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RESTORATIVE JUSTICE -

A PERSUASIVE OPTION FOR THE 21ST CENTURY?

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INTRODUCTION

Legal theorists, sociologists, criminologists, psychologists, theologians, historians and many other professionals and interested groups have spent a great deal of time and effort in recent years analysing and often criticising modern day criminal justice systems. Many have asked whether there is any real need to change a complex, multi-faceted system which seems to have evolved naturally to meet the needs of a complex, multi-faceted society. Surely, many would argue, it would be a waste of time and money to destroy an imposing edifice which still appears to be operating adequately, if not perfectly.

I believe, however, there are a number of persuasive reasons why the edifice needs to be examined and possibly reconstructed in order to accommodate the principles and processes of restorative justice.

PRINCIPLES OF RESTORATIVE JUSTICE

Restorative justice is a term that has been used to describe a number of different concepts and processes. It has been used in contrast to the retributive justice system operating in most countries of the world. As a concept, therefore, it rests on a foundation of restoration, as its name suggests, rather than on a foundation of punishment. Howard Zehr articulates the contrasts between the two kinds of justice as follows:

> "According to retributive justice, (1) crime violates the state and its laws; (2) justice focuses on establishing guilt (3) so that doses of pain can be measured out; (4) justice is sought through conflict between adversaries (5) in which offender is pitted against the state, (6) rules and intentions outweigh outcomes. One side wins and the other side loses.
> According to restorative justice, (1) crime violates people and relationships; (2) justice aims to identify needs and obligations (3) so that things can be made right; (4) justice encourages dialogue and mutual agreement, (5) gives victims and offenders central roles and (6) is judged by the extent to which responsibilities are assumed, needs met, and healing (of individuals and relationships) is encouraged."[1]

To summarise, the principles of restorative justice might be expressed as follows: The main players within a concept of restorative justice are offenders and victims - not the State; the process is seen as being one of mediation and negotiation, rather than one of adversarial conflict concluded by judicial decision-making; the outcomes are restorative, based on principles of repentance, reconciliation and reparation, rather than retributive, based on principles of revenge, punishment and deterrence.

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1 H Zehr *Changing Lenses* (Herald Press, Scottdale, 1990) 31.

Finally, one could describe restorative justice as 'active' rather than 'passive', forward-looking rather than backward-looking and a relational rather than rule-based approach to justice. As Tony Marshall writes in his paper "Restorative Justice on trial in Britain",[2]

> "...offenders should play an active role in putting things right, not just a passive one of accepting punishment; that relationships - not simply between victim and offender but also between both and the community - are important to the cause and prevention of crime; and the emotional aspects of crime are just as important as the material ones..."

This definition highlights two questions which are often not addressed in discussions on restorative justice. Firstly, is it possible to create a system of justice which focuses equally on both victims and offenders and if so, how can the separate demands of the State be seen to? Secondly, how can the needs of both an individual and the community be met, are they the same - and does the community equal the State? These questions will be addressed later in this paper as various models of restorative justice are considered.

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2 Quoted in FWM McElrea 'The Intent of The Children, Young Persons and their Families Act 1989 - Restorative Justice?' A paper presented to the Youth Justice Conference of the New Zealand Youth Court Association Inc, Auckland, February 1994.

AIMS OF A CRIMINAL JUSTICE SYSTEM

As stated earlier, the present criminal justice 'edifice' is a "historical accretion"[3] which has changed and developed over time. Traditionally its main aims have been to maintain social order (by controlling crime rates) and to solve disputes which were unable to be resolved through normal social pressure and informal sanctions. These aims have been expressed in different ways and achieved by different methods.

Today they are usually expressed in such key concepts as deterrence, protection (through incapacitation), denunciation, retribution, rehabilitation and restitution. The methods of achieving these aims vary but they are predominantly punitive and include imprisonment, compulsory treatment, periodic detention, community supervision, fines, curfews and so on.

The focus in New Zealand has been on protecting the community from crime, as is reflected in the legislation, especially in the presumptions towards imprisonment in Sections 5, 6 & 7 of the Criminal Justice Act 1985 (and the 1987 and 1993 Amendments). Although the 1985 Act and the 1993 Amendment also encourage the use of new rehabilitative options and the payment of reparations, it might be argued that these could be seen by offenders and the community as a whole as retributive rather than restorative because of the punitive environment which exists.

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3 T Marshall *Alternatives to Criminal Courts* (Gower Publishing Company, Aldershot, 1985) 5.

POSSIBLE REASONS FOR CHANGE

(i) Failure of the present system to fulfil its aims

Some would suggest that the present criminal justice system is failing in its aim to protect the community from crime because the crime rate continues to rise. As the United Nations report on crime statistics states:

> ...Reported crime has been growing on a worldwide average of 5% every year, well beyond a rise attributable to population growth. At this rate, crime is rapidly outstripping the capacity of many Governments to keep pace with it and has already outpaced their capacity to reduce it.[4]

Closer to home, figures such as the following have been used by critics of the present justice system:-

"...convictions [in New Zealand] for violent offending increased by 41% between 1985 and 1992..."[5] and "...the overall increase in recorded crimes between 1980 and 1990 was 40%."[6]

Recidivism rates also appear to be very high - as recorded by Mark Brown in his study of 615 inmates. Over the course of 30 months following release from custody 77% of the released inmates were reconvicted and 45% were returned to prison.[7]

However, these figures must be seen in perspective. Firstly, the increase in

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4 *Crime Trends and Criminal Justice Operations at the Regional and Interregional Levels* (United Nations, New York, 1993) 4.

5 FWM McElrea 'Restorative Justice. The New Zealand Youth Court: A model for development in other courts?' A paper prepared for the National Conference of District Court Judges, Rotorua, New Zealand, 6-9 April 1994.

6 *Justice Statistics 1990* (Department of Justice, Wellington, 1991) 25.

7 M Brown *Decision Making in District Prison Boards* (Department of Justice, Wellington, 1992) 105.

crime statistics is based on reported crime and according to research,[8] approximately two thirds of all offences are not reported. Therefore, as the Justice Department itself suggests,[9] a number of factors such as growing publicity or changes in police practice could cause those in the non-reporting group to start reporting, thus inflating the crime figures. Secondly, recidivism rates of prison inmates are not an accurate measure of reoffending rates in general - and of first offender reoffending rates in particular. These are very low - approximately 13%.

Finally, the argument that fewer people report crime because they have lost faith in the system (as indicated by Canadian and American surveys)[10] has not been endorsed by English and New Zealand researchers.[11] Therefore, although it is tempting to suggest that the present criminal justice system is not fulfilling its aims and therefore should be replaced by a restorative system, crime statistics on their own may well not be a persuasive enough reason for a change. Nor, as will be seen later in this article, is there any guarantee that restorative justice would succeed in lowering the crime rate and protecting the community any more satisfactorily.

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8 J Robertson, W Young and S Haslett *Surveying Crime* (Institute of Criminology, Victoria University, Wellington, 1989) 23-24.

9 Above n 6

10 W Cragg *The practice of Punishment: Towards a theory of Restorative Justice* (Routledge, London, 1992) 114-115.

11 For instance in the survey mentioned above n 8, the researchers did not find non-reporting was caused by a lack of faith in the system, but more that victims thought offences were too trivial or they wished to deal with them themselves.

(2) Victim Considerations

Perhaps a far more compelling reason for change is that the present system does not provide for victims. They appear to be "...shut out of the 'justice process' right from the beginning..."[12] Some also suggest that their injuries are compounded by the system in that a 'second victimisation' occurs as criminal justice personnel and processes steamroll on, regardless of victims' needs and wishes.[13]

The New Zealand Victims Task Force and a wealth of international researchers have established that victims' grievances cover a range of issues including harsh and unsympathetic treatment by police (whose main concern often seems to be to secure evidence and later a conviction); the lack of input and decision-making power at every stage, from the laying of charges, the setting of bail conditions, through to sentencing; the lack of protection within the adversarial process (including physical protection, through lack of separate waiting rooms and protection of reputations); insufficient information about the progress of trials and their outcomes; and inability to obtain 'closure' (psychological and emotional) mainly because the process has not provided answers to questions or an opportunity for victims to tell their stories.

The Victim of Offences Act 1987 which set up the Victims Task Force was a significant attempt by the legislature (like the reparation provisions

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12 J Consedine *Restorative Justice - Healing the Effects of Crime* (Ploughshares Publications, Lyttleton, 1995) 18.

13 Above n 1, 31.

mentioned in the Criminal Justice Act 1985) to acknowledge the existence of victims' needs within the criminal justice system.

However, in a survey conducted by the Justice Department in 1993, both victims and those providing services for them, indicated that the Victim of Offences Act had made little progress in meeting victims needs. For instance, over half those surveyed stated that Victim Impact Statements were not prepared, or were inadequately prepared; less than 50% commented positively on the way victims are dealt with - by police, defence lawyers, the media, criminal justice officials and the judiciary; most were critical about how well reparation works from a victims' point of view and nearly 80% of the respondents were supportive of establishing new procedures for the advocacy of victims in court.[14]

There is also the question of who are the victims.

There is evidence to suggest that numerically, more women than men are victims. For instance, the first major victimisation survey conducted in America in the 1960s suggested that women were three times more likely to be victims of crime than men.[15]

Although these figures have changed in recent years, there is still evidence that more females than males are the victims of crime and that violent crime against women is rising alarmingly.[16]

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14 A Lee & W Searle *Victims Needs: An Issues Paper* (Department of Justice, Wellington, 1993) 26-40.

15 R Flowers *Women and Criminality* (Greenwood Press, Westport, 1987) 2.

16 Above n 16, 1.

At the same time women are 'victims' in a multitude of other ways. They are victims of marriage and relationship breakups which leave them literally 'holding the baby' (85% of solo parents in New Zealand are women).They are victims of economic hardship (eg. Statistics New Zealand, 1993 shows men with no qualifications earn on average $208.06 per week compared with women in the same category who earn $133.59)

More generally, they are victims, or at least they perceive themselves to be victims, of a criminal justice system constructed and administered almost exclusively by males. Almost three-fifths of those surveyed in the Victims Needs Report considered women to be disadvantaged because of their gender in the way they are dealt with by the police and the courts.[17]

Therefore, an alternative justice system would be required to address issues for victims (and their families), and in so doing, to address issues for women. Proponents of restorative justice claim to take victims seriously through enabling them to participate 'safely' and 'effectively' in a process which sees to their needs and empowers, rather than disempowers.

(3) Offender Considerations

Critics of the present justice system claim that offenders, like victims, are left on the sidelines as "bystanders"[18] while a range of professionals take control through a complex process based on an "elaborate labyrinth of rules."[19] This results in-"a lack of accountability for offenders and little opportunity to be made aware of the real effects of their crime."[20]

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17 Above n 14, 26.
18 Above n 1, 33.
19 Above n 14.
20 FWM McElrea 'Accountability.in the Community: Taking reponsibility

Apart from virtual exclusion from the process itself, a lack of accountability may also arise from the adversarial nature of retributive justice which requires an offender to plead 'guilty' or 'not guilty'. Many offenders follow legal advice to plead 'guilty' in order to gain the opportunity to be offered diversion or to mitigate their sentences. Others plead 'not guilty' on the advice that the prosecution may have insufficient evidence to convict -or because of some other technical reasons why such a plea might be effective.

In both cases, the plea may bear little resemblance to the offenders' and the victims' actual experience of the crime. Howard Zehr suggests this lack of "an intrinsic link"[21] between the criminal act, the criminal justice process and the consequences of the process, makes accountability "hardly possible".[22]

Once convicted and sentenced, offenders also continue to find themselves powerless to break the stereotyped view that many of the public have of them - that they are animals, evil and separate from the rest of humanity. Criminologists believe that this 'labelling' and 'shaming' experience leads to recidivism and is ostracising rather than reintegrative. As one New Zealand researcher has found, it is "counter-productive to going straight."[23] John Braithwaite, an Australian proponent of a restorative justice process

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for Offending" A paper presented to the Legal Research Foundation Conference, Auckland, 12-13 May 1995.Pgs 7-8.

21 Above n 1, 40.

22 Above n 19.

23 Quoted in McElrea's paper. Above n 20, 6.

based on facing victims, especially within a community-based 'conference, believes that the process leads to "reintegrative shaming".[24] He states that reintegrative shaming will occur because communities are such that "individuals are densely enmeshed in interdependencies which have special qualities of mutual help and trust".[25] Therefore, a restorative justice process operates on the basis of these 'interdependencies', enabling both "expressions of community disapproval" and "gestures of reacceptance back into the community of law-abiding citizens"[26] to occur.

(4) The Cultural Imperative - an indigenous people's right to justice

I believe that there is another compelling reason to look at changing the criminal justice system in Aotearoa/New Zealand. We are not a mono-cultural society, yet the system of justice which predominates is mono-cultural, imposed by former English colonial 'masters'. There have been insistent calls for recognition within the criminal justice system of the partnership principles inherent in the Treaty of Waitangi and for changes which might address the fact that disproportionate numbers of Maori are represented in the offending and prison statistics.

These advocates of change emphasise issues of ownership and cultural appropriateness as being at the root of a need to reintroduce

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24 J Braithwaite *Crime, Shame & Reintegration* (Cambridge University Press, Cambridge, 1989) 55-56.

25 Above n 24, 100.

26 Above n 24.

'indigenous' processes and institutions within or alongside the present system.

I agree with these analyses and would add a further suggestion - that the present can and should learn from the past. The twentieth century has been an era in which a great deal of traditional wisdom and lore has been rejected as 'old-fashioned', 'superstitious nonsense' and 'crude', unsophisticated solutions. Yet these epithets have been applied less often in recent years as many civilised and sophisticated solutions have been tried and found wanting and the response has been to turn again to traditional remedies and beliefs.

Legal theorists and writers in advocating restorative justice, state that they are not advocating something new but something that was practised in many ancient societies by many indigenous peoples and by Maori in particular.[27]

(5) The impact of the Children, Young Persons and Their Families Act

Recognition of the importance of whanau/family and community was inherent in the passing of the Children, Young Persons and their Families Act 1989. This Act introduced into the NZ criminal justice system what has been recognised as a restorative justice process (although it was not presented as such when the legislation was passed) - the Family Group

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27 Above n 12, 12.

Conference. (See Appendix 1)

In an evaluation of the effect of the Act, Gabrielle Maxwell and Alison Morris concluded that the primary aims of the Act (diversion from court and decaceration) were being met. They also concluded that young people were being held accountable, families were participating more in decision-making and in taking responsibility for offenders, victims were involved in the process to a greater extent then previously and in other jurisdictions and that there was greater acknowledgment of cultural diversity and greater potential to empower Maori within the process than in the traditional criminal justice process.[28]

This degree of success (of the restorative justice process in practice), provides another persuasive reason for change - especially in the interests of consistency and progress. However, as will be noted later, Maxwell and Morris also provided evidence of weaknesses in the process.

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28 G Maxwell and A Morris *Family, Victims and Culture: Youth Justice in New Zealand* (Social Policy Agency & Institute of Criminology, Victoria University of Wellington, 1993) 186-191.

PRINCIPLES OF RESTORATIVE JUSTICE IN PRACTICE.

The principles of restorative justice have been interpreted by their proponents in different ways as attempts have been made to add them to, or integrate them into existing criminal justice systems (or to establish new systems which incorporate their key concepts).

My intention is to examine three possible models of restorative justice - each one focussing on different aspects of individual/community, victim/offender issues.

[A]The Community Group Conference Model - an extension of the Family Group Conference process

This model has been strongly advocated by proponents of restorative justice within New Zealand. Judge Fred McElrea has led most of the discussion as to the merits of this model and has outlined suggestions as to how it might function in a number of papers and in a proposal submitted to the Justice Department.

Characteristics

1) It would be a compulsory national scheme modelled on the present FGC scheme but modified in several ways, as suggested below. (See Appendix 1 and 2)

2) It would operate alongside the present adversarial system.

3) A distinction would be made between disputed charges and admitted or proved offences.

(4) If charges are admitted (or not denied) then a CGC would negotiate sanctions.There must be consensus reached on this by all members of the CGC.

(5) If charges are denied then the adversarial system would be reverted to. Also, defendants should have the right to terminate the process at any point if they wish to deny the charges.

(6) Really serious offences (purely indictable), or offences committed by repeat offenders may or may not come before a CGC. McElrea, citing research from Great Britain,[29] argues that it would be unwise to assume that these cases should be excluded from the CGC process. (The Great Britain examples, however, were based on voluntary victim/offender mediation schemes so perhaps it would be important in these cases to include the voluntary element)

(7) CGCs should be convened in the same way as FGCs but with emphasis on the wider community having an opportunity to support and bear some responsibility towards offenders and victims. This means they would be convened by a paid coordinator (not necessarily a lawyer but some one with the necessary skills and

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29 Above n 18, 14.

background - including, if possible, social work/counselling/ negotiating/ and legal skills). They would be attended by offenders and victims (or their representative(s)),significant community/family members associated with the offender and victim, the police and representatives of official organisations who may have worked closely with the parties eg social workers/probation officers/representatives of Victim Support, Men for Non-violence and so on.

(8) If the crime has no obvious victim then those most obviously affected by it (e.g.a drug dealer's family and friends), could attend.

(9) The same range of sanctions presently used would be available to be recommended within a CGC system.

(10) An adversarial court would retain the power to accept or reject the recommended sanctions - as a means of avoiding "seriously disproportionate outcomes".[30]

This model could be described as one which integrates the interests of the State, local communities and individuals (both victims and offenders) as all are given a right to make an input but each party's rights are also safeguarded to a certain extent.

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30 Above n 14, 16.

[B] Marae Justice Model

There are a number of similarities between this model and the one outlined above. However, there also some significant differences which indicate, I believe, that this model ought to be examined separately. It is also difficult to pinpoint the key characteristics of a marae justice model as various models have operated in recent years.[31] The model outlined below is essentially based on that developed by Kokona Ngahau[32] headed by Aroha Terry, in the Waikato.

Characteristics

(1) A victim makes a complaint to Kokona Ngahau and a small team of investigators investigate the complaint.

They speak to as many people as possible (not the alleged offender).

(2) Once the investigation is complete and the investigators believe the complaint is well founded, the offender is ordered to attend a hearing at the marae. (All offenders have been male to date.). There he is told of the allegation.

(3) Hearings are not held until a victim has had intensive counselling and feels able to face the offender without fear

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31 See J Consedine (Above n 12, 81-86, 96-97)

32 A voluntary group with the twin aims of child protection and whanau preservation. Publicised initially in a TV 3 documentary "Inside New Zealand, Marae Justice" and described in some detail by Consedine - See above n 22).

or wanting revenge.

(4) Offender/victim and supporters of both, whanau, friends and kaumatua attend the hearing.

(5) Aroha Terry acts as a coordinator of the hearing. (Consedine points out that in other examples of marae justice kaumatua would lead the hearing or it would be the responsibility of a committee of designated people.[33])

Moana Jackson states that in pre-colonial times there were specifically trained tohunga or experts in the law who chaired and supervised such hearings.[34] He and recent researchers claim that a lot of this traditional knowledge has been lost and modern day kaumatua feel the weight of having to regain both the knowledge and experience.[35]

(6) All those attending the hearing may speak except for the offender who is given one chance to speak at the conclusion of the hearing. (In every case dealt with so far, offenders have admitted guilt).

(7) Sanctions are decided by all present -except the offender and Aroha Terry who withdraw while the decision-making process is being conducted.

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33 As above n 12, 82.
34 As above n 12, 93.
35 J Tauri "Maori Justice Practices, Past and Future". An unpublished research paper presented to the Legal Research Foundation Conference, Auckland, May 1995.

(8) Outcomes are varied but are normally community-based sanctions which may include banishment from the marae/the area for a period of time, compulsory counselling, payment of compensation (in goods/labour/money) and other creative sanctions.

Often the severest outcome is the whakama (shame) experienced by the offender because there is an underlying belief that the mana of the offender's entire whanau, hapu and iwi has been undermined by the committal of the crime.

Similarly, a victim's pain and shame is shared by her whanau, hapu and iwi and so must be adequately and appropriately compensated for.[36]

(9) Both victim and offender may be required to go through ritualised cleansing and reintegration ceremonies over the months which follow the hearing.[37]

To summarise, the marae justice model outlined above is not based on the transportation of a Pakeha court system onto a marae or to a marae setting. It is a voluntary scheme, chosen primarily by victims, but also acquiesced to by offenders, as an alternative to the present criminal justice system.

I believe it would be also viable as a diversion option - available after a charge but before conviction and sentencing, as suggested by

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36 Above n 12, 82-84.
37 Above n 12, 83.

Moana Jackson.[38] Or, it may also be used by the court as a pre-sentencing option.

The model rests on Maori cultural concepts of community responsibility - as opposed to the idea that an offender is solely to blame for his crimes.[39] Also, the process outlined above is victim rather than offender-centred. As one of the victims in the *Marae Justice* documentary stated, "Marae justice is set up to meet victim's needs. It is not about squashing the offender into the dirt. It is about recognising who got hurt - to hell with people saying society is the victim: it was me, not society, that got hurt."[40] The final aim of the process is, as Consedine writes, "to allow full restoration of all parties...[and]...the healing of the hurt experienced by the whanau, the hapu and the tribe."[41]

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38 M Jackson *Maori and the Criminal Justice System: A New Perspective, He Whaipaanga Hou* (Department of Justice, Wellington, 1987) 239.

39 Above n 38, 110-111. Jackson writes: "The individual-based English system stressed that an offender was solely to blame for his crimes which, paradoxically, were considered acts against society, not another individual - the Crown was the aggrieved agent which sought redress.
This...conflicted with the Maori system which was shaped by ideals of kinship obligations. Because Maori possessed individual rights but collective reponsibilities, offenders were never regarded as solely to blame for their crimes...Redress was therefore sought not by some distant symbol of the 'Crown', but by the whanau involved - both the victim's and the offender's. There was thus a very real and close relationship between the offender, the victim and the 'judge and jury' - a relationship which could be retributive, rehabilitative and a deterrent.
The imposition of the Pakeha system removed this intimate sense of responsibility and replaced it with its own courts and police force in which "*imprisonment typified the Western response - the equation of individuals with animals distanced from their communities.*"

40 Above n 5, 82.

[C] Victim-Offender Mediation Model

This third model, like the marae justice model, could operate as a compulsory process - as a diversion option or as a pre-sentencing option. Or it could (and does) operate as a voluntary option outside the criminal justice system.

Key elements in this victim/offender mediation model, as it has been developed by such programmes as VORP,[42] are as follows:-

Characteristics

(1) There is a face-to-face meeting between individual victims and offenders. The offender must have already admitted guilt. Theoretically, both must agree to meet voluntarily but in some situations, where the mediation has been ordered or recommended by the court, researchers have suggested that a certain element of coercion has been experienced.[43]

(2) The process is used mainly for property-related offences - although about 20% of the cases in the British schemes were offences against the person. (Also, the Mennonites have used the process, adapted slightly, as a voluntary one for prisoners -

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41 Above n 5, 97.

42 Victim Offender Reconciliation Programme - developed initially by a Mennonite group in Ontario.

43 M Wright *Justice for Victims and Offenders* (Open University Press, Buckingham, 1991) 88.

many convicted of violent crimes.)

(3) Trained voluntary mediators act as facilitators of the meetings.

(4) The aim of the process is for both parties to tell and hear each others stories and for restitution to be made.[44]

(5) Opportunity is given for both to make suggestions and arrive at agreement as to the resolution of the offence (usually the making of restitution, although other sanctions may also be agreed on). Where mediation has been ordered by the court, any resolution reached must be endorsed by the court who may also give an additional sentence.

(6) There may be a final meeting of the parties once the agreement has been carried out.

The above model focuses on the needs of individuals - potentially an equal focus on offenders and victims, rather than on the needs of the whanau or community. It operates on a voluntary basis, at least in theory. It is not seen as an alternative system of justice but rather as an adjunct to the existing system (however it is used.)

The emphasis is placed on restitution rather than on restoration or reconciliation, despite the title of victim and offender **reconciliation** programme. Zehr states, "We make room for it [reconciliation] to happen but we don't insist.[45]

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44 Above n 43, 89. Reasons for a meeting were given as "a discussion and payment for losses."

45 Above n 44.

CRITIQUE OF RESTORATIVE JUSTICE

1 PHILOSOPHICAL/IDEOLOGICAL ISSUES

It seems clear that advocates of restorative justice differ as to what they see as being the ideological foundation for such a system.

Some - such as Howard Zehr and Jim Consedine - clearly see restorative justice concepts as having their roots within Christianity. They claim that even Hebraic Law had as its focus 'shalom', a restoration of well being and peace, and that the teachings of Christ urge humanity towards restoration (through repentance, restitution and reconciliation).

This vision has inspired Christian groups, such as the Mennonite community, to find alternative justice mechanisms which convey a message of hope, forgiveness and healing - in effect, the Gospel.

However, such a vision may not be relevant to the majority of New Zealanders, supposedly living in a post-Christian era! It may also not be very effective in fulfilling the purposes of a criminal justice system - that is, the maintenance of law and order - because realistically most offenders are not motivated by Christian principles and might well see processes flowing from them as 'soft options'.

I would suggest that this is the reason why a number of scholars and practitioners have preferred to build their understanding of restorative justice on more secular psychological foundations, in particular, the reintegrative shaming view, and the cultural view already outlined.

strongest of these mores are based on personal relationships and not on impersonal rules. Therefore offenders can be changed through the use of these relationships by shaming and reintegration. The focus is on offenders, victims and the wider community as it relates personally to the offenders. The cultural view echoes this, affirming that the basis of the moral mores and the relationships between individuals and community groups is the basis of culture itself. But cultures vary dramatically from each other. Therefore, as the law arises out of these divergent mores, in a bi-cultural or multi-cultural society such as New Zealand, how can there be one criminal justice system appropriate for all?

For instance, although communitarianism and inter-relationships was a feature of traditional Maori society, it does not appear to be a feature of modern-day pakeha society which is highly individualistic - or perhaps of modern-day Maori society.

Even Braithwaite points out that urbanisation, high residential mobility, singleness, unemployment, inadequate ties to school and being male (i.e. socially constructed to be independent!) facilitate against communitarianism. [46] As these are precisely the characteristics 'enjoyed' by most offenders how can a restorative justice system based on a theory of reintegrative shaming be effective for such individuals - or their family or whanau? Both Kenneth Polk, in his comments on family conferencing[47] and Moana Jackson[48] also raise these issues.

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46 Above n 24, 101.

47 K Polk 'Family Conferencing : Theoretical & Evaluative Concerns' in Famly Conferencing & Juvenile Justice. C Alder and J Wundersitz (ed) (Australian Institute of Criminology, Canberra, 1994) 131.

48 Above n 38..

Julie Leibrich's recent New Zealand based research goes some way towards answering criticisms levelled at theories of reintegrative shaming and the belief in the power of community and individual relationships. Although her research confirms the idea that if a person is unemployed and feeling useless they are more likely to offend, it also suggests that offenders will give up offending if they have something of value they do not want to risk.[49] That "something of value" may well be the relationship with a partner, a child or a mother as suggested in a powerful story related by Dr P Sharples at a recent conference.[50]

This story was connected to Sharples' personal experience of a marae justice model similar to that advocated. He and many other exponents of a culturally based foundation for justice believe that Maori, despite being urbanised and traumatised by many of the prevailing social ills, retain a deep connection to their whanau which can and should be used as a basis for a restorative system of justice. This connection has also been clearly recognised by Section 4 of the Children, Young Persons and Their Families Act 1989, as already mentioned.

In interpreting this section FGC convenors have held conferences on maraes and in family homes. This has been appreciated by most of the Maori interviewed by Maxwell and Morris.[51] As one interviewee states,

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49 J Leibrich *Straight to the Point, Angles on Giving up Crime* (Otago University Press, Dunedin, 1993)

50 Legal Research Foundation Conference. "Rethinking Criminal Justice." Auckland 12th May 1995. He related how a 40 year old 'hardened criminal' finally turned his life around when confronted by his elderly mother's pain, anger and despair.

51 Above n 28.

In interpreting this section FGC convenors have held conferences on marae and in family homes. This has been appreciated by most of the Maori interviewed by Maxwell and Morris.[51] As one interviewee states, "It was great. The boys felt shame. We had a kaumatua there. There was a powhiri, karakia and kai. All could speak."[52]

Answering the criticisms that we are now living in a post-Christian culture and that the liberal/humanitarian milk of human kindness underpinning restorative theory has well and truly dried up, researchers have also provided evidence which suggests otherwise. In particular, it has been found that victims are not more punitive than the general public, plus many appear to be prepared to take part in mediation even when they expect little or no benefit. (Marshall and Merry 1990).[53] In New Zealand, preliminary results of respondents' replies in the 1992 International Crime Survey also suggest that victims were no more punitive than respondents who had not experienced victimisation.[54]

Surveys conducted in Canada, America, Great Britain, Australia and New Zealand also suggest that both victims and offenders who have participated in restorative justice processes have been satisfied with both the process and the outcomes. (See discussion in following sections.)

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51 Above n 28.

52 Above n 28, 126.

53 Above n 43, 128.

54 A Church, K Lang, J Leigh, P Te Wairere Ahiahi Young, A Gray & N Edgar *Victims Court Assistance. An Evaluation of the Pilot Scheme* (Department of Justice, Wellington, 1995) 18

2 LEGAL ISSUES

Claims have been made that the New Zealand criminal justice system operates on the basis of one law for all. The system is neutral, fair, consistent and certain. It is characterised by the age old symbol of the blindfolded Goddess of Justice weighing each individual in the scales of justice. Every alleged offender is treated in the same way, measured by the same process and the same standards.

The key elements in this system of justice are certainty based on State Control and a process based on precedent; the premise that every alleged offender is innocent until proven guilty, guaranteed by due process and the adversarial system; and determinate sentencing, again based on statutory definition and precedent.

Protagonists within the system are individual offenders and the State - victims are essentially excluded.

In contrast, restorative processes and outcomes seem to raise a number of legal difficulties. The most central is the question of consistency and fairness. In all the models outlined above there is a large degree of discretion involved. Each case is considered in the light of its own individual context. Therefore, neither the process or the outcomes are based on precedent but on the unique decision/negotiating process of each CGC, marae meeting or victim/offender mediation agreement.

This has led to the following criticisms being made.

(i) Reduction in Offenders' Rights

Critics claim that restorative justice processes can reduce offenders' rights at every stage. First, during the investigatory stage, before charges are laid, the police may act unlawfully, unfairly or coercively. These actions may not come to light because there is no procedure/process for examining the actions of the police within CGCs, if they follow the FGC model. As Morris and Maxwell state, "...we are concerned about breaches of statutory safeguards by front line police officers [breaches occurring at arrest and questioning stage] and, indeed, about their continuing resistance to these safeguards...Pressures, both explicit and implicit appear to be placed upon young people to admit their guilt."[55]

In the marae justice model when the investigation is totally in the hands of non-professionals who are not answerable to any kind of formal standard there appears to be opportunity for even greater coercion. In addition, critics have claimed that because of an absence of due process and compulsory legal representation during the hearing itself, alleged offenders inhabit "a legal limbo which increase their vulnerability to subsequent punishment for offences previously committed"[56] and it may not be clear what offence or offences have been admitted to or whether the version of the facts accepted for the purpose of sentencing has been properly established.[57]

Families in both the CGC and marae justice models may also coerce defendants to admit guilt, because they wish to avoid the stigma of public

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55 Above n 28, 85.

56 Above n 43, 136.

57 K Warner 'Family Group Conferences and the Rights of the Offender ' in C Alder and J Wundersitz (ed) *Family Conferencing and Juvenile Justice* (Australian Institute of Criminology, Canberra, 1994) 142.

court appearances. Some researchers state this kind of coercion may be applied particularly to female offenders.[58]

Finally, even 'voluntary' attendance at a victim/offender mediation meeting could be coercive, especially if there was the suggestion that attendance might mitigate the sentence.

However, in answer to these criticisms it is important to note that neither CGCs or VORPS are adjudicative forums. Also, legal representation would continue to be available to defendants at every stage of arrest, charging and presumably, referral by police or a Court to a CGC. Therefore defendants would have the opportunity to be advised as to whether admitting or denying guilt was in their best interests. There could also be a reworking of the Human Rights Act in order to prevent the police going beyond their powers.

Another safeguard proposed in the CGC model is the right for offenders to terminate the conference at any point and request trial by the Court.

The Marae Justice model is a voluntary one and even though elements of compulsion may exist within it there is nothing but informal sanctions to stop defendants opting out or refusing to participate from the beginning. These informal sanctions are also likely to be applied to defendants by their families and communities within the present justice system.

Finally, although these models are 'private' as opposed to 'public' they do require the facilitation of neutral mediators and the first two also require the presence of both parties and their supporters. In most situations this should

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58 Above n 57, 149.

address potential problems of coercion within the actual conference/mediation session.

One other danger for offenders within a restorative system may be the potential for 'net widening' that is, bringing offenders to justice for offences which previously they would not have been charged with (because of lack of evidence or because it was considered that the offence was trivial).

(ii) Sentencing Issues

The five main criticisms levelled at restorative justice models which have control over sentencing are as follows:-

(a) That proportionality might be forgotten

(b) That frugality of punishment is no longer an operating principle

(c) That consistency - the "fundamental element in any rational and fair system of justice"[59] - is lost.

(d) That double jeopardy may be incurred.

(e) That cultural sanctions may be imposed which are inappropriate

It has been judicially recognised in the present criminal justice system that considerations such as rehabilitation or deterrence should not outweigh the 'criminality of the act', ie. "punishment should fit the crime. "This theoretically allows for consistency and certainty and prevents excessively harsh or lenient sentencing.

The theory of frugality of punishment has also been advanced and in fact incorporated within legislation - the Criminal Justice Act 1985 and the Children, Young Persons and Their Families Act 1989 both indicate that

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59 Above n 57, 144

the least restrictive form of sanction appropriate to the circumstances should be imposed.

These theories, if followed, should lead to consistency and fairness.

In contrast, within the restorative models, there seems to be little consistency. Each crime is judged by its context, which may be largely determined by victims' subjective responses to it. Critics suggest that in giving victims and family/closely connected community members a voice, outcomes may well be harsher than those imposed in the traditional system. Similarly, traditional cultural sanctions may well be very harsh - beatings, appropriation of property or even death.

Also, there is the danger of a kind of double jeopardy occurring if defendants are tried in a CGC which fails and are then tried again in a Court or, if they are tried through a voluntary marae justice hearing and are then required to come before a Court (or CGC).

These criticisms of restorative justice processes seem very persuasive until one takes a good look at sentencing within the present system. It is agreed by many commentators that "no clear **unifying** (emphasis added) theme runs through sentencing practice or theory."[60]

One of the problems identified is that there is a lack of agreement as to the aims of sentencing. In some cases the aim may be deterrence, in others rehabilitation, in others incapacitation, in others denunciation. Another problem is the discretion accorded to the judiciary who, although they may follow the guidelines laid down in previous cases, also have their own convictions and principles. As Hall writes:

> Sentencing is not a rational mechanical process: it is a human process

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60 Above n 10, 170.

> and is subject to the frailties of the human mind. A wide variety of factors including the Judge's background, experience, social values, moral outlook, penal philosophy and views as to the merits and demerits of a particular penalty influence the sentencing decision."[61]

A third is the range of aggravating and mitigating factors taken into consideration, often without any explanation or consistency, because the factors are always being weighed against each other and against the seriousness of the offence and the perceived aims of sentencing at that point in time.(Hesketh and Young, in considering the general sentencing framework in New Zealand courts, advance between forty and fifty aggravating and mitigating factors which may be taken into account.)[62]
The end result is judgments imposing different sanctions for the same offence or the same sanction for widely differing offences.[63]
In fact, the end result is similar to that which might be expected in a restorative justice system, because in both systems the **individual** offender is considered carefully. (Except in the marae justice model where the whole whanau and iwi may come under much greater scrutiny).
In restorative justice the aims of sentencing appear to be clearer and more consistent. If restoration of relationships occurs then theoretically deterrence, rehabilitation, reparation and so on will occur also. Although

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61 G G Hall *Sentencing Guide* (Butterworths, Wellington, 1994) B/101.

62 B Hesketh & Professor W Young *Sentencing and Plea Making* (New Zealand Law Society Seminar, July 1994) 47-64.

63 For example:- A judge sentenced a male Maori activist who attempted to chainsaw down an historic tree to 6mths periodic detention. Another judge sentenced a male Pakeha child abuser to 6mths periodic detention. A third judge sentenced a female Maori activist who spat at the Governor General to 3mth imprisonment.

only a small amount of research has been conducted to date on restorative justice programmes it does indicate a reasonably high degree of satisfaction with outcomes by victims, offenders, professionals and family members - at least compared with previously recorded expressions of satisfaction and dissatisfaction.[64] It also indicates that the programmes are slightly more likely to result in deterrence than recidivism.

In some instances sanctions have been 'moderately severe'(as observed by Maxwell and Morris[65]) yet if they are 'owned' by the parties through a negotiated settlement they seem to be much more likely to be effective. Protection against totally inappropriate sanctions is also present in each of the models, in that the Court must endorse agreements and it seems likely that the restorative process could still function effectively with the legislative presumptions towards imprisonment still in place. (If the courts were to refer indictable offences to a restorative justice process).Also, culturally inappropriate sanctions would not be permitted if they broke the criminal code.

Strategies have been effected in other jurisdictions (eg. Victoria, Australia) to prevent double jeopardy occurring. Firstly, if mediation breaks down the outcomes are not made available to the Court. Secondly, in the case of a breakdown, no further action can be taken unless the defendant did not participate in good faith.[66]

(iii) Which Offences?

Linked to criticisms that restorative justice processes do not cater for offenders and may lead to inequitable or ineffective sentencing are

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64 Above n 43, 92-93 and n 28.
65 Above n 28, 84.
66 Above n 57, 151.

criticisms that the processes are only appropriate for dealing with certain offences. It is true that in some of the early programmes - for instance the VORP programme in Kitchener, Ontario, the only offences dealt with were property offences. However, as suggested earlier, trials in the U. K. and in Canada have since validated the use of the programmes for all kinds of offences, including indictable offences. A justification for this is that victims (and possibly offenders) and their families and friends are most in need of healing and restoration after the commission of these offences.

However, certain safeguards would need to be in place, including the participation of both parties to be voluntary and adequate support and protection for victims to be assured. Also there would need to be a watching brief kept on sanctions to ensure they were not too dissimilar to those being handed down by the Courts for similar offences (given the lack of consistency in sentencing already existing and discussed above).

Public acceptability?

(iv) Reduction in Victims' Rights

Three strong criticisms have been levelled at the restorative justice movement on behalf of victims.

The first is that victims lose the powerful support of the State within the process. Although representatives of the State may be present eg. the police, they are not there as prosecutors standing in the place of the victim.

The second is that outcomes are not guaranteed to the victim (eg. A a statutory right to reparation) yet victims may have been persuaded to participate in the process on the understanding that they would be more likely to obtain some kind of reparation.

Finally, the lack of formality and the dynamics of the mediation process may mean an even greater lack of protection, particularly for women, than

that afforded to victims within a court. Traditionally mediation has been embraced by many feminists for a number of reasons. Firstly, "it rejects an objectivist approach to conflict resolution, and promises to consider disputes in terms of relationships and responsibility."[67]

The most influential of feminist researchers, Carol Gilligan, demonstrated in her work that this concern with relationships and connectedness was a characteristic of women. She called this female mode or 'voice', "the ethic of care" as opposed to the male "ethic of justice" which she claimed was a mode which emphasised individualism, the use of rules to resolve moral dilemmas and equality.[68]

A second advantage of the mediation process is said to be the elimination of the hierarchy of dominance which characterises judge/litigant and lawyer/client relationships. A third advantage is that decisions may well be informed by the context of women's realities rather than by abstract legal principles which may bear little relation to women's realities.

However, the process of mediation may be very destructive to women in the following ways - (1) There is a notion underlying most mediation processes (including the CGC and VORP models) that there is a commitment to formal equality - to treating each party alike and allowing each to have their fair say. This takes no account of general social patterns of inequality or of the specific dynamic which may be operating between victims and offenders (particularly when they are known to each other and the victims may have been in an abusive relationship for some time).

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67 T Grillo *The Mediation Alternative: Process Dangers for Women* The Yale Law Journal Vol. 100 1991, 1548.

68 C Gilligan *In a Different Voice* (Feminist Legal Theory Class Materials, Victoria University, 1995) 62-63.

(2) Women have been socially constructed to behave in certain ways which are not conducive to asserting their equality, their interests or their rights- in particular, in public. As Grillo suggests, "Nice women...stay silent or are peacemakers..."[69] They fight for the rights of their children, their partners but not themselves. If they behave stridently, angrily or emotionally they are labelled 'bitches', 'selfish', 'unmaternal' and 'irrational'. Therefore in a situation where rights have to be asserted and claimed (rather than relied on as being a statutory due) women may be at a distinct disadvantage because of their social conditioning.

(3) This is just another process which provides an illusion for women that they are making their own decisions when in effect they are not. They have no ultimate control of the charges, the venue, the participants, the mediator or the outcomes. This control still remains in the hands of a male-dominated system (except possibly in the marae justice model outlined). Community pressure and the interests of the State weigh against the wishes of individual female victims who may well wish to forgive their partner who raped them - or on the other hand - lock him up for life. If such a conflict of interests occurred, as it is likely to do, it is almost a certainty that the woman's 'voice' would be drowned out.

Finally, the informality of restorative justice settings may work to relax and reassure women. However, some feminists claim it is a regression to the 'private' sphere where women have been invisible for centuries. Informality, therefore, does not have the same status as a formal, public setting. Nor does it have the same potential protection, especially for victims of violence

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69 Above n 67, 1577.

(many of whom fear to be in the same Court as their attacker/rapist, let alone in a small, informal space.)

The question therefore remains as to whether or not victims, and women in particular, would benefit from a restorative justice system. Despite the powerful criticisms advanced, the testimony of the victim quoted earlier who found the Kokona Ngahau process so effective, is persuasive. However, her experience also suggests that a great deal of support is required for victims and consequently the VORP process may not be appropriate for many women. The research mentioned earlier - conducted in New Zealand, Canada, the States and the United Kingdom, also indicated that although many victims were still not happy with the restorative processes which they had experienced (and only between one third and a half volunteered to participate in most schemes)[70] the satisfaction rate was higher than that expressed previously under a traditional criminal justice scheme.

As already pointed out, victims needs are not represented now. They are frequently revictimised and disempowered by the adversarial process. The Prosecution's role within the present system is to see to the law and order interests of the State, not the needs, wishes and interests of victims. Similarly, although there have been moves to provide for reparation to victims, few victims are compensated at all under the present system.

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70 T Marshall & S Merry *Crime and Accountability: Victim/Offender Mediation in Practice* (Home Office, London, 1990)

3 OTHER ISSUES - PRACTICAL IMPLICATIONS

(1) Staffing

The quality of the coordinators - whether paid or voluntary, is seen as being the key as to whether or not restorative justice processes succeed or fail

As mentioned earlier, the skills required are varied and include a range of counselling, social work, negotiating and legal skills.

There has been a great deal of debate within youth justice systems as to whom coordinators should be answerable, who should train them and what background they have. In Australia (Wagga Wagga) youth justice coordinators are police. Most commentators are highly critical of this, believing that the police already have too much discretionary power within the justice system (and insufficient checks on their power) and that their 'disciplinary role' is too strongly perceived by society to fit with the 'reconciliatory role' required by the restorative justice process.

In New Zealand the coordinators (YJCs) are appointed by the Children and Young Persons Service (the Social Welfare department) and come from a range of backgrounds. Over half identify as Maori.

Apart from the survey of the whole scheme conducted by Maxwell and Morris, the YJCs are not subject to ongoing assessments. They also have a very limited period of specific training before entering their positions and 'learn on the job'. This contrasts with the training and experience required of lawyers and the judiciary.

The facilitators in the marae justice model also have little formal training and are not subject to assessment or retraining. In contrast, the voluntary mediators in the VORPs are trained, supported, evaluated and retrained.

The effectiveness of all these mediators does not, however, seem to turn on their background or training but on how effectively they can communicate and facilitate - a skill which appears to be both learned and innate.

It is important, I believe that coordinators/mediators consistently display this skill in an atmosphere of accountability. That means their being answerable to either the Court or a supervisory body through ongoing assessment of the agreements reached the feelings of the parties involved so that public confidence in their abilities is maintained.

(ii) Finance and Facilities

There are several financial issues which need to be considered. Firstly, how much might a system of CGCs/VORPS cost? Should the coordinators be paid or voluntary?

Should participants be paid to attend or given expenses or flown free of charge from their place of residence to the conference?

Can the establishment of two integrated and interacting criminal justice systems be justified when it seems to be difficult enough to fund one?

Is there a financial benefit for the State in implementing a restorative justice model? Theoretically, yes but it cannot be conclusively proved beforehand and should not be the main justification for accepting the model. However .there is evidence already from the cutbacks made to Youth Justice that there is a lack of political will to finance such a scheme. (A local YJC admitted informally that their budget had been cut from approx $56,000 to approx $18,000 last year.)

Although these are crucial questions unfortunately I feel that possible answers are beyond the scope of this article.

(iii) Burden on Families and Communities

All these models take a great deal of the responsibility for justice away from the State and place it on individuals, families and communities. This is a heavy burden to carry, both in terms of facilitating the process and in terms of providing for and monitoring the outcomes. Some have labelled it a 'cheap' system of justice for the poor. As well as this burden, the actual blame for offending is spread to families (usually the women in the families) and communities and if the offending continues the blame deepens.

It seems both cruel and inefficient to lay the burden back on potentially dysfunctional families and community groups, especially as the reason for the offending may lie within these groups themselves.

However, the fact remains that even the might of the State seems to be ineffective in dealing with habitual offenders and the power of reintegrative shaming has been demonstrated on many occasions - particularly within Maori and Pacific Island communities.

(iv) Political issues - Gender and Culture

Radical feminists, led in recent years by Catherine MacKinnon, are very sceptical about the attempts to reform existing systems and institutions. The basis of their scepticism lies in the belief that "the State is male" and law itself is "inherently male". MacKinnon states, "The law sees and treats women the way men see and treat them."[71]

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71 C MacKinnon 'Feminism, Marxism, Method and the State: Towards a Feminist Jurisprudence' in P Bart and E Moran (ed) *Violence Against Women* (Sage Publications, Newbury Park 1993) 207.

By this she means that the State is constructed upon the subordination of women and that until this truth and its significance is accepted, both men and women will continue to come up with alternatives and reforms which are merely different expressions of male power. She comments:

> Initiatives are ...directed toward making the police more sensitive, prosecutors more responsive, judges more receptive and the law...less sexist. This may be progressive in the liberal...sense but how is it empowering in the feminist sense?
>
> Even if it were effective in jailing men who do little different from what non deviant men do regularly, how would such approach alter women's rapability? Unconfronted are *why* women are raped and the role of the State in that. Similarly, applying laws against battery...has largely failed to address, as part of the strategy for state intervention, the conditions that produce men who systematically express themselves violently toward women...[72]

Similarly Moana Jackson and others have raised questions about 'marae justice'-claiming it merely acts as a sop to the implementation of Pakeha law. There are two ways to approach these concerns (summed up in the idea that tinkering with a system does not empower the institutionally disempowered). One is to refuse to waste time and money 'tinkering', to refuse to create an illusion of progress and to continue to campaign for radical reform. The second is to accept that although the entire society needs to be changed by a radical shift in the balance of power, it may be possible to cause this shift by taking one step at a time towards a more consultative and restorative approach. .

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72 Above n 62, 206.

CONCLUSION

As discussed at the outset, I believe there are good reasons for reconstructing the present criminal justice system. After examining three possible restorative justice models with their potential advantages and disadvantages I have come to the conclusion that it is possible to incorporate these models into the present system, giving them a sufficient degree of power to allow them to function effectively while retaining the present Court system to serve particular functions. (See Appendix 2).

I am convinced that the principles of restorative justice as they are expressed in these models could well provide our society with a strong foundation upon which to build for the 21st century.

Although the models do not address the endemic problems of racism and inequity present within New Zealand and within most societies today, they do provide opportunities for both victims, offenders and community groups to have more of a say in decisions about justice and for them to experiment with creative solutions which they have a certain degree of control over and which may well be more culturally appropriate.

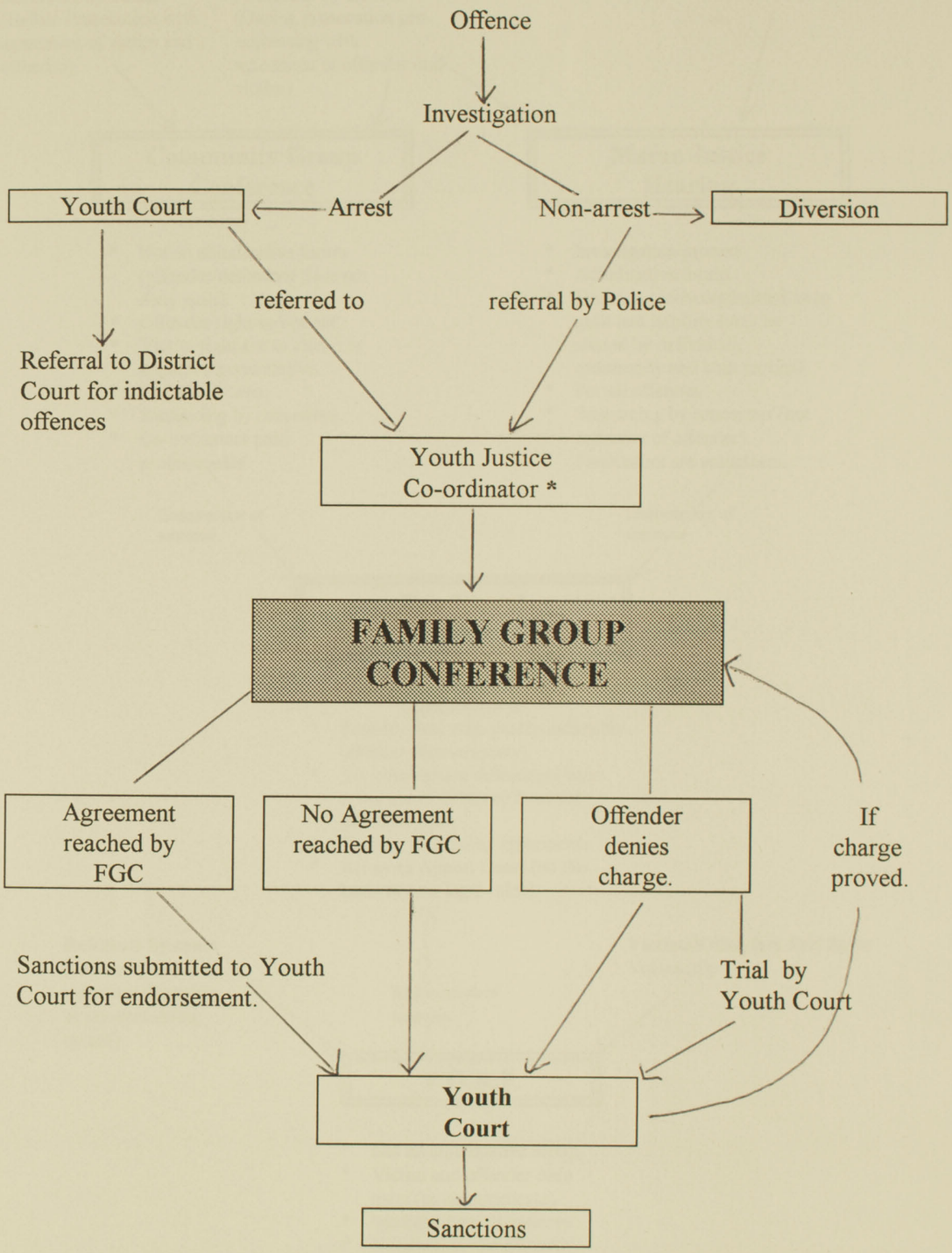
Unfortunately I don't believe each group (victims, offenders and the community) will have an equal opportunity to 'have a say', as for reasons I have outlined in this article, it seems likely that victims' needs will continue to be subjugated to the needs and beliefs of the wider community and eventually, of the State.

However, despite my comments on the dangers and inadequacies of the process I do believe it offers more than the powerlessness, invisibility and denial of their realities 'offered' to both victims and offenders within the present system. I also believe it could be a powerful social tool in the hands

of competent coordinators and that it has the potential to fulfil all the aims of any criminal justice system, including deterrence and incapacitation.
Finally I would suggest that there are number of safeguards which should protect the models advocated. Firstly, the depth of goodwill and determination to find solutions which exists within Aotearoa. Secondly, the power of the process itself, as already demonstrated through FGCs and marae justice programmes. Thirdly, the continuing presence of the traditional Courts which can operate as an alternative, reassuring the timid and ensuring that there are checks and balances in place.
In conclusion, with the backing of the media, a degree of political goodwill (which **may** be easier to obtain under MMP!)and the kind of enthusiasm encountered amongst the great range of professionals and non-professionals who attended the Legal Research Foundation Conference on restorative justice in May this year, I am confident that restorative justice models as outlined could be incorporated into the New Zealand criminal justice system relatively smoothly.

Appendix 1

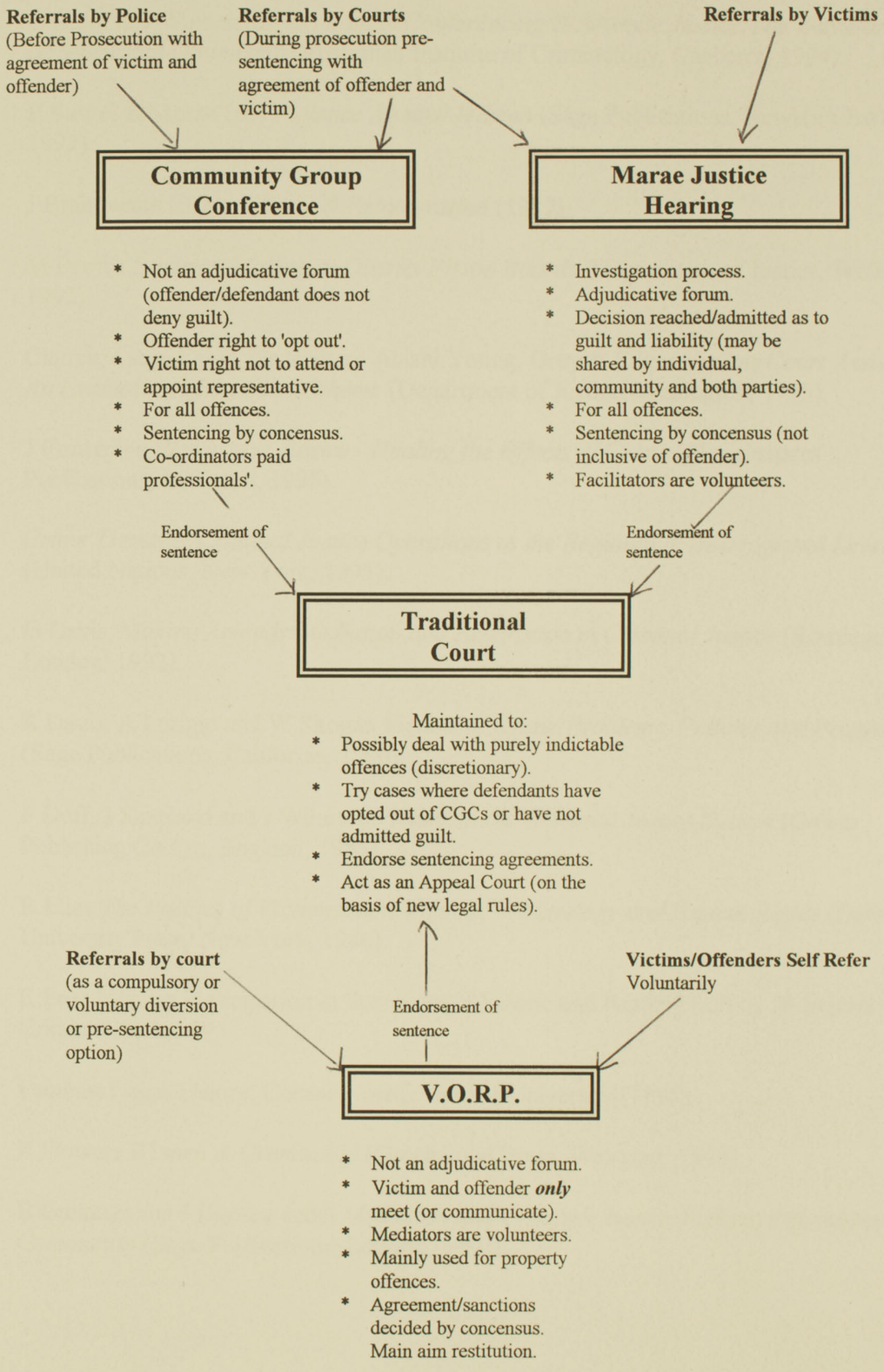
YOUTH JUSTICE PROCESS



* Youth Justice Co-ordinator convenes a FGC for offenders referred by Youth Courts and Police. In theory, offenders' families say where and when the FGC should be held and who should be invited.

Appendix 2

RESTORATIVE JUSTICE MODELS



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