

Restorative Justice Developments in Australia

Hennessey Hayes

Criminology and Criminal Justice

Griffith University

Overview

- Describe the RJ process
 - What is restorative justice?
 - What does RJ look like?
- Summarise RJ developments in Australia and results from key empirical studies on RJ processes (drawing on Maxwell and Hayes 2006)*
- Summarise what we are learning about RJ and its effect on young offenders, victims and future offending (drawing on Hayes 2006)**

*G Maxwell and H Hayes (June 2006). "Restorative Justice Developments in the Pacific Region: A Comprehensive Survey." *Contemporary Justice Review*, 9 (2).

** H Hayes (June 2006). "Restorative Justice and Re-offending". In G Johnston and D Van Ness (eds.) *Handbook of Restorative Justice*. Willan Pub.

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



What is restorative justice and what does it look like?

- Process
 - Conferences are significant temporal events in the lives of young offenders
 - Typically last between 60-90 minutes
 - Flexible process
 - Should address the needs of offenders and victims
 - Queensland is piloting an Indigenous Conference Support Officer pilot to better assist convenors meet the needs of young Indigenous offenders and victims
 - Not a soft option
 - Many young offenders view conferences as more demanding than court

The RJ process

■ 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 (Victoria and the ACT are the most recent to enact legislation) and most run New Zealand model conferences
 - The exceptions are the ACT, Tasmania and NT
 - In the ACT the Restorative Justice Unit of the Dept of Justice and Community Safety has four conference convenors: 2 civilian staff and two AFP officers.
 - In Tasmania police run conferences to administer formal cautions and civilian staff in the Dept of Health and Human Services run conferences for matters referred from police.
 - In the NT police run conferences as pre-court diversion and the Dept of Correctional Services run conferences as “post-court diversion” from custody.

RJ developments in Qld

- New Zealand model conferencing was trialled in SE Qld in 1997, following amendments in 1996 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)
 - 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: 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 conferences from April '97 to May '99 (3-5 year follow-up)
 - Obtained data from Qld Dept of Families (conferencing case file data) and Qld Police Service (offending history data)
 - Observed all pre and post-conference official incidents (does not include offence-related charges)
 - Examined how offender characteristics and conference features relate to re-offending

Conferencing and re-offending in Queensland

- 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
 - Age at first offence
 - Gender
 - Prior offending

Conferencing and re-offending: other research

- Recent studies in the NT suggest that
 - Restorative justice diversion schemes have the potential to reduce further offending among young Indigenous offenders
 - Young Indigenous offenders remain less likely to be referred to diversion compared to young non-Indigenous offenders

Conferencing and re-offending: other research

- Data from Queensland show that referral of young Indigenous offenders to YJC has climbed steadily since 2001/2002
- However, results from a recent simulation study (Stewart & Hayes) suggest that YJC is not effectively addressing the problem of over-representation of Indigenous youth in the Queensland juvenile justice system
 - This outcome related to the different offending profiles of Indigenous and non-Indigenous young offenders

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
 - However, the weight of evidence seems tipped towards reductions in offending
- There is weaker evidence that conferences are *restorative*
 - Most likely due to differences in measurement

Looking forward

- Restorative justice conferencing is firmly established in all Australian jurisdictions
 - Referral patterns in most states and territories seem to have stabilised or are increasing slightly
- Restorative justice schemes can impact positively on the lives of young Indigenous and non-Indigenous offenders
 - Results from research demonstrate the restorative potential of conferencing

Looking forward

- More needs to be done to enhance the diversionary potential of RJ conferencing schemes
 - Further amendments to relevant legislation may be needed to ensure better and more culturally appropriate access to RJ for young Indigenous offenders