Restorative Visions and Restorative Justice Practices: Conferencing, Ceremony and Reconciliation in Australia[*]

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'Settle thy studies Faustus and sound the depths of that thou wouldst profess.' Ben Jonson, *Faustus*, Act 1, Scene 1.

'To the anti- imperialist imagination, our space at home in the peripheries has been usurped and put to use by outsiders for their purpose. It is therefore necessary to seek out, to map, to invent, or to discover a *third* nature, not pristine and pre-historical...but deriving from the deprivations of the present'. Edward Said, *Culture and Imperialism.*

'She was rebellious, she never
conformed, they never broke her spirit,
her family background made sure of that
and they were always in her thoughts.
Six o'clock, out of bed, wash....
she endured many years of this spirit
breaking torture, punished, bashed, humiliated,
starved.' (From James Miller's Poem *Six o'Clock...Outa bed.* Cited in *'Bringing Them Home'*).

Evidence so far suggests that Indigenous families in Australia are reluctant to become involved with the family group conferences and/or are ineligible to participate due to stringent selection criteria. The introduction of the conferencing system has done little to reduce levels of Indigenous youth over-representation. At the same time the reconciliation process has stalled and Indigenous leaders have become frustrated with a government seemingly determined to turn the clock backwards. As criminologists we might maintain that the latter issue is none of our business, while the former problem might be resolved with a little more fine tuning, another round of consultations, better training and, perhaps, another take out from the growing *smorgasbord* of international programs on offer.

The quotations above represent the three themes I want to connect to the debate about restorative justice practices in Australia. The first has relevance to contemporary debates about the criminological imagination - or lack there of. In this context I want to suggest that criminologists and others involved in developing and researching conferencing, take a little

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time out to 'sound the depths', or, in post-modern parlance, adopt a 'reflexive' or critical stance and ask: what do we think we are doing? why are we doing it this way? and, most importantly, what are we not doing when we do the things we do? Criminology has a tendency to accept as given official narratives not only of what become defined at any one time 'hegemonically' as 'crimes' (Snider 1998) but also, by homology, what is excluded from the crime discourse. We begin our journeys from points of departure chosen for us from outside the discipline, particularly, though not exclusively, by criminal law and its ontology (Morrison 1995:7).

Hence the second quotation, which introduces a 'counter-hegemonic' theme into the narrative and raises the question of Indigenous participation. I want to suggest, here, that we imagine restorative justice within the framework of what Edward Said calls a 'restorative vision': this has broader and deeper implications than simply 'restoring' as it is hegemonically defined but must include a commitment to mapping out and imagining pathways, meeting places, crossing points where dialogue can take place with Indigenous peoples and 'a third way' opened. This may provide some other points of departure for the criminological enterprise. Following on from this, the final quotation confronts us with the very specific legacy of Australia's treatment of Indigenous peoples which still await a healing process: how can the restorative/transformative justice movement connect with this national process of reparation and reconciliation?

I want to suggest that the dominant representations of the conferencing process - constructed around a very narrow interpretation of 'reintegration' and a particularly symptomatic reading of John Braithwaite's 'shaming' thesis -may stand in the way of, rather than enable, the development of an alternative vision of justice in Australia, particularly where Indigenous people are concerned. In previous work (Blagg 1997) I have been critical of Braithwaite's thesis of 'reintegrative shaming' (Braithwaite 1989; Braithwaite & Mugford 1994) as it applies to Indigenous people. Briefly, Braithwaite's thesis, the belief that collective shaming of errant individuals can be positive and reintegrative (rather than simply denigrative and stigmatising) if certain preconditions are met, takes as given that the participants in the process share a commonality of values and beliefs - not least of which is the belief in the essential legitimacy of the proceedings. This proposition is highly contentious in a society struggling to reconcile alternative forms of legitimacy and frequently antagonistic interpretations of history.

I believe we must begin a process of dialogue that - to a large extent -would reopen for discussion some fundamental issues about conferencing with the aim of bringing the practice into alignment with the reconciliation process. Our notions of what is being 'restored' in restorative justice practices are limited to 'hegemonically' defined criminality. The concept of restoration refers to the remaking of the status quo through the reintegration of an offender into his/her network of significant others. In this version criminal events disturb the equilibrium of the community, time is temporarily out of joint, a ceremony re-knits the social fabric - everyone gets on with their lives. I don't wish to discredit such definitions entirely: rather I want to argue that they are incomplete and one-dimensional. The status quo may be an aspect of the problem we want to transform.

The processes I want to interconnect - those of restorative justice practices and the 'restorative vision' - are not necessarily incommensurable, but they are not, on the other hand, readily assimilatable within the same bureaucratic and administrative framework or ceremony. I am certainly not suggesting, for example, that victim/offender meetings instantly be thrown open to debate issues of Indigenous oppression: although some certainly could benefit from hearing stories of Indigenous people's experiences of dispossession, child ab-

duction, incarceration, poverty and violence as situating factors. They require what we might call a kind of *metonomic synchronisation* of processes and ceremonies through time in which various forms of reparative and restorative exchanges are made. This process of synchronisation involves the increasing harmonisation of Indigenous and non-Indigenous forms of ceremony through the construction of what anthropologists call 'liminal spaces': which I see as 'in between' places where dialogue can be generated. The liminal accepts, rather than problematises, hybridity and cultural difference as the starting points for dialogue.

In this respect the liminal is in opposition to the ideal of the 'communitarian' - as developed in the works of theorists such as Goodin and Pettit (1993) which provides the philosophical rational for the 'Republican Theory' underpinning Braithwaite's work (see Braithwaite & Pettit 1992). Communitarian theory retains the essential elements of the European Enlightenment, eg. a rational, secular morality as the basis for a universal civilisation, with the rational, autonomous individual enjoying rights of dominion within a community of common values and beliefs. Instead, it may be necessary to set out from entirely different premises. Firstly, by acknowledging that the Enlightenment project has been a disaster, for many cultures which stood in the way of the civilising process. Secondly, that the ideal of community embedded in communitatian theory is, in any case, a fiction which, as Gray (1995) argues, is unlike any community in the real world- the real ones often being places of conflict and enmity, their boundaries settled by war. Thirdly, that there may be alternative moralities, traditions and belief systems, not based on secular humanism and individual rights, which deserve to be respected and acknowledged.

Cunneen (1997) argues that too much was assumed about Indigenous people's willingness and capacity to be involved in conferencing: that too much was taken for granted about the shape and format of conferences as culturally appropriate 'ceremonies': due to an 'essentialising' colonial mind-set which assumed that 'because it works for Maori's' it must also work for other Indigenous peoples. Too little was said, on the other hand, about the decolonisation of the Indigenous landscape or the regimes and structures which would need to be reformed and re-defined before some kind of ceremonial meeting places could be constructed where a range of 'justice' issues could be debated.

Part of the re-thinking and re-mapping process should include a re-appraisal of the New Zealand system in terms of its structural underpinnings, its connections with reform in other justice spheres such as court processes, its connections with care and protection issues and its relationship to Maoridom. Some of these broader links are obscured in our preoccupation with the moment of the conference, which I believe has become a kind of *fetish* for its enthusiasts in Australia. These broader structural aspects deserve attention but they tend to be ignored, largely I believe, because they would impact on powerful agencies themselves.

Like many observers I was excited about the way in which Maori people in New Zealand were - as part of a broader decolonising and counter-hegemonic struggle - employing family group conferencing (FGCs) as a means of reclaiming *cultural* sovereignty over the welfare and control of their young people (Blagg 1997). While I may be guilty of having overstated the extent to which the FGCs represented a genuine empowerment process (see below) never the less the enabling legislation contained important policy directives which greatly increased family involvement and significantly reduced unchecked state powers. The controls placed upon arbitrary, racist and anti-youth styles of policing were of particular interest to observers concerned about the lack of such regulation in Australia (Blagg & Wilkie 1995, 1997)

I was dismayed (but not entirely surprised) to see how the process was represented and introduced in Australia - particularly via the 'Wagga model' with all the surrounding *mystification* of police/youth relations (including some enthusiast's claims that police could somehow adopt a neutral stance between victims and offenders and that police stations were neutral venues). My impression was that - to adapt an observation of Judge Mick Brown, the then president of New Zealand's Youth Court - while the New Zealand movement sought to empower families, our own has tended to empower the police and other, already powerful, agencies such as justice ministries. It has consolidated and extended a new 'knowledge/power' process which marginalises Indigenous justice issues. Indeed it had the potential, I believed, to actually *invert the New Zealand system by increasing state power at the expense of families.*

Decolonisation, Reclamation and Ceremony: New Zealand Style

There are two specific dimensions of the New Zealand scheme I want to stress firstly, the structural (ie. systems) context of Family Group Conferencing and secondly, its links with the cultural renaissance of Maori people. There are several key features of the New Zealand model that tend to be obscured by the emphasis on the moment of 'shaming' as the *modus vivendi* of conferencing. Discussion over the reform of the *Children and Young Persons Act* had taken place throughout the 1980's. The reforms were modeled on the most advanced elements of the British system of the 1980s, with high levels of police cautioning plus intensive 'high tariff' alternatives to custody similar to Intermediate Treatment and the separation of justice and welfare issues (Doolan 1988). New Zealand had already adopted police cautioning: a youth aid section in the police cautioning up to 50% of cases. It was acknowledged that Maori people needed to be involved in the process; their 'disenchantment with the current system' (Doolan 1988:11) had become a major concern and a way had to be found to incorporate 'family/whanau conference prior to the young person appearing in court'.

What emerged from the process of consultation with Maori people, however, went beyond the liberal minimalism of the English model. In a critique of the reform process an influential document set out a range of demands. The Maori child 'could not be separated out as an "individual" or as simply a member of a Westernised nuclear family, but had to be seen *as* part of a wider kin group or *hapu* that has traditionally exercised responsibility for the child's care and placement' (Ministerial Advisory Committee on a Maori Perspective 1988:29). The ensuing legislation placed family decision making at the centre of both youth justice and children's protection processes.

The Act and the conferencing process to which it gave birth have come in for considerable criticism in New Zealand from Maori. In particular the scheme has been criticised for simply 'indigenising' elements of the justice/welfare systems in order to achieve outcomes desired by pakehia power structures. Many Maori now believe that their cultural ideals and practices have been coopted as an 'add on' to an essentially unreformed system (Tauri 1998:2).

Whatever the limitations of the New Zealand reforms they remain, from an Australian perspective, impressive. It should be borne in mind that the process took place within a broader dynamic of structuration through which Maoridom generally has been empowered (ie. reparation through fishing rights, return of land and property, monetary restitution, official apologies - all the elements of a good family group conference!). In Australia the Indigenous landscape is suffering a kind of *de-structuration* as institutions of self manage-

ment (ATSIC, for example) are being dismembered and second wave of land appropriation (the governments anti-Mabo/anti-Wik bill) further deracinates Indigenous people.

The Colonial Appropriation

In some of my recent work I have critiqued what I have called *Orientalist* 'appropriations' of the Maori system of conferencing in Australia (Blagg 1997). This may seem like an excessively exotic term to introduce into a set of debates about a matter like justice but I was struck by the degree to which the literature on conferencing approximated what Said calls a 'colonial discourse'. By this Said means the ways in which the colonised world was constructed as an object of analysis: *Orientalism* represents the way European hegemony was secured, not just by terror and repression alone but by the formation of systems of knowledge which denuded and essentialised indigenous cultures and represented them within a series of stereotypes; exotic, timeless, lazy, uncivilised, etc.

Briefly, I can summarise my position thus:

I suggest that the Australian debate around the New Zealand approach to conferencing can be framed within a 'colonial discourse' because it is based upon similar Eurocentric devices of de-structuring the totality and context of conferencing.

The New Zealand system was scrutinised in a way which privileged certain of its features while silencing others - particularly those which could not be appropriated as examples of reintegrative shaming or which challenged the power of agencies such the police.

The system was 'read through' a lens which blanked out a number of key actualities. As Said says of the practices of Orientalists in relation to the Orient, its 'actual identity is withered away into a set of consecutive fragments', *rather* like the way the colonies raw materials are fragmented, shipped abroad and turned into commodities for use in the metropolis. The de-colonising dimensions of the process were written out of the narrative.

The New Zealand system was 'denuded and essentialised' because it was read, selectively, for ideas about what to do with young offenders in Australia, not for its rich lessons about family empowerment and cultural reclamation.

Significant sections were omitted. The reduction in police powers, the emphasis on diversion and gate-keeping, the work done to ensure that children under 14 were handled within a care and protection framework and not subjected to a confrontationalist conference and the rights of children to have independent legal advocates, for example.

Had such safeguards been embedded in the ACT scheme it would have ensured that a 12 year old child would not have worn a T-shirt saying 'I am a thief': indeed the child may not have been involved in a shaming ceremony[1].

Post Colonial Relations: Landscape, Space and Time

We tend to take for granted as normal and unproblematic the particular ways in which we organise time and space, configure the landscape, invest certain symbolic spaces and signs with meaning. The criminal justice system holds particular symbolic power in this regard. Although we are now acutely aware of the enormous disjuncture that exists between Indig-

1 This refers to an incident in the ACT restorative justice scheme where a 12-year old boy caught shoplifting was paraded around the scene of the crime wearing the now infamous T-shirt.

enous notions of ceremony and the ritual concatenations of time and space embedded in them, we are still far away from developing a language within which we could achieve a dialogue about them, let alone a set of strategies which could achieve harmony with them.

Looking historically for a moment we can see how the processes of colonisation ripped apart and disrupted the flow of time and the demarcation of space for Indigenous people. What Said calls 'geographic violence' was part of the 'founding violence' of colonisation. Imperialism created a momentum,

> through which virtually every space in the world is explored, charted, and finally brought under control. For the native the history of colonial servitude is inaugurated through the loss of control to the outsider (Said 1993:271).

The remaking of the colonial world involved its re-mapping and reconstruction in the image of the world the colonist left behind.

The physical landscape of our institutions, including justice institutions were introduced as part of this geographic colonisation. The traumatic dislocation of people from land was accompanied by 'epistemic violence' (Spivak 1996), the uprooting of the systems of knowledge and beliefs, which, in the case of Indigenous systems was intimately woven into land as the basis for identity.

For Franz Fanon colonialism was built upon a 'manichaen divide': the settler's 'Olympian' act of self-creation is complemented by the immiseration and deracintation of the colonised (1977): the 'shock' of invasion and the ensuing psychic fragmentation 'shattered not only its horizons but...psychological mechanisms'(1986:97). The colonised person becomes 'permanently an alien in his own land'; one who 'lives in a state of absolute depersonalisation'. He does not exist as he once did 'he exists *with the white man*' as his Other - not a person but a black (1986:97). This sense of being 'an alien in his own land' has implications for the ways Indigenous peoples relate to the 'stolen' landscape and the new institutions established on it. Fanon, in a passage rich with insights from his work as a psychiatrist, reveals the limitations of European disciplines (psychiatry, social work, law, medicine, etc.) in healing the traumatic disorders created by the 'shock': they presume that the subject has at least a potential for re-instatement 'back where he belonged'. There are clear parallels here with the epistemologies of hegemonic restorative justice which assume a shared 'public status' as the basis for reintegrative ceremonies (Blagg 1997:490).

The shock waves of this bitter history continue to reverberate in the present. Our fragmentation of the life worlds of Indigenous Australian is maintained through our practice of representing its manifestations as a set of discrete and unrelated 'problems' (juvenile crime, domestic violence, alcohol abuse, petrol sniffing, drugs, dysfunctional families, insanity, poor health, etc.). It is important to reassemble - to deconstruct then reconstruct - these issues as aspects of a collective suffering. Judy Atkinson has revealed how, after embarking on consultations with Indigenous people on 'domestic violence' issues, she had to move beyond the conceptual confines of gender and explore disaster/trauma theory to explain the multi-faceted consequences of colonisation (Atkinson 1996).

These insights need to be brought in from the margins of this debate and centred as a key concern for criminologists, rather than as an 'underlying issue' or background event to be dealt with by some other discipline while we get on with the job of 'criminal justice work'. A significant problem is that judicial and correctional systems of our society - which we tend to see as having a residual function-, were used extensively within the colonising process as routine aspects of control. Can conferencing arrangements sufficiently distanced

from association with this history? For Indigenous people court-like arrangements run by the police are no new phenomenon.

Appropriate Ceremony: Hybridity and Liminality

'Tred softly because you tred upon my dreams' W. B. Yeats

This final quotation reminds of our need to treat with sensitivity and respect the cultural artefacts and creations of other cultures. When we look for lessons and ideas from schemes in other societies we should acknowledge the traditions and cultural practices that have given birth to them. My discussions with Maoris and professionals working in the Youth Justice field led me to believe that some Australian visitors were not willing to listen and learn about the cultural broad underpinnings of the conferencing system and were there simply to appropriate elements of it. To understand how Indigenous people feel about what they see as a kind of cultural imperialism we need only look to the long history of anthropological theft as well as the theft of artefacts that have enriched western museums and libraries at the expense of Indigenous peoples. Some Maori people running FGCs, in particular, were annoyed by some visitors (amongst them members of various state parliaments and the judiciary) tendency to: take over some FGCs they were guests at and offer unsolicited and gratuitous advice on outcomes; tell them how much better they ran such things in NSW, WA, SA, Queensland, etc.; talk incessantly about pet schemes they ran in Australia at briefings about the FGC system.

The question of how we approach Australia's Indigenous people is yet more complex given that the destruction of Indigenous culture has been more thorough and complete. We have to think about constructing - through a dialogue with indigenous peoples (I stress the plural here because there are no fixed Indigenous identities) - those 'liminal spaces' I mentioned in my introductory section. They need to take account of Indigenous relationships and patterns of authority, they may need to rethink linkage between time and place: why a one of ceremony, in one place, involving one group of people? They need to be capable of dialogue across the boundaries we have constructed as discrete 'problems'. Liminality would require coming to terms with what has been called Aboriginal Domain, with its particular uses of time and place, its obligations and authority structures. Interconnecting and overlapping with the 'justice' issue there must ceremonies of reparation for Indigenous people.

I see no scope for liminality in police stations or in justice and welfare ministries. Liminal structures could take into account Aboriginal concerns about the criminalisation of their young people; about under-policing and over-policing; about the polices of justice and welfare services; about the lack of treatment and counselling services; about the collective shame of governments (State and Federal) on issues of housing, health and land. It isn't that Indigenous people do not care about their young people's behaviour but even culturally sensitive inducements to participate may be only partially successful when this concern is only one of many for them.

Magic Happens:[2] New Age Penology and the Path to Transformative Justice

One of my concerns about the accredited discourse on restorative justice is that a new - indeed 'new age' - language has been coined to describe some old practices. Is it simply a

2 Thanks to Frank Morgan for letting me borrow the term.

new form of what John Pratt (1989) has called 'justice talk'?: that is, an innovation which has more to do with coining language than with creating meaningful change? For all the giddy claims made for real justice/transformative justice/reintegrative justice and so on we have yet to see firm evidence that these schemes have improved on practices of those reparation and mediation schemes set up with a similar rush of enthusiasm in Britain and USA in the 1980s.[3]

I want to suggest that, while there are strong rhetorical themes - healing, wholeness, etc. - it is debatable whether reality has matched this rhetoric. The ideologies of restorative justice borrow from 'pre-modern' themes of cultural embeddedness and community - part of post-modern *bricolage* where fragments of identity are assembled in a *pret -a -porter* fashion. This grandiose language of transformation has often been accompanied by references to 'traditional' society and how pre-modern peoples 'resolved' conflict. What text on restorative justice would now be complete without reference to the Navaho or the Sioux ways of face to face conflict resolution? Are we -once again - creaming off the cultural value of people simply to suite our own nostalgia in this age of pessimism and melancholia? I have counterpoised the question of restorative justice with Said's decolonising *restorative vision*: a complex cultural and social process rather than simply a one off event as conferences tend to be.

The moment of 'reflexivity' implicit in Ruth Morris's metaphor of 'transformative' justice - needs to be thought through. This means that the ceremony should construct a bridge between the immediate incident and an ensemble of underpinning factors. It should be a space where the agencies charged with the responsibility for ensuring that crime is reduced are made accountable; were government policies are interrogated; where the agencies whose task it is to ensure that people do not become victims, that children have a worthwhile school life, that families do not fall into poverty, are decently housed and their children are not hassled very time they are on the street, make reparation. This is a very broad agenda indeed. Well beyond the scope of current practice in the justice field and well beyond the criminological imagination. But then if we are not really intent on transforming things why continue to use this grandiose language of transformation? Perhaps the 'transformation' in the literature is really that new-agey 'you can be a fairy' transformation.

I do not share John Braithwaite's optimism that communitarian conferencing, as currently practised, can open up in a way that allows for criticism of powerful agencies such as the police. They have, to borrow a phrase of David Garland's (1991)(used in relation to the correctional system) a heavily inscribed sense of their own naturalness and appropriateness as the 'real' agents for the dispensation of justice. I have no confidence that present conferencing arrangements do much more than simply displace and diffuse traditional ideas into new settings, continuing the practices of 'individuation' which have traditionally informed the justice system. My reading of the restorative/reintegrative/transformative justice movement leads me to suspect that beneath the language the purposes remain the same.

The current justice discourse has been precisely about eliminating considerations of social issues from judicial calculus. One dimension of this has involved a process wherein what Blagg and Wilkie called 'the specificity of children's and young person's services' are

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3 Here I would like to correct a point made by Kath Daley in her address to the Institute of Criminology seminar *Restorative Justice, Conferencing and the Possibilities of Reform* (8 April 1998), where she invites criminologists to get up from behind the desk and do some empirical research on restorative justice. In England in the 1980s quite a number did, to the extent that we actually know more about victim and offender meetings than we do about the formal system in many respects. For a review see Marshall (1996).

increasingly 'squeezed out' and their place taken by an expanded policing an correctional system (1995:18). Discursively, this has been accompanied by a kind of 'masculinisation' of the structures of intervention. It is noteworthy that the police as the representation of a tough-but-fair patriarchy have been accorded such elevated status within Australian conferencing. The new alliance of police and 'justice' ministries (which has smoothed the way for the correctionalisation of the juvenile justice system in many states) have taken over from 'welfare' departments to control disorderly youth. The new 'no nonsense' stress on accountability and penalty as opposed to those discredited ideals of a 'feminine' social work practice with its stress (at least in theory) on care and protection is an immensely revealing trope in the language game of justice today. The net effect of such shifts has been, as White (1994) points out, the rise of 'parent blaming' and the separation of issues of offending from structural causes.

The recent Human Rights and Equal Opportunity Commission (1997) report into the 'Stolen Children' provides an alternative scenario of community justice in which governments and government agencies relinquish some controls over decision making and assist Indigenous communities in devising solutions acceptable to them. Criminologists should familiarise themselves with this report's poignant and deeply important message: atonement, restitution and reparation are required here as the basis for a reconciled society.

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