

Apologies and Accounts in Youth Justice Conferencing: Reinterpreting Research Outcomes¹

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The literature on restorative justice is replete with findings showing that offenders and victims judge restorative processes as fair and view outcomes as satisfactory. There is less evidence to suggest, however, that restorative processes are in fact restorative. I first consider how apology and forgiveness feature in one form of restorative justice (youth justice conferencing) and then examine findings from two major research projects in Australia (RISE and SAJJ) to show why reconciliation and repair are not common outcomes in restorative justice conferences.

Keywords: Restorative Justice; Youth Justice Conferencing; Apology; Forgiveness; Peaceful Conflict Resolution

Introduction

For the past decade Australia and New Zealand have experimented with one form of restorative justice—youth justice conferencing (Maxwell & Hayes, forthcoming). Development of this alternative justice form first began in New Zealand with passage of the Children, Young Persons and Their Families Act 1989. In Australia a pilot scheme began in 1991 in New South Wales and today, youth justice conferencing is operating in all Australian jurisdictions and all (with the exception of Victoria)² are legislated (Daly & Hayes, 2001, 2002).

The momentum with which conferencing programs spread throughout New Zealand and Australia exceeded rigorous academic research into their effects on participants, including future behavior. Since the early 1990s there have been several evaluation studies commissioned by various government departments to ‘test’ the

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effects of conferencing processes on victims and offenders (Cant & Downie, 1998; Fry, 1997; Hayes, Prenzler, & Wortley, 1998; Markiewicz, 1997; Trimboli, 2000). However, there have been only a small number of academic studies of conferencing in the region (i.e., Australia and New Zealand).³ These include a major longitudinal study of young offenders attending a family group conference in New Zealand, the Reintegrative Shaming Experiments (RISE), which began in the Australian Capital Territory in 1995, and the South Australian Juvenile Justice (SAJJ) research into family conferencing, which began in 1998. Results of these major projects, as well as results from the various evaluation studies, are remarkably consistent and show that offenders and victims view conferencing processes as fair and are generally satisfied with outcomes. However, there is less evidence that shows conferences are also 'restorative'—that is, that offenders apologize, their apologies are accepted, victims offer forgiveness, and conferences conclude with a feeling of mutual good will.

In this article I explore ways of understanding these research findings by drawing upon Tavuchis' (1991) sociological theory of apology. I attempt to show that, while conferences are likely to make victims and offenders feel better about how their conflict is managed, insofar as they are treated fairly and with respect, there may be marked limits on how far conferences can go in repairing harm, inducing remorse, and helping victims and offenders to move on. I first briefly summarize what youth justice conferencing in Australia looks like. I then consider ways in which remorse, shame, neutralization, apology, and forgiveness feature in youth justice conferences. I conclude by reinterpreting findings of major research projects in Australia and draw on Tavuchis' (1991) theory of apology to explore possible reasons why the restorative ideal sometimes is not attainable in the conferencing process (i.e., conferences sometimes do not induce remorse, young offenders sometimes do not feel sorry and offer an apology, and victims sometimes do not forgive).

The Youth Justice Conferencing Process

In Australia, youth justice conferencing is structured around the 'New Zealand model,' where professionals other than the police manage and convene conferences.⁴ Conferences usually last approximately 60–90 minutes and progress through three phases: introduction, story telling, and agreement negotiation (Hayes & Daly, 2003).⁵ The typical participants are the convenor, a police officer (either the arresting officer or a representative), the offender (who, as a condition of attending, must admit to the offence), the victim(s), and supporters for the offender(s) and victim(s). Offender supporters are typically parents, while victim supporters may be parents or partners. Convenors (or coordinators) open conferences with general introductions and a summary of what the conference is expected to achieve and what participants are expected to do. It is important to note that considerable preparation for conferences occurs before they are convened. This 'backstage work' (Braithwaite, 2002) is extremely important in helping participants understand their roles in the conference, as well as what realistically can be achieved (Hayes et al., 1998).⁶

Following introductions and the orientation summary, attending police officers are asked to read out official details of the offence. Offenders are then asked to account for their behavior (i.e., tell their story). They are asked to describe how they came to be involved in the offence, to register and acknowledge the harm they caused victims as well as the pain and embarrassment they caused parents and other supporters, and to confess openly that they are sorry. Offenders are often demonstratively remorseful as they relate such details. Next, victims are asked to describe the impact of the offence. The emphasis of the victim's story is on how the offence affected them emotionally, physically, and materially. Ideally, such descriptions aim to move offenders, who may otherwise be indifferent to the harms they caused. Victims' stories aim to draw out the apology needed for reconciliation and repair. Supporters are then invited to offer additional comments. For example, offenders' parents may describe how their child's behavior has affected them and their families, and how the offence has embarrassed and hurt them.

Before moving on to the final phase of negotiating an agreement, convenors return to offenders to ask how victims' stories make them feel. Often, offenders admit that victims' descriptions were effective in helping them to appreciate the full impact of their behavior and many, at this point, offer apologies to their victims. The conference concludes with a discussion of what the young person can do to make up for the offence (the agreement). All participants are encouraged to suggest ways in which the young person can make amends. Common agreements include a verbal and/or written apology, performing some work for the victim or the community, or monetary restitution.

While this section describes what ideally should occur during a conference, it is important to note that not all conferences achieve their intended aims and not all conferences can be judged successful. In fact, there is a substantial gap between what conferences aim to achieve and what they achieve in practice (Daly, 2003b). Many conferences may be qualified as 'good' (where there is a feeling of mutual good will, reconciliation, and repair), but others may be described as 'bad' (where offenders may be belligerent and unapologetic and victims may remain angry and unmoved). There also may be times when restorative dialogue drifts from shaming that reintegrates to shaming that censures and stigmatizes. Some critics are quick to highlight the variable nature of restorative justice processes and outcomes and urge us to consider the need for procedural safeguards (Ashworth, 2002). However, restorative justice advocates (Morris, 2002) openly acknowledge that such variation in practice occurs to some degree, but they hold that practitioners should work to improve conferencing practice where areas of improvement are identified (Braithwaite, 2002) and to transform the experimental nature of restorative justice into a 'fully-fledged, systematic alternative' to conventional, adversarial justice (Bazemore & Walgrave, 1999).

Emotions and Defences in Youth Justice Conferences

Youth justice conferences are often emotionally charged encounters between young offenders, their victims, and their supporters. All participants experience a wide range of emotions. These may include negative emotions such as fear, anger, embarrassment,

betrayal, resentment, guilt, shame, and remorse. Participants also may experience more positive emotions, such as pride (in offenders for having met victims and engaged in reparative work, and in victims for having met offenders and overcome feelings of resentment and loss), hopefulness, and good will. Emotional states usually are negative at the beginning of a conference and progress to being more positive as conferences unfold. For example, offenders may come to conferences feeling fearful and apprehensive about meeting victims and having to account for their behavior. After listening to victims' stories, they may then experience guilt, shame, and remorse. Finally, by offering sincere apologies and negotiating ways of repairing harms they have caused, offenders may feel a sense of accomplishment and pride, as well as hopefulness for the future. Victims may come to conferences angry at offenders, ashamed by the victimization, and fearful about future harms. However, as conferences unfold, they may regain a sense of personal security, their anger may subside through gestures of forgiveness, and they may begin to develop a more hopeful view of the young offender. One purpose of the conference process is to help participants through such wide-ranging emotional states.

Guilt and Shame

Guilt and shame are common emotions in youth justice conferences. However, distinguishing guilt from shame is not straightforward (van Stokkom, 2002). Guilt feelings arise from learning that one has wronged another. Thus, some guilt theorists characterize guilt as an other-regarding emotion. Shame, on the other hand, is more self-directed. Shame feelings centre on the self and can invoke other negative emotions, such as anger and resentment. Anger is a common defence against shame (Retzinger, 1995). While guilt feelings signal a recognition of the other and a desire to repair harms, shame may encourage denial of harm and outward blame. Guilt seems the emotion more closely linked to remorse and regret. Guilt feelings can plunge offenders into ruminations over the wrongful behavior and a desire to undo transgressions (Tangney, 1995).

Shaming

Braithwaite's (1989) classic work on shaming (i.e., disapproval of wrongdoing) drew an important distinction between disintegrative shaming (shaming that censures and separates the wrongdoer from lawful communities) and reintegrative shaming (shaming that: (1) 'uncouples' (Braithwaite & Mugford, 1994) the offender from the offence; (2) opens a door through which offenders are invited back into communities of care; and (3) invokes remorse. Inclusive (reintegrative) shaming induces remorse while exclusive (disintegrative) shaming can diminish self-esteem, invoke anger in wrongdoers, and reinforce negative self-image. Also important for Braithwaite is the source of disapproval or shaming. Braithwaite (1993, cited in Maxwell & Morris, 2002) suggests that disapproval from those with whom one has a cherished relationship (e.g., parents) is more effective in invoking remorse than disapproval from unknown criminal justice

officials (e.g., police or judges) or unknown victims. Thus, while a victim's story about an offence's impact may not stir feelings of shame and regret in offenders, the disapproval expressed by an offender's parents may be more effective in drawing out the sorrowful feelings needed for apology.

In this sense, inclusive shaming perhaps is akin to 'guilting,' or social disapproval of an offender's behavior, not the offender. Exclusive shaming, on the other hand, seems to focus more squarely on the offender's self or the offender as a person. The distinction between guilt and shame seems most clearly made by Lewis (1971, cited in Tangney, 1995):

The experience of shame is directly about the self, which is the focus of evaluation. In guilt, the self is not the central object of negative evaluation, but rather the thing done or undone is the focus. In guilt, the self is negatively evaluated in connection with something but is not itself the focus of the experience. (p. 30)

Thus, shame is the more painful emotion because it is reflective of what one *is* rather than what one *has done* (Lewis, 1971). In other words, shame is offender-focused while guilt is deed-focused. So, shaming may encourage evasive defences while 'guilting' may encourage regret and remorse and a desire to repair harms.

Remorse

A key aim of youth justice conferences is to hold young offenders accountable for their behavior (Hayes, 2005). The process of meeting victims and accounting for one's behavior ideally induces remorse in offenders (Presser, 2003). For offenders, the expression of remorse during a conference can have positive long-term effects. For example, recent research demonstrates that re-offending is less likely when offenders are remorseful and apologize to their victims (Hayes & Daly, 2003; Maxwell & Morris, 2001). Remorse also is important for victims of crime. An expression of remorse signals to victims that offenders regret what they have done and are sorry. Remorse is evidence that victims need in evaluating the sincerity of apologies offered by offenders (Moore, 1993; van Stokkom, 2002). When victims do not observe remorse, they are likely to sustain further emotional injuries, feel worse for having met offenders, or be 're-victimised' as offenders deny injury and minimize harm (Maxwell & Morris, 1996; Presser, 2003).

When offenders are able to express remorse effectively and offer an apology, and when victims are able to accept apologies (i.e., forgive offenders), reconciliation and repair are more likely to be achieved (Strang, 2002). Indeed, some have noted that a sincere apology is more important to victims than material restitution (McDonald & Moore, 2001; Umbreit, 1994). Apologies being offered by offenders and accepted by victims through forgiveness forms the 'core sequence' of symbolic exchange in restorative encounters that is necessary for reparation to occur (Retzinger & Scheff, 1996): 'The core sequence generates repair and restoration of the bond between victim and offender.... It is the key to reconciliation, victim satisfaction, and decreasing recidivism.' (p. 316)

Neutralization

Theories of restorative justice and reintegrative shaming suggest that the process of young offenders meeting their victims, describing their offending behavior, and listening as their victims describe the impact of crime should minimize the extent to which young offenders are able to neutralize or rationalize their offending and its consequences. In his most recent book on restorative justice, Braithwaite (2002) comments that neutralization theory (Sykes & Matza, 1957) may explain why restorative justice works. Because conferencing processes place the effects of crime (i.e., victims) squarely in front of offenders, it is difficult for them to deny victims and deny the injury they have caused.

The Significance of Apology and Forgiveness

I have tried to show in the foregoing discussion how youth justice conferences are intended to work. It should be clear that restorative encounters represent reparative social exchanges between people embroiled in conflict. The relative success of a conference seems to turn on the core sequence of apology–forgiveness (Retzinger & Scheff, 1996). Therefore, it is instructive to examine more closely how apology and forgiveness feature in youth justice conferences.

I pause briefly, however, to make clear that while apology and forgiveness are key features of restorative encounters, they are not essential outcomes of conferencing processes. In the absence of a sincere apology and forgiveness, youth justice conferences offer other key benefits for young offenders and victims. Recall that one aim of a youth justice conference is to hold offenders accountable, which means ‘recognizing the wrongfulness of one’s conduct, expressing remorse for any resulting injury, and taking actions to repair the damage done by the offending’ (Luna, 2000, p. 3). Reparative work in this sense may include an apology but other things are equally important (e.g., taking steps to make amends such as agreeing to perform work for the victim, make restitution, or perform community work). In addition to the opportunity to meet offenders and receive apologies, material reparation is important to victims (Strang, 2002). Furthermore, youth justice conferences provide a forum through which offenders, victims, and supporters may participate equally in doing restorative justice. There now exists substantial evidence suggesting that participants in youth justice conferences are largely satisfied with outcomes and perceive these restorative processes to be procedurally fair (Hayes, 2005).

Nevertheless, apologies remain important to victims. Indeed, they are ‘seen as central to the process of restoration’ (Strang & Sherman, 2003, p. 28) and can assist both offenders and victims in recovering from the effects of crime. Forgiveness plays an important role too. Through receiving and accepting a sincere apology and offering forgiveness, victims may move closer to full emotional restoration (Strang & Sherman, 2003). Thus, it is important to examine more closely the ways in which apology and forgiveness feature in youth justice conferences.

Tavuchis (1991) has undertaken a thorough sociological analysis of apology and forgiveness, which underpins our understanding of the core sequence.⁷ Offenders and victims come to conferences with very different emotional orientations. Victims often are angry and possibly embarrassed, and offenders often are anxious about having to meet victims and explain their behavior. The acts of apology and forgiveness humanize and civilize (Tavuchis, 1991) and are essential to reconciliation. Tavuchis' analysis highlights two important dimensions of apology: social and experiential. For apologies to be relevant and necessary for reconciliation, both offender and offended must share social constructions of moral conduct. In addition, to apologize is to respond 'to the sharp and animating sting of *sorrow*' (Tavuchis, 1991, p. 120, emphasis in the original) emanating from the realization that one has wronged another. Bottoms (2003) explores how these two dimensions of apology feature in restorative encounters, so I do not repeat this here. Rather, I turn to another important distinction.

Tavuchis contrasts *apologies* with *accounts*. An apology is a speech act that fully acknowledges responsibility for wrongdoing. It is a 'genuine *display* of regret and sorrow' (p. 19, emphasis added). An account is an 'excuse, defence, justification or *explanation*' for wrongdoing (p. 17, emphasis added).

An apology is a special kind of enacted story whose remedial potential, unlike that of an account, stems from the acceptance by the aggrieved party of an admission of iniquity and defencelessness. It is thus about a fall from social grace related to someone ... who has the power to restore the offender to that state.... Needless to say, explanations, excuses, etc., are also stories whose truth value or sincerity may be questioned, accepted, or denied. But they differ from apologies precisely because the narrator invokes something (or someone) to deny or to mitigate responsibility for an offence that undermines that which unites and binds.... In its purest expression, an apology clearly announces that 'I have no excuses for what I did or did not do or say. I am sorry and regretful. I care. Forgive me.' To offer an apology and have it rejected because it is 'merely' another account signals a moral turning point in a relationship. Similarly, what began as an account may end as an apology in some circumstances. In practice, it makes a difference to us in our roles as suppliants and recipients if we interpret a speech as an apology or an account. (Tavuchis, 1991, pp. 18–19)⁸

Tavuchis' analysis of apology and apologetic discourse aligns with theoretical descriptions of restorative justice encounters. In the context of a youth justice conference, offenders and victims come together to discuss a harmful act committed by one against the other. Offenders are encouraged to explain their behavior, acknowledge responsibility for their offending, and, it is hoped, offer their victims a sincere apology. When offenders are able to offer sincere apologies and express genuine remorse, forgiveness and reconciliation are more likely to follow.

Tavuchis' analysis of apology suggests that the act of apology and the social interaction of apologizing are not facile. Indeed, they are exacting moral exercises. To apologize genuinely requires a substantial amount of emotional energy and resolve.

If the goal of apology is ultimately forgiveness as a prelude to reunion and reconciliation, then we must convince the other of our worthiness. A difficult and delicate undertaking even when the transgression is minor, it is especially onerous when the violation is deemed

to be grave. The task demands close attention to the mode of expression and is complicated further by our defencelessness, shame, and fear of rejection. (Tavuchis, 1991, p. 22)

To summarize, Tavuchis' analysis suggests that reconciliation and repair require sincere apologies, not effective accounts. The offender must engage in a painful moral exercise, which involves openly admitting guilt and responsibility and asking forgiveness. As a speech act, this certainly may pose a challenge for some offenders, especially young ones. This is because the 'centrepiece' of an apology is the 'expression of sorrow and regret' (Tavuchis, 1991, p. 23). In the context of a youth justice conference, success requires 'nothing less than an oral apology' in which:

[T]he offender acknowledges full responsibility for the transgression, expresses sorrow and contrition for the harm done, seeks forgiveness from the offended party, and implicitly or explicitly promises not to repeat the offence in the future. Finally, the discursive loop is closed by the forgiveness of the offender, which symbolises reconciliation and allows for the resumption of normal social relations. (Tavuchis, 1991, p. 121)

The Impact of Youth Justice Conferences

I now turn to a review of empirical results from two major research projects on youth justice conferencing; the Reintegrative Shaming Experiments (RISE) and the South Australian Juvenile Justice (SAJJ) projects. In this section, I want to explore ways in which restorative encounters affect young offenders and ways in which apology and forgiveness feature in conference events, and offer a *reinterpretation* of recent empirical results to suggest that, while restorative justice encounters aim to induce shame and remorse, they may achieve the unintended outcome of *motivating* young offenders to deny injury and minimize harm. I first briefly describe the RISE and SAJJ projects before summarizing findings relevant to this analysis.

RISE and SAJJ

The RISE project in Canberra is the only randomized field study in the region (i.e., Australia and New Zealand).⁹ From 1995 to 2000, eligible offenders (i.e., those who admitted to their offences) were randomly assigned to conference or court (Strang, Barnes, Braithwaite, & Sherman, 1999). RISE researchers conducted four experiments based on offence type—drink drivers, youth violence (offenders 29 years or younger), juvenile property (offenders 17 years or younger), and juvenile property-security (offenders 17 years or younger who shoplifted from stores employing security staff). RISE is an important study because it asked questions of a comparative nature; it compared the experiences of offenders in conference to offenders in court (Strang et al., 1999).

In contrast, the SAJJ project asked questions of a variable nature. SAJJ researchers systematically observed 89 conferences and interviewed young offenders, their victims, police officers, and conference coordinators in Adelaide and two country towns (Whyalla and Port Augusta). The aim was to learn how variation in conferencing processes related to variation in conference experiences. The data included several

measures of restorativeness (e.g., offenders' expressions of remorse and shame and positive movement between offender and victim) and procedural justice (e.g., perceptions that one has been treated fairly and with respect) (Daly, 2001b).

Empirical Findings

From RISE and SAJJ we learn that victims and offenders regard conferences as fair and are largely satisfied with outcomes (or agreements) and overall case handling (Daly, 2003a; Strang et al., 1999). We also learn that the ideal of reconciliation and repair (indicated by apology and forgiveness) is not attained in a remarkable number of cases.

I turn first to outcomes for RISE, but limit my summary to the juvenile property and young violence experiments since these often involved direct victims. Overall, significantly more offenders in conferences offered apologies compared to offenders in court. Between one half and two thirds of the offenders in the property and violence experiments apologized (Strang et al., 1999). There was, however, noticeably less forgiveness observed in the conferences, albeit significantly more than in court. Observations of conferences showed that approximately 40% of offenders in the property experiments received forgiveness. Furthermore, approximately half of the offenders in the youth violence experiment were observed receiving forgiveness (Strang et al., 1999). These observations were consistent with what victims reported. More than two thirds (69%) of the victims in the personal property experiment reported feeling 'neither forgiving nor unforgiving' (i.e., indifferent) or feeling unforgiving towards the offenders after the conference. Also, more than half (54%) the victims in the youth violence experiment reported they were either indifferent to or not forgiving of the offenders after their conference (Strang et al., 1999).

Results from RISE indicate that the ideal of reconciliation and repair was achieved in fewer than half of all cases. While advocates may be tempted to point out specific features of police-run conferences in accounting for these rather disappointing outcomes, similar results were obtained in South Australia, which convenes 'New Zealand model' (not police-run) conferences. Daly (2003b) highlights several shortcomings of the restorative ideal of youth justice conferencing. She notes, for example, that 'there was positive movement, in the form of words spoken, between the victim and offender in a minority (34% per cent) of conferences' (Daly, 2003b, p. 224). Turning to the core sequence of apology–forgiveness, she found that fewer than half of the offenders (40%) apologized spontaneously to their victims. Nearly a third had to be urged to apologize and approximately another third offered no apology. What is more demonstrative of the difficulty in achieving this core sequence is Daly's finding that only "27 per cent [of victims] believed that the main reason that YP [young offender] apologized was because s/he really was sorry" (Daly, 2003b, p. 225).¹⁰

I note here that these patterns of reconciliation and repair in the RISE and SAJJ projects are not anomalous. Similar observations have been made in other major research projects on restorative justice. For example, in New Zealand, Maxwell and Morris (1996) observed approximately 200 family group conferences between August 1990 and May 1991 and interviewed offenders, victims, and supporters about their

experiences. They found that approximately 25% of victims felt worse for having attended a conference, mainly because ‘the victim did not feel that the young person and his or her family was truly sorry’ (p. 100). In the United States, researchers compared the experiences of offenders and victims whose cases were randomly assigned to either a diversionary police-run conference or court (McCold & Wachtel, 1998). They found that 25% of victims in conferences agreed that ‘the offender’s participation was insincere,’ and 44% agreed that ‘the offender participated only because he/she [was] trying to avoid punishment’ (p. 55).¹¹

Competing Demands in Youth Justice Conferences

Why has the restorative ideal in youth justice conferences been difficult to attain in a notable proportion of cases? If an apology can bring about the ‘miraculous’ transformation of harm and distress into reconciliation and repair (Tavuchis, 1991), why do we not observe this fascinating transformation in more restorative encounters? Here, I want to suggest the possibility that some offenders may be *motivated* by youth justice conference processes to deny harm and injury, withhold apologies, and offer accounts because of *competing demands*.

Return to the ideal portrayal of the youth justice conference process and imagine young offenders’ opening speeches. They are first asked to explain (i.e., to account for) the offence, to describe the circumstances leading up to the offence, and to acknowledge responsibility. Let us assume that Tavuchis’ (1991) structural conditions of apology are met, and let us further assume that Sykes and Matza (1957) were correct, as Braithwaite (2002) pointed out, and young offenders *are* bound by moral codes of conduct but drift in and out of society’s moral bind. In this case, we might observe that offenders’ speech acts in a youth justice conference may *drift* from apologetic discourse to mitigating accounts and back again. What victims might observe is the rather uncertain position young offenders take regarding their own responsibility for wrongdoing. Offenders’ speech acts may acknowledge responsibility and offer apologies but they also may be accompanied by various excuses and justifications. Their speech may openly acknowledge ultimate responsibility for wrongdoing but also may point to circumstances which gave rise to offending (e.g., abusive, neglectful, or offending parents; severe social and economic deprivation). Such speech acts may not convince victims of offenders’ ‘worthiness’ (Tavuchis, 1991) but instead may be seen as attempts to acknowledge blame but deflect shame. Here, victims, who may view offenders’ apologies as insincere gestures, are likely to withhold their forgiveness. Thus, the core sequence of apology–forgiveness is forfeited along with reconciliation and repair.

My reinterpretation of results from the SAJJ project, in view of Tavuchis’ sociological theory of apology, would suggest that offenders attempt to *account* for their behavior. Daly (2003b) reports that two thirds of young offenders were observed giving ‘a clear story of how the offence came about.’ However, only a third (34%) of victims ‘understood the YP’s situation’ (p. 224). We might deduce from this that many offenders were unable to persuade victims effectively that they were responsible for

wrongdoing and were therefore regretful. Indeed, only 27% of SAJJ victims believed the offenders' apologies were sincere (Daly, 2003b). Results from RISE are also instructive and show that only 40–50% of young property and violent offenders received forgiveness from their victims (Strang et al., 1999). In both RISE and SAJJ conferences, the core sequence of apology–forgiveness seemed the exception rather than the norm.¹²

Third Parties

In addition to the potential for 'account talk' or 'discursive drift' (Tavuchis, 2004, personal communication) is the influence of third parties. Tavuchis makes clear that ideal apologies occur privately between offender and victim. Apologies occur in dyadic encounters. The youth justice conference process (as well as many traditional forms of responding to youth crime, such as court) transforms the private act of apologizing and offering forgiveness into a public drama of restorative justice. During a conference, an offender must engage in an arduous moral exercise not only in the face of the offended, but also in front of a conference convenor, a police officer, and supporters. The presence of these third parties may bear heavily on the quality of the transaction between offender and victim.¹³ Offenders and victims may perceive some pressure to reconcile and the focus on the offensive behavior (a mainstay of restorative processes informed by re-integrative shaming theory) may shift to the 'offensive person.' The presence of third parties, in short, may result in:

a temporal quickening or compression, a sense of urgency and impatience, pressure to move things along and conclude matters according to schedules that others view as reasonable or desirable.... Once others take part, there is some loss of personal sovereignty and flexibility on the part of one or both contestants. (Tavuchis 1991, p. 52)

In addition, third party actors may work to direct attention away from the specific transgression to questions about the offender's moral character. '[T]hird party intervention shifts attention from the original trespass to the moral integrity of the interlocutors, in most cases that of the offender' (Tavuchis, 1991, p. 53).

If the restorative ideal (i.e., the core sequence of apology–forgiveness) is difficult to achieve in a substantial proportion of youth justice conference events, what is the benefit of youth justice conferences for young offenders and victims? My reading of the empirical research in this area suggests that there are several benefits. First, offenders and victims benefit from a process that actively involves them. Offenders can be shown how their crimes have affected others, even if they are not moved by such demonstrations. Victims (even unforgiving ones) can address offenders, ask for explanations, and seek reassurances that offences will not be repeated (Hayes et al., 1998). Second, restorative justice processes are procedurally fairer than court. Offenders and victims consistently judge conference processes as fairer than they believe the youth court would be (either from speculation or past experience with court) (Strang, 2001). Finally, youth justice conferences may lead to reductions in offending. At least two studies have shown that when offenders are remorseful, future offending is less likely (Hayes & Daly, 2003; Maxwell & Morris, 2001).

Summary and Discussion

The empirical literature on restorative justice is replete with findings suggesting that participants in restorative processes judge restorative processes as fair and view outcomes as satisfactory. There is less evidence, however, to suggest that such processes are, in fact, restorative (Daly, 2002). While it would be 'unrealistic to expect that remorse for the harm caused and the healing of victims can always be achieved' (Maxwell & Morris, 1996, p. 101), it remains instructive to understand what impedes restoration in a sizable proportion of cases. By drawing on the sociological analysis of apology, I have tried to show why the restorative ideal is sometimes difficult to realize. I conclude with some reflections about what this analysis may say about the future of youth justice conferencing and conferencing research.

Youth justice conferencing is firmly established in Australian juvenile justice. Conferencing practice is legislated in all but one jurisdiction (Victoria). All available evidence suggests that youth justice conferencing works insofar as there are demonstrable benefits to offenders and victims and insofar as it may reduce future offending. As a response to youthful offending grounded in theories of restorative and procedural justice, why is the restorative ideal somewhat elusive? Restorative justice conferencing for young offenders may pose particular challenges compared to other forms of restorative justice involving adult participants (e.g., victim-offender mediation or sentencing circles). As Daly (2003b) has suggested, it may be that young offenders do not possess the moral maturity to engage in highly discursive encounters that require them to be 'morally naked,' defenceless, and completely blameworthy (Tavuchis, 1991). In addition, young offenders may not have the capacity to persuade victims effectively of their sincerity and victims may find it difficult to understand young offenders' points of view (Daly, forthcoming). It also may be that offenders and victims are not adequately prepared for restorative encounters through pre-conference orientation, and thus arrive at such encounters with insufficient understandings of what they are meant to do and what the conference is meant to accomplish.¹⁴ Or, as I have tried to show here, it may be that the restorative dialogue of youth justice conferences requires both apologetic and mitigating discourses which work against forgiveness and complete reconciliation and repair.

All of these are plausible possibilities. The empirical literature on restorative justice is substantially quantitative and from this we know various percentages of offenders and victims registering various feelings and emotions. While the aggregates suggest possible reasons *why* restoration, reconciliation, and repair are not pervasive outcomes of youth justice conferences, additional answers will probably be found within deeply interactive restorative encounters. As the momentum of empirical inquiry surrounding restorative justice continues to progress, our understanding of how and why restorative justice works may be enhanced with knowledge of the conference process acquired from additional qualitative work, which aims to learn how offenders and their victims understand conferencing processes, as well as each other.

What I have suggested here about the elusiveness of the core sequence draws on my reinterpretation of published research outcomes. However, further systemic enquiry is

needed to learn how account talk and third party intervention is linked to the core sequence. My reinterpretation of prior research findings suggests ways of understanding how restoration features in conferencing processes. Nevertheless, future research into restorative justice conferencing processes should focus squarely on offender–victim dialogue to learn why the core sequences sometimes is not achieved.¹⁵ If further research indicates the possibility that the speech acts of some young offenders do drift between apologetic and mitigating discourses, then conference coordinators need to be acutely aware of this possibility as they manage highly discursive conference sessions. Convenors should attend carefully to the words spoken by young offenders as offenders are persuaded to apologize to their victims, and convenors should work actively to manage those apologies to ensure that apologetic discourses do not drift into ‘account talk.’

Tavuchis notes, for example, that an apology accompanied by the word ‘but’ probably signals a discursive drift into a mitigating account. When convenors detect such signals, they should work to move young offenders’ speech acts back towards the acknowledgement of harm, responsibility for the wrongdoing, and apology. Retzinger (1995) demonstrates several ways in which anger and exclusive shame (that which probably promotes defensive postures) may be detected by observing the verbal and paralinguistic cues of actors. Such techniques may assist convenors in helping victims better understand young offenders’ speech acts. Indeed, the key to an effective apology is in how it is interpreted: ‘In practice, it makes a difference to us in our roles as suppliants and recipients if we interpret a speech as an apology or an account’ (Tavuchis, 1991, pp. 18–19). More recent analyses of the SAJJ project data suggest that misinterpretation often impedes restoration. The findings show that ‘perceptual mismatch’ (mutual misinterpretation regarding offender sincerity and victim belief in offender sincerity) was present in nearly a third (30%) of cases (Daly, 2006).

Tavuchis’ analysis of apology also suggests that convenors should attend to the potentially deleterious effects that their presence and the presence of police officers and supporters can have on effective apologies. While it would be impractical for convenors to allow conferencing dialogue to flow freely, convenors should nevertheless remain aware of how ‘pressure to move things along’ (Tavuchis, 1991, p. 52) can work against the core sequence of apology–forgiveness. For some offenders and victims, achieving the core sequence may not be possible in necessarily brief (60–90 minutes) encounters. Some offenders may need more time to develop the empathy needed to offer sincere apologies; some victims may need additional time to overcome feelings of anger and embarrassment and offer forgiveness. In these instances, the restorative ideal will probably not be achieved; however, offenders and victims will benefit from the conference process in other important ways (e.g., offenders having an opportunity to make amends, victims regaining a sense of security).

To be sure, managing conference sessions is challenging for the most experienced convenors. Some convenors may despair when they do not observe reconciliation and repair, especially after managing very emotional interactions. What is encouraging is that Tavuchis’ sociological analysis of apology helps us understand why reconciliation is not achieved in some restorative encounters, and shows us possible ways

of improving the practice of conferencing to allow 'for the resumption of normal social relations' (Tavuchis, 1991, p. 121).

Notes

- [1] I thank Nicholas Tavuchis and Kathleen Daly for their insightful comments on previous drafts.
- [2] The Australian Capital Territory (ACT) has only recently passed legislation for restorative justice conferencing—the Crime (Restorative Justice) Act 2004—and began conferencing under the new Act in early 2005. Prior to this, the Australian Federal Police convened conferences in the ACT since about the mid-1990s.
- [3] I focus on research in these two jurisdictions as my theoretical analysis of apology and apologetic discourse is informed by my observations of the 'New Zealand model' conferencing in operation in South Australia and Queensland. Nevertheless, a great deal of important evaluation work has been conducted in the US and the UK (see, e.g., Bazemore & Umbreit, 1999; Miers et al., 2001; Umbreit, 1996, 1998, 2001)
- [4] Please see Maxwell and Hayes (forthcoming) for a detailed review of restorative justice developments in the Pacific region.
- [5] This description of the conference process is based on several observations of conferences I conducted in 1998 and 2002, while engaged in research on the effectiveness of community conferencing in Queensland (Hayes & Daly, 2004; Hayes et al., 1998). My understanding of conferencing processes is also informed by several conversations I had in 2002 and 2003 with the state-wide coordinators of youth justice conferencing in South Australia (Carolyn Doherty), New South Wales (Jenny Bargaen), and Queensland (Gail Pollard). For a description of variation in the organizational placement and management of youth justice conferencing in Australia and New Zealand, see Daly and Hayes (2001, 2002).
- [6] While there is more consistency across Australian jurisdictions in terms of what occurs during conferences, there is considerable variation in the amount of intake work. In some high-volume jurisdictions where large numbers of young offenders attend conferences (e.g., 1500–1700 per year may be referred to conferences in New South Wales and South Australia), fewer resources can be devoted to pre-conference preparation. Necessary conversations between conference professionals and participants may be carried out over the telephone rather than face-to-face (Daly & Hayes, 2001). Queensland is the exception. This jurisdiction convenes more than 2000 conferences annually but still ensures that all pre-conference interviews with young offenders and victims occur face-to-face.
- [7] Even given the apparent relevance of Tavuchis' analysis, the restorative justice literature has tended not to draw upon sociological formulations of apology (Bottoms, 2003).
- [8] It is important to note that Tavuchis' analysis of apology centres on dyadic encounters between the offender and offended. By contrast, youth justice conferences are necessarily attended by the offender, the offended, and third parties (e.g., the convenor, police officer, and supporters). I discuss how such third party attendance theoretically may affect apologetic discourse.
- [9] I limit my review of research findings to major projects in Australia and New Zealand, as my focus is on one form of restorative justice: youth justice conferencing for young offenders. See Hayes (2005) for a review of major research projects on restorative justice in the US, Canada, and the UK.
- [10] There are no comparative data on forgiveness in the SAJJ project. The focus in SAJJ was more on victims' and offenders' abilities to develop, through restorative dialogue, mutual understandings of the other.
- [11] In another field experiment in Indianapolis, researchers observing 157 conferences from September 1, 1997, to September 30, 1999, found that young offenders offered apologies to their victims in over 80% of cases (McGarrell, Olivares, Crawford, & Kroovand, 2000).

However, no information was obtained from victims as to whether they felt the apologies they received were sincere. Nevertheless, these rates of apology are higher than those observed in other studies conducted in the US (McCold & Wachtel, 1998) and the UK. For example, in one study in the UK, researchers interviewed 43 young offenders referred to one of seven restorative justice schemes (Miers et al., 2001). They found that only 34% offered apologies to their victims through a written letter. They note: '[M]ost felt that writing a letter was enough to say sorry and "put things right"' (p. 39).

- [12] I note here that the importance of apology and forgiveness in achieving reconciliation and repair may be more important to offenders and victims who are known to one another than those who are strangers. The motivation to accept an apology and offer forgiveness comes from the desire to re-establish or maintain a cherished relationship (Roberts, 1995). However, we learn from the SAJJ research on youth justice conferencing that, in a substantial proportion of cases, offenders and victims did not know one another (Daly, 2001a).
- [13] In a recent discussion I had with the area coordinator of youth justice conferencing in suburban Brisbane, Queensland, Australia, the coordinator related a story about a conference that she had convened, in which a young female offender refused to apologize to her victim and was demonstrably angry throughout the conference. The coordinator later learned that this young offender had wanted to apologize to the victim in private and was angry because the opportunity was never offered during the conference (Hayley Baldwin, 2005, personal communication).
- [14] Daly (2003b) observed, for example, that 40% of the victims in her SAJJ sample said they received either no or only very little 'information on what would happen' (p. 223).
- [15] I am currently engaged in a large qualitative field study that aims to learn how young offenders understand restorative justice conferencing processes. In future work, I also will be exploring the ways in which victims and offenders understand one another.

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