

**Meredith Rossner and Jasmine Bruce**  
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# **Trajectories and typologies of pre-sentence restorative justice rituals**

**Meredith Rossner, London School of Economics  
Jasmine Bruce, University of New South Wales**

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## **Abstract**

Enthusiasm for restorative justice has seen the mainstreaming of conferencing in criminal justice systems around the world. This raises concerns over how integration into criminal justice will impact conference dynamics. This article presents new findings from a study of conferencing at the pre-sentencing stage for adult offenders. Documenting the interactional dynamics reveals the emotional trajectories that conferences take, and the factors that shape conference outcomes. Our results show what restorative justice is capable of achieving as well as the tensions that arise when it is integrated within conventional criminal justice. We offer a refined vision of what success can mean in restorative justice at the pre-sentence stage.

## **Key words**

**Restorative justice; conferencing; justice rituals; pre-sentencing programmes.**

Word Count: 8,155 words

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## **Introduction: restorative justice and criminal justice**

Early advocates of restorative justice conceived of it as a radical alternative for resolving conflict (Zehr, 1990), with differences in philosophy, method, and practice from traditional criminal justice. Practitioners and scholars wrote with revolutionary fervor about the potential to provide healing and fairness for offenders, victims and communities (Bazemore and Umbreit, 1994; Galaway and Hudson, 1990). As it grew in popularity, scholarship shifted to consider whether restorative justice was compatible with the goals of contemporary criminal justice (Von Hirsch et al., 2003; Aertsen et al., 2006). As these arguments continue, (see Armstrong, 2014; Daly, 2012), practices are eclipsing the normative debates with restorative justice programmes integrating into criminal justice (Rossner, 2017).

In many jurisdictions restorative justice was initially offered as part of a diversionary approach to juvenile offending with police cautions and conferencing (Richards, 2010; Maxwell, 2007). Trends in Australia and New Zealand show the emergence of restorative justice practices within adult criminal justice systems at both the pre and post sentencing stages (see Bruce et al., 2012; Halsey et al., 2015). Similarly, the UK Ministry of Justice is promising restorative justice to victims of crime (in juvenile and adult cases) at any stage in the criminal justice system (Ministry of Justice, 2014), and information about restorative justice for all victims (Ministry of Justice 2015, Shapland et al. 2017). Restorative justice has moved from

the 'margin to the mainstream' (London, 2011) as it is increasingly incorporated into the sentencing process. For instance, the New Zealand 2002 Sentencing Act recognizes restorative justice as an option for adult offenders (McElrea, 2007), it has been a component of the Northern Irish system since the early 2000s (O'Mahony and Campbell, 2006), and England and Wales has recently implemented a pre-sentence pilot programmes (Wigzell and Hough, 2015).

The placement of restorative justice within the criminal justice toolkit can present a challenge to fundamental principles (Zernova, 2007). Core elements include informality, a process driven by lay people, with an emphasis on democratic participation, yet when set against the backdrop of a court hearing at the pre-sentence stage, the process can take on a more formal, professional, and potentially coercive tone (Shapland et al., 2006). The normative assumptions that participants have about what a criminal justice encounter is 'supposed' to be like (Shapland et al., 2006), can impact the ritual and emotional dynamics of a conference, particularly when discussing outcomes. This is a challenge to the mainstreaming of restorative justice, as the potential for a powerful ritual of redemption and restoration is one of its key strengths (Maruna 2011; Rossner 2013).

This article explores the dynamics that develop when restorative justice rituals are situated within a sentencing regime. Using data from an Australian study of pre-sentence restorative justice conferences, we demonstrate ways that participants can effectively resolve conflict, antagonize, or even bore each other, sometimes in the same encounter. We identify tensions that arise when restorative

justice is practiced within the structure of a judicial sentencing process, and also suggest ways to avoid or manage some of these tensions.

### **Successful restorative justice rituals**

There is ongoing debate about what it means to achieve restorative justice. Some argue that the process should be judged on a continuum from less restorative to fully restorative (McCold and Wachtel, 2003). Others question whether relationships can be restored in the urbanised, anomic conditions of late modernity (Johnston, 2011). Daly (2002) suggests that 'fairness' may be easier to achieve than 'restorativeness,' especially where restorative justice is used routinely and case selection criteria is broad. The attainment of 'restorativeness' may be setting expectations too high. Some worry less about 'restorative' outcomes and focus on the symbolic value of lay participants playing an active part in criminal justice decision making (Braithwaite, 2002a; Olson and Dzur, 2004).

Restorative justice is often praised for its storytelling potential (Miller, 2011). This can achieve: (1) the development of a collective narrative of what happened and how everybody was affected and (2) a ritual coming together through shared experience, marked by the subtle emergence of consensus and solidarity. Previous research has documented the conference as a justice ritual which traces moments of solidarity throughout the encounter (Rossner 2011). In this article, we make a further distinction between conferences that shift towards consensus or further divergence. This is consistent with a framework which approaches a conference as a justice ritual where participants can share a mutual focus, develop a

rhythm to their talk and body, and express sentiments indicating a growing solidarity, such as goodwill, generosity, openness, remorse and forgiveness.

Against the backdrop of mainstreaming restorative justice and an understanding of conferencing as a ritual encounter, we investigate the emotional trajectories of conferences. We present a typology of conference dynamics that explores the interplay between situational elements of the interaction and structural elements of the restorative programme. We suggest that certain trajectories and typologies are likely to increase as restorative justice is mainstreamed into courts at the pre-sentence stage.

### **About the study**

This analysis is based on findings from an in-depth Australian study of conferences between victims and offenders whose matters were being dealt with in the local courts.<sup>1</sup> Upon a guilty plea or verdict, adult offenders were referred to local court-based restorative justice teams by the Magistrate. After a suitability assessment, cases were remanded so a conference could be held prior to sentencing. Conferences usually included offenders, victims, family, friends, the arresting police officer, and community representatives, and would last for approximately two and a half hours. A summary of the conference and a copy of the outcome plan were provided to the magistrate at sentencing.

Data was collected over a six month period, and included observations, interviews, and analysis of administrative data. At the centre of our research are 34

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<sup>1</sup> The research took place between 2011-2013 and was approved by University of Western Sydney Research Ethics committee, registration number H9232.

in-depth case studies. We identified cases that reflect a range of different offences, offenders, and locations across the state.<sup>2</sup> In all of these cases we reviewed case files, conducted conference observations and interviews. Facilitators were interviewed after the conference, where we discussed the highlights and lowlights of the conference.<sup>3</sup> In a sample of cases, we interviewed the offender, victim, police, or other participants.<sup>4</sup> After the sentencing hearing we conducted follow up interviews with the programme administrator about the case.<sup>5</sup>

In this research, we seek to foreground the encounter as the unit of analysis (Goffman, 1961), focusing on group dynamics, participant emotions, and the way ritual develops. We characterize conferences as dynamic events, rather than static entities that can be characterized as ‘successful’ or ‘unsuccessful.’ Emotional dynamics unfold over time: participants engage and then become distant, moments of tension were followed by moments of cohesion, and agendas would converge and

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<sup>2</sup> Cases were sampled from seven of the 13 offices across the state. Most of our case studies were in metropolitan areas (28 cases). We made specific research trips to regional areas and conducted six case studies there. We relied on programme staff to refer cases.

<sup>3</sup> One benefit of interviewing facilitators immediately following a conference was dissecting the dynamics from two vantage points. We were situated outside the circle so that we had a good view of the facilitator and surrounding participants, but a poorer view of the participants on the other side. The facilitator was able to clearly see the participants directly in front of them but had only an indirect view of the people flanking them. Interviews with facilitators had a dialogic quality, with the interviewer and the facilitator contributing to sense-making. A similar methodology was adopted by Halsey et al. (2015), who used two observers for each conference.

<sup>4</sup> While in this article we largely rely on our observations and interviews with facilitators of the 34 cases, we also conducted 40 interviews with participants, including twelve offenders and offender supporters, thirteen victims, victim representatives and victim supporters, five police officers, six community members, and four observing programme administrators.

<sup>5</sup> Prior to the case studies, we conducted 24 scoping interviews with stakeholders – programme staff, police, lawyers, community representatives, and magistrates about their view on restorative justice. We supplemented this with a ‘case census’ analysis of the administrative data for all conferences taking place across the sites in our study over a six-month period (203 cases), including the distribution of offences, participants, locations, and outcome agreement items. In this paper we focus on the 34 case studies.

diverge. Our coding system paid close attention to trajectories that develop early in the conference,<sup>6</sup> focusing on how participants developed a cohesive story of what happened and how people were affected. Did participants collaborate on a collective narrative? Was it marked by consensus or divergence? We followed these early trajectories into the later stages of the conference to gauge whether the growing consensus or divergence waxed or waned. The backdrop of the offender's sentence played a role in how these trajectories played out. The following sections explore the dynamic nature of restorative justice emotions and interactions.

### **Early trajectories of a conference: consensus and divergence**

In a conference, like other justice interactions (Ewick and Silbey, 1995), participants work together to develop a shared story of the incident and its aftermath. The elements of this story follow a standard script common amongst restorative justice programmes. This script aims to develop a narrative of (1) what happened, (2) how the participants were affected, and (3) steps the offender can take to repair the harm. In stage 1 and 2, there are two main narratives that participants explore. The first is a narrative of *accountability* where the offender is supposed to show contrition and to be honest, willing, and sincere in their desire to acknowledge their role in the offense (See Roche 2003, O'Mahoney and Doak 2017). The second narrative encourages the victim and other participants to *articulate the harm* of the offense in order to gain an understanding of the full impact of the

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<sup>6</sup> Our coding frame was an emergent and iterative process. It focused on ritual and interpersonal dynamics of the conference - we did not design pre-set categories or codes. The themes presented in this paper are a result of preliminary coding and then more focused re-coding of each conference stage by the two authors and a research assistant.



offense. These two stories, of accountability and harm, develop along side each other as the conference progresses, intertwining and deviating at different points. Depending on how these stories are presented, negotiated, and perceived, conferences will quickly develop along a trajectory of consensus or divergence. These trajectories are substantive in that participants agree or disagree about what happened. They are also symbolic in that the elements of a successful ritual develop or stall, such as rhythmic coordination and synchronisation of bodies and voices, a mutual focus of attention, and a shared mood (Rossner, 2013).

In conferences marked by consensus there was an agreement about the intertwining narratives of accountability and harm. All participants agreed for the most part on the events as set out in the police fact sheet. There was also a ritual element to these trajectories. When they reached consensus, a new level of shared understanding and solidarity amongst participants emerged (Rossner, 2013), akin to what Daly (2002) refers to as the 'restorative' element of a conference. This allowed for a sense of cohesion and goodwill to develop amongst the group. On the other hand, the conferences that developed along a divergent trajectory often contained disputed facts, inconsistent or disbelieved narratives of accountability and harm, and interactional dynamics indicating increasing alienation, such as shouting, talking over each other, and physical disengagement. Participants displayed emotions such as frustration, impatience, and anger. In the next section, we show how narratives of accountability and narratives of harm emerge to support trajectories of consensus and divergence.

### *Narratives of accountability*

The development of a narrative of accountability is largely the responsibility of the offender, though other participants often contribute. Offenders must admit in preparatory interviews with facilitators that they accept responsibility for the offense and are prepared to give a full and detailed account of what happened. The early stages of the conference are designed to hold the offender accountable, beginning from the moment the conference opens, when the facilitator turns to the offender and asks, 'Can you tell us what happened?'

In some cases, the offender took responsibility from the beginning and gave a detailed account, with little prompting from the facilitator. However, some offenders found it hard to elaborate. This may have been due to embarrassment, anxiety, or poor language or communication skills (see Halsey et al., 2015; Hayes and Snow, 2013). At times it appeared to other participants that offenders have not accepted responsibility. On some occasions, other participants questioned the offender or sought clarifications. Most facilitators preferred this, as it shifted the conversation away from a scripted question and answer format between the facilitator and offender into a direct communication between the conference participants.

Offenders navigate a fine balance between providing an account and making an excuse, which sometimes proved treacherous (see Halsey et al. 2015). Conferences often allowed for an offender to acknowledge any drug or alcohol problems that contributed to his or her offending. In one case, the offender's recounted that his desire for money was to fuel his drug habit. The victim interrupted his story to express her disbelief that burglary was the only option. A

drug and alcohol worker attending as a community representative, interjected. She said to the victim,

Community Representative: Can I answer your question? I work at the clinic where [the offender] is. Addiction takes over your ... it's that in-the-moment, 'I need the money for drugs', a total lack of concern for common sense, for other people's property.

Offender: But that's no excuse either, you know?

Community Representative: No.

Offender: That's the reason, it's no excuse for what I've done though.

Community Representative: No, and sorry if I made that sound defensive.

The community representative's interjection risked turning the offender's narrative of accountability into one of excuse or neutralization. He quickly shut this down, distinguishing between a reason for the offense and an excuse. This demonstrates the tricky balance involved in the early stages of a conference: between drawing out a narrative of accountability and acknowledging personal circumstances while not absolving the offender's responsibility. When the balance is struck, it can provide the context for the formation of ritual solidarity and cohesion amongst the group.<sup>7</sup>

Narratives of accountability can be disrupted by an offender's family member. We observed this in cases where a sibling or parent aggressively defends their relative. A facilitator described this as the family 'letting them off the hook'. In one conference, a young man pleading guilty to assault attended with his two older

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<sup>7</sup> Community representatives can play a particularly important role in helping to develop such a narrative, particularly when they have professional experience relevant to the offender's needs. For more on the role of community members in restorative justice see Rossner and Bruce (2016) and Crawford and Newburn 2002.

sisters and mother. They repeatedly referred to his anger management issues, painting him as a helpless victim of his emotions and endorphins, effectively preventing the offender from actively taking responsibility, leading to division.

### *Narratives of harm*

Developing alongside accountability is a narrative of harm. There is a long-standing debate over who should attend a conference. Some approaches limit the process to offenders and direct personal victims,<sup>8</sup> whereas others invite a surrogate victim or representative if the primary victim does not wish to participate. The programme that we studied included a broad definition of victim including personal and corporate victims. In cases where the primary victim declined involvement, representatives from victim's organisations may attend.<sup>9</sup>

We consistently observed ritual dynamics develop along a trajectory of consensus when a direct personal victim articulated the harm in a sincere way. For example, when a male victim of assault described the enduring pain and difficulty eating and speaking due to a broken jaw, or a female victim of theft described how this offence triggered previous experiences of victimisation, all the participants were drawn into the encounter. This was observed in their bodily and linguistic

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<sup>8</sup> In many jurisdictions around the world (i.e. continental Europe) the dominant model of restorative justice is victim-offender mediation. North American, British, and Antipodean programmes tended towards a wider circle, based on family group conferences developed in New Zealand where families, close friends, and community members. When a victim is unable or unwilling to attend, a surrogate victim or victim representative may be invited in their place. See Braithwaite, 2002(b) and Galway and Hudson, 1996.

<sup>9</sup> Of the 34 cases we observed, 22 of them (65%) had at least one victim present (of those we coded 16 cases with at least one personal victim present and 8 cases with at least one corporate victim present). 10 cases had a victim representative, and two did not have a victim or a victim representative present.

cues- they would lean forward, nod, make eye contact, and smile. These are all signs of a solidarity-building interaction ritual (Collins, 2004, Rossner and Meher, 2014).

At this point the two narratives of accountability and harm often intersect. Upon hearing from a victim, reticent offenders or protective supporters may open up and accept further responsibility. Offenders, supporters, police, and community members can acknowledge and legitimize a victim's harm. When this happens, and a narrative of harm becomes the focus of attention, participants are on a trajectory towards consensus.

These descriptions of harm from direct personal victims were different to more abstract and general descriptions of harm. When a direct victim chooses not to attend, our observations suggest that victim representatives are most effective when they read a letter or statement from the direct victim, or refer to the specific harm this victim experienced. For example, in one case, the victim representative was a close friend of the direct victim, she was able to relay her discussion with the victim. This was in contrast to instances when victim representatives discussed the general harm of crime. This occurred more often when the victim representative was from a victims' organization, and did not have a direct connection to the offense.

Corporate victims also commonly stuck to a 'safe zone' of generalized description, for instance describing insurance costs rising or prices increasing to account for shoplifting. When corporate victims, such as store detectives or managers, go to great pains to deny they were personally harmed, this can also

prevent a narrative of harm from fully developing.<sup>10</sup> Based on our observations, victims and victim representatives who speak in generalities about harm without providing details relevant to the specific case present a real challenge to the development of such a narrative.

Facilitators asked police officers how they have been affected but they were often reluctant to reveal much, instead describing the amount of paperwork generated. This can work to the detriment of group solidarity. Indicators of this included participants rolling their eyes, responding aggressively to police that paperwork is part of their job, or glossing over this point. When police did engage at a personal level, however, this seemed to strike a chord with conference participants. In one case a female police officer acknowledged that she doesn't tell her spouse about the daily dangers that she faces because she doesn't want to upset him. In another case, a police officer discussed his personal experience with meditation as a tool to deal with the stress and anxiety, encouraging the offender to pursue such practices.

### *Balancing under and over dramatization*

The facilitators in our study spent significant time preparing participants for the encounter, often posing a series of questions that allows participants to 'rehearse' the story that they will tell in the conference (Bruce, 2013; Dignan et al., 2007). Even with this level of preparation, narratives develop in unexpected ways

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<sup>10</sup> See Dignan (2004) and O'Mahoney and Doak (2017) for a discussion around different types of victims.

during the conference encounter. The two biggest challenges to a trajectory of consensus were participants either under or over dramatizing harm.

In some cases, victims were reluctant to discuss their harm. This may have been because they were anxious, unsure, or did not want the offender to know the difficulties they had been experiencing. It can be challenging for facilitators to strike a balance between respecting victim's privacy and encouraging a full story that appropriately explores the impact of an offence. We observed this with young male victims of assault, who displayed a pattern of underplaying their physical and emotional harm. It was common to hear 'it wasn't such a big deal' or 'I haven't really been affected by it.' Sometimes, this was true and victims really did not feel upset or harmed. Other times, further probing revealed a variety of consequences for them and their loved ones. For instance, a conference with a twenty-year old pizza delivery worker who was assaulted delivering a pizza to a drunk and angry customer. He was adamant that he has not been harmed in this incident. However, when questioned further by the facilitator and other participants, he revealed stress and anxiety due to his younger brother having nightmares about being attacked.

There were also instances of overdramatizing harm. Not every crime has a direct victim, and not every person identified as a victim considers themselves to have been seriously impacted. In such cases, a lot of time and effort has been put into assembling this group for a somewhat trivial incident. In these cases, we commonly observed the use of hyperbole to describe the potential impact of an

offence, despite the victim considering the impact to be minimal.<sup>11</sup> In a case where a young man sped through a police check point, the officer directing traffic (attending as a victim) shouted out numerous times during the conference 'you coulda killed me!' trying to emphasise the seriousness of the offence. As the story developed we learn that the offender passed the police at a safe distance, he did not have any alcohol in his system, and he was speeding due to an emergency (corroborated by others). This does not mean that he is any less culpable for the offence, but most of the participants had trouble accepting that he had harmed the police officer. At different points during the conference, the officer and his colleagues (attending as supporters) appeared to be searching for things to say. Attempting to force the standard narrative structure of a restorative justice conference onto an offence such as this could fall flat, and may be an inappropriate use of the process.

In summary, our research shows distinct moments in the early stages of a conference where certain emotional trajectories develop. Trajectories form in response to the overlapping narratives of accountability and harm. In conferences marked by consensus, participants collaboratively produce these narratives, with little dispute. This is most likely to occur when the offender and victims can clearly articulate responsibility and harm in a way that is acknowledged and legitimized by the other participants. Threats to the development of these stories include inarticulate offenders, offenders who dispute the facts, corporate victims or victim

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<sup>11</sup> We are not suggesting that there may not be significant harm in cases that are 'less serious' on paper. Seemingly minor offences can cause significant trauma for a range of personal, emotional, and historical reasons. Scholars have previously documented instances where victims of 'trivial' offences have endured a lasting impact, and a restorative justice conference has helped them to deal with this (Rossner, 2013).



representatives who talk in generalities rather than specific harm, and the under or over dramatization of the harm. This is detailed in figure 1.

**Figure 1. Trajectories of Consensus or Divergence**

<b>Consensus</b>	<b>Divergence</b>
Offender clearly describe the incident, acknowledging their role.	Offender is unable to describe events in a logical and consistent narrative format, either due to anxiety, poor communication skills, poor memory, or lack of remorse.
Offender expresses remorse and actively takes responsibility.	Offender is not explicit in expression of remorse.
Other participants, particularly offender supporters, condemn the offender's actions while at the same time allowing for complexities in the narrative to be raised and discusses.	Other participants, particularly offender supporters, aggressively defend or make excuses for the offender's actions, or do not allow him/her to take responsibility.
The victim, or a participant who directly represents them, is able to articulate the harm caused by the incident.	The victim does not express specific harm, or the participants understate or overstate the harm.
The harm is acknowledged by all present.	

We characterize these dynamics as trajectories because they are flexible. They can continue or be diverted as a conference progresses. The next section will explore the paths trajectories can take in the final stages of a conference.

### **Emerging typologies of conference dynamics**

In the final stage of a conference, the facilitator guides participants away from symbolic reparation towards instrumental negotiation over outcomes. Participants are invited to produce a 'workable' outcome agreement that fits within sentencing and legislative regimes. This agreement goes back to the sentencing magistrate and is required to detail specific actions that the offender has agreed to undertake. While there is some encouragement of creative and unique outcomes that are meaningful to the offender and their circumstances, often plans take a

similar shape with the offender agreeing to voluntary work, drug treatment, or counseling.

This marks a shift in the temporal arrangements of the conference. Participants move away from a narrative of 'passive' responsibility towards a future-orientated one, where offenders are encouraged to actively take responsibility for future actions (Crawford, 2015). There is also a shift in the emotional tone of the conference, with the participants getting down to business. The development of a future-focused narrative that is constrained by participants expectations of what a magistrate will find acceptable influences the direction of the ritual. Early trajectories may continue to build or may be diverted in a new direction. Drawing on our observations and interviews, we identified five broad typologies of conference dynamics. These are: mythical, civil, drained, salvaged or divisive typologies (see figure 2). Both the structural constraints set by the programme and the ritual developments of previous trajectories contribute to these typologies.

### *Mythical conferences*

When facilitators and other stakeholders were asked to give an example of a successful conference, a few specific stories came up repeatedly. In these conferences, there may be an initial struggle- anxious victims, hesitant offenders, last minute operational hurdles- but the participants work together to develop a shared story of accountability and harm, commonly resulting in the 'core sequence' of symbolic reparation and forgiveness described by Retzinger and Scheff (1996).

This momentum extends through the final stage marked by goodwill, shared understanding, teamwork, and uplifting agreement rich in symbol. These are 'mythical true stories' (Daly, 2002) that take on legendary status, affirming restorative values and renewing a sense of commitment to the process.

Practitioners told and retold these mythical stories to us and each other. The circulation of these stories helped to maintain the enthusiasm and dedication needed for this type of work.

For participants and practitioners, *mythical* conferences provide a charge of what Collins calls emotional energy (2004), a sense of elation and commitment that comes from a successful interaction ritual. Participants report such conferences as emotionally transformative events and revel in the participatory nature of the encounter (Rossner 2013).

In our study, eight out of thirty-four cases fit this model. Of those, seven out of eight included a direct personal victim, suggesting that conferences with victims present may be more likely take on mythical status. All the cases in this category also involved higher stakes – regarding the nature of the offence or relating to the offender's personal life. This is consistent with other research that suggests that restorative justice may be most effective with more serious cases (Sherman and Strang, 2007; Rossner, 2013). For the most part, participants contributed to the discussion of accountability and harm without inhibition. When disagreements arose they reached a resolution before moving on. Participants seldom over-dramatized the harm, dealt in clichés or dominated.

### *Civil conferences*

While mythical conferences are the ideal, in practice a more mundane event is common. This has been noted by other scholars: Retzinger and Scheff (1996) argue the 'core sequence' in restorative justice is vital but rare; and Daly (2002) reminds us that truly transformative conferences remain the exception. We call these *civil* conferences. They are marked by a respectful dynamic where participants are amicable and quickly agree on outcomes. Consensus is achieved early on and continues, but there is little sign of emotional transformation or meaningful connection between parties.

Thirteen out of thirty four conferences we observed fit this typology. In seven out of these thirteen, the offence did not involve a direct victim. Often the offender had serious drug, alcohol, or other problems that might inspire sympathy from the other participants. In some, offenders are amenable from the beginning, quick to apologize and agree to whatever is asked of them. In others, participants may be complacent or slightly disengaged, unable or unwilling to intervene if they disagree. In interviews, some participants, particularly corporate victims, reported that they did not believe the offender, but did not challenge the offender's account.

An example of a civil conference involves a 34-year old drug addicted woman, who befriended and then stole from an elderly man with Alzheimer's. With the victim too ill to attend, representative from a victims' advocacy organization attended in her place. The offender's brother and arresting officer also participated. The offender was contrite from the beginning, and cried numerous times. A dialogue centred on the offender's drug history and plans for rehabilitation, focusing on the

offender's responsibility for her drug use rather than for her offense, muting the harm to the victim. While a narrative developed that is largely focused on harms experienced by the offender, the facilitator reported that the best thing about the conference was that it was 'a lot of dialogue, which was good. Like we got the story out.' There is group participation and storytelling but not a sense of solidarity and emotional energy.

How can we interpret these conferences? They reach a resolution that everyone agrees with. No one is threatening or dominating. The offender usually apologizes and this is usually accepted. On the other hand, ambiguities or inconsistencies may remain unexplored. These conferences may be rich in substantive elements of the conference- there is a chance for storytelling, participation, and dialogue. But the symbolic and ritual elements are weak. Is this a reasonable goal for restorative justice? Some would argue that such encounters fail to achieve restorative ideals. Are such encounters a natural outcome of a mainstreamed approach with a wide net?

### *Drained conferences*

In both mythical and civil conferences, all stages of the interaction can be characterized by consensus. In others, the positive trajectory loses momentum as participants haggle over the outcome plan, becoming bored and restless, shifting in tone from emotional restoration to tedious negotiation. Participants spend considerable time debating whether the plan reflects 'what a sentence should look like,' often deferring to what they imagine would satisfy a magistrate. It is tiring and

goodwill soon evaporates. We call these *drained* conferences.

Four out of thirty four conferences in our cases study fit this typology. These conferences are a challenge to the successful implementation of restorative justice at the pre-sentence stage. Even though there was consensus, and perhaps symbolic reparation and expressions of forgiveness, this is not seen as 'enough' to go before a magistrate. Participants often desired a simple and straightforward plan, such as counseling and voluntary work for the offender. They were reluctant to provide details, preferring to defer to a professional to assess the appropriate amount or type of counseling or volunteer work. Facilitators encouraged such detail in the plan, as a way to help the magistrate and signal the thoroughness of the process. This can result in long discussions, by lay people, over the correct number of therapy sessions or appropriate amount of volunteer work.

Across all the cases in our study, the detail required in the plan saw the final stage last significantly longer than the first two. On average, the first two stages lasted about an hour, while the final stage lasted for one hour and twenty minutes. In drained conferences, this was much longer. Participants were bored, ansty, or downright angry by the end. Sometimes police had to leave early to start a new shift. This deflating conclusion undermines solidarity and emotional energy built up in the first stages. This is demonstrated after the official close of these conferences, where all parties left as soon as possible, barely looking at each other as they quickly exited. The opposite dynamic played out in mythical conferences, where participants shared a cup of tea together, reveling in a shared sense of relief and accomplishment. A police officer that attended a drained conference describes it to

us:

It went for too long... by the end of it you're like 'oh thank God, it's over' rather than if it ended earlier when we were all kind of on the roll like 'yeah, this is a good idea, and this is a good idea,' and we all felt positive about it. I think it would have ended on a more positive note rather than going 'this is two hours of my life, three hours of my life, I'm never going to get back'. Even though at one stage during the [conference] I was like, 'This isn't too bad,' I'd kind of lost that feeling by the time we were just going over and over and over the really small details towards the end.

Ironically, the inclusion of lay participants in the outcome negotiation may have further alienated them. Instead of praising the participatory nature of the process, they sought to extricate themselves. We suggest that steps can be taken to mitigate against drained conferences, by limiting the amount of time, and level of detail, included in plans. It can also be addressed by encouraging facilitators to more actively manage this stage.

### *Salvaged Conferences*

We have documented some ways that emotional trajectories can be drained of their energy. Others that begin on a divisive trajectory can be diverted as participants work together to develop a plan. *Salvaged* conferences allow for a shift away from division towards a common goal of a workable plan. Disputes may remain unresolved, but the participants developed a sense of teamwork despite their unsettled differences. In all four of the salvaged conferences we observed, participants did not agree with the offender's account or the police charges, leading to heated debates and a sense of division. However, as they moved into stage three they took on a more pragmatic approach.

In the early stages, participants sit around a circle with an empty space between them. This organization is deliberate, and well documented (Dignan et al. 2007, Rossner 2013, Umbreit and Petersen Armour 2010). It aims to encourage direct conversation and removes physical barriers to communication. When this works well, it enables the mutual focus of attention and rhythm of a successful interaction ritual. At particularly fraught moments, we observed people leaving the circle to get a cup of tea, have a cigarette or a breath of fresh air, or simply leaning away or pulling their chair back. When consensus is lacking, the circle configuration may exacerbate already tense relations.

During the final stage of the conference, the spatial orientation changes. The facilitator leaves their seat and moves towards a whiteboard, where they usually remain for the rest of the conference, writing down suggestions and helping the group decide on a plan. In some cases, shifting the focus of attention may be what participants need. Rather than dwelling on disagreement, the whiteboard offers the possibility for something new.

An example concerns an incident of 'road rage' where the offender swerved into a cyclist 'to scare him' and ended up hitting him, fracturing his knee. The victim's family were unhappy about the conference, as they felt a 'more serious' approach was needed. Numerous points of conflict marked the conference with a clear sense of opposing sides during the first two stages. Although the final stage was lengthy, it was largely collaborative, with both sides equally participating, engaging in shared banter, and making jokes. Shifting away from the focus on harm



towards the outcome plan allowed the participants to contribute in a way they felt was effective.

### *Divisive Conferences*

Finally, *divisive* conferences are characterized by volatility and unresolved issues continuing into stage three, often resulting in unsatisfied participants. Early stages did not result in shared understanding of the harm, accountability, or symbolic reparation. This unease persisted into stage three as participants continued to raise grievances. In some instances, divisiveness rested on the offender’s lack of responsibility, which frustrated other participants, particularly victims and the police. In other cases, divisiveness was exacerbated by dominant offender supports who protected the offender from taking responsibility, insisting upon less onerous outcomes. These encounters can leave participants feeling angry or let down. This raises questions about case suitability.

**Figure 2. Restorative Justice Typologies**

	<b>Stage 3 Consensus</b>	<b>Stage 3 Divisive</b>
<b>Stage 2 Consensus</b>	<b>Mythical (n=8)</b> <ul style="list-style-type: none"> <li>• Engaged and active</li> <li>• Invested in creating a meaningful outcome</li> <li>• Solidarity and emotional transformation</li> </ul>	<b>Draining (n=4)</b> <ul style="list-style-type: none"> <li>• Lost momentum and cohesion</li> <li>• Bored, antsy, deflated</li> </ul>
	<b>Civil (n=13)</b> <ul style="list-style-type: none"> <li>• Polite agreement</li> <li>• Compliant offender</li> <li>• ‘Going through the motions’</li> </ul>	
<b>Stage 2 Divisive</b>	<b>Salvaged (n=4)</b> <ul style="list-style-type: none"> <li>• New focus on ‘workable’ outcome</li> <li>• Sense of teamwork distracts from differences</li> </ul>	<b>Divisive (n=5)</b> <ul style="list-style-type: none"> <li>• Unresolved issues reemerge</li> <li>• Unable to agree on outcomes</li> </ul>

### **Assessing restorative justice rituals in the pre-sentence context**

This analysis has explored how narratives of accountability and harm develop in conferences at the pre-sentencing stage. The substantive elements of the story and the ritual elements of the interaction intertwine to create a dynamic narrative. This sets the encounter on certain trajectories of consensus or divergence. These trajectories can divert or continue into broadly characterized ritual typologies.

The mythical (and to some extent the divisive conferences) are well documented in the literature (Braithwaite 2002b; Daly 2002). Less explored are the drained and salvaged typologies. In the former, the goodwill and momentum that is developed from the successful articulation of accountability and harm is diminished as participants become bogged down with the details of the plan. Participants' energy deflates as the final stage of the conference becomes a tedious negotiation. In a presentence context, where participants are expected to produce some kind of agreement to go back to a magistrate, this typology is likely to be more common. This is in part due to the pressure placed on participants to come up with detailed recommendations for the offender's sentencing hearing. This highlights the importance of managing the timeframe and level of detail required in the outcome plan. For example, although facilitators can set expectations about the length of the meeting, part of facilitation is the ability at the conference to interpret energy levels and commitment to the process. When negotiation becomes tedious, facilitators can offer breaks, or intervene to re-focus the group and draw the conference to a close.

In salvaged conferences, while participants may not agree on a narrative of responsibility or harm, they 'agree to disagree' and cultivate a sense of teamwork as they develop a plan. Unresolved issues are shelved and largely ignored, although in most cases this was not to the detriment of group solidarity. Indeed, salvaged conferences demonstrate how participants can move forward after disagreement during a conference.

A final consideration is the frequency and dynamic of civil conferences. We observed the 'core sequence' of an emotional exchange of apology and forgiveness in a minority of cases. While the 'mythical true stories' (Daly, 2002) are circulated and held up as an ideal, the common experience of restorative justice at the pre-sentencing stage was more mundane. However, civil conferences can serve an important function. They provide a forum for dialogue and lay participation in the justice process. Restorative justice processes serve substantive and symbolic functions: the articulation of a narrative and development of a solidarity-building justice ritual. While these conferences may not have intense displays of solidarity, emotional energy, and other ritual elements, there is a chance for narratives of accountability and harm to emerge. We share Braithwaite's (2016) view that the 'thin civility' on display in civil conferences is a welcome outcome of a justice process. As restorative justice is mainstreamed and participation widens, we expect that the number of civil conferences will grow.

This analysis disrupts a simple narrative of a conference being 'good or 'bad' or successful or unsuccessful events by exploring the trajectories conferences take. There is no single emotional trajectory or typology of success. By comparing the

interactional dynamics across conferences, different layers of emotions and ritual can be uncovered. These dynamics are a likely outcome of the way the restorative justice movement has matured into mainstream criminal justice. Even conferences that do not achieve mythical status can offer a participatory process where victims, offenders, and supporters can play a direct role in creating a narrative and collaborating on an outcome.

We conclude that as restorative justice is increasingly mainstreamed into pre-sentence court processes, we can expect to see more interactions of the 'civil' or 'drained' typology. We argue that civil conferences should still be seen as both substantively and symbolically successful, where participants can work together to develop a shared narrative and understanding of the offence. In the case of drained conferences, we suggest that structural impediments of pre-sentencing schemes, such as the requirement of a detailed plan, will limit the potential for ritual success. This can be addressed by reducing such structural barriers or through more creative facilitation methods.

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## References

- Aertsen, I., Daems, T. & Robert L. (Eds). (2006). *Institutionalizing restorative justice*. Cullompton: Willan.
- Armstrong, J. (2014). Rethinking the restorative–retributive dichotomy: is reconciliation possible? *Contemporary Justice Review*, 17(3), 362–374.
- Bazemore, G. and Umbreit, MS. (1994). *Balanced and restorative justice*. Office of Juvenile Justice and Delinquency Prevention Washington, DC.
- Braithwaite, J. (2002a). Setting standards for restorative justice. *British Journal of Criminology*, 42(3), 563-577.
- Braithwaite, J. (2002b). *Restorative justice & responsive regulation*. Oxford University Press.
- Braithwaite, J. (2016). Redeeming the ‘F’ word in restorative justice. *Oxford Journal of Law and Religion*, 5(1), 79–93.
- Bruce, J., Mason, G., & Bolitho, J. (2012). Restorative Justice from Juveniles to Adults. In *Restorative Justice: Adults and Emerging Practice*, J. Bolitho, J. Bruce and G. Mason (eds), The Institute of Criminology Series, no. 30, Sydney.
- Bruce, J. (2013). Understanding Back Stage and Front Stage Work in Restorative Justice Conferences: The Benefits of Using Ethnographic Techniques. *Current Issues in Criminal Justice*, 25, 517.
- Collins, R. (2004). *Interaction Ritual Chains*. Princeton: Princeton University Press.

- Crawford, A. (2015). Temporality and restorative justice: On time, timing and time-consciousness. *Theoretical Criminology*, 1362480615575804.
- Crawford, A., & Newburn, T. (2002). Recent developments in restorative justice for young people in England and Wales: Community participation and representation. *British Journal of Criminology*, 42(3), 476-495.
- Daly, K. (2002). Restorative justice: The real story. *Punishment & Society*, 4(1), 55-79.
- Daly, K. (2012). The punishment debate in restorative justice. In: *The SAGE handbook of punishment and society*, London: Sage.
- Dignan, J. (2004). *Understanding victims and restorative justice*. McGraw-Hill Education (UK).
- Dignan J., Atkinson A., Atkinson H., Howes, M. Johnstone, J., Robinson, G., Shapland, J., Sorsby, A. (2007). Staging restorative justice encounters against a criminal justice backdrop A dramaturgical analysis. *Criminology and Criminal Justice*, 7(1), 5-32.
- Ewick, P. and Silbey, S. (1995). Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative. *Law & Society Review*, 29(2), 197-226.
- Galaway, B. and Hudson, J. (1990). *Criminal justice, restitution, and reconciliation*. Criminal Justice Press Monsey, NY.
- Galaway, B. and Hudson, J. (Eds) (1996). *Restorative Justice: International Perspectives*. Criminal Justice Press Monsey, NY.
- Goffman, E. (1961). *Encounters: Two studies in the sociology of interaction*. Oxford: Bobbs-Merrill.
- Halsey, M., Goldsmith, A., and David Bamford (2015) Achieving restorative justice: Assessing contrition and forgiveness in the adult conference process, *Australian and New Zealand Journal of Criminology*, Vol 48(4), pp.1-15
- Hayes, H. and Snow, P. (2013). Oral language competence and restorative justice processes: Refining preparation and the measurement of conference outcomes. *Trends and Issues in Crime and Criminal Justice*, 463.
- Johnston, G. (2011). *Restorative Justice: Ideals, values, and debates* (2<sup>nd</sup> edition). New York: Routledge.

- Kenney, J.S. and Clairmont, D. (2009). Using the victim role as both sword and shield: The interactional dynamics of restorative justice sessions. *Journal of contemporary ethnography*, 38(3), 279–307.
- London, R. (2011). *Crime, punishment, and restorative justice: from the margins to the mainstream*. Boulder, CO: First Forum Press.
- Maruna, S., (2011). Reentry as a rite of passage. *Punishment & Society*, 13(1), pp.3-28.
- Maxwell, G.M. (2007). The youth justice system in New Zealand: Restorative justice delivered through the family group conference. In: Maxwell, G.M. and Liu, J.H. (eds), *Restorative Justice and Practices in New Zealand: Towards a Restorative Society*, Wellington: Institute of Policy Studies, pp. 45–67.
- McCold, P. and Wachtel, T. (2003). *In Pursuit of Paradigm: A Theory of Restorative Justice*. Bethlehem: International Institute of Restorative Practices.
- McElrea, F.W.M. (2007). Restorative justice for adult offenders: Practice in New Zealand today. In: Maxwell G.M. and Liu J.H. (eds), *Restorative justice and practices in New Zealand: Towards a restorative society*, Wellington: Institute of Policy Studies, pp. 95–110.
- Miller, S.L. (2011). *After the crime: The power of restorative justice dialogues between victims and violent offenders*. New York: NYU Press.
- Ministry of Justice (2015). Code of Practice for Victims of Crime. London: Ministry of Justice.
- Olson, S. M., & Dzur, A. W. (2004). Revisiting informal justice: Restorative justice and democratic professionalism. *Law & Society Review*, 38(1), 139-176.
- O'Mahony, D., & Doak, J. (2017). *Reimagining Restorative Justice: Agency and Accountability in the Criminal Process*. Bloomsbury Publishing.
- O'Mahony, D. and Campbell, C. (2006). Mainstreaming Restorative Justice for Young Offenders through Youth Conferencing: The Experience of Northern Ireland. In: Junger-Tas J. and Decker S.H. (eds), *International Handbook of Juvenile Justice*, Springer Netherlands, pp. 93–115.
- Ministry of Justice (2014). *Restorative justice action plan*. London: MOJ. Available from <https://www.gov.uk/government/publications/restorative-justice-action-plan-2014> (accessed 18 August 2017).
- Richards, K. (2010). *Police-referred restorative justice for juveniles in Australia*. Trends and Issues in crime and criminal justice, no 398, Australian Institute of Criminology.

- Roche, D. (2003). *Accountability and Restorative Justice*. Oxford: Oxford University Press.
- Rossner, M. (2011). Emotions and interaction ritual: A micro analysis of restorative justice. *British Journal of Criminology*, 51, 95-119.
- Rossner, M. (2013). *Just emotions: rituals of restorative justice*. Oxford: Oxford University Press.
- Rossner, Meredith (2017) *Restorative justice in the 21st century: making emotions mainstream*. In: Liebling, Alison and Maruna, S. and McAra, Lesley, (eds.) *The Oxford Handbook of Criminology*. Oxford University Press, Oxford, UK.
- Rossner, Meredith and Bruce, J. (2016). Community participation in restorative justice: Rituals, reintegration, and quasi-professionalization. *Victims & Offenders*, 11(1), 107-125.
- Rossner, M. and Meher, M. (2014). Emotions in Ritual Theories. In: Stets J and Turner J (eds), *Handbook of the Sociology of Emotions: Volume II*, Dodrecht: Springer Netherlands, pp. 199-220.
- Retzinger, S.M. and Scheff, T.J. (1996). Strategy for community conferences: Emotions and social bonds. In: Galaway, B. and Hudson, J. (eds) *Restorative Justice: International Perspectives*. Criminal Justice Press Monsey, NY, 315-36.
- Shapland, J., Atkinson, A., Atkinson, H., Colledge, E., Dignan, J., Howes, M., & Sorsby A. (2006). Situating restorative justice within criminal justice. *Theoretical Criminology*, 10(4), 505-532.
- Shapland, J., Crawford, A., Gray, E. and Burn, D. (2017). Developing restorative policing in Humberside, South Yorkshire and West Yorkshire. University of Sheffield, Centre for Criminological Research Occasional Papers. Retrieved from: <https://www.sheffield.ac.uk/law/research/clusters/ccr/occasionalpapers>
- Sherman, L.W. and Strang, H. (2007). *Restorative justice: The evidence*. London: Smith Institute.
- Umbreit, M. Peterson Armour, M. (2010). *Restorative justice dialogue: An essential guide for research and practice*. New York: Springer.



Von Hirsch, A., Roberts, J.V. and Bottoms, A. (2003). *Restorative justice and criminal justice : competing or reconcilable paradigms?* Studies in penal theory and penal ethics, Oxford: Hart Publishing.

Wigzell, A. and Hough, M. (2015). *The NOMS RJ Capacity Building Programme*. London: ICPR, Available from: <http://www.icpr.org.uk/publications-team/criminal-justice-agencies-and-services/the-noms-rj-capacity-building-programme.aspx>.

Zehr, H. (1990). *Changing lenses: A new focus for crime and justice*. Herald press.

Zernova, M. (2007). *Restorative Justice: Ideals and Realities*. Aldershot: Ashgate Publishing, Ltd.