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Restorative Justice, Responsive Regulation, and Democratic Governance

PAUL ADAMS
Guest Editor

Restorative justice has been a central tradition of justice in most, perhaps all societies prior to the emergence of the modern, central state power with its bureaucratic-professional systems and its emphasis on retribution, deterrence, and, sometimes, rehabilitation. Its revival as a new social movement in modern states offers a new paradigm for addressing the key questions in social work and social welfare of the relation of formal to informal systems of care and control, and of empowerment to coercion. Restorative justice may be defined in terms of process—one whereby all stakeholders come together to resolve how to deal with the aftermath of an offense and its implications for the future—or in terms of its core values—healing rather than hurting, moral learning, community participation and caring, respectful dialogue, forgiveness, responsibility, apology, and setting things right or making amends.

The articles in this issue take as their starting point the recent path-breaking book by renowned Australian scholar John Braithwaite (2002), *Restorative Justice and Responsive Regulation*. Braithwaite is Professor of Law at Australian National University in Canberra and heads the Regulatory Institutions Network there. He is a business regulatory scholar, sociologist, criminologist, activist, and leading researcher on both restorative justice and responsive regulation, as well as a scholar of democratic theory. In *Restorative Justice and Responsive Regulation*, Braithwaite synthesizes recent research and conceptual analysis of restorative justice and integrates them with his work on responsive regulation of business. Braithwaite not only demonstrates the superior
effectiveness of restoring victims, offenders, and communities compared with punitive practices of modern judicial systems; he also shows how the experience of responsive regulation of business—utilizing a regulatory pyramid to ensure compliance—and restorative justice practices can enrich each other. In the form of family group conferencing, restorative practices have already had an important impact on child welfare and youth justice, both in the United States and in many other countries. The integration of restorative justice and responsive regulation presented by Braithwaite offers an opportunity to develop a deeper understanding of this new paradigm and, indeed, achieve greater clarity about the very nature of social work and social welfare.

These articles consider the relation of restorative justice to responsive regulation—or more generally, to democratic governance—by examining areas where restorative justice and family group or community conferencing have had most influence in social welfare—child protection, domestic violence, and youth justice. Restorative and regulatory justice has much wider application, to areas as various as school bullying, international peacemaking, nursing home or nuclear power plant regulation, and radical reform of the whole legal system, and Braithwaite has studied all of them. The aim of this issue is more modest—to focus the attention of scholars and practitioners working at the interface of sociology and social welfare on the importance for this field of Braithwaite's synthesis of restorative justice and responsive regulation.

Each of the authors writes out of a conviction of the importance for social work of the theory and research reviewed and developed by Braithwaite, but there is also caution about the infancy of research in this field and the need to avoid grandiose claims. At the same time, a sense of the broad significance of this synthesis of restorative justice and responsive regulation for social welfare policy, for building a richly participative civil society, and for democratic governance pervades many of the contributions.

The first essay, by Burford and Adams, while not an introduction to each of the other articles, offers a context for reading both them and Braithwaite's work as contributions to the literature of social work and social welfare. The final article is an invited
response by Braithwaite to this special issue. It takes up, high-
lights, and clarifies many of the issue's themes.

As guest editor, I would like to thank Gale Burford for inspir-
ing me to take on and persevere with this project, and Susan Chan-
dler and Kalei Kanuha for their participation in the manuscript
review process. Above all, I would like to thank John Braithwaite
for his international leadership, as scholar and activist, in the
effort to build more just and democratic societies throughout
the world, and for graciously agreeing to read and respond to
the articles included here.
Restorative Justice, Responsive Regulation and Social Work

Gale Burford
University of Vermont

Paul Adams
University of Hawaii at Manoa

Two of the dichotomies or tensions at the heart of this profession are especially important for the themes of this special issue on restorative justice and responsive regulation. These are the relation between formal and informal helping and between care and control, or empowerment and coercion. In this article, we make a case for the importance of Braithwaite's work, especially his (2002) book, Restorative Justice and Responsive Regulation, for conceptualizing the nature of social work in relation to these dualities. Since Braithwaite's writings do not have social work or social welfare scholars and professionals as their primary audience and are less familiar to much of that audience than they should be, we seek here to provide a context for reading both Braithwaite and this issue of the Journal of Sociology and Social Welfare.

Key words: restorative justice, responsive regulation, social work, child welfare, family violence

Reflecting on the essence of social work brings its duality as a profession concerned with both individual and community well-being sharply into focus (Albers, 2001; Weick, 2001). Two of the dichotomies or tensions at the heart of this profession are especially important for the themes of this special issue on restorative justice and responsive regulation. These are the relation between formal and informal helping and between care and control, or empowerment and coercion. In this article, we make a case for the importance of Braithwaite's work, especially his (2002) book,
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provide a context for reading both Braithwaite and this issue of
the Journal of Sociology and Social Welfare.

Social Work as Social Control

When sociologists and historians look at social work, they
tend to see a profession the essence of which is social control. For
them the language of therapy, helping, or even empowerment
disguises a coercive core (e.g., Funiciello, 1993; Gordon, 1994;
Margolin, 1997; Polsky, 1991; Tice, 1998). Some recent literature
of the profession, on the other hand, has challenged the method-
ology of those researchers who rely on case records as evidence
of what social workers actually do in the field (Floersch, 2002;
Wakefield, 1998). Simon (1994) has emphasized empowerment in
the history as well as recent theory and practice of social work.
For those, including the present authors, who embrace empow-
erment as central to good practice, there remains, however, the
challenge of reconciling these self-images of empowerment with
the undeniable reality that social workers function as agents of
social control, usually paid directly or indirectly by the state to
do so. This is nowhere more evident than in the fields of child
welfare and corrections. In child protection in particular, where
social workers are the core profession, are backed by the power
of the state, and have enormous power over their clients, the
language of empowerment, partnership, and strengths character-
izes innovative practices like family group conferences and patch
(Adams, 2000). But can such practices be truly empowering in the
bureaucratic, professional, and legal context of state or county
child welfare agencies and family courts or even in corrections
(Boyes-Watson, 1999)? Braithwaite's synthesis of his work in the
areas of restorative justice and responsive regulation, developed
in his recent book of that title, challenges us to reconceptualize
the relation between two apparently irreconcilable yet irreducible
aspects of social work—care and control, or empowerment and
coercion.
Formal and Informal Helping

Social work, like the whole field of social welfare policy and services, has similar difficulties in specifying the optimal relation between formal and informal helping. In their 1977 monograph, To Empower People, Berger and Neuhaus argue for shifting the stale social policy argument about the proper role of states and markets away from a view of the state as provider, the citizen as atomized recipient, to a focus on the structures that mediate between state and individual, including family, religious community and faith-based organizations, neighbors and neighborhood organizations, and the like. Other recent literature on civil society and social capital (Putnam, 2000), rebuilding neighborhoods and communities (Schorr, 1998), and partnerships with families (Briar-Lawson, Lawson, & Hennon, 2001; Burford & Hudson, 2000) has also emphasized the importance of non-governmental organizations, social networks, trust and civic engagement for healthy families, communities and democratic societies. In social work, these influences have combined with a wider appreciation of the incapacity of state institutions, including police as well as social workers, to substitute for the care and control of families and communities. A creative ferment of community-based and family-centered practices has sought ways to interweave formal and informal care and control (Adams, 2002; Adams & Nelson, 1995; Bayley, Seyd, & Tennant, 1989). As Hadley et al. (1987) put it, formal human services represent "no more than a single strand in the complex web of relationships and services, formal and informal, statutory and nonstatutory, which together provide care and control in the community. The overall effectiveness of provision depends not on one part of this network alone but on how well the whole is woven together" (p. 95).

But what is the relation of formal to informal? On whose terms does the interweaving take place? Worries have been raised about the assumptions behind the notion of community (Pavlich, 2001) and about community-centered practice that there is a colonial character to this relation of middle class professional social workers to poor and working-class neighborhoods, a context of class, if not ethnic, subordination in the nature of the partnership of professionals and citizens (Bulmer, 1987). In FGC, among the worries and criticisms are those that it has a colonial character,
appropriating indigenous practices and placing them under state and professional control (Blagg, 1997; Love, 2000; Walker, 1996); that, on the contrary, it abdicates state responsibility for vulnerable individuals by handing control to the oppressive or pathological families that gave rise to the problems of child maltreatment in the first place (Bartholet, 1999); and that it denigrates professional expertise. Braithwaite, again, gives us a way to think about and address these issues.

Braithwaite’s (2002) book *Restorative Justice and Responsive Regulation* is of great importance to social work and social welfare because it offers us a way to reconcile empowerment practice with the context of coercion in which much social work takes place. It offers an understanding of both the limits and the possibilities of a genuine, empowering partnership with service users or clients. The book appears at an important stage in the continued devolution of human services. Both the book and the devolution trend have considerable implication for social work and social work education. There is renewed interest in strengthening civil society and considerable belief that the best way to help vulnerable people is to empower them. At the same time lingering and polarizing debates challenge professional efforts to build on the capacities of families and communities. Especially in child protection, domestic violence, and corrections services, assumptions about the application of restorative justice and other community- and family-centered empowerment practices raise concerns that devolution necessarily means risky deregulation and giving the upper hand to the wrong people.

**Restorative Justice**

Restorative justice has emerged with considerable appeal worldwide to those who well know the limitations of over-reliance on the formal legal system to deal with injustice, especially crime, and its fallout. Advocates argue that efforts to restore the social functioning of victims, offenders, and others in the affected social networks, is at least as effective in terms of recidivism and costs, but of considerably greater value than punitive practices when it comes to promoting citizenship and community-capacity building. In the long run, it is argued, restorative justice has the capacity to transform the role of the legal system in preventing crime and
strengthening the response of those at the community level who first encounter it when it does happen (Braithwaite, 2002).

A broad definition of restorative justice is found in Strang and Braithwaite (2002): “Stakeholders affected by an injustice have an opportunity to communicate about the consequences of the injustice and what is to be done to right the wrong” (p. 4). The authors note that most advocates seem to believe that for the potential of restorative justice to be realized, some face-to-face processes are needed but point out that there is less agreement about the who, what, when, how, and where of those interactions. They further argue that safety and autonomy must trump other outcomes, including reconciliation.

Tugged as it is in different and perhaps competing directions, restorative justice is shaped by the interests of a range of state and non-government groups, professions, theories, and ideologies. Roche (2003a) argues that practices and theories that rely too heavily on a critique of the limitations of the formal legal system have tended to over-romanticize the mutual aid and communitarian support of neighbors and family members in pre-modern years by leaving out chapters of history in which oppressive forces ruled. Along with Braithwaite, Roche argues that regulatory strategies need to be reconsidered to ensure that empowerment approaches are accountable. Too, feminist critique points out that communities and families did not reliably step forward to protect women and children and that people do not want to be coerced into forgiving their abusers, even in circumstances where this may be advanced as an acceptable “cultural practice” (Burford, 2000; Busch, 2002; Coker, 1999). To the extent that a restorative justice practice or practitioner sets into procedure expectations of shaming the abuser, requiring an apology or some other outcome, the risk of colonizing the process and the outcomes with formalism are increased. Braithwaite (2002) agrees and argues that in informal justice processes, apology and forgiveness often emerge in face-to-face meetings but should not be deliberately produced. The important question becomes how is it possible to balance empowering and regulatory processes in a decision-making effort that safeguards the rights of the individuals, especially to safety, and allows for solutions to emerge from the affected parties themselves?
Responsive Regulation

To ameliorate the dangers associated with restorative justice, and a wide variety of other empowerment-driven phenomena, Braithwaite (2002) proposes a regulatory pyramid as "a framework for checking the abuses and limitations" (p. vii) of the use of restorative justice while simultaneously counterbalancing the formalized means of achieving justice (punishment proportional to the offense). A basic premise of the regulatory framework is that "Governments should be responsive to the conduct of those they seek to regulate in deciding whether a more or less interventionist response is needed" (p. 29). Braithwaite (2000) offers the following (see figure 1), from Ayres and Braithwaite's (1992) Responsive Regulation: Transcending the Deregulation Debate as an example of a regulatory pyramid in the context of regulating a business such as a nursing home or nuclear power station.

The application of this pyramid to restorative justice, especially in the context of child protection, domestic violence, and youth justice, is illustrated and discussed throughout this issue (see Adams & Chandler; Crampton; Kelly; Neff; and Pennell, in this issue). In all these cases, restorative justice practices form the base of the pyramid, with increasingly coercive, deterrent, or incapacitating regulatory actions higher up as later and more seldom used regulatory responses follow failure of restorative approaches at the base. Braithwaite (2002) has shown that this approach has a wide array of applications, from corrections to school bullying to international peacemaking. Its application in some areas of social work and social welfare in which restorative justice has made some headway is the subject of this issue. At the same time, the issue raises, implicitly at least, the question of its significance and applicability to all areas of social work and social welfare, at least where some kind of regulatory mandate is involved. Roche (2003b) argues persuasively that "the very hallmarks of restorative justice—informal stakeholder deliberation, a focus on harm reparation and offender reintegration—should be the presumptive regulatory strategy in all regulatory fields."

Braithwaite's (2002) regulatory pyramid combines the possibilities of restorative, dialogue-based, empowering approaches at the base of the pyramid where regulation starts, with ineluctable
escalation up the pyramid to more coercive, deterrent, and ultimately incapacitating (e.g., license revocation in the case of business regulation) responses if the regulated body proves unwilling or unable to put things right. No less important, the pyramid offers the hope and possibility of de-escalation down the pyramid to less coercive responses as those regulated show evidence of their will and capacity to come into compliance.

Braithwaite (2002) asserts that the preponderance of evidence supports the notion that if people who are willing to acknowledge the existence of a problem come together and offer suggestions about what needs to be done about it, and participate in shaping the plan, they are then considerably more likely to comply with that plan, even when its design is to regulate their own behavior.
While restorative justice moves in the direction of setting things right with those who have been injured directly and to restore the impact that an injustice has had on the wider community, carrying it out within a responsive regulatory framework makes visible the multiple accountabilities that typically go unrecognized in instances of injustice but which are thought to be vitally important in organizing to keep bad behavior from happening again and setting out a plan for concrete repair when that is possible or symbolic reparation and healing. The power of the state, Braithwaite (2002) argues, must loom, not as a brickbat but as a firm hand that gives legitimacy to the values being expressed in the informal processes.

Some restorative justice advocates, including Braithwaite, claim that conferencing creates space in matters of settling injustice for “emotional intelligence”. (See also Moore, this issue.) This does not mean that it is neutral. Braithwaite argues that a responsive regulatory approach must begin with a clear statement of values and principles and need not be laissez faire. Being clear with an offender that her behavior is unacceptable needs to be done in a respectful way in a responsive regulatory approach. Especially the emissaries of the state need to avoid going head-to-head with any of the persons who will be part of a regulatory plan.

Empowerment approaches necessarily focus on the mediating structures through which formal and informal helping systems can complement and balance one another. Berger & Neuhaus (1977) define as mediating structures those institutions “that stand between the private world of individuals and the large impersonal structures of modern society . . . [and protect] the individual from alienation while giving legitimacy to large institutions, including the state, as being related to values that govern the lives of ordinary people” (p. 148). Braithwaite and Strang (2002) include in civil society all those institutions that are intermediate between the individual and the state—families, schools, churches, private workplaces, indigenous organizations, social movements, etc.

While Braithwaite acknowledges that responsible devolution of services depends on the evolution of cooperation among agencies, he is also concerned that policies are at risk of what he calls
'capture and corruption'. To offset these processes, he argues for the use of tripartite arrangements involving empowering citizen associations as a solution to these dilemmas. In his view, the regulatory model calls for empowering citizen associations that foster "welfare-enhancing" capture through leadership without forfeiting the agency's role in enforcing the rights of those involved. In this way the model works to facilitate the attainment of the goals mutually specified but counterbalances both the corruption of process by informal dominance and the harmful capture by any of the parties. The model promotes democracy and a wider civic engagement and certain forms of capture, or influence, that are considered beneficial.

By contrast to responsive regulation, regulatory formalism is reactive, and directed at extracting compliance divorced from the influence of the persons harmed. The outcomes of adversarial interventions are typically seen as heavy-handed, uninformed and unfair and thereby promote reactivity even from people whose interests may be harmed by their own refusal to comply. Responsive regulation grows out of a relationship between the people who are being regulated through the state's exercise of its simultaneous duties to protect and to safeguard and citizens' rights both to privacy and protection. Its presumption is to start with the most dialogue-based approach that can be crafted for securing compliance with the law in situations where there has been harm or trauma and aims to support compliance in a context built on the paramountcy of protection from further harm, healing, and repair or restoration. Hence, restorative justice advocates' preference for conferencing and related face-to-face group and family approaches to dealing with injustice. Escalation to control or punishment is made only if other approaches fail or there is no indication of willingness or ability to comply on the part of the person who has caused the injury. Despite expressing preferred values, neither restorative justice nor responsive regulation seek to establish who is to blame. People participate only if they acknowledge the existence of a problem—or if that has been established by the courts. In New Zealand, for example, a young offender might go to court but in the case of conviction the matter may be referred back to a conference at which the offender's family, the victim and their supporters and the offender
are offered input into shaping a restorative plan as opposed to one that is exclusively punitive.

The pyramid offers a useful framework to re-examine stale-mated discussions of such tensions as those between coercion and empowerment, formal and informal helping, responsiveness and formalism, public and private, individual autonomy and community well-being. Its implications are profoundly radical. It has the potential, in Braithwaite’s (2002) view, to “contribute not only to the creation of a more crime-free society but also to a society where our whole legal system works more efficiently and fairly, to a society where we do better at developing the human and social capital of our young and to a more peaceful world” (p. xi).

Restorative justice involves the opportunity for everyone involved in the situation to have an unfettered but safeguarded opportunity to tell their story of what happened, to say what the effect has been on them, and to say what they want to see happen (Moore & McDonald, 2000). The plan that emanates by consensus forms the basis for regulation. This allows the offender to exercise a degree of choice about coming into compliance, and sets the needs of the injured persons, as defined by them, in the foreground of regulation. It also assumes that unless permanent banishment of the offender and all influence from significant members of the offender’s close social network is to occur, or if it is unsafe to meet with them present, that the offender will be involved or represented.

If things go according to plan, further formalism is seen as unnecessary but is always available and possible. In situations where the regulator has a legal mandate to be involved there is no assumption that the monitoring should be done on neutral or impartial grounds. In situations that have involved violence, the opposite is the case; judgments need to be made.

As Braithwaite (2002) points out, few offenders would participate in restorative justice without some coercion, brought on by at least detection and/or disclosure. The problem for Braithwaite “seems not the question of how to avoid coercion, but how to avoid the escalation of coercion and how to avoid threats” (p. 34). Threats and counter-threats are steps to juried and other third-party resolutions in situations where the guilt is in dispute. In
these approaches, prosecution and defense are impelled to harden up the differences between their views in order to establish guilt or innocence; a dance in which both sides seek to maximize the problem for the others and minimize the responsibility for themselves. Seeking to understand the others' arguments and positions has only one aim: to find the flaws, i.e., not to promote empathy.

When there is no threat of consequence, however, backed up by certainty and immediacy when it becomes necessary, offenders, and in particular it would seem, young offenders, will, and frequently do, walk over the top of limits. But offenders, it is argued, are more likely to take responsibility when their conduct and its impact are reviewed in a non-adversarial context in the presence of people whose opinion matters and there are consequences for not subordinating one's self-interest to the interest of the group.

In the sense that offenders have the option of non-participation and of taking their chances before a court, or of refusing cooperation at the lower, less coercive levels of the pyramid, the process is voluntary. At any point, things can move up the pyramid into a new level of deliberation and coercion. Braithwaite's (2002) research supports the view that this process is a more active and effective form of deterrence to criminal behavior than is sentencing in courts itself. The attempt to "send a message" through tough and inflexible sentencing, without also offering the person the invitation to take responsibility, has the same effect as punishment alone; that is, it does not work unless it is applied quickly and is perceived by at least the offender if not others in the offender's social network, as being fair. Neither of these conditions characterizes the workings of the justice system, especially the courts.

Braithwaite (2002) builds a convincing case that responsive regulation at the level of citizen involvement is worth using, repeatedly, both for its potential to empower those who have been injured and also to deter the offenders from further harm. In the case of offenders, restorative justice invites persons from the offender's social network who might be able to exert social influence or—in Braithwaite's (2002) term—who have preventive capabilities. In particular, he points to people who themselves might be
ashamed if others found out they knew about the injustice and did nothing about it, i.e., people who might be sub-criminally responsible. In restorative justice, these people would typically be invited to a face-to-face meeting with the offender with a view toward their becoming involved in forming a plan to head off further offending which then provides the basis of regulation. In this way, restorative justice or conferencing is thought actually to increase the deterrent power of the threat of arrest or re-arrest. The challenge is to keep the threat in the background but seen at the same time as legitimate and fair. The role of the state is to constrain the self-regulatory excesses of the community (e.g., in the form of harsher punishment than courts would impose) and safeguard the process.

The Fault Lines Between Public and Private Life

Trends to increasing state intervention in family life, as represented by mandatory reporting of child abuse or mandatory arrest and prosecution of intimate partner abusers, have been challenged in recent years by concerns over limits to the state’s capacity either to deliver justice or to substitute for the care and control functions of social networks including extended families and communities.

In the case of abuse within the family, while abused persons do not want to be put in a position where they must forgive their abusers or be pressured to stay with them, neither do they like feeling coerced to separate from their partners when other people think that is the best thing for them, and while women generally welcome the involvement of police and legal authorities when they feel they need protection (Martin, 1997; Miller & Krull, 1997), they also do not like to suffer the considerable loss of influence that can go with exercising their rights to invoke protection and help from the authorities (Coker, 1999; Grauwiler & Mills, this issue; Kelly, this issue; Pence, 1999; Pence & Shepard, 1999; Pennell & Burford, 2002). The interventions of authorities into the lives of women to protect them (Miller & Krull, 1997) and their children (Callahan, 1993; Pennell & Burford, 2000) have had varying and sometimes contradictory results. In part, as will be discussed elsewhere in this issue, that is invariably a consequence of
getting help in situations where the state is vowed to protect. The question becomes under what conditions can decision-strategies work cooperatively both to promote a woman's, child's or young person's rights to autonomy and non-domination [as befits their legal status] and the family's right to privacy?

In restorative justice, the family group conference brings together extended family members with professionals and others involved in the situation who can provide information to assist the family in developing a plan to keep all its members safe. It opens up a space where members who want to support vulnerable members can talk in safety and build connections across branches of the family and across generations in a context of safeguards for the process, and protection from abuse (Burford & Pennell, 1997; Pennell & Burford; 2002). By partnering with the state at the level of culturally appropriate leadership, the private space of the family is honored and the role of the state to protect and safeguard is undiminished.

From the perspective of responsive regulation, the family group conference may be understood as a form of state-managed family self-regulation, akin to the opportunities provided by business regulators for management to come into compliance through developing and implementing their own plans in consultation with the regulators. Only if this process of supported self-regulation fails, does the regulatory process become more coercive, as families lose to professionals and courts more of their own control over decision-making about their futures (see in this issue Adams & Chandler; Neff).

Restorative Justice, Responsive Regulation, and Social Work

If social work is the core profession in child welfare, in corrections it has been marginalized. Whether social work abandoned the field of corrections (Young & LoMonaco, 2001) or was exiled, the outcomes need reconciling, not only for the sake of those caught up in that system, but also in terms of our understanding of the nature of social work itself. To be sure, victims were often ignored in the era of rehabilitation in corrections and considerable antipathy was aimed at social work educators who were seen to have undermined the role of the state in protecting vulnerable
These worries about social work may be seen as having arisen in part through the profession's inadequate theorizing and state of denial about the context of coercion framing much of its practice. In discussing the limitations of critical social theory's application to statutory social work, Healy (2000) argues the need for social workers to "situate their theorizing within the unavoidable obligation faced by statutory workers to use legal force if necessary to ensure minimum standards of well-being for the most vulnerable members" (p. 75). She goes on to argue that "Practice insights can be drawn from critical social theory to recognize the impact of social and economic systems on service users' lives and to demand sensitivity to the cultural differences in the formation of assessments. However, this is very different to suggesting, as critical social work theorists have done, that judgments should not be made" (p. 75). Some social activists, Healy points out, in advocating for the liberation of their clients, have minimized the differences in power between themselves and their clients and this has contributed to "exploitation and confusion for service users about the nature of their relationship with the service worker" (p. 126). Workers can promote the values of respect, transparency, honesty and non-tyranny without abdicating their statutory responsibilities and desire to assure safety.

Although highly valued in the academic community, empowerment practice in social work remains largely at the margins of practice and has met mixed results with the most concern about the ideas of consumer-led or driven services remaining in statutory areas of practice (Burford & Pennell, 2004). The prevailing response during the past 25 years is concerned with the legalistic determination of guilt or innocence and the management of risk all carrying the taint of "undeserving" that lingers when one is constituted a "neglectful mother", an "abusing father", a "perpetrator" and other categories. In particular, the dominance of practice by legal and administrative procedures and oversight is regarded by many as having isolated child protection work from the wider system of services regarded as making up the child welfare system (Davies et al, 2002; Parton, 1997; Parton, Thorpe, & Wattam, 1997). Rightly or wrongly, dissatisfaction with
the increased formalism in child protective services is high and child protection workers and departments find themselves in the position of lacking the resources and decision processes to engage their clients flexibly and with support while simultaneously fulfilling their mandated responsibilities to look out for the best interests of the child. The imposition of legalistic, administrative, and expert-dominated solutions in child protection undermines empowerment principles and practice.

At the same time, social workers often seek to partner with members of affected constituencies, including service user or citizen interest groups, in assessing needs, designing, implementing and evaluating plans. This latter activity includes overseeing progress, including compliance with plans when services are mandated. The social worker plays a key role in creating a culture of participation and activism in planning so that plans reflect the real needs of persons affected and participants are prepared to carry out important roles in achieving the plan including taking initiative when things are not going well.

Social work and social workers have long been concerned with finding ways to make bureaucracies, policies, and procedures responsive to the simultaneous promotion of the autonomy of individuals and the well-being of communities. Staking out this dual focus for the profession has meant that workers have considerable experience working along the fault lines between what formal organizations require through their policies and procedures, including the ways they organize the use of workers' time and allocated resources, and the needs of the people they work with. Social workers well know the dilemmas for families of trying to maintain control over the definition of their situation, especially when faced with multiple, categorical, and frequently conflicting avenues to get the help they need. Despite social work's historical embracing of the notion that human behavior is largely determined by meaning-making in social context, practices have followed quite different paths determined largely by the organizational and ideological umbrella under which practice takes place and the multiple demands made on families that require services from—or are required to be involved with—more than one institution or organization. This is especially true in situations where the justice system has become involved.
Nevertheless, the idea that an acknowledged offender, including someone who has abused a child, or their partner, might be a key player to be enlisted, along with other members of the formal and informal social influence network around them in developing, implementing, and evaluating a plan that aims to halt their own future re-offending causes some advocates of empowerment to take pause. Social workers themselves, even in a state like Hawaii that has a statewide system of family group conferencing with official support, may by professional ideology and habit, be an obstacle to restorative justice practices (see Adams & Chandler, this issue).

If sociological critics of social work one-sidedly emphasize the social control aspects of social work, social workers and social work educators may mislead themselves by equally one-sidedly stressing, at least in their rhetoric, the profession's empowerment-oriented side, and denying its coercive aspects. Braithwaite provides us a way to understand the central dualities of the profession, not only as a theoretical matter, but also in light of those practices like conferencing where responsive regulation and restorative justice, formal and informal problem-, conflict-, and injustice-resolving mechanisms, support and constrain each other.

References


Working Together to Stop Domestic Violence: State-Community Partnerships and the Changing Meaning of Public and Private

KRISTIN A. KELLY
University of Connecticut

The increasing reliance in the United States on state-community partnerships to address social problems represents both new opportunities and new dangers. This article presents examples of both possibilities through a consideration of contemporary collaborations between state and nonstate actors in the development of a public response to domestic violence. This discussion provides the basis for an elaboration of a conceptual approach to public/private relationships that replaces the traditional dichotomy with a triangular relationship, of state, family and community. By improving on our ability to think through the complex relationships between these three spheres, it is argued that this model that can assist those who are committed to pursuing the positive potential of community-state partnerships while avoiding their dangers. John Braithwaite’s theory of responsive regulation, and the regulatory pyramid that structures its operation, is discussed in terms of its ability to provide additional insights into the relationship between formal and informal responses to social problems.

Key words: domestic violence, community state-partnerships, responsive regulation, social problems, collaboration, battered women

Introduction

The trend in recent years, toward more frequent and varied collaborations between state and nonstate actors in the development of public responses to a range of social problems has become difficult to ignore (Minow, 2002; Cohen, 2002). The increased interest in exploring the potential of state-community partnerships correlates with the intensification of the challenges posed.
by highly complex social problems that require multifaceted solutions characterized by a high degree of innovation and flexibility. When viewed from this optimistic angle, the growth of public/private collaborations represents a multitude of exciting opportunities for improving our collective capacity to meet the needs of individuals who are caught in cycles of violence, poverty, addiction, and so on. Even so, as both critics and supporters of the trend point out, it is vitally important to be aware of the many dangers inherent in even the most successful collaborations.

My goal here is to contribute to current debates about how best to avoid the potential pitfalls of state-community partnerships while maximizing the achievement of their potential benefits. My ongoing interest in this subject arises from my belief that the trend is here to stay; indeed, it has so transformed the regulatory landscape that new conceptual frameworks are needed to assist with the important task of evaluating its impact. With these things in mind, in what follows, I consider the perils and the promise of combining state and community-based responses to social problems through an examination of contemporary efforts by the battered-women's movement to address domestic violence in the United States. This discussion provides the basis for the elaboration of a conceptual framework that, I argue, can significantly enhance our ability to realize the promises of community-state partnerships while minimizing their dangers. This discussion is followed by a consideration of the ways in which John Braithwaite's theory of responsive regulation further enhances our ability to assess the implications of state-community partnerships. Although the focus is on domestic violence, I believe that the frameworks (developed by both Braithwaite and myself) and the insights that they make possible can be usefully applied in the wide variety of contexts in which state-community partnerships have become common.

A Short History of the Battered-Women's Movement

The battered-women's movement is a particularly apt exemplar of state-community partnerships because of its longstanding commitment to the simultaneous development of both a community-based and a state-sponsored response to domestic violence. During the early 1970s, movement activists began calling
attention to the prevalence of violence being perpetrated against women by men with whom they are intimate. The articulation of the problem was quickly translated into political demands that the state begin treating such violence as a serious crime rather than as a personal matter between partners. Legal reforms followed, and by the 1980s domestic violence was illegal in every state. Police departments nationwide began implementing new arrest procedures designed to ensure that violence by one adult against another, regardless of their relationship, would be treated seriously (Edwards, 1989).

At the same time that movement activists were pushing for the enactment of new legal measures, they were also working to develop a grass-roots community-based approach to providing direct services to victims of domestic violence. In 1979, the first domestic violence shelter in the United States was opened in an apartment in St. Paul, Minnesota, staffed entirely by volunteers (Schechter, 1982). Today more than 2,000 shelters and crisis centers dot the North American landscape. Some are funded through private donations and staffed by volunteers but most are sustained by a combination of public and private monies and are run by a mix of professional and nonprofessional, paid and unpaid staffs (Schneider, 2000, pp. 182-184). Thus we see that contemporary efforts to address domestic violence are characterized by a pattern of service provision and problem definition that from the outset has involved a reliance on state and community measures.

The dual focus on the development of both state-based and community-based responses to domestic violence has grown stronger as movement activists have become increasingly aware of the limits of legal interventions and of the need to work harder at changing cultural attitudes about the acceptability of this type of violence (Kelly, 2003). Although the criminalization of domestic violence and legislation permitting the civil issuance of orders of protection of victims have been of undeniable importance in transforming the act from a private into a public problem (at both the symbolic and material levels), it nevertheless is still the case that many victims are simply reluctant to turn to the state for help (Dutton, 1995).

There are many reasons that victims of domestic violence might not welcome the intervention of the state. For some, the
avoidance of legal action is premised on a desire to maintain the privacy of their problem. As Margaret Borkowski explains it, “Because privacy protects intimacy and because intimacy is an aspiration normally expected to be satisfied in marriage, it is understandable that women, when first experiencing marital violence and wanting to continue their relationship should turn to agencies such as doctors and marriage guidance counselors who are believed to have strict rules about confidentiality” (Borkowski, 1983, p. 112). Borkowski’s (1983) observations are an important reminder that concerns about privacy are not limited to batterers seeking legal immunity.

For others, the reluctance to turn to the state is based, not on a general desire to maintain privacy but on very specific and tangible fears about the negative consequences of doing so. Many are involved in illegal activities themselves, such as drug use or prostitution, some are illegal immigrants or are engaged in the process of trying to become citizens (Wahholz & Miedema, 2000). For such women, the promise of protection and the potential of punishment cannot be easily separated when it comes to the operation of state power. For women of color, the equation is complicated even further by fears that turning to the law may expose them to further victimization, this time by police and legal personnel who harbor racist feelings toward them or their abusers. Kimberle Crenshaw has argued one of the consequences of such fears among African Americans is “a more generalized community ethic against public intervention, the product of a desire to create a private world free from the diverse assaults on the public lives of racially subordinated people. The home is not simply a man’s castle in the patriarchal sense, but may also function as a safe haven from the indignities of live in a racist society” (Crenshaw, 1991, p. 1241).

Even if they have none of the above concerns, battered women must still confront the possibility that turning to the state for protection might actually result in an escalation of violence thereby putting themselves (and sometimes their family and friends) in even greater danger (Dugan, Nagin & Rosenfeld, 2003). Finally, for the many women who depend largely, or entirely, on economic support from their abuser, the imposition of criminal sanctions leading to incarceration and/or unemployment brings with it the
possibility of impoverishment and homelessness for themselves and their children.

But irrespective of the specific details behind their anxieties about state intervention, if the only available recourse is to call the police and thereby involve the state directly and possibly subjecting the partner to incarceration, many victims will choose to manage the abuse on their own. Responding to the gaps that have been created by these and other limitations associated with legal solutions, in recent years movement activists have started to place a much greater emphasis on providing victims with a network of resources not so closely tied to the coercive powers of the state.

Pursuit of this objective has entailed a range of efforts fashioned to generate the involvement of a much greater number and diversity of people from the general community in developing a public response to domestic violence. Examples include public education programs about how to avoid violence, fund-raising for the provision of resources that enable victims to survive financially and emotionally without the abuser; informal actions and media-based messages communicating the wrongness of abusive behavior; corporate contributions toward violence-prevention efforts and services; and creation of workplace policies for assisting employed victims (Kelly, 2003, pp. 102-106).

The battered-women’s movement has also placed a growing emphasis on reaching out to professionals who regularly deal with the consequences of domestic violence in the course of doing their jobs: social welfare professionals, health care workers, teachers, therapists, and clergy. Support activities range from training sessions, to the provision of resource and referral materials, to the development of coalitions to facilitate mutual support and to improve service coordination (Ibid, pp. 106-109).

Community interventions: Opportunities

Trends that stress the development of state-community partnerships in the treatment and prevention of domestic violence can be understood for the most part as an adaptive response to the limitations of formal legal mechanisms for addressing the problem. But, beyond providing an alternative for those who are unable or unwilling to turn to the criminal justice system
for assistance, community-based intervention offers a number of important additional opportunities that do not exist with state-based intervention. First, because it does not involve the direct imposition of state sanctions, community-based intervention is not required to meet the same level of "probable cause" and thus can occur at a much earlier stage. Involvement by outsiders before domestic conflict escalates to violence can serve to support the couple's addressing the abuse pattern before it wreaks its havoc.

Even when state intervention becomes necessary, the presence of community-based sanctions and support can significantly contribute to ensuring the effectiveness of the state's measures. Domestic violence has ramifications that extend well beyond the circumstances of a particular incident. To expect that a single police intervention or even multiple interventions will eradicate an entrenched pattern of abuse is unrealistic (Sherman, 1992 p. 248), which means that there is an especially strong need for legal intervention to take place within a community-based framework. Because the perpetrator and the victim typically have a relationship of some duration, resolution of a single incident rarely ends the violence. Accordingly, an array of coordinated services and support systems is a critical component of the effort to help the couple either to part or to work at reconciling.

De-centering the state in the public response to domestic violence by stressing the community's role also has the beneficial result of deflecting what are widely regarded as unhelpful speculation and questions about what particular battered women did to contribute their victimization (Jones, 1994, p. 152). As long as public intervention is defined chiefly within a legal framework, the focus on individual behaviors remains primary. One of the outstanding characteristics of the American legal system is its individualistic basis. Although it is no longer incumbent on victims to press charges in felony cases of domestic violence, the burden to report the abuse and then to follow through with legal action is a heavy one (Mills, 1998). The great advantage of community-based approaches is that rather than being dependent on the initiative of those who are most the vulnerable and in need of help, the approaches are generated principally within the community itself. Consequently, the translation of domestic violence into an
issue meriting a public response no longer hinges so strongly on what its victims decide to do or not to do.

In addition to supporting our ability to relax our expectations about the "right way" to handle battering, a greater focus on activities designed to engage a wide variety of community members with the issue of domestic violence has the distinct advantage of educating people about the problem, its patterns, causes, and strategies for how and when to offer assistance. Research suggests that many people refrain from offering assistance when they encounter domestic violence not because they approve of the behavior or think it should remain private but because they do not understand what was happening and were confused about what to do. In this light, the importance of domestic-violence education for the long-term goal of transforming the violence from "their problem" into "our problem," is obvious.

As even this truncated discussion of the battered-women's movement makes clear, when it comes to the problem of domestic violence, the adoption of a dual approach that includes the development a formal legal response along with the provision of community-based programs has many potential advantages for the short-term goals of crisis intervention and the long-term goals of violence prevention. Still it is prudent to keep our hopeful enthusiasm in check. After all, it was less than fifty years ago that domestic violence was widely viewed as a private matter to be discussed only rarely in public let alone debated on the national political stage. Its relatively recent emergence as a serious public policy issue means that when it comes to the collective effort to meet the challenge of responding, we are still very much in what John Braithwaite (2002) calls "the research and development phase" of policy formulation. The ability to learn from our experiences (including both the mistakes and the successes) during the process of experimenting with different approaches depends to a large extent on our openness to the possibility "that both optimistic and the pessimistic propositions may capture part of the truth" (Braithwaite, 2002, p. vii).

With this in mind, in what follows I will consider two distinct sets of concerns that are routinely raised by those who are worried about the negative implications of placing too much emphasis on
Community interventions: Dangers

A persistent fear associated with increasing our reliance on community-based responses to battering is that doing so may contribute to a reprivatization of domestic violence. Arguments about the potential for such a reversal can be confusing because of their reliance on differing interpretations of what treating domestic violence as a public problem entails. For those who subscribe to a liberal legalist perspective, private problems become public when laws forbidding the conduct in question are enacted and enforced. Within the battered women's movement, this view has been expressed through the energetic pursuit of legal reform designed to ensure that the state makes its disapproval of battering obvious through consistent application of laws that forbid it.

From the liberal legalist perspective, prioritizing the development of a bigger role for the community in responding to domestic violence has a number of potentially negative implications. Of particular concern is the danger that a shift in focus could result in a reversal of progress in the ongoing struggle to make development of an effective governmental response to domestic violence a political priority. Notably, the likelihood of such reversals occurring is especially high during difficult economic periods, such as the one we are in now, that are characterized by substantial budget deficits leading to what are often devastating funding cuts to a wide variety of essential government-sponsored social welfare programs. In the worst-case scenario, an emphasis on community interventions combined with massive budgetary deficits would result in a regression to an era in which the government largely relinquished its obligation to provide state protection in cases of assault within the family (Seigal, 1996). In addition to having the effect of abandoning those living within the confines of private tyrannies, such a development could negate the hard-won progress that has been made in the symbolic battle to force the government to send a consistent message that domestic violence will not be tolerated (Taub & Schneider, 1990, pp. 122–123).

Another version of a “reprivatization” concern centers on the fear that an overreliance on community-based intervention could
so operate as to all but eliminate the availability of assistance to victims who do not have access to informal systems of social support. Even where community support is readily available, research has shown that many women who are being abused are especially uncomfortable with the prospect of exposing their problem to the people with whom they associate regularly, due to shame or to fears about being judged by the people who matter most to them. In other instances, the primary worry is that the community intervention provided would be inadequate or even inappropriate. This has been of particular concern with regard to religiously based assistance; repeated reports have been made of church authorities who recommended nothing more than prayer and tolerance in even cases of extreme violence.

Although the focus of the concerns just discussed differs, they are each (in one form or another) expressions of a general anxiety about the many unknowns associated with new patterns of state-community partnerships in the development of a public response to domestic violence. The anxiety is made more acute by the boundary-blurring effect of such partnerships on the structure of societal relationships. In the redrawn landscape, settled assumptions about what falls within the purview of the state's responsibility and authority are destabilized. It follows that the meaning of designations such as public and private is altered, in many cases beyond recognition. Significantly, this anxiety is not confined to those engaged with the issue of domestic violence but extends also to a lengthy spectrum of people involved in the development of innovative approaches to the provision of education, health care, and social welfare services.

To productively address the challenges posed by these changes we need a way to think about the relationships between the state and the community that does not depend so heavily on dichotomous patterns of thinking that no longer accurately describe today's world. With this in mind, in the second half of this article I outline one alternative conceptual approach to public/private relationships that replaces the traditional dichotomy with a triangular relationship, of state, family, and community (see figure 1). This is followed by a discussion of how the model can help us to systematically think through the concerns raised earlier about the potentially negative implications associated with
an increased role for the community in the treatment and prevention of domestic violence. Finally, as a means of exploring the insights generated by the model even further, I also engage John Braithwaite’s (2002) recent work on responsive regulation. In particular, I discuss his regulatory pyramid model which, I argue, helps to significantly enhance our ability to explicitly engage the challenges posed by new state-community partnerships.

A New Approach to State-Community Relationships

As indicated above, my alternative approach to thinking the implications of state-community partnerships is developed around a triangular formulation, with the state, the family, and the community each occupying a corner (see figure 1). The primary contribution of this conceptual framework is that it facilitates our ability to move beyond the dualistic models that have traditionally provided the basis for conceptualizing the relationship between public and private.

The outstanding feature of my alternative model is that the three boundaries operate so as to structure the meaning of public and private. Each boundary is distinct, varying both in terms of general characteristics and the degree of flexibility that it provides. The differences derive from the fact that rather than being predetermined, the boundaries are defined by the relationship between the two corners of the triangle they bridge.
The first element of the model depicted is the relationship between the state and the family. The *state* refers to the institutions, and the individuals that work within them, directly associated with state power and sanctions. Included within this category are legislatures, courts, law enforcement agencies, and social welfare agencies (table 1). The major function of the boundary defining the relationship between the state and the family is to protect individuals and families from unwarranted intrusions by the state. A web of institutional and cultural norms, constitutional rights, legislative mandates, administrative procedures, and institutional mechanisms constrain the degree to which government agents can become involved in the affairs of the domestic sphere and structure interventions when they do take place (table 2).

The second element of the model depicted is relationship between the family and the community. In comparison to the institutionally driven boundary between public and private, this boundary is more informal and less clearly defined. Its function

<table>
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<tr>
<th><strong>State Components</strong></th>
<th><strong>Community Components</strong></th>
<th><strong>Family Components</strong></th>
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<tr>
<td>Legislative bodies</td>
<td>Social movement</td>
<td>Nuclear family</td>
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<td>Local governments</td>
<td>organizations</td>
<td>Extended family</td>
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<td>Judicial institutions</td>
<td>Political parties</td>
<td>Intimate relationships</td>
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<td>Criminal justice</td>
<td>Special interest groups</td>
<td>Close friendships</td>
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<td>agencies</td>
<td>Corporations/private</td>
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<td>Police departments</td>
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<td>Social welfare</td>
<td>Schools/Universities</td>
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<td>agencies</td>
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Table 2

The boundary between the state and the family

<table>
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<tr>
<th>Public</th>
<th>Boundary Structures</th>
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<td>Search-and-seizure laws</td>
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<td>Due process rights</td>
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<td>Property rights</td>
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<td>State</td>
<td>Legislative mandates</td>
<td>Family</td>
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<td></td>
<td>Administrative law</td>
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<td>Family law</td>
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<td></td>
<td>Police procedures</td>
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<td></td>
<td>Physical barriers</td>
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is to distinguish what should remain completely within the discretion of individual family members from information and/or events that warrant some sort of involvement by members of the wider community. The community comprises a broad grouping of individuals and nongovernmental organizations, including neighbors, private employers, the media, churches, corporations, social activists, special interest groups, schools and universities, and health professionals (table 1). As this diverse list indicates and as it is being employed within this model, the term community is not intended to denote the presence of a set of assumptions, values, and commitments that are shared by the individuals and groups that make up this realm (MacIntyre, 1984; Taylor, 1989). In the formulation of this model, I do not assume the presence of unity within and among the communities that make up the larger community nor do I wish to argue for the desirability of such unity. In this respect the term community is used in its descriptive, not its normative, sense.

The boundary between the family and the community operates to preserve the status of the family as a private association by protecting the family and its members from excessive scrutiny from the community. In addition to the physical barriers that shield family life from constant monitoring, the boundary is structured and mediated by property laws, civil rights, and cultural and community norms that pertain to privacy and family life more generally (table 3).
Table 3
The boundary between the community and the family

<table>
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<th>Public</th>
<th>Boundary Structures</th>
<th>Private</th>
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<td>Civil rights</td>
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<td>Cultural norms</td>
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<td>Community</td>
<td>Religious principles</td>
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<td>Physical barriers</td>
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<td></td>
<td>Legislative mandates</td>
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<td>Property rights</td>
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The third element of the model depicted is the relationship between the state and the community. The interactions between nonstate actors and individual citizens are structured by bureaucratic institutions, administrative law, legislative bodies and processes, and social movement organizations (table 4). Activities that occur within these frameworks include the provision of funding, regulation and monitoring of state-funded services, education, research, reporting, public hearings, and the development and operation of coalitions designed to facilitate more comprehensive and coordinated responses to social problems.

Table 4
The boundary between the state and the community

<table>
<thead>
<tr>
<th>Public</th>
<th>Boundary Structures</th>
<th>Private</th>
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<tbody>
<tr>
<td></td>
<td>Right of Free speech</td>
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<td></td>
<td>Separation of church and state</td>
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<tr>
<td></td>
<td>Civil rights</td>
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<tr>
<td>State</td>
<td>Legislative mandates</td>
<td>Community</td>
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<tr>
<td></td>
<td>Property rights and contracts</td>
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<td></td>
<td>Tax laws and policies</td>
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<td></td>
<td>Budgetary decisions</td>
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<td></td>
<td>Economic regulation</td>
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</table>
One of the most important roles that the state plays in a democratic society is to ensure that the community does not impinge on the rights of private citizens. In keeping with this role, the boundary structures that exist between the community and the family are explicitly designed to impose limits on community-based interventions in the family so that rights violations are less likely to occur.

One of the advantages of my model is that it permits an expanded understanding of public interventions. Viewing public/private boundaries as the product of a triangular relationship between the family, the community, and the state moves us away from a dualistic construction that limits the definition of a public response to formalized legal interventions backed by state power. The model designates both state interventions and community interventions as "public" when directed at the private realm of the family. Hence, in the case of domestic violence, it becomes possible to see that the development of a "public response" can, and probably should, include both a formal state response (criminal justice interventions) and less formal community-based responses (prevention and education programs, shelter and service provision, and programs designed to help abusers to deal with their behavior before there is a need for direct state intervention backed by sanctions). From this perspective, the liberal legalist’s fear that an increase in community interventions will result in a decreased commitment to treating domestic violence as a serious criminal matter is revealed as premised on a false choice. The contribution of my model is that it operates to highlight that it is not necessary to choose between formalized criminal justice interventions and informal community-based responses when it comes to the effort to transform domestic violence from a private into a public problem.

Still, it is important to acknowledge that the model does not provide any guidance about when to take a criminal justice approach and when to take a less formal approach. In this regard, John Braithwaite’s (2002) theory of responsive regulation provides additional insights into how such determinations might be guided: "The basic idea of responsive regulation is that governments should be responsive to the conduct of those they seek to regulate in deciding whether a more or less interventionist
response is needed. In particular, law enforcers should be responsive to how effectively citizens or corporations are regulating themselves before deciding whether to escalate intervention" (p. 29). Relative to domestic violence, responsive regulation would need to include state-monitored opportunities for self-regulation such as those provided by anger management programs or by programs that target abusive men. Victims, especially those who choose to continue to live with the abuser during the rehabilitation period, would also need to be supported.

Braithwaite's (2002) responsive regulatory approach has an explicit preference for taking the least punitive approaches whenever possible, expressed through a formulation that he terms "the regulatory pyramid." At the base of the pyramid are informal interventions that operate to change behavior through the power of persuasion. That placement reflects a presumption in favor of persuasion as the preferred mode of intervention. As the pyramid narrows, the interventions grow increasingly punitive and involve a much heavier degree of formal state involvement. The decision to move up the pyramid and toward a greater emphasis on state force is made "only reluctantly" and only "in response to a failure to elicit reform and repair" (Braithwaite, 2002, p. 30).

It is noteworthy that the preference for persuasion reflected in the regulatory pyramid is a preference that appears to be shared by many victims of domestic violence. As discussed earlier, research has demonstrated that many victims will avoid involving themselves and their abusers in the criminal justice system whenever possible. Their reasons include a desire to avoid having the publicity attendant upon a highly visible intervention; fears about their own vulnerability to state sanctions; and apprehensions about exposing themselves and/or their abusers to a criminal justice response that is perceived by many to be racist in orientation and application (Crenshaw, 1991; Coker, 2002). Even if they do not harbor such concerns, many victims still do not want the abuser arrested because punishment is not their goal. When victims of domestic violence are questioned about what they want, most say they want the abuse to stop and the abuser to be assisted in changing his behavior (Barnett & La Violette, 1993). Thus, in this respect, the regulatory pyramid's presumption in favor of
public responses that depend on persuasion rather than sanctions reflects what many women say they want as well.

It is important to recognize that a commitment to persuasion over force is not the only priority that informs the operation of the regulatory pyramid. Braithwaite (2002) makes clear that the pace of escalation from persuasion to punishment must always be case-specific. For example, if an "assault offender who during the criminal process vows to go after the victim again and kill her," that declared intention is a compelling reason to override the presumption in favor of persuasion; Braithwaite (2002) says that the offender "should be locked up" (p. 30). Thus we see that, although the pyramid is structured such that persuasion is prioritized over force, if there is evidence that someone is in danger, persuasion will always be overridden by the even more important commitment to safety.

A shared feature of my triangular model (Kelly, 2003) and Braithwaite’s (2002) regulatory pyramid is that neither depends on prior agreement about when a formal state response should be employed and when an informal community-based approach should be the preferred option. Instead, both models are structured around the assumption that such decisions will (and should) be made on a per-case basis. The focus is not on the search for final answers but on the relationships, institutional structures, and ideals that form the procedural and substantive elements of the decision-making process. Thus, although neither model provides definitive answers as to the correct balance between state and community approaches, both operate to enhance the capacity of those who are concerned about particular social problems to think through the stakes and implications associated with possible combinations.

To illustrate, let us return to the concern discussed earlier, that, especially if successful, community-based domestic violence initiatives could provide lawmakers with a ready-made excuse to cut (even further) funding for public domestic violence programs. It is a concern prevalent in general debates about the promise and peril of increasing community involvement in the provision of social services. Further, it is concern that moves in both directions. Consider the assertion of advocates of privatization that, in addition to being extremely inefficient, too much government
welfare weakens the institutions of civil society. According to the logic of this argument, as people become more reliant on the state to address social problems, the likelihood that those in need will turn to community-based groups diminishes, which in turn saps the motivation for people to organize around the shared goal of offering assistance.

One of the elements that makes the increasing occurrence of state-community collaborations so unsettling is they require us to confront—and in many cases to reevaluate—the ways in which we have assigned responsibility for social problems to different spheres. Because my model enables consideration of a range of possible public responses to a particular social problem, it enhances our ability to face domestic violence and to determine, on an ongoing basis, whether the balance between state and non-state responses is productive. Further, the triangular model, by highlighting the manner in which various interventions interact, encourages us to ask questions about whether state interventions are functioning to crowd out a community response (as in the scenario just described) or whether the availability of non-state forms of assistance is negatively impacting the government's motivation to provide public versions of the same services (Kelly, 2003, p. 161). Thinking systematically about the relationships of state- and community-based responses to social problems can also help us to focus on the positive potential of these relationships. Once again, Braithwaite's (2002) regulatory framework provides additional insights.

One of the most-cited limitations of informal interventions is that they are not backed up by the threat of state sanctions and hence are of limited value when it comes to changing behavior. Braithwaite (2002) argues otherwise: an increased reliance on interventions that do not utilize sanctions will, in the long run, enhance the ability to control negative behavior by virtue of sanctions' rarity. Braithwaite (2002) writes that a preference for nonpunitive responses positively impacts the effectiveness of state punishment. First, "by resorting to more dominating, less respectful forms of social control only when more dialogic forms have been tried first, coercive control comes to be seen as more legitimate" (Braithwaite, 2002, p. 33). This argument is built upon research demonstrating that compliance with the law
is positively correlated to a belief that the law is fair. According to this account, if people are given multiple chances to correct their behavior before they are punished they are more likely to accept that punishment as deserved when it is meted out (Braithwaite, 2002, p. 78).

Second, a greater reliance on non-punitive measures helps to improve the authority of punishment, and therefore its effectiveness as a deterrent, by enhancing the likelihood that offenders will believe that they will actually be subject to sanctions if they break the law and are convicted. One of the most negative effects of what has become a chronically over-burdened criminal justice system is the perpetration of the impression, especially among repeat offenders, "that the odds of serious punishment are low for any particular infraction." That impression operates to undermine the credibility of state threats to punish, which in turn diminishes their deterrent value. Braithwaite (2002) believes that the preference for nonpunitive measures embodied in his regulatory pyramid can help to improve the authority and power of state sanctions by alleviating the "system capacity problem," and as a consequence improve the ability of the state to follow through decisively in cases where punitive sanctions are deemed to be necessary (p. 30).

As to legal intervention in domestic violence, high numbers of repeat offenders, notoriously low rates of prosecutions and convictions, and light sentencing patterns all suggest that the legitimacy problems that Braithwaite (2002) identifies are almost certainly at work in this context. Still, whether a presumption in favor of persuasion would be helpful or harmful to the overall effort to address domestic violence is a much more complex question and beyond the scope of this article. But, I do not think that it necessary to have an opinion about the particulars of Braithwaite's (2002) claims to benefit from his analyses. The general contribution of his model is its capacity to advance our ability to recognize the ways in which completely different types of interventions, sometimes occurring in entirely different domains of society, might nevertheless function to reinforce one another positively. In the above example, Braithwaite's (2002) analyses offer a new way to think through the specific implications of what now is virtually a truism in the field of criminology: that formal
and informal forms of social control are interdependent. By improving our ability to analyze the operation of this relationship in specific policy contexts, Braithwaite's (2002) model can help us to maximize its potential.

Conclusion

My reason for considering both the opportunities and the dangers represented by state-community partnerships in the treatment and prevention of domestic violence is not to arrive at a conclusion as to the merit of the partnerships. As I stated above, I believe that the partnerships, like them or not, are here to stay. Further, as the history of the battered-women's movement illustrates, both state-based and community-based responses offer many important advantages, including empowerment of victims (by offering choices when it comes to help) and the empowerment of the community (by creating new opportunities vis-à-vis the problem of domestic violence and by providing education and support to those who want to help). At the same time, my example also demonstrates the way in which increases in the rate and degree of state-community partnerships generate new challenges around how to balance state and community responsibilities when it comes to development of a public response to a social problem.

In light of the preceding discussion, it is obvious that the time has come to move beyond debates that frame the choice as one between the state and the community when attending to social welfare needs. Doing so will enable us to apply ourselves more vigorously to the crucial task of how to approach these partnerships in a manner that will maximize their potential and minimize their dangers. As Martha Minow (2002) notes in her recent, Partners, not Rivals: Privatization and the Public Good, "The Stakes could not be higher. How we mix public and private, profit and nonprofit, religious and secular in providing for schooling, welfare, human services, medicine, and law will spell the future of our democracy. We could shape newly vibrant and caring communities of freedom or cauldrons for distrust and privation" (p. 5). New conceptual frameworks that enable us to see the connections and contradictions that arise from these partnerships, are means to that desirable end. My triangular model of public/
private relationships and John Braithwaite's (2002) regulatory pyramid could help to lead the way toward a future more broadly beneficial.

Note

1. A fuller account of the model can be found in my Domestic Violence and the Politics of Privacy (Ithaca: Cornell University Press, 2003).

References


Moving Beyond the Criminal Justice Paradigm: A Radical Restorative Justice Approach to Intimate Abuse

PEGGY GRAUWILER AND LINDA G. MILLS
New York University

This article traces the history of the development of the treatment of domestic violence as a crime in the United States and the conceptual and practical limitations of this approach in addressing this important social issue. An extensive body of research on restorative justice practice suggests that restorative approaches may contribute to reducing and preventing family violence. Drawing on restorative justice principles, an alternative or supplement to criminal justice approaches is outlined for working with all parties involved in abusive relationships.

Key words: aggression, feminism, intimate partner violence, mandatory arrest, patriarchy, restorative justice

History

Public discourse and political debate influence the recognition and naming of social issues. Naming occurs through the assignment of language and the subsequent labels that define the social issue. The question always lingers: who has ownership of the issue? The battered woman’s movement began over three decades ago, as a grass roots response, by women, to help other women escape male violence. Offering a theoretical concept of battering, women assumed ownership over the issue and moved it from a private family matter to one of public concern (Schneider, 2000). Their tireless efforts have influenced political agendas across the country, and even beyond. The social problem of intimate partner violence is now a political priority. In the process of defining
domestic violence as a women’s issue, it left behind the parallel needs of male and same sex victims, as well as children.

In the last ten years, the movement has been led by a powerful and dedicated group of mainstream feminists. Mainstream feminism is a term borrowed from others, and is not meant as a criticism but as a categorization of people who self-identify as “feminist” and adhere to the belief that the primary approach to domestic violence should be a criminal intervention (Satel, 1997). They would argue that criminalization is the only way to address the prevalence of male to female intimate abuse, insofar as such an approach takes, head on, the long history of systematic patriarchal oppression of women in the criminal justice system.

The work of these mainstream feminists has resulted in the identification of domestic violence as a serious criminal justice and public health concern. Angered by the criminal justice system’s long history of disregard for a woman’s right to live violence-free, mainstream feminist advocates have lobbied for and won legislative reforms that have ultimately criminalized domestic violence through mandatory arrest and prosecution policies. Mandatory policies force police officers and prosecutors to pursue domestic violence cases to the full extent of the law, regardless of the victim’s wishes. These legal outcomes have been enhanced by the efforts of mainstream feminists to frame the issue of domestic violence as stemming from patriarchy, insisting that the American public accept this interpretation of domestic violence as the only valid one (Mills, 2003). The passage of the Violence Against Women Act (VAWA) of 1994, signed into law by President Bill Clinton, reinforced this notion. VAWA 1994 appropriated 1.2 billion dollars for more effective criminal justice responses to victims and perpetrators. This allocation was part of a larger crime bill and, as such, took a criminal justice approach to domestic violence problem solving. Zero tolerance became the battle cry; mandatory arrest and prosecution policies were the strategies used to accomplish it.

Politicians across the country joined these mainstream feminists in support of VAWA legislation. VAWA demonstration projects offered politicians the opportunity to ally with a woman-centered political agenda, leaving behind more volatile debates
about equal rights, equal pay and reproductive rights. Interestingly, in 2000 the National Violence Against Women Survey (NVAW) found that most intimate partner victimizations are not reported to the police. The NVAW Survey approximates that only one-fifth of all rapes, one quarter of all physical assaults and one half of all stalking incidents perpetrated against females by intimate partners were reported to the police. These findings suggest that victims of intimate partner violence do not consider the criminal justice system an appropriate locus for resolving conflicts with intimates (Tjaden & Thoennes, 2000). This chapter explores why battered women have so strongly resisted the criminalization of domestic violence and the opportunity offered by John Braithwaite's work in restorative justice to move beyond the criminal justice paradigm.

One explanation for women's reluctance to embrace criminal justice interventions might be the limitations of our concept of victimization that carries with it traditional gender stereotypes. Mandated arrest and prosecution policies foster the image of the passive battered woman, and the belief that overcoming such passivity necessarily involves leaving the male abuser (Mills, 2003; Peled, Eisikovits, Enosh & Winstok, 2000). This assumes battered women, whether aware of it or not, will ultimately choose to leave their abusers. Anything short of leaving is proof that the woman is being negatively influenced by her abusive partner to stay. Yet a majority of prosecutors find that over 55 percent of the victims they represent are "uncooperative" when they attempt to indict and incarcerate their partners (Rebovich, 1996). The problem is that stereotypical images of the female victim, and our aspirations for her, have not incorporated the realities of battered women's lives. Perhaps as many as 50 percent choose to stay in abusive relationships for emotional, cultural or religious reasons (Griffing, Ragen, Sage, Madry, Bingham & Primm, 2002).

One insight might explain why women are ambivalent about engaging the criminal justice system. Two decades ago, battered women were not consulted on whether the batterer should be arrested. Now, with mandatory policies, their viewpoint is still considered largely irrelevant. Women in abusive relationships are
placed in the untenable position of choosing between protecting their lovers or husbands from incarceration, or protecting themselves by relying on a criminal justice system that is unresponsive to their individual needs (Mills, 2003).

In a 30 month follow-up study of extensively and severely abused women whose male partners were in batterer treatment programs, Gondolf (2002) found that women who felt the need for more assistance were deterred as much by negative views of battered women’s programs as they were by barriers to service access. The decision to stay with an abuser is rarely understood as a choice, a statement of commitment to the relationship, knowledge of the limitations within helping systems, or an expression of self-determination and self-sufficiency (Lempert, 1996). The question of whether we can address the needs of those women who continue to turn away from advocates, police, prosecutors, judges and shelters, seeking to end the violence but not the relationship, is addressed in more detail below.

Feminist support for mandatory interventions and willingness to engage the state as a partner in ending violence against women reflects a significant shift away from the feminist movement of the 1960s—a time when the state was viewed as a system that maintained, enforced and legitimized violence against women (Schneider, 2000). This shift embraces the parity model of feminist jurisprudence that argues that women should be given legal equality (with men) that is genuine and not nominal (Routledge, 2000). While mandatory arrest offers the appearance of parity (intimate and stranger violence crimes are handled similarly), it does so at the expense of individual women. Mandatory policies offer only the illusion of true gender equality by enforcing criminal justice recognition of intimate abuse crimes. There are unintended consequences of mandatory policies that should not be ignored.

The question remains: Is criminalizing domestic violence helpful or harmful? Social scientists, feminist lawmakers, victim advocates and policy makers too often give in to the power of law, without thinking critically and creatively about what role the criminal justice system can really play in eradicating violence against women. Criminal justice reform can only be meaningful when the agents of that reform commit to the iterative process of
social change and continue to acknowledge, evaluate and revamp ineffective policy. We must consider what shifts are needed in the battered women’s movement as it moves forward; critical analysis and reflection about the role of movement politics in the current flood of domestic violence initiatives is overdue (Kanuha, 1999). The compelling work of John Braithwaite challenges us to consider what possibilities restorative justice practice might offer the feminist movement against domestic violence.

An exploration of the governing assumptions that underpin mandatory arrest and prosecution policies help clarify the ‘arrest avoidant’ actions of most victims of intimate abuse and offer some insight into how to begin to address their legal, emotional, and safety needs.

Governing Assumptions

There are four primary assumptions that underpin the mainstream feminist explanation of intimate abuse. First, men batter women because they are privileged, physically, financially and socially; implicit in this assumption is the belief that we need not understand men’s violence beyond the patriarchal explanation provided (Schechter, 1982). Second, women stay in abusive relationships because of patriarchy. They fear their abusers and lack the material resources to leave. Women who stay do so out of weakness, lack of consciousness, and an inability to act decisively by leaving. If given the appropriate political, financial, legal and emotional support, women would always choose to leave their abusive partners. Third, the criminal justice system is sexist. Police officers, prosecutors, and judges minimize the problem of domestic violence, deny women’s agency, and discredit women’s accounts of their abuse. Fourth, only extraordinary measures will counteract men’s patriarchal power and violence, women’s weakness, and the justice system’s sexism. Specifically, it is assumed that the history of denial of violence against women justifies treating all domestic violence as the equivalent of violence between strangers. Mandatory measures are necessary to overcome the state’s sexism and men’s hopelessly uncontrollable violence. In this view, it follows that jail or prison terms are the only appropriate response to intimate abuse.
These assumptions have formed the ideological foundations of American domestic violence practice and policy making. The movement has persuaded citizen and lawmaker alike of the indisputable veracity of these assumptions, which are so significant to the movement to end violence against women that they have become markers for feminism. As they have become so deeply ingrained in our political culture, few have questioned them. If you do question them, you have abandoned the movement (Mills, 2003).

Yet each assumption can be challenged on the basis of recent work in social, cultural, and gender studies. The first assumption that underpins mandatory policies states that domestic violence is caused by and restricted to patriarchal governance. This however, does not resonate with many men and women who enter the system. For example, men and women of color often don’t agree with the dominant rhetoric that all men are “patriarchs”. Many men and women of color see the white power structure as representing views that oppress not only women, but also communities of color. Lesbians, gays, bisexual and transgendered people often find mainstream explanations of intimate violence completely irrelevant to their experiences of violence (Mills, 2003). For women who choose a religious lifestyle, patriarchy is a foreign and irrelevant concept. Similarly, immigrant women steeped in traditional cultural values may not identify their experiences of violence with patriarchy. Their explanations include the realities of their lives: the difficult migration challenges that their families, and especially their husbands, often face.

If we limit our investigation into intimate abuse to patriarchal explanations, then we ignore the voices of women and men whose lived experiences do not comport with this analysis. Violence is never as simple as men’s power over women, although it may be a feature of some relationships. Empirical research supports the assertion that men and women abuse each other (Mills, 2003). Patriarchy as the principal explanation for men’s abuse ignores the fact that violence exists in gay and lesbian relationships.

The second structuring assumption—that women stay in abusive relationships out of weakness, fear, or lack of adequate feminist consciousness—has also been challenged. Research with women from a variety of cultural backgrounds suggests the need
to examine choices made by women within situational constraints rather than within a prescriptive scenario held by members of the dominant culture (Mehrotra, 1999; Peled, Eisikovits, Enosh & Winstok, 2000; Yoshihama, 2000). Many advocates and scholars believe that focusing on the woman's return draws attention away from the batterers' abuse, but not to focus on the return neglects women's voices and concerns. The woman may be in an abusive relationship, but she is also quite possibly a mother, a lover, a friend, a family member, or part of a church or a tradition that has competing claims upon her decision to stay or leave.

While it is true that violence between intimate partners has been systematically overlooked by the criminal justice system, we should not assume that it be treated like stranger violence, which is distinctly different. When the victim does not know the perpetrator of the violence, it is relatively easy, psychologically-speaking, to criminalize his or her acts. Criminalizing intimate abuse on a model that has been derived from stranger violence ignores the fact that the parties have, at one time, shared their intimate lives together, including children, or they share the experiences of marginalization through migration, race, or sexual orientation. Violence that occurs in intimate relationships is not conducive to a paradigm that assigns all the blame to one party while wholly exonerating the other. Like all intimate relationships, even violent ones have an underlying dynamic that can help illuminate the origins of the violence (Mills, 2003). Ignoring the significance of a woman's agency by ignoring her desires in relation to the arrest or prosecution leaves her both without insight into the dynamic of abuse and without protection should the prosecution be unsuccessful or once it comes to a close. And finally, by criminalizing domestic violence, the racism that is endemic in the criminal justice system is underscored. Men of color are likely to be arrested and prosecuted for intimate abuse crimes at disturbingly disproportionate rates when compared with their white counterparts, an experience so devastating that their female partners will be reluctant to reinforce it (Sherman, Schmidt, Rogan, Smith, Gartin, Cohn, Collins & Bacich, 1992).

These assumptions point to the need for inclusion of individual definitions of violence, cultural differences in the abuse experience and its relationship to intervention and prevention
strategies. Inclusion of individual expressions of abuse helps develop a different set of assumptions that permit us to develop a more inclusive strategy—a restorative justice model—that does not excuse abusers or blame victims, but instead reflects the total psychic experience of intimate abuse. Before we describe such a model, it is helpful to understand what assumptions would underpin it.

A Different Set Of Assumptions

If we begin to allow ourselves to think critically about the limitations of a patriarchal analysis of intimate abuse and a criminal justice response, we may be able to move beyond the polarization of intimate abuse as just a "woman's issue". In turn, we might then be better positioned to understand why women are choosing to avoid the criminal justice system, and develop interventions that comport with their needs and desires. Our responsibility as a society is to address the entire problem. The women that are currently being served by the criminal justice system represent a small portion of the population that need their problems addressed.

Perhaps the most sacred of the assumptions—violence runs one way from men to women—is the key to changing how we think about intimate abuse. In 1974, Straus, Gelles and Steinmetz reported that husbands and wives committed nearly equal amounts of physical violence in intimate relationships. According to these findings, 12.1 percent of husbands reported that they committed violent acts against their female partners, and 11.6 percent of wives reported acts of violence against male partners. Ten years later, their results were essentially confirmed: 11.3 percent of husbands reported violence against their wives, and 12.1 percent of wives reported violence against their husbands (Straus & Gelles, 1986). In these studies, women and men in equal numbers report being the sole victim of violence in the intimate relationship (Billingham & Sack, 1987). These studies do not suggest that women's violence is a reaction to men's violence. More than one hundred studies have since confirmed these or similar findings (Straus, 1999).
Researchers have found that when they inquire into "physical violence" rather than "injury", they are more likely to elicit admissions by women that they too have been violent. In one study, 37 percent of the women admitted that they had perpetrated physical aggression against their male partners, compared with 22 percent of men who admitted perpetrating physical aggression against their female partners (Magdol, Moffitt, Caspi, Newman, Fagan & Silva, 1997). Severe physical aggression by women also measured at significant rates. Nineteen percent of women, versus 6 percent of men, reported using such behaviors as kicking, hitting, biting, hitting with an object, using or threatening the use of a knife or gun, and beating up. In this same study, 95 percent of women and 86 percent of men reported at least one act of verbal aggression against a partner (Magdol et al., 1997).

Violence in lesbian relationships also sheds light on the issue of female aggression. Bowman and Morgan (1998) who studied verbal and physical abuse in homosexual and heterosexual college students, found that in same-sex relationships, lesbians reported statistically significant higher levels of violence in all instances than women in heterosexual relationships. Lockhart and colleagues found that 90 percent of the lesbians they surveyed had experienced verbal aggression over the previous twelve months, and 30 percent reported one or more incidents of physical violence (Lockhart, White, Causby & Isaac, 1994). According to Lie and Gentlewarrior (1991), more than half of the 1,099 lesbians in their study reported that they had been physically abused by a female lover or partner. Rohner (1976) evaluated the effect of gender and culture on aggression and found that culture predicts or modifies aggression more than gender does. Studies in Canada, Venezuela, and Mexico also support the finding that woman are engaged in aggressive acts towards their partners at least as often as are men (Fry, 1992; Cook, 1992; Leschied, Cummings, van Brunschot, Cunningham & Saunders, 2001).

Some researchers have found that traditional gender roles influence how girls and eventually women express their aggression. Passive aggression or "indirect" methods are common expressions of female anger (Björkqvist, Lagerspetz & Kaukiainen, 1992). Because boys and men are often larger and stronger and
have higher levels of physical activity, their aggression may be more physical. Girls and women draw on their well-developed emotional strength to express anger (Frączek, 1992).

Björkqvist, Lagerspetz & Kaukiainen (1992) describe indirect aggression as an attempt to hurt another while avoiding detection. In a study of indirect aggression, Björkqvist (1994) found that the purpose of the indirect approach was to find a strategy as effective as violence, while at the same time exposing the non-violent aggressor to as little danger as possible. Verbal strategies, too, put distance to the opponent, and therefore are less dangerous than physical aggression. As a result, when verbal skills are developed, verbal means of aggression tend to replace physical ones whenever possible.

Another distinct feature of women’s aggression is that it is most likely to occur in the context of family. In a large longitudinal study of more than forty-five hundred high school seniors and dropouts in California and Oregon, Ellickson, Saner, and McGuigan found that girls were more likely to be engaged in hitting family members than they were to be involved in gang violence. Twenty-six percent of both boys and girls reported that they hit members of their families (Ellickson, Saner & McGuigan, 1997).

In direct opposition to a strict patriarchal analysis of intimate abuse, psychologist Donald Dutton reports that there may be a critical link between verbal abuse inflicted by the mother on her male child and the likelihood of the boy becoming abusive once he grows up and becomes intimate with a female partner (Dutton, 1996). Dutton’s finding that verbal abuse by a mother may cause a man to have extreme anger responses toward his female partner only underscores the importance of recognizing all forms of abuse—physical and emotional, male and female, parent and child—in the violence dynamic.

Mainstream feminist activists and researchers have consistently argued that women’s aggression against men is irrelevant because it inflicts so much less harm than the injuries men inflict on women. These scholars argue that psychological or even physical abuse inflicted by women is irrelevant compared with other forms of violence expressed by men (Hamberger & Potente, 1994). However, there is strong evidence to suggest that psychological
abuse can often predict physical aggression. In a study of engaged and newly married couples, Murphy and O'Leary (1989) found that "psychologically coercive behavior precedes and predicts the development of physical aggression in marriage". They also report that both partners "may contribute to the escalation of conflict tactics during the early stages of the relationship." (p. 582). These findings are important for two reasons. They suggest that if feminists' overriding goal is to reduce incidents of violence against women, reducing psychological aggression in both partners (and not just the man) is likely to reduce injurious physical abuse against women. This is important for another less obvious reason. Though Hamberger and Potente (1994) argue that emotional abuse should count less in terms of the hierarchy of violence because it has less potential to oppress, there is evidence that, in fact, this is not true; some women experience emotional abuse as much more significant than physical forms of violence (Holzworth-Munroe, Meehan, Herron & Stuart, 1999). To limit our understanding of abuse by women as a necessary reaction to men's violence, we impede our capacity to connect with both parties and to develop interventions that go beyond safety from violence to include healing.

There is no doubt that men are more likely to injure their female partners. However, we also know that less than 30% of abused women are turning to the criminal justice system (Tjaden & Thoennes, 2000). How do we empower a woman who chooses to remain with an abusive partner if we cannot assist her in exploring her feelings of responsibility for aggression or violence because we dismiss these feelings as irrelevant? If she has been aggressive, even violent, it is important to ask the question: Do we encourage denial because we have not developed strategies to address her complicity? By investigating women's use of aggression and the dynamics of intimate partner violence, we can develop interventions that are responsive to both parties.

The extent to which women are viewed as helpless and submissive is apparent in feminist research, as well as in the minimization of men's accounts of women's aggression. Women's aggression, according to the patriarchy model, can be summarized in three simple principles: the man is in control; the man is in denial of his control; and the man is without insight into the
violence he inflicts and feels entitled to express it. In effect he is solely responsible for the violent dynamic (Mills, 2003).

But what if men really do feel that women cause them to become violent because “women complain too much and nag and harass them for no good reason” (Dobash, & Dobash, 1998 p. 155). Researchers Eisikovits and Buchbinder (2000) confirm that these feelings are present in the abusive relationship and also represent an important feature of the dynamic of intimate abuse. Although, on the surface, the male partner appears in control, and the female partner appears under his control, the reality is much more complicated. His “attempts to control [her] may lead the woman either toward managing the violence or taking on a violent identity” (p. 91). Complaining, nagging, and harassing may be learned reactions to his control or a feature of the dynamics in her family of origin. They might also be the female partner’s way of not being able to ask for what she wants from the relationship. This in turn, can lead the male partner to experience what Donald Dutton calls “abandonment anxiety.”

From Dutton’s (1995) research, we learn that men who experience abandonment, either because the women pulled away emotionally or could not move closer for one reason or another, often became aggressive against their female partners in reaction to their experiences of abandonment. According to Dutton: “For assaultive males, the psychological and behavioral result of the perceived loss of the female produces panic and hysterical aggression” (p. 68). Taking these findings one step further, it becomes apparent that when a man experiences abandonment in the face of a woman’s complaints and nagging, this may initiate his violence. If men feel women create the conditions under which they become violent, we need to hear them out and evaluate whether their complaints may have some merit, without blaming women for men’s abuse. Letting women take responsibility for whatever aggression they bring to the relationship can only serve to strengthen their position of insight, action, and power in the relationship overall.

This is not to argue that women in abusive relationships are responsible for the beatings they receive, that they are to blame for the violence inflicted on them. But rather, accounting for the
dynamic of abuse that includes how women and men participate in abusive relationships serves multiple goals of helping each of us understand intimate violence, without minimizing the effect of women's aggression on others. This, in turn, helps individual women make more informed decisions about their intimate relationships (Mills, 2003).

As the studies reviewed here suggest, male and female violence does not happen in a vacuum. Violence is a dynamic that includes more or less significant forms of emotional and physical abuse. Attempts to separate men's and women's aggression, even for the goal of protecting physically abused women, only serves to reinforce violence rather than address it. Because female aggression is part of a dynamic of intimate violence, it is time to take the very important step of examining that dynamic (Mills, 2003).

Under current practice, rather than encouraging insight, we reinforce in women their perception of themselves as victims. Mandatory arrest and prosecution policies affirm that women have no role in addressing the violence in their lives. We believe that if we took time to discover how women and men understand their own aggression in the context of their intimate relationships, we not only could help them gain insight but also help them manage the violence—both physical and emotional.

Giving Voice To New Ways Of Thinking About Intimate Abuse

John Braithwaite's work in the area of restorative justice offers some compelling opportunities for practitioners in the area of intimate abuse. Restorative justice practice, in a practical sense, involves conferences between victims and perpetrators of a crime. Each brings to the conference a care community of friends and family that can support them individually, while they address the violence that has occurred. As a group and by consensus, a contract is developed to restore to the victim what has been lost (e.g. dignity, property etc.). This contract must be agreeable to both sides and is prepared only after two events have occurred: First, there has been a full examination of the impact of the violence on those most affected; and second, violent offenders express remorse for their actions. Conferences can only be formed
with the consent of both parties and the participation of their care communities. Care communities offer localized support and enhanced safety for victims.

Braithwaite (2002) provides a comprehensive analysis of the empirical evidence generated during the last decade, about the effectiveness of restorative justice. Braithwaite hypothesizes that restorative justice restores and satisfies victims, offenders and communities better than existing criminal justice practices. This careful review of the existing research suggests a high level of victim satisfaction with their restorative justice experience. Braithwaite argues that victims feel empowered by their participation in the conferences and their individual determination of what is meaningful restoration. Similarly, the offender's apology for the offense committed offers symbolic reparation, as well as enhanced empathy for the offender. Both these conditions positively influence victim healing. The research also shows substantially higher levels of compliance with restorative justice contracts than with court orders.

Offenders also express satisfaction with the fairness of the conference process. There is some evidence that suggests that the conferences reduce reoffending. In addition, members of the community beyond the offender and victim tend to come away with high levels of satisfaction; the very collaborative nature of the conference process may increase the chance of mutual investment in finding solutions that can promote healing on both sides—not just "victory" for one side of the equation. This suggests the possibility of reducing intimate partner violence at the micro or family level that may in turn reduce the intergenerational transmission of violence—while also reducing violence at the macro or community level (Braithwaite, 2002). All of this is a compelling argument for further research into restorative justice models for family violence.

Currently, the appropriateness of restorative justice and family violence practice is a hotly debated topic (Strang & Braithwaite, 2002). Arguments against restorative justice often turn on many of the reasons explored earlier and are related to the patriarchy model. Essentially, the argument against restorative justice in domestic violence cases is that all battered women are disempowered by the violence and their safety is threatened whenever they are in the presence of their abusers. The certainty of this
power to silence her is asserted as a fundamental reason to reject conferences that address intimate abuse (Busch, 2002). This is despite the reality that thousands of men are arrested each day for domestic violence crimes, in which they often serve little jail time and return quickly to the home and or the community (Smith, Davis, Nickles, Davies, 2001). In addition, women testify in court with the support of prosecutor's preparation in the presence of their abusers and travel to and from court with friends and family (and even, sometimes, the abuser).

It is therefore inaccurate to assume that a woman participating in her abuser's prosecution is any more autonomous or safe than she might be with a care community in a structured setting designed to verbalize her abuse experience. Ironically, the shame and stigma associated with the criminal justice system may cause some women to feel the need to hide their involvement in an abusive relationship from friends and family, preventing rather than facilitating support at the community level. Conferences offer the kind of non-threatening and healing-oriented intervention that women seek and which the criminal justice system cannot provide.

Llewellyn & Howse (as cited in Edwards & Haslett, 2002) describe restoration as the creation or re-creation of relationships of meaningful social equality. The offender claims responsibility for his choices, actions and consequences of his actions; these are essential components of restorative justice. One Canadian study of family group conferences that addressed child maltreatment and domestic violence found a reduction in indicators of child maltreatment and domestic violence, an advancement of children's development and an extension of social supports (Pen nell & Burford, 1998).

Family decision making conferences were introduced in the Miami-Dade Juvenile Court in 1998. An evaluation study of this project in cases of child maltreatment, found an increase in parent and participant satisfaction with the court process, empowerment of families as decision makers, improved relationships between the Department of Children and Families and a reduction in the amount of time children spend waiting for permanency (Gatowski, Dobbin & Litchfield, 2001). This raises an important question about conferencing: If they can improve relationships within families and between participants within outside agencies,
can they address violence between partners while also improving community relations? As Kay Pranis (2002) so eloquently documents:

A very important value in restorative justice is that of empowering unheard voices. That is most often and most powerfully accomplished through personal narratives. Listening respectfully to someone’s story is a way of giving them power—a positive kind of power. (p. 30).

Restorative justice practice in the area of domestic violence can be rooted in a clear set of values and principles that coincide with the interests of mainstream feminists in serving the needs of battered women: Victim safety, victim choice, offender accountability, and system accountability (Edwards & Haslett 2002). Restorative conferences as part of a continuum of ongoing services and even criminal justice intervention in some instances, can help address the violence between individuals, within families, and also can facilitate community-wide healing through the participation of friends and community leaders.

Historically, intervention in the area of domestic violence has always started at the grass roots level—through experimentation, advocacy and respect for a diversity of views. The movement has succeeded in getting the attention of the criminal justice system. It is time to expand our efforts to include the needs of those who avoid the criminal justice system or otherwise reject it, by developing effective community-based interventions that are not dependent upon criminal intervention. The irony is that mandated arrest policies were developed following a small study in Minneapolis suggesting the effectiveness of arrest in reducing domestic violence crimes. Despite increasing evidence that this initial study may have been only partially accurate, mandated arrest became the battle cry of mainstream feminists (Mills 2003). We suggest similar experimentation stemming from early indications that restorative justice can reduce family violence. Ongoing empirical research should accompany each of these efforts.

Modifying Restorative Justice for Intimate Abuse

Intimate Abuse Circles (IAC) draw on many restorative justice principles already described, and also incorporate the set
of different assumptions described earlier. IACs are a culturally sensitive alternative to the criminal justice system response to domestic violence as the content of the conferences is tailored to the parties involved. They are a method of intervention following an arrest or in cases were no arrest has been made. The IAC is specifically designed for couples who choose to stay together even when violence has occurred in their relationship and who seek to understand the violence rather than lock it away. Intimate Abuse Circles are especially helpful to immigrant, minority, and religious families where it is more likely that the family will remain intact (Griffing et. al., 2002; Snyder & Scheer, 1981) IACs may also be used in cases where the partners have children together and would like to separate in a more amicable fashion.

The IAC recognizes as a guiding principle that intimate abuse involves more than just an offender and victim. This is different from how conferences have been imagined thus far. The IAC process recognizes that the abusive relationship probably involves a dynamic that both parties must acknowledge in order to improve how they relate to each other. The process does not involve victim blaming, but rather the recognition that even the more victimized party maintains some power in the relationship. It provides a forum for the more violent party to take full responsibility for the violence committed in the relationship, while also validating that intimate relationships involve two people with their complex and sometimes conflicting needs.

The IAC will enable both parties to choose members of their care communities to participate in the Circle process. Members of the care community help develop concrete and measurable methods for addressing the violent relationship. The role of the care community including family members and community leaders, will be to participate in creating effective solutions, but also to help monitor and, in turn, reduce the violence.

Drawing from principles of restorative justice and family group conferencing, the Intimate Abuse Circle model seeks to honor the partners' choices to remain together despite the violence. The IAC model achieves this goal by establishing circles of support within the couple's community that foster healing within their cultural context. The IAC model addresses the underlying dynamics of abuse while fostering safety for the affected
parties through a formalized network of family and community supports; this can be utilized in conjunction with or instead of criminal justice interventions.

This model acknowledges the reality that many people seek to end the violence—not the relationship. The circle conferences will be facilitated by professionally trained domestic violence experts who will recognize oppressive dynamics and ensure they do not get reproduced in the Circle process. These professionals will guarantee that all parties speak and that the feminist value of parity is actually realized.

This radical new model moves intimate abuse beyond the narrow parameters of mainstream feminism, allowing for the possibility of reconceptualizing the issue to incorporate its nuances and dynamics. Doing so provides the opportunity to address the problem more holistically and directly. It also provides a more culturally specific response that addresses the unique gender dimensions of the problem, including violence by both men and women in heterosexual and homosexual relationships. With a new conceptualization such as this one, John Braithwaite's path breaking work in restorative justice provides a model for rethinking how we address this problem in a more sensitive, compassionate, and empowering manner. It allows for the people who actually own the issue—the parties themselves—to claim their stake in healing it.

References


Managing Social Conflict—The Evolution of a Practical Theory

DAVID B. MOORE
Consultant, Sydney, Australia

This article describes the co-evolution of a process and a theory. Through the 1990s, the process known as "conferencing" moved beyond child welfare and youth justice, to applications in schools, neighbourhoods, and workplaces. In each of these applications, conferencing has assisted participants to acknowledge and transform interpersonal conflict, as a prelude to negotiating a plan of action. Much analysis of conferencing has been linked with social theorist John Braithwaite, whose work has influenced the development of a multidisciplinary theory of these process dynamics, and the development of guiding principles. Key links between theory and practice are described in chronological sequence.

Key words: Conferencing, conflict management, restorative & transformative justice, deliberative democracy

Introduction

This special issue of the Journal of Sociology and Social Welfare examines a process and a body of theory. The process is known as “conferencing”, and it is being used by a growing number of professions. Conferencing provides a conversation with a formal structure, and that structure enables participants to address constructively an incident or issue that has caused significant conflict between them. Different titles distinguish applications of conferencing in different fields of professional practice such as child welfare, corrections, and schools. “Family group conferencing” is a common title when the process is used in social welfare.

Key features are consistent across the various applications of the conferencing process. In all of them a third party convenor
brings together in a circle the group of people affected by the issue in question. The convenor directs the group's conversation through a series of stages, the last of which involves developing an action plan to improve their situation.

A growing body of evidence indicates that conferencing can improve the quality and quantity of relationships within each participating community. Various theories have been used to explain why and to justify the use of family group conferencing and other versions of the conferencing process. One social theorist has been particularly prominent in these dialogues and debates.

Braithwaite's theoretical work was first linked with the practice of conferencing in the early 1990s. Accordingly, we have now had over a decade of dialogue and debate about the fit between conferencing practice and a body of social theory of which Braithwaite's work is exemplary. This dialogue of theorists and practitioners has continued as conferencing has spread well beyond its initial applications in child welfare and youth justice. The dialogue has helped keep the conferencing process aligned with the programs that deliver it, and with underlying principles.

My contribution to this special issue comes out of an unusual relationship between theory and practice. In the early 1990s, as academic advisor to a pioneering conferencing program in Australia, I connected the conferencing process with the theory outlined in Braithwaite's (1989) then-just-published *Crime, Shame and Reintegration*. I subsequently evaluated aspects of that program under the aegis of a federally-funded research program.

After working in state government policy development and program implementation, I co-founded a company to promote conferencing and related conflict management practices. I was thus involved in the expansion of conferencing both geographically (to programs in North America and Western Europe), and to sectors/professions beyond justice and social welfare (including education, workplace relations, and community development). In this article, I outline some lessons from this experience of promoting conferencing and related processes within various programs. These lessons are arranged in chronological order, and are linked with ideas found in Braithwaite's work.

Some of the lessons discussed here have direct relevance for social welfare applications of conferencing. Others may be of
indirect relevance. The one overriding lesson, however, is that good theory assists good practice. So we must all keep talking, within and between different fields of professional practice, about the principles and practices with which we work.

Lesson: Consistently Distinguish Program from Process

The genesis of conferencing programs in New Zealand and Australia (Australasia) has been described extensively (Hudson et al., 1996). The New Zealand national parliament legislated in 1989 for the use of family group conferencing to deal with certain care and protection matters and certain youth justice matters. New Zealand’s Department of Social Welfare was made responsible for delivering both applications of the process. In essence, the introduction of conferencing into the child welfare and youth justice systems gave considerable decision-making power to individuals and groups in cases where state officials might previously have imposed decisions on those individuals.

The program has generally been judged very successful according to a number of measures, both for the individuals and families involved, and for its positive impact on the youth justice and care and protection systems. Standard measures include participants’ satisfaction with the process. Standard outcome measures include reduced reoffending, in youth justice cases, and more realistic, safer outcome plans in care and protection matters. Positive outcomes have been measured qualitatively—through powerful individual stories—and quantitatively, with impressive statistical outcomes (See e.g., Maxwell & Morris, 1992; Trimboli, 2000; Luke & Lind, 2002).

The New Zealand national legislation of 1989 inspired the first Australian program to use conferencing in youth justice. (This program began in 1991, in Wagga Wagga, the largest town in the Riverina agricultural region of southern New South Wales.) Administrative arrangements for this first Australian conferencing program were rather different from those in New Zealand. Most obviously, local police administered the program without the need of new legislation. This was possible because of the size and structure of the police agency in question, the laws under which it was operating, and some widespread cultural changes in contemporary policing.
The legal space for police to convene a process such as conferencing already existed. Using the British common law principle of "constabular discretion", Australian police officers have, historically, exercised some freedom to determine how best to deal with less serious (non-indictable) offences. In each Australian state, various laws and administrative guidelines have built on this discretion, introducing diversionary options such as police cautioning for young people (Seymour, 1988).

The process dynamics of a police caution were generally not defined with precision. So police in the Wagga Wagga patrol could establish and administer a program of "effective cautioning using family group conferencing" (Moore & O'Connell, 1994) under existing legal and administrative guidelines. The idea was simple. Here was a new option in cases involving young people aged from ten to seventeen. The option would be available if one or more young people had freely admitted their role in a non-indictable offense, and so could be considered eligible for a police caution, rather than having their case sent to court. Now, instead of a police sergeant personally cautioning a young person to desist from offending behavior, that same sergeant could bring together those affected by the offending behavior, and convene a conference. The sergeant would become more of a referee than a player in the cautioning process.

If structural, legal and administrative factors made all this possible, what made it desirable—at least to reform-minded local police officers—was a cultural change in contemporary policing. The philosophy of community policing had widespread influence on police policies and procedures through the 1990s (Skolnick & Bayley, 1988; Moore, 1992) Appropriately, the local 'Beat Police' Unit administered this Australian pilot program of conferencing in youth justice. This unit was staffed by the group of officers expressly dedicated to the philosophy and practice of community policing.

The police-administered pilot program of conferencing in and around Wagga Wagga was strongly supported by a coalition of local professionals with an interest in youth justice and social welfare. But the program also rapidly attracted attention further afield. And one reason for that widespread attention was Braithwaite's interest in what soon became known as the Wagga Model. As always, terminology was very influential here.
The word "model" conflated two distinguishing elements of the arrangements in Wagga: a program administered by the local community policing unit, and a process that evolved over several years, as its theory-based design was systematically tested, redesigned, and retested. Using one word, model, to refer to two elements obscured our understanding of both elements for some time. But dialogue between theory and practice gradually helped us distinguish more precisely the program from the process.

As other conferencing programs developed in Australasia, North America, Western Europe, and South Africa, consistent concerns were: "What agency should administer the program?" and "Who should convene conferences?" To those of us observing the day-to-day workings of the Wagga Model, however, the most interesting feature was not the set of administrative arrangements for the program but, rather, the process itself. In other words, it was "What do people actually do when they're in the room?" rather than "What rules determine who enters the room, and who administers those rules?" Braithwaite's involvement with the Wagga Model began with an attempt to answer this question.

The possibility of establishing a conferencing program in Wagga had been first formally raised at a meeting of academics, social services and justice professionals, and local city administrators. I attended that meeting as coordinator of a "justice studies" program offered nationally from the local university campus.

Now a group of local service providers was considering establishing a program. To do so properly required a clearly articulated explanation of what we (thought we) were doing. Braithwaite's *Crime, Shame and Reintegration* (1989) seemed to provide a theoretical counterpart to the process of family group conferencing—at least in its youth justice applications. Braithwaite's theory of reintegrative shaming provided a basis for philosophical reflection and an analytical framework for action research. We would probably need to adjust process and program—the practice. We might need to adjust the guiding principles—the theory. But without a working hypothesis for what conferencing was, we couldn't begin this dialogue of theory and practice.

In essence, *Crime, Shame and Reintegration* offered a meta-analysis of major schools of criminology. Rather than emphasizing points of difference, Braithwaite provided a fair-minded
summary of these schools, and an overview of the empirical data that support their respective theoretical claims. The result can be compared to a Venn diagram. At its center are points of commonality in theories about what causes crime, and what causes people to desist from crime.

Braithwaite's theoretical synthesis suggested—not surprisingly—that the more people have to lose from involvement in crime, the more likely they are to desist from criminal activity. Crucially, this is not a simplistic material analysis. Rather, it places adequate emphasis on psycho-social factors such as a sense of personal control and the presence of social support. If individuals feel they have some sense of dignity, a sense of hope for the future, and significant positive relationships, then they have a great deal to lose from behavior that damages those relationships.

Such ideas seem commonsense to professionals in social welfare and social work. The ideas can also be theorized in terms of family systems and social networks. Some of the activists who had pushed for reform of New Zealand's child welfare and youth justice systems had expressed similar views. Appropriately, some criminological research in New Zealand at this time was producing much the same findings (Leibrich, 1995). And these theories about reintegration had significant policy implications (Braithwaite & Mugford, 1994).

The terminology of reintegration was chosen as a counterpoint to a famous phrase in North American legal sociology. In the 1950s, Harold Garfinkel had articulated "conditions of successful degradation ceremonies." Garfinkel was suggesting ways to strengthen symbolic messages of social disapproval sent by the criminal justice system (Garfinkel, 1956). From a strong base of evidence, Braithwaite was now suggesting the opposite approach. He was arguing for a strategy of reintegrating rather than "degrading"—stigmatizing and segregating—people who had caused social harm.

At the core of the theory was not just a suggestion, based on strong sociological evidence, for decreasing reoffending by increasing social support. There was also a psychological claim about the nature of processes, or "ceremonies." The claim was captured in the title of the book: in the wake of a crime, social reintegration becomes possible once there has been an understanding of the
harm caused and an expression of remorse in a supportive setting. At the core of this expression of remorse is a feeling of shame.

Braithwaite has since continued to speculate about the larger social dimensions of stigmatization and reintegration, of how what is considered shameful or not influences social regulation. This work is typically both descriptive and prescriptive, and it addresses some very broad themes (Braithwaite, 2002). But already, while the theory still specifically concerned formal responses to criminal behavior, it raised very broad questions.

As one looked for points of commonality between Braithwaite's theory and related theories across the spectrum of social science and humanities disciplines, the area that seemed most to warrant more careful attention was that of psychology (Moore, 1993). In particular, the theory of "reintegrative shaming" begged the question of whether emotions—and specifically the emotion of shame—were human universals or were "culturally specific." Empirical evidence from conferencing prompted speculation here. As many conference evaluators and convenors have since noted, despite all the differences from one case to the next, a strikingly similar emotional dynamic seems to recur in conferences, irrespective of the nature of the case, the numbers present, or their cultural backgrounds. (Moore with Forsythe, 1995)

Convenors ask questions in a particular sequence, encouraging participants to paint a picture of what happened and how people have been affected, before considering how the situation might be improved. As these questions are asked and answered, the group as a whole seem to move through a series of stages. Each of these stages is dominated by a small number of emotions. Cognitive psychology, with its emphasis on conscious decision-making, did not adequately explain this group psychological dynamic. Nor did psychodynamic theory, with its emphasis on unconscious drives. Nor did behaviorist psychology, which provided a description of behavior rather than a theory of psychology.

I had noted that there was indeed a profound emotional turning point in the latter half of most well-convened conferences. It marked the point at which participants could begin working constructively towards a plan of action for making things better. Initially, this turning point seemed consistent with the theory of psychological process hypothesized by Braithwaite: a sense of
shame would be experienced once the full social effects of harmful behavior had been explained by those most affected, and had been understood. And because this shame was experienced in a supportive setting, it could be a prelude to social reintegration—rather than stigmatization and segregation. But closer observation suggested that this theory needed modification in a subtle but profound aspect.

After observing many conferences, after audio-recording and analyzing transcripts, comparing filmed role-played conferences with the 'real thing', and interviewing observers, convenors and participants at length, a key feature of this emotional turning point in conferences was clear. It was not an experience confined to any one individual. Rather, all of those present experienced something profound. They experienced a moment of "collective vulnerability", as a Canadian colleague described it in a training workshop. It was several years before we articulated adequately the emotional sequence leading to and following this turning point in the conferencing process. (A brief account is provided below.)

Meanwhile, justice system programs used some or all of the convenors’ (process) training that a group of us involved with the program in Wagga had developed. So too did the first programs in schools, neighbourhoods and workplaces. Indeed, the only professional domains where conferencing was applied with little reference to this process seem to have been social welfare and social work (see Ban, 2000; Cashmore & Kiely, 2000; Burford & Hudson, 2000). And until fairly recently, there has been only limited dialogue between social services and other applications of conferencing. But inter-professional dialogue about conferencing is now increasing, and one reason seems to be a common interest in an adequately articulated psychosocial theory of the process. As conferencing programs are established in various fields, more and more practitioners have observed the need to look more deeply, to pay closer attention to the dynamics of conferencing and related processes.

Paradoxically, a better understanding of the process dynamic was assisted by the parallel project of looking more broadly, of reconsidering the principles that the conferencing process seemed to exemplify. Reconsidering the guiding or foundational principles
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of conferencing made it easier to see the process through different lenses.

Lesson: Distinguish Principles from Program and Process

Through the 1990s, a great deal was learned from programs that applied the conferencing process in different settings, in Australia, North America, Western Europe and elsewhere. New Zealand's national legislation provided for conferencing in care and protection matters and in youth justice, all under the administrative aegis of the Department of Social Welfare. In contrast, the first youth justice conferencing program in New South Wales was administered by police, as was the first large random-allocation study of conferencing, which began in the Australian Capital Territory in 1994 (Sherman et. al., 1998).

Some local police patrols (in other states and the Northern Territory, and especially in rural and remote areas) replicated the Wagga model. In other words, they used the training methodology we had developed, and administered a diversionary program of "effective cautioning using conferencing." (Nearly a decade later, working with reformers within the Northern Territory Government, we used the same model to provide a humane alternative to the Territory's notorious mandatory sentencing laws.)

Meanwhile, in 1993, South Australia passed the first Australian statewide legislation for conferencing in youth justice. Although much of the framework was influenced by New Zealand's legislation, the program was administered by the South Australian Courts Administration Authority, which, in turn, established a semi-autonomous Conferencing Unit. Schools also began to use the process, with initiative taken variously at the level of individual schools, districts (boards), and statewide departments (Cameron & Thorsborne, 2001). In Canada and the United States from 1994, some schools and police agencies began to use versions of the training material developed in Australia.

Social welfare applications of the process were piloted with various administrative arrangements, including grant-funded dispute settlement agencies, faith-based organizations, and government agencies (Burford & Hudson, 2000). In a further significant variation, conferencing was also used to address conflict
in inner city neighborhoods (Abramson & Moore, 2002). Finally, as far as we know, the first regular formal use of conferencing to address conflict in workplaces began in New South Wales in 1995, after a group of us founded Transformative Justice Australia.

In all these applications, one of the attractions of the conferencing process was that it seemed more than just a process. To bring a group of people into a circle, and to enable them to deal constructively with problems that affected everybody present, seemed consistent with various aspirational political philosophies. For instance, conferencing could be seen as an example of participatory democracy. It could be seen as realizing some practical middle ground between liberal and communitarian philosophies of civic involvement (Moore, 1993).

Likewise, in justice system applications, the process seemed consistent with a "republican" model proposed by Braithwaite and philosopher Phillip Pettit, whereby justice processes and systems are judged according to the degree to which they increase or decrease the "dominion" of those affected (Braithwaite & Pettit, 1990). The process also seemed to have much in common with other interventions informed by family systems theory or practices such as narrative therapy (White & Epston, 1990; Niemeyer, 2001; Perry, 2002). Finally, conferencing seemed consistent with the movement for restorative justice (Moore with Forsythe, 1995).

Much of the theoretical discussion about conferencing through the latter half of the 1990s was subsumed by debate and dialogue conducted in the language of restorative justice. In retrospect, it seems that this development may have constrained unduly thinking about conferencing, and may have temporarily limited applications of the process. To understand how this occurred, we need to consider the origins of the modern restorative justice movement.

A theoretical distinction between retribution and restoration or reconciliation had long existed in jurisprudence and in social theory—for instance, in the work of G.H. Mead (1917–18). The distinction was also part of older faith traditions. In the Christian tradition, an emphasis on the restoring power of forgiveness was particularly strong in Anabaptist—Quaker and Mennonite—communities. So it was perhaps not surprising that Mennonite activists played a significant role in developing the process known
as "victim-offender reconciliation." The acronym "VORP" was derived from victim-offender reconciliation programs developed in the mid-1970s, first in Ontario, then Indiana and various other US states and Canadian provinces.

These developments have been well chronicled in an ongoing series of anthologies edited by Burt Galaway, Joe Hudson and colleagues (see also Zehr, 1990). Contributing writer/practitioners typically offer a general critique of the criminal justice system, wish to improve the wellbeing of all those affected by crime, and, specifically, wish to create circumstances whereby those affected can themselves address the specific harm they have experienced and deal with perceived underlying causes (Daly & Immari-geon, 1998).

Through the 1980s, this philosophy of restorative justice was represented primarily by one process. It was called either Victim Offender Reconciliation—a term that emphasized the desired outcome—or Victim Offender Mediation (VOM)—a phrase that emphasized process. Through the 1990s, however, conferencing, circle sentencing and other processes were also deemed exemplary restorative justice processes. Chapters and articles were published with grids comparing and contrasting their similarities and differences (e.g., Bazemore & Umbreit, 2002) And there are indeed many procedural and philosophical similarities between these processes, and practitioners generally have similar goals.

A key administrative or program difference between conferencing, victim-offender mediation and circle sentencing is that circle sentencing is typically an alternative to traditional court, victim-offender mediation typically an adjunct, while conferencing can be both alternative and adjunct. But the more significant differences concern process dynamics. (The following generalizations apply in most though perhaps not all cases.)

Conferencing seemed to differ from circle sentencing in its definition of community, with greater emphasis on the community of family, friends and/or colleagues, and somewhat less emphasis on state officials. Conferencing also differed from circle sentencing in its explicit definition of the collective agreement reached by participants as something other than a sentence.

This difference is partly a function of where in the system these two processes are used. But the difference arises also because
conferencing explicitly asks different questions from those traditionally asked by the criminal legal system. The traditional social welfare and justice systems have both asked: *Who is our subject and what do we do to them?* Conferencing, in contrast, asks: *What has happened? How have people been affected? What do we now do to make things better?*

This difference in the focus of proceedings is also true of Victim Offender Mediation. Conferencing is not designed primarily for victims, nor for perpetrators. It is equally for all those other participants who attend. It is for anybody who, by virtue of friendship, family or professional relations, has been affected by what happened. So conferencing seems to differ from VOM in its emphasis on the whole community of people affected by an incident or incidents and the associated conflict.

Secondly, conferencing is designed for cases where interpersonal conflict is the presenting problem. The theory that we developed to understand conferencing and to guide conferencing convenors explicitly distinguishes conflicts from disputes (Moore & McDonald, 2001). A dispute requires two parties, and it requires a set of facts around which the dispute occurs. It need not involve negative feelings.

Conflict is more general, is associated with strongly negative feelings, and may be experienced within a person, within a group, and/or between groups. So a dispute may cause conflict, and a state of conflict may generate disputes. But conflict can exist in the absence of any specific dispute. In other situations, disputes can be resolved without conflict. Different approaches may be required for each type of situation.

Accordingly, from the mid 1990s, I emphasized the need to distinguish three approaches to conflict: (1) maximizing conflict, as a side effect of adversarial dispute resolution; (2) minimizing conflict, as a tactic in the non-adversarial dispute resolution process of assisted negotiation known as (interest-based) mediation; (3) acknowledging and transforming conflict, the optimal approach where specific disputes are merely symptoms of more general conflict, or when there is conflict but no dispute.

For instance, when someone admits having acted in ways that offended against and victimized others, there is undisputed harm. In other words, *there is* not necessarily any dispute. Accordingly,
the primary need is not to negotiate, using a process designed to minimize conflict. Rather, the primary need is to acknowledge the conflict between people and, if possible, to transform that conflict into cooperation. Conferencing is designed expressly to do this.

So this was a subtle but significant difference between conferencing and the model of mediation-as-assisted-negotiation that we understood to have been adopted on behalf of perpetrators and victims of crime (Moore, 2000). The distinction between these processes is similar to that made between “interest-based” and “transformative” models of mediation. But the conferencing process has a more specific structure than most models of transformative mediation. And it is informed by a psychosocial theory about the emotional stages that this structure allows (Moore & Abramson, 2002).

A further interesting difference between conferencing and VOM is the direction in which these processes have promoted reform. The mediation process was developed for Alternative Dispute Resolution in other fields, and then introduced to the justice system by reformers (Umbreit, 1994). Conferencing, conversely, was first used in justice and child welfare applications, then implemented in successful programs in other regulatory systems.

So what is it about the theoretical basis and structure of conferencing that have made it suitable for systemic reform outside the justice and child welfare systems? This is a question about process and principles. It links neatly with a debate that was occurring by the early 2000s concerning the nature of restorative justice programs. Strang, a colleague of Braithwaite’s at the Australian National University, suggested that differences in national culture help explain differences in the restorative justice movement in Europe, North America and Australasia.

Strang perceived a distinction between a “support-focused” victims’ movement in Europe and its counterpart in the United States, which has a stronger “rights-focus.” Many readers will recognize the parallel between this dichotomy and Gilligan’s (1982) competing ethics of care and of justice. Strang suggests that Australian restorative justice programs have taken a third way, moving beyond the dichotomy of justice versus care. She provides examples from RISE (the Reintegrative Shaming Experiment), a
randomized controlled evaluation of conferencing in Canberra that was inspired by the program in Wagga Wagga. (A Justice Research Consortium, with the backing of the Home Office, has been implementing this evaluation on a much wider scale in the United Kingdom since 2001, when we trained the first group of convenors for that program.)

RISE researchers in Canberra found that victims of crime whose case went to conference rather than court were presented with greater opportunities for material reparation, yet they were less likely to ask for money as part of the case outcome. They were significantly less distressed and angry, and rated higher in sympathy and trust, than the control group. This effect was most pronounced for victims of violent crime. Four times as many conference victims received an apology. Conference victims were more satisfied with the information about case processing and outcomes, the opportunity to participate in the development of case outcomes, and the “fair and respectful treatment” they received (Strang, 2002).

Cultural and institutional variations may well account for significant differences in the victims’ movement in Europe and North America, and, indeed, in many other parts of the world. They may well provide part of the explanation for this apparent third way in Australasia. But a procedural factor seems at least as significant, namely that the victims interviewed in Strang’s Australian evaluation had attended a conference. In other words, they had participated in a process designed expressly to answer the sorts of concerns traditionally raised by victims of crime.

As Strang’s study reminds us, research shows consistent criticisms of the justice system. Its processes are perceived as unfair, as are the outcomes that those processes generate. People affected by crime feel excluded from decision-making, and outcomes tend to neglect non-material dimensions.

People in many other situations express similar concerns. Conferencing seems to address concerns raised by victims of crime about process and outcome, for the same reasons it is judged positively in other situations where participants have been in conflict. In all these situations, the primary problem is not a dispute. There is either undisputed harm, or there are many poorly resolved disputes associated with the conflict. Either way,
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an effective process will need systematically to revisit the key causes and consequences of conflict. For this reason, I suggested it was not accurate to interpret conferencing as third-party assisted negotiation with extra participants. Analysis of the process dynamics reveals that the differences between these processes are more significant than who is in the room (Moore, 2000). To use phrases associated with the work of the Harvard negotiation project, the structure of conferences enables participants to systematically “get to peace” before they seek to “get to yes” (Fisher, Ury, & Patton, 1991). And a key tactic for getting to peace is to engage a whole social network.

For the same reasons, it seems not quite accurate to call conferencing a victim-offender process. Even when conferencing in the justice system deals with an incident involving a single perpetrator and single direct victim of a crime, many other people will have been affected. And if conferencing is the process used to address the associated conflict, then many people should attend the conference. Again, the process is for all of them.

Likewise, it seems not quite accurate to call conferencing specifically an exemplar of restorative justice. Yes, it is a process that can be used in justice systems. It may indeed restore some elements of the situation—perhaps a sense of relative harmony or some similar psychological and/or social factor. But the more striking feature of a process that engages a whole social network in conflict is less restoration and more transformation. For this reason, in the mid-1990s, we adopted the hybrid term “transformative justice” (which was at that time most associated with Canadian activist, the late Ruth Morris (Morris, 2000).

This term “transformative justice” is a hybrid in the sense that it combines information about process and system. The word “transformative” refers to the change in participants’ perspectives and feelings, as they work towards an agreement to transform their circumstances.

So what was the defining essence of conferencing in its various applications? Again, it seemed not quite accurate to describe conferencing primarily as an example of participatory democracy. Yes, the guiding principles for convenors of participation, equity, deliberation and non-tyranny are those of deliberative democratic process (Moore & McDonald, 2001). But to define conferencing in
these terms is to risk emphasizing process over outcome. Which again begs the key questions: What is the generic desired outcome of conferencing?

Lesson: The Generic Process and Outcome is Conflict Management

A generic desired outcome of conferencing only became clear once the process had been observed in three and more specific program applications. Only then did broader patterns appear beyond the administrative concerns and risk minimization practices specific to that agency or profession.

Social welfare programs have tended to adopt conferencing (and, indeed, Alternative Dispute Resolution process generally) in response to concerns that a social services system was disempowering. Conferencing increases client participation while being consistent with family systems theory and other key ideas informing contemporary welfare practice. So a key desired outcome of conferencing in social welfare has been empowerment.

Justice system reformers have tended to promote conferencing for multiple reasons. Key desired outcomes include reducing the rate of reoffending relative to other interventions, diversion from the formal system, a voice for victims of crime, a more general sense of participation for those affected by crime, and even strengthened communities.

Some of these outcomes have also appealed to members of school communities. But conferencing has appealed above all to those schools seeking a "whole school approach to behavior management", and appropriate responses to behaviors such as harassment and bullying. A system goal, in many cases, has been to reduce the alarmingly high rates of suspension and exclusion from schools in the wake of such behaviors.

In welfare, justice and schools applications, program administrators are dealing with relatively (and in some cases literally) captive audiences. Conferencing had only to be more appealing than the alternative processes to be judged positively by participants. But the situation in workplaces is rather different. In many cases, the argument for conferencing had to be put far more persuasively if work colleagues were voluntarily to attend a conference. And it was when we began offering conferencing in
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industrial/organizational settings that the need for a more thorough paradigm shift became glaringly obvious. As it happens, the exercise of revisiting our original hypothesis about conferencing in the justice system helped articulate this new paradigm.

Close observation of conference dynamics suggested two key modifications to the theory that Braithwaite had postulated in *Crime, Shame and Reintegration*, and that we had applied to conferencing. First, the use of conferencing was clearly not confined to single incidents of undisputed harm, although the process was used overwhelmingly for such cases in the justice system.

Second, the key process dynamic was not that shame was induced in one individual. Rather, the key emotional shifts in the process were collective. They occurred as participants reflected on a complex picture of how things were, mapped each person's contribution to what happened, and gained a shared understanding and feeling that "we're all in this together."

What seemed to be happening physiologically was a shift in affects, or "basic emotions." The shift begins from the moment the convenor, quite transparently, shifts the focus from judgements about individuals to analysis of actions and/or events. This shift in subject matter begins the first affective shift, from emotions most associated with conflict—anger, fear and contempt—to the emotions of distress, disgust and surprise. These emotions are consistently expressed about harmful actions (in cases where the conference is dealing with undisputed harm), and/or about the general set of circumstances (in cases where the conference is addressing many disputes).

When a picture has been painted, collectively, of what has happened and how people have been affected, the convenor creates a space for reflection, asking some or all participants whether they have anything to add. This is a logical break, the divide between looking at the past and the present, and looking to the future. Again, in parallel with the structural logic of the process, this is also a profound affective turning point. Various metaphors describe the physiology of participants at this point. They will, for instance, look as though they have "had the wind knocked out of their sails."

This is where an argument for cultural distinctions in the understanding of emotion might be particularly relevant. Our
understanding of what is happening here is that participants are experiencing a human universal, the state triggered when a positive emotional experience is abruptly but incompletely interrupted. And this affective state is amplified, as is any strong affective state, by being experienced collectively. It is triggered as participants reflect on how things got worse, and it is amplified because they have reflected collectively on that question. (The theory that seems best to explain this phenomenon is affect theory. For more on this theory and its significance for conferencing, see Demos, 1994; Moore & Abramson, 2002).

Although justice system applications of conferencing dealt with undisputed harm that had been categorized as criminal, what conference participants were ultimately addressing was not the crime as such. Rather they were addressing the conflict associated with crime. As the sources of conflict were identified and acknowledged, participants experienced an emotional transformation, then developed a plan to transform their circumstances. In short, the process dynamic was “conflict, acknowledgment and transformation.” (Moore & McDonald, 2001)

This distinction between crime and conflict associated with crime became more obvious as conferencing began to be used further within the formal justice system, rather than as a diversionary option. In conferencing programs supported and/or administered by corrections departments, conferencing is an autonomous adjunct to all the usual processes associated with judging, sentencing and treating. A trial resolves a dispute about culpability. Sentencing imposes some form of (punitive and/or therapeutic) treatment. But conferencing provides an opportunity to address interpersonal conflict that a system of imposed punishment and/or therapy is simply not equipped to provide.

Importantly, this theoretical model—that causes of conflict are acknowledged and there is some sort of associated transformation—does not assume that conflict will necessarily be resolved. It is more accurate to think of conflict as being managed. In some cases, attitudes towards others may not change significantly. Conflict will be managed by a mutual agreement to alter behaviors, procedures and so on.

But systematically mapping what factors contributed to the conflict helps ensure that any plan of action is likely to be fair and
realistic and stands the best chance of being implemented. There may be less transformation as a result of the process, and more transformation as a result of the outcome. Change comes from an action plan that is put into practice in the following weeks and months.

In some applications of conferencing, too much can be made of this distinction between process and outcome. It is perfectly understandable that government-backed programs should emphasize outcome plans; agencies require tangible outcomes and some official record of those outcomes. But an action plan is of minor importance to participants in some conferences. Again, this tends to be most obvious in serious cases of undisputed harm.

Participants sometimes say that gaining a shared understanding of the tragic events allows them to continue with their lives. As a father who had lost his only daughter expressed it: "The process is the outcome."

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Responsive Regulation in Child Welfare: Systemic Challenges to Mainstreaming the Family Group Conference

Paul Adams and Susan M. Chandler
University of Hawaii at Manoa

The purpose of this article is to examine the challenges inherent in transforming child welfare services. We apply Braithwaite's model of responsive regulation to the restorative practice of family group conferencing in child welfare. Shifting the role of the state away from controller of families in the child protective services system to one of regulatory partner with them is extraordinarily difficult. The paper looks at the complexities of reorienting child welfare services through the use of family group conferences on a large scale.

Key words: responsive regulation, restorative justice, family group conference, child welfare, child protection

In this article, we argue that Family Group Conferencing (FGC) in child welfare has a transformative potential, but one that is hard to realize for systemic reasons. We first examine the application of Braithwaite's (2002) model of responsive regulation to child protective services (CPS) in the United States. We argue that model enables us to understand the relation of two apparently contradictory but essential elements of FGC—empowerment and the context of social control or state coercion. We discuss the difficulties of implementing FGC in the United States and suggest that the range of models and variations currently being practiced across the country may be in part evidence of and a response to these difficulties.

Drawing on the experience of the State of Hawaii in adopting a uniform model of FGC and its application statewide to over 2,000 cases, we conclude with a discussion of the kinds of system
change needed to facilitate and support the mainstreaming of FGC. The wide variations in FGC and in other forms of family group decision-making (FGDM) may be decried as representing compromises of core principles that undergird the model. This variety also is making evaluative research difficult since researchers are failing to specify a consistently applied model of the elements of FGC prior to analyzing its effectiveness. On the other hand, the diversity of forms of FGC may be celebrated both as creative adaptations to local conditions and cultures and as providing a natural experiment without prejudging the key, efficacious components of the approach. We sidestep these disputes and take a different path here—one of exploring the systemic context in which policy-makers and practitioners are attempting to apply FGC principles and processes.

Conferencing as Regulation

Braithwaite's (2002) work on restorative justice and responsive regulation provides a valuable conceptual framework for this undertaking. It enables us to see both the restorative aspects of FGC—its relation to indigenous practices aiming at solving problems and setting things right, its empowerment of families, and its widening the circle of care and control beyond the professional-client relationship—and FGC's role in the context of responsive regulation of families. Braithwaite's discussion of responsive regulation draws on the field of business regulation. It enables us to see, in the complex field of child welfare, how combining the empowering aspects of FGC with the coercive power of the state is not necessarily a limitation or contradiction. Rather, empowerment and control are different, but necessary and mutually enriching aspects of a dynamic model of state regulation of families to protect children.

The Braithwaite Pyramid

Braithwaite (2002) contends that “restorative justice, deterrence and incapacitation are all limited and flawed theories of compliance” (p. 32). Each needs to be understood and applied in a model that includes all three. In his figure entitled “Toward an Integration of Restorative, Deterrent and Incapacitative Justice,”
Braithwaite (2002, p. 32) hierarchically orders these concepts and places restorative justice at the base of the pyramid, filling up most of the space.

The pyramid provides a dynamic, non-formalist model of governmental regulation, whether of a nursing home, a nuclear power station, an insurance company, or a family. The formalist approach to regulation seeks to define in advance which problems or failures of compliance require what official responses and mandate them in regulations. In responsive regulation, by contrast, there is a presumption, regardless of the seriousness of the offense or violation, in favor of starting official intervention at the base of the pyramid. Moving up the pyramid to deterrence and, ultimately, incapacitation, is a response not to the seriousness of the harm done but to the failure to elicit reform and repair at the base with restorative justice processes. Of course, as with other violent crimes—a shooting spree in progress, for example—an immediate move to incapacitation (at least temporary) may be necessary in cases of child abuse where there is imminent and continuing danger to the child.
The presumption in favor of starting at the base of the pyramid, Braithwaite (2002) argues, not only favors less coercive and costly state intervention where possible, but also makes more coercive measures more legitimate when escalation up the pyramid is necessary. This is important because "when regulation is seen as more legitimate, more procedurally fair, compliance with the law is more likely" (Braithwaite, 2002, p. 33; see also Neff in this issue).

By analogy, accreditation of a professional school, whether of law, medicine, nursing, or social work, is a process of required self-regulation through a process of self-study and reform. The accrediting body, e.g., the Council on Social Work Education in the case of U.S. baccalaureate and masters of social work programs, has a range of escalating options to identify and encourage schools to address concerns and come into compliance, culminating in the ultimate and rarely used action of withdrawing or denying accredited status. In extreme situations, withdrawal might be immediate rather than a final step in a succession of regulatory actions. Although this option of denying a school accreditation is understood by all to be at the Council's disposal as a last resort, site visitors and accreditation commissioners work in collegial partnership with schools with the shared aim of avoiding escalation up the regulatory pyramid.

In applying this model to a business such as a nursing home, nuclear power station, or insurance company, a regulator would begin to work with the firm's management at the base of the pyramid. Both management and regulator are aware that if the firm proves unable or unwilling to make the changes needed to come into compliance, the next level of regulation will be more coercive. At the first level, the assumption is that the firm's management is a "virtuous actor," with the will and capacity to respond to the regulatory process by taking the steps needed to come into compliance. Regulator and regulated work together to prevent a more coercive regulatory response. At the next level, management may have no wish to cooperate with regulators or to make the necessary changes, but is assumed to be a "rational actor" who—faced with a fine or other penalty and the threat of being put out of business—will calculate that it is better to comply.
At the highest level of the regulatory pyramid, management is assumed to be an "incompetent or irrational actor" who is unable or unwilling to comply and who therefore needs to be incapacitated by losing its license to operate.

Applying this model to FGC, we see conferencing as a restorative process at the base of the pyramid. Following Marshall's widely quoted definition of restorative justice as process, FGC may be seen as a "process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (Braithwaite, 2002, p. 11). Conferencing involves core values as well as processes, having to do with healing and setting right, moral learning, community and kin participation, respectful dialogue, responsibility, apology, forgiveness. "So restorative justice is about restoring victims, restoring offenders, and restoring communities . . . Stakeholder deliberation determines what restoration means in a specific context" (Braithwaite, 2002, p. 11).

In contrast to youth or criminal justice contexts, conferencing in child welfare is not directly focused on the wrongdoing and the harm done, nor is there a process, in any usual sense, of resolving a conflict between offender and victim and between their respective families. Instead the focus is on the future safety and well-being of the children involved. The extended family partners with the system professionals—the family regulators—in order to develop a plan to achieve this. The family members receive significantly more information than usual from the state about their "case", including the actions of the social worker, the official concern about the abuse or neglect, and any other pertinent facts about resources and constraints that could affect decision-making. The process is concerned not with holding the "offender"—the maltreating parent—passively accountable for past actions, but with engaging the extended family group in taking active responsibility for generating and implementing solutions. Conferencing aspires to form a true partnership of family and state, even though the state retains the ultimate veto power in light of its legal mandate and responsibility to protect children. In this sense, child welfare conferencing shares with other forms of conferencing and restorative justice certain principles—about
healing, moral learning, taking active responsibility for resolving the situation—but de-emphasizes others such as apology, making amends, and forgiveness.

These differences of emphasis notwithstanding, FGCs in child welfare fit well at the base of Braithwaite's regulatory pyramid. They offer a decision-making process in which the regulator (the public child welfare agency) works with the family in a respectful mode that assumes that the family group (if not necessarily the parents) has both the capacity and the caring concern to come into compliance with the law and community standards so that children are protected from abuse and neglect. The process taps into and mobilizes the knowledge, wisdom, and caring capacity of the extended family, its culture and community, in order to plan for the children's safety.

Levels of the Pyramid

FGC, from this perspective, is a process of state-enforced family self-regulation, a collaborative regulatory process in which the professionals and any other community representatives help the family design a strategy to come into compliance by providing information, a structure, and access to resources. However, the regulatory context of this empowering, professional-family partnership is one in which all understand and seek to avoid escalation up the pyramid's levels to a more coercive regulatory response in which the state, through its social workers and/or family court, take over the decision-making process. At the apex of the pyramid lies the regulatory option of incapacitation, which in the case of families in the United States could mean the involuntary termination of parental rights and a permanent alternative placement for the child, such as adoption.

Braithwaite (2002) suggests that in the case of business regulation, "Perhaps the most common reason... for successive failure of restorative justice and deterrence is that noncompliance is neither about a lack of goodwill to comply nor about rational calculation to cheat. It is about management not having the competence to comply" (p. 32).

Much the same may be said about families. That is, restorative, empowering practices like FGC as well as more direct control by
CPS may fail, not because rational and competent adults in the family group choose to defy the child welfare regulators (CPS) or fail to appreciate the threat of losing parental rights if they do not comply, but rather because they lack the capacity or competence to make the changes required for the safety and well-being of their children. Escalation up the pyramid results from failure, for whatever reason, to respond at lower levels of coercion. The model also allows for movement back down the pyramid away from coercive interventions when a family demonstrates its will and capacity to plan for and assure the children's safety. The model provides for movement to more or less coercive forms of social control according to the family's behavior.

In Braithwaite's model, deterrence represents an intermediate place in the pyramid between restorative justice and incapacitation. This fits well with the use of FGC's in the youth or adult justice systems, for generally restorative justice occurs in the context of violations of criminal law with the potential for imposition and escalation of formal punishment. Although child abuse and neglect violate the law, criminal penalties are rarely invoked except in the most egregious cases. In those circumstances, criminal sanctions are retributive measures commensurate with the perceived seriousness of the offense, not necessarily a response to the failure of restorative regulation. Deterrence in the form of fines or other penalties analogous to those invoked in the deterrent phase of business regulation is similarly rare.

In child welfare, therefore, deterrence does not seem to fit neatly between restorative justice at the base of the pyramid and incapacitation at the top. Rather, if restorative justice at the base takes the form of the collaborative, respectful, non-coercive decision-making process of FGC, the place of deterrence in the middle is taken by professional- or court-determined disposition of the case, imposed with or without the family's agreement. In practice, that might mean a temporary custody arrangement for the child with a stringent time line in which the family must comply or the court would begin taking steps toward permanently removing the child. The deterrent for the family is not the threat of a punishment such as a fine, as might be imposed in a case of business regulation, but loss of control, of active, decision-making responsibility for their children, to the state.
We may assume that such loss of control is a powerful deterrent for families that may not wish to comply with legal requirements or collaborate with the child welfare authorities, but who nevertheless have the capacity to make and act on a rational calculation of the inevitable consequences of their failure to do so. In Braithwaite’s scheme, these are rational actors, in contrast both to the virtuous actors at the base of the pyramid—who seek the best for their children and willingly collaborate in the restorative FGC process—and to the incompetent or irrational actors at the apex who are unable or unwilling to comply. Despite some peculiarities of the child welfare context, FGC’s provide both a form of restorative justice and an empowering, non-coercive, respectful form of collaborative decision-making at the base of the regulatory pyramid.

The key to applying the regulatory pyramid to child protection is to see that the levels of the pyramid do not reflect particular outcomes but different decision-making processes with different degrees of coercion or non-domination. For example, a decision to remove children permanently from the care of their parents, through guardianship or other mechanisms, could be an outcome arrived at even at the base of the regulatory pyramid. That is, it could be part of the plan developed by the extended family group in its private family time and endorsed by the other participants in the conference, by the responsible agency, and subsequently by the court. The pyramid in child welfare reflects a continuum from state-managed family self-regulation to an outcome unilaterally imposed by the state, not a continuum of outcomes from reunification with supportive services to termination of parental rights.

Empowerment and Coercion

If a formal regulatory philosophy objects to the inconsistency of punishment implicit in restorative justice—the punishment does not fit the crime, but depends upon the offender’s willingness and capacity to set things right—an objection may be made from the opposite direction that truly restorative justice, not to mention empowerment, is impossible in the presence of an implicit threat of escalating coercion.
Braithwaite (2002) makes the point that as a matter of fact, very few criminal offenders would participate in restorative conferences in the absence of some degree of coercion in the form of detection and/or arrest, and perhaps the specter of a trial. A conference or sentencing circle puts the offender's behavior under the scrutiny of family and community and inevitably involves shame. Shame, as Braithwaite (1989) argued in his earlier classic work, Crime, Shame, and Reintegration, may stigmatize or, in a restorative justice process, help to reintegrate the offender. In the case of child abuse and neglect, the FGC process brings secrets, e.g., of violence within the family, out into the open, brings contributing behavior such as drug use to the attention of both maternal and paternal relatives, and focuses the attention of all participants on the harm done to the children and the need to protect their future well-being. It is reasonable to assume official investigation and the prospect of court involvement and ultimately of losing one's children, create a coercive context that provides a strong and often necessary incentive for abusing or neglecting parents to collaborate with the conferencing process.

Braithwaite's (2002) hypothesis is that restorative justice works best in the context of coercion, but where the implicit threat—in this case of loss of control over decisions involving one's children's future—is in the background. Similarly, Burford and Pennell's (Burford & Pennell, 1996, 1998; Pennell & Burford, 2000) research on an FGDM project to reduce family violence in Newfoundland and Labrador suggested that the sanction, support, and resources of government and professionals could facilitate the family's decision to stop violence within it. Vulnerable family members were protected both by widening the circle of responsibility and control to include those who love and care for each other, ending secrecy and isolation and providing for active family responsibility for its members, and by the sanction of the law. The legal context of FGC—the fact that in New Zealand the state has veto power if the family's plan is contrary to the principles of the Children, Young Persons, and Their Families Act—sets up a tension that may make for sharper focus and better decisions.

The legal system, similarly, constrains the "people's justice" of FGC by providing a recourse for the protection of individual rights, at the same time as FGC loosens the dead hand of
bureaucratic-professional domination and unleashes the creativity, wisdom, and active responsibility of families and communities. The hypothesis is that the interweaving of formal and informal, state and family, professional and community care and control in this way makes for a fairer process and better decisions than either would achieve if left to itself (Adams, 2002; Braithwaite, 2002; Strang & Braithwaite, 2001).

Adapting Braithwaite's (2002) hypothesis to child welfare conferencing enables us to see, however, even in the social control sphere of child protection, an important difference between the ultimatist social worker who threatens the parent with loss of her child if she does not comply with her instructions, on the one hand, and on the other, the process of collaborating with the parent and others involved to prevent escalation up the regulatory pyramid. This is true even though all understand that escalation is inexorable if they cannot work together to find ways to keep the children safe. The focus of the conference is not on blaming or threatening the maltreating parents, but on meeting the needs of the children themselves. The threat is in the background, not the foreground. This difference makes possible the empowering nature of an FGC, which enables the family group to tap into its own knowledge, wisdom, and resources in collaboration with the others involved, including the responsible agency and professionals. The family group takes active responsibility for mobilizing its collective capacity to care for the children and keep them safe through whatever plan they, rather than the professionals, play the lead role in developing.

The Promise of FGC

The child welfare FGC brings together those affected by a situation of harm to children—parents, children, extended family members, other community supports or fictive kin, and professionals (such as therapists, school officials, the CPS social worker, and the conference coordinator/facilitator)—to provide the family group with all the pertinent information and engage them in a planning or decision-making process. It widens the circle of care and responsibility, shares information with the family that under professional-dominated practice would be kept confidential to
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the professionals alone, and potentially places the social worker’s behavior under scrutiny as well as that of the parents.

FGC in child welfare differs from some other kinds of conferencing, mediation, or alternative dispute resolution. It is not a third-party mediated negotiation of a dispute between offender and victim, or parents and child. It does, however, deal with the aftermath of the (normally undisputed) harm done to the victim and involves a process of taking responsibility for resolving the concerns about the child’s safety and well-being. Like other forms of restorative justice, it draws on a cultural treasure of pre-state societies and ancient civilizations that has persisted in many indigenous people’s practices around the world. Grounded in traditions of justice that have roots and resonance in many, perhaps all cultures, as Braithwaite (2002) argues, restorative justice was eclipsed with the emergence of the modern state, which “stole conflicts” and their resolution from those affected (Christie, 1977).

The resulting homogenization and impoverishment of justice traditions has, for our purposes, at least two important aspects. One is the domination of the processing of both conflicts and disputes, both within and between families, by professionals licensed by and/or acting on behalf of the state—police, lawyers, social workers, probation officers, among others. The other is that in certain fields like child protection where workers face a high level of public skepticism about their professionalism and competence, their capacity to negotiate solutions with those directly involved is increasingly circumscribed by formal rules, regulations, and procedures (Adams & Krauth, 1995; Adams & Nelson, 1997).

FGC offers a paradigm shift in this context. It fundamentally alters the relationship of professionals and the families and communities they serve. It de-centers the professional-client relationship and widens the circle of responsibility and decision-making to include those whose relationship to the children at risk is based not on professionalism but on caring and kinship. It rests on the assumption, as Burford and Hudson (2000) put it, that “lasting solutions to problems are ones that grow out of, or can fit with, the knowledge, experiences, and desires of the people most affected” (p. xxiii). The key shift in practice and in such legislation as mandates it (above all the 1989 Children,
Young Persons, and Their Families Act of New Zealand) is from professional-dominated practice resting on a model of regulatory formalism to a process for decision-making and planning that mobilizes and empowers the children's kin and community. It does not replace the formal processes of the court system, but—and this is surely the potential of restorative justice in modern societies—it enables both formal and informal care and control to enrich and constrain each other.

Threats to Implementation in the United States

So much for theory, principles, and promise, but what of the challenge of translating these into policy and practice in the United States? Bringing about such a fundamental shift in the balance of power between child welfare professionals and families, a shift from domination to partnership, is both at the heart of FGC and a daunting task. Even the New Zealand model, the gold standard for those who emphasize this aspect of FGC, in practice has the potential to be subverted by social workers' reasserting their control over the process and outcome (Lupton & Nixon, 1999, Walker, 2003).

In the United States, there are many variations on FGC, most of which increase this potential to weaken FGC's radical core. These variations both reflect and highlight the political and bureaucratic difficulties faced by those who wish to adopt this innovation in their child welfare systems.

In the remainder of this article, we explore the variations and the threats to implementation in an American context, and discuss possible reasons for them. We discuss the case of Hawaii, which provided a particularly favorable environment for the adoption of its own version of FGC. The cultural relationship and contacts of Native Hawaiians with the Maori of New Zealand who provided the early impetus for FGC, the small size of the state, and its pattern of political-bureaucratic centralization allowing for statewide adoption of a uniform program, all made for statewide adoptability of this innovation. All this is considered in order to arrive at a realistic and sober assessment of the difficulties involved in adoption of FGC as an empowering, paradigm-shifting practice, and to suggest what systemic changes are needed to support the full realization of FGC's potential.
Model Variations

Pennell (2003) stresses the importance of model fidelity among the variety of conferencing programs across the country and articulates several minimum components required for conferencing. Without legislative mandates or judicial guidance in the United States, as is the case in New Zealand and England, the practice models of FGC in the U.S. vary widely. Of particular concern is the fact that even before the basic model of FGC has been implemented widely and empirically tested, criticisms are beginning that the model is too expensive; should be limited to certain types of case; and does not need specially trained staff or extensive preparation time. We lack empirical research with a robust design that compares outcome variables of family conferencing with matched control cases. Given this paucity of empirically tested outcome research on conferences, there is little to guide policy or social work practice. However, how do we get to reform if we do not vigorously implement and test new models of practice?

Pennell (2003) identified nine key principles and practices for assessing family conferencing model fidelity. Using the North Carolina Family Group Conferencing Project, she developed a 25-item questionnaire to evaluate if the family participants, coordinators, and service providers understood the conferencing process, actually experienced it during the conference and agreed that the listed conferencing practices had been conducted and its purposes achieved. Participants were asked questions like “[Was the] FGC coordinator respectful of the family group?” and “[Did] the family group have private time to make their plan?” (Pennell, 2003, p. 19). Her findings are encouraging for two reasons. One, the participants generally agreed that the core principles of FGC were indeed being implemented and experienced. Secondly, and perhaps most importantly, Pennell is asking the correct question: “How widespread is FGC and is there model fidelity?” Merkel-Holguin (2003) reports that in 2003, more than 150 communities in 35 states and approximately 20 countries are implementing FGDM initiatives. This suggests that a revolution in child welfare practice is under way. However, given the challenges in implementing such a model, we are concerned about the ability of many states to put this reform in place in ways that are true to FGC’s core principles.
While the conferencing model uses the language of family empowerment, partnerships, and child welfare reform, if it is to be truly implemented, the role of the state in child welfare has to be dramatically altered. Recent evaluations underscore the dangers of basing policy decisions on evaluations of programs that may depart substantially from the principles of the innovation it seeks to replicate. For example, in the study of the family decision meeting in Oregon, only a little more than half the family members reported knowing they could invite others to the conference (Rodgers, 2000). In Miami, 38% of the parents and family members interviewed reported that the private family time was “not useful at all” (NCJFCJ, 2002). It is hard to believe, however, that many families who were offered the opportunity to design a safety plan for their child and believed that their input would be seriously considered by the child welfare agency could not find this useful. We wonder if these families were truly offered this opportunity or if the family members believed that the plan had been made and agreed to in advance by the professionals. In that case, private time does indeed become superfluous. We wonder if private time is really being implemented as a period in which the family has, and understands it has, the opportunity for taking responsibility for developing a safety plan. Private family time is not a part of Oregon Family Unity Meetings, and in Michigan it is optional. Many communities do not have independent or trained facilitators and to date, there is no required training for conference facilitators. What exactly is happening inside the conference circle in many communities and how radically it differs from traditional case conferences with the family present is as yet unclear.

Reform is Hard to Implement

FGC uses an exchange-based model of assessment and issue definition that includes the family in all stages of the decision-making about child placement. This arrangement forms a new collaboration based on shared information and trust between the state and the family. This is a significant change from the traditional child protection practice in which the public agency and the court manage most of the information unfettered by the family’s questions or inputs. We have previously described the core
elements of conferencing as: widening the circle, taking/sharing responsibility for solutions, culturally competent practice, family leadership and empowerment, family driven solutions, community partnerships and private family decision making time (Adams & Chandler, 2003). Pennell's (2003) key principles and practices include these and add a few more. She includes creativity in planning; ensuring the conference belongs to the family group and "chang[ing] policies, procedures and resources to sustain partnerships among family groups, community organizations and public agencies" (p. 17). Creative social workers may be able to apply an empowering model of practice and participate in conferences that meet many of these principles. However, changing policies, procedures, and resources to promote such practice is a profound administrative challenge. It is likely that it will be difficult, in the metaphor of diffusion of innovation as contagion (Smale, 1996, 1998) to infect the public child welfare agency with the conferencing bug and infuse it throughout the system.

Possible Reasons for the Variations

Merkel-Holguin (2003), after reviewing the FGC literature in the United States, concludes that the model is not well diffused across the nation and is at best a marginalized practice in most communities. When one considers the significant change in values, practice, behavior, and policies of FGC if implemented on a large scale, it is not surprising that this system reform has not taken root in many places. The reluctance of professionals to fully enable consumers to describe their own needs has been reported (Lupton & Nixon, 1999). This has been seen in the struggles toward the development of a person-centered practice in the fields of mental health and developmental disabilities. In these areas, federal and state laws were required in order to compel state agencies to implement initiatives that involved consumers and their family members in case planning as well as policy making (Rothman, 1990; Stroman, 2003).

Implementation Barriers (Real and Perceived)

Lupton and Nixon (1999) suggest an intriguing reason for social workers' reluctance to partner with their clients—that professional autonomy was declining in public child welfare agencies
due to frequent litigation, class action suits, and court consent decrees. Their theory suggests that whenever a state lost a lawsuit or settled a consent decree, the public agency would hunker down further under their rules, make new rules, and constrict and constrain workers’ discretion in an effort to demonstrate and document that the state was complying with the lawsuit (Rothman, 1990). Often the court’s or plaintiff’s monitoring process resulted in the agency’s becoming less responsive and less innovative. An unintended consequence was more bureaucracy and paperwork and less communication and openness with consumers. Rarely is this a time of creativity and reform even though that may be what is required and often what the suit is demanding.

Even professional, masters level social workers lose discretion in these circumstances and see themselves subject to surveillance by even more levels of supervisors who oversee multiple elements of each case, presumably concerned about the case holding up under attorney scrutiny in court. When this siege mentality sets in, individual social workers believe that they will be held personally accountable for any negative case outcome such as re-abuse of a child, whether in foster care or in the biological home. Fear of making a mistake leads to high turnover, job burnout, and dissatisfaction (US-GAO, 2003). While there is logic to the idea that social workers should embrace reform efforts that result in the sharing of some of the responsibility with family members and community partners, since this is deeply embedded in their core values (see NASW Code of Ethics), it is difficult to discern this level of empowerment in many child welfare agencies.

Threats to the implementation of FGC abound. Implementation may be seen as requiring too much time and overtime pay for workers, as too expensive or just unnecessary since there is little evidence to support its superiority. With its creativity and variety of elements, a family’s safety plan is likely to look very different from one drawn up by a public child welfare agency and a traditional agency may be unenthusiastic about embracing such differences. Child welfare workers in Hawaii estimate that over 80% of the compliance plans in child protection cases include some or all of the same components: substance abuse treatment, anger management, and parenting classes (Hawaii Department of Human Services, 2002). This seems to be what the CPS workers
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believe is necessary and the courts like to see. There is a strong belief that these address the deficits that almost all families in CPS have.

If professionals in child welfare are experiencing a continuing loss of discretion and autonomy (Lupton & Nixon, 1999), it is to be expected that they will not readily embrace a concept of sharing responsibility that appears to put them professionally at risk (Adams & Krauth, 1994). NCJFCJ (2002) reported that workers often do not refer cases to FGC, believing that families in the child welfare system do not have the capacity to be decision-making partners. Social workers may have been trained to do comprehensive assessments of family deficits rather than focusing on the strengths of larger family systems as a base for building solutions. These are just some of the barriers that are likely to prevent FGC from moving into the mainstream.

We suggest that the wide variety of models now being practiced, while at best creative and responsive to local conditions and stakeholders, at worst compromises FGC principles in an accommodation to prevailing legal, bureaucratic, and professional norms. Nonetheless, the experience of FGC in Hawaii indicates the potential as well as the challenges of implementing a statewide model, of taking a conferencing pilot project to scale (Schorr, 1997). It indicates that FGC can be the practice of choice and not a marginalized or fringe project of child welfare reform.

The Case of Family Group Conferencing in Hawaii

The experience of the State of Hawaii illustrates the kind of collaborations and political and community support needed to implement FGC as a model of child welfare reform. FGC in Hawaii (called ‘Ohana Conferencing; ‘Ohana is the Hawaiian word for extended family and/or supportive networks) was implemented as a pilot project in November 1996 as the result of collaboration between the Family Court in Honolulu and the Department of Human Services (DHS). (In discussing this experience, we draw on the first-hand knowledge of one of the authors, Susan Chandler, who was the state director of human services from 1995 to 2002.) Hawaii’s conferencing program was originally one of four demonstration court diversion programs
funded by the National Council of Juvenile and Family Court Judges (NCJFCJ, 2003) to facilitate systems change in the processing of child abuse and neglect cases (NCJFCJ, 2000).

After several staff trainings conducted by experts from New Zealand, Honolulu was selected as the pilot site for a conferencing project. The state agency chose to contract out all of the needed conferencing services, including the initial planning and organizing of the conferences, as well as the facilitation of the conference. The state contracted with the private agency, Effective Planning and Innovative Communication (EPIC) for all staff training of community-based facilitators as well as the CPS workers. The decision to privatize this reform effort, which had support from many community organizations, social services agencies, and State legislators, is believed to have been an essential factor in the successful statewide implementation of conferencing. EPIC was a newly formed, non-profit agency with the single goal of conducting family group conferences. It immediately established high standards of professional practice for its entire program staff. Conference facilitators are required to have at least a bachelor’s degree and experience in working with children as well as demonstrated multi-cultural practice experience. In each conference, there must be a professionally trained group facilitator as well as a neighborhood-based community facilitator to insure family comfort and participation.

The pilot project began as a court diversion effort using conferencing to divert CPS cases away from the judicial system. This diversion goal, rather than family empowerment or child welfare reform, perhaps is one reason why conferencing in these first demonstration projects has been implemented successfully. The judges in Honolulu wanted to test strategies that included parents and other family members early in the case processing and have them actively participate in the decision-making related to their children. The court wanted to open up its proceedings and make the whole experience more humane. The project also aimed to increase family participation as a strategy to move the cases through the system more quickly.

The child welfare agency director in Hawaii was a strong supporter of this practice reform. Improving communication with family members and providers, and diverting cases out of the
system completely or having families spend less time in the system was a primary agency goal. After one year, the court stopped funding the project and since 1997 the Department of Human Services has been the primary advocate for conferencing and now finances the entire program with state and federal funds.

Elements of a Successful Innovation

"A key ingredient for organizational change is the commitment and involvement of leaders throughout the agency," according to Sahonchik (2003, p. 1). This is classic management advice, however leadership in a child welfare agency is often quite decentralized with local branches, or county structures. Daft and Marcic (2001) suggest that political appointees at the top of a public human service agency rarely can bring about lasting change, since the permanent civil service staff may decide to just wait out their latest reform idea and wait for the next political appointee to arrive with yet another agenda for change. To inoculate against this known resistance to change strategy, seven-year contracts were written in Hawaii with EPIC to ensure that FGC would endure past the changes of the political administration.

Where conferences have taken hold, there has been a confluence of forces, from inside the public child welfare agency and in the external environment that joined to make conferencing possible (see special FGC issue of American Humane's Protecting Children (2003)). Smale (1996) wrote that "changes in practice come about through 'convergent' thinking and 'contagious processes' " (p. 20). The first ideas about conferencing came from visits from Maori leaders meeting with Hawaiian leaders concerned about the high rates of incarcerated Hawaiian and part-Hawaiian youths and an overrepresentation of Pacific Islander children in the child welfare system. This dialog, along with broad legislative and community-wide support for a blueprint for child welfare reform initiative as well as a new Director of Human Services with a social work background, focused attention on conferencing as a strategy for improving child protective services. However, like many reform efforts, many inside CPS did not see the need for any innovation or reform, because they did not see a problem. To introduce change into a system that does not see a problem,
rarely succeeds. However, when discussions focus on finding a consensus on a common vision, values, mission, and principles, agreements can often be found. Trainings that were titled, "How to reduce your caseload using family group conferencing" were popular.

One strategy used in Hawaii’s DHS to infuse the idea of conferencing throughout the agency was to make trainings and workshop attendance competitive rather than mandatory, which had been the usual custom. Staff needed to submit in writing why they wanted to attend and the number of participants was limited. This made the training seem like a scarce commodity and seemed to draw people to it.

After the first few trainings, a core group of innovators affectionately called the "bungee jumpers" emerged. These were the staff that immediately liked the idea of conferences as a philosophy of practice and volunteered to try it out. One rural unit became the first test site. Subsequently, the model of expansion and diffusion was to move unit by unit geographically as the staff got trained. The hope was that conferencing would become contagious. The use of a private, not-for profit agency to conduct the conferences allowed the workers who first adopted the reform to get help with their cases, which was a strong incentive. As conferencing spread throughout the units, it became clear that some supervisors supported the reform and some did not. When supervisors did not support conferencing, their units made little use of it. To better track the level of infusion of the innovation, the agency established a goal of two conferences in every unit each quarter, monitored each unit’s progress, and publicized the data. Supervisors who did not have conferences were reminded about the goal and were encouraged to send staff (or go themselves) for more training.

Resistance to adopting the model came in many forms. Mostly, workers explained their resistance by saying that the families in the caseload did not have the capacity to attend a conference or there was no extended family or supports to draw upon. Of course, if a worker does not look for such support, he or she will rarely find it. Some workers complained that certain cases were just not appropriate. Although never explicit, this became a belief among the non-reformers. Agency-wide policies
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and procedures needed to be developed to provide incentives for workers to participate. Flex-time and glide time working hours were implemented so workers could attend conferences in the evening or on the weekends as well as use comp-time or overtime to encourage worker participation. To insure that family agreements were honored, a new policy established in 2002 that no agreement made within a conference could be overruled by a supervisor who had not attended the conference. There was concern among the workers who had never attended a conference that families would design safety plans that were not safe and social workers would not be able to veto a family’s plan. While there is a written policy that permits such a veto, to date it has never been needed or used.

While there have been over two thousand conferences convened throughout the state of Hawaii, the reform is still not consistently implemented throughout the state. Some CPS units simply do not refer cases to conferences. The strategy remains to continue training in each unit and work to show social workers the benefits of conferencing. A state law was passed encouraging the use of conferencing and requiring CPS workers to explain why a conference should not be held for all voluntary cases. Families do not yet have the right to a conference, but perhaps this is the next essential step to insure its implementation.

Conclusion

In synthesizing his two major areas of work, on restorative justice and responsive regulation, Braithwaite (2002) provides a framework for understanding the tension at the heart of social work in general, and child welfare in particular, between empowerment and control. Family group conferencing brings to the project of child protection a form of restorative justice within a framework of responsive regulation that suggests the potential for improving decision-making, procedural justice, and compliance. It has radical implications for practice and policy that generate serious challenges to implementation in an American legal and professional context, even in a state with many forces favorable to such an innovation.

Shifting the role of the state away from controller of families in the child protective services system to one of regulatory partner
with them is extraordinarily difficult. Hawaii's experience suggests that adoption of FGC in the mainstream of child welfare and implementation of its core values, principles, and practices require a reorientation of professional practice and bureaucratic functioning. The regulatory pyramid provides a framework for understanding child protection both as a form of state regulation and as a shared responsibility of families and communities. Far from abdicating state responsibility to protect children, it situates FGC within an inexorable process of adapting the level of state coercion to the response of the family to regulatory intervention. Far from offering only the appearance of empowerment to mask bureaucratic and professional domination and appropriation of informal family and community decision-making control and capacity, the regulatory pyramid shows the potential and the value—though not the inevitability in practice—of active family responsibility and empowerment at its base.

We have argued that when restorative practices work well, formal and informal care and control constrain and enrich each other. Perhaps the same may be true of the large-scale adoption and diffusion of an innovation like FGC, which both depend upon administrative support and legislative mandate—or at least a favorable legislative and judicial environment—and also require creative adaptation by local stakeholders and practitioners. Given the pressures to compromise on core principles we have discussed, it may be that only adoption on a large enough scale of FGC as a paradigm shift, a fusion of restorative justice and responsive regulation in child welfare, can provide the empirical information we need to improve both theory and practice.

References


Mainstreaming the Family Group Conference


A regulatory approach compels the child welfare worker to make decisions according to set procedures and prevents responding flexibly to families. Differential response is a way that child welfare is departing from legal formalism. One means is convening a family group conference (FGC) to develop a plan. John Braithwaite's regulatory pyramid assists in conceptualizing differential response. This article reports a factor analysis of data on achievement of FGC objectives to elaborate three interfaces for fostering responsive regulation. Each interface keeps the family group at the center of planning while firmly maintaining their connections with community and government programs.

Key words: family group conferencing, responsive regulation, child welfare, differential response

A well circulated cartoon shows a child welfare worker being lynched by an angry mob. The caption for one frame reads, "Social worker who took child into care," and the caption for the other reads, "Social worker who did not take child into care." No matter what the social worker decides, the populace is provoked to take the law into its own hands. Such vigilante justice is in reaction to seemingly arbitrary authority. It condemns the social worker and in all likelihood the child's parents and leaves the child in need of protection. This gallows humor will continue to resonate as long as public child welfare is defined solely as saving children from their parents. Some children need such rescuing but far more need supports and protections that safeguard them and their families.

The doctrine of parens patriae, however, obligates the state to substitute as parent when the child's own parents fail to protect because of their personal limitations or those of the wider
society. This same doctrine has raised legitimate concerns about the abrogation of the rights of parents and children and has led to an emphasis on due process through the courts. The result is heightened legalism interacting with the state's liability for the child's safety. This combination chokes off opportunities for child welfare to join with the family and community in forming partnerships of caring.

John Braithwaite's (2002) theory of responsive regulation points to a viable alternative for child welfare. He posits a regulatory pyramid with a broad base of responsiveness to offenders underneath an apex of legal regulation. Because the state is charged to care for children in need of protection, child welfare must maintain a firm interface between responsiveness and regulation. This article examines how family group conferencing (FGC) achieves this interface. First, an overview is provided of the movement toward responsive regulation in U.S. welfare, the role that FGC can play in promoting responsive regulation, and its key practices in child welfare settings. Then, utilizing a factor analysis of findings from a FGC study, three interfaces are elaborated—family leadership, cultural safety, and community partnerships. In conclusion, a model for interfacing responsiveness and regulation in child welfare is presented.

Responsive Regulation and Child Welfare

Child welfare in the United States has a lengthy history of swinging between a priority of child safety or family support (Jimenez, 1990). Child safety stresses the state's responsibility to regulate the child's care and ensure that it meets adequate standards of protection; family support urges a responsive approach to children and their caregivers to promote healthy families. While both regulation and responsiveness are necessary for safeguarding children, neither approach alone is sufficient for an effective child welfare system (Pecora, Whittaker, Maluccio, & Barth, 2000). Family support is limited when caregivers will not, or more often cannot, change their practices on their own; community services are lacking, inaccessible, or under utilized; and the broader economic and political systems undermine families (Pecora, Reed-Ashcraft, & Kirk, 2001).
The prevailing approach, though, is reliance on regulation, that is, forensic investigations, court hearings, strict timelines for termination of parental rights, registering abusers, and so forth. With precedence given to following legal procedures, workers are preoccupied with defensible rather than helpful implementation, parents feel stigmatized by service, and the effects on children are deleterious (Parton, 1997). Significantly, children of culturally marginalized groups in the United States are disproportionately represented in the foster care system (U.S. DHHS, 2000). All of this serves to alienate workers from their clients and communities and to increase the workload and responsibility of public child welfare beyond its capacity.

As a counter measure, some U.S. states have passed legislation permitting a differential response, variously known as dual track, multiple response, and alternative response (National Child Welfare Resource Center, 2001). This allows child protective services to adopt more than one method or “track” of handling reports of child abuse and neglect. States have at least two tracks for responding: an investigation track for substantiating child maltreatment in the more severe situations and mandating interventions and an assessment track for determining need and involving families from the outset in finding solutions. All cases screened-in meet statutory definitions of child maltreatment—in other words, child protective services cannot “walk away” from these families (North Carolina Division of Social Services, 2002, p. 7). Differential response is not intended as a means of widening the net of child welfare cases. It is intended to concentrate legal interventions on the cases that truly warrant such a response and in the other cases to engage families in services and foster supportive community networks.

Concerns frequently raised are that workers will place families in the wrong track, not transfer cases to the investigation track when necessary, and, thus, endanger the safety of children. The preliminary findings are that approximately one-quarter of families are placed in the investigation track and about three-quarters in the assessment track and that cases do not usually change tracks (National Child Welfare Resource Center, 2001). Social services workers and collateral agencies prefer this way of working with families (Virginia Department of Social Services, 1999). Reports
and re-reports of child maltreatment decrease while reported incidents for which action is taken increase, children are removed from their homes at the same rate but spend less time in placement, and the safety of children does not appear to be compromised despite workers' large caseloads and limited resources (Institute of Applied Research, 1998).

Family Group Conferencing on Multiple Tracks

Braithwaite's (2002) theory of responsive regulation was developed by integrating his work on business regulation and criminal justice. With some qualification, this theory provides a way of conceptualizing and expanding differential response in child welfare. The base of his regulatory pyramid is about responding flexibly to all cases, and this is achieved through using restorative justice processes. The aim is to repair the harm caused by the offense, involve the key stakeholders in deliberations, and transform community and government relationships (Schiff & Bazemore, 2002). Except in extreme cases, Braithwaite recommends that restorative practices are first applied and then only if offenders refuse to comply, is recourse to the law and courts sought. Once offenders begin to comply, the approach moves down the pyramid from legal interventions to restorative processes.

Braithwaite's prescription would raise grave fears in child welfare, or for that matter in domestic violence, where the victims reside with their abusers and may require immediate interventions backed by the force of the law. In these contexts, the tension between regulation and responsiveness cannot be relaxed. Nonetheless, his notion of applying restorative justice processes early in serious as well as more moderate cases is worth pursuing. If child welfare clients in whatever service track have a voice regarding their plans, interventions are more likely to respond to their conditions and cultures and regulate their actions and interactions.

One way to promote families' voices in child welfare is by using family group conferencing. The "family group" is composed of the family members along with their relatives, friends, and other close supports, and the "conferencing" refers to holding a decision-making forum to resolve areas of concern. This
restorative justice process is now applied in child welfare as well as other arenas including schools, youth justice, and adult services in many countries and cultures (Burford & Hudson, 2000). Like restorative processes generally, family group conferencing (FGC) reflects traditional practices and, in particular, decision making among the New Zealand indigenous people the Maori (Love, 2000) and, more broadly, South Pacific islanders (Shook, 1985). The approach was first legislated in the New Zealand 1989 *Children, Young Persons and Their Families Act*. This law emphasizes the family group's responsibility for their young relatives, children's safety and rights, respect for cultural diversity, and community-government partnerships for the benefit of children and young people (Hassall, 1996).

FGC is not uniformly implemented in child welfare (Merkel-Holguin, 2000), but desirable practices can be specified (Burford, Pennell, & MacLeod, 1995; Marsh & Crow, 1998; North Carolina Family Group Conferencing Project, 2002; Paterson & Harvey, 1991). A family is referred to a FGC usually by their social worker. The referral is sent to a FGC coordinator, who is responsible for organizing and convening the conference but who does not assume case-carrying responsibility. By only having one role with the family, the coordinator avoids confusing the family group and helps them focus on how to plan the conference rather than negotiating other services.

In advance of the conference, the FGC coordinator explains the process to the family members and emphasizes that they have the option of whether to attend or not; collaboratively develops an invitation list of who are family and 'like family'; checks out the family group's wishes on the meeting including its place, timing, food, and opening; assesses potential risks for participants and builds in needed supports and protections; arranges travel, child care, and other logistics; and generally prepares family group and service providers to take part safely and effectively.

The service providers often need help in understanding their roles. The FGC coordinator stresses that these do not change at the conference. The child protection workers retain their responsibility for child safety and have the final say over whether the FGC plan goes into effect. The other service providers, such as a substance-abuse counselor or domestic violence advocate,
are there to share information that will help the family group produce the best plan possible. The coordinator assists the service providers on how to present information in a way that is understandable and respectful of family group.

The conference can be viewed as having distinct stages: the opening, information sharing, family’s private time, finalizing the plan, and closing. To signal that the conference belongs to the family group, it is commonly held in a community center and opens in a way fitting the family’s traditions. This may mean a welcome by a senior family member, a prayer, or simply choosing one’s own seat. The FGC coordinator ensures that all participants are introduced and informed about the purpose of the conference and its format. Then the service providers and family group overview the situation along with possible resources for remedying it. If the child welfare worker has “bottom lines” or matters that are not open to negotiation such as keeping a sexual abuser away from a child, then these should be clearly stated at this time. Once the family group has sufficient information about the concerns to be addressed, the service providers including the FGC coordinator leave the room.

This is the start of the family group’s private time to formulate a plan. During this period, the family group often lends support to members and challenges them to change their behaviors and almost always comes up with a plan. Typically the family group members select professional services but also offer to contribute their homes and other resources. After developing a plan, the family group invites back the service providers. The child welfare worker and other involved authorities review the plan to ensure that it addresses the safety and care issues, approve the action steps, and authorize the allocation of public resources. In closing, conference participants may say their good-byes or have a more elaborated ceremony. After the conference is the work of carrying out the plan. This is facilitated if the FGC plan includes a clear system of monitoring and evaluating implementation and reconvening the group as needed.

As can be seen, FGC is labor intensive in its preparations and deliberations and intrusive in the sense of conveying so much confidential information to a larger group. Given the nature of FGCs, workers should have very solid reasons for making a referral. Although usefully applied to plan family supports, FGCs tend
to be convened even more frequently in the difficult situations where workers are uncertain about how to proceed and important decisions must be made such as whether to place a child outside the home (Hudson, Morris, Maxwell, & Galaway, 1996; Marsh & Crow, 1998; Pennell & Burford, 2000; Trotter, Sheehan, Liddell, Strong, & Laragy, 1999). These cases are usually substantiated and involuntary and already involved with the legal system.

FGC is a restorative process that is readily applicable to multiple tracks in a differential response system in child welfare. By amplifying the voice of the family group, more responsive interventions can be designed on whichever track the family is assigned. If the family is involved with the courts, the FGC plan can be referenced by the judge at the time of disposition or sentencing. If the family requires assistance from relatives, the community, and public agencies, the plan serves to coordinate these services according to the expressed wishes of the family group. Because the plans must be approved before they are implemented, the mandatory authorities retain their legal role while responding to the family group and community.

Repeated studies have clearly demonstrated that FGC participants like the process (Cashmore & Kiely, 2000; Marsh & Crow, 1998; Pennell, 2002a; Pennell & Burford, 1995; Trotter et al., 1999; Unrau, Sieppert, & Hudson, 2000; W. R. McDonald, 1999). They are satisfied with how the conferences are run, the decision process, and the resulting plans. Although both family group and service providers rate the process highly, the former are more enthusiastic and prefer FGC to other child welfare decision approaches (Marsh & Crow, 1998; Trotter et al., 1999). Some child welfare workers are more skeptical about the appropriateness of FGC plans as compared with those generated at other child welfare meetings (Trotter et al., 1999). The workers’ position reflects more general questions in child welfare circles about family group dysfunction and the worker’s and agency’s liability if the plans go awry (Lupton & Nixon, 1999; Sundell, Vinnerljung, & Ryburn, 2002).

Despite some workers’ trepidations, the outcomes of FGC appear promising. The preliminary findings indicate a greater likelihood of children staying with their parents or kin, siblings kept together, placements stabilized, child maltreatment and domestic violence reduced, and a sense of family pride enhanced
Deviations from key practices of the model, however, can affect its outcomes and capacity to establish a responsive and regulatory approach in child welfare. To assess for such divergences, the North Carolina Family Group Conferencing Project developed a series of key practices or "objectives" to be realized for each conference. These objectives and their measurement are described next.

**FGC Objectives**

To guide practice, the model was specified as a series of principles and their related steps. The use of principles helps to prevent over-prescription (Henggeler, Schoenwald, Borduin, Rowland, & Cunningham, 1998) that can limit the flexibility necessary in applying FGC in diverse contexts. This practice guidance was translated into a measurement instrument called "Achievement of FGC Objectives" so that adherence to the model can be assessed (Pennell, 2002b). The questionnaire has 25 items that are scored on a scale of "strongly disagree," "disagree," "agree," and "strongly agree" with space for "don't know" and "not applicable." The last two along with no response were coded as missing datum.

The questionnaire was used by the North Carolina Family Group Conferencing Project as a means of assessing model fidelity and a guide for improving FGC implementation, training, and policy. During the course of the Project, the instrument was completed by 151 participants from 30 conferences. These participants, in rounded percentages, were 60% family group members, 23% FGC coordinators, 16% research observers (who observed conferences where permission was granted by all participants), and 1% service provider. The FGC coordinators and research observers filled out the instrument on their own shortly afterwards. On average about one month after the conferences, consenting family group members scored the questionnaire during an interview, usually by telephone.

The majority of respondents in the three categories completed all items but with the family group members having the least
number of missing data. This shows understanding of the process on the part of the family group. The research observers were likely to give a “don’t know” on conference preparations that they would not have observed. The FGC coordinators circled “not applicable” for items that they thought were not relevant to a particular conference. The family group members reported “don’t knows” particularly on items related to the social services' agency or work taking place after the conference.

A detailed report of the findings and their implications for practice can be found in Pennell (2003). The general finding was that for the most part FGC participants saw their conference as achieving its objectives but with some variation in responses. This finding is congruent with both the diligence of the FGC coordinators in carrying out the preparations and the high level of satisfaction expressed on the evaluation forms distributed at the conclusion of the conferences and in the qualitative feedback provided during the after-the-conference interviews. Given that conferences were more or less implemented according to the model, the data from the North Carolina FGC Project provide a means of uncovering the factors or main forces underlying its key practices or objectives.

Underlying Model Factors

What are the model’s underlying factors? In order to address this question, a factor analysis was carried out of FGC participants' views of the extent to which the key practices or objectives of FGC were achieved at their conference. The aim was to see if their views on these objectives coalesced into associations and could be reduced to a smaller number of underlying factors. The assumption is that their pattern of correlations can be explained by these factors shared in common by groups of variables. Because the objectives are steps in the model, conceptually they can be viewed as not causing each other and thus are amenable to factor analysis which looks for commonalities among variables rather than causal paths between variables.

In this study, the factor analysis can be characterized as a heuristic device for specifying patterns among variables (Kim & Mueller, 1978). Although the author did not anticipate the pattern
of correlations among the objectives, the instrument for measuring achievement of FGC objectives is based on theory and practice guidance developed out of the author's long-term experience with FGC and its study. The author conceptualizes FGC as "widening the circle" of those committed to safeguarding children and other family members (Pennell & Burford, 1994) and theorizes three ways of achieving this end (Pennell, forthcoming 2004):

- Family leadership—a relationship in which the family group members are central and their efforts are supported by community organizations and public agencies
- Cultural safety—a context in which family members can speak in their own language, express their values, and use their experiences and traditions to resolve issues
- Community partnerships—a local collaboration in which each partner retains its distinctive role while striving to realize common goals.

A factor analysis requires that correlations have the same sample size. In order to perform the factor analysis, nine questionnaire items with extensive missing data were initially removed. Priority was given to retaining items answered for the most part by family group members. Later two more items were removed which did not pertain to the extracted factors and had missing values. This left a total of 14 variables in the final analysis. After their removal, some cases continued to have missing data, they likewise were deleted with the total sample size reduced from 151 to 111. Despite these reductions, the overall profile of the respondents remained similar to the original sample. The retained cases were as follows in rounded percentages: 59% family group, 28% FGC coordinators, 13% research observers, and 1% service provider. These respondents came from all of the original 30 conferences.

The first step in the factor analysis is to compute a matrix of correlation values to "load" into the factor analysis. Because the measurement scale for the objectives was ordinal, the polychoric correlation was selected in the Statistical Analysis System (SAS). The polychoric correlation looks at the data as if their ratings were made on a continuous scale, instead of strictly in the ordinal categories of "strongly disagree," "disagree," "agree," or "strongly
agree." The polychoric analysis assumes that respondents in one ordinal category had a range in views rather than being tied. From this premise, it asks what continuous distribution would be needed in order to derive the same groupings once all the answers are placed into categories.

From correlations among the 16 objectives, principal component analysis extracted three main factors whose eigenvalues were respectively 7.55, 1.77, and 1.29, and that accounted for 66.3% of the total variance. Although a fourth factor had an eigenvalue slightly above unity, limiting the extraction to three factors was supported by the scree test. Varimax rotation was utilized to ease interpretation. The orthogonal transformation matrix highlighted the loadings of the objectives on each factor. The eigenvalues for the rotated factors were 3.67, 3.48, and 3.46. The relationships were further explored by assessing the contribution of each objective to its factor's total Cronbach Coefficient Alpha, which is usually employed to check the reliability of a measurement tool such as a questionnaire. Two variables were removed because they were shown to reduce the alpha coefficient for their factor and theoretically did not fit well in the factor. The correlations of the 14 remaining variables with their factors are shown in Table 1 below. Two of the factors have four items, and the third factor has six items. Correlations of the objectives with their factor ranged from .429 to .693. With one exception, all of the items if deleted would reduce the alpha for their factor. The removal of item 17, however, would increase the alpha very slightly from .761 to .763. It is noted that each of the three resulting scales has a Cronbach Coefficient Alpha near 0.8, which is well above the usual norm of 0.6. Thus, the reliability of the scales is assured.

Review of the objectives in each factor shows convergence with the author's FGC theory on "widening the circle" through establishing cultural safety, community partnerships, and family leadership. The four items in the first factor, labeled "cultural safety," each pertain to holding the conference in a way that feels right to the family group. Three objectives refer to where the conference is held, how it held, and who is invited. Their rightness reflects the family group's values and customs and more broadly their culture. The fourth objective is concerned with having sufficient supports and protections and can be viewed as
Table 1

Correlation of Achievement of Objectives with Family Group Conferencing Factors and Alpha If Item Deleted ($N = 111$)

<table>
<thead>
<tr>
<th>Item</th>
<th>Correlation</th>
<th>Alpha*</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Factor 1: Cultural Safety</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Conference held in the right way for family group.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. The conference was held in a place that felt right to the family group.</td>
<td>.645</td>
<td>.666</td>
</tr>
<tr>
<td>11. The conference was held in a way that felt right to the family group (e.g., right food, right time of day).</td>
<td>.660</td>
<td>.658</td>
</tr>
<tr>
<td>14. People at the conference were relatives and also people who feel “like family” (e.g., old friends, good neighbors).</td>
<td>.530</td>
<td>.732</td>
</tr>
<tr>
<td>17. The conference had enough supports and protections (e.g., support persons).</td>
<td>.451</td>
<td>.763</td>
</tr>
<tr>
<td><strong>Factor 2: Community Partnerships</strong></td>
<td>.782</td>
<td></td>
</tr>
<tr>
<td>(Family group and service providers clear about what doing.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Each service provider was clear about their role (e.g., child protection, counseling).</td>
<td>.612</td>
<td>.715</td>
</tr>
<tr>
<td>6. The family group understood the reasons for holding the conference.</td>
<td>.534</td>
<td>.755</td>
</tr>
<tr>
<td>15. The family group was prepared for the conference (e.g., got enough information on what happens at a conference).</td>
<td>.560</td>
<td>.745</td>
</tr>
<tr>
<td>16. The service providers were prepared for the conference (e.g., got enough information on what happens at a conference).</td>
<td>.653</td>
<td>.699</td>
</tr>
<tr>
<td><strong>Factor 3: Family Leadership</strong></td>
<td>.754</td>
<td></td>
</tr>
<tr>
<td>(Family group empowered to make a plan.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. The FGC coordinator was respectful of the family group.</td>
<td>.511</td>
<td>.722</td>
</tr>
</tbody>
</table>

*continued*
Table 1  
*Continued*

<table>
<thead>
<tr>
<th>Item</th>
<th>Correlation</th>
<th>Alpha*</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. The only job of the FGC coordinator was to organize the conference. He/she did <em>not</em> have other jobs to do with the family.</td>
<td>.481</td>
<td>.723</td>
</tr>
<tr>
<td>12. More family group than service providers were invited to the conference.</td>
<td>.429</td>
<td>.743</td>
</tr>
<tr>
<td>19. Service providers shared their knowledge but they did not tell the family group how to solve the problems.</td>
<td>.453</td>
<td>.733</td>
</tr>
<tr>
<td>20. The family group had private time to make their plan.</td>
<td>.693</td>
<td>.676</td>
</tr>
<tr>
<td>21. The plan included ways that the family group will help out.</td>
<td>.501</td>
<td>.717</td>
</tr>
</tbody>
</table>

*Cronbach Coefficient Alpha (raw) is given for each factor. The value next to each objective is the value of the coefficient calculated with that objective deleted.

providing the safety necessary for participation. Whether it fits in the factor on cultural safety is debatable theoretically because it does not relate directly to culture and statistically because it has a lower correlation with the factor than the other items and its presence minimally reduces the total correlation. Awaiting further study, all four objectives were kept together because they are seen as contributing to a culturally safe context in which family members can speak in their own language, express their values, and use their experiences and traditions to resolve issues.

The second factor, “community partnerships,” includes four objectives relating to both the family group members and service providers being clear about what they are doing at the conference. Two of the objectives concern the family group—whether they understood why the FGC was held and were adequately prepared for it. The other two objectives relate to the service providers—whether they were clear about their role at the conference and prepared to take part. Such clarity on purpose, process, and
function promotes the community partnerships necessary for a local collaboration in which each partner retains its distinctive role while striving to realize common goals.

The third factor, "family leadership," encompasses six objectives that all can be viewed in terms of the conference empowering the family group to make a plan. The first two objectives pertain to the FGC coordinator's relationship with the family group, and both foster the family group's decision-making efficacy. If the coordinator respects the family group members and engages with them solely as conference organizer, they are more likely to be clear about the process and feel acknowledged as decision makers. The next two objectives reference the power relationship between the professionals and the family group and encourage the family group to take charge. If the family group members outnumber the service providers, they are more likely to state their views; if the service providers give information and refrain from dictating solutions, the family group members are more likely to come up with their own plans. The fifth objective concerns a distinctive feature of FGC—the family group's private time. With the FGC coordinator and service providers outside the room, the family group usually can express themselves more freely and develop their own solutions. The sixth and last objective is a notable output of conferencing—the inclusion of family group contributions in the plan. This demonstrates a commitment on the family group's part to continue to assist their relatives after the conference. All of these processes advance the family's leadership by generating a relationship in which the family group members are central and their efforts are supported by community organizations and public agencies.

Interfacing Responsiveness and Regulation

A regulatory approach to child welfare places the onus on the worker to make decisions in accordance with set procedures. As depicted in the lynching cartoon, this approach damns social workers whatever decision they make because they cannot respond flexibly to family situations and as a consequence, provoke community outrage. Child welfare is seeking to move away from legal formalism to a differential response so that they do not
have to treat all families the same way. One means of generating a differential response is convening a family group conference (FGC) to develop a plan. This approach transforms a vigilante mob into a community of concern who participate in making and carrying out plans to safeguard children and other family members.

John Braithwaite’s (2002) regulatory pyramid assists in conceptualizing this movement in child welfare. He theorizes a pyramid with a responsive base of restorative practices as the first site of recourse and then only if dialogue fails, escalating to the regulatory formalism of the courts and correctional services but de-escalating back to restorative processes as offenders come into compliance. In child welfare, the tension between regulation and responsiveness has to be maintained throughout because the children may need protection from their caregivers with whom they reside or from whom they must remain separated at least for some time. One way to qualify Braithwaite’s pyramid is to convert it into a series of concentric circles in which the child’s family group is interfaced with government and community. As depicted in Figure 1 below, at the center is the child’s family group, the outer ring is the community and government who both play crucial roles in safeguarding children and other family members,

![Figure 1: Diagram of Family Group, Community, and Government](image-url)
and between the two are three interfaces promoting responsive regulation.

The three interfaces are based on theory and a factor analysis of data from the North Carolina FGC Project. Family leadership encourages the family group’s taking initiative in planning, not in isolation and instead with the support of public agencies and community organizations. Cultural safety fosters a context in which the family group can access their traditions to find solutions; nevertheless a child welfare conference always remains bi-cultural in the sense of including the family’s culture as well as community standards and legal processes for protecting children. Community partnerships include the family group in safeguarding their relatives without the public agencies or community services’ jettisoning their functions. All three interfaces work together to keep a firm and productive collaboration between the family group and their community and government programs.

References


Achieving Justice in Child Protection

ROB NEFF
School of Social Work
University of Hawaii-Manoa

As formal systems for the protection of children have evolved in this country, certain barriers to achieving justice within the child protection system have emerged concomitantly. Specifically, these barriers involve ambiguous definitions of abuse and the appearance of social inequality and bias within the child protection system. One means of surmounting these barriers to justice is family group conferencing (FGC). Support for this assertion comes from the integration of the restorative justice model and procedural justice theory. When applied to the practice of FGCs in child protection, the integration of these theoretical perspectives provides a strong rationale for the use of FGC and a theoretical framework from which the outcomes and causal mechanisms of FGCs may be evaluated.

Key words: family group conferencing, procedural justice, restorative justice, child protection, child abuse, child neglect

Introduction

Much of the research on Family Group Conferencing (FGC) in child protection has been descriptive in nature. Many of these program evaluations have emphasized aspects of program fidelity and somewhat superficial outcomes, such as levels of participation, duration of conferences, rates of accepted plans, and participants' satisfaction. Although this kind of research is useful for describing FGC, it falls short of explaining how the model works to transform the child welfare culture or how it achieves greater safety and stability for children and families. In this paper I will provide a conceptual integration of two models of justice: restorative justice and procedural justice. In so doing, I will provide theoretical support for the use of FGC as a means of achieving
justic and improving outcomes in field of child protection. The integration of these two paradigms also establishes a framework from which FGCs may be evaluated.

**Restorative Justice**

FGC is one of several conflict resolution models founded on the values of the restorative justice movement (McCold, 1999). Restorative justice seeks to redress wrong-doing through the inclusion and open dialogue of those parties affected by a particular offense. Models based on restorative justice values offer an alternative to prevalent models of justice emphasizing retribution and rehabilitation (Braithwaite, 2002). The aim of restorative justice is to solve problems in a manner that elicits and integrates the perceptions and desires of those affected by the problem, thus, promoting active responsibility for solving problems. “Active responsibility is the virtue of taking responsibility for putting things right.” (Braithwaite, 2002, p. 129). Thus, central to all restorative justice practice is the idea that direct contact between offender and victims under the protective cover of the community is essential (Cohen, 2001).

Retributive justice, on the other hand, is more concerned with punishing an offender than it is solving the problems associated with an offense. As Braithwaite argues, restorative justice places the focus of interested parties on the problem rather on the person. “Through blaming the other, we declare ourselves blameless as we abrogate the possibility of us taking active responsibility for righting the wrong.” (Braithwaite, 2002, p. 129). Restorative justice models place the centrality of concern on understanding and solving problems as opposed to blaming and punishing offenders. Placing the focus on problems as opposed to persons encourages parsimonious solutions, because the extraneous influences of retribution are omitted from the process (Braithwaite, 2000).

**Responsive Regulation**

Using a restorative approach towards child protection, the state operates on a course that is congruent with the needs and abilities of its citizenry. Braithwaite (2002, p. 29) describes this as “responsive regulation”, where government is responsive to the conduct of those they seek to regulate. According to Braithwaite’s
model of responsive regulation, the responsibility for regulation is first and foremost a function of those being regulated.

It is important to note that, in the case of child protection, the application of Braithwaite’s model of responsive regulation is not based on interventions; rather, it is based on decision control. Interventions in child protection may appear to be retributive, but they are quite simply resources designed to help families. For example, out-of-home placement may be an intervention that is actively sought by a family, and as long as it is the family that has made that decision, the regulatory process is responsive. Similarly, if a family is incapable of resolving protection issues and CPS decides unilaterally to place a child in an out-of-home setting, the same intervention, out-of-home placement, will fall at a different point on the regulatory pyramid, but the process is still responsive. This is because the decision-making power is placed first with the family, and only as a last resort does the state’s authority supercede the family’s authority.

The ascendancy in regulatory control by the state is predicated on an explicit failure of the family to resolve problematic situations free of the state’s influence. Thus, the state responds to families in accordance with their needs. If a family has the wherewithal to provide adequate care for their children, state intervention is not needed. Conversely, if a family fails to provide adequate care for a child, the state must then partner with the family to establish means by which their complete independence can be restored. Continual failure by families to meet their responsibilities leads to incremental increases in the state’s exertion of its regulatory authority. Thus, no matter how invasive interventions may appear, they are not retributive. It is the state’s perfunctory denial of a family’s right to self-determination that is retributive.

Achieving Justice through Responsive Regulation

The notion that the families should be given the opportunity to self-correct before the state asserts its control over families comes from Braithwaite’s (2002) model of responsive regulation, and it provides a critical theoretical underpinning for understanding the redistribution of power that FGC inspires among families and state authorities. The family retains its autonomy
hence, decision-making power, to the extent that it is able to act responsibly. As state agencies become more responsive to the needs of the families vis-à-vis FGC, their involvement will be legitimated concomitantly. This, in turn, strengthens those agencies rather than weakening them.

Under an FGC model, although child protection workers continue to retain the authority vested in them by the state, the exercise of that authority is largely determined through the collaborative efforts of the state and family rather than by single entities. FGC allows for negotiated exchanges between the state and the family to occur. More importantly, these exchanges are likely to be perceived as fair by the participants, because the distribution of power between the state, the family, and the victim are brought into balance through the FGC process. This balance is achieved by affording FGC participants greater power in the form of decision-making control.

In his seminal book, *Restorative Justice and Responsive Regulation*, Braithwaite (2002) identifies procedural justice theory, among a host of other theories, as a means of explaining why restorative justice models may reduce reoffending and enhance restoration. However, very little effort has been made to test Braithwaite’s assertion. The concept of procedural justice is rarely mentioned in the restorative justice literature, but whenever research has examined procedural justice, it has been found that people always make procedural justice judgements, and that those judgements are always important (Lind & Tyler, 1988, p. 141). There is universal appeal to being treated fairly, and procedural justice is important to people regardless of their cultural affiliations (Lind, Tyler, & Huo, 1997), or their gender (Martinez-Tur, Ramos, and Peiro, and Garcia-Buades, 2001). As I will illustrate in subsequent sections, procedural justice theory is highly relevant to restorative justice practices, particularly in relation to the practice of FGC as applied to child protection.

Since a central function of FGC is to place the responsibility, hence greater control, with families themselves, it follows that FGC participation will result in higher appraisals of procedural fairness and increases in satisfaction among participants in a decision-making process (Braithwaite, 2002, p. 79). Furthermore, to the extent that the family maintains control over the procedures
and outcomes, dissatisfaction, resentment and other maladaptive responses towards CPS interventions will be minimized. Legitimacy has a procedural justice basis; therefore, "legal authorities can deliver unfavorable outcomes to citizens without harming their legitimacy if those outcomes are delivered through procedures people view as fair" (Tyler, 1990a, p. 175).

Procedural Justice

Procedural justice theory emerged from earlier formulations of social exchange theory (Blau, 1964; Homans, 1974; Thibaut and Kelley, 1967) and equity theory (Adams, 1963). Early formulations of social exchange theory emphasized the outcomes of social exchanges and evaluations of fairness of those outcomes (distributive justice). Social exchange theorists and equity theorists assumed that individuals judged the fairness of an exchange solely on the merit principle, which dictates that fairness exists when rewards are proportional to contributions (Adams, 1963; Homans, 1974). Procedural justice theorists, on the other hand, suggested that evaluations of fairness were more complex than the unidimensional concept of fairness suggested by equity theory, and that the merit principle was but one aspect of individuals' appraisals of justice (Leventhal, 1980).

Thibaut and Walker (1975) argued that judgments of fairness were determined by both process control (procedural justice) and outcome control (distributive justice). This argument has been supported by a series of experiments which have consistently demonstrated that how one perceives the fairness of a procedure is largely a function of the amount of control that he or she has over the process and is an important determinant of satisfaction with the outcome of a procedure (Musante, Gilbert, Thibaut, 1983; Thibaut and Walker; 1975).

The Construct of Procedural Justice

In a critique of equity theory, Leventhal (1980) expanded Thibaut and Walker's work by suggesting that procedural justice may be evaluated by examining one or more of the following seven procedural elements: selection of agents, setting ground rules, gathering information, decision structure, appeals, safeguards, and process change mechanisms. Leventhal (1980,
p. 39-46) further speculated that each of the seven procedural elements may be evaluated according to six "procedural justice rules": consistency, bias suppression, accuracy, correctability, representativeness, and the ethicality. The consistency rule dictates that allocative procedures should be consistent across persons and stable over time. The bias suppression rule dictates that self-interest and bias should be prevented throughout the allocative process. The accuracy rule dictates that the allocative process must be based on as much good information and opinion as possible and that information should be applied to the procedure with minimal error. The correctability rule dictates that opportunities must exist to modify or reverse decisions made throughout the allocative process. The representativeness rule dictates that all phases of the allocative process must reflect the basic concerns, values, and outlook of important subgroups in the population of individuals affected by the allocative process. The representativeness rule is analogous to Thibaut and Walker's (1975) conception of process and outcome control; however, Leventhal does not explicitly differentiate the two kinds of control. The ethicality rule dictates that procedures must be compatible with fundamental moral and ethical values of the individuals involved. Leventhal's conception of procedural justice has been used extensively as a guide for assessing procedural justice in the social psychology literature, and significant support for Leventhal's rules of procedural justice have been established in applied and experimental research (Jackson & Fondacaro, 1999; Lind & Tyler, 1988; Makkai & Braithwaite, 1996; Tyler, 1988).

Tyler (1988) empirically tested the theoretical criteria used to assess procedural justice. Combining and extending the criteria suggested by Thibaut and Walker (1975) and Leventhal (1980), Tyler examined the importance of each criterion to citizens' assessments of procedural justice. Using a sample of 652 Chicago residents whom had experiences with the court or police in the previous year to explore individuals conceptions of procedural justice, Tyler (1988) found that when people evaluate fairness, procedural justice was more important than distributive justice was. In terms of the relative importance of the criteria used to assess procedural justice, Tyler found that there were seven aspects of procedural justice that made independent contributions to assessments of fairness: efforts of authorities to be fair; whether
Achieving Justice in Child Protection

their behavior was consistent with ethical standards; whether opportunities for representation were given; the quality of the decisions being made; whether there were opportunities to appeal decisions; and whether authorities showed bias. Factor analysis revealed that there are two underlying factors of procedural justice assessments. The first factor concerns the qualities of the experience itself: representation, impartiality, and accuracy of decisions. The second factor concerned external referents: consistency, as compared to past experiences or the experiences of others; and ethicality, which compares the experience to external standards. Tyler noted that the efforts made by authorities to be fair was a key overall factor in assessing procedural justice, suggesting that trust constitutes a distinct criterion for evaluating procedural justice.

Tyler (1988) demonstrated that there are common criteria for the evaluation of procedural justice that may vary in their relative importance depending on the nature of the experience, a finding consistent with Leventhal’s (1980) theory. Tyler also discovered that in a given situation, there was little variation in the relative importance of procedural justice criteria among individuals. These findings led to Lind & Tyler’s (1988) group-value theory of procedural justice. According to this theory of procedural justice, group membership mediates concern with justice and the influences the evaluation of procedural justice. Specifically, group-value theory posits that procedural justice standards arise from two sources: "(1) the groups overall social values; and (2) the interest of the individual being treated as a full fledged, full-status member of the group” (Lind & Earley, 1992, p. 232). Tyler and Lind (1990) found that group standing influenced concerns about justice. Socially marginal group members were found to care the least about justice, while those who were central to groups cared the most about justice. Tyler and Lind’s findings make sense when considered in light of the tendency for those deprived of power in social exchanges to adapt to deprivation accordingly (Thibaut & Kelley, 1967).

Achieving Procedural Justice through FGC

Concerns about procedural justice are particularly salient in child protection practice. The creation of a group that includes all those with an interest in protecting an individual child and
assures that their voices are heard is, itself, an important contribution to achieving justice and improving the functioning of child protection agencies. People tend to be less concerned with justice when dealing with others outside of their social or ethnic group (Tyler, Lind, Ohbuchi, Sugawara & Huo, 1998). This may be particularly true when group differences are accompanied by power imbalances that give advantages to one party at the expense of another.

The FGC model expands the boundaries of the system for protecting children, which, according to the group-value theory of procedural justice, encourages legitimization of the state’s authority and diminishes individual concerns in favor of group needs (Smith & Tyler, 1996, p. 175). Tyler (2000, p. 120) argues that “procedural justice is central to creating and maintaining internal values that support voluntary cooperative behavior on the part of members of groups.” Hence, collectivism overrides individual concerns in favor of group needs (Lind & Earley, 1992). Although the importance of creating egalitarian groups with a common purpose is a significant factor for achieving justice through FGC, the actions of the participants and coordinators of the group clearly contribute to the overall achievement of justice as well.

Applying the aforementioned rules of procedural justice to the FGC model illustrates the potential that FGC has for achieving justice in child protection practices. The values and principles of FGC are highly attuned to a variety of aspects of procedural justice.

Consistency. Consistency is achieved through the application of responsive regulatory practices, providing opportunities for equal input for FGC participants and fidelity to the FGC model in repeated conferences. Families are informed of the conditions required to maintain autonomy, thus reducing perceptions that the actions of child abuse agencies are arbitrary.

Representativeness. Compliance with the representativeness rule of procedural justice is perhaps the most important aspect of FGCs. Thibaut and Walker (1975, p. 121) argue that in relation to procedural models, the distribution of control appears to be the best predictor of fairness and thus, satisfaction with the outcome of the procedure. Lind, Kanfer & Earley (1990) found that having
a voice in a given procedure corresponds with a greater sense of fairness. The importance of voice was significant whether it influenced the outcome or not. Hunton, Hall and Price (1998) have replicated these findings; they determined that perceptions of fairness, control, and satisfaction were more positive as the magnitude of voice increased.

Representativeness is achieved by giving deference to the families’ wishes and decisions throughout the FGC process. Although not specifically differentiated in Leventhal’s (1980) model of procedural justice, instrumental and expressive forms of control are both important factors in the assessment of procedural justice. Research has demonstrated that perceived control in relation to decision processes corresponds with greater satisfaction with procedures and outcomes (Lind & Tyler, 1988) and encourages compliance with authorities (Makkai & Braithwaite, 1996). The FGC model provides opportunities for family participants to assert a greater degree of control over both the decision-making process and the ultimate outcome.

With regard to the procedure, families have control over whether to hold a conference, who to invite to the conference, and are free to provide input regarding the problem, its effects, and the means of resolving the problem. Moreover, families are afforded control over the ultimate outcome of the procedure—the case plan. Although limitations may be applied to those decisions, such as the need for out-of-home placement or drug abuse treatment, families typically have a great deal of latitude in deciding how problems are to be addressed within the boundaries imposed by state agencies.

Bias Suppression. Leventhal (1980) identifies two potential sources of bias. First, procedures are unfair if a decision-maker has a vested interest in achieving a specific decision. Second, procedures are unfair if they are based on doctrine to the extent that other points of view are not considered. The suppression of bias is achieved in FGC by expanding the decision-making circle to include all those affected by the problem, and encouraging them to contribute to the decision-making process. The inclusiveness of FGC and its explicit emphasis on resolving problems as opposed to blaming and punishing offenders, breaks down
social barriers among participants and creates a common group identity with the central goal of protecting a child. The vested interest of all parties is the protection of the child and welfare of the family. Furthermore, the encouragement of creative solutions to child maltreatment reduces the reliance on doctrinal solutions typically employed by child protection agencies. Creative solutions brought about by combining the technical knowledge of professionals and the idiosyncratic knowledge of families enables solutions to be derived that do not rely solely on child protection doctrine.

Ethicality. Respecting family and cultural traditions and integrating those basic values into the decisions achieve ethicality. Providing families opportunities to make contributions to the decision-making process that are largely unfettered by influences from state authorities helps to ensure that their families' own world views are congruent with final outcome of the conference.

Accuracy. Sharing information in a public space and allowing input from diverse sources helps to achieve accuracy. The FGC model specifically sets aside time to share information about the problem. Information from multiple viewpoints is solicited and participants are given opportunities to clarify or confirm the perceptions of the other participants. The importance of accuracy is illustrated by Pruitt, Pierce, McGillicuddy, Welton, & Castrianno (1993, p.327), who found that compliance with mediated agreements was significantly related to the extent that the information presented in mediation allowed "all the problems to come out."

Correctability. Correctability is achieved by responsive regulatory practices, which is an inherent aspect of the FGC model. The decisions made in FGC are subject to correction and modification based on adherence to plans and the continued relevance of plans. Subsequent FGCs serve to examine and modify earlier decisions. Additionally, participation in an FGC does not negate a family's right to seek judicial intervention.

The values and practice principles that comprise the FGC model foster procedural fairness in multiple ways, which will, theoretically, lead to greater satisfaction and compliance with the safety and treatment plans designed to reunify families. Table I
<table>
<thead>
<tr>
<th>FGC Principles</th>
<th>FGC Practices</th>
<th>Procedural Justice Rules</th>
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<tbody>
<tr>
<td>1. Build broad-based support and cultural competence</td>
<td>By including a wide range of community organizations and public agencies in planning, guiding, resourcing, and evaluating the program, and by partners retaining their distinctive roles and responsibilities</td>
<td>Bias Suppression</td>
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<td></td>
<td></td>
<td>Representativeness</td>
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<td></td>
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<td>Accuracy</td>
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<tr>
<td></td>
<td></td>
<td>Ethicality</td>
</tr>
<tr>
<td>2. Enable the coordinators to work with family groups in organizing their conferences</td>
<td>By selecting coordinators who respect families and their communities. By making conference organizing the coordinator’s primary role in relationship to the family, and by providing the coordinator with cultural and practice consultation.</td>
<td>Bias Suppression</td>
</tr>
<tr>
<td></td>
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<td>Representativeness</td>
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<td>Ethicality</td>
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<tr>
<td></td>
<td></td>
<td>Accuracy</td>
</tr>
<tr>
<td>3. Have the conference belong to the family</td>
<td>By giving reasons for holding the conference that the family group and service providers can agree with. By holding the conference in a place and in a way that fits the family’s culture and by inviting more family group members than service providers.</td>
<td>Bias Suppression</td>
</tr>
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<td>Representativeness</td>
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<td>Ethicality</td>
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<tr>
<td>Foster understanding of the family and creativity in planning</td>
<td>By inviting different sides of the family and by broadly defining what is family.</td>
<td>Bias Suppression</td>
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<td>Representativeness</td>
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<td>Ethicality</td>
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<td></td>
<td></td>
<td>Accuracy (continued)</td>
</tr>
<tr>
<td>FGC Principles</td>
<td>FGC Practices</td>
<td>Procedural Justice Rules</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Help the conference participants take part safely and effectively</td>
<td>By preparing family group and service providers, by building in supports and protections, and by arranging transportation, child care, interpretation, etc., as needed</td>
<td>Representativeness Ethicality</td>
</tr>
<tr>
<td>Tap into strengths on the family group in making a plan</td>
<td>By asking information providers to share concerns, knowledge, and resources but not to dictate the solutions, and by ensuring that the family group has private time to come up with a plan.</td>
<td>Bias Suppression Representativeness Ethicality Accuracy</td>
</tr>
<tr>
<td>Promote carrying out the plan</td>
<td>By providing timely approval of plans regarding safety and resourcing by integrating supports and resources of the family group, community organizations, and public agencies, and by building in monitoring and evaluation of plans and follow-up meetings.</td>
<td>Consistency Correctability</td>
</tr>
<tr>
<td>Fulfill the purpose of the plan</td>
<td>By implementing the plans as agreed or revising them as needed, and by supporting the efforts of the family group and service providers.</td>
<td>Bias Suppression Representativeness Consistency Ethicality</td>
</tr>
</tbody>
</table>
Change policies, procedures, and resources among family groups, community organizations, and public agencies

By developing and using integrative and culturally competent approaches, and by using program evaluation as a means of changing practice and policy

Correctability
Accuracy
Ethicality

summarizes the relationships between the principles of FGCs and aspects of procedural justice.

Outcomes Associated with Just Procedures

Although not extensively studied with regard to child protection decision-making strategies or FGCs in particular, there is a diverse body of literature that supports the assertion that procedural justice is an important aspect of participant’s satisfaction with procedures, which leads to greater compliance and increased legitimization of authorities (Tyler, 1990b; Tyler & Folger, 1980; Sunshine & Tyler, 2003).

In a survey of New York residents, Sunshine & Tyler (2003) found that perceptions of procedurally just behavior by police officers was the primary driver of citizens’ legitimization of police authority which ultimately leads to greater compliance with the law (Tyler, 1990a; Sunshine & Tyler, 2003). Findings that perceptions of procedural justice lead to greater regulatory compliance have also been observed among healthcare administrators (Makkai & Braithwaite, 1996); and civil court litigants (McEwen & Maiman, 1984).

Perceptions of procedural justice have been consistently linked to greater satisfaction with outcomes in a variety of diverse settings. Martinez-Tur, et al. (2001) found that perceptions of procedural justice positively influenced customers’ satisfaction with the outcomes of hotel guests’ complaints. Tyler & Folger (1980) found that perceptions of procedural fairness predicted satisfaction with law enforcement officials among individuals stopped by police. Perceptions of procedural justice predicted satisfactions independently of whether an individual was cited or not by the police. Tyler, Rasinski, and McGraw (1985) found that perceptions of procedural justice influenced citizens’ evaluations of political leaders regardless of the benefits they received from the government. Consistently, research has indicated that how one is treated is more important than what one receives.

Considering the potential for restorative practice to achieve procedural justice, it comes as no surprise evaluations of FGC programs have repeatedly indicated that they result in the creation of plans that are satisfactory to the courts, protection agencies, and
families (Rasmussen, 2003; Sieppert, Hudson, and Unrau, 2000; LeCroy & Milligan, 2002; Gunderson, Cahn, and Wirth, 2003). Although not directly examined in any published study, there are indications that FGCs do address a variety of procedural justice concerns.

Families participating in FGCs feel that they are afforded a good deal of process and outcome control (LeCroy & Milligan, 2002; Sieppert, et al., 2000). Others have found that FGCs promotes family unity (Pennell & Burford, 2000) and foster a sense of shared responsibility among family members and CPS workers (LeCroy & Milligan, 2002). Ultimately, according to case workers’ appraisals, FGCs result in the creation of improved plans compared to those derived using prevailing practices (Rasmussen, 2002). There is also some indication that compliance with plans derived from FGCs is superior to plans derived from traditional decision-making processes (LeCroy & Milligan, 2002; Rodgers, 2000). In an evaluation of FGC in Washington State, Gunderson, et al. (2003) examined 189 FGC cases. In addition to high levels of satisfaction and plan completion, they found that a re-referral rate of 6.8% compared to the state average of 8.1%.

Conclusion

The procedural justice literature is remarkably consistent in its findings that how people are treated during the allocative processes matters. Indeed, evaluations of fairness with regard to processes may, in many circumstances, be more important than the outcomes of those processes. Also, perceptions of just treatment have been consistently associated with greater satisfaction, compliance, and the legitimization of authorities. These findings, coupled with the procedural elements of FGC in child protection provide a compelling argument that FGCs may be a superior approach to decision-making in child protection. Of equal importance, the integration of the procedural and restorative justice paradigms creates a theoretically grounded framework from which hypotheses related to causal mechanisms of FGCs may be derived and tested; thus, the application of this framework may help to elevate research into the FGC model to a higher level of sophistication.
References


Achieving Justice in Child Protection


Tyler, T. & Folger, R. (1980) Distributional and procedural justice aspects of


Sharing Power with the People: Family Group Conferencing as a Democratic Experiment

LISA MERKEL-HOLGUIN
American Humane
Children's Services

Can family group conferencing be leveraged to promote the democratic ideals of voice, freedom, justice, fairness, equality, and respect, and provide the citizenry with the opportunity to build a more just and civil society? This article reviews family group conferencing, and various model adaptations, from a democratic context and through the lens of responsive regulation.

Family Group Conferencing in a Democratic Context

Who knows what is best for the people if not the people themselves? This question, which reflects the core principles of democracy, also is central to the practice of family group conferencing. If child protection is seen as a public concern, then the process of making decisions to keep children safe and healthy benefits from being democratized.

Beetham (1999, 21) suggested that the defining principles of democracy are that “all citizens are entitled to a say in public affairs, both through the associations of civil society and through participation in government,” and that “this entitlement should be available on terms of equality of all.” In other words, in a democracy, supreme power lies with the people, all of whom have a right to freedom, equality, and a voice that will be heard and respected. Family group conferencing promotes the sharing of power for decision making between family, kin, professionals, state and the community, while balancing responsibility and accountability among these groups.

1 Portions of this article were presented at The Building Strengths Conference, Manchester, England, October 9, 2002 in a keynote address entitled, “Rebuilding the U.S. Democracy through Family Group Conferencing: Fact or Fiction? Journal of Sociology and Social Welfare, March, 2004, Volume XXXI, Number 1
Braithwaite (2000) proposed that it is not possible to achieve a fully participatory democracy on a large scale, because it is impossible to involve all affected citizens in important decisions. He contends, however, that this notion gives credibility to the prevailing perspective that representative democracy is all that is possible. Unfortunately, the result is an inactive, non-participatory citizenry that refrains from developing community and abdicates its responsibility for building democracy.

Family group conferencing—if implemented in the spirit of its originators—provides an opportunity to revitalize representative democracy and to build strong, healthy communities and families. It provides a forum for individuals to come together to exchange information, share ideas, and demonstrate their care and concern in a framework that teaches and supports active responsibility. It establishes a process by which families can work through their problems and devise their own solutions. From a responsive regulation perspective, FGC promotes individuals self-regulatory capacities thereby forestalling the state's need to transcend the regulatory pyramid. In essence, families have the opportunity to create plans that regulate their own behavior, before a more intrusive form of intervention is undertaken.

In an FGC, families have the opportunity to tap into their own resources to rebuild and strengthen existing social support networks, form new connections, and forge effective partnerships with formal systems. When given a choice, most people support the democratic principle of ensuring that people have a voice in matters that concern them. If FGC principles are fully supported, the citizenry has the opportunity to realign bureaucratic systems and programs to meet community needs.

Family group conferencing challenges years of paternalistic practice in which professionals have assessed problems, used clinical tools to determine levels of risk or harm, and developed corrective action plans with little consideration for or interest in families' opinions (Turnell, 1998). Since the early days of societies for the prevention of cruelty to children, child welfare professionals have been taught that it is their job to rescue children, that they are the experts, and that they have the solutions to families' problems. Are entrenched and powerful systems ready
to support a practice model as empowering as family group conferencing?

Responsive Regulation in Child Welfare

Braithwaite's framework for responsive regulation provides a new perspective for understanding the compatibility of empowering partnership practice in child welfare with the coercive power of the state and its responsibility for child protection. Responsive regulation contends that "governments should be responsive to the conduct of those they seek to regulate in deciding whether a more or less interventionist response is needed" (Ayres & Braithwaite, 1992). This theoretical base provides a new perspective from which to view family group conferencing.

Child welfare is plagued by an overburdened system and limited internal and community-based resources which results in the standardization and categorical nature of case plans developed to resolve the concerns that precipitated regulatory action in families' lives. Research in Oregon showed that while caseworkers had a conceptual framework for individualized services, frequently, the constellation of services they described for cases were not individualized based on the strengths/needs-based practice model. (Regional Research Institute for Human Services and the Child Welfare Partnerships, 1999). Too often, parents are minimally involved in developing case plans, resulting in plans misaligning with family needs, capacities, informal supports, and community resources (National Child Welfare Resource Center for Family-Centered Practice, 2002). While it is likely that families who come to the attention of the public child welfare system experience many similar precipitating concerns such as poverty, substance abuse, or domestic violence, it seems unlikely that a narrow range of options could be equally helpful in a wide range of family circumstances and responses to official child protection services (CPS) involvement.

Child welfare workers use prescriptive policies and procedures to craft decisions written in case plans. These regulatory vehicles, coupled with high workloads, prevent them from responding flexibly to families. Braithwaite's regulatory pyramid
provides a framework for conceptualizing family group conferencing as a way to achieve differential response more adequately to meet family, community and government needs.

The most restorative dialogue-based approach to achieve compliance with the law sits at the base of the pyramid. Braithwaite (2002) contends that in all cases of wrongdoing, the first response should be the offering of a restorative dialogue. In child welfare, this would present families with the opportunity to decide their interest in partaking in a non-dominating, lesser controlling way to create a plan that achieves safety, permanency, and well-being for children. It conveys a level of respect and trust between the state, community, and family.

If there is refusal to participate in a restorative dialogue or to reform after wrongdoing, one ascends the pyramid to a more coercive form of regulation. In child welfare, the existing research (Pennell & Burford, 2003; Gunderson, Cahn, & Wirth, 2003; Litchfield, Gatowski & Dobbin, 2003; Marsh & Crow, 2003; Wheeler & Johnson, 2003) suggests that when presented with the option of a family group conference, families, their support network and the broader community attend and make plans that achieve regulatory parameters. Some families because of shame, strained relationships, or embarrassment will nonetheless prefer traditional, state-dominated mechanisms for problem solving.

Indeed responsive regulation does not provide for a consistent response to the same wrongdoing. Similarly, family group conferencing does not result in the same plans based on similar precipitating problems. Family group conferencing provides an avenue for family, kin, community and the state to collaborate to craft original, rich and diverse plans that meet the needs of the various stakeholders. It is not about abdicating state responsibility for the protection of children, or abolishing states and bureaucracies, but coalescing the law and community as a mechanism to check and balance each other to neutralize the possible abuses and excesses of both formal and informal systems. (Braithwaite, 2002; Adams, 2003).

However, if the initial plan does not achieve the standards of safety and permanency, or non-compliance occurs, then Braithwaite suggests an additional restorative dialogue or conference occur and not an immediate ascent up the regulatory pyramid.
That said, however, there must be a commitment to ascend the regulatory pyramid if actions are not taken to prevent recurrence. If families still refuse to take responsibility for their actions, rebuff reparation strategies, or partake in actions that compromise children, then coercive control and the need for escalated regulation is legitimized. In child welfare, outcomes ascending the pyramid could be placement of children in foster care to the termination of parental rights.

The Growth of Family Group Conferencing

For hundreds of years, before formal child protection systems existed, families used their own resources, knowledge, and strengths to resolve problems involving child abuse and neglect, health crises, and child rearing. They relied on networks of relatives and friends and on religious institutions for support. Currently and unfortunately, more often than not, the traditional child welfare system serves to disempower and disenfranchise families and communities rather than to strengthen and sustain them.

For close to a decade, family group conferencing has grown exponentially throughout the world. In the United States, what started as an experiment in five communities in 1995 is now a widely recognized practice embraced by over 150 communities across the nation (Merkel-Holguin 2000). Similarly, England and Wales had only four pilot projects in 1994. In 2001, 97 local authorities or nongovernmental organizations are running or considering implementing family group conferencing in those countries (Nixon, Merkel-Holguin, Sivak & Gunderson, 2001).

Outside of New Zealand and most recently Ireland, where family group conferencing is a legal right, a number of phenomena have created interest in empowerment approaches that emphasize family and community capacity building (Schorr, 1993). In the United States, interest in family group conferencing can be attributed to the emergence of family-centered and strengths-based practices, the philosophical shift that protecting children is a shared responsibility among child protection agencies, communities, and families, and federal policies supporting family involvement in case planning (Merkel-Holguin, 1998; National Child Welfare Resource Center for Family Centered Practice, 2002).
A growing body of research and evaluation accompanies this emerging practice. In 2003, American Humane published a comprehensive volume of research and evaluation of family group conferencing in child welfare entitled *Promising Results, Potential New Directions*. The 25 studies highlighted—international in scope—employed multiple-methods and multiple-indicators evaluation strategies. While many of the studies were implementation evaluations, twelve focused on outcomes such as child and family safety, permanency, family functioning and child well-being. Eight studies utilized comparison groups as a way to determine whether or not there were any differences between children and families who participated in FGC and those who received traditional services. While more scientific and rigorous research is needed, the initial results of this meta-analysis suggest that FGC compares favorably to traditional child welfare practice.

The next sections of the article analyze the growth and adaptations of family group conferencing using a democratic and responsive regulation framework.

The Struggle Between Model Fidelity and Local Adaptation

Burford (2001) argues that there are negative consequences for social workers—and the clients they serve—when the agencies and organizations for which they work promote only formal legal, administrative, and expert-dominated solutions to problems of child maltreatment. According to Nixon et al. (2001, p. 27) “Family group conferencing has often been misunderstood as augmenting professional decision making rather than driving decisions themselves. The ambition to fit family group conferencing within the procedures, time scales, and assumptions of bureaucracies has relegated family group conferencing to secondary planning form or a rubber stamp for professional ideas. The net effect is that family group conferencing principles and philosophy are watered down to fit into mainstream orthodox practice.” In this way, bureaucracies sabotage family group conferencing.

As family group conferencing gains popularity in the United States, local communities are struggling to balance model fidelity and the adaptation of the approach to fit diverse contexts and cultures (Waites et al, in press). The concept of model varia-
tions fits with the principles of family group conferencing. It is a
democratic practice that relies on community strengths, cultural
diversity, creative thinking, and flexible resourcing to safeguard
children and families. That is not to say, however, that all varia-
tions are consistent with family group conferencing principles.

But what constitutes model drift and how can variations be
classified as either in-sync or out-of-step with FGC principles?
Pennell (2003) promotes the need for clear model definitions and
measurements. Developed for the North Carolina Family Group
Conferencing Project, a series of key principles and their associ-
ated practices for measuring model fidelity provides a framework
for helping communities determine whether variations support
or contradict FGC (Pennell, 1999). Using a comprehensive and
standardized key principles framework in concert with FGC the-
ories of community building, democracy and family leadership,
local communities, in partnership with its citizenry, should criti-
cally analyze the proposed variations to determine their congru-
ence with FGC principles.

The implementation of family group conferencing is at a
critical juncture worldwide. While over prescription of a model
conflicts with the practice philosophy, model variations that stray
from the key principles can equally damage a practice. In some
communities, powerful professional and organizational agendas
are colonizing the model for institutional and systematic gain. For
example, a few public child welfare agencies are structuring and
controlling FGCs to attain the benchmarks for system-imposed
outcomes, such as increasing the number of adoptions or chil-
dren living with kin. In an FGC, however, outcomes should not
be prescribed. That occurrence defies the responsive regulatory
nature of family group conferencing. The next section reviews
some of the adaptations, either intended or unintended, that com-
promise the inherent democratic and principles of family group
conferencing.

Comprehensive Preparation in the Pursuit of Democracy

It is the preparation phase of the FGC that supports the demo-
cratic ideal. Comprehensive preparation ensures that the wider
family, its support network, and the broader community have
information about the child maltreatment and the FGC process.
It is during this phase that the coordinator identifies and engages various participants, shows genuine respect for the family system, establishes trust, and strives to build a safe environment so the group can join together to create a plan that achieves child safety permanency, and well-being. Family members are positioned and encouraged to become active leaders in balancing accountability, responsibility, healing, apology, and remorse. A number of communities intentionally and strategically construct FGC processes in a way that family members and their support network outnumber professionals in attendance (Merkel-Holguin, Nixon & Burford, 2003).

Anecdotal evidence, however, suggests that inclusive and wide-ranging preparation is not always supported as part of the FGC process in the United States. High level of time and personnel resources required to prepare families; FGC coordinators' varying levels of comfort, skill, and expertise in preparing participants; and the unwillingness of systems to give family systems information are possible rationales for minimizing preparation of FGC participants. Independent of the reason, however, the result is that professionals and institutions maintain power, and the community-based thrust of this practice is absent. Family and community members' voices, perspectives, resources, and opportunity to take responsibility, are marginalized, the chance for the citizenry to revitalize representative democracy doesn't materialize, and the effectiveness of the responsive regulation is compromised.

Facilitation or Coordination to Achieve Democratic Principles?

In the 1990s, U.S. communities introduced numerous family involvement models that supported a spawning of practice variations. Research has long documented the importance of the coordinator in the FGC process (Paterson & Harvey, 1991; Maxwell & Morris, 1993). Yet, one of the most significant adaptations, not reviewed in the literature, relates to the structure and function of the coordinator role.

A number of US communities implementing FGC in child welfare intentionally created a structure where both a coordinator and facilitator have active roles in the conferencing process. The coordinator works to prepare the family for the FGC, and a
different professional facilitates the FGC. While the perception of neutrality is the main reason given to support this structure, are there unintended consequences in having different professionals with distinct responsibilities involved in the FGC process? Is the achievement of neutrality the most pressing need or is fairness more important? Increasingly, FGC practitioners caution that this bifurcated role may unintentionally harm families by compromising their safety at the FGC. When a family partners, engages, and builds a trusting relationship with a coordinator during the preparation phase, what is the family's perspective when another person with little or no information facilitates their FGC? The concern is that this structure encourages facilitators to pursue a more active, dominant role in the FGC process, thwarting the opportunity for family members to emerge as leaders and undermining the family's capacity to self-regulate.

In addition, there is increasing concern that model variations allow professionals to dominate the family group conference through prescriptive and subversive facilitation techniques. The Oregon Family Unity Model's information sharing stage is structured to facilitate a meaningful dialogue with all participants about the family strengths and the concerns that precipitated the FGC (Graber and Nice, 1998). While at first blush, this would appear to support key FGC principles, this strategy may benefit professionals more than families for a number of reasons. First, it can increase their control of a perhaps uncomfortable process where family members likely outnumber professionals by directing conversation toward a professional facilitator. Second, there is anecdotal evidence that suggests that facilitators' dogmatic adherence to this methodology increases their power to influence the meeting. Third, it gives professionals a sense, which may be unwarranted, that they are engaging in strengths-based practice with families by asking families and professionals to identify family strengths that can be harnessed to resolve the concerns.

Some research is showing that under this approach, the information sharing stage far outlasts private family time (LeCroy & Milligan Associates, 2002), thereby minimizing the opportunity for family leadership, participative democracy directed by families, and self-regulation. Another question to be asked is does this facilitated dialogue elicit private information from family
members with a myriad of professionals present? Even with a skillful facilitator, anecdotal evidence suggests that families divulge private information and unintentionally begin deliberating in the presence of service providers, thereby compromising their family deliberations.

While eliciting strengths and understanding a family’s perspective of the major concerns is important, can it be achieved during the preparation phase of the conference? Comprehensive preparation that embodies the principles of strengths-based practices, coupled with the information sharing stage as devised in New Zealand where the professional presents case information to the family, followed by an opportunity for any participant to ask questions, may better actualize the key FGC principles defined by Pennell (1999). According to Moore and McDonald (2000), in conferencing, it is the facilitator’s responsibility to safeguard the process to keep it true to principles of deliberative democracy. Family group conferencing is intended to give family members and their support networks a voice—thereby rebuilding their investment and say in issues that matter to them, and affording them an opportunity to forestall a formalized governmental response. It has the potential to move beyond being a family-centered practice to one that is family-driven. If communities implementing FGC believe and trust in families’ ability to safely create solutions based on their family’s culture, history and experiences, then an overly prescriptive and dominant facilitator or information sharing process may contradict the espoused FGC principles. Minimizing the facilitators’ presence and voice may better support the democratic nature and responsive regulation framework of family group conferencing.

The Impact of Professional Influence on Referral Practices

Nationwide, while family group conferencing is becoming an increasingly common practice, most FGC initiatives are marginalized by limited funding, administrative support, and staffing. This translates into few families having the opportunity to participate in FGCs. Professionals’ and systems’ selection of families to participate in FGCs requires analysis to safeguard against issues of domination and bias. Employing expansive selection criteria, some projects use FGC with a wide range of issues and severity
Family Group Conferencing as a Democratic Experiment

of cases (Burford & Nixon, 2003). At the same time, many projects struggle with social workers not referring families for FGCs. In addition, research from a number of communities suggests that a high percentage of families referred for FGCs do not move forward with the process, and that Caucasian families disproportionately participate in FGC when compared to minority populations. (Merkel-Holguin et al 2003)

Can social workers who themselves may be disempowered by system regulations and oppressive structures possibly practice in ways that empower citizens, that build collaboration, and that result in community responsibility for the protection of children in a responsive regulation framework? Numerous evaluative FGC studies strongly suggest that social workers are satisfied with FGC, including their level of say, voice, influence, perception of the conference as a positive experience, and assessment of FGC plans in promoting child safety and permanency. Other by-products of FGCs, reported by social workers, include reduced conflict with families and increased post-FGC service coordination. (Merkel-Holguin et al, 2003)

Social workers who refer few or no families to FGCs cite issues of confidentiality, liability, potential for increased workload, and a fundamentally different philosophy about child protection (Schmid & Goranson, 2003). FGC philosophies and processes confront the assumptions upon which services, organizations, institutions, and structures have been predicated since the welfare state emerged. It is unsurprising, then, if some social workers are unsettled by this practice. FGC redefines an entrenched perspective that social workers and service providers are the experts. Under the FGC paradigm, professionals play the role of information giver, community organizer, lender of their expertise, and resource provider based on family identified needs, contradicting decades of practices and beliefs.

At the outset, do decisions about referrals radically influence practice, and create a mechanism for child welfare systems to limit family processes of decision making and to continue decades of professional domination? Certainly referral practices require further review to guard against potential cultural bias and to understand why such a large number of families decline to participate in FGCs. It would appear that lack of system sup-
port of FGC practices from referring social workers and unclear referral policies, coupled with the minuscule number of families who can avail themselves to this practice in most areas are simultaneously converging to bolster professional influence on family group conferencing. Until FGC is propelled from the margins to the mainstream, and adequately resourced, these phenomena will likely continue to occur.

Perhaps, however, there is an opportunity for the community to shape FGC referral practices. When FGC is envisioned as a community process that re-establishes collective responsibility and builds a sense of shared commitment and collaboration, the community can also become a primary referral source. Bureaucratic, orthodox, and regulated systems can in essence be leapfrogged by the community’s engagement and participation in FGC processes. A few illustrations. Instead of families awaiting an invitation to participate in an FGC from a social worker, they would have the opportunity to self-refer. Or, a leader in a faith-based community could refer a vulnerable or at-risk family to participate in a restorative dialogue. Or, the role of coordinating a family group conference could be de-professionalized and/or rest within the community at-large. In effect, all of these strategies would actualize the community’s investment in FGC and help actualize participatory democracy.

Predetermined Outcomes

If the state’s role is to safeguard a process, and to ensure that decisions meet the standards for safety, permanency and well-being, then professionals using family group conferencing to coerce participants into making decisions that help systems but not necessarily families, promotes the antithesis of democratic and conferencing principles. This is often the case when the model is launched as a managerial strategy to contain costs or when communities equate family group conferencing and kinship care. Families must be given the latitude and flexibility—using their expertise, wisdom, and experience—to make decisions that ensure children’s safety and well-being. While increasingly the international data suggests that the vast majority of children who require out-of-home placement remain with extended family (Merkel-Holguin et al, 2003; Gunderson, Cahn, & Wirth, 2003; Litchfield,
Family Group Conferencing as a Democratic Experiment

Gatowski, & Dobbin, 2003; Crampton, 2003; Schmid & Goranson, 2003; Thoennes, 2003; Lupton & Stevens, 2003; Nyberg, 2003), families must also have the freedom to decide that non-familial out-of-home care is the best option for the child and their family. Predetermined outcomes usurp power from families and re-locate it within bureaucratic and professionally dominated and sophisticated child welfare systems, and in doing so, trample on the democratic principles of family group conferencing and the values of collaboration and partnership.

Children's Connection to FGC Processes

Should children participate in FGC processes where important, life-altering decisions are being made? The research suggests that children's involvement and participation varies considerably across FGC projects, and likely correlates to organizational and practice assumptions and cultural differences (Burford & Nixon, 2003; Sieppert & Unrau, 2003). FGC provides the opportunity to teach young children, at a young age, the value of civic participation. For example, by taking part in an FGC, participants are engaging in democratic deliberations and their contributions to the plan are a form of civic engagement. Also, when children and young people take part in the process, and observe the important adults in their lives positively and humanely participating in difficult deliberations, they are better prepared to become citizens contributing to a civil society. When family group conferencing is placed in a democratic context, it may be seen as impelling child welfare systems to discover ways to safely and effectively engage children as participants.

Community Involvement

Extensive community involvement in the design and implementation of family group conferencing is a critical element related to sustainability, but also one that actualizes it as a community-based practice. As described by Adams (2000), FGC is devised to work on two levels: changing relations and sharing responsibility between families and authorities, and also between the state and community. It is a practice that acknowledges that services and resources identified in plans should be closely
aligned with the real needs of those involved. By doing so, it clearly aligns itself with the theory of responsive regulation.

Moore and McDonald (2000) suggest that FGC processes expand beyond the nuclear and extended family to include the broader community. By creating or strengthening informal and formal networks, family group conferencing has the potential to build communities and social capital. In many instances, however, the broader community has not yet been engaged as partners in FGC development and implementation.

The potential role of the community in family group conferencing, however, is significant. According to the Merkel-Holguin et al (2003, 7), "the [summary of 25 evaluative] studies propose that FGC plans frequently include both family provided resources and supports and requests for services from a range of agencies. Many of the studies imply that FGDM does not diminish the need for formal services provided by statutory or community-based agencies and that FGC is not an alternative to providing quality services to children and families." In addition to providing resources, the community can play multiple roles including: serving on an advisory board guiding FGC implementation; attending conferences to listen to families' needs and match services accordingly; working collaboratively, based on families' perspectives and needs, to decategorize services and realign them if necessary.

FGC has the opportunity to revitalize the community's interest and responsibility and shared vision for protecting children and supporting families. However, there are two overriding concerns being generated from communities (Lupton & Nixon, 1999; Lupton & Stevens, 1997; Lupton 1998): 1) Family group conferencing is being implemented to minimize the public authorities' or broader communities' responsibilities, and family are expected to maximize their resources to implement their plans. 2) Typically, complex, bureaucracies are not flexible enough to meet the needs that families identify during conferences. In either case, inadequate or inappropriate resources can sabotage family plans. If communities pursue family group conferencing in a democratic context, then system collaboration and partnership with families are the hallmarks of practice that drive the engagement and service provision. Ultimately, families become the drivers of the services in the community.
Constructing a Social Movement for Family Group Conferencing

As the 21st century commences, new leaders are emerging and challenging commonplace child welfare practices and policies. One such legal scholar, Roberts (2001), provides a perspective that integrates issues of class, race and child abuse and neglect. She describes a cultural devastation in the United States not unlike the one that has been described to be occurring almost 20 years ago in New Zealand (Walker, 1996). In that democratic society, the victims were Maori. The child welfare system severed family ties and broke cultural bonds by removing indigenous children and youth from their homes and placing them in foster care at alarming rates. In reaction to the problem, a body of leaders formalized into policy a new way of working with families—indeed, it was family group conferencing.

Building Family and Community Leadership to Mainstream FGC

Pranis (2000, 48) suggested “democracy is undermined by dependence upon professional classes to analyze and solve community problems.” When child welfare decision making is driven by professionals or service systems, the opportunity to reconnect government to the people, to foster individuals participating in matters that are important to them, and to support democratic ideals of freedom, independence, and rights is lost. FGC affords social workers the potential for genuine partnership with families and the broader community in which they can collectively examine and create options to resolve the identified problems. A tenet of family group conferencing is that the broader family, community, and state—collaborating together—will generate more workable, comprehensive plans. This practice supports the quest for democracy by cultivating and respecting the various stakeholders’ voices and perspectives.

Social workers involved in FGC have the opportunity to support grassroots democratic processes that build family and community responsibility for protecting children and support responsive regulation. They can play a significant role in redefining good social work practice through the advancement of FGC; however, their ability to involve family and the broader community in FGC development, implementation and evaluation, will
likely provide a more robust, long-lasting result. Whether it be organized by families, communities, or professional groups, or through a collaborative effort, a social movement for FGC is a critical step to mainstreaming it as a practice.

In the context of CPS, responsive regulation requires that the state’s response to the abuse and neglect of children be differentiated according to a family group’s (or extended family’s) willingness and capacity to regulate itself to keep its most vulnerable members safe. The state holds back more coercive responses while family, professionals, and others involved collaborate to enhance the family’s own capacity for care and protection. Certainly, some of the FGC research is beginning to demonstrate that families can regulate their behavior in a way that maximizes child safety (Pennell & Burford, 2003; Gunderson, Cahn, & Wirth, 2003; Litchfield, Gatowski & Dobbin, 2003; Marsh & Crow, 2003; Wheeler & Johnson, 2003). Yet, while family group conferencing can appeal to both liberals and conservatives, albeit for different reasons, and while individuals can support the notion of differential response and involving individuals in matters that concern them, there is still a hesitancy to fully support the concept of self-regulation. The framework of responsive regulation, with its combination of empowerment at the base of the pyramid with ineluctable ascent to more coercive responses if that fails, provides a rationale for empowering families while carrying out more effectively the state’s responsibility for child protection.

Conclusion

Considering FGC in a democratic and responsive regulation context provides a theoretical construct to mainstream this marginalized practice. It challenges years of professional domination. It demands new strategies for engaging the citizenry as active participants in creating a community-based and responsively regulated system that protects children and supports families.

The growing appeal of family group conferencing reflects the energy, enthusiasm, and commitment of individuals to involve families in decisions that are of the highest level of importance to them. The mainstreaming of family group conferencing lies in a collective understanding of this model as a practice that supports the pillars of democracy, one that promotes self-regulation, and
one that fosters responsive regulation by encouraging differential response to families through individualizing plans to more closely meet identified needs. The question that looms is whether a social movement will be organized to replace current practices with ones that can strengthen families, protect children and rebuild communities.

References


Family Involvement Interventions in Child Protection: Learning from Contextual Integrated Strategies

DAVID STUART CRAMPTON
Case Western Reserve University
Mandel School of Applied Social Sciences

The use of family group conferencing and related family involvement interventions in child protection is rapidly increasing in the United States and many other countries. There is some concern that the child welfare field will travel down the same road as it did with intensive family preservation services; that is, tremendous enthusiasm later derailed by rigidly designed evaluations that showed unimpressive effects. The work of John Braithwaite suggests an alternative path for finding justifiable excitement about these interventions. Drawing upon Braithwaite's writings and ongoing evaluation research, this article suggests a few steps we can take towards an integrative strategy for developing effective family involvement interventions.

Key words: group decision making, program evaluation, child welfare, child protection, family involvement, C.P.S. interventions

The use of family group conferencing and related family involvement interventions in child protection is a rapidly growing practice around the world. For example, the number of communities in the United States trying Family Group Decision Making (FGDM) grew from five in 1995, to over one hundred by 2000; similarly, in 1994, four pilot programs began in England and Wales, and now fifty-five local authorities or nongovernmental groups have FGDM programs in those countries (Nixon, Merkel-Holguin, Sivak and Gunderson, 2001). Even as child welfare practitioners are eagerly implementing these programs, researchers are more cautious. For example, Whittaker asks: "While enthusiasm runs high, many questions remain: Will family group
conferencing meet the ultimate test of empirical validation in rigorous studies with appropriate controls?" (Whittaker, 1999, p. xv). While clearly stating his preference for more rigorous clinical trials, Barth concedes that: "the assumptions of family group conferencing are so compelling that variations on this practice will undoubtedly continue to develop without evaluation endorsements" (Barth, 2002, p. 201). Gelles is more critical in saying: "This service is being widely touted as effective and widely adopted without a shred of scientifically reputable evidence that this intervention actually works. This is an echo of what happened with Intensive Family Preservation Services" (Shirk, 1999, p. 18). Many researchers would agree that the potential of Intensive Family Preservation Services was hurt by an early push for a specific family preservation services model, called Homebuilders, when there was no evidence (pro or con) to suggest that this specific program model was effective (Adams, 1994). Therefore, with family involvement interventions it may be prudent to more quickly involve evaluation in the development of the intervention. On the other hand, some FGDM proponents are wary of evaluation research: "Research has, for the most part, been done by someone, to someone else, to produce data that was used by yet someone else. It was experienced as having mystical importance and complexity but very little practical value at best and at worst was a tool to justify the continued oppression of others" (Nixon, Merkel-Holguin, Sivak and Gunderson, 2001, p. 29). What is needed is an approach to family involvement research that is consistent with the intervention's values of community and family empowerment. John Braithwaite's work on restorative justice may provide some theoretical concepts (Braithwaite, 2002a) and a method for developing theory (Braithwaite, 1993) that could be useful in current efforts to use family involvement interventions in child protection. In this article, I describe some key ideas from Braithwaite's work and then illustrate their applicability using evaluation research of family involvement programs. Family Group Decision Making and Team Decisionmaking are discussed under a rubric I call family involvement interventions. Both of these models focus on a plan for the care and protection of a child that is developed through a meeting of child welfare professionals and the child's extended family in cases of child abuse and neglect. I chose to discuss these
models together because I believe they share many procedures and values with each other and with Braithwaite's restorative justice. However, I acknowledge that some proponents of Family Group Decision Making and Team Decisionmaking believe that these models are more different than they are similar. A person who is supportive of TDM and a person who is supportive of FGDM both read a previous draft of this article and both people questioned the validity of discussing these models together. My argument is that we should follow Braithwaite's contextual integrated strategy and explicitly identify differences and best practices in family involvement intervention both theoretically and empirically in order to determine the most effective ways to involve families in child protection. Comparing the models and discussing the differences helps us learn and improve our practice.

John Braithwaite and Restorative Justice

There is some concern in Family Group Decision Making that the practice has outrun the development of relevant theory (Burford and Hudson, 2000). One possible solution to this perceived problem is to look towards theory from related practices such as mediation and restorative justice. Following this strategy, there is considerable interest in the work of John Braithwaite within the Family Group Decision Making field. For example, he was asked to deliver the Closing Address at the 2002 Family Group Decision Making Roundtable held in Monterey, California (Braithwaite, 2002b). This special issue of the *Journal of Sociology and Social Welfare* further suggests that his work has broad appeal within social welfare.

Braithwaite has written extensively on both business regulation and criminology and recently brought these two areas of research together (2002a). In this latest work, *Restorative Justice and Responsive Regulation*, he suggests a theoretical approach to addressing a wide range of social problems and to improving democracy itself. Simply put, restorative justice is a process in which stakeholders come together to resolve a dispute. The specific organization of this process is less important than its core values, which include healing rather than hurting, moral learning,
community participation and community caring, respectful dialogue, forgiveness, responsibility, apology, and making amends (Braithwaite, 2002a). The key point here is that the values emphasize restoring whatever was disrupted in the dispute. In the case of a crime, ideally the victim's sense of control is restored through an apology from the offender. However, Braithwaite insists that this does not mean restorative justice should require the offender to apologize. It is the values rather than the mechanisms which must be implemented. Similarly, responsive regulation is not a clearly defined program or a set of prescriptions concerning the best way to regulate. Braithwaite argues that the best regulatory strategy depends on context, regulatory culture, and history (Ayres and Braithwaite, 1992). Braithwaite illustrates his approach with a regulatory pyramid. At the base of the pyramid are those regulatory
approaches that should be used first and most often. When these restorative approaches fail more confrontational means are necessary. Regulators should move from the means at the base of the pyramid up towards the point only when restorative processes are not working to elicit reform and repair.

Braithwaite then combines restorative justice and responsive regulation to suggest that, in a wide range of legal and policy concerns, we should begin with a restorative approach, and move to more confrontational practices only when restorative practices are not producing resolutions. For example, he applies this framework to world peacemaking.

Following arguments made by Desmond Tutu and others, Braithwaite suggests that securing peace in regional conflicts such as

![Responsive Regulatory Pyramid for International Diplomacy (Braithwaite, 2002a).](image)
as in the Middle East, South Africa, and the former Yugoslavia requires the use of restorative processes that convince people that their human rights are respected and that give them an opportunity to mourn and forgive (Braithwaite, 2002a). He cites the South African Truth and Reconciliation Commission as an example of bringing restorative practices to the grassroots level where they must be employed in order to promote sustainable peace. The pyramid illustrates that economic sanctions or military interventions should only be used when restorative processes have failed.

For those who are concerned that current family involvement interventions in child protection are under-theorized, Braithwaite's work provides both useful theory and a useful model for thinking about theory development and evaluation research. The next section describes Braithwaite's approach to evaluation research and its congruence with the evaluation of family involvement interventions. The paper concludes with a discussion of how to use Braithwaite's theory to advance the use of family involvement interventions.

The Role of Theory in Program Evaluation

Modern social program evaluation emerged during the Great Society of the 1960s, when there was a dramatic increase in social program spending and a corresponding demand for evaluation of these programs (Shadish, Cook and Leviton, 1995). This demand supported the development of evaluation as a profession. Social scientists who have taken on this work come from a wide variety of training and backgrounds, which has resulted in a lack of unified theories of how to evaluate programs. Early program evaluation guides focused on outcomes and quantitative analysis, while more recent ones have included process and qualitative methods. This shift has resulted in debates in the evaluation field about whether quantitative methods are superior to qualitative methods and whether positivist theories are superior to interpretivist theories. There are similar debates in the field of social work regarding which methods and epistemologies are best suited for social work inquiry (Allen-Meares and Lane, 1990; Ristock and Pennell, 1996). Lin (1998) suggests that a positivist approach seeks
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to identify those details with propositions that can be tested or identified in other cases, while an interpretivist approach seeks to combine those details into systems of belief whose manifestations are specific to a case. Lin further suggests that both approaches are useful in program evaluation because we need to demonstrate that policies have their desired effects with positivist analysis and demonstrate how they work using interpretivist analysis.

Braithwaite's theories are developed in a broad array of empirical investigations of occupational safety, nursing home regulation, consumer protection, and criminal justice. In a 1993 article, he describes the contextual integrated strategy he uses to contribute to better public policy in these numerous domains (Braithwaite, 1993). Braithwaite's approach to the positivist vs. interpretivist debate described above is eclectic (Braithwaite, 1993). He agrees with interpretivists who believe a theory developed in one context cannot be willy-nilly applied in another and that we are unlikely to discover universal theories of say, crime prevention. However, he also argues that theories developed in another context can be useful metaphorically for thinking about a new problem in a new context in different ways. He suggests that his approach to theory is similar to those of Allison (1971) and Morgan (1986). An example of Braithwaite's use of metaphorical theory is the pyramid described above.

While using theory as interpretivists do, Braithwaite still sees a role for positivistic quantitative methods in testing key claims of a theory: “one should definitely be discouraged in one’s support of a particular element of an integrated long-term strategy if all the evaluation studies show that in the short term, this element never makes any difference” (Braithwaite, 1993, p 388). Or to put a positive spin on this, if one finds a statistically significant relationship between certain offender behaviors during a restorative justice conference (e.g., expressing remorse) and reductions in their future criminal behavior, this information is very helpful in improving the intervention and the theory behind it (Morris, 2002).

Finally, Braithwaite's contextual integrated strategy combines metaphorical theories and positivistic research through the engagement of key stakeholders from the context in which one is developing the intervention. He suggests we take the theories
and the results of previous research and discuss them with the stakeholders from the community that is developing an intervention and learn from the community members the extent to which the theories and findings are relevant to their own community context. Then we develop a specific intervention strategy that is responsive to the stakeholder discussions of the theories, the previous research findings, and the specific community context. Lastly, the stakeholders would participate in the implementation of the intervention and the researcher’s efforts to monitor the implementation.

Applying These Ideas to Family Involvement Interventions in Child Protection

Following the methodology described above, those aspiring to develop family involvement interventions for child protection would begin with Braithwaite’s theory of restorative justice and responsive regulation. The restorative values he describes can be used to discuss the values that will drive the effort. Each community considering the use of family involvement interventions in child protection should review Braithwaite and his critics to think about which restorative justice values are applicable to child protection in their own community. For example, what is the role of apology, remorse, and shame in this process (Van Stokkom, 2002)? Family meetings are an emotional process and it is useful to discuss which emotions may emerge and how they can be used to facilitate child and family well being.

Braithwaite’s pyramid can be used to think about the context of the intervention and under what circumstances it will be used. His pyramid also highlights the importance of not simply starting yet another new program. As Adams and Krauth point out: “There is a strong tendency in American human service systems for innovations such as family-based services to take the form of discrete packages of services produced for sale on the human services market. Innovative approaches to practice tend to become reduced to specific programs. Although there are attempts to reform whole systems toward family-based practice, the stronger tendency is for such work to be isolated in specialist units while the rest of the system continues largely unchanged”
(1995, p. 92). Instead, family meetings can be used in a broad context of community- and neighborhood-based accountability. For example, Team Decisionmaking is one part of the Annie E. Casey Foundation's Family to Family Initiative which also includes strategies to recruit and support resource families and community partnerships as well as self evaluation procedures for determining how well the entire reform effort is working (DeMuro and Rideout, 2002).

By placing family meetings in the middle, rather than the base of the pyramid, I hope to clarify the role of family meetings in child protection. Prantis (2000) suggests that conferencing can strengthen or weaken community cohesiveness and sense of efficacy. Family meetings can be part of a broader effort to reinforce mutual accountability and responsibility or it can become another way professionals undermine community by creating dependence on formal services to solve community problems. Prantis is concerned that, for example, "community members have increasingly removed themselves from taking responsibility for the behavior of children and youth in public places" (p. 46) and that we need to ensure that family meetings reinforce rather than undermine a restoration of this sort of community accountability for children and families. Similarly, Braithwaite and Strang (2002) suggest that there should be synergy between public and private regulation and that we should simultaneously strengthen the regulatory capabilities of families, communities, non-governmental organizations and the state with respect to family violence. The American Humane Association's Front Porch Project is an example of an attempt to bring back this community response to child welfare (Wilmot, 2002). TDM is another example in that it is always implemented along with other Family to Family strategies that include strengthening community involvement.

Consistent with Braithwaite's pyramid metaphor, families and communities can move up and down the pyramid in Figure 3 as they demonstrate their capacity to care for children. Ideally, over time, professionals would be convening fewer meetings because the community would be organizing the meetings and other forms of support themselves. Family meetings would be convened when community accountability is not sufficient to keep a child safe. Initially, these family meetings could be used
Formal Foster Care Services, potentially including termination of parental rights

Family meetings used to remove children from their parents and place them with extended family

Family meetings used to keep children safely with their current caregivers

Community- and Neighborhood-based Accountability

Figure 3
A Responsive Pyramid for Child Protection and Out-of-home care.

to keep children safely with their current caregivers (parents or guardians). Under more serious circumstances, family meetings can be used to place children with their extended family or possibly into formal foster care. In limited (ideally) circumstances, formal foster care services would be used to make placement decisions and provide services that could include the termination of parental rights and adoptive placement. Following Braithwaite's responsive regulation, the level of state intervention would depend on the ability of the families and communities to "regulate" themselves. Communities considering the implementation of family meetings can use this pyramid to discuss how these interventions could be useful in their own contexts.

Following Braithwaite' suggestions for positivistic inquiry, quantitative studies of other family involvement programs and
ongoing analysis of the implementation of a new family involvement program can inform the development of the intervention. For example, many communities question the appropriateness of family involvement interventions in families that have a history of domestic violence or child sexual abuse. An evaluation of a FGDM program intervention in the eastern Canadian province of Newfoundland & Labrador suggests when and how family meetings can be used in these cases (Pennell and Burford, 2000). This is not to suggest that family meetings should always be used in cases of domestic violence or child sexual abuse, but the study may help communities consider whether they can make it work. Simple quantitative analysis can also be used to evaluate the implementation of a program. My own work includes the evaluation of a FGDM program that initially served African American, Asian American, Hispanic, and Native American families (Crampton, 2001). When the program was expanded to serve all families regardless of ethnicity, the level of program participation dropped. The FGDM staff suggested that Caucasian families were less willing to try FGDM than other families. A simple bivariate analysis confirmed that African American families were more willing to try FGDM than Caucasian families. However, in a multivariate analysis, race and ethnicity were no longer significant. Whether families had extended family members who were willing to participate was a better predictor of FGDM participation than race and ethnicity. This simple positivistic analysis helped the staff look for alternative explanations for the drop in program participation. An alternative theory suggested that the expansion of the population served without a corresponding increase in program resources, prevented the staff from fully exploring family resources and therefore limited the effectiveness of the program. Recent preliminary analysis of Team Decisionmaking in Cuyahoga County, Ohio (which includes Cleveland) suggests that children are more likely to be placed with relatives rather than in foster care when relatives attended the family meeting. While this finding may seem self evident, the results highlight for staff the importance of getting relatives to the meeting.

Braithwaite’s approach to involving stakeholders in the evaluation of business regulation and criminal justice is consistent with many of the early evaluations of Family Group Decision
Making. For example, the evaluators of the FGDM program in Newfoundland-Labrador described their approach as follows:

The study used a collaborative action research approach which was viewed as congruent with its philosophy of forming partnerships. The study was designed: (a) collaboratively by involving a range of project participants as well as external consultants, (b) sequentially by drawing upon learning from earlier phases of the project, and (c) formatively by revamping procedures on the basis of feedback from participating families, community representatives, government officials and project staff (Burford and Pennell, 1995, p. 7).

Family involvement evaluators can combine quantitative and qualitative data and review it with program participants in this process to develop the program theory, test how well the program works under the theory, and then use the results to build support for resources for the program. Given the emphasis that Family Group Decision Making places on “widening the circle,” it is not surprising that this approach to evaluation is often used in FGDM and Team Decisionmaking. Pennell, following her Canadian FGDM work, is now taking these lessons to her North Carolina FGDM project and following the same process (Pennell and Weil, 2000). Communities that are using Team Decisionmaking as part of the Casey Foundation’s Family to Family Initiative also have a self evaluation process that helps the key stakeholders focus on how Team Decisionmaking works and how it can improve outcomes for families (DeMuro and Rideout, 2002).

Next Steps

Given the extensive enthusiasm for Family Group Conferencing and related family involvement interventions, there will be some suggestions to begin rigorous clinical trials. I believe this would be a mistake. There is a need for additional work in developing the theory behind these interventions and understanding how they should be adapted in different contexts following the writings of Burford, Braithwaite, Pennell and others. After using the contextual integrated strategy described above, we can move towards randomized trials just as Braithwaite and his colleagues began randomized trials of restorative justice programs.
in Australia after they completed contextual integrated theory building research on these programs.

Evaluating the Essential Elements of Family Involvement Interventions

A contextual integrated strategy for developing family involvement interventions should focus on evaluating the benefits of what are perceived to be the key elements of the intervention. Some Family Group Decision Making advocates have identified three essential elements of the practice: quality preparation time prior to the meeting, private family time during the meeting, and not prescribing the decision prior to the meeting (Mirsky, 2003). While there does not appear to be anything inherently incongruous in making these prescriptions, there is again an unfortunate parallel with the experience of Intensive Family Preservation Services. The Homebuilder's model of Intensive Family Preservation Services has a very explicit intensity (2 cases per caseworker) and duration (four to six weeks). Evaluations of these services suggest that this is not necessarily an appropriate programmatic design. For example, evaluators of the Illinois family preservation program concluded that the program design was unrealistic due to the difficulties with targeting and the severity of the issues faced by the some of families served (Schuerman, Rzepnicki, and Littell, 1994). Although families in the treatment group in this study received more intensive services compared to families in the comparison group, the short-term nature of the services often prevented the families from getting what they needed. The evaluators pointed out that while the staff was supposed to involve the extended family in case planning, in practice workers said they were reluctant to do so because it would heighten complex family dynamics that could not be managed with time-limited services (Schuerman, Rzepnicki, and Littell, 1994). Following Braithwaite's approach, this finding would not suggest that family preservation services should not be limited to six weeks, but it would suggest that stakeholders discussing the use of these services should consider the trade-off in potential benefit of intensive services vs. the time demands of involving extended
family members in case planning. In a similar way, we should examine the research related to preparation time, private family time, and decision making authority in family involvement programs to see what lessons can be drawn and reviewed in places that are considering implementing similar programs. In the following sections, I review each of these three key practices using Braithwaite's strategy: what is the theory behind the practice? What does the research show about this practice? What is the perception of the stakeholders of this practice?

Preparation Time

FGDM advocates are understandably concerned that there will be attempts to start FGDM programs with insufficient resources, that these programs will then not produce the potential benefits of FGDM, and that therefore the reputation of FGDM will suffer. One way they attempt to ensure program integrity is to insist that FGDM must include quality preparation time, which is described as 20–25 hours on average (Mirsky, 2003). Preparation time is therefore a key distinction between these models: "Without thorough and intensive preconference planning, the FGC approach reflects more traditional case-planning methods" (Merkel-Holguin and Ribich, 2001, p. 203).

Research on FGDM suggests that preparation time is often extensive and that participants believe that preparation time is important for exploring family resources and beginning to change the relationships between family members and child welfare professionals (Marsh and Crow, 1998). To my knowledge, there is yet no research which demonstrates that preparation time produces these benefits or that preparation time improves outcomes for children and families. As stated above, my research showed that expanding the population served by an FGDM program without a corresponding increase in program resources, prevented the staff from fully exploring family resources and therefore limited the effectiveness of the program (Crampton, 2001). Clearly, program resources are important in making family meetings work. However, I did not find that preparation time itself was correlated with the primary goal of the program which was to divert children from foster care into kinship care (Crampton, 2001).
that study, preparation time was measured in terms of both the number of days from referral date to the meeting date, and the number of hours FGDM staff logged as preparation for the specific case between those dates. The average number of days was about eighteen and the logged preparation time averaged eight hours. Preparation time was slightly higher and number of days lower for meetings that developed a diversion plan, but these differences were not statistically significant. The Calgary FGDM pilot found that preparation time averaged seven hours (Sieppert, Hudson and Unrau, 2000). The Calgary researchers noted that Ban (1996) suggests that preparing for conferences takes approximately four times as long as actually having them. In my study, meetings averaged two hours and preparation time was eight hours, so these findings are consistent with Ban’s observation. This would suggest that preparation time in the program was consistent with some standard FGDM practices, but preparation time was not significant in predicting which families developed a diversion plan.

Undoubtedly, preparation time is important in family involvement interventions. However, prescribing a specific amount of preparation time, without empirical support, is misleading. In a review of a Cedar Raids, Iowa application of a family-centered practice called Patch, the researchers points out that: “Patch need take no more time than conventional practice, but it does require that time be used differently” (Adams and Krauth, 1995). It may be possible that family meetings, organized one at a time, are very time intensive and require 20 hours to adequately prepare. However, if family meetings are organized in a larger context, such as the one illustrated in Figure 3, a structure of community and family support may be readily available thus making the organization of family meetings much faster. Family involvement interventions explored through contextual integrated strategies, may suggest whether this is a viable approach to organizing family meetings.

Private Family Time

The second essential element cited by some FGDM advocates is private family time (Mirsky, 2003). During private family time,
after hearing from the professionals what their concerns are, the family is left alone to develop a plan. Many FGDM proponents regard private family time as an essential element: "Without private family time, research shows and history documents that power will not be shared, and the imbalance will persevere (Merkel-Holguin and Ribich, 2001, p. 211). Insisting that family involvement interventions must include this element is a potentially contentious requirement because two widely used family involvement interventions, Family Unity Meetings in Oregon and Team Decisionmaking in the Casey Foundation's Family to Family Initiative, do not routinely use private family time. Does this mean that these interventions do not empower families? In order to answer this question, we need to compare programs with and without private family time. While definitions of empowerment are illusive, some FGDM researchers have suggested evaluating FGDM's ability to empower families by whether programs can produce successful outcomes (Lupton and Nixon, 1997). Thus far, we have no outcome evidence that proves the value of private family time. Proponents of private family time say that it turns the decision making over to the family, gives them a sense of control, and symbolizes that the family is in charge (Mirsky, 2003). It would be useful to ask family members who participate in family meetings if they agree with these stated benefits.

An ongoing evaluation of Team Decisionmaking in Cuyahoga, County, Ohio is examining a related issue. In this case, staff are concerned about a tendency for some staff to step out of the room and consult with each other about a case without the family's participation. To evaluate this practice, the staff is asked to record how often this occurs and write a brief explanation of why it was necessary for someone to leave the room. Preliminary results suggest that someone left the room in only about eight percent of the meetings. The explanations show that sometimes people left the room for legitimate reasons unrelated to staff discussions (e.g. 'went to the bathroom,' 'feeding the meter,' 'infant being born'). Interestingly, it also includes examples of the family being left to discuss the case on their own without the professionals in the room. As suggested by Braithwaite, collecting this information, discussing it with staff, and linking it to outcomes will help us understand whether variations in attendance during
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the meeting are potentially important to the outcomes for children and families.

Prescribing Outcomes

Finally, FGDM advocates believe it is important that the facilitator of the meeting not prescribe the outcome (Mirsky, 2003). The question of who is making the decisions and when the decisions are made is a controversial issue in the family involvement field. For example, Team Decisionmaking consultants have written: "While team decisionmaking shares the same fundamental philosophy and values and is similar in participants and process, it differs significantly from family group conferencing. In team decisionmaking, the group is convened for the specific purpose of making an immediate placement related decision-and the process is used for each and every such decision faced by the public agency in its daily work. The public agency shares but does not delegate its responsibility to make critical placement decisions. Team decisionmaking therefore tends to be a high-volume and emotionally charged process which requires highly skilled agency staff to serve as facilitators" (DeMuro and Rideout, 2002, p. 12, emphasis added). In Team Decisionmaking, a high value is placed on involving families in decision making, however the primary concern is child safety. Bartholet, author of Nobody's Children: Abuse and Neglect, Foster Drift, and the Adoption Alternative, is explicit in saying: "If social workers are approving most of the family plans, I find it very troubling, because it says to me that what FGDM is about is near total delegation of decision making by the state to the family" (Shirk, 1999, p. 18). Usually in an FGDM process, the professionals are not supposed to be directing the family decision making; however, the social workers have an essential and significant role in both the preparation and the follow-up to the meeting. In addition, contrary to Bartholet's statement, typically the referring social worker must approve the family's plan, based on safety and permanency criteria, so it is not an abdication of decision making to the family, but a sharing of it.

While FGDM proponents typically clarify that social workers can veto a family's plan, they also suggest that families are
making the decisions and that it is problematic to use FGDM to achieve a prearranged outcome. For example, Merkel-Holguin (2000) argues that:

While family group conferencing provides families of origin and communities with a process to share decision-making authority with formal child welfare systems, it does not prescribe an outcome. In the United States, a troubling phenomenon is occurring in an increasing number of communities that, to receive much needed political support to initiate family group conferencing, are casting this approach as a cost-savings or containment mechanism, or one that results in certain outcomes. When this occurs, the intent of family conferencing is lost (emphasis added, p. 229).

Before an FGDM program makes the claim that they are not prescribing the outcomes, they should carefully review their referral process and examine which families are referred to an FGDM and which are not. In the United States, typically the public agency social worker most intimately involved in the case refers the case to an FGDM program (Merkel-Holguin and Ribich, 2001) and therefore, presumably also has the power to not make a referral. Although this FGDM selection process has not been fully explored in British studies of FGDM (called Family Group Conferencing or FGC), researchers from England suggest that there is evidence "that professionals retain considerable control over whether and which families are offered the choice of a FGC" (Lupton and Nixon, 1999, p. 119). Even if social workers are not prescribing outcomes in FGDM, if they have the power to decide who gets an FGDM, they do have considerable control of the outcomes. As Stevens (2003) points out: "Family Group conferencing involves a professionally initiated arena where families contribute to decisions about the future of their children, which represents a particular balance of control over decision making. While families make plans and decisions, professionals define and raise the specific issues to which families are responding" (p. 34).

Although the concern about who is making the decision may be important, it is difficult to develop a means of measuring it. In my study, we asked the FGDM staff to record the family's reaction to the child maltreatment report and the recommendation to
remove the children from their caregivers (Crampton, 2001). Generally, this section is a few sentences long and indicates whether the family asked any questions about the investigation findings and whether they agreed with what was said. Family members typically agreed that the children needed to be removed, but they often asked questions and had different perspectives on the specific concerns. The study found that families who agreed with the initial removal decision but asked clarifying questions were more likely to develop a diversion plan. This is consistent with other studies showing that information sharing can be important. In Newfoundland-Labrador, they found that information sharing is critical: "The impact on the family of hearing the facts with everyone present in the room was regarded as a significant milestone in the reunification process. . . . the few exceptions being where the presentation was ‘preachy’ in the words of one researcher and in one case where a presenter was described in the evaluation by several participants as ‘arrogant’ (Burford, Pennell, MacLeod, Campbell and Lyall, p. 43).

In my study, families completed a seven-question survey immediately after the family meeting. A convenience sample of 156 surveys from forty-one meetings showed that the families were positive about the FGDM staff, fairly positive about the FGDM program and process, less enthusiastic about the role of the investigating Child Protection worker, and positive but sometimes disappointed by the outcome of their case. When social workers and families were engaged with each other in the process, they were more likely to develop a diversion plan. For example, those families who developed a plan were more likely to strongly agree that the coordinator shared necessary information and that they were given the information they needed to make a decision.

These observations of family members' reaction to the process and their responses to surveys seem to suggest that it is the sharing of information back and forth between the facilitator and the family that is important in reaching a collective decision. This may mean it is less important to determine who made the decision than to determine whether everyone felt they contributed to the decision. Burford and Pennell (1995) developed an instrument to measure meeting participants' perception of the amount of
influence or "say," all the participants had in the meeting. This instrument was also used in a study of Family Unity Meetings in Oregon (Rockhill and Rodgers, 1999). The Oregon study suggested that a significant number of family members felt they had sufficient involvement in the decisions and the study identified a number of family meeting practices that seemed to improve the amount of say participants felt they had. For example, when a series of family meetings were held, the participants felt that their amount of say increased (Rockhill and Rodgers, 1999).

The findings summarized above begin to provide some ideas regarding the significance of preparation time, private family time, and decision making authority. Following Braithwaite's approach, communities developing family involvement interventions should review the theories related to these and other family involvement practices, the research findings on these practices and consider the applicability of this theory and research to their own community. While some stakeholders groups may reach similar conclusions about previous family involvement work, we would continue to expect to see variations in family involvement practice across communities. When we achieve some consensus around which practices are critical, we can then consider rigorous clinical trials that can demonstrate the efficacy of this approach. This follows the suggestions made by Wells (1994) that family preservation services research should place greater emphasis on connecting program design with theory and then, after the theory is developed, evaluate the links between the conceptualization of child welfare problems, causes, and their treatments.

Family Group Decision Making and related family involvement interventions are part of a larger debate about the role of the community and the role of the state in addressing cases of child abuse and neglect. In the United States, the child welfare system does not have sufficient resources to respond to all calls received from people who are concerned about the treatment of children by their parents (Faller, 1985; Lindsey, 1994; Schorr, 1997). The consequence of this dilemma for public child welfare managers is either to focus limited resources on the most severe cases or attempt to secure additional resources by developing partnerships with organizations and people who are willing to help in cases of child maltreatment. Adams (2000) describes
these alternatives as a debate between the neostatist approach and the community-based approach to child welfare services reform. The neostatists believe state intervention should place a greater emphasis on adoption as the best option for children who are maltreated (Bartholet, 1999). The community-based approach emphasizes partnerships between families and communities to address child maltreatment (Waldfogel, 2000). Adams (2000) cites Family Group Decision Making as an example of this community-based approach. FGDM aspires to fundamentally change current child welfare practice and change it in a way that is very different from neostatist reform proposals. Not surprisingly, neostatists, like Elizabeth Bartholet (1999), are highly critical of FGDM and there is already a "backlash" against FGDM. Research following the methods of Braithwaite and others, can help provide a response to this backlash. Family involvement interventions appear to be a useful way to bring more community resources to the problem of child maltreatment. In order to demonstrate and promote their use, we should avoid the difficulties posed by the family preservation services movement and follow the path suggested by Braithwaite.

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References


Family Involvement Interventions


Families and the Republic

JOHN BRAITHWAITE
Australian National University

Restorative and responsive justice can be a strategy of social work practice that builds democracy bottom-up by seeing families as building blocks of democracy and fonts of democratic sentiment. At the same time, because families are sites of the worst kinds of tyranny and the worst kinds of neglect, a rule of law is needed that imposes public human rights obligations on families. The republican ideal is that this rule of law that constrains people in families should come from the people. Restorative and responsive justice has a strategy for the justice of the people to bubble up into the justice of the law and for the justice of the law to filter down into the justice of the people. The role of the social worker is to be a bridge across which both those democratic impulses are enabled to flow. The empowering side of the social work role fits the first side of the duality where the will of families bubble up; the coercive side of the social work role fits the second where the justice of the law filters down.

Key words: social work, responsive regulation, restorative justice, democratic theory, families, social justice

Social Work and Structural Justice

My thanks to the contributors to this special issue for a thoughtful and gracious set of contributions. When they arrived from Paul Adams he apologized that there was too heavy an emphasis on families and child welfare, bearing in mind the way Restorative Justice and Responsive Regulation (Braithwaite, 2002) ranges across all domains of law, business regulation and even peacemaking in international relations. When I was a young sociologist, social work was not my favorite discipline because it seemed to focus too much on micro-solutions, pejoratively referred to as band-aids, to problems of injustice that require structural solutions.
my energy was directed to studying questions like *Global Business Regulation* (Braithwaite & Drahos, 2000), the role of the IMF and the WTO, how tax administration can become more effective in getting rich individuals and powerful corporations to pay their fair share of tax to support the welfare state, and the like. Some of our responsive regulatory initiatives in Australia to persuade multinational corporations to pay some tax seem to have been surprisingly effective (Braithwaite, 2003), so it is important not to neglect this part of our work.

We expect social workers to prioritize work with families, but we can be surprised when evidence-driven tax administrators do so. An intriguing development has been that a senior tax official seconded to our research group, Jenny Job, together with her colleague Monika Reinhart, has found that families hold the key to tax compliance! This research (Job & Reinhart, 2003) set out to test Robert Putnam's (2000) influential thesis that social capital and trust in government is driven by civic engagement and associational membership. Their AMOS analysis on survey data from 1,999 Australian taxpayers produced a rich texture of results the complexity of which I will not try to summarize. But the basic result was that civic engagement of various kinds—from not bowling alone, to volunteering, to political activism—had only minor effects on trust in government institutions, including the Australian Tax Office. Trust in family and friends (workplace colleagues really) is what drives their model. If you learn trust in your family, or failing that in your workplace, you trust strangers more, you trust other government institutions more, and these work through to higher trust in the tax authority. Perhaps it is perverse that we sociologists should be surprised to learn that families are much more fundamental than bowling leagues to social capital formation and the cultivation of habits of citizenship that enable the functioning of institutions like taxation that are so fundamental to redistribution of wealth from rich to poor.

As Kristin Kelly (this volume) says, partnerships with community organizations are still important and are here to stay; there are good reasons why these partnerships help secure improved effectiveness and decency in how we pursue important public purposes, from the protection of children to the environment. But what a mistake for Braithwaite the young sociologist to fail to see
that it is in families that most of us learn most of what equips us
to be effective democratic citizens in community organizations.
The New Zealand innovation of family group conferences is not
merely something the evidence now shows to have promise as
a way of confronting crime, delinquency (see Braithwaite, 2002;
Latimer, Dowden & Muise, 2001; Nugent, Williams & Umbreit,
2003) and the care and protection of children (see Neff, this vol-
ume; Merkel-Holguin, this volume; Pennell, this volume), it is
a strengths-based strategy for restoring families as a fundamen-
tal building block of strong democracies. Children are not born
democratic. They must learn to be democratic citizens—to listen,
deliberate, support others when their rights are abused, speak
out against injustice (Barber, 1992). For most of us these are gifts
of deliberative competence induced by participation in healthy
family decisionmaking. Many who miss out on these gifts in their
family lives learn them in schools that give children a voice. And
some who miss out in both these institutions are lucky enough to
get a job early in their life in a democratic workplace. The bowling
league and other civic associations matter, but are thin reeds
compared to family-school-workplace as pillars of education for
democracy. If the most important pillar of the three is the family,
then the social work road not taken by many young sociologists
of the 1970s was not a band-aid on deeper societal sores, but one
important path to healing wounds at their source.

David Moore shows in his contribution to this volume that
conferences are structured to “get to peace” before they seek to
“get to yes” (Fisher, Ury, & Patton, 1991). This helps us see why
restorative and responsive peacebuilding has an important con-
tribution to make in societies in the process of putting down their
guns to recover from armed conflict. In peacemaking contexts like
the Bougainville civil war (in Papua New Guinea) we can see how
New Zealand-style conferences adapted to Melanesian traditions
are playing a major role in securing the peace (Howley, 2003).
Empirical research on what works and what hinders care and pro-
tection and juvenile justice conferences will help inform how we
can heal the wounds of children traumatized by atrocities against
their parents in a war, how we can help in dissuading them from
wanting to restart the war to avenge their family’s suffering in the
next generation. By connecting the work of our micro-research
and practice community to the peace movement we inspire our mundane work with that wider significance. By connecting the peace movement to the social movement for restorative justice we can show peace activists a small way of acting locally to teach the young how to be democratic through their personal participation in protecting their sibling or mother from abuse, in how to protect their friend from being bullied in the school playground (Morrison, 2004). The peace movement can show the social movement for restorative justice how to make the personal political; just as restorativists can show the peace movement how to make the political personal, how to act locally in a way that gives our global aspirations for peace a more holistic grounding in the relationships that daily preoccupy us.

We get to peace before we get to yes by seeing conflict resolution as about the transformation of relationships rather than just bargaining over interests. Mediation reduced to doing deals does not offer up human relationships that are infused with integrity, that enable the trust and the social capital formation that Putnam (2000) rightly saw as fundamental to a flourishing democracy and economy. The evidence from observational studies is increasingly consistent with Moore's (this volume) observations that open expression of affect and a process that is shaped by the participation of stakeholders rather than by professionals is critical to the success of restorative processes in achieving the purposes they set for themselves.

Caring for Children

Lisa Merkel-Holguin (this volume) shows the rapid growth of child protection, as opposed to juvenile justice, family group conferences from existing in five US communities in 1995 to over 150 by 2000, from 4 pilot projects in England and Wales in 1994 to 97 local programs by 200. While most of these programs are not the mainstream in their locality, the spread has been surprisingly rapid intra-nationally and internationally across at least 20 nations. Merkel-Holguin suggests that a lot of the appeal of family group conferences has been their fit with the idea of strengths-based interventions. The notion of building out from the strengths of children and families in turn fits with the aspiration of bottom-
up education for democracy, a theme nicely developed in Merkel-Holguin's essay.

Yet the family group conference is not a pure deliberative democracy. Sometimes, as Joan Pennell (this volume) implies, the social welfare professional must enter the conference by communicating a clear "bottom line" such as securing the safety of a particular at risk child from a particular threat. Whether emphasizing "bottom lines" up front is the most effective way of securing safety is a question on which we have no empirical evidence as far as I know. What I would want to assert is that there is nothing wrong in democratic principle with "bottom lines" so long as they are bottom lines that are clearly demanded by a law voted through a democratic legislature. Bottom lines that enforce a standard that is not a legal obligation of families, that enforce merely a personal or programmatic preference of the professional, are democratically unacceptable. Whether up front through bottom lines grounded in human rights law or after the event in court decisions that overturn conference outcomes that abuse children's rights, a democracy will not be a democracy unless it builds in checks and balances against tyrannies of the majority, especially when the majority are adults and the minority are children dominated by them.

As Philip Pettit (1996) has explained in his republican theory of governance, the reason democracies are a good thing is that they advance the protection of all of us, not just some of us, enjoy from domination by others. Freedom as non-domination is the condition a republican theorist of democracy seeks to secure. A pure deliberative democracy where a primary group like a family or extended family votes for their interests without interference from legal principles from the wider demos might be viewed as desirable if one's theory is of maximum democratic choice as a good in itself. But if we value democracy as a means to the end of freedom as non-domination, then we want to both nurture richer deliberation of stakeholders and nurture the checking of that deliberation by actors with an obligation to protect human rights. Actually we want to do more. We also want to make the deliberative democracy of citizens vulnerable to the rule of the peoples' law (professionals communicating "bottom lines" may be one way of doing this). And we want the rule of law
to be vulnerable to the rule of the people. A family group being able to call in legal aid to contest the legality of a bottom line communicated by a professional at a conference is one way of doing this. This helps the legal system to clarify what kinds of bottom lines are democratically acceptable and which are not. This is Christine Parker’s (1999) idea of the justice of the law filtering down into the justice of the people and the justice of the people bubbling up into the justice of the law.

In Joan Pennell’s (this volume), Paul Adams and Susan Chandler’s (this volume) and David Crampton’s (this volume) contributions, responsive regulation is seen as useful for reconciling the tension between empowering democratic deliberation and intervention to protect children. At the base of the pyramid informal civic deliberation in families, communities and neighborhoods is relied upon to prevent the abuse and neglect of children. Then, as in Crampton’s Figure 3, there can be escalation to more structured family meetings that reach agreements on how to keep children safe within their existing family. When those protections cannot give enough assurance against a grave risk or when experience proves them to have failed, the next step in Crampton’s pyramid is family meetings that decide to remove children from their parents and place them with extended family. The next rung of the pyramid is formal foster care.

Adams and Chandler, Pennell, and Crampton have all grasped the basic idea that responsive regulation is a way of thinking, not a definite list of prescriptions. Some pyramids may specify moving an adult out of the family rather than a child, for example, or moving an adult member of the extended family into the household to keep an eye out for the rights of the child. Indeed the superstructure of the pyramid can be redesigned by democratic deliberation at the base of the pyramid. So a family group conference might decide that there will be a trial period of a family member attending an anger management program. Further it might agree that if this fails and degrading tirades of anger persist, there will be an escalation of intervention that requires this person to move out and live with their uncle. Finally, if the tirades still come back to haunt the family and spill into violence, family members may resolve to escalate to lodging a formal assault complaint with the police. Signaling in advance
that these escalations will occur if interventions at lower levels fail can be good protective practice. This is because it communicates to the actors who need to change their behavior that if change does not occur, this will not be tolerated. The pre-commitment to an escalated response can motivate change because of the message the pre-commitment gives that change is inexorable.

Later, the conference may resolve that if the tirades have dissipated under the joint influence of the anger management program and living under the firm hand of the uncle, conditions may be set for a return to live with the family. Signaling a pre-commitment to deescalate in advance can also be good practice because it offers a positive incentive for change. The idea of responsive regulation is that it is better to be at the base of the pyramid where democratic conversation does the regulatory work, but that if escalation is necessary the decision to escalate should always be open to revision, so de-escalation occurs.

A virtue of a restorative approach of plural deliberation at the base of the pyramid is that the engagement of a plurality of participants actually opens up new options in the middle of the pyramid. For example, Crampton (this volume) refers to some preliminary Ohio data that children are more likely to be placed with relatives rather than in foster care when relatives attended the family meeting.

While the accumulation of evidence on the efficacy of child welfare conferences cited in this volume is encouraging, it is early days and large studies with excellent designs are yet to flourish. Some of the most crucial questions of conference design are still being questioned by empirical evidence, as in the case of Crampton’s (2001) result that preparation time did not predict success at diverting children from foster care into kinship care.

Lobbying for quality, independent research has paid dividends for restorative justice advocates with criminal and juvenile justice because early vaguely encouraging results have now become higher quality, more decisively encouraging results (Braithwaite, 2002; Nugent, Williams, & Umbreit, 2003). Independent evidence is needed to contend with what Crampton (this volume) discusses as the neostatist backlash. Neostatists believe in a heavy emphasis on state intervention and a greater emphasis on adoption as the best option if children are maltreated. Cost-benefit
studies of high quality may be needed to address the concerns of critics who say family group conferences are too expensive (Adams & Chandler, this volume). Adams and Chandler describe the affectionate labeling of Hawaiian conferencing innovators as "bungee jumpers". Of course most folk in welfare bureaucracies are not bungee jumpers; they prefer to stand on the bridge and watch to see if the jumpers survive. They may not jump until there is evidence showing that it is unequivocally bad practice not to. Strengths-based strategies are always vulnerable to worldly-wise cynicism that a particular family, whose details are only understood by this caseworker, is devoid of strengths and supports. There are no extended family supports that will come if called upon; the family does not have the capacity to make such difficult decisions, and so on. Adams and Chandler also point to more banal bureaucratic obstacles that need to be dealt with, like access to flextime and overtime to allow conferences to be convened at times like the evenings and weekends where maximum numbers of family members might be able to attend.

There is also a tension between being evidence-based and being democratic of course, as there is to tapping affect to motivate change (Moore, this volume). What happens when citizens vote for a solution that the evidence clearly shows makes such situations worse? What should happen when emotion drives people like stampeding cattle toward an outcome that the evidence shows to be counterproductive? The other side of this argument is that high quality evidence is no use if people are not motivated to use it (Pease, 1998). Our biological inheritance is that we tend not to engage our capacity for evidence-based reasoning unless our emotions are harnessed to motivate us to do so. Why is the evidence so strong with criminal cases that restorative justice processes lead to more implementation of decisions than for cases in control groups that went to court and other command and control forms of processing (Latimer, Dowden, & Muiise, 2001; for child welfare conferences see Neff, this volume)? A probable reason is that democratic deliberation leads to more commitment to the decision than command and control by a court. But there is also great practical capacity for monitoring. So, for example, a next-door neighbor who promises at a conference to check in
on the family regularly to ensure that an undertaking is being honored is likely to have more practical capacity to do so than their welfare worker. What we need is a marriage of the evidence-based philosophy and the democratic ideal. We need evidence-based practitioners who provide conference participants not only with a list of community and professional support options available for the kind of problem the conference is addressing but also feedback on what the evidence says about when these interventions are likely to be effective and ineffective. It is the amalgam of deliberation, intelligent analysis of evidence and emotional intelligence that has delivered the greatest accomplishments of human beings, not deliberation alone, nor evidence alone, nor emotion alone.

There is also a need to work harder at connecting restorative justice practice to rich existing bodies of empirical research that establish relationships between variables that are strongly in play during restorative justice processes. An example of how to do this is Rob Neff’s (this volume) illuminating treatment of the issue of procedural justice and how it can improve not only compliance with legitimate authority but also the realization of quite a list of family group conference principles (Neff, this volume, Table I). Procedural justice is likely to be best secured by neither top-down legalism nor by pure deliberative democracy, but by the law’s conception of procedural justice being contested by the people’s conception of fairness and by what citizens in a conference feel is fair being constrained by procedural safeguards in the law.

Finally, there is a need to draw upon the methodological contributions that have been developed in other fields. Joan Pennell’s (this volume) factor analysis of the objectives of participants in family group conferences to form three factors—cultural safety, community partnerships and family leadership—is a good example. The factors appear robust empirically and are conceptually evocative. There is another reason why this aggregating of objectives into conceptual clusters is useful. This is as a response to the critique that Andrew Von Hirsch et al. (2003) among others, has made against my work—that every value under the sun seems to be a restorative justice value, so there is no parsimony about it as a normative theory.
Domestic Violence

Peggy Grauwiler and Linda Mills (this volume) contend that existing policy is not working to deal with intimate abuse. They cite results from the 2000 National Violence Against Women Survey that only a fifth of all rapes and a quarter of all physical assaults perpetrated against females by intimate partners were reported to the police in the United States. Grauwiler and Mills see restorative justice as having a lot to offer toward correcting this situation, especially for women of color given the way automatic recourse to criminal prosecution for domestic violence tends to play out more to the disadvantage of black than white women (and men). Their idea of Intimate Abuse Circles connects in an interesting way to the strengths-based theme of the last section. Grauwiler and Mills argue that without blaming victims, we should grant victims the dignity of having the strength to concede that things they have done may have contributed to the social dynamic that led to violence. The important thing is to vindicate the victim by making it clear that what was done to her was unjust and not deserved in any way. Once these things are secured it makes no sense to treat the victim as someone who has no power in the situation. She has the power to do things that make her safer and the power to do other things that add fuel to the emotional dynamic that leads to violence. Intimate Abuse Circles comprise an approach oriented to assisting women and men to acquire greater wisdom about things they sometimes do that escalate violence as a stepping stone to designing a plan that will actually work to prevent violence in the face of these cruel realities. The analysis is courageously articulated in a way that makes a good case for experimentation and rigorous evaluation of Intimate Abuse Circles.

Kristin Kelly (this volume) sees the battered women's movement as an exemplar of state-community partnership because of the attachment it has always shown to both community-based and statist responses to domestic violence. Kelly believes that both community and state interventions can be strengthened. She says liberal legalist trepidation that bolstering community interventions will mean reduced commitment to treating domestic violence as a serious criminal matter is a false choice. Braithwaite
Families and the Republic (1998) likewise contends that hydraulic arguments about stronger states weakening communities or markets, and vice versa, are common but theoretically highly contingent contentions. It is also a theoretical possibility that we can strengthen one institution in a social system in a way that reinforces rather than weakens other systems. Hence, it is absolutely coherent to struggle politically for a social democratic dispensation of strong markets, strong communities, and a strong state. Kelly's trilogy of institutions makes families, rather than markets, the third key institutional sector. The earlier discussion of Job and Reinhart’s (2003) research on families, community organizations, and state institutions of taxpaying is actually a nice illustration from a completely different domain of the fertility of Kelly's trilogy.

With domestic violence we can choose politically to struggle for legal and policing reforms to make criminal prosecution effectively more available to victims of domestic violence at the same time as we make family group conferences and community support from battered women's shelters more effectively available. If it is correct that restorative justice is a powerful tool for securing respect for legal rights, but more powerful if it is backed by the possibility of responsive escalation to litigated justice, then an important way of securing equal protection of rights is to make both restorative justice and responsive regulation as available to the most powerless citizens as they are to wealthy individuals, powerful corporations, and state regulators. Too much of the debate around the advantages and disadvantages of state versus community or family justice is about where the imbalance of power will be greatest. My suspicion is that there is a lot of contingency here as well. Sometimes an Intimate Abuse Circle will dispense justice with less imbalance of power than is found in a courtroom; in other contexts, the reverse will be true. If this contingency claim is right then the greatest inequity will exist when the powerful party has the capacity to choose whether to go to court or to opt for restorative justice while the less powerful party is forced to lump one option or the other. It also follows that simultaneously struggling for greater access to the justice of the courts and greater access to restorative justice for weaker parties will strengthen their hand in conflicts with better-resourced parties. The model in Figure 1 of Kelly’s paper
therefore seems fundamentally right with respect to justice. There can be synergies between strengthening state justice, community justice, and family justice where each enhances the capabilities of the other.

The Language of Reform

The R Word

While the articles in this special issue make a good case that regulatory theory has some use for changing how we think about challenges like child welfare and domestic violence, regulation does not always sit comfortably as a word to describe specific interventions. Of course there is a brutal truth to the fact that child welfare bureaucracies do regulate families as Burford and Adams (this volume) explain in their introduction to this volume. Families are also regulated by other actors in the community sector and they self-regulate. It is not that pluralist regulatory theories are unattractive as a way of describing and explaining the reality of what happens in welfare practice. It is that at the normative level, the R word is not the stuff of politically resonant practice. My favored solution when deploying regulatory theory in a context where the R word turns people sour is to use governance. For those of us who use regulation in its broadest sense as governing the flow of events, this works fine.

The Other R Word

The other R word is restorative. David Moore (this volume) prefers transformative. For years people like David and myself were working on conferencing in New Zealand and Australia without using this second R word. Restorative justice was the term of art in North America. My research group went along with this mainly because we think social movements matter and they don’t get far unless they share a language that participants find politically resonant. Also of course America matters in any kind of global social movement politics in a way Australia does not. But restorative has some negatives when we are dealing with abuse and neglect in families. Do we want to restore patriarchal families? No, we would rather transform them. Desmond Tutu would reply that of course the South African Truth and Reconciliation
Families and the Republic

Commission, which he conceives as a restorative justice initiative, was not about restoring Apartheid. It was about restoring human dignity, justice, and the rights that are fundamental to our humanity. At the end of the day, it does not matter much that David Moore is using the T word and I the R word, so long as we are collaborating effectively to develop ideas, practices, critique, and evidence that assist the same broad reform movement.

The J Word and the C Word

Another difference in language with David Moore's work is that David and his colleagues like to speak of conflicts, whereas I prefer to see restorative justice as about responding to injustice. This is because of a desire to separate restorative justice from older versions of mediation and alternative dispute resolution that feminists in particular have found unattractive for application to domestic violence and family law disputes. So it seems important when a rape is being responded to for this not to be conceived as merely a conflict about which a mediator is morally neutral. Certainly the restorative justice facilitator must not be biased against either side. Yet there is moral clarity that there are values at the heart of restorative justice; fundamental is the value that we must confront injustices and correct them as best we can. Again David Moore can and does agree with this while opting for a different default usage of language. His side of this argument might point out that injustice is not a particularly apt framing for a family group conference concerning a conflict over whether a child should live with a father with a drug problem or an aunt after the child's mother has died. While no one is being accused of wrongdoing here, my perspective would be that the value centering of the process is still about justice in the sense of securing the fundamental human rights of that child. For all this, the fundamental point I wish to make here is that we must not be misled into allowing a disagreement over language to cloud a more fundamental agreement over practice and underlying values.

The S Word

David Moore and I have been in the same hot water from restorative justice folk who don't like the S word—shame. David
has made a great contribution by documenting, as summarized in his contribution to this volume, the profound emotional turning point that regularly occurs in conferences from collective vulnerability or collective shame to acknowledgement that we all have some ownership of this problem and we are going to fix it. My colleagues Eliza Ahmed and Nathan Harris, among others, have also done important empirical work showing that when injustice occurs, whether a minor act of bullying or a serious crime, we cannot understand the productive and unproductive ways of responding to it without understanding the shame that both the victim and the bully are feeling (Ahmed et al., 2001). As Tom Scheff points out, we cannot comprehend the origins of World War II without understanding the collective shame Germans experienced from the humiliation of Versailles that Hitler so effectively exploited. Nor can we comprehend the peaceableness of Germany since World War II without understanding their acknowledgement of shame after Nuremberg and their reintegration into the world community through the Marshall Plan and other gestures that rejected the path of humiliation of the vanquished that had been followed after World War I.

A belief that understanding the joint emotions of shame and pride is fundamental to grasping what is productive and counterproductive in restorative justice processes does not mean that the language of shame provides a politically resonant discourse for the social movement for restorative justice. It does not. The political discourse of shame is dangerous because it is so vulnerable to appropriation by those who wish to stigmatize and humiliate. Here I think David Moore and I would agree on how to use language. But we would also agree that simply because some people take political shots at our theoretical writings as a result of our seeing shame as central, we should not be deterred from evidence-based theory development about shame and restorative justice.

Conclusion

As Burford and Adams (this volume) argue in their introduction to this collection, family group conferences can be conceived as a strategy for reconciling the rights to autonomy of members
Families and the Republic

of families and their right to privacy. The conference honors the private space of the family while leaving the obligation of the state to protect and safeguard fundamental human rights undiminished (especially for children). Burford and Adams draw an interesting parallel with my work on enforced self-regulation as a business regulatory strategy (Ayres & Braithwaite, 1992: Chapter 4), viewing the family group conference as a form of state-enforced family self-regulation. Burford and Adams see sociological critics of social work as one-sidedly emphasizing the social control character of social work while some social work educators one-sidedly romanticize the profession as about empowerment. If they are right that my work is of some use for reframing this central duality of the profession, it is because it involves a normative rejection of both of those one-sided views and also of any wishy washy middle ground between the two. Rather it says that social work should have a strong commitment to being a coercive agent of the state's law and a strong commitment to empowering citizens to run their own lives. But those two imperatives are temporally ordered. Social work's presumptive strategy should be empowerment. But when empowered citizens use that power to threaten the safety of vulnerable others, then escalation to more and more coercive interventions should be inexorable—until safety is secured. Then, and only then, there can be a dialogue about deescalating intervention to reinstate community and family empowerment.

Burford and Adams are right that coercion is inevitable and just in social work practice. What a pyramidal approach to institutional design can deliver is a strategy for minimizing coercion. This is because the paradox of the pyramid is that by signaling inexorable escalation until justice is secured, more of the action is driven down to the deliberative base of the pyramid. People are most likely to take responsibility for securing the rights of vulnerable others when the institutional design shows them that failure to do so is a slippery slope to responsibility to secure those rights being taken from them. The state's taking over that responsibility is not threatened in the foreground but threatening in the background. Social workers should proceed on their routine work of empowerment not by making judgments that some people are fit to accept responsibility and others not. By
assuming that all people have a willingness to take responsibility for securing the rights of vulnerable others with whom they are in close relationships until that presumption is proved wrong, by seeing all people as having multiple selves that include socially responsible and irresponsible selves, social work practice is about empowerment to coax and caress the socially responsible self to the fore. It is about building democratic problem solving, but equally it is about enforcing the democracy's human rights and freedoms when democratic deliberation fails to honor them.

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Book Reviews


Family health social work is based on a radical set of principles, values, and beliefs that recognize the critical role of family as primary. Continuing the philosophy and efforts of social work legend, Mary Richmond, this holistic approach brings together a time tested perspective to social work blending individual, ecological, and systems theories and acknowledging the physical, mental, emotional, social, economic, cultural, and spiritual dimensions of human life. Central to family health theory and practice is consideration of unique aspects of contemporary family life, such as neighborhood and culture, often overlooked by other practitioners of other clinical methods. At last, here is a perspective that unites family and health, and in addition to being family centered, will inform the foundation of social work teaching and practice.

As an emerging field the research and literature in this area of study and practice has been sparse. The editor, John T. Pardeck, urges a more thorough and critical review of the relevant material and calls upon students and educators to commit to further research. The goal of this edited volume was to go beyond direct practice, broaden our understanding of the predicament of health care today, and stimulate a change process by focusing on macro level issues. As a result the text makes a significant contribution to the advancing knowledge regarding family health social work.

Organized into nine straightforward chapters the contributions include selections on clinical practice, community intervention, policy and program development and program administration. A social work scholar and family health pioneer, the editor writes five of these chapters to introduce the family health social work specialization, review the literature, describe various assessment tools, and outline a cornerstone of theoretical thinking in this practice, the Minuchin family stress model. Much of this
will be familiar to seasoned practitioners, however a significant section is Pardeck's analysis of family policy in the United States. While mindful to not place blame he offers some explanations for why a comprehensive family policy in the USA remains elusive, and highlights some of the hurdles remaining before affordable and accessible healthcare, housing and social services for all Americans becomes a basic human right. I read between the lines, looking for solutions and strategies, as he describes several bleak and eroding systems. However, I was most influenced by the poignant question raised: "How long can a society tolerate the widening gap between rich and poor families, the tragedy of children going without health care, and the disgrace of families literally living on the streets in many large American cities?" An attempt to suggest an answer to this vital question soon became jostled by a reminder that politics are complex. Usually national reform requires more than what is implied by the comment from the controversial Professor Edward C. Banfield: "Every political system is an accumulation of habits, customs, prejudices and principles that have survived a long process of trial and error and of ceaseless response to changing circumstances. If the system works well on the whole, it is a lucky accident—the luckiest, indeed, that can befall a society."

Other contributors add their expertise in the remaining material that covers a family health organizational model, a family health perspective on social and economic justice, adapting family health principles to Hispanic migrant health care, and developing and managing family health programs. While these authors provided an overview of key macro family health concepts and principles, they varied in style and had redundant information. An example was the repetitive definition of family health practice that served to bloat the book. On the other hand their attention to inclusiveness was refreshing, and the updates on the rapidly changing health care system and recognition that our society's current family structure is indeed a mosaic made a noteworthy impression. Their work illustrated how modern families grapple with health care issues in the context of their cultures, communities, and larger social systems, and they emphasized the value of formulating policies and programs "outside the box". In addition to supporting the message of family health practice, their critical
thinking stresses the importance of social work involvement in the nuances of politics, public policy, program development, and administration.

The family health paradigm from a macro level approach provides solid reading for learning within the classroom, clinical environments, and policy planning arenas. This resourceful text includes information on methods and skill requirements, as well as government and public policy reforms and recommendations. We can assume that at some point of our lives, we will have to interface with the health care industry either as a provider, patient, or caregiver. A personal experience often ignites the political and professional spirit, and the family health social work prototype offers us new perspective and hopes to keep facing into the wind. Distinguished from other social work concentrations this rising field of practice provides a holistic understanding of family behavior and health in the social environment and gives momentum toward the possibility of greater acceptance of human differences, responsibility for unmet social needs and health care reform.

Marsha Blachman
University of California at Berkeley


*Growth and Convergence in Metropolitan America* by Janet Rothenberg Pack contributes to the literature in urban sociology by presenting a quantitative analysis of the 'Frost Belt-Sun Belt' thesis. Variables for the study were obtained from the U. S. Decennial Census of Population and Housing, the City and County Data Book and the State of the Cities Data System of the U.S. Department of Housing and Urban Development. Census data was analyzed beginning with the 1960 Census and ending with the 1990 Census. The unit of analysis consisted of 277 metropolitan areas in the United States.

In this book, Pack examined the shift in economic activity and population that has occurred in the nation's cities and suburbs as well as the regional differences which have emerged. She
contends that the shift in economic activity and population from the cities to the suburbs, and from the regions of the Frost Belt to the Sun Belt, resulted in a convergence in per capita income, poverty, unemployment rates and educational attainment in over 200 metropolitan areas in the United States, revealing what she calls 'interregional differences in growth rates.' Pack also contends that these interregional differences have created certain concentration effects resulting in highly distressed metropolitan areas and in the South continuing to lag behind the rest of the country on various socio-economic indicators.

In order to counter the convergence and concentration effects resulting from this shift, Pack urges the development and implementation of federal, state and local policies which promote economic growth and improve the well-being of citizens within a regional growth strategy. She promotes this arrangement of policies with the knowledge that the regional approach has declined in importance since the 1970s and that urban issues have sunk below the serious threshold of national policy discussions.

While Pack is to be commended for her analysis, her work has some limitations. First, Pack offers a rather narrow economic analysis to predict and examine the degree of the shift in economic activity and population from the cities to the suburbs and from the Frost Belt to the Sun Belt. Although she does mention policy effects as contributing factors, her argument could have been strengthened by a more balanced discussion of the political factors that contributed to the shift. Furthermore, she did not adequately discuss the role of political entrepreneurs and pro-growth coalitions in these trends. These factors are concerned with identifying persons who assess political benefits and risks in order to build support among various stakeholders (or coalitions) which can result in proposing or developing a policy and program for economic development at the sub-national government level.

Second, while analyzing the shift, Pack presents a selective discussion of declining industries in the Northeast and Midwest and the problems associated with the growth in the cities and suburbs in the South and the West, such as housing prices and traffic congestion. In addition, Pack's inclusion of qualitative data was based on the use of secondary sources such as magazine articles, Chamber of Commerce materials and real estate periodicals
which can present an optimistic discussion of local economic conditions.

Third, Pack appears hesitant when she states that "no general regional development policy is called for, but if one is called for, it should be focused on the metropolitan statistical areas (MSAs) in the South" (p. 179). However, Pack could have discussed the background, successes, implications and failures for creating a regional development policy at the sub-national government level. Further, although Pack appears to support macroeconomic activity as a way of improving the well-being of citizens in depressed metropolitan areas, her argument could have been strengthened by providing more detailed discussions on the link between macroeconomic factors and their effects on growth rates. Although Pack does not appear to favor the introduction of a systematic local regional development policy, her recommendations to improve the well-being of persons in depressed metropolitan areas are clearly political in nature. Finally, noticeably absent is a substantive review of racial, social class and regional issues which are embedded in her policy recommendations. At least two of the recommendations (progressive income tax and business location/relocation decisions) have racial, social class and regional (urban, rural, suburban) dynamics embedded in arguments for or against developing and implementing them.

Nevertheless, Pack is to be commended for her quantitative analysis of the Frost Belt-Sun Belt thesis, and her concern to improve the well-being of persons located in depressed metropolitan areas. However, Pack's analysis is limited by an inadequate discussions of the political, economic and social factors that are associated with urban development issues and which are widely cited in the literature. These have contributed substantially to the shift in economic activity and population which this text has examined.

Joseph A. Deering
House Research Division
Missouri House of Representatives

The type of intervention most likely provided by social workers and other mental health professionals to individuals suffering from severe mental illness is "case management." The literature on case management practice has grown and matured over the years and has spawned a wide variety of theories and models. The same literature, Floersch points out in *Meds, Money, and Matters*, for the most part, argues for the effectiveness and utility of case management in improving the quality of life of individuals suffering from serious mental illness, by linking them to social, medical, and mental health services. Utilization of these services, it is argued, yields many desirable outcomes. Independent living and a decrease in hospital utilization are seen as highly indicative of successful case management. Floersch asks and provides answers to the questions: What does a case manager face on a daily basis while going about the multiple tasks involved in providing case management services? What guides the case manager’s practice? What happens when case management fails?

After an introductory chapter describing the theoretical and methodological consideration that historically have been utilized in the field, Floersch introduces the concepts of disciplinary knowledge/power and situated knowledge/power. The former refers to the theories and models utilized in case management practice, while the latter refers to practitioner produced case management practice that is local, specific, and contextual. While acknowledging he has not operationalized these concepts, and that he borrows from Michael Foucault’s ideas and from the literature on situated learning, he argues that while case managers are guided and influenced by theories of social work practice, managed care, and the politics and economics of the welfare state, case managers also practice and produce effects that are of their own making, unique and personal.

Utilizing what he describes as a multimethod, interdisciplinary, and critical-realistic perspective, and after describing the setting for his study and the historical antecedents that gave rise to the social policy of the deinstitutionalization of the mentally ill, the remaining nine chapters present his ethnographic study of case managers. One of the chapters provides a very useful review of social work’s historical role in the formation of community support services in general, and specifically in High County,
Kansas, the setting for the study. Another chapter is devoted to the rise of the case manager practitioner who, it is argued, required something other than the disciplinary knowledge of the clinic or hospital social workers. Case managers, when assigned the goal of keeping individuals out of the hospital, had to learn to monitor meds, money and manners. Floersch makes this point by recounting the history on one social worker assigned to work within a case management paradigm shortly after earning her MSW.

One of the most interesting chapters describes the development of the strengths case management model at the University of Kansas School of Social Welfare and how this model found what Floersch would call scientific legitimization. In a chapter on the oral and written narratives of case management, Floersch analyzes the work of case managers using a strengths perspective. He analyzes text and oral narratives and presents a case study that makes the point that the language of the strengths philosophy found in the written narrative is not necessarily found in the oral narrative. The consequences of actions taken, or not taken, to maintain fidelity with the strengths model is explored, as are the creative ways in which case managers navigate around the limitations of case management practice models to achieve desired outcomes utilizing situated knowledge. Money and the impact on the studied case manager’s work, is explored by Floersch in what he refers to as the moral economy of case management. He examines social work’s historical use of money in helping relationships and reviews some of the questions and difficulties encountered by case managers in his study involved in managing and/or assisting clients manage their money.

Psychiatric medications and their role in the deinstitutionalization of individuals suffering from severe mental illness are briefly reviewed in a chapter dedicated to psychotropic medications. Here, Floersch examines the everyday interaction among case managers with psychiatrists, nurses, and consumers when medications are prescribed, and explores the different categories of the drugs used and their expected impact on targeted behaviors and emotions. Once again, Floersch compares the written and oral narratives of case managers, as well as the notes taken from case manager’s team meetings. He suggests that the disciplinary/knowledge of medications utilized in institutions,
is not sufficient for those needing medications and require the situated/knowledge of the case manager as the key figure in medication monitoring. This, Floersch suggests, compromises some of psychiatry’s authority over medical matters. In his concluding chapter, while not asking for the return of the fifty-minute hour, Floersch, seems to call for the return of ego psychology or of “clinical” case management as a means of bringing “a theory of the self back into management work.” He does not, however, articulate how a case manager’s psychodynamic understanding will translate into well medicated, and well mannered, consumers, who spend their money wisely. His work does collect a formidable amount of actual experiences obtained during the provision of strengths case management services. Funneled through the strainer of the ethnographer, that experience results in a clear, well documented and researched book that adds significantly to our understanding of the daily realities faced by those who provide services to the mentally ill. It raises many points worthy of further inquiry.

Rafael Herrera
University of California, Berkeley


Social policy is one of the core areas of social work education. Controversies surrounding social policies come up in classroom discussions, professional meetings, in public discussion, as well as in the media. A critical understanding of these debates should help strengthen the profession as well as should be used as an effective teaching tool. By putting together a selection of 18 debates, argued for and against by reputed scholars in the field, Professors Karger and Midgley, and Ms. Brown have made a valuable contribution to the social work profession.

The book is divided into four parts. Part I includes three debates on general issues in social welfare policy. In debate one, James Midgley and Howard J. Karger address whether the American Welfare state is compatible with the free market economy. While James Midgley believes it is, Karger essentially opposes
the position. In the second debate, Jon Meyer and Stephen Erich argue on the issue: "Should the federal government fund faith-based social service organizations?" Meyer believes it should, while Erich asserts that it should not. In debate 3, David Stoesz argues for the privatization of social services, whereas Ira C. Colby argues persuasively against their privatization.

Part II of the book examines issues of poverty and inequality and contains nine debates. In debate 4, Marion Wagner and Rebecca Van Voorhis argue in favor of the legislation for protecting the rights of gay and lesbians, while John F. Longres finds special legislations to be unnecessary. Debate 5 pertains to whether or not governmental policies are solving the problems of homelessness. Larry W. Kreuger, John Q. Hodges, and Debi L. Word argue that they do, whereas John J. Stretch finds homelessness a prevalent feature in the "midst of plenty" in America. Debate 6 focuses on whether welfare-to-work programs have had any significant effect in reducing poverty. Sandra K. Danziger believes that it does, but Eileen Trzcinski and Deborah Satyanathan doubt that welfare-to-work programs have decreased poverty. Debate 7 addresses the issue of whether an asset-based welfare policy really helps the poor. Michael Sherraden, the originator of the idea of Individual Development Accounts (IDAs), argues that the assets have substantial positive effects on the well-being and development of poverty-stricken households. Contrarily, James Midgley argues that IDAs, with all their noted advantages, will not really help the poor. In debate 8, Ann R. Alvarez argues that affirmative action policies have really increased equality in the labor market, but Sally C. Pipes maintains that they do the exact opposite. Debate 9 pertains to the issue of whether privatizing social security is good for women or not. William W. Beach argues that every type of worker and family would benefit if they could place their current Social Security tax dollars in private investment funds. Contrarily, Patricia Ireland argues in favor of the protection of the federal Social Security system for women. Debate 10 addresses whether or not the United States needs a national healthcare policy. Dawn McCarty and J. Rick Altemose offer convincing reasons in favor of it, whereas Robert E. Moffit is concerned that it may curtail freedom of choice for American citizens. Debate 11 revolves around the issue "who really has benefited from the
Americans with Disabilities Act (ADA)” and “whether or not the ADA is working.” Howard J. Karger argues that on some levels the ADA is working very well, whereas John C. Bricout doubts its overall efficacy and calls for strengthening the Act’s resources and purpose. Debate 12 focuses on the issue: “Has the War on Drugs been Effective?” The Office of the National Drug Control Policy (ONDCP) maintains that both national and international strategies of the government have effectively lowered the rates of drug use. Susan P. Robbins, however, refutes the position and asks for a rethinking of the national drug policy.

Part III includes four debates on social service policy and its delivery issues. Debate 13 pertains to outpatient mental health commitments for clients. E. Fuller Torrey and Mary Zdanowicz argue for their necessity and benefits, whereas Kia J. Bently and Melissa F. Taylor believe that the existing system is totally inadequate and alternative delivery models should be sought. Debate 14 focuses on managed care. Richard L. Smith and Kristin Steward believe that managed care has essentially benefited consumers by improving the quality of medical care and making it affordable. Contrarily, Heather Kanenburg believes that the current system is quite expensive and fails to offer quality services to all consumers. Debate 15 relates to transracial adoption issues. Elizabeth Bartholet argues convincingly in its favor. She believes that transracial adoption offers a special kind of diversity which should be embraced as well as celebrated. Leslie D. Hollingsworth opposes transracial adoption on the ground that it may separate children from their cultural group and could deprive them of the best assistance and protection. Debate 16 focuses on adoption by gays and lesbians. Stephen Erich argues that gays and lesbians should be accorded the same opportunities for adoption as that of heterosexuals. Howard J. Karger urges caution in pursuing gay and lesbian adoptions because of possible negative impact on children’s welfare.

Part IV of the book includes two debates on social work education and professional policy issues. In debate 17, John T. Pardeck and Roland Meinert argue on: Should abortion rights be an accepted social work value? John T. Pardeck argues in favor of it. Roland Meinert maintains that it cannot be accepted as a social work value. The last debate in the book touches on the issue:
whether faith-based social work programs should be required to comply with nondiscrimination standards if they violate the beliefs of those institutions? The debate’s context refers to some alleged practices of faith-based schools that may not tolerate gay and lesbian lifestyles. Karen E. Gerdes and Elizabeth A. Segal identify some legal difficulties in imposing any standard regarding sexual orientation but argue that every program should teach and model nondiscrimination of lesbian, gay, bisexual, and transgender (LGBT) people. Lawrence E. Ressler disagrees and maintains that the CSWE standard on nondiscrimination is legally and ethically flawed and should not be applied to all institutions equally.

A valuable feature of this book is the “Editor’s Note” at the beginning of each debate, which serves as a thumbnail sketch introducing each selection. Controversial Issues in Social Policy will no doubt be very useful as a text in both undergraduate and graduate social work policy classes. While as a collection of contemporary social policy debates it is quite extensive, by no means should the book be treated as exhaustive. Its additional strength lies in its style of presentation. The presentation of topics as controversies, as the authors argue, “is the essence of intellectual discourse” and I believe that we should make the best and most effective use of this critical discourse in our educational process as well as in professional forums.

Mizanur R. Miah
Southern Illinois University Carbondale


For at least the last twenty years, health theorists have employed social epidemiology to better understand the distribution of health and illness among various populations. Most of the research in this area has concentrated on three main factors, races, sex and income, a set of variables that have sometimes been called the ‘Holy Trinity’ of social epidemiology. Data about these variables are readily available, and each has been shown to have
a significant impact on health status. The editors of Engendering International Health: The Challenge of Equity, and the numerous authors who contributed to the book argue that to more fully comprehend the distribution of health and illness, one needs to include not only sex, but also gender in one's analysis. They posit that these two variables, biologically determined sex, and socially defined gender, have significant impact on health status, especially through social roles that delimit how women and men behave, work, and reproduce.

The book begins with an excellent introduction to the themes of the text. The editors of the text lay the groundwork in this chapter for the rest of the book. Sex and gender are clearly differentiated, and the various pitfalls and difficulties of separating their unique impacts on health are discussed fully. They provide a clear explanation of why and how gender has been largely overlooked in social epidemiological studies of health status. They also examine the importance of the intersections among race, age, income status (in particular poverty) and gender. This single chapter provides an essential framework for including gender in health study. The remainder of the book is divided into two sections: key health area, and health research and policy. The health areas included are communicable diseases; work and its effects on health; reproductive health; violence against women; mental health; hip fracture; and, health and the environment. The research and policy section includes two chapters on gender, race and class—one examining these issues in the United States and the other in India. The remaining chapters in this section are on policy environments, health status measures and health sector reform.

Each of the key health area chapters follows the same format. They begin with a description of the issue, its distribution in various populations, a gender analysis, and end with discussions of research and policy needs to further address the areas. The policy chapters do not follow a specific format, although each describes its subject and then includes a careful gender analysis related to its specific focus.

This is a strong book with few, but at least one notable weaknesses. The content is meaningful and the focus on international
health provides opportunities to compare developed and developing nations with regard to both their population health status and the different gender roles and its impact. Although the primary focus is on women’s health, the impact of gender roles on men’s health is not overlooked. What is omitted is an analysis of the impact of sexual orientation/identity on health. This is surprising given that the effects on health of a person’s sexual orientation/identity are equally as socially grounded as are the effects of gender, and in some person’s definitions sexual orientation is part of gender identity.

The policy section of the text is not as strong as are the health area chapters. There is some considerable redundancy in the content, especially with regard to discussion of measures. The chapter on measures is clear and complete, and the inclusion of further analysis of those measures in other chapters is not needed. The final chapter focuses on health sector policy reform, but is located fully in developing countries. Important as this is, those of us searching for health sector reform in the United States may find ourselves frustrated by the lack of discussion of this most pressing issue.

Except in a course on women’s health, this book may be difficult to use as a text. In addition to the obvious limitation of the primary focus on gender, its organization of covering both health areas in a theoretical perspective, followed by policy issues may make it difficult to locate in a single class. I may use some of this text in the course that I teach on the behavioral, psychosocial and environmental aspects on health and illness. I would, however, probably not use the entire text. The introductory chapter provides the necessary framework for expanding the discussion of social epidemiology to include gender (and in my teaching, to include sexual orientation, as well). I would suggest that students read health area chapters that inform research for their for the various class assignments, however, I would be somewhat reluctant to use the policy segments of the text—mostly because they do not fit with the course. In contrast, I might want to assign at least a few of the chapters for reading in my health policy class, especially the ones related to measurement and policy environments. Regardless of whether it is used as a primary text, a
secondary one, or to provide background for preparing classes, as a university professor, I find this a valuable book and suggest that others teaching health courses will find it so.

Deborah Schild Wilkinson
University of Michigan


In this recently published work, Katherine van Wormer, Professor of Social Work, University of Northern Iowa and Diane Rae Davis, Associate Professor of Social Work, Eastern Washington University offer their readers an exhaustive and comprehensive Cook’s tour of the why’s, wherefores and whereby’s of addiction treatment from a strengths (including but not limited to social work) perspective. The book is a must read for social workers and other allied health and substance abuse treatment professionals and provides refreshing and insightful vignettes and anecdotes from both authors’ professional and personal lives. It is full of history and facts, and the authors take the bio-psycho-social ecological framework very seriously in their effort to situate current addiction treatment in its appropriate context.

The book is divided into four parts: Part I offers an Introduction which encompasses chapters on the nature of addiction, historical perspectives and strength’s based helping strategies while Part II, on the biology of addiction, consists of two chapters; these deal respectively with substance misuse, dependence and the body and interventions related to the biological nature of substance abuse among Native Americans. Part III addresses the psychology of addiction with chapters on addiction across the lifespan, eating disorders, gambling, shopping and other behavioral addictions and substance use with a coexisting disorder or disability. Part IV provides an overview of the social aspects of addiction, including chapters on family risks and resiliencies, racial, ethnic and cultural issues, gender and sexual orientation differences, mutual help groups, and public policy.

In short, the book is remarkably wide ranging and comprehensive and if there are any downsides it may be that, for some
readers, the book offers too much detail on too wide a spectrum of issues. This reader, however, came away with a sense that the book makes a major contribution to substance abuse treatment generally and in particular to the (much needed) field of social work practice in the field of addictions. This is an area of social work practice, research and policy that many believe has been woefully ignored by mainstream social work. Indeed, given that NO area of contemporary social work practice can ignore substance abuse in its many permutations, it is surprising that such a book has not appeared sooner. But, the fact of the matter is that it has not, and Professors van Wormer and Davis are to be congratulated on their effort which represents a milestone in this reader’s opinion.

The authors set the tone for the book in their very first sentence by informing their readers:

"On the surface, our application of the strengths perspective to the field of addiction treatment marks a dramatic departure from the past. Our notion of reinforcing strengths in a self-directed program of harm reduction is seemingly a more extreme departure still. And yet the tone of the writing is intended to be conciliatory rather than adversarial; the focus is "building upon" rather than "tearing down". (p. 1)

To their credit, van Wormer and Davis take the proverbial bull by the horns and come out of the closet at the onset with their explicit support of a harm reduction perspective. This is refreshing and yet their arguments are so well defended and referenced one could not help but be persuaded by their many examples and insightful vignettes. It is interesting to note that both women likewise have had extensive personal and clinical experiences with "substance abuse" and the book provides sensitive and appropriate insights in terms of their own process and their commitment to understanding this critically important area of practice.

What else can one say? With respect to strengths, the book is well researched, and comprehensive, although more attention, not surprisingly, is given to some areas than others. This reader especially appreciated the authors’ historical perspective, their clear and sympathetic articulation of harm reduction, their inclusion
of a section on biology (the oft forgotten part of the bio-psycho-social equation) and their inclusion of lifespan considerations, an area seldom adequately addressed in the literature. The inclusion of the “new” addictions, such as eating disorders, gambling, shopping and sex are also appreciated as are their discussions of gender, racial, ethnic and sexual orientation perspectives. With regard to limitations, such as they are, at times the book felt a bit too chocked full with almost too many examples and there were chapters when it seemed as though the authors weren’t sure who the audience is—practitioners? students? policy wonks? Some chapters had exercises for readers, while others did not so that on occasion the reader experienced a certain (minor) confusion as to what the intent was. But, at the end of the day, the richness of the book must be recognized for its important contributions. Thank you Katherine and Diane for a significant effort.

Mike Gorman
San Jose State University

In the last fifty years, the idea of fatherhood in the Western World’s has undergone a major transformation. This is because the number of men entering into committed marriage-relationships has declined, as marked by the rise of rates in divorce and cohabitation outside of marriage. The number of men who actually father children has also declined. Additionally, men who biologically father children are much more likely to become absentee fathers, denoting not just non-custodial fatherhood, but in many cases, a complete withdrawal from the father-child relationship. Where fathers were once a key parenting partner, mothers have become the provider, protector, and proctor. Further complicating the fatherhood picture, men often times end up fathering non-biological children when they engage with women who have children from previous relationships.

At the same time that fatherhood has undergone profound changes, welfare policy has experienced change. In most Western countries, it is the state, rather than fathers who are ultimately responsible for provision of income security when parents are unable to fulfil this responsibility. The rise of the welfare state is directly related to the decline of fatherhood. However, this newly formed state-child role is manifested differently in different countries. While much academic attention has focused on children and their mothers as the recipients of state welfare policy, fathers have received scant attention, with the exception of child support policy in the United States.

To what extent should the state be involved in the father-child relationship? How can the state positively impact this relationship? To what end should the state involve itself? These questions are discussed in this interesting book. The book treats fatherhood as a gendered institution, just as feminist theoreticians have defined motherhood. From this perspective, the book examines both the politics of masculinity and the role fathers play in
social policy. It also examines their role as targets of social policy. The various chapters discuss transnational fatherhood issues and policies centered on the obligations and rights of fathers. The book also provides a comparative analysis of state policies affecting fatherhood. It offers an interesting discussion of policies in the United States that compel work in exchange for welfare and thereby almost completely excluding consideration of parental capacity to care for children. These policies are compared to social democratic welfare approaches in Sweden and the Netherlands, where paternal-child relationships are defined as both cash-and-care focused.

This book is a 'must-read' for social policy scholars and their students and for policy makers who are focused on the issues of child welfare, family issues and anti-poverty studies. It provides important insights into social policy in Europe, North America and other Western nations. By discussing contrasting definitions and the historical formation of the role of fatherhood, the causation of abdication of the paternal role, and state response to fallout caused by this abdication, it covers a large terrain. Perhaps the only weakness is a lack of focus on other societies outside the Western World, where fatherhood takes on different meanings and faces different challenges. Nevertheless, this is an interesting and informative book which provides effective insights into men, masculinity, and paternal-child relationships in the Western societies.


There has been a spate of new literature on children’s rights, childhood sociology and changing childhood conditions. Writing in this genre, Moss and Petrie offer a critical analysis of the political, economic, and historic factors that have produced modern notions of childhood in many English-speaking countries. Further, they make a unique contribution by explaining just how we’ve arrived at the often fragmented, insufficiently staffed, yet highly regulated institutions that shape the lives of children today. In addition to the usual calls for increased intergovernmental
coordination, the authors offer up the refreshing possibility of an alternative discourse and praxis based on political and ethical choice.

The authors begin by illustrating the dominant discourse about children and their relationships with parents and society through policy analysis and comparative case study. Donning the theoretical lenses of social constructionism and Foucauldian interpretations of knowledge and power, the authors next provide a critical analysis of the philosophy and practice of children's institutions including schools. By way of contrast, the authors provide vibrant accounts of early childhood programs in the much-lauded Italian region of Reggio Emilia and dedicate a chapter to the case of Sweden to exemplify alternative possibilities that might emerge in the postmodern era. Foregrounding the child as a citizen, a member of a social group with rights, a child 'rich in potential, strong, powerful, and competent' centered in politically and ethically grounded 'children's spaces,' they elucidate their own discourse based on the notion of children's spaces.

They contend that children's spaces, "the physical, social, cultural, and discursive spaces where children and adults might contest understandings, values, practices and knowledges," require a new theory and practice of work with children. Borrowing from continental Europe's long established theory of pedagogy, they propose a holistic approach of social responsibility for children, with the pedagogue as the nexus for education and social welfare in daily practice with children. Resigned to market capitalism and fated to a multiplicity of systems wrought by the hands of modernism, the authors' reticence to prescribe wholesale solutions may leave some readers feeling dissatisfied. However, the authors, attribute their intentional uncertainty to a resistance of modernist inclinations to end with firm conclusions. On the other hand, this resistance can also be interpreted and appreciated as the stark realism with which concerned interventionists are confronted. Their goal, rather, is to instigate a 'crisis of thinking' about children's services. By freeing readers from the dominant discourse, their intention is to create space for novel and experimental ideas. To this end, they achieve their goal. Bridging the fields of sociology, educational studies, and social welfare,
their ability to connect theory to practice should appeal to a wide range of analysts and interventionists. It is hoped that those concerned about children in the 21st century will consider the relevance of the author’s ideas for professional work and personal practice.

Bo Rothstein and Sven Steinmo (Eds.), *Restructuring the Welfare State: Political Institutions and Policy Change*. New York: Palgrave, 2002. $75.00 hardcover, $24.95 papercover.

There has been a good deal of discussion in the international social policy literature about the future of the ‘welfare state’. Welfare states, it is said, have been severely damaged over the last twenty years as a result of the political ascendancy of the radical right and by budgetary retrenchments and privatization. In addition, it is widely believed that the forces of globalization are compelling governments of all political persuasions to reduce social expenditures and re-evaluate their commitment to welfare state ideals. This discussion has been accompanied by normative proposals for restructuring the welfare state in ways that are humane and that perpetuate the ideals of the welfare state’s founders.

The title of this book, and its introductory section suggests that a rethinking of the welfare state is badly needed. Accordingly, the reader’s interests are whetted by the prospect of a substantive analysis of the ways in which welfare states can indeed be overhauled so that they meet the needs of their citizens through judicious and appropriate state intervention. Although the existing literature on the subject is quite extensive, there is a need for a thorough review of the various normative proposals that have been proposed for addressing the challenge posed by politics of the radical right and by globalization.

Unfortunately, the book does not in fact grapple with these issues at any length and amounts instead to an eclectic and discursive account by political scientists on diverse issues affecting social policy today. The topics covered by these contributors include discussions of the role of political trust in the creation of welfare states, the reasons for American exceptionalism, the contribution of privatization and devolution in welfare state thinking, the role of racial politics in social policy, policies for including ‘foreigners’
in welfare states and popular support for the welfare state. These
tropics are thematically linked by a theoretical commitment to his-
torical institutional analysis which is used to frame the discussion.
Historical institutionalism differs from other dominant theories in
political and public policy such as pluralism and rational choice in
that it stresses the role of historically institutionalized practices in
the analysis of policy decisions. This is undoubtedly a worthwhile
enterprise but the reader is left with a sense of disappointment
that bigger issues such as the future of the welfare state have not
been addressed.

Nevertheless, the book does shed light on how historical
institutionalism guides social policy thinking in political science
circles today. In addition, some of the contributions address topics
of current importance. The chapters on privatization, race and
immigration are particularly useful. Some of the chapters also
bring a welcome comparative perspective to the discussion, fo-
cusing on developments in Europe and the United States and
also on Japan and other countries. Although this is not a book for
undergraduates, it will be of interest to scholars concerned with
political theories and the way they affect social welfare policy.

Ian Ferguson, Michael Lavalette and Gerry Mooney, Rethinking
lications, 2002. $92.00 hardcover, $27.00 papercover.

The last decade has offered fertile ground for the continuing
debate between the political Right and Left over the role and
function of the welfare state. As Neo-Liberalism has become the
dominant economic policy around the globe, welfare and welfare
state policies have been redesigned. Fiscal austerity measures
in the United Kingdom and the United States have resulted in
planned reforms aimed at minimizing welfare state functions. The
classic tension between those who advocate for an expanded state
and those who view the state as exacerbating already existing
inequalities has begun to play out on a global scale. Most of the
welfare reform efforts have been driven by a dynamism from
within the private sector, heralding consumer choice over state
control.

Scholars working from the Marxist tradition have continued
to provide critical analyses of these trends, which aim to identify
and explain the cultural, economic and political forces of modern capitalism. In this way, *Rethinking Welfare* provides researchers and practitioners a compelling reminder of the largely structural and material forces that shape our welfare states. The authors respond to claims that Marxist analysis is no longer relevant or capable of understanding the complexity of present day capitalism. They reflect on the familiar structure of this over-celebrated, ‘new world order’ and marshal evidence to suggest that, despite ardent attempts by Western Democracies to celebrate difference, empower women and minimize state authoritarianism, 21st century social welfare has not escaped the grasp of larger political economic forces.

On a more academic note, *Rethinking Welfare* argues against civil society led reform measures and theoretical paradigms that fail to consider structural forces and class conflict. The authors articulate a systematic critique of the new Left and its affection for postmodernism. They argue that after years of promoting excessive cultural relativism and what the authors dub as ‘the new essentialism’, postmodern theory has undermined the gains made by the working class and the poor. The cost of adopting postmodernism has been an eroded social contract. By applying a structural Marxist analysis of postmodernism the authors conclude that, in fact, postmodernism has really functioned as Neo-Liberalism’s lap dog than as an effective political force.

*Rethinking Welfare* provides a thoughtful and emerging resistance to the identity politics and vulgar social constructionism that has pervaded the academic world and also taken hold in many professional social work schools. The book’s inclusion of recent political developments on the world scene, such as the G8 summit and the Seattle protest, will be welcomed by current students of social policy trying to understand the impact of large scale social movements on national policy making. However, in some chapters the authors have drawn excessively on anecdotal and dated research thus leaving parts of their argument on shaky ground. Scholars looking for strong empirical support for the book’s arguments will be disappointed if not all together skeptical. Nonetheless, the book provides a convincing caveat to the alleged success stories of free markets, structural adjustments and globalization.

There is considerable debate about whether and how teacher beliefs and expectancies about student ability impact attachment to and performance in school. Weinstein posits that expectancy effects in schooling have largely been misunderstood and, ultimately, underestimated. She describes three characteristics of the extant research literature that potentially obscure the power of these effects. These attributes include: a lack of an ecological lens that situates teacher and student beliefs and behaviors within wider classroom, school, and societal contexts; a tendency to ignore the ways in which individual differences, especially in terms of race, class, gender and developmental stage, can amplify or dampen these effects; and, finally, inattention to the actual experience of and voice of children in measuring these effects.

Weinstein’s book is divided into three sections. The first section reviews the literature on educational expectancies and self-fulfilling prophecies conducted from both teacher and student perspectives within laboratory and classroom settings. She highlights the critical gaps in the literature; these gaps, most fundamentally, relate to questions of for whom and in what types of contexts these effects occur. She then proposes an ‘ecological paradigm’ relevant to conceptualizing the nature and outcomes of ability-related expectancies. The two remaining sections are largely syntheses of Weinstein and her colleagues’ research conducted over the last two decades. Using the ecological paradigm, she investigates differentiation within and across classrooms, within schools and across elementary, secondary and post-secondary settings. She begins by documenting, through both quantitative and qualitative data sources, the ways in which elementary-aged children are acutely aware of not only their own abilities, but of their teachers’ perceptions of their own and their peers’ abilities as well. Rich in-depth case studies of classrooms illustrate the ways in which children learn about ability differentials through classroom-level instructional grouping and curricular coverage, teacher-directed motivational and reward
systems and strategies and relational climates including teacher-student trust.

Moving to the larger school context, Weinstein details challenges associated with implementing an intervention designed to de-track a rigidly differentiated public high school. This is contrasted with a ‘best practices’ example of a private elementary school which, by design, resists tendencies to sort students through offering multiple opportunities for achievement across a variety of domains. Finally, she compares university climates which alternatively select faculty stars versus those who develop faculty talent and potential. The thrust of the evidence presented suggest the embeddedness of ability-related practices and beliefs and the ways in which isomorphic processes that accentuate their impact occur across and within educational institutions.

The contribution of this text lies in its breadth and depth. Weinstein integrates knowledge ranging from developmental psychology, the sociology of education and political processes in urban school reform. In short, we see not only the potential power of educational expectancies as they are enacted within and across varying contexts over the life course, but, perhaps more importantly, the book reveals the value of applying a contextualist perspective to study the individually-based behaviors and beliefs of both teachers and students.


The publication of *The Quiet Hand of God* reflects growing interest (and concern) in the political and social role of religious institutions. As the federal government attempts to devolve responsibility onto church-sponsored social service organizations and as local, national, and international religious political groups become more powerful and sophisticated in their influence, academics have tried to increase knowledge of how religious organizations and their social and political activities function and succeed. This book parallels other work in the study of contemporary religion, regardless of the discipline, in that the focus is empirical and not theoretical. The kind of theoretical work that
harks back to the questions of Weber or Durkheim seems more today the domain of comparative literature (Anidjar), continental philosophy (Derrida, Agamben), or medieval studies (Boyarin). This is not to negate the value of The Quiet Hand of God, which offers an impressive, unique collection of articles on one of the more significant forms of religious organization in the United States today. In fact, the book may serve as an important reference and model for further research and publications on religious practice and social and political influence.

The book brings together different methodological approaches and disciplinary interests, producing a nuanced, complex, and ultimately fascinating portrait of mainline Protestant churches and their adherents. The chapters range from the historical research of Peter Thuesen into the institutional model of social activism propagated by mainline Protestant churches to the quantitative sociological analyses conducted by Jeff Manza and Clem Brooks on the political participation (and suggested potential influence) of mainline Protestants. Part I of the book concentrates on historical background and the organization of church political and social activities, while Part II takes a more current look at involvement in public issues. In a sense, the information and analyses provided in Part II are more well-known to the lay reader, although the historical research and the intricacies of the debates on issues like homosexuality and environmentalism are not.

From one perspective, the strength of this collection lies in its range, timeliness, and new research. From another perspective, its weakness lies precisely in this range, which remains broad and rather unfocused except for the common theme of mainline Protestantism. The majority of authors are sociologists, with the exception of a historian, political scientist, and few scholars of religion. Rather than bring the collection together intellectually, the common disciplinary and methodological terrain excludes the kind of experiential insight provided by ethnography or the conceptual framework offered by more theoretical work. Both would have benefitted the collection, in that they would have offered more depth and purpose to the intellectual endeavor. Perhaps theory represents the next stage for the sociology of religion, after the notable collection of empirical research presented here.
CORRESPONDING AUTHORS

Paul Adams
University of Hawaii at Mīnoa
School of Social Work
1800 East-West Road
Honolulu, HI 96822
pladams@hawaii.edu

Kristin Kelly
University of Connecticut
Department of Political Science
341 Mansfield Road, U-1124
Storrs, CT 06269-1124
kkelly@uconnvm.uconn.edu

Linda G. Mills
New York University
70 Washington Square South
Rm. 1229
New York, NY 10012
linda.mills@nyu.edu

David B. Moore
155 Arundel Street
Glebe NSW 2037
Australia
d.moore@mail2me.com.au

John B. Braithwaite
Regulatory Institutions Network
Research School of Social Sciences
Australian National University
ACT 0200
Australia
john@braithwaite@anu.edu.au

Joan Pennell
North Carolina State University
Department of Social Work
C.B. 7639
Raleigh, NC 27695-7639
jpennell@unity.ncsu.edu

Rob Neff
University of Hawaii at Mīnoa
School of Social Work
1800 East-West Road
Honolulu, HI 96822
robandang@earthlink.net

Lisa Merkel-Holguin
Nat'l Center on Family Group Decision Making
American Humane, Children’s Services
63 Inverness Drive East
Englewood, CO 80112
lisa@americanhumane.org

David Crampton
Case Western Reserve University
Mandel School of Applied Social Services
10900 Euclid Avenue
Cleveland, OH 44106-7164
dc14@case.edu

Gale Burford
University of Vermont
Department of Social Work
447 Waterman
Burlington, VT 05405
g.burford@uvm.edu

Lisa Merkel-Holguin
Nat'l Center on Family Group Decision Making
American Humane, Children’s Services
63 Inverness Drive East
Englewood, CO 80112
lisa@americanhumane.org

David Crampton
Case Western Reserve University
Mandel School of Applied Social Services
10900 Euclid Avenue
Cleveland, OH 44106-7164
dc14@case.edu

Gale Burford
University of Vermont
Department of Social Work
447 Waterman
Burlington, VT 05405
g.burford@uvm.edu
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(Revised June, 2000)

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Founding Editors
Norman Goroff and Ralph Segalman