

Rhetoric or Reality? Restorative Justice in the Youth Justice System in England

Christina Stahlkopf

**St. Cross College
Oxford University**

Thesis submitted in partial fulfillment of the requirements for the degree of DPhil in
Sociology in the Division of Social Sciences at the University of Oxford.

Michaelmas Term, 2005 [i.e. 2006]

Words: 83, 638

ABSTRACT

This thesis explores the recent introduction of restorative justice into the youth justice system in England. It examines the historical and political context from which current youth justice policies have emerged and aims to evaluate how this new system is functioning 'on the ground' several years after being implemented. Specifically, the primary aim of the research is to investigate final warnings and referral orders. The findings are based on an in-depth study of one Youth Offending Team (YOT). The research adopted a predominantly qualitative, case study based method utilizing techniques of observation, informal conversations, formal interviews with the young offenders and their supporters as well as with authority figures who are amongst those responsible for policy and practice in the youth justice system. The substantive chapters of this thesis focus on the delivery of final warnings, referral order panel meetings, victim participation, and the structural, cultural and political influences on YOT practice. This research concludes that at present, restorative practices in England are seriously compromised. However, simply because these programmes experience difficulties, they should not necessarily be considered a failure. The present failures in practice are not related to the philosophical foundation of these programmes or even to the way in which they have been set up. Rather, the current shortcomings in practice are due mostly to a failure of implementation on the part of the YOT. The final warning and referral order programmes, if improved, have the potential to become an effective first encounter with the criminal justice system and to impact positively on many first time offenders.

Table of Contents

INTRODUCTION	1
1. REVOLUTIONS OF JUVENILE JUSTICE	5
The 1970s and 1980s: The Development of the 'Successful Revolution'	6
The rise of 'law and order'	8
An unforeseen shift to diversion, decriminalisation and decarceration	10
The 1990s: An Abrupt Change	13
The influence of moral panic	13
The James Bulger murder	15
The end of the 'decarcerative experiment'	17
A New Philosophy of Crime Control	20
Procedural reform: creating an efficient system	22
Non-criminal orders: probability and risk	24
The Introduction of Restorative Justice	28
Reprimands and final warnings	30
Referral orders	31
Continuing Incarceration and Managerialism	34
Incarcerative trends	34
Managerialist trends	35
Conclusions	38
2. RESTORATIVE VALUES, PRACTICES AND POTENTIALS	41
Values of Restorative Justice	42
Empowerment of all parties	43
Repairing the harm: reparation and restoration	51
Potential Strengths	56
Increased victim and offender satisfaction	57
Deliberative accountability	59
Community development	60
Reduction in re-offending rates	62
Potential Problems	64
The role of the State	65
Non-restorative justice for participants	69
Failure to affect real change	76
Research Aims	79

3. THE RESEARCH PROCESS: METHODOLOGICAL ISSUES	82
Research Programme	83
Choosing a research site	83
Selecting cases	85
Observation and interviews	87
Gaining Access	90
The gatekeepers	91
Informal gatekeepers	93
Collecting the cases	94
Informed consent	102
In the Field	105
‘Going native’	107
Field notes	111
The interviewer effect	113
Conclusions	115
4. FINAL WARNINGS	118
The Administration of the Final Warning	120
Empowerment and deliberative accountability in the final warning meeting	121
Legitimacy	126
Interventions	128
Meeting national standards	129
Old-style cautioning versus new final warnings	134
Re-offending rates	135
Pros and cons	137
Self-Assessment	139
Police Led Restorative Justice	140
Procedural safeguards and due process	141
Police power and the coercive nature of the police	144
Police led restorative justice in the UK	149
Is It Restorative?	151
Conclusions	153
5. REFERRAL ORDERS: YOUTH OFFENDER PANELS	157
Contradictory Results?	158
General Understanding of the Justice System	161
Panel Members, Representatives of the Community	164
Demographic composition of the panel members	165
Defining ‘community’	167

Selecting 'community' panel members	168
Deliberative Participation By All	172
Young offenders' involvement in panel meetings	173
Difficulties with panel members' participation	176
Case example: The benefits of discussion	182
The Panel Meeting Itself	184
Frequency of panel meetings	184
Length of panel meetings	186
Predisposition to Negativity	189
Is It Restorative?	192
Conclusions	197
6. VICTIM (NON)PARTICIPATION	199
The Fall and Rise of the Victim	201
Victim Involvement in Final Warnings	203
Three types of victim involvement	203
Victim Involvement in Referral Orders	208
Direct victim participation	208
Indirect victim involvement	211
Exploring the 'Missing Victim' Syndrome	215
Is It Restorative?	219
Dissemination of information	220
Reparation	223
Are final warnings and referral orders restorative in victims' absence?	230
Conclusion	232
7. STRUCTURAL, CULTURAL AND POLITICAL INFLUENCES ON YOT PRACTICES	234
YOT Standards and Practice	235
National standards: Intended practice of final warnings and referral orders	236
Actual practice	238
Explaining the Gap in Practice	246
Structural influences on YOT practice	246
YOT culture	252
Political influence on YOT practice	262
The organisational context of YOT practice	264
Is It Restorative?	275
Conclusion	278

8. CONCLUSIONS: RESTORATIVE JUSTICE, RHETORIC OR REALITY?	280
Restorative Rhetoric or Restorative Reality?	281
Restorative theory in practice	282
Defining success in restorative practice	284
Restorative potential and future success	287
Are These Conclusions Generalizable?	289
Warnings for the Future	291
Where Do We Go From Here?	294
WORK CITED	298
APPENDIX 1	318
APPENDIX 2	325

List of Figures and Tables

FIGURES

Figure 7-1 Janet Chan’s Interactive Model of the Production of Practice	262
Figure 7-2 An Interactive Model of the Production of Practice in YOTs	265

TABLES

Table 3-1 Number of Cases Collected	95
Table 3-2 Number of Final Warning Interviews	95
Table 3-3 Number of Referral Order Interviews Broken Down By Panel Meeting	95
Table 5-1 Summary of Results: Overall Satisfaction of the Referral Order Process	160
Table 5-2 Summary of Results: Self-Assessment Questions	160
Table 5-3 Panel Member Demographics	166
Table 5-4 Length and Frequency of Panel Meetings	185
Table 5-5 Cases Six Months Long or Less Which Missed a Meeting	185
Table 5-6 The attitudes of the No Prior and Prior groups regarding referral orders	189
Table 6-1 Summary of Results for Use of Letters of Apology in Final Warning and Referral Order Cases	226
Table 7-1 National Standards for Final Warnings and Referral Orders	237

Introduction

This thesis explores the recent introduction of restorative justice into the youth justice system in England. It examines the historical and political context from which current youth justice policies have emerged and aims to evaluate how this new system is functioning 'on the ground' several years after being implemented. Specifically, the primary aim of the research is to investigate final warnings and referral orders and to ask whether these forms of restorative justice achieve their goal of restoration, reintegration and reparation. The findings are based on an in-depth study of one Youth Offending Team. The research adopted a predominantly qualitative, case study based methods utilizing techniques of observation, informal conversations, formal interviews with the young offenders and their supporters as well as with authority figures who are amongst those responsible for policy and practice in the youth justice system. Ultimately, this research contributes to an on-going discussion about the further development of restorative justice in England.

Chapter One explores the fluctuation of the youth justice system over the last thirty years. It begins with a discussion of the 1969 Children and Young Persons Act introduced by the Labour Party and follows changes in policy through to the beginning of the twenty-first century with the introduction of restorative justice in the 1998 Crime and Disorder Act and the 1999 Youth Justice and Criminal Evidence Act. Developments in the youth justice system historically have been turbulent and inconsistent. Nevertheless, analysis within this historical framework demonstrates that advancements in youth justice over past decade have been exceptionally dynamic. By exploring the roots of the present day youth justice system, a foundation is laid

from which to analyze and critique modern day policies as well as the aims for future development.

Chapter Two explores in-depth the concept of restorative justice. The chapter discusses the various values which comprise restorative justice and notes the difficulties that arise in attempting to create a firm definition. Since the values of restorative justice differ from those of the traditional criminal justice system, the benefits and problems restorative practices bring also differ to those of the conventional system. Therefore, the potential strengths and the pitfalls of restorative justice practices are briefly examined. The chapter concludes by structuring this discussion within the context of the primary research questions of the thesis. In particular, the overarching research question this thesis seeks to address is whether the restorative reforms that are being put forth in England are part of a true paradigm shift or whether they are in reality simply symbolic. The framework established in this chapter serves as a foundation from which to analyze final warnings and referral orders as well as the YOT as an organization responsible for overseeing these programmes.

Chapter Three describes the methodological approach of the research. This empirical study employs wholly qualitative methods. I spent a total of seventeen months immersed in the field, spending a great deal of time within two Oxfordshire YOT offices included in my sample - one in Oxford's City Centre and one in North Oxfordshire. Overall, this study utilizes observation, informal conversation, interviews and case file analysis. I studied the YOT employees, their motivations and behaviour both with and away from young offenders, even when I was not actively engaged in interviews with specific people. Data were also collected through the use

of observation of final warnings and referral panel meetings and interviews with juvenile offenders, their families, youth workers and the heads of governmental institutions responsible for developing policy and directing practice. My aim was to triangulate different forms of data to tell a story that is both descriptive and analytical, that identifies and seeks to explain any gaps between restorative philosophies and 'on the ground' practice.

The following four chapters report the findings from fourteen final warning cases and thirty three referral order cases. The intention is to assess the restorative nature of the final warning and referral order schemes. Chapter Four explores the current state of final warnings. In particular, this chapter examines the administration of the final warning and the interventions which accompany them. In addition, it explores and contributes to the debate surrounding police led restorative justice. Chapter Five investigates current referral order practice within the context of the panel meeting. It closely examines the use of the community in referral order panel meetings, exploring the role of the panel members who conduct the panel meetings, as well as structural and external factors which affect the success of the order. In both Chapters Four and Five particular attention is given to young offenders' opinions of the final warning and referral order process and the factors which influence those opinions.

Chapter Six is devoted to the place and participation of victims in restorative justice practices, and specifically in both final warnings and referral orders. It is only over the last two decades that the government has been persuaded to implement measures to help victims, and restorative justice has brought about the only genuinely dialogic, participatory approach. However, this research found a distinct lack of

victim participation. Therefore, this chapter explores the issue of victim non-participation and its impact on the restorative potential of both final warnings and referral orders. Chapter Seven examines the structural, cultural and political influences on the Oxfordshire YOT and its practitioners to explore its entropic tendencies and to explain any gap between policy and practice at the heart of the youth justice services. Lastly, Chapter Eight draws together the concluding thoughts on this research and attempts to answer the question of whether restorative justice practices in the England are mostly rhetoric or reality.

1. Revolutions of Juvenile Justice

The adult gaze is fixed on youth as something both desirable and threatening. Desirable because youthful energy remains a part of adult longing; threatening because freedom is deemed dangerous when unsupervised and unregulated.

– John Muncie 1999a

The current criminal justice system makes a distinction among three stages in life: childhood, adolescence, and adulthood. As the justice system has been shaped by important historical forces, so too have the boundaries of the three life stages shifted and developed in the course of their own history (Newburn 2002a, p 532-534). Indeed, the exact boundaries of ‘youth’ remain unclear and continue to change. Nevertheless, despite this conceptual instability, there has been an historical permanence in the representation of youth as a problem. Hence, it is not surprising that the activities of young people are more closely policed than any other age group (ibid, p 540). The tension between the innocence and danger posed by youth is reflected in the very history of the juvenile justice system, a history that is itself complex and full of contradictions.

Historically policies behind the youth justice system have hinged on two competing philosophies which, to some extent, exist in governmental policies today. On one side is ‘welfare’ which seeks to protect children who, for various reasons, find themselves in conflict with the law. Simultaneously, ‘justice’ demands that those who persistently violate the law receive punishment reflecting that such unacceptable behaviour will not be tolerated (Hagell and Newburn 1994, p 6). As a result of this tension, the youth justice system has found itself in oscillation between these two philosophies, never entirely able to reconcile one with the other.

However, recent times have witnessed a shift in the debate, in the underlying philosophy of the system, moving away from the ideologies and assumptions that underpinned the criminal justice system for much of the twentieth century (Garland 2001, p 4). Although youth crime is clearly not a new societal concern, the issue has moved to the political frontline with the recent emergence of radically different philosophies of crime control. Policy is developing in a volatile manner, as the lines of debate are constantly blurred and changing. New principles are emerging. Nevertheless, this new form of crime control suggests more than simply a change in society's response to crime. Behind these changes lies a fundamentally altered view of how to address the underlying problem of youth crime and possibly the emergence of a new penology (Garland 2001, p 6).

This chapter provides the historical context in which contemporary changes in youth justice policy are taking place. It explores the fluctuations of the youth justice system over the last thirty years. An historical perspective of the developments in juvenile justice is central to the comprehension of our current status in the evolution of youth justice. By exploring the roots of the present day youth justice system, a foundation is laid from which to analyze and critique modern day policies as well as the aims for future development.

The 1970s and 1980s: The Development of the 'Successful Revolution'

For much of the post war era, criminal justice policy was dominated by welfarist notions, based on a belief in the 'non-partisan character of crime and on the merit of gradual shifts towards rehabilitative policies for its control' (Downes and Morgan 1997, p 128). Both of the major political parties supported, albeit to differing

degrees, strategies which focused on the welfare of the offenders rather than on punishment (Nash and Savage 1994, p 138). The welfarist ideal reached a pinnacle in 1969 with the introduction of the Children and Young Person's Act (CYPA). The Labour government of 1964-1970 proposed a radical reform of the juvenile justice system in the CYPA with the intention of creating a justice system in which a juvenile's welfare would be the single most important consideration. The Act envisaged the phasing out of all criminal proceedings for children between the ages of ten and fourteen, instead instituting 'care and protection' proceedings. Juveniles between the ages of fourteen and seventeen could be subject to criminal proceedings, but only after mandatory consultation between the police and the local authority children's department (Gelsthorpe and Morris 1994, p 957; Newburn 2003, p 194).

The intention was that the juvenile court should become a welfare-providing agency but also 'an agency of last resort' (Rutter and Giller 1983, p 81). The 1969 Act was more than a set of recommendations about how to deal with crime; it was also part of a legislative programme set toward the development of what was believed to be a more just society (Gelsthorpe and Morris 1994, p 958).¹ The underlying philosophy was a belief that youth delinquency was often a normal part of growing up, and therefore, criminal proceedings were inappropriate for minor delinquent activities (Rutter and Giller 1983, p 81). The role of the Court was to enable the young person to get the necessary help and treatment (Rutter and Giller 1983, p 81).

¹ The Labour Party Study Group published a report "Crime: A Challenge to Us All," known after its Chairman as the Longford Report, several months before the Labour Party came to power in 1964. The report indicated a desire to avoid "the branding of a child ... as a criminal, whatever offence he might have committed" as it was in society's interest that such children should receive treatment "without any stigma or any association with the penal system" (p 24).

The rise of 'law and order'

The 1969 Act was never fully implemented as the Conservative Party took power in 1970 with different ideas about the appropriate reactions to juvenile offending (Cavadino and Dignan 2002, p 289). Indeed, the Conservative Party was always opposed to the core philosophy of the welfare approach to juvenile offending (Gelsthorpe and Morris 1994, p 964).² Although accepting of the belief that there was a class of juveniles who needed support rather than strict punishment, the new government was, nonetheless, much influenced by the view that there was also, as the Magistrates Association stated, “a minority of tough sophisticated young criminals ... [who] ... prey on the community, at will, even after the courts have placed them in care. They deride the powerlessness of the courts to do anything effective” (cited in Hagell and Newburn 1994, p 14). Welfarist ideals were attacked for being overly interventionist and unconscionably soft, and it was claimed that the only way to deter young people was a return to the classical ‘justice’ philosophy (Gelsthorpe 2002, p 50-51).

While it was the Labour Party who introduced the CYPA, when the party again took power in 1974 some of its previous ideals had dissipated, making way for a marked shift to a clearer ‘law and order’ approach (Cavadino and Dignan 2002, p 290). Although the intention of the CYPA was to help rather than punish juvenile offenders, the actual result was, interestingly, quite the opposite.³ There was a

² This philosophy is illustrated in the Longman report, the White Papers, and the subsequent legislation of the 1960s.

³ This general trend led a prominent group of commentators from Lancaster University to state: “The tragedy that has occurred since [the passage of the 1969 Act] can be best described as a situation in which the worst of all possible worlds came into existence – people have been persistently led to believe that the juvenile criminal justice system has become softer and softer, while the reality

noticeable decline in the use of community based sentences for young offenders coupled with a considerable rise in the use of custody: 3000 custodial sentences in 1970 to over 7000 in 1978 (Newburn 2003, p 195; Cavadino and Dignan 2002, p 290).

The swing towards the 'punishment' philosophy of juvenile justice gathered further momentum as the Conservative Party, under Margaret Thatcher, took power in 1979 bringing a revival of punitive criminal justice values and the abandonment of post-war consensus on criminal justice. The Party under Thatcher went so far as to attack welfare strategies for encouraging youth crime (Nash and Savage 1994, p 139). One of the major Conservative platforms in the election was increased 'law and order' measures to deal with juvenile offenders. The Conservative Manifesto of 1979 indicated a continued commitment to child incarceration as it promised to strengthen sentencing powers with respect to juveniles, stating:

The most disturbing threat to our freedom and security is the growing disrespect for the rule of law ... We will therefore amend the 1961 Criminal Justice Act which limits prison sentences on young adult offenders, and revise the Children and Young Persons Act 1969 to give magistrates the power to make residential and secure care orders on juveniles ... In certain detention centres we will experiment with a tougher regime as a short, sharp shock for young criminals.

(1979 Conservative Party Manifesto)

Indeed, the Manifesto has been described as "the most avowedly 'law and order' manifesto in British political history" (Newburn 1997, p 642).

Thatcher's 'rule of law' rhetoric was developed in the 1980 White Paper *Young Offenders* and instituted in the Criminal Justice Act 1982. Together the White Paper and the 1982 Act espoused notions of personal responsibility and increased

has been that it has become harder and harder [brackets in original]" (Thorpe et al 1980 quoted in Newburn 2003, p 195).

punishment (Gelsthorpe 2002, p 51-52), and marked the transition from the 'child in need' to the juvenile criminal in what Norman Tutt called the "rediscovery of the delinquent" (1981, p 249).

An unforeseen shift to diversion, decriminalisation and decarceration

The 1980 White Paper also expressed the view that "juvenile offenders who can be diverted from the criminal justice system at an early stage in their offending are less likely to re-offend than those who become involved in judicial proceedings" (Home Office 1980, para. 38). Hence, as unlikely as it may seem within this political milieu, the Conservative government, in an unexpected change, also led the way throughout the 1980s with a policy of directing young offenders away from prosecution utilizing the three principles of diversion, decriminalisation and decarceration. The bifurcation of policy represented a form of compromise to resolve the inevitable tension between principles of justice and welfare. While a 'get tough' justice model was employed for those young people perceived to be serious and persistent offenders, a welfare approach was taken towards first time and non-serious offenders who were diverted away from the criminal justice system (Pickford 2000, p xxxi).

The Criminal Justice Act 1982 was also strongly influenced by this bifurcatory discourse (Gelsthorpe and Morris 1994; Gelsthorpe 2002, p 51). The 1982 Act was not simply an expression of the Conservative government's 'law and order' campaign as it aimed to limit the use of custody for young offenders by endorsing the expansion of diversion with the increased use of cautioning (Newburn 1996, p 63). Magistrates were resisting the pressure to impose custodial penalties (Gelsthorpe 2002, p 51-52) and many offenders who would previously have gone to

detention centres received non-custodial sentences, thus beginning the trend towards decarceration. The 'short, sharp, shock' detention centre regime which had been so popular began to decline as the Home Office discovered that more than half of those sent to detention centres were reconvicted within a year, making the programme appear to be a failure (Hagell and Newburn 1994, p 17; Home Office 1984).

Throughout the 1980s, the philosophy of diversion was reaffirmed in government documents.⁴ By the late 1980s, the number of juveniles in penal custody had fallen to the extent that the abolition of youth custody became a realistic possibility. The number of male juveniles in custody on 30 June, 1990 was 15 fourteen year-olds, 107 fifteen year-olds and 238 sixteen year-olds⁵ (Howard League 1993, p 25). This number contrasts greatly with the over 7000 custodial sentences that were passed ten years earlier (Godfrey 1996, p 293). By 1990, of all young offenders, 70 per cent of boys and 86 per cent of girls between the ages of fourteen and sixteen years were being cautioned and thereby diverted from prosecution (Goldson 2002, p 389).

The legitimacy of this unexpected and ongoing shift towards decarceration sprang from several distinct influences. First, and quite compelling, was the apparent success of policy and practice, with an emphasis on diversion corresponding to a decrease in the rate of juvenile crime (Goldson 1999, p 6; Barclay et al 1991). Second, the government was backed by academic studies confirming that youth incarceration was not only harmful and counterproductive for juveniles but also quite

⁴ See the White Papers (eg Home Office 1980), consultative documents (eg Home Office 1984), Circulars to the police (eg Home Office 1985) and the Code of Practice for prosecutors (CPS 1986).

⁵ Totaling 360.

expensive to maintain (Bottomley and Pease 1986; Pitts 1990, p 8; Goldson 2002, p 388). Labelling theorists⁶ and empirical research⁷ emphasized the damaging, negative impact of overzealous interventions that can create and sustain delinquent identities, thereby, ironically, increasing the very behaviour that such intervention is meant to stop.⁸ Moreover, further research indicated that the majority of youth offending consisted of petty, opportunistic and transitory crimes (West 1982; Osborn and West 1980; Dunkel 1991).

Third, throughout Thatcher's successive administrations a propelling force was the desire to relieve the Treasury of public spending commitments. Hence, the drive to reduce the custodial populations on the grounds of cost effectiveness created support for non-custodial initiatives (Pratt 1987, p 429; Goldson 2002, p 388). Lastly, penal institutions were severely over-crowded, and the early 1980s brought an eruption of criticism in response to the high rates of incarceration.⁹ It is an interesting paradox that during this period of Thatcherism, a progressive stance on youth justice policy developed in what is now called the 'successful revolution' of juvenile justice (Rutherford 1986, p 5). Lord Windlesham, a former Home Office Minister, described this transformation as 'one of the most remarkable post-war achievements of deliberate legislative enactment' (Windlesham 1993, p 170).¹⁰

⁶ e.g. see Blackmore (1984); Taylor et al (1973).

⁷ Wolfgang et al (1972); West (1982).

⁸ This theory is explored in more depth in Chapter Two.

⁹ Jay (1977); Howard League (1979); Bottoms (1979)

¹⁰ However, some argue that the extent to which this 'revolution' may be attributed to deliberate legislative enactment is more debatable. See Newburn (1996).

The 1990s: An Abrupt Change

At the onset of the 1990s, the ideals and principles that revolutionised the previous decade maintained prominence. The Criminal Justice Act 1991 arguably represented an acceptance of the effectiveness of diversionary practices, as evidenced by the raising of the minimum age that a young person can be sentenced to a custodial punishment to fifteen. Indeed, the 1991 Act was to have been the ‘finishing touch’ to the ‘successful justice model’ of youth justice throughout the 1980s (Nash and Savage 1994, p 151). However, despite the decarcerative thrust of the 1991 Act, changing economic conditions and media led moral panics about a handful of high profile cases soon reversed the guiding principles of the juvenile justice system.

The influence of moral panic

During 1991 well publicized urban youth disturbances, such as ‘joyriding’ in Blackbird Leys, Ely and Tyneside, focused public attention on youth crime and disorder.¹¹ These public disturbances reignited enduring concerns about youth crime as they were highlighted in the media. With a Home Secretary eager to re-establish his populist credentials and Chief Constables worried about the level of funding for their forces, these incidents proved a convenient moment for the rise of public concern and panic (Newburn 1996, p 69).

It is within this context of heightened awareness that, in 1992, Home Secretary Kenneth Clarke gave a speech directly addressing the need to increase incarceration for young serious offenders, stating “We will be taking a long hard look at the options which are available to the courts in dealing with serious [juvenile]

¹¹ See Campbell (1993) for an in-depth description.

offenders ... If court powers need to be strengthened or new institutions created, then they will be" (quoted in Newburn 2002a, p 555). Soon thereafter stories of persistent juvenile offenders, as they became increasingly referred to, started to appear on a regular basis in the popular press. The *Daily Express* on 9 September 1992 summed up the police view in the headline, "Mini-gangster is beyond our control." The *Daily Star* on 30 November 1992 began an editorial with the headline, "We've got too soft," and went on to state, "Children are supposed to be little innocents – not crooks in short trousers. But much of Britain is now facing a truly frightening explosion of kiddie crime. As we reveal today, too many youngsters are turning into hardened hoods almost as soon as they've climbed out of their prams." An image was created of persistent young offenders repeatedly offending while on bail, so called 'bail bandits,' in conjunction with inadequate official responses (Cavadino and Dignan 2002, p 298).

Beyond heavy sensationalist reporting of certain youth crimes, several other factors had combined to produce the 1990s moral panics about youth crime. There was growing opinion, fuelled by the media and supported by many politicians (not only those in the Conservative Party), that liberal policies regarding young offenders had become too lenient. Public concern was bolstered by a House of Commons Home Affairs Select Committee inquiry into youth crime in 1992-1993¹² which also led to highly publicized claims by special interest groups, such as police

¹² In Autumn of 1992, the House of Commons Home Affairs Committee (HAC) announced that it would be enquiring into issues surrounding juvenile offenders and particularly persistent offenders, explaining "We decided on this inquiry both because of public concern about the level of juvenile crime in particular, and because of the apparent inability of the criminal justice system to deal adequately with it." (HAC 1993).

organizations, about youth crime and persistent young offenders¹³ (Cavadino and Dignan 2002, p 299). The final ingredient was the death of James Bulger in February 1993 and the arrest of two 10 year-old boys for his murder.

The James Bulger murder

The abduction and murder of a young child would always carry significant impact. However, this case prompted widespread moral outrage and a flurry of highly sensationalized newspaper coverage primarily because he was murdered by two young children (Franklin and Petley 1996, p 134). On 25 November 1993 the *Daily Star*, ran a front page headline beneath photographs of the young defendants which asked, "How do you feel now you little bastards?" The paper went on to report the guilty verdicts which had been passed on Jon Venables and Robert Thompson. The demonization of the two boys was relentless in the press, even by the liberal *Guardian* (27 November 1993) who branded the two 'the spawn of Satan.'

Effectively, the Bulger murder shattered what was left of the public's belief in the intrinsic innocence of children. Media coverage continually castigated not only the young offenders themselves but also those who thought of children as inherently innocent; the 'evil' character of Venables and Thompson was projected not only onto children but also the whole notion of childhood. Children were seen as capable of evil, a dangerous group threatening the well being of the public.¹⁴ Media coverage

¹³ For example, the Association of Chief Police Officers (ACPO) presented evidence which challenged the belief that there had been a decline in juvenile offending throughout the 1980s. ACPO argued that taking into consideration the decline in the juvenile population, the general increase in crime, and reduced rates of detection, the 1980s had actually witnessed a 54 per cent rise in youth crime (Newburn 1996, p 71).

¹⁴ On 25 November 1993 the *Mail* dismissed 'the sentimental view that children are born innocent' as 'relatively modern.' On the same day an editorial in *The Times* commented that 'childhood has a darker side' and 'children should not be presumed to be innately good. In the lexicon

seemed to imply that children who were guilty of such serious offences should be removed from the category of 'child' altogether, no longer deserving of the legal safeguards of the child status (Jenks 1996, p 128-129). It was almost as if childhood itself was on trial. Groups of juveniles were increasingly ascribed particular identities resonating with 'otherness' and 'immorality' (Jenks 1996, p 128). There were some in the media who were not so quick to pass judgement on 'childhood' altogether suggesting instead that the two defendants were atypical. Articles in the *Daily Mirror*, *Today* and the *Sun* portrayed Venables and Thompson as 'freaks of nature.'¹⁵ However, much of the media extrapolated from the incident to argue against special treatment of young offenders.

Although the extreme sensationalism surrounding the Venables and Thompson guilty verdict was short lived,¹⁶ both the Conservative Party and New Labour were quick to portray their parties as being 'tough on crime.'¹⁷ Within days of the Bulger murder, Prime Minister John Major proclaimed that "society needs to condemn a little more and understand a little less" (quoted in Goldson 1999, p 8).

of crime there is metaphysical evil ... there is physical evil ... and there is moral evil, the choice of vice over virtue. Children are separated by necessity of age from none of these."

¹⁵ The *Daily Mirror* (25 November, 1993) printed a headline which branded the two defendants 'Freaks of Nature.' An article in *Today* on the same day suggested that the boys were exceptions: "I believe human nature spurts out freaks," claimed one police officer. "These two were freaks who just found each other." Similarly, the *Sun* (25 November, 1993) quoted Lord Denning declaring such 'terrible wickedness' to be 'a freak incident.'

¹⁶ The actual lifespan of the story proved surprisingly short. Many newspapers severely truncated their coverage within a few days. The *Daily Express* reduced the space given to related stories from 1,980 square inches on 25 November, 1993 to only 3 square inches two days later. The *Daily Mail* allocated 2,595 square inches of editorial space on 25 November but only 45 square inches on 27 November. See Franklin and Petley (1996).

¹⁷ The power of the media to pre-empt a moral panic and thus bring about political changes, particularly in the arena of criminal justice is well-documented (eg Cohen 1972/1980; Goode and Ben-Yeuda 1994). McRobbie and Thornton contend that moral panics, once the unintended consequence of media practices, have become the goal and the way in which events are brought to the public's attention. Through the use of highly emotional events, the moral panic influences public opinion and requires action to be taken. As a result, such tactics can be used by politicians to create consent to ever more punitive criminal policies and by the media to make events newsworthy (McRobbie and Thornton 2002, p 68).

Three months later, in his first public announcement as Home Secretary, Michael Howard referred to a “self centred arrogant group of young hoodlums ... who are adult in everything except years [and who] will no longer be able to use age as an excuse for immunity from effective punishment” (ibid). Howard assured the public that ‘prison works’ and promised a tougher stance towards these young criminals,¹⁸ interesting given that only months earlier his predecessor, Douglas Hurd, had declared that imprisonment was a way of ‘making bad people worse’ (Garland 2001, p 132).

The end of the ‘decarcerative experiment’

New Labour, aware of the growing political vulnerability of the Conservative Party,¹⁹ attempted to exploit it by stressing the need for a tougher stance on crime. In the 1996 pre-manifesto document *Tackling Youth Crime: Reforming Youth Justice*, the Labour Party commented that, “ultimately, the welfare needs of the young offender cannot outweigh the needs of the community to be protected from the adverse consequences of his or her offending behaviour. The government seems to have lost sight of this guiding principle. We intend to restore it.” (quoted in Goldson 1999, p 9). Thus, the Labour Party moved away from its traditional belief that rising crime was mostly due to social and economic inequalities, and became more in line

¹⁸ In 1993 Home Secretary Michael Howard introduced tough changes to the penal system under his credo “Prison works.” At the Conservative Party Conference on October 6, 1993, Howard stated, “Prison works. It ensures that we are protected from murders, muggers and rapists – and it makes many people who are tempted to commit crime think twice ... This may mean that more people will go to prison. I do not flinch from that. We shall no longer judge the success of our system of justice by a fall in the prison population.” (quoted in the *Guardian* October 30, 2003 ‘Michael Howard: a life in quotes’)

¹⁹ During the early 1990s male unemployment rose by 15 per cent; the prison population fell from 50,000 to 42,000; and the crime rate rose by almost 50 per cent (Downes 2001, p 69). Opinion polls indicated that public confidence in the Conservative Party was waning, and for the first time in 30 years, the Conservative lead over Labour as the Party best able to institute ‘law and order’ began to subside (Goldson 2002, p 389).

with the typically Conservative 'law and order' stance. Support for decarcerative policies was always conditional (Goldson 2002, p 389), and with the development of a nationwide moral panic, the youth justice policies that had evolved over the previous decade were quickly renounced while child incarceration was both expanded and consolidated. For politicians, while policy choices should be credible, initiatives are viewed in terms of their political appeal and are frequently reactive, often heavily determined by the need to find popular support. Consequently, it can be argued that policy tends to be impassioned and built upon atypical cases, like the Bulger case, which have become distorted to represent the ordinary and which strain the meaning of justice (Garland 2001, p 113).

The re-politicisation of youth crime brought in a new agenda centred on two guiding principles: youth incarceration and personal responsibility. As a result, the UK incarcerated a significantly greater proportion of young people than any other member of the European Union (Ruxton 1996, p 313).²⁰ However, the quasi-hysteria and despair about youth crime appears to make little sense in light of the available statistical data. According to criminal statistics published by HMSO, the number of young offenders aged 10-17 who were cautioned or found guilty of an offence fell by 30 per cent between 1987 and 1997 (Pickford 2000, p xxxv). During that same time period, the number of male juvenile offenders fell by 33 per cent, a number that cannot totally be accounted for by the decline in the juvenile population (*ibid*). Moreover, a later report by NACRO pointed to evidence that youth crime in England

²⁰ In sheer numbers the difference is even greater given that most of the following countries make less use of custody for all age groups. Sweden 1992, 8 young people; Finland 1992, 34 young people; Spain on an average day 850 young people; England and Wales 1994, 5300.

and Wales is the lowest of any of the European countries surveyed (NACRO, April 17, 2002).

Given the strong incarcerative tide that swept through both political parties, it is not surprising that concerns were raised about young offenders, especially very young offenders who would be under the age of criminal responsibility in other European countries. United Nations (UN) monitoring of the UK led it to conclude that the human rights of British children are consistently ignored (Muncie 1999b, p 167). As public antipathy for juvenile offenders developed, fuelling societal anxiety concerning youth crime generally, the government tended to employ imprisonment as a 'last resort' far less, a practice which would seem to conflict with the United Nations Convention on the Rights of the Child. Article 37 states, "The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time" (United Nations 1989). Indeed, the response of the government has been that the UN has no right to question UK policy (Muncie 1999b, p 167).

The sense of a fearful and angry public had a considerable effect on the content of policy making. Crime became re-dramatized as the public demanded strong measures of punishment and protection (Garland 2001, p 10). Hence, the emotional content of policy making became significantly more influential. What resulted was a populist current in penal policy in which nearly all partisan difference was eliminated. The two parties competed to establish themselves as tough on crime and capable of restoring both morality and order in the midst of corrosive social change (ibid, p 131). As a result, policymaking became a form of immediate gratification, no matter how poorly adapted new measures may have been for

addressing any underlying problem (ibid, p 134). As Barry Goldson commented, “The political air soon filled with punitive rhetoric and before long each party would turn to the child in order to flex its authoritarian and disciplinary muscle. The decarcerative experiment was over” (2002, p 390).

A New Philosophy of Crime Control

The Labour Party, determined to benefit from the increased politicisation of youth crime, highlighted the issues of crime in an unprecedented way throughout the 1997 election campaign:

Under the conservatives, crime has doubled and many more criminals get away with their crimes: the number of people convicted has fallen by a third, with only one crime in 50 leading to a conviction. This is the worst record of any government since the Second World War ... We propose a new approach to law and order: tough on crime, tough on the causes of crime ... Youth crime and disorder have risen sharply, but very few young offenders end up in court, and when they do half are let off with another warning. Youth offenders account for seven million crimes a year.

(1997 Labour Party Manifesto)

Rather than attempting to neutralize the Conservative Party’s traditional advantage on this issue, Labour sought to establish itself as the party most likely to instigate ‘tough’ measures against offenders, putting forward its proposals for reform of the youth justice system in a series of consultation papers, starting with *Tacking Youth Crime*. Problems with the youth justice system were identified in this paper and used to set forth proposals for reform. The problematic issues identified were: a lack of public credibility and clear aims; the slow nature of the youth justice system; re-offending while on bail; the failure of repeat cautioning; lack of supervised community based intervention programmes aimed at changing the behaviour of young offenders early in their careers; and an absence of national strategic direction (Home Office 1997a, Introduction). Soon thereafter, in November 1997, followed the White Paper *No*

More Excuses – A New Approach to Tackling Youth Crime confirming the Government's central commitment to early intervention to prevent offending.

Out of these papers came the Crime and Disorder Act 1998, created to 'nip youth offending in the bud.' The 1998 Act provided for a major reform of the youth justice system, indeed the most radical in 50 years, through an extensive new range of policies and measures. Labour significantly shifted away from the earlier ideologies underpinning the juvenile justice system and enthusiastically embraced a new philosophy of crime control that was neither transformative nor aspirational but rather managerial. Managerialism gained prominence within the criminal justice system in the 1990s as it was increasingly argued that what was needed was a suitable management of youth crime and youthful behaviour in general (Muncie and Hughes 2002, p 5).²¹ This paradigm shift was identified by Malcolm Feeley and Jonathan Simon in 1992. Originally called the 'new penology,' Feeley and Simon later refined, expanded and renamed the theory 'actuarial justice' in 1994.²² The discourse, which is not in itself a theory of crime or criminology, is characterized by an emphasis on systematic integrity rather than on moral sensibilities or external social objectives.

The primary concern is with the rationality of the managerial process where "new performance indicators tend to measure 'outputs' rather than 'outcomes,' what the organization does rather than what, if anything, it achieves" (Garland 1996, p 458). Managerialist ideals become an objective of criminal justice policy in itself and therefore a 'principle' of punishment (Fionda 2000, p 111). Thus by embracing actuarial justice, Labour definitively moved away from the ideological warfare of

²¹ However, Garland (1990) traced the emergence of managerialism back at least 200 years.

²² Feeley, M and Simon, J. (1994) 'Actuarial Justice: the Emerging New Criminal Law' in D. Nelken (ed) *The Futures of Criminology*, pp 173-201.

previous decades as, unlike the welfare or justice model, managerialism seeks to regulate levels of deviance rather than respond to individual deviants. Feeley and Simon identified three distinct components that comprise the 'new penology': first, the increased primacy of the efficient control of internal system processes replaced the traditional objectives of crime control; second, the introduction of the language of probability and risk and its application to offending behaviour; finally, the targeting of offenders as an aggregate group rather than on an individual level (1992, p 450). These three managerialist principles are reflected and adopted in the 1998 Act and demonstrate a new strategy adopted by the government for dealing with youth crime.

Procedural reform: creating an efficient system

In keeping with the managerialist philosophy, Labour set out to rid the youth justice system of its previous moral ideals. Rather than binding the system to a particular philosophy of welfare or justice, the government aimed to create a clearly defined infrastructure and a practical strategy to preventing offending (Muncie 1999a, p 151). Three major procedural reforms were set forth by the Crime and Disorder Act 1998 designed to impose a level of uniformity upon the youth justice system.²³

First, Section 41 of the CDA created a national Youth Justice Board (YJB) for England and Wales. Ten members, selected by the Home Secretary, were given the responsibility for monitoring both the policy and operation of the youth justice system; that is, to oversee the youth justice system as a whole (Youth Justice Board

²³ This response was based partly in response to the Audit Commission's report *Misspent Youth* (1996), which strongly criticized the inefficiency and ineffectiveness of the existing system: "The current system for dealing with youth crime is inefficient and expensive, while little is being done to deal effectively with juvenile nuisance. The present arrangements are failing the young people" (p 96).

Website). In addition, the Board was established to advise the Home Secretary on national standards and good practice (Fionda 1999, p 41). The Youth Justice Board best exhibits the major characteristics of systematic managerialism: the creation of an overall strategic plan; the construction of key performance indicators; inter-agency co-operation to obtain the overall goal of the system; and the active monitoring of aggregate information (Newburn 2002b, p 456).

Second, Section 39 created a national network of Youth Offending Teams (YOTs). These are locally based, multi-agency teams typically made up of social workers, probation officers, police officers, health workers, education welfare workers, and any other appropriate local authority considered necessary. The YOTs co-ordinate both the organization and provision of youth justice services locally and are responsible for a variety of supervisory duties connected with community penalties, intervention programmes, pre-sentence reports and much of the work previously carried out by the probation and youth justice services. According to the approach adopted by the government, tackling the problem of youth offending requires the involvement of a range of agencies, and the YOTs were established as a response to the multitude of expertise housed within various services in the youth justice system. The function of the YOT was, therefore, to bring together the knowledge and abilities that had previously been carried out by distinct authorities (Vaughan 2000, p 358).

Third, Section 37 of the Act emphasized the primary aim of prevention: "It shall be the principal aim of the youth justice system to prevent offending by children and young persons." This new aim for youth justice agencies was a vital statement of purpose for the system as a whole (Fionda 1999, p 41). As evidenced by these

Sections of the 1998 CDA, there was a perceptible shift in the government's crime fighting ideology, which was free of the philosophies that had previously driven the youth justice system.

Non-criminal orders: probability and risk

In addition to the implementation of significant structural changes, one of the major modifications to the youth justice system made by the Crime and Disorder Act 1998 involved the introduction of a series of non-criminal orders. These orders are non-criminal because rather than reacting to offending behaviour as it occurs they instead seek proactively to prevent it. Thus, the long-standing primary focus of the youth justice system began to shift, giving way to a new perspective on addressing crime. At the heart of the Audit Commission's report was an assumption that youth crime prevention could be achieved by bringing youths into the justice system at an early stage in their career, perhaps even before it began. The report states,

While public services clearly need to deal effectively with offending behaviour by young people, it would be better to prevent offending behaviour in the first place. Appropriate help and support for young people who are at risk of offending, but have not yet done so, can prevent some of them from getting involved in crime ... Steps can be taken by a wide range of agencies, to address problems before those at risk start to offend.

(Audit Commission 1996, p 58-59)

Thus, a significant feature of the 1998 Act is that it allowed for pre-emptive early intervention in anti-social or disruptive behaviour not dependent upon the occurrence of a criminal incident. Rather, it is sufficient that particular behaviour is believed to be unruly or that a child is judged to be at risk of committing a criminal offence (Pitts 2001, p 169). Therefore, the range of behaviours over which the government claims authority is expanding, effectively extending the concept of 'delinquency' to

behaviour that falls short of criminal offending. What became apparent was a move away from entrenched practices, which simply responded to crime towards policies that promoted risk aversion and individual responsibility.

There are several principal orders in this new category of preventing and addressing crime: the local child curfew,²⁴ the child safety order²⁵ and the anti-social behaviour order. This discussion will focus on the anti-social behaviour order or 'ASBO' (Section 1 of the 1998 CDA), which has become the subject of extensive criticism.²⁶ This civil court order, applied for by local authorities and the police, prohibits juveniles from doing anything described in the order for a minimum of two years (CDA 1998, sec. 1.7).²⁷ Controversially, for juveniles non-compliance becomes a criminal offence subject to a detention and training order with a maximum term of twenty-four months, of which twelve months is custodial and twelve months

²⁴ The local child curfew order (Section 14) allows local authorities to impose a general curfew prohibiting all children under 10 years-old from specified public places between 9pm and 6am, unless accompanied by a parent or suitable guardian. However, the curfew may not exceed 90 days. According to the Home Office, the local child curfew scheme is designed to protect local communities from the "alarm and distress" caused by groups of youths participating in anti-social behaviour; and to protect juveniles from the risks of being unaccompanied on the streets late at night (Home Office 1998b, para 2.1). Effectively, this legislation targets the perceived threat posed by very young children.

²⁵ The government believes that early intervention in anti-social or disruptive behaviour is more effective than waiting until the child is old enough to be dealt with by the youth justice system (Home Office 2000, para. 2.1). The child safety order (Section 11) allows a Family Proceedings Court to place a child younger than 10 years of age under the supervision of a social worker or a member of the Youth Offending Team for up to three months, one year in exceptional cases when the youth falls within a set of criteria stated in Section 11(3). One criterion clearly states the order is applicable if the child has behaved in a manner that has caused or is likely to cause alarm, distress or harassment to persons not within the same household as the youth (Home Office 2000, para 4.5). It has been argued that the government has found a way to abandon the minimum age of criminal responsibility without the ensuing political troubles that would follow such a direct move (Fionda 1999, p 45).

²⁶ See Ashworth et al (1998); Gardner et al (1998). Additionally, organizations raising serious concern about the ASBO included the Howard League for Penal Reform, Liberty and the Law Society, and, as of February 2005, there was an advertisement in the YJB News (Issue 26) for the formation of a new coalition against ASBOs.

²⁷ Adults can also be subject to ASBOs; indeed over half of ASBOs are imposed on people over aged 17.

is in the community (Home Office 2002a).²⁸ Therefore, the violation of a non-criminal order, granted on the burden of proof required by the civil courts with civil procedural and evidential protections for the defendant, becomes in itself a crime subject to criminal punishment.

It is important to note that support for the ASBO was not unanimous as those both inside and outside government were vociferous with their concerns.²⁹ Critics of the ASBO suggest that the order disregards the basic principle of the rule of law and the government's own commitment to human rights (Gardner et al 1998, p 25). If the ASBO proceedings are criminal in substance, regardless of their formal classification as civil, the proceedings need to be evaluated according to the safeguards for criminal trial and conviction laid out in Articles 6(2), 6(3) and 7 of the European Convention on Human Rights, which are now part of English law under the Human Rights Act (Ashworth 1997, p 770; Gardner et al 1998, p 26).³⁰ In light of this criticism, it is interesting that the Home Secretary commented, "My wish [with the ASBO] is that everyone should enjoy the most basic of human rights: the right to live life free from fear and free from crime" (quoted in Rutherford 2000, p 54). Gardner et al conclude, "The rights in Articles 5, 6 and 7 of the Convention are *absolute*. There are no ifs and buts. If the Government cannot pursue its objectives in accordance with them, then let us be clear that *it cannot lawfully pursue them at all*" [emphasis in original] (1998, p 27).

²⁸ Twelve to fourteen year olds must be a persistent offender to be given a DTO while ten and eleven year olds can only be given a community order for a breach.

²⁹ See Rutherford (2000) p 50-58 for a more detailed description of the debate that surrounded the ASBO while passing through Parliament.

³⁰ See Gardner et al (1998) for a detailed description of how the anti-social behaviour order conflicts with each of these principles.

In order to be 'tough on crime,' New Labour made clear that prevention also embraces targeting individuals whose behaviour is outside the criminal law. Effectively, such policies encourage the creation of the 'quasi-criminal', which is likely to divert attention away from underlying social issues (Rutherford 2000, p 58).³¹ In this highly interventionist framework, activities which are not criminal in any real sense are labelled as criminal, partly by nature of them being addressed in the Crime and Disorder Act. Youthful behaviour can become scrutinized by a different standard and critics worry that the ASBO threatens "to criminalise people's activities by stealth" (Ashworth et al 1998). Although we are reminded that "there is no such thing as sub-criminal behaviour; there is behaviour and criminal behaviour," the preceding Orders implemented by the 1998 Act appear to blur the boundaries between these previously distinct concepts (Rutherford 2000, p 55). As a government spokesperson commented:

Anti-social behaviour is a menace on our streets; it is a threat to our communities. We aim to prevent it as far as we may. A civil order is part of the regime for doing that. But ultimately, we regard such behaviour as criminal.

(Lord Williams quoted in Rutherford 2000, p 53)³²

Therefore, concern has been raised that an order like the anti-social behaviour order is civil only in a formal sense. Andrew Ashworth suggests that such legislation is a 'Trojan horse' to utilize civil procedures in obtaining access to criminal procedures and sanctions (Ashworth 1997, p 770).

³¹ A Conservative lawyer remarked there was a danger that "we fool ourselves into thinking that passing these remedies, which every year become ever more draconian, will deal with the problem. However, most of the problems arise from the fundamental social, moral and ethical structures of society, which Parliament, acting through legislation cannot address" (quoted in Rutherford 2000, p 55).

³² Lord Williams, H.L. Deb, 5th ser., Vol. 585, 3 February 1998, col. 603.

Effectively, the new philosophy, exhibited in the preventive orders contained within the 1998 Act, imported the economic theory of 'risk management' into the criminal justice system, which revolves around the management of "a permanently dangerous segment of the population while maintaining the system at minimum cost" (Feeley and Simon 1992, p 463). Therefore, the task of the justice system becomes the identification, classification and management of varying classes of dangerous offenders (ibid, p 452), of differentiating on a calculation of risk between various groups of offenders (ibid 1994, p 173). Crime is taken for granted and deviance accepted as normal; the traditional goals of rehabilitation, punishment and deterrence (whether previously part of the welfare or justice model) are replaced by the goal of making crime tolerable through systemic coordination. The tools utilized are indicators, prediction tables, population projections and various other methods that allow for probabilistic calculation to be applied to populations (ibid 1992, p 452).

The Introduction of Restorative Justice

Whilst promoting the managerialist policies contained within the Crime and Disorder Act 1998, Labour simultaneously recognized that a successful criminal justice policy relies upon the development of an inclusive social policy to provide "appropriate help and support for young people who are at risk of offending", as suggested by the Audit Commission (1996, p 58). Therefore, scattered throughout the Crime and Disorder Act 1998 (CDA) and its preceding discussion papers is recognition of the need to 'reshape the criminal justice system in England and Wales to produce more constructive outcomes with young offenders' (Home Office 1997b, para. 9.21). The 1998 CDA showed signs of the government's intentions to embrace

restorative justice principles, which emerged as a critique of traditional forms of justice (Crawford and Newburn 2003, p 21).

In contrast to the potentially exclusionary policies discussed above, the restorative view recognizes the capacity of individuals to change if they are provided guidance, encouragement and opportunity, and an emphasis is placed on respect and social responsibility in an attempt to repair harm caused by criminal behaviour and to improve the situation for the future (Faulkner 2000, p 81). Although 'restorative justice' at present has no settled meaning, one oft cited definition is of a "process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (Marshall 1996, p 37).³³ This definition highlights three core components of restorative justice: the inclusion and empowerment of all involved parties; the significance of participatory and deliberative processes; and an emphasis on restorative outcomes (Crawford and Newburn 2003, p 22). In particular, restorative justice recognizes that crime is more than an offence against the State and that historically the role of victims and offenders has been marginalized as the State has 'stolen the conflict' (Christie 1977). The government, specifically the Home Secretary, explicitly criticised the traditional court based criminal justice system, "The young offender is, at best, a spectator in a theatre where other people are the actors. At worst, the young offender is wholly detached and contemptuous of what is going on" (cited in Ball 2000, p 215). Thus, restorative justice seeks to reinstate the primary stakeholders (ie victim, offender and community) to a central position in the

³³ Critics of this definition include Haines (2000); Bazemore and Walgrave (1999); Walgrave (2004).

resolution of an offence, as a positive interactional influence becomes a meaningful and viable form of control to which the individual is potentially responsive (Crawford and Newburn 2003, p 22; Orcutt 1973, p 264).

Reprimands and final warnings

These restorative principles are borne out in the 1998 Act in several ways, specifically in the system of reprimands and final warnings (Part IV, Sections 65 and 66). In this new system of cautioning, a reprimand is a less formal measure aimed at first time, non-serious offenders. It is similar to the previous informal verbal warning except that it is recorded. The more formal caution is the final warning aimed at offenders who have already received a reprimand or whose offence is too serious for one (Home Office and Youth Justice Board 2002, para. 1.6; Brownlee 1998, p 315). Following a final warning, the police have a statutory duty to refer the young person to a YOT, which in turn has a statutory duty to assess the young offender and recommend an intervention programme meant to prevent further offending and secure rehabilitation (Home Office and YJB 2002, para 1.7; Dignan 1999, p 51; Evans and Puech 2001, p 794).³⁴ According to the Youth Justice Board, the scheme provides an opportunity for an early assessment of juveniles' situation and a structured means by which to try to change their behaviour (2002, p 10). However, the government has stressed that no offender should receive two or more of either penalty (Brownlee 1998, p 315).

³⁴ Compliance with intervention programmes is voluntary. However, if a young person goes to court, any failure to participate in an intervention programme may be cited in the same way as previous convictions.

The final warning attempts to avoid the dangers of stigmatization and exclusion due to association with the justice system by specifically keeping young offenders away from the formal justice system, particularly the court. Moreover, it provides a warning to the young person demonstrating that such behaviour is not acceptable while simultaneously attempting to provide help for the young person, such as aid with literacy and numeracy or anger management. The Youth Justice Board claims that the final warning scheme, which is similar to the Thames Valley restorative cautioning initiative,³⁵ has proven effective, especially when used in conjunction with an intervention programme.³⁶

Referral orders

With a continuing recognition of the need to reform the youth justice system to incorporate positive socially inclusive approaches to coping with youth crime and its consequences, New Labour introduced the Youth Justice and Criminal Evidence Act 1999 (YJCEA) with the intention of promoting restorative justice and preventing offending. This Act radically reformed the juvenile system and embraced restorative justice more fully than any preceding legislation. Part I (Sections 1.1 to 1.12) of the Act introduced a mandatory referral order for most young offenders who plead guilty on their first appearance in youth court. When a juvenile under the age of 18 appears in the Magistrates' court for an offence which (a) does not have a sentence fixed by

³⁵ The Labour government, particularly its first Home Secretary, strongly endorsed 'restorative cautioning,' introduced by Thames Valley Police before the 1998 Act, which involves a form of mediation between the offender, his family and if possible the victim (Morris and Gelsthorpe 2000, p 25; Dignan 1999, p 50).

³⁶ The Oxfordshire Youth Offending Team, which is held up as an exemplar, requires all juveniles who receive a final warning to participate in some form of restorative activity which, it is claimed, has resulted in an 18.8 per cent reduction in reconviction rates over the course of 2001/2 (Youth Justice Board 2002, p 11). The government, therefore, set a target that 80 per cent of all final warnings be accompanied by an intervention programme by 2004 (Youth Justice Board 2004a, p 6).

law, (b) in which the court is not proposing to impose a custodial sentence, and (c) in which the court is not proposing to absolutely discharge the offender, it is mandatory for the court to make a referral order if the juvenile pleads guilty to one or more offences and has never been previously convicted of any offence (YJCEA 1999, Sec. 2).

The order refers the juvenile to a Youth Offender Panel (YOP) to establish a programme of behaviour guided by the principles of restorative justice (Ball 2000, p 212; Home Office 2002b, para. 1.20). These panels consist of at least two community volunteers who should be representative of the local community, one YOT member, the offender and his family³⁷, and sometimes the victim³⁸ (Crawford and Newburn 2002, pp 478-479). In addition, to encourage the restorative nature of the referral order, a variety of people, such as a representative of the community or anyone the panel considers to be capable of having a 'good influence,' may be invited to attend panel meetings (*ibid*).

The panels are designed to provide opportunities to discuss the offence and its consequences, and difficulties experienced by the young person or his family. The hope is that the referral orders, by providing a supportive environment, will militate against other exclusionary measures in their lives, and will help to reintegrate them back into their communities, as well as being less exclusionary criminal responses in themselves. This format is a significant shift away from the youth courts in which young offenders rarely speak for themselves. The young offender given a referral

³⁷ 'Families' necessarily include non-family supporters such as guardians or appropriate adults.

³⁸ Home Office research found that victims attend panel meetings in only seven per cent of cases (see Newburn et al 2002).

order is subsequently required to attend a series of meetings of the YOP for a period of three to twelve months. Hence, the restorative and reintegrative elements of the order are strengthened by meetings throughout the referral order period. The panel meeting can become a place to discuss, support and perhaps even congratulate an offender's progress (ibid, p 479).

When agreed upon, the 'programme of behaviour' becomes a 'youth offender contract.' This contract should always include reparation to the victim or community as well as a programme aimed to prevent future offending (Home Office 2002b, para. 1.14) and can incorporate any of a lengthy list of terms set forth in Section 8(2) of the 1999 Act, including: reparation to an identified victim, a curfew, participation on specified programmes of activity, staying away from specified persons and/or places. If no agreement can be reached, the offender is referred back to the court for re-sentencing (Crawford and Newburn 2002, p 478; Ball 2000). The referral order is meant to be the sole sentence for the first conviction and other sentences cannot be applied in addition to the order (ibid).

Within a restorative perspective, solutions to social problems, like crime, are addressed by inclusion within the community, by providing opportunities rather than punishment and exclusion (Young 1999, p 62). Instead of revoking an offender's or 'deviant's' status as an ordinary member of society and thereby rejecting that individual, as is the case with exclusionary approaches,³⁹ the effectiveness of inclusion *depends* on maintenance of the 'deviant' as an ordinary member of the group. The inclusive and restorative reaction attempts to cope with the particular

³⁹ The ultimate example is custody which symbolizes the complete rejection and isolation of the deviant from society (Lermert 1951, p 321).

deviant act and operates to limit the deviance to the specific situation in which it occurred (Orcutt 1973, p 264).

Continuing Incarceration and Managerialism

As with previous decades in youth justice, overall, the direction of the government's criminal justice strategy is not entirely clear. The broader policy context in which restorative principles are supposedly being integrated remains bound to punitive and exclusionary policies.

Incarcerative trends

Most ominously, there has been no serious attempt to reverse the 'vicious incarceration spiral' (Dignan 1999, p 53, Hoyle and Rose 2001). The incarcerative trends established in the Crime and Disorder Act 1998 continued in the Criminal Justice and Police Act 2001 (CJPA). The provisions of the CJPA, which commenced in 10 areas on 22 April, 2002, extend the use of secure remands for 12-16 year olds. Its purpose is to extend to the courts a package of options to handle young people who repeatedly commit offences while on bail or while in non-secure accommodation but who cannot be remanded because their individual offences are not serious enough. The courts have not previously had the power to remand into secure detention those young people who have committed repeat offences of a less serious nature (CJPA 2002, para. 2.3). However, the government is quick to note that the court is supposedly required to consider all possible options before deciding whether to remand a juvenile, and a significant range of alternatives to custody have been strengthened to ensure that community alternatives are used whenever possible.

Nevertheless, the government has admitted an expectation of an increased demand for secure places (*ibid*, para. 2.16).

In addition, the government announced steps to utilize its authority even further to interfere with the family as it examines the use of protective custody where the family has broken down. An article in *The Guardian* on 17 April, 2002 made clear former Home Secretary David Blunkett's intention that persistent offenders aged 10 and 11, who are legally too young to be locked up, are to be taken into "protective custody," a new breed of foster parenting. What is being called "intensive fostering" is designed to deal with young offenders who might otherwise face custody and for whom home life is seen to contribute to offending behaviour, is soon to be piloted (Youth Justice Board News, Issue 25 2004, p 1). Intensive fostering would involve highly specialized, full-time trained and paid foster parents who act not in isolation but rather as part of a Supervision Order (*ibid*). Blunkett commented, "Crime is not restricted to those aged 12 and over. I am looking seriously at how we can strengthen the law in respect of those 10 and 11 years-old who commit persistent but low level crimes" (*Guardian*, 17 April, 2002).

Managerialist trends

The preventive initiatives first established in the Crime and Disorder Act 1998 have not yet strongly taken hold within the youth justice system as the government has, until recently, focused on reactive measures to youth offending. According to the Youth Justice Board, no local child curfew order scheme has been set up under

the powers provided for by the 1998 Act.⁴⁰ Similarly, Holdaway et al (2001) found that there was virtually no uptake of the child safety order (p 43).

Nevertheless, the publication of a new Green Paper in addition to recent press releases from the Youth Justice Board and the introduction of new managerialist programmes indicate a renewed thrust towards preventive, early intervention strategies targeting young people *at risk* of offending. Lord Warner, the then Chairman of the Youth Justice Board, commented, “The first area where we are moving forward is prevention ... There are now real opportunities for an expansion of effective prevention work” (YJB Press Office, 14 November, 2002). Subsequently, the government renewed its vows to employ prevention in the youth justice system in the Green Paper *Every Child Matters*, published in September 2003, which focuses on the identification, tracking and referral of children ‘at risk’ of offending and the provision of services to help them. The intention of the Youth Justice Board is to pursue this radical new ideology for coping with youth crime, further developing already implemented programmes⁴¹ as well as piloting and implementing new preventive measures to target ‘at risk’ youths as young as eight who are “displaying problematic behaviour and who are ‘at risk of offending’” (ibid).

Two of these new preventive schemes are the Youth Inclusion Programme (YIP) and the Youth Inclusion and Support Panel (YISP). The YIP scheme is

⁴⁰ See the Youth Justice Board website, listed under Local Child Curfew: www.youth-justice-board.gov.uk

⁴¹ Lord Warner, in a speech at the Youth Justice Board Annual Convention on 14 November, 2002, noted the success of prevention schemes such as anti-social behaviour orders, commenting that, as part of a prevention strategy, a new joint Home Office, Youth Justice Board and ACPO guidance on anti-social behaviour orders has been developed (issued 12 November, 2002) to further this scheme.

designed for the top fifty 'at risk' 13 to 16 year-old children⁴² identified through interagency cooperation and based on the entry of risk factors into a scoring matrix (YJB 2003, p 6). The aim is to "identify not only those who are offending, but also those at risk of future offending, social and educational exclusion" (YJB 2003, p 6).⁴³ The YIPs provide a variety of interventions and activities for the young people who attend, ranging from outreach education, training and mentoring, to sports, arts and culture (YJB 2003, p 8). Similar to YIPs are the Youth Inclusion and Support Panels (YISPs), which are currently in the process of being piloted. YISPs target children aged eight to thirteen who are considered to be at high risk of offending. The scheme utilizes multi-agency sharing of information and provides intervention based upon assessed risk and need.⁴⁴

The developments in youth justice since the 1999 Youth Justice and Criminal Evidence Act appear to highlight the continued punitive and 'risk averse' side of government youth justice policy.⁴⁵ The youth justice system, in its push to prevent offending, has become increasingly concerned with those at risk of offending rather than simply with those who have offended. What is clear is that the move towards an acute concentration on misbehaviour appears to have blurred the boundaries between deviant and non-deviant actions, that is the potential for harm rather than the actual harm itself has opened the door for an ever widening net of crime control. The age of

⁴² Although the top 50 'at risk' youths are the central focus of the YIP, the scheme should also draw in a wider group of young people living in the area (YJB 2003, p 7).

⁴³ Since the first introduction of the programme, a total of 5,508 young people have been identified as one of the top 50 at risk young people in their area. Because participation in the scheme is voluntary, only 4,050 (or 73%) have attended a YIP at some point in time (YJB 2003, p 7).

⁴⁴ See the Youth Justice Board website:

<http://www.youth-justice-board.gov.uk/PractitionersPortal/PreventionAndInterventions/YISP/>

⁴⁵ The same is true of the criminal justice system for adults, see for example the Criminal Justice Act 2003.

'innocence,' of childhood, is rapidly disappearing, replaced by a conception of fully rational, capable and autonomous young people. People are increasingly directed to interpret "criminal" behaviour as something new, something broader and more extensive. Through the remodelling of the juvenile justice system, the government, whether intentionally or not, has set about re-defining the very meaning of 'crime' itself.

Conclusions

The youth justice system today is defined by its history as its experiences, its successes and its failures form an integral part of the evolutionary process. The historical overview presented in this chapter demonstrates that, even within the turbulent and often paradoxical context of juvenile justice, the past decade has been uncharacteristically dynamic. One strong historical thread has been the ideological contest waged over the years between differing models of what the system should be trying to achieve. Although recent times have seen an exit from the welfare/justice merry-go-round which previously dominated the youth justice debate for so many years, the tensions between welfare and justice have not disappeared altogether but rather are reflected in the next generation of youth justice policies.

At present it seems as though the government is still in two minds, pursuing policies that do not appear consistent with each other, as highlighted in the contradictory messages contained within the 1998 and 1999 Acts as well as subsequent legislation. On one side of the divide are preventive, 'at risk' policies which push previous societal conceptions of deviance and attempt to re-establish the boundaries of acceptable youthful behaviour. On the other side are restorative

policies which seek not to alienate or exclude juveniles but rather to integrate and include young people who find themselves at the fringes of mainstream society. However, this contemporary remodelling of the juvenile justice debate and ensuing practices potentially comprises only a theoretical and philosophical transformation rather than an actual transformation.

The relationship between restorative justice and the existing criminal justice system is an awkward one as restorative justice seeks both to fit into a larger criminal justice portfolio, in which many of the policies are still very strongly influenced by more traditional and retributive ideals⁴⁶ (Dignan 1999, p 58), while simultaneously attempting to transform the system. In this milieu, it is possible that restorative ideals can themselves become subverted within the 'no excuses' political climate. Simply because aspects of the policies borrow from the restorative justice philosophy, the government cannot assume that all practices on the ground are fully restorative. Not all restorative processes actually reflect restorative values nor do they necessarily achieve restorative outcomes.

This thesis will broadly focus on the place of restorative justice, and specifically final warnings and referral orders, within the juvenile justice system in England. Since the piloting of final warnings and referral orders and their national implementation, relatively little attention has been paid to these restorative justice programmes. The government is quickly expanding the reach of the youth justice system with an influx of new programmes aimed at preventing offending behaviour from even earlier stages, that is before offending begins, and this government

⁴⁶ Similarly, Morris and Gelsthorpe noted that "restorative justice [is] just one theme in a broadly punitive and controlling piece of legislation" (2000, p 20).

obsession with prevention has diverted attention away from already implemented programmes. This research will examine the final warning and referral order programmes several years after implementation, now that they are firmly entrenched in the youth justice system, and aims to strip away the political and philosophical rhetoric which supports these programmes to discover the extent to which practice is, in reality, restorative.

As this thesis focuses on restorative justice theory and its translation into practice, the next chapter explores the restorative justice movement and lays out the central research questions for this thesis.

2. Restorative Values, Practices and Potentials

... the argument for restorative justice is as much, if not more, about the purposes and values which should guide our responses to crime as it is about the best methods of accomplishing existing goals.

-Gerry Johnstone 2002

Increasingly, restorative justice is playing an important role in countries around the world and, as a result, is gaining prominence on the world stage. Significantly, during a meeting of the United Nations Commission on Crime Prevention and Criminal Justice in 2002, forty countries joined the Canadian government in sponsoring a resolution on restorative justice. The resolution directed the Secretary General to circulate the draft elements of a set of basic principles on the use of restorative justice and to convene an expert committee to consider the adoption of these principles by the UN. The sheer number of countries who sponsored this resolution suggests substantial worldwide interest in the potential of restorative justice (Van Ness 2002a, p 1). More recently in the 2005 UN Crime Congress, restorative justice took its most prominent position yet as “Enhancing Criminal Justice Reform, Including Restorative Justice” was one of only six official congress workshops and the Working Party on Restorative Justice⁴⁷ sponsored five ancillary sessions (Porter 2005, p 1).

Restorative justice fundamentally changes the way we view and respond to criminal behaviour as well as the way we relate to those who commit crime and those who are affected by it (Johnstone 2002, p 6). Particularly in light of the increasing growth and prominence of restorative practices across the globe, it is important to

⁴⁷ The Working Party was formed by the New York Alliance of NGOs on Crime Prevention and Criminal justice, a coalition of major nongovernmental organizations which serve as consultants to the United Nations (Porter 2005, p 2).

continue the development of the concept of restorative justice through academic discussion and practical evaluation. Howard Zehr argues that judicial punishment is a social choice and not an inevitable response to crime. Restorative justice demonstrates the nature of that choice and allows society to question its reasonableness and righteousness (1990, p 227). This chapter discusses the values, the strengths and the weaknesses of restorative justice practices and concludes by structuring this discussion within the context of the primary research questions of the thesis. Throughout this discussion, it is important to remember that juveniles are at a stage in their lives where they can be especially susceptible to the perceptions of others.

Values of Restorative Justice

Chapter One reproduced Marshall's (1996) oft cited definition of restorative justice and briefly discussed a few of the key components of restorative justice. However, at present no generally accepted definition of restorative justice exists and a review of the literature suggests that there are more definitions of restorative justice than there are programmes (See McCold 1998; Walgrave 2004 p 552; Hoyle and Young 2002, p 527). In fact, it has been said that the task of clearly identifying, articulating and defining restorative justice is too difficult (Fattah 1998, p 393). As a result, diversity in practice has arisen because restorative justice is comprised of a broad set of values not linked to any specific purpose. In the latter part of the twentieth century, many countries across the globe have wrestled with the question of how best to respond to youthful offending. One common theme has been the introduction of a variety of restorative justice practices into criminal justice systems

worldwide. However, how restorative values are interpreted and the extent to which they are realized by restorative programmes varies.

This section seeks to collate discussions on what constitutes restorative justice, highlighting several of the core values which most restorative justice advocates agree underpin restorative justice theory. These values are grouped into two categories which are broadly encompassed by most restorative justice practices: (1) the empowerment of all parties and (2) repairing the harm caused by an offence. The following discussion is by no means all-inclusive but rather focuses on key restorative justice values and practices, reflecting upon how programmes in England and Wales – specifically final warnings and referral orders - fit into the larger worldwide picture of restorative justice.

Empowerment of all parties

One of the primary goals of restorative justice is to empower the principal parties affected by an offence – that is the victim, the offender, and the community. This objective is duly achieved first by re-empowering the parties as central players in conflict resolution and second by encouraging deliberative participation among those parties.⁴⁸

The conventional criminal justice system emphasizes both the centrality and authority of the State; offending is viewed as a violation of the State's interests despite its disguise as a violation of 'public interest' (Morris and Young 2000, p 13). In contrast, restorative justice recognises that crime is a violation not simply of the law but rather of people and their relationships (Roche 2003, p 26). Thus, restorative

⁴⁸ See Bazemore and Schiff (2005) for a detailed discussion of stakeholder involvement in a conferencing environment.

justice seeks to return the conflict to its rightful owners⁴⁹ by reinstating the primary parties to the principal decision-makers in conflict resolution (Morris and Young 2002, p 14; Bazemore and Umbreit 2005, p 56). Equal attention is given to all stakeholders as restorative justice is concerned with the needs and empowerment of all those affected by an offence (Braithwaite 2003, p 10). By bringing together the victim, offender and the wider community, such a meeting allows the parties to determine on a consensual basis how to cope with the aftermath of the offence and how to begin to repair the harm that was done (Morris 2002a, p 599).

In conjunction with the empowerment of the stakeholders, restorative justice emphasizes the importance of active participation, dialogue and negotiated agreements in resolving conflict (Hudson and Galaway 1996, p 2; Crawford and Newburn 2003, p 22). Indeed, full empowerment cannot be achieved without such active participation. Marshall's most cited definition of restorative justice is almost exclusively concerned with this ideal,⁵⁰ and essentially all restorative programmes have in common some kind of deliberative process between offenders, victims and, in some cases, the wider community. According to Declan Roche, mutual accountability is created through the deliberative process that provides 'a vital and inclusive structure which works to check decision-makers' (2003, p 4, 79). Advocates claim that restorative justice's participatory conflict resolution naturally promotes "repair, reconciliation and reassurance" (Zehr 1990, p 181; Roche 2003, p 31). This strategy of empowerment provides a dynamic solution to address problems

⁴⁹ Christie's (1977) seminal work argued that the conflict between victims and offenders had been 'stolen' by the State.

⁵⁰ To reiterate Marshall's (1996) definition: "Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future."

of crime as well as underlying factors and social norms which may contribute to conflicts, such as economic and social injustice (McCold 1995).

(i) Practical realization of empowering the parties

As mentioned earlier in this chapter, there is a great diversity of practices around the world which fall within the purview of restorative justice. The differences are based upon the history and politics of the region and how the concept of restorative justice has taken hold and evolved. Thus, restorative justice in the international community is a fluid concept. Lacking any specific direction on how values should be implemented, programmes have been free to interpret restorative justice based upon the values they wish to emphasize. Practitioners have developed diverse ways to realize the goal of empowering the parties both in regards to who is empowered as a stakeholder and exactly what decision-making power is restored.

The first contemporary restorative process was victim-offender mediation (Van Ness et al 2001, p 7). As the name suggests, this archetypal form involves the bringing together of victims and offenders in the presence of a neutral mediator who coordinates and facilitates the meeting (Van Ness et al 2001, p 7). However, the only two parties involved in this process are the victim and the offender. The aim of the mediation is to engage the parties directly in problem-solving negotiation and to help them consider ways to put right the harm that was done (Van Ness et al 2001, p 7). While victim-offender mediation was revolutionary at its inception, other restorative practices have built upon it, expanding the list of those allowed to participate in such a gathering.

As with victim-offender mediation, restorative conferencing involves a meeting of the two primary stakeholders in a relatively informal setting with a third

party mediator. However, restorative conferencing includes a broader range of stakeholders, notably secondary victims (such as family members, friends or the community) as well as supporters for both the victim and offender (Crawford and Newburn 2003, p 22). Conferencing is considered to be a process in which any individuals connected to or affected by an offence come together to discuss the issues that have arisen (McCold 2001, p 44).

New Zealand's Family Group Conferencing (FGC), one of the most well known restorative programmes in the world, involves meetings convened and facilitated by a youth justice coordinator and includes offenders, their family, victims, their supporters, and a police representative (Morris and Maxwell 2000, p 209).⁵¹ The conference deliberately relocates the response to juvenile offending outside the formal criminal justice system and within the community most closely concerned with and directly affected by the young offender, that is, the family (Miers 2001, p 71). However, in New Zealand, members of the wider community do not have a right to participate in conferences because such participation is considered 'at odds with the principles underlying conferencing' (Morris and Maxwell 2000, p 215). Similarly, Australia's Wagga Wagga conferencing model - pioneered in Wagga Wagga, New South Wales in 1991 - although different from FGCs because it is entirely police based⁵² - focuses only on those individuals with direct relevance to the victim, the offender or the offence. Family, friends and other members of the offender's 'community of care' are seen to be the most potent shaming agents in

⁵¹ In some cases a social worker or lawyer may be present (Morris and Maxwell 2002, p 209).

⁵² The police function as the sole gatekeepers to eligible offenders, manage all pre-conference organisation and coordination, and the conferences themselves are police-led and facilitated (Miers 2001, p 61). This model of conferencing is an extension of formal police cautioning for juvenile offenders and therefore mostly involves less serious offences than those that go to conferencing in New Zealand (Crawford and Newburn 2003, p 29).

denouncing the wrongfulness of the offence but not the offender (Crawford and Newburn 2003, p 29).⁵³

Moving along a continuum, other forms of restorative justice, namely community boards and sentencing circles, define primary stakeholder even more broadly because these programmes have evolved a slightly different understanding of the purpose of restorative justice. A community reparative board, such as the Vermont Reparative Probation Programme, is a citizen tribunal composed of a small group of community members who meet with the victim and the offender, develop sanction agreements, and monitor compliance (Bazemore and Umbreit 2001, p 3). The reparative board usually consists of five or six citizens from the community in which the offence occurred (Sinkinson and Broderick 1998, p 303). In addition, the meetings are open to the public; since the programme is well publicized, it is not uncommon for several members of the public to attend any given session (Karp and Walther 2001, p 200). Unlike New Zealand's FGC or conferencing in Wagga Wagga, which focus conflict resolution amongst individuals of direct importance to the victim and/or the offender, the mission of the community boards is to increase social control at the local level by involving lay citizens in the justice process (Sinkinson and Broderick 1998, p 303). Like community boards, sentencing circles are a community directed process designed to enhance local community involvement in justice matters and therefore also define 'stakeholders' expansively as any community member with an interest in a case may attend and participate; usually between fifteen and fifty people attend a circle (Van Ness et al 2001; McCold 2001, p

⁵³ The Wagga model is based on Braithwaite's (1989) theory of reintegrative shaming. This theory is discussed in further detail later in this chapter.

50; Crawford and Newburn 2003, p 33; Lilles 2001, p 163).⁵⁴ Ultimately, how each programme chooses to recognize 'stakeholders' in turn impacts on the deliberative process and who is given most of the decision-making power.

Central to the experience of empowerment for the stakeholders, however defined, is the ability to engage in consensual, deliberative, non-coercive participation. Programmes differ in how they allow for such participation to take place. Victim-offender mediation forms the basis of the participatory process. The mediation forum allows both the victim and the offender an opportunity to have their say. Victims describe their experience of the crime and the effect it had on them and offenders can explain the context of the offence, that is what they did and why, as well as answer any questions that the victim may have (Tickell and Akester 2004, p 22). In addition, victim-offender mediation promotes dialogue between the parties as they work together to reach a consensual, realistic and proportional resolution (Tickell and Akester 2004, p 22).

While this form of dialogue forms the basis for restorative processes, restorative conferencing, community boards and sentencing circles all differ in how decisions are made and by whom. In New Zealand's Family Group Conferences, after general discussion among all those present - addressing the offence, its underlying circumstances, its effects, and options for holding the offender accountable - the professionals and the victim leave the room while the offender and his or her family privately discuss recommendations to propose on how to make amends. As mentioned previously, the FGC relocates the response to juvenile offending within the family. Therefore, the primary emphasis is placed on the

⁵⁴ Sentencing circles are mostly used in Canada.

offender to take responsibility and to propose how best to repair the harm caused by the offence. When the FGC reconvenes, the young offender outlines a proposal and everyone discusses it. Upon agreement by all those in attendance, the proposal is formally recorded and becomes legally binding (Morris and Maxwell 2000, p 210).⁵⁵

In contrast, in Vermont's Community Reparative Probation Programme, after a discussion among the key participants – similarly focusing on the offence, its impact on the victim and the community and strategies for reparation as well as reintegration - the board meets in the *absence* of the offender to discuss elements to be included in a restorative agreement. Upon reconvening with the offender, a sanction package suggested by the board is discussed (Sinkinson and Broderick 1998, p 304; Bazemore and Umbreit 2001). Since the aim of the Vermont board is to increase social control at the local level by involving lay citizens, the most important part of the decision-making process, that is the creation of the sanction agreement, is suggested by the board. Therefore, although the young offender must still agree to the board's proposals, the central step of discussing and suggesting how to make amends for the harm caused does not involve the offender, quite the opposite to New Zealand's FGC.

Sentencing circles differ from restorative conferencing and reparative boards in that ultimately sentencing circles are held as part of the sentencing process and seek to develop consensus on appropriate sentencing plans that address the concerns of all involved parties. Therefore, the sentencing circle process is adopted by judges in lieu of hearing formal sentencing submissions from the prosecution and defence lawyers. The sentencing circle is not a form of diversion but is used almost

⁵⁵ For court referred cases, the agreement must be accepted by a Youth Court judge as well.

exclusively for serious cases and results in convictions and criminal records for offenders (Lilles 2001, p 163). After a discussion by the participants, including anyone from the public who chooses to attend as well as lawyers for the prosecution and the defence, the judge imposes a sentence incorporating the recommendations of the circle (Crawford and Newburn 2003, p 34; Lilles 2001, p 164). In this programme, the overarching power remains with judicial officials.

Restorative justice practices in England, and specifically both final warnings and referral orders, integrate aspects of the international practices noted above and their restorative philosophy. In particular, the police-led Wagga model of restorative cautioning influenced the development of the Thames Valley Police cautioning scheme which, in turn, influenced the guidelines for the restorative element of final warnings and referral orders (Crawford and Newburn 2003, p 31; Hoyle et al 2002, p 7). Similarly, the referral order is reflective of several schemes, in particular New Zealand's Family Group Conference and Vermont's Reparative Probation Programme (Crawford and Newburn 2003, p 63). The referral order in England draws implicitly on New Zealand's pioneering FGC. However, unlike the FGC and similar to the Vermont Board's, the referral order allows for the involvement of community members in the guise of panel members who lead and mediate the conference as well as represent the views of the community. The belief is that the panel members can serve as a link between a professionalized system and ordinary citizens (Crawford and Newburn 2002, p 489). As a result of a subtle blending of philosophies and practices supporting other restorative programmes, practices in England - both final warnings and referral orders - potentially provide for perhaps the most balanced form of empowerment. Offenders, victims and anyone else attending the programmes (whether police officers for final warnings or community members

for referral orders) decide *together* how to repair the harm done by the offence. Therefore, no one attendant individual is marginalized by being left out of the discursive process during which a reparation agreement is created.

Repairing the harm: reparation and restoration

A second goal of restorative justice is to reconcile the parties, repairing harm caused by the dispute (Bazemore and Schiff 2005, p 48; Hudson and Galaway 1996, p 2).⁵⁶ In the aftermath of a crime, restorative justice looks towards ‘How can things be put right?’ and ‘What can be done to make amends?’ (Roche 2003, p 27). Restorative justice recognises that there is a need for more than formal legal processes and prospects of punishment. Outcomes should promote reconciliation, rapprochement and a greater mutual understanding among the parties (Crawford and Newburn 2003, p 23). Exactly what needs to be repaired or restored will depend on the circumstances surrounding the specific crime, ‘whatever dimensions matter to the victims, offenders and communities affected by the crime’ (Braithwaite 1999 p 6).

Reparation can take a variety of forms although most reparation falls into one of several categories: (1) financial reparation – monetary compensation for financial losses incurred; (2) physical reparation – actions performed by the offender to make amends such as community service or performing a service directly for the victim (ie. repainting a fence that was damaged by graffiti); or (3) symbolic reparation – a symbolic gesture made by the offender to the victim such as an apology. For many victims, the most serious losses resulting from an offence are emotional and psychological, such as the loss of confidence, security and personal power (Roche

⁵⁶ See Bazemore and Schiff (2005) for a detailed discussion of repairing harm in a conferencing environment.

2003, p 27). Therefore, generally, restorative justice seeks to restore the victim's sense of security, dignity and control.

Nevertheless, restorative justice also seeks to restore the offender's sense of control by encouraging him to take responsibility for the offence, its consequences and for making amends (Morris and Young 2000, p 14). Most restorative justice practices are predicated upon the offenders' admission of guilt, that is, for the restorative programme to even take place the offender must first accept responsibility (Roche 2003, p 9). This requirement stems from restorative justice's emphasis on the offender's personal accountability to those harmed by an offence (Dignan and Marsh 2001, p 85). Offenders should expect to explain their behaviour and acknowledge responsibility for the offending through making amends (Van Ness et al 2001, p 6; Morris and Maxwell 2001, p 268). However, there is simultaneously an expectation on victims to accept offenders' expressions of remorse and to express a willingness to forgive as well as an expectation that the community will ensure the offender is reintegrated (Hudson and Galway 1996, p 2; Roche 2003, p 29).

One theory which underscores many restorative justice practices and which emphasizes the offender's reintegration is John Braithwaite's (1989) theory of 'reintegrative shaming'. Braithwaite argues that the criminal justice system should not aim to stigmatize and degrade those who have committed a criminal offence but rather should integrate offenders back into society (Braithwaite and Mugford 1994, p 139). The criminal offence and the moral status of the individual perpetrator should be uncoupled as crime is constructed as 'the bad act of a good person' (Braithwaite and Mugford 1994, p 146). Formal, official punishment administered through courtrooms tends to degrade offenders and serves as some incomprehensible authoritative out casting (Braithwaite and Mugford 1994, p 142). In contrast,

Braithwaite argues in favour of informal social control mechanisms which revolve around the reintegration of offenders and the phenomenon of shame.

Reintegrative shaming proposes that disapproval by a personally relevant community of people followed by attempts “to reintegrate the offender back into the community through words or gestures of forgiveness or ceremonies to decertify the offender as deviant” (Braithwaite 1989, p 100-101) will have a greater effect on criminal behaviour than sanctions imposed by a distant legal authority because people care more about how they are perceived by their close acquaintances and family (Braithwaite 1989, p 69).⁵⁷ Reintegrative shaming can be a reaffirmation of the moral status of the individual through the expression of disappointment that the offender would do something so out of character. The shaming then becomes reintegrative through the expression of pleasure at the restoration of the character of the offender (Braithwaite 1989, p 72-73). As a result, reintegrative shaming minimizes the risks of pushing deviant individuals towards criminal subcultures which may re-affirm the values of deviant behaviour. Therefore, shaming operates at two levels. First, it deters deviant behaviour because individuals do not like to lose the social approval of their intimates. Second, shaming, repentance and reacceptance aid in building a conscience that internally deters deviant behaviour (Braithwaite 1989, p 75).⁵⁸

Restorative justice, in theory and practice, is informed by this theoretical framework. As discussed in Chapter One, alongside exclusionary ‘at risk’ policies,

⁵⁷ This seems to be borne out by empirical research. For example, a British Government Social Survey asked youths to rank the most significant consequences of arrest. While 10 per cent said ‘the punishment I might get’ was the most important consequence, 55 per cent said ‘what my family’ or ‘my girlfriend’ would think (Braithwaite 1989, p 69-70).

⁵⁸ Although, Braithwaite argues that there are instances in which the offender is beyond being shamed and punishment is needed (1989, p 73).

the Labour government has pursued restorative justice policies with the specific intention of countering socially exclusive and stigmatizing elements of society. Indeed, there has been recognition of the benefits that can derive from informal, socially inclusive policies which attempt to reintegrate the young offender back into the mainstream norm. Overall, the aim of restorative justice is to restore and rebuild ruptured relationships through a forum that allows all three parties to participate (Kurki 2000, p 236; Zehr 1990).

(i) Practical realization of repairing the harm

As noted earlier in this chapter, one of the origins of modern restorative practices is victim-offender mediation, started in 1974 in the Canadian province of Kitchener, Ontario. One of the driving forces behind the development of this practice was the concept of finding a way to put right the harm caused. A probation officer and a colleague of his in the Mennonite Central Committee had the idea to establish mediation as a means of resolving the conflict created in a community by two young men who committed twenty two acts of property damage (Umbreit 2001, p xlii). A recommendation was made to the court that the offenders meet every person they had victimized and assess how much loss occurred as a result of their actions. The judge ordered a one month remand to allow the meetings to take place so that the offenders could gain a better understanding of the impact of their criminal behaviour and subsequently sentenced them to probation with the requirement that they pay restitution to the victims. Three months later, the offenders again visited each of the victims and provided each with a cheque for the monetary loss incurred (Umbreit 2001, p xliii). While these beginnings spawned primarily from helping victims

recover from financial losses resulting from the offence, there was an acknowledgment of the need to do more than simply pay financial restitution.

Since the Kitchener experiment, restorative programmes like New Zealand's FGC and England's referral order place less emphasis on financial restitution and focus more on other means repairing the harm caused by an offence, such as engaging offenders in community service, direct reparation to the victim, and encouraging verbal or written apologies. Crawford and Newburn's early study of referral orders found that only 2 per cent included financial compensation to victims (2003, p 135). Nevertheless, although each programme has its own set of standardised forms of reparation - like, for example, particular community service programmes that offenders usually take part in - there are diverse ways of 'repairing the harm'.

As for the reintegrative capacity of restorative programmes, there is again a variety of means used to achieve this goal. Some programmes such as the Wagga Wagga conferencing programme, and the Reintegrative Shaming Experience (RISE) in Canberra, Australia (a version of the Wagga model of conferencing), specifically attempt to utilize Braithwaite's concept of reintegrative shaming. The hypothesis being that whereas formal courts stigmatise offenders, the use of a 'community of care' - those people whom offenders respect and who care most about the offenders - engendered by a restorative conference provides an opportunity for offenders to confront the consequences of their behaviour and repair the harm caused (Sherman et al 1997, p 4). Other practices such as New Zealand's FGCs specifically do not subscribe to reintegrative shaming, suggesting that shaming could be at odds with

restorative ideals (Morris and Maxwell 2000, p 216).⁵⁹ However, FGCs do make use of the notion that people who are personally relevant to an offender are best placed to help aid and reintegrate that individual (Morris and Maxwell 2000, p 213). As for England's practices, although reintegrative shaming has been an influential theory behind the development of referral orders and final warnings in particular, neither programme outwardly subscribe to the theory. Instead, like FGCs, the practices focus less on shaming and more on reintegration.

This section has discussed some of the values restorative processes instil in the modern criminal justice system and examples of practice associated with those values. In discussions of restorative justice, cited alongside the values are the potential strengths and the potential problems of restorative justice practices. Since the values of restorative justice differ from those of the traditional criminal justice system, the benefits and problems restorative practices offer also differ to those of the conventional system. Bazemore and Umbreit (1995) suggest that "restorative justice sanctioning does *not* offer complete solutions to all of the complex issues facing juvenile justice policymakers", nor, of course, does any criminal justice paradigm (p 311). Therefore, it is important to understand where the strengths and limitations of any justice paradigm lie. The following sections will serve only as a general discussion since different restorative practices are more or less prone to particular strengths and weaknesses.

Potential Strengths

⁵⁹ Alison Morris says of FGCs, "It does not require offenders to feel shame or to be shamed" (2002b, p 157).

There are four principal potential strengths that restorative programmes bring to the justice system:⁶⁰ increased satisfaction for victims and offenders; deliberative accountability; community development; and a reduction in offending behaviour and/or changes in offending behaviour. Some are more optimistic than others that these benefits can be realised in the majority of restorative justice schemes. It is fair to say that further rigorous empirical research is needed to provide definitive evidence about the extent to which such potential is realised in practice. This section serves as an introduction to these potential benefits, but these are revisited in each of the subsequent chapters of this thesis and addressed in relation to the data collected.

Increased victim and offender satisfaction

One benefit of restorative justice practice which receives much attention is the potential to increase victim satisfaction. As noted earlier in this chapter, victims tend to be alienated from state centred justice processes as the personal experience of victimization becomes abstracted and institutionalized (Palk et al 1998, p 139). In contrast, victims involved in restorative justice processes get more out of and are on the whole more satisfied with restorative processes and outcomes than victims whose cases go to court. Victims comment that they are better informed and supported, experience more respect and equity, and derive a greater sense of justice and empowerment.⁶¹

A study by McGarrell et al (2000) looked at the implementation and the initial results of restorative justice conferences as an alternative response to young offenders in Indianapolis, Indiana between 1997 and 1999. The authors found markedly higher

⁶⁰ This list is comprised of the four widely discussed strengths of restorative justice. Some suggest a much longer and more detailed list (e.g. Braithwaite 1999).

⁶¹ See McCold and Wachtel (1998); Strang (2002); Walgrave (2004); Morris and Maxwell (2000); Braithwaite (2002); Palk et al (1998)

levels of satisfaction among victims in cases randomly assigned to restorative conferences; moreover, 97 per cent of victims “felt involved”, compared with 38 per cent of the control group, and 95 per cent of victims felt they had the opportunity to express themselves, compared with 56 per cent of the control group victims (McGarrell et al 2000, p 45).

In another study, Umbreit et al’s (2001) meta-analysis reported the following results: regarding victims’ satisfaction with the criminal justice referral of their case to mediation, nearly all programmes reported satisfaction rates of 70-79% and those studies with comparison groups found higher levels of satisfaction for victims referred to mediation than for those who were not; victims’ satisfaction with victim offender mediation ranged from 90-97%; and 80-97% of victims were satisfied with the outcome of the mediation. Similarly, Latimer et al’s (2005) meta-analysis of thirteen evaluations with a control group found victim satisfaction to be significantly higher in the restorative justice group (Latimer et al 2005, p 136).

As with the experience of victims in restorative programmes, increased satisfaction for offenders participating in restorative processes is also considered a significant benefit of restorative justice, and evidence suggests that offenders involved in restorative justice programmes likewise have high levels of satisfaction. McCold and Wachtel (1998) in their examination of police conferencing in Bethlehem, Pennsylvania found that offenders who took part in conferencing were more likely to be satisfied and experience the process and outcome as fair than offenders whose cases went to court (p 59-60).⁶² Moreover, of those who

⁶² McCold and Wachtel reported 97 per cent of offenders to be satisfied with “the way your case was handled” and 97 per cent assessing the handling of their case as fair, a better result than the

participated in a conference, 92 per cent claimed they would recommend conferencing to others who faced similar trouble and 94 per cent said that if they had to do it over again, they would chose to participate in a conference (McCold and Wachtel 1998, p 60). Latimer et al's (2005) meta-analysis correspondingly found that offenders were more likely than control groups to be satisfied with how their case was handled (p 136).⁶³ In fact, many studies report similarly positive results.⁶⁴ The strongest published result is on the Queensland conferencing programme in which 98 per cent of offenders believed their conference to be fair and 99 per cent were satisfied with the agreement (Palk et al 1998, p 144). Offender satisfaction with restorative processes is important because offenders are more likely to respond positively to criminal justice processes which they perceive as just and with which they are satisfied (Braithwaite 2002, p 54; Morris and Maxwell 2000, p 212; Walgrave 2004, p 564).

Deliberative accountability

As discussed at the beginning of this chapter, one of the principal aims of restorative justice is the empowerment of the parties, achieved in part through participatory processes. This can bring about one of the potential benefits of

cases which went to court (1998, p 59), although the results on offender satisfaction were not statistically significant.

⁶³In the first analysis the result was not statistically significant as their sample contained a clear outlier with an extremely small sample size (N=7). Upon removing the outlier, the results became statistically significant (2005, p 136).

⁶⁴High perceptions of fairness have been found in regard to a number of facets of procedure and outcome in the Canberra RISE conferences as compared to Canberra courts (Braithwaite 2002, p 55). Moreover, Trimboli (2000) reported even higher levels of offender perceptions of fairness and outcome satisfaction in the New South Wales conferencing scheme compared with the RISE conferences (p 34-54). Trimboli reported that of the offenders who took part in the RISE conferences, 89 per cent stated that the conference was either 'somewhat fair' or 'very fair', compared to 95 per cent of offenders participating in the New South Wales conferencing, a statistically significant difference (Trimboli 2000, p 36).

restorative practices, deliberative accountability.⁶⁵ This concept suggests that when victims, offenders and their supporters deliberate together in a restorative justice meeting, the process of negotiation brings about mutual accountability (Roche 2003, p 230). Therefore, if, for example, an offender is uncooperative in making amends to the victim, the young person can be held to account by his family and the victim. Similarly, if a victim calls for excessive reparation from the offender, others attending the meeting can question the validity of the victim's demands. The advantage is that accountability lies with the decision-making process itself (Roche 2003, p 230).

Nevertheless, it would be an exaggeration to assume that every meeting of all restorative programmes demonstrates deliberative accountability, and in fact Roche's research found that too often programmes were run in a manner which led to its collapse (2003, p 231). To be successful deliberative accountability requires the empowerment of all parties attending the restorative meeting and no one participant can be bullied, coerced, oppressed, or forced into attendance and participation (Roche 2003, p 231).

Community development

This section has thus far discussed some of the key potential benefits in the use of restorative justice pertaining to victims and offenders. In addition, there is a general agreement that the community is also central to restorative justice (McCold and Wachtel 2003, p 294; Roche 2003, p 229; Bazemore and Schiff 2005). Evidence suggests that where communities demonstrate strong social support, criminality is less (Cullen 1994; Chamlin and Cochran 1997), and some advocates of restorative justice propose that restorative processes can alter existing social structures that cause

⁶⁵ The concept of 'deliberative accountability' is explored in full by Declan Roche (2003).

crime (McCold 1995; Braithwaite 1999).⁶⁶ However, few studies provide evidence which supports the claim of community development and even Braithwaite concedes that “it might be optimistic to expect that restorative justice could ever have sufficient impacts in restoring micro-communities to cause a shift in the macro impact of community on the crime rate” (2002, p 67). Authors warn that it is too early to promise that restorative justice builds better communities, particularly since the effects of restorative justice on local communities has not been systematically researched (Kurki 2003, p 293; Walgrave 2004, p 564). Rather, short-term satisfaction issues have primarily dominated evaluative efforts.

Nevertheless, there are several reasons to expect that restorative practices will work better than most other community building efforts. For example, restorative justice processes do not limit discussion to the specific crime and often participants wish to speak about other social problems in their community. Moreover, restorative justice practices reduce the distance between different groups of people as they directly and consensually participate in conflict resolution (Kurki 2003, p 309).⁶⁷ Community development is potentially a significant strength for restorative justice practices, one which should be much more rigorously explored, and at present there

⁶⁶ Bazemore and Schiff (2005) suggest that the concept of community-building is flexible and dynamic, based on a general understanding that ‘community is where you find it’ (p 276). The authors argue that community-building can take place on multiple levels ranging from micro to macro: (1) the conference setting – the building of relationships among the community of care present at the conference; (2) the community of conferencing volunteers – there is community building potential when trained volunteers share their knowledge and apply restorative skills in other settings; (3) instrumental communities and institutions – a variety of micro-communities such as educational, residential and workplace settings can be directly affected by crime and thus may be in need of informal social control and social support mechanisms; (4) neighbourhoods, community organizations and small towns – community development may take place at the level of entire neighbourhoods (p 281).

⁶⁷ See Kurki (2003) for a detailed list of reasons why restorative justice is potentially beneficial to community building efforts.

are no available data which contradict the conclusion that restorative justice should be beneficial to communities and the wider public.

Reduction in re-offending rates

For most governments, policy-makers, and criminal justice practitioners, one of the primary reasons for incorporating restorative justice into the criminal justice system is its capacity to reduce re-offending. Recent research from New Zealand and Australia suggests that models of restorative justice may have some effect in reducing re-offending, at least in some cases. Maxwell and Morris' (2003) research in New Zealand found that some six years after a family group conference more than two fifths of young offenders were not reconvicted or were convicted only once (p 261). Nevertheless, according to the authors, the most important finding was that restorative conferencing could contribute to a reduction in re-offending even when other important factors such as adverse early experiences and subsequent life events were taken into account (Maxwell and Morris 2003, p 261).⁶⁸

However, the methodology adopted in these studies does not allow us to be confident of a causal relationship between good restorative justice practices - which reflect key restorative values, processes and outcomes - and a reduction in offending. Braithwaite, the ultimate champion of restorative justice, points out that the evidence is not satisfactory as statistical power, randomization, and control have been weak in

⁶⁸ Meta-analyses appear to support the results of these studies, suggesting that there appears to be a modest causal relationship. A preliminary meta-analysis of programmes that contain restorative justice elements was conducted by Bonta et al (1998). This analysis, which focused exclusively on the role of restorative justice in reducing offender recidivism, found that restorative justice programmes yielded mild reductions in re-offending. However, the authors used a very broad operational definition of restorative justice which failed to incorporate some of the fundamental principles. In a later meta-analysis, Latimer et al (2005) aggregated data from studies that compared restorative justice programmes to traditional non-restorative approaches. In an evaluation of 32 studies, these authors found that on average restorative justice programmes yielded reductions in recidivism when compared to non-restorative approaches (Latimer et al 2005, p 137).

much of the research on recidivism (Braithwaite 2002, p 56, 60). One way of coping with this problem is to randomly allocate offenders into restorative or non-restorative processes and examine the subsequent re-offending rate (Hoyle and Young 2002, p 538). The RISE evaluation in Canberra, Australia adopted just this method. This study examined the effects of diversionary restorative justice conferences on repeat offending (Sherman et al 2000, p 3). The results of the study, utilizing a one year follow-up, indicated that when compared to court appearances diversionary conferences caused a large drop in the offending rates of violent offenders, a small increase in offending by drink drivers, and no difference in repeat offending by juvenile property offenders or shoplifters (Sherman et al 2000, p 3). These results are perhaps somewhat discouraging given that a large percentage of criminal offences are against property. Nevertheless, the public is generally more concerned with violent offences and a reduction in re-offending by violent offenders is of significant benefit to society, even if overall crime rates are not largely affected (Hoyle and Young 2002, p 539).

In contrast, a study on restorative cautioning by Wilcox, Young and Hoyle (2004) found that caution type, whether restorative or traditional, was *not* a significant predictor of resanctioning (p 19). Indeed, there was no evidence to suggest that restorative cautioning resulted in a statistically significant reduction in resanctioning (Wilcox et al 2004, p vi). This robust study specifically focused on resanctioning rates and therefore should be given proper attention when examining this topic.⁶⁹ Likewise, Paulin et al's (2005a and b) recent research on two New Zealand restorative justice schemes found that the re-offending rates of participants

⁶⁹ This study compared the resanctioning rates of over 29,000 offenders and used two comparison police forces controlling for relevant offender characteristics (Wilcox et al 2004, p ii).

were not statistically different from the rates of matched comparison groups dealt with through conventional criminal court (para. 4.1.1). Taken together, these studies highlight the need for further, more detailed and scrupulous research into the relationship between restorative justice processes and re-offending. Nevertheless, it is important to keep in mind that a reduction in recidivism is only one of several goals of restorative justice processes.

This section has focused on four of the potential benefits of restorative justice programmes. These strengths apply broadly to all programmes which fall under the restorative justice heading. However, in addition, these issues are especially relevant to final warnings and referral orders where the principal aim is to prevent offending behaviour before it becomes persistent by engaging young offenders, victims and, for referral orders, members of the community in face-to-face deliberative discussions. The following chapters of this thesis return to these themes and examine them within the context of final warnings and referral orders.

Potential Problems

Essential to the development of restorative justice practices is the critical evaluation of difficulties that may lie with restorative programmes. This section highlights several such potential problems, grouping them into three categories: the role of the State; non-restorative justice for participants; and failure to affect change. Nevertheless, as with the potential strengths of restorative justice practices, we must be careful not to draw any strong conclusions from the following discussion of potential pitfalls. Restorative practices are still evolving, particularly in the UK, and large-scale longitudinal studies have yet to be completed. Despite the lack of firm evidence, the debate among scholars and practitioners of potential problems inherent

to restorative justice will aid in the development of practice. As with the discussion of benefits, each of the following pitfalls of restorative justice practices, while applicable to most restorative justice programmes, is pertinent to the analysis of the final warning and referral orders programmes that follow in the subsequent chapters of this thesis. This discussion, therefore, serves as a general thematic introduction to potential problems which can arise and over which there is much debate amongst scholars.

The role of the State

The role that the State should be allowed to play is one of the most contentious issues in restorative justice.

(i) Restorative justice erodes legal rights and due process

One distinctive pitfall often associated with restorative practices, especially those programmes that focus solely on juveniles, is that they erode offenders' legal rights and due process. In particular, concern has been raised in regard to the requisite admission of guilt needed to opt into a restorative programme. A worry is that young people, when presented with the choice between admitting guilt and receiving an informal option or denying guilt and going further into the legal process, may confess to a crime of which they are innocent (Polk 1994, p 136).⁷⁰ In addition, there is a potential that with an admission of guilt, the focus of the intervention becomes how best to deal with the offender and there is a danger that due process considerations may be overlooked (Warner 1994, p 142). Nevertheless, it is

⁷⁰ Polk (1994); Maxwell and Morris (1993); Warner (1994); Levrant et al (1999)

suggested that restorative practices uphold the safety net of legal formality because offenders still have the option of a court appearance (Moore 1992⁷¹).

A second principal concern over due process in restorative practices relates to consistency and proportionality in sentencing.⁷² Just-desert theorists warn that disproportionate agreements could be reached in restorative processes as a result of the influence of victims or the wider community.⁷³ Complaints have been made that offenders who have committed similar offences may end up with different sanctions (Warner 1994, p 148) and concern has been expressed over the 'absence of safeguards against excessive penalties' (Ashworth and von Hirsch 1998, p 303). Fears over disproportionate reparation agreements would not be as pertinent were restorative practices used only to divert low level offenders. However, restorative justice processes are used for more than low level diversion – for example, referral orders in England – and thus should be recognised as a form of sentencing (Hoyle and Young 2002, p 544). It therefore becomes harder to disregard arguments pertaining to proportionality and consistency in restorative justice sentencing.

Responding to these criticisms, Morris and Young (2000) argue that “consistency and proportionality are constructs which serve abstract notions of justice” and desert theory does not provide outcomes which are meaningful to restorative justice; consistency of approach, achieved by taking into account the needs of those directly affected, rather than uniformity in outcomes is needed in restorative justice (p 21-22). Similarly, Braithwaite (1999) advocates that instead of ensuring

⁷¹ Moore (1992) 'Facing the consequences: conferences and juvenile justice' paper presented at the National Conference on Juvenile Justice convened by the Australian Institute of Criminology. Cited in Polk (1994).

⁷² Ashworth (2000); Hoyle and Young (2002); Warner (1994); Ashworth and von Hirsch (1998); Delgado (2000)

⁷³ For example see Ashworth (2000)

consistency and proportionality of outcomes, restorative practices should ensure that outcomes do not exceed defined upper limits (p 105). Moreover, research indicates wide sentencing disparities occur in the sentencing practices of the formal justice system and discrimination based on race and region is not unknown (Morris and Maxwell 2000, p 218). However, concerns about consistency, proportionality and sentencing disparities should not be easily dismissed. While this is a potential problem with the restorative justice format, more research and thought should be placed into whether or not these problems arise and, if so, how to best resolve the conflict.

(ii) Police-led restorative justice

One of the significant debates within the current field of restorative justice is whether or not police led restorative justice should be allowed.⁷⁴ As with other forms of restorative justice, police led restorative justice is criticized for concerns over due process. However, additionally, police led restorative justice is criticized for giving too much power to the police and blurring the checks and balances thought to safeguard the application and delivery of penal sanctions. The concern is that police led schemes allow the police to both investigate and adjudicate an offence thereby simultaneously assuming the roles of investigator, prosecutor, judge and jury (Bottoms and Dignan 2004, p 136; Goldson 2000, p 38). Thus, for example, in the final warning, the decision of whether to issue a reprimand, administer a final warning or charge the suspect is invested solely with the police (Goldson 2000, p 37). This raises fundamental concerns about the concentration of too much power in one

⁷⁴ For critiques of police led schemes see Polk (1994), Warner (1994); Blagg (1997) and Cunneen (1997). For counter-arguments see Braithwaite (1997; 1999) and McCold and Wachtel (1998).

agency (Ashworth 2001), especially as a system based on the 'separation of powers' may be far less effective when a single agency like the police has such wide ranging functions (Bottoms and Dignan 2004, p 136). Critics like Andrew Ashworth argue that in principle "a system with dispositive powers should involve a quasi-judicial body such as public prosecutors, not a chiefly investigative body such as the police" (2001, p 171). Others suggest that restorative processes lose their deliberative accountability if authority figures like the police convene the meeting (Roche 2003, p 233).⁷⁵

Concern about police power in schemes like final warnings focus on the difficulties in changing entrenched police culture.⁷⁶ Some question the extent to which cop culture may influence and affect any interactions, thereby creating obstacles to the successful implementation of restorative justice.⁷⁷ A common critique is that restorative conferences should not be run by the police because they "have a coercive role, their legitimacy is grounded in the invocation of punishment and they do not enjoy the respect of young people ... So, it is argued, it is naïve to believe the police could do a good job" (Braithwaite 1994, p 207).

However, McCold and Wachtel (1998) argue that this concern is not only unfounded but based on a stereotypical vision of policing (p 108). Rather, they believe that policing has undergone a significant transformation towards a more problem solving approach which allows police led restorative justice to be successful.

⁷⁵ Most police led programmes recognize the inappropriateness of the investigating officer convening the meeting. However, Roche suggests that police led schemes are nevertheless problematic because solidarity amongst the police force is a central characteristic of police culture (Roche 2003, p 234). The statement is supported by Young's research in which he found that when an offender made a criticism of the investigating officer, the police facilitator typically became defensive (Young 2001, p 214).

⁷⁶ For example see Chan (1996)

⁷⁷ See Hoyle et al (2003); Young (2001)

In their research, McCold and Wachtel found that young offenders and their parents were consistently satisfied with the conferencing process; they perceived both the process and the achieved outcome as fair; and nearly all participants indicated that not only would they participate in the conference again but they would also recommend it to others in a similar situation (1998, p 108). As a result, the authors concluded that these high levels of satisfaction demonstrate that traditional cop culture does not pervade the conferencing process and police can make good facilitators (1998, p 108).

Non-restorative justice for participants

Although there is some evidence to suggest that restorative practices lead to increased satisfaction among both victims and offenders, it is possible that sometimes restorative justice may not in fact be restorative for the principal participants.

(i) Failure to be restorative for victims

Restorative justice has been criticized for its potential to be traumatizing for victims.⁷⁸ Several studies have found a significant minority of victims who felt worse after participating in restorative programmes.⁷⁹ One principle reason for victim dissatisfaction stems from the failure to properly implement restorative practices. Morris and Maxwell (2000) reported that approximately 25 per cent of victims participating in family group conferences reported feeling worse afterwards due to the offender's lack of sincerity, the victims' inability to express themselves adequately, and a lack of support offered (p 212). Nevertheless, Morris and Maxwell

⁷⁸ For example, Braithwaite (2002) notes that in some occasions (albeit rarely) offenders can be formidable and scary, causing re-victimization. He discusses the worst case example from his research in Canberra. The case revolved around an offender who threatened a woman with a syringe filled with blood. The conference was not run well and feelings between the victim and offender deteriorated. Subsequently the victim found a syringe left on the dashboard of her car which she assumed was a threat from the offender. The allegation was never proved (Braithwaite 2002, p 139).

⁷⁹ Daly (1996) and Strang and Sherman (1997); Morris and Maxwell (2000).

suggest that the victims' concerns arise from poor practice rather than fundamental objections to restorative practices per se (2000, p 212). Likewise, the Crime and Justice Research Centre in New Zealand in conjunction with the New Zealand Ministry of Justice recently released a report on the evaluation of restorative conferences; the research found that victim satisfaction rates were significantly lower at the twelve month follow-up compared to the initial interview (Kingi et al 2005, sec. 8.7). The factors associated with this increase in dissatisfaction also stemmed from poor implementation, in particular victims' perceptions that the conference agreements had not been completed (Kingi et al 2005, sec 8.7-8.8).

Other worries in regards to victims are that they are pushed into participating in restorative processes before they are ready. Pressures to reduce the time between arrest and intervention can be counterproductive to victims who need more time to mentally prepare themselves (Braithwaite 2002, p 140). Another somewhat related worry is that victims may be used as props in an effort to rehabilitate offenders and may, therefore, be pressured to take part in restorative processes when they are unready (Braithwaite 2002, p 139-140). Umbreit et al's (1994) study found that some victims felt coerced into participation and re-victimized because of a perceived bias towards the offender on the part of the mediator.⁸⁰ Nevertheless, it has been suggested that the traditional justice system uses victims for the State's own interest and does not offer victims any of the benefits enjoyed by restorative justice (Morris and Young 2000, p 22).

(ii) Failure to be restorative for offenders

⁸⁰ Umbreit M, Coates R and Kalanj, B. (1994) *Victim Meets Offender: The Impact of Restorative Justice and Mediation*, Monsey NY: Criminal Justice Press. Cited in Strang (2002) p 58.

Akin to criticisms that restorative programmes may not in fact be restorative for victims, there is concern that aspects of restorative practices may also detract from their restorative potential for offenders. As much as reintegrative shaming underscores restorative justice theory, it simultaneously has the potential to be at odds with it as well. Primarily, the concern with reintegrative shaming is that it may not always come across as reintegrative and may rather be perceived by offenders as stigmatic shaming (Morris 2002b, p 165). Taylor (2002) argues that the line between reintegrative shaming and stigmatic shaming is a fine one. Moreover, the author suggests that “shaming is shaming” even if it is followed by a restorative process, and rather than leading to reintegration, it may instead lead to feelings of resentment by the offender (Taylor 2002, p 190-191). After all, it is the individual being shamed and not the person doing the shaming who determines whether or not the shaming is reintegrative (Morris 2002b, p 167).

In support of concerns over the inability to differentiate between the moral status of the offence and the offender, Daly (2001) reports that in her research a significant minority of victims, one third, were unable to separate the inherent ‘badness’ of the offence from the individual perpetrator which she suggests demonstrates little desire or capacity to reintegrate the offender back into the community (p 77).⁸¹ Moreover, when interviewing victims after a restorative conference, only 28 per cent believed the offender apologized because s/he was “really sorry” while 31 percent thought it was because s/he would get off easier, 26

⁸¹ Daly found that “When asked if they would say that the young person did a bad thing because of who they *were* or that the young person was not bad but what they did was bad, one third of victims elected the first option, seeing the young person as intrinsically a bad person” (2001, p 77).

per cent felt the offender was pushed into apologizing, and 15 per cent believed the offender said s/he was sorry to make her/his family feel better (2003a, p 77).

A number of recent papers have argued that the criminal justice system and the public in Britain are increasing the stigmatization of offenders, especially young offenders, and thus escalating the adverse affects of labelling.⁸² While there are obviously immediate consequences for those who are both labelled and treated as delinquents, the effect can be much more profound and long-term. People tend to view themselves, at least in part, through the eyes of others (Kitsuse 1962). The concept of the self is constructed by the reactions of others around us, that is, we see ourselves through our perceptions of others' perceptions of us. Thus, the 'self' is the product of a reflective process involving the interaction of individuals in a social matrix (Mead 1962, p 135). Charles Cooley called it 'the looking glass self' (Cooley 1964, p 184).

In 1936 Frederick Thrasher was one of the first to identify and address this subject in his research on juvenile gangs when he noted that the official label of 'deviant' had potentially negative effects on the youths. Two years later, Frank Tannenbaum (1938) wrote that juvenile delinquents begin to think of themselves as not simply naughty but rather as different when the community around them characterized them as deviants. According to Tannenbaum, the community's reaction to boys' actions was more important than the boys' actual behaviour in establishing self-perceptions as deviants (1938, p 11). The theory proved to have stamina as similar results were found in later studies by William Chambliss (1973) and Ross Matsueda (1992), who reported that "an interactionist conception of the self as

⁸² See Triplett (2000); De Hann (2000); Halpern (2001); Meossi (2000).

reflected appraisals provides an important cause and consequence of delinquent behavior” (p 1603).

The differentiation of the deviant as well as the development of his own self-conception can be greatly affected by his contact with the social control institutions of society, especially the criminal justice system. In particular, the police and courts are responsible for applying a label (Williams 2001, p 416) and many of the institutions designed to discourage and prevent delinquent behaviour actually end up perpetuating it (Erikson 1966, p 14). As Kai Erikson comments, society’s decision to bring sanctions against a juvenile signifies a transition out of ‘normal’ society into the special position of deviant (1966, p 15), with all its attendant repercussions. For example, although youth courts are theoretically designed to protect juveniles, courts can become instruments in formally stigmatising youths as the process ceremoniously and publicly stamps the indelible mark of ‘delinquent’ upon a juvenile (Lemert 1951, p 319). As George Herbert Mead pointed out,

The self is something which has a development; it is not initially there, at birth, but arises in the process of social experience and activity, that is, develops in the given individual as a result of his relations to that process as a whole and to other individuals within that process.

(Mead 1962, p 135)

For Erving Goffman the crucial point was that a stigmatised individual tends to hold the same belief about his identity that the majority of society assigns to him. He is often acutely aware of what others see as his failings, causing him to agree with the perceptions of himself, even if only briefly (1963, p 7). As deviants are labelled by the community, they are often excluded, left on the edges of society to seek self validation from others who are similarly labelled. Goffman argued that exclusion causes the stigmatised to turn to others who share a similar position, who thereby aid in creating the sense that the ‘other’ is actually normal. This shift in ‘normalcy’

contributes towards the self-fulfilment of the assigned attributes (1963, p 19). In searching out acceptance and associating with those who not only engage in delinquent behaviour but also embrace their delinquent label, these 'deviants' are more likely to believe that they too are delinquent. Therefore, treating a person as though he is deviant produces a self-fulfilling prophesy, setting in motion mechanisms that shape a person in the image society has of him (Becker 1963, p 34). The excluded form an identity that is in itself rejecting and exclusive; they differentiate themselves and exclude others as they are excluded.

Gross exclusion develops as the deviant status becomes overriding, as it is transformed into the 'master status' (Becker 1963, p 34), or, as in Lemert's words, the offender becomes a 'secondary deviant' (Lemert, 1951, pp 76-77). The delinquent becomes identified as a deviant first and foremost. The deviant category becomes an essential part of the individual's core being. A wide range of 'imperfections' are attributed to the delinquent on the basis of this status regardless of whether or not an individual actually possesses those traits (Goffman 1963, p 5; Loftland 1969, p 129). Moreover, a new configuration develops in the perceptions others have of the deviant. A variety of current activities that were not previously defined as indicative of a deviant essence are now so defined; the same actions take on a different meaning (Loftland 1969, p 148). Without access to circles that re-affirm a 'normal' identity, the chances of a deviant continuing to conceive of himself as a 'normal' member of the majority are small (Matza 1969, p 159). The greater the consistency and duration with which a definition, either normal or deviant, is promoted, the greater the likelihood that an individual will accept and embrace that definition as his own (Loftland 1969, p 121).

Arguably, young people in today's society are feared, avoided, labelled and excluded to a greater extent than their social position or level of criminality would deem to be appropriate. It is, therefore, plausible that regardless of the restorative and reintegrative intentions of restorative justice programmes, young offenders could experience the process as stigmatizing and one in which a deviant label is applied. Moreover, many young offenders live on the margins of communities and society, experiencing them not as benign entities but rather as unfriendly and sometimes even hostile. Therefore, why would young people want to be restored into a community which fails to sufficiently address their marginalization and alienation (Crawford 2000, p 302)? Restoring relationships in an unequal society may mean restoring unequal relationships and reaffirming inequality, and therefore, reintegration can be insufficient if offenders remain marginalized and socially excluded (Morris 2002b, p 166). It is necessary to think about 'who restores what, to whom and why' (Crawford 2000, p 302).

(iii) Culturally inappropriate concept of community

As for the community, a criticism of restorative justice programmes is that they rely on a kind of community that is culturally inappropriate, that the restorative justice response tends to assume a fixed unified collectivity which does not necessarily acknowledge intracommunity conflict, diversity or inequality (Braithwaite 2002, p 142; Crawford 2000, p 300; McCold and Wachtel 2003, p 295; Delgado 2000, p 769; Hill and Wright 2003, p 292-293). Levrant et al (1999) suggest that restorative programmes cannot begin to achieve 'true community restoration', which

is simply a 'utopian goal' (p 14-15).⁸³ Moreover, the effectiveness of restorative justice is bound by the degree of community interest in participating in restorative programmes and the opportunities available to offenders, such as employment and education (Levrant et al 1999, p 14). It is possible that the literature assumes a level of participation by the community for which little evidence exists (LaPrairie 1998, p 66). Nevertheless, even when community members do participate in restorative practices, questions have been raised as to whether or not community participants have the necessary skills and resources to successfully navigate their role in the restorative justice process (La Prairie 1998, p 67; Levrant et al 1999 p 12).

Failure to affect real change

A third criticism of restorative justice is that contrary to all of the hype surrounding the possible achievements of restorative justice practices, in reality restorative programmes fail to affect real changes in offending behaviour. As discussed above, advocates of restorative justice suggest that restorative programmes can reduce recidivism and change offending behaviour. However, critics are sceptical about claims of such achievement.⁸⁴ Effecting change in offenders is neither quick nor easy. Moreover, the ability of public institutions to change offending behaviour is limited at best (LaPrairie 1998, p 68). Since the criminal

⁸³ Likewise, Hill and Wright (2003) argue that the richly symbolic concept of community has been frequently employed for 'ideological effect' on the grounds that it is a 'feel-good' term (p 292). However, the authors conclude that "Paradoxically, the very policies reliant upon that rhetoric may recreate the conditions for condemnation, exclusion and alienation" (Hill and Wright 2003, p 293).

⁸⁴ LaPrairie (1998); Snider (1995); Ball (2000); Crawford (2000); Delgado (2000)

justice system functions to further social control, it can lack transformative potential because it may disempower rather than empower individuals (Snider 1995).⁸⁵

Building on this line of argument, some scholars suggest that the lack of transformative power in restorative practices lies in the failure to address longstanding social inequity and marginalization. Arguably those with the most tenuous relationship to mainstream society, who exist at its periphery and are marginalized by it, are less likely to have a stake in restorative processes (Crawford 2000, p 300). As Delgado (2000) points out “if [the] status quo is marked by radical inequality ... for the offender, returning the parties to their original positions will do little to spark social change” (p 764).⁸⁶ Without attempting to combat structural inequalities or at least provide young people with sufficient social support to access pro-social resources and opportunities, it is unlikely that reintegration in restorative interventions can be realistically achieved (Gray 2005, p 947).

Moreover, it is potentially unlikely that restorative programmes will produce behavioural changes because they fail to incorporate the principles of effective intervention as related to the risk and needs of offenders (Levrant et al 1999, p 19). When offenders perform reparation, it usually involves menial unskilled labour, such as painting fences. However, in many cases, in order to spur social transformation it is the offender who needs a better education, increased job training and improved living conditions (Delgado 2000, p 764).

⁸⁵ Snider, L. (1995) *Toward Safer Societies*, Kingston: Queen’s University. Unpublished paper cited in LaPrairie (1995). Also see Ball (2000) who argues that the coercive nature of referral orders jeopardizes the government’s aim of reducing offending.

⁸⁶ Raynor (2001) suggests that the concept of reintegrating socially excluded young offenders into the mainstream community is somewhat of a misnomer because most were never integrated to begin with. He therefore advocates that rather than considering how to reintegrate young offenders, ‘a more appropriate strategy would be to seek to involve them in a new set of pro-social linkages, resources and opportunities’, which is conceived as ‘a strategy for social integration or inclusion’ (Raynor 2001, p 192).

In addition, the potential that a one hour mediation session, for example, will lessen criminal tendencies among offenders is not immediately obvious. Rather, it is more likely that the everyday reinforcing effect of an individual's neighbourhood and peer group will be much more enduring than a brief perfunctory meeting (Delgado 2000, p 765). As Levrant et al state "It is especially disturbing that advocates of restorative justice have ignored the research on the behavioural change of offenders in favour of the hope ... that brief interludes of public shaming will change deeply rooted criminal predispositions" (1999, p 20; 22). Yet, in response to such claims, advocates suggest that "no one thinks that the effect of an eighty-minute conference on days, months and years of competing influences will be massive" (Braithwaite 2002, p 138). Such a response perhaps alludes to central debate within restorative justice as to just what goals the practice is trying to accomplish and whether or not crime reduction is even a ground on which restorative justice should be selling itself.⁸⁷ Akin to Braithwaite, Morris counters disputes over whether restorative justice can effect change in behaviour by switching the debate, suggesting that the focus of restorative justice is to hold offenders accountable and make amends to victims (Morris 2002a, p 606).

As with claims about recidivism, there is simply not enough evidence to know whether or not restorative justice can change behaviour patterns.⁸⁸ Nevertheless, likewise, there is no evidence to suggest that restorative processes make offending behaviour worse (Morris 2002a, p 607).

⁸⁷ Hudson (2003) warns that crime rate reduction is not a ground on which restorative justice should be selling itself because rate reduction is a competition which will likely lead to restorative justice becoming complicit in penal inflation (p 189).

⁸⁸ Kurki (2000); Morris (2002a) although she does suggest that the New Zealand youth justice system provides some evidence.

This section has briefly discussed some of the potential pitfalls of restorative justice practices. Although these concerns are applicable to practices throughout the world, some are especially relevant to English practices which, in the main part, are police led (final warnings) and heavily involve the community (referral orders). These issues will be returned to throughout the following chapters and examined within the context of the empirical data presented in the thesis.

Research Aims

Arguably, the evolution of restorative justice, in the UK and abroad, is in its early years both in terms of implementation and in understanding its effects (Crawford and Newburn 2003, p 58). Similarly, present research into the complex dynamics involved in restorative initiatives is quite young and further research is needed to evaluate changes in contemporary policies as they stabilize. John Braithwaite claims, “There is no blueprint for how an ideal restorative justice system should work ... restorative justice at the moment is an adventure of research and development” (2003 p 3-4). This chapter has explored the contemporary restorative justice movement, placing English practices within the context of developments worldwide, and discussed the working definition of restorative justice, its potential strengths and weaknesses.

Kathleen Daly comments that it would be naive for a researcher to assume that there will not be a gap between theory and practice, between a programme’s ideals and its actual achievements (Daly 2003a, p 219-220). Yet, Daly warns that while research is in an optimistic stage there exists raised expectations which will be impossible to meet. Daly suggests that rather than allowing any negative or contrary results to produce a mood of impossibilism, a more constructive approach is to analyse

how the ideal functions in practice all the while assuming there are limits on achieving the ideal (2003b, p 24). With Daly's critique in mind, the overarching research question this thesis seeks to address in the following chapters is whether the restorative reforms that are being put forth in England are part of a true paradigm shift or whether they are in reality simply symbolic. To what extent is there a gap between rhetoric and practice in final warnings and referral orders? Are these programmes truly accomplishing the aims of restorative justice or have they fallen victim to a punitive philosophy still supported in the justice system and thereby become another venue through which juveniles are excluded and a deviant label applied?

This chapter has set out the aims and goals of restorative justice practices and highlighted some of the potential problems that may be encountered. The following chapters use this framework as a foundation from which to analyze final warnings and referral orders as well as the YOT as an organization responsible for overseeing these programmes. This research differentiates itself from previous research because it seeks not to systematically evaluate the final warning and referral order programmes, as was done in the pilots.⁸⁹ Rather, this research seeks to develop our understanding of these programmes, and in the process our understanding of restorative justice in England, by seeking to compare the rhetoric with the reality and determining what 'restorative justice' means within the context of final warnings and referral orders in the contemporary world.

⁸⁹ Both the final warning and referral order programmes were piloted before being implemented nationally. The research results of these pilots were published: Holdaway and Desborough (2004) *National Evaluation of the Youth Justice Board's Final Warning Projects*; Newburn et al (2002) *The Introduction of Referral Orders into the Youth Justice System: Final Report*.

The next chapter describes the methodological approach used to explore and answer research questions set out above.

3. The Research Process: Methodological Issues

Field research cannot be neatly fitted into a linear model of steps and stages, for the field researcher has to cope with a variety of social situations, perspectives and problems.

– Robert Burgess 1984

In order to assess restorative practices - specifically final warnings and referral orders - and how they fit into the wider youth justice system in England, this research adopted a wholly qualitative approach. The research design employed several qualitative techniques throughout the fieldwork period: observation, interviewing (both informal and formal), and case file analysis. These methods, described in this chapter, produced an in-depth ethnographic picture of one of the country's leading Youth Offending Teams. Nevertheless, the process of doing field research is "not merely the use of a set of uniform techniques but depends on a complex interaction between the research problem, the researcher and those who are researched" (Burgess 1984, p 6). Thus, in addition to outlining the techniques used to collect a wide array of data, this chapter discusses the methodological challenges which were faced throughout the data collection period. My research with the Oxfordshire Youth Offending Team proved especially complex, requiring me to negotiate a multifaceted web of access to data often with parties who had conflicting interests. Therefore, the challenge for this research was to develop methods that best extracted the data from the participants and reflected the complexity of the social situation in which the data were collected. My aim was to triangulate different forms of data to tell a story that is both descriptive and analytical, facilitating exploration of diverse areas of inquiry.

Research Programme

This thesis represents the culmination of seventeen months⁹⁰ spent immersed in the day-to-day work of a Youth Offending Team (YOT). When designing this research project, I decided that qualitative methods were best suited to collect the in-depth and personal data that I sought. Indeed, I felt that an examination of final warnings and referral orders required an ethnographic approach. This research sought not only to ask direct questions about participants' views of these processes but it also aimed to understand the culture and motivations of YOTs and their employees, both with and away from young offenders. I aimed to develop a comprehensive picture of YOT practice not entirely reliant on solicited answers. What follows is a description of this research design.

Choosing a research site

For this research the cooperation of the Thames Valley Police Service and the Oxfordshire Youth Offending Team was sought. The decision to base the research in Oxfordshire was founded on three reasons: the exemplar status of the YOT; utilizing the Oxfordshire YOT would allow me to build upon previous work of members within Oxford University's Centre for Criminology; and there was a practical element to locating the research near to where I live. Within the Oxfordshire YOT, two teams, one based in the North of the county and one based in Oxford City were the focus of the research. The two teams were chosen for several reasons. First, they preside over geographically distinct areas. The North Oxon YOT manages a large

⁹⁰ From December 2002 through April 2004

rural area,⁹¹ with officers spending a great deal of their time travelling to young people's homes for assessment visits while the City team presides over a condensed cosmopolitan area. There is a corresponding difference in the populations of these areas. The City Centre has, for example, a higher proportion of asylum seekers, an interesting sub-sample of the population that is all too often labelled as 'troublesome' or 'illegitimate.'⁹²

Second, although both teams are within the same YOT, they have different working practices based on the distribution of limited resources. In the North, the YOT chose to operate a rota system of officers to serve on referral order panels. Therefore, the practitioner who is responsible for overseeing a young offender's case is not necessarily the same officer who attends the panel meetings. However, in the City, YOT officers always attend the panel meetings for every referral order they oversee. The primary reason for the use of the rota system in the North is the large geographic area covered by the team. For the first 18 months after the introduction of referral orders, the North team used the same system as the City whereby everyone attended to their own cases. However, the practice was eventually changed; as one YOT officer explained, 'it was a huge waste of their time because they were all doing the travelling and often waiting around for something that can now be allocated to one person.' Because the City team offices are very close to where the panel meetings are held, it is easy for their staff to attend all panel meetings.

Lastly, focusing on two different units allows for comparison between settings in which similar activities occur. Although both teams are within the Oxfordshire

⁹¹ The North covers areas North of Oxford City, including Witney, Bicester, Banbury, Chipping Norton. See Appendix 2 for Map.

⁹² This difference in the composition of the population was pointed out to me by the YOT staff. In fact, the City office is located directly above an Asylum Seekers Team, a local government funded support base for asylum seekers who arrive under the National Asylum Support Service.

YOT, they function, for the most part, independently and, therefore, working practices and culture are not the same. Indeed, the managers of both the North and City teams expressed a keen interest in comparing the two. Ultimately, a good cross-sample is achieved by examining both units of the YOT.

Selecting cases

A case study approach was decided upon to allow for a more thorough understanding of how the YOT deals with cases in their entirety. One of the primary aims of this research was to discover whether these restorative processes and outcomes fulfil their ideological promises. This goal is best achieved by an approach which follows cases from beginning to end and which facilitates an examination of how young people's views develop as they advance through the programme. Moreover, especially when researching a programme that develops over a lengthy period of time, such as the referral order, the use of a case study approach encourages participants to regard research observation as a normal part of the process. That participants came to regard my presence as normal became apparent when, on a few occasions, I was unable to attend a panel meeting. My absence was noted by the participants - panel members, YOT officers and young offenders – and an explanation of my whereabouts was sought.

At the outset of the research, the aim was to collect a total of thirty final warnings and thirty referral orders, comprising fifteen cases from both the North and the City teams. The target of thirty was chosen because, after initial conversations with members of the YOT, it appeared as though thirty was an obtainable goal given the total number of cases the YOT expected to deal with over the fieldwork period. Moreover, by avoiding a larger sample of cases, there would be time to build up a

stronger ethnographic component to the research, allowing the emergence of thick data. Gathering detailed material is demanding, and because an emphasis is placed on the 'depth' and 'richness' of data, ethnography is often limited in sample size (Fielding 1993, p 155). Nonetheless, it is possible to make meaningful inferences from thirty cases.

Identifying cases for final warnings and referral orders involved slightly different processes. For final warnings, the appropriate YOT officer was approached each week to inquire about cases in the following week. Because there was no official schedule for the final warnings, I was reliant on the YOT officer to inform me about new final warnings. All necessary case files were identified and examined prior to the warning. Identifying referral order cases was slightly easier. At the end of every week, a list of all referral order panel meetings for the following week was obtained from the YOT administrator. The list included the place where the meetings were to take place, the name of the young person, the YOT officer who had been allocated the case, and, for panel meetings, both the YOT officer who would be attending the panel meeting as well as the panel members assigned to the case. Once the YOT officers in charge of the week's cases were identified, they were individually approached for permission to attend panel meetings.

Where possible, for all cases, final warnings and referral orders, the YOT officer contacted the young people and their supporters in advance of the meeting to describe the aims of the research and ask for their permission for me to both observe the meeting and interview them. However, in the event that was not possible because the YOT officer was unable to contact the young person in advance, the officer attending the final warning or panel meeting met both the young person and his supporters on arrival, explained the research and asked for their consent.

All identifiable new final warnings and referral orders were automatically included in the sample. Every meeting for each new case was attended unless it conflicted with the times allocated for cases already in progress. Where new final warnings and referral orders conflicted, the referral order was chosen. Referral orders take three to twelve months to complete whereas final warnings are one-off events. Therefore, referral orders were prioritized so that they would finish within the fieldwork period.

Observation and interviews

(i) Observation

Observational field notes provided supplementary data that helped to interpret the findings obtained through interviews. Observation of both final warning meetings and referral order panel meetings was considered necessary to explore any disjuncture between the supposed restorative behaviour of YOT officers and panel members and the experience of the young people and their supporters. It was aimed to observe the extent to which final warnings and panel meetings embody and encourage restorative justice principles; how YOT officers and panel members interact with each other and with the juveniles who are given final warnings and referral orders; to what extent YOT officers giving final warnings and members of referral order panels actively use restorative and reintegrative language and gestures; and the extent to which the processes and any outcomes are supportive and reintegrative, or punitive and stigmatising.

(ii) Interviews with young people and their supporters

Interviews with young people and their supporters were conducted in order to explore directly their experience of final warnings and any panel meetings in which they were involved.⁹³ It was decided that a semi-structured interview was the best way to engage the young people and their supporters in a discussion about their experience. Of significance in these interviews was the flow of the conversation. In any interview, accuracy and reliability can be lost if an interviewee becomes irritated at not being able to give or expand on his or her views (Hoyle 1998, p 35). This frustration was avoided by allowing all interviewees to answer any questions as fully as they deemed appropriate. When interviewees did not answer the question asked and instead became side tracked, they were not interrupted. Instead, the question was repeated when they had finished their commentary. Therefore, each interviewee was given the freedom to comment on whatever they felt was relevant to their case. In some cases, stories which were not related to the question asked nonetheless provided valuable insights. In addition, the use of semi-structured interviews secures answers to specific questions which can be compared across all cases.

The interviews took place, where possible, face-to-face directly after the final warning or panel meeting as it was thought that it would be difficult to reach and talk openly to young people by telephone at a later date.⁹⁴ The supporters were usually interviewed face-to-face after the young person. However, in the few cases where the supporters were unable to be interviewed directly after the panel meeting, they were later contacted by telephone to complete the interview. Young people and their

⁹³ See Appendix 1 for all interview schedules.

⁹⁴ As mentioned in Chapter One, the number of panel meetings per referral order is dependent upon the length of the order.

supporters were interviewed separately in the hope of obtaining open and honest responses from both parties.⁹⁵ In the few instances in which I could not attend a panel meeting due to clashes in the schedule, the young person was interviewed face-to-face when he came into the office for his fortnightly appointment with his YOT officer, and thereafter, the supporter was called for a telephone interview. Additionally, follow-up interviews were conducted, in person or on the telephone, three months after the warning took place as well as with those young people who re-offended before their referral order was completed.⁹⁶

(iii) The 'big' interviews

In addition to research within the YOT, formal interviews were carried out with those people which, at the time, I identified as influential in the development of restorative justice in the youth justice system (in the Thames Valley in particular): Peter Neyroud, the Chief Constable of the Thames Valley Police; Charles Pollard, the then Acting Chair of the Youth Justice Board⁹⁷ and former Thames Valley Police Chief Constable; Mel Lofty, the Superintendent of Thames Valley Police Area Support and someone who has been heavily involved in restorative justice in the Thames Valley for some years; Sue Raikes, Head of the Thames Valley Partnership, an organization which aims to reduce crime and disorder in Thames Valley by bringing together local people - school children, ex-offenders, and interested individuals - with communities and organizations; and Rob Allen, Youth Justice

⁹⁵ In the majority of cases, this approach turned out to be successful. Often both the young people and their supporters individually acknowledged they were telling me something which they would not want the other party to hear.

⁹⁶ In only one final warning case did the young person refuse to be interviewed at the follow-up stage. Two young people who had re-offended were not interviewed: one because he refused the interview and the other because I was not able to gain access to him in a young offenders institution.

⁹⁷ Refer to Chapter One for a description of the Youth Justice Board.

Board member and Director of Rethinking Crime and Punishment, a strategic initiative established to raise the level of public debate about the use of prison and alternative forms of punishment in the UK. These interviews took place towards the end of the fieldwork period and were based on questions developed over the course of my research with the YOT. As my research progressed, I began to wonder how much those in the higher echelons of youth justice knew of practices as they were functioning on the ground. In particular, I was interested to see if they were aware of (or would admit to) the problems the YOT was experiencing with organization, communication and accountability which I was uncovering in my fieldwork. Therefore, between October and December 2003, I interviewed the aforementioned people in order to explore what they could tell me of the current restorative practices.

Overall, this research programme employed qualitative methodology, using relationships forged during the long fieldwork period, to develop a thorough and intricate examination of one of the country's leading Youth Offending Teams.

Gaining Access

Gaining access is a vital part of the research process. Not only is access obviously a prerequisite for any project to be conducted but access also influences the reliability and validity of the data that the researcher collects. The process that occurs during the key phase of gaining access will subsequently influence the way in which those who are being researched view the researcher and the project. The contact that a researcher has with an organization or group will in turn influence the data that can be collected and therefore the very project itself (Burgess 1984, p 45).

With this particular project, access turned out to be one of the defining characteristics of the fieldwork period. Due to the nature of this research, the process

of gaining access was crucial throughout every stage because the collection of data was highly dependent on access to participants (that is young people and their families) as well as to the 'behind the scenes' workings of the YOT. Surprisingly, the daily negotiation of access with individuals throughout the YOT organization proved more difficult than anticipated and in fact impacted on my ability to meet stated data collection targets. However, as this research is qualitative in nature rather than quantitative, any efforts to thwart the data collection process had minimal overall impact on the results of the research. Moreover, I was able to forge good relationships with most members of the YOT allowing for the collection of rich data and therefore thorough analysis of the YOT and its practices. .

The gatekeepers

As with all fieldwork-based research, access to both information and research subjects must be secured. At the initial stages of negotiation, access to an organization is usually obtained via official permission that can be legitimately granted by key personnel (Hammersley and Atkinson 1995, p 63). While the problem of acquiring access is often most acute in the initial negotiations, it is not a one-off exercise at the beginning of the empirical enquiry. Rather, it is an on-going process that persists to one degree or another throughout the data collection period (Burgess 1984, p 49).

It was necessary to negotiate with tiers of 'gatekeepers'⁹⁸ throughout the Thames Valley hierarchy. In November 2002, letters, written by my supervisor who has a good relationship with the criminal justice institutions in Oxford, were sent to

⁹⁸ Gatekeepers are people who can control a researcher's access to the field and the subjects as well as access to secondary sources such as organizational records (Jupp 1989, p 134).

the Chief Constable of Thames Valley Police (TVP) and the head of the Oxfordshire YOT asking for permission to conduct the research. Both the TVP and the YOT were more than happy to cooperate with the research. The Head of the YOT noted that the proposed research “focused upon an area of potential conflict that I am all too aware of.” After additional telephone conversations between my supervisor and the Deputy Manager of the YOT, permission was secured to carry out the research in two divisions of the Oxfordshire YOT, the Oxford City Team and the North Team.

It was, therefore, necessary to seek support for the fieldwork from both the City and North Team Managers. The proposal was sent to the Managers, and upon obtaining their approval for the fieldwork, a one-week ‘familiarization period’ in both teams of the Oxfordshire YOT began. Each week spent with the two teams consisted mostly of acquainting myself with the office and the staff, informal chats with all of the YOT officers and observation of normal office practice. This brief period of observation of day-to-day practices and informal interviews helped to clarify the concepts to be used in the research and the organizational procedures as they functioned on a practical level, which helped in refining the research tools. In addition, this familiarization period created the opportunity to get to know members of the YOT and start the process of developing strong positive relationships which are crucial to successful empirical work.

Subsequent to the familiarization period, the research tools were developed and a meeting was set up in January 2003 with the Manager of the Oxfordshire YOT and the Team Managers.⁹⁹ During the meeting the terms of access were agreed on and the research tools were presented for approval. The interview schedules were

⁹⁹ Due to miscommunication within the YOT, the City Manager was not invited to this meeting. Therefore, only the North Manager attended.

later finalized with the aid of the YOT.¹⁰⁰ The Team Managers were provided copies of the interview schedules and allowed to comment on them. The process went smoothly as no one in the YOT asked for changes to be made.

Informal gatekeepers

It would be wrong to assume that data collection will be straightforward or accomplished with ease once the formal access has successfully been negotiated. Victor Jupp comments, "This continuous process of negotiating access does not end when one has successfully bypassed all those who have some formal power to prevent the research taking place. Arrival at the sources of data provides no guarantee that research work can begin" (Jupp 1989, p 149). The process of gaining consent for each and every case was at times very frustrating since simply having access to the YOT granted by those at the top of the organization was not sufficient; there were multiple layers of gatekeepers to negotiate with in each case.

Negotiation for access to participants - whether offenders, their families, panel members or other YOT personnel - continued on a daily basis, in part because the schedules for the YOT are determined only a short time in advance. Throughout the data collection process, every week involved conversations with members of the YOT, young people and even occasionally panel members in order to find out about final warnings or panel meetings and to gain consent from all participants to attend meetings. Many of the YOT officers and most of the panel members were happy to cooperate and were very generous with their time. However, a few YOT officers and panel members only grudgingly agreed to participate and so influenced the number of

¹⁰⁰ It was felt that it was unnecessary to pilot the interview questions as many had already been used in research on restorative cautioning conducted by Dr. Carolyn Hoyle and Dr. Richard Young.

cases collected. Their behaviour included repeatedly failing to return my phone calls and emails, failing to inform me about the scheduling of final warnings or panel meetings, failing to notify me about changes and cancellations in the schedules as well as generally making me feel unwelcome in particular meetings. It was a favourite habit of some YOT officers to inform me about final warnings or panel meetings anything from a day to a week after they had already taken place even though I had spoken to them very recently and sometimes even the day of the meeting. Similarly, on more than one occasion I found myself sitting in a police station or community centre expecting to observe a final warning or panel meeting only to receive a telephone call telling me it was rescheduled, or to presume, after an hour of waiting, that it had been cancelled. As Victor Jupp notes, gatekeepers are not only those from whom official permission is required to enter the field of research; rather gatekeepers can also comprise individuals who have informal means of withholding access to subjects (1989, p 134).

Collecting the cases

By the end of the field research period, I had data on a total of fourteen final warnings - nine from the North and five from the City - and thirty three referral orders - twenty one from the North and twelve from the City. Each case consisted of multiple interviews with both the young person involved in the order and their supporters as well as observation notes on any meetings held.

TABLE 3-1 NUMBER OF CASES COLLECTED

Geographic Area	Final Warnings	Referral Orders
North Oxfordshire	9	21
Oxford City Centre	5	12
Total	14	33

TABLE 3-2 NUMBER OF FINAL WARNING INTERVIEWS

Interview	Young Offender	Offenders' Guardian
Final Warning	14	9
Follow-up	12	9
Total	26	18

TABLE 3-3 NUMBER OF REFERRAL ORDER INTERVIEWS BROKEN DOWN BY PANEL MEETING

Interview	Young Offender	Offenders' Guardian ¹⁰¹
Initial Panel	33	17
Review Panel	26	14
Final Panel	23	12
Total	82	43

As previously stated, I intended to collect thirty cases of each, but due to a combination of unforeseen consequences and informal gatekeepers, the case target was not fully met. Several factors militated against the original targets. First of all, field work in the City commenced nine weeks later than in the North. Although the Manager of the City initially agreed in principle to the research, it took a further five weeks to obtain full cooperation from her. I surmise that a contributing factor to this

¹⁰¹ Not every offender came with a parent or guardian. If a young person is 17 years old, a parent or guardian is not required to attend the panel.

delay was the absence of the City Manager at the meeting in January 2003 between me, my supervisor, the Manager of the Oxon YOT and the Manager of the North Team. The YOT was notorious for poor communication among the staff during my time in the field. By not being included in the January meeting, albeit accidentally, perhaps the City Manager forgot that I was to begin research immediately or perhaps she was unhappy at not receiving an invitation to the meeting. As Sara Arber points out, "In reality, research takes place in a political context, including the micro-politics of interpersonal relationships and the politics of research units" (1993, p 33). Either way, the delayed response to my repeated inquiries pushed back the start of data collection in the City. Once full cooperation from the City team was achieved, there was a marked lull in the number of new final warnings and referral orders. Indeed, there were no new cases for several weeks. Throughout the fieldwork period, this circumstance was not all that unusual for the City as there would periodically be times when there were no new final warnings or referral orders. Presumably, there was not a total absence of youth offending in the City during these times. However, despite my most assiduous investigations, I never was able to discover the cause of these lulls in caseload.

(i) Final warnings

After the initial delay in entering the field, the problems with collecting data on final warnings in the City were primarily the result of the unwillingness or inability of the staff to cooperate with me. The Oxfordshire YOT reports that between March and November 2003 thirty eight final warnings took place. However, during that time period only five final warning cases could be collected. The first was not until June 30, 2003, despite entry into the field six months earlier. According to

the YOT, between March and June 2003 there were 14 final warnings in the City. Therefore, it is clear that final warnings were taking place but I was denied access to them. Throughout the fieldwork period, my constant emails, phone calls and office visits asking to attend final warnings were usually rebutted with a reason why there were either no final warnings taking place or a reason why I could not attend the final warnings that were being delivered. The following two email exchanges were typical of my experience.

Email exchange explaining that there were no new cases to collect:

From Me to YOT Officer A: I thought that I would check in this week and see if you have any new final warnings coming up next week. There has been quite a delay getting started on the final warnings and I am eager to begin work with them. Thanks! Christina

Reply from YOT Officer A: Christina, I am on leave next week, but I understand that YOT Officer B has three. You may wish to discuss this with him.

From Me to YOT Officer B: I have been speaking with YOT Officer A and she informed me that you have three final warnings next week. I am interested in attending them, of course with the permission of the young person. I will call you later this afternoon to discuss these warnings. Thanks and speak to you soon. Christina

Reply from YOT Officer B: Unfortunately I have been pulling YOT Officer A's leg regarding the number of final warnings because I knew she was on leave and she didn't want any final warnings allocated to her. As it is there are no final warnings at all. It has been very very quiet recently with practically no new cases coming through from the Police RJ Department. As promised though I will keep you informed.

Email from a YOT officer explaining why I was not allowed to attend a final warning:

Sorry about the other day, but I was having problems with the parents, in that they felt that their son was also a victim and felt that he shouldn't have had to attend the YOT. At the time feelings were running high, and I didn't think it would have been fair for you to try to speak with the Y/P [young person] and the possible response you may have got.

Although the staff eventually warmed to my research, after my supervisor contacted the negligent individuals and their supervisors to ask about the difficulties I had been

experiencing, it was by this time so late in the fieldwork period that only a few final warnings could be collected. Additionally, the number of cases was reduced for the following reasons: three young people refused to participate in the research; as discussed previously, on several occasions final warnings conflicted with other data collection¹⁰²; and for a month of my fieldwork, I was barred from attending final warnings because the YOT was training a police officer who had been seconded.

There were also significant difficulties in obtaining final warnings in the North. The North team had considerable problems generally with staff retention and recruitment which resulted in several unfilled positions throughout the research period. As YOT officers explained, the North team serves so many young people over such a large area that people simply do not want to work for them because there is so much travel involved. One particular difficulty which affected my research was their problems recruiting and retaining a police officer capable of performing final warnings, resulting in the team's inability to administer the warnings. Thus, they were subsequently forced to refer cases to the Restorative Justice Unit within the Thames Valley Police to perform 'administrative final warnings' without any restorative interventions and little evidence of restorative justice values or practices informing the process.¹⁰³ The Youth Justice Development Officer for the Thames Valley Police states that the final warnings were actually delivered in a 'restorative manner' but no interventions took place because the YOT had no staff available to deliver them.

¹⁰² In some cases the young person failed to turn up to the first appointment and the warnings were re-scheduled to a later date which subsequently conflicted with other data collection. In other cases, the initial appointment conflicted with other data collection.

¹⁰³ The process was described to me by the police officer performing the administrative warnings as 'simply bringing the young people into the station and making them sign on the dotted line.'

The permanent police officer assigned to the North team left in May 2003 and the Thames Valley Police in conjunction with the YOT was unable to secure a permanent replacement until December 2003. While attempting to fill the vacant position, Thames Valley Police temporarily assigned a PC as a replacement. This police officer simply refused to interact with the YOT. In fact, the YOT Manager in the North, when directly questioned, did not even know if the final warnings were taking place as he was unable to contact the police officer despite repeated attempts. Even when offers to help the temporary officer came from the City, where there was a distinct lull in the casework, the officer continued to refuse contact with the YOT; he never returned any phone calls to the City team.

When I finally managed to speak with the police officer, he vehemently stated that he thought the YOT was “a joke” and wanted nothing to do with it. He also did not seem particularly pleased that I wanted to observe the final warnings he administered. Forced to defend not only my research but my methodology, the PC declared that my observation of “administrative” final warnings would skew my data and ruin my research. We proceeded to have a conversation in which I assured him that part of my work was to examine how the YOT functions at *all* times, including when final warnings were out sourced to the police. After pointing out that both the Chief Constable and the Head of the Oxfordshire YOT supported this project, the officer resorted to telling me that because he had other responsibilities besides overseeing final warnings, he would not be able to give me any indication as to when final warnings might be scheduled. I assured him that I would appreciate any notification, no matter how short. His whole attitude is summed up in his favourite sentence, “I don’t have a problem with your research *but* ...”

Once the permanent police officer left in May 2003, despite a concerted effort, I was unable to collect any further cases in the North as the newly appointed officer refused to cooperate.¹⁰⁴ After many attempts to meet, all of which were aborted by his claims that he was too busy with 'real' police work to administer the final warnings, I did manage to meet face-to-face the rogue replacement. Our conversation was interesting as he explained his dislike for the YOT. Nevertheless, although he allowed me to observe a large group final warning of four boys and their parents, he subsequently refused access to them for interviews and personally escorted them out to their cars so that I could not approach them. Maurice Punch (1979) experienced similar difficulties with his research on police corruption and deviance in Amsterdam. Punch found that although formal access had been granted at the top of the organizational hierarchy, gates were being closed further down in the police organization. He was excluded from particular situations and conversations, not welcome at certain meetings, and denied documents which he had officially been promised.

(ii) Referral orders

For referral orders, although the overall target of thirty was exceeded (thirty-three in the sample), again fewer cases were collected in the City than in the North. As data collection began later in the City, the times of initial meetings for new cases sometimes coincided with follow-up meetings in the North which had to be prioritized in order to complete those cases already in progress. However, some YOT officers in the City also attempted to exert their own influence over the direction of

¹⁰⁴ The Oxfordshire Youth Offending Team reports that during my time in the field 9 final warnings were delivered by the North and 92 were delivered out of area by non-YOT staff.

the research. In one instance, a YOT officer had two initial panel meetings scheduled for the same day. When I inquired about including the cases in my research, she claimed that she did not want me to attend one of the panels because it was a “difficult case” and she thought the young person would not like it if I were present. I pointed out that part of the research was to observe *all* cases no matter how difficult and asked her again if she would speak to the young person about the project. She declined. However, she said that it would be fine for me to observe the second case, which she claimed was an “easy case” and subsequently obtained his consent. Although, as far as I can tell, such ‘cherry picking’ occurred infrequently, this incident was not the only time in which the YOT officer refused access to a case without approaching the young people and their supporters for consent.

The behaviour of YOT staff resulted in constant extremely frustrating negotiations with lower level gatekeepers throughout the entire fieldwork period. I do not believe that their behaviour was malicious or a deliberate attempt to sabotage my research. Rather, I think that their behaviour reflected an apprehension about the nature of the research, a fear of being ‘evaluated,’ and, especially with the Oxfordshire YOT officers, a feeling of being the subject of constant research. Simon Holdaway commented on his research with the police, “Research and my previous experience of police work demonstrated the power of the lower ranks, not least their resistance to external control of their work. Any effective research strategy would have to pierce their protective shield if it was to be successful” (1983, p 4).

Ultimately, while frustrating, I do not believe that the actions of these few people significantly affected the data that were collected. For the most part, the YOT officers were very accommodating and helpful, in some cases going out of their way to assist me in data collection. In order to meet the target total of thirty cases, extra

cases were acquired in the North. Despite these difficulties, I collected a sufficient number of referral order cases to allow for a fair and balanced comparison between the North and City teams.

Informed consent

Before the interviews could be conducted, it was necessary to speak with all of the participants of the final warnings and the panel meetings to explain the purpose of the research and to gain their informed consent. For all participants, whether YOT officers, panel members, youths or their supporters, this requires not only the initial provision of necessary information when asking for permission to observe processes or talk to participants, but also a commitment to *keep* explaining the research and answering additional queries throughout the process.¹⁰⁵ Participants should be provided with all of the relevant information to enable them to make an informed choice about whether or not to participate. This did not prove to be problematic; very few of the young people or any of their supporters refused to participate.

However, securing informed consent has inherent problems. It is important to be wary of the potential vulnerability of participants; because the young people were involved in the criminal justice system, there was a danger that they would be fearful of repercussions for refusing to take part in the research or that they would believe they did not have a choice. Moreover, because almost all of the young people were experiencing the justice system for the first time, it might be that despite the best efforts to inform them fully about the research, they viewed the interviews with me as simply another part of the criminal process. Smith and Wincup warn of the potential

¹⁰⁵ Given the nature and scope of this project, the 'Statement of Ethical Practice' from the Socio-Legal Studies Association (SLSA) is used as the principal guideline in conjunction with the 'Statement of Ethical Practice' provided by the British Sociological Association (BSA).

to exploit a captive audience and point to the thorny issue of informed consent in secure and semi-secure environments (2000, p 342). Hence, in every situation it was stressed that they could decline to participate in the study and this would have no bearing on their case.

The problematic nature of informed consent was raised in one particular incident. At the very beginning of my research, a panel leader refused to let me observe a panel meeting even though the young person and his supporter had both readily consented to participate in the research. It was the first time I had tried to attend one of her panels and she made it quite clear that she had no interest in allowing me access to her panel meetings. She claimed that my presence would be disruptive and the young person would not want to talk with me in the room. The YOT officers were frustrated and upset with this panel member since the young person and his supporter were clearly happy for me to attend the panel. After the Team Manager had a brief conversation with the panel member emphasising the importance of this research and the fact that it was fully supported by the Head of the Oxfordshire YOT, she agreed to my presence, albeit unhappily; she questioned why we even bothered to ask for her permission in the first place. One YOT officer commented that he had experienced difficulties with this particular panel member in the past. He suggested that she thought too highly of herself and fancied herself a Magistrate. Additionally, he suspected that she was simply afraid of having a researcher examine her skills as a panel member.

The panel member's grudging acceptance of my presence does not conform to the Socio-Legal Studies Association or British Sociological Association standards of informed consent. However, as this panel member led many of the panels in Oxfordshire, I believed the reliability of the data would be affected by her non-

participation. In addition, the young person and his supporter were happy to be involved in the research. Therefore, I pushed harder than ordinarily could be justified. The objects of criminological research have their own interests that they want to protect and, like gatekeepers, their own means of blocking research depending on whether their interests are in line with or at variance with the interests of formal gatekeepers (Jupp 1989, p 149). Maurice Punch refers to the professional code of ethics as a guideline that alerts the researcher to the ethical dimensions of the project, especially prior to entry into the field. Moreover, Punch comments that, in some cases, obtaining consent from every individual involved “would be almost futile, while matters would become absurdly complex if some said ‘yes’ and some said ‘no” (1986, p 37). Over time this particular panel member adjusted to my presence and showed an interest in my work. Before too long we were engaging in lengthy and friendly chats while waiting for panel meetings.

This project raised additional ethical concerns regarding informed consent because it dealt with minors. Neither the SLSA nor the BSA suggests a solution to the dilemma of who should give consent, the child or the parent. Rather, it is simply noted that special care should be taken with vulnerable participants. Clearly, it is necessary to obtain the consent of the minor. Additionally, the consent of a parent or guardian should also be obtained. Because this project aimed to involve the parent(s) or guardian as well as the minor, consent was automatically sought from both parties. Nevertheless, problematic situations can develop when only one party, either the child or the parent, provides consent. In such instances, only the party which provided consent (although the parent/guardian must consent to the child being interviewed) was involved. There was one case in particular where the mother was so upset about what had transpired in the panel meeting that she did not want to speak

with me, but her son was happy to chat with me and she gave her consent for this. In this case, therefore, only the young person was interviewed. Care was taken to ensure that consent was not coerced; it was made clear to minors that regardless of what a parent, guardian or authority figure told them, they did not have to participate in the study. However, in no cases was I aware of the parent putting pressure on the young person to be interviewed. Rather, in most cases the parent indicated that the choice was the young person's.

In the Field

Ethnography involves the study of behaviour in 'natural settings' as it derives from a desire to identify the rules which govern relationships in a setting and to discern patterns in members' behaviour (Fielding 1993, p 157). The social world of any particular group is socially constructed. Therefore, it is necessary to direct empirical inquiry at the way in which the group actively engages in the construction of that social world. Erving Goffman (1961, p ix-x) thought that every social group had something distinctive about it and the best way to understand the group's behaviour was to become a part of that natural setting. Through prolonged participation in the daily life of a group, the researcher can begin to empathize with the norms, values and behaviour of that group.¹⁰⁶

Ethnography has been called "a curious blending of methodological techniques" (Denzin 1970).¹⁰⁷ McCall and Simmons claim ethnography includes "some amount of genuinely social interaction in the field with the subjects of the study, some direct observation of relevant events, some formal and a great deal of

¹⁰⁶ Becker, H. (1970) *Sociological Work*. London: Allen Lane.

¹⁰⁷ Denzin, NK. (1970) *The Research Act in Sociology*, London: Butterworths. Cited in Fielding (1993) p 157.

informal interviewing ... [and] some collection of documents" (1969, p 1). Much time was spent with YOT officers going about their daily routine, besides the time spent observing warnings and panel meetings. This allowed for emerging familiarity with the group, especially once the YOT officers became accustomed to my presence.¹⁰⁸ Becker and Geer (1960) argue that it is important to ensure that conclusions about the perspectives of the participants are not entirely reliant on solicited answers. A wealth of data were collected through informal chats with the YOT officers throughout the day, often while making cups of tea, during cigarette breaks, travelling to and from final warnings or panel meetings, and by simply 'hanging around.'¹⁰⁹ Because the area covered by the YOT, specifically the North team, is so geographically dispersed, I frequently shared transport with a YOT officer going to and from final warning or referral order meetings. This time alone with the YOT staff usually resulted in lengthy conversations about the operation of the YOT and in particular about the internal and national politics driving its operation. Keeping the research questions in mind, I tried to direct conversations toward my own interests as well as allowing them to pursue their own agendas. Accepted as a member of the team, most YOT officers frequently joked and gossiped, sometimes quite indiscreetly, in my presence.

It should be noted that these types of informal chats with members of the City team were much less frequent due to the more intermittent contact that I had with

¹⁰⁸ In general, the officers in the North unit were more amenable to my presence and interest in their work. Their cooperation allowed me to spend a significant amount of time with the team, conducive to a type of ethnography of how one YOT team functions.

¹⁰⁹ Making tea and coffee is a frequent ritual which occurs on an almost hourly basis. After a short time with the YOT, I too was expected to participate in this task, which symbolized my acceptance as part of the YOT. The YOT officers jokingly bicker about whose turn it is to make the next round of tea, and upon my inclusion in this process, I was told that it wouldn't take me much time at all to memorize how everyone likes their tea and coffee.

them. Unlike in the North office, the YOT staff in the City tended to keep to their own and rarely engaged in cross office banter or conversations. Rather, staff members worked quietly at their desks and were not always receptive to interruption. The atmosphere of the City office was not conducive to informal conversations. It appeared as though this was a cultural difference between the two teams and not a result of YOT officers adjusting their behaviour in my presence.¹¹⁰ It is difficult to account for this cultural difference. However, it is possible that since the North had half the number of staff as the City, the office was a more intimate setting, thereby more conducive to team bonding. As the panel meetings occurred very close to the location of the City office, I always arrived at the panel meetings on my own rather than travelling with the YOT staff. Most of my informal discussions with members of the City team occurred either before the panel meeting or final warning while waiting for the young person and his supporters to arrive or directly afterwards while leaving the meetings.¹¹¹ These conversations proved quite important, however, and for the most part complemented the information gained informally through the North.

'Going native'

It is, nonetheless, important to maintain some distance from the interactions of the actors. Observational fieldwork requires a delicate balance between professional objectivity and the establishment of a relationship which will result in cooperation. The first time that a researcher joins a group, he or she is likely to have some impact

¹¹⁰ Upon arriving at the office, it was always quiet. I never arrived at the office to find conversation cease upon my entrance. In fact, I never noticed a perceptible change in the YOT officers' behaviour when arriving or leaving.

¹¹¹ Since I did not travel with the City YOT officers to and from either final warnings or referral orders, I made a point to arrive particularly early and to leave afterwards with the YOT officer. Indeed, some of my best informal data from the City was collected by walking out of buildings with officers and while riding in elevators.

on the dynamics of that group, known as the 'observer effect.' Once the observer has spent even a short amount of time with the observed, the effect appears to be minimized as the group settles back into its normal pattern of activity. As relationships in the field develop, the researcher needs to be careful to minimize the personal intimacy of observational work at the risk of becoming too close to the research and 'going native' (Jupp 1989, p 60). The condition of 'going native' refers to a researcher's over-involvement in the group being studied with the consequence that the researcher becomes less of an observer and more of a participant. Furthermore, the researcher may subsequently overlook statements and actions as normal rather than as data to be questioned and examined (Jupp 1989, p 60). William Foote Whyte (1943) found that although he had begun as a non-participant observer, as he became accepted into the community he almost became a 'non-observant participant.' Simon Punch also experienced the problem of over identifying too readily with the police officers he was researching, commenting, "more and more I became involved in a participant role. I chased people, searched people, searched cars, searched houses, held people, and even shouted at people who abused my 'colleagues'" (1979, p 12). Carolyn Hoyle notes that observational work should be stopped when the researcher becomes too closely aligned with the subjects of the study, thereby reducing the researcher's ability to look beyond the subjects' immediate explanations for their behaviour. Hoyle, writing about her own experience in the field with the police, stated:

I realized that I had spent sufficient time observing officers when I looked forward to speeding and weaving through traffic with the police car 'blues and twos' going; felt disappointed when arriving at yet another activated burglar alarm which had been set off by a cat or electrical fault; and empathized too readily with officers who missed the excitement of a violent pub brawl because they were held up at a neighbourhood dispute over dustbins.

(1998, p 46)

After several months, it became clear that I was considered to be a member of the YOT: I was given keys and security codes for the building; invited to office social events (often nights out 'on the town'), BBQs and leaving parties; invited to go golfing on the weekends; and I was even, only half in jest, asked if I wanted a job with the YOT.¹¹² I was always very careful to be tactful in turning down any invitations that I received in order to maintain a level of distance from the YOT and its staff. In retrospect, I realize that further 'insider information' could have been gathered by attending these events. However, my own interpretation of the field led me to believe that the YOT officers did not view our informal conversations as part of my research. Even when research is made overt and explicit, it is not uncommon for participants to forget once they come to know the researcher as a person. Researchers try to facilitate such a situation by actively working to build a rapport with the participants (Hammersley and Atkinson 1993, p 265). In one instance, two YOT officers spoke with me casually over a cup of tea about how they disliked one of their superiors in the YOT and felt he did not do a very good job. Therefore, to attend such informal personal functions with the sole purpose of gathering data felt too akin to covert research for my own liking.

Of more concern than being included in social activities by YOT staff, I was occasionally asked to perform the duties of a YOT officer, which I believe was a result of my movement along the continuum from 'other' to 'accepted other' to, eventually, 'one of them.' On one occasion I was forced to take a telephone call from the mother of one of the juveniles included in my research because the receptionist knew that I was involved in the case and connected her through to my phone before I

¹¹² When I replied that I was busy with my research, the YOT officer laughed and said it was ok because they didn't have time for their jobs either.

had a chance to say no. This incident resulted in a somewhat awkward conversation in which the mother informed me that she and her son did not want to attend the scheduled final warning and asked if I could re-schedule the appointment for them. After explaining to her that I did not have the authority to make such a change, I asked the receptionist not to forward calls to me in the future. In another instance, a YOT officer failed to show up at a panel meeting and the panel members, again only half jokingly, suggested that we continue because I had been with the YOT for some time and they surmised that I knew more about the case than the YOT officer. Part of what contributed to my status as a well-established member of the YOT was the amount of time I spent in the field. The YOT has a high staff turn over rate. Therefore, over the course of the year my position was increasingly legitimized with the more established YOT staff. Moreover, since new staff members had not been present at my entry into the YOT, they considered my research normal and something to be expected, further securing my position within the team.

By the end of my fieldwork, I found first of all that it can be difficult to extract yourself from the field. Although I stopped taking new cases for referral orders at the end of August 2003 and final warnings at the end of November 2003, following through with the remaining cases lasted until April 2004. The original plan was to be entirely out of the field by Christmas 2003, but, needless to say, it did not work out that way. My contact with the YOT waned significantly beginning in January 2004 as I concluded my ethnography and only went to the YOT to follow through the cases in my sample. As a result, working with the YOT became increasingly more difficult. Because I was not always around, YOT officers would sometimes forget to respond to my emails and phone calls. If it had not been for the

conscientious woman at the Headquarters who emailed the schedules every week, I am not sure how I would have managed.

Field notes

In social science research, the methods used to collect and record data affect the very data themselves (Miles and Huberman 1994). Hammersley and Atkinson consider the use of tape-recording, supplemented with notes recording non-verbal aspects of the research and the physical environment, to provide the most “complete, concrete and detailed” data. They argue that tape recording prevents the loss of any data and notes can subsequently fill in the aspects of the physical setting that go unrecorded (1995, p186). However, because of the nature of subject matter covered in this research coupled with the age of many of the participants, I felt that note-taking was the best way sensitively to obtain reliable data. In addition, given the large number of interviews sought, approximately 300 plus, I felt that transcribing tapes would become too time consuming and cumbersome.

From the outset, field notes were used for recording additional data. Field notes comprise a continuous record of the situations and conversations in which the researcher participates (Burgess 1984, p 167). I constantly carried a notebook in which I, usually very discretely, wrote down observational data and conversations had with YOT officers. Most of the conversations with YOT officers over the course of the fieldwork period were informal and ad-hoc. If a tape recorder had been used, it would have disrupted the flow of the conversation and put the staff on guard. As previously mentioned, my impression of these informal conversations was that the YOT officers and even panel members considered them ‘off the record.’ On many occasions I was told, ‘I should not be telling you this but...’ Nigel Fielding notes that

even the most faithfully negotiated overt research inescapably contains covert elements as “short of wearing a sign, ethnographers cannot signal when they are or are not collecting data ... In reality, overt and covert approaches shade into each other” (1993, p 159). Indeed, during some conversations, YOT officers and panel members would get nervous and immediately commented if I began to write notes. Despite my own assurances that I was not taking notes on the conversation but rather had suddenly remembered items for the evening grocery list, inevitably the conversation would quickly digress. Therefore, I often found myself doodling symbols while speaking to them to remind me of what had been said and then excusing myself for a trip to the toilet or news agent for a chocolate bar or to ‘work with a new case file’ in order to write up details of what had been said. As, Rob Reiner also found, frequent trips to the toilet are helpful for writing brief reminders for subsequent report writing (2000, p 224).¹¹³ At the end of each day, usually as soon as I got on the bus or the train, I began a complete and detailed write up of everything that had transpired.

In addition, note-taking and not tape-recording was used during meetings and interviews. Notes were made during the administration of final warnings and panel meetings; similarly, the answers provided in interviews were written in short hand, carefully marking exact quotation of significant phrases, and subsequently, a thorough account of the interview was written up. There was concern that the use of a tape-recorder would hinder a build up of trust with the young people and their supporters, thereby deterring them from answering the questions honestly. Reiner notes that while tape recording is the most reliable and convenient method of data

¹¹³ Also see Fielding (1993) who notes that developing a reputation for a weak bladder can enable note taking in the field (p 161).

collection, it frequently raises alarm amongst respondents (2000, p 224). Heather Hamill (1999) similarly noted the negative impact the use of a recorder would have had on her research of those connected to criminal activities in West Belfast. In the end, I believe that the chosen method of data collection facilitated more truthful, insightful and in-depth information from all participants.

However, tape recording was used during the interviews with key personnel in the criminal justice system. These interviews were formal with an appointment established well in advance. Additionally most of these people have high profile jobs and were used to giving interviews 'on the record.' Therefore, there was little concern that the process of tape recording the interview would compromise the data. When asked if I could tape record the conversation, the usual response was "Of course." As there were only five interviews in total, transcribing the conversations was not overwhelming task. Nevertheless, it took a significant amount of time to transcribe each interview, which further endorsed the decision not to tape record all other interviews.

The interviewer effect

As with ethnography, it is necessary to consider how the researcher is perceived in an interview setting because it is likely that participants' replies will be filtered through their perceptions of the researcher. In any study, it is not possible to be completely free of the effects of the interviewer-interviewee interaction since every interview is a piece of social interaction and not a neutral measuring instrument. The characteristics of race, age, sex, social class and religion have proven to have an impact (Becker 1970, p 45; Burgess 1984, p 105). The classic study by Herbert Hyman (1954) found that white interviewers received more socially

acceptable responses from black respondents than from white respondents. Similarly, black and oriental interviewers obtained more socially acceptable answers than did white interviewers.¹¹⁴ Smith and Wincup write about exploiting aspects of their personal biographies to facilitate their field research for their PhDs, commenting that projecting the image of a naïve research student proved to be advantageous (2000, p 388). Similarly, Easterday et al note that if the researcher is considered naïve and not taken seriously, people within the research setting may confide in her or let her be privy to conversations because they perceive her as non-threatening (1982, p 66).¹¹⁵

With my research, the significant interviewer effect was my nationality as an American. This was to my advantage as it prevented speculation, and subsequent animosity, on the part of the participants concerning a British accent and the assumed correlated social class. Blanche Geer comments, “The most handicapped observer is the one doing people and situations he/she is closest to” (Cited in Easterday et al 1982, p 66).¹¹⁶ In addition, it is likely that my gender as a female and my relatively young age, twenty-five at the start of the fieldwork, made me less threatening and possibly an easy figure with whom to relate. In fact, these traits likely helped me in my ethnography as well since both interviewing and ethnography are a form of social interaction. Jupp comments, “The recognition that the research act is a form of social interaction which all participants endow with meaning and definitions is of fundamental methodological significance” (1989, p 141).

I was pleasantly shocked when, as part of an interview, I asked a young person who he thought should be a panel member and he said me. He asked if I was

¹¹⁴ Later S. Sudman and NM Bradum (1974) published a definitive review of the literature.

¹¹⁵ In this article, Easterday et al were writing specifically about female researchers.

¹¹⁶ From a personal communication between Geer and the authors.

training to be a YOT officer, and when I said no, he proclaimed that I would make a great one and should “go for it.” This comment suggests that the young person trusted me and found me non-threatening. Were my attributes different – such as, for example, a 50 year old, British male - it is likely that I would not be perceived to be able to relate as easily with this young person. Rather, it is possible that I could have been instead classified as an ‘old geezer’, as happened with several panel members.

Conclusions

Overall, the qualitative research programme described in this chapter, uncovered how young people and their supporters experience and respond to final warnings and referral orders, how a well-established Youth Offending Team functions on an everyday level, as well as how the YOT workers themselves approach their work. Over the course of the research, sample targets were mostly met and a large amount of innovative and rich qualitative data were collected. In total, seventeen months were spent in the field with the Oxfordshire YOT; each case was followed over a minimum of three months and interviews took place with each participant on multiple occasions producing 26 interviews with young people involved in final warnings and 18 interviews with their supporters; 86 interviews with young people on a referral order and 35 interviews with their supporters. In total, I completed 44 interviews regarding final warnings and 121 interviews regarding referral orders. Interviews were also obtained from five of the key people responsible for directing and developing youth justice policy and research.

However, fieldwork is not a sterile process simply involving the methodical collection of data. Qualitative research necessitates the personal and professional negotiation and development of relationships. As my time with the YOT progressed,

my relationships with YOT staff, panel members and the young offenders themselves noticeably developed. I have discussed in this chapter how, as the fieldwork advanced, I moved along a continuum from 'other' to 'accepted other' to 'one of them.' However, while this meant progress for my research, it also meant a development in my personal relationships with participants, particularly YOT staff since I spent the majority of my time with them. We discussed personal issues such as boyfriends, girlfriends, moving, renting houses, buying houses, and even retirement dreams. It is the development of these more personal relationships which facilitated the collection of rich ethnographic data.

As social scientists, we focus on maintaining a level of distance, abstraction and objectivity from our data. Akin to purely scientific research, there are rules to be followed. It is easy to forget that although we are collecting data in a regulated manner according to the appropriate guidelines, research - particularly qualitative research - is still a personal experience. Working with the YOT was, in many ways, vexing. I found myself drained, both physically and emotionally from the entire process. Scheduling was constantly in flux as meetings were cancelled and rescheduled, often at the last minute. Moreover, sometimes the same meeting would be cancelled and rescheduled as many as three or four times, which led frequently to a state of total disarray. The YOT officers themselves were often unaware who should be attending the referral order panels or even which panels, if any, had been cancelled. Last minute cancellations led to endless wasted hours. The scheduling was so confused that even the young people and their families would turn up at the wrong times or on the wrong days. Then, there were of course the times when everything came together as it should. The YOT officer, panel members and young people all arrived in the right place and at the right time. The panel could finally

proceed, that is, of course, if the caretaker of the community centre was present to open the building (and not on vacation in America) since the YOT lost the keys months earlier and haven't yet acquired another set!

In the end, the fieldwork described above uncovered the detailed daily practices of one of the leading Youth Offending Teams in the country and allowed for the thorough and robust analysis of issues that strike to the core of the youth justice system and restorative justice in the chapters that follow.

4. Final Warnings

Too little is done to change youngsters behaviour early in their offending career ... We believe that the time has come for fundamental changes to be made ... In many areas cautioning continues to be used when it patently does not work... cautioning for many is therefore a waste of time ... too often it is not associated with effective intervention ... We have to start again ... by prioritising early intervention to nip offending in the bud.

– Straw and Michael 1996

As part of New Labour's reforms, the final warning scheme was introduced into the youth justice system with the 1998 Crime and Disorder Act. The primary aim of the 1998 Act, in conjunction with preceding White Papers such as *No More Excuses* (1997), was a reformation of the youth justice system. This reform came about largely because of severe criticism of the old cautioning scheme. The Audit Commission (1996) reported an uneven pattern of cautioning across the country and concluded that cautioning was too variable both within and between constabularies. Moreover, it was argued that many young offenders were repeatedly cautioned thus causing a loss of credibility with young offenders and the public.¹¹⁷ Therefore, the final warning scheme was established to replace cautioning and to provide a highly structured, assessment-based approach to youth offending (Holdaway et al 2001, p 352).

As discussed in Chapter One, the final warning is designed to be an initial intervention for a young offender.¹¹⁸ The final warning consists of a verbal warning by a police officer and, in some cases, an intervention programme delivered by the

¹¹⁷ The 1997 White Paper *No More Excuses* stated, "Inconsistent, repeated and ineffective cautioning has allowed some children and young people to feel they can offend with impunity ... The Government feels that more radical action is now needed." See Evans (1990); Evans and Ellis (1997) for documented research.

¹¹⁸ In some cases, the young offender may have been issued a reprimand prior to receiving a final warning.

Youth Offending Team (YOT) (Holdaway et al 2001, p 30). The intervention programme is not mandatory but the Youth Justice Board (YJB) has stated that by 2004 80 per cent of all final warnings should be accompanied by an intervention programme (Youth Justice Board 2004a, p 6). Three criteria must be met before a final warning can be considered. First, the young person must admit to the offence. Second, the young person must not have any prior convictions, and third, prosecution must be considered to be in the public interest (Holdaway and Desborough 2004, p 18).

Unlike the policies that followed in the 1999 Youth Justice and Criminal Evidence Act, the 1998 Act did not specifically intend to introduce a commitment to principles of restorative justice. While the reforms brought to the justice system elements of restorative justice, their primary aim was unambiguously stated as the prevention of offending (Holdaway 2003, p 351). As the White Paper succinctly stated, “We will refocus resources and talents of professionals on nipping offending in the bud, to prevent crime from becoming a way of life for so many young people” (Home Office 1997b, Preface).¹¹⁹ Nevertheless, restorative justice was incorporated into the Home Office Guidance for final warnings, which specifically states that restorative processes should be used in the delivery of final warnings (Home Office and Youth Justice Board 2002, para. 9.22-9.23).

This chapter explores the current state of final warnings with the specific intention of assessing the achievements of the final warning scheme as well as the restorative nature of the programme. In particular, this chapter focuses on the

¹¹⁹ Thereafter, ‘nipping offending in the bud’ became formalized primarily by the institution of the new final warning system.

administration of the final warning and the interventions which accompany them.¹²⁰

Moreover, this chapter will explore and contribute to the debate surrounding police led restorative justice. Nevertheless, the aim of this chapter is not simply the systematic evaluation of each aspect of the final warning but rather a broader exploration into the meaning of restorative justice within the context of final warnings, focusing on the point of view of young offenders.

Unfortunately, for the purposes of this chapter, analysis of the final warning scheme is somewhat limited. To date, there is very little literature available regarding final warnings.¹²¹ It seems slightly paradoxical that a scheme which features so prominently in the repertoire of the 'new' youth justice system would be so unrepresented in the literature. There is, nonetheless, a reasonable amount of writing on restorative cautioning schemes, which although not always entirely applicable, can provide a point of reference in analysis of the final warning scheme.

The Administration of the Final Warning

Despite the urgings of the Youth Justice Board (YJB) that nearly all final warnings be accompanied by an intervention programme, such interventions are by no means guaranteed to take place since participation by young offenders is voluntary. Therefore, the administration of the final warning is actually of paramount importance because it is potentially the only contact between the young person and

¹²⁰ Final warnings are also designed to, where possible, involve the victim. Overall, this research found minimal levels of victim participation. In none of the cases in this sample did a victim attend a final warning and in very few cases was there any victim input. The place of victims within both final warnings and referral orders is examined in Chapter Six.

¹²¹ In fact, there are only two studies of final warnings: Hine and Celnick's (2001) follow-up to the national evaluation of the pilot YOTs and Holdaway and Desborough's (2004) evaluation of the piloting of final warnings. Both studies are limited in the information they report.

the Youth Offending Team. The government has urged that the final warning meeting itself should be restorative, aiming to help young offenders understand the harm their offences have caused while avoiding stigmatization (Home Office and Youth Justice Board 2002, para. 9.22-9.23). If the final warning is to be successful, it is essential that this meeting provides a supportive environment for young people to examine, reflect upon, and discuss their behaviour; that is the final warning should uphold the restorative values discussed in Chapter Two, empowering young offenders through deliberative participation, all the while trying to restore and reintegrate them.¹²² This section examines the interactions between the YOT and the young offenders during the final warning meeting and evaluates the immediate achievements of this exchange.

Empowerment and deliberative accountability in the final warning meeting

This research indicates high levels of satisfaction; overall young people thought the warning meeting was a good idea, helpful and fair. After the administration of the final warning, all young offenders thought final warnings were a good idea.¹²³ When re-interviewed several months later all but two young people still thought final warnings were a good idea.¹²⁴ Not only were young offenders initially very happy with final warnings, but they remained content with the process over time. The question then arises as to what it is about the administration of the final warning which generates such positive responses by young offenders.

¹²² These values could also apply to victims. However, since victims are rarely involved in the final warning process, the focus here is on offenders.

¹²³ This is only in regards to the final warning meeting and does not incorporate how young people felt about any associated interventions.

¹²⁴ One young person thought they were "OK" and a second responded "Don't Know." This question was asked in follow-up interviews three months after the delivery of the final warning and therefore incorporates young people's feelings about both the final warning meeting and intervention programmes.

Because the administration of the final warning consists of a single face-to-face meeting between the young offender and the YOT officer, the capacity for final warnings to affect young offenders arguably derives from the skills of the YOT officers. Interviews with young offenders revealed that young people felt very positive about their interaction with the YOT officer during the final warning meeting for several reasons. Primarily, young offenders appreciated the sense of empowerment achieved through deliberative participation; they were expressly pleased with the chance to both speak and to be listened to and the opportunity for involved discussion:

- * *She let me get in my point of view. (7NFW)*
- * *She asked for what I thought, for my opinion. (1NFW)*
- * *She was friendly and she listened to me. (5NFW)*

None of the YOT officers used the meeting to lecture young offenders but rather engaged in restorative and reintegrative discussion, all the while with the aim to get young offenders to take responsibility for their actions. They asked searching and inclusive questions such as “What do you think are the important things we need to talk about?” (Case 2NFW); “Do you think what you did was fair?” (Case 8NFW); “If you were to put this right, how would you do it?” (Case 7NFW). As one YOT officer noted at the beginning of a final warning, “Long gone are the days where we shout and yell at you and tell you that you are stupid. If we push you away, this will happen again” (6NFW).

The following case example illustrates the type of constructive discussion that took place (6NFW):

Simon had been very drunk and shattered a shop window after leaving a club. At first, Simon did not want to take full responsibility for breaking the window, claiming

that the glass was thin and he had simply ‘tapped’ it with his elbow. Rather than discounting the young person’s view of the events, the YOT officer proceeded to ask a series of non-threatening questions, asking the young person to describe the events and his experience. In recounting his trip to the hospital, the young person admitted that his elbow was very painful, bruised and cut. The YOT officer then used this information to point out that he must, therefore, have applied a significant amount of force to the window because ‘tapping’ a window would not give him such painful injuries. The young person subsequently smiled and admitted that the YOT officer must be right.

When interviewed after the final warnings, Simon commented, “[The YOT officer] needed and asked for my cooperation. She asked me to work with her and didn’t talk down to me or tell me what to do.” Simon appreciated “the way we talked to each other like real people.” Similarly, Simon’s mother noticed that “[The YOT officer] listened to Simon and was in tune with him.”

As a result of the restorative and inclusive conversations between young offenders and YOT officers, all young people felt that the YOT officers were trying to help and support them, and all but two felt the officers were on their side, which seemed important to the offenders’ willingness to engage in thought-provoking discussions.¹²⁵ Young people stated:

- * *He was on my side. He gave me good advice and is going to try and help me find a job. (1CFW)*
- * *Yes, it was very helpful. [The YOT officer] explained a lot of stuff that I didn’t understand. (4CFW)*
- * *She was on my side. She was very friendly and helpful. (1NFW)*
- * *Yes, [he] was trying to help me ... because [he] was trying to keep me from getting into more trouble. (2CFW)*

Offenders felt this way because the YOT officer was not intimidating, did not shout at them, and did not demean them: “[The YOT officer] wasn’t pounding me but talked to me like I am a person and not like the bottom of a shoe” (6NFW). Indeed, in all of the final warning meetings presided over by YOT officers, the officer engaged the

¹²⁵ Of these two, one felt the YOT officer was neutral: “[She was on my side] in a way ... it was more neutral, trying to be on both sides.” (8NFW)

young person in a friendly but concerned manner.¹²⁶ The officers always made a point to get the young person to view themselves positively by, for example, asking the young person to say something positive about themselves. At least once during each meeting, the YOT officers made an effort to tell the young offender that they were not a bad person, making comments such as “I am *not* thinking you were a bad person. I am trying to keep you from going to court” (Case 2NFW). It was, therefore, not surprising that over half of young people (64%) felt that it was easy to speak with the YOT officer during the meeting. Mostly, young people commented that it was easy simply because they felt comfortable: “Easy ‘cause it was comfortable ... When people normally talk to me they say mean things and shout at me. He just talked to me” (3CFW).¹²⁷

These data reveal that young offenders are responsive to inclusive and restorative conversations with YOT officers which empower them to tell their story and put forward their own perspective on their behaviour. By speaking to young offenders with respect and continuing a dialogue which employs deliberative accountability throughout the final warning meeting, even young offenders like Simon, who initially deny any responsibility for their behaviour, eventually are willing to re-think their actions. If young offenders are going to change, they need to be a part of the final warning process where they themselves arrive at the conclusion

¹²⁶ As discussed in Chapter Three, final warnings in the North were taken over by a PC not seconded to the YOT. Although I was only able to observe one final warning, it was not restorative. This warning will be discussed later in this chapter.

¹²⁷ However, the fact that just over one third of young offenders found it difficult to speak does not necessarily reflect badly upon the final warning meeting. Young offenders who feel ashamed of their behaviour almost inevitably find it difficult to discuss their actions: “It was hard to talk because it was hard admitting that I’d done something wrong like that” (5CFW).

that their behaviour should change rather than simply being told they are 'bad' and should never do it again.

All of the points discussed in this section come together well in one particular case (1NFW):

Jon was caught on CCTV committing public order offences and subsequently arrested for being drunk and disorderly and urinating over a car. The YOT officer began the meeting by asking Jon to talk about what he did and what he was thinking. The YOT officer then brought the conversation around to consider other people's points of view: "Were you aware that there were numerous people walking past?"; "What do you think the witnesses felt?"; "What about the owner of the car?" The YOT officer reiterated several times that this incident did not make Jon a bad person but rather that he needed to be aware of the harm he was doing to himself; after all, he was the one arrested.

Because this was an alcohol related offence, the YOT officer engaged in a lengthy discussion about the harms of alcohol. Jon admitted that once he'd had 'a few beers' his personality changes and he becomes a different person, usually 'being very silly' when he is drunk. The YOT officer noted how 'there is nothing wrong with being drunk and silly' but Jon's behaviour could lead to further offences. Using a hypothetical situation, the YOT officer discussed how 'silly behaviour' can have a knock-on affect leading to more serious situations generally involving assault. Jon needed to know his limits and learn to realize when his behaviour changes. As the YOT officer concluded the meeting, she said, "Look after yourself and give yourself consideration. It would be a shame to go to court over another silly episode ... I don't want to see this effect a promising future." She gave Jon her card and stated he could contact her if he ever wanted to talk more about alcohol use.

When interviewing Jon after the warning, it was apparent that he appreciated the way the YOT officer interacted with him: "She was open and chatty. I thought it would be more of a set procedure, but I liked being in a relaxed setting. It made me more comfortable." Moreover, because Jon felt relaxed and comfortable, he listened to what the YOT officer said and found it helpful "When she talked about what I could do to prevent it from happening again. She made me think about what I could do and what I have done."

Although this warning is for a relatively trivial offence, the case highlights key aspects of the final warning which were discussed in this section.

Overall, the comments of the young offenders indicate that the final warning meeting provides a supportive environment in which to discuss offending behaviour.

Ultimately, all but one of the young people thought the final warning meeting was

useful. Specifically, young people were pleased with the final warning because they felt that it provided them with various opportunities: a chance to talk; a chance to examine their behaviour; a chance to learn; and another chance to stay out of trouble.

As some of them commented:

- * *It's good to get it out and talk about it. (2CFW)*
- * *It helped me to see my behaviour differently. (1NFW)*
- * *It helps you to understand all of the consequences of what you do. (9NFW)*
- * *It showed me that I should stop being stupid. (5NFW)*
- * *To have something before court is a good idea. Not everything deserves to go to court. (6NFW)*

It is, of course, important to consider that as a researcher there is always a danger that participants will say what they believe the researcher wants to hear (Miles and Huberman 1994, p 265). However, throughout this research there appeared a level of genuine emotion which showed through from these participants both during the meeting with the YOT and while being interviewed. For example, in one particular case (5CFW), the young person was extremely grateful because he felt that the YOT officer had gone out of his way to help him in his difficulties with his school. This young person became emotional as he said “Yeah my YOT worker [came to] my school meeting. He came to support me through it. There were lots of people there saying bad things about me and talking about how I didn’t go to school much. [He] was on my side and supported me”.

Legitimacy

Another crucial aspect of innovatory practices like final warnings is that they are seen as legitimate by those who take part. Empirical evidence suggests that participants who experience a fair process are more likely to accept the outcomes as

legitimate.¹²⁸ Moreover, offenders are also more likely to take responsibility for the harm caused by the offence if they believe they have been treated fairly (Hoyle et al 2002, p 18). Importantly, all of the young people included in this research felt the final warning process was fair. Nevertheless, Hoyle et al (2002) warn that perceptions of fairness can heavily depend on prior expectations and beliefs about what constitutes 'fair' treatment (p 27). As a result, offenders were asked to provide a reason as to why they felt the process was fair. Primarily, young people felt the process was fair because of the way the YOT officer interacted with them. Young offenders valued being listened to as well as asked for their opinion, being treated like "real people." Additionally, young people appreciated the final warning as a chance to be redeemed and forgiven. The feelings of the young offenders are best summarized in the comments of one young man (SCFW) when attempting to explain why he felt he had been treated fairly: "I don't know ... it's hard to say ... the way he was with me, the way he talked to me, that I was forgiven for what I did, that I get another chance." Hoyle et al (2002) similarly found that the vast majority (89%) of offenders felt they had been treated fairly in restorative cautioning (p 27). Like young people given final warnings, most participants felt the process was fair because they were given an opportunity to speak and they were listened to with a degree of respect (Hoyle et al 2002, p 27).

There appears to be a clear implication that young offenders' perceptions of procedural fairness can generate high levels of satisfaction and are, therefore, likely closely linked with perceptions of the final warning scheme as a good idea. However, it is worth noting that participants may have low expectations of the process and, as a

¹²⁸ See Tyler (1990).

result, may be pleasantly surprised when treated as someone worth listening to, usually a staple of even the worst run restorative programmes (Hoyle et al 2002, p 29). Hoyle et al (2002) speculate that their participants would have been more critical if they had a sound understanding of restorative justice principles.

In light of the evidence presented in this section, it is possible to argue that the administration of the final warning achieves the Youth Justice Board's expectations: it is conducted in a restorative manner which employs key restorative values and, in large part due to its restorative nature, is successful in working with young offenders to address their offending behaviour. As a result of this process, young offenders experience high levels of satisfaction with the administration of the final warning.

Another aspect of the final warning scheme which can contribute to a successful and restorative programme is the intervention programme which accompanies the final warning. The section that follows examines the interventions associated with final warnings in order to evaluate the intervention programme as well as its contribution to the restorative nature of the final warning scheme. In part, this feature of the final warning scheme is the most important because the government has based the justification for the 'new and improved' final warning scheme on the intervention programme.

Interventions

Labour invested a significant amount of energy and faith in an interventionist approach in the belief that 'by intervening early and effectively before crime becomes a habit, we can stop today's young offenders becoming tomorrow's career criminals' (Home Office 1997a, para. 47). With the creation of the 1998 Crime and Disorder

Act and subsequent publications, Labour made clear that final warnings *with* an intervention programme were a priority of the final warning scheme. Indeed, the intention of the 1998 Act is that virtually all offenders will complete an intervention programme (1998 CDA para. 66.2b).

As noted earlier in this chapter, the Youth Justice Board set the standard that by 2004 80 per cent of all final warnings should include an intervention programme designed to address offending behaviour and the needs of the victim (Youth Justice Board 2004a, p 6). When creating an intervention programme for young offenders, it is important that the programme be tailored to take account of young offenders' individual needs. According to the Youth Justice Board, high quality assessment is believed to be central to achieving a reduction in offending by young people (Youth Justice Board 2004f, p 1). Thus, an assessment of the young person using ASSET and any prescribed intervention should be linked (Youth Justice Board 2004a, p 6).¹²⁹

Meeting national standards

According to the Youth Justice Board, in 2001 70 per cent of final warnings were *accompanied* by an intervention programme (Home Office and Youth Justice Board 2002, para. 1.9). However, my research suggests that there is a significant gap between the national standard and practice on the ground. Of the young people who participated in this study, most (71%) were *offered* further interventions ranging from help with literacy and numeracy to anger management to restorative conferencing. At the time of the administration of the final warning, all *agreed* to the further interventions suggested by the YOT. However, of the ten young offenders who were

¹²⁹ ASSET, developed by the University of Oxford Centre for Criminology, was first introduced in April 2000 and provided for the first time a common, structured assessment profile used across the youth justice system in England and Wales (Youth Justice Board 2004f, p 1)

offered and agreed to interventions, only three (30%) actually completed the programme. Therefore, of all final warning cases included in this research, only three out of fourteen (21%) completed intervention programmes, a poor result compared to the 80 per cent national standard set by the YJB.

The principal reason cited by young offenders for uncompleted intervention programmes was the YOT's failure to contact them after administering the final warning in order to set up the intervention. The YOT officers themselves were frustrated by the poor state of final warnings. One YOT officer in particular usually had a very heavy caseload which she complained placed her in a position where she was simply not able to meet national standards.¹³⁰ She commented, "There are so many final warnings to do ... I can't make them all restorative. It's more about going through the motions ... It's horrible and I desperately want to see it change" [FD0128]. Furthermore, this YOT officer expressed concern that she did not have the time to set up or do any interventions because they take up so much time. She stated, "To be honest, by the time I do fifteen final warnings this week and twelve next week, I will have forgotten about the first one this week. I just don't have the time to chase it up and make sure it happens" [FD0203]. It is not surprising therefore that this YOT officer was extremely sceptical about any YOT meeting the national standards. However, she did feel that it was vital that more resources were placed into final warning interventions because she believed that they can provide young people with extra support that is badly needed.

¹³⁰ Chapter Three discussed the unforeseen difficulties encountered in collecting final warning cases. This YOT officer was the sole officer in her team capable of performing final warnings, and she left the YOT after I had been in the field for several months. Refer back to the Chapter Three for a detailed discussion of how cases were collected.

Similar results were reported by Holdaway and Desborough (2004) in their national evaluation of final warnings. They reported that some YOT managers felt there were not enough resources to handle final warnings and project representatives believed that an unexpectedly high number of court referrals have led to the diminished importance of final warnings within the YOT (p 28). Interviewees from the YOTs offered several explanations for the low level of referrals to intervention programmes: YOT managers' affording a higher level of priority to court work; many projects had difficulties starting up due in part to staff and volunteer shortages; inappropriate services offered by the projects funded; low levels of victim participation; and the unwillingness of offenders to agree to final warning programmes (Holdaway and Desborough 2004, p 28). Overall, the results of their research caused Holdaway and Desborough to comment, "Indeed, on the basis of interviews with project and YOT staff, we take the view that the Final Warning has still not been given sufficiently high priority within YOTs" (2004, p 28).¹³¹

Interestingly, according to the Oxfordshire YOT performance data, 47 per cent of final warnings were supported by an intervention in the 2003 calendar year, which coincides with my time in the field. In examining the breakdown of the data, this low percentage is mostly explained by the fact that only 9.5 per cent of final warnings in North Oxfordshire were supported by interventions. The other areas of Oxfordshire – the City Centre and South Oxfordshire – respectively reported 84 per cent and 80 per cent of final warnings supported by an intervention. As discussed in detail in Chapter Three, due to a lack of a permanent police officer able to perform

¹³¹ Holdaway and Desborough's (2004) findings in conjunction with the results from this research also raise important questions about YOT practice, efficiency and culture which contribute to low completion rates, questions which will be fully explored in Chapter Seven.

final warnings in the North team, the YOT was forced to refer final warnings out of the North team to be performed by the police without an intervention. When a full-time YOT police officer was found for the North, the reported percentage of final warnings supported by an intervention rose to 91.5 per cent in the 2004 calendar year.¹³²

However, these reported figures appear somewhat perplexing and possibly dubious in light of my own research. According to the YOT performance data, in North Oxfordshire, 15 out of 157 (9.5%) final warnings were supported by an intervention programme in 2003. Between February and November 2003 – the time period when I was collecting final warning cases – the YOT reports that only 10 final warnings were administered by the North team.¹³³ Nine cases were collected as part of my research. Of these nine, none completed intervention programmes and three of these were not even offered an intervention. As a result, I specifically asked the YOT to clarify what was meant by the term “final warnings supported by an intervention” as used in the performance monitoring data. According to Mike Simm, Head of the Oxfordshire YOT, the term means that an intervention was offered and more than one post-assessment contact took place, although the intervention might not necessarily have been completed. Therefore, to be counted as valid, the intervention does not have to be completed so long as there was more than one contact that took place. Of the nine final warnings in this sample, only one qualifies under the stated definition. Thus, for the YOT’s performance figure to be correct, the other fourteen cases must have occurred during the month of January or the month of December 2003. This

¹³² The breakdown is as follows: North Oxfordshire: 96%; the City Centre: 90%; and South Oxfordshire: 91%

¹³³ This figure is for both boys and girls.

seems unlikely as the same YOT officer who followed through with only one intervention programme was responsible for final warnings in January of 2003 and the non-YOT police officer performing administrative final warnings was still in place in December 2003. Therefore the validity of the YOT's claims about the percentage of final warnings supported by an intervention in 2003 is questionable, which throws into doubt the figures for 2004 as well.¹³⁴

Also of interest, and seemingly contradictory to my results, according to the Audit Commission's 2004 report, 80 per cent of YOT managers felt the national standard is easy to achieve (para. 29). However, many simultaneously felt that the standard was too high in relation to the needs of young people and a tailored approach using resources in a targeted way would be more appropriate (Audit Commission 2004, para. 29). This opinion was also mirrored by the North Oxfordshire's replacement police officer for final warnings who felt that interventions are not appropriate in all cases and more discretion is necessary to determine if interventions are right on a case-by-case basis. This police officer claimed the government is trying to impose restorative justice on young people and thereby undermining the core principles of restorative justice [FD 0731].¹³⁵ These views, however, are at odds with the YOT officers who work with young people on a daily basis. YOT officers constantly expressed a desire to provide young offenders with as much assistance as possible. Perhaps the difference between the YOT managers' opinion, as reported by the Audit Commission, and the YOT officers' opinion, as found in my research, is

¹³⁴ See Chapter Seven for further discussion of the YOT's questionable recording of cases and the structural, cultural and political pressures which may influence the way the YOT records performance targets.

¹³⁵ This police officer differed with the YOT on a philosophical basis with most core issues.

borne out of what appears to be the YOTs' difficulty in meeting national standards given present resources.¹³⁶

Old-style cautioning versus new final warnings

The findings of my research regarding the use of intervention programmes raise obvious concerns.¹³⁷ The government has made clear that the primary strength of the final warning lies in additional assistance provided to young offenders through intervention programmes. One reason cited by the government for the failure of the previous cautioning system was the lack of additional intervention and support beyond the administration of the caution.¹³⁸ During the restructuring of the cautioning scheme, the government stressed that one of the primary distinctions between the older cautioning system and the new final warning scheme was the intervention programmes, which were viewed as crucial to curbing offending behaviour (Home Office 1997b, para. 5). Therefore, the poor use of interventions discovered both by this research as well as by Holdaway et al - who in their 2001 national evaluation of pilot YOTs found as many as 80 per cent of offenders were not even considered suitable for intervention programmes - jeopardizes the government's reasoning for shifting to a new final warning scheme.

Nevertheless, the government's claim that without interventions the final warning scheme is not so dissimilar from old style cautioning is not necessarily true. Maggie Lee's research on old-style cautioning found that cautioning sessions functioned akin to a degradation ceremony, reproducing and institutionalizing the

¹³⁶ This point is discussed further in Chapter Seven.

¹³⁷ Holdaway et al (2001) and Holdaway and Desborough's (2004) research also found the use of interventions problematic.

¹³⁸ Note Straw and Michael's (1996) quote at the beginning of the chapter. Also see, for example, the Home Office White Paper *No More Excuses* (1997)

court-based degradation ceremony in the police station (1998, p 114; 119). Lee comments:

Although questions of 'who did what, when and why?' were routinely put to the juveniles, they were not raised merely to confirm what happened or elicit new information from the individual. Instead, the focus on individual culpability generally set the scene for police comments on the juvenile's disgrace to the parents, the school or even the whole community ... The moral lecture underlined the juvenile's status as a criminal and, as such, performs a symbolic function similar to that of the court system.

(1998, p 118)

In fact, there was a consensus among non-police agencies¹³⁹ that a caution should be administered sternly 'as a screw is turned very tightly on them' (Lee 1998, p 116). Lee concluded that the objectives of the cautioning sessions collapsed into achieving a visible impact on young offenders, for example through shaming and/or reducing them to tears (1998, p 128). The findings of my research indicate that the current final warning scheme, with or without intervention programmes, is an improvement on old-style cautioning. The punitive attitude which appeared to dominate old-style cautioning has been replaced by one which is indeed restorative, as discussed at the beginning of this chapter. Therefore, although the government is right to note a difference between old-style cautioning and final warnings, it should not go so far as to suggest that the intervention programme is the sole difference.¹⁴⁰

Re-offending rates

Where intervention programmes do take place, they might curb offending behaviour. My research found an overall re-offending rate of 29 per cent. However,

¹³⁹ Probation services, welfare services, education services, and social services.

¹⁴⁰ More credit should be given to the attitudinal changes of police officers seconded to the YOT regarding their work with young offenders. See Chapter Seven for a discussion of how seconded YOT police officers tend to hold culturally distinct attitudes towards restorative work in comparison to regular police officers.

of those young people who re-offended after the final warning, not one had completed an intervention programme.¹⁴¹ According to the Audit Commission's (2004) national review of the youth justice services, young offenders indicated that only when their needs were met with adequate support did they feel 'optimistic about changing their lifestyle and reducing their offending' (p 75). Nevertheless, with so few cases obtained in this research, it is necessary to be extremely cautious about drawing any firm conclusions.¹⁴² The re-offending rate is based solely on those cases in which young people were convicted of or pleaded guilty to another offence and sent back to the YOT during the time period of data collection.¹⁴³ Moreover, no control group was used.

Re-offending rates are often used as a measure of success, particularly by the government, for any criminal justice programme. However, as discussed in Chapter Two, accurately assessing re-offending rates is a dubious task. As for final warnings, thus far relatively little is known about the re-offending rates of young offenders who complete final warnings, with or without intervention programmes. Thus, a sound

¹⁴¹ The Youth Justice Board 2001/2002 Annual Review Report commented that the Oxfordshire YOT required all young people receiving a final warning to participate in some form of restorative activity which led to an 18.8% reduction in reconviction rates (2002, p 11). However, I am hesitant to take these results at face value given the low level of participation in interventions which I observed within the Oxfordshire YOT. Moreover, the YJB does not report what the conviction rate started out at and what it was reduced to.

¹⁴² In contrast to my research, Holdaway and Desborough found 31% of young offenders on an intervention programme re-offended within a year of receiving a final warning (2004, p 37). This percentage includes female offenders. However, again it is necessary to be cautious about drawing any firm conclusions from these data because of the small sample size and lack of a control group. In addition, early research on final warnings by Hine and Celnick (2001) found that there was no discernable difference in further criminal proceeding rates, either statistically or in actual rates, between those young offenders who were deemed inappropriate for a 'change programme' (30%) and those for whom a programme was created (29%). Based on these results, the authors called into the question the adequacy of the YOTs' assessment procedures but indicated that the introduction of ASSET could improve future assessments (Hine and Celnick 2001, p 33).

¹⁴³ For individuals who had received a final warning, their name would appear on the weekly list of up-coming referral orders I was provided. In addition, YOT officers were aware of which cases I had collected and would notify me of any further offences.

study into re-offending rates and the characteristics of final warnings that are more likely to be associated with less re-offending could provide a richer understanding of the final warning programme.

Pros and cons

Two themes arise from the discussion of final warnings thus far which are simultaneously encouraging and disappointing. On the one hand, young people expressed overwhelmingly high satisfaction with the final warning and the YOT. Where intervention programmes took place, they were very well received by young offenders. Of the three young people in the study who completed an intervention programme, all claimed that the programme was very helpful. Moreover, the intervention programme appeared to achieve its aim of preventing offending by helping young offenders re-enter mainstream society: "I went and met with [my YOT officer] and did a literacy and numeracy course. It was really good and helped me a lot with my English and my spelling. And it helped me to get a job!" (ICFW). However, on the other hand, due to a lack of resources there were low levels of completed interventions. The YOT is falling short of the Youth Justice Board's expectations as well as, and arguably more importantly, the expectations of the young offenders themselves who wanted more support. An additional four young people (36%) who failed to complete an intervention programme would have liked further support from the YOT.

Some of the cases in which young people desired but did not receive additional support are not only disheartening but also more seriously represent a lost chance to address underlying causes of offending behaviour:

David (7NFW) was given a final warning for criminal damage; however, the offence was actually quite serious. While under the influence of alcohol, David attacked a car in a car park which had two people inside it. He climbed onto the bonnet of the car, scratching and denting the car; he kicked in the windscreen, bent the wipers, and smashed in some of the car windows. While attacking the car, David attracted a crowd of at least thirty youths, many of whom were also drunk, who surrounded the car and its occupants. The police report states:

An unprovoked attack carried out under the influence of alcohol. The incident took place in a car park used by the public, especially families with young children. The defendant's actions attracted a large number of youths, a number of which were drunk and the police believe the situation could have resulted in a near riot situation.

After the final warning, David was subsequently re-arrested and given a referral order for trying to steal beer from a store. Both of David's offences are alcohol related and his first offence indicated that he likely had a problem with alcohol use. The final warning presented an ideal situation in which to provide David with the alcohol counselling he may need, thereby addressing the underlying cause of his offending behaviour and potentially preventing future offending of this nature. This case is exactly the type of offending behaviour for which the final warning is designed.

It is puzzling that a scheme which has such a positive response from young offenders and which might have the potential to reduce re-offending has such a low priority within the YOTs. Moreover, the government has so strongly in the last few years championed early intervention and yet that enthusiasm is not backed up by support for schemes like the final warning within the YOT. If the final warning scheme is to become truly successful, it is important that greater resources be devoted to achieving the standard set by the Youth Justice Board that 80 per cent of all final warnings be accompanied by interventions.

Further support of the need to increase resources to the final warning scheme lies in young offenders' reflective evaluations of themselves. To fully understand how young offenders respond to final warnings, it is necessary to investigate how they evaluate themselves and their behaviour after completing the final warning programme, both the delivery of the warning and, where applicable, the intervention programme.

Self-Assessment

Alongside overall assessments of both the final warning meeting and intervention programme, it is important simultaneously to examine self-assessment questions which aid in gauging how young people internalize their experiences. When, several months after completing the final warning, young offenders were asked self-assessment questions concerning their offending behaviour, the results were quite positive: all but one young offender felt the final warning made a difference to their feelings about their behaviour and the majority (66%) felt that they had changed in the few months since the final warning. Young people commented:

- * *It really affected me in a good way. I learned lots and realized how lucky I was to get a second chance like this. (1CFW)*
- * *Yes [I've changed] because I got help and it made me think about things. (2CFW)*
- * *I've calmed down lots. I didn't used to think before and I used to explode but now I really think before I say or do anything. (6NFW)*

These results suggest that the final warning facilitated in young offenders an introspective examination of their behaviour, which, more than any law or threat of punishment, could prevent them from re-offending.

Similarly suggestive of the success of the final warning scheme is that most of the young people (75%) felt the final warning process would help other young people who got into trouble. Moreover, when young offenders were asked what they would say to a friend who had just been told he would have a final warning, not one young person made a negative comment. Rather, young people noted that they would encourage their friend to attend the final warning and to pay attention because much help could be gained from the YOT:

- * *Basically, it's there to help you, to get over it and move on. Take the courses, stay away from your old group of friends that was getting you into trouble, don't listen*

when other people say stuff about you. It will help you lots so learn what you can. (1CFW)

** I'd tell him to go in and see someone and get help from them, to learn not to do it again. (4CFW)*

** Attend it. It's not so bad. They're nice people. (5NFW)*

Overall, these results, in conjunction with the findings reported in the previous two sections of this chapter, attest to the strength of the final warning meeting at present. As one young man (1CFW) stated, “[The final warning] is not a slap on the wrist but a harsh warning. I could get into trouble but I’d rather take the other road. It’s a chance to redeem myself. It’s really good. Everyone should get a final warning for a first offence. They shouldn’t go to court.”

Thus far, this chapter has discussed core aspects of the final warning scheme. However, the involvement of the police as facilitators also requires attention since it too has the potential to be significant to the outcome of the final warning. The following section considers the controversial issue of whether or not it is appropriate for the police to act as facilitators in restorative practices like the final warning. This section will not examine the arguments and counter-arguments in detail (discussed in Chapter Two) but rather will address distinct pitfalls of police led restorative justice in the light of the results of this research.

Police Led Restorative Justice

One of the significant debates within the current field of restorative justice is whether or not police led restorative justice should be allowed.¹⁴⁴ This section will briefly examine where police led conferencing, in the form of final warnings, is prone

¹⁴⁴ For critiques of police led schemes see Polk (1994), Warner (1994); Blagg (1997) and Cunneen (1997). For counter-arguments see Braithwaite (1997; 1999) and McCold and Wachtel (1998)

to distinctive pitfalls, placing the debate within the context of the results from this research. Contentions surrounding police led restorative justice largely focus on two issues: the appropriate safeguards to due process and influences of cop culture on restorative justice practices.

Procedural safeguards and due process

As discussed in Chapter Two, one of the primary critiques of restorative justice is that it lacks the appropriate and necessary safeguards for due process. In particular, there are two main areas of concern for police led restorative programmes and specifically for final warnings: the pre-requisite admission of guilt to partake in the programme and the potential increase in penalties for offenders who do not complete 'voluntary' intervention programmes.

(i) Admission of guilt

An arguably problematic aspect of police led schemes lies in the pre-requisite admission of guilt. With regard to final warnings, a warning can *only* be given if the young person is willing to make a 'clear and reliable admission to all elements of the offence' (Home Office and Youth Justice Board 2002, para. 4.12). This requirement places a strain on due process because when admission of guilt is required to participate in a diversionary programme, there is inevitably an incentive to admit responsibility (Polk 1994; Warner 1994). Critics worry that such incentive may pressure young people to admit guilt even if they are innocent in order to avoid a court appearance (Polk 1994; Warner 1994).

Initial research on final warnings indeed found evidence of problems with the admission of guilt by offenders receiving final warnings. In several cases, despite

being issued a final warning, young people denied altogether admitting guilt to the police (Holdaway and Desborough 2004, p 19). In other cases, there was real doubt surrounding the guilt of the young person arrested (Holdaway 2003, p 355). In fact, research found that some young people had even been advised by lawyers to accept a final warning rather than attend court and risk the possibility of being found guilty, despite ambiguous circumstances (Holdaway 2003, p 355). Therefore, apprehensions regarding due process and the pre-requisite admission of guilt are not far-fetched.

It is possible that such disregard for due process safeguards would weaken the credibility, and thereby the effect, of the final warning scheme. If young offenders believe they have done nothing illegal or if they been under undue pressure to accept guilt, the final warning may be discredited in their eyes and its effectiveness compromised (Holdaway 2003, p 356). However, such subversion of proper due process was not found in my research, suggesting that potentially improvements have been made since early studies on final warnings in the way young people are informed of their rights regarding (non)participation in the final warning scheme. Nevertheless, more thought and investigation should be put into this contentious situation, particularly given that this research had such a small sample size.¹⁴⁵ There is clear potential for abuses within the system.

(ii) Incomplete intervention programmes

In addition to concerns surrounding the admission of guilt in final warning cases, the scheme is also criticised for its potential to 'up-tariff' young people who do

¹⁴⁵ Hoyle et al (2002) found low level miscarriages of justice resulting from coerced participation and the administration of cautions despite the denial of guilt causing them to similarly conclude that at present the necessary due process safeguards are not in place for cautions, reprimands or final warnings (p 66).

not follow through with the voluntary intervention programme (Goldson 2000, p 40). In the case of final warnings, any agreed intervention beyond the administration of the final warning is voluntary. However, the reality behind the 'voluntary' intervention programme is troubling: failure to participate in and complete an intervention programme may be used against a young person on any further appearances in court. Section 66(5) of the Crime and Disorder Act provides that 'any report on a failure by a person to participate in a rehabilitation programme' (related to a final warning), 'may be cited in criminal proceedings in the same circumstances as a conviction.' The reasoning behind such citation in court was highlighted in the consultation paper *Tackling Youth Crime*:

... for the Final Warning to be effective in preventing re-offending, there must be sufficient incentive for young offenders and their parents to co-operate and complete the intervention programme ... further sanctions may be required ... any unreasonable non-compliance would be recorded on the individual's criminal record ... and that record might be taken into account by a court for any subsequent offence.

(Home Office 1997a, para. 65-68)

Therefore, the intervention programmes which accompany the final warning are imbued with a 'curious legal status'.¹⁴⁶ Although participation in the intervention programme seems voluntary, in reality it is not unless offenders want to risk judicial repercussions should they come before the court again. Indeed, at the point of agreeing to further intervention work with the YOT during the administration of the final warning, young offenders in my research were in every case reminded that non-participation could be used against them in the future and magistrates would look upon such non-participation unfavourably.¹⁴⁷ Kate Warner (1994) has likened such

¹⁴⁶ See Bottoms and Dignan (2004) p 99.

¹⁴⁷ Interestingly, Holdaway's (2002) research reported that two-thirds of final warnings had no 'citable elements' (that is elements which if not completed may be formally adduced in evidence in

extra penalties to 'double jeopardy.'¹⁴⁸ She argues that a court is forbidden from passing a more severe sentence because an offender has pleaded not guilty or has conducted the defence in a particular manner, and, therefore, similarly a court cannot justify increasing a sentence on the basis of a failure to complete a conference, or in this case a voluntary final warning intervention programme (Warner 1994, p 150-151).

This particular due process concern is especially relevant to the findings of my research. As noted earlier in this chapter, only three young people in the sample completed an intervention programme. However, my research found that the sole reason young people failed to complete an intervention programme is because one was either not offered or not provided by the YOT. Therefore, the question arises as to what happens to these young people if they find themselves in court again. Does their record indicate a failure to complete an intervention programme? Does the YOT make clear in the records that the failure was because no intervention was offered? These are questions which are worth exploring in more detail and further court-based or longitudinal research is needed. Final warnings effectively form a sentence and therefore require the appropriate due process safeguards.

Police power and the coercive nature of the police

Besides due process concerns, police led restorative justice is primarily criticized for giving too much power to the police. Chapter Two discussed how

future court proceedings) because, he argued, many YOT workers were uneasy both about the compulsory nature of the intervention programme and the citation of non-attendance in future court hearings. Holdaway, S. (2002) *A Study of the Final Warning Scheme Operating in 30 Youth Offending Teams*, Unpublished research report prepared for the Youth Justice Board. Cited by Bottoms and Dignan (2004) p 99.

¹⁴⁸ Double jeopardy refers to the danger of multiple conviction or punishment for the same act at the same or in successive trials (Warner 1994, p 150).

concern has arisen over police led schemes which concentrate wide ranging functions within a single agency, allowing the police to both investigate and adjudicate an offence thereby simultaneously assuming the roles of investigator, prosecutor, judge and jury.¹⁴⁹ Moreover, when this power is conjoined with the coercive nature of policing and 'cop culture', police led schemes may create obstacles to the successful implementation of restorative justice.¹⁵⁰ However, McCold and Wachtel (1998) argue that this concern is not only unfounded but based on a stereotypical vision of policing (p 108). Rather, they believe that policing has undergone a significant transformation towards a more problem solving approach which allows police led restorative justice to be successful.

Unfortunately, it appears as though authoritarian traditional cop culture is still present in general inside the police organization. Several of the young people included in this research made allegations of verbal and physical abuse suffered at the hands of their arresting officer. Indeed, this alleged misbehaviour by the police extended to their interactions with the young offenders' parents, as they too made complaints against the police.¹⁵¹ In one case (3CFW), the offender, George, and his mother accused the arresting officer of verbal abuse stemming from the young person's inability to read and write. George's mother complained:

The police officer who stopped him said nasty things to him because he couldn't write his name and didn't remember what his address is. [George] doesn't understand the world and can't cope with it. He didn't deserve to be treated like that.

In a similar case (6NFW), Simon and his mother complained that his arresting officer was unnecessarily mean, sarcastic and condescending. When Simon's mother went

¹⁴⁹ See Bottoms and Dignan (2004); Goldson (2000); Ashworth (2001); Roche (2003)

¹⁵⁰ See Hoyle et al (2003); Young (2001), Chan (1996)

¹⁵¹ Informally to me.

to pick him up from the police station, the arresting PC told her that Simon “had an anger problem and a drink problem and that he was a trouble-maker. Who is he to say that to me?!” Then, when leaving the police station, Simon said privately to his mother “I won’t be back here again” to which the officer interrupted, asserting “I think you will!” Simon’s mother commented, “I didn’t like the PC. His attitude was terrible! The way he talked to us it’s no wonder youth don’t respect the police. He owes us an apology!”

Interestingly, however, the results of this research suggest that young offenders and their supporters made a distinction between the general population of police officers who tend to exude more traditional cop culture values, such as the arresting police officer, and the YOT police officers who facilitated the final warnings. At the conclusion of the final warning, George’s mother commented on the difference noting that it was nice to have a police officer that listened and actually talked to George. Similarly, Simon and his mother made a distinction between ‘regular’ police officers and YOT officers. One young person illustrated this distinction well when he said: “[The YOT officer] was nice, unlike the other police officers who were really grumpy when I was arrested” (5NFW).

In only one case did a young person struggle to reconcile his own competing perceptions of the police. The young offender was confused by his interaction with the YOT officer in the final warning because the YOT officer was so different from the stereotypical police officer. In this instance the young person was therefore unable to answer whether or not the YOT officer had been on his side during the final warning: “Sort of ... because [the YOT officer] is a police officer she isn’t totally on my side. She’s nice and wants to help but she can’t really be on my side cause she’s

the police” (2NFW). This last comment highlights an important point of discussion. Despite the absence of traditional cop culture by those police officers performing final warnings, it is yet possible that cop culture could nevertheless affect the final warning process.

YOT police officers are technically part of the police force. It is possible that young offenders may arrive at a final warning with preconceived notions of the ‘police’, in a broad sense, based on previous personal experiences. Subsequently, young offenders could possibly be predisposed to distrust the YOT officer simply because that officer is a member of the police, therefore damaging the restorativeness of the final warning. Harry Blagg (1997), in discussing youth conferencing in Australia, questions the realistic prospects for conferencing in the case of Australian aboriginals who have experienced police discrimination in everyday life. Maxwell and Morris (2004) take the argument further to incorporate all those who are socially excluded. Even Braithwaite (1994) concedes that police led restorative justice may not be best suited to communities that historically have deep rooted levels of discrimination and distrust with the police.

Richard Young (2001), in his research on Thames Valley police restorative cautioning, found that not all police facilitators embraced traditional ‘cop culture’ values (p 221). Indeed, he comments that some police facilitators clearly adjusted their norms and practices to align more closely with restorative ideals. Nevertheless, Young points out that such normative shifts can be patchy and in need of constant reinforcement, particularly in the early stages of making such an ideological

transformation (2001, p 221).¹⁵² In only one incident during this research did I observe evidence of non-restorative police interaction. As mentioned in Chapter Three, the permanent YOT police officer on the North team left several months into the collection of data and, therefore, a temporary replacement police officer performed administrative final warnings outside of the YOT while the Thames Valley Police searched for a new police officer to be seconded to the YOT. This temporary officer, PC Jones, was at no point a part of the YOT, a distinction he was always keen to make clear. The following case study discusses the one final warning administered by PC Jones which I was allowed to attend:¹⁵³

I arrived at the police station early on the evening of the final warning. While waiting at the reception desk for PC Jones to arrive, three young men who had stolen a motorbike all arrived for their final warnings. Being told that PC Jones was not yet at the police station, the boys went out front to wait. Within several minutes, a police woman drove up to the station and immediately concluded that the boys looked suspicious. The police woman began to yell at the boys and subsequently grabbed one of them, forcibly pushing him past me into a questioning room at the police station. While being searched, the young man started to scream at the police officer. "I'm here for a final warning!! I'm here for a final warning!! What is this about? I'm here for a final warning!!" Hearing her son yelling, his mother, who was also waiting for PC Jones out front, began to alternately shout at and cry to the officer behind the reception desk.

Within ten minutes, PC Jones arrived at the police station and together with the female officer began to question the young man and his mother. The mother claimed to have lost her dog earlier in the day and, thinking she had seen him run past the police station, asked the boys to look for it while they were waiting. Neither PC Jones nor the other officer believed the young man and his mother. PC Jones shouted, "That's rubbish!" and proceeded to question whether the woman was even the boy's real mother, "I don't think you are even really his mum, are you?!", a suggestion to which the mother took great offence. After a half an hour of questioning, failing to have evidence of any misbehaviour, PC Jones decided to proceed with a group final warning of all three boys.

¹⁵² McCold and Wachtel (1998) conceded that early in the Bethlehem project there was a tendency by some officers to be authoritarian, a tendency which they admit cannot entirely be dismissed (p 108).

¹⁵³ As noted in Chapter Three, I was prevented by the officer from interviewing anyone who took part in this final warning. Thus, the only remarks I can make are in regards to my observations of the warning meeting.

As the final warnings started, the PC spoke in a contemptuous and abusive tone of voice towards the three boys and their mothers, often referring to them as 'trouble-makers'. At no point did he come across as someone friendly or someone who wanted to help these young men. He did not engage in a discussion with the young men but proceeded to sternly lecture them on being 'stupid' and their 'unacceptable behaviour for which they should be ashamed.' Even when one of the boys politely asked the simple question of why it had taken four months for them to receive their final warnings, PC Jones gruffly stated, "I was prepared to give an answer to your mother about that but I am not prepared to do so for you!" It was a fair question to ask and one which deserved an answer. However, immediately, PC Jones launched back into another verbal attack on the young men, telling them that their lives were 'going no where.' The tirade continued for two and a half hours.

Therefore, overall, my research suggests that 'cop culture' may not have changed as significantly as might be hoped or expected. Indeed, it seems as though traditional authoritarian police culture is still present within the police organization.¹⁵⁴ However, those police officers who make the transition out of the mainstream police service into Youth Offending Teams appear to embrace restorative practices and embody the forefront of ideological change from within the police.

Police led restorative justice in the UK

For the purposes of contemporary research in the UK, it appears as though there is a high level of support for police run schemes amongst offenders, victims and their supporters. Hoyle et al's (2002) research on restorative cautioning reported that the majority of people thought of the police as best-placed to facilitate restorative conferences for cautionable offences most notably because an authoritative response to offending behaviour is needed (Young 2001, p 204). In fact, only 6 per cent of participants expressed a strong disapproval of the police as facilitators (p 64). Cautioning was perceived as a legitimate response to first time offending only when accorded the appropriate degree of seriousness, formality and authoritarianism. This,

¹⁵⁴ See Chapter Seven for a more detailed discussion of this issue.

it was thought by participants, could be secured by using police officers as facilitators (Hoyle et al 2002, p 65).

The results from my research align with Hoyle et al's findings. Although participants were not directly asked if they thought it was a good idea for the police to facilitate the final warning or whether someone else would have been better, it is possible to discern participants' general attitudes about the police as facilitators by examining the responses to less direct questions. When young offenders were asked generally how they felt about the way the YOT police officer ran the meeting, not one person made a negative comment. On the contrary, all of the comments were positive, praising the YOT officer for being open, approachable and easy to engage in a comfortable conversation.¹⁵⁵ In fact, at no point in any of the final warnings included in this sample did the YOT officer do or say anything that the young offenders did not like. Rather, the majority (79%) of young people commented that the YOT officer said or did something helpful during the administration of the final warning. Most young people found the way the YOT officer spoke and/or the way the officer engaged in the final warning meeting to be helpful and encouraging. A typical comment by a young offender was: "She explained everything really well and helped me to understand what the final warning is about" (9NFW).

Further evidence that young offenders were satisfied with the police led final warnings has already been discussed in this chapter. As noted earlier, the majority (79%) of young people felt that the YOT officer was on their side and only one person felt differently. Typical comments included: "Yeah, [the YOT officer] had a

¹⁵⁵ As noted earlier in this chapter, the majority of participants felt at ease when talking with the YOT officer facilitating the final warning. Those who felt it was hard to speak with the YOT officer expressed that it was hard to admit that they had done anything wrong. It is likely that these feelings would be the same no matter who facilitated the final warning meeting.

positive view on stuff and was friendly and easy-going” (5NFW) and “Yes, the way [the YOT officer] talked to me and [that] he wants to do extra sessions with me. He wants to help me through this trouble” (5CFW). Moreover, all of the young people felt the process was fair; all believed that final warnings are a good idea; all felt the YOT was trying to help and support them; and all, save one, found the final warning meeting useful. If young offenders felt they were placed in a compromised position because of the police power over the final warning process, it is likely that these responses would not be so positive and instead would reflect discomfort with the relationship.

Is It Restorative?

In laying out the central aims of this thesis, Chapter Two made clear that this project seeks to do more than systematically evaluate the final warning scheme. Rather, this research endeavours to explore the potential grey area between restorative justice rhetoric and restorative practices, thereby gaining a better understanding of what restorative justice is within the context of everyday practice. Does final warning practice sufficiently incorporate a restorative approach or are politicians’ calls for ‘restorative processes’ in final warnings simply symbolic? By examining the different aspects of the final warning scheme, as has been done thus far in this chapter, it is possible to explore the meaning of restorative justice within this context.

This chapter suggests that, especially in relation to the final warning meetings, final warnings do appear to uphold certain restorative values and utilize restorative processes. First of all, young offenders expressly appreciated the empowerment the final warning process provided - the opportunity to speak, to be listened to, to be

respected, and to receive help. Moreover, young people appreciated the restorative manner in which YOT officers approached the final warning process; young people were especially perceptive to not only what the YOT officers said but also to the manner in which YOT officers interacted with them. Thus, this combination of empowerment achieved through deliberative discussion with young offenders about their behaviour, alongside the positive reinforcement of the self,¹⁵⁶ aided in solidifying the restorative nature of the final warning programme and prevented the entrenchment of a deviant identity.

In April of 2000, the Home Office issued a guidance which explicitly encouraged the wider use of restorative justice principles in the delivery of final warnings.¹⁵⁷ Thereafter, the Youth Justice Board made available training to equip YOT workers to deliver restorative warnings (Dignan 2005, p 121; Burnett and Appleton 2004a, p 43). It appears as though such training may impact on YOT officers and the quality of warnings they deliver. The only example of non-restorative, alienating behaviour exhibited during a final warning came from a PC who was not a member of the YOT. Therefore, while this research raises questions about how widely restorative principles have penetrated the police force, it is nevertheless clear that those officers who choose to make the transition into the YOT uphold restorative principles and processes as envisaged by the Home Office and the YJB.

¹⁵⁶ Chapter Two discussed the concept of the 'looking glass self', that is the concept of the self as constructed by the reactions of others around us. Therefore, how YOT officers interacted with young offenders affected their view of themselves.

¹⁵⁷ Home Office. (2000) *Circular Introducing the Final Warning Scheme*, London: HO. Further guidance was issued in 2002 which largely consolidated the original version. However, it also included further encouragement to adopt a restorative approach 'to make final warnings more effective and meaningful'. Home Office and Youth Justice Board. (2002) *The Final Warning Scheme Guidance for the Police and Youth Offending Teams*, London: HO.

Nevertheless, the restorative potential of the final warning programme can be increased. First, the YOT needs to find a way to better utilize interventions accompanying the final warning meeting. Second, the transparent enforcement of participation in an intervention programme by lightly veiled threats of harsher punishment in the future can potentially reduce the restorative nature of the final warning and associated interventions. Such threats may reduce the legitimacy of the final warning scheme in the eyes of the participants and, as a result, make them less likely to internalize the final warning and subsequently change their behaviour. The 'do it or else' mentality is at odds with restorative justice in which there is an emphasis on voluntary involvement as the basis for change and introspection. Therefore, it appears as though the Youth Justice Board is simultaneously pursuing two antithetical philosophies to the detriment of restorative justice. However, those young offenders in the sample who participated in an intervention programme were especially positive about their final warning experience and were vocal in their appreciation of additional assistance. If final warnings utilized voluntary interventions in 80 per cent of cases, as called for by the national standards, the restorative scope of the final warning programme would be extended even further.

Conclusions

Final warnings are an important part of the youth justice system. They are a prevalent criminal justice response to youth offending evidenced by the Youth Justice Board's 2003/04 Annual Statistics which indicate that 36 per cent of all pre-court orders are final warnings and 15 per cent of all pre-court, first tier community and

custodial disposals for young people are final warnings (2004g, p 54).¹⁵⁸ Moreover, the 2004 MORI Survey stated that young people who are caught offending are typically given a final warning: 41 per cent of young people in mainstream schools and 52 per cent of young people who are excluded (Youth Justice Board 2004h, p 38). The final warning is designed as an early criminal justice response to halt and reverse offending behaviour. Therefore, it is important that we examine and evaluate how final warnings currently function in practice, where the strengths and weaknesses of the programme lie for the young offenders.

Holdaway and Desborough in their research for the Youth Justice Board commented, “The offender, the offence committed and the victim¹⁵⁹ are central to the final warning. The intervention programme is at its heart” (2004, p 12). Unfortunately, the current final warning scheme has been unable to uphold several foundational elements of the programme. This chapter has demonstrated that aspects of the final warning remain problematic – in particular the failure adequately to provide intervention programmes and procedural safeguards for offenders - and these shortcomings raise questions about the success of the final warning programme.

Nevertheless, in spite of the deficiencies in the final warning programme, young offenders responded positively to the scheme. Young people saw the process as helpful, useful and fair for a variety of reasons but most especially because final warnings provided a chance to contemplate, discuss and change their behaviour: “Final warnings are good because the next step to court is really big. It’s a good idea to have something before that which gives you another chance” (7NFW); “It made

¹⁵⁸ These percentages are for males only.

¹⁵⁹ The place of the victim in final warnings is discussed in Chapter Six.

me realize my mistake and get on with it” (9NFW). In fact, young offenders’ responded so strongly to the programme that the demand by young people for additional help and support from the YOT exceeded the YOT’s limited resources.¹⁶⁰

The Youth Justice Board considers a restorative approach fundamental to reducing re-offending: “A restorative approach can make final warnings more meaningful and effective ... Research into the delivery of final warnings shows that the use of restorative processes reduces re-offending” (Youth Justice Board 2002a, p 19). Ultimately, the final warning programme, if improved, especially when used in conjunction with interventions, appears as though it can become an effective first encounter with the criminal justice system and has the potential to keep many first time offenders from continuing down the path of deviance. The final warning programme empowers young offenders, leading to high levels of satisfaction, and may potentially be correlated with lower levels of re-offending where intervention programmes take place. In order to ensure that the final warning programme achieves the goals of restorative justice, the scheme needs a greater investment of time and other resources from the government, from YOTs themselves as well as from researchers.

The next chapter evaluates referral orders as part of the youth justice response to stop and prevent offending behaviour. Like the final warning, the referral order is an important component in the youth justice artillery because it is designed for new offenders with the aim of curbing their offending behaviour. Unlike the final

¹⁶⁰ The Audit Commission’s (2004) nation review of the youth justice system likewise found that young offenders reported ‘disappointment over the lack of access to certain key services’ (p 75).

warning, the referral order specifically embraces restorative justice as a means of accomplishing its goal.

5. Referral Orders: Youth Offender Panels

... one of the most encouraging aspects of the referral order pilots has been the experience of the youth offender panels. Within a relatively short period of time the panels have established themselves as constructive, deliberative and participatory forums in which to address young people's offending behaviour.

– Tim Newburn et al 2002

The Labour Party, continuing its reformation of the juvenile justice system, introduced referral orders under the 1999 Youth Justice and Criminal Evidence Act. Unlike the 1998 Crime and Disorder Act and the final warning programme it established, the 1999 Act specifically sought to introduce restorative justice practices. The White Paper *No More Excuses* first outlined what would become the referral order, commenting that the proposal built upon 'principles underlying the concept of restorative justice' defined as 'restoration, reintegration, and responsibility' (Home Office 1997b, para. 9.21).

As discussed in Chapters One and Two, the referral order became the new primary sentencing disposal for young people between the ages of ten and seventeen pleading guilty and convicted for the first time by the courts. The order refers young offenders to a Youth Offender Panel (YOP) intended to provide a forum away from the formal court system in which young offenders, their family, and, where appropriate, victims can consider the offence, its circumstances, consequences and effects (Crawford and Newburn 2003, p 59). In addition, community members are invited to serve on the panel as an emphasis is placed on the importance of strengthening the offenders' ties to the community as well as the responsibility of the community to ensure the offender is reintegrated (Roche 2003, p 29). Alongside the final warning scheme and other major reforms to the youth justice system, the referral order also upholds the government's overarching aim 'to prevent offending by

children and young people,' as established under Section 37 of the 1998 Crime and Disorder Act.

This chapter explores the contemporary referral order within the context of the all important panel meeting. As noted in the quote at the start of this chapter, the panel meeting has the potential to be a forum in which to positively empower young offenders to think about, discuss and address their offending behaviour. The aim of this chapter is to assess the achievements of the panel meeting as well as the restorative nature of the programme. In particular, this chapter examines the position of the panel members who conduct the panel meetings and their interaction with young offenders.¹ In addition, it addresses other structural and external factors which affect the success of the referral order. The objective of this chapter, as with Chapter Four, is not simply the systematic evaluation of the referral order but rather a broader exploration of the meaning of restorative justice within the context of referral order panel meetings, focusing on the point of view of young offenders.²

Contradictory Results?

Similar to the findings on final warnings discussed in Chapter Four, young offenders' overall satisfaction with the referral order process was very positive. At the end of the order, when asked whether they thought the referral order was a good or a bad idea, the majority of young people felt that it was a good idea (70%) and

¹ Overall this research found minimal levels of victim participation. In only one case in the sample did the victim attend a referral order panel meeting. The place of victims within both final warnings and referral orders is examined in Chapter Six.

² In conjunction with the panel meeting, an important element of the referral order is the relationship between young offenders and the YOT officers assigned to their cases. It is the responsibility of the YOT practitioners to oversee the referral order, to provide frequent and continual contact with young offenders in between panel meetings, and to ensure the completion of any reparation programme agreed by the panel during the meeting. This aspect of the referral order is examined in Chapter Seven.

most claimed to have found the order helpful (61%). Moreover, all young offenders felt that they were treated fairly during the panel meeting.³ Young people generally experienced positively their interaction with the panel, with the majority (64%) feeling that the people in the panel meeting were on their side and a third (30%) feeling that the panel was, at a minimum, neutral; only two young offenders felt that the panel was against them. Similarly, most (77%) juveniles felt that the people on the panel helped and supported them.

However, the data tell a far more complex and interesting story regarding young people's feelings on referral orders. Alongside these positive responses are results which show a different picture, one which is far less encouraging. Interestingly, when offenders were asked questions about the impact of the referral orders on their feelings about themselves or their behaviour - that is when asked self-assessment questions – unlike with final warnings, their responses suggested a more neutral or negative experience. At the end of the referral order, when asked if they had changed since the first panel meeting, approximately half (48%) of young people said yes while the other half (44%) said no. Similarly, when asked if the panel members had helped them to feel differently about themselves, only little more than a third (39%) of young people responded yes while nearly half (48%) said no. As for the panel meetings themselves, half (54%) of the young people claimed the initial panel meeting did not make a difference to their behaviour and more than a third (39%) of young people did not think the first panel meeting was useful. Moreover, when asked at the end of the order what they thought about the panel meetings they

³ Refer back to Chapter Four for a discussion of legitimacy. Crucial to any innovative practice such as final warnings or referral orders is that they are seen as legitimate by those who take part. Evidence suggests that participants who experience a fair process are more likely to accept the outcomes as legitimate. See Tyler (1990).

attended, approximately two thirds made negative or neutral comments while only a quarter made positive comments: 30% of young people made a negative comment, 39% made a neutral comment and only 26% of young people made a positive comment.

TABLE 5-1 SUMMARY OF RESULTS: OVERALL SATISFACTION OF THE REFERRAL ORDER PROCESS⁴

Questions to Young Offenders	Yes	No
Do you think referral orders are a good idea?	16 (70%)	4 (17%)
Overall do you think your referral order was helpful?	14 (61%)	7 (30%)
Did you feel you were treated fairly?	33 (100%)	—
Did you feel the people on the panel were on your side?	21 (64%)	2 (6%)
Do you feel the people on the panel were helping and supporting you?	20 (77%)	1 (4%)

TABLE 5-2 SUMMARY OF RESULTS: SELF-ASSESSMENT QUESTIONS

Questions to Young Offenders	Yes	No
Have you changed as a result of anything that has happened since the first panel meeting?	11 (48%)	10 (44%)
Have the panel members helped you to feel differently about yourself?	9 (39%)	11 (48%)
Did the initial panel meeting make a difference to your feelings about your behaviour?	9 (35%)	14 (54%)
Do you think the first panel meeting was useful?	11 (42%)	10 (39%)

When asked if he had any last comments about referral orders after the final panel meeting, one young person (4NRO) summed up the gap between general

⁴ The percentages given for the results presented in tables 5-1 and 5-2 are based on the total number of cases for each set of interviews. Refer to Table 3-3. Also, the percentages in the tables do not always add up to 100%. The other responses were a combination of "Don't Know", "Don't Care", or "Sort of / Some what".

responses and personal experiences when he said “Referral orders are a good idea and they’re better than court ... but ... well ... it wasn’t that helpful for me.”⁵ The following sections explore these apparently contradictory data.

General Understanding of the Justice System

The first chapter of this thesis examined the contemporary historical roots of the youth justice system. In that chapter, it was argued that a strongly punitive undercurrent has persisted in the youth justice system for decades. Most prominently this punitive approach was embodied in the ‘short, sharp, shock’ treatment of young offenders and the ‘Prison Works!’ politics championed by Michael Howard. However, as discussed in Chapters One and Two, recent years have seen a growth in programmes grounded in restorative justice theory, the antithesis to a punitive philosophy, and, according to the Youth Justice Board, referral orders accounted for nearly one third of all youth court orders between April 2002 and 2003 (Youth Justice Board 2004e, p 1).

However, despite the growing prominence of restorative justice (and referral orders) within the youth justice system, young offenders and their supporters tend to hold older, fairly stereotypical notions of the purpose of the justice system. Maggie Lee in her study on cautioning reported research findings indicating that young offenders regard the judicial system’s principal task as punishment and control rather than care and treatment (1998, p 125).⁶ The referral order process is very different from stereotyped perceptions of the justice system, and it appears as though

⁵ Unfortunately, this young person could not be more specific as to why the referral order wasn’t that helpful for him.

⁶ See Morris and Giller (1977) and Parker et al (1981)

participants had difficulty reconciling their experience of restorative justice with more traditional, and widely known, views of the justice system. Indeed, this disparity between traditional views of crime control and restorative justice came across quite strongly in several interviews, as highlighted in the following case example (S19NRO).

After an initial panel meeting, the father of a young offender was quite candid in expressing his discontent with the referral order process. Indeed, he felt strongly that referral orders are a waste of time and are simply wrong. “It is not tough enough. They should be telling [my son] what he *will* do and not asking his opinion or trying to take his views into consideration. This is *not* justice. It is a waste of time for everyone involved!”

Clearly this father subscribed to more stereotypical notions of what ‘justice’ entails. Young offenders too had difficulty reconciling their understanding of ‘justice’ with their experience of the referral order process. The son of the man quoted above commented, “The main reason I’m here is to learn a lesson and be punished on the government’s money. Even though they don’t call it punishment, it is” (S19NRO).

It is possible that young offenders’ traditional (and arguably misguided) understanding of the justice system contributes to their high level of overall satisfaction with the referral order process. When speaking with young offenders over the course of their orders, it was interesting to observe the frequency with which they compared referral orders with prison, as if prison was the only alternative. Without prompting, almost a fifth of offenders drew a direct comparison between referral orders and prison during at least one of the panel meetings, making comments such as:

- * *It’s a good idea. It’s much better than prison! (2CRO)*
- * *Personally, it’s the only choice apart from jail so it’s a good idea. (9NRO)*
- * *It’s a good idea because you don’t go straight to prison. You get a second chance. (10CRO)*

When asked whether they believed the referral order was punishment or not, just over one third (38%) of young people said that it was at least a sort of punishment.

However, their answers to this question show the tension between their understanding of justice and their experience of the referral order:

- * *I suppose it must be [punishment] but I don't mind it. (10NRO)*
- * *You can't do [something wrong] and get away with it. So it's punishment but it's helping. (10CRO)*

Even when some young offenders did not experience referral orders as punishment, they nonetheless believed they deserved punishment: “[Referral orders] are a bad idea. It's not punishment. I should get punishment” (12NRO).

Therefore, if young people are entering the juvenile justice system with a fairly stereotypical understanding of what the justice system entails – i.e. prison – it is reasonable to infer that they might generally view the referral order experience positively.⁷ Regardless of whether or not the referral order impacted positively on them personally, young offenders are pleased with their experience because they conceive that it is better than an alternative form of more traditional punishment. Thus, the majority of offenders think the process is fair, good, and helpful and we find high levels of general satisfaction.

However, in contrast, the individual experience of the young person on a referral order is dependent on his personal interaction with the entire process. Therefore, all participants in the process – victims, panel members, offenders – and even the structure of the meeting itself become factors that influence the young person and shape his experience. The rest of this chapter explores these influences and their impact on young offenders' perceptions of their personal experience with

⁷ In fact, of those included in this research, half of young offenders and half of their supporters did not understand what a referral order was upon attending the first panel meeting. When speaking to the then Acting Chair of the Youth Justice Board, Charles Pollard, he indicated that such poor levels of awareness were a result of an under-resourced YOT. Chapter Seven examines this point more closely.

referral orders. As will be discussed in Chapter Six, this research found exceptionally low levels of victim participation. Therefore, the interaction between young offenders and community members who serve on panels becomes paramount to the success of the panel meeting. Since the panel members are essentially the only ones with whom young offenders interact during the panel meetings, it is important to first explore who panel members are and whether they truly represent the offenders' community.

Panel Members, Representatives of the Community

Chapter Two discussed how some restorative practices are in part based on the premise that the harm created by an offence extends beyond the victim and the offender to the wider community (Roche 2003, p 26). Thus, for some forms of restorative justice, central to the restorative process is the inclusion of people who represent 'the community', however defined. For referral orders, the community is represented by volunteers who serve as panel members. The belief is that the panel members can serve as a link between a professionalized system and ordinary citizens, creating a closer connection with young offenders than a magistrate (Crawford and Newburn 2002, p 489). Nevertheless, the best way to involve 'the community' in programmes like referral orders is by no means without difficulties. This problem is one that has been considered over the years by restorative justice advocates. Howard Zehr questioned, "Community is an elusive, oft-abused term. What does it mean and how could it be given reality in a restorative approach?" (1990, p 221).

Demographic composition of the panel members

According to the Home Office, of central importance to the referral order process is the recruitment of panel members who are “properly representative of the community they intend to serve” (Home Office 2000b, para. 1.4). The government believes that a representative panel is needed to achieve restorative justice goals:

A key objective of the introduction of youth offender panels is to engage local communities directly with preventing offending by young people ... The intention is that youth offender panels should be distanced far less from offenders and their families than might be the case with a panel solely of practitioners.

(Home Office 2000b, para. 1.2)

In my sample, the panel members were 92% white and 59% female.⁸ Other research has reported similar results. Crawford and Newburn (2002) found that most youth offender panels were comprised of people who were 91% white, 69% female, 68% over 40 years of age and 50% employed in professional or managerial occupations (p 483). A study by Biermann and Moulton (2002), on which the Youth Justice Board’s (YJB) Annual Statistics 2003/04 are based, found the panel demographics comprised 86% white, 65% female and 63% over the age of 40 (p 2).⁹ These statistics demonstrate that the majority of panel members are white, female, professionals over the age of forty (see Table 5-3).¹⁰

⁸ There were a total of 22 panel members who served on the panels I observed. However, two panel members served on 57% of the panels while other panel members only served on one panel. Therefore, the overall demographics of the panel members as a group are not necessarily representative of the demographics of the panel members who served on the specific panels I researched. Thus, I determined the demographics of those who actually served on each of the 33 panels and not of the total population of panel members. Interestingly, the demographic composition remained the same.

⁹ However, these statistics represent the demographics of the total population of panel members and do not, therefore, necessarily reflect the demographics of the panels. These statistics do not take into account that a small core group of volunteers, who may or may not be demographically different from the total population, might oversee the majority of panels.

¹⁰ Interestingly, this pattern is not simply limited to the UK. A study of board members in Vermont’s Reparative Probation Program by Karp et al (2004) found similar results. Board members were 97% white, 55% female, 86% over the age of 40, and 73% college educated or better (p 494).

Crawford and Newburn (2002) argue that these results indicate a risk of disjuncture between community representatives and the communities they seek to represent (p 483). However, Oxfordshire’s panel members are not entirely unrepresentative of the community; rather panel members are mostly representative of the population from which they are drawn. According to the United Kingdom’s 2001 Census, Oxfordshire’s population is 95% white, 51% female, and 34% between the ages of 40-69. However, while young people under the age of 20 represent 30% of Oxfordshire’s total population, anyone under 18 years of age is ineligible to serve on panels (Home Office 2005a). As a result, by excluding ineligible portions of the total population, the proportion of people between the ages of 40-69 rises to 53%.¹¹

TABLE 5-3 PANEL MEMBER DEMOGRAPHICS

	My Research	Crawford & Newburn 2002	Biermann & Moulton 2002	Census 2001
Ethnicity, White	92%	91%	86%	95%
Gender, Female	59%	69%	65%	51%
Age, Over 40	—	68%	63%	53% ¹²

Therefore, the demographic composition of the panel members does not significantly misrepresent the wider community when taking into consideration who is eligible to serve on referral order panels. Consequently, females and the over 40 age group are only slightly over-represented by approximately 10-15 per cent.

¹¹ This percentage is based on the total population between the ages of 20 and 69 given by the census. I recalculated the total population to include only those age groups eligible to serve on referral order panels. Therefore, I excluded the under 20 age group, which is not eligible to serve on panels, and the over 70 age group, which is highly unlikely to sit on panels.

¹² See previous footnote for explanation of how this percentage was calculated.

Defining 'community'

Crawford and Newburn (2002) are not incorrect in their concern that the representativeness of the panel is 'inherently problematic' (p 483). The question becomes not simply who *does* serve on panels but who *should* serve on panels; what 'community' population do panel members represent? In my research, little more than a third (39%) of young offenders felt that the people at the panel meeting were their 'kind of person' while slightly more (42%) young people felt the panel members weren't. Most respondents considered the panel members to be too old – as one young person commented "that old geezer in the corner" – or out of touch with the lives of the young people before them: "they don't know what it's like for me."

- * *Make it just for young people. Mostly it's just old people who say they understand when really they have no clue! They're like thirty years older than me. Times have changed. Their experience was different than what it's like today. (16NRO)*
- * *No [they're not my kind of people] cause they're old. I am more comfortable with younger people or people who know where I am coming from. (7NRO)*
- * *[Laughing] No, they are nothing like me. They're cold. (18NRO)*

Moreover, at the end of the referral order when the young people were asked what they thought of the panel members, just over a third (39%) responded positively while almost half (48%) of young people said the panel members were 'okay' or made neutral comments about how they were "just doing their job." However, simply because young people comment that the panel members are nice does not mean that they necessarily connect with them, as is evidenced by the several young people who claimed "I don't know them do I?"

McCold and Wachtel (2003) argue that community is a feeling of connectedness among a group of people not necessarily dependent upon geographic location. Indeed, the authors suggest that community defined geographically is 'a

mythical reflection of a romanticized past' (2003, p 295). Based on the findings of this research, it appears that the government is using 'lay person' and 'community member' interchangeably. Simply because the panel members are lay people does not automatically make them members of the young person's community, just as lay magistrates are not necessarily members of the community from which young offenders before them come. Indeed, a few of the young people were incredulous when asked about how they thought the panel members would react if they were to see them in their neighbourhood, commenting:

* *That's never gonna happen! (9NRO)*

* *They wouldn't be there in my neighbourhood would they! (6CRO)*

Clearly, this result is problematic if referral order panel meetings are to provide a forum in which a young offender listens to panel members, accepts their help in addressing offending behaviour and is ultimately restored and reintegrated into his community.

Selecting 'community' panel members

It is important that restorative justice's community volunteer population reflect the natural diversity of both the community and young offenders, including but not limited to race, class and socio-economic standing. Hence, some restorative programmes – the Toronto Community Council and the Vancouver Restorative Justice Programme – make particular efforts to select community participants who are of the same cultural and racial background as the offenders (Roche 2003, p 97). Only by sharing common characteristics and experiences with the offender can the community members work with an offender from a base of common understanding rather than from a position of trying to imagine what life is like for the offender

(Roche 2003, p 97). As Anne Phillips comments, “no amount of thought or sympathy, how careful or honest, can jump the barriers of experience” (1994, p 76).

Arguably, the community panel members who sit on the YOPs represent other similar community members with the time, resources and inclination to volunteer. Indeed, unpaid volunteerism excludes those people who cannot afford the time it takes to undergo training and convene meetings (Roche 2003, p 97). As a result, the implementation of restorative justice can be influenced by the establishment of a homogenized volunteer group not necessarily well equipped to deal with certain community issues (Wonshe 2004, p 259). Declan Roche proposes two means of addressing the problems of community representation. First he suggests that a more representative and inclusive basis for choosing community participants is by a random selection from the electoral rolls. Thus, similar to jury selection, access is gained to a wider cross-section of the population. However, Roche does admit that a drawback to such a scheme is that those community members obliged to attend may not be committed to reaching an agreement through deliberative accountability – nor, it can be argued, a restorative one (2003, p 96). Moreover, another problem with Roche’s suggestion is that, unlike jury members, it is necessary to train panel members to provide them with the skills required for their position. Therefore, in order to be cost effective, panel members would need to serve for a long period of time. It would be unrealistic to demand that those selected to serve as panel members must donate three hours a week of their time. In contrast, jury service is a one off event, normally lasting a maximum of two weeks.

Roche’s second proposal suggests that community representation could perhaps be boosted by paying people to serve on panels. Such a strategy, he argues, may provide a way to tap into parts of the population who are less likely to volunteer.

This proposal raises the question of whether an important aspect of community participation is that it is unpaid (2003, p 97). By paying volunteers, it is possible that the YOTs could attract people who cared more about receiving payment than about the outcome of the panel meeting. If the community is to have a beneficial impact on the process, it might be argued that individuals should volunteer for the right reason and not for financial gain.

While aspects of Roche's suggestions are problematic, he nevertheless raises an important point about the need to reassess and redesign how community panel members are recruited, selected for, and serve on panels. If young offenders view the panel members as 'old geezers' or people who have no real understanding of what life is like for them, it is likely that the panel members will be seen as figures similar to magistrates. Such a situation is troublesome for restorative justice because, as discussed previously in this chapter, one of the foundations needed to make the theory behind referral orders successful is a connection between the offenders and the community panel members, a connection which appears tenuous in light of the evidence above.

Of the young people who answered the question "Who would you pick for a panel member" half (56%) indicated someone who knew where they were coming from:

- * *Someone safe, someone who knows what I am talking about. (21NRO)*
- * *Someone who's been through something like this and changed. Someone who knows everything. Maybe someone who's been in prison and changed. (22NRO)*
- * *Someone who understands kids and why we act like we do. (11NRO)*
- * *People who are less authoritative who are not on their high horse like these ones. They have a rocket up their arse. (9NRO)*
- * *Someone like me. (16NRO)*

These comments suggest that young people want someone they can relate to on the panel. Since anyone under the age of eighteen is barred from becoming a panel member, actively recruiting and increasing the number of panel members between the ages of eighteen and thirty could be a good means of lessening the gap between young offenders and panel members, thereby improving the relatability of panel members. In addition, according to the YJB's Annual Statistics 2003/04, the demographic composition of young offenders on referral orders in the South East of England¹³ is 89% white and 79% male (p 87). Therefore, it would not be unreasonable to slightly over-represent male panel members to reflect the skewed gender difference in the offending population. These changes would allow the panel demographics to more accurately reflect the population of young offenders.

It is also interesting that some lay people who possess particular qualities which may connect them with young offenders at panels are not included, such as those with a previous criminal record. The Home Office states that "where an applicant can demonstrate that he or she does not present any risk of re-offending, a previous minor offence need not necessarily be a bar to recruitment (2002b, para. 5.12). Although such 'minor offenders' are not necessarily excluded, they are by no means encouraged to participate."¹⁴ The right ex-offender could be ideally placed to meet the needs of the young people quoted above. The ex-offender status affords that person a degree of authority young people are likely to respond to when engaging in a discussion about offending behaviour and life pressures. Obviously any potential

¹³ Oxfordshire is included in this region by the YJB in their Annual Statistics 2003/04.

¹⁴ In the United States, Vermont's Department of Corrections staff has expressed the need to mobilize a more inclusive group of board members for the Vermont Reparative Probation Program. It has been suggested that the current demographic difference between offenders and board members – see Footnote 10 – 'creates social distance, in which neither side understands the other' and the inclusion of welfare mothers, the unemployed and ex-offenders could help to create a better balance (Karp et al 2004, p 503).

panel members would have to be carefully screened but such 'experienced' panel members could be of great value to the panel process

This section has examined the idea of community in the referral order process and its role. Community participation in panel meetings is fundamental to the restorative philosophy specific to the referral order. However, Kay Harris points out that "laying out ways to operationalize the admirable notion of eliciting more active community involvement in the reconciliation process remains an elusive task" (1989, p 35). These results suggest that young offenders may not perceive panel members to be different than any other authority figure. The following section explores the dynamics between young offenders and community panel members, focusing on the participation of young people themselves in the panel meeting, a key element in the success of restorative justice and more specifically of referral orders.

Deliberative Participation By All

Returning for a moment to the core ideals of restorative justice, one of the most important aspects is the empowerment of the parties achieved through the meeting, discussion and participation of *all* three parties – the victim, the community, and the offender – which for the referral order takes place during the panel meeting (Roche 2003, p 30). The process should place the responsibility back into the hands of those involved, returning the conflict to the rightful owners,¹⁵ thereby shifting the control from the State to the individual citizen and local communities (Umbreit 1994, p 162). Indeed, as discussed in Chapter Two, deliberative participation by all parties is viewed as critical to the success of restorative justice. As Howard Zehr points out:

¹⁵ Christie's (1977) seminal work argued that the conflict between victims and offenders had been 'stolen' by the State.

Justice has to be lived, not simply done by others and reported to us. When someone simply informs us that justice has been done and that we should now go home (as victims) or to jail (as offenders), we do not experience that as justice ... Not simply justice, but the *experience* of justice must occur. [Emphasis in original]

(1990, p 203)

By respecting their ability to participate and make choices, the process works to empower, restore and reintegrate the parties.

Young offenders' involvement in panel meetings

While it is true that, for referral orders, young offenders are obviously present at the panel meetings, their presence does not automatically guarantee participation in the meeting. This research found a disappointing lack of involvement by young people in panel meetings, as only half (52%) of young people felt that they were fully involved in deciding what the contract should be while a third (36%) felt they were not involved at all.¹⁶ Frequent comments were:

* *I did what they told me. (3NRO)*

* *I had no say. I had to do what I was told. (8NRO)*

The following case illustrates how young people can be left out of the deliberative process (1NRO):

Matthew was brought into hospital for excessive drinking. While being treated at the hospital he behaved in an agitated, drunk and disorderly manner, scaring other patients and eventually assaulting two nurses. One of the nurses who had been assaulted consented to attend the panel. When it was time to formulate the contract, the panel failed to consult or involve Matthew. They asked the victim what she would like to see done and added what they thought was appropriate and then handed the contract to Matthew, saying, "Here, read it if you like and then sign it." At no point was Matthew involved in a conversation about 'repairing the harm done.' When later interviewed about the meeting, Matthew commented that he did not feel involved in deciding what his contract should be. He stated, "They wrote it and read it to me and I felt like I had to sign it or I would go back to court." While Matthew maintained that he had been treated fairly and that referral orders were a good idea

¹⁶ The remaining 12% felt they were only "sort of" involved in deciding what the contract should be.

‘‘cause it’s better than jail,’ he did not feel his referral order had been helpful for him nor did he think it would be beneficial for other young people. Although Matthew stated that meeting the victim had been very influential, he was significantly let down by the rest of the process, particularly his non-participation in the panel meeting, which contributed to his negative personal experience.¹⁷

In light of the fact that over one third of the sample did not feel involved in deliberations regarding the contract, it is not surprising that directly after the panel meeting when asked what they had agreed to in the contract, only a third (36%) of young people remembered all of the elements of the contract while a fifth (21%) failed to remember any. The remaining half (43%) forgot between one and three elements of the contract but remembered at least one element.¹⁸ Typical comments were:

- * *I don’t know what I just signed. I’ll read the contract at home later and find out. (6NRO)*
- * *I’ll have to read the contract to tell you what I agreed. (1CRO)*
- * *It doesn’t matter. I have to do it. (18NRO).*

It is difficult to argue that the young people were actively empowered, participating in reaching a beneficial outcome for all parties when only a few minutes after signing the contract the majority of offenders could not remember all elements of the legally binding document they just signed. Significantly, when the offenders were asked half way through their orders how they felt about the contract that was made, only a quarter (23%) felt positively which arguably reflects their disempowerment and marginalisation from the process.

¹⁷ Other aspects of Matthew’s case, specifically YOT culture and management, also significantly influenced his experience of referral orders and contributed to his disappointment with the order overall. This will be discussed in detail in Chapter Seven. Nonetheless, Matthew was specifically upset by, what he felt, was the coercive way the contract was created and forced upon him.

¹⁸ The elements of the contract vary on an individual basis since each programme is tailored to the individual young person. All that is required is reparation either directly to the victim or to the community.

A few YOT officers were aware of and concerned about young people's lack of involvement in the referral order process. In one instance, when speaking with the YOT officer before a review panel, the officer expressed concern about the case (2CRO). She told me that during a one-on-one session with this young offender, Dominic, he commented that his referral order was a duty, and therefore, he would do whatever the YOT officer asked of him. Concerned by these comments, the officer tried to talk to Dominic about his order. It became evident that Dominic did not feel involved in the order but rather saw it as a requirement he had to complete. Dominic's lack of attachment to the process worried the YOT officer. The involvement of the young person in the referral order, and in restorative justice more generally, is necessary in order to achieve success. Young people cannot view the programme as done 'to them' but rather need to understand it as a process done 'with them.'

Other research has reported similar results. Evaluations of New Zealand family group conferences found that when parents of young offenders were asked who they thought had made the decisions in the conferences, 19 per cent identified professionals alone as the decision-makers (Maxwell and Morris 1993, p 113). Newburn et al's (2002) findings in their early examination of referral orders found that although 75 per cent of young people felt they were not pushed into anything they disagreed with, 44 per cent agreed that they had just gone along with what the panel suggested for the contact (p 36). Therefore, although the young people went along with what the panel suggested, they were not necessarily actively involved in establishing the outcome of the panel. Although Bazemore and Schiff (2005) argue that inclusion is a fundamental value of restorative conferencing, the authors conclude that "it is possible to observe conferences in which the offender plays a very passive

role in formulating agreements even in the most ideologically and structurally inclusive conferencing models (p 196, 176).

Difficulties with panel members' participation

As discussed earlier in this chapter, community representatives were placed on panels to connect with young offenders and thereby make the process more meaningful to young people than they would otherwise experience in court. However, there was a general consensus among the YOT staff that the community volunteers are simply not equipped or skilled enough to be representing the justice system.¹⁹ YOT officers found the majority of panel members unable to engage young people and inept in coping with difficult situations. McCold and Wachtel warn that there is a danger in involving 'official' community representatives (2003, p 300). The authors claim that volunteers' role as direct stakeholders in crimes may not be legitimate and therefore they may have no real emotional connection to the crime or those affected by it (McCold and Wachtel 2003, p 300). Moreover, they suggest that community representatives may represent interests that are anything but restorative (2003, p 300), something evident in the following case example (21NRO₁).

In one panel, a new panel member Jane became increasingly frustrated with the young person because he was not fully participating, instead giving only very short responses to direct questions. As the panel member became more frustrated, she became louder to the point of nearly shouting; her tone became increasingly accusatory and on several occasions she directly accused the young person of lying; she spoke over the other panel member and the YOT officer; and finally, she made several inappropriate comments. In particular, when the young person's father stated that he had lost all faith in his son, Jane commented "I think your father has good reason to say this. I don't really believe that you will change." Then, subsequently, when the panel was drawing to a close, Jane heavily pressured the young man to accept participation in a group workshop on offending behaviour as part of his

¹⁹ Although panel members' inclusion in the referral order process is intended to represent the community, because panel members preside over the panel, they are, nonetheless, perceived by all as representing the justice system.

contract. Eventually, after considerable pressure, he responded, "If you want." The second panel member immediately responded, "It's not about what we want. It is about what you want to do and what we can agree to. There has to be agreement on both sides." However, Jane threatened, "You can agree to the contract or you can go back to court."

Jane's behaviour only served to alienate the young person, who after the panel commented to me. "That bitch, I didn't want to talk to her!" and "I wanted to tell her to shut-up. I flipped her off." Throughout the meeting this young person had found creative and subtle ways to raise his middle finger to Jane as a means of expressing his anger at a situation over which he felt he had no control and no say. This panel was very worrying because at the conclusion of the order, the young person named the panel members as the single worst part of the referral order process.

To be fair, this panel member was new and had only served on a few panels, suggesting that their training was inadequate.²⁰ Nevertheless, common sense should indicate that such negative behaviour on the part of the panel is simply not good practice. Therefore, it is also possible that this individual did not have the right personality to be a panel member. Unfortunately, the YOTs are experiencing difficulties recruiting a sufficient number of panel members and thus cannot afford to turn away volunteers.

It is necessary to ensure that the mediator of the panel is highly skilled because there are legitimate concerns about power imbalances in face-to-face meetings with young offenders, who often lack good communication skills, are less able to represent themselves, can feel too intimidated to speak and, importantly, may have little input on agreements (Kurki 2003, p 307). Therefore, it is important to have mediators who can ensure that an atmosphere is created in which each party is equally empowered and is able to contribute to the discussion. In observing the panel meetings, there were a significant number of incidents in which panel members proved unable to conduct panel meetings in a positive and empowering manner.

²⁰ The adequacy of panel members' training is discussed later in this chapter.

Panel members frequently over-stepped the remit of their position by extracting apologies and generally coercing young people into contracts rather than enabling a discussion between key participants.²¹ In one panel (8CRO₁), a panel member demanded, “You MUST show us that you regret the offence” to which the offender responded, “I’ll try.” Panel members need to be diligent in including the young person, especially as some researchers warn that offenders tend to accept passively any terms of agreement suggested since they recognize that any disagreement might be seen as uncooperative. Karp comments, “It is generally in their interest to be polite and agree with board members at every turn.” (2002, p 76).

Some panel members used panel meetings as an opportunity to exert power over young offenders as well as other participants in the panel. One panel member in particular, Mike, was especially controlling and domineering. No matter how a room was arranged for a panel he would always rearrange it, including moving a coffee pot on the table six inches. In one instance, Mike got into a heated argument with a second panel member who took offence to being treated like a secretary and prevented from participating in the panel. The panel member stated, “I am a panel member too and I am allowed to have a say! I have a right to express myself!” to which Mike responded coldly, “I am the leader. You are the sweeper”²² implying that the other panel member was to write the contract and keep quiet [FD0220]. In fact, it appeared as though Mike preferred to perform panels on his own. Even though at least two panel members are supposed to sit on every panel, when Mike

²¹ Again very similar results were found in Young and Hoyle’s (2003) study of restorative cautioning.

²² There were usually two panel members per panel. The YOT designated one as the ‘leader’ and one as the ‘sweeper’ in order to clarify which panel member was primarily in charge of the meeting. YOT officers felt the terminology should be changed to ‘co-facilitator’ whereby both panel members are equal.

found himself in situations where he was alone, he turned down offers of assistance from other panel members [FD0424].

More significantly, there was a tendency for panel members to dominate the proceedings.²³ After a series of back-to-back panels, the YOT officer gave vent to his frustration (F3NRO₁), “The panel was incompetent! They talked and talked and talked *at* [the young offenders]. [The young offenders] hardly said anything! The panel is supposed to be engaging them and they’re not. [The panel members] just come across as people who want to be magistrates and can’t.” Panel members themselves sometime became aware of their dominating approach as one panel members stated after a lengthy speech to a young offender, “Alright, no more lecturing from me” (14NRO_{2R}). Even the young offenders themselves noted this tendency, evidenced in the following comment (19NRO), “[The panel meetings are] more for them [the panel members]. They do ask you questions but it’s not so much for us as for them, to make them feel like they are doing something.” In this research, the majority of panel meetings tended to be dominated by panel members’ monologues, especially when young people found themselves unable or unwilling to participate fully in the panel meeting.

All of the panel members’ undesirable traits combined together in one particular case (11CRO):

The young offender, Tim, had been given a referral order for helping a friend to steal a girl’s handbag. Tim was a frightened twelve year old boy who was on the verge of tears for the entire panel meeting. As a result, Tim was very quiet and had difficulty answering questions. Nevertheless, the panel members spoke to Tim as if he were a much older youth arrested for a serious offence. The panel members made no accommodation for Tim’s age or state of mind. Moreover, during the initial meeting,

²³ Richard Young and Carolyn Hoyle (2003) reported similar results in their research on restorative cautioning. Specifically, they discovered that facilitators contributed on average half of all spoken words during a restorative session (p 286).

the panel was very accusatory when speaking about Tim's family, particularly his brother who was on a supervision order and who they stated was a bad influence. At the end of the initial meeting both the YOT officer and Tim's mother were infuriated with the panel members for their condescending behaviour throughout the meeting. The YOT officer commented, "I hate panel members being mean to my kids when they don't deserve it! ... They really treated him unfairly." The mother was so upset by what had transpired during the panel that she wanted to make a formal complaint against the panel members.

Unfortunately, there was no improvement at the review panel²⁴ with the panel members approach remaining the same. The panel fervently expressed concern about Tim's poor attendance at school until the YOT officer noted that she didn't think an 89 per cent attendance rate was bad. Furthermore, dismayed by Tim's quiet demeanour during panel meetings, the panel members demanded that Tim prepare a speech for the next panel meeting so that he would be forced to engage in conversation with them, a very intimidating prospect for any twelve year old. The panel leader asked the YOT officer if Tim spoke more in their one-on-one meetings to which she responded, "Yeah, because he *likes* me!"

Great skill is needed on the part of community volunteers to effectively engage young offenders, who may often be accustomed to passive roles within the traditional justice system (Bazemore and Schiff 2005, p 176). The YOT officers expressed frustration that panel members can be both strong willed and strongly opinionated and it can be hard to get them to take advice, especially in cases where the YOT officer felt the panel member was acting inappropriately. In light of panel meetings such as this, it is not surprising that YOT officers expressed a desire to get rid of all the voluntary panel members currently working for the Oxfordshire YOT, in favour of training a new group from scratch.

Even when panel meeting should have been easy and straight-forward some panel members had great difficulty maintaining a restorative atmosphere:

Jacob (5CRO) had received a twelve month order for affray. He did very well over the course of his order and managed to acquire a full-time job as a postman. Therefore, his final panel meeting should have been celebratory. However, rather than congratulating Jacob for addressing his offending behaviour and changing his lifestyle by obtaining steady employment, the panel expressed disappointment in his

²⁴ Refer to Chapter Three for an explanation of what a review panel entails.

decision to be a postman. The panel felt that he should have chosen to be a more highly paid builder and scolded him for not following their suggestion. The panel subsequently proceeded to ridicule Jacob's job, implying that he was lazy and stating that maybe becoming a postman was the perfect job because he would be done by noon. As Jacob continued to talk about his job, he mentioned that he was hoping to transfer his route to Headington where he lived. The response Jacob received from one panel members was, "Yeah, good luck trying to transfer before your first 40 years!" The panel members' comments were inappropriate and only served to alienate the young person at a time when it was crucial to be as reintegrative as possible. This panel had worked with Jacob for a year and, upon concluding the order, rather than focusing on the positive changes he had made in his life, the panel members instead chose to ridicule him. Not surprisingly, the YOT officer was very upset. After giving me a knowing look and the panel members a stern look, she bluntly interrupted them and proceeded to conclude the panel herself by giving Jacob the praise he deserved.

The exclusion of young people from what should be restorative processes is very troubling. In order for a process to be restorative, it is necessary that offenders are not simply allowed but encouraged to help in determining how to make amends. Only by empowering offenders in the process can they learn to take responsibility for their actions and, moreover, begin to learn to become responsible members of the community (McCold 1995, p 3). Thus, it is important that no participant should be able to exert excessive pressure as described in the examples throughout this section because such pressure destroys the restorative process and circumvents the experience of justice called for by advocates such as Zehr (1990). Likewise, the threat of initiating or reviving an alternative less desirable form of punishment applies pressure to offenders to agree to any demands made of them by other participants and again circumvents the restorative process.²⁵ If restorative justice is to be justified on participatory grounds, the offender must not be threatened or coerced. Rather than brute force, a process of negotiation can be vastly superior as it allows participants to

²⁵ As was done, for example, by Jane the panel member in the case (21NRO₁) discussed earlier in this section.

‘experience justice’ and contains its own form of mutual accountability. It is ironic that panel members could be less reintegrative than criminal justice officials.²⁶

The YOT officers did, however, acknowledge that some of the panel members were quite good. They noted that some worked hard to gain the respect of young people by interacting with them as though they were equals and by listening to what the young people had to say.

Case example: The benefits of discussion

Not all panel meetings discouraged young offenders’ participation. In fact, several panel meetings displayed benefits that discussion between young offenders and panel members can have, as the following case (11NRO) demonstrates:

Peter was given a twelve month referral order for burgling a house. During the initial panel meeting, tension arose between Peter and the panel as Peter did not want to agree to the contract suggested by the panel. Specifically, Peter did not want to take part in the group work session and asked the panel, “Is it a choice if I go? ‘Cause I won’t go if I don’t have to.” The panel leader responded by saying, “How can we assist you in not offending again? You knew what you were doing [burgling a house] was wrong and you still *chose* to do it. You are making a choice now.” Peter then asked again, “That is what I asked, is it a choice to go because if I have to then it’s not a choice at all.” Nevertheless, the panel continued to talk to him about all of the choices he had in his life, choices he had already made and choices he could make from here to make things better for himself. In the end, Peter agreed to all of the elements in the contract that the panel had suggested.

It is true that if the panel members perceive an element of the contract necessary the young offender has no choice but to agree or to go back to court. Therefore, in some regards a discursive process such as the one described above is illusory because Peter in fact had no choice. However, there is a subtle distinction to be made between coerced agreements based upon open threats²⁷ and those based on constrained choice. By engaging Peter in a discussion aimed at making him think critically about his past behaviour and what can reasonably be expected of him to make amends, the panel got Peter to agree to the contract without overt coercion. In fact, in this case, Peter felt contented with the choice that he made. When interviewed afterwards, Peter said that

²⁶ This chapter will later discuss whether community panel members are best placed to serve as mediators in referral order panel meetings or whether trained professional mediators would better uphold restorative values.

²⁷ Such as in the case (21NRO₁) noted earlier where panel member Jane threatened “You can agree to the contract or you can go back to court.”

he felt that he had been fully involved in agreeing the contract because “I made a choice. I was given a choice and had to choose what I wanted to do.” When asked how he felt about the way the panel members ran the meeting, Peter said, “I thought it’d be worse. I thought it would be all lectures. At no point did they lecture me.” Moreover, he felt he had been treated fairly in the panel meeting, “They didn’t pressure me or shout at me. I could say what I thought.” Peter felt the panel meeting was a good idea because “it is a step forward.”

Thus, a discursive process highlighting the choices, albeit constrained choices, young people can make proved a beneficial means to achieve a positive result: Peter agreed to the contract and felt contented with the process. Indeed, in every case where the word “choice” was used during a panel, the young person commented on it afterwards and always felt they had actually been presented with a choice.²⁸

The evidence presented in this section calls into question the restorative nature of the majority of panel meetings as they are presently functioning. For the panels to meet the standard principles of restorative justice the young offenders must be *actively* engaged in the process. However, this ideal meeting is not necessarily taking place in a significant number of cases. Rather, it seems as though many panel meetings have fallen prey to panel members who are unable to conduct the meeting in such a way as to allow a fully restorative and reintegrative process to take place. The participation of the offenders themselves is designed to be at the heart of the restorative and reintegrative process. Therefore, it can be of little surprise that, in instances where young people are excluded from participation in the panel meeting, young offenders come away from the referral order process with a less than positive personal experience.

Thus far, this chapter has discussed the theory behind referral order panel meetings and how that theory is currently playing out in the actual meetings. The chapter has examined the roles of the parties in the restorative process and how these

²⁸ Arguably Peter could have succumbed to the panels wishes because he decided that simply cooperating, although he didn’t want to, was easier than what would happen if he continued to disagree. However, this is a larger question about restorative justice which is addressed later in this chapter.

roles can impact on both the process itself and the outcome of the referral order, particularly on the experience of the young offender. Nevertheless, there is another vital element, the panel meeting itself. The next section explores how the organization and efficiency with which the panel meetings take place can influence the referral order experience.

The Panel Meeting Itself

Restorative justice theory maintains high expectations for the achievements of practice. Advocates argue that restorative practices can tackle the consequences of offending behaviour, the causes of offending behaviour, and have the potential to reintegrate offenders into their community, rebuilding stronger community bonds. Therefore, it is reasonable to infer that for panel meetings to be successful, the panel members and young offenders need to spend a reasonable amount of time interacting with one another, especially given that usually they have not met prior to the panel meeting. As discussed in Chapter Two, one criticism of restorative justice is that high expectations are difficult to meet given the amount of time young offenders are actually involved in restorative programmes. Restorative processes require an investment of time, either in terms of the number of times young people meet with those who are supposed to be supporting them or in terms of the length of those meetings.

Frequency of panel meetings

As mentioned in Chapter One, the panels only meet once every three months. Therefore, for a three month referral order, the panel convenes only twice, once at the initial meeting and once for the sign-off; for a longer referral order, the young

offender meets with the panel at least three times. This research found that 76 per cent of the referral orders were six months or shorter, thereby convening a maximum of three times: 40 per cent of the sample was comprised of three or four month orders, thus only meeting twice; and 36 per cent of the sample was comprised of five or six month orders, thus meeting three times.

TABLE 5-4 LENGTH AND FREQUENCY OF PANEL MEETINGS

Length of Order	Percent of All Orders	Number of Times the Panel Theoretically Convenes
3 or 4 Months	40% (13)	Twice
5 or 6 Months	36% (12)	Three
7 or 9 Months	15% (5)	Three or Four ²⁹
12 Months	9% (3)	Five

Moreover, a quarter of the referral orders between three and six months long had either no review or no sign-off meeting. Indeed, almost one quarter of the orders that were either three or four months long had only one panel meeting, and one quarter of the orders that were either five or six months long had either no review or no sign-off meeting, therefore convening just twice.

TABLE 5-5 CASES SIX MONTHS LONG OR LESS WHICH MISSED A MEETING

Length of Order	Cases Which Missed a Meeting	Number of Times Those Cases Actually Convened
3 or 4 Months	23% (3)	Once
5 or 6 Months	25% (3)	Twice

Total = 24% (6)

²⁹ A seven month order will generally meet three times whereas a nine month order usually convenes a total of four times.

Despite the value that panel meetings have for young offenders, the question arises of just how much significance can be placed on these meetings. Arguably, convening as a panel only two or three times over the course of several months is not enough contact between the parties to achieve restorative justice goals and/or reduce offending tendencies.

Offenders are not legally required to attend the final sign-off meeting. Both YOT officers and panel members expressed frustration with this situation as they felt that part of the restorative process necessitates the interaction which occurs in the final meeting where the offender can be congratulated for successfully completing the order. However, of slightly more concern is the fact that some review panel meetings did not take place. In these instances, the young person did not turn up to the meeting and the YOT officer together with the panel members decided that the young person had done a good job and therefore did not need to meet with the panel. This reaction suggests that YOT officers and panel members themselves do not understand the philosophy behind the panel meeting nor do they understand the importance of these meetings. If the YOT and the panel members do not comprehend the significance of the panel meetings, how can we expect young people to find them beneficial?

Length of panel meetings

A second concern regarding panels involved the length of the meeting. Whilst the initial panel meetings usually lasted for 45-60 minutes, which seems to be sufficient time in which to accomplish the restorative goals of the meeting, the panel meetings after the initial meeting lasted for an average of only 10 minutes, hardly enough time in which to adequately discuss the offender's behaviour and progress. In these meetings there was generally very little discussion, seeming little more than a

chance for the young persons to 'check-in', rather like offenders on police bail. One young man (11NRO) noted, "There is not much to them. It's only about five minutes to see how you are doing and make sure you are staying out of trouble." Indeed, several young people called the panel meeting a 'check-in,' making comments such as (13NRO) "All they did is quickly ask how I'm getting on. It was short, only ten minutes. It's just a check-up, that's all." In one particular instance, even the YOT officer was very upset about the lack of discussion in a review panel meeting. In this case, the young person was on a twelve month order and had experienced on-going difficulties both inside and outside the home. However, he was settling down and had been steadily employed for several months so the panel leader talked for approximately five minutes about how everything in the report indicated he was doing better and then sent the young person home, without asking him about the difficulties he was still experiencing. Indeed there was no discussion of anything significant. The YOT officer commented (FD1016), "If I were Jon, I'd be really pissed off. I'd feel like it didn't matter what I did because we wouldn't talk about it. Where was the praise?! He's held down a job and [the panel leader] didn't even mention it. He didn't talk about Jon's move away from his offending behaviour. If I were his parents, I'd be really upset if I'd left home for that. What's the point really?"

For the most part, the final panel meetings tended to be even shorter than the review meetings, lasting on average for 5-10 minutes. Most final panels consisted of the panel members saying a brief well done and don't do it again. Excluding the initial panel meetings, only two meetings out of all the review and final meetings lasted longer than 15 minutes.

The panel meeting should be fundamental to the restorative justice process. Arguably one of the reasons that young people are not having positive personal experiences with referral orders is because the panel meetings are too infrequent and too short to make them important to the young people. Indeed, young people expressed frustration over both the frequency and length with which the panel met commenting:

- * *I've only seen them once. How can they help me?! (9NRO)*
- * *The panel meetings were a waste of time. They were so short and we never talked about anything. I don't see the point! (5NRO)*

Even the most reintegrative of meetings cannot “magically undo the years of social marginalization and exclusion experienced by so many offenders” (Morris 2002a, p 605). For these panel meetings to have the impact which restorative justice theory claims they can, both in terms of tackling offending behaviour and reintegration into the community, the panel meetings themselves need to be bolstered. The review and final panel meetings should last longer than 5-10 minutes and should allow for more active discussion involving the young person. A simple mechanistic ‘check’ process is by no means enough in itself.

This chapter has so far explored a variety of factors which have influence over young people’s experiences of referral order panel meetings. However, in addition to what takes place during a panel meeting, the data also suggest that there is an outside influence which can affect young people’s personal views of the referral order process. The next section examines how young people can become predisposed to hold a particular view of referral orders even before the order begins.

Predisposition to Negativity

This research found that young people’s experiences of referral orders are not necessarily reliant solely on their own personal experience, but rather young people can be influenced by friends or family who previously received a referral order. The sample was divided into two groups: those who had no prior contact with someone on a referral order hereafter called “No Prior” and those who had prior contact with someone on a referral order hereafter called “Prior.” Within the sample, 21 per cent of young people³⁰ fell into the Prior category, and interestingly, they were much more likely to hold a negative opinion of referral orders.³¹ We find that 35 per cent of No Priors felt they did not change as a result of the referral order process. In contrast, 88 per cent of Priors felt they had not changed.³² Similarly, 53 per cent of No Priors thought that referral orders would be beneficial to others; again, in contrast, none of the Priors felt the same way.³³

TABLE 5-6 THE ATTITUDES OF THE NO PRIOR AND PRIOR GROUPS REGARDING REFERRAL ORDERS

	No Prior	Prior
Felt they did NOT change from the referral order	35%	88%
Felt referral orders would be beneficial to others	53%	0%

³⁰ This percentage is equivalent to seven cases. Thus the analysis that follows in this section is of these cases.

³¹ This research did not specifically ask participants if they knew someone who had previously gone through a referral order. These percentages are based on comments young people made about friends or family in answering other questions. This percentage may not be an accurate representation but still provides a basis for discussion.

³² This percentage excludes two young people who never had a final panel meeting and were therefore not asked this question.

³³ None of the Priors claimed that referral orders would be beneficial to others. However, 40% noted that whether the referral order was beneficial or not depended on the individual young person. These percentages also exclude two young people who never had a final panel meeting.

Clearly there is a significant difference in the attitudes of those who have heard about referral orders through friends and those who have not. Therefore, the question arises as to why and how prior contact with someone who has had a referral order could make such a difference in the attitudes of young people.

It is reasonable to assume that someone who knows a friend or family member who has been through a referral order previously will have spoken with that person about his or her experience while on the referral order and/or after completing it. Earlier, it was noted that many young offenders are unaware of what referral orders are before beginning them.³⁴ Therefore, it is not unreasonable to assume that, for those who have a friend or family member who already experienced a referral order, their experiences will comprise most, if not all, of their knowledge about referral orders upon beginning their own order. Moreover, earlier this chapter also established that a significant proportion of the general sample of young offenders gave negative or neutral responses to questions about the personal impact of the referral order on them. When speaking with others about the referral order, young people will recount their own personal experience and not an overall general concept of whether referral orders are a good idea or not. Therefore, despite the fact that the majority of young people agree that referral orders are a good idea in principle, a substantial proportion who have experienced a referral order are likely to tell others about their more neutral or negative personal experience.

This research collected data which established what young people themselves would tell their friends about referral orders after having completed them. What the data show is that one quarter (26%) of the general sample claimed that they would tell

³⁴ Of those included in this research, half of young offenders and half of their supporters did not understand what a referral order was upon attending the first panel meeting.

their friends something negative about the referral order while half (52%) of the general sample claimed they would tell their friends something neutral about referral orders, such as “Just do it and get it done.” However, a closer examination of the opinions of those who answered neutrally indicates that a significant proportion had negative experiences with referral orders as nearly half (42%) made a negative comment about the panel meetings they attended. Therefore, it is reasonable to infer that these negative opinions about the panel meetings would come up in a conversation with friends and family. All Priors commented that their contacts had spoken about referral orders negatively, making comments such as:

- * *I've had lots of friends who've had them and they all think it's crap and I do too! (18NRO)*
- * *[My friends] have had them and think they're a waste of time. [6CRO]*
- * *[They] thought it was a pain in the ass and didn't help you in any way. They told me not to bother or worry. (9NRO)*

Thus, we know that a significant proportion of young people are speaking negatively with their friends and family about referral orders.

This section has demonstrated that there appears to be a pattern in which young people are predisposed to think negatively about referral orders, with damaging effects on the referral order process. In light of these results, it is reasonable to suggest that Priors were less likely to go into the referral order process with an open mind and more likely to condemn the process from the start because of what they had been told to expect by friends and family, resulting in an overall higher percentage of negative experiences. Indeed, this predisposition is so strong that the young people who had prior contact with someone on a referral order thought more negatively about the concept of referral orders as a whole: 82 per cent of No Priors believed that referral orders are a good idea while only 29 per cent of Priors similarly

thought referral orders are a good idea. One of the fundamental principles of restorative justice is that *all* parties must be willing actively to engage in the process. Through a negative predisposition to referral orders, Priors never gave the process or themselves a chance to make referral orders work. Therefore, improving the referral order process so that all participants have a mutually beneficial experience is of great importance not only for the individuals involved but also for future cases and the reputation of referral orders among young offenders.

Is It Restorative?

In laying out the central aims of this thesis, Chapter Two stated that this research endeavours to explore the potential gap between restorative justice rhetoric and restorative practices, thereby gaining a better understanding of what restorative justice is within the context of everyday practice. Do referral orders sufficiently exhibit a restorative approach or do they simply serve as another way in which this government can claim that it is introducing restorative measures into the criminal justice system?

This chapter suggests that the referral order panel meeting does not obviously uphold the values of restorative justice. While young offenders were generally positive about referral orders overall, their response to the panel meetings was much more neutral or negative: as discussed at the beginning of this chapter, half (54%) of young offenders felt the initial panel made no difference to their behaviour; over a third (39%) did not find the initial panel meeting useful; when asked at the end of the order what they thought about the panel meetings they attended, two thirds (69%) of young offenders made neutral or negative comments about the panel meetings; and half (48%) did not feel that the panel members helped them to feel differently about

themselves. In particular, there are two primary areas which detract from the restorative potential of the referral order panel: the use of community members and the short, infrequent panel meetings.

The theory supporting the referral order panel meeting claims that community members are involved in restorative processes, and specifically referral orders, for two reasons. First, the harm created by an offence extends beyond the victim and the offender to the wider community (Roche 2003, p 26). Second, the “intention is that youth offender panels should be distanced far less from offenders and their families than might be the case with a panel solely of practitioners” (Home Office 2000b, para. 1.2). However, this chapter has suggested that in reality panel members are not necessarily more closely linked to young offenders. In fact, the majority of panel members are from a different gender, age, and professional class from young offenders, differences of which young people are all too aware. Moreover, this research found a worrying level of domineering and coercive behaviour exhibited by panel members during the referral order panel. Therefore, the question is raised as to whether community members are best suited to fulfil the position of mediator. Would referral orders be improved if they utilized professional mediators, akin to New Zealand’s Family Group Conferences?

Some have argued that although professionals may possess the skills to form positive relationships with victims and offenders, their status as paid professionals reduces their ability to provide social support and social control.³⁵ Karp et al suggest that community volunteers are important because they are just that, unpaid volunteers. The authors comment that “board members ... believed that when their

³⁵ Karp et al (2004); Braithwaite and Mugford (1998); Bazemore (2000); and Pranis (2001).

interventions were successful it was because they were not 'getting paid', that they more effectively conveyed a sense of concern or care" (Karp et al 2004, p 505-506).

However, in light of the findings from my research, I must disagree.

Professional mediators would be no more distant to young offenders than community members, but professionals would be able to maintain the informal and positive atmosphere appreciated by young offenders and might be less likely to be domineering or disrespectful. Effectively, the members of the panel have no training in criminal justice. The official programme of training requires only six full days plus one extra day for those who will sit as panel leaders (Crawford & Newburn 2002, pp 482), arguably hardly enough time to become sufficiently acquainted with the restorative philosophy and values required for such a position of responsibility. Unless the Youth Offender Panel members have prior knowledge or training in criminal justice, they are unschooled in criminological and legal theories relating to juveniles and therefore may not have the necessary skills required to work with such young people. Young offender's comments about the panel meeting reveal that what they appreciated most was not the presence of community members per se but rather the informal atmosphere of the meetings and being treated with respect:

- * *It was a nice atmosphere. I like the couches and the room. (3NRO)*
- * *They were relaxed and easy to talk to. It was good. (5NRO)*
- * *It's better than court. I have to listen to the solicitor talk in court and here I get to have my views. (19NRO)*
- * *They were being nice, not like court 'cause the court doesn't care; they want you in and out. (14NRO)*
- * *It was comfortable. I expected it to be different, a room full of men in suits looking down on me. (5CRO)*
- * *It was nice the way they spoke to me, talking properly and not treating me like a child. (10NRO)*

* *The way they treated me. It's not like anyone else. (6CRO)*

The complete removal of community members from the referral order process is not necessarily the best way forward. Nevertheless, it is necessary to take steps to lessen the gap between the theory of what community members should bring to referral orders and the reality of their presence in the panel meeting. Theoretically community members can make strong contributions to the referral order process as panel members. However, the reality - relatively untrained lay individuals who are not actually members of the young offenders' direct community - does not inherently provide any benefit to the process and could potentially do more harm than good. Either panel members should be much more rigorously trained and monitored, removing those who display domineering or coercive traits, or professional mediators should take over the panel members' role, relegating community members to a less authoritative position in the panel.

Compounding the difficulties with panel members and panel meetings, another aspect of the referral order process which hinders its restorative potential is the brief amount of time that panels meet with young offenders. Not only do panels meet infrequently, once every three months, but the panel meetings themselves are very short. In a typical example, Ethan's (12NRO) review panel meeting lasted only a few minutes. Ethan had a good progress report from the YOT so the panel simply told him 'well done' and then asked him if they could help him in any other way. When he said no, the panel concluded. A meeting like this is perfunctory and not restorative. Moreover, with such short meetings, it is exceptionally difficult for community members to fulfil their role of building closer connections with young offenders, and they do not, therefore, obviously retain an advantage over professional mediators. Since the attitude, approach and abilities of panel members are paramount

to creating a restorative panel meeting, it is essential that these issues be address by both the YOTs and the Youth Justice Board.

Another question raised by this chapter is whether panel meetings can be restorative when technically young offenders may have little choice but to agree to a contract. Consent, however, is a complex matter. In Peter's (11NRO) panel meeting (discussed earlier in this chapter) he initially did not want to agree to take part in a group work session but was eventually persuaded by the panel. It might be argued that Peter had no choice but to agree to attend the group work session, and therefore the process was not restorative. However, I would disagree. By speaking calmly with Peter and encouraging him to take responsibility, the panel was able to get him to agree to the contract without feeling that he had been forced. The discursive process achieved the same result as a coercive process as Peter signed the contract, but with very different results; Peter felt the panel meeting had been fair, and he was contented with the process. Moreover, nearly all of the panel members allowed young offenders some latitude in rejecting suggestions for the contract. For example, one young offender (5NRO) was allowed to reject the suggestion that he write a letter of apology to the victim. In the ensuing discussion the panel pointed out that they were not going to make him do something that he did not want to do, and they asked him to instead come up with an idea of how he could make amends to the victim or the community. In another case (6CRO), as the panel began to discuss what could be included in the young person's contract, a panel member stated, "We want you to be a part of the process. It is not for us to just tell you what to do. This is different than court." The panel encouraged the young person not to be afraid to speak out and to make suggestions of how he could repair the harm he had caused.

Not every meeting in every referral order can be expected to be fully restorative. However, overall, the referral order panel meeting is not obviously restorative. The success of the panel meetings depends heavily on the skills of the community members, and this chapter has discussed the problematic nature of their role as mediators. Nevertheless, one cannot deny that young offenders more generally appreciate the referral order as approximately over two thirds (70%) thought it was a good idea and another two thirds (61%) found it helpful. However, it is possible that this satisfaction derives from not from the restorative potential of the order but rather from its more diversionary roots. Simply because a programme is not perceived as stigmatizing does not automatically make it restorative.

Conclusions

Chapter Two noted Kathleen Daly's warning that it is naïve to assume there will be no gap between theory and practice, and as demonstrated in this chapter, we have seen that there are indeed gaps. Although some researchers question whether or not the values of restorative justice can be translated into a practical reality, restorative justice and referral orders are nonetheless a positive development for the youth justice system.³⁶ The majority of young people agree that referral orders are good, helpful and fair. Moreover, a third (30%) specifically mentioned that referral orders are better than court or more traditional punitive justice measures such as prison.³⁷ However, this research shows a clear discrepancy between positive overall

³⁶ See Levrant et al (1999) who describe restorative justice as 'an unproved movement that risks failure,' claiming that its appeal 'lies more in its humanistic sentiments than in any empirical evidence of its effectiveness' (p 16); or Miers (2001) who states that restorative justice 'skeptics have much to be skeptical about' (p 88).

³⁷ No direct question was asked to specifically target this opinion. Rather this percentage is based on comments young people made with regards to other questions on the interview schedule.

assessments of referral orders and the personal experiences of young people on referral orders.

Although restorative justice has a long history, its modern format, particularly referral orders, is a relatively recent development and more time is needed for its values to translate into good contemporary practices. What this chapter shows is that the panel meeting and the interactions that take place within it are of paramount importance to the referral order process. At present, the all important panel meetings are falling short in several key areas: panel member representation, training, approach and attitude; as well as the amount of time young offenders spend with the panel. Therefore, it is necessary for the Youth Justice Board and the YOTs to pay closer attention to how the panel meetings are conducted because such failures can be damaging to young offenders as well as the system as a whole, particularly when young people have negative experiences which they discuss with their friends. Nevertheless, that young people are able to recognize that referral orders are a good idea and potentially beneficial to the youth justice system is encouraging and a step forward for restorative justice. Referral order panel meetings have the potential to be an important and effective component of the youth justice system once the current problems are addressed.

Another important aspect of the restorative process which has been alluded to thus far is the involvement of victims in restorative practices. The next chapter looks in depth at victim participation in both final warnings and referral orders.

Therefore, this percentage is not necessarily totally representative but nonetheless provides a point for discussion.

6. Victim (Non)Participation

Restorative justice ... to see the goal simply as crime reduction impoverishes its mission.

-John Braithwaite 2003

Until fairly recently, victims were the forgotten actors in the criminal justice system; expected to act as witnesses for the prosecution, but provided with little information about, and no decision-making in, the criminal justice response to their offence. Over the latter half of the twentieth century, a variety of social and academic factors combined giving rise to a greater attention to victims in the criminal justice system.¹⁹⁸ Yet, it is only over the last two decades that the government has been persuaded to implement measures to help victims. Standards of services for victims were first established in the Victims' Charter of 1990 and the message was subsequently reinforced by the publication of other statements of standards of services for victims¹⁹⁹ (Zedner 2002, p 435). However, not until the rise of restorative justice in the last decade have victims had a legitimate means of influencing the State response to offences. Whilst the 1990s provided victims with the opportunity to find out information about their case and to tell decision makers how they have been harmed by the offence, restorative justice brought about the only genuinely dialogic, participatory approach.

To return briefly to the concept of restorative justice, as discussed in Chapter Two, several of the central aims and values are: the empowerment of all parties

¹⁹⁸ These factors are discussed in more detail in the following section.

¹⁹⁹ These statements include the Crown Prosecution Service 'Statement on the Treatment of Victims and Witnesses (1993), the 'Court Users' Charter (1994), the Report of the Royal Commission on Criminal Justice (1993), a second Victims' Charter in 1996, 'A Review of the Victims' Charter' (2001), 'A New Deal for Victims and Witnesses: National Strategy to Deliver Improved Services' (2003), and the statutory code of practice for victims to be implemented in December 2006 as designated under the Domestic Violence, Crime and Victims Act 2004.

involved; participatory and deliberative processes; and repairing the harm caused by the offence. In particular, the inclusion of the victim is held to be of great importance as the interaction between victims and offenders is at the heart of restorative processes (Hoyle and Young 2002, p 527). This encounter is designed to achieve a number of goals. First, the meeting forces offenders to become directly accountable for the consequences of their actions (Crawford and Newburn 2003, p 184). Simultaneously, these meetings provide young offenders with the chance to explain their actions, make amends, and, moreover, may help offenders to better understand the effects of their actions (Crawford and Newburn 2003, p 184). Second, the victim-offender meeting can increase victim satisfaction. The meeting provides an appropriate forum in which to address the fears and anxieties of victims as well as the opportunity for victims to express the harm and hurt they experienced as a result of the offence (Crawford and Newburn 2003, p 184; Roche 2003, p 10).²⁰⁰ A large majority of victims and offenders record high levels of satisfaction with restorative justice meetings (Roche 2003, p 11).²⁰¹

Whilst my research did not set out specifically to examine the role of victims in restorative interventions,²⁰² I found a distinct lack of data with regards to direct victim involvement - via victim/offender face-to-face meetings or victim statements - in final warnings and referral orders. Such an absence of data regarding a core component of restorative justice is in fact interesting data in itself. Remarkably, in

²⁰⁰ Umbreit et al (2001) reviewed a total of 27 empirical studies of victim offender mediation; 14 studies specifically addressed programmes working only with juveniles and 13 examined programmes working with juveniles and adults. This review revealed that studies in England found that victims who went through mediation were 50% less likely to express fear of re-victimization than those who did not go through mediation. The reason often cited as a factor in the reduction of fear was personal contact with the offender.

²⁰¹ See Umbreit et al's (2001) review which was discussed in Chapter Two.

²⁰² For studies examining the potential and pitfalls of victim-offender contact see Hudson (2003); Strang (2002)

restorative justice literature, the low level of victim participation is noted but not often discussed, particularly in relation to its impact on restorative processes.²⁰³ Therefore, this chapter explores the issue of victim (non)participation and its impact on the restorative potential of both final warnings and referral orders.

The Fall and Rise of the Victim

Only with the rise of the modern state has the responsibility for the investigation, prosecution and disposition of a criminal offence ceased to be the responsibility of the victim of crime (Strang 2002, p 3). With the emergence of professional policing and then, more latterly, the Crown Prosecution Service, private prosecutions have become few and far between. As Christie (1977) commented, effectively the State 'stole' the conflict from the victim and offender, leaving the victim in particular, remote from his own case. However, over the past twenty-five years there has been a growing attention to the place of victims within the criminal justice system. Nevertheless, the driving forces behind this development are not necessarily easily disentangled (Strang 2002, p 7, Maguire and Shapland 1990, p 206).

Heather Strang argues that the elements which resulted in the greater recognition of victims in the justice system are certainly tied to the social and demographic changes of the early 1970s which contributed to a vastly inflated crime rate around the world (2002, p 7). More victims meant a greater attention to victims of crime and more enhanced support services.²⁰⁴ Maguire and Shapland suggest that

²⁰³ e.g. Burnett and Appleton (2004a); Crawford and Newburn (2003)

²⁰⁴ In 1974 Victim Support was founded, and soon became seen as the heart of the victims' movement in Britain. Its affiliated schemes now cover the entire country and utilizes 17,000 volunteers to help over one million victims a year (Zedner 2002, p 432-33).

'most obviously, public reactions against increasing crime rates combined with increasingly impersonal, uncaring and ineffective criminal justice systems, and growing awareness of the serious impact of crime on individuals' were driving forces behind the increasing recognition of victims' rights (1990, p 206) although, as Dignan notes, the higher profile victims enjoy is the result of a lengthy process to which various other factors also contributed. Among these variables, he lists: the increasing visibility of victims in the media; a growing sensitization towards the existence and needs of particular groups of 'vulnerable victims', such as victims of domestic violence or incest; the increasingly widespread use of victim surveys by local and national government; and academic interest (2005, p 14-16). With the proliferation of research about victims, questions were raised about the purpose of the criminal justice system and victims place within it (Zedner 2002, p 443).

These social and academic developments finally persuaded the government that something should be done to help victims of crime. Various measures were put in place - starting with the Victims' Charter of 1990, its successor in 1996 and most recently the Domestic Violence, Crime and Victims Act 2004²⁰⁵ - to provide victims with information about the progress of their case and a chance to have their say. However, despite extended provisions for advice, support and information for victims, it is only with the rise of restorative justice, as discussed in Chapter One, that victims resumed centre stage, leaving some wondering 'how their obvious neglect could have so long gone without attention and remedy' (Geis 1990, p 255).

²⁰⁵ This Act replaced the non-statutory Victims' Charter and instead established a statutory code of practice which sets out a minimum level of service for victims. The proposed code is presently in draft form and will be laid before Parliament in the summer of 2006.

The next two sections of this chapter are dedicated to examining the place of victims in the contemporary youth justice system in regard to final warnings and referral orders.

Victim Involvement in Final Warnings

Unlike the 1999 Youth Justice and Criminal Evidence Act which clearly establishes the use of victim participation in referral orders, the 1998 Crime and Disorder Act does not explicitly provide for such participation in final warnings. A final warning begins with an assessment by a Youth Offending Team, and subsequently, a majority of cases involve further tailored interventions aimed at preventing re-offending (Home Office and Youth Justice Board 2002, para. 1.7, 8.1). When an intervention programme does take place, it should include victim involvement through restorative conferencing (Youth Justice Board 2004a, p 9). However, as discussed in Chapter Four, all intervention programmes are voluntary for offenders and therefore a restorative conference may not necessarily take place in all cases. Nevertheless, in the event that a face-to-face meeting between the victim and offender does not occur, there are other means by which the views of the victim can be conveyed.

Three types of victim involvement

In practice, there are three possible forms that a final warning can take with different levels of victim involvement. First, victims can be involved in a face-to-face meeting with the offender in a restorative conference as part of the intervention programme. However, there will inevitably be at least some victims who are willing to speak with the YOT but who simply do not wish to participate in restorative

conferences. Therefore, an alternative must be sought which can adequately represent the views of the victim. A second option for using a restorative process in the delivery of a final warning is “a restorative warning involving the young person and his or her parents ... with the views of the victim conveyed” (Home Office and YJB 2002, para. 9.24). The restorative warning may incorporate the views of the specific victim involved in the case or it may make reference to the victims in general if the particular victim chooses not to participate in the process. In such instances, the Home Office Guidance suggests that, regardless of victim input, police officers should aim to deliver final warnings “in a way consistent with restorative processes (e.g. by talking to the young person about the actual or potential impact of their offending on the victim and the wider community” (Home Office and Youth Justice Board 2002, para. 9.28). Finally, the last type of warning, a standard warning,²⁰⁶ makes no specific reference to a victim.

(i) Restorative conferences

In this research, all cases except one had an identifiable victim. However, not one final warning incorporated a restorative conference. In one case a conference was agreed upon between the parties, but it took so long for the YOT officer to organize the conference that the young person lost interest in participating. Other research on final warnings also found low levels of restorative conferencing. Holdaway and Desborough’s national evaluation of final warnings reported that only 4 per cent of final warnings included restorative conferencing (2004, p 7). They suggested that the low level of restorative conferencing was due to a belief within the YOT that conferencing was not appropriate work for seconded YOT police officers

²⁰⁶ So named by Holdaway and Desborough (2004).

and, therefore, should not be a priority (2004, p 20). In addition, they discovered cultural assumptions about the unwillingness of victims to be involved in warnings, which led to a diminished level of victim participation (2004, p 20).²⁰⁷

The research reported here, lending support to the findings of Holdaway and Desborough, suggests that one of the fundamental elements of restorative justice, that is, the face-to-face meeting of the victim and offender, does not take place in the vast majority of final warnings. While the 1998 Crime and Disorder Act did not make explicit that restorative justice should be a crucial feature of final warnings, the Youth Justice Board made this clear in its 2004 publication, *Key Elements for Effective Practice*: “Restorative processes should be central to final warning interventions” (Youth Justice Board 2004a, p 6). Although victim participation is not a fundamental aspect of the final warning scheme, it is a central means for confronting young people with the consequences of their actions and helping them to reflect upon their behaviour, and it is considered by some to be elementary to the restorative process.²⁰⁸ James Dignan’s critique of the 1998 Act argues that the face-to-face meeting of victims and offenders is one of the elemental differences between a restorative approach and a more conventional retributive response (1999, p 54).

(ii) Restorative warnings

Given that there were no restorative conferences in my research, it is necessary to examine how, if at all, the YOT officers’ portrayed the views of the victims to the young offenders. In almost half (42%) of the cases,²⁰⁹ the facilitators

²⁰⁷ This will be discussed further below.

²⁰⁸ For example, see Hudson (2003), Zehr (1990), Van Ness et al (2001), Morris and Maxwell (2001)

²⁰⁹ Excluding the case with no identifiable victim.

discussed the feelings of the victim during the meeting held to deliver the final warning.²¹⁰ Although the victim was not present, the representation of the victims' feelings in these cases produced emotive responses in young offenders and enabled a thoughtful discussion between the YOT officer and the young offender, as illustrated in the following case example (1CFW):

Over a period of several months, Tommy continuously stole items from the grocery store where he worked and eventually was caught trying to steal cigarettes. The owner of the store had been told by other employees that Tommy had been bragging for weeks to his co-workers about stealing from the store. The owner was very upset because he believed that he had been a good employer. Moreover, by Tommy bragging to other employees, the owner felt Tommy was effectively betraying his kindness. Over the course of the assessment meeting, the YOT officer discovered that Tommy was being bullied by his supervisors at the store. In one instance, they smashed an egg over his head and gave him the option to work in that state or go home without pay. As Tommy started to discuss his situation at the store, he broke down in tears.

Tommy and the YOT officer were able to have a good conversation about the victim, his feelings, and the effects of Tommy's behaviour on him. Tommy stated that he did not think of the owner when he was stealing but rather about getting back at his supervisors. In fact, Tommy was dismayed and remorseful that his actions had so upset the store owner because he acknowledged that the owner had always been very good to him. After the final warning, the YOT officer set up an appointment to meet with the victim to explain what had transpired during the final warning meeting as well as to discuss the problem of bullying in the store. The YOT officer made clear to Tommy that everyone has a right to feel safe all the time and bullying at work is not acceptable. In addition, the YOT officer stated that he would discuss the problem of bullying in the store with the owner.

In terms of realising the potential of restorative justice, this type of warning is less ideal than one which involves a restorative conference. The effect of the final warning on both Tommy and the store-owner if they had discussed the issues together in a safe setting may have been much greater. When relaying sensitive information through a third party, the emotive impact of that information can be lessened. Nevertheless, despite the absence of a face-to-face victim and offender meeting, this

²¹⁰ Several cases involved reading to the young person the victim and/or witness statements made to the police. As I was not present during the conversation between the YOT officers and the victim, I can make no judgement on the accuracy of the reporting of the victims' feelings.

case suggests that this type of final warning is capable of providing an environment in which both the victim and the offender can have their feelings conveyed, listened to, and discussed, even if through a third party mediator.

In the other half (58%) of cases, there was no victim involvement and thus the YOT officer administering the final warning referred generally to the victim and asked the offender to imagine how the victim might have felt.²¹¹ Although they did not report the victims' specific feelings, the YOT officers administering the final warnings still worked to get young offenders to consider the impact of the offence on their victims. These cases involved a line of inquiry such as 'How do you think that made the victim feel?' and 'How would you feel if that had happened to you?' What is problematic about these types of final warnings is that because there is no direct input by the victim there is no direct association between the offence committed and the specific harm caused. It is therefore possible that the overall effect of the final warning on the young offender is diminished, perhaps significantly. In such cases, offenders can disassociate themselves from the victim and the harm caused.

(iii) Standard warnings

Nevertheless, a reference to a victim, no matter how vague, is usually better than no reference at all. While every case in my research qualified as a restorative warning,²¹² Holdaway and Desborough reported that only 16 per cent of their sample constituted restorative warnings. Indeed, they found that 80 per cent of their cases

²¹¹ In these cases, the YOT was either unable to contact the victim or the victim refused to participate at all. I had minimal contact with the victim liaison officer and therefore can make no comment on the effort put into obtaining victim involvement. However, as discussed later in this chapter, there was some concern among YOT staff that victims were contacted in a biased manner.

²¹² That is, in every final warning the views of the specific victim were conveyed or victims were discussed more generally.

qualified as a 'standard warning' in which no reference was made to a victim (2004, p 7). Therefore, although my research found poor use of restorative conferencing, when compared with Holdaway and Desborough's research, it suggests that improvements may have been made with regards to the use of victims' views in final warnings.²¹³

Victim Involvement in Referral Orders

The Home Office states that, "Restorative justice has been at the heart of youth justice reforms since 1998" (2003b, p 10). However, it wasn't until the introduction of the referral order, under the 1999 Youth Justice and Criminal Evidence Act, that restorative justice became an integral part of the youth justice system. In contrast to the more traditional (and marginal) roles previously accorded to victims in the criminal justice system, their active involvement is central to the referral order.

Direct victim participation

As with final warnings, direct in-person participation by victims in a referral order panel meeting is most ideal. In the three cases in this study where the victim attended referral order panel meetings, there was apparently a strong impact on both offender and victim, in line with restorative justice theory. The following case study (1NRO) is particularly illustrative:

Going back to the case discussed in Chapter Five - Matthew, the young man who assaulted two nurses in hospital - one of the nurses who had been assaulted consented to attend the panel. During the meeting, the victim was never angry or accusatory. She always spoke in a calm and sympathetic voice and spoke about the events from her point of view. Thus, she explained the events in terms of "I felt" rather than "you

²¹³ As my data do not constitute a random sample, I cannot be certain of this.

did.” What was especially interesting about this meeting was the nurse’s primary reason for attending the meeting. She stated, “We’ve all been there to a certain degree and I know it [Matthew’s behaviour] was due to the alcohol. But you could have died. You were dangerously unconscious from the alcohol and you could have died that night and that is what brought me here today. I wanted to tell you that.” Matthew seemed genuinely surprised by what she said and at times looked like he was going to cry. The nurse’s supporter also told Matthew that the staff manager at the hospital takes abuse such as this very seriously and should it happen again he could be banned from the hospital for life. Thus, if he had a genuine trauma, he could be refused treatment at the hospital. The supporter wanted Matthew to see how his behaviour could severely affect his own well-being.

When speaking to Matthew after the panel, he seemed genuinely affected by the presence of the victim. When I asked him if he felt the people in the meeting were on his side or not, he responded, “On my side, yes ... [The nurse] coming mainly because I could have died and she was trying to help me.” Moreover, when speaking with Matthew several months later, he vividly remembered his meeting with the victim. At that point, I asked him if he would get into trouble with the police again and he said, “No! Talking to the nurse I realized that I acted like an arse. I wouldn’t do it again.” He also commented that meeting the nurse “made me feel really small but it helps in a way ‘cause now I know how they felt.”

Unfortunately, in the majority of cases, victims did not attend referral order panel meetings.²¹⁴ My research found low victim participation rates with victims attending in only three (9%) of the cases.²¹⁵ Moreover, in two of these cases, the victims were the parents who were attending the panel meeting as offender supporters.²¹⁶ If we exclude parents as victims, who are more or less obliged to attend, then only one victim in this study attended the panel meeting.²¹⁷ Crawford and Newburn (2003) reported a victim participation rate of 18 per cent in the Oxfordshire pilot area (p 186). Thus, my research suggests that this has reduced

²¹⁴ Which probably contributed to young people’s discontent with the referral order process, as discussed in Chapter Five.

²¹⁵ This percentage is based on cases in which there was an identifiable victim.

²¹⁶ Parents are required to attend panel meetings with their children when young offenders are under 17 years of age.

²¹⁷ When speaking informally with panel members about all the cases they have participated in over the last year, both inside and outside this research sample, they reported that there had been no victims present at the panels or that they knew of merely one or two cases in which victims had participated. Therefore, these data appear to be representative of Oxfordshire at the time of this research.

dramatically since their study.²¹⁸ As the Audit Commission's 2004 report states, "In principle, victims should play a central role in Referral Orders but, in practice, participation by victims in most areas is the exception rather than the rule ... more should be done to encourage victims to attend meetings" (para. 49).

In some cases, it was particularly surprising (and disappointing) that the victim failed to meet with the young offender as part of a restorative process, as demonstrated in the following case (2NRO):

Aidan was given a three month referral order for criminal damage. At the time, he was living in a local authority children's establishment for young people and had been in the care system for a total of six years. Aidan was due to receive a visit from his brother at the care facility. However, on the day of the visit, he was told that his brother would not be coming and was given no reasons as to why. Aidan flew into a rage and stormed into the office at which point he was verbally abusive to the staff. He was physically removed from the office and subsequently picked up a chair and threw it through a window.

Even though Aidan lived full time in the care facility, no one from the establishment attended the panel meeting. Rather, Aidan was accompanied by his social worker. The panel expressed surprise and frustration that no one from the facility attended. Since Aidan was to continue living full-time in the care facility, this panel meeting could have provided a good resource to help Aidan and the staff talk about the incident, why it happened, how it made both parties feel, and how to move forward after such conflict. In the absence of anyone from the care facility, Aidan proceeded to present himself as the victim when recounting the incident at the initial panel meeting. He claimed that he was physically abused when being removed from the office and was punched in the stomach by one of the staff.

Absent any input from the care facility, the panel members proceed to take Aidan's side, commenting "I feel for you. I understand how cross you were"; "You were right to be angry. I would be too." As a result, Aidan was never challenged to understand how his behaviour impacted on the staff at the care facility. At the conclusion of the panel meeting, the YOT practitioner was very upset with the panel members, "This panel went badly ... [Aidan] needs to learn to manage his anger and that did not come across in the meeting. Instead the panel was colluding with him and slagging off [the care establishment]."

²¹⁸ Crawford and Newburn (2003) were optimistic that new developments implemented in the wake of their research were producing greater success with victim participation. Their optimism was perhaps misplaced.

One month later, Aidan was removed from the care facility.²¹⁹ He had been arrested again for similar behaviour. After the panel meeting he continued to display aggressive behaviour and damage property.

Numerous other studies examining community panels such as the referral order have found low levels of victim participation,²²⁰ although the victim participation rate for my study appears to be uncommonly low. In the United States, a study of the Vermont citizen boards found a 15 per cent victim participation rate (Karp and Walther 2001) and in Canada a restorative resolutions project reported a 10 per cent victim participation rate (Bonta et al 1998). At the time of the referral order pilots, Crawford and Newburn concluded, 'There is an understandable concern that the low level of victim participation may be undermining the restorative potential of YOPs and compromising their explicit aims' (Crawford et al 2001, p 35). Therefore, in light of the levels of victim participation in the referral order programme since its pilot, it is necessary to explore the other means by which victims and their perspectives are incorporated.

Indirect victim involvement

As with final warnings, victim participation in a restorative intervention should not necessarily require victims' attendance at a meeting with the offender. Some victims may not wish to meet their offender directly but may nonetheless wish to have their views expressed. In such cases, victims can participate indirectly through a third party. The guidance for referral orders and youth offender panels says, "Victims who chose not to attend the panel meeting can have their views represented by the Youth Offending Team member, or they may record a statement to

²¹⁹ He was transferred to another care facility in a different part of the country, and therefore, his case was transferred to his local YOT. Despite my efforts to track the progression of the case, after Aidan's move, I lost contact with him.

²²⁰ Newburn et al (2002); Karp and Walther (2001); Bonta et al (1998)

be presented at the panel meeting, describing the effects of the offence and outlining their views on reparation” (Home Office et al 2002b, para. 6.11).

However, despite the potential to participate indirectly in referral order panel meetings, it appears as though in practice the opportunity is rarely utilized. In my own research, only three cases had statements from non-attendant victims. In one instance, a statement was produced by the YOT for the second nurse assaulted in Matthew’s case (1NRO, see above). The statement briefly outlined the traumatic effect the incident had on the nurse:

After the assault [Jane] has difficulty sleeping. She is taking a herbal remedy to help her sleep. She has not told the hospital management about this as she does not want them to know that she has been affected badly. She fears they will interpret that she cannot cope if they find out ... She is starting a period of night duty next week. She is frightened. She said that [Matthew’s] assault on her is the main cause of her fear. She is having flashbacks, as she describes them. She sees [Matthew’s] face, his rage, and relives the terror she felt at the time.

However, in this case, the victim statement received little attention from both the panel members and the young offender because the focus was instead on the nurse who attended the panel. In fact, the actual attendance of a victim at the panel proved so over-powering that when interviewed immediately after the panel and several months later Matthew never mentioned the second nurse and focused solely on the one whom he’d met. Nevertheless, as demonstrated in the section on final warnings, when there is no in-person participation from victims, indirect participation through statements can be a decent alternative. As for the other two cases of indirect participation, unfortunately the report from the victim liaison officer was less than ideal because it was vague about the impact of the offence on the victim and therefore did not particularly contribute to the panel meeting. For example, one of the statements (19NRO) simply said:

The mother had clearly been upset by what happened but was not vengeful in any way and hopes [John] will not continue offending. Although it has been upsetting, she understands that [John] needs to move on as well.

In the other thirty cases included in this research, the report given to the panel members either noted that a referral had been made to the victim liaison officer and no feedback had been received or no mention was made of the victim. As a result, in all of the referral order panel meetings, except the three noted above, panel members could only speculate about the victim:

- * *Put yourself in his shoes. How would you feel? (5NRO)*
- * *Are you aware of the effect that this had on him? What if you were suddenly punched in the face unexpectedly? What about his mum? (13NRO)*
- * *Why did you feel you had the right to go into anyone else's house? Did you know the people who live in the house? Why did you write on the walls of the house? What effect might this have had on the people in the house? Would you have been pissed off if it had been in your mum's place? (14NRO)*
- * *As far as the community is concerned, what effect does this have? (9NRO)*

During the referral order pilots Crawford and Newburn found that no mention was made of the victims' perspective in 25 per cent of the panel meetings, leading them to conclude that the victims' issues were insufficiently represented in the absence of an attendant victim (Crawford et al 2001, p vii). While there has been some improvement in the attention paid to the victims' perspective since every case in my sample at least generally referred to the victim, such vague and non-directive references like those above are not ideal. As with final warnings, discussed in the previous section, one drawback to this level of victim involvement is that without the victim/offender interaction the young person can become more detached from the offence and the harm caused. Not every victim will want to participate nor will every victim want to make a statement to pass onto the panels. However, more thought and research needs to be put into finding out why so few victims make statements.

Thus far this chapter has examined different ways, ranging from face-to-face interaction to general referencing, in which the views of the victim can be portrayed in final warnings and referral orders. Direct victim participation in the majority of cases would be ideal because it can be empowering to the victim, providing them with answers to their questions about the offences and offender and, in some cases, reassurance and reparation; it can also be a powerful tool to help young offenders address the effects and consequences of offending behaviour. Nevertheless, it is unrealistic to suggest that a restorative conference take place in every final warning or a victim attend a panel meeting in every referral order. It is therefore necessary to consider an appropriate alternative.²²¹ The findings suggest that in lieu of in-person victim participation, indirect participation, that is representing the personal views of victims in the final warnings and referral orders, can be a viable alternative means of encouraging young offenders to discuss the harm caused and relate with the victim on a more personal level. However, unfortunately this research suggests that such indirect participation also occurs in a minority of cases. The following section explores factors which could contribute to such a low rate of victim participation. In an interview, Rob Allen of the YJB commented,²²² "I think that it is puzzling that the rates of victim involvement are very much lower than in other countries ... Well, there must be some reason why that is happening ... and it may be that the victims aren't being approached properly and being given a chance to give informed consent."

²²¹ It is also necessary to consider why almost none of my cases directly involved the victim. This issue is explored later in the chapter.

²²² This quote is taken from an interview with me on December 8, 2003 at the headquarters of 'Rethinking Crime and Punishment', a strategic initiative set up by the Esmée Fairbairn Foundation between 2001 and 2004.

Exploring the 'Missing Victim' Syndrome

The movement towards greater victim involvement in the criminal justice system is based upon the assumption that victims desire to partake in the state response to an offence (Hoyle 2002, p 104).²²³ However, the data discussed thus far in this chapter suggests that a justice system revolving around high levels of victim participation is, at least at present, more of a dream than a reality. As a result, it is important to explore why victims fail to participate in restorative processes.

Hoyle, Young and Hill in their research on restorative cautioning in Thames Valley identified and interviewed 27 'non-participating victims' in order to understand why they failed to participate in a restorative session and how much they understood about the restorative process (Hoyle 2002, p 104).²²⁴ They found that poor implementation of the restorative model was the primary reason for the failure to bring together victims and offenders (Hoyle 2002, p 116). They discovered that most non-participating victims lacked adequate information about and explanation of the process and consequently were unable to fully understand what was being offered. Therefore, victims who passed on the opportunity to meet the offender in a restorative session did not realise what they were refusing (Hoyle 2002, p 117). Hoyle suggests that such confusion may inadvertently discourage victims from attending restorative sessions: "This hypothesis is partly supported by our finding that, after we had explained to them what a restorative session should involve, over half of the victims

²²³ This is based in part on various empirical studies which suggest that a large number of victims would like the opportunity to meet the offender in their case. See Mattison and Mirrlees-Black (2000); Umbreit et al (2001).

²²⁴ This is based on Hoyle's research with Young and Hill (2002).

who had not originally wanted to attend the session said that if invited in the future they would agree to attend" (Hoyle 2002, p 119).²²⁵

Correspondingly, Crawford and Newburn suggest that low levels of victim participation stem from a degree of unfamiliarity over the best way to involve victims in the restorative justice process, possibly linked to the limited nature and extent of training provided to YOT officers (2003, p 187-189). Moreover, they found that victim contact work is laborious, requiring significant resources, and, therefore, such work was often not given priority by YOT workers with heavy caseloads and time pressures (Crawford and Newburn 2003, p 188-189). Not surprisingly, the pilot areas with the highest victim participation rates tended to be those that dedicated the most time and resources to contacting victims (*ibid* p 187).

In my own research, I can make no claims as to how victims were contacted and asked to participate in the process because I was not present for any such conversations. However, during the fieldwork period, the issue was raised by YOT officers on two separate occasions. In the first instance, there was an argument in the office between two of the YOT staff, Megan and Julia. The conflict revolved around a case in which the victim of an assault was also the offender in a second case. Megan, the victim liaison officer for the YOT, made the assumption that the victim-turned-offender would not want to participate in a referral order panel meeting as a victim because he would be busy coping with the aftermath of his own offence. Julia,

²²⁵ O'Mahony and Doak's (2004) study of restorative cautioning pilots in Northern Ireland likewise concluded that, since victim non-participation is a problem for many police-led schemes, including their own research in Northern Ireland, there were likely deep issues at work such as victims' lack of understanding of the nature of the restorative process (p 488, 496). In order to increase rates of victim participation, the authors suggest that a greater emphasis could be place on providing victims with more information and explanation regarding restorative processes (O'Mahony and Doak 2004, p 496-497). Similarly in a study of restorative schemes by Miers et al (2001), the authors found it was possible that the "mode of initial contact and service delivery might be influencing acceptance rates but the data were insufficient to allow this to be determined here" (p 32).

a YOT practitioner, was very upset by this assumption and pointed out that it was Megan's duty to contact the young person regardless of whether he was an offender in a separate case; anything less was tantamount to taking away his rights as a victim. "Just because he has gone on to offend doesn't take away the pain of being a victim. How will he recognize his responsibilities as an offender if he is not treated properly as a victim?" she stated. However, Megan claimed that he wasn't worthy of contact and involvement in the process as a victim because he had offended. Afterwards, Julia quietly accused Megan of being a biased victim liaison officer who contacts only those victims whom she personally believes are worthy, commenting to me that this was not the only instance in which Megan made value judgements about victims.

On another occasion, during a coffee break, a YOT officer called Chris vented his frustrations about the poor quality of victim contact in the Oxfordshire YOT. This particular YOT officer happened to be a personal friend of a victim in one of the referral order cases included in my study. After failing to hear anything from the YOT, the victim eventually asked Chris to find out what was happening with the case. Chris was infuriated to find out that the order had already been completed. His friend had wanted to attend the panel and meet the offender, but now that the order was completed, there would be no such opportunity. Crawford and Newburn's research on the referral order pilots uncovered similar results. Of victims who did not attend panel meetings, half (53%) claimed that they had not been offered the opportunity to attend the panel meeting. Of these victims, half indicated that they would have attended the panel if they had been offered the chance (2003, p 194).

The Youth Justice Board appears to be aware of the current problems surrounding victim participation in restorative processes. When I spoke with Charles

Pollard, the then Acting Chair of the YJB, in October 2003, he made clear he was aware of the need to boost victim attendance:²²⁶

In terms of restorative process ... the next point would be to say that the way through this is that we have to have much more professional victim engagement so that more victims will come forward ... So the real answer is that we do need to evolve and we need victim liaison officers properly trained and doing the right thing and you'll get a very high percentage of victims.

Similarly, Rob Allen of the Youth Justice Board, commented in an interview, "So, I think one of the reasons for the low turn out of victims in these schemes is the people in the Youth Offending Teams don't necessarily know the right way of dealing with this."²²⁷

There has been much interest over the last decade in the rights of victims. Nevertheless, simultaneously, little attention has been given to the duties of various criminal justice agencies such as the YOTs to provide those rights or meet victim expectations (Hoyle 2002, p 128). Burnett and Appleton found that the integration of victim work into the youth justice services gave rise to frequent questions from YOT staff about what they were allowed to do, what the proper procedures were, and how it fitted in with other policies (2004a, p 49). In response, the YJB produced a set of guidelines for YOTs on developing victim policies with the hope that it would help to ensure that victims were not peripheral to the work of YOTs (Burnett and Appleton 2004a, p 50). Nevertheless, what the research suggests is that significant improvements still need to be made in the way the YOT interacts with victims, with particular attention to the way in which victims are contacted and the information that is provided.

²²⁶ The quote is taken from an interview with me at the YJB Headquarters in London on October 20, 2003.

²²⁷ This quote is taken from the same interview with me on December 8, 2003 as noted previously. See footnote 24.

This section has briefly explored factors which can lead to victim non-participation. Unfortunately, it appears as though at present organizational failure of the YOT may be contributing to the low rates of victim participation.²²⁸ Since restorative justice theory revolves heavily around the participation of the victim, the following section will discuss the impact of such low rates of participation on the restorativeness of final warnings and referral orders.

Is It Restorative?

Since a face-to-face meeting between victim and offender is relatively rare, the question arises as to whether final warnings and referral orders should be thought of as 'restorative' in the absence of victim-offender contact. Taking Tony Marshall's well known definition of restorative justice as a "process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future",²²⁹ it is clear that central to the restorative process is the meeting between victim and offender and the opportunity for them to determine, to some extent, the process and the outcome.²³⁰

Conversely, Gordon Bazemore and Lode Walgrave contend that restorative processes need not necessarily involve victim-offender encounters since such a limitation excludes the opportunity of restoration to victims who choose not to become involved (1999, p 50-51). Rather, they define restorative justice as "every action that is primarily oriented toward doing justice by repairing the harm that has

²²⁸ Chapter Seven discusses the YOT as an organization and the concept of organizational failure in detail.

²²⁹ Marshall (1996, p 37).

²³⁰ The United Nations similarly defines restorative justice by reference to the meeting between victim and offender: Restorative justice is a process 'in which the victim, offender and/or any other individuals or community members affected by a crime participate actively together in the resolution of matter arising from crime.' United Nations (1999).

been caused by a crime” (1999, p 48). Under this conception, what becomes important is not victim-offender face-to-face contact but the restoration of the parties. James Dignan is similarly critical of Marshall’s definition because it makes no explicit reference to outcomes (2005, p 3). He points out that there is a difference between restorative justice processes and restorative or reparative outcomes (2005, p 4).²³¹ Thus, under such an expanded definition of restorative justice, programmes with low levels of victim-offender contact could maintain restorative outcomes regardless.

In light of these differences of opinion between restorative justice advocates, this section discusses several principal variables which contribute to restorative outcomes, particularly for cases which involve non-participating victims. Thereafter, upon considering these variables within the context of final warnings and referral orders, this section explores the restorative nature of these programmes.

Dissemination of information

For victims of crime, one of the most important elements associated with victim satisfaction, and thereby a restorative outcome, is the provision of information. Twenty years ago Shapland et al (1985) interviewed over 200 victims of violent crime in two English cities, the researchers found that initially victims expressed high levels of satisfaction with their treatment by the police. However, as the investigation progressed, victim satisfaction declined due largely to the lack of information about their cases. Victims felt aggrieved if they were not provided with information about their case and could not easily find out about it. (p 83-89). Shapland concluded that

²³¹ Dignan’s description of restorative justice includes four key values: (1) the principle of inclusivity; (2) an attempt to balance various interests that are affected when an offence is committed; (3) a form of practice based on the principle of non-coercion; and (4) a problem solving orientation (2000, p 1).

‘the rule was: the more contact [with criminal justice authorities], the greater the level of satisfaction’ (1986, p 214).

More recently, a study by Hoyle et al (1998) examined the all important provision of information to victims through a programme called the One Stop Shop (OSS). The OSS was designed to be a means of simplifying and improving the passing of information to victims.²³² Of those who opted into the scheme, the majority (77%) did so because they wanted to know what happened in their case or because they felt it was their right to know (Hoyle et al 1998, p 14). In receiving information about the developments in their cases, victims felt more in control, even if in reality they exercised little or no control over what happened in their cases (Hoyle et al 1998, p 23). Like Shapland, Hoyle et al’s findings suggest that the more timely information victims receive the more satisfied they are. However, one of the most interesting results to come out of this study is that once victims received some information, they desired even further information which the OSS scheme never intended to provide.²³³ This thirst for information demonstrates the poignant nature of the provision of information to victims.

For victims who choose not to participate in a restorative session, satisfaction is associated with the amount of information received throughout a case. It is not sufficient that victims be made aware of the arrest of an offender, they also want to know how the case progresses and how it is finalised (Hoyle 2002, p 109).²³⁴ Victims who do not meet an offender can still achieve some of the benefits of

²³² All information - from the police, the Crown Prosecution Service and the courts - is collated and communicated to victims through the police (Hoyle et al 1998, p 11).

²³³ Of those who participated in the scheme, although most expected to be told little more than what the OSS scheme undertook to tell them - that is the date of the first court appearance, the trial date, the verdict and the sentence - most victims also wanted to be informed about decisions - ie remands or bail conditions - which the programme does not do (Hoyle et al 1998 p 41).

²³⁴ Of course, this is also true even if a victim attends a restorative session.

restorative justice by making a victim statement and by receiving feedback at the end of the process, and in fact victims who do so are more likely to report moderate therapeutic benefits (Hoyle 2002, p 110). However, Hoyle et al's research on restorative cautioning in Thames Valley found that 'non-participating victims' rarely reported a positive impact of their experience and in fact were much more likely to harbour negative feelings in the long term (Hoyle 2002, p 110). Restorative benefits were not achieved in many cases because facilitators failed to provide victims with the opportunity to make a victim statement, failed accurately to report these statements and did not report back to the victim what had occurred at the restorative session (Hoyle 2002, p 110).

Unfortunately, not only do few victims attend final warnings or referral orders, but it appears as though, like restorative cautioning in Thames Valley, many 'non-participating' victims never received the type of information necessary to benefit from a restorative process. Holdaway et al, in the national evaluation of pilot Youth Offending Teams, reported that victims were contacted in only 15 per cent of cases, causing the authors to conclude, "The new guidance for final warnings emphasizes the involvement of victims but our evidence suggests that it is unlikely that police officers will be able to involve victims routinely" (2001, p 80). Correspondingly, Burnett and Appleton's research on the establishment of the YOTs, found that the primary source of complaint from victims concerned a lack of communication from the YOT; victims had not been informed about the outcome of cases nor had they been updated as cases progressed (2004a, p 49). Moreover, Crawford and Newburn's research on referral order pilots found that over half of non-participating victims (53%) failed to receive any information about the terms of the youth offender contract agreed at the initial panel meeting; in addition, the majority

failed to receive any information about the progress of the case as the young person completed the terms of the order (2003, p 195). Although my own research cannot speak to victims' experiences of receiving information from the YOT, my field research discussed earlier in this chapter suggests the flow of information between the YOT and victims is still problematic.²³⁵ Therefore, since research suggests that the dissemination of information is closely linked to victim satisfaction and thereby restorativeness, in light of this evidence, it is difficult to believe that a significant number of victims experience these orders as restorative.

Reparation

Beyond the dissemination of information, another way in which final warnings and referral orders can be restorative for victims is through reparation. As discussed in Chapter Two, one of the primary restorative values is repairing the harm caused by the offence. Restoration can be achieved through a wide range of actions, including direct or indirect reparation. Early research by James Dignan based on an adult diversion scheme in Kettering, Northamptonshire found that the majority of victims who were interviewed expressed strong or qualified support for the principle that offenders should be expected to make amends for the offences they committed (1992, p 461). Depending on the victims' wishes, offenders' attempts to repair the harm caused can be addressed to the victim directly or to the community (Walgrave 2000, p 261). In my research, in only two cases did victims receive direct reparation. In both cases, the victim was a parent of the offender. In one case (4NRO), the young person agreed to help his father around the house, performing chores such as keeping

²³⁵ As noted earlier in this chapter, a victim who wanted to participate in a referral order panel was never contacted and suggestions were made by YOT officers that victims were contacted in biased ways. These findings, in conjunction with the attendance of only three victims, two of whom were parents of the offender, suggest that the YOTs relationship with victims is not satisfactory.

his room tidy and washing his father's car. In the other case (22NRO), the young person agreed to work in his parents' garden. Unfortunately, in the latter of these two cases, the YOT never arranged for the reparation to take place. Because the YOT did not prioritize the reparation, the young offender's parents felt that their son did not take it seriously either. They claimed that he openly made jokes about the reparation which made them feel even more victimized. As a result, the young man's mother listed the direct reparation (or rather lack of) as the single worst part of the referral order. This example is especially troubling as the reparation not only failed to restore the victims but actually caused the parents to feel revictimized.

Even if victims do not wish to receive direct reparation from the offender, they can be satisfied with other forms of reparation, most notably symbolic reparation in the form of an apology, either in person or in a letter of apology from the offender. It has been said that the apology has come to be seen as central to the restorative process (Strang 2001, p 186). In Strang's research on restorative conferencing, when victims were asked 'do you believe you should have received [an apology]²³⁶ from the offender(s) to compensate for your loss and harm?', 91 per cent of conference victims said yes (2002, p 114). Moreover, a 1990 review of British mediation programmes found that victims preferred symbolic reparation, primarily an apology, over substantial reparation such as compensation (Marshall and Merry 1990). Because there was an exceptionally low victim participation rate in my study, the majority of apologies to be made by offenders would be through letters sent to victims. Letters of apology can be effective means of reparation as a study by Miers

²³⁶ Insert in original.

et al (2001) found that victims appreciated sincere, personal letters of apology which had clearly been written by the offender (p 33).

Unfortunately, as with direct reparation, there is little use of the letter of apology in final warnings as referral orders. Holdaway et al's research on the pilots of final warnings found that a letter of apology was included in restorative interventions in 27% of cases (2001, p 9); likewise, Crawford and Newburn's research on the piloting of referral order found that a letter of apology was included in the contract in 32% of cases (2003, p 135). In my own research, in only seven out of forty-seven final warning and referral order cases (or 15%) did the offender agree to a letter of apology – three final warning cases and four referral order cases.²³⁷ In fairness to offenders, in four cases (9%), the offender had already apologized to the victim personally before the first meeting of the final warning or referral order; in eight cases (17%), the offence was for victimless crimes such as driving without a license or insurance; and in twenty-three cases (49%), the idea of a letter of apology was never brought up in the final warning or referral order meeting. In only three cases did the offender refuse to write a letter of apology, and in two cases, offenders agreed to 'consider' writing a letter but eventually refused. See Table 6-1. Nevertheless, since victims seldom attended final warnings and referral orders, it is disappointing that letters of apology were so rarely used.²³⁸

When letters of apology are written, it is important that such apologies at least appear sincere and offers to write letters of apology are fulfilled. Researchers have found that victims were much less receptive to letters of apology which had been

²³⁷ 12% of referral order cases and 21% of final warning cases.

²³⁸ In a handful of cases letters of apology were never discussed in the final warning or referral order because the possibility of a restorative conference was discussed instead. However, since a restorative conference was agreed to in only one case, it is not unreasonable to wonder why letters of apology were not discussed as alternatives.

altered by adults, for example typing out hand-written letters and correcting spelling mistakes (Miers et al 2001, p 33; Davis et al 1988, p 129). Likewise, offers to write letters of apology which are not followed through can lead to serious victim dissatisfaction (Strang 2002, p 141; Davis et al 1988, p 129). In my sample, of the seven cases in which young offenders agreed to write a letter of apology to the victim,

TABLE 6-1 SUMMARY OF RESULTS FOR USE OF LETTERS OF APOLOGY IN FINAL WARNING AND REFERRAL ORDER CASES

	Number of Cases
Offender Already Apologized	4 (9%)
Offender Agreed to an Apology	7 (15%)
Offender to Consider an Apology	2 (4%)
Offender Refused to Write an Apology	3 (6%)
Victimless Crime, No Apology Necessary	8 (17%)
Not Discussed in Final Warning or Referral Order	23 (49%)

in three - one referral order case and two final warning cases - a letter of apology was never written. If the victim is kept up to date with the progress of the case and therefore expects to receive a letter of apology, it can be disappointing when no letter arrives. Therefore, such failure to follow through with a simple but important gesture of reparation is problematic and potentially quite damaging to the restorative process.

A third form of reparation victims can receive is monetary reparation. More commonly called restitution; this form of reparation involves monetary repayment for damages sustained by a victim in an offence (Van Ness and Strong 1997, p 91). In several cases in my sample, young offenders made restitution to victims. However, in all cases monetary compensation was ordered by the court and was not included as part of the youth offender contract. Monetary reimbursement can help victims to feel

restored. In fact, research suggests that a majority of victims who suffer material loss would appreciate compensation (Davis 1992, p 162). As I did not speak to victims, I can make no comment on their feelings concerning monetary restitution. However, monetary fines can also be helpful to offenders. In one case (19NRO), Tom committed an assault causing bodily harm (ABH) to another boy in his school. Tom was ordered by the court to pay the victim £300 restitution. During the interviews, Tom said that being 'outta pocket 300 quid' helped him to change, to 'grow-up'.

Regardless of the type of reparation, most damaging to the restoration of victims is offenders' failure to complete an agreed programme of reparation. As mentioned in Chapter Two, research on restorative conferences in New Zealand found that victim dissatisfaction significantly increased over the twelve months following the restorative conference. This trend was associated with victims' unfilled expectations arising from the conference; that is victims were more dissatisfied when they failed to receive agreed upon reparation and when tasks agreed upon in the conference went uncompleted (Kingi et al 2005, sec 8.7-8.8). Strang comments that "agreements must be carried out rigorously to monitor compliance by offenders, particularly with letters of apology. Victims must be notified that agreements have been honoured so that they can feel a sense of closure" (2002, p 152).

Returning to the referral order case discussed earlier in this chapter - Matthew (1CRO) the young man who assaulted two nurses in hospital - unfortunately, after the very positive initial panel meeting, nothing was ever done with Matthew's case:

Matthew failed to attend for his review panel meeting, scheduled for several months after the initial panel. When I asked his YOT officer Eric about it, he told me that he had not even been aware that Matthew's review panel meeting was on the schedule. Eric claimed that although he had met with Matthew several times, nothing else had been accomplished because Matthew had a very busy schedule. After one month, I again asked Eric about the case because Matthew's review panel had still not been re-scheduled. I received the same answer; he had met with Matthew several times but

nothing else had been accomplished. Finally, several months later, and two months after Matthew's order expired, he was officially signed-off his order in absentia. Eric's report read:

This order was very difficult to implement as Matthew obtained full time employment and works in shifts which change daily. He has not met with [the drug and alcohol counsellor] but has stopped drinking. He has not done a letter of apology. He has done no reparation. He did, however, do work in anger management and offending behaviour over three session with me.

However, when I spoke with Matthew, he stated that he had never met or spoken with Eric once over the course of his order: "I didn't see him at all or talk to him on the phone. He posted letters though the door and when I got 'um I'd missed it already so I'd call and leave him a message." Matthew did no work in anger management or offending behaviour, although he did claim that he wrote and sent a letter of apology.

Regardless of how positive the initial panel meeting may have been for the victim, it is plausible that the victims²³⁹ in this case could have felt the process as a whole was not restorative. Either the victims are likely to feel marginalized when informed that nothing happened with the case or they are never updated on the status of the case, which, as this section has already demonstrated, tends to lead to feelings of anger and exclusion. Both alternatives have the potential to negate any restorative affect of the initial panel meeting in which the victim and offender meet. In addition, there is some confusion as to whether or not the young offender completed a letter of apology to the nurse who did not attend the panel. The young offender says he did but the YOT claims that he didn't. It is unlikely that, even if the letter was written, it was received by the victim. Young offenders are never provided with victims' personal information. Therefore, if Matthew did write a letter, the YOT would pass it on to the victim. As the YOT claimed no knowledge of a letter of apology, it is unlikely that one was passed on. Thus, the nurse would have heard either from the YOT or her friend who attended the panel that the young offender would send a letter

²³⁹ Both the nurse who attended the panel and the nurse who made a statement.

of apology which she likely never received. If we are to justify restorative justice in part for what it brings to the victim then this example is very troubling.

Regrettably, Matthew's case was not the only final warning or referral order case in which agreed upon reparation was never completed. As discussed in Chapter Four, offenders completed the agreed final warning intervention programme in only three out of ten cases (30%). As for referral orders, excluding young offenders who re-offended, were injured²⁴⁰ or transferred to another YOT during the referral order, the agreed contract of reparation was completed in eighteen out of twenty five cases (72%). However, this figure is somewhat questionable and could potentially be lower. With the referral order data, information about the completion of the contract was obtained from YOT officers' reports provided to panels at the sign-off meeting. This relied upon the YOT accurately reporting the status of the referral order. Unfortunately, at several points over the course of this research, it became evident that some YOT officers lied in their reports.²⁴¹ On four occasions, young offenders admitted that they had not completed their contract when the report from the YOT officer stated otherwise. In two of these instances, the report falsely stated that the young offender had completed their reparation. After becoming aware of this problem late into data collection, I began to ask young offenders in their interviews if they had completed the reparation claimed by the YOT report. On one particular occasion (21NRO), the young offender laughed and expressed surprise that I had 'figured it out.' He refused to tell me how much reparation, if any, he had actually completed, but admitted that it was not what the report claimed. Therefore, it is

²⁴⁰ One young offender was attacked during the course of his referral order. He fell into a coma and was signed-off his referral order while still unconscious in hospital.

²⁴¹ This issue will be discussed in the next chapter.

possible that in other cases in my sample where it appeared that the contract had been completed this had not happened.

Since reparation is central to the restorative justice ideal and considered a key means of paying back the harm done or making amends, the current status of reparation in final warnings and referral orders is troubling. Particularly in the absence of victim participation, reparation, even if not directed at the primary victim, is an important component in creating a restorative outcome and therefore, should be documented and tracked to monitor and improve compliance.

Are final warnings and referral orders restorative in victims' absence?

Walgrave (2002) argues that 'restricting restorative justice to voluntary deliberations would limit its scope – possibly drastically, and condemn it to the margins of the system (p 193). He is right to be concerned about a conception of restorative justice which necessitates victim participation when research consistently shows low rates of participation throughout restorative schemes. However, Van Ness (2002b) points out that restoration can be achieved to differing degrees. Restorative justice reflects values which can be partially or fully expressed; when these values are partially expressed, there will be some restorative impact albeit not a fully restorative outcome (Van Ness 2002b, p 131). Likewise, McCold and Wachtel (2002) delineate three types of restorative justice which range from 'partially restorative' to 'fully restorative' depending upon the extent to which restorative values are realized.²⁴²

²⁴² The three types of restorative justice are as follows: (1) reparative approaches that deal with only one group of direct stakeholders are termed 'partly restorative'; (2) processes which include the principle stakeholders but exclude their 'communities of care' are termed 'mostly restorative'; and (3) only when all three sets of direct stakeholders are involved is a process said to be 'fully restorative' (McCold and Wachtel 2002, p 115-116).

This concept of degree is critical to our understanding of the implications of victim (non)participation.

Theoretically, in the absence of victim attendance at final warnings or referral orders, or indeed any restorative programme, it is possible for the scheme to be restorative as long as three other key variables are upheld. First, the victim and offender communicate with each other via statements and letters of apology through a third party mediator such as the YOT.²⁴³ Second, information about a case, its progress and its outcome are communicated consistently, efficiently and effectively to victims. Third, offenders complete the agreed programme of reparation. While this type of intervention would not qualify as fully restorative, using McCold and Wachtel's typology, it could be mostly restorative as long as the three key elements were upheld.

The problem with contemporary final warnings and referral orders is that not only is there a low level of victim participation but there is also poor follow-through with the three other variables. As a result, final warnings and referral orders are, at present, arguably towards the bottom of the sliding scale, qualifying as only partially or, in some cases, even marginally restorative. Therefore, when victims fail to personally participate in final warnings and referral orders, the restorative nature of these programmes becomes questionable. Not only should the Youth Justice Board be looking into ways to improve victim attendance in restorative programmes but it should also look for ways to improve the gathering of statements to be read in

²⁴³ In some cases victims will not want to make a statement and therefore this variable is somewhat specific to each victim in a case-by-case basis. However, as discussed in Chapter Four, hearing a victim statement can invoke a strong response in offenders. Therefore, while failure to make a statement will not affect the restorativeness of a programme for victims who are offered the opportunity and do not take it, such failure can potentially affect the restorativeness of a programme for offenders.

victims' absence, for those who do not wish to meet their offender face-to-face, as well as ways to improve both the dissemination of information and the completion of reparation.

Conclusion

One of the core components of restorative justice is victim participation, but low victim participation rates are a feature of restorative justice programmes in the UK and throughout the world.²⁴⁴ When I asked Rob Allen of the Youth Justice Board if he was aware of any failings in restorative work with Youth Offending Teams, he stated "Well, I think the main problem is the failure to get the victims involved."²⁴⁵ As discussed in this chapter, many, although not all, would agree that for final warnings and referral orders to be 'fully restorative' victim participation is necessary. Mr. Allen went on to explain:

So in a way, I don't think that the full possibility of this way of dealing with young offenders has really properly been explored. And so, we now have to think it's not really a restorative justice kind of intervention. It can approach ... It can sort of approach being one but it's not really one, and therefore, the components ... which involve paying back or making amends or whatever the restorative component, is presumably less significant than it might be.

As a result, it is necessary to consider the restorative nature of final warnings and referral orders in the absence of victim participation. This chapter has suggested that it is possible for both final warnings and referral orders to be of some restorative value if important variables are upheld, in particular the dissemination and flow of information between the parties and the completion of reparation to make amends for the harm caused by an offence. Unfortunately, it appears as though at present, these

²⁴⁴ E.g Karp and Walther (2001); Bonta et al (1998)

²⁴⁵ This quote is taken from the same interview with me on December 8, 2003 as noted previously. See footnote 24.

key factors are not fulfilled. Whilst this research did not set out to examine in-depth the role of victims in restorative justice programmes, my findings suggest that the current status of victim participation in Oxfordshire, both direct and indirect, is poor. Therefore, the restorative nature of final warnings and referral orders is greatly reduced to the point where one of the cornerstones of restorative theory appears to be in jeopardy. When interviewing Sue Raikes of Thames Valley Partnership, she commented:²⁴⁶

I think one of the key things if we are talking about restorative processes [is bringing] victims and offender together ... all of the research suggests that is quite complicated and needs quite a lot of work ... We've actually got to be prepared to put the time in and make it work ... [otherwise] it will end up being used much more selectively, which I think would be a shame.

In the light of these and other results cited above, further research focusing explicitly on victim (non)participation in final warnings and referral orders would be beneficial and could help the final warning and referral order programmes fulfil their restorative potential.

Another vital aspect of the restorative process which has been alluded to thus far is the cultural and organizational structure of the YOT. The next chapter looks in depth at the YOT as an institution, discussing the impact that its culture and management have on both the final warning and the referral order processes.

²⁴⁶ This quote is taken from an interview with me at the Thames Valley Partnership Headquarter on November 5, 2003.

7. Structural, Cultural and Political Influences on YOT Practices

We found much evidence to suggest that the YOTs were developing into strong organisations and were fulfilling their role in preventing offending.

—Youth Offending Team Inspection 2004

The preceding chapters of this thesis have examined in-depth the final warning and referral order programmes, exploring the successes and pitfalls of current practice from an array of perspectives. One of the principal themes to emerge from the thesis thus far is that there is a gap between the policy behind these programmes and practice as it occurs on a daily basis. With the 1998 Crime and Disorder Act, the newly created Youth Offending Teams (YOT) became the hub of youth justice services, the main vehicle by which the principal aims of the youth justice system were to be delivered (Youth Justice Board 2004l, p 4). Therefore, in order to better understand how these gaps between policy and practice occur, it is necessary to study the YOT as an organisation.

Organizational ecologists tend to assume that stability is the normal state for an organisation since change is believed to be not only difficult but also dangerous (Scott 2001, p 110). As discussed in Chapter One, the YOTs were created under a managerialist agenda in an effort to improve the consistency and the performance of the youth justice services, and in keeping with this managerialist ideal, the Home Office and the Youth Justice Board laid out clear guidelines for YOT practice. Therefore, from organizational ecologists' viewpoint, it would not be unreasonable to assume that under these guidelines the practices of the YOT organization would remain stable. However, other theorists argue that organisational persistence cannot

be taken for granted; rather entropy, “a tendency toward disorganization in the social system”, is the more normal condition (Zucker 1988, p 26). While national guidance was intended to create greater stability and uniformity across all YOTs, in fact practice tends to vary at the local level as standards are informally modified on the ground by practitioners because of distinct pressures placed on the YOTs and their staff. Meanwhile, local managers are either unaware or turn a blind eye to such modifications.

This chapter examines the structural, cultural and political influences on the Oxfordshire YOT and its practitioners to explore its entropic tendencies and to explain the gap between policy and practice at the heart of the youth justice services. Thus far, research into Youth Offending Teams has not explicitly examined these factors and their influence on the production of practice. Despite a vast body of sociological inquiry into organisations, research by criminologists of criminal justice institutions such as the YOTs remains scarce. This chapter seeks to address this significant gap in the study of youth justice practice and explore the effect of the YOT as an institution on the translation of restorative values into practice.

YOT Standards and Practice

The performance of the YOT is essential to the success of any youth justice programme. YOT staff are responsible for overseeing the implementation of policies and ensuring that programmes meet standards of practice on a day-to-day basis. Therefore, it is vital to examine the standard of practice that YOT officers are expected to meet and to judge how close actual practice comes to these standards.

National standards: Intended practice of final warnings and referral orders

As discussed in Chapter One, a significant philosophical transformation took place when the Labour Party assumed power in 1997. Moving away from the ‘punishment’ or ‘welfare’ ideologies which had previously dominated the youth justice system for much of the twentieth century, New Labour embraced managerialism. This new philosophy of crime control focused not on underlying ideology but rather on performance measured in terms of output. Under the tenet of managerialism, the government, with its newly created Youth Justice Board (YJB), clearly mapped out quantifiable strategies, goals and expectations of achievement for the reformed youth justice services. Good practice was defined according to a clear national framework of performance standards established for final warnings and referral orders.²⁴⁷ See Table 7-1.

According to the YJB, these standards provide for “the minimal level of service required by those working in the delivery of youth justice services” (Youth Justice Board 2004i, p 3). Practically, these standards clearly outlined the expected interaction between the YOT and young offenders: YOT officers should have frequent and consistent contact with young offenders throughout the administration of final warnings and referral orders, and, moreover, cases should follow specified timelines for practice to ensure the swift administration of justice, which is viewed as vital in the effort to persuade young offenders to reflect on the consequences of their actions.²⁴⁸ In October 2001, all YOTs in England and Wales signed a declaration that

²⁴⁷ In October 2001, all YOTs in England and Wales signed a declaration that they would meet the *National Standards for Youth Justice Services* by March 2004 (Youth Justice Board 2004c, p 19).

²⁴⁸ The swift administration of justice is one of the government’s top priorities: “The swift administration of justice is a key priority of the Youth Justice Board and is a key objective for youth

TABLE 7-1 NATIONAL STANDARDS FOR FINAL WARNINGS AND REFERRAL ORDERS

Final Warnings	Referral Orders
- The YOT must undertake an assessment of the young offender within 10 working days of referral from the police - The police should issue all final warnings within 20 working days from the date of bail - 80% of final warnings should be accompanied by an intervention programme The assessment should inform the intervention programme, which should include the following as appropriate: ▪ a restorative approach where the victim wants to be involved ▪ a one-off session if the risk of reoffending is low ▪ a brief programme of activity to address the needs identified by ASSET where the risk is high - An intervention programme must consist of a minimum of one post assessment meeting - If the intervention has been greater than the minimum requirement, a final ASSET should be completed when the intervention programme is concluded Youth Justice Board 2004i, para. 6.6-6.11; 2004a, p 6	- A YOT officer must be assigned to the case before the end of the next working day following court - This YOT officer must meet the young offender within five working days of court - An initial panel meeting must be convened within 20 working days of court - Progress panel meetings must be held at least once every three months - Action agreed within the young offender's contract must begin within five working days of the contract being signed - Face-to-face meetings between the YOT practitioner and young offender must take place at least every two weeks for the first half of the order Youth Justice Board 2004i, para. 8.18-8.25

they would meet the *National Standards for Youth Justice Services* by March 2004 (Youth Justice Board 2004c, p 19). Any departure from these standards must be appropriately authorized by the YOT Manager, Governor or Head of establishment

offending teams (YOTs). The Youth Justice Board believes that it is important to speed up the justice process so that sanctions against offending are experienced more immediately and young people are aware of the consequences that flow from their actions.” Youth Justice Board (2004m).

and the reasons for divergence recorded (Youth Justice Board 2004i, p 4). Nevertheless, this thesis has already demonstrated that expected standards of practice are not always realized.

Actual practice

Youth Offending Teams form the epicentre of many youth justice services, in particular final warnings and referral orders. For final warnings, all support received by young offenders comes from the YOT police officer. Young offenders on referral orders are meant to receive supervision by their YOT officer and support from Youth Offender Panels (YOPs). However, Chapter Five demonstrated that, at present, young offenders have limited contact with YOPs. Therefore, the quality of YOT supervision, the only other principal area of support for young offenders on a referral order, becomes paramount to the success of the order.

(i) Final warnings

The successes and difficulties of final warning practice have been discussed in detail in Chapter Four. To summarize briefly, the administration of the final warning by a YOT police officer provided a positive and supportive environment in which to discuss offending behaviour. However, in my sample, an intervention programme was completed in only 21 per cent of the cases rather than the 80 per cent called for by the Youth Justice Board.²⁴⁹ Therefore, the majority of final warnings in this sample failed to meet expected standards of practice and consisted of only a one-off meeting with the YOT police officer. Of further significance, during the fieldwork period the North Team lacked a seconded YOT police officer for eight months

²⁴⁹ See Youth Justice Board (2004a)

resulting in the referral out of the YOT of 92 final warnings; these warning were performed ‘administratively’ without intervention. A recent audit of final warnings in Thames Valley claimed that the overall poor performance was attributable to the lack of a police officer on the North Team (Audit Commission et al 2004, p 25). However, my data suggest that the Audit Commission’s conclusion is not necessarily true. Although the collection of cases in this research was certainly affected by the absence of a seconded police officer to the YOT, the data reported in Chapter Four represents the practice of YOT seconded police officers. Therefore, the extremely low completion rate for intervention programmes in the Oxfordshire YOT is not strictly ‘attributable to the lack of a police officer on the North Team.’

(ii) Referral orders

YOT practitioners’ work with young offenders on referral orders is a core component of the referral order programme. It is the responsibility of the YOT officers to implement the agreed upon youth offender contract; to oversee the referral order process and to ensure that each aspect of the order, including reparation, is completed to satisfaction; and, perhaps most importantly, to provide frequent and continual contact with young offenders, engaging them in discussion about the offences and their consequences. The relationship between the young person and the YOT practitioner comprises the backbone of the referral order programme since the YOT officer is the first person the young offender meets and, throughout the order, is the person with whom the young offender, at least in theory, works with the most.

According to national standards, young offenders must meet face-to-face with their supervising YOT officer “at least once every two weeks for the first half of the order and at least once a month thereafter” (Youth Justice Board 2004i, para. 8.24).

In this research, in the majority of cases young offenders' meetings with YOT officers complied with national standards: by the review panel meeting, 86 per cent of young people had met with a YOT officer at least every two weeks, and by the final panel, 83 per cent of young people had met with a YOT officer at least once a month. These data suggest that the vast majority of young people received the nationally *desired* level of support.²⁵⁰ However, unfortunately, in the 19 per cent²⁵¹ of cases in this study which failed to comply with national standards for the duration of the referral order, young people experienced virtually no support from the YOT. The following case example highlights the problematic lack of support experienced by young offenders in these cases:

David (10NRO) was given a seven month referral order for being involved in an alcohol related assault and affray which took place at a football match. Although David's court appearance was in November and his initial referral order panel meeting should have been scheduled before December, David's first panel meeting did not take place until four months later, in March of the following year. When finally convened, the initial panel meeting went well; the atmosphere was relaxed and friendly as David discussed with the panel the offence, the harm caused and how they could help him to stay out of trouble.

Three months later, when David was first scheduled for a review panel, he failed to appear. Subsequently, his review panel was again scheduled, cancelled and re-scheduled over the course of several months. Eventually, the review panel convened five months after David's initial panel. The official reason for the delay was that David's YOT officer had gone on extended leave and no one took over his case. Much to David's concern, and indeed dismay, he heard nothing from the YOT for the entire five months until just one week before his review panel when he met with his new YOT officer three times. "I wondered what happened. I didn't know what was going on!" he explained. Unfortunately, at the review it was discovered that David's case was no longer on file, meaning that there was no record of his initial panel meeting or his youth offender contract. The panel members were, not surprisingly, horrified: "Something has to happen here. This is dreadful, absolutely dreadful ... Obviously you've been lost in the system. For that I apologize;" "A right cock up isn't it!" Despite the significant problems with the case, the review panel was

²⁵⁰ There is a question as to whether national standards of support for young offenders are sufficient to achieve restorative justice goals. This will be discussed further later on in this chapter.

²⁵¹ The percentage is calculated out of the total number of cases in the study, excluding those cases which never progressed as far as the review panel.

positive. David was reassured, relieved and hopeful that his case was finally progressing. He received much appreciated praise from the panel for staying out of trouble and finding himself full-time employment despite the lack of contact from the YOT: "You have achieved a lot on your own and that is excellent but we want to get some other things in place because we think it will help you." Because there were only two months left on his order, the panel reduced his required hours of reparation from fourteen²⁵² to four and instead of working in the community he would be allowed to spend the time studying for his driving test.

Two months later, David failed to show up for his final panel meeting and was officially signed-off his order in absentia. According to David's YOT officer, David could not attend because he had to go to work.²⁵³ When speaking with David later, he explained to me that he had not seen his YOT officer since the review panel, "Nothing. Not at all. I only met him three times out of the whole seven months. I was meant to do loads more stuff ... It would have been better to have seen him [the YOT officer] more." Therefore, over his seven month order, David had two panel meetings, met his YOT officer three times, spent two hours (and not the four hours specified) preparing for his driving test and attended a three hour group workshop on offending behaviour. Not surprisingly, although David thought referral orders were in theory a good idea, he did not find his helpful, "It would have been [helpful] if I had attended what I was supposed to ... [The YOT] hardly ever got in contact with me and didn't tell me what was going on for months at a time. It was really stressful because I didn't know what was going on with my order."

In this case, the YOT failed in many respects. David's initial panel meeting should have taken place within 20 days of his court appearance; instead it took four months; David should have met with his YOT officer at least eleven times over the course of his order; instead they met three. The review panel meeting should have taken place within three months of the initial panel meeting; instead it took place five months later. Moreover, David's reparation was ultimately reduced to only two hours, and he was allowed to serve his own needs by studying for his driving test rather than making reparation to the community, one of the core tenets of restorative

²⁵² It is standard practice to give young offenders reparation for twice as many hours as the number of months of the referral order. Thus, a seven month referral order has fourteen hours of reparation.

²⁵³ Young offenders are not legally required to attend the final panel meeting.

justice.²⁵⁴ Sadly, by failing so dramatically to meet standards of practice, the YOT also failed David, who expressed on more than one occasion a desire to obtain more help and support from the YOT.

Most of the cases that did not meet national standards for YOT contact had similar experiences. However, in a few cases, it was difficult to assess the extent to which national standards were being met because some YOT officers appeared to lie to cover-up their mistakes or failings:

During an informal chat with other panel members before a meeting, one panel member, Tessa, began to discuss how she had discovered Edward, a YOT officer, lying about his work with young offenders. For some time Tessa had been suspicious of Edward, suspecting that he was not putting the amount of work into each case that he claimed. Tessa believed that Edward was coaching young offenders through every panel meeting by taking them aside and telling them what to say directly before the meeting started. On one occasion, Edward arrived late for the panel meeting because he was watching a football game. Tessa decided to take the opportunity to start the panel meeting without Edward and see if the young person had indeed completed everything in Edward's written report. As she suspected, Tessa discovered that the young person had never seen or even talked to Edward on the phone, although the official report claimed otherwise. Edward claimed he had discussed drugs with the young offender but he had done no more than send leaflets in the post. Tessa reported Edward to the YOT manager on three different occasions, but no action was taken, leaving her upset and frustrated: "He doesn't even do his job! The whole thing is a farce really!" [FD 2107].

In my own sample, during a final panel meeting, a young offender, Ben, and his mother contested that the official report from his YOT officer falsely stated that he had successfully completed his contract. Incredulous, one of the panel members stated, "Well, [the YOT officer] said it here in his report. Surely you are just not remembering." When Ben disagreed again, the panel member rebutted by reading the report aloud. Ben's mother was particularly frustrated and angered because she felt that Ben did not receive the support he was promised and which she felt he badly needed. Disappointed, a panel member commented, "We didn't ask very much of

²⁵⁴ The Youth Justice Board's publication on key elements of effective practice for restorative justice discusses the importance of young offenders' reparation to either the victim or the community (2004k, p 6).

you and it wasn't completed properly" to which the other panel member rebutted, "It was not his fault though." Ben was subsequently signed-off his order.²⁵⁵

Even when national standards were achieved in terms of timeliness and frequency of supervisory meetings, the quality of YOT supervision suffered. When young offenders in this study did meet with their YOT officers only half (48%) found their meetings helpful, with the others saying they were pointless:

- * *It was a hi, hello, coffee, cigarette, leave. (9NRO)*
- * *It's for them. It's more of a check-in so they can say they've done something ... an appointment to give me a future appointment to make sure I stay out of trouble. (19NRO)*
- * *I don't see the point of going for only five minutes. (11CRO)*
- * *We didn't say much. It was just crap and I can't even remember what we did. (5CRO)*
- * *It was as helpful as speaking to a filing cabinet. We didn't really talk about anything. (20NRO)*

Thus, although technically the YOT officers achieved national standards by meeting with young offenders according to the established guidelines, the length and quality of these meetings was less than was expected and desired by the young people.

Other orders, such as Intensive Supervision and Surveillance (ISSP), dictate a minimum level of supervision, twenty-five hours per week in the case of ISSP (2004i, para. 9.2). However, the national guidelines for referral orders make no such delineation, stating only that a meeting must take place. The problematic nature of YOT supervision on referral orders was highlighted in one case in particular:

Wayne (20NRO) was an alcoholic who received a referral order for drunk and disorderly behaviour; in fact, over a one year period, Wayne received a reprimand, a final warning, a referral order, and a two month extension to the original referral order all for separate drunk and disorderly offences. Subsequently, while on his

²⁵⁵ The panel had been similarly frustrated at Ben's review panel to learn that nothing had been accomplished in the order. At that point, the panel cancelled Ben's required reparation to provide him sufficient time to complete the other aspects of his order.

extended referral order, Wayne was arrested yet again for being drunk and disorderly and was placed on ISSP. After Wayne's referral order was revoked, I had the opportunity to speak with him. Interestingly, Wayne was very happy with his ISSP order and felt that the referral order had failed him because of the lack of quality supervision. Wayne commented:

I've changed more now that I'm on ISSP. I was an alcoholic then and I'm not now. I don't drink like I use to and it's because of the extra support I'm getting from ISSP ... I didn't think too much of [the referral order]. It's more hi, how are you, ok, see you later. It's just a gathering but things still aren't sorted out like twelve years later. They don't do anything. They say they are going to give you this plan and get you sorted but nothing ever comes of it ... If they did actually get someone to speak to you and if they did what they said they were going to, [it'd be helpful]. They need to rev their song, get more organized ... but I say to learn you still need ISSP or the YOT and more frequent work and support. It has to be that way.

Wayne's comments indicate that he preferred the ISSP over a referral order because of the more integral supervision he received from the YOT. ISSP guidelines provide a level of quality assurance by dictating the amount of time that young offenders and YOT officers must spend together each week, an assurance absent from the referral order guidelines.

However, regardless of what guidelines demand, for these orders to be successful it is necessary that the interaction between young offenders and YOT practitioners be sufficiently meaningful. On several occasions, much to the YOT officers' embarrassment, young offenders would be unable to recount to the YOPs what they had discussed with YOT officers during these supervision sessions. For example, in one case (8CRO), the panel asked Kevin how his anger management sessions with his YOT officer were going. Kevin stated that he didn't know because he couldn't remember anything that was discussed in the sessions. His YOT officer, Kim, was visibly disturbed by his comment and gently reprimanded him stating, "Come on now Kevin! You remember what we talked about. I know you do. Stop fooling around and tell them about it." When Kevin, clearly struggling, tried to give an answer, Kim stepped in and finished his sentence. Later Kim commented, "He

does remember anger management from week to week. I don't know why he said that. We go over it every time we meet but he doesn't remember what we talk about."

A critic might argue that in fact some restorative work took place in this and other meetings but young offenders are notoriously monosyllabic and have a tendency to say 'I can't remember' or 'Nothing happened.' As I did not sit in on these meetings or specifically interview YOT officers, it is difficult to determine what 'really happened' in the meetings between young offenders and their YOT officers. However, in this case, Kevin's perception of his meetings with Kim is revealing: "I don't talk that much. Kim does all the talking. She just talks at me." Therefore, while Kevin admitted to me that Kim lectured him for half an hour about anger management before his panel meeting, because she failed to involve Kevin in a conversation about it, the meeting effectively became meaningless for him. Kevin eventually said of his meetings with Kim, "I don't take any notice." For YOT supervision to be successful, it must not only meet national standards but it must in fact surpass the national guidelines by providing a level of quality not explicitly called for in the guidelines. Therefore, it would be beneficial if the YJB considered changing the national standards for practice to include a minimum amount of time that young offenders must meet with the YOT officers while on a referral order, akin to the ISSP guidelines. However, more importantly the guidelines should be changed to include quality of practice and not simply quantifiable data.

The following section explores why such a significant gap between policy and practice exists in some cases. In trying to understand this gap, structural, cultural and political influences on practice are examined.

Explaining the Gap in Practice

In order to better understand why an organisation such as the YOT functions as it does, it is necessary to examine the forces that influence practice. The Oxfordshire YOT is influenced by three distinct, yet intertwined, forces: structural, cultural and political. External structural pressures on the YOT, particularly resources available, dictate the level of practice that can be achieved. The organisational culture which develops within the YOT influences the decisions about practice that YOT practitioners make within the parameters of the organisation. Lastly, the YOT as an organisation is political. Thus, political pressures placed on the YOT by the government and government quangos like the Youth Justice Board affect both the structural constraints on the YOT organisation and the cultural decisions made by YOT practitioners, in particular by setting priorities. This section explores each of these three influences on YOT practice and discusses how they interact to produce the practice described earlier in this and other chapters.

Structural influences on YOT practice

During the fieldwork period, it became apparent that YOT practices were inhibited by several structural constraints which were deeply intertwined, in particular, financial and personnel resources. Central to the success of any organisation is plentiful financial resources alongside financial stability. Nevertheless, since the inception of the YOTs, there has been insufficient funding. During its formative years, the YOTs received a substantial amount of money from the YJB for the development of practices. However, this funding was dedicated to the development of specialized projects. As a result, attention was diverted away from the core services of the YOT in favour of the specialist projects (Burnett and

Appleton 2004a, p 21). Ros Burnett and Catherine Appleton felt that “a ‘Rolls Royce’ service was being established, but there were insufficient resources for ‘core services’: assessment and preparation of pre-sentence reports, court duties; one-to-one supervision of young people; case records” (2004a, p 19). Even practitioners described this key developmental period as one of “champagne and caviar but not enough bread” (Burnett and Appleton 2004a, p 20). At the time, there was concern that the YJB’s funding strategy was ultimately unhelpful because it detracted from the development of collective long-term strategic planning and funding arrangements (Burnett and Appleton 2004a, p 20). Failure to plan effectively the funding during the vital developmental period of the YOTs still affected practice during the fieldwork period for this research.

Several years on, one significant problem which plagued the YOT during my research was the recruitment and retention of staff, both YOT officers and police officers seconded to the YOT. In fact, vacancies for both types of practitioners remained open for the length of data collection. The YOT’s struggle to recruit and retain personnel was so considerable that on the first day of field research, the most senior YOT practitioner simply stated, “Forget everything you have read. Throw it all out the window. Policy does not equal practice” [FD 1012]. He went on to explain that the YOT was simply not capable of living up to national standards due to a lack of resources, in particular personnel. The Manager of the North Team complained bitterly about the lack of staff. He was frustrated for his team because in Oxfordshire, at the time of this research, the case load was split across the county by approximately 40 per cent to the North, 40 per cent to the City and 20 per cent to the South. However, his team had only half the number of staff as the City and, in fact,

approximately the same number of staff as the South, despite carrying responsibility for twice the caseload [FD 1112]. Furthermore, the North Team lacked a seconded police officer for nearly a year, resulting in final warnings being referred elsewhere. According to the Team Manager, the lack of resources prevented the team from meeting any national standards, "We don't meet national standards on anything. We just can't because we don't have the resources" [FD 1112].

The YOT's difficulties with staff recruitment and retention, in part, revolved around insufficient financial resources. Putting aside the unfilled practitioner positions, the YOT was in need of additional staff to meet the growing demand for services. In fact, the Youth Justice Board found that 45 per cent of YOTs felt that their size provided substantial difficulties to the provision of services (2004j, p 14). However, the resources to provide for increases in staff were simply not available to YOT Managers. In interview, Mel Lofty,²⁵⁶ the Superintendent of Thames Valley Police Area Support, stated:

If you go back to the conception of the Oxfordshire YOT, no one actually worked out how many staff they needed and the money it required. I mean, it was very much up in the air because it was done so quickly and you are probably aware they did a sort of budget review about 18 months back now and they identified even then that they were at least one million pounds short of the money they needed to do what they were supposed to be doing.

Shortages in personnel placed a significant burden on existing staff both in terms of caseload and in meeting national standards. Although the normal caseload is considered to be approximately twelve cases, according to the YOT officers many practitioners had more and several were responsible for as many as twenty cases at

²⁵⁶ This quote is taken from an interview with me at the Thames Valley Police Headquarters in Kidlington, Oxfordshire, on November 17, 2003.

one time. Under such strain, ten to twelve hour working days were considered fairly standard for the staff.

Practitioners expressed grave concern over their growing caseloads and lengthy working hours. One YOT officer, Jason, permanently carried a heavy caseload of between fifteen and twenty cases. Jason worried that his schedule would never return to normal because every time he closed two cases he was immediately assigned two more. Likewise another YOT officer, Susan, complained that she typically found herself working a minimum of ten hour days because her schedule required her to meet with young people at all times of the day. For example, she had been given a new referral order case with a young offender who could only meet with her after 6.30pm due to his work commitments, which when combined with her clients who could only meet in the mornings made for an overly long day [FD 3010].²⁵⁷

Rod Morgan, Chair of the Youth Justice Board, recently admitted that there are concerns about the caseload of YOT practitioners.²⁵⁸ Morgan noted that there has been a 30-35 per cent increase in the number of young people brought before the court, due in part to the automatic nature of the system.²⁵⁹ However, as the caseload of the existing staff increases, money has not been given to YOTs to support the expanded provision of services. Morgan stated that more thought needed to be placed

²⁵⁷ Susan felt that it would be beneficial to all YOT officers if cases were allocated in groupings so that, for example, one person was responsible for all the cases that only met in the evenings and another person took the morning cases, thereby reducing the number of lengthy working days.

²⁵⁸ Rod Morgan gave a talk at Oxford University's Criminology Seminar Series on March 2, 2005.

²⁵⁹ i.e. a referral order is given automatically for a guilty plea on a first offence in court.

on how stressed resources are being utilized, “We need to think strategically about YOTs, workloads, and their funding.”

A contributing factor to some of the YOT officers’ long working days was the amount of time they spent travelling to meet with young offenders. This was specifically a concern for the North team. The City team was responsible for a fairly compact geographic area which made it possible for all young offenders to come into the offices for appointments. Moreover, all venues for referral order panel meetings were within a one mile radius of the team’s offices. However, the North team served a large rural area, requiring YOT staff to spend a significant amount of time travelling to meet young offenders and to hold referral order panel meetings.²⁶⁰ It was not unusual for the staff to spend as much as two or three hours driving in a single day and to travel as much as 700 miles in one week [FD 1203]. As a result, the practitioners had to work longer hours to compensate for the amount of time lost to travelling. YOT officers believed that this was one of the primary reasons the North team had difficulties recruiting and retaining staff [FD 1203]. With extra resources, to hire additional staff, the strain caused by travel would not be as significant because each practitioner could carry a lighter load.

Not only did the YOT lack the finances to hire a sufficient number of staff, but the existing staff did not feel adequately remunerated. YOT officers complained that they should be given higher salaries for working particularly long hours. As Jason put it: “It’s a joke really isn’t it. My salary goes down by the day. The more hours I work, the less my hourly rate!” [FD 0810]. The combination of an arduous

²⁶⁰ Refer to Appendix 2 for a map of the areas covered by the various units of the Oxfordshire YOT.

working schedule and relatively low wages made it difficult for the YOT to both recruit and retain practitioners, which in turn contributed to the demanding and strenuous working schedule. The Audit Commission's 2004 report on youth justice noted that the recruitment and retention of qualified staff was problematic for all YOTs (p 62). For example, the Youth Justice Board reported that some YOTs found they had no choice of candidates when recruiting for Manager positions because the pay was so low, resulting in placements which had a disappointing lack of skills (2004j, p 13). In fact, simply an interest in youth justice could, regardless of training or qualifications, result in recruitment into the YOT (Burnett and Appleton 2004b, p 40). Burnett and Appleton revealed that "At one stage there was a joke going round the YOT that anyone who dropped into the office for a cup of tea was eligible to join the team" (2004b, p 40). Significantly, during my own research with the Oxfordshire YOT, the difficulty with the recruitment and retention of staff reached such a state that a panel member was offered, and accepted, a job as a YOT officer. Within six weeks he was carrying a full workload and was attending referral order panel meetings on his own. Moreover, as mentioned previously in Chapter Three, much to my surprise I was even, only half in jest, asked if I wanted a job with the YOT.²⁶¹

This section has demonstrated that current structural conditions are not conducive to the achievement of targets and standards set by the government. As a result of these constraints, practitioners are unable to devote sufficient time to meaningful work with young offenders. A second and inter-related influence on the YOT as an organisation is the culture. It is necessary to analyze organizational

²⁶¹ When I replied that I was busy with my research, the YOT officer laughed and said it was ok because they didn't have time for their jobs either.

culture because the accomplishments of an organisation's goals are determined not only by external processes but also by internal dynamics.

YOT culture

Youth Offending Teams, like any other criminal justice agency, are an organisation both practically and conceptually, and as an organisation, they develop an organisational culture which is a 'learned product of group experience' (Schein 1985, p 7). More specifically, culture is a multifaceted notion comprised of a complex collection of values, attitudes, rules and accepted practices specific to each organizational setting which emerges as people react to situations that confront them and which are interpreted through the lens of prior experiences (Reiner 2000b, p 85). Culture, and specifically YOT culture, is an important sociological concept to understand because it is critical to the way practitioners react within the organisation's working environment.

(i) An homogenous culture?

Researchers of criminal justice institutions have long argued that the cultures of such organizations are not universal. Rather, such institutions are culturally diversified by structural stratification and the distinct pressures placed on individuals of different rank. Therefore, it is possible to identify multiple cultures within one organisation.²⁶² This is particularly applicable to Youth Offending Teams as they are an amalgamation of different services. In fact, the creation of the Youth Offending Teams has been likened to 'shotgun weddings between agencies' (Bailey and

²⁶² A great deal has been written with regards to 'cop culture'. See for example Reiner (2000b); Chan (1997), (1999); Manning (1978)

Williams 2000, p 5). By taking employees from various and distinct services - the police, probation and social services - it is possible that, although displaced into the new YOT organisation, these individuals would continue primarily to identify with their home institution. For example, the police might be expected to be more punitive and more victim-focused than social workers, who might be expected to be offender-focused and favour minimum intervention. However, this research suggests that on a macro-organisational level the Oxfordshire YOT has primarily developed a singular homogenous culture.

One of the primary reasons for the presence of an overall homogeneous culture is that members of the YOT are cut off from their mainstream institutions. Burnett and Appleton similarly reported the emergence of a 'generic YOT worker' during the formation of the YOTs as practitioners lost contact with their parent agency and consequently identified themselves with the YOT (2004b, p 41). In my own research, the re-assignment of identity was most prominent with police officers. A review of youth justice services by the TVP revealed that outdated views of restorative justice as 'pink and fluffy' were still very much in vogue. In fact, YOT police officers noted that non-YOT police referred to their jobs as 'a cushy number', a 'nine to five' in which young offenders were 'mollycoddled' (Thames Valley Police 2003, p 15). Officers who held positions in Youth Offending Teams were accused of 'going native' and told they would have to be retrained to do 'proper policing' upon leaving the YOT (Thames Valley Police 2003, p 16,18).²⁶³ One police officer who was seconded to the YOT was told that she would have to hand in her key fob for the

²⁶³ The TVP report does not make clear whether YOT police officers were told this casually by other officers or whether they were told this officially.

police station even though YOT workers are allowed to have fobs (TVP 2003, p 19). As a result, YOT police officers reported feeling invisible, undervalued and excluded by fellow police officers and line managers (TVP 2003, p 15, 19). Therefore, seconded YOT police officers were more likely to identify culturally with the YOT.

This divide between the police and the YOT became especially clear when the YOT police officer in the North team left and TVP tried to find a replacement. Temporarily, PC Jones was assigned to the North team to take over the responsibilities for final warnings from the officer who had left. He was very unhappy about this assignment and made it clear that he did not want to work with the YOT. PC Jones was impossible to get in touch with, never returned phone calls to any of the YOT staff (or to me), and if a member of staff did manage to speak with him, he was rude and abrupt, in one instance reducing a YOT officer to tears [FD 0806]. PC Jones was so elusive that the Manager of the North team could not even find out if final warnings were being administered. When James, one of the YOT police officers from the City team offered to help PC Jones with the final warnings, he refused to take James' calls. James was irritated that PC Jones would not take his help, "It's stupid really because he doesn't want to do them anyway! They have a backlog of ones that need to be done." Moreover, James was particularly upset because he knew PC Jones was not organising any interventions, "This style of just making them sign on the dotted line is a step backwards and is not what this work is about anymore. It's about trying to help them [young offenders] and not about trying to shuffle them through the paperwork as fast as you can" [FD 3007].

When I finally managed to meet PC Jones, he stated that he was desperate to get out of working for the YOT, "They are a joke and I want nothing to do with

them!” [FD 3107]. In fact, PC Jones disassociated himself with the YOT so strongly that during the only final warning I observed him administer, he told the young offenders and their parents, “The YOT has not done its job and there is no excuse for it. I have been brought in to clean up their failure with respect to this and other cases. I am *not* part of the YOT and for that I am thankful!” [FD 3107]. Primarily, PC Jones’ negative attitude toward the YOT stemmed from his perception that the YOT was wholly dysfunctional, a belief which he supported by pointing to the huge gap between the rhetoric behind the organisation and everyday on the ground practice. The Thames Valley Police were well aware of the difficulties in filling several vacant positions in Youth Offending Teams, noting “it is disquieting that there have been few expressions of interest” (TVP 2003, p 17). However, the police process for filling vacant YOT positions, as stated in their *Youth Justice Review*, was not helpful to the situation:

If there are no takers, area commanders will allocate an officer, and it has been the case in the past that they select the ‘infirm and unwilling’, i.e. officers on light duties, with long service or problems (although in at least one case the YOT has successfully ‘rehabilitated’ such an officer). This can also take considerable time.

(TVP 2003, p 17)

Schein (1985) argues that culture should be “reserved for the deeper level of basic assumptions and beliefs that are shared by members of an organization” (p 6). The largest cultural divide in the Youth Offending Teams is likely to occur between seconded police officers and the other YOT workers, particularly since police culture tends to be entrenched. However, this research suggests that the divide could occur within police culture, as there is a clear distinction to be made between those police officers who believe in restorative justice work with juveniles and those who think restorative justice work is overly-lenient, trivial, and unproven. In support of this

supposition, a small study by Smith (2002) suggests that two separate cultures with disparate attitudes exist in two of the English police services which introduced restorative justice practices. Interviews with central figures in Thames Valley Police revealed that police officers trained in restorative justice techniques are culturally distinct from those who have no involvement in restorative justice (p 16).²⁶⁴ This is not entirely surprising, given that the existence of multiple cultures within the police has been well documented.²⁶⁵ Further research into this area could help develop our understanding of police culture and its relationship with YOT culture. To some extent, I would surmise that cultural division within the police has encouraged a homogeneity in the culture of the YOT, which is based upon a shared 'deeper level of basic assumptions and beliefs'.²⁶⁶

The culture of the Youth Offending Teams represents the 'working personality' of the organisation and develops from an adaptive response to working conditions.²⁶⁷ As a result, although the overall macro-culture of the YOT remains unified, it is understandable that the micro-culture between different YOTs or even between different units within one YOT might vary slightly as working conditions can vary. As noted in Chapter Three, there was a slight cultural difference between the North and City teams of the Oxfordshire YOT as the North team staff were

²⁶⁴ Smith, P. (2002) *The Rise of 'Law and Order' and Its Implications for Restorative Justice*, Oxford: Reuters Foundation and Green College (unpublished David Law Fellowship Paper) cited in Hoyle and Young (2003) p 694.

²⁶⁵ For example, see Reiner (2000b); Chan (1999); Manning (1978); Manning and Van Maanen (1978)

²⁶⁶ In this case, I would argue that the deeper level of beliefs which unites the members of the YOT is a belief in helping young offenders through restorative programmes. Although there is no specific evidence of this per se, throughout this thesis, and as seen in the rest of this chapter, YOT officers' comments indicate their philosophical commitment to restorative principles, especially when they express frustration, anger and dismay that current programmes are not achieving their ideal. If YOT officers did not believe in restorative justice, they would not express feelings of concern that young people were not receiving the help they needed.

²⁶⁷ Skolnick (1966) claimed that culture was the 'working personality' of the police.

generally more boisterous, engaging in frequent informal, friendly conversations while in the office. In contrast, the City team staff worked quietly at their desks, rarely engaging in cross office banter or conversation. It is likely that this difference was due in part to the size differential between the members of the North and City teams staff and office space. The North team had approximately half the number of staff as the City team and accordingly only half the office space. It is plausible that the more intimate size of the North team fostered a more collegial atmosphere while the large size of the City team led to a more sober working environment.

A second micro-cultural division appeared within the Oxfordshire YOT, and specifically the North team, which again is likely based upon the working conditions of the North team. The 'organisational purpose', that is, the set of beliefs about the mission of the organisation, is considered foundational to an organisation's culture (Sackmann 1991, p 144). One of the core components of YOT culture is a sense of a mission to prevent offending through the provision of support and assistance to young offenders.²⁶⁸ According to the Youth Justice Board:

The statutory aim of the youth justice system is to prevent offending by children and young people. This can only be achieved by ensuring that the assessed needs of children are met, and that young people manifesting risk factors associated with offending behaviour can access appropriate health, social, educational, family support and leisure provision as a means of diverting them from criminal and anti-social behaviour. At the same time, this will enable Yots to contribute to the social inclusion agendas of these agencies.

(2004j, p 2)

Although YOT officers did not speak openly about a cultural sense of mission, it was reflected in the YOT officers' sense of honour about their work. Some YOT officers

²⁶⁸ Similarly, one of the core components of cop culture is a sense of mission. Police officers are, for the most part, intrinsically dedicated to 'fighting crime' since policing is viewed not simply as a job but rather as a way of life with a meaningful purpose (Reiner 2000b, p 89). This sense of mission and purpose is reflected in police officers' view of themselves as 'the thin blue line' (Reiner 2000b, p 89).

tried very hard to keep up with their cases but others simply seemed unable to perform their jobs. In the North team, there was concern among some YOT officers that such attitude and poor quality of work reflected badly on the YOT and dishonoured it [FD 1202]. Indeed, this concern was so strong that it led to a division within the North team between the two types of practitioners. Whether consciously or subconsciously, during working hours YOT officers tended to socialize (for example, during cigarette breaks) primarily with other practitioners who aspired towards similar standards of practice. This time would be used to complain about the other practitioners' quality of work. The intimate working environment of the North team made it generally prone to gossip among the staff and therefore ripe for cultural divisions around standards of practice. However, this division was not seen in the City team. Because the City team was much larger and developed a micro-culture of non-interaction between staff, it is likely that the YOT officers in the City were much less aware of the status of other practitioners' cases.

Overall my research suggests that the YOT has developed a homogenous culture on the macro-organisational level. However, micro-organisational divisions can be found within the Oxfordshire YOT based upon varied working conditions. It is not unreasonable to assume that other micro-cultural differences could exist within other YOTs and YOT teams as it is unlikely that any two YOTs or teams will function under precisely the same working conditions. Following the same line of reasoning, it is possible that other YOTs have not developed the same homogenous macro-culture found within the Oxfordshire YOT because the partnership agencies in other areas may interact differently. Nevertheless, at least in Oxfordshire, the YOT is culturally unified on a macro-level.

(ii) The influence of YOT culture on practice

Building on Bourdieu's concepts of 'field' and 'habitus', Janet Chan (1999) argues that under specific structural conditions (the 'field') workers develop and maintain particular cultural assumptions ('habitus') (p 118).²⁶⁹ Thus, in the YOT, practitioners develop a cultural attitude about their work in response to the structure of their working environment as "people create their own cultures, but not under the conditions of their own choosing" (Reiner 2000b, p 85). When the YOTs were first formed, the initial attitude of YOT workers was one of enthusiastic optimism (Holdaway et al 2001, p 56; Burnett and Appleton 2004a, p 26). Burnett and Appleton in their study on the formation of the Oxfordshire YOT state, "The 'formative' stage began with buoyancy and optimism ... The first months were an exciting period of growth which inspired staff and fitted well with the Youth Justice Board's consistently positive publicity about the reforms it was overseeing" (2004a, p 18). However, in the time since the authors' research, as the initial excitement of the YOTs creation and purpose has waned and as the preliminary flood of funding has begun to taper, the cultural attitude of YOT practitioners appears to have dramatically shifted.

My research found that throughout the YOT a sense of pessimism and cynicism developed amongst YOT officers as current structural constraints made it impossible to meet the rapidly growing need for their services. YOT practitioners increasingly had to work harder and harder simply to maintain a level of stasis, and,

²⁶⁹ 'Field' and 'Habitus' are terms set forth in Bourdieu and Wacquant (1992). Chan developed Bourdieu's conceptions in her work on police 'cop culture'. However, her theoretical argument can be generalized to this case. As Van Maanen points out "Workers in all occupations develop ways and means by which they manage certain structural strains, contradictions and anomalies of their prescribed role and task" (1978, p 116).

as the Red Queen Syndrome²⁷⁰ set in, a feeling of almost helplessness permeated the YOT:

- * *We're totally snowed under. We just don't have the time to do everything properly.*
Jason [FD 1806].
- * *We are letting a lot of young people down. We just don't have the capabilities to help them.* Martin [FD 2002]
- * *I hate to say it but referral orders are half assed. We just don't have the resources.*
Patrick [FD 2002]

YOT officers became progressively disillusioned because they were unable to meet the performance standards they expected of themselves, which their sense of mission necessitated, and which were expected of them by their governing bodies. As a result, YOT officers became increasingly disillusioned with the system as a whole, losing their sense of purpose about their work. In discussing restorative justice with two YOT workers, Greg and Michelle, they told me:

Greg: Restorative justice is a bit naïve. Some of it is just unrealistic.

Michelle: They are nice up there in the YJB headquarters. Charles Pollard [the then Acting Chair of the Youth Justice Board] is a nice guy but he doesn't understand the reality and the nitty gritty of working in the YOTs with these young people. He is surrounded by his palace up in London.

[FD 2910]

Similarly, when speaking with Susan about the YOT she said, "The more time I spend with the YOT, the more unimpressed I become. It simply is not achieving its

²⁷⁰ The Red Queen Syndrome derived from the character of the Red Queen in Lewis Carroll's *Alice Through the Looking Glass*: "Alice never could quite make out, in thinking it over afterwards, how it was that they began: all she remembers is, that they were running hand in hand, and the Queen went so fast that it was all she could do to keep up with her: and still the Queen kept crying 'Faster! Faster!' ... just as Alice was getting quite exhausted, they stopped ... Alice looked around her in great surprise. 'Why I do believe we've been under this tree the whole time! Everything is just as it was!' ... [And the Queen said] 'It takes all the running you can do, to keep in the same place. If you want to get somewhere else, you must run at least twice as fast as that!'"

goal.” She claimed that YOTs and restorative justice look good for the government because they provide the illusion that money is being spent on positive programmes, but “in reality, it’s useless” [FD 0508].

Returning to Bourdieu’s concepts of ‘field’ and ‘habitus’, Chan asserts that in light of structural constraints and cultural assumptions, workers make choices about their actions which determine practice (1999, p 118). The concept of organisational culture and its affect on the working practices of organisations is not new. Indeed, it has been studied over many decades.²⁷¹ However, Chan warns that practice is not the result of a simple linear progression from structural conditions through cultural knowledge (1999, p 117). Rather, Chan asserts that the process is interactive. It is necessary to consider individuals as active participants who form a crucial link between these elements because people are not passive entities as they take an active role in constructing their environments (Chan 1997, p 75; 1999, p 118).

Janet Chan’s model (See Figure 7-1) is helpful in providing a conceptualization of how structural conditions, cultural knowledge and practice all interact with individuals within an organisation such as the YOT. Thus, the production of YOT practice results from the dynamic interaction of these elements which cannot be easily separated.²⁷² However, the police organization on which Janet Chan builds her framework is well established. In contrast, Youth Offending Teams have only recently been established and therefore are best represented by a slightly different model, one which shows the influential power of politics over the structure and culture of YOT practices.

²⁷¹ For a meta-analysis see Ouchi and Wilkins (1985).

²⁷² This relationship and the effects of YOT culture on practice is discussed below within the context of case examples.

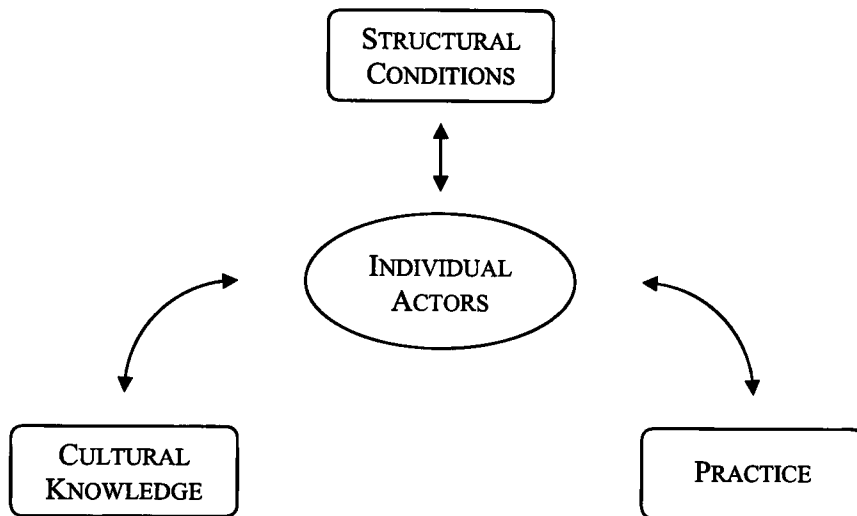


FIGURE 7-1 JANET CHAN'S INTERACTIVE MODEL OF THE PRODUCTION OF PRACTICE

Political influence on YOT practice

Examining Oxfordshire's Youth Offending Team, this chapter has thus far discussed how YOT practice results from a mixture of structural constraints which dictate the limits of practice and cultural attitudes which are responsive to the working condition and environment of the YOT. However, there is one more significant element which influences YOT practices: politics. Janet Chan, in writing about the police, comments that despite the supposedly apolitical nature of police organisations, policing is inherently political because it is an institution both created and sustained by political processes designed to enforce public order (1997, p 80). Arguably, Youth Offending Teams are also inherently political. In fact, the creation of the YOTs was so political that the government charged ahead with the implementation of legislation and policy before reviewing the final results of the pilot YOTs; only the interim findings provided guidance in the nationwide establishment

of Youth Offending Teams (Burnett and Appleton 2004a, p 14). This initial period of growth occurred so rapidly that concern arose among YOT staff that the quality of the YOTs' work might be compromised by governmental pressure to maintain a fast pace of development. One YOT manager commented:

It has been very, very fast and I have only just kept up with it. And the compromise has been the quality ... But the Government needed quick wins, that's the way politics runs and I can't see how it could have been done in any other way.

(cited in Burnett and Appleton 2004a, p 14)

Since the implementation of the YOTs, political pressure has led to unintended and unanticipated cultural changes within the organisation. In 1997 during the election campaign, the Labour Party promised to halve the average time from arrest to sentencing for persistent young offenders (Audit Commission 2004, p 28). Since the election, the government has continued to make clear that "Persistent young offenders must be accorded priority within the administration of justice" (Youth Justice Board 2004j, p 11). As a result, the needs of young offenders on low level orders such as referral orders in some cases become secondary. For those YOT officers who worked on both referral orders as well as more serious orders, such as detention and training orders, several were so over-worked that they stated they simply could not be bothered with referral orders [FD 3010]. Rob Allen, a member of the Youth Justice Board and head of the organisation Re-Thinking Crime and Punishment, commented that there is "an emphasis on speed through the system which I think sometimes can act against some of the dynamics in the referral orders and restorative justice generally."²⁷³ Thus political processes in and around an

²⁷³ This quote is taken from an interview with me on December 8, 2003 at the headquarters of 'Rethinking Crime and Punishment', a strategic initiative set up by the Esmée Fairbairn Foundation between 2001 and 2004 .

organisation can lead to low performance, particularly when combined with severely restricted resources.

In addition, the politicization of targets can force negative cultural changes within the YOT. As discussed at the beginning of this chapter, under the managerialist reforms that took place in the youth justice system, the Youth Justice Board instituted performance measures and targets. However, in order to ensure that this expected level of practice was met, the YJB made further funding dependent on meeting the outlined targets, withholding eight and a half percent of funding in those YOTs which failed to achieve the performance measures (Burnett and Appleton 2004a, p 127). Needless to say, YOT workers expressed objections noting that “it doesn’t exactly help to achieve [the targets] in the following year if you take the funding away” (Burnett and Appleton 2004a, p 128). It was, therefore, interesting to find that, as demonstrated in the case examples which follow, YOT officers had a tendency to lie about incomplete cases, claiming in the official report that they had been completed successfully. If funding is linked to achieving performance measures, it is not necessarily surprising that YOTs would chose to cover up cases which could potentially damage badly needed funding. Thus, politics and political pressure has been a powerful force in shaping the YOTs’ practice.

The organisational context of YOT practice

The following figure illustrates the organisational context of the YOT and how structural, cultural and political forces interact.

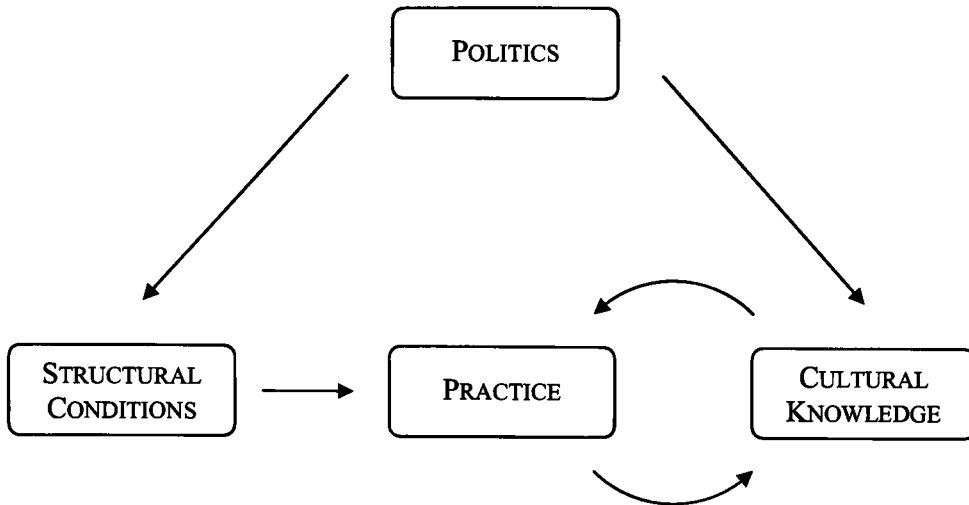


FIGURE 7-2 AN INTERACTIVE MODEL OF THE PRODUCTION OF PRACTICE IN YOTs ²⁷⁴

This section will utilize case study examples to facilitate discussion on how structural, cultural and political factors combine to produce the poor practice described at the beginning of this chapter.

(i) Jeremy

The case example which follows is one which I became familiar with although it was not included in my official sample:

Jeremy's case came to my attention when, in the midst of a panel meeting I was observing for this research, his father burst into the room and started yelling at the panel. Jeremy had been given a four month referral order and, at his initial panel meeting, scheduled his final panel meeting for that particular day and time. Since the initial panel meeting, Jeremy had not heard once from his YOT officer. He had not had a single meeting nor had he completed even one element of his contract. The YOT had cancelled his final panel meeting earlier that week realizing that nothing had been done with the case, but, as usual with this case, no one notified Jeremy or his family.

²⁷⁴ Janet Chan, in discussing her framework for practice laid out earlier in this chapter, states that the 'relationships between the elements are neither unidirectional nor deterministic' (1999, p 118). However, the lifespan of the YOTs has been so short that there has not been a sufficient amount of time for feedback to influence the politics or the structure of the YOTs. Therefore, presently those factors remain unidirectional. In the future, as research influences the YOTs developing practices, it is likely that politics and the structure will change. Nevertheless, at this point, that has not yet happened.

Jeremy's father complained that earlier in the week his wife had called the YOT to complain that the family had never heard from Jeremy's YOT officer and to ask whether the final panel meeting was still to go ahead. The YOT officer present at the panel confirmed that a message was taken and passed on to the YOT manager, although apparently still nothing was done. Jeremy's father stated that the whole family was both furious and disappointed that they had received no help from the YOT. They wanted 'the whole mess done with one way or another.' As the panel was not Jeremy's panel and neither his case information nor contract was present, Jeremy could not be officially signed-off his order. However, the YOT officer present said she would speak with the YOT manager and someone from the YOT would let the family know what would be done.

After Jeremy left, both the YOT officer and the panel members expressed outrage that a case could be so badly mishandled. The YOT officer proclaimed it a 'great disgrace' and stated that she was infuriated with the YOT manager. The panel members expressed concern over some of the larger implications of such mismanagement: "This is very bad! Now Jeremy can go and tell other people that referral orders are a waste of time, that he did nothing. He can tell them how he didn't even go to his final panel meeting, how his father went for him and it didn't matter because they weren't expecting him anyway."²⁷⁵

Jeremy's final panel meeting was rescheduled for three weeks later. However, he did not attend the meeting and was officially signed-off his order in absentia. The panel member presiding over the cases that day was unimpressed because she had to sign-off in absentia three young offenders, and she had no report from the YOT as to whether any of them, including Jeremy, had completed their orders. In fact, for two of the cases, the YOT sent her a letter stating that the files had gone missing and there was no longer a record of the order. In disgust this panel member called the YOT a 'black hole' and stated, "Kids can just disappear! I have to keep the names in a diary and chase them up [to get anything done] but who knows what would happen if I didn't!" [FD 07008]

A few days after the final panel meeting I spoke to both Jeremy and his father on the telephone. The family remained angry with the YOT. Since Jeremy's father burst into the panel meeting several weeks prior, the family had still not heard from the YOT. In fact, they didn't even know his final panel meeting had been rescheduled or that Jeremy's order had officially ended. Jeremy's father said:

We still haven't heard a word from the YOT! I feel like I wasted my time in going down there to talk to them because I still haven't heard anything. We just don't know what is going on!! They haven't even given us the courtesy of a phone call to tell us what has happened. No has called to tell us what went wrong or to offer us an apology. This needs to be ironed out for other children. [Jeremy] has turned over a new leaf and is behaving himself now but as parents it is disappointing that nothing was done. If he'd been a bad kid, we would have had no support at all! I thought the

²⁷⁵ The panel members were right to be concerned. As discussed in Chapter Five, young people with negative experiences of referral orders can influence others, who have never had a referral order, to think negatively about them.

idea was to sit down and talk to them and help them with their problems, to show them that they don't need to turn to crime. The point is that young people need to have other people besides their parents that they can talk to and work their problems out with. It's a big jump to the next stage and he hasn't been given the opportunity to talk this out with anyone. Luckily, what we've done with him as a family has worked. But if you talk to him, he will say that he was let off easily. If he does stray again, he'll say that he wasn't punished this time.

Surprisingly, Jeremy remained more positive about referral orders than his father. He believed that they were a good idea and could be beneficial if used correctly. He claimed that he would have liked to have had a chance to go back and talk to the panel about himself and how he'd changed. He was only disappointed that he did not receive more help from the YOT. He stated:

[Referral orders] are a good idea. [The YOT] just needs to be more disciplined about it. I learned a lot from my first meeting. Going just once was really helpful for me and I've changed partly because of it. I liked talking with [the panel] about what I did wrong and about how to learn from my mistakes. I think it's good to talk about it. I realized how stupid I was being. I got a good impression from them. I think they can really help people and be really useful.

The obvious question is how could this happen? How could the YOT reach a state where such significant gaps in practice occur? First and foremost, structural constraints on YOT practices are, at present, the principal determinant of practice. Given the severe constraints on resources already discussed in this chapter, the YOT was unable to provide the expected (and required) standard of practice for all young offenders. Thus Jeremy's case is one of approximately 20 per cent of referral orders in this sample which did not meet standards. However, the extent to which Jeremy's case was ignored results from a cultural response within the YOT in reaction to political and structural pressures.

YOT culture is critical in the translation of goals into practice as practitioners make choices about how to prioritize limited time and resources. As discussed earlier in this chapter, in response to political pressures within the constraints of limited resources, the needs of young offenders on low level orders such as referral orders, and particularly low level referral orders such as a four month order, may become secondary. In addition, because of the culture of apathy and frustration which

developed in response to the severe constraints on practice, there was a quiet underlying acceptance that not all cases could meet expected standards of practice. On a day-to-day basis there was little motivation to ensure best practice because YOT officers knew that even if it became well known that they were not meeting standards most likely nothing would be done, such as in Jeremy's case. The Audit Commission's report on youth justice noted that "Most YOTs lack any clear arrangements for managing staff performance, so good performance may not be rewarded or poor performance improved. This leaves staff feeling that performance is a low priority issue." (Audit Commission 2004, p 62).

Under the 1999 Youth Justice and Criminal Evidence Act (Section 12), the YOT had only two choices once it became clear that Jeremy's referral order would lapse with no action taken in the case: "Where the panel decides that the offender's compliance with the terms of the contract has been such as to justify [the] conclusion, the panel's decision shall have the effect of discharging the referral order as from the end of the compliance period. Otherwise the panel shall refer the offender back to the appropriate court." (YJCEA 1999, Sec 12.3-12.4). Thus, the YOT could either turn a blind eye to the situation while quietly signing-off Jeremy - thereby failing to acknowledge the shortcomings of the YOT and preventing a reduction in future funding due to a failure to meet targets - or it could go back to court, publicly admit the mistake and try to get the order extended or another order issued.

Burnett and Appleton in their study of the Oxfordshire YOT suggested that strong leadership is critical to the success of partnership initiatives such as the YOT

(2004a p 21).²⁷⁶ The authors indicated that early success in the YOT was due at least in part to the leadership qualities of the first two YOT managers, concluding, “The experience of the OYOT [Oxfordshire YOT] indicates that, to succeed, such a radical reorganisation requires first class leadership, committed and competent staff and a spirit of optimism” (Burnett and Appleton 2004a, p 21, 134). The actions of the YOT manager in Jeremy’s case certainly suggest weak or broken leadership within the YOT organisation, since he clearly behaved in an unprofessional manner by knowingly allowing an incomplete case to be successfully signed-off. Nevertheless, besides showing fallibility, given the structural and political constraints beyond his control, the behaviour of the YOT manager arguably demonstrates the sort of determination to ‘do what it takes’ to ensure the future stability and funding of the YOT, a characteristic usually attributed to strong leadership. Burnett and Appleton list among the qualities of ‘first class leadership’ ‘stamina ... and the dogged determination as relevant to success’ as well as the ‘inspiration, direction and influence which [leads] to funding’ (2004a p 21, 134). Although I do not condone the actions of the YOT manager, I am nonetheless sympathetic to his predicament and wonder if the qualities required of a manager to get the YOT up and running are not perhaps detrimental when the YOT is placed under extreme constraints such as those found in this research. Either way, the YOT manager’s actions are suggestive of the extent to which leadership can be subjected to organisational and institutional pressures.

²⁷⁶ Likewise Hedderman and Williams (2001) found that leadership ‘seems to be the factor which determines whether implementation is successful’ (p 2).

It is widely assumed that organizational choice is possible within the context of external constraints; however, institutional theorists have, in the past, tended to focus on conformity and acceptance rather than resistance and manipulation in response to constraints and pressures (Oliver 1991, p 149). In contrast, Christine Oliver delineates five general strategies organizations use in confronting institutional pressures such as the structural and political pressures the YOTs face: acquiesce, compromise, avoidance, defiance, and manipulation (1991, p 152).²⁷⁷ For the purposes of this case example, the YOT appears to primarily embrace 'defiance' – dismissing or ignoring rules or values as a strategic option when internal objectives diverge or conflict with institutional requirements (Oliver 1991, p 156). Thus the active decision on the part of the YOT to do nothing, to ignore the guidelines for practice laid out by the YJB, is a cultural response formed to cope with the YOT's inability to meet expectations given existing structural limitations and pressures of political prioritization. However, by allowing Jeremy's case to become officially recorded as a completed case, the YOT is also employing 'avoidance' - the attempt to conceal non-conformity and thereby create a buffer from institutional and external pressures and expectations (Oliver 1991, p 154). By concealing their failure in this case, the YOT creates an external appearance of conformity and thereby receives all of the benefit (such as full funding) that accompany conformity.

²⁷⁷ Oliver (1991) defines each strategy as follows: acquiesce: compliance with institutional values, norms or requirements or imitation of other successful organizations selected as models; compromise: balancing, placating and negotiating institutional demands; avoidance: the attempt to conceal non-conformity and thereby create a buffer from institutional and external pressures and expectations; defiance: dismissing or ignoring rules or values as a strategic option when internal objectives diverge or conflict with institutional requirements; manipulation: the purposeful and opportunistic attempt to co-opt, influence or control institutional pressures and evaluation.

(ii) Charles

Charles (6NRO) was given a three month referral order for criminal damage. Although he received this order for a minor offence, Charles was widely known to be linked with much older and more serious offenders. At the initial panel meeting, Charles' mother begged for help from the YOT. She claimed that she was worried for her son because he was completely out of control. At the time of the offence, 5.30am, Charles had been out all night without his parents consent or knowledge of where he was. As Charles' mother began to describe his behaviour and her concerns, Charles kept interrupting her and arguing with her, telling her to 'shut-up.' Charles became increasingly rude and argumentative with the entire panel and eventually refused to sign the youth offender contract. After being told that he would go back to court, Charles signed the contract.

Although review meetings are extremely rare for three month orders, the panel decided that because they believed Charles to be at high risk of re-offending they would meet again in one month to ensure that his case was progressing. Before the scheduled meeting one month later, the panel members were very upset to learn from the YOT report that nothing had been done with Charles' case: a referral had been made to the group workshop on offending behaviour although no workshop session had yet been arranged by the YOT; an appointment had been set up with Social Services but it was cancelled by Charles' mother because it was arranged for when Charles was in school; Martin, Charles' YOT officer, was on holiday for three of the four weeks between the initial panel meeting and the review panel meeting and therefore did not have the opportunity to meet with Charles even once.

Nevertheless, the review panel meeting never took place as Charles' mother arrived alone; Charles had been missing from home for two weeks and was listed as a missing person with the police. Charles mother began to cry as she said:

I've been desperately asking for help for 18 months from social services, from the YOT from everyone. His behaviour has been getting worse and worse. As long as he has a choice and feels that there are no consequences for saying no, then he will not do it. So far there have been no consequences for his actions. He has been given too much choice and asked if he wanted to do something rather than told that he had to ... nothing has been done up to this point. He needs to see that people are telling him what to do and are backing up their words.

[FD 1903]

After discussion amongst the panel members, the attending YOT officer, Lisa, and Charles' mother, the panel decided to revoke Charles' order and send him back to court with the likely outcome that he would be re-sentenced to a more intensive programme. However, the next day there was an argument in the YOT offices. The YOT manager refused to revoke Charles order claiming that it was necessary to hold a breach meeting with Charles first to give him the opportunity to amend his behaviour, which could not be done until he was found. Out of anger with the situation, Lisa proclaimed, "When you find him in a ditch, you tell the coroner that he [Charles] had to have a breach meeting!" Lisa later commented,

It is in difficult situations like these that the system breaks down ... [Charles] is a high risk case and they are treating it 'by the book' and not making an exception of his special needs. Not all youths will fit specified criteria. Special consideration needs to be taken in some cases. The YOT needs to be flexible and use their expertise to judge what is best for a particular case. [They] should trust my opinion and that of [the panel member], since he is an experience panel member. [Charles] has great welfare needs that must be helped. His mother is crying out for help! By the time they have the breach meeting the order will be over with and there will be no time to do anything ... the Children's Act of 1989 makes clear that the welfare of the child must come first. This is the first thing that we as YOT officers must look to. In this case, they are not even considering the welfare of [Charles] ... They are such asses! They don't even know how to communicate with young people!

[FD 0904]

Six weeks later, I spoke with Martin about Charles' case. He stated that Charles' order was never revoked, everything was progressing smoothly and Charles would be signed-off his order in the next few weeks. However, Charles' final panel meeting never appeared on the YOT's official schedule. Thus, a month later I again talked to Martin about Charles' case. This time, he claimed that Charles already had his final panel meeting a month ago and I must not have seen it on the schedule. I suspected that Martin was lying and went to see the YOT staff member who organized all the referral order panels, booked the necessary spaces and coordinated with the panel members. She stated that she never organized a final panel meeting for Charles and thus did not know how it could have taken place. I subsequently went to the panel members responsible for presiding over Charles' panel meetings and they stated that they had never been involved in a final panel meeting for Charles. In fact, the panel members were still under the impression that Charles had been sent back to court and given a different order. Disturbed by the prospect that Martin was lying about Charles' case and that possibly nothing had ever been done with Charles, one of the panel members relentlessly pressured the YOT to tell him what had happened with the case. Six weeks later, the panel member received the following email from the YOT:

[Charles] failed to show up for the group work on offending behaviour and the case worker then went on leave. By the time he returned from leave, there was insufficient time to take this back to court due to the amount of time the courts are taking at the moment. The North YOT didn't have sufficient staff to pick this one up in the case worker's absence and cover it.

Perhaps not surprisingly, Charles re-offended six months later and was given a three month supervision order. However, he again failed to keep his appointments with his new YOT officer, Jack, who threatened to send Charles back to court again unless he started to cooperate. A breach meeting was held between Charles, Jack and the YOT Team's manager. Charles agreed to cooperate and was allowed to continue his order. Nevertheless, Charles continued to be elusive. As the three months of Charles' order was coming to an end, I worried that he had 'completed' his supervision order in the same way he had 'completed' his referral order. I had tried to speak with Charles on many occasions, always when he was supposed to meet with Jack. However, I had not been successful because he had not once come to his meetings with Jack.

Therefore, I hoped to reach Charles when he would be doing community service as part of his required reparation, but, as always, Charles failed to attend. The reparation officer told me that Charles and Jack had been fighting because Charles claimed his reparation was scheduled after the three months of his order expired and he was therefore legally not required to attend. Jack had eventually given in to Charles and allowed his reparation to be incomplete. When I called Jack to ask why Charles did not complete his reparation, Jack told me that the reparation officer had cancelled it because he couldn't attend. Clearly, one of them was lying. Regardless, once again Charles received no meaningful support from the YOT.

As the excerpt demonstrates, Charles was a difficult young person with whom to work. Because he was so contentious, a significant amount of extra effort was needed from the YOT to get Charles to attend even one meeting. However, YOT officers were limited in the amount of time they had to devote to each young offender and therefore realistically could not afford the extra time needed for difficult cases like Charles'. Moreover, for the most part, many YOT practitioners had little desire or motivation to work with such challenging offenders and knew that any inattention to a case would be overlooked by the YOT. Therefore, in light of the grave restraints on the YOT's resources, YOT practitioners, in some cases, made cultural value judgements about which young offenders would receive attention; the cases requiring the most effort tend to be the ones which actually receive the least help. For example, Susan was supervising a young offender named Brian who was extremely uncooperative. He turned up to appointments with Susan only when threatened with being sent back to court for a breach of the order and, upon attending appointments, was rude and defiant. Susan admitted that Brian should have had his order revoked due to non-cooperation. However, Susan had neither the time nor the patience to work any further with this particular offender and so she made sure the panel was unaware of his true behaviour, allowing Brian officially to complete his order [FD

0805]. Even the Youth Justice Board was aware of this tendency as Charles Pollard,²⁷⁸ the then Acting Chair of the YJB, noted of YOT practices:

I say to people, say on your final warnings for example and with the interventions, how do the interventions go and how many people do successfully complete these interventions? Oh it goes very well, they say, oh about 80% doing very well here. I say well what about the other 20%? Well, they don't turn up or ... I say well aren't those the very ones we should be trying to ... aren't those the most problematic of them all. So he's telling me that the youngsters, the most contentious ones, the ones that really aren't easy to do the work with, are the ones who get away with it, which is useless frankly.

Research into other criminal justice agencies has revealed organisational difficulties similar to those in the YOT. In 1993 the Crown Prosecution Service (CPS) was reorganized and brought under new public management in order to establish a new national framework (Loveday 1999, p 365). However, in 1998 the Glidewell Inquiry was established to consider the practices of the CPS. It found that cases which were considered borderline for successful prosecution were discontinued. Such borderline cases are the ones which often require the most significant amount of work and were therefore discontinued in order to ease the burden on over-worked lawyers. Moreover, these discontinued cases were also usually the most difficult, complex and contentious cases (Glidewell 1998, Chapter 4 para. 32). Barry Loveday in his discussion of the Glidewell Inquiry adeptly commented, "Yet in terms of public interest criteria and also public confidence in the criminal justice system, the decision to discontinue the most serious cases while pursuing the least serious might have been viewed as perverse" (1999, p 368).

Once again, when it became clear that nothing would happen in Charles' case, the YOT chose to overlook its failings, quietly letting the case pass unnoticed (and

²⁷⁸ The quote is taken from an interview with me at the YJB Headquarters in London on October 20, 2003.

then more covertly lying about it) rather than risk any repercussions from a formally recorded incomplete case. As in Jeremy's case, the YOT again used 'defiance' and especially 'avoidance' tactics to cope with their inability to meeting expected standards of practice. It may at first be thought that performance standards increase the transparency of an organisation, particularly one like the YOT. However, the cases discussed in this chapter demonstrate that the opposite can be true. Rather, the application of performance culture to criminal justice agencies may only hide internal organisational failure (Loveday 1999, p 375). What the data reveal are that obfuscation and manipulation in the name of performance standards and targets appear to assume a high degree of salience instead. Therefore, it seems as though the political pressure intended to ensure a high standard of practice across the country has instead fostered a YOT culture which not only tolerates poor quality practice and has little motivation to get difficult cases back on track but also, more significantly, chooses to cover up cases which do not meet the expected levels of performance demanded by the YJB, cases like Jeremy's and Charles'.

Is It Restorative?

Arthur Stinchcombe (1965) suggests that organisations are imprinted at their founding by the institutional environment so as to reflect the historical conditions of their origins (cited in Scott 2001, p 100). Youth Offending Teams were established and cultivated during the era of mainstream managerialism; in fact, YOTs were created under the central ethos of managerialism, to bring together staff and resources to provide more efficient services (Home Office 1998b, para. 10-11). If we follow Stinchcombe's line of thinking, then it should not be surprising if a managerialist

agenda is prominently placed at the core of the youth justice service, and in fact, it appears as though Stinchcombe is correct. While restorative justice may be at the heart of many youth justice policies, the YOT organisation does not exist in a political vacuum, and there is, nonetheless, a pressure to attune to the principles of managerialism.

Arguably, part of the reason for the massive reform of the youth justice system was due not to a theoretical revision of youth justice principles. Rather, the changes were brought about in response to criticisms, particularly from the Audit Commission's 1996 report *Misspent Youth*, calling for a more efficient and economical youth justice system.²⁷⁹ If the contemporary reforms have come about out of a desire to streamline and economize then we cannot expect restorative justice values to take precedence over the managerialist intentions which drove the reforms. In fact, we find evidence that the changes were not wholeheartedly theoretical as the government made clear that even restorative justice practices were not to be immune from an expectation of performance, from tangible managerialist performance measures. The guideline document *Restorative Justice: Key Elements of Effective Practice* published by the Youth Justice Board states, "It is possible to become so interested in the process of restorative justice that the overall objectives are forgotten. The achievement of the overall objectives should not be measured by the 'feel good' factor that often accompanies a restorative process" (2004k, p 6).

One of the continuous themes of this thesis is to explore the implications of YOT practice on the restorativeness of the final warning and referral order

²⁷⁹ Audit Commission's report *Misspent Youth* (1996) states: "The current system for dealing with youth crime is inefficient and expensive, while little is being done to deal effectively with juvenile nuisance. The present arrangements are failing the young people" (p 96).

programmes. Sadly, this chapter reveals that the organizational context and operation of the YOT, at present, is very damaging to the restorative potential of these two programmes. The structural and political pressures placed on YOT staff, both practitioners and managers, have created a cultural adaptation which favours survival and the portrayal of success while any failings are at best unmentioned and at worse lied about and covered up. A 'tick box' practice has emerged in which the YOT prioritizes pushing cases through the system rather than carrying out meaningful and often time-consuming work with young people.

In order to secure an improvement in YOT practices, more attention needs to be paid to the stresses that the YOTs currently function under and more funding needs to be provided to the YOTs, not for specialist projects but for ordinary everyday work. The case examples in this and other chapters have shown that many young offenders wished that they had more contact with and more help from the YOT. For example, in one case (9CRO) when asked if there was one part of the referral order process that he could change what would it be, the young offender stated: "I liked doing it [the referral order] but, well, maybe if we'd met more often I think it would have helped to keep me off the action plan order."²⁸⁰ Another young offender (6NFW) who agreed to a final warning intervention programme but never heard from the YOT again felt that additional help from the YOT would have helped him, "I

²⁸⁰ An action plan order is a community sentence which is available for any juvenile who is convicted of an offence which the court considers serious enough to merit a community sentence. It is intended to provide a short, intensive, individually tailored response to offending behaviour and associated risks (Youth Justice Board Website). In this case (9CRO) the young offender was given an action plan order because he was caught attempting to burglarize a store while he was still serving out his referral order.

coulda done with the extra help.” Sue Raikes²⁸¹ of the Thames Valley Partnership comments:

I think that the huge shift that was envisaged in the legislation and politics probably still needs to happen. In some ways the focus on reparation and restorative justice as the centre of what goes on is probably not really there yet ... In a sense that means that the original vision of the Youth Justice Board and the legislation is still quite a long way from actually being practice. So rather than thinking about where the policy should go, I think it is still really a question of practice catching up with the policy.

However, in addition, as discussed in Chapter Five, there is a question as to whether national standards of support for young offenders are sufficient to achieve restorative justice goals. Especially when national standards are being interpreted in the manner discussed in this chapter, it is not unreasonable to suggest that indeed national standards are insufficient. Quality assurances should also be put in place. Therefore, a review and improvement in national standards could, alongside additional financial support, improve the restorative prospects of current practices.

Conclusion

One of the difficulties facing public policy, indeed one which has plagued the youth justice system, is fractious and competing interests which can result in inconsistent and contradictory divisions.²⁸² In 1997, the White Paper *No More Excuses* stated, “The Government believes that there has been confusion about the purpose of the youth justice system and the principles that should govern the way in which young people are dealt with by youth justice agencies ... This confusion creates real practical difficulties for practitioners” (Home Office 1997b, para.2.1).

²⁸¹ This quote is taken from an interview with me at the Thames Valley Partnership Headquarter on November 5, 2003.

²⁸² Chapter One discussed in-depth the historical prevalence of such inconsistency in the youth justice system.

Unfortunately, it appears as though the recent reformation has not necessarily produced greater uniformity in the youth justice arena as confusion about the purpose and governing principles of the youth justice system remains, a confusion which continues to create difficulties for practitioners.

Contemporary youth justice policies suggest a commitment to restorative justice principles, which do not lend themselves to quantifiable performance measures. However, simultaneously, the Labour Party, strongly identifying with improved performance and performance measurement in public services, introduced new management methods which included the establishment of performance targets and indicators (Loveday 1999, p 352; Flynn 2002, p 91). This bipolarization of youth justice priorities affects the daily administration of youth justice services in Youth Offending Teams. At the creation of the YOTs, practitioners were very excited and optimistic about the new ideological commitment to an interventionist strategy which aimed to tackle offending behaviour and risk factors that lead to further offending. However, this chapter has demonstrated how the countervailing tendencies between structural restrictions and political pressure have bred a culture of cynicism, alienated staff and undermined the effectiveness of the youth justice services.

Barbara Czarniawska-Joerges, in her examination of complex organisations, points out, "Organizations are organisms, survival oriented" (1992, p 166). This description is particularly applicable to the YOT organisation at present as Youth Offending Teams struggle to meet not only government demands but the needs of young offenders while structural, cultural and political pressures coincide to subvert restorative ideals and good practice.

8. Conclusions: Restorative Justice, Rhetoric or Reality?

If we want to avoid the cycle of optimism and pessimism that so often attaches to any justice innovation, then we should be courageous and tell the real story of restorative justice. But, in telling the real story, there is some risk that a promising, fledgling idea will meet a premature death.

-Kathleen Daly 2003c

At the beginning of this thesis, Chapter One illustrated the revolutionary nature of the youth justice system; revolutionary both in its unmitigated cyclical debate between differing models of what the system should be trying to achieve and revolutionary in its ability to create innovative new policies to address offending behaviour. The focus of this research has been on the radical shift in policy over the last decade away from the welfare and justice ideologies that underpinned the criminal justice system for much of the twentieth century and the introduction of restorative justice under the 1998 Crime and Disorder Act and the 1999 Youth Justice and Criminal Evidence Act, specifically the introduction of final warnings and referral orders.

One third, or 31 per cent, of all youth justice disposals, including custody are comprised of final warnings and referral orders (YJB 2004g, p 53). Moreover, most first time young offenders receive either a final warning or a referral order. Therefore, restorative justice practices have come to constitute a significant component of the youth justice system. However, while this contemporary shift in policy is apparently dramatic, the question remains as to whether these developments comprise only a theoretical and philosophical transformation to restorative justice

rather than an actual transformation to restorative practices. There will always be gaps between theory and practice, and this thesis aimed to explore the gap between restorative justice rhetoric and restorative practices. This chapter draws together my concluding thoughts on restorative justice practice in England.

Restorative Rhetoric or Restorative Reality?

Youth justice has always been a politically hot topic. However, particularly since the moral panics of the early 1990s, youth crime has rarely been out of the eye of the media and the public.²⁸³ Increasingly, the public are becoming better informed ‘consumers’ of policy, calling for more information about services and their effectiveness (Wilcox 2003, p 21) and demanding positive results. The government has responded to, and further fed, this appetite for ‘something to be done’ by rolling out new schemes aimed at curbing and preventing offending behaviour at an astonishing rate. Since 1998, among the Labour Party innovations are²⁸⁴:

the Youth Justice Board (YJB); Youth Offending Teams (YOTs); reprimands; final warnings; referral orders; intensive supervision and surveillance (ISSP); reparation orders; action plan orders; supervision orders; youth inclusion programmes (YIPs), youth inclusion and support panels (YISPs); positive activities for young people (PYAP); safer schools partnership; acceptable behaviour contracts (ABCs), anti-social behaviour orders (ASBOs); local child curfews; local child safety orders; parenting orders.

Moreover, since the establishment of the Youth Justice Board (YJB) and under its authority, over 250 different projects have received funding, at least 46 of which involve restorative justice (Wilcox 2003, p 22). However, officials at the YJB have commented that, because the main priority has been to establish programmes as

²⁸³ Refer back to Chapter One’s discussion on moral panics surrounding urban youth disturbances and the murder of James Bulger.

²⁸⁴ This list was created from the Youth Justice Board website. October 2005.

quickly as possible, insufficient time is allotted to evaluative arrangements (Wilcox 2003, p 23). As a result, in a political quagmire where quantity appears to trump quality, comparatively well established programmes like final warnings and referral orders can find themselves in a state of limbo, ignored by the government and the Youth Justice Board who appear to be consumed with establishing the latest in the new product line for policy consumers.

Restorative theory in practice

If we return to the discussion of Chapter Two, 'restorative justice' is somewhat of an ambiguous term since there is no single agreed definition. Rather, the concept of restorative justice is an 'umbrella term' which has been stretched over a number of disparate practices in different countries and different legal cultures (Shapland 2003, p 197). As a result, restorative justice is primarily associated with core values which processes and outcomes should reflect. In particular, there are two primary guiding principles of restorative justice which practice, in varying forms, seeks to uphold: (1) the empowerment of all parties and (2) reparation of the harm caused by an offence. Unfortunately, the results of this research indicate that both final warnings and referral orders are currently experiencing significant failures in practice, which suggests that restorative practice in England is characterised by more rhetoric than reality.

The most obvious gaps in the translation of restorative theory into practice occur in the conversion of the value 'repairing the harm' into practical reality.²⁸⁵ In the aftermath of a crime, reparation and restoration are used to facilitate repair among

²⁸⁵ A discussion of the translation of 'empowerment' into practice occurs below.

the parties. However, the substantive chapters of this thesis suggest that the elements of practice necessary to achieve reparation and restoration are not significant features of either final warnings or referral orders. Reparation by offenders to either the victim or to the community is not a significant aspect of many final warnings and referral orders.²⁸⁶ Restoration, of victims but especially of offenders, is also difficult to achieve when victim participation is exceptionally low and when young offenders are afforded only brief and infrequent contact with community panel members who are mostly of a considerably different demographic make-up and who have a tendency to dominate proceedings.²⁸⁷ Moreover, the support structure, provided by the YOT, to enable and catalyse reparation and restoration appears to be in organisational peril.²⁸⁸

The broader question this thesis sought to examine relates to the meaning of restorative justice within the context of everyday practice. The conclusion of this research is that presently restorative practices in England re-establish young offenders as a central party in conflict resolution and thereby empower them, the first of the

²⁸⁶ The results from this research suggest that final warning interventions are poorly utilized - of the fourteen final warnings included in this sample, only three completed an intervention programme. Refer to Chapter Four. Likewise, with the referral orders, direct reparation to the victim was made in only two cases, symbolic reparation to the victim in the form of a letter of apology was completed in only four cases. Furthermore, this research raises significant questions about reparative work undertaken by young offenders in the form of community service - in at least four cases the YOT falsified the young offender's progress report to state that he had completed the requisite hours of community service when, in fact, this was untrue. Refer to Chapter Five.

²⁸⁷ The results of this research indicate that victim participation was low for both final warnings and referral orders. In final warnings, no victims participated in restorative conferences and victims' views were represented through the YOT in six cases. In referral orders, only three victims chose to attend the panel meetings and another three provided panels with statements. Refer to Chapter Six. For referral orders, almost one quarter of the orders that were either three or four months long had only one panel meeting, and one quarter of the orders that were either five or six months long had either no review or no sign-off meeting, therefore convening just twice. Moreover, whilst the initial panel meetings usually lasted for 45-60 minutes, the panel meetings after the initial meeting lasted for an average of only 10 minutes. Lastly, the figures from various research demonstrate that the majority of panel members are white, female, professionals over the age of forty (see Table 5-3). Refer to Chapter Five.

²⁸⁸ Refer to Chapter Seven.

core restorative values mentioned above.²⁸⁹ Significantly, as Chapters Four and Five illustrated, young offenders are very positive about restorative programmes despite the problems already highlighted. This satisfaction with the process derives from the empowerment young offenders experience through the final warning and referral order processes - duly achieved first by reinstating the parties as central players in conflict resolution and second by encouraging deliberative participation among those parties. This research found that young offenders expressly appreciated the empowerment that the final warning and referral order process provided – that is, the opportunity to speak, to be listened to, to be respected, and to receive help. As a result, despite the gaps in practice, young offenders experienced high levels of satisfaction with the programmes: young offenders predominantly thought that final warnings and referral orders were both fair and a good idea; and the majority of young people appreciated the provision of a ‘second chance’.

Defining success in restorative practice

Given this current embodiment of restorative theory in practice, it is important to consider how we evaluate the achievement of such elusive contextual justice practice. Earlier, this chapter mentioned the government’s drive to rollout new legislation and to implement new programmes. In order to accomplish this goal, the government, has emphasized a managerialist approach to youth offending. Thus, one measure of success, especially used by the government, for any criminal justice programme examines the extent to which quantifiable targets are met, particularly a reduction in re-offending rates. However, while this management style can be

²⁸⁹ While theory also provides for the empowerment of victims, since their participation rates are so low it is not unreasonable to suggest that victim empowerment does not characterize restorative practices in England.

beneficial and can help to streamline youth services, making them more efficient, as Chapter Seven suggested, utilizing quantifiable performance targets to measure the success of restorative practices does not necessarily provide an accurate picture of young people's experiences of those programmes.

Another means of evaluating the success of a restorative programme is to appraise the extent to which practice realizes restorative values. Regrettably, if the final warning and referral order programmes are evaluated in this manner, neither can be considered very successful. As a result of the many failures in practice, only one of the two core restorative values has been realized. Moreover, the value of 'empowering of the parties' has been successfully realized only in regards to young offenders. However, the scope of this value is intended to include the participation and empowerment of victims, something which research suggests has not yet happened in restorative practices in the England.²⁹⁰ Therefore, even the translation of this value is only partially successful. Especially when placed within the context of the aims and justifications of the final warning and referral order programmes, these gaps in practice are indicative of a larger failure to translate restorative rhetoric into a practical reality.

Nevertheless, even if restorative values are successfully employed, restorative practices still may not be considered successful. Some suggest that restorative practices alone may not be sufficient. The Crime and Justice Research Centre in New Zealand in conjunction with the New Zealand Ministry of Justice have recently released a research evaluation of restorative conferences; the report argues that

²⁹⁰ See the results of this research discussed in Chapter Six. Also see Holdaway and Desborough (2004); Newburn et al (2002); Crawford et al (2001), which are likewise discussed in Chapter Six.

although researchers found high levels of satisfaction among participants, such findings may not matter if there is no impact on re-offending rates (para. 10.1).²⁹¹ However, offender satisfaction with restorative processes is important because offenders are more likely to respond positively to criminal justice processes which they perceive as just and with which they are satisfied (Braithwaite 2002, p 54; Morris and Maxwell 2000, p 212; Walgrave 2004, p 564). Evidence from this research, discussed in Chapter Five, suggests that if young people have a negative experience of a justice programme, such as a referral order, they are likely to influence their friends into thinking negatively about the programmes as well. This process in turn has the potential to lessen a programme's ability to impact on young offenders predisposed to mistrust it because they enter the programme expecting it not to work. Therefore, high levels of satisfaction with restorative practices by both victims and offenders is not something that should be lightly disregarded.

Effecting change in young people is neither quick nor easy. Although practice may meet performance targets, the quality of practice is equally important. Meetings cannot be brief (that is, less than ten minutes for review or final panel meetings), victim participation is important (but at present is almost non-existent) and reparation should be meaningful and should be followed through (at present it is not). Performance targets can provide an indicator to how well practice lives up to expectations but targets in and of themselves are in some sense meaningless if they are not backed-up by a corresponding quality of practice.²⁹²

²⁹¹ Kingi et al (2005) Court referred restorative justice pilot evaluation, Wellington New Zealand: Crime and Justice Research Centre, Victoria University of Wellington and the Ministry of Justice.

²⁹² Recent research released by the Ministry of Justice in New Zealand found that although offender satisfaction with restorative justice conferences was initially significantly higher than court

Restorative potential and future success

According to Morris and Maxwell, the real question is whether restorative processes offer more *potential* than conventional justice processes to impact on offenders and to effect change (2001, p 270). The current state of the final warning and referral order programmes is very problematic. However, simply because these programmes experience difficulties, they should not necessarily be considered a failure. Certainly the potential of final warnings and referral orders is suggestive of future success for these programmes. First of all, as discussed above, restorative practices have the potential to lead to higher levels of satisfaction among young offenders which in turn can possibly increase the impact that restorative processes have on young offenders as compared to more traditional processes.²⁹³

Second, the present failures in practice are not related to the philosophical foundation of these programmes or even to the way in which they have been set up. Rather, the current shortcomings in practice are due mostly to a failure of implementation on the part of the YOT. The achievement of successful restorative practices which realize restorative values is time intensive, requiring a great input from a service provider such as the YOT. The results of this research suggest that, constrained by political and financial imperatives, the YOT as an organization is essentially stretched beyond its capacity for the provision of services which fully

comparison offender satisfaction, after a one year follow-up period, there was no longer a significant difference in the satisfaction rates. The primary reason for the significant decline in offender satisfaction arose from offenders' disappointment that the promises of the conference were not fulfilled. Offender satisfaction after twelve months was grounded in the impact of the conference in their lives. Where the conference led to positive changes in their lives, offenders were more likely to be satisfied (Kingi et al 2005, sec 8.8).

²⁹³ Both McCold and Wachtel (1998) and Latimer et al (2005) found that offenders who took part in restorative programmes were more likely to be satisfied and experience the process and outcome as fair than offenders whose cases went to court. Moreover, other studies, including my own, have found exceptionally high levels of satisfaction ranging up to 100% believing the process is fair and 99% satisfaction rates. See Braithwaite (2002), Palk et al (1998), and Trimboli (2000).

address these values. With effort, it is possible that practice can more fully realize restorative values, especially since the empowerment of young offenders in the final warnings and referral orders demonstrates that at least some restorative values can be successfully translated into practice.

Lastly, also important to the potential future success of restorative practices in England, the necessary underlying ideological transformation appears to have taken place within the youth justice services. Although those in the youth justice arena can have a tendency to become frustrated at their inability to provide services, there is a notable awareness of the importance of a restorative approach, and there is an underlying belief in restorative justice. While Chapter Seven illustrated practitioners' growing cynicism about their work, significantly, this attitude appeared to stem from an ineffectual provision of services rather than from a disbelief in restorative justice. In fact, as comments highlighted throughout this thesis have shown, practitioners espoused the benefits of a restorative approach and demonstrated their sensitivity to restorative justice. For example, practitioners were adamant that the title of the initial assessment of young offenders be changed to the 'young person's assessment' from the 'young offender's assessment.' They felt that the use of the word 'offender' labels and stigmatises young people [FD 1903]. This attitude represents a significant shift towards a more socially reintegrative approach and away from the conventional open-ended form of stigmatic shaming that has long characterized most retributive forms of punishment. Charles Pollard illustrated this stance well as he commented on the need to ensure that young offenders are not excluded from society.²⁹⁴ He stated,

²⁹⁴ The quote is taken from an interview with me at the YJB Headquarters in London on October 20, 2003.

“What we’ve got to do is de-label them [young offenders], get the label off of them ... and then it’ll be like, wow these kids actually have a bit of a chance in life!” As long as the individuals involved in youth justice – practitioners, managers and those responsible for the oversight of the system - are able to maintain a basic belief in restorative justice theory and practice, it is possible to remain hopeful that they will encourage a greater investment in practice, which will allow for the potential of final warnings and referral orders to be more fully realized. If we believe in the merits of a restorative approach, in trying to address offending behaviour in a positive and constructive way to prevent future offending, then the results of this research are certainly promising and restorative programmes like final warnings and referral orders are worth a renewed interest.

Are These Conclusions Generalizable?

Since this research is based upon the examination of only the Oxfordshire YOT, it needs to be asked if these conclusions are generalizable across all YOTs in England. David Garland prefaces his overview of social responses to crime by noting the unavoidable tension “between broad generalization and the specification of empirical particulars” (2001, vii). He comments that detailed case studies, of which this thesis is one, prompt critical questions about their significance. Sue Raikes, in her interview, was likewise dubious about the generalizability of such specific research.²⁹⁵ She commented, “... your decision to focus on Oxfordshire ... will give you some very good information, and of course Oxfordshire are very open to communicate what they do, but the reality is that they are not typical.”

²⁹⁵ This quote is taken from an interview with me at the Thames Valley Partnership Headquarter on November 5, 2003.

However, Young and Hoyle argue that sometimes local detail can reasonably be presented as something of national importance, as part of the bigger picture (2003, p 274). Where this research gains significance on a national level is not the extent to which these conclusions can be generalized across England, or even the UK, but rather the extent to which they cannot. In the same interview with Sue Raikes, she continued:

They [the Oxfordshire YOT] are quite significantly ahead ... to be honest I don't know how strong the restorative work, the mainstream restorative work is in the areas outside of Oxfordshire. I guess it's pretty patchy ... So it's not a criticism of your work but I think you won't be able to really say this is what it looks like elsewhere unless you wanted to extend it and look at it in other places ... You would probably be quite struck at the lack of resources even now compared to Oxfordshire.

The Oxfordshire YOT is widely recognized as the pinnacle of practice in the UK. Because of Oxfordshire's close ties with Charles Pollard, ex-Chief Constable of the Thames Valley Police who went on to preside over the Youth Justice Board as a member and, for a time, acting chair, the YOT has always been at the forefront of youth justice developments. The Oxfordshire YOT was one of eight YOTs across England and Wales to be granted pathway status, thereby receiving £11 million to demonstrate best practice, and as a result, in many cases the YOT has served as a pilot site for developing programmes, including referral orders (Youth Justice Board News 1999, 2000). In fact, the Oxfordshire YOT has been singled out for exemplar practice in several government documents.²⁹⁶ Therefore, the practice of the Oxfordshire YOT represents best practice and where practice falls short in Oxfordshire, practice across the rest of England is unfortunately likely to be even

²⁹⁶ Youth Justice Board (2002); Home Office (2003b); in the Audit Commission et al (2004) report on the Oxfordshire Youth Offending Service, the introduction notes, "At this stage, we expect only a few YOTs to be performing satisfactorily". The report then goes on to assess the overall performance of the Oxfordshire YOT as good; as of November 2005, the Oxfordshire YOT was highlighted on the YJB website as an example of good practice in working with asylum seekers.

further behind. As a result, in light of this research, it is fair to suggest that restorative practices throughout England are, for the most part, likely to be failing to uphold restorative values.

Warnings for the Future

Despite the problematic state of restorative practice, the government, rather surprisingly, has declared the youth justice system a success. As recently as July 2005, in the publication of the new Green Paper *Youth Matters*, the Home Office wrote:

Recognising that Youth Offending Teams (YOTs) have had considerable success in delivering targeted youth crime prevention programmes with a strong performance management culture, the Youth Justice Board, Home Office and DfES have agreed a proposal which would maintain this role for YOTs.

(Home Office 2005b, p 58)

Such an unequivocal statement seems paradoxical and is certainly at odds with the results of this research. Nevertheless, this apparently strange denial makes more sense when placed within the current political climate.

As suggested at the beginning of this chapter, there has been a perceptible shift in the relationship between politics and the public as criminal justice is increasingly vulnerable to a consumerist public mentality and therefore to shifts of public political reaction (Garland 2001, p 172). As such, there is a greater pressure than ever before for the government, and in this case the Labour Party, to produce successful policy. Elections create an imperative political show of results (Tilley 2003, p 83), and although the last general election took place on May 5, 2005 before the release of *Youth Matters*, a strong demonstration of results from the newly elected party can help Labour garner support for its agenda in the new term. While

restorative justice was instilled in the youth justice system only a few years ago, the Labour Party's agenda for youth justice has quickly progressed and attention has turned to the introduction of preventive 'at risk' policies. Therefore, especially as final warnings and referral orders form part of the bedrock of Labour's policies since taking power in 1997, the government needs to be able to demonstrate that it can create and implement successful youth justice programmes in order to garner more support for the newer, and arguably more controversial, 'at risk' policies. However, the combination of populist demand and pressure for quick and successful solutions may produce two damaging effects of which the youth justice system should beware.

Early in the twenty-first century, the internet and advanced technology has helped to create a society accustomed to instant gratification where almost anything can be done twenty-four hours a day, seven days a week.²⁹⁷ Even criminal justice policy is expected to meet modern standards of timely reaction, as Garland comments, "Governments today are on a war footing ... expected to produce an instant response whenever this is called for" (2001, p 172). In a society obsessed by the immediate, it can be difficult to remember that although theoretical policy innovations can be created with break-neck speed, their practical realization and successful implementation cannot. It is as though there is an underlying assumption that programmes will automatically be successful. However, simple implementation is not equivalent to the establishment of continuing successful practice.

As a result, society is in danger of developing not simply a 'tick-box' practice, as discussed in Chapter Seven, but an era of 'tick-box' policy in which the rapid

²⁹⁷ For example, twenty-four hour communication across the globe; twenty-four hour news, twenty-four hour entertainment; twenty-four hour shopping and banking.

creation of policies to fulfil an ideological quota is prioritized - retributive policies, check; restorative policies, check; 'at risk' management policies, check. Rather than allowing time for meaningful work with young people to evolve at a sensible pace, thereby allowing for the successful establishment of newly created programmes, the government seems interested only in establishing new programmes and then quickly moving onto the next big idea, without sufficient attention to how new policies play out in practice. Unfortunately, final warnings and referral orders have received a diminishing amount of attention from the government and the YJB despite their growing place in the justice system, forcing the YOTs into the impossible situation of trying to make a success out of under resourced programmes.

Because policy is created and implemented so swiftly, in part to appease populist demands, there is an argument to be made that the philosophical implications are not always well thought out. One of the current trends in youth justice is the growth and incorporation under the banner of the justice system of a range of policies and programmes which target young people who have not yet offended. Arguably, what is taking place is the extension of the field of 'formal crime control' (Garland 2001, p 170). As a result, criminal specialists are no longer solely responsible for controlling and monitoring criminal behaviour as the field now extends to some extent beyond the State to include social and economic actors (Garland 2001, p 170). However, there is increasing concern among those within youth justice that by including potential offenders within the jurisdiction of the youth justice arena, these individuals will fall within a stigmatized group and may begin to associate criminality with their identity, thereby creating a self-filling prophecy.

Sue Raikes has significant reservations about encompassing many youth based policies under the jurisdiction of the justice system. She comments:

I personally have some reservation about seeing all intervention and support for young people as accessed through a criminal route ... I think that most people would see danger in everything coming out under a youth justice criminal justice banner and that it is important to see that there are grey areas around all the edges of the system and that young people need help and support for other reasons and not just that they might get into trouble.

YOT officers too worry that children are becoming increasingly criminalized and institutionalized in England and the UK. One YOT officer noted that “the pre-emptive tactics being taken by the government to bring younger and younger children into the system contributes to labeling them ‘criminals’ and to making them feel that they are different from the rest of the population” [FD 0207]. This practitioner suggested that even the name of the Green Paper ‘Children at Risk’ teaches young people to separate themselves and to label themselves as ‘at risk’ of becoming criminal. “It tells them that they are almost criminals and puts them in an institutional mindset,” he stated. Thus, as society sprints through the creation of youth based policies to address every imaginable risk factor and ‘stop offending before it begins’, it is important to beware of incorporating too much social policy under the heading of the criminal justice system and to think through the implications of this path. At present, it appears as though those who design and implement youth justice practices in England and the UK need to be especially wary of falling into these two distinct traps.

Where Do We Go From Here?

Chapter Two highlighted Howard Zehr’s argument that judicial punishment is a social choice and not an inevitable response to crime (1990, p 227). As a social

choice, it is vital that we as a society take responsibility for that choice and continue the development and evolution of the justice system through discussion and practical evaluation. The findings of this thesis suggest that having made the ideological commitment to incorporate restorative justice principles into the youth justice system, the transition to a practical realization of those principles has been less successful.

Kathleen Daly, in the quote at the beginning of this chapter, is right to be concerned about the premature death of restorative justice if the ‘real story’ of current practice is revealed. Recent years have seen a rise in public scepticism towards the delivery of public services (Davies et al 2000, p 1) and public animosity about the state of the justice system in the UK is already apparent. As recently as August 2005, the *Guardian* ran a story entitled ‘A shameful mess or the best we can expect?’ which deplored the current state of the criminal justice system:

The criminal justice system doesn’t work. It’s a mess. It’s a waste of money. It’s a badly managed attempt to implement policies which would not work even if they were well managed. It’s been hijacked by politicians for their own populist ends. It doesn’t catch many criminals, it doesn’t dispense much justice and it’s no kind of system at all.

If programmes like final warnings and referral orders are to survive, and to be supported by the public, they must maintain political viability, an arguably necessary evil, and should current practice come into the arena of public debate, it is not obvious that their viability would be upheld. As was illustrated in the early 1990s with the moral panics surrounding youth crime, support for decarcerative policies is always conditional.²⁹⁸

However, as Dignan and Marsh note “the process of developing restorative justice is necessarily an incremental one, and one that is unlikely to be accomplished

²⁹⁸ Refer to Chapter One for a detailed discussion of youth justice policies of the 1990s.

with just one legislative sitting” (2001, p 98). It is, therefore, necessary to allow for open and accountable research and, subsequently, the re-evaluation of programmes in light of research findings. The juvenile justice system does not necessarily deliver the benefits extolled by newly launched flagship programmes, such as final warnings and referral orders in this case, as the energy and enthusiasm behind new programmes inevitably wanes (Smith 2005, p 192). Without an investment in the further development of restorative practices, surprisingly little is known about the quality of intervention experienced by young offenders, and it is possible for policies to be ‘hijacked by politicians’ for populist ends. McCold and Wachtel warn that “Without the guidance of research, a mythology develops around the use of restorative practices based merely on personal or political preferences” (2002, p 110).

Nevertheless, it has been suggested that a time frame of up to ten years is needed in order to assess how policies and programmes are working and to learn from the evidence gathered (Sabatier 1986). However, the demands of the electoral cycle and public opinion mean that no government can afford to postpone the development of policies until the conclusions of long term research can be obtained (Tilley 2001, p 83). The much shorter timescales available to politicians result in an evaluative focus on implementation (Sanderson 2000). While all of these restrictions may very well be true, they do not change the fact that an investment in research after the implementation of programmes is required to ensure that practice is accomplishing established goals. Restorative processes do not work by simply going through the motions, and quite frankly there is little point in continuing to fund practices which don’t achieve the intended outcome.

At present, restorative practices in England are seriously compromised. However, restorative practices have the potential to successfully realize restorative values. In order for restorative programmes to succeed, they must be afforded proper attention and resources. The best hope for the future of restorative justice is that the results of research will filter back to the Youth Justice Board and to the YOTs so that developmental steps can be taken to improve restorative programmes like final warnings and referral orders where they are currently failing. Tony Blair has commented that what counts is what works and that the Labour government is committed to evidence led policy (Tilley 2001, p 81). Let us hope that this proves to be true.²⁹⁹ Ultimately, the final warning and referral order programmes, if improved, can become an effective first encounter with the criminal justice system and have the potential to impact positively on many first time offenders, hopefully preventing them from continuing down the path of deviance.

²⁹⁹ Tonry (2003) is skeptical of evidence led policy-making by the Labour government. He argues that the government's approach to evidence led policy is 'schizophrenic'. Tonry suggests that there is a startling contrast between the government's claims to engage in evidence based policy-making and its preoccupation with media imagery which had led to support for policies for which there was no significant evidential base (p 1-2).

Work Cited

- AUDIT COMMISSION. (1996) *Misspent Youth*, London: Audit Commission.
- (2004) *Youth Justice 2004: A review of the reformed youth justice system*, London: Audit Commission.
- and COMMISSION FOR SOCIAL CARE INSPECTION, ESTYN, HEALTH CARE COMMISSION, HM INSPECTORATE OF CONSTABULARY, HM INSPECTORATE OF PRISONS, HM INSPECTORATE OF PROBATION, OFFICE FOR STANDARDS IN EDUCATION, SOCIAL SERVICES INSPECTORATE FOR WALES. (2004) *Joint Inspection of Youth Offending Teams of England and Wales, Report on: Oxfordshire Youth Offending Service*, London: HM Inspectorate of Probation.
- ARBER, S. (1993) 'The Research Process' in N Gilbert (ed) *Researching Social Life*, London: SAGE, pp 32-51.
- ASHWORTH, A. (1997) 'In Favour of Community Safety,' *Criminal Law Review*, pp 769-770.
- (2000) 'Victims' Rights, Defendants' Rights and Criminal Procedure' in A Crawford and J Goodey (eds) *Integrating a Victim Perspective within Criminal Justice*, Aldershot: Ashgate.
- (2001) 'Is Restorative Justice the Way Forward for Criminal Justice?' in *Current Legal Problems*, 54, pp 347-376.
- and VON HIRSCH A. (1998) 'Desert and the Three Rs' in A von Hirsch & A Ashworth (eds) *Principled Sentencing: Readings on Theory and Policy*, Oxford: Hart Publishing.
- GARDNER J, MORGAN R, SMITH A, VON HIRSH A, and WASIK M. (1998) "Neighbouring on the Oppressive: The Government's Anti-Social Behaviour Order Proposals" in *Criminal Justice*, 16(1), pp 7-14.
- BAILEY, R and WILLIAMS, B. (2000) *Interagency Partnerships in Youth Justice: Implementing the Crime and Disorder Act 1998*, Sheffield: University of Sheffield Joint Unit for Social Services Research.
- BALL, C. (2000) 'The Youth Justice and Criminal Evidence Act 1999', *Criminal Law Review*, pp 211-222.
- BARCLAY G, VENNARD J, TURNER D. (1991) *A Digest of Information on the Criminal Justice System: Crime and justice in England and Wales*, London: Home Office.
- BAZEMORE, G. (2000) 'Community Justice and a Vision of collective Efficacy: The Case of Restorative conferencing' in J Horney (ed) *Policies, Process and Decisions of the Criminal Justice System*, 3, pp 225-298, Washington DC: National Institute of Justice.
- and SCHIFF, M. (2005) *Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice*, Devon: Willan Publishing.

-
- and UMBREIT, M. (2001) 'A Comparison of Four Restorative Conferencing Models' in *Juvenile Justice Bulletin*, Office of Juvenile Justice and Delinquency http://www.ncjrs.org/html/ojjdp/2001_2_1/contents.html
- and WALGRAVE, L. (1999) 'Restorative Juvenile Justice: In Search of Fundamentals and an Outline for Systemic Reform' in G Bazemore and L Walgrave (eds) *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*, New York: Criminal Justice Press.
- BECKER, H. (1963) *Outsiders*, New York: Free Press.
- (1970) *Sociological Work*. London: Allen Lane.
- and GEER, B. (1960) 'Participant Observation: The Analysis of Qualitative Field Data' in RN Adams & JJ Preiss (eds) *Human Organization Research: Field Relations and Techniques*, Homewood: Dorsey Press.
- BIERMANN, F and MOULTON, A. (2002) *Youth Offender Panels in England and Wales Dec 2002*, Home Office Online Report 34/03
- BLACKMORE, J. (1984) 'Delinquency Theory and Practice,' *Youth and Policy*, 9, pp 45-49.
- BLAGG, H. (1997) 'A Just Measure of Shame? Aboriginal Youth and Conferencing in Australia,' *British Journal of Criminology*, 37(4), pp 481-506.
- BONTA J, WALLACE-CAPRETTA S and ROONEY J. (1998) *Restorative Justice: An Evaluation of the Restorative Resolutions Project*. Ottawa, Ontario: Solicitor General Canada.
- BOTTOMLEY, AK and PEASE, K. (1986) *Crime and Punishment: Interpreting the Data*, Milton Keynes: Open University Press.
- BOTTOMS, AE. (1979) 'Youth Custody and Supervision: A New Sentence. Comments on the Green Paper on Young Adult Offenders,' *British Journal of Criminology*, 19, pp 257-262.
- and DIGNAN, J. (2004) 'Youth Justice in Great Britain' in M Tonry & A Doob (eds) *Youth Crime and Youth Justice: Comparative and Cross-National Perspectives*, 31, London: University of Chicago Press.
- BOURDIEU, P AND WACQUANT, LJD. (1992) *An Invitation to Reflexive Sociology*, Cambridge: Polity Press.
- BRAITHWAITE, J. (1989) *Crime, Shame and Reintegration*, Cambridge: Cambridge University Press.
- (1994) 'Thinking Harder about Democratising Social Control' in C Alder and J Wundersitz (eds) *Family Conferencing and Juvenile Justice: The way forward or misplaced optimism?*, Canberra: Australian Institute of Criminology, pp 199-216.
- (1997) 'Conferencing and Plurality: Reply to Blagg' in *British Journal of Criminology*, 37(4), pp 502-506.
- (1998) 'Restorative Justice' in M Tonry (ed.) *Handbook of Crime and Punishment*, Oxford: Oxford University Press, pp 323-344.

-
- (1999) 'Restorative Justice: Assessing Optimistic and Pessimistic Accounts' in M Tonry (ed) *Crime and Justice: A Review of Research*, 25, pp 1-129.
- (2002) *Restorative Justice and Responsive Regulation*, Oxford: Oxford University Press.
- (2003) 'Principles of Restorative Justice' in A Von Hirsch, JV Roberts, A Bottoms, K Roach, M Schiff (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, Oxford: Hart Publishing, pp 1-20.
- and Mugford, S. (1994) 'Conditions of Successful Reintegration Ceremonies', *British Journal of Criminology*, 34(2), pp 139-171.
- BROWLEE, I. (1998) 'New Labour – New Penology? Punitive Rhetoric and the Limits of Managerialism in Criminal Justice Policy', *Journal of Law and Society*, 25(3), pp 313-335.
- BURGESS, RG. (1984) *In the Field: An Introduction to Field Research*, London: Routledge.
- BURNETT, R and APPLETON, C. (2004a) *Joined-up Youth Justice: Tackling youth crime in partnership*, Dorset: Russell House Publishing.
- and —— (2004b) 'Joined-up Services to Tackle Youth Crime: A Case-Study in England', *British Journal of Criminology*, 44, pp 34-54.
- CAMPBELL, B. (1993) *Goliath: Britain's Dangerous Places*, London: Methuen.
- CAVADINO, M and DIGNAN, J. (2002) *The Penal System*, London: Sage Publications.
- CHAMBLISS, W. (1973) 'The Saints and the Roughnecks' *Society*, 11, pp 24-31.
- CHAMLIN, M and COCHRAN, J. (1997) 'Social Altruism and Crime', *Criminology*, 35, pp 203-228.
- CHAN, J. (1996) 'Changing Police Culture,' *British Journal of Criminology*, 36(1), pp 109-134.
- (1997) *Changing Police Culture: Policing in a Multicultural Society*, Cambridge: Cambridge University Press.
- (1999) 'Police Culture' in D. Dixon (ed.) *A Culture of Corruption: Changing an Australian Police Service*, Sydney: Hawkins Press, pp 98-137.
- CHRISTIE, N. (1977) 'Conflicts as Property', *British Journal of Criminology*, 17(1), pp 1-15.
- COHEN, S. (1972/1980) *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, Oxford: Blackwell.
- COOLEY, CH. (1964) *Human Nature and the Social Order*, New York: Schocken Books.
- CONSERVATIVE PARTY. (2000) 'The Conservative Party General Election Manifesto 1979' in I. Dale (ed) *Conservative Party General Election Manifestos, 1900-1997*, London: Routledge, pp 265-282.

- CRAWFORD, A. (2000) 'Salient Themes Towards a Victim Perspective and the Limitations of Restorative Justice: Some Concluding Comments' in A Crawford & J Goodey (eds) *Integrating a Victim Perspective within Criminal Justice*, Aldershot: Ashgate, pp 285-310.
- and NEWBURN, T. (2002) 'Recent Developments in Restorative Justice for Young People in England and Wales', *British Journal of Criminology*, 42, pp 476-495.
- and ———, (2003) *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*, Devon: Willan Publishing.
- and ——— SHARPE K, EARLE R, GOLDIE S, CAMPBELL A, MASTERS G, HALE C, SAUNDERS R, UGLOW S, NETTEN A (2001) *The Introduction of Referral Orders into the Youth Justice System: Second interim report*, RDS Occasional Paper No 73, London: Home Office.
- CROWN PROSECUTION SERVICE. (1986) *Code of Practice for Prosecutors*, London: CPS.
- CULLEN, F. (1994) 'Social Support as an Organizing Concept for Criminology: Presidential Address to the Academy of Criminal Justice Sciences', *Justice Quarterly*, 11, pp 527-559.
- CUNNEN, C. (1997) 'Community Conferencing and the Fiction of Indigenous Control' in *Australian and New Zealand Journal of Criminology*, 1.
- CZARNIAWSKA-JOERGES, B. (1992) *Exploring Complex Organizations: A Cultural Perspective*, London: SAGE Publications.
- DALY, K. (1996) 'Diversionary Conferences in Australia: A Reply to the Optimists and Skeptics' Paper presented at the annual meeting of the American Society of Criminology, 20-23 November.
- (2001) 'Conferencing in Australia and New Zealand: Variations, Research Findings, and Prospects' in A Morris & G Maxwell (eds) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing, pp 59-83.
- (2003a) 'Mind the Gap: Restorative Justice in Theory and Practice' in A von Hirsch, J Roberts & A Bottoms (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, Oxford: Hart Publishing, pp 219-236.
- (2003b) 'Making Variation a Virtue: Evaluating the Potential and Limits of Restorative Justice' in G Weitekamp & HJ Kerner (eds) *Restorative Justice in Context: International Practice and Directions*, Devon: Willan Publishing.
- (2003c) 'Restorative Justice: The Real Story' in G Johnstone (ed) *A Restorative Justice Reader: Texts, Sources, Contexts*, Devon: Willan Publishing, pp 363-381.
- DAVIS, G. (1992) *Making Amends: Mediation and Reparation in Criminal Justice*, London: Routledge.
- , BOUCHERAT J, AND WATSON D. (1988) 'Reparation in the Service of Diversion: The Subordination of a Good Idea' *The Howard Journal*, 27(2), pp 127-134.

-
- DAVIES H, NUTLEY S, and SMITH P. (2000) 'Introducing Evidence-based Policy and Practice in Public Service' in H Davies, S Nutley & P Smith (eds) *What Works? Evidence-based Policy and Practice in Public Service*, Bristol: The Policy Press, pp 1-11.
- DE HANN, W. (2000) 'Explaining the Absence of Violence: A Comparative Approach' in S Karstedt and KD Bussmann (eds) *Social Dynamics of Crime and Control*, Oxford: Hart Publishing.
- DELGADO, R. (2000) 'Prosecuting Violence: A Colloquy on Race, Community and Justice' *Stanford Law Review*, 52, p 751-775.
- DENZIN, NK. (1970) *The Research Act in Sociology*, London: Butterworths.
- DIGNAN, J. (1992) 'Repairing the Damage' *British Journal of Criminology*, 32(4), pp 453-472.
- (1999) 'The Crime and Disorder Act and the Prospects for Restorative Justice', *Criminal Law Review*, pp 48-60.
- (2000) *Restorative Justice Options for Northern Ireland: A Comparative Review*, Belfast: Northern Ireland Office.
- (2005) *Understanding Victims and Restorative Justice*, Maidenhead: Open University Press.
- and Marsh, P. (2001) 'Restorative Justice and Family Group Conferences in England: Current State and Future Prospects' in A Morris & G Maxwell (eds) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing, pp 85-101.
- DOWNES, D. (2001) 'The Macho Penal Economy' in *Punishment and Society*, 3(1), pp 61-80.
- and MORGAN, R (1997) 'Dumping the Hostages of Fortune? The Politics of Law and Order in Post-War Britain' in M Maguire, R Morgan & R Reiner (eds.) *The Oxford Handbook of Criminology 2nd Edition*, pp 87-130
- DUNKEL, F. (1991) 'Legal Differences in Juvenile Criminology in Europe' in T Booth (ed) *Juvenile Justice in the New Europe*, Sheffield: University of Sheffield Unit for Social Services Research, pp 1-29.
- EASTERDAY L, PAPADEMAS D, SCHORR L and VALENTINE C. (1982) 'The Making of a Female Researcher: Role Problems in Fieldwork' in RG Burgess (ed) *Field Research: A Sourcebook and Field Manual*, London: Routledge, pp 62-67.
- ERIKSON, K. (1966) *Wayward Puritans*, London: Collier MacMillan Publishers.
- EVANS, R. (1990) 'Variations in Police Policy and Practice in England and Wales' in *The Howard Journal of Criminal Justice*, 29(3), pp 155-176.
- and ELLIS, R. (1997) *Police Cautioning in the 1990s: Research Findings No.52*, London: Home Office.

-
- and PUECH, K. (2001) 'Reprimands and Warnings: Populist Punitiveness or Restorative Justice?', *Criminal Law Review*, pp 794-805.
- FATTAH, EA. (1998) 'Some Reflections on the Paradigm of Restorative Justice and Its Viability for Juvenile Justice' in L Walgrave (ed.) *Restorative Justice for Juveniles: Potentialities, Risks and Problems*, Leuven: Leuven University Press.
- FAULKNER, D. (2000) 'Policy and Practice in Modern Britain: Influences, Outcomes and Civil Society' in P Green & A Rutherford (eds.) *Criminal Policy in Transition*, Oxford: Hart Publishing, pp 79-89.
- FEELEY, M and SIMON, J. (1992) 'The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications', *Criminology*, 30(4), pp 449-474.
- and —— (1994) 'Actuarial Justice: the Emerging New Criminal Law' in D. Nelken (ed) *The Futures of Criminology*, pp 173-201.
- FIELDING, N. (1993) 'Ethnography' in N Gilbert (ed) *Researching Social Life*, London: SAGE, pp 154-171.
- FIONDA, J. (1999) 'New Labour, Old Hat: Youth Justice and the Crime and Disorder Act 1998', *Criminal Law Review*, pp 36-47.
- (2000) 'New Managerialism, Credibility and the Sanitisation of Criminal Justice' in P Green & A Rutherford (eds) *Criminal Policy in Transition*, Oxford: Hart Publishing, pp 109-127.
- FLYNN, N. (2002) *Public Sector Management*, London: Prentice Hall.
- FRANKLIN, B and PETLEY, J. (1996) 'Killing the Age of Innocence: Newspaper Reporting of the Death of James Bulger' in J Pilcher & S Wagg (eds.) *Thatcher's Children? Politics, Childhood and Society in the 1980s and 1990s*, London: Falmer Press, pp 134-154.
- GARDNER J, VON HISCH A, SMITH A, MORGAN R, ASHWORTH A and WASIK M. (1998) 'Clause 1 – The Hybrid Law From Hell?' in *Criminal Justice Matters*, 31, pp 25-27.
- GARLAND, D. (1990) *Punishment and Modern Society*, Oxford: Oxford University Press.
- (1996) 'The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society' in *British Journal of Criminology*, 36(4), pp 445-471.
- (2001) *The Culture of Control*, Oxford: Oxford University Press.
- GEIS, G. (1990) 'Crime Victims: Practice and Prospects' in AJ Lurigio, WG Skogan, RC Davis (eds.) *Victims of Crime: Problems, Policies and Programs*, Criminal Justice System Annuals v 25, London: Sage, pp 251-268.
- GELSTHORPE, L. (2002) 'Recent Changes in Youth Policy in England and Wales' in I Weijers & A Duff (eds.) *Punishing Juveniles: Principle and Critique*, Oxford: Hart Publishing, pp 45-66.
- and Morris, A. (1994) 'Juvenile Justice 1945-1992' in *The Oxford Handbook of Criminology*, Oxford: Oxford University Press, pp 949-993.

-
- GLIDEWELL, I. (1998) *The Review of the Crown Prosecution Service*, London: HMSO.
- GODFREY, D. (1996) 'Lost in the Myths of Crime: The Use of Penal Custody for Male Juveniles, 1969-1993', *Howard Journal*, 35(4), pp 287-298.
- GOFFMAN, E. (1961) *Asylums*, New York: Doubleday.
- (1963) *Stigma*, New Jersey: Prentice-Hall Inc.
- GOLDSON, B. (1999) 'Youth (In)Justice: Contemporary Developments in Policy and Practice' in B Goldson (ed.) *Youth Justice: Contemporary Policy and Practice*, Brookfield: Ashgate, pp1-27.
- (2000) 'Wither Diversion? Interventionism and the New Youth Justice' in B Goldson (ed) *The New Youth Justice*, Dorset: Russell House Publishing, pp 35-57.
- (2002) 'New Punitiveness: The Politics of Child Incarceration' in J Muncie, G Hughes & E McLaughlin (eds.) *Youth Justice: Critical Readings*, London: Sage Publications, pp 386-400.
- GOODE, E and BEN-YEHUDE, N. (1994) *Moral Panics*, Oxford: Blackwell.
- GRAY, P. (2005) 'The Politics of Risk and Young Offenders' Experiences of Social Exclusion and Restorative Justice' *British Journal of Criminology*, 45(6), pp 938-957.
- THE GUARDIAN. (16 December, 2001) 'Where Suicide is a Cult', Guardian Unlimited Website: <http://www.observer.co.uk/international/story/0,6903,619495,00.html>.
- (22 January, 2002) 'Alarm at Met Database on Likely Young Criminals', Guardian Unlimited Website: http://www.guardian.co.uk/uk_news/story/0,3604,637167,00.html
- (2 April, 2002) 'Muslim Leaders Deny Palestinians Are Terrorists', Guardian Unlimited Website: <http://www.guardian.co.uk/israel/Story/0,2763,677775,00.html>.
- (17 April, 2002) '10 Year-Olds Face Blunkett Curbs', Guardian Unlimited Website: <http://society.guardian.co.uk/crimeandpunishment/story/0,8150,685735,00.html>.
- (24 April, 2002) '£90M Pledge to Tackle Truancy', Guardian Unlimited Website: http://www.guardian.co.uk/uk_news/story/0,3604,689595,00.html.
- HAGELL, A and NEWBURN, T. (1994) *Persistent Young Offenders*, London: Policy Studies Institute
- HAINES, K. (2000) 'Referral Orders and Youth Offender Panels: Restorative Approaches and the New Youth Justice' in B Goldson (ed.) *The New Youth Justice*, Dorset: Russell House Publishing, pp 58-80.
- HALPERN, D. (2001) 'Moral Values, Social Thrust and Inequality: Can Values Explain Crime?' in *British Journal of Criminology*, 41(2), pp 236-251.
- HAMILL, H. (1999) *Hoods and Provos: Crime and Punishment in West Belfast*. Unpublished.

-
- HAMMERSLEY, M and ATKINSON, P. (1995) *Ethnography: Principles in Practice 2nd Edition*, London: Routledge.
- HARRIS, K. (1989) 'Alternative Visions in the Context of Contemporary Realities' in P. Arthur (ed) *Justice: The Restorative Vision. New Perspectives on Crime and Justice*, Akron PA, Mennonite Central Committee.
- HEDDERMAN, C AND WILLIAMS, C. (2001) *Making Partnerships Work: Emerging Findings from the Reducing Burglary Initiative*, Policing and Reducing Crime Unit, London: Home Office.
- HINE, J and CELNICK, A. (2001) *A One Year Reconviction Study of Final Warnings*, Sheffield: University of Sheffield. Available online as of 2005: www.homeoffice.gov.uk/rds/pdfs/reconvictstudywarn.pdf.
- HILL, J and WRIGHT, G. (2003) 'Youth Community Safety and the Paradox of Inclusion', *The Howard Journal*, 42(3), pp 282-297.
- HOLDAWAY, S. (1983) *Inside British Police: A Force At Work*, Oxford: Basil Blackwell.
- (2003) 'The Final Warning: Appearance and Reality', *Criminal Justice*, 3(4), pp 351-367.
- DAVIDSON N, DIGNAN J, HAMMERSLEY R, HINE J, and MARSH P. (2001) *New Strategies to Address Youth Offending: The National Evaluation of the Pilot Youth Offending Teams*, London: Home Office.
- and DESBOROUGH, S. (2004) *The National Evaluation of the Youth Justice Board's Final Warning Projects*, London: Youth Justice Board.
- HOME AFFAIRS COMMITTEE. (1993) *Juvenile Offenders*, Sixth Report, London, HMSO.
- HOME OFFICE. (1980) *Young Offenders*, Cmnd 8045. London: HMSO.
- (1984) *Cautioning by the Police: A Consultative Document*, London: Home Office.
- (1985) *Home Office Circular 14/1985: The Cautioning of Offenders*, London: Home Office.
- (1997a) *Tackling Youth Crime*, London: Home Office.
- (1997b) *No More Excuses – A New Approach to Tackling Youth Crime*, Cm 3809. London: HMSO.
- (1998a) *Guidance Document: Local Child Curfew*, London: Home Office.
- (1998b) *Interdepartmental Circular on Establishing Youth Offending Teams*, London: Home Office.
- (2000) *Guidance Document: Child Safety Order*, London: Home Office
- (2000b) *The Referral Order: Guidance to Youth Offending Teams*, London: Home Office.

-
- (14 August, 2002) 'Research Supports Government's Approach to Tackling Crime' Home Office Website:
<http://www.nds.coi.gov.uk/coi/coipress.nsf/7709c1f0104c752080256bf400338394/8d3cda8ffe7bd7aa80256c150040e37b?OpenDocument>.
- (2002a) *A Guide to Anti-Social Behaviour Orders and Acceptable Behaviour Contracts*, London: Home Office
- (2002b) *Referral Orders and Youth Offender Panels: Guidance for Courts Youth Offending Teams and Youth Offender Panels*, London: Home Office
- (2003) *Every Child Matters*, London: Home Office.
- (2003b) *Restorative Justice: The Government's Strategy*, London Home Office.
- (2005a) *Census 2001*, London: Home Office: <http://www.statistics.gov.uk/census2001/>
- (2005b) *Youth Matters*, London Home Office.
- and YOUTH JUSTICE BOARD (2002) *Final Warning Scheme: Guidance for the Police and Youth Offending Teams*. London: Home Office.
- LORD CHANCELLOR'S DEPARTMENT and YOUTH JUSTICE BOARD (2002) *Referral Orders and Youth Offender Panels: Guidance for Courts, Youth Offending Teams and Youth Offender Panels*, London: Home Office.
- HOWARD LEAGUE FOR PENAL REFORM. (1979) *Supervision and Control of Young Offenders*, London: Howard League.
- (1993) *Young and in Trouble*, London: Howard League.
- HOYLE, C. (1998) *Negotiating Domestic Violence: Police, Criminal Justice, and Victims*, Oxford: Oxford University Press.
- (2002) 'Securing Restorative Justice for the 'Non-Participating' Victim' in C Hoyle & R Young (eds) *New Visions for Crime Victims*. Oxford: Hart Publishing, pp 97-131.
- and CAPE E, MORGAN R, SANDERS A. (1998) *Evaluation of the 'One Stop Shop' and Victim Statement Pilot Projects*, London: Home Office RDSD.
- and ROSE, D. (2001) 'Labour, Law and Order', *Political Quarterly*, 72(1), pp 76-85.
- and YOUNG, R. (2002) 'Restorative Justice: Assessing the Prospects and Pitfalls' in M McConville & G Wilson (eds) *The Handbook of the Criminal Justice Process*, Oxford: Oxford University Press, pp 525-548.
- and — (2003) 'Restorative Justice, Victims and the Police' in T Newburn (ed) *Handbook of Policing*, Devon: Willan Publishing, pp 680-706.
- and — HILL R. (2002) *Proceed with Caution: An evaluation of the Thames Valley initiative in restorative cautioning*, Layerthorpe: Joesph Rowntree Foundation

- HUDSON, B. (2003) 'Victims and Offenders' in A Von Hirsch, JV Roberts, A Bottoms, K Roach, M Schiff (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, Oxford: Hart Publishing, pp 177-194.
- HUDSON, J and GALAWAY B. (1996) 'Introduction' in B Galaway & J Hudson (eds.) *Restorative Justice: International Perspectives*, New York: Criminal Justice Press.
- HYMAN, H. (1954) *Interviewing in Social Research*, Chicago: University of Chicago Press.
- JAY, P. (1977) *Children and Young Persons in Custody: Report of a NACRO Working Party*, London: Barry Rose.
- JENKS, C. (1996) *Childhood*, London: Routledge.
- JOHNSTONE, J. (2002) *Restorative Justice: Ideas, Values, Debates*, Devon: Willan Publishing.
- JUPP, V. (1989) *Methods of Criminological Research*, London: Unwin Hyman.
- KARP, D. (2002) 'The Offender/Community Encounter' in D Karp & T Clear (eds) *What is Community Justice?*, London: Sage Publications, pp 61-86.
- and WALTHER, K. (2001) 'Community Reparative Boards in Vermont' in G Bazemore and M Schiff (eds) *Restorative Community Justice*, Cincinnati OH: Anderson Publishing, pp 199-217.
- Bazemore G and Chesire J. (2004) 'The Role and Attitudes of Restorative Board Members: A Case Study of Volunteers in Community Justice', *Crime and Delinquency*, 50(4), pp 487-515.
- KINGI V, ROBERTSON J, POPPELWELL and MORRIS A. (2005) *Court Referred Restorative Justice Pilot Evaluation*, Wellington New Zealand: Crime and Justice Research Centre, Victoria University of Wellington and the Ministry of Justice.
- KITSUSE, J. (1962) 'Societal Reaction to Deviant Behavior: Problems of Theory and Method', *Social Problems*, 9, pp 247-256.
- KURKI, L. (2000) 'Restorative and Community Justice in the United States' in M Tonry (ed) *Crime and Justice: A Review of Research*, 27, pp 235-303.
- (2003) 'Evaluating Restorative Justice Practices' in A Von Hirsch, JV Roberts, A Bottoms, K Roach, M Schiff (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, Oxford: Hart Publishing, pp 293-314.
- LABOUR PARTY. (1964) *Crime: A Challenge to US All*, Report of a Labour Study Group, Chaired by F. Longford, London: Labour Party.
- (2000) 'The Labour Party General Election Manifesto 1997' in I. Dale (ed) *Conservative Party General Election Manifestos, 1900-1997*, London: Routledge, pp 345-
- LAPRAIRIE, C. (1998) 'The 'New' Justice: Some implications for aboriginal communities', *Canadian Journal of Criminology*, 40, pp 61-79.

-
- LATIMER J, DOWDEN C and MUISE D. (2005) 'The Effectiveness of Restorative Justice Practices: A Meta-Analysis' in *The Prison Journal*, 85(2), pp 127-144.
- LEE, M. (1998) *Youth Crime and Police Work*, Basingstoke: Macmillan.
- LEMERT, E. (1951) *Social Pathology*, London: McGraw-Hill Book Co Inc.
- LEVRANT S, CULLEN FT, FULTON, B and WOZNIAK JF. (1999) 'Reconsidering Restorative Justice: The Corruption of Benevolence Revisited?' *Crime and Delinquency*, 45(1), pp 3-27.
- LILLES, H. (2001) 'Circe Sentencing: Part of the Restorative Justice Continuum' Justice' in A Morris & G Maxwell (eds) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing, pp 161-182.
- LOFTLAND, J. (1969) *Deviance and Identity*, Englewood Cliff: Prentice Hall.
- LOVEDAY, B. (1999) 'The Impact of Performance Culture on Criminal Justice Agencies in England and Wales', *International Journal of the Sociology of Law*, 21, pp 351-377.
- MCCALL, G and SIMMONS, J. (1969) *Issues in Participant Observation*, New York: Addison-Wesley.
- MCCOLD, P. (1995) *Restorative Justice: The Role of the Community*. Paper presented at the annual conference of the Academy of Criminal Justice Sciences, Boston.
<http://iirp.org/library/community3.html>
- (1998) 'Restorative Justice: Variation on a Theme' in L Walgrave (ed) *Restorative Justice for Juveniles: Potentialities, Risks and Problems for Research*, Leuven: Leuven University Press.
- (2001) 'Primary Restorative justice Practices' in A Morris & G Maxwell (eds) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing, pp 41-58.
- and WACHTEL, B. (1998) *Restorative Policing Experiment: The Bethlehem Pennsylvania Police Family Group Conferencing Project*. Pipersville, PA: Community Service Foundation.
- and —— (2002) 'Restorative Justice Theory Validation' in E Weitekamp & HJ Kerner (eds) *Restorative Justice: Theoretical Foundations*, Devon: Willan, pp 110-142.
- and —— (2003) 'Community Is Not a Place: A New Look at Community Justice Initiatives' in G Johnstone (ed) *A Restorative Justice Reader: Texts, Sources, Context*, Devon: Willan Publishing, pp 294-302.
- MCGARRELL E, OLIVARES K, CRAWFORD K and KROOVAND N. (2000) *Returning Justice to the Community: The Indianapolis Juvenile Restorative Justice Experiment*, Indianapolis: Hudson Institute.
- MCRROBBIE, A and THORNTON, S. (2002) 'Rethinking Moral Panic for Multi-Mediated Social Worlds' in J Muncie, G Hughes & E McLaughlin (eds) *Youth Justice: Critical Readings*, London: Sage Publications, pp 68-79.

- MAGUIRE, M and SHAPLAND, J. (1990) 'The Victims Movement in Europe' in AJ Lurigio, WG Skogan, RC Davis (eds.) *Victims of Crime: Problems, Policies and Programs*, Criminal Justice System Annuals v 25, London: Sage, pp 205-225.
- MANNING, P. (1978) 'Lying, Secrecy and Social Control' in P Manning & J Van Maanen (eds.) *Policing: A View from the Street*, Santa Monica: Goodyear.
- and VAN MAANEN, J (eds) (1978) *Policing: A View from the Street*, Santa Monica: Goodyear.
- MARSHALL, TF. (1996) 'The Evolution of Restorative Justice in Britain,' *European Journal of Criminal Policy and Research*, 4(4), pp 21-43.
- and MERRY, S. (1990) *Crime and Accountability: Victim/Offender Mediation in Practice*, London: HMSO.
- MATSUEDA, RL. (1992) 'Reflected Appraisals, Parental Labelling, and Delinquency: Specifying Symbolic Interactionist Theory' *The American Journal of Sociology*, 97(6), pp 1577-1611.
- MATTISON, J and MIRRLEES-BLACK, C. (2000) *Attitudes to Crime and Criminal Justice: Findings from the 1998 British Crime Survey*, London: Home Office.
- MATZA, D. (1969) *Becoming Deviant*, New Jersey: Prentice-Hall Inc.
- MAXWELL, G and MORRIS, A. (1993) *Family, Victims and Culture: Youth Justice in New Zealand*, Wellington: Institute of Criminology, Victoria University of Wellington.
- and —— and Anderson T. (1999) *Community Panel Adult Pre-Trial Diversion: Supplementary Evaluation*. Wellington: Crime Prevention Unit, Department of Prime Minister and Cabinet and Institute of Criminology, Victoria University of Wellington.
- and —— (2001) 'Family Group Conferences and Reoffending' in A Morris & G Maxwell (eds) *Restorative Justice for Juveniles: Conferencing, Mediation & Circles*, Oxford: Hart Publishing, pp 243-263.
- and —— (2004) 'What is the Place of Shame in Restorative Justice?' in H Zehr & B Toews (eds) *Critical Issues in Restorative Justice*, Devon: Willan Publishing, pp 133-142.
- MEAD, GH. (1962) *Mind, Self, and Society: From the Standpoint of a Social Behaviorist*, London: University of Chicago Press.
- MEOSI, D. (2000) 'Changing Representations of the Criminal' in *British Journal of Sociology*, 40, pp 296.
- MIERS, D. (2001) *An International Review of Restorative Justice*, Crime Reduction Series Paper 10, London: Home Office
- MAGUIRE M, GOLDIE S, SHARPE K, HALE C, NETTEN A, UGLOW S, DOOLIN K, HALLAM A, ENTERKIN J, NEWBURN T. (2001) *An Exploratory Evaluation of Restorative Justice Schemes*, Crime Reduction Series Paper 9, London: Home Office.

- MILES, M and HUBERMAN, AM. (1994) *Qualitative Data Analysis: An Expanded Sourcebook*, London: Sage Publications.
- MOORE, D. (1992) 'Facing the Consequences: Conferences and Juvenile Justice' paper presented at the National Conference on Juvenile Justice convened by the Australian Institute of Criminology.
- MORRIS, A. (2002a) 'Critiquing the Critics,' *British Journal of Criminology*, 42(3), pp 596-615.
- (2002b) 'Shame, Guilt and Remorse: Experiences from Family Group Conferences in New Zealand' in I Weijers & A Duff (eds.) *Punishing Juveniles: Principle and Critique*, Oxford: Hart Publishing, pp 157-178.
- and GILLER, H. (1977) 'The Juvenile Court – the Client's Perspective', *Criminal Law Review*, pp 198-205.
- and GELSTHORPE, L. (2000) 'Something Old, Something Borrowed, something Blue, but Something New? A Comment on the Prospects for Restorative Justice Under the Crime and Disorder Act 1998', *Criminal Law Review*, pp 18-30.
- and MAXWELL, G. (2000) 'The Practice of Family Group Conferences in New Zealand: Assessing the Place, Potential and Pitfalls of Restorative Justice' in *Integrating a Victim Perspective within Criminal Justice*, A Crawford and J Goodey (eds), Aldershot: Ashgate, pp 207-225.
- and —— (2001) 'Implementing Restorative Justice: What Works?' in A Morris & G Maxwell (eds) *Restorative Justice for Juveniles: Conferencing, Mediation & Circles*, Oxford: Hart Publishing, pp 267-281.
- and YOUNG, W. (2000) 'Reforming Criminal Justice: The Potential of Restorative Justice' in H Strang & J Braithwaite (eds.) *Restorative Justice: Philosophy to practice*, Aldershot: Ashgate, pp 11-31.
- MUNCIE, J. (1999a) *Youth and Crime: A Critical Introduction*, London: Sage Publications.
- (1999b) 'Institutionalized Intolerance: Youth Justice and the 1998 Crime and Disorder Act', *Critical Social Policy*, 19(2), pp 147-175.
- and HUGHES, G. (2002) 'Modes of Youth Governance: Political Rationalities, Criminalization and Resistance' in J Muncie, G Hughes & E McLaughlin (eds.) *Youth Justice: Critical Readings*, London: Sage Publications, pp 1-18.
- NACRO. (April 17, 2002) 'Youth Custody Levels in England and Wales Highest in Europe Despite Low Youth Crime Rate', NACRO Website:
<http://www.nacro.org.uk/templates/news/newsitem.cfm/2002041700.htm/archive>.
- NASH, M and SAVAGE, S. (1994) 'A Criminal Record? Law, Order and Conservative Policy' in S Savage, R Atkinson and L Robins (eds) *Public Policy in Britain*, Basingstoke: Macmillan.

-
- NEWBURN, T. (1996) 'Youth Crime, Youth Justice and the Rediscovery of Authoritarian Populism' in J Pilcher & S Wagg (eds.) *Thatcher's Children? Politics, Childhood and Society in the 1980s and 1990s*, London: Falmer Press, pp 61-76.
- (1997) 'Youth, Crime and Justice' in M Maguire, R Morgan & R Reiner (eds.) *The Oxford Handbook of Criminology 2nd Edition*, pp 613-660.
- (2002a) 'Young People, Crime, and Youth Justice' in M Maguire, R Morgan & R Reiner (eds.) *The Oxford Handbook of Criminology 3rd Edition*, Oxford: Oxford University Press.
- (2002b) 'The Contemporary Politics of Youth Crime Prevention' in J Muncie, G Hughes & E McLaughlin (eds.) *Youth Justice: Critical Readings*, London: Sage Publications, pp 452-463.
- (2003) *Crime and Criminal Justice Policy*, London: Pearson Longman.
- CRAWFORD A, EARLE R, GOLDIE S, HALE C, HALLAM A, MASTERS G, NETTEN A, SAUNDERS R, SHARPE K and UGLOW S. (2002) *The Introduction of Referral Orders into the Youth Justice System: Final Report*, London: Home Office.
- O'MAHONY, D and DOAK, J. (2004) 'Restorative Justice – Is More Better? The Experience of Police-led Restorative Cautioning Pilots in Northern Ireland', *Howard Journal of Criminal Justice*, 43(5), pp 484-505.
- OLIVER, C. (1991) 'Strategic Responses to Institutional Process', *Academy of Management Review*, 16, pp 149-179.
- ORCUTT, J. (1973) 'Societal Reactions and the Response to Deviance in Small Groups', *Social Forces*, 52, pp 259-267.
- OSBORN, SG and WEST, DJ. (1980) 'Do Young Delinquents Really Reform?' *Journal of Adolescence*, 3, pp 99-114.
- OUCHI, WO and WILKINS, AL. (1985) 'Organizational Culture,' *Annual Review of Sociology*, 11, pp 457-483.
- PALK G, HAYES H and PRENZLER T. (1998) 'Restorative Justice and Community Conferencing: A Summary of Findings from a Pilot Study' *Current Issues in Criminal Justice*, 10(2), pp 138-155.
- PARKER H, CASBURN M, and TURNBULL D. (1981) *Unmasking the Magistrates*, Milton Keynes: Open University Press.
- PAULIN J, KINGI V and LASH B. (2005a) *The Rotorua Second Chance Restorative Justice Programme: An Evaluation*. Wellington: Ministry of Justice.
- , —— , —— and HUIRAMA T. (2005b) *The Wanganui Community-Managed Restorative Justice Programme: An Evaluation*. Wellington: Ministry of Justice.
- PHILLIPS, A. (1994) 'Dealing with Difference: A Politics of Ideas or a Politics of Presence?', *Constellations*, 1(1), pp 74-91.

- PICKFORD, J. (2000) *Youth Justice: Theory and Practice*, London: Cavendish Publishing Limited.
- PITTS, J. (1990) *Working with Young Offenders*, London: Macmillan.
- (2001) 'The New Correctionalism: Young People, Youth Justice and New Labour' in R. Matthews & J. Pitts (eds.) *Crime, Disorder and Community Safety*, London: Routledge, pp 167-192.
- POLK, K. (1994) 'Family Conferencing: Theoretical and Evaluative Concerns' in C Alder & J Wundersitz (eds) *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?*, Canberra: The Australian Institute of Criminology, pp 123-140.
- PORTER, A. (2005) 'Restorative Justice Takes the World Stage at United Nations Crime Congress', *Restorative Practices E Forum*, www.iirp.org.
- PRANIS, K. (2001) 'Democratising Social Control: Restorative Justice, Social Justice, and the Empowerment of Marginalized Populations' in G Bazemore & M Schiff (eds) *Restorative Community Justice*, Cincinnati: Anderson, pp 357-378.
- PRATT, J. (1987) 'A revisionist history of intermediate treatment' in *British Journal of Social Work*, 17(4), pp 417-436.
- PUNCH, M. (1979) *Policing the Inner City*, London: Routledge.
- (1986) *Politics and Ethics of Fieldwork*, London: SAGE.
- RAYNOR, P. (2001) 'Community Penalties and Social Integration: "Community" as Solution and as Problem' in A Bottoms, L Gelsthorpe & S Rex (eds) *Community Penalties: Changes and Challenges*, Devon: Willan, pp 183-199.
- REINER, R. (2000) 'Police Research' in R King and E Wincup (eds.) *Doing Research on Crime and Justice*, Oxford: Oxford University Press, pp 205-235.
- (2000b) *The Politics of the Police*, Oxford: Oxford University Press.
- ROCHE, D. (2003) *Accountability in Restorative Justice*, Oxford: Oxford University Press.
- RUTHERFORD, A. (1986) *Growing Out of Crime: Society and Young People in Trouble*, Harmondsworth: Penguin.
- (2000) 'An Elephant on the Doorstep: Criminal Policy Without Crime in New Labour's Britain' in P. Green & A. Rutherford (eds.) *Criminal Policy in Transition*, Oxford: Hart Publishing, pp 33-61.
- RUTTER, M and GILLER, H. (1983) *Juvenile Delinquency: Trends and Perspectives*, Harmondsworth: Penguin.
- RUXTON, S. (1996) *Children in Europe*, London: NCH Action for Children.
- SABATIER, PA. (1986) 'What Can We Learn From Implementation Studies?' in FX Kaufmann, M Giandomenico & V Ostrom (eds) *Guidance, Control and Evaluation in the Public Sector*, London: Harvest Wheatsheaf.

- SACKMANN, SA. (1991) *Cultural Knowledge in Organizations: Exploring the Collective Mind*, London: SAGE Publications.
- SANDERSON, I. (2000) 'Evaluation in Complex Policy Systems', *Evaluation. The International Journal of Theory, Research and Practice*, 6(4), pp 433-454.
- SCHEIN, EH. (1985) *Organizational Culture and Leadership*, San Francisco: Jossey-Bass.
- SCOTT, WR. (2001) *Institutions and Organizations 2nd Edition*, London: Sage Publications.
- SHAPLAND, J. (1986) 'Victims and the Criminal Justice System' in E Fattah (ed.) *From Crime Policy to Victim Policy: Reorienting the Justice System*, London: Macmillan, pp 210-217.
- (2003) 'Restorative Justice and Criminal Justice: Just Response to Crime?' in A von Hirsch, J Roberts & A Bottoms (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, Oxford: Hart Publishing, pp 195-218.
- , WILLMORE J, and DUFF P. (1985) *Victims in the Criminal Justice System*, Cambridge Studies in Criminology, Aldershot: Gower.
- SHERMAN L, BRAITHWAITE J, STRANG H, BARNES G, CHRISTIE-JOHNSON J, SMITH S. (1997) *Experiments in Restorative Policing. Reintegrative Shaming of Violence, Drink Driving and Property Crime: A Randomized Controlled Trial*, Australian National University.
- , STRANG H and WOODS D. (2000) *Recidivism Patterns in the Canberra Reintegrative Shaming Experiment (RISE)*. Canberra: Australian National University.
- SINKINSON HD AND BRODERICK JJ. (1998) 'A Case Study of Restorative Justice: The Vermont Reparative Probation Program' in L Walgrave (ed) *Restorative Justice for Juveniles: Potentialities, Risks and Problems for Research*, Leuven: Leuven University Press, pp 301-315.
- SKOLNICK, J. (1966) *Justice Without Trial*, New York: Wiley.
- SMITH, DJ. (2005) 'The Effectiveness of the Juvenile Justice System', *Criminal Justice*, 5(2), pp 181-195.
- SMITH, C and WINCUP, E. (2000) 'Breaking in: Researching Criminal Justice Institutions for Women' in R King and E Wincup (eds.) *Doing Research on Crime and Justice*, Oxford: Oxford University Press, pp 331-349.
- SNIDER, L. (1995) *Toward Safer Societies*, Kingston: Queen's University. Unpublished.
- STINCHCOMBE, A. (1965) 'Social Structure and Organizations' in J March (ed) *Handbook of Organizations*, Chicago: Rand McNally, pp 142-193.
- STRANG, H. (2001) 'Justice for Victims of Young Offenders: The Centrality of Emotional Harm and Restoration' in A Morris & G Maxwell *Restorative Justice for Juveniles: Conferencing, Mediation & Circles*, Oxford: Hart Publishing, pp 183-193.
- (2002) *Repair or Revenge: Victims and Restorative Justice*, Oxford: Clarendon Press.

-
- and SHERMAN, LW. (1997) *The Victim's Perspective*, RISE Working Paper 2, Canberra: Law Program, RSSS, Australian National Institute.
- STRAW, J and MICHAEL, A. (1996) *Tackling Youth Crime: Reforming Youth Justice*, London: Labour Party.
- SUDMAN, S and BRADMAN, NM. (1974) *Response Effects in Surveys: A Review and Synthesis*, Chicago: Aldine.
- TANNENBAUM, F. (1938) *Crime and the Community*, London: Ginn and Company.
- TAYLOR I, WALTON P and YOUNG J. (1973) *The New Criminology: For a Social Theory of Deviance*, London: Routledge.
- TAYLOR, G. (2002) 'Guilt, Shame and Shaming' in I Weijers & A Duff (eds.) *Punishing Juveniles: Principle and Critique*, Oxford: Hart Publishing, pp 179-192.
- THAMES VALLEY POLICE. (2003) *Youth Justice Review 2003*, Oxford: Thames Valley Police.
- THORPE DH, SMITH D, GREEN CJ and PALEY JH. (1980) *Out of Care: Support of Juvenile Offenders*, London: George Allen & Unwin.
- THRASHER, F. (1936) *The Gang 2nd Edition*, Chicago: University of Chicago Press.
- TICKELL, S and AKESTER, K. (2004) *Restorative Justice: The Way Ahead*, London: Justice.
- TILLEY, N. (2001) 'Evaluation and Evidence-led Crime Reduction Policy and Practice' in R Matthews & J Pitts (eds) *Crime, Disorder and Community Safety: A New Agenda?*, London: Routledge, pp 81-97.
- TONRY, M. (2003) 'Evidence, elections and ideology in the making of criminal justice policy' in M Tonry (ed) *Confronting Crime: Crime Control Policy Under New Labour*, Devon, Willan Publishing, pp 1-25.
- TRIMBOLI, L. (2000) 'An Evaluation of the NSW Youth Justice Conferencing Scheme' New South Wales Bureau of Crime Statistics and Research:
http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_index
- TRIPLETT, R. (2000) 'The Dramatisation of Evil: Reacting to Juvenile Delinquency During the 1990s' in S Simpson (ed) *Crime and Criminality: The Use of Theory in Everyday Life*, Thousand Oaks CA: Pine Forge Press.
- TUTT, N. (1981) 'A Decade of Policy', *British Journal of Criminology*, 21(4), pp 246-256.
- TYLER, T. (1990) *Why People Obey the Law*, New Haven: Yale University Press.
- UMBREIT, MS. (1994) *Victim Meets Offender: The Impact of Restorative Justice and Mediation*, New York: Willow Tree Press.
- (2001) *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research*, San Francisco: Jossey-Bass.

-
- COATES RB, and VOS B. (2001). 'Victim Impact Meeting with Young Offenders: Two Decades of Victim Offender Mediation Practice and Research,' in A Morris & G Maxwell (eds) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing, pp 121-144.
- UNITED NATIONS. (1989) *UN Convention on the Rights of the Child*, UN Office of the High Commissioner for Human Rights Website:
<http://www.unhchr.ch/html/menu3/b/k2crc.htm>.
- (1999) *Draft Declaration on Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, New York: UN.
- VAN MAANEN, J. (1978) 'Kinsman in Repose: Occupational Perspectives of Patrolmen' in P Manning & J Van Maanen (eds.) *Policing: A View from the Street*, Santa Monica: Goodyear.
- VAN NESS, D. (2002a) 'The Shape of Things to Come: A framework for thinking about a restorative justice system' in E Weitekamp & HJ Kerner (eds) *Restorative Justice: Theoretical Foundations*, Devon: Willan, pp 1-20.
- (2002b) 'Creating Restorative Systems' in L Walgrave (ed) *Restorative Justice and the Law*, Devon: Willan, pp 130-149.
- and STRONG, K. (1997) *Restoring Justice*, Cincinnati: Anderson Publishing Co.
- and MORRIS A, and MAXWELL G. (2001) 'Introducing Restorative Justice' in A Morris & G Maxwell (eds) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing, pp 3-16.
- VAUGHAN, B. (2000) 'The Government of Youth: Disorder & Dependence', *Social and Legal Studies*, 9(3), pp 347-366.
- WALGRAVE, L. (2000) 'Extending the Victim Perspective Towards a Systemic Restorative Justice Alternative' in A Crawford and J Goodey (eds) *Integrative a Victim Perspective Within Criminal Justice*, Aldershot: Ashgate Dartmouth, pp 253-284.
- (2002) 'Restorative Justice and the Law: Socio-ethical and juridical foundations for a systemic approach' in L Walgrave (ed) *Restorative Justice and the Law*, Devon: Willan, pp 191-218.
- (2004) 'Restoration in Youth Justice' in M Tonry & A Dobb (eds.) *Youth Crime and Youth Justice: Comparative and Cross-National Perspectives*, 31, pp 543-597.
- WARNER, K. (1994) 'Family Group Conferences and the Rights of the Offender' in C Alder & J Wundersitz (eds) *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?*, Canberra: The Australian Institute of Criminology, pp 141-152.
- WEST, DJ. (1982) *Delinquency: Its Roots, Careers and Prospects*, London: Heinemann.
- WHYTE, WF. (1943) *Street Corner Society: The Social Structure of an Italian Slum*, Chicago: University of Chicago Press.

- WILCOX, A. (2003) 'Evidence-based Youth Justice? Some Valuable Lessons from an Evaluation for the Youth Justice Board', *Youth Justice*, 3(1), pp 19-33.
- YOUNG R and HOYLE C. (2004) *Two-Year Resanctioning Study: A comparison of restorative and traditional cautions*, Home Office Online Report 57/04.
- WILLIAMS, KS. (2001) *Textbook on Criminology 4th Edition*, Oxford: Oxford University Press.
- WINDLESHAM, LORD. (1993) *Responses to Crime (volume 2): Penal Policy in the Making*, Oxford: Oxford University Press.
- WOLFGANG M, FIGLIO R, and SELLIN T. (1972) *Delinquency in a Birth Cohort*, Chicago: Chicago University Press.
- WONSHE. (2004) 'How Does the 'Who, What, Where, When and How' Affect the Practice of Restorative Justice?' in *Critical Issues in Restorative Justice* by H Zehr & B Toews (eds), Devon: Willan Publishing, pp 253-264.
- YOUNG, J. (1999) *The Exclusive Society*, London: Sage Publishing.
- YOUNG, R. (2001) 'Just Cops Doing "Shameful" Business? Police-led Restorative Justice and the Lessons of Research' in A Morris & G Maxwell *Restorative Justice for Juveniles: Conferencing, Mediation & Circles*, Oxford: Hart Publishing, pp 195-226.
- and HOYLE, C. (2003) 'New, Improved Police-Led Restorative Justice?' in A. Von Hirsch, JV Roberts, A Bottoms, K Roach, M Schiff (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, Oxford: Hart Publishing, pp 273-292.
- YOUTH JUSTICE BOARD. *Who, What, Why?*, Youth Justice Board Website: <http://www.youth-justice-board.gov.uk/who/index.html>
- (2002) *Building on Success: Youth Justice Board Review 2001/2002*, London: Youth Justice Board.
- (2003) *Evaluation of the Youth Inclusion Programme*, London: Youth Justice Board.
- (2004a) *Final Warning Interventions: Key Elements of Effective Practice*, London: Youth Justice Board.
- (2004b) *ISSP: The Initial Report*, London: Youth Justice Board.
- (2004c) *Annual Review 2003/04 Building Confidence*, London: Youth Justice Board.
- (2004d) *Final Warning Projects*, London: Youth Justice Board.
- (2004e) *Referral Orders: A Summary*, London: Youth Justice Board.
- (2004f) *ASSET*, London: Youth Justice Board
- (2004g) *Annual Statistics 2003/04*, London: Youth Justice Board.
- (2004h) *MORI Youth Survey 2004*, London: Youth Justice Board.

-
- (2004i) *National Standards for Youth Justice Services*, London: Youth Justice Board.
- (2004j) *Youth Justice Plan 2002-2005*,
http://www.oxfordshire.gov.uk/youth_justice_plan0405-3.pdf
- (2004k) *Restorative Justice: Key Elements of Effective Practice*, London: Youth Justice Board.
- (2004l) *Sustaining the Success*, London: Youth Justice Board.
- (2004m) *Swift Administration of Justice: Key Elements of Effective Practice*, London: Youth Justice Board.
- YOUTH JUSTICE BOARD NEWS. (1999) 'New pathways to reduce youth crime', London: Youth Justice Board, 1, pp 3.
- (2000) 'Youth Offender Panels – handing justice back to the community', London: Youth Justice Board, 3, pp 9.
- (2004) 'Intensive fostering gives more support', London: Youth Justice Board, 25, pp 1
- (2004) 'Volunteer army plays vital role in supporting youth justice system', London: Youth Justice Board, 25, pp 3.
- YOUTH JUSTICE BOARD PRESS OFFICE. (23 October, 2002) 'Preventing Youth Crime Now and in the Future,' Lord Warner's Speech to the ACPO Youth Justice Conference.
- (14 November, 2002) 'Building on Success,' Lord Warner's Speech to the Youth Justice Board Annual Convention.
- (1 October, 2004) 'New Scheme Set to Crack Crime and Support Families', London: Youth Justice Board.
- YOUTH OFFENDING TEAM INSPECTION. (2004) *Joint Inspection of Youth Offending Teams: The First Phase Annual Report*, London: Youth Justice Board.
- ZEDNER, L. (2002) 'Victims' in M Maguire, R Morgan & R Reiner (eds.) *The Oxford Handbook of Criminology 3rd Edition*, pp 419-456.
- ZEHR, H. (1990) *Changing Lenses*, Scottdale, PA: Herald Press.
- ZUCKER, L. (1988) 'Where Do Institutional Patterns Come From? Organizations as Actors in Social Systems' in L Zucker (ed) *Institutional Patterns and Organizations: Culture and Environment*, Cambridge: Ballinger Publishing Company, pp 23-49.

Appendix 1

Interview Schedules

The following are the interview schedules used for offenders in the evaluation. To facilitate comparison between the experiences of participants, the same questions were used in interviews with the offenders' supporters, save Question 18 in the Final Warning Interview and Question 20 in the Referral Order Initial Interview which were omitted in the supporters' interview.

Final Warning Interview for Young Offenders

- | | |
|--|---|
| <ol style="list-style-type: none">1. Approximately how long was it from the time the police first spoke to you until the final warning meeting today?2. Did you feel that [the amount of time] was too long, too short or it didn't matter to you?3. Why was that?4. Is the YOT officer who ran the meeting today the one who first contacted you before the meeting?5. Do you think that's a good or a bad thing, or does it make no difference?6. When you arrived at [the meeting venue], immediately before the meeting how were you feeling?7. Can you remember what you were thinking?8. And how did it feel to talk about the offence in front of the people who came to the meeting?9. Was it easy or hard to say what you wanted to say in the meeting? | <ol style="list-style-type: none">10. How did you feel when you were listening to other people talking about the offence?11. [<i>If the victim is present</i>] How did you feel seeing the victim and listening to him/her speak about the harm caused by your behaviour?12. How do you feel about the way the YOT officer ran the meeting?13. Was there anything that the YOT officer said or did that you didn't like?14. Was there anything that the YOT officer said or did that you liked or found particularly helpful?15. [<i>If applicable</i>] Was there anyone in the meeting that you thought SHOULD NOT have been there?16. Was there anyone NOT in the meeting that you thought SHOULD have been there?17. Did the meeting make you feel ashamed of what you'd done or not? |
|--|---|

- | | |
|--|--|
| <p>18. By the end of the meeting did you feel like a bad person or not?</p> <p>19. Do you worry that anyone – friends, family, people where you live or at school – will treat you differently because you have been given a final warning?</p> <p>20. Do you feel that the [YOT officer] in the meeting today was on your side or not?</p> <p>21. Overall, did you feel that you were treated fairly or unfairly during the meeting?</p> <p>22. What do you think was [fair and/or unfair] about it?</p> <p>23. Now that the meeting is over, do you feel that you can put this behind you and move forward with your life?</p> | <p>24. Having been through the meeting, what do you think the main purpose of it was?</p> <p>25. Overall, do you think that it was a good or bad idea to have had this meeting?</p> <p>26. Did you agree to do anything or attend any further meetings after this meeting?</p> <p>27. Are you pleased about this or not?</p> <p>28. Can you suggest any ways in which this process, involving these meetings, could be improved?</p> <p>29. Is there anything else you would like to say about final warnings?</p> |
|--|--|

Final Warning Follow-up Interview for Young Offenders

- | | |
|---|---|
| <p>1. Looking back now, do you think the final warning meeting was useful or not? [In what way?/Why not?]</p> <p>2. What do you remember most about that meeting?</p> <p>3. When you first arrived at that meeting did you understand what a final warning is and what it involves?</p> <p>4. At the final warning meeting, did you agree to do anything or attend any programmes or have any further meetings?</p> | <p>5. [If yes] Can you remind me what you agreed to do and did you do it / was it helpful or not?</p> <p>6. [If no] Do you think that it would have helped you to have gone on a programme, or had any further meetings or any other additional support from the YOT?</p> <p>7. Did you feel that the people in the YOT were trying to support or help you?</p> |
|---|---|

- | | |
|--|--|
| <ol style="list-style-type: none"> 8. Did you feel that coming to the final warning was a kind of punishment or not? 9. Did the final warning make any difference to your feelings about your behaviour one way or another? 10. Have there been any important changes in your life since the final warning meeting? [Probe for changes in schooling, work, family circumstances and significant relationships] 11. Do you think you have changed in any way over the last few months? 12. Why or why not? [In what way? Why the change?] 13. Do you think that you are likely to do anything that could get you in trouble with the police again? 14. Why or why not? 15. Do you think that other young people who get into trouble with the | <p>police will benefit from the process that you have just been through?</p> <ol style="list-style-type: none"> 16. If one of your friends had just been told he was going to be given a final warning by the police, what would you tell him about it? 17. Has anyone – friends, family, people where you live or at school – treated you differently because of the final warning? 18. Do you think final warnings are a good idea or a bad idea? 19. Having been through the final warning, what do you think the main purpose of it was? 20. If there was one part of this process that you could change, what would it be? 21. Is there anything else you would like to say at this stage about final warnings? |
|--|--|

Referral Order Initial Interview for Young Offenders

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Approximately how long was it from the time you were in court until the referral order meeting today? 2. Did you feel that [the amount of time] was too long, too short or it didn't matter to you? 3. Why was that? | <ol style="list-style-type: none"> 4. Is the YOT officer who attended the meeting today the one who contacted you before the meeting? 5. Do you think that's a good or a bad thing, or does it make no difference? 6. When you arrived at [the meeting venue], immediately before the meeting how were you feeling? |
|---|--|

-
7. Can you remember what you were thinking?
 8. At the beginning of the meeting what did you think the people round the table were thinking about you?
 9. And how did it feel to talk about the offence in front of the people who came to the meeting?
 10. Was it easy or hard to say what you wanted to say in the meeting?
 11. How did you feel when you were listening to other people talking about the offence?
 12. [*If the victim is present*] How did you feel seeing the victim and listening to him/her speak about the harm caused by your behaviour?
 13. How do you feel about the way the panel leader ran the meeting?
 14. Was there anything that anyone said or did that you didn't like?
 15. Was there anything that anyone said or did that you liked or found particularly helpful?
 16. Was there anyone in the meeting that you thought SHOULD NOT have been there?
 17. Was there anyone NOT in the meeting that you thought SHOULD have been there?
 18. Did you feel that the people round the table were your kind of people or not?
 19. Did the meeting make you feel ashamed of what you'd done or not?
 20. By the end of the meeting did you feel like a bad person or not?
 21. Do you worry that anyone – friends, family, people where you live or at school – will treat you differently because of the referral order?
 22. What do you think that the people round the table thought about you by the end of the meeting?
 23. Do you feel that the people in the meeting today were on your side or not?
 24. Overall, did you feel that you were treated fairly or unfairly during the meeting?
 25. What do you think was [fair and/or unfair] about it?
 26. Having been through the meeting, what do you think the main purpose of it was?
 27. Do you think that it was a good or bad idea to have had this meeting?
 28. Besides additional panel meetings, did you agree to do anything or attend any further programmes?
 29. Are you pleased about this or not?
 30. Did you feel you were fully involved in deciding what the contract should be or not?
 31. Can you suggest any ways in which this process, involving these meetings, could be improved?
 32. Is there anything else you would like to say about referral orders or panels?

Referral Order Interim Interview for Young Offenders

1. When you arrived here today, immediately before the meeting how were you feeling? Can you remember what you were thinking?
 2. [*If the victim is present*] How did you feel seeing the victim and listening to him/her speak about the harm caused by your behaviour?
 3. Was there anything that anyone said or did that you didn't like?
 4. Was there anything that anyone said or did that you liked or found really helpful?
 5. Do you think that the people in the meeting today wanted to hear your opinion and listen to what you had to say?
 6. What do you think the panel thought about you by the end of the meeting today?
 7. If you were to see any of the panel members in your neighbourhood tomorrow, how do you think they would treat you?
- Now can we talk about the time since the first meeting and a bit about your feelings about the first meeting.
8. How often have you met with your YOT officer since the first panel meeting?
 9. How do you feel about this?
 10. [*If they have met*] Were these meetings helpful or not?
 11. [*If they have NOT met*] Do you think it would have been helpful to have met?
 12. Looking back now, do you think the first panel meeting was useful or not? [In what way?/Why not?]
 13. What do you remember most about that meeting?
 14. When you first got there did you understand what a referral order is and what it involves?
 15. Do you feel you now understand what a referral order is?
 16. Did the first panel meeting make any difference to your feelings about your behaviour one way or another?
 17. How do you feel now about the contract that was made?
 18. Have you kept to the contract?
 19. Have there been any important changes in your life since the first panel meeting? [Probe for changes in schooling, work, family circumstances and significant relationships]
 20. Do you think you have changed in any way over the last few months?
 21. Why or why not? [In what way? Why the change?]
 22. Do you feel that the process of going through the referral order is helping you to change or not?

- | | |
|---|--|
| <p>23. Do you feel that the people on the panel and supporting and helping you?</p> <p>24. Do you feel that coming to these panel meetings is a kind of punishment or not?</p> <p>25. Has anyone – friends, family, people where you live or at school – treated you differently because of the referral order?</p> | <p>26. If you could decide who gets to be a panel member, what kind of person would you pick? [Who do you think could help you the most?]</p> <p>27. If there was one part of this process that you could change, what would it be?</p> <p>28. Is there anything else you would like to say at this stage about referral orders and/or panel meetings?</p> |
|---|--|

Referral Order Final Interview for Young Offenders

- | | |
|--|---|
| <p>1. How often have you met with your YOT officer since the last panel meeting?</p> <p>2. How do you feel about this?</p> <p>3. [<i>If they have met</i>] Were these meetings helpful or not?</p> <p>4. [<i>If they have NOT met</i>] Do you think it would have been helpful to have met?</p> <p>5. When you arrived here today, immediately before the meeting, how were you feeling? Can you remember what you were thinking?</p> <p>6. What do you think about the panel meetings you have attended?</p> <p>7. What do you think about the panel members?</p> <p>8. Have the panel members helped you to feel differently about yourself or</p> | <p>helped with your relationships with other people?</p> <p>9. What do you believe the panel members think about you now at the end of the referral order?</p> <p>10. Do you think that you are likely to do anything else which could get you into trouble with the police again?</p> <p>11. Why or why not?</p> <p>12. Do you feel that you have changed as a result of anything that has happened since the first panel meeting?</p> <p>13. Having been through the referral order, what do you think the main purpose of it was?</p> <p>14. Overall, do you think your referral order was helpful or not?</p> |
|--|---|

- | | |
|--|--|
| <ul style="list-style-type: none">15. Do you think referral orders are a good idea or a bad idea?16. What, if anything, was the best thing about the referral order?17. What, if anything, was the worst thing about the referral order?18. Do you think that other young people who receive referral orders will benefit from the process that you have just been through? | <ul style="list-style-type: none">19. If one of your friends had just been given a referral order by the court, what would you tell him about it?20. If there was one part of this process that you could change, what would it be? |
|--|--|

Appendix 2

Below is a map of Oxfordshire. It illustrates the territorial division of the Oxfordshire YOT into the North, City, and South teams.

