

# DEVELOPING ETHICAL IDENTITIES IN YOUNG OFFENDERS THROUGH RESTORATIVE JUSTICE PRACTICE IN AUSTRALIA

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## I INTRODUCTION

Restorative justice is firmly established in Australian juvenile justice. While the official language used to describe restorative initiatives varies across states and territories, the most common form is a meeting or conference between young offenders and their victims (most commonly known as a family group or youth justice conference).<sup>3</sup> During the past decade, an impressive amount of empirical research has examined how the restorative justice process affects offenders, victims and other participants (such as supporters for young offenders and victims). Results from this line of research are remarkably consistent and show that participants generally regard restorative conferences as procedurally fair and that they are satisfied with the outcomes (eg what young offenders agree to do to make up for their offending behaviour, such as offer a sincere apology or perform work for the victim or the community). What is less common, however, is the perception among participants that restorative conferences achieve the key aim of restoration.<sup>4</sup> By ‘restoration’ we refer to encounters where ‘offenders apologise, their apologies are accepted, victims offer forgiveness, and conferences conclude with a feeling of mutual good will’.<sup>5</sup>

This research asks why this is so, and proposes that restoration and the development of ethical identities in young offenders is more difficult to achieve in a conference process that relies on traditional governing practices. By ‘ethical identities’ we mean the forms of subjectivity shaped as a result of young people engaging with, and utilising, a range of practices and discourses (such as apology and forgiveness) as part of governing

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<sup>3</sup> G Maxwell and H Hayes, ‘Restorative Justice Developments in the Pacific Region’ (2006) 9 *Contemporary Justice Review* 127.

<sup>4</sup> H Hayes, ‘Apologies and Accounts in Youth Justice Conferences: Reinterpreting Research Outcomes’ (2006) 9 *Contemporary Justice Review* 369.

<sup>5</sup> *Ibid* 370.

themselves.<sup>6</sup> We begin by outlining the aims of this project and then follow with a description of what restorative justice is and what it looks like, drawing on our experience of restorative justice practice in Queensland, which takes the form of youth justice conferencing. Following this, we draw on qualitative data obtained in a large Australian Research Council (ARC) research project to illustrate the impact of restorative justice practice on young offenders. We conclude that conferencing practice often employs techniques in obtaining outcomes that prevent real restoration from occurring in many cases.

## II KEY AIMS OF THE RESEARCH

Prior research on the effectiveness of restorative justice conferencing demonstrates that while offenders and victims are largely satisfied with restorative justice processes and perceive the outcomes to be fair, there is less evidence that suggests restorative justice processes are in fact restorative.<sup>7</sup> The key aims of this research are: 1) to learn why the restorative ideal has been difficult to achieve in youth justice conferencing processes; 2) to reconsider the management of restorative conferencing practice as a means of enhancing the restorative potential of youth justice conferences; and 3) to assess the practice of restorative conferencing in the Australian context (focusing on Queensland as a prime example) to determine the extent to which current conferencing practice effectively achieves the goal of restoring young offenders and their victims.

To achieve these aims, we draw on qualitative perceptual data from restorative conference participants (young offenders) collected as part of a large ARC research project. The data collection focuses on the impact of current conferencing practice on young offenders and their perceptions of the conferencing experience. Using these data, we analyse the restorative potential of conferencing and identify problems arising out of the current practice.

## III RESTORATIVE JUSTICE, CONFERENCING, AND RESTORATION

### A *Restorative Justice*

In dealing with criminal matters, restorative justice is viewed as an alternative to traditional state-centred (ie adversarial) justice and brings together those with a stake in crime in a facilitated, constructive dialogue about an offence, its impact, and what should be done in response to it. John Braithwaite notes that several varied justice practices are claimed under the restorative justice 'banner'. These include transformative justice, peacemaking, relational justice, republican justice, reconciliation and conferencing.<sup>8</sup> Tony Marshall's definition of restorative justice has been identified as the most 'established'<sup>9</sup> and draws attention to the restorative process and its

<sup>6</sup> M Foucault, *The Use of Pleasure* (Vintage Books, 1990) 27.

<sup>7</sup> H Hayes, 'Assessing Reoffending in Restorative Justice Conferences' (2005) 38 *Australian and New Zealand Journal of Criminology* 77; H Hayes, 'Apologies and Accounts in Youth Justice Conferences: Reinterpreting Research Outcomes', above n 5; H Hayes and K Daly, 'Youth Justice Conferencing and Reoffending' (2003) 20 *Justice Quarterly* 725; H Hayes and K Daly, 'Conferencing and Reoffending in Queensland' (2004) 37 *Australian and New Zealand Journal of Criminology* 167.

<sup>8</sup> J Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press, 2002).

<sup>9</sup> A Crawford and T Newburn, *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice* (Willan Publishing, 2003).

outcomes: ‘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’.<sup>10</sup> This definition seems to have driven much of the empirical research on restorative justice, which has focused predominately on restorative processes and outcomes (eg how conferences are administered and run, how participants feel about conferences, how offenders make amends, and how victims are healed and recover).

Interest and academic scrutiny about restorative justice escalated during the 1990s. Restorative justice initiatives have appeared in many jurisdictions around the world, including New Zealand, Australia, North America and Europe. While jurisdictions in the northern hemisphere have made substantial progress in developing various restorative justice initiatives – eg., sentencing circles, victim-offender mediation programs, victim-offender reconciliation programs, police accountability conferences<sup>11</sup> – Australia and New Zealand are leaders in youth justice (diversionary) conferencing.<sup>12</sup> In Australia and New Zealand, conferences are aimed at diverting young offenders from youth court or are used to provide sentencing advice to judges or magistrates.<sup>13</sup>

#### IV THE YOUTH JUSTICE CONFERENCING PROCESS AND ITS EFFECT ON PARTICIPANTS TRIALLED

Conferencing was first introduced into legislation in New Zealand under the *Children, Young Persons and Their Families Act 1989*, making New Zealand the first jurisdiction in the world to provide a legislative basis for diversionary conferences.<sup>14</sup> Conferencing was first trialled in Australia in Wagga Wagga, New South Wales, under a police-run scheme in 1991.<sup>15</sup> The first legislated conferencing scheme in Australia appeared in South Australia in 1994. Since then, all Australian jurisdictions (the most recent being Victoria and the Australian Capital Territory) have developed a legislative basis for diversionary conferencing. However, there is a substantial degree of variation across jurisdictions within Australia, regarding the way conferencing is administered and run.<sup>16</sup>

In Australia, youth justice conferencing is structured around the ‘New Zealand model’, where other professionals, not the police, manage and convene conferences.<sup>17</sup>

<sup>10</sup> T Marshall, *Restorative Justice: An Overview* (Home Office, 1999).

<sup>11</sup> J Hudson and B Galaway, ‘Introduction’ in B Galaway and J Hudson (eds), *Restorative Justice: International Perspectives* (1996) 1; P McCold and B Wachtel, *Restorative Policing Experiment: The Bethlehem, Pennsylvania Police Family Conferencing Project* (Pipersville, PA Community Service Foundation, 1998); M Umbreit, ‘Restorative Justice Through Mediation: The Impact of Programs in Four Canadian Provinces’ in B Galaway and J Hudson (eds), *Restorative Justice: International Perspectives* (1996) 373.

<sup>12</sup> K Daly and H Hayes, ‘Restorative Justice and Conferencing in Australia’ (2001) 186 *Trends and Issues in Criminal Justice* 1, 6.

<sup>13</sup> K Polk et al, *Early Intervention: Diversion and Youth Conferencing* (Crime Prevention Branch, Commonwealth Attorney-General’s Department, 2003).

<sup>14</sup> G Maxwell and A Morris, ‘Research on Family Group Conferencing with Young Offenders’ in J Hudson, A Morris and G Maxwell (eds), *Family Group Conferences: Perspectives on Policy and Practice* (1996).

<sup>15</sup> D Moore, ‘Shame, Forgiveness and Juvenile Justice’ in M Braswell, B McCarthy and B McCarthy (eds), 12 *Justice, Crime and Ethics* (1993), 3.

<sup>16</sup> Daly and Hayes, above n 12; K Daly and H Hayes, ‘Restorative Justice and Conferencing’ in A Graycar and A Grabosky (eds), *The Cambridge Handbook of Australian Criminology* (2002) 294.

<sup>17</sup> See: Maxwell and Hayes, above n 3, for a detailed review of restorative justice developments in the Pacific region.

Conferences usually last from approximately 60 to 90 minutes and progress through three phases: *introduction*, *story telling*, and *agreement negotiation*.<sup>18</sup> 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 victims and supporters for the offender and victim. Offender supporters typically are parents, while victim supporters may be parents (where victims also are children) or partners. Convenors (or coordinators) open conferences with general introductions and a summary of what is expected to be achieved by the conference and what participants are expected to do. It is important to note that in Queensland a lot of preparation for conferences occurs before they are convened. This ‘backstage work’<sup>19</sup> is extremely important in helping participants understand their role in the conference, as well as what realistically can be achieved.<sup>20</sup>

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 behaviour (ie to tell their story). During the ‘story-telling’ phase, they are asked to describe how they came to be involved in the offence, to register and acknowledge the harm they have caused victims, as well as the pain and embarrassment they may have caused their parents or other supporters, and to confess openly that they are sorry. Next, victims are asked to describe the impact of the offence. The emphasis of the victims’ 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 harms they have caused. Supporters are then invited to offer additional comments. For example, offenders’ parents may describe how their child’s behaviour has affected them and their families, as well as describe how the offence has embarrassed and hurt them.

Before moving on to the final phase of negotiating the 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 behaviour 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

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<sup>18</sup> Hayes and Daly, ‘Assessing Reoffending’, above n 7. This description of the conference process is based on several observations of conferences H Hayes conducted in 1998 and 2002, while engaged in research on the effectiveness of community conferencing in Queensland. See Hayes and Daly, ‘Conferencing and Reoffending in Queensland’, above n 7; H Hayes, T Prenzler and R Wortley, ‘Making Amends: Final Evaluation of the Queensland Community Conferencing Pilot’ (1998) Centre for Crime Policy and Public Safety, Griffith University, Brisbane. Our understanding of conferencing processes also is informed by several conversations H Hayes had in 2002 and 2003 with the state-wide coordinators of youth justice conferencing in South Australia (Carolyn Doherty), New South Wales (Jenny Borgen) and Queensland (Gail Pollard). For a description of variation in the organisational placement and management of youth justice conferencing in Australia and New Zealand, see: Daly and Hayes, ‘Restorative Justice and Conferencing in Australia’, above n 12; Daly and Hayes, ‘Restorative Justice and Conferencing’, above n 16.

<sup>19</sup> Braithwaite, above n 8.

<sup>20</sup> Hayes, Prenzler and Wortley, above n 18. While there is more consistency across Australian jurisdictions in 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 (eg 1500 to 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. See Daly and Hayes, above n 12. 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.

(the agreement). All participants are encouraged to suggest ways 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.

There is now a substantial amount of evidence from several Australian jurisdictions, which shows that offenders and, to a lesser degree, their victims, view restorative justice conferences as fair and are generally satisfied with outcomes. For example, Trimboli<sup>21</sup> evaluated the youth justice conferencing scheme in New South Wales and found that 90% of offenders and 79% of victims were satisfied with how their cases were dealt with by the conference. Also, 95% of offenders and 97% of victims felt the conference was fair for offenders. In Queensland, 98% of offenders and victims felt their conference was fair, and similar proportions (99% and 97%, respectively) were satisfied with their conference outcomes.<sup>22</sup> Major research projects carried out in the Australian Capital Territory and South Australia show similar results. In Canberra, 85% of juvenile personal property offenders and 92% of juvenile property (security) offenders who attended a police-run conference in the Reintegrative Shaming Experiments (RISE) project reported that their treatment was 'fair overall'. Also, 80% of juvenile property victims felt 'satisfied with [the] outcome after conference'.<sup>23</sup> In South Australia, 90% of young offenders in the South Australia Juvenile Justice (SAJJ) project reported being satisfied with how their cases were handled in a family conference, compared to 73% of victims.<sup>24</sup> Also, SAJJ observers rated the process of deciding conference outcomes as fair in 89% of conferences.<sup>25</sup>

#### A Restoration

It seems clear that offenders, victims and supporters judge restorative conferences as fairer than the adversarial court process and these participants are largely satisfied with outcomes (ie what young offenders agree to do to atone for their offences). However, when we shift our focus to the restorative nature of conferencing, the extent to which this ideal has been achieved in practice becomes less clear. Returning to the RISE and SAJJ studies, we note that reconciliation and repair (that is, restoration) were not achieved in a remarkable proportion of cases. This may signal a significant shortcoming of restorative justice conferences in achieving restoration, especially if a successful restorative justice process is defined as one which achieves the 'core sequence' of apology – forgiveness.<sup>26</sup>

<sup>21</sup> L Trimboli, *An Evaluation of the NSW Youth Justice Conferencing Scheme* (New South Wales Bureau of Justice Statistics and Research, 2000).

<sup>22</sup> Hayes, Prenzler and Wortley, above n 18; G Palk, H Hayes and T Prenzler, 'Restorative Justice and Community Conferencing: Summary Findings from a Pilot Study' (1998) 10 *Current Issues in Criminal Justice* 138.

<sup>23</sup> H Strang et al, *Experiments in Restorative Policing: A Progress Report on the Canberra Reintegrative Shaming Experiments* (Australian Federal Police and Australian National University, 1999).

<sup>24</sup> K Daly, 'Conferencing in Australia and New Zealand: Variations, Research Findings and Prospects' in A Morris and G Maxwell (eds), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (2001) 59.

<sup>25</sup> K Daly, 'Making Variation a Virtue: Evaluating the Potential and Limits of Restorative Justice' in E Weitekamp and H Kerner (eds), *Restorative Justice in Context: International Practice and Directions* (2003) 23.

<sup>26</sup> S Retzinger and T Scheff, 'Strategy for Community Conferences: Emotions and Social Bonds' in B Galaway and J Hudson (eds), *Restorative Justice: International Perspectives* (1996) 315, 316.

To be sure, restoration is not commonly observed in restorative encounters. Hayes<sup>27</sup> recently completed a study in which he reinterpreted the published results of two major research projects on restorative justice: the RISE project in the ACT (1995-2000) and the SAJJ project in South Australia (1998-2001). The RISE project in Canberra is the only randomised field study in the region (ie Australia and New Zealand). From 1995 to 2000, eligible offenders (ie those who admitted to their offences) were randomly assigned to conference or court.<sup>28</sup> 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.<sup>29</sup>

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 apologised.<sup>30</sup> There was, however, noticeably less forgiveness observed in the conferences, albeit significantly more so than in court. For offenders in the property experiments, observations of conferences showed that approximately 40% of offenders ‘received forgiveness’. Furthermore, approximately half of the offenders in the youth violence experiment were observed receiving forgiveness.<sup>31</sup> These observations were consistent with what victims reported. More than two-thirds (69%) of victims in the personal property experiment reported they were either indifferent or not forgiving of the offender since the conference. Also, more than half (54%) of victims in the youth violence experiment reported feeling ‘neither forgiving nor unforgiving’ (ie indifferent) or felt unforgiving towards the offenders since their conference.<sup>32</sup>

The SAJJ project, in contrast, 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 (eg offenders’ expressions of remorse and shame and positive movement between offender and victim) and procedural justice (eg perceptions that one has been treated fairly and with respect).<sup>33</sup>

Results from SAJJ highlight several shortcomings of the restorative ideal of youth justice conferencing. Daly notes, for example, that ‘there was positive movement, in the form of words spoken, between the victim and offender in a minority (34%) of conferences’.<sup>34</sup> Turning to the ‘core sequence’ of apology-forgiveness, she found that less than half of offenders (40%) apologised spontaneously to their victims. Nearly a third had to be urged to apologise and approximately another third offered no apology.

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<sup>27</sup> Hayes, above n 5.

<sup>28</sup> Strang et al, above n 23.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> K Daly, *SAJJ Technical Report No 2: Research Instruments in Year 2 (1999) and Background Notes* (School of Criminology and Criminal Justice, Griffith University, 2001).

<sup>34</sup> K Daly, ‘Mind the Gap: Restorative Justice in Theory and Practice’ in A von Hirsch et al (eds), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (2003) 219, 224.

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] apologised was because s/he really was sorry'.<sup>35</sup> *It is important to note that no comparative data on forgiveness is available from SAJJ, as the focus was more on victims' and offenders' abilities to develop, through restorative dialogue, mutual understandings of the other.* New data gathered for this project will focus squarely on the 'core sequence' of apology-forgiveness to learn the extent to which youth justice conferencing is currently achieving the restorative ideal for young offenders and victims.

## V THE NEED FOR RECONSIDERATION OF PRACTICE

The practice of youth justice conferencing in Queensland and elsewhere is structured around a set of guiding principles that focuses on the needs of young offenders, victims and supporters. These include providing a response to youthful offending that: 1) diverts offenders away from the formal juvenile justice system; 2) encourages young offenders to take responsibility for their behaviour; 3) provides victims with an opportunity to participate in a process of dealing with offences made against them; 4) encourages parents of young offenders to take responsibility for the care and supervision of their children; and 5) encourages the negotiation of constructive responses to youthful offending that will promote positive dialogues between those affected by the offending behaviour.

These principles are effective in guiding conferencing practices to ensure that all participants are treated fairly and respectfully. Indeed, results from key empirical research conducted in Australia and overseas convincingly demonstrate that the participants of restorative justice conferences judge the process as fairer than traditional adversarial responses to crime and that they are largely satisfied with the outcomes. However, to date, the full restorative potential of youth justice conferencing has not been realised. We argue this is because apology and forgiveness (necessary for reconciliation and the restoration of damaged relations) *do not* feature more prominently in restorative conferences, and this should raise serious questions about the restorative potential of youth justice conferences. To enhance the restorative potential of conferencing processes, we argue that there is a need for reconsideration of conferencing practices to assist young offenders in managing the delicate emotional transactions that necessarily occur in youth justice conferences in a manner that allows them to develop their ethical self-concepts in meaningful ways. While some observers and critics of restorative justice have theorised 'an ethics of restorative justice',<sup>36</sup> these have focused largely on the *concept* of restorative justice rather than its *practice*. None of this scholarship offers guidance for how to *do* restorative justice to achieve restoration. This is the primary task of this project.

One problem is that, while restorative justice in general, and youth justice conferencing in particular, are meant to be more just or 'transformative' alternatives to traditional courts, there is very little difference in the styles in which they are administered. The court system is set up to judge and punish or acquit as a way of governing deviant

<sup>35</sup> Daly, *SAJJ Technical Report No 2*, above n 33, 225.

<sup>36</sup> J Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press, 2002); G Pavlich, 'Towards an Ethics of Restorative Justice' in L Walgrave (ed), *Restorative Justice and the Law* (2002) 1.

individuals, while the youth justice conference has already judged and is also tasked to govern deviant individuals. Even the goals of restoration or reparation are aimed at governing young offenders in similar ways. The practices used in doing so may be different to those used in courts, but the outcome is essentially the same: young offenders are required to admit their guilt publically (ie admit to the offence as a condition of being referred to a conference), accept blame, and engage in some kind of recompense or sanction. In the case of the courts, the deviant youth is encouraged to repay the community by doing community service or by spending time in juvenile detention. In the case of the conference, he or she is required to restore the balance of justice by working for the victim, or writing a letter of apology, or by making a verbal apology. And while these penalties might not seem as harsh as those imposed by courts, they have the potential to shame and may be perceived as punishment. Even in those conferences that are regarded as 'successful' – in that the participants claim they are satisfied with the outcomes – the young offender has been subjected to governing practices meant to alter their behaviour in particular ways to reintegrate them back into 'normal' society. For example, coercing young offenders into apologising to victims works to increase resistance rather than to stymie it, in much the same manner as judging and sanctioning by courts. How these practices are restorative remains open to debate. Our research suggests that they are not restorative because the very practices that are meant to facilitate the development of an ethical identity in the young person, actually end up preventing that very process from occurring.

Our analysis draws on a post-structural framework,<sup>37</sup> which argues that individuals develop their ethical identity through practices adopted by the institutions of which they are a part - school, the family, church, and so on. The practices employ techniques that govern individuals' behaviours in ways that attempt to make them socially acceptable. It's important to note that the use of such practices and techniques is not necessarily a bad thing. Indeed, these practices and techniques have productive potential because they provide the individual with tools with which they can form their ethical identities. Practices reflect power relations, but these power relations are not something from which we need to be liberated in the sense that critical theorists argue. Power relations characterise all social relationships, regardless of who holds the power. Therefore, seeking to be liberated from dominating power relations only results in a reversal of the power or the establishment of a new power relation.

Individuals are capable of - and disposed to - resist power relations and their inherent practices and techniques, and it is this resistance that can provide the foundation for developing an ethical identity.<sup>38</sup> If individuals are to successfully engage in ethical work they need to be able to reflect critically on the practices and techniques being employed in their governance, with a view to choosing which practices and techniques best reflect their own identity. In this way, they are able to develop greater awareness of their own behaviours and beliefs and how they impact the world and society. Stifling individuals' ability to reflect critically and employ that critical reflection in the conduct of their lives prevents individuals from perceiving themselves as autonomous directors of their own destinies. This is not to say that the practice of conferencing as it currently stands isn't a positive alternative to the court system. Indeed, as we have stated above, research shows that it is. Similarly, power relations in themselves are not necessarily counterproductive

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<sup>37</sup> M Dean, *Critical and Effective Histories* (Routledge, 1994) 174ff.

<sup>38</sup> M Foucault, *The History of Sexuality* (Vintage Books, Volume 1, 1990) 95-6.

or repressive - they facilitate the development of productive citizens and institutions. Our point is that current conferencing practice often engages in techniques that not only work against restoration, but they govern young people in ways that negatively impact on their ability to engage in ethical work. For example, by being told (either directly or indirectly) to apologise, young offenders lose the ability to form their own ethical positions in terms of their behaviour. The 'being told' may take the form of a suggestion, a prompt, or even a look or unuttered expectation - either way, if the young offender takes their cue from the real or apparent expectations of the people in charge of their destiny, they are failing to engage in the kind of productive ethical work that is the goal of conferencing practice.

The following section reports on a qualitative study of the impact of such conferencing practices and how young offenders perceive the conferencing experience.

## VI ISSUES ARISING OUT OF CONFERENCING PRACTICE

In this section, we draw on some narrative data collected by H Hayes for a large Australian Research Council funded qualitative project on restorative justice and re-offending. The aim of that project was to learn how young offenders understand conference encounters. Here, we draw on selected narratives in an attempt to show how the practice of youth justice conferencing limits offenders' abilities to engage in ethical work due to perceived pressure from authorities to offer apologies to their victims.

In devising ways to structure the practice of youth justice conferencing around a more restorative framework, we argue that the core component of the conferencing process, the story-telling phase, can be fashioned to afford young offenders more adequately the opportunity to engage in self-reflection. That is, the story-telling phase could encourage young offenders to reflect critically on their own beliefs and values rather than simply accept the values/morals that are imposed by justice system officials. Our view is that current youth justice conferencing practice works against young offenders' engagement in such ethical work.

The selected narratives drawn upon for this project were gathered from 50 young offenders who attended a youth justice conference during 2005 and 2006. These offenders varied in age between 10 and 16 years. The majority were males and offences ranged from fare evasion to petty property offences (such as graffiti and vandalism) to more serious offences like assault. The interviews focused on what young offenders understood or took away from their conference experience. However, there was a deliberate emphasis in these interviews on how young offenders understood the emotional transactions that often mark the conference encounter. Specifically, we were interested in how young offenders understood the role of apology and how they perceived forgiveness offered by victims.

Our purpose for this project was to draw on some of these narratives for potential evidence of perceived *coerced remorse*. Below, we present excerpts from four interviews that illustrate the ways that some young offenders perceived the need to offer apologies to their victims. These passages suggest that some young offenders may offer apologies less out of a moral sense that it is the right thing to do, than out of a practical sense that they are obliged to do so. Some young offenders seem to believe that not offering their victims an apology could result in harsher outcomes for themselves.

## QLD CARE-RJR 007

Interviewer: How important was that for you that the victim accepted your apology - like what do you think would have happened if the victim wouldn't have accepted your apology?

Offender: 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.

Interviewer: So it would have affected where you had to go next?

Offender: Yeah, that's what I thought.

## QLD CARE-RJR 009

Interviewer: Alright. And, did you tell the victim you were sorry?

Offender: Yeah, I had to apologise.

Interviewer: You had to?

Offender: Oh, well, I felt like I had to.

Interviewer: Okay. Do you feel like you were pressured in to apologising?

Offender: Yeah.

Interviewer: Yeah, you were?

Offender: Like I felt like if I didn't say sorry they ...

Interviewer: Did you find another way to apologise to the other victims? Did you write a letter or do anything like that?

Offender: Yeah, I have to write ... I think I have to write a letter, I'm not ... I've got a month to do it all, to finish the agreement.

Interviewer: Alright. So you don't ... I guess when you send the letter you don't know if they accept it or not, do you?

Offender: Well, I don't really care. I don't reckon it's going to do nothing. I reckon they're just going to look at it and scrunch it up and throw it away.

Interviewer: So it's not going to have much of an impact?

Offender: No, I don't think.

## QLD CARE-RJR 020

Interviewer: So did you let the victim know you were sorry?

Offender: I kind of smiled when I said sorry. I didn't really mean it because I don't really like her.

Interviewer: So it sounds like you didn't really want to apologise?

Offender: Not really.

Interviewer: Do you feel like you were pressured to apologise?

Offender: He said 'Would you like to apologise to her', so it was kind of like, yeah, apologise.

Interviewer: Okay, so what do you think would have happened if you had said 'No I don't want to apologise.'?

Offender: I think I'll have a harsher consequence.

## QLD CARE-RJR 043

Interviewer: And were you sorry for what you did?

Offender: Yeah, I suppose yeah.

Interviewer: Suppose, what's the suppose bit?

Offender: Oh yeah, no it was bad.

Interviewer: But something else was going on that you want to say there, what else is it?

- Offender: They were saying it makes other people feel bad and it affects the community but no one knew.
- Interviewer: So what do you mean by that?
- Offender: Like the actual shop person would never have known, she was just reading a book and not taking any notice.
- Interviewer: So she wasn't actually aware that you'd actually taken something.
- Offender: Yeah, she wasn't aware.

## VII CONCLUSION

These few illustrations are representative of a range of responses from young offenders about how they perceive the conference experience. It is clear that, at least on some occasions, young offenders perceive being coerced - whether directly or indirectly - into apologising to the victims. There are three conclusions that arise out of these observations. First, coercing young people into apologising encourages them to respond insincerely and fails to allow them to respond to the conference experience in true faith. The fear of a negative outcome, such as having to go to court or some other sanction, has driven these young people to recognise that what they themselves feel and believe does not matter; what matters is that the conference convenor and the victim are satisfied with the offender's response. The perception is that not to offer an apology would lead to an unsatisfactory evaluation and possibly harsher consequences for the offender. Secondly, coercing an offender into apologising may reinforce the young offender's identity as a deviant youth. The young offender is already stigmatised by being charged and admitting guilt, becoming acutely aware of their deviance in the process. Coercing an apology may reinforce the view that the young offender has of himself as deviant because it suggests to him that what he believes and feels is wrong. If the young offender doesn't feel remorse, he or she may conclude that is because of some fault in themselves - they may believe that they *should* feel remorse, and if they do not, they may acknowledge that they are still deviant. If the goal of conferencing is restoration, then reinforcing deviance does not contribute to a successful outcome, regardless of whether the convenor or victim is 'satisfied'. Finally, coercing young offenders into apologising prevents them from engaging in the ethical work required to develop their ethical identity. Their lack of remorse is a resistance to the conferencing process, which may not have worked the way it was intended. Such resistance is the first step of critical self-reflection and, if encouraged, would assist the young person in developing their ethical identity. Blaming the young person, rather than the process itself, for failing to achieve restoration - as coercing an apology implies - rejects the young offender's resistance, effectively stymieing the process of critical self-reflection required in order for the young person to take responsibility and become ethically self-aware, while at the same time reinforcing the possibility of further future resistance leading to continued deviance.

We suggest that in a substantial number of cases, the conferencing process, as currently practiced, actually can work against restoration and repair. Systematic empirical research is needed to learn the degree to which this is the case. However, our preliminary assessment of several case narratives from young offenders in youth justice conferences suggests that the process of restorative justice needs to afford young offenders the opportunity to resist perceived pressure to offer apologies. By doing so young offenders are able to engage in critical self-reflection, which is necessary for the development of their ethical identities. Furthermore, when apologies are offered by

critically self-aware offenders, such apologies are more likely to be sincere and perceived as such by victims. It is this perception of sincere remorse is that is necessary for restoration and repair to be achieved.