

Language and restorative justice practices

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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 language deficits affect conference outcomes
 - » Implications for practice

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 Queensland

- 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)
 - Recent amendments to the Qld Youth Justice Act 1992 removed court referred conferences

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

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 (60% interviewed at follow-up)
- Assess official offending histories 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)

Communicating emotion

- Many young offenders have difficulty expressing how they feel during the restorative justice conference process
- Oftentimes other participants expect an effective story from the young offender
- Many young offenders do not have the oral communication skills needed to deliver an effective story
 - » Recent evidence from research in New South Wales and Victoria show that approximately 50% of young people in the juvenile justice system have a clinically significant but undiagnosed language impairment (Snow and Powell 2008, 2011)
- This may affect how other participants judge the process
 - » For example, victims may become less satisfied if they don't receive an effective account and a spontaneous apology
 - » Other participants may misinterpret the YP's nonverbals as disinterest and/or disengagement

Some illustrative narrative

Case 005a

*Interviewer: Alright. **What did it feel like**, actually walking into a room with that many people?*

*005a: **I don't really know**. Just looked in, saw them.*

...

Interviewer: Yeah. Okay, before you spoke how did you feel at that point?

005a: Well, actually I was pretty scared.

...

Interviewer: Okay. Alright, we'll move on from that, okay. When the victim told their story, how did it make you feel?

*005a: A little bit better. Relieved. **Something like that**.*

Some illustrative narrative

Interviewer: So did you ever see that the victim react to what your mum was saying? Or...

005a: No.

Interviewer: Who were you looking at when your mum was talking?

*005a: **I was talking at my feet at that time.***

*Interviewer: At your feet. So when you look at your feet **how are you normally feeling?***

*005a: Well I was upset so **I was looking at my feet** and sort of just trying to not cry.*

Some illustrative narrative

Case 005b

*Interviewer: **How did you feel** about you having to meet him [the victim]?*

*005b: **I don't know really.***

...

*Interviewer: Okay. And at the beginning [of the conference], **how were you feeling?***

005b: Normal.

*Interviewer: **Didn't feel anything?***

*005b: **No.***

Some illustrative narrative

*Interviewer: So can you tell me about the victim's story **and how it made it you feel?***

*005b: **No, I don't know.***

Interviewer: Don't know? Didn't it make you feel anything when they were talking?

005b: Oh, made me feel sad for him. So he had to spend a lot of money.

Interviewer: Okay. So you felt sad for him? Did you agree with their story?

005b: Yes.

...

*Interviewer Yeah? Okay. **How did you feel** after hearing everyone's stories?*

*005b **I'm not sure.***

Preliminary findings

- Narrative data suggest that young offenders may display *alexithymia* (a lack of words for emotion)
 - » Can manifest in antisocial behaviour
 - » Can be misinterpreted as disinterest, disengagement, disrespect
 - (looking at the floor, not speaking, short answers, avoiding eye contact)
- Findings suggest that conference facilitators may need to prepare victims and other conference participants to better understand the limited verbal abilities of many young offenders
 - » This may help set more realistic expectations of young people in highly conversational and emotionally charged restorative justice encounters

Preliminary findings

- A summary of these preliminary findings can be downloaded at

http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi463.pdf