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# **THE ENIGMA OF 'COMMUNITY' AND THE EXIGENCY OF ENGAGEMENT: RESTORATIVE YOUTH CONFERENCING IN NORTHERN IRELAND**

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## **Abstract**

This article considers the role of community in a new model of restorative youth conferencing that has recently been introduced in Northern Ireland. It notes the considerable advantages of enhancing community involvement in criminal justice, but also recognises concerns particularly for a society that is just emerging from years of conflict. Whilst the scheme has clearly increased levels of participation, it is argued that there is potential to develop work further in partnership with elements of the community sector and to contribute to governance and democratic participation within a post-conflict society.

## **Introduction**

The quest for legitimacy in the Northern Ireland criminal justice system has been fraught with difficulty over many decades. In 1998, Northern Ireland got a unique opportunity to conduct a fundamental review of its justice system as part of the peace process following the 'Belfast' or 'Good Friday' Agreement. One of the central aims of this Review was to make the criminal justice system more accountable and acceptable to the community as a whole and to encourage community involvement and be responsive to the community's concerns (Criminal Justice Review Group, 2000). The Review, which was published in March 2000, made 294 recommendations for change across the criminal justice system which included fundamental changes to the system of youth justice. Specifically, it recommended that a restorative justice approach should be central to how young offenders are dealt with in the criminal justice system. It proposed a conference model to be known as 'youth conferencing' to be based in statute for all young persons (10 to 17 year olds) subject to the full range of human rights safeguards (Criminal Justice Review Group, 2000: 205).

The model of youth conferencing proposed was similar to the New Zealand family group conference, though the Northern Ireland model placed much more emphasis on the role of the victim and sought to locate them at the centre of the process. While it was recognised that the New Zealand system had been the basis for many restorative justice schemes worldwide and it was highlighted as a potential model for Northern Ireland, it was recognised that the local context and background of Northern Ireland was very different and therefore it was not appropriate to simply transplant it.

At the time of publication of the Review, Northern Ireland was just emerging from over thirty years of conflict, which had resulted in a deep hostility and mistrust of the state and criminal justice system in some communities. This hostility had also resulted in the development of informal and community based schemes in some areas, which were outside the criminal justice system and dealt with issues of crime and crime prevention (McEvoy and Mika, 2002). More recently, some community based restorative schemes have developed in mainly loyalist and republican areas as alternatives to punishment beatings and these have mostly dealt with low level criminality and neighbourhood disputes. However, it was decided to place the conferencing model firmly within the criminal justice system by enshrining it in legislation and thereby fully integrating it into the formal criminal justice system.

The model proposed for Northern Ireland was very different from those in existence in other parts of the United Kingdom. It sought to place restorative principles at the very heart of the criminal justice system in relation to youth justice, and recommended youth conferencing as the main avenue for dealing with young people who offend. Thus, for example, it was different from the youth panels used in England and Wales, which have been primarily aimed at first-time offenders and have sought to include restorative principles in their operation, so as to provide young offenders with opportunities 'to make restoration to the victim, take responsibility for the consequences of their offending and achieve reintegration into the law-abiding community' (Home Office, 2002). The youth conferencing proposals went considerably further by making restorative justice a central element in youth justice and directly involving offenders and victims in the process of seeking justice through restorative principles. By doing so, it was hoped that this would considerably enhance community participation and confidence in the justice system.

In implementing these reforms, the state was faced with the challenge of rolling out an alternative model of justice, which conceptualises ownership of the crime as being distributed among the victim, the offender and the community (McCold, 1996; Maxwell and Morris, 2000). However, the implementation of restorative schemes is often considerably more difficult in practice than theory might suggest, and there is a discernable lack of consensus as to how precisely these 'pillars' of the restorative paradigm are supposed to interact (Johnstone, 2002). This article explores the extent to which the restorative conferencing model introduced in Northern Ireland encourages community participation. It begins with a brief description of the scheme, and then proceeds to

discuss the concept of community participation, noting some of the potential benefits and pitfalls, with particular reference to the contested meaning of 'community' within the Northern Ireland context. Drawing on a recent evaluation of the conferencing scheme, the article proceeds to argue that the model holds considerable capacity to engage with 'community', but that the potential for the scheme to be truly 'restorative' faces challenges as a consequence of the post-conflict setting, particularly in relation to the uneasy relationships that continue to exist between the state and some local communities.

## **The Conferencing Scheme**

The introduction of youth conferencing marks a radical change in the arrangements and delivery of justice to young people in Northern Ireland. The Justice (Northern Ireland) Act 2002 provided for the establishment of an independent Youth Conferencing Service, to organise and facilitate conferences. The legislation outlines two types of conferences, known as diversionary and court-ordered conferences. Both forms of conference take place with a view to providing a recommendation, respectively to the prosecutor (diversionary) or court (court-ordered) on how the young person should be dealt with.

Diversionary conferences are convened following referral to the Youth Justice Agency from the Public Prosecution Service. The prosecutor is expected to make a referral where they would otherwise have instituted court proceedings. Therefore, they are not intended as a disposal for first time offenders or offenders who commit minor criminal acts – who should normally be dealt with by the police, by way of caution or warning. Rather, diversionary conferences are intended for young people who may have offended and may have been cautioned in the past or where formal action is deemed necessary, short of referral through the courts. For the diversionary conference to take place the young person *must* admit to the offence and must consent to engage in the process. If either of these conditions is not met the young person will not be dealt with through this process and may be referred to the court for prosecution.

For court-ordered conferences, the young person is referred for conferencing through the court. As with diversionary conferences, the young person must admit to the offence and consent to the conferencing process. If there is a dispute of the facts, these will be heard by the court, and following a finding of guilt the case may then proceed to conferencing – with the young person's consent. The distinctive feature of the Northern Ireland system is that the court *must* refer a young person to a youth conference. Only offences with a penalty of life imprisonment, offences which are triable under indictment only and scheduled offences (terrorism) are not automatically eligible for youth conferencing. The mandatory nature of referrals highlights the intended centrality of conferencing to the youth justice process.

The actual conferencing process typically involves a meeting in which the young person is invited to reflect upon their actions and offer some form of reparation to the victim. The conference is chaired by a professionally trained conference co-ordinator, employed by the youth conferencing service. The victim, who is encouraged to attend, can explain how the offence has impacted on them and can gain an understanding of why the offence occurred. This process is designed to give the offender an understanding of the impact of their actions and to understand the victim's perspective. It also gives the victim the opportunity to understand why they were victimised and to separate the offender from the offence. Following a group discussion, a conference plan will be drawn up which takes the form of a negotiated 'contract' which is enforceable and requires the offender to complete acts, such as reparation to the victim. The agreement process, like participation in the conference, is voluntary and the young person must consent before the contract becomes enforceable. Contracts are designed with a restorative outcome in mind and usually contain some form of reparation, which is intended to address the needs of the victim, the offender and the community.

## **Community Participation**

There is a certain inherent appeal with the idea of community participation within restorative conferencing, and, indeed, within criminal justice and public policy discourse generally. Both terms - 'community' and 'participation' - have proved heavily influential in contemporary criminal justice discourse. Phrases such as 'community spirit', 'community building / strengthening', 'sense of community', 'community activism' carry very positive overtones. As Crawford (1997:148) observed, 'community' was the 'policy buzzword' of the 1990's and, Weisberg (2003:373) describes the term as 'warmly persuasive'. McCold and Wachtel (2003:296) comment that the notion of community is reflective of a societal longing for return of a sense of connectedness 'against a tide of individualism and a perceived decline of community life'. It also correlates with a broader trend in criminal justice discourse, which increasingly calls for justice to be devolved to those most directly affected by the offence (Christie, 1977; Morris and Maxwell 2000; Garland, 2002).

Three major benefits of community participation are commonly cited. First, community involvement assists with localised problem-solving efforts in terms of contributing towards public safety and crime prevention (Zehr, 1990; McCold and Wachtel, 1997; Braithwaite, 2002). To this end, community representatives are seen as being more effective than outside professionals in encouraging offenders to take personal responsibility for their crimes and in reintegrating them back into the community, since they are in a better position to 'connect with the victim and offender and support them as they try to repair the harm from the crime' (Olson and Dzur, 2004). This comes from the expectation that community members will be more like 'real people' to the offenders, who will identify more with community members and care more about what they think. In turn, communities that are pro-active and mobilised may reduce reliance upon the resources of the state (Weisberg, 2003).

Secondly, community input provides a framework for the restoration of harm and reintegration of the offender. Through offering a forum for the symbolic acknowledgement that harm has occurred (Sullivan and Tift, 2001), community involvement may be said to have a denunciatory function. However, it simultaneously avoids stigmatising or ostracising the offender, and instead offers a forum where public disapproval can be aired, but rituals of forgiveness can be invoked and a 'continuum of respect' may be left intact (Braithwaite, 2002: 78). In this way, 'reintegrative shaming' is exercised (Braithwaite, 1989; 2002).

A third perceived benefit of community participation, and perhaps one that is especially relevant to Northern Ireland, is that it can add a sense of legitimacy to the outcomes / agreements that may result from restorative processes (Shapland, 2003; Weisberg, 2003). In setting down norms of acceptable and unacceptable conduct (Weisberg, 2003; Olson and Dzur, 2004), community participation can help foster a sense of civic ownership of disputes. It follows that community involvement may be capable of adding a sense of moral authority to decision-making processes, which may assist in developing a collective sense of understanding of the need to address offending behaviour in spite of any grievance or suspicion about the involvement of the state. In developing policies which are based around partnership with local communities, multi-level governance and civil society may be developed and a sense of 'democratic space' may act to revive politics and 'democratise democracy' (Morison, 2001).

Just as there are three major potential benefits of community participation, it is also important to note the existence of at least three questions which have the potential to undermine the role of community. These relate to the meaning of 'community'; the role of community; and the perceived risks of community involvement. Each of these potential caveats is now considered in turn.

## **The Meaning of Community**

The definition of 'community' is steeped in ambiguity and further complicated by the very specific meaning that is often attributed to it in Northern Ireland. While various commentators have grappled to unpick the meaning of the term, the task is often fudged (Sullivan and Tift, 2001; Zehr, 2002). Commonly defined in everyday usage in geographical terms (i.e. a locality, district, or neighbourhood), there is a broad consensus that this view tends to be simplistic and over-romanticised (McCold and Wachtel, 1997; Crawford and Clear, 2001; Duff, 2003). As such, there has been a cross-disciplinary shift towards understanding the concept as 'dynamic, contentious and changing' (Halperin, 1998:2) or 'freefloating' (Crawford, 2000:301). It is frequently conceptualised as a sociological construct used to describe an 'ephemeral quality of identification through connection with others' (Pavlich, 2005:85). The term thus continues to mean very different things to different people, but a common thread in contemporary discourse is that it is used to describe a form of social network where individual lives converge (Braithwaite, 1989:85) through diverse media including work, neighbourhood, family, friends, leisure, religion or politics. (Walgrave, 2003; Crawford and Clear, 2001).

Membership is subjective and largely dependent on a sense of connectedness and interdependency (McCold and Wachtel, 1997). However, there is little agreement as to what level of 'connectedness' is sufficient to give rise to a community. While some commentators conceptualise 'community' as an all-encompassing term that includes anything or anyone that is distinct from the state (Van Ness, 1997; Weisberg, 2003), others have suggested a fairly robust set of criteria that would need to be met before a 'community' can be truly said to exist (e.g. Frazer, 1999).

While there is broad agreement that the concept of community can no longer be taken to refer to a tangible entity (Walgrave, 2003; Crawford and Clear, 2001; Pavlich, 2005), a presupposition of its existence in some form (albeit an imagined representation) remains essential not only in relation to restorative justice, but to the entire realm of community justice, which includes community policing and crime prevention. Just as such ideas are formulated around an *a priori* assumption as to the existence of community (Pavlich, 2005), it is also based on the assumption that all members of the community share common values and aspirations (Van Zyl Smit, 1999; Shapland, 2003). Communities are themselves composed of a range of diverse individuals who often lack uniformity in terms of age, race, socio-economic profile, life experience, education and culture, and, in the particular context of Northern Ireland, religion or political opinion (O'Mahony et al, 2000). Indeed, definitional questions are further clouded in Northern Ireland by the fact that media reportage and political discourse is heavily influenced by the idea that there are two homogenous umbrella communities – one being frequently labelled 'Unionist' or 'Protestant', the other commonly referred to as 'Nationalist' or 'Catholic'. While such labelling may constitute 'comfortable shorthand', it risks creating a 'normative halo', and implies an unproven commonality of interest and experience (Weisberg, 2003: 348). While most people view themselves as belonging to one community or the other, this orientation is entirely subjective, and there can be little guarantee that a certain majority of members will share what one particular representative of a community deems to be reflective of their collective interests.

There is a consensus that, in a very general sense, the social fibres and community bonds that connect people have become fractured in recent years (Crawford, 1996; McCold and Wachtel, 1997). Ironically, however, the conflict-ridden history of Northern Ireland has meant that society has been less exposed to wider globalised erosion of 'community' and certain community values have even been preserved or developed as a form of 'social cement' (O'Mahony et al, 2000: 6-7). As such, Northern Ireland has a strong history of proactive civil society and highly mobilised political communities. The community sector has performed a wider role in terms of both service provision and policy development than its counterparts in Great Britain or North America (McEvoy and Mika, 2002). Thus in the very particular setting of Northern Ireland, a communitarian ethos is still largely vibrant which suggests that, in theory at least, it ought to be a fertile ground for restorative-based initiatives to flourish.

In contrast to these more general definitions of community, the term has come to take on a much more specific meaning among certain restorative proponents. The concept of 'micro-communities' has emerged, and refers to a range of stakeholders connected with the circumstances surrounding the offence and may encourage, help and support those directly involved<sup>1</sup>. Thus micro-communities are constructed out of the events in question and reflected in the 'supporters' of victims and offenders which may include schools, churches, youth organisations, or family and friends (McCold, 2000; Braithwaite, 2002). This narrower meaning of 'community' tends to be favoured by restorative proponents, probably because it imports a degree of certitude and tangibility since specific individuals may be more readily identified and included within conferencing arrangements.

Irrespective of which of these meanings of community is adopted, it remains something of a 'promiscuous concept' (Worrall, 1997:46). While it may be unrealistic to expect that all commentators will share identical understandings of the concept, such continuing confusion risks undermining the potential benefits of restorative justice (McCold and Wachtel, 1997; Schiff, 2003), and also obfuscates the task of defining how the 'community' ought to interact with other stakeholders and what role its representatives should play.

### The Role of Community

A second caveat relating to community participation concerns the ambiguity that exists regarding its proper role in restorative processes. Faget (2000) suggests that the uncertainty is exacerbated by the corresponding use of the term 'participation', which may be read as implying a sense of control or veto, as opposed to expressing an opinion or inputting information. A range of 'roles' for the community have been suggested in specific regard to community involvement in restorative conferencing: to act as a victim of crime where there has been direct damage to communal property or in so-called victimless crimes such as 'joyriding' or drug use (McCold, 2000; Dignan, 2005); to represent the injury caused by the state and the fracturing of communal peace, thereby injecting a wider public interest into processes that generally exclude the state (Braithwaite and Mugford, 1994; McCold, 1995); to support those who have been directly affected by the crime (Morris and Maxwell, 2000; McCold, 2000, Braithwaite, 2002); to act as a surrogate or proxy victim where the direct victim has failed to participate (O'Mahony and Doak, 2004; Dignan, 2005); to act as an organiser and / or facilitator (Roche, 2002; McEvoy and Mika, 2002); or to act or as a passive witness or bystander (Dignan, 2005).

While such roles need not be mutually exclusive, existing literature sheds little light on how precisely 'community' is supposed to interact with other players involved in the process and how potential conflict arising between them might be resolved. The task of ascertaining a proper role for the community is therefore necessarily tied to the meaning that is attached to it.

## The Risks of Community

A third caveat relates to the concern that community participation carries certain potential risks as well as benefits. It is perhaps inevitable that, where non-state parties play a central role in the process, particularly if they are facilitating conferences or exercising decision-making powers, they may leave themselves open to the criticism that they are deficient in terms of accountability, transparency and human rights. Dignan (2005:101) highlights a dangerous presumption that communities are 'reasonably benign, tolerant, likely to espouse broadly progressive values', but proceeds to note that not all communities could be characterised in this manner. Pavlich (2001:58-59) also warns of the 'totalitarian dangers that lurk beneath attempts to posit the community as an ontologically fixed entity' since images of community 'have featured prominently among social calculations behind the most horrific catastrophes of the twentieth century' including National Socialism and Stalinism. Such a view underlines the need for some form of over-arching check against vigilantism, authoritarianism or domination (Shapland, 2003; Weisberg, 2003). Furthermore, even if communities themselves can be said to espouse collective liberal values, not all communities share the same resources or are equally well-placed to restore victims or re-integrate offenders (Crawford and Clear, 2001).

The validity of such criticisms in relation to specific restorative programmes will depend on a number of factors, including the nature or values held by the community in question (McEvoy and Mika, 2002); the degree to which the views expressed by the representatives are actually reflective of the community as a whole; and the role community actually plays in arriving at the conference agreement. Specific fears have been expressed that the community-based restorative schemes operating in some loyalist and republican areas in Northern Ireland are self-contained and operate without judicial safeguards or due process, thus creating the potential for the unchecked abuse of power (Dignan and Lowey, 2000). While a spirited defence to these views is advanced by McEvoy and Mika (2002), there can be little doubt that the relationship between the Northern Ireland community-led restorative programmes and the state has always been, and remains, tense. There is a degree of mutual suspicion on both sides: the government retains suspicion over the historical roots of such organisations and their perceived links with paramilitary organisations. Consequently, the state has refrained from allocating resources or defining any formal role for these restorative programmes, and the community organisations were largely excluded from the consultations which preceded the implementation of the youth conferencing arrangements. On their part, the community organisations are often reluctant to co-operate closely, or at all, with state agencies. Since partition, the impartiality and legitimacy of the Northern Ireland criminal justice system has been frequently questioned, particularly (though by no means exclusively) within much of the nationalist community. There remains a sense of hostility in some quarters to what may be perceived as an attempt by the state to monopolise or claim ownership of restorative-based solutions to juvenile offending. It may thus appear to the leaders of such schemes that their own *modus operandi* is under threat by the introduction of a statutory state-led system which has secured a substantial investment of resources.

## The Place of Community in the Youth Conferencing Scheme

Having highlighted some of the difficulties inherent in defining and locating a role for 'community', we shall now proceed to consider the degree of community input in the youth conference arrangements. The scheme has been subject to a major evaluation in which the proceedings of 185 conferences were observed and personal interviews were completed with 171 young people and 125 victims who participated in conferences (Campbell et al, 2006). This research allows us to reflect on the extent to which the scheme embodies the goals and values highlighted by the Criminal Justice Review Group, which included rendering the justice system more accountable and responsive to the community as a whole, and the need for 'partnership between the criminal justice system, the community, and other external bodies' (Criminal Justice Review Group, 2000: 30).

### Victims and Offenders

It is important to highlight that the research found the scheme to operate with relative success overall. Youth conferencing considerably increased levels of participation for both offenders and victims. The youth conferencing scheme managed to engage a high proportion of victims in the process: over two-thirds of conferences (69%) had a victim in attendance, which is relatively high compared with other restorative based programmes (cf. Maxwell and Morris, 2002; Newburn et al, 2003; O'Mahony and Doak, 2004). Victims appeared to be willing to participate in youth conferencing and 79% said they were 'keen' to participate. Most (91%) said their decision to take part was their own and not a result of pressure to attend. Over three quarters (79%) of victims said they attended 'to help the young person' and many victims said they wanted to hear what the young person had to say and their side of the story. Victims appeared to react well to the conference process and were generally able to engage with the process and discussions. Overall 98% of victims were observed as talkative in conferences and it was clear that the conference forum was largely successful in providing victims with the opportunity to express their feelings. Though most victims (71%) displayed some degree of frustration toward the young offender at some point in the conference, the vast majority accepted the young person's version of the offence either 'a lot' (69%) or 'a bit' (25%) and 74% of victims expressed a degree of empathy towards the offender.

For offenders it was evident that the conferencing process held them to account for their actions, for example, by having them explain to the conference group and victim why they offended. The majority wanted to attend and they gave reasons such as, wanting to 'make good' for what they had done, or wanting to apologise to the victim. The most common reasons for attending were to make up for what they had done, to seek the victim's forgiveness, and to have other people hear their side of the story. Only 28% of offenders said they were initially 'not keen' to attend. Indeed many offenders appreciated the opportunity to interact with the victim and wanted to 'restore' or repair the harm they had caused. Though many offenders who participated in conferences said they did so to avoid going through court, most felt it provided them with the opportunity to take responsibility for their actions, seek forgiveness and put the offence behind them. Youth

conferencing was by no means the easy option and most offenders found it very challenging. Generally offenders found the prospect of coming face to face with their victim quite difficult. For instance, 71% of offenders displayed some degree of nervousness at the beginning of the conference and only 28% appeared to be 'not at all' nervous. Despite their nervousness, observations of the conferences revealed that offenders were usually able to engage well in the conferencing process, with nearly all (98%) being able to talk about the offence.

The direct involvement of offenders in conferencing and their ability to engage in dialogue contrasts with the conventional court process, where offenders are usually allowed a passive role - generally they do not speak other than to confirm their name, plea and understanding of the charges - and are normally represented and spoken for by legal counsel throughout their proceedings. Similarly, victims were able to actively participate in the conferencing process and many found the experience valuable in terms of understanding why the offence had been committed and in gaining some sort of apology and / or restitution. This too contrasts with the typical experience of victims in the conventional court process where they often find themselves excluded and alienated, or simply used as witnesses for evidential purposes if the case is contested (Zehr, 1990).

### **The Community**

As previously noted, the task of assessing the extent of community involvement is intimately related to what constitutes a 'community'. As far as the use of 'micro-communities' is concerned, the restorative youth conferencing process also demonstrated a considerable degree of success in encouraging broader participation in justice, beyond the individual offender and victim. Indeed the notion of broad participation is regarded as an essential element in the conferencing process and by law the young person, the conference coordinator, a police officer and an appropriate adult must attend a conference<sup>2</sup>. The young person is entitled to have legal representation at the conference, but they may only attend in an advisory capacity and cannot speak for the young person. The coordinator may also include anyone else who they feel may be 'of value' to the process, such as a community worker or someone who is likely to help the young person, either during the conference or as part of the conference plan. So, for example, because the offenders were juveniles, all of the conferences observed included parents or guardians, and some included other supporters, such as social workers or probation officers, who had been working with or knew the young person. These individuals were encouraged to support the young person and observations showed that 77% of supporters were engaged to at least some extent when discussing the crime. Many, by invitation of the co-ordinator, described positive aspects of the offender's life and several supporters were seen to actively step in when the young person was having difficulty expressing him/herself.

Victims are entitled, but not required, to attend; and where they chose not to do so they may still contribute to the conference process either directly or indirectly. This could include a telephone link, a written statement, letter or tape recording in which the victim can express the impact of the crime. Victims could also bring supporters if they wish.

While only seventeen victim supporters attended a conference, all were observed to participate well and contribute to the discussion about the offence and its impact. Most of the victim supporters engaged directly with the young person and explained the impact of the offence on the victim and themselves. All of the victims attending with a supporter valued their presence and felt they helped them through the process. The supporters were also able to demonstrate that the impact of the crime often went beyond the individual victim and affected their whole family and even the broader community. All victims attending with supporters described them as helpful and none indicated that their presence was unhelpful, or that they would have preferred to have come alone.

Another major form of community engagement was through the participation of victim representatives or 'proxy victims' Here, a representative of local business or community centre could attend a conference if the direct victim was unable or unwilling to attend. Of the victims who attended conferences, 40% were direct victims, but 60% were 'victim representatives' who participated in the conference as 'vicarious stakeholders' (Dignan, 2005:101).

In addition to the use of 'micro communities' and the use of proxy victims acting as 'vicarious stakeholders', broader levels of 'community' engagement in the process were also evident. These interventions tended to come from a range of 'service providers'. They included voluntary, statutory and non-statutory bodies and community organisations which provided services to youth conferencing, such as one-to-one mentoring services, drug and alcohol awareness, voluntary and community based work programmes, victim and offence awareness sessions, to peer education and diversionary programmes. The reliance upon the voluntary and community sector was significant and 83% of conference plans included activities or programmes which were usually provided through the community and voluntary sector, again underlining the commitment to community participation and engagement.

There was, however, very little evidence of co-operation with the community-led restorative schemes that have been established in some loyalist and republican areas. Interviews conducted with representatives from the two main community-based restorative projects revealed that they both felt excluded from the youth conferencing arrangements. While there has been some limited contact and cooperation with the conferencing service, this has been the exception rather than the norm. It should be noted, however, that the lack of involvement of either organisation is not solely attributable to reluctance on their part: at an official level at least, the Northern Ireland Office has issued guidance to the effect that facilitators working within the Youth Conference Service should not involve community-based organisations in the preparation or conduct of a conference as long as such groups resist co-operation with the police.

### **Discussion**

In evaluating the youth conferencing arrangements, one of the key tasks was to consider the extent to which they succeeded in securing the objective as set out in the Criminal

Justice Review of enhancing community involvement and support for the criminal justice system. Clearly, the arrangements have been successful in engaging micro-communities and this has broadened to include wider levels of community engagement and participation. Statutory agencies and voluntary service-providers have played a positive role in many conferences. Family members and friends of the victim and offender attended and actively participated in the dialogue. The supporters were able to feed positively into the restorative atmosphere of the conference and were able to describe the impact of the offence on the broader family and on their community. Many, while showing support for the young person, also spoke of feelings of regret, disappointment and shame which no doubt added to the restorative impact of the conference on the young person. Likewise, victims' representatives were keen to play a proactive part in discussions. As representatives of local businesses or community organisations, they were able to inject fresh community perspectives and understandings into the conference and reinforce on the offender the wider impact of their actions. The use of such representatives enabled a victim and community perspective to be brought into the process whereas it might not otherwise have occurred.

A more disconcerting finding from the research was that there was very little interaction between the Youth Conference Service and the community-led restorative programmes. While both the statutory and community schemes are adopting a similar approach to juvenile offenders, with, presumably, the same restorative-based goals in mind, there is little active consultation or exchange between them. This has the potential to increase the risks of double jeopardy in some cases, which will obviously thwart the reintegrative purpose of the process<sup>3</sup>. The main reason for the lack of interaction between the community and statutory schemes, as previously noted, is ongoing mutual mistrust and suspicion. Certain communities still perceive themselves to be in opposition to the state, police and criminal justice system, which may in turn impact upon their willingness to engage in a state-led process, as well as impacting upon the state's receptiveness to engage with them. The prospects for such agreement remain somewhat uncertain in the short term, and may well be linked with broader questions concerning policing reform and the return of devolution. In July 2006, the Northern Ireland Office released a Draft Protocol designed to provide a framework for relations between the criminal justice system and the community-based schemes. The document laid down a number of operative requirements to which these schemes would be expected to subscribe (Northern Ireland Office, 2006). Foremost amongst these conditions was the stipulation that any criminal offences should only be referred to such schemes by the police. Although the protocol is subject to a 12-week consultation period, it has already received a cool reception among leaders of the schemes that operate within republican communities. It thus appears doubtful that the publication of the new protocol will have any major impact upon the relationship between the formal and informal sectors. Prospects for future co-operation would seem to hinge upon political movement towards devolution<sup>4</sup>, or changes in attitudes amongst republican leaders towards cooperation with the police.

## Conclusions

Clearly, the new restorative youth conferencing arrangements have considerably enhanced levels of community participation in criminal justice as evidenced by the significant involvement of micro-communities and broader community level involvement. Whilst it has been noted that there are certain difficulties involved in community participation, not least in terms of the meaning of community, the role of community and the risks of community, these obstacles can and should be transcended through a more transparent and collaborative approach to policy-making. While challenges also exist for the leaders of community-led schemes, it is in the interests of both programmes to cooperate and work together. An approach based on partnership between the informal and formal schemes could further build public confidence in both schemes, and might even give rise to a form of mutual accountability, whereby state-led conferencing is accountable to community-based schemes and vice versa, each placing checks on the perceived disadvantages and risks of injustice of the other (Roche, 2002).

In this way, restorative youth conferencing can act as both a vehicle for and beneficiary of further community building. However, in order for such a partnership to work successfully, the underlying conditions must be right. This will depend not only on the 'stage of development' which the community is at (Schiff, 2002), but will also be governed by the rate of transition in a post-conflict setting. Perhaps, in the case of Northern Ireland, it is still too soon to expect a restorative scheme to be in place that is capable of 'total' community participation: for both the state and republican and loyalist communities, Northern Ireland remains in the midst of transition rather than at the end of a process. It is still very much a politically divided society.

However, there is tremendous potential for youth conferencing arrangements to flourish in an environment that has a history of strong civil society and vibrant and dynamic community activism. Post-conflict societies tend to lend favourable conditions to promote restorative justice (Skelton, 2002) and, at its core, transitional justice and restorative justice are both fundamentally transformative discourses that have much in common. Restorative justice not only holds the potential to repair harm at an individual level, but may even act as a vehicle for truth-finding and reconciliation in divided societies<sup>5</sup>. The mainstreaming of restorative solutions to crime could make a modest contribution to post-conflict reconciliation in two major ways.

Firstly, conferencing may help build confidence in the reformed criminal justice. The process of normalising policing in Northern Ireland could be bolstered by the additional transparency that the presence of the police officer may bring: the presence of at least one police officer is mandatory under the legislation<sup>6</sup>. In their evaluation of the RISE project in Australia, Sherman et al (1998) noted that police-led conferencing helped to foster a great sense of respect for the law and the police. Conferencing may thus have a modest role to play in opening up the Northern Ireland criminal justice system, in that young people from communities that have traditionally felt alienated and antagonistic towards the police may be able to put a 'human face' to individual officers. Through a long-term

'drip-effect', this may assist in overcoming the mistrust and hostility that has been directed at the police and criminal justice institutions in the Northern Ireland for so long.

Secondly, conferencing may boost democracy and inter-communal healing through imparting certain values and outlooks into the society at large. Teitel (2000) has argued that transitional legal systems and new laws may act in such a way to establish normative values and to clarify and make amends past wrongs. If the values that drive criminal justice reform are restorative in nature, they should encompass key themes such as reconciliation, inclusivity, accountability, healing, and similar communitarian values. In turn, such values may assist in forging better relationships between community-based organisations and the formal criminal justice system. Ultimately, however, the long-term integrity and sustainability of the youth conferencing arrangements is tied to the much larger project of political transition. Only time will tell whether the Criminal Justice Review will have succeeded in its goal of developing a dynamic and lasting partnership between the state and all sections of the community.

## End Notes

- <sup>1</sup> Micro-communities have also been referred to as 'communities of care', 'communities of interest' or 'personal communities' (Braithwaite, 2002; Maxwell and Morris, 2000; McCold, 2000; Zehr, 2002; Pavlich, 2005; Dignan, 2005).
- <sup>2</sup> Article 3A, Criminal Justice (Children) (Northern Ireland) Order 1998, as inserted by s57 Justice (Northern Ireland) Act 2002.
- <sup>3</sup> According to the community representatives we interviewed, there were at least two cases where young people had sat in been involved in both state-led conferencing and community-led mediation.
- <sup>4</sup> Devolved government in Northern Ireland is one of the goals of the peace process and it is hoped that this would foster inclusive government, that would be acceptable to all communities.
- <sup>5</sup> Recent examples are to be found in the South African Truth and Reconciliation Commission and the Gacaca courts of Rwanda. While there are examples of transitional truth-finding processes in Northern Ireland, such as the Bloody Sunday public inquiry, no 'Truth Commission' has been established to date.
- <sup>6</sup> Justice (NI) Act, s57, inserting Article 3A in the Criminal Justice (Children) (Northern Ireland) Order 1998

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