

Co-option, Coercion and Compromise: Challenges of Restorative Justice in Victoria, Australia

Masahiro Suzuki; William R. Wood

School of Criminology and Criminal Justice, Griffith University, Brisbane, Australia

Corresponding Author

Name: Masahiro Suzuki Position: Doctoral candidate Affiliation: School of Criminology and Criminal Justice, Griffith University, Brisbane, Australia Tel: +61 (0)7 3735 1202 Email: masahiro.suzuki@griffithuni.edu.au

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Abstract

Restorative justice (RJ) encompasses a widely diverging set of practices whereby those most affected by crime are encouraged to meet, to discuss the effects of harms caused by one party to another, and to agree upon the best possible redress of harms when appropriate. In its inception in the late 1970s, RJ was conceptualized and developed as an alternative to formal criminal justice practices. Since this time, however, RJ has largely moved from being an alternative to criminal justice practices to an 'alternative' practice within criminal justice systems. This institutionalization has resulted in the significant growth of RJ practices, but has also resulted in RJ being used for criminal justice system goals that are at odds with the needs of victims or offenders. This paper examines the use of the Youth Justice Group Conferencing Program in Victoria, Australia. Drawing from interviews with conference conveners, our research highlights problems related to administrative 'constraints' and 'co- options' in conferencing in terms of referrals, preparation of conference participants, and victim participation. Following presentation of findings, we conclude with a discussion of implications for the use of RJ within a highly institutionalized setting.

Keywords

Restorative justice; youth justice; institutionalization; Australia

Introduction

In their inception in the late 1970s, restorative justice (RJ) practices were conceptualized and developed as alternatives to formal criminal justice practices (Daly, 2013). Since this time, however, RJ has largely moved from being an alternative to criminal justice practices to an 'alternative' practice within criminal justice systems (Dignan, 2008; Shapland, 2003). This institutionalization has resulted in the significant growth of RJ, but research has also found this has frequently resulted in its use for criminal justice system goals that are at odds with the needs of victims or offenders (Hoyle, Young, & Hill, 2002; Zernova, 2007b). Particularly within Australia, the development and use of RJ has occurred almost entirely within youth or adult criminal justice systems, such that in reality it has never existed as an 'alternative' to the justice system in this country, but rather largely as a set of post-adjudicative responses to offending (Larsen, 2014; Richards, 2010).

Over the first two decades of its growth, much attention was given to RJ practices in terms of how they could better address the needs of victims (Umbreit, 1985; Van Ness, 1989; Zehr, 1990), better encourage offenders to make amends and reintegrate (Braithwaite, 1989; Eglash, 1977; Umbreit, 1989), and how RJ could potentially work to involve local communities in justice decision making (Christie, 1977). By the 1990s, however, more attention was being given by scholars as to how to measure RJ outcomes when compared to traditional criminal justice practices. Specific attention was given to areas such as victim satisfaction and redress (Latimer, Muise, & Dowden, 2005; Sherman & Strang, 2007; Strang, Sherman, Mayo-Wilson, Woods, & Ariel, 2013), and offender compliance and reoffending (Bonta, Jessemann, Ruge, & Cormier, 2006; Latimer et al., 2005; McCold & Watchtel, 1998; Shapland et al., 2008; Sherman & Strang, 2007; Sherman, Strang, Mayo-Wilson, Woods, & Ariel, 2015). Work from Daly (2002) and others (Choi, Bazemore, & Gilbert, 2012) found that RJ often did not live up to what Thorburn (2005) has called its sometimes 'impossible dreams,' and by the late 1990s there was an emerging body of 'gap' research on RJ. Some of this research, as in the case of Daly's work (2003a, 2003b, 2005, 2006) focused more immediately on the gaps between the promises of RJ and actual experiences of people in conferencing or other restorative interventions. Other research focused more on gaps in the delivery or implementation of RJ practices, in particular the growing institutionalization of RJ which saw some of its core values compromised in lieu of justice system goals and the not infrequent 'rebranding' of existing criminal justice practices as 'restorative' (Campbell et

al., 2006; Hoyle et al., 2002; Shapland, Robinson, & Sorsby, 2011; Zernova, 2007b).

This research follows in the vein of the latter, looking at problems related to the use and delivery of RJ in Victoria, Australia as these relate specifically to what we call administrative 'constraints' and 'co-options' in youth conferencing from policing agencies, magistrates, and the youth court. In this article, we advance a critical analysis of impediments to RJ in the Youth Justice Group Conferencing Program (YJGCP) in Victoria as these relate to problems in referrals to conferencing, to problems related to adequate pre-conference preparation for participants, and to problems in the inclusion and participation of victims in the YJGCP. We focus on these problems because each in their own way significantly compromises the potential 'restorativeness' of the process, the experiences of those involved, or both. Following our review of literature and presentation of findings, we discuss the implications of these constraints and co-options as they relate to the use of RJ for other criminal justice system goals, to the problematic 'gatekeeper' functions of police officers and magistrates, and to the practices of conveners.

Review of literature

There has been a long and sometimes acrimonious debate within RJ as to proper definitions of this term, as well as to what 'counts' as RJ (Daly, 2016; Wood & Suzuki, 2016). We do not seek to enter into these debates. Conferences that involve victims, offenders, and other parties such as conveners and family members coming together to respectively voice harms, admit culpability and make amends, and decide on how such an outcome can best be achieved, are widely regarded as a restorative practice (Daly, 2016; Suzuki & Hayes, 2016). The contemporary origins and development of RJ have also been well-documented (Daly, 2013; Gavrielides, 2007). Our focus on the literature is rather one that looks more immediately at the institutionalization of RJ practices, the 'paradox' of this institutionalization as RJ has become more entrenched into criminal justice systems, and the research that currently exists on the effects of administrative constraints and of RJ practices within existing criminal justice systems.

Necessity of institutionalization for the growth of RJ

Contrary to the motives of many early advocates to develop RJ as an alternative to formal criminal justice practices (Daly, 2013), today most RJ practices are used within youth or criminal justice systems (Dignan, 2008; Shapland, 2003). In Australia, RJ is

largely used as a type of diversionary program within existing youth justice systems (Daly & Hayes, 2001; Larsen, 2014; Richards, 2010). A primary reason for this, as Daly and Proietti-Scifoni (2011) note, is that it is unrealistic for RJ to be used as a social response to crime until the offender has admitted harms. That it is used mostly as a post-adjudicative practice reflects the need for RJ to be used within existing structures of criminal and youth justice.

There are other reasons for the placement of RJ within existing youth and criminal justice systems. The institutionalization of RJ has been a necessary part of its growth, implementation and effectiveness. As with New Zealand and some European countries, in most Australian states the growth of RJ practices have been driven in large part by legislation and the requisite availability of funding (Larsen, 2014; Richards, 2010). Legislation not only provides the auspices for RJ programs, but also clarifies under what circumstances RJ should be implemented. It enables decision-makers in existing criminal justice systems, who often show reluctance to utilize new types of programs, to implement RJ programs (Bolívar, 2015; Groenhuijsen, 2000). Further, involvement of the RJ as an institutional practice helps to secure funding for RJ programs to grow and to be sustainable (Jantzi, 2004; Miers & Aertsen, 2012).

Legislating RJ programs within existing criminal justice systems also helps to offer legal safeguards for participants because it 'serves legal certainty and predictability as well as equality' (Groenhuijsen, 2000, p. 74). Since there may be an imbalance of power between victims and offenders (Umbreit, 1995), without such safeguards there is a risk of 'uncontrollable abuses of power' in the RJ process (Walgrave, 2007, p. 571). Institutionalizing RJ within criminal justice systems helps to prevent this issue by limiting the severity in the agreement plan within accepted punishments for specific offenses (Artinopoulou & Michael, 2014; Radzik, 2007). While there is debate over what roles states should play in RJ, it is an almost general consensus that state involvement in RJ is necessary, at least in the background (Walgrave, 2007).

Finally, situating RJ practices within existing youth and criminal justice systems is necessary for victim redress and recovery. Justice systems function to facilitate victim redress and the compliance of agreements in terms of restitution or other outcomes agreed upon by the victim and the offender. Beyond victim redress, the situating of RJ within state practices may better afford and align victims with other significant services. While research has found generally positive outcomes for victims who participate in conferences and other practices (Latimer et al., 2005; Shapland et al., 2011; Strang et

al., 2013; Umbreit, Coates, & Vos, 2008), it is also not realistic to think that all victims' needs can be met through brief, one-time interventions. Many victims still grapple with issues or have significant needs even after RJ programs have been completed (Herman, 2004). Findings from the South Australian Juvenile Justice project demonstrate, for example, that different victims followed different paths to recovery and some victims did not fully recover even after the RJ processes (Daly, 2008). To redress the effects of victimization, more supports may be required for some victims even after the completion of RJ procedures because their recovery may have 'little to do with an ongoing relationship with an offender or a community' (Herman, 2004, p. 78). In this regard, the state has a vital role to play insofar as it is often the most well-poised and well-resourced to provide supports for victim recovery (Herman, 2004), although in reality this varies widely between jurisdictions.

Paradox of institutionalization of RJ practices

The institutionalization of RJ practices within existing youth and criminal justice systems has contributed to the sustained growth of RJ programs. However, this institutionalization has not been without risks or problems. As RJ has become more entrenched into existing youth and criminal justice systems, the institutionalization of RJ practices has engendered what Pavlich (2005) calls the 'imitator paradox.' By being situated within existing criminal justice systems, RJ programs increasingly tend to serve, and to be measured by criminal justice goals such as offender rehabilitation, compliance or reoffending, and less by goals of restoration or meeting victim needs (Pavlich, 2005). Johnstone (2012, p. 112) has argued, for example, that institutionalization may compromise the RJ practices through processes of 'standardization' (the process of establishing standards for 'best practice' of RJ), where practice becomes professionalized, losing the core essence of 'taking conflicts back into community ownership.' Such institutionalization of RJ practices risks losing the larger goals of RJ in a bid to make practices more legitimate or uniform (Dignan, 2008; Fattah, 2004).

The paradox of institutionalizing RJ has been widely addressed within the literature (Aertsen, Daems, & Robert, 2006; Hudson, 2007; Pavlich, 2005; Schiff, 2013). There has also been ample research that highlights struggles or failures to integrate RJ into existing criminal justice systems without compromising restorative ideals, particularly regarding conceptual constraints of RJ practices at a macro (i.e. political, systemic and legal) level (Aertsen et al., 2006; Archibald & Llewellyn, 2006; Fellegi, 2011). However, our focus here is rather on empirical research on conceptual co-options, particularly for victims at

the level of restorative practice. Existing research supports our focus. In interviews with RJ practitioners in EU member states, Bolívar (2015) found one of their primary concerns was the manner by which RJ was used to benefit offenders. Choi, Gilbert, and Green (2013) examined four victim-offender mediation (VOM) cases in the United States to examine how victims were treated in the RJ process. Using participant observation and interviews with eight victims involved in these cases, they found these victims they did not receive adequate preparation, were excluded in the decision-making processes, were pressured to accept apologies from offenders, raised concerns about their safety because they felt threatened by offenders and their supporters, and that conveners failed to help victims even when conveners sensed victims' distress. Consequently, Choi et al. (2013, p. 128) suggested that these problems were attributed to 'misunderstandings regarding the application of restorative justice values and principles' in practice.

Zernova (2007a) also examined how the institutionalization of family group conferencing (FGC) programs in England in turn affected RJ practice. Her research focused on the goals of RJ advocates, including victim redress and participation as well as alternatives to dominant offender-focused treatment programs. Similar to Choi and colleagues, Zernova (2007a) found that the main focus of many FGCs was often on rehabilitating offenders rather than empowering victims. RJ practice served to maximize rehabilitation of offenders as the criminal justice system's primary goal. Victims 'appeared to be "empowered" only to a degree that did not endanger the achievement of the objectives of the criminal justice system' (Zernova, 2007a, p. 506). Consequently, interviews with victims also showed that victims felt that the process was offender-centered, and some reported no benefits from attending the process (Zernova, 2007a).

Other evaluation studies have also highlighted co-option of RJ practices as a part of their overall findings (Choi et al., 2012). Several evaluation studies have reported that although many victims were satisfied with the way their case was dealt with, a smaller number of victims showed dissatisfaction or felt re-victimized after RJ practices (Morris & Maxwell, 1997; Strang, 2002; Wemmers, 2002; Wemmers & Cyr, 2005). Although the reasons varied and some were attributed to offenders' attitudes and behaviors rather than practices (Daly, 2003b; Gerkin, 2008), one of the most common reasons given for negative outcomes was lack of care and attention toward victims, such as lack of preparation for victims (Choi & Gilbert, 2010; Umbreit, Vos, Coates, & Lightfoot, 2005) or excessive focus on offenders (Hoyle et al., 2002; Strang, 2002).

Zernova (2009) has examined why institutionalization leads to this paradox. While noting the conceptual tensions between RJ and dominant criminal justice goals, she argued that the dependence of FGCs on criminal justice funding resulted in formal or informal pressure to focus on offender outcomes. She also argued that the integration of RJ into the criminal justice system resulted in increased roles and decision-making capacities for professionals involved in FGCs – in particular police, judges, and youth workers – where the goals of these actors often took precedence over the restorative goals of FGC conveners or participants.

Research conducted by Bolívar, Pelikan, and Lemonne (2015) further unpacked the institutionalization effect on victims. Comparing victims' experiences of participating in mediations in Austria, Finland and the Netherlands, they suggested that although victims were satisfied constantly across these countries, the position of RJ programs in relation to conventional criminal justice systems have influenced victims' perceptions. The stronger the relationship between RJ programs and criminal justice systems become, more risks there may be that victims experience RJ negatively.

Research in the European Union was conducted on victims', offenders' and professionals' opinions about how to improve victim treatment in RJ programs in EU countries in light of the 2012/29 EU "Victims directive" (Gavrielides, 2014b). Findings were somewhat consistent with Bolívar et al. (2015). Gavrielides (2014a, p. 231) suggested that 'victims and offenders feel that the existing "gatekeepers", entrenched practices barriers in the implementation of the Directive's intentions' as these relate to RJ. Participants in the RJE suggested that victims can feel suspicious or dissatisfied with RJ due to 'unethical' behaviors of gatekeepers or programs' co-option to prioritize the criminal justice or other instrumental goals at the expense of victims' needs and rights.

Thus, the extant literature reflects awareness of conceptual constraints in outcomes in RJ practices. Within existing criminal justice systems, RJ principles may be compromised because the processes become offender-focused rather than victim-focused (Skelton & Sekhonyane, 2007). When this occurs, the aims of RJ practices are 'transformed from empowerment and personalization into a means to get restitution or a confrontation to teach offenders a lesson' (Zehr, 1995, p. 209-10). In such cases victims and others affected by crime may be used largely as a 'pedagogical' means for rehabilitation and reintegration of offenders (Walgrave, 2004, p. 579).

Administrative constraints of RJ practices

The institutionalization paradox influences not only RJ practices at the ground level, but also at the administrative level of programs. Compared to research on the programmatic co- option of RJ practices, however, there is less research on the question of how the institutionalization of RJ practices generates administrative constraints or results in the co- option of RJ for other system goals.

One area that has been researched towards this question is how RJ programs obtain referrals from existing criminal justice systems. Obtaining referrals for RJ practices is often not a smooth procedure. Referrals are usually made by criminal justice professionals such as police, prosecutors, judges, or probation staff (Van Ness & Strong, 1997). But research suggests that these professionals are often reluctant to use RJ practices (Laxminarayan, 2014; People & Trimboli, 2007; Wood, 2013). Even where they may be supportive of RJ practices, they sometimes choose other approaches when they see them as more appropriate than RJ practices (Clairmont & Kim, 2013; Shapland et al., 2011). As part of their evaluation study on the FGC program in Northern Ireland, Campbell et al. (2006) observed that magistrates who have discretion to make referrals to conferencing were resistant to RJ, resulting in problems in obtaining referrals. Comparing the operations of RJ practices in various European countries, Laxminarayan (2014) reached the same conclusion that there is the difficulty obtaining referrals, mainly due to the skepticism among professionals who have been involved in criminal justice practices. Other studies have found similar skepticism towards referrals in general (Archibald & Llewellyn, 2006; Artinopoulou & Michael, 2014; Chankova, 2014; Shapland et al., 2011). Hence, such lack of awareness and understanding of RJ practices among criminal justice professionals works as an obstacle to implement and utilize RJ (Stenius & Ravenstijn, 2010).

Time constraint – the pressure to complete RJ processes within the criminal justice system's timeframe – may also inhibit completion of tasks to implement programs in a restorative way (Crawford, 2015; Jones & Creaney, 2015). Compared to other criminal justice procedures, RJ processes sometimes require significant investment in time and labor (Daly, 2003b), especially in preparation for participants. It usually takes several weeks to hold face-to-face dialogue between victims and offenders from the point of referral. Preparation plays an important role in successful RJ practice in terms of participants' understanding (Barton, 2003; Dignan et al., 2007; Wallis, 2014) and their attitudes (Rossner, 2013). Yet despite its importance, preparation, especially for victims,

is often compromised (Choi et al., 2012). As mentioned above, this is partly because of lack of attention to victims and RJ principles (Choi et al., 2012).

There is another administrative reason for this as well. In research examining the discrepancy between RJ theory and practice, Gavrielides (2007) surveyed RJ practitioners and researchers in various countries, such as the United States, the United Kingdom, Canada, Australia, New Zealand and some European countries, and found that RJ practitioners are often pressured to comply with the timelines determined in criminal justice systems as funders. Despite their recognition of importance of preparation, therefore, this pressure may sometimes make RJ practitioners compromise preparation to deliver RJ practices within those timeframes.

This compromise of preparation, especially for victims, can also be associated with victim participation rate (Artinopoulou & Michael, 2014). In the research on Thames Valley police cautioning in England, Hoyle (2002) examined the reasons why victims declined to participate in the RJ process. Interviews with non-participating victims found that many victims decided not to participate due to the lack of a clear understanding what RJ process involved. This is congruent with Zinsstag (2012), who examined how RJ practices are implemented in European countries and found that the more victims understand RJ programs, the more likely they are to participate. Further, in the Thames Valley research, Hill (2002) found that the police sometimes acted as a 'gatekeeper' of the RJ program where they described RJ in negative ways to victims, resulting in less willingness on the part of victims to participate.

If RJ proponents aspire 'full' restorative outcomes, it is necessary to identify and understand both administrative constraints as well as ways in which RJ is co-opted in practice. Towards these goals, this study focuses on experiences and perspectives of conference conveners. Although the roles of conveners regarding the facilitation of dialogues between victims and offenders are often discussed in research, conveners perspectives on and knowledge of administrative constraints and co-options is still sparse in the literature. Yet conveners play various roles in the 'backstage' of the RJ practices, such as preparation or follow-up (Choi & Gilbert, 2010). These backstage roles are as important as their 'frontstage' roles, such as facilitation of dialogue between victims and offenders (Bruce, 2013; Dignan et al., 2007). Conveners are frequently involved in the whole RJ process from intake to outcome. Examining convenue perspectives on the constraints of RJ practices can help to develop a more thorough understanding of how and where co-options of restorative goals occur, as well as

potentially reveal the degree to which such constraints or co-options can be mitigated or addressed.

Methodology

This research involved a study of the use of youth conferencing in the Youth Justice Group Conferencing program (YJGCP) in Victoria, Australia. At the time of this research, the YJGCP was the only RJ program in Victoria. The YJGCP is also notable for the reason that it was implemented and operates in a highly institutionalized youth justice setting (Department of Health and Human Services (DHHS), 2015). The YJGCP was conducted as a pilot program in two regions in Victoria in 1995 and was implemented in other regions under the aegis of the DHHS beginning in 2001 (KPMG, 2010). In 2005, the *Children, Youth and Family Act 2005* provided the legislative basis to the YJGCP, and following this the YJGCP became a state-wide program from October 2006 (KPMG, 2010). Six non-governmental organizations operate the program across Victoria in six regions (KPMG, 2010).

The YJGCP is implemented as one form of diversionary programs in the youth justice system in Victoria. The eligibility of the program is young offenders aged 10-18 and whose offending is serious enough for 'a sentence supervised by the youth justice service including probation, youth supervision order, youth attendance order, youth residential order or youth justice centre order' (Department of Health and Human Services (DHHS), 2015, p. 1). Following adjudication, offenders are referred to the youth justice service which explains the YJGCP to the young person and assesses whether they are suitable for the YJGCP based on a number of factors including level of remorse and empathy, safety issues, special needs in terms of intellectual ability, substance abuse, and cultural values and level of interpersonal skills (Department of Health and Human Services (DHHS), 2015). Once young offenders agree to participate in the program, magistrates defer the sentence and the youth justice court advice worker refers young offenders to the conference convener (Department of Health and Human Services (DHHS), 2015).

It is the police's responsibility to contact victims and explain the YJGCP to the victims and obtain the victims' permission to provide their details to the conference convener (Department of Health and Human Services (DHHS), 2015). At the YJGCP process, participants are expected to share their stories of offences and discuss ways in which the young offender might repair the harm caused by crime as an outcome plan. After

the process, the conference convener writes a report including the outcome plan for the magistrates and the magistrates determine the sentencing for young offenders (Department of Health and Human Services (DHHS), 2015).

Research focus and methods

This study was designed to investigate potential administrative constraints in the YJGCP. Given the fact that the YJGCP operates within the existing youth justice system in Victoria, the primary goal of the research broadly was investigation of the integration of RJ practices into a highly institutionalized youth justice setting. Knowledge of previous research (discussed above) on this question framed more specific research questions, in particular questions of potential administrative co-option and constraint in terms of difference in goals between RJ and the youth justice system. Focusing on the experiences and insights of conference conveners – those with arguably the most experience and comprehensive understanding of the process of adjudication, referrals, preparation, conferences, and outcomes – was thus crucial into gaining insight into these research questions.

As this research focused on the experiences and perspectives of conveners, qualitative methods were employed. Qualitative research is appropriate for research focused on explicating experiences or in-depth perspectives of participants (Creswell, 2014). Neuman (2000, p. 146) notes that qualitative methods are most appropriate for research into such settings insofar as they ‘emphasize the importance of social context for understanding the social world.’ Semi-structured interviews were utilized, with initial interview questions guided by findings from past research (discussed above), including administrative and ‘best- practice’ challenges facing conveners in the YJGCP, how conveners attempted to address these issues in practice, and to what extent they succeed (or not) in doing so.

Overall, seven interviews were conducted with conveners involved in the YJGCP. This number reflected one representative from each of the six non-governmental organizations that deliver RJ, recruited to provide representation across Victoria.¹ Since there were 25 conference conveners across Victoria at the time of the interviews (Amelia van Lint, Senior Program Officer of the Youth Justice & Disability Unit at the DHHS, personal communication, February 9, 2016), we consider this sample size adequate in relation to the total number of conference conveners across Victoria. Only one organization is located at the metropolitan area and other organizations are in

suburbs of Victoria (KPMG, 2010). All six (In one interview, there were two conveners from the same organization at the same time) organizations agreed to take interviews for this research. Upon request, the interview schedule was also provided in advance. Among the seven conveners, there was one male convener and the rest were female. Their working experience as conveners varied from 1.5 to 10 years. Interviews were conducted at the location of each of the organizations that operate the YJGCP in Victoria between December 2012 and February 2013. Interviews were audio- recorded and lasted between one and two hours.

Collected data was analyzed by thematic analysis. Thematic analysis is 'a method for identifying, analysing and reporting patterns (themes) within data' (Braun & Clarke, 2006, p. 79). It was chosen as the most suitable method of analysis for the reason that it enables the researchers to reveal 'something important about the data in relation to the research question, and represents some level of *patterned* response or meaning within the data set' (Braun & Clarke, 2006, p. 82, emphasis in the original). Themes were developed based on the criteria proposed by Ryan and Bernard (2003), such as repetitiveness of particular themes in the data. Appropriateness of the established themes was assessed across both the codes and datasets by examining internal and external coherence.

Findings

We present findings as they relate to the questions posed above, namely convener perspectives on the administrative constraints and co-options in YJGCP in terms of disjuncture between RJ and youth justice system goals, points or places where RJ goals tended to be co-opted into youth justice system goals, and the means and degree to which conveners were able to deal with or mitigate these problems.

Interviews with all conveners revealed problems in the delivery and implementation of restorative practices in terms of the YJGCP's integration into the youth justice system. Particularly, findings revealed three specific problem areas: difficulty obtaining referrals; compromise of the preparation for young offenders; and police motivation leading to victim absence. They also revealed some of the convener's attempts and efforts to address these issues and their perceptions regarding their limited capacities to do so.

Difficulty obtaining referrals

Since the YJGCP is used as one form of diversionary programs in the juvenile justice

system in Victoria (Department of Health and Human Services (DHHS), 2015), cases are referred to the program from the Children's Court. Therefore, it is the magistrates who make decisions on which cases should be referred to the YJGCP. According to four conveners, the number of referrals and types of offences, especially serious crimes, referred to the YJGCP varied depending on the attitudes of the magistrates in each region. Three conveners reported that some magistrates were very supportive of the program, but others, especially those who were known to be politically conservative, did not tend to support it. Two conveners also suggested that public perception of RJ as a 'soft' option for youth offending played role in the types of cases referred to the YJGCP, particularly in regards to magistrates' concerns over public relations (According to the *Magistrates' Court Act 1989* (Vic), magistrates are appointed by the Governor in Council).

Even though there was hesitance on the part of some magistrates to refer young people to RJ, at the same time, there was pressure to obtain referrals. Due to operating costs, the organizations that operate the YJGCP were expected to conduct a prescribed number of conferences. From Convener G's perspective, this was problematic because such a requirement sometimes forced them to deal with cases that were inappropriate for the program, for example cases where a young offender lacked an appropriate level of remorse. Convener G expressed concern that this raises a risk of re-victimization:

The quality of the program can be compromised by . . . the pressure to gain referrals. Sometimes the pressure . . . makes the whole process de-valued . . . If you think a young person really has no remorse, then it's really not worth taking him through the process. I think there's some value of confronting with the victim but I think you can actually re-traumatize the victim.

To address this difficulty obtaining referrals, four conveners reported attempts and efforts to advocate for the YJGCP directly to magistrates in their respective regions. This involved attending a court advisory group, making regular court visits to establish a relationship with the magistrates, and informal attendance in court to remind the magistrates of the program. One convener stated that with these continuous efforts, there was a slight change in the trend of referrals. More serious crime, which these four conveners felt was more effectively dealt with through RJ, started to be referred to the program. However, final decisions were left to the magistrates and as one convener noted, when supportive magistrate moved to other regions, they have to make the same efforts all over again.

Compromising preparation of young offenders

As is the case with many other RJ programs, the YJGCP required offenders to consent voluntarily to participate (Department of Health and Human Services (DHHS), 2015). As five conveners noted, the voluntary participation of offenders was crucial for the conference's success because the greater the extent of voluntariness in their participation, the more likely it was that they were actively involved in the process, and the more likely they were to willingly commit to repairing the harm caused by their crime. Three conveners mentioned, however, that some young offenders decided to participate even though they did not volunteer initially because the YJGCP is a diversionary program:

A sense is created that you [young offenders] are kind of required to do it [participate in the YJGCP]. Even though the Acts say you [young offenders] cannot be any worse off . . . there is an emotional sense that you [young offenders] will be worse off. (Convener A)

To enhance the voluntariness of offenders' participation, five conveners reported that they attempted to provide a detailed explanation of the concept of voluntariness in the preparation phase. Nevertheless, four conveners still expressed their concerns that the voluntary participation of offenders was compromised. Although two conveners mentioned that this was partly due to a lack of comprehension by offenders, the other two noted that it is was also partly due to lack of sufficient preparation time to ensure that young offenders participated voluntarily. For the preparatory activities, conveners were generally given eight weeks. In this regard, these conveners mentioned that this period was not long enough to ensure that young offender's participation was voluntary because within such a limited timeframe, there were also other essential tasks they has to complete in order to promote young offenders' engagement in the process. These included ensuring that the young person understood the impact of their offending, as well as working on their attitudes and verbal abilities.

I think the problem for us [conveners] is that we've only got . . . a short window of time to work with the young person . . . We're spending a lot of time working on their attitudes towards offending. We might not be able to work on some other things that they might need some support and assistance with. (Convener C)

Additional issues exacerbated this administrative constraint. First, the preparation timeframe of eight weeks was sometimes further shortened due to delayed referrals or

problems with case-processing or paperwork. According to one convener, Court's not necessarily getting referrals to us on a timely manner. Eight weeks will then become six weeks, so that's a challenge. Time is always a challenge. . . Even the details of the referrals we [conveners] get . . . can sometimes be challenging because we're given . . . very minimal information, so it's challenging [because] we almost have to do our own investigations and find out who's [the police officer] working with this young person. (Convener D)

Two conveners also noted that during the initial referral process in court, there was no opportunity for them to engage in explaining the details of the YJGCP to promote voluntary participation by young offenders. Rather, this was the youth justice court advice worker's role in the YJGCP, which according to at least one convener, created problems:

I think we as conveners all in [name of a region] . . . don't have more involvement in that initial referral process . . . We know how it works, but [it is] youth justice and court advice workers who manage their referrals and talk to the young person at that very early stage . . . What happens in the very beginning [of the YJGCP] is that either a youth justice [court advisor] or solicitor, for example, might suggest it [to the magistrate] or the magistrate might even say this is a good idea. And the magistrate will stand the matter down for 10 minutes or so. [The] youth justice court advisor go out and meet with the young people, see . . . if they're assessed to be suitable and by that whether or not the young person want to do it basically. And then, [the] youth justice court advisor comes back and says, 'Yes your honor, he's being suitable. He wants to participate' or 'No, your honor, he hasn't given his consent to participate' . . . which is very frustrating (Convener C).

Police motivation leading to victim absence

All of the conveners agreed that victim presence is essential in promoting the quality of the program. It not only enables empowerment of victims by involving them in the decision- making process but also helps young offenders to repair the harm caused by their offences. According to Convener G that was because it makes the 'images of victims . . . clear to the young person' and renders 'something concrete that's [otherwise] quite abstract.' More importantly, the real voice of victims is directly conveyed to young offenders. This also helps young offenders repair the harm caused by their crimes because they can more easily understand what needs to be done. Convener

C stated, 'The quality of the conference improves when the victims are present because . . . nobody can articulate the victims' experiences like victims.' This recognition among conveners regarding the importance of victim presence was further evidenced in their effort to reflect victims' voices even when they were absent from the process. This involved obtaining a victim impact statement or inviting victims' family members or representatives from a victim support agency. However, three conveners pointed to the compromising effects of such representations. For example, Convener D stated, 'It's [such a representation of absent victims is] still not as powerful as victims [being present] . . . Having the victims themselves is obviously the perfect situation.'

According to a review on the YJGCP conducted between April 2007 and June 2009 (KPMG, 2010), among 372 conferences only about 50 per cent of conferences had an actual victim presence, about 35 per cent involved only 'indirect' victim participation, such as presence of victim representatives, and about 11 per cent did not have any form of victim participation. Convener D noted the difficulty inviting victims to the YJGCP because 'it's [participation] voluntary and often they [victims] are obviously too frightened or they just don't wanna come.' But, six conveners thought that victim absence was also due to 'lack of interest' in the YJGCP and that lack of interest among victims was at least partly attributed to police reluctance to cooperate the YJGCP. In the YJGCP, the first contact with victims must be made by the police, and conveners were only allowed to contact victims for the first time through the police (Department of Health and Human Services (DHHS), 2015). These six conveners felt that many police officers were opposed to the YJGCP because they saw it as a soft option. Conveners thus questioned whether this negative view among police officers negatively affected victim attendance rates.

As far as . . . the first contact with the victim [which is conducted] by the [police] informant, this can be a challenge because the police officer may not view the process [as having] the same value as we [conveners] do. So, they [the police] approach the victim and infer that this is a soft option for a young person. Then, you are working against that before you start. (Convener G)

The perceptions among these conveners about the negative police attitudes toward the program were somewhat supported by their negative experiences with the police. For example, four conveners reported their difficulty seeking to contact victims through the police:

The challenges are . . . trying to contact [a] police informant to get victim details . . . because it can be really difficult and it slows the process down, and we [conveners] have the certain period of time and we've got to work within that timeframe that the court gives us. It can be really frustrating as practitioners. (Convener F)

Two of the conveners had also facilitated conferences without police officers, although the law requires police to attend the program (Department of Health and Human Services (DHHS), 2015). The review on the YJGCP showed that about 15 per cent of conferences lacked police presence (KPMG, 2010). (It is important to note that the reason why the police did not attend might be their level of activity rather than their scepticism or lack of interest. The evaluation research on the FGC program in New South Wales, Australia, suggested that the police experienced difficulty attending conferences without substantial notice in advance (People & Trimboli, 2007)).

To prevent victim attendance from being influenced by police skepticism toward the YJGCP, four conveners stated that they engaged in advocacy works with the police, such as building relationships with police officers by volunteering with the programs operated by the police. However, one convener felt that in terms of cost and time, it is unrealistic to expect to convince all of the police officers across Victoria.

Discussion and conclusion

Given the case study approach and the small sample size in this research, it may be difficult to generalize the findings of this study. However, as discussed above, our findings parallel similar results in studies of other RJ programs in relation to each of the research findings of this study: difficulty obtaining referrals due to skepticism of referral agencies (Campbell et al., 2006; Laxminarayan, 2014); compromise of preparatory tasks due to the limited timeframe (Choi et al., 2012; Gavrielides, 2007); and relationship between victim absence and lack of 'full' explanation about the program (Hill, 2002; Hoyle, 2002).

Three decades of increased institutionalization of RJ practices has seen these practices grow – affording more victims opportunities to voice harms and seek amends directly from offenders. This is a good thing. Yet our research is in line with those of others who see RJ as becoming 'stuck' or co-opted in ways that are at odds with many of its most basic goals (Hoyle et al., 2002; Zernova, 2007b), in particular the goals of victim participation and redress, and offender accountability and amends. It seems clear there

exists a 'paradox' in this respect, but the question is whether such a paradox leaves RJ irreconcilable with its institutionalization.

It is not surprising that many early advocates of RJ argued for its use outside of formal justice system auspices. Indeed, if anything, rates of victim participation in the YJGCP program were *better* than research from other programs (Hoyle et al., 2002), but significant problems remain even where victims *do* participate. One strategy is to establish RJ programs that are independent of existing criminal justice systems (Marshall, 1992). However, as mentioned above, such independence is not realistic because without state backing, RJ programs may be less likely to be utilized and may pose other equally problematic risks and problems (Daly, 2013).

Other scholars claim that to avoid or mitigate these problems, it would be better to make RJ a 'fully-fledged alternative rather than a few programs around the margins of current systems' (Bazemore & Walgrave, 1999b, p. 64). In other words, they aim to make restorative responses to crime the dominant approaches in justice systems. This can prevent RJ programs from becoming 'something other than a sideshow' and can help them 'resist the tendency to compartmentalize reforms as alternative programs, process or ancillary policies' (Bazemore & Walgrave, 1999a, p. 5). However, such a shift seems unrealistic, for many reasons. It is necessary for existing criminal justice responses to back up RJ in case RJ responses are inadequate (Braithwaite, 2002). Further, even if such a development was possible, it would take a long time to transform existing criminal justice systems into restorative programs (Walgrave, 2010).

So, the question about how to address co-option in RJ practices within existing criminal justice systems still remains. This paper concludes by providing three strategies that would be implementable, and would go some way towards addressing the problems presented here and in other research we have discussed. The first strategy involves addressing and strengthening the decision-making capacities of conveners though vesting them with increased authority over the screening of cases, victim contact and participant redress. Research from the US, for example, has found that vesting conveners with more decision-making capacity improved restorative outcomes in VOMs, and better meet victim needs in all stages of their participation (Wood, 2013). In a similar vein, several program evaluation studies have suggested improving roles of conveners at each stage of the RJ process including invitation (People & Trimboli, 2007), screening (Hoyle et al., 2002; Rossner, Bruce, & Meher, 2013), preparation (Campbell et al., 2006; Shapland et al., 2011) and follow-up (KPMG, 2010; Maxwell et al., 2004) may

also play a significant role in the improvement of restorative outcomes.

The second strategy is one predicated addressing the problem of 'gatekeepers' such as police or magistrates who hold significant power over the decision of whether or not to use RJ. As discussed above, our research is in line with other studies (Campbell et al., 2006; Clairmont & Kim, 2013; Shapland et al., 2011) which have identified gatekeepers as a primary impediment to the use of RJ, to referrals, and to the choice made by victims to participate. Administrative constraints are partly attributed to lack of knowledge and skepticism regarding RJ practices and ideals (Shapland, 2014; Stenius & Ravenstijn, 2010). Therefore, it is important to increase understanding of RJ among criminal justice professionals (Gavrielides, 2007; Laxminarayan, 2014). Equally important, however, is the push towards (further) legislative and administrative changes that require the option of RJ for victims, and vest the decision to determine the suitability of cases in the hands of victims and staff trained to screen, prepare, and deliver restorative programs. To be sure this is a difficult and politically charged prescription. But it is also far more possible than the notion of RJ divesting itself from institutional justice practices.

The final strategy is one that at first glance may seem counterintuitive to RJ proponents and advocates. In its institutionalization and growth, RJ has not only become administratively hindered and co-opted, but it has also become increasingly used for purposes, and in cases it was never intended for. Much of this growth has come at the 'low end' of offending (Hoyle & Rosenblatt, 2016; Shapland, 2014). As discussed above, interviews with some conveners mentioned that although they felt that serious crimes could be more effectively dealt with through RJ, depending on magistrates such cases were less likely to be referred to the YJGCP than minor offences. More generally, in cases that involve immediate victims, even for smaller offenses, this is appropriate. But in cases such as minor drug possession, public nuisance or disorder offenses, shoplifting (especially from corporations) and so on, the notion of 'harms' is as wanting of an immediate victim as it is of an offender who can readily make sense of who they should make amends to. RJ programs need to abandon such cases, and not only for the reason that they are not likely to be much beneficial to offenders or to victims. Such cases also arguably precipitate administrative constraint and co-option (Hoyle & Rosenblatt, 2016; Skelton & Batley, 2006), through inviting magistrates, police, and others to stand 'in lieu' of such victims, or to use RJ to create victims where no immediate victim is identifiable. Moreover, dealing with such cases may lead to net-widening (Hudson, 2002; Skelton & Frank, 2004), which can exacerbate the problem of administrative co-option, given

limited human resources. If RJ seeks to avoid the problem of co-option, it must also contend at least in part with the fact that it has increasingly become used as a low-end diversionary option for offenders in cases where conferencing is not needed or suitable (Wood & Suzuki, 2016).

The debate about whether RJ should or can be an 'alternative' to youth or criminal justice systems is long over. RJ is now firmly ensconced in state justice practices. The question is rather *how* can it move forward within these institutional settings to better meet the needs of victims, offenders, and other vested parties. Our research suggests convenors have a significant role to play in redressing the co-option and other problems related to the institutionalization presented in this research, and by those of others we have discussed.

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