RETHINKING JUVENILE JUSTICE REFORM IN NEW SOUTH WALES: A SYSTEMS THEORY APPROACH TO YOUTH JUSTICE CONFERENCING

MICHAEL CHAAYA*

Like anyone else, young people respond to high expectations, opportunity and responsibility. For many of them schooling and even higher education do not offer these stimuli; and the second chance which work used to provide for early school leavers has now all but disappeared. In addition, the personal needs of young people, rooted in family and community, are in many cases no longer adequately met by the family or by the unpersonal and fragmented social support which has been developing to replace the traditional and now declining community network of extended families, stable neighbourhoods, churches and other local institutions.

Young people are part of a changing landscape in which the established is being replaced by the unstable. There are now two transitions to be managed simultaneously - one of young people into adult society, the second, of the society itself from what has been to what will be. In managing the transitions, there is need for clear directions and long-term coordinated social and industrial planning, but also for a recognition that year by year many young people have been, are and will continue to be at risk of being excluded from the mainstream society.

Cathy Blakers
Youth & Society: The Two Transitions (1990) at 258.

* BEc (Hons) LLB (Hons) Syd, Mallesons Stephen Jaques Solicitors, Sydney. This paper was produced as part of my Independent Research Project in 1997 at the Faculty of Law, University of Sydney under the supervision of Associate Professor Alex Ziegert. I am grateful for his guidance and thoughtful comments in the preparation of the paper. The data collection could not have been made possible without the help and cooperation of many young people and professionals in the field who must remain anonymous. My high regard for their time and valuable input will hopefully be evident in what follows.

ABSTRACT

Premised on the notion of 'restorative justice', the introduction of youth justice conferencing as part of the *Young Offenders Act* 1997 (NSW) has generated a fundamental rethinking of the way in which juveniles are treated in the criminal justice system. Whilst it is difficult to argue against any measure designed to temper the formalities and rigour associated with the criminal justice system as it relates to young people, it remains to be seen whether the purported 'shakeup' of the system through the introduction of conferencing will ultimately benefit young offenders. After surveying the critical conferencing literature, this paper considers the results of a small qualitative survey which evaluates the merits of the proposed conferencing scheme. The value of systems theory in understanding the dynamics of the juvenile justice system is highlighted and used as a framework for discussing the findings of the survey.

It is argued that the underlying political climate which has driven many of the reforms in the juvenile justice arena will mediate against the successful introduction of conferencing in New South Wales. There are several issues raised by the survey participants and supported in the critical literature which require serious attention. The role played by police, the level of community resources required, the irrelevance of the legal system for many young offenders and the tension between welfare and justice objectives in the system present a microcosm of the vast array of contentious issues raised by the conferencing paradigm. Finally, the paper outlines two outstanding reform issues which have yet to generate the same level of attention and debate generated by conferencing: The lack of a national perspective on juvenile justice issues and the need for further research into the implications of the new legislation.

PART I

I. INTRODUCTION

The issue of juvenile justice in New South Wales has long been controversial. Indeed, a number of inquiries and reviews have been undertaken over the years in an attempt to identify the shortcomings of the system and possible directions for reform.[1] A common conclusion reached by these various investigations has been that there is a need to redirect attention to prevention and diversion measures, rather than the conventional focus on punishment. Given this preference for prevention and diversion, one of the most recent innovative suggestions for change within the juvenile justice system has been the

1 See for example, New South Wales Ombudsman, *Inquiry into Juvenile Detention Centres,* 1996; New South Wales Juvenile Justice Advisory Council, *Juvenile Justice Green Paper - Future Directions for Juvenile Justice in NSW,* 1993; and *Juvenile Justice White Paper - New Directions for Juvenile Justice in NSW,* 1994; New South Wales Legislative Standing Committee on Social Issues, *Juvenile Justice in NSW,* 1992; and Youth Justice Coalition, *Kids in Justice - A Blueprint for the 90s,* 1990. Notably, the New South Wales Ombudsman's Report identifies seven other inquiries into the juvenile justice system which have taken place since the election of the Carr Government in New South Wales in March 1995.

introduction of family group conferencing. As a diversionary measure, the notion of conferencing is designed to challenge the assumed responsibility of the state in juvenile affairs, diverting the onus towards families and communities.

The growing interest in conferencing as a new direction in criminal justice reflects the incapacity of existing diversionary tools to reduce crime, mediate disputes, rehabilitate offenders, or recognise the rights of victims.[2] In the context of juvenile justice, the notion of family group conferencing has certainly enjoyed increasing attention in many jurisdictions, including Australia. Commensurate with this increasing attention has been the development of a wide body of literature examining the conferencing ideal and its potential suitability for young offenders.[3] Whilst this literature has highlighted critical questions about conferencing, the full range of evaluation issues has yet to be explored in detail. These evaluation factors are essential to determining whether family group conferencing is able to realise its stated objectives grounded in the theory of restorative justice. This paper is an evaluation of the proposed legislative scheme for youth justice conferencing in New South Wales.[4] The underlying theme is the extent to which this latest juvenile justice measure is a systematic improvement on the status quo, or simply another example of state intervention in the lives of young people.

The paper is divided into three sections. Part I provides a description of the conferencing model to be introduced in New South Wales in early 1998, as well as a statistical profile of the Children's Court. This section also introduces Niklas Luhmann's theory of autopoiesis. This preliminary discussion sets the scene for the remainder of the paper which relies on this theory to develop what is commonly referred to as 'theory guided research'. Such research allows for new insights into the existing commentary and understanding of conferencing. In Part II, the paper surveys the critical literature and discusses the results of a survey of young juveniles, youth and community workers, policy officers and academics. The survey is designed to obtain a cross section of views on the proposed handling of juvenile offenders in New South Wales. Although this section is primarily descriptive, the results provide an interesting benchmark of ideas for improving the juvenile justice system. Finally, in Part III, the paper draws some tentative hypotheses which need to be tested in further research and highlights some outstanding reform issues. These include the lack of a uniform

---

2 C La Prairie, "Altering Course: New Directions in Criminal Justice - Sentencing Circles and Family Group Conferences" (1995) Special Supplementary Issue *The Australian and New Zealand Journal of Criminology* 78.

3 See for example, C Cunneen, "Communitarian Conferencing and the Fiction of Indigenous Control" (forthcoming) *Australian and New Zealand Journal of Criminology*; J Stubbs, "Shame, Defiance and Violence Against Women: A Critical Analysis of Communitarian Conferencing" in J Bessant and S Cook, (eds), *Violence Against Women: An Australian Perspective* (1997); J Hudson, A Morris, G Maxwell and B Galaway (eds), *Family Group Conferences Perspectives on Policy and Practice* (1996), C Alder and J Wundersitz (eds), *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* (1994); FWM McElrea, "Restorative Justice- the New Zealand Youth Court: A Model for Development in Other Courts?" (1994) 4 *Journal of Judicial Administration* 33, and D Moore, "Shame, Forgiveness, and Juvenile Justice" (1993) 12 *Criminal Justice Ethics* 3.

4 See *Young Offenders Act* 1997 (NSW) - Part 5 (hereafter "the Act").

national approach to juvenile justice; the disturbing political climate - couched in terms of 'law and order' - which underpins many of the changes in this area; and the need for further evaluation following the introduction of youth justice conferencing.

II. CONCEPTUAL FRAMEWORK

A. Juvenile Justice in Context

For the purposes of this paper, a significant problem is the narrow scope of the current debate on juvenile justice issues. The author contends that if research concerned with these issues is to have any explanatory value and lead to more effective preventative and developmental policies of intervention, the perspectives on juvenile offenders need to be broadened to incorporate socio-political terms, that is, the context of society as a whole, with all its socio-economic, age, cultural, gender, and above all, class divisions. Secondly, if many causes of juvenile crime are linked to the social environment, in which young people live - as many criminologists have claimed[5] - then research needs to focus on the environment rather than solely on the juveniles themselves.[6] Although often labelled as an individual act, juvenile crime has a certain social dimension, "reflecting the connections between the primary areas of a young person's life".[7] As such, juvenile justice policy ought to be concerned with achieving a holistic solution to juvenile crime.

B. Key Assumptions

The arguments developed in this paper are based on the above conceptual framework and two basic assumptions. Firstly, it is maintained that the position of young people has to be considered in the societal context; that is, in relation to the whole structure of society and not in isolation as some self contained entity. Secondly, it is maintained that young people, while sharing certain common characteristics and common interests, do not constitute a homogeneous social group. It is arguable that both claims are superfluous, given their obvious nature, yet the prevalent attitudes in juvenile justice policy developments, as well as in much of the research in the area, tend to convey an opposite perspective. It is pertinent to keep these assumptions in mind when devising a model of

---

5 See for example, R White, *Any Which Way You Can - Youth Livelihoods, Community Resources and Crime* (1997), ch 7; D Shoemaker, *Theories of Delinquency* (1990), chs 4-5, 7; J Lilly, F Cullen and R Ball, *Criminological Theory: Context and Consequences* (1989), ch 3; and S Brown, F Esbensen and G Geis, *Criminology: Explaining crime and its context* (1989), chs 8-9.

6 This issue has been neglected in many research projects pertaining to youth affairs in Australia generally. For a critical discussion which outlines some of the difficulties associated with such research, see C Boland and A Jamrozik, "Policies and Services for Young People: Social Concern or Political Expediency?" in P Saunderd and A Jamrozik (eds), *Community Services in a Changing Economic & Social Environment* (1987) at 107.

7 P Dwyer, J Wyn, B Wilson and F Stewart, *Pathways, Personal Issues, Public Participation: Research Report No 1*, Melbourne Youth Research Centre (1989), p 23.

conferencing which attempts to cater for the social, economic and cultural needs of young offenders.

III. YOUTH JUSTICE CONFERENCING IN NEW SOUTH WALES

A. Conferencing Defined: Theory and Practice

In short, a family group conference in the juvenile justice context entails a professional coordinator inviting the young offender and their extended family (or supportive community members where no family exists) to a conference. The victim of the offence is also invited, with the aim of providing a forum to discuss the offence committed by the young person and to propose a mutually acceptable plan which satisfies the needs of both the victim and offender. The idea of family group conferencing was developed in New Zealand, based on the traditional systems of conflict resolution within Maori culture.[8] Following the introduction of the *Children, Young Persons and their Families Act* 1989 (NZ), the law relating to children and young people in New Zealand was radically transformed. It departed from a conventional criminal justice approach couched solely in terms of punishment, and embraced the theory associated with the so called restorative justice model.

In theory, restorative justice is designed to 'put things right' between the offender and the victim, and is premised on a community based orientation where input is sought from the victim, the offender, the offender's family (or members of the community) and professionals who are involved. Some of the philosophical foundations for restorative justice were highlighted in the New Zealand Parliament at the time of the introduction of the *Children, Young Persons and their Families Act* 1989. The Minister of Social Welfare of the then Labour Government, spoke of the Bill in the following terms:

> I shall summarise the main strands of the philosophy underlying the Bill. First, the Bill reflects a belief that greater emphasis is needed upon the responsibility of families for the care, protection and control of children and young persons. Secondly, it reflects a belief that more attention should be paid to the rights of children and young persons - the right to safety, the right to protection from abuse and neglect, the right to a say in decisions that affect them, and the right to a fair hearing and to appropriate sanctions when they have offended against the law. Thirdly, the Bill reflects a widely held conviction that ways must be sought of assisting and supporting children and young persons and their families in a manner that recognises ... cultural diversity. Fourthly, the Bill represents a commitment by the Government, and the Department of Social Welfare in particular, to encouraging a partnership between the communities and the State in providing services to children and young persons and their families.[9]

8 See I Hassall, "Origin and Development of Family Group Conferences" in J Hudson, A Morris, G Maxwell and B Galaway (eds), *Family Group Conferences Perspectives on Policy and Practice* (1996) at 17.

9 New Zealand, Debates, vol 497, 1989.

The four philosophical strands identified by the Minister - family responsibility, children's rights (including the right to due process), cultural awareness, and cooperation between the state and the community - are appealing in political terms. Some would argue that the use of these terms helps the state to shield its ulterior purpose for moving towards conferencing in the juvenile justice area; namely, the minimisation of cost to the state.[10]

Principles of restorative justice also inform Braithwaite's much publicised "shame and re-integration model".[11] This model focuses on the needs and involvement of the victims of crime and the consequences of criminal behaviour. The reintegrative shaming attempts to avoid the removal of offenders from their community and the stigma attached to being labelled an 'offender'. Instead the crime is shamed and the offender reintegrated once they acknowledge their wrongdoing and accept responsibility for their actions.[12]

B. Youth Justice Conferencing in New South Wales

Following the qualified success of juvenile justice conferencing trials in Wagga Wagga (based on a variant of the New Zealand model), the New South Wales Government recently passed the *Young Offenders Act* 1997 which will introduce youth justice conferencing throughout New South Wales. In short, the proposed legislation provides conferences for summary matters and indictable matters capable of being dealt with summarily.[13] Young offenders who have a prior history of juvenile crime will not be excluded from the scheme,[14] unlike the strongly criticised South Australian legislation which does not cater for repeat offenders. More importantly, the power traditionally held by police to ascertain who enters the juvenile justice system and on what terms will remain intact under youth justice conferencing.[15] Referral to the scheme is to be determined by a specialist youth officer who consults with a conference coordinator as to the desirability of a conference.[16] If appropriate, having regard to culture and geographic location, the coordinator then selects a conference convenor.[17]

In developing a conferencing paradigm for domestic purposes, the New South Wales Government has placed considerable focus on the individual with a number of repeated references to the young offender taking "responsibility for offending behaviour".[18] Part 5 of the Act is the most relevant for present

10 Hassall, note 8 *supra* at 19.

11 J Braithwaite, *Crime, Shame & Reintegration* (1989).

12 This model of shaming is to be contrasted with the draconian proposal of the New South Wales Police Commissioner Peter Ryan that all young offenders should be publicly shamed out of their criminal habits by being named in the courts. Not surprisingly, this idea was greeted with considerable criticism from civil liberties groups who correctly argued that the plan would only stigmatise young people and make them outcasts. For an interesting media commentary on this point, see C Miranda, "Name Them, Shame Them" *The Daily Telegraph,* 4 October 1997, p 9 and Editorial, "Anger at Ryan Over Juvenile Shaming" *The Sydney Morning Herald,* 4 October 1997, p 5.

13 *Young Offenders Act* 1997 (NSW) s 8(1).

14 *Ibid* s 37(5).

15 *Ibid* ss 45-8.

16 *Ibid* ss 37-8.

17 *Ibid* ss 45-7.

18 See for example, *Young Offenders Act* 1997 (NSW) ss 34(1)(a)(i), 34(1)(b)(iii), 34(3)(b), 34(3)(c).

purposes as it outlines the principles of youth justice conferences, their organisation and proposed structure. According to the legislation, the conferencing scheme is designed:

(i) to promote acceptance of responsibility by the child concerned for his or her own behaviour;

(ii) to strengthen the family or family group of the child concerned, and to provide the child concerned with developmental and support services that will enable the child to overcome the offending behaviour and become a fully autonomous individual;

(iii) to enhance the rights and place of victims in the juvenile justice process;

(iv) to be culturally appropriate, wherever possible; and

(v) to have due regard to the interests of any victim.[19]

These principles echo the philosophical foundations of family group conferencing referred to earlier in the discussion of the New Zealand model. They also serve to illustrate some of the elements of the new juvenile justice system in New South Wales and the faith which is being placed in conferencing as a genuine diversionary tool for young offenders.[20]

IV. CHILDREN'S COURT OPERATIONAL STATISTICS

The operational statistics for the Children's Court provide a practical indicator of the demands being placed on the formal legal system and the nature of juvenile crime. In 1995-1996, there were 14 759 Children's Court criminal appearances.[21] In contrast to other periods depicted in Table 1 below, this represents an increase of almost 3.5 per cent on the 1994-1995 figure of 14 269. Perhaps one of the most alarming statistics reflected in Table 1 is the 41 per cent increase in Children's Court appearances for robbery and extortion offences (up from 348 to 490). Non-violent property offences in 1995-1996 comprised the majority (77 per cent) of offences for which juveniles appear before the Children's Court.[22]

In recent debates, the Senior Children's Magistrate, Stephen Scarlett, has spoken of the existing burdens on the Children's Court in the following manner:

> The Children's Court remains chronically under-resourced. It does not have the staff, either magistrates or clerical staff, to perform its existing functions, let alone undertake such grandiose schemes such as extending its current catchment area or conducting sittings on a regular basis in country areas ... The Children's Court will stay under-resourced as long as the politicians and the bureaucrats fail to accept that it is a specialised jurisdiction.[23]

---

19 *Young Offenders Act* 1997 (NSW) s 34(1)(a).

20 The objects of the legislation reinforce this view. These are reproduced for illustrative purposes in Appendix A.

21 New South Wales Department of Juvenile Justice, *Information Package for 1995/96* (1996) at 11-12.

22 New South Wales Department of Juvenile Justice, *Annual Report 1995/96* (1996) at 7.

23 S Scarlett, "Living in Interesting Times" in College of Law (Continuing Legal Education Department), *Children's Court Practice* (1996) 1 at 7.

Given that the Act will introduce youth justice conferencing for all summary offences and indictable offences able to be dealt with summarily,[24] it will be interesting to monitor any downward pressure on the Children's Court statistics referred to above. It is arguable that the politicians will now view the concerns of the Senior Children's Magistrate as unfounded because conferencing is designed to take away the so called burdens on the Children's Court. What the New South Wales Government has overlooked, however, is the strong possibility that conferencing will become the exception, rather than the norm.[25]

V. RESEARCH GUIDED BY SYSTEMS THEORY

As indicated above, a key feature of this paper is the emphasis on theory guided research.[26] Theory guided research usually means that one of the preliminary steps in undertaking new research is to examine existing and alternative theories.[27] For present purposes, Niklas Luhmann's autopoietic theory provides an innovative framework for evaluating the *Young Offenders Act* 1997 (NSW). In particular, autopoietic theory allows for a more realistic analysis of the features of the new legislation as well as an awareness of the limits of legal intervention in young people's lives.

According to autopoietic theory, law is a system which, like other social systems, is normatively closed, but cognitively open. It is normatively closed because it is characterised by a self referential coding of the outside world. Yet it is cognitively open because it draws selectively from its environment. In doing so, the legal system defines the world according to its own construction of reality and deconstructs other systems such as psychology and welfare through legal discourse designed to 'enslave' or 'exploit' these other disciplines.

If one recognises law as a social institution which 'thinks' independently of its members, one is forced to accept that traditional studies of juvenile justice offer only a partial explanation of legal decision making.[28] A common finding in these conventional studies is that prejudicial attitudes towards young offenders cause injustice for the young people involved, hence frequent calls for more sensitive court personnel and retraining for members of the legal profession. However, rather than making the experience for young offenders easier, these

---

24 See *Young Offenders Act* 1997 (NSW) s 8.

25 Indeed, before a conference proceeds the young offender must admit the offence and consent to the conference taking place; see *Young Offenders Act* 1997 (NSW) s 36. On this issue, it is important to note that s 33 of the *Children (Criminal Proceedings) Act* 1987 has been amended to allow conferencing as a sentencing outcome for all cases determined by the Children's Court. This also applies where the court finds the offence proved following a not guilty plea.

26 There are several descriptions of 'theory guided research' in the literature. White, for example, states that "[a]n emphasis on theory means that we are interested in the reasons or logic connecting observations. It also means we are looking for general patterns that are true of types of cases rather than of specific cases"; see LG White, *Political Analysis - Technique and Practice* (2nd ed, 1990), p 33.

27 *Ibid.*

28 See generally, M King and C Piper, *How the Law Thinks About Children* (2nd ed, 1995), ch 2; and M King, *Childhood, Welfare and Justice* (1981), ch 5.

'sensitive' players in the legal system simply communicate, and will continue to do so, as legal officers within a system of communication which is closed and highly suspicious of other systems.

In order to reverse this tendency and increase the instrumentality of the juvenile justice system for young offenders, one must contest the legal system's inherently adversarial nature, as well as the use of specialised language for its own purposes. If the principles of the juvenile justice system are to reflect the needs of juveniles themselves, the law must accept differing perspectives and reorganise procedures at every level. This requires a holistic approach which extends beyond the provision of individual support in a conference environment. At the most fundamental level, it requires a total revision of the methods by which young people become involved in the criminal justice system. A corollary of this argument is the necessity for increased multidisciplinary research in this area, which analyses the legal system's capacity to treat young offenders as citizens, rather than clients of the criminal justice system. In this regard, it will be interesting to monitor the outcome of the Australian Law Reform Commission's inquiries into the adversarial nature of our legal system[29] and its relationship with children.[30]

The insights offered by systems theory as discussed above provide an effective basis for challenging the content of the legislation and calling for an alternative approach. A broader and more systematic procedure which acknowledges the social and economic dimensions of juvenile crime is desirable for two reasons. Firstly, it encapsulates a more realistic analysis of the nature of juvenile offending behaviour; and secondly, a broader framework allows the criminal justice system to be informed by disciplines outside the legal domain, such as psychology and sociology.

29 See Australian Law Reform Commission, *Review of the Adversarial System of Litigation - Rethinking the Federal Civil Litigation System*, Issues Paper 20, April 1997.

30 See Australian Law Reform Commission, *Speaking for Ourselves - Children and the Legal Process*, Issues Paper 18, March 1996 and Australian Law Reform Commission Report 84, *Seen and Heard: Priority for Children in the Legal Process*, 1997.

TABLE

TRENDS IN APPEARANCES FOR CRIMINAL MATTERS BEFORE THE CHILDREN'S COURTS BY TYPE OF OFFENCE AND YEAR OF APPEARANCE: 1990-1991 TO 1995-1996[31]

Type of offence charged	*Year of Appearance*											
	1990-1991		*1991-1992*		*1992-1993*		*1993-1994*		*1994-1995*		*1995-1996*	
	No	*%*	*No*	*%*	*No*	*%*	*No*	*%*	*No*	*%*	*No*	*%*
Against the person	2 079	13.2	1 951	14.2	1 790	14.3	2 447	17.6	2 802	19.6	3 010	20.4
Robbery & extortion	272	1.7	300	2.2	293	2.3	425	3.1	348	2.4	490	3.3
Sexual assault	98	0.6	98	0.7	102	0.8	121	0.9	116	0.8	117	0.8
Fraud	435	2.8	406	3.0	378	3.0	388	2.8	279	2.0	334	2.3
Breaking & entering	2 353	14.9	2 250	16.4	2 132	17.0	2 017	14.5	1 914	13.4	1 933	13.1
Larceny:												
Motor Vehicle Theft	1 638	10.4	1 366	9.9	1 164	9.3	1 503	10.8	1 547	10.8	1 502	10.2
Shoplifting	714	4.5	639	4.6	985	7.9	999	7.2	989	6.9	849	5.8
Other theft	2 293	14.5	1 874	13.6	1 400	11.2	1 618	11.6	1 519	10.6	1 646	11.2
Unlawful possession	864	5.5	668	4.9	620	4.9	713	5.1	639	4.5	750	5.1
Serious driving	491	3.1	364	2.6	259	2.1	264	1.9	316	2.2	298	2.0
Firearms & weapons	185	1.2	171	1.2	170	1.4	133	1.0	217	1.5	199	1.3
Property damage	1 163	7.4	1 024	7.4	959	7.6	985	7.1	1 090	7.6	1 003	6.8
Offensive behaviour	999	6.3	723	5.3	526	4.2	530	3.8	662	4.6	553	3.7
Drug	590	3.7	667	4.8	753	6.0	680	4.9	663	4.6	821	5.6
Other	1 628	10.3	1 252	9.1	1 006	8.0	1 089	7.8	1 168	8.2	1 254	8.5
TOTAL	15 802	100.0	13 753	100.0	12 537	100.0	13 912	100.0	14 269	100.0	14 759	100.0

31 This table is adapted from New South Wales Bureau of Crime Statistics and Research, *NSW Criminal Courts Statistics 1996* (1997) at 42; and New South Wales Department of Juvenile Justice, *Information Package for 1995/96* (1996) at 11-12. Note that the Act excludes a range of serious offences from conferencing, including sexual assault offences, serious driving offences and certain personal violence offences (see s 8(2) of the Act).

PART II

I. A SURVEY OF THE CRITICAL LITERATURE

In the growing body of literature on conferencing in the juvenile justice arena many commentators have expressed concerns about the level of victim satisfaction, the potential for net widening, and the guarantee of due process for young offenders given the role played by police in some schemes. Although other important issues have been raised, the focus here is on these three primary concerns and their relevance in the context of the Act.

A. The Level of Victim Satisfaction

Guaranteeing the satisfaction of victims is perhaps one of the greatest challenges for conferencing as a new approach in the criminal justice system. One of the theoretical attractions of conferencing is that it involves the empowerment of victims through enhanced opportunities for direct compensation and by having the chance to face the young offender with their account of how the offence has affected them. In his discussion of the notion of family group conferencing, Braithwaite has described the benefits victims enjoy in the following terms:

> Crime victims have their rights as citizens taken more seriously ... Under this model, both the offender and the victims are imputed the status of responsible citizen in a community, whereas under a liberal model their status is as individual subjects of state justice; the status of the victim is simply that of evidentiary cannon fodder, of witness or claimant, not of citizen with participation rights and obligations.[32]

In summary, it is suggested that through direct contact with the offender, a victim is able to express their anger and disappointment, participating in the process of restitution and reparation as they see fit.[33]

This theoretical view is supported by the results of an evaluation of the Wagga Wagga model of juvenile conferencing by Moore and O'Connell.[34] They argue that holding the conference in police stations, as took place in Wagga Wagga, increased victim satisfaction and gave victims the feeling of general police support.[35] The role played by police officers in the conferencing process is a

---

32 J Braithwaite, "Juvenile Offending: New Theory and Practice" in L Atkinson and SA Gurell (eds), *National Conference on Juvenile Justice: Australian Institute of Criminology Conference Proceedings* (1994), p 35 at 36.

33 Note that the level of victim satisfaction with conferencing varies depending on the context in which it is used. In the area of violence against women, for example, Stubbs has convincingly argued that the use of communitarian conferencing is counterproductive and likely to exacerbate the already skewed power relationship between women and their offenders. She correctly suggests that "the [conferencing] process itself may be perceived to be an opportunity for further abuse by the offender, and, or for the denial and trivialisation of the abuse that has already occurred"; see J Stubbs, note 3 *supra*.

34 D Moore and T A O'Connell, "Family Conferencing in Wagga Wagga: A Communitarian Model of Justice" in C Alder and J Wundersitz (eds), *Family Group Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* (1994), p 45 at 65.

35 It is notable that Moore and O'Connell fail to adequately explain the poor level of victim satisfaction found in the New Zealand model of family group conferencing. They suggest that one reason for this higher victim dissatisfaction in New Zealand is that conference coordinators are often viewed by victims to be acting in the interests of young offenders. This claim cannot be sustained, however, in

significant one in so far as they arbitrarily determine, to a large degree, not only which young offenders will become part of the juvenile justice system, but also the nature of their entry. More importantly perhaps, the largely negative role played by police in the wider juvenile justice system ultimately shapes the perception young people have of the conferencing process. Thus, some critics suggest that instead of reintegrating the offender, the conference may simply serve to exacerbate the largely entrenched abuse found in the juvenile justice system.[36]

At the same time, it is argued that victims themselves may become marginalised by the conferencing process. Where a conference is relatively unstructured, victims may "feel that the potential is great for having intimate details of their lives exposed and for being re-victimized".[37] It would seem, however, that it is difficult to predict the level of victim satisfaction given the diversity of conferencing schemes. For present purposes, it is necessary to identify the way in which the Act has catered for victims.

Under s 3(c)(iii) of the Act, meeting the needs of victims is referred to as one of the objects of the legislation. The principles and purposes of conferencing as enunciated in Part 5 also mention the needs of victims, suggesting the scheme is designed "to enhance the rights and place of victims in the juvenile justice process".[38] Other references to victims are found in s 34(3):

> In reaching decisions at a conference, the participants are to have regard to ... (c) the need to empower families and victims in making decisions about a child's offending behaviour, [and] (d) the need to make reparation to any victim.

Arguably, these provisions reflect a paradigm shift towards the greater recognition of victims rights in general. In his Second Reading speech for the Act, the Attorney-General, Hon Jeff Shaw MLC QC, spoke at considerable length of the value of recognising the rights of victims in the conferencing process:

> An important feature of the [conferencing] scheme is the Government's recognition of the rights of victims by providing for their participation in the conference process. The victim will be able to take part in discussions to determine appropriate restoration to be made by the young person. Victims who attend a conference will have a right of veto over any proposed outcome plan.
>
> ... Emphasis will be placed on ensuring that victims are informed of action taken in relation to young offenders, and the scheme overall will lead to the speedier resolution of matters.[39]

Although beyond the scope of this paper, it is necessary to bear in mind the growing enthusiasm for the rights of victims in the criminal justice system and how this stands in contrast to the conventional focus on due process for the

---

circumstances where police are responsible for a conference which has the unintended effect of marginalising victims. See the comments of critics such as Stubbs, note 3 *supra*.

36 See for example, the comments of Mick Dodson in *Aboriginal and Torres Strait Islander Social Justice Commissioner Fourth Report*, 1996 at 30-5.

37 La Prairie, note 2 *supra* at 89.

38 *Young Offenders Act* 1997 (NSW) s 34(1)(a)(iv).

39 New South Wales, Legislative Council, Debates, No 27, 21 May 1997, pp 8960-1.

defendant in a criminal trial.[40] Any future evaluation of youth justice conferencing needs to be careful about the way in which 'satisfaction' is operationalised and the notion of victim is constructed. It is arguable that the victims of juvenile crime who choose to take part in conferencing may not be representative of all victims. Moreover, it is likely that the level of victim satisfaction, irrespective of how it is measured, will be inextricably linked to the participation of the young offenders and a willingness to take responsibility for their own action. The accurate measurement of variables such as victim satisfaction is a crucial issue which should not be underestimated.

B. Protection of Due Process[41] for Young Offenders

One of the most fundamental criticisms levelled at conferencing in the juvenile justice area relates to the protection of due process.[42] There are a number of variations on the conferencing ideal, and the literature points to several issues worthy of discussion. Firstly, it is maintained by some critics that the increased flexibility of conferencing may severely jeopardise the predicability, fairness and natural justice associated with the formal criminal justice process. With respect, however, the current predicament of young offenders (particularly their association with police and the lack of complaint)[43] questions the assumed existence of due process for young offenders. To the extent that conferencing provides an alternative to the more conventional procedures for juvenile justice, and at the same time avoids the deficiencies of the present system, it ought to be encouraged (albeit with caution).

This is not to underestimate the possibility that due process in a conference environment can sometimes be compromised. In its submission to the New South Wales Law Reform Commission's Inquiry into sentencing laws, the Youth Justice Coalition maintained that young offenders who are involved in conferencing are not provided with legal representation before they make a criminal admission, and the penalties which are devised do not always equate with the principles of proportionality and consistency.[44]

In light of these issues, it is useful to examine the extent of any procedural safeguards and rights which are available for young offenders and the level of scrutiny, accountability and review which is offered under the Act. The

---

40 On this topic, see F Manning and G Griffith, *Victims Rights and Victims Compensation: Commentary on the Legislative Reform Package*, New South Wales Parliamentary Library Research Service, Briefing Paper 12, 1996.

41 The term 'due process' is loosely defined in the juvenile justice literature with a number of competing definitions. For present purposes, it is understood to include (but not limited to) "respect for and full compliance with the right of all young people to competent and understandable legal advice, representation and support so that their legal rights are observed at every stage of the legal process". This definition is adapted from the New South Wales Juvenile Justice Advisory Council's Green Paper, note 1 *supra* at 104.

42 See for example, the comments in relation to Indigenous youth by Cunneen, note 3 *supra*.

43 See the text below at notes 64-7 *infra*.

44 As stated in New South Wales Law Reform Commission Report 79, *Sentencing*, 1996 at 301. Note that the Youth Justice Coalition was commenting on the forms of conferencing operating at the time the New South Wales Law Reform Commission called for submissions to their inquiry.

emphasis on due process procedures and the personal responsibility of young offenders found in Part 5 of the Act typifies the nature of Australian reform to juvenile justice, shifting from a welfare model to a justice model.[45] In general terms, the focus on due process reflects the procedural aspect of the justice model, while the ideological content is represented by the emphasis on individual responsibility. The ideology driving the Act, and indeed much of the juvenile justice processing in Australia, is closely associated not so much with academic criticism or the available evidence, but rather more pragmatic and political concerns which have generated the tough 'law and order' campaigns of the 1990s.[46]

The concerns in relation to due process in the context of the Act are twofold: Firstly, there remain inherent power imbalances in the conferencing scheme provided for in the Act; and secondly, the operation of youth justice conferencing may provide an inferior, rather than stronger, level of procedural protection than the present scheme under the *Children (Criminal Proceedings) Act* 1987 (NSW).[47] In fact, similar concerns were expressed by politicians involved in the extensive parliamentary debate over amendments to the proposed legislation.[48]

C. The Potential for Net Widening

A corollary of the concerns about due process is the common criticism voiced in relation to any diversionary scheme which has a net widening effect. Criminologists such as Cohen[49] and Braithwaite[50] have argued that diversion in some instances can be counterproductive due to the possibility of net widening. They argue that by lessening the formal intervention of the criminal justice system, young offenders are attracted where they would otherwise not become involved in initiatives such as family group conferencing, or other formal schemes within the criminal justice system.

---

45 See N Naffine and J Wundersitz, "Trends in Juvenile Justice" in D Chappell and P Wilcon (eds), *The Australian Criminal Justice System: The Mid-1990's* (1994), ch 11.

46 The juvenile justice policy of the Carr Labor Government is entitled *Tough on Crime, Tough on the Causes of Crime*. The events leading up to the March 1995 State election, as well as subsequent developments have shown that the message of this title was to be taken literally. That is, policy prescriptions subject to the 'law and order' statement were to take a punitive, hardline and strong policing approach to juvenile justice issues. Ironically, an announcement was made in the recent State Budget that legal aid support at the state level is to be slashed by $12.4 million. Although the Government claims it has been forced to cut funding due to Commonwealth pressure, it is difficult to envisage how young offenders, most of whom are in no position to finance legal representation, will be afforded due process in the juvenile justice system following these unjustified measures; see D Humphries, "Legal aid slashed as courts revamped" *The Sydney Morning Herald,* 7 May 1997, p 18.

47 These and other concerns feature prominently in the critical conferencing literature. See the sources cited note 3 *supra.*

48 New South Wales, Legislative Council, Debates, vol 27, 18 June 1997, pp 7-12, 25-38, 41-60, 62-9; and 19 June 1997, pp 22-37.

49 S Cohen, *Visions of Social Control* (1985). See also his chapter "The Failures of Criminology" in S Cohen, *Against Criminology* (1988), ch 4.

50 See Braithwaite's sophisticated analysis of this issue in J Braithwaite, "Diversion, Reintegrative Shaming and Republican Criminology", paper presented at Diversion and Social Control: Impacts on Justice, Delinquents, Victims and the Public, International Symposium, 27-9 November 1992, Germany.

The potential for net widening has become a contentious issue in the literature. On the one hand, commentators such as Braithwaite believe that net widening is desirable in some cases because it makes services available for young offenders who are at risk.[51] On the other hand, critics have argued the reverse, suggesting that a distinction needs to be drawn between:

> processes that make services voluntarily available ... [and] the use of statutory coercive power to ensure that children and families opt for what society considers to be in their best interests.[52]

If the impact of youth justice conferencing is an increase in the coercive power of the state, then tensions are likely to arise between acknowledging professionals' statutory duties and encouraging family decision making; between valuing the input of families and sufficiently protecting abused young people; between protecting rights and ensuring the informality of the conferencing process.[53]

Though the issue of net widening (in empirical terms) is beyond the limits of this paper, it is an important one to consider when evaluating the operation of the Act in the future, that is: To what extent will the youth justice conferencing scheme simply widen the net of young offenders in New South Wales in five or ten years time? The answer to this question lies in empirical testing of youth justice conferencing which will be made considerably easier by the explicit reporting provisions found in the Act.[54] As the Attorney-General recognised in his Second Reading speech for the legislation:

> Research on the effectiveness of police warnings, cautioning and the conferencing system, and the collection of relevant data and other information will be crucial to the effectiveness of these schemes.[55]

II. A QUALITATIVE SURVEY OF THE ISSUES

A. Methodological Considerations

In order to gauge a small qualitative assessment of the likely success of youth justice conferencing in New South Wales, a semi-structured survey[56] was used to interview the following participants:

---

51 J Braithwaite, "Thinking Harder About Democratising Social Control" in C Alder and J Wundersitz, (eds), *Family Group Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* (1994), p 199 at 202-3.

52 A Morris, G Maxwell, J Hudson and B Galaway (eds), *Family Group Conferences: Perspectives on Policy and Practice* (1996), ch 14, pp 226-7.

53 *Ibid*, p 232.

54 Pursuant to ss 17, 33 and 59, the Department of Juvenile Justice and the Police Service are obliged to keep comprehensive records of when and how often warnings, cautions and conferences respectively are utilised. In addition, the New South Wales Government has already established a young offenders implementation committee which will monitor the operation of the legislation; see New South Wales, Legislative Council, Debates, No 27, 21 May 1997, p 8962.

55 New South Wales, Legislative Council, Debates, vol 27, 21 May 1997, p 8961.

56 A description of the survey methodology which was used is detailed in Appendix B.

- four young people aged between 10-18 years, two of whom have been exposed to the juvenile justice system;
- two youth and community workers dealing regularly with young offenders;
- two policy officers from both the Department of Juvenile Justice and the Attorney-General's Department; and
- two academics who have an interest in the issue.

Prior to examining the results of the survey it is important to be mindful of its limitations. Firstly, it is accepted that the findings may not necessarily reflect the views held by the wider population. Such a conclusion can only be safely drawn following a much larger sample size for the survey. Secondly, there is no attempt to quantify the results or draw any statistical inference from them. Again this would require a more comprehensive analysis. Thirdly, it is possible that the views reflected in the survey results stem more from a dissatisfaction with the current system rather than the feasibility of the new scheme.

B. Survey Results and Theory Guided Research

Notwithstanding the methodological shortcomings of the survey, the findings are useful to the extent to which they provide some qualitative evidence of the issues that are likely to arise following the enactment of the scheme in 1998. Not surprisingly, the comments made by the various participants concur, to a large extent, with the issues raised in the critical literature. Issues emphasised by the participants included the potential for the young offender's rights to be overlooked, the uncertainty as to the degree of victim satisfaction, as well as the significance of the wider law and order debate. These and other points are outlined below with reference to autopoietic theory, guided in particular by the illuminating work of King, Piper and Trowell who have researched the limits of legal intervention in young people's lives.[57]

(i) A Meaningless Legal Paradigm for Young People

King and Piper contend that the dominance of the law in juvenile justice policy prescriptions means that legal truth is privileged over other truths, although the dominance of the law (and its alleged perfection) is often irrelevant to the young people involved.[58] This dominance is reflected in the shortage of youthful experiences being heard in the legal discourse associated with juvenile justice. When young people are given the opportunity to voice their opinions, the irrelevance of the juvenile justice system becomes apparent. As two of the young participants explained:

> I don't reckon they care what we think or do. So long as the cops get what they want they'll be happy. I spent six months in a detention centre where they treated me like some murderer. Sure there were some guys in there for violent stuff but I didn't fit in - a small robbery didn't compare to some of the stuff I heard of in there.

---

57 See M King and C Piper, note 28 *supra* and M King and J Trowell, *Children's Welfare and the Law: The Limits of Legal Intervention* (1992).

58 King and Piper, note 28 *supra*, ch 6.

> I wanna know where they got this idea about meeting our victims from. I bet they didn't bother talking to some of us before it came about.

Other participants argued that participation for some groups of vulnerable youth in the conference environment will be extremely limited. They queried whether the rhetoric of youth empowerment as articulated in the Act would be fully realised. A young person commented:

> The government stinks. They talk about meeting with the people and stuff but I've never seen them around here. They're cooped up in their cosy offices with no idea of what's really happening outside.

In fact, the exclusion of young people from decision making processes affecting their lives has a long history in Australia which goes beyond the juvenile justice system. Young people are consistently represented in ways which construct them as the object of others' concerns and action, and policy makers provide very little, if any, alternative views of young people as active agents or legitimate participants in the processes shaping their lives.[59] In the areas of health, education, transport and income support it is not uncommon for the voice of youth to be marginalised.[60] In the legal context, King and Piper argue that the very process of legal fact finding is prejudicial to the needs of young people.[61] What is required, the authors suggest, is a paradigm shift away from 'legalism' with its obsession with binary thinking (legal/illegal, true/false, guilty/innocent) and resultant inflexibility.[62]

Arguably, a young person's culpability is viewed as the basis for the outcome which is produced by the criminal justice system. The culpability of young offenders under criminal law occurs through its determination of whether they are guilty or innocent of a crime, the seriousness of the offence and whether they are repeat offenders. Youth justice conferencing embodies a similar approach, relying on the various legislative provisions to determine a young person's eligibility for a conference.[63]

Although conferencing is often referred to in the literature as a 'diversion from the courts' or 'alternative sentencing option', such labels are misleading. These terms suggest that conferencing is a non-legal alternative which is uninhibited by the norms of the criminal justice system. In practice however, initiatives such as conferencing often become elaborate attempts by the law, acting as a self referential system, to extend its borders and ultimately its social control of young offenders. This was identified as problematic by some participants who commented in different ways on the question of due process. The policy officers emphasised the checks and balances in the legislation, whereas the youth and community workers expressed doubt as to whether there

---

59 D Eldridge and T Newman, "Whose Future? Changing Attitudes to Young People" (1992) 22 *Impact* 15.

60 Although a significant issue, the question of 'youth participation' is beyond the limits of this paper. See generally, T Irving, D Maunders and G Sherington, *Youth in Australia: Policy, Administration and Politics* (1995), especially Part 3 "Youth: A Wasted Resource, 1975-1990s".

61 King and Piper, note 28 *supra*.

62 *Ibid*, p 104.

63 Before a conference can proceed a number of conditions need to met: The offence is one for which a conference may be held; the child admits the offence; the child consents to the holding of the conference; and the child is entitled to be dealt with by holding a conference. See ss 35-8 of the Act.

were enough safeguards for young offenders in the legislation. When asked about the role played by police, the difference in attitudes became even more apparent, as illustrated in the following comments:

> The role of police is explicitly downplayed in the Act. The government has made it clear that their role in the conference environment will be the absolute minimum and nothing more.
>
> (Policy Officer)
>
> I accept that the Act attempts to address the dominance of professionals which can arise in many conferencing schemes, but when it comes to police I find it hard to believe that they will be able to remove themselves from the conference. In most cases it is the police themselves who have a vested interest in making sure the young offender makes it to the conference. In any case, the specialist youth officer who determines the young person's eligibility for conferencing is defined under the Act as a member of the New South Wales Police Service.
>
> (Youth Worker)

The most critical view of police was that offered by the young people interviewed. One young person conceded that "some cops were fair and didn't try to control us and give us lectures about staying on track". Though the majority believed that any conference setting which involved the police was likely to be counterproductive given the history of police controlling their space whenever they simply "wanted to muck around".

Notwithstanding the fact that there are grievance procedures in the juvenile justice system, it is commonly accepted that they are under utilised. In one of the most comprehensive studies of the treatment of juveniles in Queensland, Victoria, Tasmania and Western Australia, Alder *et al*, identified that only a small number of youths who are harassed by police actually lodge complaints.[64] Ninety-eight per cent of the lawyers, legal advocates and services who responded to the study indicated that less than a quarter of youth who have been inappropriately treated by police formally complained.[65] It is not too difficult to appreciate the reasons why young people would have little or no confidence in the existing complaints procedures. In addition to the fact that many of them are unaware of their legal rights, they have little faith in a system which places them in a skewed power relationship with police. In many instances, the lack of complaint is also explained by a sense of hopelessness about the existing complaints procedures which allow police to investigate allegations against their fellow officers.[66]

Given the common use of the words 'them' and 'us' it became apparent that the juvenile justice system, at least from the standpoint of the young people interviewed, was characterised by a daily battle for equitable treatment. In order

---

64 C Alder, I O'Connor, K Warner and R White, *Perceptions of the Treatment of Juveniles in the Legal System* (1992), pp 39-42.

65 *Ibid.*

66 Not surprisingly, the New South Wales Ombudsman, Irene Moss, has recently claimed that young people do not make many complaints to her office. Interestingly, of the relatively small number of complaints lodged by young people, about 50 per cent stem from police assaults, stop/search/seize and breach of rights. Complaints concerning juvenile justice centres account for approximately 30 per cent of young people's complaints. See New South Wales Ombudsman, *Annual Report 1996-7* (1997) at 167-9.

to combat this situation, there is a need to institute effective, culturally sensitive and efficient complaint mechanisms to deal with young people's claims of abuse of power by police. The recent call for a Children's Ombudsman is one step in this direction, and is commendable in so far as it provides an independent alternative to the status quo.[67] It might also be thought that the recent Wood Royal Commission in New South Wales should provide youths, as victims of police corruption, with some hope of reparation. Those who have held this expectation, however, are likely to be disappointed by the scope of the recommendations which failed to make any reference to the policing of young people. What remains is the disappointing historical irony: Young people are *overpoliced* as alleged 'offenders' (whether it be in the private or public domain), yet are *underpoliced* as true 'victims' of crime when they report offences. In the words of two young participants:

> The cops think they can do what they want with us. They reckon pushin' us around gives us an idea of right and wrong - all it does is make ya hate them more. I'm not gonna let them do that and embarrass me in front of others in a meeting.
>
> Youth are put down all the time - graffiti, rubbish, vandalism, stealing is all our fault society reckons. When a cop picks you up for something they reckon they're teaching you a lesson for society. It's a joke. This conference thing will only work without them in it.

In the youth justice conferencing environment the aim of teaching the juvenile the difference between right and wrong[68] is tantamount to insulting their intelligence. Most offenders, whether young or old, are highly conscious of the legal implications of their actions and it serves no useful purpose to insist on this aim being fulfilled. The fact that the conference is controlled by the legal system is a further indication that the scheme will not work. It is arguable that the law is not designed to teach juveniles a lesson. A rather cynical view would suggest that conferencing is designed to be nothing more than a pedagogical exercise which is ill suited to legal problem solving. Arguably, youth justice conferencing will become an extreme form of social control which is no better than the existing system. Although it offers a different form of communication with participants, it is predominantly concerned with the social engineering of young people.

---

67 See the comments made by K Cronin and M Rayner in their article "No political voice, no clout" *The Sydney Morning Herald,* 21 October 1996, p 20. The newly appointed chief executive of the New Children's Hospital, Professor Kim Oates, has gone further than the call for a Children's Ombudsman, maintaining that Australia needs an "Office for Children" as a watchdog over all government departments and policies affecting children; see D Jopson, "Children's watchdog 'essential'", *The Sydney Morning Herald,* 5 November 1997, p 4. The Australian Law Reform Commission has recommended a similar approach to that advocated by Professor Oates in its recent inquiry into Children and the Legal Process; see note 30 *supra.* See also S Loane, "UN goes to bat for our children" *The Sydney Morning Herald,* 8 October 1997, p 11.

68 Though this aim is not explicit in the Act, s 34 which outlines the principles and purposes of conferencing provides that conference participants are to have regard to "the need to hold children accountable for offending behaviour" (s 34(3)(b)) and "the need to encourage children to accept responsibility for offending behaviour" (s 34(3)(c)).

(ii) The Legal System's Simplistic Response

A close examination of the Act reveals that the procedures and rules to be used for youth justice conferencing will primarily still be based on legal criteria. The initial decision to consider conferencing stems from a discretionary assessment by a police officer of the seriousness of the offence and its suitability for conferencing.[69]

The fact that young offenders need to admit their offence attracted heavy criticism by participants:

> It is possible the requirement of confessing to a crime before conferencing can take place will build incentives for a guilty plea and a positive disincentive to go to trial.
>
> (Academic)
>
> The fact the conference relies on a confession is problematic. I can envisage many situations where a suggestible and frightened young person will much sooner wrongly confess to the police rather than face the prospect of a court hearing.
>
> (Community Worker)

A number of participants believed that the conferencing scheme was inappropriate for violent offences such as sexual assault. They also agreed that juvenile crime cannot be viewed in isolation from the social and economic environment surrounding young people. Youth homelessness, high levels of youth unemployment and suicide were some of the issues which they believed to be of great significance in the lives of a growing number of young Australians. In fact, given their prevalence in the youth affairs literature,[70] it is easy to appreciate why some of these social factors are strongly associated with juvenile crime.[71] A recent study by the New South Wales Bureau of Crime Statistics and Research has confirmed the long held perception that economic and social stress arising from unemployment, poverty and lack of family support strongly correlates with juvenile crime.[72]

Many of the participants predicted that the marginalisation of these social issues would lead to a large number of young offenders being fed back into the conventional court system. This criticism stems from confusion over the role to be played by conferencing. There is much to commend the adoption of a welfare objective in conferencing as the justice role is already played out by the law. Yet the Act is structured in such a way that a young person will only come to the attention of the state when they pass a means test of criminal behaviour. One of

---

69 Note 63 *supra.*

70 A detailed discussion of these issues can be found in the work undertaken by Eckersley for the Commission for the Future; see R Eckersley, *Casualties of Change: the Predicament of Youth in Australia* (1988).

71 This is a claim supported by many criminologists; see note 5 *supra.*

72 New South Wales Bureau of Crime Statistics and Research, *Social and Economic Stress, Child Neglect and Juvenile Delinquency*, 1997. The study reveals that in urban New South Wales - Sydney, Newcastle and Wollongong - an extra 1 000 neglected children results in an extra 256 juveniles involved in crime. This is equivalent to an extra 466 Children's Court appearances. For an interesting discussion of the research findings see R Gittins, "Why Child Neglect is Such a Crime" *The Sydney Morning Herald,* 5 November 1997, p 17. Somewhat ironically, given his own occupation, Gittins observes that "[t]he solution to crime the media urge on politicians will always be about the readily visible - the alleviation of symptoms - rather than the invisible: the prevention of the disease".

the academics surveyed noted the irony in a criminal justice system which is responsible for extending the reach of its own discourse for non-legal purposes:

> In some ways the conferencing scheme has the potential to offer some real assistance in terms of welfare for young offenders, including referral to youth and community services, counselling or rehabilitative reparation. Unfortunately, to get this assistance the young person needs to commit a crime and fit the typical criminal characterisation.

The legal system's flawed conception of children and their problems has been criticised by many commentators.[73] They argue that the criminal law insists on simplistic 'factual' answers to its questions (for example: "Has the child committed a crime?"; "What level of capacity does the child have?") and mistakenly proceeds on the basis that such answers can be easily obtained from other professions in the form of expert diagnoses of the child and his or her problems. The reality of handling the situation is quite often a complex, lengthy and resource intensive procedure which may draw results which are incapable of being reduced to the 'snap shot' approach adopted by courts and alternatives such as youth justice conferencing. It is argued that the unprecedented level of faith being placed in conferencing represents a conscious effort by the State Government to reduce the burgeoning cost of operating the Children's Court in New South Wales. The rights and responsibilities of young people, though made explicit in the objectives of the Act, do not necessarily feature prominently in the Government's broader law and order agenda.[74]

When asked whether there was likely to be any major difficulties with the conferencing process, the academics and those who work with youth expressed some concern about the potential for power imbalances between young offenders and adult professionals. This view was expressed in terms of the increasing complexity of Australian society (in terms of changing social norms and growing institutionalisation), leading many young people to become marginalised and excluded from mainstream society. A youth worker commented on this problem in the following way:

> As a society we have to address our attitude towards young people in general - not just young offenders. 'Youthful' responses are no less valuable than adult ones, just different. The intergenerational tensions caused by false impressions of young people as 'lazy', 'self-indulgent' and 'dangerous' need to be critically evaluated. Many of the juveniles who come into contact with our service often complain that new schemes such as conferencing are an ill-suited, adult-created means of dealing with juvenile behaviour. Their cynicism I think says a lot about adult relations with young people and their inability to speak with young people on a level playing field.

In the juvenile justice system these issues have severe ramifications and highlight the inadequacy of schemes such as youth justice conferencing which are simply imposed on young offenders with little, if any, thought given to their needs. Whilst the new legislation provides a long list of factors to be considered before allowing a conference to proceed,[75] it is arguable that in practice, the

---

73 Note 57 *supra*.

74 The wider criminal law reform agenda is discussed below in Part III of this paper; see text at notes 86, 88-90, 96 *infra*.

75 These conditions are found in ss 36-8 of the Act.

interests of time and cost will prevail over any social concern for the young offender. That is, if a specialist youth officer[76] is confronted, for example, with a choice between a Children's Court appearance which may be delayed for months and a small conference which can convened in a matter of days, there is little doubt that the latter will be preferred. This result may still arise even where the child is reluctant to admit to commission of the offence, or has difficulty in communicating with professional adults.

The difficulties young offenders face with puzzling legal language are significant. If one assumes that the criminal justice system is designed to be fair, it is questionable whether this objective is achieved when juveniles are forced to confront the legal discourse which is driving current juvenile justice policy prescriptions. Seymour contends that lawyers are adopting the high ground in debates about juvenile justice reform in Australia. He rightly views this tendency as problematic given the nature of legal education and training, arguing that:

> ... lawyers tend to think in terms of broad principles and institutional models. For example, they believe in due process, proof beyond reasonable doubt and the adversary system. The problem with a commitment of this kind is that it can lead to the provision of ready-made answers rather than the identification of appropriate questions.[77]

This argument is appealing in so far as it calls for the identification of deficiencies in the existing juvenile justice system. That is, rather than simply allow for the adoption of ready made political answers to alleged community outrage over juvenile crime, we could achieve more if we begin to question the assumed operations of the system.

(iii) Justice and Welfare as Polar Extremes

Some may wish to argue that framing reform of the juvenile justice system to take into account social factors outside the system, generates a conflict between the welfare and justice systems about how young offenders ought to be treated.[78] On the one hand, the methods of the welfare system are geared to consider the impact of social forces on young offenders. Advocates of the welfare model believe the state has a duty to intervene so as to help correct the offending behaviour of juveniles. On the other hand, according to the juvenile justice model the state has no rehabilitative functions, individuals are held personally responsible for their actions.

Rather than being forced to decide on the preferable approach, it is more fruitful to be able to recognise this tension and engineer reform which takes into account the environment surrounding young people. According to a youth worker who was interviewed:

---

76 This is defined in s 4 of the Act as "a member of the Police Service appointed as a specialist youth officer for the purposes of [the legislation] by the Commissioner of Police".

77 J Seymour, "Juvenile Justice: The Need to Ask the Right Questions" in L Atkinson and S A Gerull (eds), *National Conference on Juvenile Justice Australian Institute of Criminology Conference Proceedings* (1994), p 25 at 26-7.

78 See Naffine and Wundersitz, note 45 *supra*.

> We won't witness a decrease in offending behaviour by young people unless we admit a number of our systems are failing. This is generating a cultureless group of young people who are creating their own language and have no extended family. We're giving them the impression that they were born at the wrong time, in the wrong place, at the wrong age, in the wrong family, and in the wrong economic climate. It's along this terrain that we have tended to move young people further out from mainstream society and into deviant behaviour.

In the context of diversion it is simple to point to initiatives such as conferencing as an answer to previously failed schemes and the problems in the current scheme. However, it is also crucial to ask questions about the desirability of the reform and its likely impact. As Seymour reminds us:

> [t]he adoption of ready-made answers, particularly those imported from overseas or interstate, is no substitute for the careful diagnosis of problems and the rigorous design of solutions fashioned to solve those problems.[79]

In terms of whether youth justice conferencing will overcome existing difficulties and operate outside the juvenile justice system, participants provided the following comments:

> Whilst the theory suggests that conferencing can be divorced from the state, this is not intended to be the case in New South Wales. This is not to dismiss the fact, however, that youth justice conferencing is designed to combat the formalities of the Children's Court and provide a comfortable alternative to the status quo.
>
> (Policy Officer)
>
> There is no doubt that the best solutions to juvenile crime are not found in the juvenile justice system itself, but rather in community-operated schemes. To the extent that youth justice conferencing is able to achieve the latter it will be a remarkable improvement on previous strategies for juvenile justice reform. At the same time, we ought to be realistic about the process. I think it is inevitable that the state will continue to be involved, not only in justice issues, but also the welfare of young offenders.
>
> (Community Worker)
>
> Despite the proclaimed merits of conferencing, the total juvenile justice system remains at odds with the needs of young offenders.
>
> (Academic)

If we are able to move beyond the theoretical appeal of family group conferencing, we can focus attention on the deficiencies in existing practices which the introduction of conferencing purports to overcome. Many supporters of conferencing emphasise that conferencing can be a simple, cost effective, relatively quick and informal alternative to a courtroom environment. Others suggest it can be viewed as a mechanism for providing support services tailored to the needs of young people and their families. Essentially, the difference between these two views is that the former aims to do *less* for young offenders involved in conferencing, while the latter attempts to do *more*.[80] If the results of the survey undertaken for present purposes are any indication, it appears that this issue will be controversial in relation to youth justice conferencing, with differing views as to the likely impact of the new scheme. King and Trowell

---

79 Note 77 *supra*.

80 Note 77 *supra* at 28-9.

refer to the damage created when 'legal' demands are allowed to triumph over more fundamental concerns. The increasing legalisation of juvenile justice issues, coupled with the tendency to construct young people's issues within a justice framework (as opposed to welfare) has the effect of hardening the attitudes of juveniles (particularly repeat offenders) and diverting attention away from the real issues such as prevention and social rehabilitation.

Attempts to reduce the harm done by the law, including the conferencing scheme under the Act, are unlikely to succeed, since the existing system privileges legal objectives over welfare objectives. Even if welfare objectives are given priority, it is reasonable to question whether all local communities throughout New South Wales are in a position to provide the support which is assumed under the Act. This issue was raised by some participants who were unconvinced that all the problem areas had been addressed by the government and the bureaucracy:

> A lot of rhetoric about communities owning and solving their problems is thrown around by legislators looking for a quick fix. Yet most of the communities that will be called on are ill-equipped to handle troubled young offenders owing to a lack of resources.
>
> (Academic)

> In realistic terms, the kids who are likely to be caught by conferencing don't come from resource-rich communities and are unlikely to be returned to that community for assistance.
>
> (Policy Officer)

At the same time, other participants remained optimistic about the potential for youth justice conferencing to offer something different for young offenders. References to the alleged international success of family group conferencing (particularly in New Zealand) were frequently cited by these participants:

> Youth justice conferencing is fresh, new and innovative. It is appealing because it has international legitimacy and over time can become a useful strategy for dealing with young offenders. Assuming the issues in the critical literature are attended to we ought to readily embrace this initiative.
>
> (Policy Officer)

The results of this research suggest that the introduction of youth justice conferencing will bring with it a number of problems which have yet to be adequately addressed by the State Government. Clearly one of the most crucial issues discovered in the course of survey interviews for this paper was the lack of infrastructure associated with the paradigm shift towards conferencing. This view was common among the youth and community workers and young people who were interviewed. They argued that they had become accustomed to the physical infrastructure which currently makes up the juvenile justice system in New South Wales, particularly the Children's Court. The introduction of youth justice conferencing, in the view of these participants, was tantamount to dismantling the existing infrastructure. Such a view is well illustrated in the following observation:

> I have no doubt in my mind whatsoever that in the future we will shift to a totally different set-up where the Children's Court will be abolished due to lack of funds and everything will be thrust upon communities and families.
>
> (Youth Worker)

Robert Ludbrook, in his discussion of age discrimination, has argued that there are many examples of Australian laws and policies created to promote the welfare of young people which have the effect of disadvantaging them with no corresponding benefits.[81] As a result, he coins the term 'youthism' which describes the situation where young people are treated differently and less favourably simply because of their age. It is arguable that a distinct youthism permeates many of the existing institutional structures that young people come into contact with on a daily basis. These include schools, government departments, families, the mass media, banks and hospitals to name but a few. It is submitted that youth justice conferencing will operate in a similar discriminatory fashion. The entrenched role of police has the strong potential to produce a bifurcated juvenile justice system whereby those who are favoured by police are given the benefit of schemes such as youth justice conferencing and those who are marginalised (such as Indigenous youth) are driven into the formal criminal justice system with no alternative. Evidence collected for this paper suggests that some of the active players in the juvenile justice system share what Humphrey refers to as "a broad conception of youth as somehow engaged in resistance, opposition, delinquency and rebellion"[82] due to their age. As argued in Part I of this paper, such treatment fails to identify the true diversity of young people in terms of their capabilities, views and beliefs, and social backgrounds.

PART III

I. OUTSTANDING REFORM ISSUES

A. A National Juvenile Justice Perspective

In the view of this author, a disappointing aspect of the juvenile justice debate is the fact that there is often little, if any, Commonwealth direction given to the States and Territories. That is, there is no Commonwealth juvenile justice policy and no clearly articulated national perspective on juvenile crime prevention or the treatment of juvenile offenders. Although the juvenile justice portfolio is clearly within state boundaries, there is no reason why the Federal Government cannot enter this crucial national debate. A number of reasons can be identified for the need for participation by the Federal Government.

Firstly, it has become commonplace for the Commonwealth to issue directions to the States and Territories on "state" issues. The previous decade has witnessed the proliferation of national committees and councils being established to investigate and set guidelines for issues such as youth suicide, domestic violence, education, and gun control. Secondly, the diametrically

81 R Ludbrook, *Youthism: Age Discrimination and Young People* (1994).

82 K Humphrey, "Youth and the Art of Subversion" (1989) 86 *Arena* 56.

opposed nature of the juvenile justice policies in some states would suggest an obvious need for national direction, at least for the purpose of consistency in approach to juveniles in Australia. As Sidoti points out:

> There seems to be unparalleled national interest in juvenile justice issues but the developments across the country are inconsistent, frequently ill-informed, often counter-productive and in many respects contrary to Australia's human rights obligations.[83]

As such, there is much to commend the Federal Government assuming a role in the juvenile justice debate. Apart from the obvious benefit to be gained from a nationally driven policy approach in terms of consistency, there is also the opportunity for the States and Territories to regularly review their policies in light of positive developments across the nation such as the introduction of conferencing. This responsibility for coordinating national approaches to issues of federal significance has also been recently highlighted in relation to juvenile justice by Cronin, who argues that "the problems associated with children in the legal process require a national solution".[84] Cronin's view echoes a similar argument made earlier by the Australian Law Reform Commission:

> The Commonwealth has a role in juvenile justice matters beyond simply making provision for Federal and ACT juvenile offenders ... The Commonwealth is in a position to influence, and play a leadership role in, the development of coordinated juvenile justice policies throughout Australia.[85]

More importantly, there is the Commonwealth's responsibility to ensure that all Australian jurisdictions, in responding to juvenile crime, observe our international human rights obligations under the International Convention on Civil and Political Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Racial Discrimination, to name but a few. In the past, the juvenile justice system in various parts of Australia has been the subject of severe criticism for failing to meet these bare international standards. The Western Australian paradigm, for example, was often censured by the former Human Rights Commissioner, Brian Burdekin, for adopting a policy which was contrary to these international conventions.[86] Although these conventions bind all jurisdictions equally, the Commonwealth has a primary responsibility to guarantee they are met as a nation.

At the same time, however, it is essential to appreciate the possible shortcomings of a Federal approach to juvenile justice. Beresford and Omaji contend that the push towards a greater role for the Commonwealth may be

---

83 C Sidoti, "The Commonwealth's Responsibility for Aboriginal Young Offenders" in S McKillop (ed), *Aboriginal Justice Issues Australian Institute of Criminology Conference Proceedings* (1993) at 83-4. See also E Southorn, "Rights Arbiter Urges National Standard" *Courier Mail Qld*, 11 September 1995, p 5.

84 K Cronin, "The Failings of Federalism - Juvenile Justice Issues in Australia", paper presented at Children and the Law: What About Justice?, Institute of Criminology Seminar, 28 April 1997.

85 Australian Law Reform Commission Report 44, *Sentencing*, 1988 at 123. This view has been reinforced in subsequent reports by the Australian Law Reform Commission; see note 30 *supra*.

86 As quoted in Sidoti, note 83 *supra* at 90. Elsewhere, Burdekin argues it is "a demonstrable fiction that Australian law, much less Australian practice, fully complies with any of the human rights instruments to which we are committed in international law"; see B Burdekin, "The Impact of a Bill of Rights on Those Who Need it Most" in P Alston (ed), *Towards an Australian Bill of Rights* (1994) at 147.

counterproductive: "it could be that it represents a 'top down' approach, failing to acknowledge the simultaneous need for the mobilisation of 'grassroots' community opinion".[87] It is submitted that the potential for this difficulty can be minimised if governments, state agencies and community organisations unequivocally realise the need to negotiate together to invent more creative strategies for young offenders.

B. The Need for Further Research

In canvassing a solution to the problems inherent in the system (including the new legislation), the use of systems theory and the development of this theory by other researchers in terms of law as a self referential system was found to be instructive for the purposes of this paper. Given that the theory is able to explain the legal system's inability to comprehend the needs of young people, its general applicability to the issue of conferencing must be investigated further. For present purposes it is suggested that the theory raises a number of interesting policy questions which may serve as a useful starting point for future research: To what extent does youth justice conferencing operate outside the formal criminal justice system? Is the new scheme genuinely free of the inflexibility and formalism associated with the juvenile justice system? What procedures generate the most satisfactory outcomes for participants? Will youth justice conferencing surpass the failures of earlier schemes, or will it fall short of its stated objectives? Can the scheme modify existing tensions between the welfare and justice models?

Over the past year the State Government has introduced a smorgasbord of criminal justice initiatives which need to be borne in mind when evaluating the future efficacy of youth justice conferencing. The greater recognition of victim's rights through the use of victim impact statements;[88] changes to the delivery of children's evidence in court;[89] and the passage of the *Crimes Amendment (Detention After Arrest) Act* 1997 (NSW)[90] are just a few examples of the many reforms which have reorganised the priorities of the criminal justice system and the way in which this system will operate in future.

It is accepted that the small qualitative study undertaken for present purposes is unable to safely comment on the ultimate impact of conferencing in terms of changing juvenile crime patterns. Nevertheless, the research enabled the development of the following hypotheses, through a process of induction,[91] which ought to be tested in a more comprehensive study:

---

87 Q Beresford and P Omaji, *Rites of Passage - Aboriginal Youth, Crime and Justice* (1996), p 184.

88 For a useful discussion of the legislation and history surrounding 'victim impact statements', see F Manning and G Griffith, note 40 *supra*. See also "*Victims Rights Act* 1996" (1996) 3 *Criminal Law News* 87.

89 See *Crime Amendment (Children's Evidence) Act* 1996 (NSW). This legislation purports to ease the difficulties experienced by children when giving evidence in court. Many of the provisions of this legislation mirror the reforms suggested by the New South Wales Children's Evidence Taskforce.

90 See G Griffith, *Police Powers of Detention After Arrest*, New South Wales Parliamentary Library Research Service, Briefing Paper 8, 1997.

91 According to Patton, the advantage of inductive research designs is their ability "to allow the important analysis dimensions to emerge from the cases already under study without presupposing in advance what

(i) The greater the community involvement in youth justice conferencing the more likely the underlying social causes of juvenile crime will be identified and treated.

(ii) The over representation of professionals, particularly police and juvenile justice departmental representatives, is likely to decrease the level of participation of young offenders in the conferencing environment.

(iii) The increased rhetoric about due process for young offenders as formulated in the *Young Offenders Act* will lead to a decrease in the number of young people being able to invoke their rights (due to their passive presence in a system dominated by professionals).

(iv) The potential demand that will be placed on some communities following the formal legislative introduction of conferencing, is unlikely to be satisfied given their poor level of resourcing and infrastructure, especially in rural and remote areas.

(v) The more draconian the Government's broader law and order policy for young offenders, the weaker the impact of initiatives such as youth justice conferencing.

Critics will be quick to point to the enormity of the task ahead, for an evaluation of these hypotheses may be viewed as too optimistic and unlikely to be achieved. In response, this author asserts that complacency cannot continue. In pursuing further research on the issue, it is pertinent to keep in mind the distinction between rhetoric, theory and practice, for as Cronin reminds us:

> ... [J]uvenile justice conferencing schemes proceed on the assumption that young people will benefit by being 'shamed', should directly confront often angry and emotional victims (and their families) and acknowledge their wrongdoing by devising and making appropriate reparation ... [despite the fact] the juvenile justice cohort has within it some of the most disadvantaged, damaged and least articulate young people in our community.[92]

II. CONCLUSION

The introduction of youth justice conferencing in New South Wales will clearly change the nature of state intervention in the lives of young offenders. At the same time, conferencing will bring with it the time honoured clash between welfare principles on the one hand, and notions of justice for young offenders on the other.[93] Given its haphazard move towards the latter, the juvenile justice system in New South Wales has been ill equipped to adequately address the need for a balance between these two principles. From a purely positivist legal standpoint, the role of the juvenile justice system (in particular the Children's

---

the important dimensions look like"; see MQ Patton, *Qualitative evaluation and research methods* (2nd ed, 1990), p 44.

92 Cronin, note 84 *supra* at 2.

93 See text above at 78 *supra*.

Court) is to administer justice and leave the determination of welfare issues to other private agents of the state, including the family.[94] It is for this reason that conferencing, as a community based alternative, is often signalled as a desirable reform strategy.

The practical and statistical reality for young offenders, highlighted in Part I of this paper, illustrates the current pressures being placed on the Children's Court in respect of juvenile justice matters alone: Hence the desirability of a conferencing scheme which has the potential (at least in theory) to reverse these statistics. It was also argued, however, that many issues are raised in the critical conferencing literature which demand attention by the legislature in any future evaluation of the proposed youth justice conferencing scheme.[95] These include the level of victim satisfaction, the protection of due process for young offenders, the potential for net widening and the presence of professionals, such as police, in the conference. The results of the survey undertaken for the purposes of this paper confirm the contemporary relevance of these issues.

Although the passage of the legislation represents a significant turning point in the treatment of young offenders in New South Wales, it is equally important to be mindful of the political climate which has driven many of the recent juvenile justice reforms. As was pointed out in Part II of this paper, the new legislation underwent serious modification and arguably still contains undesirable elements concerning the level of due process for young offenders. Moreover, the State Government continues to advocate the merits of its *Children (Protection and Parental Responsibility) Act* 1997 and other controversial juvenile justice reforms.[96] It is maintained that the principles of restorative justice strongly associated with conferencing will be undermined by these initiatives - a microcosm of the Government's tough law and order campaign for young offenders. In addition, it remains to be seen whether the state will avoid restricting true community ownership of the scheme by allowing for an unjustified police presence at the conferences. Other potential difficulties include the likelihood that conferencing will only be used in exceptional

94 This is despite the fact that the Children's Court is vested with jurisdiction over the care and protection of young people in New South Wales. For a concise summary of this jurisdiction see S Scarlett, note 23 *supra* at 9.

95 Section 76 of the Act makes specific provision for a review of the legislation "as soon as possible after the period of three years from the date of commencement [of the Act]".

96 In his Second Reading speech for the *Children (Protection and Parental Responsibility) Bill* 1997, the Police Minister, Hon Paul Whelan, argued: "In providing for a comprehensive review and legislative restatement of the initiatives contained in the *Children (Parental Responsibility) Act* 1994; the Government has recognised the legitimate concerns of many local communities, particularly in rural areas, about juvenile crime. The *Children (Protection and Parental Responsibility) Bill* represents an expansive and appropriate response to concerns about juvenile crime and crime in general"; see New South Wales, Legislative Assembly, Debates, vol 27, 21 May 1997, p 8977. It is disappointing, in the view of this author, that a recent call by the New South Wales ALP State Conference to repeal this legislation has been ignored by the Premier. See L Lamont, "Carr faces grilling over youth rights" *The Sydney Morning Herald,* 2 October 1997, p 6 and A Bernoth, "Carr digs in over law on loitering" *The Sydney Morning Herald,* 8 October 1997, p 4.

circumstances and issues of fairness, equity and accountability will be overshadowed by what Dodson refers to as 'professional pollution'.[97]

With these concerns in mind, it is important to avoid overstating the benefits of a scheme such as youth justice conferencing which, in the final analysis, relies on political will and challenging a long and oppressive history of police practices and attitudes towards young people. The positive outcomes witnessed by the Maori people in New Zealand will not automatically be imported into Australia. Apart from giving legislative effect to police warnings and cautions, the juvenile justice legislation in New South Wales remains substantially no different from many of the other states, and the extent to which the shift towards conferencing is successful remains to be seen. To ensure the program's prosperity, it is submitted that the state's involvement ought to remain at arms' length. If the state continues to dictate its version of law and order in the hope of placing a lid on crime, it runs the serious risk of undermining rather than supporting this alternative to dealing with young offenders.

It is also doubtful whether youth justice conferencing will actually challenge the current structural inequalities in the juvenile justice system. As White has opined, "[r]eforms in this area tend to be centred on 'juvenile justice' (rather than social justice), 'young offenders' (rather than depressed or oppressed communities) and 'restorative justice' (rather than structural inequalities)".[98] As maintained throughout this paper, young people require a system of support designed to address their social and structural disadvantage. However, under the existing pattern of inconsistent state objectives and practices in the New South Wales juvenile justice system this support is clearly lacking. In the interests of placating unfounded public fear of a juvenile crime wave, the State Government may have elevated political expediency and the demands of the law and order lobby over practical reality.[99]

---

97 Dodson, note 36 *supra* at 50.

98 R White, "Taking Custody to the Community - The Dynamics of Social Control and Social Integration" (1991) 3 *Current Issues in Criminal Justice* 181.

99 In his recent delivery of the annual Sir Earle Page memorial oration at the New South Wales Parliament, Gleeson CJ accused politicians of competing with each other in order to be viewed as tough on crime. He argued that the law and order debate had become highly politicised and was in need of a radical reappraisal by the legislature, executive government and the judiciary. See B Lagan, "MPs found guilty in crime debate" *The Sydney Morning Herald,* 23 October 1997, p 3.

APPENDIX A

YOUNG OFFENDERS ACT 1997 (NSW)
Part 1, s 3: Objects of Act

The objects of this Act are:

(a) to establish a scheme that provides an alternative process to court proceedings for dealing with children who commit certain offences through the use of youth justice conferences, cautions and warnings, and

(b) to establish a scheme for the purpose of providing an efficient and direct response to the commission by children of certain offences, and

(c) to establish and use youth justice conferences to deal with alleged offenders in a way that:

  (i) enables a community based negotiated response to offences involving all the affected parties

  (ii) emphasises restitution by the offender and the acceptance of responsibility by the offender for his or her behaviour, and

  (iii) meets the needs of victims and offenders.

APPENDIX B

METHODOLOGY FOR EVALUATION OF YOUTH JUSTICE CONFERENCING

1. Survey Sample

In most cases the survey was undertaken in person following a random (purposive) selection of participants. Prior to completing the survey interview, the author spoke to participants and explained the aims of the research. These aims were also reiterated in a letter given to participants prior to the interview. Copies of the letter and the survey are in the author's possession.

2. Collection of Data

The interviews were relatively informal and the questioning by the author often deviated from the structured survey sheet. Interviewing time ranged from 25 minutes with the policy officers, to almost 90 minutes with the youth and community workers. Other participants were interviewed for approximately 40-45 minutes each. Where appropriate the interviews were recorded on tape for ease of recollection. Participants were assured of confidentiality and there is no means of identifying their contributions to the research project as documented in this paper.

3. Analysis of Results

The results of the interviews are presented in a largely descriptive fashion in Part II of this paper. Given the small sample size no attempt is made to draw any statistical inferences from the data. The discussion of the survey findings exhibits a preference for *contextualism* (a commitment to interpreting events and people's behaviour in their context), and *holism* (an undertaking to examining social entities, for example, juvenile justice detention centres, government departments, families and communities, as wholes to be explicated and understood in their entirety).