution of welfare difficulties. Whereas the Wagga Wagga model is designed for youth justice interventions and concerns, this model can at times exclude the victim, victim's family and wider community members, focussing mainly on the offender and the offence.

The use of the two different models of conferencing and their interventions in varying contexts reflects the division of childcare and juvenile justice and how the difficulties encountered in each are addressed. It has been stated elsewhere that "the juvenile justice system exists as a function of the child care and criminal justice system on either side of it, a meeting place of two otherwise separate worlds" (Harris and Webb, 1987, p. 9).

Additionally, Gelsthorpe and Morris (2002, p. 238-53) are concerned that given the divide of welfare and judicial provision in England and Wales, whether restorative justice in the youth justice sector can be seen as representing the last refuge of 'welfare'. They envisage youth justice as a system

with little interest in the well-being of the young people involved, other than through the final traces of concern held within restorative policies and practices.

The debate whether youth offending resolution or welfare concerns could or should be addressed within a welfare or justice framework, each with their conflicting ideologies, is still ongoing (Farrington 1984; Klein 1984; Terrill 1992; King and Piper, 1995). These two factors seem to be inextricably linked through this continuous and perpetual argument. Over time in England and Wales, a cycle has emerged shifting the focus from punishment to treatment and back again. Research shows that there are a multitude of potential factors that contribute to youth offending emphasising the welfare aspect, while accountability for ones actions and the safety of the public stresses the need for judicial interventions. These two strands of welfare and justice are viewed very differently in the literature and in practice (Harris and Webb, 1987; King and Piper, 1995; Pickford, 2000; Crawford and Newburn, 2002).

It is envisaged that the UK Government's Green Paper 'Every Child Matters' will place greater responsibilities on agencies that work with children to collaborate and communicate to a greater degree (Family Rights Group, 2003). The paper is designed to eliminate the failure in partnership working and communication that ultimately led to the death of Victoria Climbié while in the care of the local authority (Laming Report, 2003). This new integrated approach by all agencies that deal with young people and their families is a positive step. However, the vision of the paper to create new local structures for children's services appears already hindered with problems. At one level the separation of children and adult services is seen as undermining essential interaction with families where mental health needs are prevalent (Stanley, 2004). At another level the new structures bring about 'Children's Trusts' to local authorities, these trusts coordinate all the relevant children's services in one geographic location. It seems that YOT's will still balance their work between being part of the children's services and part of the criminal justice system (Youth Justice Board News, 2004).

## RESEARCH AND EVIDENCE BASED PRACTICE

Do restorative practices and family conference interventions work in the current climate of 'what works' and 'effective practice' with young offenders? (NACRO, 1999). Recent data suggests as

with the Thames Valley Restorative Cautioning scheme research, that good satisfaction rates amongst victims and offenders are achieved, compliance rates are high and reduction of the re-offending rate along with the fear of crime is also attained (Latimer et al, 2001; Miers, 2001; Hoyle et al, 2002). However, there has been equally as much criticism levelled at the Crime and Disorder Act (1998), and restorative youth justice regarding the overly punitive nature of many of the new orders and the potential for oppressive practices (Evans and Puech, 2001). With the thrust of its focus aimed at parental and individual responsibility the Act has been criticised for bringing more "children, young people and their parents into the purview of [the youth justice] system" (Pitts, 2003, p.61) than ever before. Final warnings, heralded as the first opportunity for intervention within the youth justice system, are condemned as being overly punitive, disproportionate and possibly leading to net widening. The latter, which is a process of social control that imposes sanctions on individuals who would have normally been diverted from the formal court or criminal justice system (Evans and Puech, 2001; Pitts, 2003; Yates, 2003; Giller, 2004). Restorative justice has had similar claims made against it regarding net widening and additionally that it erodes legal rights, fails to restore victim and community, does not reduce offending rates, allows for institutional racism and re-victimises the victim. In fact the reverse of all the claims it has as successes (Umbreit and Coates, 1999; Young and Gould, 1999; Delgado, 2000; Roach, 2000; Blagg, 2001; Daly, 2001; Latimer et al, 2001; Johnstone, 2002; Morris, 2002).

Restorative justice and family group conferencing although not specifically legislated for within the 1998 Act, have found their way into the practice of youth offending teams in the UK (Mirsky, 2003a,b,c). In line with the underlying principle of the Crime and Disorder Act (1998) and the recent Home Office publication, 'Restorative Justice: The Government's Strategy (2003)', restorative justice practices, approaches and processes are all underpinned by the notion of taking responsibility for ones actions and the subsequent consequences of those actions. Many, if not all, of the sentencing disposals regarding young offenders within the Act have elements of restorative justice and there is potential for conferencing at many different stages of the justice process (Home Office, 1999; 2002; 2003; Dignan, 2003). Basically, restorative justice processes according to many authors and the British Government cover the three R's: Responsibility, Reparation, and Reintegration (Dignan, 1999; Home Office, 2002; 2003).

## IMPLEMENTATION

Within youth justice, social services and the voluntary sector, the use of conferencing is now well established in England and Wales. According to one source, a survey undertaken by the University of Bath and Portsmouth in 2001 showed that 38% of local authorities in England and Wales were using family group conferences (Family Rights Group, 2003). From the literature it appears that in many counties for example, Kent, Essex and Hampshire, family group conferencing is common practice for youth offending concerns. They are used to aid individuals, families and victims to empower themselves to address the difficulties that they have experienced (Utting and Vennard, 2000; Hampshire County Council, 2003; Kent Social Services, 2004, Essex County Council, 2004).

Specifically regarding youth justice and based on the Wagga Wagga model, Enfield YOT and the Thames Valley Police Force (working with Oxfordshire YOT's) are using conferencing for early intervention cases at the Final Warning (cautioning) stage of the judicial process. Additionally, they are working with youth at the pre court intervention stage with teenage runaways and for school truanting (Thames Valley Police Force, 2004(a); Enfield Youth Offending Team, 2004). Somerset and Essex YOT's are working with schools, at the pre court intervention stage using conferences regarding bullying, truanting and class disruption (Essex County Council, 2004; *The Guardian*, June 9th 2004, p.7). Essex YOT have also successfully worked with serious and repeat young offenders using a model based on the original New Zealand model of conferencing (Essex, 2002).

Recently the new Youth Inclusion and Support Panels (YISPs) were established as a multi-agency approach to address welfare and youth justice issues regarding the 8-13 year old age group. The new approach targets vulnerable youth and their families who are on the periphery of the welfare and justice systems and aims to use a host of interventions including family group conferencing. The Youth Justice Board, the British Government's non departmental public body advising on youth justice issues are funding a three year, £1.36 million program, to research the effectiveness of conferencing with the aim of working along side the YISP providing "extra resources and an enhanced service" (CJS NOW, 2004, p.4). From the literature the conference will involve the young person, relatives and key agency players "to identify the factors linked to offending and draw up plans to combat them" (CJS NOW, 2004, p.4). There is no victim, no friends and no community mentioned in

the report. Given the above quote regarding creating a plan to combat offending, one would assume that the conference would be an 'incident' focus rather than a 'family' or 'community' focussed conference highlighting the use of the Wagga Wagga model.

Linking conferencing with the YISP gives the justice system access to a younger age group of children and their families, long before they reach the age of criminal responsibility, the normal point of access into the criminal justice system. It does not appear that restorative justice conferences will be used at a structurally more beneficial stage however, one could argue that the process is now more generally accessible to families with concerns.

## CONCERNS

Restorative justice is the principles upon which these conference practices are based. The models used and in which circumstance have to a degree been predetermined in England and Wales, dividing conferences into the two categories of welfare and justice, each with their own legislation (King and Piper, 1995; Shaw and Janè, 1999).

Young people in the U.K would already be in either or both systems before any decision for a conference to take place is made. It appears that the system decides the conference model used and not the needs of the young person. Whereas in the New Zealand system the needs of the young person are paramount and although the systems are divided in the same way as England and Wales, the conference takes place at the earliest opportunity to decide a course of action, regardless of whether it is welfare or justice issue (New Zealand Ministry of Justice, 2004). It appears that the New Zealand approach is a much more holistic and age appropriate process, involving all individuals and professionals in dealing with child and youth matters at a much earlier point. Conversely, the level of intervention at an early stage of a young offender's career is seen as both potentially positive and negative, depending on the offence, the young person's circumstances, and proportionate response. A young person could actually be drawn into more criminal activity rather than diverted from it if the intervention is overly intrusive or punitive and not commensurate with the offence (NACRO, 2000; 2000(a); Giller, 2004).

Regarding outcomes, as my own dissertation research showed, the use of the same model of conferencing at the earliest intervention into the youth justice system for first time offender's, heralded very different results (Fox, 2004). The way the

model was incorporated in England and Canada and the support given, varied, as did the outcome. The facilitation, use of family time, the inclusion of community and victim and the level of implementation of the formal script (which also varied in each country) all affected the outcome of conference process (Fox, 2004). Further examination and investigation needs to take place to ascertain to what extent these variables effect the outcome and in what circumstance.

The argument for legislating family group conferencing is a strong one given the success of conferencing in New Zealand (Morris, 2002). Additionally in Canada the Youth Criminal Justice Act (2003) incorporated values of restorative justice and family group conferencing as an option for less serious crimes (Department of Justice Canada, 2003). However, in New Zealand the age range for young people to attend the judicial conference is much older and in the case of criminal matters are only used for serious repeat offender or serious offences. A child's welfare is seen as paramount in New Zealand and if any young person has serious welfare or criminal matters against them, then a conference to establish the next step and planned intervention is undertaken. My concern for legislating conferences in England and Wales is that currently the restorative interventions in place especially in youth justice appear to enhance punitive approaches and do not exist to plan holistic interventions. These approaches continue to mainly focus on the offender and the offence rather than the victim or community. If legislation were to occur then in my opinion it has to follow the successful New Zealand approach in its entirety and not just the elements that reinforce a governmental agenda. Unless the conference intervention is based on the original model and at the same structural point as in New Zealand, rather than using various hybrid models, each with a different focus, then family group conferencing will not be used to its fullest potential. It will not meet the true aim of restorative justice and may replicate many of the negative points raised in the literature.

## SUMMARY AND CONCLUSION

Restorative justice practices in England and Wales are well established but very sporadic. It appears that different organisations are using different restorative interventions (including different models of conferencing), for very different reasons. This is not surprising as Mirsky's three part series on Family Group Conferencing Worldwide illustrated the diversity of uses for one restorative intervention (Mirsky, 2003a,b,c).

As the literature and my own small contribution to the research have shown, family group conferencing is a prevalent restorative justice intervention but its future is still unclear. If one is to incorporate the true value of restorative justice, then all parties affected by an incident have to be involved in the conference process. The practice in the U.K of using modified, hybrid conference models involving different parties regarding either judicial or welfare concerns herald very different results and outcomes (Fox, 2004). Therefore the distinction made in England and Wales as to the model and its specific use, is subject to scrutiny.

When the British Government publishes its restorative justice strategy it is envisioned that it will encompass the positive elements of restorative interventions and not pursue the current agenda of finite, inflexible rules that impose certain types of restorative justice on certain types of offender, for specific offences. This is not the meaning of traditional restorative justice. It is a fluid, flexible and living process that allows people to engage with each other over an incident that has caused them all harm. In creating a 'one size fits all' strategy, the core value of this approach will be diluted and this can only affect the quality of the intervention.

Concerns for family group conferencing and restorative justice continue. As long as the traditional free flowing process is co-opted and professionalised into an agenda that is marred by legislation and an underlying punitive or controlling objective, then its true potential will remain unfulfilled. Conferencing could be used within the YISP intervention strategy with 8 -13 year olds but the model needs to be based on the collective decision making New Zealand model in which the attendees' decide what is in their own best interests. However, the YISP is a statutory agency collaboration and thus would be subject to a statutory agenda.

I would like to see more non governmental and voluntary organisations undertaking the implementation of family group conferencing, external to any statutory agenda. I am hopeful that once the Green Paper is established it will require a more holistic approach to addressing a child's needs, that encompass both judicial and welfare concerns at a much earlier stage and could combine statutory and voluntary agency collaboration.

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