

Sorry Justice: The Promises and Perils of Apology in Family Group Conferencing

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Good morning, and thanks to Peter Condliffe for giving me this opportunity to speak today.

I am in the middle of my undergraduate honours thesis on the topic of the role of apology in Family Group Conferencing. So I'm delivering this talk while my thesis is still very much a work in progress. I'm very excited to be speaking today so that I can get your feedback and incorporate that into my planning and writing. So I'll leave plenty of time for questions at the end.

My discussion will more or less mirror the structure of my thesis, except that I'm going to assume familiarity with the concepts of RJ and FGC. Please note that throughout my talk I may make reference to the victim as 'she' and the offender as 'he'. This is done purely for convenience and is not intended to convey anything more.

I'm going to start off by discussing the 'gap' that various RJ scholars have found between FGC theory and practice. I'll then try to explain this gap by reference to the psychological concept of apology. I'll give a detailed definition of apology, and once this is established, I'll talk about some of the ways in which apology might go wrong in a FGC.

There are two reasons why I have chosen to focus on apology. First, apology is fundamental to RJ and FGCs. It's inherent in the idea of reintegrative shaming and it's a precursor to forgiveness. The second reason is that there really is a lack of literature dealing *specifically* with the intersection between FGC and apology.

In 2002, Kathleen Daly published a paper exploring the gap that existed between FGCing theory and practice. She wrote that 'gaps' are arising "... in areas outside of the control of the coordinators and police officers, where organisational, cultural, and individual constraints place limits on what can be achieved."

FGCs have two fundamental aims. The first is material reparation. FGCs aim to facilitate restitution of victims by offenders. Material reparation encompasses Qs like: Was the offender willing to make practical amends? Did the offender *offer* an apology? Was a reparation agreement signed and what were its contents? Was the reparation agreement completed? FGCs are doing very well at facilitating material reparation. Evaluations of FGC schemes in the ACT (RISE Experiments), SA (SAJJP), Wagga Wagga, and NZ, all confirm this. For example, 86% of victims in the ACT received apologies, while 95% received material restoration.

The second key aspiration of FGC is what Retzinger & Scheff call ‘symbolic reparation.’ Symbolic reparation looks at repairing the social bonds between the victim and offender, and between the offender and his community. It encompasses questions like: Did the victim’s story stir up feelings of remorse and empathy in the offender? Did the offender think about what s/he could offer the victim? Did the offender mean what he said when he apologised? Did the victim sense that the offender was sincere? Was the victim satisfied with the terms of the reparation agreement? Has the victim forgiven the offender? Has the victim obtained a sense of closure? So here, it’s not the *gesture* of making amends, but the psychological halo surrounding it that is crucial.

FGCs are far less successful at securing symbolic reparation than they are at securing material restoration. For example: in New Zealand, only 49% of victims were in any way satisfied with the conference outcomes. A third of victims emerged from the conference feeling worse than they did before the conference. In the ACT, only 39% of victims forgave their offenders. Specifically on apology, looking at Family Group Conferencing in SA:

- In 34% of cases, both victim and offender agreed that the offender was sorry.
- In 27%, both agreed that the offender was not sorry.
- In 30% of cases there was a ‘*perceptual mismatch*’ (Daly’s terminology) – offenders were **not** sorry but victims thought they were (12%), or offenders **were** sorry, but victims didn’t sense this (18%).

These findings are not anomalous. They have been confirmed by other RJ researchers elsewhere (e.g. Maxwell & Morris, Hayes, Stubbs).

Let’s now examine some of the underlying causes of the gap.

Apology is a gesture by which the offender acknowledges the commission of the offence and its wrongfulness, expresses regret, affirms the moral status of the victim, and promises to forbear from such conduct in future.

I identify 7 elements of apology. I don’t mean to say that all 7 need to be present for symbolic restoration to occur. Depending on the victim and the circumstances, a simple expression of sorrow, coupled perhaps with a willingness to make reparations, will suffice. But I think it’s useful to set out a definition of apology in its fullest form. For one thing, I suspect that victims are going to be *seeking* a full-blown apology than just an expression of remorse/sorrow. But also, I believe that the absence of any one element can be enough to bring down an apology, and with it, the chance of symbolic reparation.

1. Voluntariness

The apology has to be voluntary. It can’t be forcefully extracted; it must be a product of free will. It doesn’t have to be overly enthusiastic, but it does have to be free of external pressure, whether that’s actual pressure or pressure perceived by the offender

2. Account

The offender must articulate exactly what transpired between himself and the victim. This removes any doubt as to whether the transgression in fact occurred. The account doesn't have to be elaborate, but it mustn't skip over critical details. So where, for example, the offender damaged the victim's family photos in the course of a burglary, he would need to mention this – simply saying, 'I'm sorry I robbed your house' wouldn't be specific enough

3. Acceptance of Responsibility

The offender must unconditionally accept responsibility for the harm. An expression lacking in this element could sound like a condolence ('I am sorry you're hurt') or even an insult ('I am sorry if you were hurt')

4. Sincerity

The apology must be sincere.

Some apology theorists believe that so long as the victim *perceives* the apology as being genuine, that's enough - the apology doesn't also have to be genuine in fact. I don't favour this approach. I think it discounts the therapeutic potential that apologising can have for offenders. Also, the perceptual mismatch I referred to earlier (whereby victims are sensing sincerity when it's not there, and not sensing it when it is) strongly suggests that sincerity is seen as a fundamental part of apology, certainly by victims, if not also by offenders

5. Expression of regret

The offender must express regrets for what s/he did. This enables the victim to see the human side of the offender.

6. Promise to forbear

The offender must promise not to repeat the misconduct. Otherwise the apology does nothing to assure the victim that fear is no longer necessary.

7. Willingness to make reparations

Lastly, the offender has to be willing to take practical responsibility for the harm caused, whether that be by way of making tangible amends or intangible reparations.

3 things can influence the perceived credibility of the apology.

1. Delivery

A categorical apology should come straight from the offender, not from a spokesperson. It should also be issued face-to-face so that the victim can assess sincerity by reference to body language, facial expressions, intonation, behaviour, and eye contact.

2. Risk

The more the offender has to lose in apologising, the greater the apology's credibility may be. An apology may be more highly valued where it's seen to cost something for the offender. So if a victim senses that the offender is finding it really difficult to swallow his pride and apologise, but *manages to*, that apology is likely to mean more than if it was all-too-readily forthcoming.

3. Timing

Timing is crucial. If the apology comes too early, the victim may not be ready to even consider forgiveness. If it comes too late, her pain and resentment might have hardened and finally set.

If we have an ideal apology – one that satisfies all 7 elements, which is delivered in the right way, at the right time, and with an appropriate degree of 'risk', what sort of benefits can this yield?

Victims

An apology can erode the victim's resentment – sometimes instantaneously. This establishes the conditions for forgiveness. Forgiveness is a source of profound psychological healing because it involves abandoning resentment, forgoing the desire to retaliate, and issuing compassion towards the offender.

Immediately upon receiving an apology, victims are empowered by their ability to choose whether to grant or withhold forgiveness. This can help counteract the disempowerment that many victims feel in the wake of crime.

An apology is a way of saying that the offence wasn't intended as an affront to the victim's moral worth. It can help subtract insult from injury and convey that the victim was not targeted because she was worthless or insignificant.

Apology can also clarify the locus of blame. The victim learns that the crime was not within their control, so they don't have to blame themselves, and that the cause of the crime was chance, so they don't have to expect it to be repeated.

Offenders

The therapeutic potential of apologising from the offender's perspective should not be overlooked either. Apologising is a humbling experience, a 'wake-up call' for offenders who had denied, rationalised or minimised the effects of their offence. Apologising is particularly beneficial for young offenders, who might not be used to putting aside pride in pursuit of reconciliation.

Apology enables offenders to distance themselves from their transgressions, communicating to the V (and everyone else at the FGC) that their bad acts don't characterise them as persons. Once the offender communicates this, the victim is

likely to view them in a better light. This can, in turn, alleviate the offender's sense of guilt.

Relational & Community Benefits

Apology can also facilitate reconciliation between the victim and offender, where there was a pre-existing relationship.

It can also lead to reconciliation at the 'macro' or 'community' level. By apologising to the victim, the offender is also apologising to the community, as represented by the family group.

I'd now like to look at what might be going wrong in FGCs.

Failure of Apology

If there's one thing I've learnt about apology, it's that it's hard to get right. Any number of things can go wrong, and the absence of any one element can void the entire apology.

A defective account can rule out element 2 (account). If the offender fails to mention every factual aspect of the offence, this may leave the victim wondering whether her trauma has in fact been acknowledged. Sometimes the offender may not even know which factual aspect is the one which the victim is waiting to hear! So accounting for crime is not as easy as simply narrating past facts.

A lack of accountability will negate element 3 (Acceptance of responsibility). This can arise, even inadvertently, through the use of conditional language, e.g. *I'm sorry if I upset you*. It can also be done through passive language (*I'm really sorry that you were hurt, c/f I'm sorry I hurt you*).

Also, if the offender gives a perfect apology but then attempts to add some sort of excuse or justification, this can void the apology. Take the following expression: "*I'm so sorry that I hit you and took your bag. Please forgive me. I was in a really bad place at the time.*" The offender may really mean this, and it may well be true that he was in a bad place at the time. But from the *victim's* perspective, this may be seen as an attempt to deny full responsibility.

Family Group Conferencing proceeds from the basis that the offender is guilty of the offence. So where that sort of qualified apology is given, this could send contradictory messages to the victim: on the one hand, the offender has assumed *legal* culpability for the offence, but on the other, he is not accepting *moral* culpability. For victims who perceive this mismatch, this could be an obstacle to forgiveness.

Lack of sincerity will rule out element 4. There is always a danger that the offender will apologise for strategic reasons. This danger is borne out by the empirical data, which has found that many offenders apologise in order to obtain what they perceive as a lighter penalty. There is a fundamental ethical problem with offenders using apology as a strategic device. At the same time, we have to remember that *yes*, apologies are being used for strategic purposes, but at the same time, remember that

victims are noticing this (Daly – victim and offender agree re lack of sincerity in 27% of cases).

An offender may genuinely *feel* regret but fail to adequately communicate this. This can bring down element 5. Pride might prevent the offender from communicating regret. Apology puts one in a very weak position, and this is something that many offenders may not wish to go through. An offender may also not be mature enough to express regret to the extent that is required. He might say, ‘I’m sorry about what I said and did to you, and I feel bad about it’ but the nature of the offence and the gravity of the harm call for something much more sophisticated. Finally, there’s simple interpersonal variation. Some people are comfortable with apologising while others are not.

If the offender gives an account, accepts responsibility, says he is sorry, and means it, this will be enough for many victims. But other victims may be unable to overcome their fear of a repeat attack if the offender doesn’t add, ‘*and I promise to never do it again.*’

Naturally, if the offender is unwilling to make reparations, this will come through in the FGC and, most likely, the conference will be cancelled and the case diverted to Youth Court. But an offender might be willing to make reparations, but not to the degree required by the victim. An offender in a FGC may not use expressions that we normally would in apologising for social errors (‘please let me make it up to you,’ ‘name anything’). The reparation agreement in a FGC is far more structured and is supposed to be a product of consensus. One can imagine how a victim might perceive that the offender as being less than happy to make practical amends. This can rule out element 7.

The apology might be delivered poorly. Apology in Family Group Conferencing takes place in a face-to-face meeting. This is good, because it enables victims to see when remorse is absent. But it’s also dangerous, because poor delivery might conceal remorse when it **is** there. If the offender is too embarrassed to make eye contact with the victim, for example, the victim might think the offender is trying to evade responsibility. Or, if the apology is blurted out too quickly, the victim might perceive the offender simply wants to get the apology over with.

If the offender tenders an apology and undertakes to do some repair work, s/he can evade more traditional forms of sanction. From the victim’s perspective, does the offender have anything to lose in apologising? To the contrary. He has everything to *gain*. There is no sense of risk. Any apology may therefore be seen as hollow from the victim’s point of view.

Failure of process

Other factors that can void an apology have nothing to do with the offender, but more to do with the FGC process.

The quality of the apology will be compromised where it is a product of actual or perceived coercion, because coercion negates element 1 - voluntariness. There are 3 ways that an apology can be the product of coercion.

Firstly, while the offender must agree to the conference outcome, he is required to attend the FGC. If he doesn't, a charge will be laid and the conventional criminal process will take place. The offender's participation not being truly 'free', we have to question how voluntary his apology might be.

A second factor has to do with intimidation. While a FGC is a way to deal with juvenile offenders, the offender might be the only one under 18 present at the conference. The presence of so many adults, particularly those in positions of authority such as police officers, may make the offender feel compelled to apologise.

Apology can feature at two stages in a FGC – first during the course of the conference, and then as part of the reparation agreement. One has to question how valuable this subsequent apology is. Is 'ordering up' an apology not inherently paradoxical, seeing as apology has to be free of external pressure?

If the FGC is convened too early, the victim may not be ready to be in the same room as the offender, much less issue forgiveness. If it is convened too late, the opportunity for forgiveness may have passed. A victim can always choose not to attend a FGC, but where she does decide to attend, she may not know whether she's ready to forgive (or is past the point of being able to do so) until she is finally sitting in the same room as the offender.

Conclusions

An offender may, through malice, weakness, pride, immaturity, or simple lack of knowledge, fail to deliver a proper apology. For many victims, a defective apology will preclude him or her taking the first steps toward forgiveness.

From this paper, I hope I have demonstrated that apology is difficult to get right at the best of times, let alone in a FGC where it's not a social faux pas but a criminal offence that has taken place. To the extent that the problems derive from a failure of process, they may be able to be addressed by a change in practice.

But my hunch is that the more common problems are those pertaining to apology. The tricky thing is that these can't be predicted before a conference actually gets underway. An exploration of the solutions to these problems calls for another thesis.

Thankyou.