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Managing Social Conflict - The Evolution of a Practical Theory

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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

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 & Immarigeon, 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,

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

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."

References

Abramson, L. "Keeping it Restorative: Focusing on All Emotions and not just shame" *Correctional Psychologist* 1998, 30 (2–3).

Abramson, L. & Moore, D. "The Psychology of Community Conferencing", in J. Perry (ed) *Repairing Communities through Restorative Justice*, Lanham, MD: American Correctional Association, 2002.

Ayres, I., & Braithwaite, J. *Responsive Regulation: Transcending the Deregulation Debate*: New York: Oxford University Press, 1992.

Ban, P. "Family Group Conferences in Four Australian States" in Burford and Hudson, 2000.

Bazemore, G. & Umbreit, M. "A comparison of four restorative justice conferencing models by the office of juvenile justice and delinquency prevention", in J. Perry (ed) *Repairing Communities through Restorative Justice*, Lanham, MD: American Correctional Association, 2002.

Braithwaite, J. *Crime, Shame and Reintegration*. New York: Cambridge University Press, 1989.

Braithwaite, J. "Globalisation and Australian Institutions" in *Australia Reshaped: 200 years of institutional transformation*, Cambridge: Cambridge University Press, 2002.

Braithwaite, J. & Pettit, P. *Not Just Deserts: A Republican Theory of Criminal Justice* Oxford: Oxford University Press, 1990.

Braithwaite, J. & Mugford, S. "Conditions of Successful Reintegration Ceremonies: Dealing with Young Offenders", *British Journal of Criminology*, 1994, 32 (2): 139–171.

Braithwaite, J. & Strang, H. (eds) *Restorative Justice and Civil Society*, Cambridge: Cambridge University Press, 2001.

Burford, G. & Hudson, J. *Family Group Conferencing: New Directions in Community-Centered Child and Family Practice*, Hawthorne, NY: Aldine De Gruyter, 2000.

Daly, K. and Immarigeon, R. "The Past, Present, and Future of Restorative Justice: Some Critical Reflections," *Contemporary Justice Review*, 1998, 1(1): 21–45.

Demos, E.V. (ed) *Exploring Affect: The selected writings of Silvan S. Tomkins* Cambridge, Mass.: Cambridge University Press, 1994.

Fisher, R., Ury, W & Patton, B. *Getting to Yes* (2nd edition), London: Arrow Books, 1991.

Garfinkel, H. "Conditions of Successful Degradation Ceremonies", *American Journal of Sociology*, 1956, 61: 420–424.

Gilligan, C. *In A Different Voice: Psychological theory and women's development*, Cambridge, Mass.: Harvard University Press, 1982.

Leibrich, J. *Straight to the Point: Angles on Giving Up Crime*, Dunedin: University of Otago Press, 1995.

Luke, G. and Lind, B. *Reducing Juvenile Crime: Conferencing versus Court* NSW Bureau of Crime Statistics and Research, Sydney, 2002. [available through: *www.lawlink.nsw.gov.au;* specifically at *http://www.agd.nsw.gov.au/bocsar1.nsf/pages/cjb69text*]

Maxwell, G & Morris, A. *Family Participation, Cultural Diversity annd Victim Involvement in Youth Justice: A New Zealand Experiment* Wellington: Victoria University, 1992.

Mead, G.H. "The Psychology of Punitive Justice", American Journal of Sociology, 1917–18, 23, pp. 577–602.

Moore, D. "Criminal Justice and Conservative Government in New South Wales (1988–1992): The significance of police reform", *Police Studies*, 1992, 15 (2) pp. 41–54.

Moore, D. "Shame, Forgiveness, and Juvenile Justice", *Criminal Justice Ethics*, 1993, 12 [Reprinted (ch. 16) in M.C. Braswell, B.R. McCarthy, & B.J. McCarthy (eds), *Justice, Crime and Ethics*, (2nd edition), Cincinatti, OH: Anderson Publishing, 1996. Available at <www.lib.jjay.cuny.edu/cje/html/sample2.html>]

Moore, D. "Criminal Action—Official Reaction: Affect Theory, Criminology, and Criminal Justice" in D.L. Nathanson (ed) *Knowing Feeling*, New York: W.W. Norton, 1996.

Moore, D. "Justice in the Workplace: The transformation of economic communities" in *Humanity and Society* 1998 22(3): 78–96.

Moore, D. "Pride, Shame and Empathy among Peers: Community conferencing as transformative justice in education" in K. Rigby, and P. Slee (eds) *Children's Peer Relations*, London: Routledge, 1998.

Moore, D. "Community Conferencing As Transformative Problem-Solving" *SPIDR NEWS, 2000, Fall, vol 24. no. 4, pp. 1–4.* [Available at http://www.mediate.com/articles/mooreD.cfm]

Moore, D. *David Williamson's Jack Manning Trilogy: A study guide*, Sydney: Currency Press, 2003.

Moore, D. & O'Connell, T. "Family Conferencing in Wagga Wagga: A Communitarian Model of Justice." In C. Alder and J. Wundersitz (eds.), Family Conferencing and Juvenile Justice. Canberra: Australian Institute of Criminology, 1994.

Moore, D. with Forsythe, L. *Family Conferencing in Wagga Wagga: A report to the Criminology Research Council*, Wagga Wagga: Centre for Rural Social Research, 1995 [Available at <http://www.aic.gov.au/crc/oldreports/fulltext.html>]

Moore, D. & McDonald, J. "Guiding Principles of the Conferencing Process" in G. Burford & J. Hudson, J. (eds) *Family Group Conferences: New Directions in Community-Centered Child and Family Practice*, Hawthorne, NY: Aldine de Gruyter, 2000.

Moore, D. & McDonald, J. "Community Conferencing as a Special Case of Conflict Transformation" in Braithwaite & Strang, 2001.

Morris, R. *Stories of Transformative Justice*, Canadian Scholars Press, 2000.

Niemayer, R.A. 2001 *Meaning Reconstruction and the Experience of loss*, Washington D.C.: American Psychological Association.

Seymour, J. *Dealing with Young Offenders*, Sydney: Law Book Company, 1988.

Sherman, L.W., Strang, H., Barnes, G., Braithwaite, J., Inkpen, N., & The, M. *Experiments in Restorative Policing: A Progress Report on the Reintegrative Shaming Experiments*, Canberra: ANU Research School of Social Sciences, 1998. Available at *www.aic.gov.au/rjustice/rise/index.html*

Skolnick, J.H. & Bayley, D.H. *Community Policing: Issues and Practices around the world*, Washington D.C.: National Institute of Justice, 1988.

Strang, H. *Repair or Revenge: Victims and Restorative Justice*, Cambridge, Cambridge University Press, 2002.

Strang, H. & Braithwaite, J. *Restorative Justice and Family Violence*, Cambridge, Cambridge University Press, 2002.

Trimboli, L. *An Evaluation of the NSW Youth Justice Conferencing Scheme*, NSW Bureau of Crime Statistics and Research, Sydney, 2000. [available through: *www.lawlink.nsw.gov.au*; specifically at *http://www.agd.nsw.gov.au/bocsar1.nsf/pages/cjb69text*]

Umbreit, M *Victim Meets Offender: The impact of restorative justice in mediation*, Monsey, NY: Criminal Justice Press, 1994.

White. M. & Epston, D. *Narrative Means to Therapeutic Ends*, New York: Norton, 1990.

Zehr, H. 1990 *Changing Lenses: A new focus for criminal justice*, Scottsdale PA: Herald Press.