

The R(evolution) of Restorative Justice through Research-Practitioner Partnerships

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Some of you may have noticed, and especially practitioners, that when research is reported on restorative justice, it is normally the researcher -- and the researcher alone -- who is the bearer of the research news. We may ask, where are the practitioners? And how does their participation in a research project affect their practices?¹

We report on the ways in which a research project on restorative justice in Australia -- the South Australia Juvenile Justice (SAJJ) Research on Conferencing Project -- affected the practitioners, and in particular, those who are responsible for convening and running family conferences, the Youth Justice Coordinators (YJC's). Daly is the SAJJ Project Director, and Kitcher, the Head of the Family Conference Team;² the project emerged after two years of planning and working together. Before describing the SAJJ project, we sketch the larger picture of restorative justice practices in Australia, which are variously termed "diversionary conferences" (the Australian Capital Territory [ACT]), "family conferences" (South Australia [SA]), "youth justice conferences" (New South Wales [NSW]), among other terms.³

The history of conferencing in Australia is complicated and contested. It was not a linear unfolding of one event to the next, but rather several events occurring at the same time, and with considerable state variation over time. In 1991, a version of conferencing was first introduced in Wagga Wagga (a town in the southern part of NSW) by members of the police as part of an "effective cautioning scheme" (Moore and O'Connell 1994: 46). "Wagga" style conferencing drew, in part, from the New Zealand model of "family group conferencing", enacted in 1989 legislation for responding to youth justice and care/protection matters. The general conferencing model

involves an admitted (juvenile) offender and their supporters, a victim and their supporters, and other appropriate people to come together to discuss the crime and how it should be dealt with. Conferences normally last about 1 to 2 hours; the purpose is to bring offenders to account for their behaviour, to hear victims discuss the impact of the crime, and to find a mutually agreeable way to "right" the wrong, without the case going to court.

Conference Models: Legislation and Practices

As the conference idea developed in Australia in the early 1990s, two distinctive models evolved: the "Wagga" model, which is lodged in a police organisation, where a police officer organises and facilitates the conference, and the "New Zealand" model, which is lodged in a variety of non-police organisations (such as welfare or courts), where a coordinator organises and facilitates the conference with a police officer present.

There has been sharp debate, especially among academics and those in police organisations, on the merits of each (Alder and Wundersitz 1994), but by the mid-1990s, it was clear that the New Zealand model won out, as did a legislative basis for conferencing. Having said that, we would add that little of a systematic nature is known about practices, and variation in practices, across Australian jurisdictions.

Drawing largely from legislation and practice or procedural manuals, the following characteristics of conferencing can be highlighted:⁴

- All eight states and the territories have used conferencing, but there are five in which conferencing is "active". They are SA, WA, QLD, and NSW, which legislatively established conferences 1993-97. The other jurisdiction is the ACT, which has no legislative basis, but where police have run conferences since 1995 in connection with the Reintegrative Shaming Experiment (RISE).⁵

For these five more active jurisdictions:

- Conferences are routinely used only in criminal matters, not in care and protection.
- Some jurisdictions tie their practices to concepts of "restorative justice,"⁶ others to "reintegrative shaming,"⁷ and others, to a mixture of both together with additional elements.⁸ These concepts are not explicitly in the legislation, but are more often found in procedure/practice manuals, or are implicit in the legislation.
- Cases are referred to conference mainly by the police, although referral is also possible by the judiciary
- With two exceptions, referral to conference is solely for the purpose of diversion from court process. The exceptions are QLD and NSW, where conferences can be used as a sentencing option.
- While conferencing is mainly a state activity and used as a diversion from juvenile court, the process is also used in schools and workplace disputes in QLD and NSW, as part of a private enterprise, Transformative Justice Australia; and in drink driving cases for adults in the ACT, as part of RISE.
- In one jurisdiction (QLD) victims have veto power over whether a conference can be held.
- In three jurisdictions (WA, QLD, and NSW) victims have veto power over the conference "agreement" or "plan" if they are present at the conference
- In two jurisdictions (NSW and WA) the focus is not only on "repairing the harm" but also on providing support or assistance for the young person

We turn now to one example of the research-practice interface and what happened in the SAJJ project.

The SAJJ Project

The research plan evolved over a two-year period during which Daly had observed over 30 conferences in the ACT and SA. The SAJJ project addresses these questions:

- are two dimensions of restorative justice, namely, "restorativeness" and "democratic process" (the latter

including procedural justice and participation) present in conferences?

- do judgments of "restorativeness" and "democratic process" vary by participants' roles, their social locations (e.g., gender, race-ethnicity), urban/rural contexts, and type of offence?
- if "restorativeness" and "democratic process" are present (defined as a "successful" conference), what are the long-term consequences for young people and victims? Or, if these dimensions are absent, what are the long-term consequences?

SA's first conference was held in February, 1994.

Organisationally placed within the Courts Authority, the Family Conference Team has nine YJC's, plus the Senior YJC, with varied backgrounds in social work, community work, mediation, corrections, and law. Team offices are located in Adelaide and Port Augusta, though coverage extends to the entire state. In Adelaide, there are 12-14 specially designated Police Youth Officers (PYO's), who refer cases and participate in the conferences.

The 1993 Act contains no reference to "restorative justice" as a conference principle. Over time, however, all the conference coordinators have come to embrace this idea in their practices. While some police officers also accept the idea, there appears to be less unanimity among them. This is not surprising since the "police perspective" is more often associated with ideas of deterrence and protecting the community. Also, the Act is ambiguous on the matter, and this has led to different interpretations by police and coordinators over which principles should guide practice.

The SAJJ research plan called for

- observing conferences over a 12-week period in the Adelaide metropolitan region and country towns in the Port Augusta area;

- focusing on particular offences (the more serious violent and property offences) and excluding drug offences and shoplifts; and
- gathering information on a relatively small number of conferences (about 100, with the associated victims and offenders), but in great depth.

During March through June 1998, members of the SAJJ group observed a total of 89 completed conferences in metropolitan Adelaide and in Port Augusta and Whyalla. For each conference, the police officer and coordinator completed a self-administered survey. Among other items, the survey asked them to make judgments about what happened at the conference along dimensions of "restorativeness" and "democratic process".⁹

The Interface of Research and Practice¹⁰

On average, SA coordinators prepare for and run 155-170 conferences a year,¹¹ and they are responsible for monitoring the compliance of all the young people associated with the conferences. The arrival of a crew of four researchers to study conferencing was viewed by the coordinators -- understandably -- with a mixture of enthusiasm and wariness.

During January and February 1998 (about six weeks before the start of the formal research period), Daly held intensive small-group meetings with the coordinators and police officers to discuss the content of their surveys. From those meetings, Daly learned that coordinators and police officers had somewhat different perceptions of "practice", and that these differences in conference goals and practitioner roles needed to be structured into the surveys. Daly worked with both groups, in separate meetings, to discuss what they perceived to be elements of "successful" conferences.

Inside and outside the small group sessions, the coordinators expressed particular concerns:

- "How's this research going to help me (or the Team) to do our job better?"
- "Does the researcher have unrealistic expectations for 'successful' conferences?" Or, in other words, "Will the evaluation of my work (or that of the Team) put me in a poor light (and unfairly so)?"
- "Is this research going to take too much of my time?"

With respect to *time*, the research did take up coordinator time because there were added tasks associated with SAJJ-eligible cases. For example, as part of the consent protocol, when the coordinators contacted the young person and victim in preparing for the conference, they were to describe the research briefly and seek permission for SAJJ observation. They were also to alert participants that a SAJJ researcher would be contacting them to arrange a follow up interview. Finally, they had to set aside time before the conference for a pre-conference briefing with a researcher to discuss any relevant case elements or problems they anticipated. This briefing was an invaluable element for both research and practitioner during the research.

Before the formal period of research began, the coordinators had other concerns.¹² All believed that the researcher's presence in the conference might affect the participants' behaviours and perhaps the outcome of the conference itself. Some wondered whether a young person would feel coerced in being asked to be part of research project, especially during the interview phase.

Impact of the Research

So what was the impact of the research? The SAJJ project had a general impact of generating more discussion among coordinators, and between coordinators and police officers, about what happened in a conference. This occurred in one-on-one conversations and informal small-groups. There were four more specific ways that the research affected coordinators and their practices. First, the research heightened the process:

one coordinator felt "more accountable," another said that he "sat a little more on the edge of my chair." Contrary to initial fears, the research was less intrusive than the coordinators expected. The participants' behaviours and outcomes in the SAJJ conferences were not notably different than in non-SAJJ conferences. If anything, the research project likely affected the conference *practitioners* (i.e., coordinators and police) more than it did the conference *participants* (e.g., offenders, victims, and their supporters).

Second, the coordinators became more aware and self-conscious of their practices. In particular, they became more aware of the need to "get the formalities right" in terms of ground rules, legal advice, and general information about the purpose of the meeting. However, they said that "the art" of the process -- its heart and soul -- remained the same.

Third, the research gave coordinators a framework to discuss the conference process in more analytical and "academic" terms. Here is where we see the interface of practice and research most vividly. The survey asked questions that encouraged the coordinators to think both more broadly and with greater precision about what occurred in a conference. They were able to reflect on their practices in new ways and to discuss their experiences comparatively with colleagues. This occurred at an operational level (that is, the "techniques" used) and a more abstract level (that is, justice goals in individual cases).

For technique, some coordinators said that they were able to pinpoint more precisely what mediation skills they used to move the process along when a conference reached a point of impasse. For justice goals, one survey question generated much discussion, although the SAJJ group wasn't aware of it at the time. Coordinators (and police) were asked to select from a list of ten aims, the three that were most important to them for a particular conference. Among these items were "appropriate punishing the YP," "detering the YP from future offending," "repairing the damage caused by the offence,"

"using informal social controls, like family ties," and "participants, not the professionals deciding the outcome." In responding to this item, each coordinator (and police officer) had to reflect on which justice principles were salient to them in a particular case, that is, were they more restorative or deterrence oriented? offender or victim-centred? a combination or these?

Fourth, the research gave the coordinators a revitalised sense of the importance of their professional role and of the need to study conference practices in their own right. A good deal of research to date on conferencing tends to focus on system "case flow," dispositions, and kinds of outcomes. Such research, though important, provides a snapshot of organisational contexts and case outcomes, but ignores the processes and group dynamics that take place in the conferences themselves. It also ignores the importance of adequately preparing for the conference itself.

The SAJJ project did not intend to change conference practices, nor even to be a catalyst for change. And, as we have noted, the research did not affect "the art" of the conference process itself. But the process of engagement in doing the research affected the ways in which the coordinators thought of their work and the ways their practices could be improved.

Summing Up

In comparing Australian jurisdictions, it is difficult to know what is happening on the ground by simply drawing from legislation or even practice manuals. To date, we are uncertain about the degree to which ideas of "restorative justice," "reintegrative shaming," or admixtures and other theories guide practitioners -- that is, both the police and coordinators -- in their work.

We have suggested that a good place to see the development and evolution of the idea of restorative justice is at the interface of research and practice. Our experience suggests

that research can play a constructive and direct role in clarifying and improving practice. At the same time, by paying close attention to how practitioners are affected by the research process, we can see how everyday ideas about justice practices can be linked to more "academic" aspirations and analyses of justice.

¹ This paper was presented at the Youth Justice in Focus Conference, Wellington, New Zealand, 27-30 October 1998. In November 1998, the SA Family Conference Team organised a 2-day Forum on Conference Practices, when practitioners from Australia and New Zealand met to discuss the organisation and practice of conferencing in their states.

² Kitcher, one of the original YJC's when the SA Family Conference Team began in February 1994, became the Senior YJC in December 1995. In July 1998, she was seconded to the Justice Strategy Unit, but continues to provide coordinating support for SAJJ.

³ Other terms used are "community conferences" (Queensland [QLD]), "juvenile justice teams" (Western Australia [WA]), and "group conferences" (Victoria). Some prefer to use the term "transformative" rather than "restorative" justice to emphasise the need to "transform conflict" rather than to "avoid or ignore" it (Moore 1998). Transformative Justice Australia is a private organisation that applies the conference process to workplace and school conflicts.

⁴ See Barga (1996, forthcoming) for a detailed comparison of Australian jurisdictions and New Zealand.

⁵ RISE, a major research project based in the Australian National University, is comparing the different impact of court and conference on participants. Information about RISE and SAJJ can be obtained on the Australian Institute of Criminology web page at www.aic.gov.au.

⁶ In responding to crime, restorative justice focuses on the relationships between offenders, victims, and the communities in which they live; the aim is to "repair the harm" caused by crime. For discussion of the history and development of the term, see Daly and Immarigeon (1998).

⁷ In responding to crime, reintegrative shaming focuses on censuring an offence, while simultaneously supporting and reintegrating the offender in a community of care. The term comes from Braithwaite (1989).

⁸ SA: restorative justice; WA: restorative justice, in which reintegrative shaming is embedded; ACT: reintegrative shaming; QLD: restorative justice, neutralisation, and other theories; NSW: restorative justice.

⁹ The 89 conferences had a total of 196 young people/offenders and victims (this figure includes all the offenders and the primary victim, if there was more than one, at the conference). We conducted interviews with 172 offenders and victims, for an overall completion rate of 88% (all the interviews were face-to-face, except those carried out by phone with those victims who did not attend the conference). In March-June 1999, the SAJJ project will conduct a second wave of interviews with the offenders and victims.

¹⁰ We depict coordinators' reaction to the research by drawing from a discussion at a Team Meeting in August 1998, in which Kitcher asked questions of the coordinators and administrative staff. Among them: (1) "At the early stages of the SAJJ research there was some concern by the coordinators that the research may intrude on (or be disruptive of) work routines. What concerns did you have?" (2) "Coordinators say that the SAJJ project gave them a chance to reflect on their conferencing practices. For you, what are some examples of that?" It would also be important to poll police officers on their reactions to the research. This was done informally and in a police-coordinator meeting in July 1998, but not to the degree that it was done with coordinators in August.

¹¹ Data for 1997 show a total of 1406 completed conferences (Wundersitz 1998: 124), whereas data for fiscal year 95 show 1559 conferences (Wundersitz 1996: 107). Each total was divided by 9, with some allowance for conferences that the Senior may have conducted, to produce the range. Preliminary data for 1998 show a total of 130 completed conferences per month, which is closer to the average for 1995.

¹² Compared to the coordinators, the administrative staff did not have many concerns before the research began. They too had extra tasks related to the research, but they looked forward to the research, seeing it as adding a new dimension to their work.

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