JUVENILE CONFERENCING AND RESTORATIVE JUSTICE IN TASMANIA

BY

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STATEMENTS

This thesis contains no material which has been accepted for a degree or diploma by the University or any other institution, except by way of background information and duly acknowledged in the thesis, and to the best of the candidate's knowledge and belief no material previously published or written by another person except where due acknowledgement is made in the text of the thesis.

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disrupt the goals of restorative justice, including reductions in recidivism. Special consideration is given to the place of parents in reintegrative shaming theory.
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*Children, Young Persons and Their Families Act 1989* (NZ).
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INTRODUCTION

This thesis concerns recent innovations in the way that criminal justice systems deal with young offenders, namely through a process that is sometimes generically referred to as 'juvenile conferencing'. Juvenile conferences have been instituted across Australia and in numerous other countries. Empirical research was conducted in Tasmania, a small island State of Australia with a population of less than half a million people. Australia is a federation of six States (Tasmania, Victoria, New South Wales, Queensland, South Australia, and Western Australia) and two territories (the Australian Capital Territory and the Northern Territory). On European settlement of Tasmania (then Van Diemen's Land) the English common law was adopted and applied. It was later modified by the Governor on the advice of the Legislative Council and later the Parliament of Van Diemen's Land. With Federation in 1901 the Commonwealth was not granted an express power to legislate on criminal law matters. Consequently, the States retained primary responsibility for their own criminal laws. The main sources of criminal law that concern this thesis are Tasmania's Criminal Code (established under the Criminal Code Act 1924 (Tas)) and other State legislation, particularly the Youth Justice Act 1997 (Tas).

The timing of the beginning of the research was fortunate. It began in January 2000, one month before Tasmania's youth justice system was completely restructured with the proclamation of the Youth Justice Act 1997 (Tas). Previously the police had two options when dealing with young offenders who had admitted to an offence: to caution the youth and not proceed with the matter, or to refer the matter to the children's court. The Act introduced a four-tiered system involving informal cautions, formal cautions, community conferences, and the children's court. The first two tiers, the informal and formal cautions, are processes conducted by the police. Formal cautions are held at police stations and usually include the offender's parents. Unlike any other Australian formal cautioning system, victims can attend formal cautions in Tasmania. Formal cautions can result in the young offender agreeing to complete undertakings, including up to 35 hours community service and actions to repair the damage caused to the victim. Community conferences, the third tier, are based on a format developed in New Zealand called family group conferences. Both formal cautions and community conferences can deal with quite serious offences, such as sexual assault, wounding, and grievous bodily harm.
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Community conferences involve the offender, the victim, their respective supporters, and a police officer. An independent facilitator, employed on a contractual basis by Tasmania’s Department of Health and Human Services (DHHS), convenes the conference. Each person is given the opportunity to talk openly about their perspective of the offence, its impact, and their hopes and fears for the future. Together the group attempts to agree upon ways in which the young offender can repair the emotional and material harm caused by her or his actions. These undertakings can include up to 70 hours community service as well as actions for the benefit of the victim and others. Unlike the agreements reached in a formal caution, the undertakings arising from a community conference are enforceable at court. In other words, if the young offender fails to complete their undertakings, the DHHS notify the police and the police can refer the matter to court.

Ostensibly the system established by the Youth Justice Act 1997 (Tas) seems unremarkable – quite similar to the South Australian juvenile justice system in many respects. However, a complicating factor about Tasmania is that the police are conducting the ‘formal cautions’ as juvenile conferences. This means that Tasmania essentially has two conferencing systems operating side by side, one operated by the police and the other operated by the DHHS. This development makes Tasmania’s system most unusual because, internationally, different jurisdictions have chosen either police-run conferencing or independently facilitated conferencing. The police and DHHS conferences are the focus of my thesis.

The thesis contains eight chapters. The first three chapters are descriptive chapters that lay a foundation for the remainder of the thesis. Chapter one provides a vital international theoretical context for the developments in Tasmania and for the results yielded from this study. It describes a new theory of criminal justice: ‘restorative justice’. Restorative justice is a rapidly evolving theory which argues that the criminal justice system should empower victims, offenders, and the communities from which they come to deal with the aftermath of crime. The origins of restorative justice are described, together with its values and objectives, and the way in which restorative theory tends to view the traditional criminal justice system. Different themes that are emerging in
restorative justice are discussed. This chapter is essential for the entire thesis, but it is particularly important for chapter seven.

Chapter two moves the thesis towards juvenile conferencing practice, which is recognized as a form of restorative practice. It discusses many of the key findings that have been produced to date on conferencing and then contrasts the conferencing systems that have been established in New Zealand and Australia. Three significant issues are analysed in detail. The first is the complexities involved in successfully diverting significant proportions of young offenders away from court, which is one of the central objectives of the new Tasmanian juvenile justice system. The second issue is the phenomenon known as ‘net-widening’. This generally refers to an unanticipated increase in the number of young people having formal contact with the criminal justice system. It can occur as a result of attempts to divert offenders away from court to alternatives such as conferences. Finally, chapter two highlights the heated debate that took place in Australia over police conferencing and considers the use of police conferencing in the United Kingdom and North America.

Chapter three is devoted to the developments that have taken place in Tasmania’s youth justice system. It provides a useful historical background by describing some of the tensions that existed in juvenile justice policy that predated conferencing and restorative justice. The chapter goes on to explain how these tensions influenced policy formation in Tasmania. Developments in practice are also outlined, the most important of which was the police initiative to trial conferencing in 1995. It becomes clear in this chapter that the new juvenile justice system in Tasmania evolved in a relatively unplanned manner.

The fourth chapter presents one of the major contributions of this thesis. That is, statistical analyses that were performed using the central police database in Tasmania. The analyses provide data on young offenders across Tasmania from 1991 to May 2002. It is important to note that the information presented in this chapter was not available in government reports or attainable from any other agency. Until 1991 the Department of Community Services produced extensive annual reports on juvenile offenders. In 1991 the department was restructured and is now the DHHS. Since 1991 the reports on juvenile offenders included in the Parliamentary Papers have included very little useful
information, at least nothing that can address the research questions relevant to this study. The chapter describes the source of the data and how the statistical analyses, in particular regression analyses, were performed. The results provide quite clear evidence relating to three research questions that should be of interest to other conferencing system in Australia and overseas. Is the new Tasmanian system successfully diverting young people away from court? Is net-widening occurring? Have the court's sentencing patterns changed with the introduction of the new system?

In chapter five I compare and contrast the methods used to recruit, train, and monitor police facilitators and DHHS facilitators. The chapter highlights the problems involved in forcing police officers to train as facilitators. The discussion explores many practical interrelationships between training, monitoring, and practice standards. Chapter five dovetails well with chapter six, which presented the findings arising from the observation of 67 police and DHHS conferences. Six thematic areas are examined including (a) the basic features of the police and DHHS conferences, (b) the impact of the experience of the facilitator, (c) pre-conference preparation, (d) the facilitators' explanations of the legal context of the conference to the conference participants, (e) the facilitators' approaches to conferencing, (f) and the undertakings agreed upon.

A completely new direction for restorative theory is presented in chapter seven. This new direction concerns the place of the parents of young offenders in restorative justice. The chapter builds significantly upon ideas first presented in an article I wrote during the course of the research (Pritchard, 2002). This chapter urges restorative theory to make a unique space for parents. Parents may view themselves as part-contributors to the offence committed by their child. They may simultaneously view themselves as victims of the criminal behaviour. In discussing how to practically respond to this ‘contributor-

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1 The reports include information such as the annual cost of juvenile detention and the number of reports tendered to the courts by the DHHS.

2 In the early stages of the research six conferences (three police and three DHHS) were observed partly to help formulate the methodology. Thirty-one police conferences and thirty DHHS conferences were then observed employing the methodology.
victim paradox' I draw heavily upon my qualitative observations of conferences as well as psychological literature on parental self-efficacy (or self-confidence) (Coleman & Karraker, 1997). Chapter eight concludes the thesis and reflects on its contributions to policy, practice, restorative justice theory, and criminology.