# 17 Social Work and the Justice System

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## KEY POINTS

- The criminal justice practice context confronts social work with some of its most significant challenges.
- Social work principles require an approach to practice that considers desistance from crime not just in terms of the psychology of individual persons but with respect to its inter-personal and social structural contexts.
- The youth justice sector of criminal justice represents a critical practice nexus for social work as it is the meeting point of welfare and justice.
- Restorative justice conferencing has been applied to the youth justice system in a manner that is intended to address these tensions in the sector.

## KEY TERMS

correctional response
criminal contamination
criminal justice
criminogenic needs
desistance
reductivism
restorative justice conferencing
retributivism
risk-needs-responsivity framework
social justice
the Good Lives Model
youth justice

## Introduction

Arguably, *the* classical challenge for social work lies in the tension between its commitment to social care and its engagement with practices that support social control. **Criminal justice practice** presents the profession with what is perhaps its most confronting instance of this tension.

**criminal justice:** Responding to crime by means of a system of institutionalised practices.

The criminal justice system is called upon when the civic obligation to honour and respect the rights, needs, and feelings of fellow citizens is not met. In specific instances of such transgression, the law seeks to hold to account individual persons. However, where there is evidence of patterns of crime or claims of surges in its incidence, questions about broader responsibility inevitably arise. Identifying who or what is responsible for such prevalence, how to address and manage it, and how those involved and affected are treated become topics that inspire vigorous debate and polarising responses. Government policy in both Aotearoa New Zealand and Australia reflects a history of zigzagging approaches. Social science evidence surrounding the underlying drivers of crime, such as inequality, collides uncomfortably with the political realities of responding to perceived public clamour to 'get tough'. As a practice discipline under pressure at this fault line, social work must draw on its traditions and professional principles in both addressing questions of **social justice** and working with those directly involved as victims or perpetrators.

**social justice:** The policy of addressing social ills by addressing patterns of unfairness and inequality.

In this chapter, we present an analysis of contemporary Australasian justice system contexts with reference to relevant elements of history and current practice frameworks. We consider principled and effective responses. We place a particular focus on youth justice, for this is where welfare meets justice, and where care· most pointedly meets control.

## The political and ideological context

This section describes the background of ideas and beliefs that has shaped contemporary justice systems in Australasia.

### The justice system and its responses

The criminal justice system comprises the agencies, processes and practices that address those acts formally identified as 'criminal offences'. Such acts (or failures to act) are considered to involve harm to persons or property and are punishable under the law. The institutional elements directly involved in criminal justice are:

- police
- courts and victim support
- prison, rehabilitation and probation services
- community agencies.

Social workers practice with or in agencies, in prisons and the community. They often work in conjunction with probation officers, with whom, historically at least, they share similar values and principles as an occupational class.

### Conceptions of crime and criminal justice policy

As well as administering the justice system, the state also determines what particular categories of conduct constitute criminal offences and public responses. While they have developed separate structures, criminal justice systems in Australia and Aotearoa

New Zealand are based on the English legal system and its legacy of history and culture. This history and culture has shaped the *intentions* of the sentences imposed by the state as expressions of the consequences of crime.

Justice, in a generic sense, might be defined as *putting things to right*. However, given the tensions we have noted, the means for achieving this are highly contentious. One view is that criminals should be expected to somehow repair the harm they have done. Another is that they should be removed from the community, perhaps preventively. Potentially related to these two remedies is the view that we should expect offenders to *feel* badly about what they have done. Finally, there is a contention that things might be put to right by the offender undergoing some sort of rehabilitation, subsequently reforming, and therefore desisting from crime in the future. Of course, there remains debate about the extent to which any of these aims are achievable—especially rehabilitation. The academic literature presents these functions in terms of two basic types of formal consequence:

- **retributivism**—to exact retribution on behalf of those harmed
- **reductivism**—to reduce crime.

(For deeper discussion of these functions, see Cavadino & Dignan, 2002; Hudson, 1996.)

## Retributivism

While attempts to reduce crime have waxed and waned over time in countries like Australia and Aotearoa New Zealand, the sentiment of exacting retribution has remained a consistently powerful one. Retribution, whether achieved through inconvenience, pain, shame or remorse, responds to a perceived community need to have a payment exacted—a rightful and just reckoning—for the criminal individual's transgression. The criminal must be seen to experience consequences. A key principle of retributive justice is proportionality: the punishment should fit the crime in order to provide a satisfactory and just rebalancing. Punishment and/or repair is typically sought through imprisonment, detention and reparation. Interestingly, a philosophy of *reductivism* often uses these same methods.

**retributivism:**
Theory and policy advocating a punishing response to criminals that is in proportion to the harm caused in order to restore a just balance.

**reductivism:**
Theory and policy of responding to crime with interventions designed to reduce the likelihood of further crime.

## Reductivism

Reducing crime can be achieved by means of making reoffending less likely by the person convicted or by making crime less attractive to all. By some combination of punishing, containing and reforming, the offender is dissuaded and others are deterred. The consequences of engaging in crime are made unpleasant. According to this logic, the reporting of such unpleasantness affects would-be offenders, prompting them to weigh this up against the potential payoffs of crime. Furthermore, those who are convicted might be incapacitated from doing further harm during a period of imprisonment, or otherwise restricted by means of curfew or home detention. Importantly though, while detained and monitored in these ways, the opportunity exists for attempting to *transform* the offender by educative or therapeutic means. The type and duration of the reductivist strategy will depend on requirements that are

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determined by an assessment of the particular case. Therefore, unlike retributivism's desire for satisfaction, the key to reductivism is functional need.

## KEY PRACTICE QUESTIONS

1    Compare and contrast the key concepts of social justice and criminal justice.

2    Consider the relative merits of retributivism and reductivism as criminal justice policy philosophies. Draw a conclusion about which philosophy is more favourable to meeting social work goals in this sector.

## Applying penal philosophies in Australia and Aotearoa New Zealand

The criminal justice systems in Aotearoa New Zealand and Australia reflect aspects of both reductivism and retributivism. Throughout the twentieth and twenty-first centuries (thus far) both countries have experimented with a range of criminal justice responses, continually struggling to balance retributive and reductivist influences (for more comprehensive histories, see Newbold & Eskridge, 2005; Robinson & Lincoln, 2010). The institution of the prison and other forms of detention and restriction have remained constant, though their purpose has wavered in relation to these competing demands. A means of resolving this tension in practice has been to offer rehabilitative services, but to limit choices for service users and to create restrictive ('uncomfortable') settings as their contexts. This combination typically characterises the **correctional response** as a facet of criminal justice.

From the mid-1980s, following a period of resignation about the lack of effectiveness of efforts to reform offenders, interest in correctional 'treatment' was re-ignited by results achieved by a new technique in research evaluation called *meta-analysis*. By harnessing the growing capacity and power of computers, researchers increasingly sought to *combine* findings from individual empirical studies that evaluated the outcomes of rehabilitative programs. These meta-analysts claimed that their methods were a valid means of supporting the contention that, under certain circumstances, some correctional programs were capable of improving reconviction figures. The underlying logic was that because certain characteristics of the offender could be detected as factors in driving their crimes, then those factors could be targeted as '**criminogenic needs**' and subsequently targeted for change as risks underlying reoffending. In spite of some concerns about the real-world application of this 'risk-needs' approach as a rehabilitative framework (see, for example, Looman & Abracen, 2013) and the somewhat dubious claims of the methodology that informed it (e.g. McNeill et al., 2009), this new 'psychology of criminal conduct' was hungrily taken up by Western jurisdictions desperate

**correctional response:**
An approach to criminal justice that employs a network of institutions designed ultimately to reduce criminal behaviour.

**criminogenic needs:** Those factors relating to an individual criminal seen to both drive their behaviour and be amenable to change, e.g. impulsivity, low level of employment skills.

to offset the unsustainability of prison populations expanding in response to populist punitive demand (Pratt & Clark, 2005). Thus was heralded a brave new world of penal practice where offenders were 'managed' and programs were 'delivered'. Psychologists of this persuasion, armed with formidable risk assessment technology and the certainty of evidence-based and manualised interventions, had the confidence of knowing 'what works'. Their modularised interventions held sway; probation services were disciplined into compliance and re-assigned to the task of assisting in the elimination in offenders of deficits and deficiencies assessed as criminogenic needs.

# Contemporary rehabilitation frameworks: theory and practice

However, while the influence of the psychology of criminal conduct grew, contending rehabilitative frameworks were being developed, or were resurging. The philosophical and theoretical contention that developed from these alternative frameworks is important and far-reaching in its implications for social work and so we now consider in some detail two broad rehabilitation paradigms that have emerged in the last 20 years or so:

- Risk-Need-Responsivity (RNR) rehabilitation
- 'strengths-based' rehabilitation.

We then consider the implications of these developments in a realm of especial interest to social workers: youth justice.

## The Risk-Need-Responsivity (RNR) rehabilitation framework

Essentially, the Risk-Need-Responsivity (RNR) framework involves determining the risk of reoffending represented by an individual offender, considering their amenability to change, and then addressing the range of dynamic factors assessed to be functionally related to their offending. The reasoning is that by successfully attending to these 'criminogenic' needs, the individual's level of risk is reduced.

RNR is the foremost model in the general offending research and intervention literature known as the 'psychology of criminal conduct' (Andrews & Bonta, 2010). The RNR framework has three principles that have been supported by research over some 30 years as fundamental to effective interventions with offenders. These are outlined below.

### The Risk principle

The Risk principle states that criminal conduct can be reliably predicted, and that the treatment 'dosage' should match the level of the assessed risk of the individual offender. In practical terms, this means that the higher the level of assessed risk, the more intensive any rehabilitation service will need to be to reduce that risk.

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### The Needs principle

The Needs principle emphasises the importance of identifying the 'criminogenic' (i.e. crime-causing) needs of the offender, and addressing them specifically in the design and conduct of treatment. Programs intended to reduce risk must include content that explicitly targets only those factors that, as attributes of the offender and their circumstances, are both criminogenic and amenable to change.

### The Responsivity principle

The Responsivity principle describes how the treatment should be provided to optimise engagement in the rehabilitation program. Responsivity is a broad construct and includes considerations such as readiness, motivation, learning style, intelligence and cultural engagement. The key intention is to ensure that the program is conducted in such a way that it addresses barriers to change and maximises the resources an offender might have to support successful change to occur.

## 'Strengths-based' rehabilitation approaches

Alternative approaches, while not necessarily rejecting outright the contribution of the RNR framework, have sought to at least balance its tendency to objectify the criminal offender and its somewhat negative preoccupations with risk and deficiency. Among these alternative approaches are:

- narrative identity
- Good Lives
- desistance.

### Narrative identity

The alternative approaches—which are sometimes referred to as 'strengths-based' approaches—have emphasised the importance of the offender retaining an experience of personal agency and a sense of volition in developing a commitment to—and active involvement in—their own transformation to desistance from offending. Some authors have linked these qualities to narrative identity (Veysey, Christian & Martinez, 2009; Ward & Marshall, 2007; Ward & Maruna, 2007). This notion of locating one's own efforts within an emergent narrative of moving away from a life of crime has been substantiated through research as a key component in the evolution and maintenance of criminal desistance (King, 2013; Maruna, 2001).

### Good Lives

While narrative identity writers have linked offender agency and self-determination to rehabilitative goals through the construct of identity, others have emphasised the critical relevance of human rights. Connolly and Ward (2008) argue that, to have the capacity to appreciate harm and to respond to the needs and experiences of others, offenders should not be deprived of the minimal conditions for leading lives of dignity and retaining self-esteem. Ward and others have referred to such conditions as providing the requirements for avoiding reoffending by living 'good lives' (Ward, 2002;

Ward & Marshall, 2004; Ward & Maruna, 2007). Their **Good Lives Model (GLM)** of rehabilitation presents the premise that, in offending, offenders are seeking to achieve certain culturally-shaped goals, which are ultimately linked to a set of universal 'human goods'. The implication of this logic is that these goals can also be achieved by alternative, and desirable, non-offending means. These generic human goods, it is argued, relate to goals such as competence and mastery, but also belonging and intimacy. In the case of criminal offenders, exploitive and abusive forms of conduct have been used as strategies for attaining these goods. This good-lives framework of rights (Ward, 2002; Ward, Yeats & Willis, 2011) proposes that those who embark on criminal strategies are in various ways blocked or restrained from taking up more pro-social strategies. Rehabilitation efforts are, in this view, focused on providing access to culturally appropriate means of goods attainment, based on respect for others and regard for community.

> **Good Lives Model (GLM):** Providing offenders with access to culturally appropriate means of attaining 'goods,' based on respect for others and regard for community.

The GLM rights-based approach allows for a conceptual separation between the person and the offence caused, suggesting more complex courses of explanation and broader means of restoration. Such explanation lends itself to social constructionist approaches to rehabilitation, which seek to position the individual who has offended in relation to their offensive conduct (e.g. Jenkins, 2009). This framework of rehabilitation creates the opportunity for the offender to take a stance of empowerment and personal agency in relation to these acts.

## Desistance

Consistent with the current thinking about empowerment and personal agency is a growing body of research that supports a departure from practices that have become associated with the RNR psychology to practices that attend to the social and relational context. As well as the *human* capital resources (i.e. motivation and capacities), desistance from offending has been shown to require the resources of *social* capital. Maruna's groundbreaking research investigated the essential ingredients in the lives of former offenders who had eventually succeeded in 'going straight' (Maruna, 2001). The compelling common theme in these accounts is the identification and development of a *life of desistance*. Such a narrative tells of a process that is both driven by and owned by the desistor. The fundamental narrative plots an arc in the trajectory of the ex-offender's life from one that is deeply entrenched in a criminal lifestyle to one that is fully committed to a pro-social lifestyle. Maruna (2001) has referred to this process as 'making good', reflecting its transactional character. While the process of making good is described as being kindled and sustained by internal factors such as hope (a facet of human capital), such positive expectations are not sustainable without the interpersonal and social resources of family and community networks (i.e. social capital).

> **desistance:** A theory about how offenders stop their offending behaviour.

Of significance to the broader and longer-term aims of rehabilitation, a sense of belonging, opportunities to experience the gratification of both giving and receiving, and the benefits of mutual support are factors synonymous with human goods and values such as might be provided by family. These experiences are also consistent with what Maruna and LeBel (2003) refer to as 'generativity', and Martinez and Christian as 'redemption' (2009), being components of a desistance narrative, and also empirically identified by Martinez and Christian (2009) as contributing to transformative experience.

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## KEY PRACTICE QUESTIONS

1    What factors might account for the popularity of the 'psychology of criminal conduct' among practitioners in this sector?

2    How might the RNR framework and the 'strengths-based' rehabilitation models described above be seen to complement each other in practice rather than being considered as competing approaches?

## Social work and offender rehabilitation

A process of desistance is thus understood in the context of human relationships. Whereas, arguably, the RNR framework stresses *intrapsychic* factors, strengths-based rehabilitation approaches attend to the domain of the *interpersonal*. This focus is much closer to the natural sphere of social work and traditional probation work. The practitioner's role here is seen much more in terms of a broker and mediator in shaping the offender's desistance efforts, and relies considerably more on embodied skill than the actuarial process of applying statistically derived data to risk, need and responsivity factors (McNeill, 2014). The role of social workers in this respect is in supporting the efforts of the desistor in reconnecting with their community (McNeill & Maruna, 2007). This collaborative process has been referred to as 'co-producing desistance' (Weaver, 2014). Weaver even factors in the social worker among the desistor's stock of social capital, and has suggested that the question of '*who* works' is integral to the question of '*what* works' (Weaver, 2014). Recent research in New Zealand has substantiated the role of the social worker in such rehabilitative efforts (Gilbert & Elley, 2015).

youth justice:
The formal care and protection and criminal justice systems that currently administer legislation specific to young people.

Social workers are directly engaged in probation and parole, forensic detention, **youth justice**, restorative justice, family work, rehabilitation programs, work in correctional institutions, halfway houses, and so on. Social work holds at its core a set of steadfast principles on social justice. These principles demand a perspective that takes into account not just the specific circumstances of individual persons, but also their social context—including prevailing power structures. It promotes a conception of wellbeing that incorporates the person, the community and society. As a component of social policy, criminal justice policy seeks to fulfil the aim of maximising wellbeing. It seeks to replace conduct that causes harm with conduct that reflects pro-social qualities, such as respect and trust. Similarly, criminal justice, as a component of social policy, has a significant role in this by mitigating harm done by crime and by responding to criminal offending. Nevertheless, international research suggests strongly that those factors that influence welfare outcomes—such as education, poverty and inequality—also intersect with factors that contribute to crime (Wilkinson & Pickett, 2010). If criminal justice is to be successful it seems, then, that these factors should also be targeted as a social work task. From this perspective, at some point, the needs of justice must intersect with the needs of welfare. Fittingly, the next section focuses on youth justice.

# Youth justice

Youth justice is a field that illustrates the justice/welfare nexus and, at the same time, because of its interface with child protection systems, involves social work as a profession arguably more than any other area of justice. We will begin by elaborating upon the key concepts and understandings that underpin our notions of 'justice' and 'youth' before considering the role of social work in youth justice and the tensions in this field of practice.

## Concepts of youth and concepts of justice

The development of youth justice systems in Australia and Aotearoa New Zealand has been subject to pressures and tensions created by changing expectations of 'youth' and the age at which young people may be deemed to be legally responsible for their actions, along with changing expectations of justice systems. In the nineteenth century, children and young people were tried and sentenced in adult courts and subject to adult punishment (Richards, 2011). It has only been more recently, with the creation of adolescence as a distinct life stage, that young people have been subject to specific age-related governmental controls and responses. For the purposes of this chapter, 'youth justice' refers to the formal care and protection and criminal justice systems that currently administer legislation specific to young people.

Current legal provisions in both Australia and Aotearoa New Zealand relating to youth have their origins in longstanding English Common Law. Across Australian jurisdictions, the current minimum age of criminal responsibility is ten years of age, and between ten and 14 years of age the legal principle of *doli incapax* applies, meaning that between these years a child is deemed to be incapable of committing a criminal act (Urbas, 2000). This legal provision can be challenged if a prosecutor can demonstrate that a child could distinguish between right and wrong at the time of the offence. Between 14 and 17 or 18 years of age (this varies in some Australian jurisdictions), offenders may be held accountable for their offending and are subject to a range of different sanctions from adult offenders (Urbas, 2000). The situation is very similar in Aotearoa New Zealand, where a child under the age of ten cannot be charged with a criminal offence—with the exception of murder or manslaughter (*Crimes Act 1961*, section 22(1)). Young people between 14 and 17 years of age can be charged in the Youth Court on criminal charges or, if their crimes are very serious, they may be transferred to a District Court or High Court (*Children, Young Persons, and Their Families Act 1989*, sections 272–274, 283(o)). As in Australia, a range of different sanctions applies to young offenders.

Among the external influences on criminal justice policy for both countries are the views of the United Nations Committee for the Rights of the Child (UNCRoC), which recommended that a preferable minimum age for criminal accountability be 14 or 16 years of age (UNCRoC, 2007). This is a contentious issue that is subject to political debate and opinion from more conservative standpoints (i.e. lowering the age of responsibility) to more liberal views (i.e. increasing the age). Whichever perspective is ascribed to across Western jurisdictions, it is widely acknowledged that the majority

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of young people who come to the attention of justice authorities are from the most marginalised and poorest communities (Muncie, 2008).Whatever decisions are made in each jurisdiction have potentially far-reaching effects on children and young people.

## Risk and youth justice

Sitting alongside the justice and more punitive model of responses to youth offending has grown a longstanding perception of youth as either 'at risk' or as a risk to society (Kemshall, 2008; Goldson, 2005). Much research and writing has been done regarding the prediction of youth offending predicated on the risk, needs and responsivity (RNR) model developed in relation to adult offenders by Andrews and Bonta (2010), described earlier. Actuarial predictive assessment of youth offending has been challenged on the basis that it risks further marginalising already disenfranchised, alienated youth (Case, 2006; Haines & Case, 2008; Riele, 2006). The challenge for criminal justice policy responses for youth is the tendency for predictive risk measures to individualise likelihood for offending and ignore the structural contributors to individual behaviour (France, 2008). As long as the focus remains biased toward individual attributes, the less attention will be paid to socio-economic policies that create the social conditions that contribute to increased risk of youth offending. Various forms of risk of youth reoffending assessment tools are now employed internationally, with the more predominant models emanating from the United States (Olver, Stockdale & Wormith, 2009). These tools determine, to a large extent, how a young offender may be treated in the care and protection and criminal justice systems either by way of custodial measures or by way of treatment and supervision (Olver, Stockdale & Wormith, 2009).

In addition to the debate about the outcome of applying risk of reoffending measures to youth offender populations, there is ongoing debate about the applicability of the prediction of risk measurement tools to boys and young men, and whether the same tools are applicable to girls and young women (Daigle, Cullen & Wright, 2007; Reisig, Holtfreter & Morash, 2006). Despite the debate concerning the utility of various predictive instruments in relation to gender, there is no doubt that in both Australia and Aotearoa New Zealand there are overall far fewer girls and young women who come into contact with justice systems for criminal offending in comparison with boys and young men (Chong, 2007; Richards, 2011). Young women also tend to commit less serious crime (Chong, 2007; Richards, 2011).

Juvenile offending differs from adult offending in that it overwhelmingly involves property or disorderly offences (Chong, 2007; Richards, 2011). There are age-related factors that can be explained by opportunity theory (McGloin et al., 2007), as the majority of the offenders in the 15 to 19 age group will either still be in school or unemployed and on state benefits (Chong, 2007; Richards, 2011). Livingston and colleagues (2008), in a study based in Queensland, discovered three primary juvenile offending trajectories involving early moderate offenders, late-onset moderate offenders, and chronic offenders. While most young people 'grow out' of offending, a small group remain in the criminal justice system for many years (Livingston et al., 2008).

The incarceration of young people in youth detention centres, youth prisons and adult prisons has for many years concerned criminal justice policy makers because of the risk of **criminal contamination** (ALRC, 1997). Contamination involves the transfer of criminal knowledge and criminal networks within criminal justice facilities. The effect of contamination has been borne out by research that evidences a history of incarceration in a criminal justice facility as predictive of reoffending (Cottle, Lee & Heilbrun, 2001; Smith, Cullen & Latessa, 2009). Providing the evidence base for contamination is complex in terms of distinguishing which particular variables, including a history of imprisonment, have the greater influence on youth reoffending. Demographic factors, alcohol and other substance abuse, and family background all play a part in shaping children and young people's life trajectories (Smith, Cullen & Latessa, 2009). The risk of contamination has formed an important part of the rationale for criminal justice jurisdictions recommending differential treatment for youth offenders with the principle of containment as a 'last resort' widely preferred (Muncie, 2008).

In the contemporary context, youth justice measures reflect the tension produced by the two divergent purposes in responding to youth offending described earlier, with youth either 'at risk' or a risk to society. Gelsthorpe and Worrall (2009) have argued that while earlier welfare perspectives increased surveillance and intervention in the lives of young women, the prevailing 'justice' approach may have criminalised young women's genuine welfare needs. This is a common theme from commentary that questions the concept of 'at-risk' youth and the focus of a risk-based society on individual characteristics of young people rather than the impact of their schooling and societal attitudes (McAra & McVie, 2007; Phoenix & Kelly, 2013; Riele, 2006). Among the suite of responses to youth offending—which include police cautions at the lower end of the spectrum to detention in a correctional facility at the upper end—sit restorative justice processes. Despite the increased emphasis on punitive criminal justice responses, there has remained an international commitment to restorative justice (Braithwaite, 2007). Restorative justice has become a cornerstone of criminal justice responses to youth offending in Australia and particularly in New Zealand, and the following section provides a brief history of its evolution into practice. It is in this area of **restorative justice conferencing** that social workers are most likely to be involved with youth justice. For this reason, this aspect of youth justice will be the focus of the remainder of this chapter.

## Restorative justice and youth justice

Aotearoa New Zealand became a pioneer in incorporating restorative justice for young people as part of its care and protection legislation in the 1980s with its *Children, Young Persons and Their Families Act 1989* (CYPF Act). This was conceived as an adaptation of traditional Māori practices of reconciliation and the restoration of relationships between an offender, a victim, their extended family and the community (Carswell et al., 2013; Connolly, 2006). The adoption of restorative justice systems and

**criminal contamination:** The transfer of criminal knowledge and criminal networks within criminal justice facilities.

**restorative justice conferencing:** A collective approach to an offence; involves a youth justice coordinator (the state), the victim and their supporters, the offender and their family support, and the police.

processes via youth justice conferencing for young people marked a seminal shift in approach toward young people's behaviour where they came to the attention of police or other authorities (Maxwell & Morris, 2006). The emphasis of this new approach was on holding young offenders accountable, but also attending to their socio-cultural needs to ensure that the causes of the behaviour were addressed in an organised collective approach to service delivery. The collective approach was achieved through a conference involving a youth justice coordinator (the state), the victim and their supporters, the offender and their family support, and the police.

The primary motivation for introducing the model stemmed from concern about the numbers of indigenous children and young people entering the court and criminal justice system and a political commitment at the time to diversionary measures (Maxwell & Morris, 2006). Australia is one of the countries the began to develop youth justice conferencing approaches, but these were initially police-led and controlled, as opposed to the care and protection family group conference system instituted in New Zealand (Daly & Hayes, 2001; Richards, 2010). While youth justice conferencing is now included in legislation across Australian states and territories, it remains one part of a hierarchy of responses (Daly & Hayes, 2001; Richards, 2010) and is not always a requirement, unlike in New Zealand.

## Social work and youth justice conferencing

In Aotearoa New Zealand, Family Group Conferencing and Youth Justice Conferencing originated within the state's care and protection services, and social workers play a critical role in the key positions that support conferencing (CYPF Act; Doolan, 2008).

Youth justice coordinators are more likely to be social workers in Aotearoa New Zealand and their roles are, as much as possible, to achieve the lowest form of sanction appropriate to the offending (Maxwell & Morris, 2006). They are required to organise and convene conferences and ensure that all participants understand the process (Maxwell & Morris, 2006). There is an expectation that coordinators are familiar with the indigenous Māori culture in Aotearoa New Zealand and conferences can be convened according to Māori custom and involve Te Reo Māori (Māori language). Skills of coordination, meeting facilitation, managing conflict and specific cultural expertise are necessary for these positions (Ministry for Vulnerable Children, 2016). Ongoing assessment and review of the outcomes and case plans that are agreed to by a youth justice conference will be monitored by the coordinator. Youth justice social workers are likely, in many cases, to be involved in providing the practical support and advice to the young person and their family and ensuring access to appropriate treatment and referral to services.

The following case study illustrates the outcomes of a youth justice conference case conducted in Aotearoa New Zealand, and it identifies the particular circumstances of the offending and the situation of the victim.

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## CASE STUDY

### John

'John' was charged with a burglary that occurred in a provincial town. The victim was an elderly person, frail and living alone, who has been deeply traumatised by the event. A Family Group Conference was convened following direction by the court. It was attended by the young person's parents and eight other members of his extended family.

It was not possible for the elderly victim to attend the Family Group Conference, which was being held some distance away. Therefore, in order for the conference to reach appropriate resolutions and restore the dignity of the victim, the young person's parents paid a personal visit to the victim's home. (John had already been placed in a different part of the country in full-time employment, and was working a great deal of overtime.) The visit was very successful; it resulted in warm and kindly relations between the two families and further visits followed. The parents apologised to the victim, who in turn made it clear that no reparations were being sought. In fact, the victim wrote a letter to the Court expressing appreciation for the visit and asking that no further action be taken against John.

The Youth Justice Coordinator encouraged the parents to involve the whānau (extended family) by emphasising that the vulnerability of such an elderly victim created a potential for more serious charges. The Youth Justice Coordinator suggested that the extended family's help in dealing with the young person might be critical to prevent reoffending and thus the mana (respect) of the family would be more seriously damaged if this help was not sought from the wider whānau.

The Family Group Conference plan stipulated that the young person would make a cash reparation, and provide a card with his apologies and a gift for the victim, all of which would be personally delivered by one of his family members. The parents acknowledged that they were having a 'rough patch' in controlling their son's behaviour, and enlisted the support of the whānau. John was to reside with a close relative who lived in an urban centre where he would be surrounded and supported by immediate and extended whānau.

The plan built on the fact that John had obtained full-time employment, and provided for a regular program of savings that were managed by his mother; his involvement in sporting activities, which included playing for a whānau team; and help from an immediate family member toward passing the written examination for a driver's licence. Monitoring was to be the responsibility of the family. The plan was completed.

(From Levine, Eagle, Tuiavi'l & Roseveare, 1998.) ●

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## KEY PRACTICE QUESTIONS

1   How might a youth justice conferencing approach inadvertently contribute to 'risk' rather than addressing it?

2   In the case study above, following the visit of John's parents, the victim wrote a letter to the Court asking that no further action be taken against John. But as the result of the subsequent plan, John was subject to a number of implications and changes in his life. Provide an argument that seeks to reconcile these two developments in the case.

It can be seen from this case study how the twin areas of welfare and justice must be balanced by social workers so that criminal justice system expectations are met, along with the welfare needs of the young person. The tension between these two goals in wider societal contexts has been traversed earlier in this chapter. This restorative justice practice example shows the victim and their social supports, the young person (offender) and their family network, the local community wherein the offending occurred and the state as represented by the New Zealand Department of Child Youth and Family as all having both their own particular and their shared interests that need to be served by the conferencing process. The social worker's role often requires maintaining boundaries between what may be perceived as a 'soft' approach to the offending behaviour versus the rehabilitation needs of the young person.

## Conclusion

In the UNICEF report *The Role of Social Work in Juvenile Justice*, reference is made to the multiple roles that social workers have in juvenile justice systems across the world (UNICEF, 2013). The professional antecedents social work in social care and practical support for families facing poverty, substance dependency and crime have meant that the profession has played a significant role with justice systems for many years. As has been pointed out, social workers sit within the ambit of social services, and social service and justice systems are two distinct and separate sectors (UNICEF, 2013). The two sectors have diverse aims (as pointed out in the introduction to this chapter) and youth justice, because of its concern with young people, is one type of justice that bridges across to the welfare or social services domain. Social workers therefore are expected to reconcile competing discourses and purposes and in ways that will conform to the goals of their profession. These goals include social justice, empowerment, and supporting the wellbeing of children and young people. The evaluations of Youth Justice Conferencing show that it is possible to produce positive outcomes for young people, victims, and their respective families and communities in a process of repairing harm and addressing the rehabilitation needs of young offenders (Sellers, 2014). In order to effect social change and the laudable goals of social work, the profession will also need to target the structural factors that lead to the poverty and marginalisation of many youth and the over-representation of indigenous and cultural minorities in youth justice systems.

## REVIEW QUESTIONS

1   Describe the tensions at the heart of criminal justice that are especially confronting to social work.

2   Why should desistance from crime be considered more as a social process than an event in the life of an individual?

3   In what ways are welfare and justice reconciled in youth justice practice?

4   In the case study, what actions are taken that can be seen to support a balance of criminal justice system expectations on the one hand with both the welfare needs of the family and the rehabilitation needs of the young person on the other?

## FURTHER READING

Braithwaite, J. (1989). *Crime, shame and reintegration.* Cambridge: Cambridge University Press.

> This seminal text by one of Australasia's foremost theorists on the issue of restorative justice balances the overseas perspectives of the next two texts in this list.

McIvor G. & Raynor P. (eds) (2007). *Developments in social work with offenders.* London: Jessica Kingsley.

> This book covers recent developments in policy, assessment, supervision and intervention; especially changes that have occurred in social work and probation in the United Kingdom.

McNeill, F & Durnescu, I. (eds) (2014). *Understanding penal practice.* Abingdon: Routledge.

> In seeking to describe, critically analyse and support practice in this sector, this book brings together a range of international studies, which also investigate effectiveness and prescribe development.

McRae, A & Zehr, H. (2004). *The little book of family group conferences New Zealand style.* Philadelphia: Good Books.

> A very accessible guide to the process and operation of this world-renowned system.

## USEFUL WEBSITES

www.aic.gov.au/criminal_justice_system/courts/juvenile.html

> The Australian Institute of Criminology website has an Australia-wide compendium of specialist youth courts with a comprehensive network of relevant links.

http://youthjustice.co.nz/

> The Youth Justice Learning Centre is a New Zealand website with links to a wide range of resources for supporting practice with young people.

www.cycj.org.uk/about-us/background/

> Based in Scotland—arguably one of the West's most progressive jurisdictions—the Centre for Youth & Criminal Justice seeks to promote the development, support and understanding of youth justice practice, policy and research by sharing learning internationally.

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