

APOLOGIES AND PERCEPTIONS OF FORGIVENESS IN RESTORATIVE JUSTICE CONFERENCES FOR YOUNG OFFENDERS

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Overview

- ▣ Describe the RJ (conferencing) process in Queensland
- ▣ Summarise RJ developments in Australia and results from key empirical studies on RJ processes
- ▣ Summarise preliminary findings from current qualitative field study
 - Extent to which apology and forgiveness feature in youth justice conferences
 - How young offenders understand forgiveness

What is restorative justice and what does it look like?

- ▣ RJ takes many alternative justice forms and many names: circles, peacemaking, conferencing, informal justice, transformative justice
- ▣ Conferencing (primarily for young offenders) is the main form of RJ in Australia

What is restorative justice and what does it look like?

- ▣ “A *process* whereby parties with a stake in a specific offence *collectively* resolve how to deal with the aftermath of the offence and its implications for the future” (Marshall 1999:5, emphasis added)
- ▣ Flexible but formal process
- ▣ Not a “soft” response to youthful offending



The RJ process in Australia

▣ Introduction

- Orienting presentation by convenor which serves to introduce participants and review role expectations (e.g., what participants are meant to do in the conference)

▣ Story-telling

- Offenders account for (i.e., explain circumstances) their behaviour and may offer an apology
- Victims describe offence impact
- Offender and victim supporters offer additional input

▣ Agreement negotiation

- Group (offenders, victims and supporters) negotiates ways offender can repair harms
 - ▣ Common agreements include verbal and/or written apology, commitment not to re-offend, work for victims/community

Key aims of RJ processes

- ▣ Meet the needs of victims
- ▣ Hold offenders accountable
 - As with formal cautioning, a young offender must admit to the offence to be eligible for a conference
- ▣ Reparation
- ▣ Restoration
- ▣ Crime reduction/reduce re-offending

RJ developments in Australia

- ▣ Developments in Australia were largely influenced by the growth of family group conferencing in New Zealand, following passage of the *NZ Children, Young Persons and their Families Act 1989*
- ▣ First conferencing trial in Australia appeared in Wagga Wagga, NSW in 1991, a police-run scheme

RJ developments in Australia

- ▣ First legislated restorative justice conferencing scheme established in SA in 1994, after passage of the *Young Offenders Act 1993*
- ▣ SA adopted the “New Zealand model” for administering family conferences, where other professionals (not police) convene conferences

RJ developments in Australia

- ▣ Today, restorative justice conferencing is legislated in all Australian jurisdictions and most run New Zealand model conferences
 - The exceptions are the ACT, Tasmania and NT
 - ▣ These jurisdictions run “dual” systems, where both police and civilian staff convene conferences

RJ developments in Qld

- ▣ New Zealand model conferencing was trialled in SE Qld in 1997, following amendments to the *Juvenile Justice Act 1992*
- ▣ Conferencing in Qld is a middle-range response to (admitted) youthful offending
 - Young offenders are referred from police (as a diversion from court) or from the Youth Court (in lieu of sentencing or as a condition of sentencing)

What we currently know about RJ

- ▣ There is strong evidence from research conducted in Australia to suggest that victims and offenders judge RJ conferences as procedurally fair and are largely satisfied with outcomes.
 - There is a high degree of consistency in research findings on how victims and offenders rate conferences
- ▣ Less evidence to show that RJ process is restorative

Findings from key Australian research

- ▣ NSW (Trimboli 2000)
 - ▣ Surveyed offenders, victims and offender supporters across 391 conferences convened in 16 Dept of Juvenile Justice regions throughout the state from April through August 1999
 - ▣ 90% (N=330) of offenders and 79% (N=256) of victims satisfied with how their cases were dealt with by conference
 - ▣ 95% of offenders and 97% of victims felt the conference was fair for offenders

Findings from key Australian research

- ▣ Western Australia (Cant and Downie 1998)
 - Surveyed 265 offenders, victims and offenders supporters attending family meetings from 1996-1997
 - 90% to 95% felt the family meeting process was fair
 - 82% to 92% were satisfied with outcomes

Findings from key Australian research

- ▣ Queensland (Hayes, Prenzler and Wortley 1998)
 - Surveyed 351 offenders, victims and offender supporters across 76 conferences convened from April 1997 to May 1998 in two southeast “pilot” programs.
 - 98% of offenders and 98% of victims felt their conference was fair
 - 99% of offenders and 97% of victims were satisfied with conference outcomes
 - High percentages of restorativeness
 - ▣ 99% of offenders and 91% of victims felt “doing the conferences was just what I needed to sort things out”

Findings from key Australian research

- ▣ SA-SAJJ (Daly, 2001)
 - Surveyed 93 young offenders and 79 victims attending a family conference from March through June 1998
 - 90% of offenders and 73% of victims felt satisfied with how their cases were handled in a family conference
 - Observers rated the process of deciding conference outcomes as fair in 89% of conferences
 - Restorativeness (mutual appreciation and positive movement b/w offender and victim) was present in only about 30-50% of cases

Findings from key Australian research

- ▣ ACT-RISE (Strang et al. 1999)
 - 85% (n=48) of juvenile personal property, 93% (n=44) of juvenile property (security) and 89% (n=26) of youth violence offenders reported overall fair treatment with process of police-run conferences
 - 80% (n=35) of juvenile personal property victims and 56% (n=25) of youth violence victims felt satisfied with outcomes

RJ and re-offending

- ▣ Evidence on how RJ conferences affect future offending behaviour is mixed. Results show...
 - that re-offending is less likely among offenders in conference compared to court (violent offenders in RISE; NSW retrospective comparison, NT comparison)
 - there is no difference in re-offending for conference and court offenders (property and drink drivers in RISE)
 - that re-offending is more likely for offenders in RJ programs compared to offenders in non-restorative interventions (results of Canadian meta-analysis)
 - that re-offending is less likely when offenders are remorseful and outcomes are decided by consensus (Maxwell & Morris 2001; Hayes & Daly 2003) and that age, gender, early onset offending and prior offending remain significant predictors of re-offending (Hayes & Daly 2004)

Conferencing and re-offending: comparison studies

- ▣ The ACT-RISE (Sherman et al. 2000)
 - Four experiments comparing police-run conference to court for admitted offenders (youth violence, juvenile personal property, juvenile property (security), drink drivers)
 - Observed pre- and post-referral officially detected offending
 - Key findings
 - ▣ No differences in re-offending 12 months post-referral for drink drivers and juvenile property offenders
 - ▣ Significantly lower post-referral offending rates for youth violence offenders in conference compared to court
 - ▣ No differences in observed remorse for conf and court groups

Conferencing and re-offending: comparison studies

- ▣ NSW (Luke & Lind 2002)
 - Retrospective analysis of offender histories for young offenders in 3 groups:
 - ▣ offenders in court 12 months prior to introduction of conferencing
 - ▣ Offenders in court during first 12 months of conferencing operation
 - ▣ offenders in conference during first 12 months of operation
 - Key findings
 - ▣ No difference in estimated rate of post-intervention offending for both court groups
 - ▣ 15-20% reduction in predicted risk of re-offending for conference group compared to both court groups

Conferencing and re-offending: comparison studies

- ▣ NT (Cunningham 2007)
 - Analysed police records for 2,744 young offenders who were 16 years of age or younger at first apprehension
 - Approximately three quarters (76%) did not reoffend following a warning, diversion or court appearance
 - Survival analyses showed that very young offenders (10-13) who were diverted were estimated to be 3 times less likely to reoffend compared to 10-13 year olds referred to court

Conferencing and re-offending: meta-analyses

- ▣ Canada (Latimer 2001)
 - Meta-analysis of 22 studies that compared a RJ program with other interventions
 - Meta-analysis is an analysis of prior analyses (i.e., a quantitative literature review)
 - Key findings
 - ▣ Average 7% reduction in re-offending across all studies examined
 - ▣ Some studies showed RJ programs led to reductions in re-offending by as much as 38%
 - ▣ Some studies showed that RJ programs produced iatrogenic effects (i.e., made things worse) and increased re-offending by up to 23%

Conferencing and re-offending: variation studies

- ▣ New Zealand (Maxwell & Morris 2001)
 - Observed post-conference convictions for 108 young offenders attending a family group conference in 1990-91 (6.5 year follow-up)
 - Key findings
 - ▣ Early life experiences (e.g., poverty and parental neglect) and what happened after the conference (e.g., unemployment and criminal associates) were associated with future offending
 - ▣ Several features of the conference also were associated with recidivism. Re-offending was less likely when the following conference features were present
 - Memorable conferences
 - Non-stigmatic shaming
 - Agreeing to and complying with conference outcomes
 - Meeting victims and offering apologies
 - Feeling sorry or remorseful for the offending behaviour

Conferencing and re-offending: variation studies

- ▣ SA-SAJJ (Hayes & Daly 2003)
 - Followed 89 primary offenders 8-12 months post-conference; measured recidivism as any new post-conference official incident
 - Key findings
 - ▣ Offender characteristics known to be predictive of re-offending were associated with post-conference offending (e.g., prior offending, social marginality, sex, ethnicity)
 - ▣ Beyond offender characteristics that were associated with recidivism, when offenders were observed to be remorseful, and when conference agreements were observed to be decided by genuine consensus, re-offending was less likely

Conferencing and re-offending: variation studies

- ▣ Queensland (Hayes and Daly 2004)
 - Followed 200 young offenders attending 3-5 years post-conference (data from c-files and QPS)
 - Key findings
 - ▣ No conference-related features associated with re-offending
 - Case flow duration, length of conference and outcome (e.g., apology, restitution, community work) not related to recidivism
 - Offenders' experiences with the conference also not related to recidivism
 - Little to no variability in offender evaluation results
 - Very high ratings of procedural fairness, satisfaction and restorativeness
 - Timing of evaluation may have produced outcomes

Conferencing and re-offending in Queensland

▣ Key findings

- ▣ Several offender characteristics associated with re-offending
 - ▣ Age at conference
 - ▣ Youngest age group (10-12 yrs) at conference less likely to re-offend compared to youngest age group at caution or court
 - ▣ Age at first offence
 - ▣ Youngest age group more likely to re-offend
 - ▣ Gender
 - ▣ Males more likely to re-offend
 - ▣ Prior offending
 - ▣ YPs with prior offences more likely to re-offend

Summarising empirical outcomes: Does RJ “work”?

- ▣ There is strong evidence that offenders and their victims have positive conference experiences.
 - They are satisfied with conference outcomes/agreements.
 - They perceive fair treatment by the process.
- ▣ Evidence about the impact of RJ on re-offending behaviour is mixed
- ▣ There is weaker evidence that conferences are *restorative*
 - Less positive movement and mutual understanding
 - Apologies are not pervasive

Current project on RJ and re-offending

- ▣ Observed 68 YPs across 49 conferences
 - 22% indigenous
 - 15% female
 - 5% (10-12 yrs), 24% (13-14 yrs), 71% (15-16 yrs)
 - 74% police, 15% indefinite, 9% before sentence
- ▣ Interviewed 50 YPs approximately one week following their conference (average 35 mins)
- ▣ Interviews explored how YPs understand their conference encounters
 - Role of conference participants
 - Aims of the conference
 - Sense of restoration

Current project on RJ and re-offending

- ▣ 12 month follow up interviews to learn how YJC experiences endures in the memories of YPs and self-reports of further offending
- ▣ Assess official offending histories 12 months post-conference

Current project on RJ and re-offending

- ▣ Project aims
 - To learn what YPs know and understand about their restorative encounters
 - To determine if YPs' understandings of conference encounters is linked to what they do afterwards
 - ▣ Measuring self-reported offending
 - ▣ Measuring officially detected offending
 - ▣ Measuring intervening life events (e.g., social and economic disadvantage)
 - ▣ Examining offender-victim transactions as observed (at the conference) and interpreted by YP (through interview narrative)

Initial impressions

- ▣ Apologies are important for some young offenders
 - Spontaneous apologies (30%) less common than those that have to be drawn out (52%)
- ▣ True forgiveness seems less important for YPs perhaps because their victims are often unknown to them
- ▣ Having the opportunity to offer an apology and have it accepted likely assist YPs in moving forward (e.g., gaining a sense of recovery and closure)
 - Some of the narrative data suggest that YPs are often disappointed when victims do not attend

Some illustrative narratives

- ▣ Apologies and perceptions of forgiveness
 - Q: “Did you feel pressured to apologise?”
 - A: “No, I wanted to.”
 - Q: “Do you think the victims forgave you?”
 - A: “Yeah...I know that the parents forgave us.”
 - Q: “How did you get that sense? Did they say ‘I forgive you’ or you just have a...?”
 - A: “Well, [the convenor] said ‘Do you accept [YP’s] apology?’ And they said ‘yeah’.”
 - Q: “And how did that make you feel when you heard that?”
 - A: “I felt a hundred and ten percent better.” (CARE-RJR 002)

Some illustrative narratives

- ▣ Apologies and perceptions of forgiveness
 - Q: “How important was it for you that the victim did forgive you....?”
 - A: “It was very important.”
 - Q: “Do you feel like the conference would have been successful if the victim hadn’t forgiven you?”
 - A: “No, I don’t think it would have been.”
 - Q: “Even if you’ve done the right thing and you’ve gone to the conference, it was still important to you that the victim forgive you?”
 - A: “No matter what happened at the conference, I wouldn’t have cared. The only thing I wanted out of the conference is them to forgive me and I’ll say sorry to them. That’s the only thing I wanted.” (CARE-RJR 002)

Some illustrative narratives

- ▣ Apologies and perceptions of forgiveness
 - Q: “So did you let the victim know you were sorry?”
 - A: “I kind of smiled when I said sorry. I didn’t really mean it because I don’t really like her.”
 - Q: “So it sounds like you didn’t really want to apologise?”
 - A: “Not really.”
 - Q: “Do you feel like you were pressured to apologise?”
 - A: “He said ‘Would you like to apologise to her’, so it was kind of like, yeah, apologise.”
 - Q: “Okay, so what do you think would have happened if you had said ‘No I don’t want to apologise.’?”
 - A: “I think I’ll have a harsher consequence.” (CARE-RJR 020)

Some illustrative narratives

- ▣ Apologies and perceptions of forgiveness
 - Q: “Do you think they [victims] forgave you?”
 - A: “I don’t know.”
 - Q: “How important was it for you for the victim to forgive you?”
 - A: “Not really.” (CARE-RJR 020)

Some illustrative narratives

- ▣ Apologies and perceptions of forgiveness
 - Q: "...we know that the victim accepted your apology. Do you think they forgave you?"
 - A: "I think that they do."
 - Q: "Alright so how did they offer forgiveness?"
 - A: "Not the way they offered it but just more the body language."
 - Q: "So what was the body language like?"
 - A: "Like calm and talking like they knew me."
 - Q: "...what do you think would have happened if the victim wouldn't have accepted your apology?"
 - A: "I'd probably have gone to court. I would have gone back to the police station and they would have decided what would happen...whether there would be another conference or court."
(CARE-RJR 007)

Summing up

- ▣ Even if apologies and forgiveness are not pervasive and future behaviour is not affected, other benefits to offenders and victims are salient and include
 - Perceptions of fairness with the YJC process
 - Satisfaction with process outcomes (e.g., agreements)
 - An overall sense of a better justice experience