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ANNUAL LECTURE

The indecent demands of accountability: trauma, marginalisation, and moral agency in youth restorative conferencing

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Abstract

In this article I explore the concept of accountability for young people in youth restorative conferencing. Definitions of accountability in research and programme literature demonstrate significant variation between expectations of young people to admit harms, make amends, address the causes of their offending, and desist from future offending. Such variation is problematic in terms of aligning conferencing goals with accountability expectations. I first draw from research that suggests appeals to normative frameworks such as accountability may not be useful for some young people with significant histories of victimisation, abuse, neglect, and trauma. I then examine problems in accountability for young people that are highly marginalised or 'redundant' in terms of systemic exclusion from economic and social forms of capital. These two issues – trauma on the micro level and social marginalisation on the macro level – suggest problems of getting to accountability for some young people. I also argue trauma and social marginalisation present specific problems for thinking about young offenders as 'moral subjects' and conferencing as an effective mechanism of moralising social control. I conclude by suggesting a clear distinction between accountability and responsibility is necessary to disentangle the conflation of misdeeds from the acute social, psychological, and developmental needs of some young offenders.

Keywords: Restorative justice, youth offenders, trauma, marginalisation, offender accountability.

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1 Introduction

In this article I examine the concept of offender accountability as it is used within research and programme literature on youth restorative justice conferencing. By conferencing I mean variants of restorative meetings between victims, offenders, and other relevant parties including youth conferencing, family group conferencing, victim-offender mediation (VOM), and sentencing circles. I focus on conferencing in English-speaking countries, in particular Australia, Canada, New Zealand, the United Kingdom, and the United States. These are countries with some of the oldest and, in the case of Australia and New Zealand, most integrated uses of youth conferencing. These countries also utilise more adversarial youth justice processes, with restorative justice used mostly within 'the system' either as a diversionary practice or as a post-adjudicative outcome (Daly & Marchetti, 2012). Finally, these are all countries with relatively higher degrees of social inequality for industrialised nations, long histories of deeply impoverished and socially marginalised communities, and with trends towards increasing inequality since the 1980s.

Accountability is repeatedly set forth in research and programme literatures as arguably the primary goal for offenders in restorative youth conferencing. The institutional contradictions of youth 'responsabilisation' in restorative justice programmes, policy, and legislation have been well-documented in existing research (e.g. Cunneen, 2003; Gray, 2005; Muncie, 2006). This is not what I mean by 'indecent demands', however, although there is an indecency to these institutional contradictions as well.[1] Rather, I mean the problem of accountability as one of the 'plastic words' of modernity; words that Uwe Pörksen (2010) argues retain the authority of their technical heritage but in the vernacular can mean almost anything to anyone. The problem with plastic words, argues Pörksen, is not their imprecision – many words are imprecise – but rather their amenability to use by problem-solvers as 'common sense' because they can be poured into any problem and moulded into any solution.

O'Mahony and Doak's (2017) recent work on restorative justice and accountability anticipates the amoeba-like quality of this term (see also Daly, 2017; Richards, 2017; Roche, 2003) when they note the many ways offenders are held 'accountable' in the criminal justice system – through prosecution, sentencing, punitive sanctions, and so on. In distinction from these, O'Mahony and Doak (2017) propose an 'empowering' model of accountability.[2] Others have also sought to clarify accountability, for example 'personal accountability' (Dignan &

1 The phrase 'indecent demands' comes from a work by Ivan Illich (1992) on the contradictions between the historical emergence of health as one's individual responsibility and the growth of sickness, disease, starvation and environmental degradation and piracy endemic to global economic progress.

2 O'Mahony and Doak (2017: 71) note: 'Accountability, within the context of our framework, thus needs to be understood in its positive and empowering sense, and is achieved when offenders admit their involvement in the offense, accept the harms they have caused, express remorse and accept collectively agreed resolutions that help contribute towards their restoration and reintegration.'

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Marsh, 2001), 'active accountability' (Karp, 2019), 'deliberative accountability' (Roche, 2003), or 'full and direct accountability' (Van Ness, Morris & Maxwell, 2001).

The overall effect is not more precision of the term, however, but less. This is an issue in criminal justice broadly, but I focus on the problem as it relates to accountability in youth conferencing. I also give attention to the problem of restorative justice as an 'accountability model' of justice. This model understands crime as a violation of moral order and argues for effective solutions through offender involvement with normative values and behaviours such as those communicated and learned in conferencing. Boutellier (2012: 21) notes, for example, that 'Restorative justice defines, more or less explicitly, crime as a moral act for which the offender – as a moral subject – is responsible and accountable.'[3] Yet restorative justice faces problems from other knowledge frameworks of offending and justice that challenge assumptions of at least some young offenders as 'moral subjects', as well as the notion that offending can be best addressed through appeal to normative values and behaviours. I make three arguments in this article to support this claim.

First, offender accountability is often presented as a common-sense concept in restorative justice research and policy literature. On closer inspection, definitions of this concept vary significantly in terms of when, how, and to whom or what offenders are to be accountable. Moreover, accountability is often used interchangeably with 'responsibility'. Some scholars (e.g. Braithwaite, 2006; Daly, 2017) have made distinctions between these terms, but most do not. Whether it is helpful to think about these concepts as distinct is something I return to at the end of the article.

Second, young offenders demonstrate significantly higher rates of serious trauma than non-offenders. Trauma-informed research suggests some young people offend or engage in anti-social behaviours as attempts to resolve trauma symptomatology or to protect themselves from real or perceived harms. This research suggests accountability models of justice are probably poor mechanisms from which to address the causes or symptomatology of serious trauma, particularly when it is unrecognised or not treated. This research also suggests potential problems or impediments to conferencing in cases of serious offender trauma.

Third, many young offenders come from significantly marginalised communities and entrenched systems of social disadvantage. Highly unequal societies and entrenched disadvantage present problems for restorative justice as an accountability framework of justice. Appeals to normative values may be weak for disadvantaged young people. Also, some young offenders may lack capacity to mean-

3 O'Mahony and Doak (2017: 32) similarly argue: 'restorative theory implies that the object of the reparation is some form of moral debt owed by the harm-doers to the persons that have suffered harm.' Bazemore and Umbreit (1995: 305) also argue that within restorative justice, 'the message to lawbreakers that they are capable of and responsible for, making amends for the harm caused by their crime stands in sharp contrast to the message of "sick" or "evil" offenders […]'.

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ingfully engage with and demonstrate responsibility in conference processes and agreements.

2 What is accountability in restorative youth justice?

The term accountability is frequently employed but not defined in restorative justice research or programme literature. This is particularly common in evaluative research, which often measures some aspect of conferencing and notes that offender accountability is a primary goal of restorative justice. This is the problem of 'everyone knows what accountability is' and hence there is no need to define it.

When defined in research or programme literatures, there is wide agreement that accountability includes expectations that offenders admit to harms they have caused, listen to victims about the impacts of these harms, and engage in dialogue about these harms. This can be called the 'base standard' of offender accountability. Almost all publications or sources I have found include these criteria in some form when accountability is defined.

On top of the base standard definition, restorative justice research and programme literature often includes more accountability expectations or requirements for young people in conferencing. These can be categorised in terms of 'temporal accountability' and 'object accountability'. Temporal accountability is the question of the point in time to which an offender is expected to be accountable – past, present, or future. Object accountability is the question of to whom, or to what, the offender should be accountable.

2.1 Temporal accountability

The base standard definition of accountability is the most temporally limited insofar as it is generally focused on specific harms that have already been committed. Johnstone (2013: 16) explains, 'Restorative justice is usually understood and discussed as a way of responding to crimes which have already been committed.' In this respect accountability is not distinct from retrospective goals of punishment in retributive theories (Daly, 2000b; Roche, 2013).

As with retributive theories, restorative definitions of accountability often include remedy in the 'present' for harms caused in the past. The primary distinction in restorative conferencing is focus on repairing harms to victims in lieu of restoration of social equity through administrative sanctions. Most common is the notion offenders are obligated to 'make things right' or make amends directly to victims (e.g. Umbreit, 1995; Van Ness et al., 2001; Zehr & Mika, 1998). There is distinction from deserts theories insofar as offender obligations in restorative conferences may vary in terms of victim needs, but punishment or 'amends' in conferencing are also generally considered proportionally, in dialogue, in relation to harms caused (e.g. Crawford & Newburn, 2013).

Other definitions of offender accountability exist in the temporal present in ways less immediately connected to obligations for past harms caused to victims. There is frequent focus on the accountability of offenders to demonstrate how they may be addressing causes of their offending – what Menkel-Meadow (2007:

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169) calls 'accountability for behavioural change' (see also Consedine, 1995; Zehr, 2015). Here there is slippage between accountability for past harms and a more consequentialist view of accountability where, for example, Umbreit and Armour (2011: 79) have argued restorative justice can make 'a substantial contribution to increasing victim involvement and healing,' and 'offender responsibility for behavioral change and learning from experience'. Umbreit and Armour use 'responsibility' to the same effect that Menkel-Meadow uses 'accountability'. These terms are often used synonymously in restorative research and policy literatures. Part of this may be because in some cases expectations of behavioural changes are tied to victim requests in conference agreements, and other times not. Common examples include alcohol or drug rehabilitation, anger management courses, therapy or counselling, and so on.

Accountability definitions may also focus on future behaviours. In some cases, accountability is seen as a precursor to future responsibility in young people. Chapman and Chapman (2016: 144) explain this when they argue, 'Perpetrators are not in a position to understand how their actions have caused suffering until they listen to the victim,' which they suggest 'may create feelings of remorse and a responsibility to consider the consequences of one's actions in the future.' In this view, responsibility for future actions is more a hoped-for outcome of accountability than a condition of accountability itself (see also Braithwaite, 2002; Morris, 2002). This 'one-two' step link between offender accountability and desired outcomes, especially decreased reoffending, is most common in restorative justice research literature.

In other cases, accountability is more directly tied to obligations or expectations of future behaviour, especially reoffending. This is more common in policy literature or evaluations than in academic research. A training workshop for conference practitioners in the UK notes, for example, that participants will learn to '[p]repare a written plan with the group that forms the basis for an Agreement where people are held accountable for future behaviour' (RJC, 2015). An evaluation from the Queensland Government (DCSYW, 2018: 56) measured young people's 'sense of accountability' using several questions, including 'I am less likely to offend like this again'. The link between accountability and reoffending can also be seen in the Balanced and Restorative Justice (BARJ) model in the United States (Pranis, Bazemore, Umbreit & Lipkin, 1998: 9), which notes: 'The BARJ Model defines accountability as taking responsibility for your behaviour and taking action to repair the harm.' According to this model:

Taking full responsibility for behaviour requires:

- Understanding how that behavior affected other human beings (not just the courts or officials).
- Acknowledging that the behavior resulted from a choice that could have been made differently.
- Acknowledging to all affected that the behavior was harmful to others.
- Taking action to repair the harm where possible.
- Making changes necessary to avoid such behavior in the future (Pranis et al., 1998: 9).

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The BARJ model is the most temporally expansive (i.e. past, present, and future obligations) definition of accountability I found in research or programme literature.

2.2 Object accountability

Object accountability is the question of to whom, or what, the offender is accountable. When defined, accountability always includes victims. In some cases, 'victims' are narrowly defined, while in other cases more broadly. The debates about the types and roles of victims as 'stakeholders' in restorative justice models are well known (e.g. McCold, 2004). Here it is enough to point out that different definitions of victims lead to different views of to whom and how offenders should be accountable.

For offences against individuals, there is a clear expectation in research and programme literature that accountability should be to victims as 'primary stakeholders'. But sometimes there are other victims as well. Corporations can be victims, or municipalities in the case of victimless crimes, public nuisance offences, and so on. Communities are also frequently often seen as victims to which offenders should be accountable. Corrado, Cohen, and Odgers (2012: 5) explain that 'the community is also a victim in any offence and, as such, the offender has an obligation to restore, and is accountable to, the community.'

Again, the problems and debates of who or what is community are well known (e.g. Crawford & Clear, 2003). So I will only point out again that how community is defined or conceptualised as a victim in turn creates distinct or even contradictory views regarding the scope of offender accountability. Some restorative justice advocates have argued community service may help to restore harms to the community (Maloney, 2007; Walgrave, 1999). Others have argued community service is 'potentially restorative' (Zehr, 2015). And yet others have argued community service is not restorative unless the 'offender, his or her victims, and others they have harmed are given an opportunity to participate directly in the decision-making' (McCold, 2004, 25).

Beyond accountability to victims and to the community, restorative justice research and programme literature demonstrates other people or things young people should be accountable to or for. They should be accountable to their families (Claassen, 1996), to themselves (Corrado et al., 2012), or even to the court (Reality House, 2020). Such examples are less frequent than accountability to the victim or the community, but neither are they rare.

Definitions of accountability contain implicit or explicit assumptions about the function and goals of restorative justice conferencing. The 'base standard' understanding of accountability is the most temporally limited in focus on past harms and present amends, but also the most restrained in terms of offender obligations. Definitions that include present or future consequentialist goals involve more accountability requirements from the offender, and thus constitute broader and larger obligations from the young person. This is also the case when the scope of accountability is expanded to include a larger number of people or things the young person is asked to be accountable to or for.

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3 Accountability, trauma, and moral agency in young people

Restorative justice literature often views offending as a result of moral deficit or lack of moral agency on the part of the offender. In this respect, it is a normative theory of justice. It emphasises the use of dialogue-driven practices between victims, offenders, and other parties towards the goals of victim redress; encouraging young people to admit harms they have caused; and making amends for these harms. As a normative theory, restorative justice practices 'assume mentally competent and hence morally culpable actors, who are expected to take responsibility for their actions' (Daly, 2000b: 35). 'Direct' or 'personal' accountability to victims is a means by which young people can remedy a bad or 'harmful' action in terms of taking responsibility for that action. This is clear in the BARJ (Pranis et al., 1998) example earlier, where offenders should acknowledge their 'behavior resulted from a choice that could have been made differently'. Radzik (2007: 197) similarly argues that in allowing offenders opportunities to make amends, restorative justice approaches provide offenders 'an active role in helping to determine what form those amends should take … [and] show great respect for offender's moral agency.'

Conferencing is also viewed as a way for offenders to learn or gain moral capacity by providing them with opportunities to demonstrate accountability and engage in dialogue that holds them to account (e.g. Braithwaite, 1999; Moore, 1993). Hudson, Galaway, Morris, and Maxwell (1996: 3) note that 'Conferences can also be seen as an educational tool', where 'offenders can learn that their actions have real consequences for victims and that they are able to make amends'. Bender, King, and Torbet (2006: 63) note that youth offenders 'learn the impact of their behavior, gain insights into themselves and their conduct, internalize the need for improved behavior, and receive support for taking action to repair the harm'.

As 'moral subjects' offenders may thus be able to repair harms to others, but also better understand consequences of their actions and gain insight into reasons for their offending. In some views of accountability, these are characterised as offender 'needs'. Johnstone (2013: 78-79) argues, for example:

> Offenders must be held accountable to victims for the harm they have caused and must make serious efforts to repair such harm before they can expect to have their needs attended to. However … by holding offenders accountable and encouraging them to make amends for their behaviour we are already beginning to meet their needs … not through therapeutic techniques which are based on a passive conception of the criminal, but through 'moralising social control' based on the assumption that criminals have a choice about how to behave.

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One problem with thinking about meeting young people's needs through normative views of accountability advanced by Johnstone and others[4] is that some young people offend for reasons other than lack of moralising social control, or because they lack understanding of the consequences of their actions. That is to say, some young people come into conferences with significant needs resulting from histories of trauma and victimisation that, as victims, remain unmet.

In this article I use the term 'serious trauma' to refer to post-traumatic stress disorder (PTSD) or complex post-traumatic stress disorder (CPTSD). Young offenders demonstrate higher rates of serious trauma than their non-offending counterparts (Abram et al., 2004; Dierkhising et al., 2013). This is because young offenders on average experience higher rates of trauma exposure and adverse childhood experiences than non-offenders. Predictors of serious trauma include parental abuse and neglect, victimisation from violent and sexual offences, the witnessing of violence, and the loss of a parent or caregiver (Dierkhising et al., 2013).

There is also agreement in trauma-informed research that some young people offend, become anti-social, or self-harm as mechanisms of trauma avoidance, or as a means of trauma repression (Griffin, Germain & Wilkerson, 2012; Solomon, Davis & Luckham, 2012). Unfortunately, restorative justice research and policy literature has largely ignored research on offender trauma. Reasons for this are not clear, as the empirical reality and negative impacts of serious trauma for victims are not contested within restorative justice literature (e.g. Angel et al., 2014; Lloyd & Borrill, 2019).

However, little empirical research has been published on offender trauma in the context of restorative justice, or in terms of implications for restorative conferencing (e.g. Gustafson, 2018). Slightly more restorative justice research has identified problems of offender trauma (e.g. Randall & Haskell, 2013; Rozzell, 2013; Zehr, 2008, 2009), but, with the exception of Zehr these have generally speculated that restorative justice approaches are or can be 'in line' with trauma-informed practices. Rozzell (2013: 5), for example, argues restorative justice practices are 'in harmony with a trauma-informed justice system, particularly in their emphasis on not causing further harm while at the same time holding people who have committed offenses accountable'. Sherman and Strang (2015: 402) have further suggested:

> For an offender, the trauma may lie not in the crime, but in the RJC [restorative justice conferencing] … When offenders can no longer deflect the evil of their crimes by techniques of neutralization (Sykes & Matza, 1957), they may find the 120-180 minutes of direct accountability for the harm they cause to

4 Bazemore (1998: 789) also notes that: 'from a restorative perspective, important first steps in an offender's rehabilitative or reintegrative process include a feeling of shame or remorse and an effort to make things right'. Luzon (2016: 38) notes, 'The offender's obligation, backed by his or her attitude toward his past conduct (condemnation) and participation in restorative agreements assist in his or her rehabilitation. Accepting responsibility for future acts is intended to affect the future conduct of the offender'.

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> be far more painful psychologically than any other experience of criminal sanction.

Yet given the relative prevalence of youth offenders with substantial histories of victimisation, abuse, neglect, and adverse childhood experiences it is certain that some young people who come into conferences as offenders also bring with them significant trauma as victims. To date, there is no research on the prevalence of serious trauma in young people who participate in conferences. This is unfortunate because there are significant implications of trauma-informed research for restorative conferencing. Most of these implications fall outside of the purview of the focus on accountability in this article, however, so I make only three points regarding trauma-informed research and practice that bear more directly on restorative justice as an accountability model of justice and youth offenders as moral subjects.

The first point is the abundance of research that demonstrates some young people offend as a *reaction* to perceived or real threats resulting from trauma symptomatology (Baer & Maschi, 2003; Griffin et al., 2012). Responses to such threats can include hyperarousal and poor self-regulation (Ford, Chapman, Connor & Cruise, 2012), which may result in aggressive or impulsive behaviours as a mechanism of self-protection or trauma avoidance. Also, serious trauma may significantly impact emotional development and affect in some young people, leading to increases in negative emotionality, callous and unemotional (CU) traits, and decreased empathy (Bennett & Kerig, 2014). CU traits and low empathy have long been recognised as correlates of offending, but only more recently have been identified 'in the context of reactions to maltreatment and victimization … when youth detach emotionally in order to cope with the distress associated with trauma exposure' (Mozley, Lin & Kerig, 2018: 745).

The second point that follows from this is attempts to address trauma-related offending behaviours through appeals to accountability may be ineffectual in addressing root causes of offender's misdeeds. Rather, trauma symptomatology is likely to remain in what Sar and Ozturk (2006) explain as the inevitable repetitions of coping mechanisms or strategies of trauma avoidance, unless and until the underlying causes of trauma are addressed and worked through, usually in a therapeutic setting.

The third point is that serious trauma may fundamentally skew young people's perceptions of fairness and respect. This is an issue for conferencing in terms of how young people may respond to conflict, and in how they may perceive what is procedurally fair and just in conferencing interactions and outcomes. Conflict, disagreements, and even anger are a normal and accepted part of conferencing. Rossner (2019: 375) notes: 'Restorative justice encounters are full of angry emotions (and at times retributive urges).' Bush and Folger (1994: 12) argue restorative justice presents opportunities for the healing of victims, but also 'moral growth inherently presented by conflict' for offenders. However, young people with serious trauma, particularly as a result of abuse and neglect, are often hypersensitive to anger, conflict or confrontation (Cohen, Mannarino & Deblinger, 2016). Even where conference environments may be 'safe' for young

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people and facilitated towards goals of respectful communication and conflict resolution, young people with serious trauma often view their world through a lens of constant or current threat to their safety and to avoiding situations that may trigger trauma symptoms.[5] Research from Scheuerman and Matthews (2014: 870) has found high negative emotionality and low constraint (which are higher in trauma victims) predict lower experiences of procedural justice in young offenders, and has concluded 'the experience of [procedural justice] and shaming may not depend as much on how restorative justice programmes are implemented, but on how they are perceived'.

Serious trauma may also manifest profound lack of faith or belief in goodness or justice in young people. It may change or distort social cognition, in particular as Nazarov et al. (2016: 2) note within 'its performance in emotionally salient social contexts'. Conferences are highly salient social settings that require effective communication and demonstration of complex emotions. Yet Williams and Sommer (2014: 227) note that following serious trauma, children sometimes 'show no overt diagnosable disorders, yet they profoundly distrust people, expect betrayal, and lose faith that life holds any justice or meaning'. In this regard, profound distrust and lack of faith in justice or meaning may be poor antecedents to effective moralising social control.

All these issues are compounded by the fact that serious trauma in young people is often difficult to diagnose (van der Kolk, 2005). It appears to be particularly underdiagnosed within youth-offending populations (Maschi & Schwalbe, 2012). More recent research also suggests that some young offender's attitudes and behaviours are likely to be mischaracterised as anti-social or wilfully deviant rather than being perceived as resulting from serious trauma (Ford & Courtois, 2014). Rather, trauma may impact young people's decision-making, including decisions to offend (Solomon et al., 2012).

Lack of attention to offender trauma within restorative justice literature and research also speaks more broadly to poor engagement with mental health research and issues faced by some young people. PTSD is often comorbid with depression, anxiety disorders, and other mental health problems (Kilpatrick et al., 2003) that may also not only be contributing factors in anti-social behaviours, but unto themselves are not generally thought of or treated in terms of young people as 'moral subjects'. Griffin et al. (2012: 277) make this distinction clear when they articulate a trauma-informed model of youth offending:

5 Some literature identifies the problem of 'current threat' in terms of difficulties in addressing trauma events. As Dunmore, Clark, and Ehlers (2001: 1079) note: The concept of current threat helps explain why PTSD symptoms are strongly associated with anxiety despite the event being one that is in the past [...] Individuals who interpret their emotional responses during trauma as signs of being "unstable", "out of control", or a "sick person" will also try to avoid confronting the memory, and experience the distress and arousal accompanying intrusive memories as threatening. Both mental defeat and negative interpretation of emotional responses during trauma may interfere with the therapeutic effects of imaginal reliving, as reliving these experiences may confirm rather than disconfirm the negative appraisals. Thus, such appraisals may need to be addressed directly in treatment.

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A trauma-informed model is very different than a punishment model. The latter assumes a youth is a rational actor, which directly conflicts with a trauma-informed approach. A traumatized youth, who feels threatened, overreacts, and is then punished by adults for the overreaction, may not see the basis for the adult response. A traumatized youth is not a rational actor but rather reacts to a trauma trigger. If anything, continually punishing a traumatized youth may further convince the youth that the adult world is a real threat.

4 Restorative justice and redundant young people

Serious trauma and its comorbidity with other health and mental health problems present challenges for thinking about how to approach offending through an accountability model for young people with PTSD or CPTSD. Yet neither trauma nor mental health are individual level problems. They are also patterned in ways that reflect larger social inequalities, in particular social class; race, ethnicity, and indigeneity; and gender.

Historical trends in such inequalities have increased in most Anglophone countries since the late 1970s. Patterns of inequality are difficult to compare between countries, but within the last four decades there have been discernible general trends that speak to the growth of social inequality and social marginalisation. Contrasted against the massive increase in concentrated wealth at the top, rates of people living in 'concentrated disadvantage' (Australian term, see McLachlan, Gilfillan & Gordon, 2013), 'absolute poverty' (Canadian term, see Lammam & MacIntyre, 2016), or 'concentrated poverty' (US term, see Jargowsky, 2013) have not decreased, although rates of 'absolute low income' (UK term, see Francis-Devine, 2020) have more recently declined in the UK. These trends intersect disproportionally with racial, ethnic, and Indigenous peoples (Lichter, Parisi & Taquino, 2012; McLachlan et al., 2013; Palmer & Kenway, 2007), which also see the lowest rates of social mobility (Chetty, Hendren, Jones & Porter, 2020; Connolly, Corak & Haeck, 2019; McLachlan et al., 2013).

These phenomena have been widely recognised and documented within sociological and criminological literatures. Wilson (1987) referred to these groups in the context of the US as the 'truly disadvantaged'. Polk (2001) has documented the structural political-economic and social exclusion of what he calls 'abandoned youth' in Australia. Bauman (2004) has characterised such groups more broadly as 'redundant populations' – groups and individuals fundamentally excluded from participation in the productive economies of both developed and developing nations. Young people, and especially poor racial or ethnic minority young people, are among the highest in terms of such redundancy.

More affluent European countries have tended to pursue strategies of wealth redistribution and strong social welfare provisions as a means of limiting social inequalities, particularly wealth inequality. For most Anglophone countries, however, strategies of addressing inequality have been markedly different and have

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tended to follow discursive policies of social containment,[6] suppression,[7] and ideological reframing of social problems as personal problems or individual deficits of the poor and particularly racial and ethnic poor people.[8]

These are not novel arguments, and each can easily be found in reference to the voluminous literature on these topics. These problems have also been widely recognised within restorative justice literature, particularly in its criticisms of the punitive turn in youth (and adult) justice in the United States beginning in the 1980s, and a bit later in Australia, the United Kingdom, and in New Zealand for adult offenders. Umbreit (1998, Concluding remarks, para. 4), for example, argued over two decades ago that a primary risk facing the restorative justice movement was that 'concern for the overrepresentation of people of color in our juvenile and criminal justice systems could easily be lost with a hasty and exclusive focus on restorative interventions'.

Two decades later the same structural conditions exist where many young people, especially racial, ethnic, and Indigenous young people, remain redundant or 'surplus' to the productive economy and the benefits of prosocial norms and behaviours. Societies with high inequality and social marginalisation – particularly endemic and intergenerational marginalisation – are societies that have lower shared values, weak normative frameworks of justice, and little incentives for people that are fundamentally and often forcefully excluded to find the accountability of such values meaningful, or even sensible.

This presents issues for all normative theories of criminal justice, not just restorative justice. Criminal justice interventions in general are relatively weak mechanisms for addressing social inequalities, so it is not realistic to expect this from restorative conferencing. Daly (2000a) has argued that a better question isn't whether restorative justice eliminates structural inequalities in justice outcomes, but whether it does less harm this way compared to traditional court processes. Research that has measured or looked at effects of offender poverty, social disadvantage, or social marginalisation in conferencing processes or outcomes is limited, but suggests that these factors often play a role in poorer conferencing

6 Containment involves social-geographical separation of marginalised groups into areas or regions where they are structurally excluded from the formal economy, and from access to social or cultural capital. Such social-geographical spaces are also the most differentially enforced. Examples of this include the urban ghettoisation of poor and, in particular, racial and ethnic minorities in the US and the UK (Hancock & Mooney, 2013; Wacquant, 2009); but also in the ruralisation of poverty and social disadvantage in remote and particularly First Nations communities in Australia and Canada (Vinson, Rawsthorne & Cooper, 2007).

7 The primary example of this is the racialised war on drugs in the US (Nunn, 2002). More generally, it involves the evolution of punitive populism and tough-on-crime policies that have targeted the poor and particularly poor racial, ethnic and indigenous minorities in the US, but also Australia, New Zealand and the UK (Muncie, 2008; Wacquant, 2001).

8 Examples include workfare programmes that have effectively turned diminishing social welfare support into low-skill, low-pay jobs for those that can find them (Daguerre & Etherington, 2014; Wacquant, 2009); but, more generally, the host of policies, practices and strategies that make the poor responsible for their own poverty.

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outcomes for such offenders.[9] Research from de Beus and Rodriguez (2007) is the notable exception here where the authors found young people below the poverty level that participated in a restorative justice programme had better rates of programme completion than the comparison group.

More comparative and variation research exists on conferencing outcomes for racial, ethnic, and Indigenous youth offenders. The evidence is not strong that restorative conferencing functions to mitigate problems of disproportional racial or ethnic involvement in the youth justice system, or leads to better reoffending outcomes for these young people.[10] A recent study in Queensland found Indigenous young people were significantly more likely to reoffend than non-Indigenous young people after conferencing. Their discussion is worth quoting at length:

> [These findings] should not be surprising. RJ approaches do not specifically focus on addressing risk factors associated with youth offending (such as substance misuse, low socioeconomic status, poor impulse control, involvement with delinquent peers, neighbourhood disorganisation, etc.). Rather, these processes aim to meet victim needs, elicit offender accountability, and restore the offender back into society through the key mechanism of reintegrative shaming. For some Indigenous young people who live in communities characterised by high levels of economic and social disadvantage [Weatherburn, 2014], there are concerns to what these young people are being restored. (Little, Stewart & Ryan, 2018: 4083)

Such research has problematic implications for accountability mechanisms in the conferencing of young people from highly marginalised or deprived communities,

9 Maxwell and Morris' (2001) study of FGCs in New Zealand reported a detrimental impact of social disadvantage on conferencing outcomes, although this was not a comparative study. Hayes and Daly (2003: 744) looked at residential instability as a proxy for social disadvantage in the South Australia Juvenile Justice project and found 'significant bivariate associations for reoffending and Aboriginality, social marginality, and prior offending. Some 64% of Aboriginal youths reoffended, compared to 37% of the non-Aboriginal youths; 72% of residentially unstable youths versus 28% of the more stable youths reoffended; and 55% of those who offended preconference, compared with 21% who did not reoffend'. Research on the use of restorative justice for socially marginalised girls in Canada has also reported 'difficulties in both the theoretical underpinnings of the RJ concept and the reality of RJ in practice that may well limit its effectiveness in addressing the needs of marginalized girls,' in particular, physical and emotional abuse, racism and discrimination, poverty and exploitation (Jackson & Henderson, 2006: 236).

10 Wood and Suzuki (2020: 8) note: A smaller number of studies demonstrate improved outcomes for racial, ethnic or Indigenous offenders in RJ conferencing compared to traditional court practices and sanctions (de Beus & Rodriguez, 2007; Luke & Lind, 2002; Maxwell, Morris & Anderson, 1999; Rodriguez, 2005). But more comparative studies have found no difference (Allard, Stewart & Chrzanowski,, 2010; Bergseth & Bouffard, 2007; Fitzgerald, 2008; Jones, 2009; Poynton, 2013; Smith & Weatherburn, 2012) or worse outcomes for non-White offenders (Strang & Sherman, 2015). Variation and experimental studies on RJ conferencing have also found no differences (Hayes, 2005; Hipple, Gruenewald & McCardell, 2015) or worse outcomes for non-White offenders (Hayes & Daly, 2003; Hipple et al., 2015; Little et al., 2018; Stewart, Hayes, Livingston & Palk, 2008).

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particularly when accountability is linked to expected changes in offending behaviours. It is well recognised that youth conferencing tends to be used for less serious offences or first-time offenders – what Hoyle has called the 'shallow end' of the criminal justice pool (Hoyle in Cunneen & Hoyle, 2010; see also Shapland, 2014). These young people often bring with them more social capital and opportunity and leave conferences with stronger prosocial support and capacities to 'make things right' and to reintegrate. Some countries do regularly conference with violent youth offences, or repeat offenders, most notably Australia and New Zealand. Apart from research by Maxwell and Morris (2001, see footnote 9 in this article; see also Maxwell, Robertson, Kingi, Morris & Cunningham, 2003), there is no research to my knowledge on these questions in New Zealand. Research from Australia (Hayes & Daly, 2003; Little et al., 2018; Smith & Weatherburn, 2012), unfortunately, has demonstrated that young people that come into conferences with significant disadvantage and, in many cases significant offending histories, are not transformed by them but rather tend to return to the same milieus and similar behaviours.

5 Disentangling accountability and responsibility in youth conferencing

The 'base standard' of accountability is one that arguably appeals to most people as 'common sense'. Yet, as I have discussed, offender accountability is often defined as much more than this in restorative justice research and programme literature.

The problem is not a muddying of philosophical goals of punishment. There are ample case studies that demonstrate positive retrospective and consequentialist outcomes in restorative conferences. The problem is rather the assumption that conferencing inherently works better than other youth justice approaches as an accountability mechanism when research demonstrates that a smaller but still sizeable number of young people experience significant problems in what can be called *getting to accountability*.

5.1 Getting to accountability

By the problem of *getting to accountability* I mean empirical research that demonstrates at least some young people struggle in conferences to 'give account' in ways that are satisfactory to victims and often result in poor conference experiences and outcomes. Research shows many youth offenders in conferences have problems adequately expressing themselves, conveying basic information related to harms or their offences, recalling facts, or providing a 'full account of the offence' (Beckett, Campbell, O'Mahony, Jackson & Doak, 2005: 10; see also Bolitho, 2012; Hayes, 2006).

In using the term 'giving account' I separate accountability from responsibility. I agree with Braithwaite (2006), Daly (2017) and others that the terms in fact mean quite different things, at least historically. 'Responsibility,' argues Braithwaite (2006: 34), is 'an obligation to do some right thing; accountability is being answerable to give a public account of some thing' (Braithwaite, 2006: 34).

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In this respect he argues, 'The public accountability dimensions of restorative justice are mostly, though not entirely, about rendering an account of whether the responsibility that has been taken is just.'

This is useful in thinking about the ever-expanding definitions of accountability when in fact what many definitions mean is *responsibility*. Accountability is not reparation, although some victims might find meaning in offenders being held to account. Rather, as Daly (2017: 118) argues, accountability is a process of '*calling* alleged wrong-doers to account' (i.e. investigation and criminal charges) 'and *holding them to account*' (i.e. expecting them to answer to their alleged wrongdoing). These processes are fairly distinct in traditional court practices. In youth conferencing, however, they are less so, in that holding them to account means more than merely pleading or being found guilty. It involves not just admitting fault, but also, as Braithwaite (2006: 24, my emphasis) notes, a '*rendering* an account of whether the responsibility that has been taken is just'. In other words, it is also a type of 'obligation to give an account' directly to those harmed, and perhaps others as well (Braithwaite, 2006: 38).

This distinction between accountability (holding to account) and responsibility (reparation of harms) is analytically helpful in clarifying the 'limits' of accountability. But two problems follow from this. The first is that in practice, processes of giving account and taking responsibility are often deeply intertwined in youth conferencing. Hayes (2006) has noted the problem of 'competing demands' in youth conferences where young people are asked to both explain what they have done and why (i.e. give account), and also offer apology and accept blame (i.e. take responsibility). He describes how,

> offenders' speech acts in a youth justice conference may drift from apologetic discourse to mitigating accounts and back again … Such speech acts may not convince victims of offenders' "worthiness" [Tavuchis, 1991] but instead may be seen as attempts to acknowledge blame but deflect shame' (Hayes, 2006: 378).

Hence the separation between accountability and responsibility may be less clear in practice than in principle, especially where a 'poor account' on the part of the young person may be perceived as a denial of responsibility.

The second problem that follows is that of thinking about youth offenders as 'moral agents'. Certainly many (maybe most) youth offences can be described as poor decisions or mistakes made without thinking of the consequences. But not all. Serious trauma presents problems for young people to be able to give account or be 'held to account' when the basis of their offending may be a result of living in a 'current threat' mode, when anti-social behaviours may be coping mechanisms, or when offending is not a bad decision to harm others but rather a *reaction* made by the young person to deflect or mitigate real or perceived harms. Trauma-related effects such as decreased empathy or remorse, significant distrust of adults and authority, emotional withdrawal or hyperarousal, and weak emotional affect also present challenges in getting to accountability. Snow and Sanger (2011: 330) have also identified the link between trauma and alexithymia (the

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inability to describe and define emotions) in young people, noting this may present problems for 'young offenders' ability to engage in a Restorative Justice conference— both in order to "tune in" to another's affective state and to use appropriate words to describe their own'.

Social marginalisation and depravation also pose problems for getting to accountability. Here too research suggests socially disadvantaged young people evidence higher speech, language and communication problems than other young people (Snow & Sanger, 2011). These problems have been identified as particularly prevalent in youth offenders (Bryan, 2004; Sanger, Moore-Brown, Magnuson & Svoboda, 2001). Hayes and Snow (2013: 4) note that in Australia 'one in two young offenders has expressive and receptive language skills that fall well below what could be expected on the basis of their age and IQ', leading them to question how this may impact 'a young person's capacity to give an effective account of their wrongdoing and to effectively express their emotions (e.g. remorse, regret, embarrassment, sorrow)?'

These problems are also evident in existing qualitative research. Willis' (2020: 187) ethnographic study found that conferences in the UK appear 'to privilege middle-class forms of communication, and participants from middle-class backgrounds may therefore be more powerfully positioned in restorative justice processes than participants from less advantaged backgrounds'. Willis and Hoyle (2019: 15) investigated the role of 'street culture' in restorative justice conferencing and found, 'Being from a disadvantaged background . . . appears to increase the likelihood that an offender will be judged as insincere in restorative processes and more likely to reoffend'.

5.2 Capacity of response

Accountability is being held to give or render an account that admits blame for harms caused and identifies obligations to address these harms. Responsibility is the reparation of harms that follow from the obligations of the account. The word 'responsibility' comes from *responsabilis* (Latin as 'responsible') + *ableté* (Old French as 'state or condition of being able; capacity to do or act'), meaning the 'ability or capacity to respond'. Capacity is important here because it denotes the question of not only whether someone *should* do something, but also whether they have the capacity for that thing. Following a standard definition of capacity as 'the maximum amount that something can contain', problems of serious trauma and social marginalisation elicit the question of how much capacity we should expect in the ability of these young people to respond, to be responsible?

This is arguably where the conflation of accountability and responsibility is most problematic. G*etting to accountability* may be difficult for some young people in terms of their ability or willingness to give or 'be held' to account. But subsuming obligations that are in fact 'responsibilities' into accountability conflates the acute *needs* of young people with the process of being accountable for their *misdeeds*.

I return to the quote from Johnstone (2013: 78-79), when he argues that 'by holding offenders accountable and encouraging them to make amends for their behaviour we are already beginning to meet their needs' (see also footnote 4 in

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this article). This may be true for some and maybe many young people. But again, trauma and social marginalisation present problems. Each additional obligation of a young person as it extends in temporality or scope requires more capacity from them. For many young people, even effective communication of sincere apology requires significant emotional, linguistic and non-verbal (i.e. body language) capacities (Choi & Severson, 2009; Hayes, 2006). Offering of sincere apology and completion of restitution and other agreements requires more capacities such as increased self-control; the capacity to make money or do work to pay restitution; and support from family, peers, and social institutions. Addressing underlying issues of offending, anger and self-control or drug and alcohol problems requires even more psychological and cognitive capacity, but also social or economic capital for access to programmes, treatment and so on. Desisting from future offending requires tremendous capacity and, as desistance literature suggests, is very often a long and zig-zag process for some offenders (Veysey, Martinez & Christian, 2013), who may take years to gain capacities they need to move away from offending.

The greater the required obligations of 'accountability', the less likely a young person will have capacity to respond effectively to such obligations. This is not a radical argument. Rather, increasing young people's capacities is at the core of several models of delinquency intervention and treatment, including multisystemic therapy, functional family therapy and the Better Lives Model. Walgrave, Ward, and Zinsstag (2019) have argued there may be good opportunity for restorative conferencing to be used more closely within some of these models. They also note, however, the current limits in many restorative interventions to address acute needs of offenders 'suffering unfavourable conditions and prospects from very early on in his/her life', arguing such changes 'require intensive guidance over time, monitoring successes and failures, and the acquisition of internal and external resources such as social skills, emotional regulation skills, vocational training and social support' (Walgrave et al., 2019: 4).

The reality is that academic researchers probably do not know enough about ways this may be happening in practice. Countries like Australia and New Zealand are easier to assess, as youth conferencing tends to be structured at state or federal levels. The UK and, especially, the US are more decentralised and in the case of the latter there are countless local or regional conferencing programmes that we know little about in research. Some research has documented effective use of evidence-based treatment models in conjunction with restorative youth conferencing. Research in Washington State (Wood, 2013) found that conferences were used as a mechanism of 'offender accountability' to victims within larger integrated offender plans that also included appropriate social, psychological or 'wrap-around' services for young people with acute needs. Family group conferences (FGCs) in New Zealand also reflect, in principle, an attempt to balance young people's acute needs with accountability to victims, although research shows relatively poor levels of victim involvement in FGCs (Levine, 2000), and also significant concerns as to how well they meet the needs of Māori young people (Moyle & Tauri, 2016).

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But it is certainly the case that, as Walgrave et al. (2019: 4) argue, many restorative programmes fall short in addressing or integrating conferencing with 'wider living conditions, behavioural skill deficits and perspectives of the person who has committed the offence'. A recent evaluation of youth justice conferencing (YJC) in Queensland (DCSYW, 2018), for example, found almost 60 per cent of young people were identified as moderate or high 'at risk'. But after three decades of YJC in Queensland, there was still a recommendation that consideration be given to restorative justice staff to 'identify the needs of "at risk" young people and their families and provide assisted referrals to other early intervention, community support and government services' (DCSYW, 2018: 10).

This is familiar territory in terms of literature that has identified problems in the 'responsabilising' of young people through restorative justice programmes. And many researchers and advocates realise the limited scope and possibilities of conferencing in this regard (e.g. Daly, 2008; Shapland, Robinson & Sorsby, 2011; Walgrave et al., 2019). But it has not stopped other advocates, especially policymakers, from stretching more and more 'responsibility' requirements into an increasingly plastic understanding of accountability. This highlights one of the significant dangers in relying on restorative justice programmes for rehabilitative goals. The evidence on this in terms of reoffending outcomes for young people is at best mixed (Piggott & Wood, 2018). Unfortunately, the growing body of evidence is not on the side of those who view conferencing as a viable way of meeting the acute needs of young offenders, particularly young people at 'high risk', socially marginalised, or those with significant prior offending histories.

6 Concluding remarks

Unless youth conferencing can be more programmatically and theoretically linked to these acute needs before, during, and after restorative conferencing, 'accountability' should stop demanding things from young people that set at least some of them up to fail as 'moral subjects'. Alternatively, conferencing should be employed as a narrower mechanism of accountability to victims – for offenders to admit blame and, to the extent possible, make amends to the victim. If so, more attention must be given to the problem of *getting to accountability,* particularly in cases of serious trauma and/or socially marginalised young people. Accountability in the way it is hoped for by many restorative justice advocates cannot be presumed as a de facto mechanism of conferencing.

There may be room for serious offender trauma in conferencing, when such trauma is recognised and being treated.[11] But conferencing is not a substitute for therapeutic treatment of offender trauma, nor is attempting to solicit types of accountability from young people they may not be capable of. This also risks turn-

11 Research from Gustafson (2018) on trauma in adult offenders who participated in VOM found that many of the offenders reported participation in VOM to be therapeutic in terms of trauma healing. Case studies from this research indicate a majority of offenders had received some or significant treatment for PTSD and other mental health problems or other forms of therapy related to their offending.

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ing the conference into a bad therapy session for the offender, at the expense of victim needs. This would require far better integration of conferencing with trauma-informed practices, including more comprehensive screening of at-risk young people (Suzuki & Wood, 2018: 460), focusing not only on offender suitability and victim safety, but also on 'whether youth offenders are cognitively and developmentally mature enough in terms of comprehensibility, emotionality and communication capacity'.

Likewise, employing a narrower application of accountability recognises the high degree of social marginalisation or disadvantage faced by some young offenders. It delimits unrealistic expectations of significant behavioural changes as a result of a one-to-two hour conference. It strips the hubris away from thinking some young people do not go right back to the same interpersonal and structural problems that they had before the conference. It removes the community, more broadly defined, as a stakeholder unless or until the community can demonstrate its own accountability to and resourcing of economic, social, and political infrastructures that do not leave some youth offenders as redundant or abandoned people.

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