

LOCATING THE COMMUNITY IN RESTORATIVE JUSTICE FOR YOUNG PEOPLE IN AUSTRALIA

Dr Kelly Richards, Lecturer, Faculty of Law, School of Justice, Queensland University of Technology, Brisbane

Abstract

The concept of the community is a key component of restorative justice theory and practice. In restorative justice scholarship, the community is constructed, alongside the victim and offender, as having a crucial role to play in responding to crimes in a restorative way. Indeed, it is often claimed that the perceived need for the community to be involved in responding to crime was a key rationale for the emergence of restorative practices around the world. Taking the emergence of youth justice conferencing – the most commonly-utilised restorative practice in Australia – as a case study, this article argues, however, that the idea of the community was peripheral to the emergence of restorative justice in Australia. The documentary analysis from which this article stems also found that while Indigenous young people are represented as belonging to communities, non-Indigenous young people are not – at least, not beyond their ‘community of care’. As such, this article raises concerns about the disproportionate responsabilisation of Indigenous young people, families and communities.

Keywords

Restorative justice; youth justice; history; community

Introduction

Much has been made about the importance of the community in restorative justice theory and practice, and the community is a central feature of global restorative justice discourse. Indeed, the terms 'restorative community justice' and 'community restorative justice' are sometimes used in place of, or alongside, the term 'restorative justice' (see e.g. Bazemore & Schiff, 2001; Eriksson, 2009; Gilbert & Settles, 2007). The community is constructed as central to the restorative justice enterprise in a number of key related ways. First, as Daly and Immarigeon's work (1998) demonstrates, restorative justice is often considered a manifestation or extension of the broader shift towards community justice or alternative dispute resolution. Daly and Immarigeon (1998:24) claim that one of the 'major...political challenges that ha[s] given shape and substance to restorative justice' is this shift towards community justice:

'During the mid- and late-1970s, the development of community justice boards and neighbourhood justice centers reflected a desire for greater "access to justice" characterized by more informal processes and greater citizen participation. These methods of conflict resolution (referred [to] also as alternative dispute resolution) reflected a growing disillusionment with adversarial fact-finding and adjudication according to legal principles. Emphasis was given to negotiation, exchange between disputants, and a less central role for legal professionals'.

A second closely related way in which the community is constructed as integral to restorative justice is the representation of the community as a key party in restorative justice practices alongside victims and offenders. Diagrammatic representations of restorative justice as involving these three primary parties are common in the restorative justice literature (see e.g. McCold & Wachtel, 2003; Smith, 2013; Wachtel, 2013; Zehr, 2002). Further, the mottos or mission statements of restorative justice agencies commonly reflect the view that victims, offenders and communities are the three key groups essential to restorative practices. The motto of the New South Wales Department of Corrective Services' Restorative Justice Unit, for example, is 'working with victims of crime, offenders and the community for reconciliation and healing' (New South Wales Department of Corrective Services, nd). The argument that individuals involved in conflicts (whether civil or criminal) ought to be involved in their resolution was epitomised by Nils Christie's (1977: 7, italics in original) influential article 'Conflicts as Property', which posited that 'conflicts represent a *potential for activity, for participation*. Modern criminal control systems represent one of the many cases of lost opportunities for involving citizens in tasks that are of immediate importance to them'.

Third, the community is represented as a key beneficiary of restorative justice. In the restorative justice literature, the community is constructed as being able to benefit from a shift from retributive to restorative measures not only via its increased participation in criminal justice processes (as discussed above), but from cost savings, reduced crime, and improved confidence in the criminal justice system (see e.g. McLaughlin et al., 2003; Roach, 2000).

After detailing the methodology of the research from which this article stems and providing a brief overview of youth justice conferencing in Australia, this article critically analyses these three constructions of the community in turn. It presents a number of interrelated findings in this regard: first, it contends that in contrast with many other restorative justice measures, the concept of the community – and the perceived need to involve the community in criminal justice processes - was not a strong driver of youth justice conferencing in Australia. Second, it argues that while Indigenous young people are represented as belonging to a community, this is rarely the case for non-Indigenous young people, who are typically not represented as belonging to any community beyond their ‘community of care’ (i.e. their family and known adults in positions of authority (see Braithwaite & Daly, 1994)). Third, it argues that to some extent, youth justice conferencing could be considered a reflection of the punitive turn in criminal justice. The article concludes by considering the implications of these findings.

Methodology

This article critically explores the discursive notion of the community in the context of the emergence of one particular manifestation of restorative justice – youth justice conferencing in Australia. It critically analyses documentary material to interrogate the primary key question: How was the community constructed in the emergence of youth justice conferencing in Australia? Using this key question as an overarching framework, this article considers the three predominant constructions of the community central to the restorative justice enterprise, as outlined above. The analysis asks:

- To what extent and in what ways was youth justice conferencing portrayed as a manifestation of the broader community justice movement?
- To what extent and in what ways was the community portrayed as a key party in youth justice conferencing alongside victims and offenders? and
- To what extent and in what ways was the community constructed as a key beneficiary of the introduction of youth justice conferencing?

The sample was comprised of publicly-available documents that relate to the emergence of youth justice conferencing in each of Australia’s jurisdictions. Following Jupp (1989) and Tuchman (1994), the sample was comprised predominantly of ‘primary’ or ‘prescriptive’ documents; in other words, documents that precipitate, enable or ‘come before’ the emergence of a program or practice, such as policy documents, legislation, parliamentary debates, and governmental papers, rather than those that follow, reflect on or ‘come after’ an emergence, such as program evaluations and media reports. The timeframe from which the documents were drawn therefore varies across jurisdictions, as youth justice conferencing was introduced at various times during the 1990s and 2000s across Australia’s jurisdictions (see Richards 2010 for an overview).

Building on a program of research on the history of restorative measures around the globe (see e.g. Richards 2011, 2009), this research is broadly Foucaultian in terms of its theoretical framework. It critically examines the emergence of restorative practices (in this case, youth justice conferencing in Australia) and is concerned primarily with the discourses that gave rise to them, rather than with their tangible effects. As such, this

article critically examines the community of legislators' and policy-makers' imaginations rather than being concerned with the impacts of youth justice conferencing on communities.

Youth justice conferencing in Australia

Youth justice conferencing operates under a legislative framework in all eight of Australia's jurisdictions (see Richards, 2010 for an overview). It is known by a variety of names, including youth justice conferencing (New South Wales, Queensland, and Northern Territory), community conferencing (Tasmania), restorative justice conferencing (Australian Capital Territory), group conferencing (Victoria), juvenile justice teams (Western Australia), family conferencing (Northern Territory and South Australia), victim offender conferencing (Northern Territory), and pre-sentence conferencing (Northern Territory). This article uses the terminology 'youth justice conferencing' to cover these practices.

Youth justice conferencing is utilised to varying degrees across Australia's jurisdictions, with as few as two percent of young people apprehended by police being referred to a conference in the Australian Capital Territory, and as many as 25 percent in the Northern Territory (Richards, 2010). Even *within* jurisdictions, youth justice conferencing is utilised to varying degrees across police Local Area Commands. A review of the youth justice system in New South Wales (Noetic Solutions, 2010: 57) found that '[while] there are a number of Local Area Commands in NSW that utilise conferencing quite heavily...the majority are under-utilising it'.

In all jurisdictions, youth justice conferencing is part of a suite of diversionary measures, and is available to young people who admit an offence. Young people are referred to youth justice conferences primarily by the police and courts, although under recent amendments to Queensland's legislation, courts can no longer refer young people to a conference. In Victoria, only the court can refer young people to a youth justice conference (see further Richards, 2010).

Most jurisdictions' legislation excludes very serious offences from being considered for a conference, although in Victoria, a young person can only be referred to a conference if the court is considering imposing a supervised youth justice order (i.e. a community- or detention-based order).

The research evidence about the efficacy of youth justice conferencing in Australia is mixed. While a number of early studies suggested that conferencing reduced reoffending, these studies were later criticised as having weak methodologies. Weatherburn and Macadam's (2013) review of the evidence on restorative measures for both adults and young people found little evidence to support the claim that youth justice conferencing reduces reoffending better than the traditional criminal justice process. Nonetheless, there is public support for youth justice conferencing (Weatherburn & Macadam, 2013) and it has been found to meet objectives other than reducing recidivism, such as including victims in the justice process (see Joudo Larsen, 2014).

Constructions of the community

This section critically analyses relevant documentary material to address the key question: How was the community constructed in the emergence of youth justice conferencing in Australia? It focuses in turn on the three sub-questions outlined above.

To what extent and in what ways was youth justice conferencing portrayed as a manifestation of the broader community justice movement?

As described above, in the global restorative justice discourse, restorative justice practices are often constructed as a manifestation of the shift towards community justice (see e.g. Daly & Immarigeon, 1998). An analysis of documentation relating to the emergence of youth justice conferencing in Australia, however, reveals little evidence of this construction of restorative justice. Few explicit references to youth justice conferencing as a reflection of community justice principles were found. Queensland's *Youth Justice Act 1992* states that one of the intended benefits of youth justice conferencing for the community is the 'increasing resolution of disputes within the community without government intervention or legal proceedings' (s. 30(4) (d) (iii)), clearly reflecting the principles of 'more informal processes...greater citizen participation....and a less central role for legal professionals' (Daly & Immarigeon, 1998: 24). Such a discourse is, however, rare in the documentary material analysed for this research.

Another manifestation of community justice principles uncovered by this research is the requirement that New South Wales' youth justice conferencing conveners must 'live and work in local communities' (<http://www.djj.nsw.gov.au/conferencing.htm>). This is somewhat indirect, but appears to reflect the community justice principles of increased citizen participation and decreased professional ownership over disputes.

Finally, the community was commonly represented as an abstract entity to which young people who participated in youth justice conferences would be reintegrated. New South Wales' Young Offenders Bill, for example, contained the principle that 'children who are alleged to have committed an offence should be dealt with in their communities in order to assist their reintegration and to sustain family and community ties'. Similarly, one of the objectives of Queensland's *Youth Justice Act 1992* is to 'recognise the importance of families of children and communities...in the provision of services designed to...reintegrate children who commit offences into the community' (s. 2(e)). While this is again indirect, it could be considered a manifestation, broadly speaking, of the principles of community justice, in that it encourages the increased participation of community members in responding to offending. As discussed further below however, in these representations, the community is not primarily constructed as an entity that should be *involved* in youth justice conferencing, but as an abstract entity that might play a vague and somewhat peripheral role.

To what extent and in what ways was the community portrayed as a key party in youth justice conferencing alongside victims and offenders?

Although there is a strong focus on the participation of offenders, victims and families in documents relating to the emergence of youth justice conferencing in Australia, there are few references to the involvement of a generic community. Indeed, while each

jurisdiction's legislation stipulates parties who *must* attend, and parties who *may* attend a youth justice conference (see Richards, 2010 for an overview), members of the community rarely feature in the legislation. While all jurisdictions' legislation empowers the conference convenor and/or the child and/or the child's family with the discretion to invite 'other' 'relevant', 'significant' and/or 'appropriate' people to a conference, the community is not represented in any more specific way, at least in relation to non-Indigenous young people. Queensland, Western Australia and Tasmania's legislation, however, provide for a member of 'the Aboriginal community' to participate in a youth justice conference where 'relevant' or 'appropriate'. As discussed further below, this reflects the way in which the community is predominantly imagined specifically in relation to Indigenous young people.

While members of a generic community may rarely be directly sought to participate in youth justice conferences, in some jurisdictions, the community is constructed in more general terms as an entity that should take greater responsibility for preventing and responding to youth offending. For example, one of the main objectives of Western Australia's *Young Offenders Act 1994* is:

- [T]o enhance and reinforce the roles of responsible adults, families, and communities in —
- (i) minimising the incidence of juvenile crime; and
 - (ii) punishing and managing young persons who have committed offences; and
 - (iii) rehabilitating young persons who have committed offences towards the goal of their becoming responsible citizens (s. 6(d)).

Section 4(f) of Tasmania's *Youth Justice Act 1997* uses almost identical language. This suggests that while often considered a progressive criminal justice measure, in some instances, the introduction of youth justice conferencing in Australia reflected the conservative shift towards greater responsabilisation of offenders, families and communities. In other words, it reflected the shift towards a mode of governance under which individuals, families and communities are increasingly responsible for preventing and responding to crime in place of the government (see Hinds & Grabosky 2010).

Further, while the community as a generic concept was not a key discursive feature of the emergence of youth justice conferencing in Australia, there was a strong emphasis on 'communities of care'. In Tasmania, for example, in addition to the young person, the young person's guardians and the victim, section 13 of the *Youth Justice Act 1997* stipulates that the following parties must be invited to a youth justice conference:

- (c) any relative of the youth who may, in the opinion of the officer, be able to participate usefully in the community conference; and
- (d) any other person who —
 - (i) has had a close association with the youth or has been counselling, advising or aiding the youth; and
 - (ii) in the opinion of the officer, may be able to participate usefully in the community conference.

Similarly, under South Australia's *Young Offenders Act 1993*, a conference convener must invite 'any relatives of the youth who may, in the opinion of the [referring police] officer, be able to participate usefully in the family conference; and any other person who has had a close association with the youth and may, in the opinion of the authorised officer, be able to participate usefully in the family conference' (s. 10(1)).

The generic concept of the community as it is imagined in global restorative justice discourse is very different from the 'communities of care' represented here. Perhaps most importantly, where 'communities of care' are to be involved in youth justice conferences in Australia, this is largely to influence the behaviour of the young person. As the above excerpts show, members of young people's 'communities of care' are to be invited to a youth justice conference to 'aid' or 'advise' the young person, and to participate 'usefully' in the conference. In short, they are not invited to participate for any perceived benefit that they themselves might obtain. This is in sharp contrast to constructions of the community in much restorative justice scholarship, which posit community involvement in restorative practices as benefiting the community through increased ownership over disputes, as discussed above.

In the main, young people other than Indigenous young people are not represented as belonging to a community outside their 'community of care'; only Indigenous young people are constructed as belonging to communities. For example, one of the 'best interests principles' that underpin Victoria's *Children, Youth and Families Act 2005* is 'the need, in relation to an Aboriginal child, to protect and promote his or her Aboriginal cultural and spiritual identity and development by, wherever possible, maintaining and building their connections to their Aboriginal family and community'. No such principle in the legislation relates to the communities of non-Indigenous young people. Similarly, one of the principles of the Northern Territory's *Youth Justice Act* is that 'if practicable, an Aboriginal youth should be dealt with in a way that involves the youth's community' (s. 4(o)). Again, no such principle in the legislation relates to non-Indigenous young people, although under section 84(2), a conference may include 'any of the victims of the offence the youth is charged with, *community representatives*, members of the youth's family or any other persons as the Court considers appropriate' [italics added].

Community is therefore represented as primarily relevant to Indigenous young people. As the then Attorney-General, Peter Toyne (2005: np; italics added) commented during the Second Reading Speech for the Northern Territory's Youth Justice Bill:

'What I would point out here is that by far the most powerful influence you can bring to bear on a young offender is family, through confronting the victim and acknowledging the harm that they have done to them through the community that they live in. *That particularly applies to young indigenous offenders*'.

This focus on the community of Indigenous young people resulted in legislative provisions for Indigenous Elders and other Indigenous representatives to be present at youth justice conferences in some jurisdictions. For example, in the only reference to community members outside of young people's families in his Second Reading Speech on South

Australia's Young Offenders Bill, the then Minister of Health, Family and Community Services, M.J. Evans (1993: 2851) stated that:

Another inherent advantage of the family conference is its ability to accommodate cultural diversity. A young Aboriginal offender, for example, will be able to invite members of his/her extended family, as well as other significant adults, including tribal elders [to the conference].

Under Queensland's *Youth Justice Act 1992*, a conference can include 'for an Aboriginal or Torres Strait Islander child who is from an Aboriginal or Torres Strait Islander community, a respected person of the community or a representative of a community justice group that may be in the community' (s. 34(1)(h)3)). Similarly, under Tasmania's *Youth Justice Act 1997*, if a young person is 'a member of an Aboriginal community', a conference facilitator must invite 'an Elder or other representative of that community' (s. 14(2) (c) (ii)), and under Western Australia's *Young Offenders Act 1994*, juvenile justice teams may include '[an] elder or other appropriate member of an approved Aboriginal community' (s. 37(1) (b)). New South Wales' *Young Offenders Act 1997* is less prescriptive, and states that 'If the conference convener is of the opinion that it is appropriate, the conference convener may invite...a respected member of the community, for the purpose of advising conference participants about relevant issues'. While this legislation does not specifically name Indigenous communities, it is reasonable to assume that Indigenous communities are among those that legislators imagined might require a member of the community to advise a conference about 'relevant issues'.

As discussed further below, while engaging Indigenous communities in crime reduction initiatives has been identified as good practice (Richards, Rosevear & Gilbert, 2011), it may also create the potential for these communities to become increasingly responsabilised for the offending behaviour of young people.

To what extent and in what ways was the community constructed as a key beneficiary of the introduction of youth justice conferencing?

As described above, in the restorative justice literature, the community is constructed as a key beneficiary of the introduction of restorative justice measures via increased opportunities to participate in criminal justice practices, as well as cost savings, reduced crime, and improved confidence in the criminal justice system. This preliminary research found that these were key rationales for the introduction of youth justice conferencing in Australia. Most prominently, the community was represented as an abstract entity able to benefit from youth justice conferencing via the increased protection from youth offending that conferencing would produce. The protection of the community was painted as the *raison d'être* for the introduction of youth justice conferencing in Australia's eight jurisdictions. For example, in his Second Reading Speech on South Australia's Young Offenders Bill, M.J. Evans (1993: 2850) stated that:

[T]he Young Offenders Bill redefines the philosophy on which the juvenile justice system is predicated. Under the current Children's Protection and Young Offenders Act, the primary emphasis is on the rehabilitative or welfare requirements of the child, while the need to protect the community

and to hold young people accountable for their criminal acts is taken into consideration only "where appropriate"....The Bill reverses this emphasis in order to ensure that the needs of victims and the community are given appropriate precedence...[and emphasises]...the need to protect the community and individual members of it against the violent or wrongful acts of the youth.

Similarly, the then Chief Minister of the ACT, John Stanhope (2004: 4081), remarked on the Crimes (Restorative Justice) Bill that '[the Bill] goes a long way towards addressing the oft repeated concern that the criminal justice system...has led to something of a crisis in confidence throughout the community'.

To note that youth justice conferencing was introduced partly due to concerns about protecting the community may seem trite, but this is an important point given that restorative justice measures are often considered to be highly progressive and at odds with the punitive turn (see e.g. Bazemore & Schiff, 2001; Bottoms, 2003; Cunneen, 1997; Pranis, 2004; Roche, 2003). The above discussion suggests, however, that in some instances at least, the introduction of youth justice conferencing in Australia was not at odds with, but part of, the punitive turn in youth justice. This was made most explicit in South Australia, where the introduction of youth justice conferencing occurred as part of sweeping changes designed to 'increase both the severity and range of penalties available at all levels of the [youth justice] system' (Evans, 1993: 2849). Rather than as an anomaly then, youth justice conferencing in Australia might best be understood as being premised on both progressive and punitive elements, as discussed further below. This is not to say that young people or families who participate in youth justice conferencing experience them as punitive or that youth justice conferences have punitive outcomes. Rather, it suggests that historically speaking, one of the diverse antecedents of restorative measures for young people was the perceived need for a more punitive response to youth offending.

The introduction of youth justice conferencing was also constructed as benefiting the community in ways beyond affording it greater protection. For example, the community would be able to benefit from the voluntary reparative work that young people would undertake as part of the outcome plans stemming from their conference. Then Member of the Legislative Assembly for the ACT, Bill Stefaniak (2004: 4073), for example, commented that the Crimes (Restorative Justice) Bill would enable youth justice conferences to develop 'work plan[s] that might benefit the community'. In fact, despite having the full title 'An Act to provide a process of restorative justice for victims, offenders and the community, and for other purposes', the only mention of the community in the ACT's *Crimes (Restorative Justice) Act 2004* is that a youth justice conferencing outcome plan (or 'restorative justice agreement') may include 'a work plan to be carried out by the offender for the benefit of the community or a part of the community' (s. 51(2)(d)).

Finally, while cost savings are rarely mentioned as a potential community benefit in other jurisdictions, Queensland's *Youth Justice Act 1992* notes that the community is to benefit from youth justice conferencing in a number of ways, including by 'less public cost from unnecessary involvement of the courts' criminal justice system' (s. 4(d)(2)).

Discussion

This preliminary research into constructions of the community in the emergence of youth justice conferencing in Australia has resulted in two key interrelated findings. This section discusses these findings and considers their implications.

First, in contrast with the dominant portrayal of restorative justice in the global literature, the community was not found to be a key feature of discourse relating to the emergence of youth justice conferencing in Australia. While this article has described a number of ways in which the community was constructed in relation to youth justice conferencing, these were found to be peripheral discourses. Overall, it was found that there is limited evidence of youth justice conferencing being constructed as an extension of the community justice movement, and that while victims and offenders were considered integral parties to youth justice conferencing, this was not the case for the community. This challenges the taken-for-granted restorative justice 'truth' that a shift towards engaging communities underpins the emergence of restorative practices. While this may be the case in other locations and/or in relation to other restorative practices, this research suggests that a perceived need to engage the community was not a key driver of youth justice conferencing across Australia's jurisdictions.

Second, and most significantly, the community was only found to be a key discursive feature in relation to Indigenous young people. In contrast to non-Indigenous young people, Indigenous young people were consistently portrayed as belonging to communities that ought to have some influence over, and involvement in, addressing youth offending. This was rarely the case for non-Indigenous young people.

These findings raise concerns about the potential responsibilisation of Indigenous communities. There is undoubtedly a greater need to improve the situation facing Indigenous communities in relation to youth justice issues, with Indigenous young people over-represented in the youth justice system in every jurisdiction (Australian Institute of Health and Welfare, 2013). Nonetheless, this singling out of Indigenous communities introduces the possibility that Indigenous communities may be disproportionately responsibilised for youth offending. If only Indigenous young people are seen as belonging to a community, then it stands to reason that these communities may be more often required to be actively engaged in preventing and responding to youth offending.

This shift towards holding communities responsible for young people's offending behaviour corresponds with broader shifts towards embracing a 'new right' or neo-classical philosophy of crime control, in which a move away from structural explanations of crime, and an increased focus on individual responsibility are paramount. Through youth justice conferencing, the state governs Indigenous youth offenders 'at a distance' (O'Malley, 1994; Rose, 1996) via the increasing responsibilisation of these communities. Importantly, while this may apply to communities across the board in some instances, it is concerning that in others, Indigenous communities are singled out.

Further, in general terms, this 'handing back' of responsibility to communities has often taken place without an equivalent increase in social support services for families and

communities (see e.g. Lee, 1995). Such a move clearly has the potential to impact disproportionately on low socioeconomic communities, Indigenous communities, and culturally and linguistically diverse communities. This was found to be the case in New Zealand, where, in a more explicit way, youth justice conferencing was introduced to empower the 'Māori community' to manage the offending of Māori young people (Serventy, 1996). Māori 'communities of care' were found to have been given increased responsibility for dealing with youth offending without a corresponding increase in social or financial support: 'On occasion services were provided within iwi [extended families]. This happened in the main without sufficient state funding' (Maxwell & Morris, 1993: 85) (see also Tauri & Morris, 2003). This clearly demonstrates the fine line between empowerment and responsabilisation of communities (see further Richards, 2011).

Conclusion

All of the above suggests that despite the overwhelmingly innocuous construction of the community in the restorative justice literature, the concept of the community and its role in restorative practices should be examined more closely. This research suggests that in contrast with the benign portrayal of community in much restorative justice literature, involving the community in restorative justice might not be as progressive a measure as it first appears. The centrality of the community might instead be considered a manifestation of neoliberal modes of governance, which emphasise the responsibility of (particular) communities for dealing with social problems – in this case, youth offending. This research therefore suggests that while restorative measures are often considered to be progressive, and have often enjoyed support from across the political spectrum (Nyp, 2004; Roach, 2000; Roche, 2004; Strang, 2000), some restorative practices may in fact reflect elements of the punitive turn. In some of its guises, youth justice conferencing in Australia was implemented with the aims of greater responsibility of offenders, families and communities, cost savings, increased individual responsibility, and more severe punishment. Thus in contrast to the prevailing view that restorative justice measures are something of an anomaly in an otherwise increasingly punitive criminal justice landscape (Bazemore & Schiff, 2001; Bottoms, 2003; Cunneen, 1997; Pranis, 2004; Roche, 2003), this research suggests that some restorative practices may, in some guises at least, reflect the punitive turn.

Finally, this research highlights the diverse antecedents of restorative justice measures around the globe. As the work of Pavlich (2005) and Richards (2009) has argued, while restorative justice proponents often portray restorative justice as monolithic, it emerged from highly divergent antecedents. This is important to note, as the representation of restorative justice as a unified phenomenon valorises restorative practices, and leaves little room for critical scholarship on this topic. This article therefore makes a preliminary contribution to the body of critical historical literature on restorative justice (e.g. Pavlich, 2005; Richards, 2009; Sylvester, 2003).

References

- Australian Institute of Health and Welfare. (2013) *Youth detention population in Australia*. Canberra: AIHW <http://www.aihw.gov.au/publication-detail/?id=60129545395>.
- Bazemore, G. and Schiff, M. (2001) (eds.), *Restorative Community Justice: Repairing Harm and Transforming Communities*. Cincinnati: Anderson Publishing Co.
- Bottoms, A. (2003) 'Some Sociological Reflections on Restorative Justice'. In A. Von Hirsch, J. Roberts, A. Bottoms, K. Roach and M. Schiff (eds.) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* Portland: Hart Publishing: 79-113.
- Braithwaite, J. and Daly, K. (1994) 'Masculinities, Violence and Communitarian Control'. In T. Newburn and E. Stanko (eds.) *Just Boys Doing Business? Men, Masculinities And Crime*. London: Routledge: 305-326.
- Christie, N. (1977) 'Conflicts As Property'. *British Journal Of Criminology*, 17(1), 1-15
- Cunneen, C. (1997) 'Community conferencing and the fiction of indigenous control'. *Australian And New Zealand Journal Of Criminology*, 30(3), 292-311.
- Daly, K. and Immarigeon, R. (1998) 'The Past, Present, And Future Of Restorative Justice: Some Critical Reflections'. *Contemporary Justice Review*, 1(Special Issue: The Phenomenon of Restorative Justice), 21-45.
- Eriksson, A. (2009) *Justice in transition: Community restorative justice in Northern Ireland*. Collompton: Willan Publishing.
- Evans, M. (1993) *Young Offenders Bill (Hansard)*. South Australia House of Assembly. Adelaide: 1 April.
- Gilbert, M. and Settles, T. (2007) The next step: Indigenous development of neighbourhood-restorative community justice. *Criminal Justice Review*, 32(1): 5-25.
- Hinds, L. And Grabosky, P. (2010) Responsibilisation revisited: From concept to attribution in crime control. *Security Journal*, 23(2): 95-113.
- Joudo Larsen, J. (2014) *Restorative justice in the Australian criminal justice system*. Canberra: Australian Institute of Criminology.
- Jupp, V. (1989) *Methods of Criminological Research*. London: Routledge.
- Lee, M. (1995) 'Pre-court diversion and youth justice'. In L. Noaks, M. Maguire and M. Levi (eds.) *Contemporary Issues In Criminology*. Cardiff: University Of Wales Press: IPPR 314-335.
- Maxwell, G. and Morris, A. (1993) *Family, Victims And Culture: Youth Justice In New Zealand*. Wellington: Social Policy Agency and Institute Of Criminology, Victoria University Of Wellington.
- McCold, P. and Wachtel. T. (2003) In pursuit of paradigm: A theory of restorative justice. Paper presented at the XIII World Congress of Criminology, 10-15 August 2003, Rio de Janeiro, Brazil.
http://www.iirp.edu/iirpWebsites/web/uploads/article_pdfs/paradigm.pdf.
- McLaughlin, E., Fergusson, R., Hughes, G. and Westmarland, L. (2003) 'Introduction: Justice in the Round - Contextualizing Restorative Justice'. In E. McLaughlin, R. Fergusson, G. Hughes and L. Westmarland (eds.), *Restorative Justice: Critical Issues*. London: Sage: 1-18.
- Noetic Solutions. (2010) *A strategic review of the New South Wales Juvenile Justice System*. Canberra: Noetic Solutions Pty Ltd
http://www.djj.nsw.gov.au/pdf_htm/publications/general/Juvenile%20Justice%20Review%20Report%20FINAL.pdf.

- New South Wales Department of Corrective Services. (nd) Victim-offender conferencing brochure. Sydney: New South Wales Department of Corrective Services
<http://www.correctiveservices.nsw.gov.au/information/restorative-justice>
- Nyp, G. (2004) *Pioneers of Peace: The History of Community Justice Initiatives in the Waterloo Region 1974-2004*. Kitchener: Pandora Press.
- O'Malley, P. (1994) 'Governing At A Distance'. *The International Journal Of Drug Policy*, 5(3), 136-141.
- Pavlich, G. (2005) *Governing Paradoxes of Restorative Justice*. London: Glasshouse Press.
- Pranis, K. (2004) 'The Practice and Efficacy of Restorative Justice'. *Journal of Religion & Spirituality in Social Work*, 23(1/2), 133-157.
- Richards, K. (2011) 'Restorative justice and 'empowerment': Producing and governing active subjects through 'empowering' restorative practices'. *Critical Criminology: An International Journal*, 19(2): 91-105.
- Richards, K. (2010) 'Police-referred restorative justice for juveniles in Australia'. *Trends & issues in crime and criminal justice* 398. Canberra: AIC.
- Richards, K. (2009) 'Rewriting and reclaiming history: An analysis of the emergence of restorative justice in Western criminal justice systems'. *International Journal of Restorative Justice*, 5(1): 104-128.
- Richards, K., Rosevear, L. and Gilbert R. (2011) *Indigenous Justice Clearinghouse Brief no. 10: Promising interventions for reducing Indigenous juvenile offending*. Sydney: NSW Department of Justice and Attorney-General.
- Roach, K. (2000) 'Changing punishment at the turn of the century: Restorative justice on the rise'. *Canadian Journal of Criminology*, 42(3), 249-280.
- Roche, D. (ed.) (2004) *Restorative Justice*. Aldershot: Ashgate Publishing Company.
- Roche, D. (2003) 'Gluttons for restorative justice'. *Economy and Society*, 32(4), 630-644.
- Rose, N. (1996) *Inventing Ourselves: Psychology, Power and Personhood*. Cambridge: Cambridge University Press.
- Serventy, N. (1996) *Between idea and reality: the development of conferencing in Australia*. Unpublished MA (Hons) thesis, University of Technology, Sydney, Sydney, New South Wales, Australia.
- Smith, C. (2013) 'Paula Cooper's second chance: The power of restorative justice'. *Sociology Lens* 18 June <http://thesocietypages.org/sociologylens/2013/06/18/paula-coopers-second-chance-the-power-of-restorative-justice/>.
- Stanhope, J. (2004) Crimes (Restorative Justice) Bill (Hansard). Legislative Assembly for the ACT. 24 August, Canberra.
- Stefaniak, B. (2004) Crimes (Restorative Justice) Bill (Hansard). Legislative Assembly for the ACT. 24 August, Canberra.
- Strang, H. (2000) 'The Future Of Restorative Justice'. In D. Chappell and P. Wilson (eds.) *Crime and the Criminal Justice System in Australia: 2000 and Beyond*. Sydney, Australia: Butterworths: 22-33.
- Sylvester, D. (2003) 'Myth in Restorative Justice History'. *Utah Law Review*, 1(1), 471-522.
- Tauri, J., and Morris, A. (2003) 'Re-forming Justice: The Potential of Maori Processes'. In E. McLaughlin, R. Fergusson, G. Hughes and L. Westmarland (eds.) *Restorative Justice: Critical Issues*. London: Sage Publications Ltd: 44-53.
- Toyne, P. (2005) Youth Justice Bill (Hansard). Legislative Assembly of the Northern Territory. 24 August, Darwin.

- Tuchman, G. (1994) Historical Social Science: Methodologies, Methods, and Meanings. In N. Denzin and Y. Lincoln (eds.) *Handbook Of Qualitative Research*. Thousand Oaks: Sage Publications: 306-323.
- Wachtel, T. (2013) 'Defining restorative'. <http://www.iirp.edu/pdf/Defining-Restorative.pdf>.
- Weatherburn, D. and Macadam, M. (2013) A review of restorative justice responses to offending. *Evidence Base*, 1(1): 1-20.
- Zehr, H. (2002) *The Little Book Of Restorative Justice*. Intercourse: Good Books.