DEFINING THE COMMUNITY IN COMMUNITY CONFERENCING

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In his article, Crime, Shame, and Community: Mediation Against Violence, Professor Scheff contends that increasing crime rates in the United States may be addressed by embracing an alternative dispute resolution (ADR) approach known as community conferencing. For the most part, this approach suggests that the involvement of community representatives in the criminal adjudication process produces an environment that, "closely resemble[s] the form that justice takes in most traditional societies, in which small communities handle their own crimes rather than delivering the offenders into the hands of legal and correctional professionals." It is argued that this environment allows for the expression of shame on the part of the offender through the public assumption of responsibility and ultimately pays dividends in terms of addressing victim needs and lowering recidivism rates.

Given Professor Scheff's research, one would be hard-pressed not to admit that the basic premises of community conferencing have merit as a diversionary justice approach. Clearly, there is a place for community-based ADR programs in countries such as the United States, Australia and Canada. It may be argued, however, that the applicability of community conferencing is heavily dependant upon the existence of a definable community—an aspect of the program which is not addressed to any great extent in Professor Scheff's article. Specifically, it is puzzling that Professor Scheff would extensively describe the importance of a number of key elements involved in the relationship between crime, shame and community (i.e., symbolic reparation, re-integrative shame, indignation, etc.), yet neglect to offer any indication of how this approach might be effectively implemented in a society where little or no sense of community exists. In essence, one is left wondering about the potential of this ap-

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approach to crime in urban areas where there has been a continual erosion of a sense of community. This is an especially salient concern given Professor Scheff’s suggestion that this approach be employed as a model for implementation of similar programs in cities such as Los Angeles and Sacramento.

The importance of establishing a definable community when discussing ADR programs such as Professor Scheff’s is perhaps best illustrated by reference to a number of recent Canadian judicial decisions regarding sentencing circles—an ADR approach currently employed by various Canadian aboriginal groups. Like community conferencing, the sentencing circle seeks to combine elements of community, shame and personal responsibility in order to facilitate healing on the part of the offender and victim.\(^1\) Since the inception of sentencing circles, the Canadian courts have clearly indicated that the applicability of this program is restricted to situations in which an identifiable community exists.\(^2\) For example, in one of the first aboriginal sentencing circle cases, Justice Laycraft rejected a lower court decision to accept the sentencing recommendation of the local Inumarit Committee on the basis that he was, “unable to see . . . the community which it [the Committee] serves”.\(^3\) The views of the court appear to be bolstered by research suggesting that the breakdown of aboriginal communities in Canada is often accompanied by a decrease in sociolegal control of community members.\(^4\)

In addition to pointing out the importance of establishing the existence of a community, recent court decisions also suggest that the appropriateness of ADR approaches such as sentencing circles is reliant upon proof that an individual is a member of the community in so much as the community is willing to take responsibility for him or her. In Regina v. Morin,\(^5\) for example, the court accepted a sentencing circle recommendation for an individual (even though he did not reside in an aboriginal community) on the grounds that a local Metis community declared an

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interest in taking responsibility for the rehabilitation of the individual. In this case, the court was clear in its assertion that one of the "essential ingredients" involved in a decision regarding the use of a sentencing circle is the existence of a community willing to take an active role in helping a defendant to change his lifestyle.

The above cases serve to illustrate my main concern with Professor Scheff's proposed wide-ranging implementation of community conferencing as a viable alternative to traditional justice. Specifically, although it appears that this approach is an effective option for well-defined communities willing to take an active role in the rehabilitation of an offender, there is little empirical or judicial evidence regarding its feasibility in non-aboriginal societies which are experiencing a continual erosion of the sense of community. Clearly, the backbone of any community conferencing approach to justice is the need for a clearly established community—something not so easily found in most densely populated North American urban centres. This concept is certainly not a new one. Over 200 years ago Cesare Beccaria argued that there was a strong relationship between crime and increasingly larger populations which culminated in the erosion of the spirit of the family, "[i]n proportion to the increase of society, each member becomes a smaller part of the whole; and the republican spirit diminishes in the same proportion."

Given the above, I would argue that community conferencing should continue to be pursued as a useful alternative to conventional justice approaches in clearly defined "traditional societies" such as those found in a number of aboriginal communities in the United States, Canada and Australia. However, before advocating the broader implementation of this approach, one must first produce evidence that a sense of community exists in urban areas equal to that found in traditional societies, or that this sense of community can be readily attained. I find no such evidence in Professor Scheff's article. In short, although the article clearly addresses a number of important aspects related to the conference component of community conferencing, it does not appear to address the community component to the same extent.

6 CESARE BECCARIA, AN ESSAY ON CRIMES AND PUNISHMENT (1983).
7 Id. at 41.