

INDIGENOUS PARTNER VIOLENCE, INDIGENOUS SENTENCING COURTS, AND PATHWAYS TO DESISTANCE

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ACKNOWLEDGEMENTS

We thank the Indigenous offenders who generously gave their time and trust to participate in the interviews, as well as key personnel at the four court sites. In particular, we acknowledge and pay tribute to the Elders and Community Representatives who assisted us; without them, the research would not have been possible.

FUNDING

This study was supported by an Australian Research Council (ARC) Discovery Project and Australian Research Fellowship Grant (DP0985987) and an ARC Future Fellowship Grant (FT140100313).

KEYWORDS

Indigenous partner violence, Indigenous sentencing courts, desistance analysis

ABSTRACT

Mainstream sentencing courts do little to change the behavior of partner violence offenders, let alone members of more socially marginal groups. Indigenous offenders face a court system that has little relevance to the complexity of their relations and lived experiences. Assisted by respected Elders and Community Representatives, Australian Indigenous sentencing courts seek to create a more meaningful sentencing process that has a deeper impact on Indigenous offenders' attitudes, and ultimately, their behavior. Drawing from interviews with 30 Indigenous offenders, we explore the ways in which the courts can motivate Indigenous partner violence offenders on pathways to desistence.

INTRODUCTION

Family and domestic violence in Australian Indigenous¹ communities has been the focus of numerous inquiries and reports (e.g., Gordon, Hallahan, & Henry, 2002; Memmott, Stacy, Chambers, & Keys, 2001; Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007; Robertson, 2000; Victorian Indigenous Family Violence Task Force, 2003). Many theories have been advanced to explain the causes of Indigenous violence. Memmott et al. (2001) identify precipitating causes, and situational and underlying factors. Precipitating causes are events that trigger a violent episode (such as family arguments and disagreements); and situational and underlying factors are the individual, social, and historical factors that indirectly lead to violence (such as the violent dispossession of land and culture, and alcohol and drug abuse). Without a distinct legal offense of family or domestic violence, estimates of offending and victimisation rely on hospital admissions, victimization surveys, homicide databases, and victim support services. For all available data sources, rates of family and domestic violence victimization are greater for Australian Indigenous than non-Indigenous females. For example, the Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014* report, states that “[t]here is no main measure” for indicators of family and community violence, however, in 2013 “the proportion of Aboriginal and Torres Strait Islander women reporting violence by a current partner were 1.2 (NSW) [New South Wales], 1.6 (SA) [South Australia] and 2.2 (NT) [Northern Territory] times the rates for non-Indigenous women” (Steering Committee for the Review of Government Service Provision, 2014, p. 4.88) [A similar pattern is evident in studies produced in the US, Canada, and New Zealand, although national homicide rates are higher for African American women in the US (Bachman, Zaykowski, Kallmyer, Poteyeva, & Lanier, 2008; Daoud, Smylie, Urquia, Allan, & O’Campo, 2013; Dobbs & Eruera, 2014).] Despite many efforts to address Australian Indigenous family and domestic violence, including increased penalties and a “zero tolerance” policy agenda, offending and victimization rates continue to be higher in Indigenous than non-Indigenous communities.

Distrust of the criminal justice system, coupled with a recognition that it does not incorporate Indigenous visions of justice, are the reasons that many Indigenous people find mainstream courts unsuitable for family and domestic violence (Nancarrow, 2006; Robertson, 2000). To address such violence, Blagg (2002) argues that more holistic practices are required, which focus on community healing.² Justice processes, with community involvement and a greater degree of victim and offender participation, resonate with Indigenous victims and offenders, and are viewed as more promising.

Australian Indigenous sentencing courts were first established in Port Adelaide, a suburb of Adelaide, South Australia, on 1 June 1999 to address Indigenous distrust of the conventional criminal justice system and, to a certain degree, Indigenous disproportionalities in imprisonment. At present these courts are operating in every jurisdiction in some form, apart from Tasmania and the Northern Territory (although they used to operate in the Northern Territory as Community Courts). Such courts involve Elders and Community Representatives³ in the sentencing process and seek to align culturally appropriate and offender-specific rehabilitation programs in sentencing (Marchetti & Daly, 2007). The courts do not use customary (or traditional) law. Rather, they are a more informal sentencing process that permits an open exchange of information about defendants and their cases. A judicial officer sits at eye-level with an offender, usually at the table where the defense lawyer and prosecutor also sit, rather than on an elevated bench, with one or more Indigenous Elders or Community Representatives. An offender's supporters are present; and depending on the jurisdiction, the victim. The sentencing process normally takes longer than in a conventional court; and depending on the court, Elders or Community Representatives directly engage with offenders and victims.

Our study analyses the impact of this sentencing process on partner violence, that is, violence between current or ex-intimate partners, including de-facto and married couples and couples who do not live together. We examine the degree to which court processes can change the behavior and attitudes of Indigenous partner violence offenders. To understand how and why the

courts may reduce partner violence, we review the literatures on Indigenous courts, re-offending, and partner violence, and an emergent “desistance paradigm” (Maruna & LeBel, 2010).

INDIGENOUS SENTENCING COURTS, PARTNER VIOLENCE, AND RE-OFFENDING

A vast array of criminal justice interventions has sought to address family and domestic violence in Australia and elsewhere; but as yet, little is known about responses that are appropriate and effective for *Indigenous* partner violence. In Australia, in addition to mainstream courts, there are Family Violence Courts and Indigenous sentencing courts, some of which handle family and domestic violence. Indigenous sentencing courts are sometimes associated with restorative justice or therapeutic jurisprudence practices that have been used in mainstream court processes to better meet the needs of victims and offenders (Freiberg, 2005; King, 2003). However, we would challenge this categorization. Although some similarities exist (such as elements of procedural justice), Indigenous sentencing courts are in a category of their own because of their transformative, culturally appropriate, and politically charged processes and procedures (Marchetti & Daly, 2007). Critiques that have been leveled at the use of restorative justice practices for responding to gender violence (see reviews by Daly, 2012; Daly & Stubbs, 2006; Stubbs, 2010) are not necessarily applicable to Indigenous sentencing courts, since these courts sit within the mainstream criminal court system and are part of a formal sentencing process.

Australian Indigenous sentencing courts typically operate at a magistrates’ (or local) court level; thus, partner violence cases are at the “less serious” end of the injury spectrum in a legal sense. However, in South Australia and Victoria, Indigenous sentencing processes are also used in higher-level courts and result in penalties for more serious partner violence cases. The courts are not a separate system of justice (like the Navajo Peacemaking Courts described by Coker, 2006), nor do they use customary or traditional forms of punishment. They are also unlike the Canadian courts that use *Gladue* reports because they involve Elders or Community Representatives in the

sentencing process (Marchetti & Downie, 2014). Although the New South Wales Circle Court was loosely modeled on Canadian circle sentencing, it operates in both urban and regional areas and does not use restorative justice ideas, in that their primary aim is not to “repair the harm” to a victim (Daly, 2002, p. 58), but to increase the involvement of the offender and Indigenous communities in the sentencing process (Marchetti & Daly, 2007, p. 435).

Research on Indigenous sentencing courts suggests that community-building aims are typically achieved. Specifically, the courts provide more culturally appropriate processes, increased communication, and community participation — all of which make the sentencing process more meaningful to defendants and victims (Borowski, 2010; Cultural & Indigenous Research Centre Australia [CIRCA], 2008; Daly & Proietti-Scifoni, 2009; Fitzgerald, 2008; Morgan & Louis, 2010). Although problems may arise when defendants do not respect Elders (CIRCA, 2008; Marchetti & Daly, 2007; Potas, Smart, Brignell, Thomas, & Lawrie, 2003), a consistent finding is that the courts are successful from a cultural perspective and Indigenous participants endorse them.⁴ How, then, do these community-based aims relate to criminal justice aims, in particular, reductions in individual offending? The answer depends on how the research is carried out.

Two quantitative studies, one in New South Wales (Fitzgerald, 2008) and another in Queensland (Morgan & Lewis, 2010), found no differences in re-offending for defendants sentenced in Indigenous or conventional courts. A third, in Western Australia (Aquilina et al., 2009), found increased offending for defendants sentenced in Indigenous courts. This finding surprised the staff and community members because their perception was of reductions in offending. Likewise, in a study of the New South Wales Circle Courts, community members believed there were reductions in re-offending (CIRCA, 2008). Why, then, do quantitative studies of large datasets say one thing, but interviews with those close to the process say another? CIRCA (2008) proposes several reasons. One is that selected individual exemplars, whose lives had changed dramatically, are remembered and cited as proof of the positive impact of the courts. Another is that while some defendants may have re-offended, their lives had changed in significant

ways; or as one magistrate said “there have been standouts and failures, but less failures” (CIRCA, 2008, p. 61).

A qualitative study by Daly and Proietti-Scifoni (2009) shows what the magistrate means by “less failures.” The authors analyzed all cases (except partner violence) sentenced in the Nowra Circle Court (New South Wales) from 2002 to mid-2005, a total of 13. The defendants were interviewed about their experiences before, during, and after the Circle; and detailed criminal histories pre- and post-Circle were assessed. Analyzing these materials, the authors found that a statistical analysis, which coded offending and re-offending as a simple binary variable, would have concluded that eight defendants (over 60%) re-offended. However, recognizing that movement toward change is “faltering, hesitant, and oscillating” (Bottoms, Shapland, Costello, Holmes, & Muir, 2004, pp. 381-382), the authors came to a different conclusion. Five defendants were identified as “partial desisters”: although they had re-offended, it was minor, occurred a long time after the Circle, or occurred soon after the Circle, but then stopped. The partial desisters differed significantly from the three “persisters,” who continued to offend. The authors suggest that quantitative analyses are typically unable to discern the partial desisters. It is these people that the Elders and court staff see as partial success stories because they have taken steps toward change. A quantitative analysis would have classified the partial desisters as “failures,” as evidence that Indigenous sentencing courts do not reduce re-offending.⁵ A second finding emerged: all the complete desisters found the court experience positive, but so too did most partial desisters and persisters. Thus, re-offending is not a proxy for offenders’ views of the courts. Lastly, maturation effects were evident: complete desisters were older (average [mean] age of 37 years) than the partial desisters (26) and persisters (21.5) at the time they participated in the Circle.⁶ Although the sample is small, the study demonstrates the value of a desistance framework by viewing legal interventions as one lever of change and by taking a longer term, more holistic view of a person’s offending and desistance pathway.

DESISTANCE FRAMEWORK

In the past decade, comparisons have been drawn between older-style rehabilitation or correctional models and those using a desistance framework. The latter “focuses less on evaluation evidence of ‘*what works*’ and instead draws from criminological research on ‘*how change works*’” (Maruna & LeBel, 2010, p. 66). The implications for practice are encapsulated by Farrall (2004): “offending-related” approaches are concerned with identifying, targeting, and correcting deficits, whereas “desistance-focused” approaches encourage behaviors that promote social bonds and pro-social activities.

Three factors distinguish theories and research using a desistance framework and older style rehabilitation or correctional (“what works”) frameworks. First, a desistance framework views change toward pro-social behavior as a complex and gradual process that can be expected to include setbacks, obstacles, and relapses. Desistance is a “process of learning to live a non-criminal life when one has been living a largely criminal life” (Bottoms, 2014, p. 264). For research, this requires an ability to follow an often meandering and zigzag pathway to desistance. Desistance scholars who use qualitative approaches challenge the assumptions and findings of quantitative analyses, and the “what works?” approach more generally (Farrall & Maruna, 2004). Specifically, they argue for taking a *process-oriented* approach to understanding change in people’s lives.

Second, as McNeill (2012) argues, desistance perspectives differently construe the role of programs or interventions. Rather than putting “intervention at the heart of a process of change,” as older style rehabilitation does, “desistance ... perspectives stress that the process of change exists before, behind, and beyond the intervention” (p. 13). McNeill’s insight has implications for how to conceptualize and measure the impact of a social and legal process like Indigenous sentencing courts. Rather than analyze the effect of an intervention (or program) for reducing offending, we should focus on how and why certain types of interventions can encourage and support movement toward pro-social identities.

Third, desistance researchers are interested in understanding how individuals “view their current circumstances and future prospects” (Bottoms, 2014, p. 260). They do so by carrying out

interview or ethnographic studies to apprehend individuals' worldviews and day-to-day experiences. The concept of agency has been introduced to refer to the steps individuals self-consciously take to change their circumstances and to shift away from routines of offending, although not in "conditions entirely of their own choosing" (Bottoms, 2014, p. 263, citing Hollis, 2002, p. 19).

A desistance framework has much to offer in understanding how and why Indigenous courts may influence change. To date, however, it has been applied mainly to young men's "high volume offending [in] burglary, drug sales, and low-level violence" (Maruna, 2010, p. 1). Only recently has partner violence been researched with explicit reference to a desistance framework (Walker, Bowen, Brown, & Sleath, 2015), although Dobash, Dobash, Cavanagh, and Lewis (2000) had anticipated elements of a desistance framework for partner violence many years before.

Modelling Desistance and Partner Violence

Walker et al.'s (2015) model of desistance draws on interviews with 22 men (predominantly white British), who were recruited from rehabilitation programs that the men were attending, waiting to attend, or had completed. When interviewed, over half (13) were desisters, and nine were classified as persisters. The model identified three "global themes," which captured temporal movement away from an "old way of being" (violent behaviors) to catalysts for change and a "new way of being" (non-violent behaviors). Like other desistance scholars, Walker et al. (2015, p. 2743) view the process of shifting from an old to a new way of being as "complex, dynamic, and idiosyncratic ... [and] distinct for each individual." Here we focus on the elements associated with the catalysts for change and a new way of being.

Walker et al. (2015, p. 2738) find that there was no "single, defining moment or incident that enabled men to spontaneously desist" partner violence offending. Rather, "the triggers accumulated and gained momentum over the course of time" (p. 2738). Some of the triggers were "external" (e.g., a child witnessing violence or criminal justice intervention) that affected the men's

thought processes toward change. Others were “internal” (“negative emotions of guilt, shame, and fear”), which began to “act as a form of psychological punishment” (Walker et al., 2015, pp. 2738-39). After experiencing many such triggers, the men came to a “point of resolve” that they must change. This then led to “intrinsic autonomous motivation,” that is, a set of self-directed decisions and choices to change. Movement to a new way of being “cannot be achieved passively” (p. 2739), and at times, some men reverted to their old way. What is required is “managing the antecedents and triggers to violence” (p. 2740), including reducing the use of alcohol and better communication. In addition, the men “had to make radical changes in their underlying beliefs or theorizing about their behaviours” (p. 2741), specifically by viewing their past behavior as abusive and by viewing their new “self” as the agent of change toward non-violence. Integral to change were supports by “partners, family members, and treatment providers” (p. 2742). Men’s groups were also important facilitators for change.

Many years earlier, Dobash et al. (2000) had outlined processes for changing violent men that are congruent with a desistance framework. They described the transformative process as reflecting “new ways of thinking, speaking, and acting” (p. 154). The process of change is often set in motion from “a personal crisis” such as an arrest or a partner leaving, and it is consolidated when the men see themselves as “subjects” responsible for violence but capable of making change, and then having internalized controls against using violence. Participating in men’s groups was a significant element in changing behavior.

Desistance and Race/Ethnicity

The sparse literature on desistance and race/ethnicity suggests that minority group men’s pathways to desistance are similar, in rough outline, to those of majority group men; however, the role of identities and social capital may vary. We turn to studies in Canada and Australia to elucidate these themes.

Bracken, Deane, and Morrisette (2009) explore the relationships between “structure, culture, and biography” for Canadian Aboriginal men, who were recently released from jail and members of a street gang (p. 69). The OPK program (for Ogijiita Pimatiswin Kinamatwin)⁷ was established in Winnipeg (Manitoba) to work with gang members who wanted to stop offending, but not necessarily leave the gang. It combines several elements: addressing past traumas and experiences of stigma (both past and present) of being Indigenous; developing “positive practices of Aboriginal traditions,” which helped to shift their hostile attitudes to more pro-social behavior; and “building [the men’s] limited social capital” (Bracken et al., 2009, p. 75). Movement was encouraged away from social capital derived by the men’s bonds to the gang and toward an employment program that offered “bridging and linking capital [to enable the men] to build new lives” (p. 75).

Sullivan’s (2012) ethnographic study focused on Australian Aboriginal men, who had been repeatedly convicted for offenses and incarcerated, but who had largely stopped offending.⁸ The study area was Dubbo and surrounding towns in northwest New South Wales, an area with high levels of Indigenous violence and offending. Sullivan was interested in the “role of agency and culture in the motivation and maintenance of desistance” (p. 15), unlike others, who have focussed on agency and structure.

Sullivan argues that the Aboriginal men are “Aboriginal first and offenders second” (p. 268); her observation has implications for “identity re-formation” in the desistance process. In particular, a re-formed identity is not, as Shapland and Bottoms (2007) propose, a movement toward mainstream conformity or ceasing all forms of offending. Rather, the “motivating schemas” for change were fatherhood, long-term partnership, and maintaining kin relations. These embraced “forms of responsibility and respectability, [but] ... not necessarily ... breadwinning” (p. 288). The underlying value was looking after family and kin, although this idea expanded to “looking after my people” in employment. Sullivan argues that the structural context of desistance (that is, bridging or linking capital, as noted by Bracken et al., 2009 and Bottoms, 2014) is less relevant to the men.

Instead, she says, “bonding capital is critical to desistance,” specifically that “maintaining bonds with kin and community is central to Aboriginal identity,” (p. 342), although in time, such bonding capital may lead to employment. In the region she studied, Sullivan finds that “Aboriginal people do not necessarily aspire to ... all the perceived benefits of mainstream society, particularly if this would mean sacrificing kin relationships” (p. 351).

Contrary to Maruna (2001), who found that “desisters’ narratives [were] full of excuses,” Sullivan finds that the men “[did] not blame anybody but themselves” (p. 307). She suggests that “Aboriginal desisters owned their past crimes,” not with pride, but “strongly claiming that no one else was responsible” (pp. 306-7). She believes that this may be a consequence of the value of autonomy in Aboriginal socialization,⁹ which she suggests, “may have implications for the operation and effectiveness of Circle sentencing” (p. 349).¹⁰ Many men had been incarcerated for partner violence or assaulting police. For four who had been jailed for partner violence, but then ceased offending, their reasons were varied: a realization that they had to stop drinking for their health, a desire to maintain a relationship with a partner and to be a good father, and holding a job of public respectability.

Assisted Desistance

Bottoms (2014, p. 268) identifies eight elements that should “guide supervision practice,” drawing from McNeill, Farrall, Lightowler, and Maruna (2012, 2013). Among the elements of “assisted desistance” are developing and maintaining motivation and hope, recognizing the importance of relationships for offenders, supporting and developing an offender’s strengths and resources, and encouraging and respecting self-determination by working *with* (not on) offenders. By supervision practice, desistance researchers refer to what probation officers do; yet it is striking to see that Indigenous Elders, Community Representatives, or Community Justice Group members also practice assisted desistance. Moreover, Bottoms (2014, p. 269) says that “if offenders are to feel that probation officers can assist them, ... they need to be confident that supervisors really do understand the social worlds they inhabit.” This element also distinguishes Indigenous sentencing

courts from other types of socio-legal responses to crime. Of course, Elders and Community Representatives are not probation officers, nor do they see themselves as taking this role. However, their practices of calling on culture to re-form identities, drawing on knowledge of an offender's relationships, and encouraging change by supporting defendants, align with those of assisted desistance.

METHODS

This study is part of a larger project that considers the unique contribution of Indigenous sentencing courts, which is not present in specialist family violence or mainstream courts, in addressing Indigenous partner violence. Over a 4-year period (2010 to 2014) interviews were carried out with Elders or Community Representatives, magistrates, lawyers, Indigenous court workers, family and domestic violence service providers, victims, and offenders in a number of Australian court sites (see Marchetti, 2015 for details). Here we present findings from the interviews of 30 offenders (29 men and one woman),¹¹ who participated in an Indigenous sentencing hearing in two New South Wales sites (Nowra and Kempsey) and two in Queensland (Rockhampton and Mount Isa). In addition, updated information was gathered from those with knowledge about the offender (for example, lawyers and Indigenous court workers) to confirm the offending trajectory observed at the time of the interviews.

Table 1 shows the number of male and female partner violence cases at each site, and the number of offenders interviewed. Females were 7% of offenders, and overall, interviews were conducted with 20% of offenders. To allow sufficient time to assess the impact of Indigenous

Table 1 about here

court processes, only those offenders who had participated in a court process at least 1.5 years before the interview were listed as possible participants. The average (mean) time between first

Indigenous court appearance and interview date was 4.9 years (range: 1.8 to 8.25 years), and between first Indigenous sentencing court appearance and follow-up discussions with key people was 7.9 years (range: 3.9 to 12.2 years). Despite the long timeframes, most offenders had a good recollection of what happened, what was said, and how they felt during the hearing; they remembered how many Elders or Community Representatives were present (and in some cases, who was present), and the penalties imposed.

The interviews focused on offenders' experiences in the court process and how it compared to that in a mainstream court. A requirement of the approved ethics protocol, was that an Elder or Community Justice Group member be consulted to select "appropriate" participants. This was necessary to ensure that none of the offenders who might be interviewed would be too volatile and unpredictable if they discovered their partners (or former partners) had participated in an interview, and to ensure that none of the participants were at risk of self-harming or would be too "ashamed" to participate in an interview. In the end, seven offenders who were approached to be interviewed declined; 15 were considered, for various reasons, to be unsuitable to participate in an interview; and nine were deceased. Many others were in jail, in a rehabilitation facility, out of town, or no longer residing in town at the time the interviews were being conducted. The participants interviewed were largely those who could be found, either through mutual contacts or by chance. We acknowledge that this raises questions of sample selection bias, which for this project, could not be avoided. It may be argued that the sample was skewed because it contains those who were more accessible and living life in a more conventional manner. However, we found that most participants led complex lives that corresponded to those in other studies of Indigenous offending.

Once selected for an interview, an Elder or Community Justice Group member initially approached a participant to seek agreement to participate. To ensure cultural sensitivities were respected and to offset any feelings of distrust, an Elder or Community Justice Group member was also present during the interview. This is an accepted practice when interviewing marginalised members of an Indigenous community, and indeed, it encourages participants to be open and honest

when responding to questions (Daly & Proietti-Scifoni, 2009; Marchetti, 2015). During the interview, an Elder or Community Justice Group member would at times ask further questions to clarify a response, which made it more likely that the responses fully reflected the views of the participants. The interviews were recorded, and on average, they were approximately 25 minutes in length. The brevity of some interviews may be explained by Eades (2013, p. 42), who suggests that when being asked questions by a non-Indigenous person, “much information is not freely available and information seeking is subject to strong social constraints.” All transcriptions were checked for accuracy by re-listening to the recording while reading through the completed transcript. The offender interviews were cross-referenced with those who knew the offender (for example, the victim-partner or those associated with the court) to check the accuracy of self-reports. Each offender was classified in one of three categories of partner violence offending (desister, partial desister, and persister), with reference to these questions:

- To what extent did an offender continue to offend after the Indigenous sentencing court experience? What types of offenses (if any) were charged? (Clarification was sought during the interview on whether any disclosed behavior was detected by police and resulted in charges being laid. This was only one of several measures that were used to classify re-offending for the purposes of the typology. Other measures used to classify re-offending were reflected in the questions that follow.)
- How did an offender relate to the Elders and Community Representatives at the hearing?
- Did an offender accept responsibility for their actions towards a partner?
- Did an offender feel proud of how their life had changed since their Indigenous sentencing court appearance?
- Had an offender formed new or stronger social bonds with positive role models or family members?

In pursuing these questions, we may understand how change works (if it does) for those Indigenous offenders who have been offered a more culturally appropriate sentencing process.¹² Classification

of the 30 participants was not straightforward because some continued to offend, but it was not violence against a partner; others did not re-offend, but had not fully adopted a desister identity. When relevant, we explain the basis for classification in some difficult cases.

FINDINGS

Of the 29 men and one woman, 12 (40%) were classified as desisters; five (17%), partial desisters; and 13 (43%), persisters. (The woman was a desister.) Before turning to each group, we sketch their socio-demographic profile. Over half had more than two children, and 12 had more than four. The large number of small and dependent children contributed to a stressful home environment. Some admitted that their children had been placed in state care or that they now had little or no contact with their children, which caused concern and sadness. The added emotional and financial stress of looking after extended family, as well as young children, contributed to conflict and chaos in the home environment. One man admitted that the financial burden of accommodating his partner's extended family for long periods of time was the main source of conflict with his partner. The participants' average (mean) age at the Indigenous sentencing court was 33 (range 19 to 52 years). Most were unemployed or not in regular employment, although many were looking for jobs or engaged in work-training programs. In general, employment and health services are more difficult to access in the four regional areas, in which the courts are based, than in urban areas. Eleven confided that they had grown up in violent homes or had experienced a "poor upbringing"; three said that they had spent most of their lives in juvenile detention. Two mentioned suicide attempts or a history of family members committing suicide. Almost all had been in contact with the criminal justice system for varied offenses, and most had spent time in jail. All but one had problems with alcohol or drugs.

Desisters

The average (mean) age of the 12 desisters when attending the Indigenous court was 32 (range: 21 to 52 years). Of the 12, all but two had not been convicted for a post-court partner violence offense. Five others had been convicted of other offenses, but they were less serious and unrelated to domestic violence (typically it was a traffic offense). These seven individuals would be considered “failures” in a standard re-offending analysis, but by probing more deeply into the cases, we come to a different conclusion.

One person who was convicted of post-court partner violence (we shall call him Dave) had desisted for 11 years, but then assaulted his partner. According to the lawyer, in the months leading up to the assault, Dave had lost his job and started taking Ice. He was initially given a sentence of 6 months in prison and 6 months on parole for a charge of “allegation to intimidate,” but on appeal this was reduced to 3 months in prison and 6 months on parole. He has the support of his long-term partner, and the lawyer said he felt ashamed and remorseful for his actions. The lawyer believed that if Dave can find work when he is released from jail, he would be on an “upward track” and not considered a failure of an Indigenous court process.

The second person was sentenced to jail for a domestic violence related offense about 14 months after his Indigenous court appearance; however, he has not been charged with any further offense (domestic or non-domestic) since then (6 years later). The Elder who was present during the interview attributed the change in the offender’s behavior to his then-partner (the victim), who was described as controlling and manipulative. This comment was not made to blame the victim but to offer some context to explain how the dynamics of the offender’s previous relationship contributed to his offending behavior. He left that relationship approximately 3 years after the Indigenous sentencing court hearing and is now in another long-term relationship, which is not conflictual or volatile, despite the fact that he is still a heavy drinker.

For the five men who admitted to post-court convictions for non-partner violence offences, one had been charged for an affray with the police. It was related to a minor incident (the penalty was 70 hours community service) when the police were called to his cousin’s house for a noise

complaint, which he did not initiate and in which he was not directly involved. The youngest member of the desister group was difficult to categorize: although he has not been charged with further domestic violence offenses for nearly 6 years after the court hearing, he had committed minor offenses such as public nuisance. We classified him a desister because he had internalised comments made by the Elders at his court hearing and by others at men's group meetings, which he was ordered to attend as part of his sentence. He said that this led him to decrease his alcohol intake and taught him "to walk away from trouble" and go to his Auntie's place (#7, Mt Isa). Two other offenders aged in their early twenties at the time of their hearings, had also adopted deep-seated changes in their attitudes and identity. One re-offended by driving with an expired licence, although he thought it was current. According to an Indigenous court coordinator, he was all "shamed up" because of the driving offense (which occurred about 2 years after his Indigenous court hearing). The man had managed to reverse a long history of contact with the criminal justice system, and was now committed to finding a job, becoming an "inspiration" for his son, and resolving relationship problems in ways that do not involve violence. The other was Dave, described above, who had taken Ice, and during a drug haze, had assaulted his partner.

All the desisters, except one, had alcohol or drug abuse problems. As part of their Indigenous court sentence, most received counselling or other forms of rehabilitation, or attended group meetings to come to terms with their substance and partner abuse. One offender said, "there's always alcohol in that violence" (#2, Kempsey). The sole female offender had given up drinking due to health problems (she had no charges post sentence hearing). All acknowledged that controlling or reducing alcohol helped them to stop assaulting their partners. The following participant cites the support he received from the Elders to address an alcohol problem:

I got all, you know, I got all the right support off the Elders to help me get to where I am. If, you know, if I didn't get all the support, and you know, if it didn't roll the way it did, I don't think I'd be as good as I am today. (#1, Nowra)

One desister said he found religion, and another said he “sort of grew out of it” and could now see where he was “doing” or “going” wrong (#16, Mt Isa). This desister, like others, was now committed to looking after his three children born to his current partner. Social controls, via social bonds, whether they were formed through their intimate relationships, community groups, religion, or jobs, were important catalysts for maintaining changed behavior.

Of the 29 interviewed, all but two (both persisters) preferred Indigenous sentencing courts over the mainstream courts: they were perceived as fairer because of the sentencing process or outcome. What distinguished the 12 desisters from the others is the way the court process affected their psyche. Dave, who had assaulted his partner 11 years after the court hearing, but otherwise had no offending, remarked that he had “definitely walked out spiritually changed” (#1, Nowra). The Elders’ comments at the court hearings or the court-ordered offender programs focus on “future-oriented desistance goals” (Bottoms, 2014, p. 267) such as learning about healthy ways to manage conflict within relationships or supporting pro-social identities. All of the desisters described what Walker et al. (2015) term “internal” triggers for change, or what Dobash et al. (2000) term as movement from being “objects” of violence to “subjects” who are responsible for violence. The desisters acknowledged feeling guilty, scared, nervous, and responsible for their actions; and they held a deep sense of respect for their Elders and what they had to say about partner violence offending. According to one:

Anywhere throughout this whole country, you’ve got to respect your Elders no matter where you go. And I suppose it was just the thoughts running through my head, “what’s going to happen here?” I know I’m going to get a good ripping, told straight here, “young fella, wake up to yourself,” and which I did. But I respected that too, and I think I needed that at the time to be told the truth straight, and it’s [domestic violence] happening too much in our culture.¹³ That’s something that has to -- we’ve got to put a full stop to. (#15, Rockhampton)

Some said that the process of change took time, and they would recall the words of the Elders or what they learned in their men’s or women’s groups when they were confronted with an incident

that might trigger violence. One, who had attended a men's group for 3 years as part of a bail program,¹⁴ said:

Well at first, when they [the Elders] were telling me about it, like I thought I was only going to do it [men's group] for a month, like a couple of months. But like they didn't really sentence me ... And then you just go back to court [to report back]. ... All those times I've been coming [to men's group] ... before I go back to court, sort of helped me, and I don't know, put something in my head there. (#7, Mt Isa)

The offenders' identities as fathers, uncles, partners, and members of their Indigenous community played a crucial role in their decisions to desist from partner violence. The realization that they were hurting both their children and their partners, as a result of what was said in the Indigenous court hearing by respected members of the community and their partners (if they were present), caused many to rethink their behavior and the direction their lives were taking. Four desisters said they were now helping other couples or young people in their community behave differently.

Of the 12 desisters, ten had previously appeared in a mainstream court, and none spoke positively about their experiences. Most said it was impersonal, quick, and less intimidating than appearing before an Indigenous sentencing court:

Yeah, I was – I was pretty shaky, you know. Like sometimes when you go into the – into the white fellas court you're not really that concerned, but when you face your uncles and aunties and you tell them your problems and which you haven't told them before, it makes you really grippy,¹⁵ yeah. (#3, Nowra)

Other than the threat of being incarcerated, the mainstream court offered no incentive or support for changing their behavior.

Partial Desisters

The stories and struggles of five partial desisters remind us that a person's pathway to desistance is not linear, but instead takes many twists and turns. Their average (mean) age was 36 (range: 24 to 49 years) at the time of the Indigenous court hearing. According to their self-reports and follow-up conversations with those who knew them, two partial desisters were not charged with offenses related to partner violence after the Indigenous court hearing. They might have been classified as "desisters," but their attitudes do not yet reflect a deep-seated identity change. One, whom we call Andy, has had many problems to contend with in his family of origin; his mother is an alcoholic, all of his brothers have "disappeared," with one having severe mental health problems caused by drug abuse. Andy is trying to assist with the care of his brother's children, but his continued alcohol and drug abuse creates major obstacles and difficulties. According to a key informant, Andy is "generally going well," although he admitted to break and enter, and stealing offenses after his Indigenous court hearing. He says his offending was due to "silliness" and realizes he missed out on his children growing up. At his interview he declared, "Man, I've got to snap out of that" (#7, Nowra), meaning he needed to stop his offending.

A second man with no charges related to domestic violence was articulate and intelligent, but according to a key informant, he may now be in jail for fraud. Before his Indigenous court hearing, he had been through the mainstream court "a number of times," referring to it as a "revolving door" (#9, Mt Isa). He acknowledged that there had been incidents of domestic violence at home since his Indigenous court hearing:

There's been arguments, there's been issues there obviously. I mean look, it's gone very close to being brought before the courts. (#9, Mt Isa)

When interviewed, he was not satisfied with how he had been behaving towards his partner. As part of his Indigenous court outcome, he was required to attend the men's group and a domestic violence program. However, he thought there needed to be more "follow up" after the Indigenous sentencing court because the programs were too short, and it would be easy for someone to "bluff their way

through a lot of things” unless they were “serious about wanting to seek some help.” Although he had started to mentor others, he still needed support and advice about his own behavior.

Three partial desisters had been serial domestic violence perpetrators before their Indigenous sentencing hearing. Two had assaulted partners not long after their Indigenous court process, but then they stopped. The third continued to offend against new partners after his hearing, but then, as a result of having continued to attend the local domestic and family violence support centre (which he was ordered to attend as part of his sentence), he seemed to have completely desisted. However, according to a key informant in a follow-up conversation, he was not as focused on his rehabilitation as he used to be and was having other family problems.

All the partial desisters had great respect for the Elders and what they said at the court hearing, including a second offender who referred to the “ripping” he received from the Elders (#7, Nowra). Although he took this as a form of criticism he still acknowledged, “they’re me Elders” and that he ultimately had to respect what they said to him, without argument. All had serious alcohol abuse problems and were aware they needed to decrease drinking if they were to stay out of trouble. Some were able to do this better than others. Two believed their victim-partner had played a role in the volatility of their relationship, with one attributing the separation from his partner as one reason he had stayed out of trouble (the other reason was that he was drinking less). The latent triggers identified by Walker et al. (2015) – alcohol abuse and life “stresses” such as children and pressures from extended family – were evident in the partial desisters’ lives. However, all believed that appearing before their Elders had served, to some degree, as a catalyst for change, and that this would not have happened in a mainstream court.

Persisters

The lives of the 13 persisters were imbued with alcohol and drug abuse, and they were less likely to take responsibility for abusing their partners, explaining their violence as caused by others, and thus viewing themselves as “objects” of violence in Dobash et al.’s (2000) terms. Their relationships with partners were volatile, difficult, or toxic, in which both parties were heavy

alcohol users and easily susceptible to angry outbursts. Unlike the desisters or partial desisters, the persisters focused more on relationship difficulties with partners or extended family members during their interviews, rather than their Indigenous sentencing court experiences and what the Elders or Community Representatives said to them. They said that family and friends who drank a lot influenced them, former or current partners controlled them, and they were charged with domestic violence offenses due to the actions of their partners, such as calling the police:

Yeah. Yeah. In the last 3 to 4 years, I've been in and out of jail for nothing. Because that's all my missus has ever done to me. Just, we'd have an argument, and then [she would] call the police: "Oh yeah, he hit me, verbally abused me." (#2, Rockhampton)

This man said that if he had been able to appear before an Indigenous court earlier, he would have been able to have a voice and provide the court with his version of events. Some persisters saw the benefits of speaking to the Elders and magistrate as a tool to defend their actions, rather than a way to better understand their violent behavior toward partners:

I asked for it [the Indigenous sentencing court] because I thought that I might have a better chance, you know, with my Elders and that listening to what I've got to say instead of a white man listening to what I've got to say and judging me. I thought, if they listen and they can understand what I'm talking about, maybe they can convince the white judge, you know like, that I'm not a bad man, you know what I mean? I'm a strong Aboriginal man, where I like people to hear my side of the story too, because I am a strong man and I come from a strong background and I'm not afraid to talk. (#14, Rockhampton)

The persisters' average (mean) age at the time of Indigenous court hearing was 32 (range: 19 to 46 years), the same as that of the desisters. Some said they were making different choices as they got older because they no longer wanted to be in jail and away from their children; however, change was difficult to sustain because of attachments to family and friends who supported unhealthy and crime-promoting activities. Their interactions with Elders and Community Representatives in the court process did not have sufficient power to influence a new sense of

agency and identity. This may be related, in part, to the court site. Of the 13 persisters, seven were from Rockhampton. None of these seven men went through a pre-sentence bail program with regular report-back meetings (like the one in Mt Isa) as part of the Indigenous court process. A domestic violence (pre-sentence) bail based program was established in Rockhampton in mid-2008, but it did not capture any of the offenders who were interviewed. In Queensland the Indigenous court sentence hearings are also generally shorter than in New South Wales (where they can last 2 to 3 hours for each offender). Therefore, in Mt Isa and New South Wales, there was generally more Elder or Community Representative contact with the offenders during the Indigenous court process. For persistent Indigenous partner violence perpetrators, it appears that a greater degree of culturally appropriate ongoing support and intervention is needed.

DISCUSSION AND IMPLICATIONS

Like other First Nations people around the world, Australian Indigenous people are more likely to experience higher unemployment, chronic health conditions, and violent victimization, and to have fewer years of formal education. Changing offending behaviour in such circumstances, particularly in regional or remote towns, where access to jobs and services is more limited, is not easy. However, as our study shows, it is not impossible. Using culture as a “hook for change” (Giordano, Cernkovich, & Rudolph, 2002), Indigenous perpetrators of partner violence, with a readiness to change, can find the support and motivation to desist from further offending in towns that have Indigenous sentencing courts. By “using culture” as a hook for change, we mean a re-kindling of Indigenous values, and of being reminded of one’s cultural heritage and identity, which requires respect not only of one’s Elders, but also family, kin, and partners. When we probe with care into patterns of offending after an Indigenous sentencing process, we are able to re-define “success” by including those who are on pathways to desistance.

On balance, we find that the sentencing courts helped to change the lives and identities of just over half of partner violence offenders (17 of 30). However, as other studies find, the process of change is not linear and immediate, but zigzag and lengthy, as this man said:

I didn't walk out of [the Indigenous court hearing] ... a changed person. But having that imprinted in me head you know, every time a possible offense came up that I was going to commit, thinking about the [Indigenous court hearing] ..., it just pulls you straight back. This just yanks you back, it does ... Like there was people I could have punched in the face, and the only thing that's stopping me was the thought of [the Indigenous court] ... in me head. (#1, Nowra)

The cultural influence of an Indigenous court contrasts to the impersonal and efficiency-driven nature of mainstream courts. For the full and partial desisters, the interviews suggest that violence toward partners would not have changed, had they been sentenced using the conventional courts. Except for two persisters, the Indigenous court experience was positive and preferred over the mainstream court for all offenders.

Our findings confirm, extend upon, and in some cases, challenge previous research that has utilized a desistance framework in analysing offending, partner violence, culture, and Indigeneity. We make four points. First, a desistance framework better grasps the setbacks and obstacles in moving from a criminal to non-criminal life. The process takes time; and as Bottoms (2014, p. 264) suggests, it “does not appear by magic, [but] has to be worked for.” However, second and with some exceptions, desistance scholars have focused on criminal lives organized around illegal economic gain, not on interpersonal violence or partner violence. (We suspect there is overlap in offending, but the desistance literature is typically silent on partner violence.) For partner violence, the “many small decisions about daily living” (Bottoms, 2014, p. 264) concern a person’s drug or alcohol use and taking responsibility for partner violence as a “subject” capable of change (Dobash et al. 2000; Walker et al. 2015). More research is required on the pathways to desisting from partner violence, using a desistance framework, although our research (like that of many others, including

Dobash et al. 2000 and Walker et al. 2015) suggests that targeted men's group activities can be effective. One area of future investigation is age differences (and associated maturation effects). Whereas these were evident in Indigenous cases of non-partner violence (Daly and Proietti-Scifoni, 2009), our analysis of partner violence finds no major age differences for desisters, partial desisters, and persisters at the time they participated in the sentencing process.

Third, extending upon the idea of "assisted desistance," especially by those who inhabit the social worlds of offenders, Elders and Community Representatives in Indigenous sentencing courts can provide a catalyst for pro-social identities, assuming an Indigenous partner violence offender is ready for change. Not all are, as the persisters in this study demonstrate. The persisters blamed others for their violence, including their partners, family members, and friends; in other words, they viewed themselves as "objects" of violence (Dobash et al. 2000).

Fourth, future research is required to probe the complex relationships among social bonds, culture, agency, and structure in promoting desistance from crime for minority group offenders (and especially those who are First Nations, Aboriginal, or Indigenous). Here, we relate our findings to four studies, although none addressed partner violence. In Bracken et al.'s (2009) analysis of Aboriginal men's desistance in the city of Winnipeg, the authors viewed significant change toward desistance as movement from social capital that was secured by social bonds to gang members, to social capital that was gained by participating in an employment program. Importantly, such movement did not mean the men had to sever ties with former gang members, and in addition, the OKP employment program focussed on developing a positive Aboriginal identity. Sullivan (2012), by contrast, analysed Aboriginal desistance from crime in a regional town in New South Wales. She argues for a greater emphasis on "culture" than social structure. But what exactly does this mean? In her analysis, it meant strengthening family and kin ties, more so than the ability to secure employment, which she believes is less relevant to Indigenous men in a regional area. Contrary to the persisters in our study, Sullivan (2012, p. 307) argues that the men "did not blame anybody but

themselves” for their offending. However, her research did not focus on partner violence, and she expressly chose desisters for her sample, reading back in time their pathways to desistance.

One question arising from Bracken et al. (2009) and Sullivan (2012) is whether the positive features of “social bonds” (especially those to family and kin) vary for Indigenous people in urban and more regional or remote areas. Sullivan is emphatic in suggesting that bonds to family and kin aid in reducing Indigenous offending, but Bracken et al. focus on the positive impact for men of securing a job and maintaining bonds to peer groups. Our research suggests that desires to be a good parent and improve family relationships were strong motivators for desisting from partner violence. At the same time, we find that such bonds were associated with alcohol abuse and violence in the lives of the persisters. Neither our study nor that by Daly and Proietti-Scifoni (2009) would support Sullivan’s (2012) claim that social bonds to family and kin are more important than employment in Indigenous pathways to desistance; the two are often interwoven, especially in men’s lives.

A related question is how researchers differently invoke the concept of “culture” to understand and explain desistance from crime. Calverley’s (2013) research on pathways to desistance for ethnic minority offenders (Indian, Bangladeshi, and Black and dual heritage) in Britain equates “culture” with social capital derived from family networks, and at times, with religious identities. Family members of Bangladeshi-origin offenders supported and encouraged the desistance process; and in addition, Islam shaped their motivations to desist by reinforcing their identities as “good” Muslims (paraphrasing Bottoms, 2014, p. 266). By comparison, desistance “was a much lonelier journey” for the Black and dual heritage offenders because “they lacked social capital” associated with strong family networks (Calverley, 2013, p. 187, quoted in Bottoms, 2014, p. 266). “Culture” can refer to varied facets of a way of living. Our research suggests that “social capital” — whether by bonds to family/kin or by linkages to legitimate forms of employment — does not well capture all that occurs in re-forming one’s identity in becoming a “good” person, whether Muslim, Aboriginal, Black, or another identity. Future research might examine how such

re-formed culturally-invoked identities are distinct from “social capital” as currently defined in the desistance literature.

Despite many questions about how a desistance framework would address partner violence and differences by race-ethnicity and culture, a clear signal exists through the noise and uncertainty occasioned by sparse research. It is that studies of partner violence and socio-legal interventions have not paid sufficient attention to the social and legal *processes* that may encourage pathways to desisting from partner violence. Such an approach requires a longer-term temporal framework, an understanding of the life-worlds of offenders and victims, and methods that do not rely solely on binary understandings of “re-offending”. It also requires careful attention to the ways in which community authority figures (such as Elders and Community Representatives) and targeted programs can be influential elements in changing attitudes and behavior that support and justify partner violence. Changing such attitudes and behavior has been a significant challenge for policy makers and activists for many decades. Equally challenging and significant is identifying new ways to research and explain pathways to change.

NOTES

1. The word “Indigenous” has been used as a noun to collectively refer to Australian Aboriginal and Torres Strait Islander people, and for this reason it has been capitalized.
2. Blagg (2002, p. 198) notes that “[h]ealing, in the Indigenous sense of the term, is difficult to define” but has been “employed by Indigenous people to describe a dynamic and unfolding process of individual and collective problem solving,” with the aim of “changing community structures and ameliorating social conditions, ... [and] changing the embedded negative value systems which have accompanied cultural marginalization and dispossession.”
3. The words “Elders” and “Community Representatives” have been capitalized as a sign of respect for the importance of their role in their communities.
4. The courts could be improved, however, by providing greater support for victims, better programs for offenders and victims, and greater support for Indigenous court staff and Elders.
5. The same might be said for studies of conventional court processes; but until researchers do the careful work of analyzing offending trajectories over time and how they relate to the timing of a socio-legal intervention, we will be unable to draw conclusions.
6. As we discuss later in the paper, the age differences seen for these desisters and persisters in non-partner violence cases were not found for those in partner violence cases.
7. These words mean “learning to become a protector and provider for the community” (Sullivan, 2012, p. xiii).
8. Sullivan (2012, p. 83) interviewed 26 men and four women, but her thesis focused on 15 men.
9. As elucidated by Macdonald (2008, p. 350), “the intrinsic worth of an Aboriginal person is embedded in the notion of autonomy, and a person’s right to be themselves, to take responsibility for themselves, not to have to conform to others’ expectations, and to speak for themselves.”
10. Sullivan (2012) gives passing reference to some men who had participated in Circles, but she does not say more. She makes the erroneous claim that Circles “are limited to first offences for

non-serious crime” and are “not central” to analyses of offending and desistance (p. 11). Contrary to what she says, partner violence cases have been heard in Circle Courts in New South Wales since they began in 2002.

11. The woman’s experience of the Indigenous sentencing court and how it affected her did not differ from how the men discussed the court and its impact.

12. We are confident that our sample of Indigenous offenders who had experienced both mainstream and Indigenous sentencing court processes provides a good comparison. However, our study did not consider other types of domestic/family violence specialist courts and non-Indigenous offenders.

13. The word “culture” in this context is being used to refer to “community.”

14. The term “bail program” is used to “refer to formal pre-sentence supervision involving participation in some form of rehabilitative program prior to sentencing” (Morgan and Louis, 2010).

15. “Grippy” in this context means nervous, hyper-aware, or anxious.

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Table 1: Indigenous partner violence offenders from each court site

Court site	Total number of partner violence offenders	N of male partner violence offenders	N of female partner violence offenders	N and percent of partner violence offenders interviewed
Nowra	15 (Feb 2002 – early May 2010)	15	0	5 (33%)
Kempsey	33 (April 2006 – end Dec 2010)	31	2	5 (15%)
Rockhampton	63 (June 2003 – end May 2010)	58	5	10 (16%)
Mount Isa	41 (1 January 2007 – end July 2011)	37	4	10 (24%)
Total	152	141 (93%)	11 (7%)	30 (20%)

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